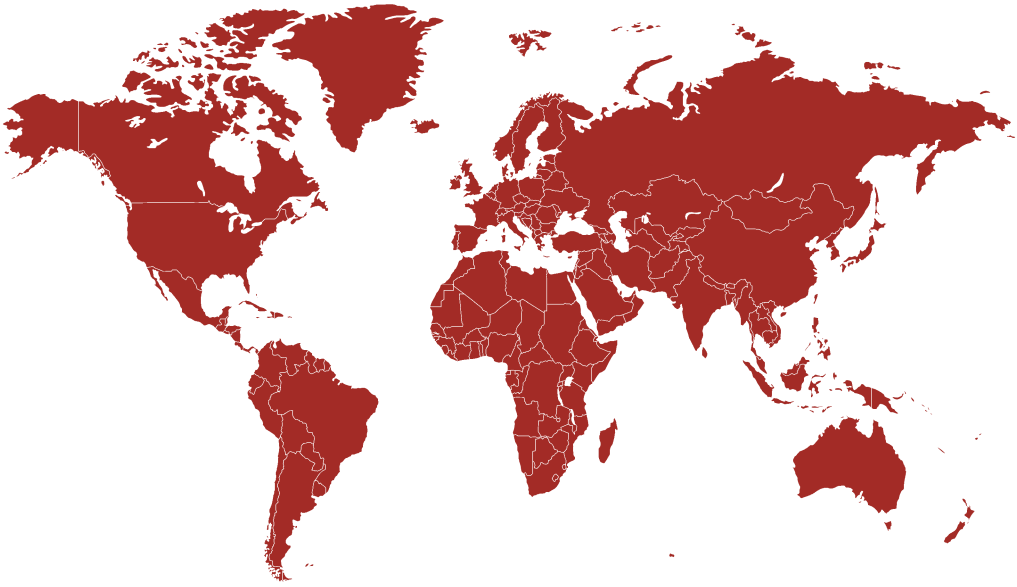


The Forum of Federations Handbook on Local Government in Federal Systems

Edited by Nico Steytler

Forum of Federations
The Global Network on Federalism and Devolved Governance

OPEN ACCESS

palgrave
macmillan

The Forum of Federations Handbook on Local Government in Federal Systems

Nico Steytler
Editor

The Forum of Federations Handbook on Local Government in Federal Systems

Forum of Federations
The Global Network on Federalism and Devolved Governance

palgrave
macmillan

Editor
Nico Steytler
University of the Western Cape
Cape Town, South Africa

ISBN 978-3-031-41282-0 ISBN 978-3-031-41283-7 (eBook)
https://doi.org/10.1007/978-3-031-41283-7

Cover illustration: Medina creatives/Getty images

This Palgrave Macmillan imprint is published by the registered company Springer Nature Switzerland AG
The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

Paper in this product is recyclable.

Foreword

As the order of government closest to the people, local governments have historically played, and continue to play, a significant role in systems of governance. Local government is an essential component of any democratic society, providing critical services, representation, and accountability to its citizens. By working with other orders of government, local governments can help create thriving, vibrant communities that benefit everyone.

In today's times, where the world is seemingly getting smaller, communities have a renewed interest in the role that local government may offer. The majority of the population in most countries resides in cities, the governance of which is not only more complex but also has the ability to impact significantly on the rest of the country. Local governments are also often first responders in times of disaster or emergencies. These dynamics were forcefully brought to the surface during the Covid-19 pandemic.

This volume, *The Forum of Federations Handbook on Local Government in Federal Systems,* seeks to continue the work of the Forum of Federations on local government in building on past scholarship and offering key insights that will be of use to both academics and practitioners. Bringing together authors from across the globe, it seeks to broaden and update current understandings around local government issues within 16 federal or federal-type countries. The book aims to identify some extrapolatory lessons that might be learnt from this Forum of Federation's signature

comparative analysis and to inform our work in established as well as emerging federal countries.

We would like to extend special thanks to the editor, Nico Steytler, for his tireless efforts to steer this project and ensure successful publication.

We consider the book an important contribution to the study of federalism and hope that it will inspire discussion and further research.

February 2023
Berlin

Felix Knüpling
On behalf of the Forum
of Federations

Preface

Through a partnership between the Forum of Federations and the International Association of Centres for Federal Studies (IACFS), a book series entitled *A Global Dialogue on Federalism* was published since 2005. The sixth volume in the series was *Local Government and Metropolitan Regions in Federal Systems*, published in 2009 by McGill-Queen's University Press. It generated great interest, which prompted the Forum of Federations to seek an update and expansion of the work. When the Forum asked me in 2020 to edit the new volume too, I was happy to accept, as local government in federal systems is a subject close to my heart and a dynamic area in federal systems.

That there was a need for a new version is evident. First, the number of case studies was limited (only 12) and the scope of the work needed expansion to reflect greater geographical representativity. Argentina was added to the two case studies from Latin America (Mexico and Brazil); Italy to the European case studies; Ethiopia to Africa (Nigeria and South Africa); and Nepal to Asia (India). Secondly, new federations came on stream in the previous decade, notably Nepal. Its Constitution of 2015 established a three-level federation, and in keeping with the international trend, gave a prominent role to local government in the country's governance. Thirdly, the Covid-19 pandemic highlighted the role and place of local government in federal systems, whether as merely an implementing agent of senior levels of government or as an autonomous agent responding directly to the needs of the community. Fourthly, as the field

of local government is a dynamic one, much would have changed. The question is thus whether the trends identified in 2009 continued in the ensuing decade or whether the status quo remains? The result is a book containing 16 country studies from six continents, written by 22 authors.

This book owes its existence to the Forum of Federations. It is thus fitting that the title is *The Forum of Federations Handbook on Local Government in Federal Systems*. I would like to acknowledge the inspirational and leading roles played by Rupak Chattopadhyay, the president of the Forum, and Felix Knüpling, the vice-president. I also wish to thank George Stairs, John Light, and Jamie Thomas, the project managers at the Forum, for their generous assistance.

A special word of thanks goes to the contributors. They endured queries, revisions, and delays with great forbearance. They stayed the course, and have produced excellent scholarship. It was with great sadness that we learned of the unexpected death of Andreas Ladner on 7 February 2023, the author of the chapters on Switzerland in this and the previous volume. Andreas was a leader in the field of Swiss and European local government, and leaves behind a rich legacy of scholarship.

The research for this volume is based on pioneering work done for the *Global Dialogue* volume. The Forum of Federations and I acknowledge the contribution of the previous authors, without whom we would not have the foundations upon which we are building. These authors include Andreas Kiefer, Franz Schausberger, Luiz Cesar de Queiroz, Martin Burgi, George Mathew, Rakesh Hooja, Boris Graizbord, Habu Galadima, and Michael A. Pagano.

At the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, at the University of the Western Cape, the support I received from my colleagues, Jaap de Visser and Tinashe Chigwata, is much appreciated. The work was done while I held the South African Research Chair in Multilevel Government, Law and Development. The support provided by the South African Research Chairs Initiatives of the Department of Science and Technology and the National Research Foundation is thus hereby gratefully acknowledged. A particular word of thanks goes to André Wiesner for his excellent editing of the manuscript, and Sanet le Roux for the indexing.

The final word of thanks goes to the staff at Palgrave MacMillan for their expeditious and meticulous production of this book.

Cape Town, South Africa Nico Steytler
February 2023

Contents

Notes on Contributors

Elisabeth Alber is a research group leader (Participation and Innovations) and programme head (Federal Scholar in Residence) at the EURAC Research Institute for Comparative Federalism, Bolzano/Bozen, Italy.

Penélope Vaca Avila is an adjunct professor at the Institute of Social Sciences and Administration, National University Arturo Jauretche, Buenos Aires, Argentina.

Zemelak Ayitenew Ayele is an associate professor and former director of the Centre of Federal and Governance Studies, Addis Ababa University, Addis Ababa, Ethiopia

Kleber Castro is an economist and partner at Finance Análise e Consultoria Econômica, and an economic consultant at FNP, Rio de Janeiro, Brazil.

Meryl Justin Chertoff is an adjunct professor and the Executive Director of the Georgetown Project on State and Local Government Policy and Law, Georgetown University Law Center, Washington, DC, United States.

Jaap de Visser is the South African Research Chair in Multilevel Government, Law and Development, at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, University of the Western Cape, Cape Town, South Africa.

Khim Lal Devkota is a member of the National Assembly (Upper House) and former member of the Intergovernmental Fiscal Relations Council, Kathmandu, Nepal.

Sol Garson is a researcher at the Public Policies Program, Institute of Economics, Federal University of Rio de Janeiro, Rio de Janeiro, Brazil.

Gopi Krishna Khanal a development economist and Secretary of Government of Nepal, Kathmandu, Nepal.

Greta Klotz is a researcher at the Institute for Comparative Federalism, EURAC Research, Bolzano/Bozen, Italy.

Karl Kössler is a senior researcher at the Institute for Comparative Federalism, EURAC Research, Bolzano/Bozen, Italy.

Andreas Ladner was a professor at the Swiss Graduate School of Public Administration, University of Lausanne, Lausanne, Switzerland.

Alejandra Reyes is an assistant professor of Urban Planning and Public Policy, University of California, Irvine, United States.

Niranjan Sahoo is a senior fellow at the Observer Research Foundation, New Delhi, India.

Graham Sansom is an adjunct professor at the Institute for Public Policy and Governance, University of Technology Sydney, Sydney, Australia.

Henrik Scheller is the team leader, Public Finance, Economy and Sustainability Indicators, at the German Institute of Urban Affairs, Berlin, Germany.

Enid Slack is the Director of the Institute on Municipal Finance and Governance (IMFG) at the School of Cities, University of Toronto, Toronto, Canada.

Nico Steytler is a professor emeritus at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, University of the Western Cape, Cape Town, South Africa.

Rotimi T. Suberu is a professor of Society, Culture and Thought (SCT) at Bennington College, Bennington, Vermont, United States.

Su Fei Tan is an Industry Fellow at the Institute for Public Policy and Governance, University of Technology Sydney, Sydney, Australia.

Zach Taylor is an associate professor in the Department of Political Science and Local Government Program, Western University, London, Canada, and fellow of the Institute on Municipal Finance and Governance (IMFG) at the School of Cities, University of Toronto, Toronto, Canada

Mónica Unda-Gutierrez is an assistant professor at the Political Science and Economics departments at Marquette University, Milwaukee, WI, United States.

Alice Valdesalici is a research group leader at the Institute for Comparative Federalism, EURAC Research, Bolzano/Bozen, Italy.

Francisco Velasco Caballero is a professor of law at the Instituto de Derecho Local, Universidad Autónoma de Madrid, Madrid, Spain.

Abbreviations

73rd CAA	73rd Constitutional Amendment Act, 1993
74th CAA	74th Constitutional Amendment Act, 1993
ACELG	Australian Centre of Excellence for Local Government
ACLG	Australian Council of Local Government
ACT	Australian Capital Territory
ALGA	Australian Local Government Association
ALGON	Association of Local Government of Nigeria
ANC	African National Congress
ANCI	National Association of Italian Municipalities
ASF	Federal Chief Audit Office
BL	Basic Law
CABA	Autonomous City of Buenos Aires
CDC	Centers for Disease Control
CNM	*Confederação Nacional de Municípios*
COAG	Council of Australian Governments
CoE	Council of Europe
DIFU	German Institute of Urban Affairs
EPRDF	Ethiopian Peoples' Revolutionary Democratic Front
EU	European Union
FAISM	Fund for Municipal Social Infrastructure
FCM	Federation of Canadian Municipalities
FEMP	Spanish Federation of Municipalities and Provinces
FNP	*Frente Nacional de Prefeitos*
FO.AR	Argentine South-South and Triangular Cooperation Fund
FORTAMUN	Fund for the Strengthening of Municipalities
FPM	Fund for Participation of Municipalities

GDP	Gross domestic product
HDI	Human Development Index
IBGE	Brazilian Institute of Geography and Statistics
ICMS	State Value Added Tax
IDP	Integrated Development Plan
IGFA	Intergovernmental Fiscal Arrangement Act
IMEPLAN	Metropolitan Planning Institute
IMF	International Monetary Fund
ITC	Italian Constitutional Court
LGAs	Local Government Authorities
LGOA	Local Government Operation Act
LGSC	Local Government Service Commission
LRF	Fiscal Responsibility Law
MinMEC	Minister and Members of the Executive Councils
MoUD	Ministry of Urban Development
MRs	Metropolitan Regions
NCOP	National Council of Provinces
NCTD	National Capital Territory of Delhi
NEBE	National Electoral Board of Ethiopia
NGF	Nigeria Governors Forum
NNRFC	National Natural Resources and Fiscal Commission
NULGE	National Union of Local Government Employees
OECD	Organisation for Economic Co-operation and Development
PAN	*Partido Autonomista Nacional*
PCC	President's Coordinating Council
PJ	Justicialist Party
PPP	Public-Private Partnerships
PRI	Institutional Revolutionary Party
PRIs	*Panchayati Raj* Institutions
PRONASOL	National Solidarity Programme
PSOE	Spanish Socialist Workers' Party
SALGA	South African Local Government Association
SALT	State and Local Tax
SCs	Scheduled Castes
SDGs	Sustainable Development Goals
SEZs	Special Economic Zones
SJLGA	State Joint Local Government Account
SNCF	National Fiscal Coordination System
SNNP	Southern Nations, Nationalities and Peoples
SPÖ	Social Democratic Party of Austria
STs	Scheduled Tribes
TPLF	Tigray People's Liberation Front
TUEL	Consolidated Text of Local Authorities

UCLG	United Cities and Local Governments
ULBs	Urban Local Bodies
UPI	Union of Italian Provinces
WHO	World Health Organization

List of Figures

List of Tables

Chapter 9

Chapter 15

CHAPTER 1

Introduction

Nico Steytler

While local government is found in all federal countries, its place and role in the governance of these countries vary considerably. In some, local government is considered an essential part of the federal nature of the state and recognised in the constitution as such; in others, it is simply a creature of the subnational states or provinces and firmly under their thumb. When referring to local government, it is more correct to refer to local governments (plural), as these institutions come in all shapes and sizes and perform widely divergent functions. They range from metropolitan municipalities, mega-cities, counties, municipal councils of cities and large towns to small town councils and village assemblies. Their focus is either multi-purpose, in the case of municipalities, or single purpose, in the case of special districts or school districts. What unites these institutions of state is that there is usually no level of government below them. That is also their strength and democratic claim: they are the government closest to the people.

N. Steytler (✉)
Dullah Omar Institute for Constitutional Law, Governance and Human Rights, University of the Western Cape, Cape Town, South Africa
e-mail: nsteytler@uwc.ac.za

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_1

The earliest federal constitutions (United States (US), Switzerland, Canada, and Australia) did not refer to local government at all (and if they did, then merely as a competence of state or provincial government as is the case in Canada). Local government was thus merely a creature of statute at the discretion of the state or province. Since the Second World War, however, federal constitutions have increasingly recognised local government as a constituent part of the federal state. A principal reason for this growing recognition of local government is the democratic potential of the government closest to the people. This was the case in Germany, Brazil, Nigeria, South Africa, and Nepal. In India, entrenching local self-rule in the Constitution was seen also as vital for the mobilisation of local resources for development. On the other hand, changes to the Swiss Constitution giving recognition to local government merely recorded the entrenched status of municipalities in the political life of that country.

The place and role of local government have also come strongly to the fore in the governance of metropolitan areas. Where local governments have to deal with the challenges of massive conurbations, they are also staking claims to be partners at the federal table of government. Many large metropolitan governments' budgets are larger than those of states or provinces in the same country. Their claim is thus for money, power, and respect. Urban governments require new fiscal tools to meet their increasing responsibilities, they need powers commensurate to the challenges of urbanisation, and finally, given the vital role they play in the social and economic well-being of the country as a whole, they want respect—a seat at the table of government. Ran Hirshl[1] argues that since the vast majority of the population in developed economies lives in cities and the Global South is witnessing a dramatic growth in mega-cities, cities must deal with the challenges of environmental protection, climate change, poverty, and international migration. Yet they are not constitutionally recognised to play a meaningful role in this regard. In federal systems the situation is no different, if not more complicated. Although there is increasing constitutional recognition of local government as opposed to cities per se, cities are usually under the full or partial control of state governments. Increasingly, there are strong arguments for

[1] *City, State: Constitutionalism and the Megacity* (Oxford University Press, 2020).

cities to play a greater role as a distinct type of local authority and for this role to find expression in the federal framework of governance.[2]

In systems where the federal state is conceived as comprising only the federal government and states or provinces, the former usually has little or no direct relations with local government, with the concerns and interests of the latter being mediated by the states or provinces. Where governmental powers are divided and shared among the three orders of government, direct relations between the federal government and local government usually follow, producing an inherently more complex and dynamic system of government.

Increasingly, local government plays a significant role in government. The constitutional recognition of local government over the past few decades bears testimony to this. In an age of globalisation when the world is getting smaller, communities have a renewed interest in the comfort zone which government closest to them may offer. Although the majority of local governments are still to be found in small towns and villages, with town hall meetings exemplifying local self-government, the majority of the population in most countries live in cities, the governance of which is not only more complex but also affects the health and well-being of the entire country. These developments in the role and place of local government impose new demands on the theory and practice of federalism.

These dynamics were brought dramatically to the fore in 2020 by the Covid-19 pandemic.[3] First, the pandemic tested the federal nature of federations in general, raising the question of whether the federal dispensation helped or hindered the management of the pandemic. In some federations, such as the US and Brazil, the federal government dragged its heels while subnational governments led the imposition of effective curative and preventive measures, thus acting as a check and balance on federal (in)action. Secondly, local governments were often at the cutting edge of the pandemic and the implementation of response measures. In some cases, they were merely the implementers of federal policies, but in others they devised innovative measures to curb the pandemic. Given the federal dynamics that emerged in each country, the question is what

[2] Erika Arban (ed), *Cities in Federal Constitutional Theory* (Oxford University Press, 2022).

[3] See Nico Steytler (ed), *Comparative Federalism and Covid-19: Combating the Pandemic* (Routledge, 2022).

the long-term consequences might be for the federal system in general and the role and place of local government in particular. Will the system return to the old patterns of functioning, or has the management of the pandemic triggered more long-lasting reforms?

The purpose of this *Handbook* is to examine the role and place of local government in 16 federal or federal-type countries and to explore their relationship with the other orders of government and their impact on the system of federalism as a whole. Consistent with the purpose of the Forum of Federation to assist countries in learning from each other's experiences, country chapters explain not only the formal institutional arrangements but also their operation in practice. For the sake of comparative analysis, the chapters have been structured according to a template that guides the information each chapter contains.

For this volume, 16 very different federal or federal-type countries have been selected: Argentina, Australia, Austria, Brazil, Canada, Ethiopia, Germany, India, Italy, Mexico, Nepal, Nigeria, South Africa, Spain, Switzerland, and the US. These countries—among them the major federations and quasi-federations in the world—represent divergent economic and social conditions as well as distinct political and institutional arrangements. Old established federations can thus be compared with more recent additions to the federal family, even with those such as Spain and South Africa that deny a familial connection despite the presence of some federal features in their constitutional make-up. From a constitutional perspective, as noted above, the old federal constitutions (those of the US, Switzerland, Canada, and Australia) did not refer to local government, and if they did, merely as a competence of the states or provinces. In contrast, ever since the Second World War, the other countries in this sample have all given recognition to local government, although not always as a full-fledged order of government.

More important than constitutional recognition of local government is the practice of intergovernmental relations, which gives a better reflection of the role and place of local governments in the federal system. We ask whether local government has become a partner in the federal system of government or whether it is still under the tutelage of states or provinces. In this context, are direct relations emerging between local government and the federal government, or do states mediate that relationship? Where local government is recognised as a partner in the federal system of government, how has this affected the relationship between the federal government and states? Is there competition for power and resources

between states and large local governments such as metropolitan cities? Where local government is a partner in the federal system, what impact has this had on the system as a whole? Have intergovernmental relations become more complex and unwieldy, with less accountability to each order of government's constituency?

In addressing these questions, the country chapters, as noted, have been written to an agreed template in order to ensure coverage of similar issues. Meaningful comparisons can then follow. Each chapter commences with an introductory overview providing the geographical, demographic, and economic context of the federal polity and its political institutions. The second section focuses on the history, structures, and institutions of local government. The historical development of local government is sketched, tracing the evolution of its role over time. As mentioned above, the collective term 'local government' includes counties, municipalities, townships, town councils, school districts, special districts, rural local authorities, villages, and traditional or traditional authorities. The myriad institutions also differ in having either multiple purposes or a single purpose. An important factor in this context is the institutional arrangements for the governance of metropolitan regions. The governance of federal capital cities is also examined.

The third section is concerned with the constitutional recognition of local government. The focus is on the reasons for, and the scope, nature, and consequences of, recognition in both federal and state constitutions. The broad question about the constitutional nature of this order of government is answered through a number of subsidiary questions:

- Is local government accorded powers that make local self-government meaningful?
- Does local government have original taxing powers?
- Are there special features in the constitution, such as directly according local government a seat in the federal government?
- Does the capital city have a special status?
- If there is no national recognition, does local government receive any protection in subnational constitutions? If so, what is the nature of such recognition?
- More broadly, what is the impact of the constitutional recognition of local self-government or absence thereof? Does it enhance democratic and accountable government? Does it lead to greater political participation and better government?

Section 4 analyses the overall governance role that local governments play in a country. This depends on the exercise both of their own functions and of those administered on behalf of the state and federal governments. The focus then shifts to the institutions that exercise power and perform the functions of local government. Issues addressed include the following:

- What are the powers and functions of local government? Are the powers constitutionally entrenched or conferred in legislation? Is the allocation of powers symmetrical or asymmetrical, depending on the size of a local authority?
- Are there powers that local government has sole responsibility for and others which are shared with other orders of government?
- To what extent do local authorities serve as agents for other orders of government?
- Are local authorities under an obligation (by federal or state law) to perform certain functions and provide certain services? If so, how are they financed?
- Given their powers and functions, what do local authorities actually do? What functions are the core of local government in terms of expenditure and personnel? Do they provide, directly or indirectly, goods and services such as water, sewage, waste management, electricity, public transport, and housing? Is there a tendency to privatise these services?
- What is the contribution of local government to total government expenditure (compared to federal and state or provincial governments)?

Having ascertained the powers and functions of local governments, the focus shifts to the institutions that exercise power and fulfil the functions of local government.

- What are the political institutions of local authorities? What is the democratic nature of local government? How are councils elected?
- Do elected councils fuse legislative and executive branches of government?
- Is the mayor directly or indirectly elected?

- How is executive power exercised—in committee or by an executive mayor?
- How do communities hold elected representatives accountable? Are there participatory processes of decision-making?

Financing the governance role of local government is the subject of section 5. Whatever the formal functions and powers of local governments may be, the degree of self-sufficiency in revenue-raising is a strong indicator of the level of local self-governance. A reliance on transfers from state governments is likely to lead to dependency. The focus, then, is on the sources of revenue—whether own or as a result of transfers—and the level of expenditure discretion. The more detailed issues which are probed include the following:

- What is the constitutional and legal framework for the financial management of local authorities?
- Does local government have any constitutionally entrenched revenue-raising powers?
- What are the revenue sources of local government (property taxes, taxes, levies, transfers, and so forth)? Are there any tax-base sharing agreements?
- What are the borrowing powers of local government?
- What percentage of local revenue is self-generated? Is there a vertical fiscal imbalance? How does this compare with state or provincial revenue streams?
- Is there a gap between the assigned duties and functions of local government and the available revenue?
- Is there horizontal fiscal imbalance and are there equalisation policies?
- What are the form and extent of intergovernmental transfers? Conditional, unconditional? Of transfers, how much comes from the federal government and how much from states or provinces?
- Are there controls over local expenditure? May local authorities run budget deficits?
- In general, has local self-government contributed to greater financial accountability and efficiency?

The sixth section examines the theory and practice of supervision of local government exercised by states and the federal governments. Supervision includes standard-setting, support, routine review of decisions, monitoring of performance, and intervention. The extent of supervision has an important bearing on the level of local autonomy. Issues addressed include:

- Can superior levels of government override local laws and decisions?
- Is a superior level of government able to dismiss a democratically elected council? If so, under what circumstances?
- May a superior level of government take over a local authority?
- What has been the practice of supervision? Have superior orders of government exercised a tight rein on local authorities, or allowed a tradition of local autonomy to develop?

Although the states' supervisory role reflects a hierarchical relationship, the practice of intergovernmental relations with other orders of government may suggest a relationship based more on equality. In section 7, the relationships between local government and the states or provinces are outlined. The question is also probed of whether direct relations with the federal government are developing. What is the nature of these relationships? Are they mainly top-down, with the federal or state government dictating outcomes to municipalities, or are there areas in which local government is regarded as a partner in co-determining policies and programmes? In both sets of relations, organised local government plays an important role as the voice of local government and partner in government. How do local authorities organise among themselves to deal with other orders of government? On a national or regional basis? How does organised local government manage the great differences between small rural municipalities and large urban ones?

With regard to local–state/provincial relations, are there state or provincial ministries responsible for local government? Where the relationship is non-hierarchical, are there dedicated structures for intergovernmental relations? Is the local government's relationship with state or provincial government cooperative or conflictual?

Of particular interest are local–federal relations. Issues addressed include:

- Does the federal government relate directly in some instances with local authorities? Are there federal ministries dedicated to local government?
- What impact does local government's relationship with the federal government have on its relationship with state or provincial government?
- Given their size and importance, do the local authorities of metropolitan areas have separate relations with the other orders of government?
- More broadly, how has the emergence of local self-government affected federal–state relations? Has it made intergovernmental relations slower and more complex and cumbersome?

The practice of intergovernmental relations is relevant to section 8, which deals with the political culture of local governance. To what extent have local politics been incorporated into the national-party political system, either facilitating intergovernmental relations or, alternatively, dictating local decisions? More generally, some issues discussed include:

- Are there organised party politics at local level?
- What is the popular interest in local elections? How does voter turnout at local government elections compare to federal and state or provincial elections?
- Is equitable gender representation an issue?
- What link or interaction is there between politics at local level and politics in the other orders of government? Are local politicians often recruited by federal parties? Do federal parties influence local decisions and policies?

Given the role and place of local government in a country's federal system, as described above, section 9 deals with how the Covid-19 pandemic and the measures to combat it impacted on this role and place. Questions addressed include whether, in general, there has been a contraction or expansion of the relative autonomy of local governments where it existed before. What role did local authorities play—proactive or reactively implementing directions from state or provincial and federal governments? Were local governments part of intergovernmental

structures and decision-making, thus presenting a whole-of-government approach to the pandemic? Could the impact of the pandemic on local government lead to more permanent reforms of this order of government?

The final section concerns the role of local government in the evolution of the federal system: what are the main issues of, and emerging trends in, local government that may affect a country's federal system? Four interconnected trends are probed. First, is the autonomy of local government waxing and waning? Secondly, in regard to the problem of smallness of rural municipalities, how do the majority of municipalities, which have less than 5000 inhabitants, cope with the demands and mandates placed on them? Thirdly, as regards the problem of largeness in metropolitan areas, how are they effectively governed in a context where they are the site of both economic growth and social and economic hardship? Finally, have the challenges that globalisation poses to local governments seen greater international connections and cooperation? Are large cities engaging in international relations? How has regional integration, such as in the European Union, affected local governments?

The concluding chapter in this volume gives a comparative analysis of the different themes examined in each chapter. It seeks to answer the overall question of whether the growth of local government with relative autonomy is changing the shape of federal systems. Is there a movement, slow but sure, away from the classical two-order federal system and towards multi-sphere governance? If this is the case, what are the new demands on the theory and practice of federalism?

CHAPTER 2

Argentina

Penélope Vaca Avila

In terms of its Constitution of 1853, Argentina is a federal, republican, and democratic state. It has 24 subnational districts (23 provinces and the Autonomous City of Buenos Aires (CABA),[1] which has special status) and about 2400 local governments (municipalities and others). Local governments are democratically elected by the citizens, and their autonomy is constitutionally recognised. The legal status of local governments is regulated largely in provincial laws and constitutions, as a result of which they enjoy wide heterogeneity in size, powers, tax capacity, and electoral rules. Despite their limited ability to collect taxes, their chronic impecunity, and their moderate organisational capacity, Argentine local governments play a growing role in political and social life—a fact which was spotlighted during the Covid-19 crisis.

[1] After its acronym in Spanish.

P. V. Avila (✉)
Institute of Social Sciences and Administration, National University Arturo Jauretche, Buenos Aires, Argentina
e-mail: pvacaavila@hotmail.com

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_2

1 Country Overview

The Republic of Argentina is located in the south-eastern corner of South America. With a surface area of 2,780,400 km^2 subject to effective sovereignty, it is the largest Spanish-speaking country in the world[2] and the fourth-most populous in Latin America. With a low population density, it has 40,117,096 inhabitants,[3] most of whom are concentrated in the Greater Buenos Aires agglomeration (38.9 per cent) and the Pampean and Metropolitan regions (66.3 per cent).[4]

Argentina's contemporary ethnic composition is the result of the interaction between the pre-Columbian indigenous-native population (Guarani, Mapuche, Tehuelches, and Diaguitas, among others), the Iberian European colonists, and forced immigrants of African-sub-Saharan origin enslaved in the colonial era. From 1860 onwards, this population received an immense influx from a wave of European immigration, mostly Italian and Spanish (1860–1955). Similarly, since the mid-twentieth century, the ethnic composition was influenced by large internal migrations from the countryside to the city, and from the north and the coast to the country's large cities; in addition, the Argentine territory has always received a considerable migratory flow from South American countries. The composition of the current population has been influenced significantly by these different waves of immigration.

According to the World Bank, Argentina's nominal gross domestic product (GDP) for 2020 (USD 383,067 billion) ranks 31st in the world, namely 8442 USD annually in per capita terms for the same year. With abundant natural resources in energy (gas and lithium reserves) and agriculture, it is a leader in food production (with large-scale industries in agriculture and livestock), and has enormous potential in renewable energy. The country also has great opportunities in certain manufacturing

[2] If we take into account the Malvinas, South Georgia, South Sandwich, and numerous other smaller islands (administered by the United Kingdom, but with disputed sovereignty), plus a portion of the Antarctic area south of parallel 60° S, called Argentine Antarctica, over which Argentina claims sovereignty, the surface area increases to 3,761,274 km^2.

[3] This figure comes from the 2010 National Census, the last one carried out in Argentina. In 2020, the planned census could not take place due to Covid-19.

[4] According to the most recent estimates, its population is 45,195,777 (United Nations, Department of Economic and Social Affairs, Population Division. *World Population Prospects: The 2015 Revision, Medium Variant*).

subsectors and in the innovative high-tech services sector. Its Human Development Index is 0.845, placing it among the group of countries with very high human development (46th).[5] Adjusted by inequality, Argentina falls back four places in the ranking, while in the gender inequality index it falls back to 75th place. Urban poverty (measured in relation to a basic basket of goods and services) is high, affecting 42.9 per cent of the population in the second half of 2020, with an extreme poverty rate of 10.5 per cent and a child poverty rate (under 14 years of age) of 57.7 per cent.

The country has a republican form of government and democratic representative regime with a three-part structure. The legislative branch is bicameral: a Senate of 72 seats, with three representatives per province and three for CABA, and a Chamber of Deputies composed of a variable number of representatives per province depending on its population. Members of Congress are elected through a system of proportional representation and are renewed, in the Senate, by thirds every two years (six years of term, re-electable) and, in the Chamber of Deputies, by halves every two years (four years of term, re-electable). The executive branch is presidential, directly elected by the population in a single country district on the basis of a ticket composed of a president and a vice president with four years of mandate and the possibility of immediate re-election only for one more term. Judicial power is exercised by the Supreme Court of Justice and the other lower courts (federal and provincial). The legal system is one of civil law.

It is important to note that the main disruptions to the functioning of democracy during the twentieth century were the recurrent *coups d'état* that interrupted democratically elected governments in 1930, 1943, 1955, 1962, 1966, and 1976. Unlike in other Latin American countries, these episodes of dictatorship were almost always conservative and, in the case of the last and bloodiest (1976–1983), neoliberal.[6]

[5] PNUD, *Human Development Report 2020. The Next Frontier: Human Development and the Anthropocene* (United Nations Development Programme, 2020).

[6] In the 53 years that elapsed from the first coup in 1930 until the fall of the last civic-military dictatorship in 1983, there were 25 years of undemocratic rule with 14 dictators as 'presidents' and various de facto authorities throughout the country. See Felix Luna, *Los Golpes Militares (1930–1983)* (Planeta, 2003).

The two major Argentine political parties are the Radical Civic Union (*Unión Cívica Radical*, UCR) and the Justicialist Party (*Partido Justicialista*, PJ). The UCR arose in 1891 from a split within the conservative *Partido Autonomista Nacional* (PAN). Ideologically, it is a defender of secularism, liberalism, nationalism, developmentalism, and social democracy, having played a decisive role in challenging compulsory male suffrage and instituting liberal democracy. It has been particularly representative of the middle classes. The PJ, founded by Juan Domingo Perón in 1946, adopted social justice as its main banner, remaining since then closely linked to the working class and trade unions, but so too to conservative groups in the provinces.[7] It has an anti-imperialist ideology and a federal vocation. The PJ was instrumental in obtaining compulsory suffrage for women and deepening democracy in terms of economic and social rights. It was outlawed and unable to present candidates in elections between 1955 and 1972.

The social structure of Argentina in the twentieth century was divided by three fundamental cleavages: class; the opposition between national interests and foreign economic interests; and the tension between the interests of the most underdeveloped regions and those of the most developed.[8] These cleavages persist to this day. The two major parties broadly represent one side or the other of them, and over the last decades have drawn their support from relatively heterogeneous masses of voters. The Argentine party system is not, therefore, configured along the lines of the classic European conservative-liberal-workerist spectrum (which is fundamentally linked to class cleavages), but is characterised by the coexistence of two broad-based multiclass movements (Radicalism and Peronism) that coincide with other, smaller parties of ephemeral or provincial nature. Since the big political parties have alternated in power, sometimes within the framework of broader coalitions, the Argentine party system is bipartisan, with some periods of Peronism acting as a predominant party.[9] Given the existence of a federal state and an electoral system anchored in the provinces, the national party system coexists with a multiplicity of

[7] Darío Macor y Cesar Tcach, (eds) *La Invención del Peronismo en el Interior del País* (Universidad Nacional del Litoral, 2003).

[8] Manuel Mora y Araujo, 'Comentarios sobre la búsqueda de la fórmula política argentina' (1972) 12(47) *Economic Development* 623–629.

[9] Both the UCR and the PJ, since their creation, have captured the presidency 10 times.

provincial party systems, autonomous of each other, within the framework of a single polity. In this context, interactions and veto actors multiply exponentially in a situation of fragmentation and denationalisation, which impacts on governance and the capacity for the reform and implementation of public policy.[10]

2 History, Structures, and Institutions of Local Government

In Argentina, the third level of public administration is called local government. According to official data, there are currently a total of 2294 local governments,[11] half of which are municipalities and the other half of which are local governments without municipal status. The latter go by various designations—development commissions, rural boards, government boards, municipal commissions, development delegations, and communes—and their status varies according to what is assigned to them under the different provincial constitutions. These local governments thus have no legal subordination with respect to other municipalities, but instead represent a type of local government within a particular territory.[12] The number of local governments in each province and the average population per local government is given in Table 1.

Each of the 23 Argentine provinces (excluding CABA) is divided into departments (in the Province of Buenos Aires, *partidos*), which are split into districts (a distribution which is only administrative, as it does not imply the existence of government institutions). Each district has localities, which are named municipalities when they exceed a certain number of inhabitants or are given this status by means of a provincial law. They

[10] Carlos Varetto, *Las Múltiples Vidas del Sistema de Partidos en Argentina* (Eduvim, 2018).

[11] National Census of 2010 (INDEC). More recent calculations, according to information provided by the Municipal Observatory of the Undersecretary of Municipal Relations of the Ministry of the Interior, indicate that in 2021 there were 2,308 municipalities in the country. See Ministry of Interior, *Informe sobre paridad en Argentina. Relevamiento federal de Concejos Deliverantes* (Ministry of Interior, 2021).

[12] As such, there are no multilevel local government structures that exercise jurisdiction over the same territory. See Daniel Cravacuore, 'Los municipios argentinos (1990–2005)', in Daniel Cravacuore, *Procesos Políticos Municipals Comparados en Argentina y Chile (1990–2005)* (National University of Quilmes—Autonomous University of Chile, 2007) 25–49.

Table 1 Number of local government and average population per province (2010)

Province	*Number of local governments*	*Average population per local government*
Buenos Aires	134	116,605
Mendoza	18	96,607
Tierra del Fuego	3	42,006
San Juan	19	35,845
Salta	59	20,584
La Rioja	18	18,536
Chaco	68	15,519
Misiones	75	14,688
Corrientes	68	14,573
Tucumán	112	12,888
Jujuy	61	11,038
Chubut	47	10,694
Catamarca	36	10,217
Santa Cruz	27	9942
Neuquén	58	9294
Santa Fe	370	8634
Río Negro	75	8349
Formosa	55	8195
Córdoba	428	7503
San Luis	68	6013
Santiago del Estero	119	5605
Entre Ríos	247	4919
La Pampa	129	2472

Source National Census of 2010

are governed by an executive power—exercised by an *Intendente* (or Mayor, elected by direct universal suffrage)—and a legislative power, exercised by a Deliberative Council which has the authority to pass municipal ordinances and the size of which, in terms of the number of councillors, depends on the number of inhabitants. The rest of the localities that meet certain minimum requirements (the existence of urban areas, for example) may be governed by a development commission consisting of a president and several members.

Demographically, the Argentine municipal system stands out for its heterogeneity: three municipalities govern more than one million inhabitants and comprise 11 per cent of the country's population, whereas

there are two local governments with less than 20 inhabitants. Half of local governments have fewer than 5000 inhabitants, showing the infra-municipalism characteristics of the system.[13] There are only 30 local governments with more than 250,000 inhabitants.[14] In short, as Table 1 shows, the Argentine municipal system has, on the one hand, a few large municipalities that contain the major proportion of the country's population, and, on the other, many small local governments with few inhabitants.[15]

Understanding the history of Argentine federalism is fundamental to analysing relations between national, provincial, and municipal governments. The Argentine Republic is a federal state that was established after the dissolution, in the early nineteenth century, of the Viceroyalty of the Río de la Plata, part of the Spanish crown. The process of emancipation began in 1810 and culminated in 1816 with the declaration of independence. Interprovincial conflicts were rife for most of the nineteenth century and arose mainly from attempts to limit the hegemony of the province of Buenos Aires. The need to create an autonomous and strong federal government was presented as the only way to counter the most powerful province without rejecting its participation; economic necessity was another reason to keep the rest of the Argentine provinces together.[16]

The process of establishing the Argentine federal state culminated in 1880 with the military defeat of the province of Buenos Aires by the rest of the provincial powers. After its capitulation, the province lost control over the City of Buenos Aires and its port and, therefore, over the main

[13] 'Infra-municipalism' refers to the existence of a large number of small local governments highly dependent on superior levels of government and characterised by reduced administrative structures, populations and budgets—all of which make it difficult for them to exercise the functions required by their citizens. See Enzo Ricardo Completa, '¿Cómo salir de la trampa del inframunicipalismo en Argentina y no morir en el intento?' *Espacios Políticos* (2011) 7; and Mónica Iturburu, 'New Institutional Arrangements to Tackle Argentina's Inframunicipalism', *Cooperación Intermunicipal en Argentina* (2001) 37–66.

[14] In comparative terms, in Latin America the average per municipality is 40,000 inhabitants. See Jacint Jordana, *Relaciones intergubernamentales y descentralización en América Latina: Una perspectiva institucional*, Working Document Series I–22 UE (BID, April 2001).

[15] The average size of local governments relative to their number of inhabitants also varies markedly among the different provinces.

[16] Edward Gibson and Tulia Falleti, 'Unity by the Stick', in Edward Gibson (ed) *Federalism and Democracy in Latin America* (Johns Hopkins University Press, 2004) 226–254.

revenues of the state: customs returns. The City of Buenos Aires (today, CABA) was thus dismembered from the Province of Buenos Aires and remained, from then until 1994, under the control of the federal government. This historic event put an end to half a century of military struggle between the provinces and led to the consolidation of a federal state in Argentina.[17] Since then, Argentina has been a multilevel state in which the national state, 24 provincial units, and about 2,300 local governments share responsibilities among each other.

Two historical events frame the special status of the capital city, Buenos Aires: its federalisation in 1880 and its autonomy in 1994. During the interval between them, there were 23 provinces in the country and a Federal Capital. The creation of the Municipality of the City of Buenos Aires in 1880 entailed powers and resources far superior to those of the rest of the Argentine municipalities. It was governed by an executive power (*Intendente*) appointed by the President, while the Congress of the Nation delegated powers to a Deliberative Council whose members were elected by the citizens.[18] The 1994 Reform of the Argentine National Constitution consolidated the principle of the full autonomy of the government of the City of Buenos Aires,[19] giving rise to a new name: the Autonomous City of Buenos Aires (*Ciudad Autónoma de Buenos Aires*, CABA). This allowed it to become an institution analogous to the other provinces after enacting its own constitution and forming an autonomous government elected by the citizens of the city. Thus, on 30 June 1996, elections were held for the first time for the head of government (executive branch), who has a role similar to that of governors.

Elections were also held on the same date for a Constitutional Convention which, after two months of sessions, approved the CABA Constitution on 1 October 1996. The former Deliberative Council ceased its

[17] Tulio Halperin Donghi, *Contemporary Latin American History* (Alianza Editorial, 1969).

[18] Horacio Cao, *La administración pública argentina: Nación, provincias y municipios,* XIII International Congress of CLAD on State and Public Administration Reform (Buenos Aires, 2008).

[19] Article 129 of the National Constitution states: 'The city of Buenos Aires shall have a system of autonomous government, with its own powers of legislation and jurisdiction, and its head of government shall be directly elected by the people of the city'.

functions on 10 December 1997, having been replaced by the city legislature. From that moment on, CABA has had a dual nature. The first is of a temporary character, that of the capital's residence in the country, until it is granted a new destination; the second is of a permanent character and consists of the creation of a new entity in the federal framework together with the national state, the provinces, and the municipalities.[20] After the transformation of the Federal Capital into CABA, there are no more territories under the direct control of the federal state.

In the country, there are 23 metropolitan areas with highly variable populations in terms of demographic size—the largest, that of Buenos Aires, with 13,588,171 inhabitants, and the smallest, around the city of Villa Carlos Paz (Córdoba), with 69,840. However, none of them has institutional recognition. The metropolitan issue is relatively absent from the concerns of society and the state in Argentina. The 'functional city', in contrast to the idea of the 'legal city', appears not as a direct, specific object but as part of the powers of the governments of the minor territories (municipalities) and even, in many cases, of the governments of the intermediate territories (provinces). This is hence based on a formal definition that does not take into account the reality of what happens in some spaces or how they change over time. Therefore, to the extent that a city becomes independent of its 'original' territory, the state organisation as it was initially conceived ceases to correspond to the new urban form and to the unity of the processes that characterise and determine it. Argentine federalism has adopted a rigid position in the face of a new problem to have emerged: the idea of the metropolitan city.[21]

Regarding the delimitation of municipalities, most provincial constitutions are unclear on this, delegating the final establishment of territorial boundaries to the provincial legislature. Some constitutions adhere to a system in which adjoining *ejidos* (also called *partidos*, departments, or districts) cover urban and rural areas, such that the entire provincial

[20] The proclamation of the autonomy of Buenos Aires in 1994 gave the citizens of CABA the possibility of making their own laws, being judged by their own judges, and administering their own resources—powers that were already enjoyed by all citizens of the country's other jurisdictions. See Matías Federico Landau, *Gobernar Buenos Aires: Ciudad, política y sociedad, del siglo XIX a nuestros días* (Prometeo, 2018).

[21] Pedro Pírez, 'El desafío de la gobernabilidad metropolitana en la Argentina Badía', in Gustavo Badía and Rodrigo Carmona (eds) *La Gestión Local en Argentina: Situación y Perspectivas* (UNGS, 2008).

territory is included within local governments. Others adhere to non-adjoining *ejidos*—the in-between municipalities where there are lands of exclusively provincial jurisdiction, either because the urban *ejido* coincides with the limits of the municipality, due to urbanisation, or because a rural area is added to the borders of the urban *ejido* as a way of anticipating the growth of the city. Thus, in 2010, 92 per cent of the Argentine population lived in territories under the jurisdiction of a local government, 7 per cent lived in CABA, and the remaining 1 per cent lived in rural areas that do not correspond to any jurisdiction at the municipal level but which fall under a provincial jurisdiction.[22]

Recently, and particularly in the context of the Covid-19 crisis, although there have been some manifestations in relation to the reality of the Metropolitan Area of Buenos Aires (*Área Metropolitana de Buenos Aires*, AMBA), it is not a problem that has been given priority. Currently (2022), the AMBA is composed of CABA and 23 municipalities (*partidos*) of the province of Buenos Aires, establishing a continuous urban space with a total population of 11,334,809 inhabitants. In a broader sense, the Metropolitan Region of Buenos Aires (*Región Metropolitana de Buenos Aires,* RMBA) can also be considered, thus adding another 15 municipalities of the Province of Buenos Aires and amounting to a total population of 12,889,468 inhabitants. However, to date none of the metropolitan areas of the country has any type of institutional framework to manage its common problems.[23]

With regard to the existence of specific local entities for indigenous peoples, Argentina is home to more than 30 ethnic groups, speaking 13 languages and representing 2.4 per cent of the population, of whom 18 per cent live in rural areas where they comprise more than 1600 communities. Civil law recognises the legal status of such communities and their right to claim ownership and possession of the lands they inhabit. However, the communities do not enjoy specific forms of government under public law that can be subsumed under any kind of local government.[24]

[22] Alejandro López Accotto and Mariano Macchioli, *La Estructura de la Recaudación Municipal en la Argentina: Alcances, Limitaciones y Desafíos* (UNGS, 2015).

[23] Pedro Pírez, 'Buenos Aires: Ciudad metropolitana y gobernabilidad' (2019) 20(3) *Estudios Capitalise Demográficos y Urbanos*.

[24] Ministry of Justice of the Nation, *Derechos de los pueblos indígenas en Argentina: Una compilación* (Publications Area of the Ministry of Justice and Human Rights, 2015).

3 Constitutional Recognition of Local Government

In Argentina, there has been a long legal debate about whether municipalities are autarkic or autonomous. Autarky means that an entity or organism has the capacity to administer itself, in accordance with a rule which is imposed on it; autonomy means that it has the ability to administer itself and the right to dictate rules of self-government and be governed by democratically elected authorities. In March 1989, the Nation's Supreme Court of Justice interpreted the municipalities as constitutionally autonomous.[25]

The recognition of municipal autonomy gives rise to a democratic government and entails greater political participation, since a municipality's governing bodies are elected by its citizens in regular, competitive, free, and fair elections. In Latin America, the date on which a country's first elections of subnational, local, or intermediate governments were held usually came soon after the year in which its democratic transition took place. Excluding some cases such as Colombia, Venezuela, or Costa Rica, where democracy did not disappear in the 1970s, local elections were held after the countries' transition to democracy: in no instances were local elections held before then. This indicates the emergence of new expectations in the face of strong social demands, given that the local power had not previously had the opportunity to legitimise itself.[26]

In Argentina, the National Constitution does not define the municipal regime of local governments, but provides only a general regulatory framework. Article 5, inscribed in the original text of 1853, states:

> Each province shall enact for itself a Constitution under the republican representative system, in accordance with the principles, declarations

[25] In 1989, the Supreme Court of the Nation, in its decision in *Rivademar v the Municipality of Rosario*, recognised this power of the municipalities, rectifying the doctrine which had predominated since the decision in *Ferrocarril del Sud v the Municipality of La Plata* in 1911. This doctrine established that 'municipalities are nothing more than delegations of provincial powers, circumscribed to administrative purposes and limits that the Constitution has foreseen as entities of the provincial regime and subject to their own legislation'. To date, all provincial constitutions recognise municipal autonomy except for four: La Pampa, Mendoza, Santa Fe, and the Province of Buenos Aires.

[26] Jordana (n 14).

> and guarantees of the National Constitution; and ensure its administration of justice, its municipal system, and primary education. Under these conditions, the Federal Government shall guarantee to each province the enjoyment and exercise of its institutions.

Article 123, included in the reform of 1994, provides that '[e]ach province dictates its own Constitution, in accordance with the provisions of article 5, ensuring municipal autonomy and regulating its scope and content in the institutional, political, administrative, economic and financial order'.

The reform of the National Constitution of 1994 ended the legal controversy regarding municipal autonomy or autarky. The National Constitution also empowers municipalities to establish their own forms of government through the drafting of municipal charters, albeit their scope is determined by the legislation of each province. As a result, there are as many local regimes in the country as provinces, since it is the latter that define them in a specific chapter of their provincial constitutions and in their municipal laws. Each province thus defines the typology of its local governments: some do not, while others define up to five different types, including municipalities of different categories and non-municipal local governments. Just as provinces exercise their constituent power of the second degree through the sanction of provincial constitutions, municipalities also do so in the third degree with the approval of the respective organic charters. In the provinces that have enshrined municipal autonomy, the municipalities have the power to determine their organic charter—that is, a regulation of their own which orders the clauses governing the executive and legislative powers and establishes the rules on the budget, the electoral board, and other matters. Its sanction for non-compliance is carried out following the usual procedures of a constitutional norm, since it is drafted by a local convention in accordance with the general principles of the provincial constitution.[27]

The 24th district, CABA, also has full autonomy, but of a particular kind, given its mixed status as both province and capital. It is organised into 15 communes governed by the Buenos Aires Law 1.777/2005. These are decentralised units of political and administrative management

[27] Daniel Cravacuore, 'El sistema municipal argentino', Paper prepared to be presented at the XI Congreso Chileno de Ciencia Política, organised by the Asociación Chilena de Ciencia Política (Chilean Association of Political Science, ACCP, 2014).

which, in some cases, cover more than one neighbourhood. Communes have exclusive and concurrent powers with the city government. Among the first powers are the maintenance of secondary roads and green spaces, the administration of the commune's heritage, the legislative initiative, and the preparation of its budget and government programme.

Since gaining its autonomy, Buenos Aires is no longer a municipality but an autonomous city with a city government. These modifications involved replacing councillors with deputies of the city and the *Intendente* with a *Jefe de Gobierno* (Head of Government) elected by universal suffrage. The reconstruction of Buenos Aires as a government based on the principles of its own constitution places it on an equal footing with the provinces in the federal regime. For the first time, it is defined as a community of self-governing citizens, and not as a space for the coexistence of national political powers and local municipal authorities.[28]

4 Governance Role of Local Government

The municipal autonomy enshrined in the National Constitution means that it is possible for municipalities freely to elect government authorities (political autonomy), manage and allocate their budgets independently (financial autonomy), and form organisational structures and appoint staff autonomously from other political powers (administrative autonomy).[29] The municipalities' power arises from the provinces' legal system—that is, from their constitutions and municipal laws, but so too from the municipal organic charters.

The federal constitutional framework is not precise in terms of the roles and responsibilities of each level of government. Historically, this has allowed functions to be reassigned in a variety of ways. Currently, the federal government has sole responsibility for foreign relations, currency issuance, trade regulation, inland and foreign navigation, and defence. In contrast, there are shared competencies in several sectors, including the administration of justice, primary and secondary education, and social security. The provinces have significant powers, as they have the right to adopt their own constitutions, establish representative governments—which consist of governors and legislatures elected on the basis of the

[28] Landau (n 20).

[29] López Accotto and Macchioli (n 22).

provinces' own electoral rules—and appoint local judiciaries. Likewise, provinces retain the right to impose and collect certain taxes, and are responsible for initiating provincial public policies and implementing national ones.[30] Provincial governments can also borrow and issue bonds, create their own public services companies, industries and banks, and establish and finance municipal governments. Finally, because governors (or provincial party leaders) have control of not only local nomination and electoral processes but also the selection and conduct of national legislators from their provinces, they wield enormous influence in the national arena.[31]

The concurrent competences between the national, provincial, and municipal governments are the construction of infrastructure works; the care of the population in situations of poverty and destitution; consumer protection; the promotion of economic development; sports promotion; health care; the regulation of cargo and passenger terminals, as well as automotive transport; tourism promotion; and the management of cultural and natural heritage. The competencies shared between the provincial government and municipalities are the provision of public services; the administration of water and sewerage networks; fire protection; and health care.[32]

There is also a set of exclusive municipal competences, historically limited to three major areas of action: construction and maintenance of urban infrastructure; regulation and control of the activities carried out in the territory and urban traffic; and support to at-risk populations through direct social assistance, primary health care, and civil defence against natural disasters. These fields have been addressed with greater or lesser efficiency by all local governments. Nevertheless, for about two decades some of them have progressively assumed a set of new responsibilities (environmental preservation; civic security; economic promotion; access

[30] Allyson Lucinda Benton, 'Presidentes fuertes, provincias poderosas: La economía política de la construcción de partidos en el sistema federal argentino' (2003) 10(1) *Política y Gobierno*, 103–137.

[31] Mark Jones and Scott Mainwaring, 'The Nationalisation of Parties and Party Systems: An Empirical Measure and an Application to the Americas' (2003) 9 *Party Politics* 139–166; Pablo Spiller and Mariano Tomassi, 'El funcionamiento de las instituciones políticas y las políticas públicas en la Argentina: Una aproximación desde la nueva economía institucional' (2000) *Desarrollo Económico* 425–464.

[32] Cravacuore (n 27).

to justice and the resolution of family and/or neighbourhood conflicts; social development and non-formal education), thus expanding their agendas. The Argentine municipalities have seen, therefore, a substantial increase in their functions, due to both the pressure of growing demands by citizens and the decentralisation of power by the provinces and the nation.[33]

Local governments have slightly enlarged staff, although of variable competence, and generally lack sufficiently qualified technicians for the execution of new functions, usually due to the relatively low salaries in municipal administration compared to those in other sectors. The legal regime of public employment varies: in some provinces it is standardised between provincial and municipal employees, while in others, local governments have their own regime, even though mixed situations are very common. In terms of career management, personal relationships prevail over principles of excellence. Municipal employee unions play an important role in defending workers' rights, and their actions. In recent years, local governments have concentrated their meagre budgets on salary payments and current expenses, conditioning investment expenses to the possibility of obtaining discretionary transfers from the nation or the province. However, the proportion of personnel expenditure relative to total current expenditure in all Argentine municipalities decreased from 64 per cent in 1993–2002 to 57 per cent in 2003–2013, which translates into a recent greater availability of resources to finance other municipal functions.[34]

Each province defines the electoral system of its municipalities—the proportional representation system prevails—although the municipalities with an organic charter can modify it partially, which they generally do by combining it with a majority system. Elections are multiparty in nature, although in some local governments one party may be highly dominant, a fact originating both in the particularities of the electoral systems and in cultural phenomena and clientelism. The local executive power (*Intendente*, or Mayor) is usually elected, by a simple majority of the popular vote, for a period of four years with, generally, the possibility of re-election for an additional term, although in some provinces there are no term

[33] Cravacuore (n 12).

[34] Cravacuore (n 27).

limits. The legislative branch (*Honorable Concejo Deliberante*, or Deliberative Council) has a variable number of members, as prescribed by the laws or organic charters; these members (*Concejales*, or Councillors) do not usually have restrictions on re-election after their four-year term. Mid-term elections for the renewal of councils are common, although in other provinces they are held only every four years. Marginally, there are local governments of small populations that lack division of powers: they have only a collegiate authority or a unipersonal commissioner.

The election of the mayor and the councillors may be held on separate ballots—thereby encouraging greater plurality—or on the same ballot, thus tending to consolidate a parliamentary majority. The date of local elections may be concurrent with that of provincial and, eventually, national elections, although some organic charters state that they must be held in autonomous elections. Citizens have no form of control over local management beyond their representatives, but an Ombudsman's Office—however limited its importance—has been created in some municipalities.[35]

5 Financing Local Government

The ability to generate revenue and incur expenditure is a significant dimension of local political institutions' capacity for action. In Argentina, the National Constitution clearly determines what kind of taxes the nation and the provinces may collect, but it does not expressly state the distribution of such taxes between the provinces and the municipalities. It establishes that the federal level has exclusive competence over external or customs taxes,[36] and concurrent competence with the provinces over indirect taxes, and, exceptionally and temporarily, direct taxes.[37] The provinces, for their part, have exclusive competence to establish direct taxes[38] and, concurrently with the national government, indirect taxes.[39] With respect to municipalities, the constitutional text recognises only their

[35] Ibid.

[36] Articles 4 and 75(1).

[37] Article 75(2) para 1.

[38] Article 121.

[39] Article 75(2) para 1.

economic and financial autonomy, in article 123, and their taxing power, in article 75(30).

The provisions of the National Constitution must be supplemented by those of the Federal Tax Revenue Sharing Regime (National Revenue Sharing Law 23.5488/1988), which regulates the distribution of resources between the nation and the provinces. This law, which in article 9, inc. g distributes approximately 80 per cent of the taxes in the country, establishes that the provinces are required by themselves, and through them, their municipalities, not to establish taxes analogous to the national taxes included in this system. Therefore, about 80 per cent of the taxes in effect in the country are sanctioned and collected by the federal government (which then distributes them, partially), leaving only four taxes in the hands of the provinces. This acts as a restriction on the taxing capacity of provinces and municipalities, which have only fees for services and special contributions as possible genuine revenue sources. It also limits, in practice, the effective exercise of municipal autonomy even if the provincial constitutions expressly recognise it, since it implies less room for manoeuvre and greater levels of loyalty towards the governments of the other two levels. The political actors that benefit most from this situation are the provincial executives, since—directly or through the different instances of the provincial government—they can influence municipal spending according to their interests.[40]

With respect to the provincial constitutions, in general they do not provide a precise demarcation of tax competences between provinces and municipalities.[41] Local government revenues are frequently regulated by the requirements of the municipal laws of the different provinces (which define the rates and taxes that can be collected by local authorities) and the co-participation law of each district (which regulates fiscal transfers from the provincial to the municipal budgets). Among the 23 subnational districts in the country, there is a wide diversity in the transfer systems in terms of both the funds or revenues shared and the criteria used in their allocation.

[40] Marcelo Leiras, *All the King's Horses: Political Party Integration and Democratic Governance in Argentina, 1995–2003* (Prometeo Libros, 2007).

[41] Héctor Flores, Martín Gil, Estela Rufina Iparraguirre, and Cristian Daniel, Altavilla, 'Las decisiones del gasto público y el rol de los municipios en el desarrollo local en Argentina: Un abordaje desde la autonomía municipal y los actores sociales y políticos' (2016) 4 *Terra* 1–31.

In general, the collection of tax revenue in Argentina is strongly concentrated at the national level. This is in line with a theory of collection efficiency which assumes that efficiency increases when collection is carried out by jurisdictions with greater intervention capacity. The current situation does not differ in this regard from that seen four decades ago, taking into account that the main legislation on the subject—National Co-participation Law 23.5488/1988—has yet to be updated. This situation is sustained by a system of intergovernmental transfers, the most important of which are those carried out through revenue-sharing laws (National Law 23.5488/1988 and provincial laws) that define a significant percentage of provincial revenues (about 80 per cent on average, with much variation between provinces). Half of the municipal resources come from this revenue-sharing system and other current national and provincial transfers. Genuine own resources account for 40 per cent (fees and contributions-32 per cent, and other current earnings-eight per cent). This implies that Argentine municipalities are dependent for 60 per cent on transfers from higher levels of government.[42] Figure 1 illustrates the origin of municipal revenue.

The logic of concentrating fiscal resources at the highest level of government between nation and province is therefore replicated between provinces and municipalities. In practice, only in 11 of Argentina's 23 provinces do municipalities collect taxes on one or some of the typical provincial taxes, while in the other 12 provinces their municipalities do not exercise any taxing powers. The map is varied, however, since, on the one hand, the municipalities of provinces such as Buenos Aires, Chubut, or Córdoba directly collect a great part of their own revenues, while, on the other, La Rioja, Catamarca, and San Juan depend to a greater extent on transfers from provincial and/or national governments.[43] Among the municipalities that exercise their own taxing power, there is

[42] López Accotto and Macchioli (n 22).

[43] Local governments' revenues are of both provincial and national origin. The latter have gained preponderance in recent years in municipalities aligned to the federal government for the construction of public works, as well as the resources of the Federal Solidarity Fund, created by National Decree No. 206/2009, which transfers to the provinces 30 per cent of the tax withholdings on the export of soybeans and obliges them to channel at least 30 per cent of them to their local governments. See Paula Clerici, Lucia Demeco, Franco Galeano and Juan Negri, 'Embarrando la cancha. Los aportes a municipios como construcción política', REPSA 2021 Conference.

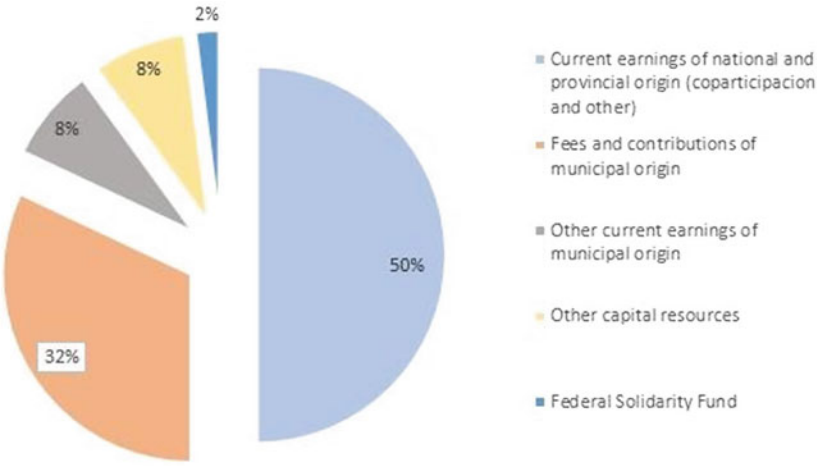


Fig. 1 Origin of municipal revenue in 23 provinces (2013) (*Source* López Accotto and Macchioli [n 22])

evidence of great heterogeneity in the financing scheme: collection of fees, contributions, patents, and fines, among others.

In the case of spending, from the early 1990s to 2019 there is no trend towards decentralisation but instead a slight increase at the national level, linked to a recovery of the state's role in the economy and greater development of social policies. However, it is important to note that in 1980, the national government's share of consolidated expenditure was 66 per cent and that it was the decentralisation implemented in the early 1990s which changed that situation.[44] Indeed, at that time, spending was decentralised first from the national government to the provinces and then from the latter to their municipalities, while resources were re-centralised.[45] The consequence was that first the provinces and then the municipalities were responsible for a significant number of competencies without having sufficient own resources to exercise them, thus fostering the provinces' financial dependence on the nation and the municipalities'

[44] López Accotto and Macchioli (n 22).

[45] Oscar Cetrángolo, Juan Pablo Jiménez, Florencia Devoto and Daniel Vega, *Las Finanzas Públicas Provinciales: Situación Actual y Perspectivas* (CEPAL, 2002).

Table 2 Distribution of income and expenditure by level of government (1993, 2013, and 2019)

Government level	*Revenue*			*Expenditure*		
	1993 (%)	*2013 (%)*	*2019 (%)*	*1993 (%)*	*2013 (%)*	*2019 (%)*
National	78	80	79	52	58	56
Provincial	16	16	16	39	33	38
Local	6	4	5	9	9	6

Source Elaboration on data of López Accotto and Macchioli (n 22) and *OJF y Assoc. (2019)*

on the provinces—a pattern which has been one of the main characteristics of intergovernmental relations in Argentina since the 1990s.[46] Table 2 shows the distribution of income and expenditure by level of government for nearly three decades.

Calculated as a proportion of GDP, total municipal spending in Argentina went from a value close to 2.8 per cent in 1993–2008 to 3.7 per cent in 2009–2013 before falling to 2.4 per cent in 2019—a historic low-point. In turn, the municipality's own collection of taxes, fees, duties, and contributions has tended to remain at about 1.2–1.3 per cent. This translates into an increase in the last 20 years of pressure on the municipal fiscus.[47]

With respect to borrowing capacity, both the constitutions of provinces and the provincial laws authorise local governments to borrow money. In all cases, except in the province of Tucumán, the loan is approved by the Deliberative Council of the municipality, but it must meet certain requirements. In 16 provinces the debt cannot exceed 25 per cent of income; in four others it cannot exceed 20 per cent; and in two cases there is no regulation in this regard. Unlike provincial governments, municipalities are governed by provincial *ex-ante* debt control modalities. The weight of interest on debt on current expenditure for all municipal governments in the country has not reached two per cent in any year in the last two decades, and since 2006 it has been less than one per cent. This situation

[46] Flores et al. (n 41).

[47] López Accotto and Macchioli (n 22).

has as a consequence the waste of different financial instruments to offer better goods and services to the population and to fulfil new functions.[48]

6 Supervising Local Government

In practice, the fiscal dependence mentioned above constitutes the main mode of control that provincial and national governments exercise over Argentine municipalities. There is no formal form of supervision by the higher levels of government over the local level beyond the logistical coordination and sectorial supervision intrinsic to the normal functioning of certain public policies such as health and education. In this regard, the administrative acts of municipal authorities and their officials are subject to provincial administrative law, which is regulated differently in each of the country's provinces. This implies that, in the face of reasons of illegality, timeliness, merit, or expediency, all the administrative remedies provided for in the provincial legal system of administrative law may be used, imposing an appeal before the same institution that issued the rule or before higher instances, as the case may be.

With regard to the control of municipal political acts such as ordinances, decrees, and municipal resolutions issued under the municipal organic charters, judicial remedies provided for in the provincial and national legal system may be brought before the Superior Courts of Justice of the various provinces, which will decide whether or not the acts respect the provincial constitutions and, ultimately, before the Supreme Court of Justice of the Nation, which determines their respect for the National Constitution.

There is, however, an extraordinary possibility of political control by the provinces of the municipalities, similar to that included in the National Constitution. The latter contains a powerful tool enabling the federal government to take over a provincial authority (*intervención federal*). Article 6 empowers the federal government to intervene in a province and remove elected authorities 'to secure the republican form of government, or repel foreign invasions, and at the request of its constituted authorities to sustain them or re-establish them, should they have been removed by sedition or invasion by another province'. The federal government may

[48] Ibid.

intervene in the executive, the judiciary, or the legislative powers separately, or any combination of the three. Other American countries have similar institutions.[49] In Argentina, federal intervention was used extensively in the nineteenth and twentieth centuries, but only six times since the beginning of the current democratic period.

A similar mechanism exists in several of the provincial legal systems (in the provincial constitutions and/or by provincial organic law), allowing the provincial government, by provincial law (although it can be by decree of the governor if the legislature is not in session), to assume executive or legislative municipal powers. The intervention may be total, or limited to a single one of these powers, and has the sole objective of restoring the municipality's normal functioning. As such, the intervention is always approved and carried out by a designated auditor (*interventor*) for a limited period. The occurrence of interventions has, however, been rare.

In the event of a sustained fiscal deficit, it is out of the question for public bodies to go bankrupt. When such a situation arises in a municipality, it is usually the province that is responsible for resolving the situation. In recent years, the financial health of municipalities, measured as a percentage of total expenditure for all municipalities, has been observed in three different stages. Between 1993 and 2002, municipalities showed large imbalances in fiscal matters: on average, a financial deficit of about 4 per cent was recorded. In the stage of the first economic upturn, in 2003 and 2004, there was a strong expansion of the fiscal surplus, of about 6–7 per cent. From 2005 onwards, the trend has been towards financial equilibrium, where years alternate between fiscal deficits and surpluses of about 2 per cent.

7 Intergovernmental Relations

In Argentina, relationships between provincial and municipal governments, and between municipal governments, present a highly complex and heterogeneous picture. The relationship between the provinces and

[49] Jaqueline Behrend, 'Federal Intervention and Subnational Democratisation in Argentina: A Comparative Perspective', in Jacqueline Behrend and Laurence Whitehead (eds), *Illiberal Practices: Territorial Variance within Large Federal Democracies* (John Hopkins University Press, 2016).

the municipalities is generally hierarchical, informal (formal intergovernmental forums are rare), and enacted through partisan channels. Intergovernmental dynamics are such that mayors are dependent on and, generally, aligned, with the governors.[50] The ability of the latter to influence the former is both political and fiscal. On the one hand, governors have 'both electoral incentives and institutional instruments to capture and subordinate the local level',[51] especially if they share partisan affiliation; on the other hand, provincial governments can exercise discretion in the transfer of fiscal resources to municipal governments and are responsible for enabling new local taxes. Traditionally, then, municipalities have been seen as the 'administrative units of provincial governments',[52] which have exclusive power over the creation, size, and design of municipal institutions.[53] However, recent studies show that the role of the mayors has become increasingly important in the last two decades[54] and that, in particular, the mayors of large cities or capitals can challenge the provincial executive and become an opposition pole.[55]

The decentralisation and territorialisation of the political and party system has resulted in an increasing localisation of politics. In this context, mayors appear as new types of managers who are closer to the people than

[50] Kent Eaton, *Politics Beyond the Capital: The Design of Subnational Institutions in Latin America* (Stanford University Press, 2004); Tracy Beck Fenwick, 'The Institutional Feasibility of National-Local Policy Collaboration: Insights from Brazil and Argentina' (2010) 2(2) *Journal of Politics in Latin America*, 155–183.

[51] Fenwick, ibid.

[52] Andrew Nickson, *Local Government in Latin America* (Lynne Rienner, 1995).

[53] Lorena Moscovich and Valeria Brusco, 'Political Alignments and Distributive Politics at the Municipal Level in Federal Countries' (2018) 26 *Revista Brasileira de Ciência Política* 63–105.

[54] See Leandro Eryszewicz, '¿Localización de la política? El protagonismo de los intendentes argentinos en la escena nacional' (2015) *Pensar las Elecciones: Democracia, Líderes y Ciudadanos*, 61–94; Daniel Cravacuore, 'Gobiernos locales en Argentina', in José Manuel Ruano de la Fuente and M. Camilo Vial Cossani (eds) *Manual de Gobiernos Locales en IberoAmerica* (CLAD Centro Latinoamericano de Administración para el Desarrollo y Universidad Autónoma de Chile, 2016) 15–40.

[55] See Miguel De Luca, 'Political Recruitment and Candidate Selection in Argentina: Presidents and Governors, 1983 to 2006' in Peter Siavelis and Scott Morgenstern (eds) *Pathways to Power: Political Recruitment and Candidate Selection in Latin America* (Pennsylvania State University Press, 2008) 189–217; Tomás Došek and Carlos Varetto, 'Conflict or Cooperation? Political Relations between Governors and Mayors in Major Cities in Argentina' (2021) 40(2) *Bulletin of Latin American Research*, 235–250.

to officials at higher levels of government.[56] They are hence valuable allies for governors: capital municipalities and those with great population weight are significant for generating a critical mass of voters. Within the framework of local client structures, mayors can coordinate different brokers, an aptitude which is highly important for politicians in the provinces.[57] Moreover, given that recent work has confirmed a partisan bias in much of the fiscal distribution to local governments,[58] it is ultimately the mayors who can make political profit from these investments by obtaining electoral support and building territorial political networks.

The growing role of the mayors has also made them interlocutors of the presidents in the territory (mainly those in power since 2003 onwards: Nestor Kirchner, Cristina Fernández, Mauricio Macri, and Alberto Fernández), allowing a direct relationship between the national and local levels and in some cases avoiding the intermediation of the governors.[59] This strategy of direct territorial links (coupled with direct financial support) has been used to bolster mayors: in provinces governed by the opposition or by a wayward ally, this entails raising local leaders who are often adversaries of the governor. The presidential strategy of generating more than one ally in each provincial territory, sometimes bypassing the governors, has been very useful for the national executive, but in the local arena it generates short-circuits due to the need to sustain agreements that ran in parallel.[60]

With respect to municipal associationism, this type of institutional arrangement began to develop in the provinces of Córdoba and Buenos Aires in the 1990s. Marking a turning-point in this regard, the Constitution of the Province of Córdoba of 1987 enabled the formation

[56] Eryszewicz (n 54).

[57] Rodrigo Zarazaga, 'Brokers Beyond Clientelism: A New Perspective Through the Argentine Case' (2014) 56(3) *Latin American Politics and Society*, 23–45.

[58] Marcelo Nazareno, Susan Stokes and Valeria Brusco, 'Réditos y peligros electorales del gasto público en la Argentina' (2006) *Desarrollo Económico* 63–88; Moscovich (n 53).

[59] Martín Ardanaz, Marcelo Leiras and Mariano Tommasi, 'The Politics of Federalism in Argentina and its Implications for Governance and Accountability' (2014) 53 *World Development*, 26–45; Mariela Szwarcberg Daby, 'Reelecciones infinitas: el caso de los intendentes del Conurbano' (2016) 21(2) *POSTData: Revista de Reflexión y Análisis Político*, 577–592.

[60] Penélope Vaca Avila, 'Quiebres y continuidades en las dinámicas multinivel con la llegada de Cambiemos al gobierno' in Matías Triguboff (ed) *Estado y Políticas Públicas en la Argentina de Cambiemos* (Imago Mundi, 2020).

of 'intermunicipal organisations', an institution later adopted by other provinces.[61] In Argentina, three models can be distinguished:

- A commonwealth of municipalities (within the same province or across provincial borders), that is, an association, with a legal structure but without political power, through which local governments achieve the joint execution of works and services;
- Micro-regions, composed of a set of local governments that collectively seek local development by means of an inter-municipal agenda in all areas of administration; and
- City networks.

The Argentine Federation of Municipalities[62] is the most important local government network and the only legal entity that, according to Law No. 24.807/1997, may represent the country's municipalities before third parties (the relationship with provincial and federal actors runs through the traditional channels).[63]

Local governments, particularly small and medium-sized ones, began to establish voluntary cooperation agreements in a 'bottom-up' process, and organised themselves under different names: associations of municipalities, inter-municipal consortiums, corridors, micro-regions, and others. However, the results to date of inter-municipal associations are discouraging: they reached their peak during the political crisis of 2001, after which many of them were deactivated.[64]

[61] Myriam Consuelo Parmigiani, 'Aspectos jurídicos y políticos y de la institucionalización de Modelos innovadores de asociativismo municipal: una reflexión a partir de experiencias en Argentina' (October 2005) Paper presented at the 10th CLAD International Congress on State and Public Administration Reform, Santiago (Chile) 18–21.

[62] See www.famargentina.org.ar/.

[63] In recent years, there has been a proliferation of thematic networks, for example the Federal Network of Tourist Municipalities in the face of Climate Change; Healthy Communities; Religious Tourism Management; and Participatory Budgeting. Among the international ones, Mercociudades stands out in the context of Mercosur.

[64] Cravacuore (n 27).

8 Political Culture of Local Governance

Municipal elections in Argentina attract popular interest and enjoy a high turn-out. Since voting is compulsory in Argentina, elections at all levels achieve a high average turn-out of about 70 per cent. The two major national parties, the PJ and UCR, run for local elections, either autonomously or in coalition with other parties. Provincial and local parties also usually compete as allies, formal or informal, of the national ones, in order to access successfully public transfers.

Mayors represent a significant part of the national leadership due to their role as local leaders and their ability to mobilise the electorate in a country where local politics are important in the context of federal dynamics. However, we must differentiate between, on the one hand, the status of the mayors of the large municipalities—those of the AMBA, with preponderant weight in the national elections—and the provincial capitals—where a significant part of the provincial electorate is concentrated—and, on the other, the status of the mayors of small local governments, who are generally subordinated in compliance with directives originating at the provincial level. In any case, all mayors are of great importance at the local level, since they have more economic and symbolic resources than other territorial actors.[65] Increasingly, important political careers begin with the position of mayor, with many provincial governors and three presidents (Fernando de la Rua, Nestor Kirchner and Mauricio Macri, the latter the Head of Government of CABA) having followed this pattern.[66]

Gender equality in the branches of government has been a recurring theme in the Argentine political agenda in recent years. The first advances occurred at the national level, with the approval in 1991 of Law 24.012 on Women's Quota and then, in 2019, with Law 27.412 on

[65] Edward Gibson and Julieta Suarez Cao, 'Federalised Party Systems and Subnational Party Competition. Theory and Empirical Application to Argentina' (2010) 43(1) *Comparative Politics*, 21–39; Došek and Varetto (n 55).

[66] De Luca (n 55); Germán Lodola, 'The Sub-national Structure of Political Careers in Argentina and Brazil' (2009) 49(194) *Desarrollo Económico* 247–286; Edward Gibson, *Boundary Control: Subnational Authoritarianism in Federal Democracies* (Cambridge University Press, 2013).

Gender Parity. This was followed by an extensive process of subnational dissemination of such standards.[67]

Thanks to the legislation approved at national level, 2020 was very positive in terms of progress on gender-parity laws at the provincial level: as a result of the trans-partisan organisation and negotiations among legislators, reforms took place in seven provinces. Several of these initiatives were taken or strongly supported by the provincial executive powers either to fulfil campaign promises or because it was an unavoidable demand. This shows that women politicians had the capacity for political engagement and influencing decision-making, and that the pressure exerted by various women's groups in civil society, political parties, academia, and professional sectors was effective. Only three remaining provinces have not yet reformed their quota laws.[68]

There are few analyses on gender equality at the municipal level, but a recent study[69] shows that, out of a sample of 1135 municipalities, only 140 (12.33 per cent) are governed by women, and that of a total of 9800 seats of deliberative councils, women councillors represent 40 per cent. In general, the percentage is higher in those provinces that have a parity law in force. A conclusion reinforced by another study in the Province of Buenos Aires shows that after the implementation of the

[67] Between 1992 and 1997, 20 provinces adopted minimum quota laws similar to the national law; Chubut and CABA adhered to the national regulations; and in 2011 and 2012 Jujuy and Entre Ríos joined then. Anticipating the national dynamic, between 2000 and 2002 the provinces of Santiago del Estero, Córdoba, and Río Negro adopted gender-parity laws (50 per cent) for the nomination of candidates to their respective provincial legislatures. These pioneering provinces were joined by Buenos Aires, Salta, Chubut, and Neuquén in 2016 and Catamarca in 2018. While Buenos Aires and Salta had already implemented parity in 2017, the rest would do so for the first time in 2019, in line with the debut of the national law. See Natalia Del Cogliano and Danilo Degiustti, *La nueva Ley de Paridad de Género en Argentina: Antecedentes y Desafíos, Observatorio Político Electoral – Documento de Trabajo No. 1* (Ministry of Interior, Public Works and Housing, 2020).

[68] Those provinces are Tucumán, Tierra del Fuego and Corrientes. Latin American Justice and Gender Team, *El año de la paridad en las provincias*, www.ela.org.ar/a2/index.cfm?muestra&aplicacion=APP187&cnl=4&opc=47&codcontenido=4297&plcontampl=12 (accessed 5 July 2021).

[69] Ministerio del Interior, Informe sobre paridad en Argentina: Relevamiento federal de Concejos Deliberantes, 2021.

national parity law, women went from occupying 33 per cent of the council's seats to occupying 40 per cent. In that case, municipalities where women occupied half or more of the seats also increased, from 8 to 19.[70]

9 Covid-19's Impact on the Role of Local Government

The Covid-19 pandemic produced a global crisis unprecedented in human history. The first case of Covid-19 detected in Argentina was reported on 3 March 2020 in CABA. Immediately, on 20 March, the national government issued the *Aislamiento Social, Preventivo y Obligatorio* (Social, Preventive and Compulsory Isolation, ASPO) throughout the country for people who did not work in essential sectors of the economy. This measure aimed to flatten the curve of infections for a few months during which period action could be taken to improve health infrastructure and stock up on supplies so that the health system did not collapse. The economy, however, suffered severely, as did most social indicators.

Three months later, on 28 June 2020, the *Distanciamiento Social, Preventivo y Obligatorio* (Social, Preventive and Compulsory Distancing, DISPO) was approved, allowing a resumption of movement subject to restrictions, including the need for permits to cross provincial borders. Since then, there have been several short-term partial closures but never a return to a situation of total lockdown. The severe economic situation and the rapid increase in poverty prevented the reintroduction of quarantine measures in 2021, despite the fact that a second wave of the coronavirus saw a sharp increase in the number of cases and deaths compared to those recorded in 2020. In mid-2021, Argentina was one of the countries with the highest number of cases per capita[71] but also one of them with the

[70] CIPPEC, 'Participación de las mujeres en los concejos deliberantes antes y después de la primera implementación de la paridad de género. Provincia de Buenos Aires (2017)', www.cippec.org/grafico/participacion-de-las-mujeres-en-los-concejos-deliberantes-antes-y-despues-de-la-primera-implementacion-de-la-paridad-de-genero-pba-2017/ (accessed 26 August 2021).

[71] As of July 2021, Argentina had had 4.72 million cases and 100,000 deaths since the beginning of the pandemic. This equates to 2330 deaths per million inhabitants, ranking the country 13th in the world.

highest vaccination coverage,[72] thanks to an active policy of agreements and local vaccine production.

The municipal system responded to the crisis with great commitment from its officials in spite of scarce resources. The sector where the greatest challenge arose was health care, a site of concurrent competition between the three levels of government. The municipalities were responsible for primary care, with provincial and national hospitals were the institutions in charge of the hospitalisation of complex cases. In all areas, but in this one in particular, intergovernmental coordination became of fundamental importance.

At the beginning of the crisis and throughout 2020, there was fluid and coordinated work between the different levels of the administration. It was particularly important in the AMBA, where the most severe effects of the pandemic were evident due to the combination of population density and high levels of poverty in sectors of the Buenos Aires *Conurbano*. The coordination was fruitful throughout 2020 despite the lack of formal mechanisms and the affiliation of leaders to the two political coalitions of the country: that of the national government and the Province of Buenos Aires with the PJ, and that of CABA with *Juntos por el Cambio* (UCR and Republican Proposal). Numerous face-to-face and virtual meetings were held between the President, the governor of Buenos Aires, the head of government of CABA, and the 24 mayors to review the capacity to respond to the health crisis.[73] Nevertheless, coordination was transformed into competition in line with partisan preferences during 2021, in particular on children's attendance at schools.

In terms of competencies, municipalities continued to support basic services—waste collection and final disposal; urban grooming and maintenance; food delivery to the in-need population; and primary health care—and also played a leading role in the vaccination programme in 2021. Many municipalities produced educational materials to promote

[72] As of July 2021, Argentina ranked 14th in the world in terms of people vaccinated per 100 population.

[73] In the larger municipalities where the pandemic had a severe impact, out-of-home isolation beds for the mildly infected were quickly set up in hotels, universities, schools, barracks and sports clubs, in addition to which cemetery graves were prepared. Working in conjunction with each other, the three levels of government built 12 modular hospitals in the first two months of the pandemic, adding 350 new intensive care and 650 intermediate care beds to the system. See Daniel Cravacuore, *Municipalities in Argentina in the Face of the Coronavirus Pandemic COVID-19* (Preprint, 2021).

safety in homes and businesses, and distributed them through social networks. In addition, productive enterprises dedicated to the manufacture of masks and clothing for health personnel were activated. In the social field, several municipalities mobilised networks of volunteers to assist the elderly in the purchase of food and medicine. The delivery of food reinforcements to poor households, in the form of weekly baskets or daily meals, was accelerated, given the closure of school canteens.

As a novel element in terms of competences, the national government expanded during this emergency situation municipal competencies in terms of price control of food and essential cleaning products (PEN Decree 351/20), acting as agents of the federal government. Among the tax actions, the postponement of the collection of municipal taxes, both from households and affected businesses, was widespread. Far more remarkable was the fact that some municipalities—such as Rosario as well as Santa Fe, the third most populous in the country, and with the conspicuous exception of the CABA government—extended lines of credit at a subsidised rate to protect jobs and companies (mainly small and medium-sized enterprises), thereby complementing the actions of the national government. In the area of mental health, some large municipalities set up telephonic helplines to provide psychological counselling for people with ASPO-related conditions. In the same vein, telephonic support for increased gender- and domestic-violence-related complaints was reinforced. Finally, the municipalities were in charge of implementing mandatory quarantine measures and controls in regard to people returning from abroad.[74]

The management of the Covid-19 crisis gave rise, at the municipal level, to various forms of collaborative governance to solve common and urgent problems. These efforts were built, in some cases, on previous experiences of multilevel, horizontal, and public–private collaboration. A recent study of four municipalities of the Buenos Aires *Conurbano*[75] highlighted that the health, economic, and social situation confronted officials with unfamiliar problems and compelled them to search actively for governance modes capable of addressing these issues. Innovative measures were

[74] Ibid.

[75] Jacqueline Behrend and Ximena Simpson, 'The Covid-19 Pandemic Response in the Municipalities of San Martín, Tres de Febrero, Avellaneda and Quilmes, Policy Paper #5' (Ciudad Autónoma de Buenos Aires: Asuntos del Sur, 2021).

devised to create short-term solutions for complex problems, mainly ones affecting vulnerable populations.

Collaboration also involved technology transfers to subnational governments, which could lead, in the medium term, to an increase in municipal organisational capacities. Key examples were the implementation of the national programme *Detectar* (Detect), intended to identify new cases of Covid-19, and the coordinated delivery at municipal level of food from national government programmes such as *Programa Argentina contra el Hambre* (Argentina against Hunger Programme) and the *Alimentar* (food) card programme—the latter relied on a distribution network that included schools, neighbourhoods, and companies that donated supplies.

In addition, videoconferencing strengthened multilevel collaborative governance by enabling frequent meetings to be held between officials from different levels of government. This technology also facilitated close monitoring of the situation in the territories, for instance through video calls with women victims of domestic violence or with the inhabitants of vulnerable or more affected neighbourhoods. The articulation with territorial referents and/or intermediaries expanded the scope of the incidence of public policies and allowed the formation of networks with social organisations, neighbourhood referents, churches of different religions, and other territorial actors.

10 Emerging Issues and Trends

Emerging trends regarding the role of municipalities in Argentina have to do with the need to strengthen their capacities to identify and solve collective problems, something that was clearly spotlighted during the management of the Covid-19 crisis. The management capacity of the local governments is undoubtedly limited by their restricted taxing powers. However, this is a pending issue since the approval of the National Revenue Sharing Law 23.5488 in 1988, which could not easily be modified due to the difficulty of achieving the necessary consensus.

Other contemporary issues are the search of scale for economic development, the decentralisation of some provincial policies, the recognition of regional particularities for the promotion of development, and the increase in new municipal functions. Despite their financial limitations, municipalities in recent years have played an increasingly prominent role

in the lives of citizens, both in the political arena and even at the international level, as evidenced by their growing importance in the field of international cooperation.

One of the main ways in which local governments participate in international cooperation is through decentralised and South–South and Triangular Cooperation. A recent seminar in Buenos Aires[76] showed that Argentine provinces and municipalities are highly active in the Argentine South–South and Triangular Cooperation Fund (FO.AR), which has more than 130 technical cooperation projects in different regions of the world. Fields in which Argentina has added value include agro-industry, productive technological innovation, science and technology, creative industries, the environment, health, and human rights.

Another area of international cooperation is developed through the Argentine Federation of Municipalities,[77] a non-profit public entity created by the National Law No. 24,807/1997 and empowered to serve as a voluntary association representing all municipalities in the country. Thanks to this entity, a range of agreements have been entered into with international financial organisations (such as the World Bank, Inter-American Development Bank, and Andean Development Confederation), private donors, international cooperation agencies, and the federations of municipalities of other countries in the region. The agreements dealt with such fields as governance, transport, justice, the economy, and agriculture. Further contexts where local governments have played a salient role are the European Union's URBAL and International Urban Cooperation programmes.[78]

Nonetheless, the main area of regional participation of Argentine municipalities and important cities has been Mercosur (the Southern Common Market, a South American trade bloc). The Treaty establishing a Common Market between Argentina, Brazil, Paraguay, and Uruguay, signed in Asunción on 26 March 1991, gave rise to a process of integration among the countries of the Southern Cone. The process has had its ups and downs and is still under way, but the Treaty is undoubtedly the main framework for regional cooperation in the Southern Cone.

[76] The 5th Regional Conference 'Perspectives of Triangular Cooperation in Latin America and the Caribbean', jointly organised by Argentina and Germany.

[77] FAM, Covenios, www.famargentina.org.ar/convenios/ (accessed 10 July 2021).

[78] International Urban Cooperation Program, https://iuc-la.eu/ (accessed 10 July 2021).

In November 1995, the First Summit of the Mercociudades Network was held in Asunción, culminating in the signing of the 'Founding Act of Mercociudades' by the mayors and other leaders of the participating cities. The objective was to generate an institutional environment in which local governments could express their opinions on the direction of the integration process and develop a space of convergence and exchange.

One of the main challenges that was identified as requiring joint action was the almost non-existent development of international cooperation departments in the region's municipal governments; other challenges were municipalities' lack of resources, lack of staff training, and lack of awareness of the importance of international relations. Likewise, tasks such as the renovation or conversion of the productive bases of cities, the building and maintenance of urban infrastructure, the maintenance of acceptable levels of quality of life for the population, and the articulation of viable mechanisms of social integration, were considered matters that cities could not solve in isolation. Subsequently, the Common Market Council, the highest body of Mercosur, decided at the Belo Horizonte Summit in December 2004 to create the Consultative Forum of Mercosur Municipalities, Federated States, Provinces and Departments, which replaced the *Reunión Especializada de Municipios e Intendencias* (Specialised Meeting of Municipalities and Intendencias). Since then, the participation of local governments in Mercosur has been very active, although at the mercy of the vicissitudes of the regional integration process itself.

CHAPTER 3

Australia

Graham Sansom and Su Fei Tan

Australian local government consists of some 537 elected municipalities, plus a small number of special-purpose entities appointed by state governments.[1] Perhaps local government's most telling characteristic is its sheer diversity—a consequence of Australia's size, geography and distribution of population, and of seven differing state and territory systems.[2] Other key features are its limited range of functions and revenue sources; the many small (in population), poorly resourced rural and remote municipalities; and the single-tier arrangements whereby all municipalities operate under essentially the same legislation within each of the seven systems. These elements combine to make it difficult for local government to act collectively (that is, at both state and federal levels) and consequently

[1] Examples include the Lord Howe Island Board in New South Wales, South Australia's Outback Communities Authority, and the former Docklands Authority in Melbourne Victoria (1991–2007).

[2] In this chapter, the term 'states' should be read to include the Northern Territory, unless clearly intended otherwise. There are no municipalities in the Australian Capital Territory, which is in effect a 'city-state'.

G. Sansom (✉) · S. F. Tan
Institute for Public Policy and Governance, University of Technology Sydney, Sydney, Australia
e-mail: graham.sansom@uts.edu.au

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_3

to determine and pursue robust policy positions. Importantly, they also inhibit the ability of the growing number of large, well-resourced municipalities to 'stand out from the crowd' and play a national leadership role.

Local government is not recognised in the Australian Constitution and, in many respects, it plays only a minor role in the federation. It accounts for just 2.5 per cent of gross domestic product (GDP), reflecting its limited focus on municipal services and infrastructure. Main highways, public transport, utilities, police, education, and hospitals are all solely or primarily provided and managed by state governments, or have been privatised.[3] Similarly, the governance, planning, and management of metropolitan regions is dominated by state agencies rather than municipalities, however large the latter may be.

Nevertheless, from the early 1980s until about 2012, Australian local government progressively established a significant national profile, one built to a large extent on a strong working relationship with the federal government, which sponsored its participation in intergovernment forums. Hence a decade ago, local government seemed well advanced in achieving acceptance as the 'third sphere' in the federation, although this position was by no means guaranteed:

> Despite its weak constitutional and legal position local government has made considerable progress towards acceptance as a partner – albeit junior – in the Australian federal system … A key question now is whether local government can secure this federal presence. Or will the states, some of which appear to see strong municipalities and robust local democracy as a threat (or at least a nuisance), re-assert their dominance?[4]

The short answer to that question is that the potential for recognition as a legitimate 'third sphere' has not been realised, and the states have indeed re-asserted their dominance. This chapter reviews the present

[3] The principal exceptions are water supply and sewerage in Queensland, Tasmania and non-metropolitan NSW; some highways and bus and ferry services in the City of Brisbane; light rail in the City of Gold Coast; and many regional airports. The City of Brisbane is a co-owner of the main airport.

[4] Graham Sansom, 'Commonwealth of Australia', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 8–36, 28.

status of local government in the Australian federation and explores the forces at work.

1 Country Overview

The Australian federation was formed in 1901 and comprises a federal (aka Commonwealth) government, six states (New South Wales, Queensland, South Australia, Tasmania, Victoria, Western Australia) and two semi-autonomous federal territories (Australian Capital Territory, Northern Territory). It has a written constitution, hardly amended since federation; an independent High Court; and a system of common law that is uniform across all states and territories.

Australia has an area of 7.7 million km^2 and a population of some 25.7 million, of whom about 85 per cent live in metropolitan regions and other cities. Since 1970, population growth has averaged about 1.5 per cent per annum (compounding), largely due to immigration. However, growth is expected to slow due to reductions in both natural increase and net migration. In 2019 (before the Covid-19 pandemic) GDP was approximately AUD 1.9 trillion or AUD 70,000 per capita. Despite heavy borrowing during the pandemic, public sector debt remains relatively low by global standards.

The population is extremely diverse, although the dominant group and culture remains that of Anglo-Celtic settlers who colonised Australia from the late eighteenth century. Subsequent waves of immigrants have come from across the world, though mainly from Europe and Asia. Indigenous Aboriginal and Torres Strait Islander peoples comprise about 3.2 per cent of the population. They have inhabited the continent for 60,000 years or more and their cultures are some of the oldest on earth, but their numbers were decimated by the wars, reprisals, displacement, and disease which followed European settlement. Today they live mostly in the larger towns and cities, but are also a major presence in rural-remote areas, especially across northern Australia.

Reflecting its colonial history, Australia remains a constitutional monarchy under a King (of England and Australia). A 1999 referendum to establish a republic was unsuccessful, and the Governor General—effectively appointed by the Prime Minister—is the de facto head of state. The Commonwealth, states, and territories have Westminster-style parliaments, all of which are dominated by the Australian Labor Party and the Liberal-National Coalition (or variants of it). Numbers of minor party and

independent members of parliament (MPs) have increased steadily over recent decades, reflecting disenchantment with the status quo, shifting policy agendas (such as the environmental movement, represented principally by the Greens party), plus specific regional and local concerns. Nevertheless, the major party in power usually maintains firm control over policy and programmes, although that control is constrained when governments lack a clear majority in an upper house (parliaments are bi-cameral, with the exceptions of Queensland and the two territories).

Except in Tasmania and the Australian Capital Territory (ACT), lower house MPs are elected to single-member constituencies. Upper houses are elected through various forms of proportional representation. Voting in all federal, state, and territory elections is compulsory and requires or allows voters to allocate preferences. Systems of voting in local government elections vary (see below). There are no reserved seats for First Nations or other minority groups at any level.

Governments are held accountable principally through parliamentary and electoral processes, but also through the courts, various anti-corruption bodies, independent auditors-general, ombuds, freedom of information laws (typically weak), and the media. The Australian High Court plays a key role in applying and interpreting the federal constitution.

2 History, Structures, and Institutions of Local Government

Democratic local government dates from the mid-nineteenth century, when roads, boards, and municipalities began to form, but only in certain areas and under tight colonial (later state) control. They had minimal devolved powers and the franchise was confined to property-owning elites.[5] The modern system evolved during the twentieth century and especially in response to post-war reconstruction and strong economic and population growth in the 1950s and 1960s. Today, by far the greater part of Australia's landmass, and most of its islands, have elected local governments. Exceptions to this include the ACT, which is in effect a

[5] Andrew H Kelly, *The Development of Local Government in Australia, Focusing on NSW: From Road Builder to Planning Agency to Servant of the State Government and Developmentalism* (Faculty of Law Papers, University of Wollongong, 2011), https://ro.uow.edu.au/lawpapers/530/ (accessed 1 August 2021).

small city-state; the sparsely populated north-west of New South Wales (NSW), managed by state departments; and northern South Australia (Aboriginal lands and areas managed by the Outback Communities Authority).

All 537 municipalities are established under state constitutions and laws. Their average population is relatively large by international standards—about 47,000—but populations range from less than a hundred to 1.2 million (the City of Brisbane), and areas from just 2 to almost 380,000 km^2. Most rural and remote municipalities (usually known as 'shires') have fewer than 10,000 residents. Many have populations of less than 3000 and often little income apart from federal and state grants. Municipal tax revenues and expenditures across Australia amount, respectively, to just 3 and 5 per cent of the total public sector, and local government's mandatory functions are typically limited to various municipal services, local roads and community infrastructure, land-use planning, development control, and environmental management. In Queensland, Tasmania, and non-metropolitan NSW, municipalities are also responsible to varying degrees for water supply and sewerage.

However, all local government Acts now grant a power of general competence or its equivalent, and the sector's scope of activity has increased considerably over recent decades, partly due to the general-purpose federal funding support that was introduced in the 1970s. Moreover, municipalities control assets with a replacement value (2018/2019) of approximately AUD 450 billion and employ nearly 200,000 people nationally (akin to employment in the mining industry). Local government thus accounts for approximately 1.6 per cent of the total workforce and nearly 10 per cent of all government employees.[6] It is a particularly significant employer in rural and remote regions. In 2011, the municipality employed 10 per cent or more of the workforce in 46 local government areas across Australia, while in small Aboriginal shires in Queensland that figure rose to 50 per cent or more.[7]

As noted earlier, local government operates everywhere as a single tier, regardless of differences in scale and capacity. There are no directly

[6] Australian Local Government Association (ALGA), *Local Government Key Facts and Figures*, https://alga.asn.au/facts-and-figures/ (accessed 1 August 2021).

[7] Su Fei Tan, *Local Democracy at Work: An Analysis of Local Government Representatives and Democracy in New South Wales, Australia* (unpublished PhD thesis, 2020), https://opus.lib.uts.edu.au/handle/10453/142526 (accessed 1 August 2021).

elected regional or special-purpose local government bodies,[8] but many municipalities enter into joint arrangements for planning, major projects, business enterprises, and specific services, as well as to share resources (for example, skilled staff, major items of equipment, information technology).[9] In NSW, Tasmania, South Australia, and Western Australia, local government Acts include enabling provisions for various types of joint authorities. In Victoria, the Act includes 'collaboration' as a guiding principle. Nevertheless, municipalities lean towards protecting their autonomy, and cooperation tends to be tentative, patchy, and intermittent.[10]

Municipalities may discharge some of their responsibilities through committees or other organisations. Typically, they may form and/or join incorporated associations and companies, and also establish locality-based or special-purpose committees to provide advice, assist with advocacy, or undertake aspects of planning and service delivery. However, Australian local governments have been reluctant to delegate much of their authority, especially in the 'core' areas of service delivery, and there has been widespread resistance to the concept of 'lower-tier' bodies along the lines of Britain's parish, community and town councils, or New Zealand's community boards.[11]

2.1 Amalgamations

There have been recurring moves to amalgamate local government areas into larger units.[12] These initiatives are driven by the limited resources of smaller municipalities; pressures to increase efficiency, cut costs, and

[8] Where special-purpose or regional bodies exist, their governing boards are appointed by, and often from among, the councillors of their constituent local governments.

[9] Brian Dollery, Bligh Grant, and Michael Korrt, *Councils in Cooperation: Shared Services and Australian Local Government* (The Federation Press, 2012).

[10] Graham Sansom, *The Practice of Municipal Cooperation: Australian and Comparative Perspectives* (Institute on Municipal Finance and Governance, University of Toronto, 2019).

[11] Graham Sansom, 'Is Australian Local Government Ready for Localism?' (2019) 15(2) *Policy Quarterly* 26–32.

[12] Neil Marshall, 'Restructuring and Reform: Australia', in Emmanuel Brunet-Jailly and John Martin (eds) *Local Government in Australia and Canada: The Challenge to Federation in a Glocalised World* (University of Toronto Press, 2010) 179–212.

promote more effective strategic planning and management; and sometimes sheer political expediency. State governments may implement boundary changes and amalgamations (or, very occasionally, subdivision) of municipalities as they see fit, but usually there is some form of (semi) independent commission or ad hoc inquiry that makes recommendations to the responsible minister.

Since 1990, mainly forced but also some voluntary mergers have reduced the number of municipalities by more than 200. The 1990s saw widespread amalgamations in Tasmania, South Australia, and, most dramatically, Victoria. This century, the focus has shifted to Queensland, Western Australia, and NSW. In early 2007 the Queensland government cut the number of local governments from 157 to 73.[13] More recently, however, the complete (in Western Australia) or partial (in NSW) failure of amalgamation programmes, plus associated political damage (real or perceived), has led state governments to pursue local government reforms in other ways—at least in the short to medium term.[14]

2.2 Metropolitan Regions

The governance of Australia's metropolitan regions is heavily dominated by the states, with local government (and, in different ways, the Commonwealth) only playing an essentially supporting role.[15] Australia's six widely dispersed colonial capitals remain the dominant population centres in each state and, as such, the focus of state politics and administration.[16] State governments thus exercise tight control over metropolitan management and planning, including any major development proposals, and most have established special-purpose agencies for urban transport, main roads, water, sewerage and drainage, pollution control, major

[13] Following a change of government and successful local referenda, four areas subsequently de-amalgamated.

[14] Graham Sansom, 'Recent Trends in Australian Local Government Reform' (2020) 23 *Commonwealth Journal of Local Governance*.

[15] Australian Housing and Urban Research Institute, *Local Government Coordination: Metropolitan Governance in Twenty-first Century Australia*, Final Report No. 352 (2021).

[16] In order of the population of metropolitan areas, the state capitals are Sydney (New South Wales), Melbourne (Victoria), Brisbane (Queensland), Perth (Western Australia), Adelaide (South Australia), and Hobart (Tasmania). Canberra is the national capital and only city within the Australian Capital Territory.

cultural facilities, and other functions that might otherwise have been the responsibility of local government.[17]

A key factor limiting local government's role is its continued division into numerous separate municipalities with no upper tier or mandatory sub-metropolitan groupings. In addition, as noted above, even very large metropolitan municipalities do not enjoy any enhanced legal status or greater authority than their smaller counterparts. Greater Sydney, for example, with a total population of about 6 million, remains divided into 34 local government areas, while Greater Perth has 31 for just 2 million.[18] This fragmentation undermines local government's potential to partner state and Commonwealth governments in metropolitan planning and management, or to advocate effectively on behalf of local communities.

Nonetheless, most municipalities resist both mergers and mandatory joint-planning and resource-sharing. At the same time, most state governments appear reluctant to amalgamate metropolitan municipalities into very large units or to create upper tier local governments that could handle a substantial devolution of responsibilities and, in the process, might begin to rival the state's own authority. In Perth, the state government has twice intervened to divide large municipalities; while after abandoning planned amalgamations in 2016, the then NSW government both strengthened its control over major development projects and excluded direct local government representation in new metropolitan planning and development agencies.

The picture is somewhat different in South East Queensland. There, 95 per cent of the metropolitan region's 3.5 million people live in just seven municipalities. The City of Brisbane alone houses 40 per cent of the population and has an annual budget of about AUD 3 billion. It is a key provider of metropolitan infrastructure and services, including some highways and parts of the public transport system. Also, there is an influential, region-wide Council of Mayors. Until recently, metropolitan region planning was carried out as a truly cooperative venture by state agencies and

[17] Graham Sansom and Jeremy Dawkins, 'Australia: Perth and South East Queensland', in Enid Slack and Rupak Chattopadhyay (eds) *Governance and Finance of Metropolitan Areas in Federal Systems* (Oxford University Press Canada, 2013).

[18] Australian Bureau of Statistics (ABS), *Greater Capital City Statistical Areas*, https://www.abs.gov.au/websitedbs/censushome.nsf/home/factsheetsgeography/ (accessed 1 August 2021).

local government, but concerns around water supplies and local government's capacity to manage population growth and infrastructure provision effectively have prompted a shift towards greater state control.[19]

2.3 Indigenous Communities

Australia's troubled history of dealings with its indigenous Aboriginal and Torres Strait Islander peoples is reflected in local governance. In large urban areas, First Nations people are typically a minority group and few have become elected councillors.[20] However, in the remote regions of the Northern Territory, Queensland (including the Torres Strait), and Western Australia, indigenous communities form a large proportion of the population and do have substantial representation in elected local governments.

Queensland has 15 'Aboriginal Shires' or their equivalent. These were originally missions or reserves, and later lower-status community councils, which have now become mainstream local governments; in addition, there is a further shire and a regional authority in the Torres Strait. In the Northern Territory, what were previously 60 small Aboriginal community governments separated by vast areas of unincorporated lands, have become advisory 'local authorities' within seven new regional councils. There are also three small indigenous local governments in the Darwin region, plus a regional council for the Tiwi Islands to the north. In South Australia, three Aboriginal Community Councils operate on Aboriginal Lands Trust land, while Aboriginal authorities (established under land rights legislation) perform some municipal functions in the state's remote north.

3 Constitutional Recognition of Local Government

Local government is not mentioned in the 1901 Australian Constitution. It enjoys varying degrees of recognition and protection under state constitutions, but as a general rule these can be altered simply by an Act of

[19] John Abbott, 'A Partnership Approach to Regional Planning in South East Queensland' (2001) 38(3/4) *Australian Planner*.

[20] There are no dedicated wards or reserved seats for First Nations people in any Australian local governments.

state parliament, whereas changes to the federal constitution require a referendum.[21]

There have been two unsuccessful referendums seeking to recognise local government in the Australian constitution. Each was supported by federal Labor governments and opposed by the conservative Coalition and most states. The first, in 1974, sought the explicit authority to provide federal grants directly to local government bodies, rather than through the states. The second, in 1988, would have required states to maintain systems of democratic local government, albeit subject in all respects to state laws. Both propositions were easily defeated. Nevertheless, in 2011 the federal Labor government began formulating proposals for a third referendum. This was triggered by a High Court judgment[22] that cast doubt on the legality of some Commonwealth grants to municipalities.[23] As in 1974, the proposition was limited to that issue,[24] but again following widespread conservative and state opposition, the referendum was abandoned in 2013.[25]

At this stage, there is little or no prospect of revisiting the issue. In addition to the inherent difficulty of passing referenda, three critical factors are in play.[26] First, recognition of Australia's indigenous peoples has taken priority, and is an area in which the Commonwealth can build on existing constitutional authority. Secondly, there is no practical threat to continued payment of Commonwealth grants directly to municipalities, regardless of the constitutional position: federal MPs promote such funding for their local constituencies; some of the larger programmes (such as 'Roads to Recovery') were introduced by conservative federal

[21] Cheryl Saunders, 'Constitutional Recognition of Local Government in Australia', in Nico Steytler (ed) *The Place and Role of Local Government in Federal Systems* (Johannesburg: Konrad-Adenauer-Stiftung, 2005) 47–63.

[22] See Duncan Kerr, '*Pape v Commissioner of Taxation*: *Fresh Fields for Federalism?*' https://lr.law.qut.edu.au/article/download/37/36/37-1-74-1-10-20120525.pdf (accessed 1 August 2021).

[23] Anne Twomey, 'Always the Bridesmaid: Constitutional Recognition of Local Government' (2012) 38(2) *Monash University Law Review* 142–180.

[24] Expert Panel on Constitutional Recognition of Local Government: Final Report (December 2011), https://bit.ly/3v2ENtX (accessed 1 August 2021).

[25] Australian Local Government Association: Constitutional Reform Campaign Website, http://councilreferendum.com.au.

[26] A referendum must gain majority support in a majority of states (that is, four out of six), plus a national majority, and voting is compulsory.

governments; and the states are not opposed because Commonwealth grants reduce their need to provide support. Thirdly, it is now abundantly clear that the states are likely to oppose *any reference* to local government in the federal constitution that (depending on future High Court interpretations) might undermine their authority or enable the Commonwealth to re-direct funding support from the states to local government.

On the other hand, there are opportunities—and perhaps growing needs—to strengthen recognition of local government in state constitutions.[27] As noted above, the form of such recognition varies widely and may be amended with relative ease. Typically, constitutions require the establishment of elected local governments across all or part of the state and empower the legislature to pass laws as it sees fit concerning the boundaries, institutions, elections, and operations of those entities. Some provide additional protections for local democracy. Queensland requires that dissolution of an individual local government be ratified by the legislative assembly, and that a referendum be held before a bill may be passed that abolishes the system of local government altogether. In South Australia, such a bill requires an absolute majority of both houses of parliament, while Victoria defines local government as a 'distinct and essential tier' of government and dismissal of an individual elected council requires an Act of Parliament (importantly, a provision that may only be changed by referendum). Local government could argue for such 'best practice' provisions to be replicated in all states.

However, not one of the state constitutions *guarantees* democratic local government even where this is the expressed wish of the people, and the NSW constitution envisages that municipal councils might be 'duly appointed' rather than elected. Nowhere does local government enjoy constitutionally entrenched powers or revenues, while both local government Acts and other legislation (notably that governing land-use/development planning) may include provisions which work to remove the rights of communities to exercise meaningful control of their local affairs.

[27] Saunders (n 21) 53–56.

4 Governance Role of Local Government

Municipalities derive their powers and functions from a combination of state local government Acts and related special-purpose legislation (for planning, roads, environmental protection, public health, and so on). The former prescribes a governance and operational framework, including such matters as purpose and functions, electoral systems, revenue-raising and financial management, corporate planning, meeting procedures, and the like. Some capital city councils have supplementary Acts which include additional or modified provisions, but the differences are minor. Provided they act lawfully, all municipalities set their own budgets, choose and employ their own staff, and have a 'power of general competence'—or its equivalent—to pursue the good governance of their local areas as they see fit. Some states also empower municipalities to pass local laws.

Australia's seven local government systems are all unitary and assign essentially the same legal status, powers, and responsibilities to every municipality. However, the huge differences in geography, scale, and capacity have produced matching variations in what local governments actually do. A remote rural shire may simply maintain roads, provide some services as an agent of the state or Commonwealth, and advocate on its community's behalf; while a large regional centre or metropolitan local government would offer a full range of municipal services (other than those provided directly by state agencies) and play a significant role in strategic planning, environmental management, and social and economic development. These differences impact the way individual municipalities see themselves and how they relate to state and federal governments (see below).

In addition to their 'core' activities, municipalities may be required to provide services or collect charges and levies on behalf of state governments, or pay levies to the states (for example, for emergency services and waste disposal), and they are often also contractors to state or federal agencies, notably in road construction and maintenance. Municipalities and government agencies frequently play overlapping or complementary roles in delivering services (for example, in public health and community services, especially in Victoria) or administering regulations (for example, development control, environmental management). In almost all cases, however, the state agency is dominant.

Recent decades have seen a trend to contracting-out or corporatising some local government services, especially in public works and waste

management. A more business-like approach to service delivery was strongly promoted under the National Competition Policy, which was adopted by federal and state governments in 1995, and by the then Victorian government's policy of compulsory competitive tendering for many municipal services (a policy since abandoned).[28]

Since the 1950s, local government's functions have expanded and diversified considerably, whatever the mode of service delivery. Municipalities have responded to community pressures to do more, as well as to new state or Commonwealth legislation and funding programmes. Key areas of increased activity include land-use and strategic planning, environmental management, and economic development and community services. In parallel with this expansion of local government functions, there has been significant growth in the number of larger and better resourced municipalities. This development has occurred partly by design and policy intent (as in the number of amalgamations) but also as a result of the rapid population growth in middle and outer metropolitan areas, accessible coastal regions, and some inland urban centres. On the metropolitan fringe, what were once large semi-rural shires are now suburban cities with populations of 150–350,000 or more.

The development of corporate and strategic planning has been particularly important. Corporate plans became mandatory during the 1990s, although some of the larger municipalities had already introduced new planning and management systems of their own to handle their expanding role.[29] At the same time, local government has had to improve its efficiency and effectiveness within a more competitive global economy. This has engendered more sophisticated financial and asset management, as well as performance monitoring, organisation development, benchmarking, increased contracting-out of services, and joint delivery of services to capture economies of scale and scope.

The emergence of 'integrated' and 'place-based' strategic planning has complemented this trend in improved corporate management. Municipalities are having to take a more synoptic view of trends and issues

[28] Chris Aulich, 'Markets, Bureaucracy and Public Management: Bureaucratic Limits to Markets: The Case of Local Government in Victoria, Australia' (1999) 19(4) *Public Money and Management* 37–43.

[29] Su Fei Tan and Sarah Artist, *Strategic Planning in Australian Local Government: A Comparative Analysis of State Frameworks* (Australian Centre of Excellence for Local Government, University of Technology Sydney, 2013).

in their local areas, even when these may extend beyond the formal responsibilities of local government, in order to handle new roles in community services, environmental management, and economic development. Concepts of sustainable development and the 'triple or quadruple bottom line' (economic-social-environmental-cultural) have been particularly influential in this regard. In addition, municipalities have moved to expand and intensify their efforts in community engagement. Several local government Acts now require the preparation and implementation of community engagement strategies, both as an integral element of strategic and corporate planning as well as for a wider range of routine municipal operations, including budgeting.[30]

5 Financing Local Government

Municipal revenues and financial management are subject to detailed regulation under local government Acts. Even so, municipalities do enjoy a substantial measure of local choice in the way they manage their financial affairs, especially in the setting of expenditure priorities. They are not legally prevented from running deficits from time to time, although consistent deficit budgeting would undoubtedly attract some form of intervention by the state minister. In practice, the goal is generally to achieve 'balanced' budgets.

On average, municipalities fund over 80 per cent of their expenditure from their own sources, mainly through property tax ('rates') and service charges, plus investments and commercial revenues. The balance of funding comes from federal and state grants. While limited, this revenue base is well-matched to local government's narrow range of mandatory responsibilities. The larger urban municipalities, with their high property values, can raise 90 per cent or more of their revenues locally and also have the capacity to provide additional services and infrastructure to underpin community well-being.

Typically, local governments carry little or no debt and the majority of them appear to be financially sound, at least in the short-medium term. There is a high degree of transparency and accountability: municipalities report extensively both to state agencies and to their constituents, audits are generally thorough, and financial corruption is very rare. Nevertheless,

[30] Helen Christensen, 'Legislating Community Engagement at the Australian Local Government Level' (2018) 21 *Commonwealth Journal of Local Governance*.

longer-term financial sustainability remains a cause for concern.[31] Since 2000, inquiries into the sector's funding and/or financial sustainability have been undertaken in all states (in some cases more than once) and also nationally. There are several reasons for this.

First, the small (in population) rural and remote municipalities typically lack sufficient capacity to raise revenue locally and are highly dependent on central government grants. A 2008 study by the federal Productivity Commission found that 20 per cent of local governments are dependent on grants for at least 34 per cent of their revenue, while 10 per cent are highly dependent, with grants accounting for 43 per cent or more of their revenue.[32] (It should be noted, however, that the latter are home to less than 0.5 per cent of the Australian population.)

Secondly, many municipalities have accumulated substantial backlogs in infrastructure maintenance and renewal. This has come about, at least in part, from the need to fund increased responsibilities in planning, environmental management, economic development, and community services.[33] Revenues have simply not grown fast enough to cover both the new functions and adequate infrastructure maintenance. In addition, municipalities are often averse to carrying debt, despite the fact that borrowing is widely accepted as the appropriate way of funding costly infrastructure with a life of several decades. This reluctance reflects (pre-Covid) Commonwealth and state government rhetoric about the need to minimise public sector debt; together with a reluctance to lock-in future rates increases for the repayment of loans.

Slow revenue growth is in part a consequence of the high public visibility of rates, which are raised mostly through annual or quarterly payments. The Productivity Commission's study found that, had rates revenue nationally kept pace with GDP over the period 1990/1991 to 2005/2006, it would have been 20 per cent higher, and that many larger urban municipalities could potentially raise enough revenue from their

[31] See, for example, NSW Independent Local Government Review Panel (ILGRP 2013), *Final Report: Revitalising Local Government*, 25–29, https://bit.ly/3E4Sdd2 (accessed 1 August 2021).

[32] Productivity Commission, *Assessing Local Government Revenue Raising Capacity* (Draft Research Report, Commonwealth of Australia, 2007). The Productivity Commission is a statutory body that undertakes independent investigations into economic and policy issues referred by the federal government.

[33] See, for example, NSW Independent Local Government Review Panel (n 31).

own sources to dispense with most or all grant funding. However, councillors often reject proposals for substantial rate increases due to concerns about opposition from ratepayers, and state politicians regularly engage in rhetoric which suggests that municipalities are inefficient and rates excessive. The NSW and Victorian governments limit annual increases in rates to a set percentage. While municipalities may apply to exceed the limit, the political risks and administrative effort of submitting complex applications discourages many from doing so, regardless of the evident need for more revenue.

A third factor in this is the way in which financial pressures on local government have been increased by 'cost shifting': state, and to a lesser extent, federal governments may require or encourage councils to undertake additional functions, but do so without providing adequate financial support or the ability to raise additional revenues.[34] Cost shifting also occurs when state governments set statutory fees and charges below cost-recovery levels; exempt their own agencies and other types of property owners (for example, churches, charities, private schools, and even some commercial enterprises) from paying rates; and force municipalities to offer concessions on rates or fees and charges to pensioners (thus in effect transferring a social welfare responsibility).

Despite the lack of any specific provision in Australia's Constitution, local government's largest source of external funding is the Commonwealth. As noted earlier, financial assistance grants (FAGs) were introduced in the mid-1970s and have, since then, continued to increase steadily under bi-partisan policies. Currently, these grants amount to around AUD 3.0 billion per annum and are 'untied' (essentially unconditional). FAGs serve two purposes: first, they reduce the vertical fiscal imbalance in the Australian federation that results from Commonwealth dominance of all major forms of taxation; and secondly, they facilitate partial horizontal equalisation between 'rich' and 'poor' municipalities. They are distributed by state local government grant commissions that determine relative needs and calculate the annual grant to each municipality. All local governments receive at least a minimum per capita grant, but about two-thirds of total funding is allocated to non-metropolitan areas where municipalities are judged to have greater needs.

[34] House of Representatives Standing Committee on Economics, Finance and Public Administration, *Rates and Taxes: A Fair Share for Responsible Local Government* (Parliament of the Commonwealth of Australia, Canberra, 2003).

The Commonwealth also channels substantial support through special-purpose assistance (notably for regional development projects and roads). The 'Roads to Recovery' programme, introduced in 2000, provides a minimum AUD 500 million per annum. Total Commonwealth funding for local government, including smaller special-purpose grants, is now more than AUD 3.5 billion per annum, roughly 10 per cent of the sector's total revenue.

6 Supervising Local Government

Almost all aspects of municipal governance are subject to state control and intervention. State governments have virtually unqualified powers to establish and alter local government areas; to suspend or dismiss duly elected councils and to appoint commissioners or administrators in their place (usually following an inquiry); and to create appointed bodies to undertake municipal functions in designated locations. In both Sydney and Melbourne, for example, the urban renewal of some inner-city areas has been placed in the hands of statutory authorities or state agencies, even though these areas lie within the boundaries of well-resourced capital city councils. Suspension or dismissal of elected councils occurs occasionally in most states, either on the grounds of unsatisfactory governance or as part of amalgamation processes.

Oversight is exercised through ministers for local government, various departments, auditors-general, statutory pricing authorities, anti-corruption commissions, ombuds and conduct committees or tribunals. Municipalities must submit annual reports and other statistical and financial returns to state agencies, and the minister or his or her department may undertake various forms of intervention if they consider it necessary to do so. In Victoria, for example, the minister may appoint 'municipal monitors' to observe governance processes and report on issues, provide advice to the council, and make recommendations for further action. Also, councillors and, in some states, municipal managers and staff, must abide by detailed, statutory codes of conduct. Formal complaints about their behaviour can be made by almost anyone, and subsequent inquiries can lead to punitive action or even dismissal.

Supervision can, of course, be undertaken in a cooperative and constructive fashion. There are numerous examples across Australia of state departments and local governments or their associations collaborating to introduce improvements to management and governance.

However, the political reflex of state governments tends to be one of asserting their pre-eminence and authority and keeping local government (and, as a result, local democracy and autonomy) in check. A related factor is the frequently limited capacity and lowly bureaucratic status of state local government departments, which tend to lack staff with sufficient practical experience in municipal management or in-depth understanding of the complex issues involved in local governance.

In several instances, local government is also subject to the Commonwealth's powers with respect to immigration, indigenous affairs, and foreign affairs. Examples include rules (and sometimes threats) concerning the way municipalities hold citizenship ceremonies and recognise Australia Day (widely termed 'Invasion Day' among First Nations peoples); environmental protection measures flowing from treaty obligations; and most recently a requirement for international agreements (such as those for Sister Cities) to be vetted for any manifestation of adverse foreign interference. Moreover, the Commonwealth may attach conditions to grant funding as it sees fit. Surprisingly, however, it has taken little or no action to protect the effectiveness of its billions of dollars in grants to municipalities against the adverse impacts of state restrictions on other local government revenues, such as rates and charges.

7 Intergovernmental Relations

A literal interpretation of Australia's Constitution places Commonwealth and state governments on roughly equal terms, with little overlap in functions, while local government is wholly subservient to the states. In recent years, however, the practical reality has been one of Commonwealth dominance and extensive functional overlap, including direct links (both financial and functional) between the Commonwealth and local government. This reflects the Commonwealth's financial strength, derived from control of both income and indirect taxes, as well as a series of High Court decisions that have interpreted the Constitution in such a way as to extend federal powers.[35]

[35] See Clement Macintyre and John Williams, 'Australia: A Quiet Revolution in the Balance of Power', in Raoul Blindenbacher and Abigail Ostien (eds) *Dialogues on Distribution of Powers and Responsibilities in Federal Countries, Booklet Series, Volume 2, A Global Dialogue on Federalism* (McGill-Queen's University Press, 2005).

Commonwealth and state constitutions and laws have very little to say about intergovernmental relations and how to advance cooperation or resolve disputes between governments. What has emerged in practice is a framework of ministerial councils and other intergovernmental forums and mechanisms. These have been mostly established administratively, but also through complementary federal and state legislation in some key functional areas, such as long-distance road transport. In the 1980s, local government started to become part of this emerging framework, and from 1992 to 2020 the president of the Australian Local Government Association (ALGA) was a member of the peak Council of Australian Governments (COAG), alongside the Prime Minister and first ministers of the states and territories. Local government was also represented on numerous ministerial councils. However, in recent years its involvement has diminished (see below).[36]

7.1 Organised Local Government

Australia has seven state and territory local government associations. Together these constitute and control the Canberra-based Australian Local Government Association (ALGA). Municipalities are members of the state and territory associations, and their links with ALGA are confined largely to attendance at national conferences. Funding of ALGA by its parent associations is now insufficient to support a wide-ranging role in federal forums and national policy debates; ALGA's agenda is thus confined to a few agreed priorities, chiefly focused on seeking additional Commonwealth grants to municipalities.

ALGA is not local government's only national voice. There are several other groupings of municipalities—principally the larger and better resourced ones—with a well-established federal presence. Examples include the Council of Capital City Lord Mayors, representing the central cities of each metropolitan region; the National Growth Areas Alliance, consisting of rapidly growing municipalities on the metropolitan fringe;

[36] For an overview of local government's evolving intergovernmental relations, see Graham Sansom, 'What's Fair? Intergovernmental Relations in Australia', in John F Martin and Emmanuel Brunet-Jailly (eds) *Local Government in Australia and Canada: The Challenge to Federation in a Glocalised World* (University of Toronto Press, 2010) 179–212.

and Regional Capitals Australia, advocating on behalf of larger non-metropolitan towns and cities. In addition to these, professional institutes engage in policy debates and have links with Commonwealth agencies. These and other more specialised organisations fill gaps in ALGA's agenda and capacity, but with the accompanying risk of a local government Tower of Babel.

State associations tend to be preoccupied with the 'day-to-day' working relationships between their member councils and government agencies, as well as the provision of valued practical services to their members, such as insurance, recruitment, industrial relations, and legal advice. Their efforts and achievements in policy development are typically spasmodic and tend to be linked to advocacy on contemporary issues of concern rather than innovative research and ideas about the future of local communities and their governance. The associations often struggle to reconcile the differing needs and opinions of their diverse membership, one that typically includes numerous poorly resourced rural and remote municipalities. This can produce a 'lowest-common-denominator' approach that inhibits meaningful contributions to 'big-picture' debates. It also results in larger municipalities and regional groupings dealing directly with ministers and agencies, opening the door for the states to 'divide and rule'.

7.2 Local–State Relations

Relationships between local and state governments vary greatly from state to state and over time, but generally tend to be somewhat uneasy and unstable. This reflects the underlying forces at work: on the one hand, local government is created by and legally subservient to the states, while on the other, municipalities are accountable to their electors and local government Acts have granted them a substantial degree of autonomy. Moreover, many administrative, regulatory, and public works functions can only be carried out effectively at the local level, and populous urban municipalities are largely financially independent. While the states dominate the delivery of major social services and networked infrastructure, and have regionalised their biggest bureaucracies, they still need a partner to 'fill the gaps' locally.

Given their complementary functions, state and local governments are necessarily engaged in a more or less continuous operational dialogue,

conducted by means of a raft of special-purpose consultative or advisory committees. However, formal mechanisms for exchanges of views on policy matters, or for joint-planning, have been less common, particularly on a 'whole of government' basis. There is rarely a clearly articulated statement of respective roles and responsibilities or shared priorities, and effective coordination of activities is patchy.

Nevertheless, most states have a forum of some sort for regular meetings between the premier and/or senior ministers and local government leaders (the association, mayors, senior managers). Most have also seen the negotiation of protocols or partnership agreements between state and local governments on key policy issues, although such agreements may prove short-lived if there is either a change of state government or its political priorities and attitude towards local government alter. In NSW, for example, an agreement signed in 2013 was abandoned only a few years later following bitter disputes over proposed amalgamations. By contrast, Tasmania's arrangements for state–local dialogue and cooperation have lasted since the beginning of this century and survived a change of government. This cooperative approach was exemplified with the passing of the Greater Hobart Act of 2019, which aims 'to assist councils … and the State Government to better collaborate with each other in the making of decisions that will affect strategic land-use planning, and the provision of infrastructure in the Greater Hobart area'.

7.3 Local–Federal Relations

Since the early 1980s, there has usually been a federal minister with the words 'local government' in his or her title, and the Commonwealth's policies have been a significant driver of the expansion in local government's role over the past half-century. The critical threshold in local–federal relations came during the term of the Whitlam Labor government in the early 1970s, with a combination of increased grant funding and closer engagement of the Commonwealth in local and regional affairs. Subsequent decades saw further initiatives to strengthen local–Commonwealth relations and local government's place in Australia's federal system. Those include the following:

- Research into local and regional governance by the then Advisory Council for Inter-government Relations during the 1980s, leading to the second (1988) referendum on constitutional recognition.[37]
- The establishment of a National Office of Local Government and a dedicated Commonwealth-states Local Government Ministers Council (also during the 1980s).
- ALGA's involvement in the establishment of COAG in 1992.
- In 1995, the signing of a Commonwealth-Local Government Accord which set out a shared policy agenda (though this was abandoned the following year due to a change of government).
- A 2006 parliamentary resolution recognised the importance of local government.
- Also in 2006, all governments adopted an 'Inter-Governmental Agreement Establishing Principles Guiding Inter-Governmental Relations on Local Government Matters'.
- In 2008, the establishment of the Australian Council of Local Government (ACLG) as a dedicated federal–local forum (abandoned in 2013 following election of a conservative Coalition but revived by a new federal Labor government in 2023).
- Funding of an Australian Centre of Excellence for Local Government (ACELG) from 2009 to 2015.
- Since 2016, inclusion of local government in the negotiation and implementation of several City and Regional Deals (Commonwealth–state agreements for funding major infrastructure and facilities in metropolitan growth areas and selected regional centres).

During the past decade, however, the impetus for federal–local cooperation on policy issues (as opposed to grant funding for projects) and Commonwealth support for local government's national presence has waned. There is still a nominated (assistant) minister, but (apart from City and Regional Deals) local government issues now occupy a lowly place in a large, multi-functional department. The parliamentary resolution and the 2006 intergovernmental agreement came to nothing. ACELG played a valuable 'research and development' role but ceased operations in 2015. Successive reviews of COAG's network of ministerial councils have led

[37] Saunders (n 21) 50–53.

to the abolition of the Local Government Ministers Council and several others that were particularly useful for local government.

In April 2020, COAG itself was summarily disbanded by Prime Minister Scott Morrison as part of his reaction to the Covid-19 pandemic (see below).[38] Morrison claimed that COAG had been cumbersome and ineffectual, 'a place where good ideas went to die'.[39] He wanted a streamlined operation with a narrower agenda, focused in the first instance on a collective response to Covid-19. Accordingly, COAG was replaced by a 'National Cabinet' consisting only of first ministers that would meet more frequently, mostly online and 'behind closed doors' with fewer advisers in attendance. ALGA was excluded from this, but under the federal Labor government elected in 2022 it has been guaranteed attendance at one of National Cabinet's quarterly meetings each year.

8 Political Culture of Local Governance

Throughout Australia, local governments are now elected under a universal adult franchise for residents, but with a supplementary property franchise in all jurisdictions except Queensland and the Northern Territory.[40] The level of voter turnout in municipal elections varies widely across the country. In Queensland, New South Wales, Tasmania, Victoria, and the Northern Territory, voting is compulsory (as it is for state and federal elections throughout Australia) and turnout averages about 80–85 per cent (5–10 per cent lower than state and federal elections). In South Australia and Western Australia, voting is voluntary and turnout is typically low (30–35 per cent). Measures such as postal voting have been introduced to encourage greater participation.

[38] Bill Browne, *State Revival: The Role of the States in Australia's COVID-19 Response and Beyond* (The Australia Institute, July 2021), https://bit.ly/3upUlc0 (accessed 1 August 2021).

[39] ABC News, 'COAG is No More as Scott Morrison says National Cabinet will Replace Old System in Wake of Coronavirus' (29 May 2020), https://ab.co/38s0VGj (accessed 1 August 2021).

[40] A 'property franchise' gives a vote to owners of property as well as residents. See Yee-Fui Ng, et al. 'Democratic Representation and the Property Franchise in Australian Local Government' (2016) 76(2) *Australian Journal of Public Administration* 221–236.

The level of overt party politics in Australian local government is highly variable. In some states, party politics is seen as contrary to a preferred culture of cooperative community governance, but overall it appears to be increasing, especially in major metropolitan areas and regional cities. For ambitious politicians, success in local government can often lead to positions in state or federal parliament, while control of a large, strategically placed municipality is increasingly seen as a glittering political prize in itself. The Labor and Greens parties tend to be more visible at the local government level, but the Liberal Party is now also becoming more openly engaged in urban areas. Liberal-leaning business-oriented and 'ratepayer' or 'progress' groups are not uncommon, and in rural Australia, many 'independent' councillors are seen as aligned with the National Party. Local elections do also feature many truly independent candidates with no party affiliations, but they may forge electoral alliances to improve their chance of winning seats.

There are approximately 4800 local councillors across Australia, roughly five times the number of state and federal parliamentarians. On a per capita basis, the number of councillors is relatively low by international standards. This reflects the large average population of municipalities; the legislative limits applied to the number of councillors (no more than 15 everywhere except the city of Brisbane); and the lack of elected lower-tier ('community') councils and regional bodies. On average, an Australian councillor represents more than 5000 people, and in larger metropolitan and regional municipalities he or she may have 10–15,000 and even, in several cases, more than 20,000 constituents. Yet (with the sole exception of Queensland), councillors work mostly part-time, receive only expenses and/or modest allowances, and must perform their duties with little administrative or research support. Historically, this represents both a persistent 'volunteer' culture as well as the desire of property owners to keep costs low. It certainly tends to limit the number and type of people who feel able to stand for election.

Little information is available on the demographic profiles of elected councillors. Data from NSW indicates that councillors as a group tend not to reflect their communities in terms of gender, age, or social class. In 2014, 73 per cent of councillors (but only 49 per cent of the population) were men, while women accounted for just 27 per cent of

councillors (although that figure rose to 39 per cent in 2021).[41] Similar disparities exist in terms of age and levels of education. While a fifth of the population is aged 18–29, a mere 4 per cent of councillors were drawn from this age group; and, in the 2016 census, the majority of councillors identified themselves as 'professionals' compared to only 37 per cent of the population. Thus older, professional men are over-represented on local councils. In addition, in the absence of hard data, anecdotal evidence suggests that indigenous peoples, ethnic minorities, LGBTQ groups, and people with disabilities are all significantly under-represented in elected councils.[42]

Political governance continues to reflect the neoliberal and associated managerialist tendencies of the late twentieth century.[43] Nearly all municipalities operate in accordance with the 'council-manager' model.[44] Except in the City of Brisbane, regardless of size of population and budget, the elected body comprises only 7–15 councillors; there is no 'cabinet'; and neither councillors nor mayors have executive powers as such. Mayors may be directly ('popularly') elected by the voters for the full term of the council (four years), or elected by and from the councillors, in which case mayoral elections take place every one or two years. Most local government Acts now give mayors some additional responsibilities as the leader of the elected council and the local community (such as liaising with and guiding the chief executive on policy issues and representing the municipality in intergovernmental forums). Also, mayors may even enjoy a quasi-executive role through delegated authority if they enjoy clear majority support among the councillors and/or a strong personal mandate. This occurs particularly in capital city councils and

[41] NSW Office of Local Government, *NSW Councillor and Candidate Report 2012, Local Government Elections* (Office of Local Government, Nowra, 2014), https://www.algwa.org.au/docs/candidates.pdf (accessed 1 August 2021).

[42] Tan (n 7).

[43] Su Fei Tan, Alan Morris and Bligh Grant, 'Mind the Gap: Australian Local Government Reform and Councillors' Understanding of their Roles' (2016) 16 *Commonwealth Journal of Local Governance*.

[44] See, for example, James H Svara and Kimberly L Nelson, 'Taking Stock of the Council-Manager Form at 100' (August 2008) *Public Management* 6–15.

in larger municipalities where a popularly elected mayor belongs to an entrenched majority party or group.[45]

Since the 1990s, however, local government Acts have placed implementation of the elected body's plans and policies, along with all routine operations of the organisation (including the hiring and firing of all other staff), in the hands of a chief executive. Councillors are expected—in their new role as a kind of 'board of directors'—to focus on governance, policy, oversight, and performance review. 'The elected council oversees the activities of the council but is not involved in the day-to-day running of the council. The "shareholders" of a public company can be likened to a local community'.[46] This approach can lead to difficult relationships between councillors and management, especially if the chief executive seeks to limit the decision-making role of the elected body and resists interventions by individual councillors on behalf of their constituents.[47] Such tensions become particularly significant when most senior officers are on relatively short-term, performance-based contracts and may be summarily dismissed.

Councillors often struggle to understand how and where to draw the (frequently blurred) line between 'policy' and 'administration'. Many can articulate the conceptual difference, but find it very hard to express in practice, especially given the far-reaching administrative and, in effect, political power which is placed in the hands of the chief executive.[48] This applies particularly to the chief executive's capacity to set parameters for council agendas and to shape the information provided to councillors, as well as the power to lead policy development by drafting strategic and corporate plans and budgets.

Tensions also arise from the expectation that the councillors will work smoothly as a collective. This ignores the reality that every councillor

[45] Graham Sansom, 'The Evolving Role of Mayors: An Australian Perspective', in Graham Sansom and Peter McKinlay (eds) *New Century Local Government: Commonwealth Perspectives* (Commonwealth Secretariat, London, 2013) 212–239.

[46] NSW Office of Local Government, *Councilor Handbook* (Office of Local Government NSW, Nowra, 2017) 8, https://www.olg.nsw.gov.au/councils/councilors/councilor-handbook (accessed 1 August 2021).

[47] John Martin and Roland Symons, 'Managing Competing Values: Leadership Styles of Mayors and CEOs' (2002) 61(3) *Australian Journal of Public Administration* 65–75.

[48] Tan (n 7).

is answerable to his or her constituents, may be a member of a political party or group, and may see his or her position as a councillor as leading to a position in state or federal parliament. Different perspectives and priorities are inevitable, and these can give rise to robust political debate. In addition, local government Acts require formal decision-making to be conducted almost entirely in public meetings: a situation more likely to generate theatrics than thoughtful 'boardroom' discussion. Closed meetings are usually strictly limited to matters affecting individual members of staff or deemed commercial-in-confidence. Councillors may establish committees and delegate some aspects of decision-making to them, but these committees also normally meet in public, with their recommendations to be considered at the next council meeting.

Most council meetings are accompanied by very lengthy and complex agenda papers that councillors are expected to absorb and understand in order to discharge their statutory decision-making functions: 'Meeting or business papers should be of sufficient quantity and quality to allow all councillors to do their job properly and effectively'.[49] While some of the content will be routine matters and updates, the agenda papers often include lengthy technical reports. There may also be further background and policy papers which are distributed separately to read, as well as papers from preceding committee meetings. For part-time councillors, dealing with such a mass of papers can and often does become impossible in terms of both the hours of reading required, not to speak of the political and intellectual demands imposed in processing them.

At the same time, municipalities face steadily rising demands for good governance and accountability to both their local communities and state governments. Greater accountability to the community is reflected in requirements for better and more continuous public reporting, improved access to information, and preparation of comprehensive engagement strategies that go beyond consultation and provide opportunities for local people and key stakeholders to contribute more effectively to decision-making processes.[50] Tensions may well arise concerning the respective roles of elected councillors and management in these processes of engagement.

[49] Ibid, 28.

[50] Emanuela Savini and Bligh Grant, 'Legislating Deliberative Engagement: Is Local Government in Victoria Willing and Able?'(2020) 79(4) *Australian Journal of Public Administration* 514–530.

9 Covid-19's Impact on the Role of Local Government

Both constitutionally and operationally, the primary responsibility for addressing the public health dimension of the Covid-19 pandemic fell to state governments, which also took wide-ranging action in support of their economies. However, the Commonwealth dominated the economic response, raising huge borrowings to provide fiscal stimulus and boost social security payments. It also controlled Australia's international borders, the aged care sector, and vaccine supplies and distribution. As well, the Commonwealth assumed—or tried to assume, with mixed success—responsibility for national leadership and coordination. As described above, this involved frequent online meetings between first ministers and led to the establishment of National Cabinet as a replacement for COAG, with local government excluded.

There is some irony here. As the 'frontline' agencies, municipalities were severely impacted by the pandemic. Within their limited resources, they did a great deal to support local economies and communities, acting on their own initiative as well as at the urging of state governments. Some states provided substantial financial support to help maintain municipal employment, but the Commonwealth declined to include local government in its national 'Jobkeeper' programme as it deemed municipalities to be purely a state responsibility.

The pandemic obliged municipalities to make far-reaching changes to modes of service delivery and to close facilities—such as customer service centres, libraries, child-care services, leisure facilities, and community centres—where people gather together. Council meetings had to move online and, wherever possible, staff worked from home, necessitating action to strengthen their IT and communications skills. Large numbers of staff were reassigned to other roles or required to take unpaid leave; some were retrenched. In addition, many councils introduced programmes to support local businesses and community wellbeing, including action to minimise the adverse impacts of isolation and loneliness.

Changes and reductions in service delivery reduced municipal revenues as income streams from fees and charges declined. There were many efforts to assist struggling businesses and households: rates relief, accelerating payment of local suppliers, rent relief for tenants in council buildings, waiving various fees and charges, and new or increased grants

programmes for economic and community development. These all came at a substantial cost, and there are likely to be lasting impacts on municipal budgets: reductions in own-source revenue will be locked-in and make it difficult for some municipalities to contribute effectively to promoting post-Covid recovery in their communities, on top of their own financial recovery. In a 2021 survey, 59 per cent of local government chief executives reported negative impacts on their municipality's financial sustainability, with that figure rising to 73 per cent in metropolitan areas.[51]

The Covid-19 pandemic also impacted the demographic profile of some local government areas. The Australian Bureau of Statistics reported that in July, August, and September of 2020, Australia's capital cities experienced a net loss of 11,200 people due to internal migration.[52] This is the highest loss since records began. As people moved to working-from-home arrangements, some also gained greater freedom of choice in where they live, and the high cost of living in the major metropolitan areas provides an incentive to consider moving to attractive coastal or rural locations. This may well have significant longer-term implications—both positive and negative—for regional and metropolitan municipalities alike. Similarly, there was the additional impact of potential lasting downturns in the influx of tourists, backpackers, farmworkers, and international students to both metropolitan and regional areas.

Importantly, the Covid crisis empowered and emboldened the states. They appeared to relish their opportunity to demonstrate their capacity in public health roles and exercise their constitutional authority, notably in the popular measure of closing state borders to prevent the spread of the virus.[53] The pandemic also highlighted and reinforced the central importance of relations between the Commonwealth and the states. By contrast, it appears to have weakened local government's position in terms of its overall political profile, particularly relative to the states. The financial capacity of municipalities to accept additional responsibilities has also been reduced, at least in the short to medium term while they recover from

[51] Davidson Consulting, *Australian Local Government CEO Index 2021*, https://bit.ly/3up3NMC (accessed 1 August 2021).

[52] Australian Bureau of Statistics, *Regional Internal Migration Estimates Provisional* (2021) ABS catalogue number 3412.0.55.005, https://bit.ly/3rdlFby (accessed 1 August 2021).

[53] Browne (n 38).

revenue losses and unplanned expenditures, though there are concerns that this may become a lasting trend. All in all, despite the essential contribution municipalities made to tackling the epidemic, the impact of Covid-19 could leave local government in a significantly weaker position than before.

10 Emerging Issues and Trends

A decade ago, nearing the end of the Rudd-Gillard Labor federal government, the president of ALGA was a member of COAG; ALGA was also represented on numerous ministerial councils and inter-government committees; the federal local government minister was a senior member of cabinet; his predecessor had established the high-level Australian Council of Local Government (ACLG) as a vehicle for direct federal–local relations, and funded the Australian Centre of Excellence for Local Government (ACELG) together with a range of local government reform and development initiatives; and there was agreement in principle on holding a third referendum on constitutional recognition.

Local government seemed to have met the first part of the challenge identified by Chapman and Wood in the early 1980s: 'To survive as part of the body politic local government must accustom itself to, and be seen to be, operating as part of the intergovernmental network'.[54] However, Chapman and Wood had also made it clear that intergovernmental negotiations demand much more than simple advocacy of local concerns and perspectives: 'Advocates respond to issues: what is needed to protect local interests in the intergovernmental system is not advocacy alone, but full-time involvement in the political and administrative activity of the federal and state governments'.[55] In these terms, local government has been found wanting. It has failed to grasp and pursue the longer-term 'big-picture' opportunities presented by COAG, ACLG, ACELG, and ongoing federal support for reform and development. Instead, it has focused its energies on what again proved to be the holy grail of constitutional recognition, while continuing to couch its relationship with the federal government principally in terms of the need for increased

[54] RJK Chapman and Michael Wood, *Australian Local Government: The Federal Dimension* (George Allen and Unwin, Sydney, 1984) 12.

[55] Ibid., 167–168.

financial support, rather than emphasising the expertise and resources municipalities could bring to national agendas.

This response may be ascribed to several related factors: the hold that the state associations have over ALGA; their inevitable preoccupation with state–local relations; and the very large number of resource-poor rural and remote shires. The result is a tendency to pursue and adopt 'lowest-common-denominator' policies that highlight areas of weakness rather than the strengths of large metropolitan and regional city governments, particularly their capacity to play an expanded role. Nationally, local governments can agree on the importance of federal grants and the desirability of constitutional recognition, but not much else. As Nicola Brackertz observed in 2013:

> there appears to be a persistent reluctance on the part of local government to take up its own cause and initiate change. This is evidenced, for example, by the fact that although local government peak bodies have initiated a number of inquiries, local government has been hesitant to put together and action packages of reforms, leaving responses to the recommendations of inquiries largely to state and federal governments.[56]

There have been several other contributing factors. The new federal minister appointed after the 2010 election proved to be more interested in regional economic development than the relationship with local government; municipalities in Queensland were preoccupied with implementing the sweeping amalgamations that took place in 2007–2008; and the attention of local government in Western Australia and NSW had also become focused on state government reform initiatives.

Whatever the explanation, subsequent events point to a significant downturn in local government's federal presence. The conservative Coalition in office during 2013–2022 showed little or no interest in a federal–local dialogue, even though it maintained high levels of both general-purpose financial assistance and, especially, grants for local and regional projects. The latter include (non-metropolitan) regional development programmes, strongly supported by the National Party; and the 2016 City Deals initiative, which now encompasses nine metropolitan

[56] Nicola Brackertz, 'Political Actor or Policy Instrument? Governance Challenges in Australian Local Government' (2013) 12 *Commonwealth Journal of Local Governance* 3–19.

areas and major regional centres, as well as 'Regional Deals' in three other locations. Remarkably, however, it appears that neither the participating municipalities nor ALGA have sought to generate a national conversation about how these programmes might be networked as part of a broader federal–local agenda.

The culmination of a decade of steadily declining institutional engagement between the Commonwealth and local government was reached in 2020 with Prime Minister Morrison's decision to exclude ALGA from the new 'National Cabinet'. Evidently, the premiers and chief ministers supported this approach, and there is little doubt they would have been pleased not to have local government—their underling but potential rival for Commonwealth support—at the table. Indeed, recent years have seen a re-assertion of state primacy and control over municipalities. For example, Victoria has joined NSW in capping annual rates increases while, having failed to legislate rate-capping as such, the South Australian government has empowered its Essential Services Commission (a pricing authority) to oversee municipal financial plans.[57] Several states have implemented land-use planning 'reforms' that transfer decision-making authority from municipalities to state ministers and their appointees. Most have subjected councillors to more demanding codes of conduct and complaints procedures, while elected councils that exhibit failures (real or perceived) to deliver good governance have been exposed to additional avenues for state intervention, suspension, or dismissal.

Perhaps state governments want to 'put the genie back into the bottle'. Having established democratic local government, given it a significant degree of autonomy plus the power of general competence, watched the growth of large metropolitan municipalities and initiated across-the-board amalgamations, they worry that their creation may become an out-of-control rival for status and resources. In the foreseeable future, Australia will have a string of local governments with populations of 400,000 or more, big budgets, extensive professional and technical resources, significant international links on issues such as climate change, and undoubted capacity to partner directly with the Commonwealth in major initiatives. Effective local democracy on that scale could disrupt the exercise of the powers of the states to determine infrastructure and development priorities and promote business investment in property, transport,

[57] Statutes Amendment (Local Government Review) Act 26 of 2021.

mining, energy, industry, or agriculture. Local objections may hinder favoured projects, while uncontrolled municipal rates and charges may impede increases in state land tax and other revenues from property development.[58]

Faced with these and other challenges, Australian local government in the early 2020s seems to lack a collective sense of direction. For the most part, it tends to focus on local gains even at the expense of—rather than together with—more substantial advances achievable only through collaborative efforts. Municipalities appear to lack interest in pursuing a broader and more robust localist agenda,[59] perhaps because it might entail devolving some of their own functions to communities, and granting meaningful authority to cooperative regional entities that could partner more effectively with state and federal governments.[60] On the whole, their response to increasing state oversight and intervention has been notably incoherent. State associations tend merely to react to individual government practices, decisions, or proposals that are seen to disadvantage a substantial number of their members, rather than promulgate a rounded set of their own policies for community well-being. This may be due in part to a lack of high-profile leaders with the reputation and authority needed to speak for local government as a whole and achieve a more constructive relationship that advances community and regional governance. In the absence of productive relationships with the states, local government is bound to struggle for support in federal forums. The difficulty is compounded by ALGA's very limited resources and agenda, plus the existence of competing national voices.

In 2016, Local Government Professionals Australia published *Australia in a Century of Transformative Governance: A Federation for Communities and Places*.[61] The paper observed that the value of local action is often overlooked in the workings of the Australian federation, but also noted that:

[58] Sarah De Vries, 'Australian Local Government's Contribution to Good Governance on Major Projects: Increasing Information, Participation and Deliberation' (2021) 24 *Commonwealth Journal of Local Governance*.

[59] Sansom (n 11).

[60] Sansom (n 10).

[61] Mark Evans and Graham Sansom, *Australia in a Century of Transformative Governance: A Federation for Communities and Places* (Local Government Professionals Australia and University of Canberra, Institute for Governance and Policy Analysis, 2016).

> collaborative governance involving local citizens and all key stakeholders is the only way in which Australia can bring to bear all the skills and resources required to address 21st century challenges … local government could make a far greater contribution to the success of the federation as part of a concerted campaign to promote collaboration between governments, business and civil society at local and regional levels.

The 2016 paper documented some of the plentiful evidence that shows the highly beneficial—and increasingly essential–contributions that municipalities, both individually and in groups, are making to a range of national agendas. As noted earlier, most municipalities performed strongly during the Covid crisis, supporting local communities and economies. Many are focused on improving relationships with Australia's First Nations peoples and their unacceptable social and economic disadvantage; on the needs of an ageing population; and on climate change, promoting renewable energy and advancing a circular economy.[62] While regional cooperation remains patchy, there are good examples of how to make it work and of the gains to be made when it does, such as the leadership displayed by the South East Queensland Council of Mayors in securing the 2032 Summer Olympics for Brisbane. Moreover, there is surely considerable scope to network the various 'special-purpose' national organisations and combine their resources in a concerted effort to reinvigorate local government's role in the federation.

The central lesson of the last half-century is that Australian local government flourishes when it gains active Commonwealth engagement and support for its role—not just financial assistance and project grants—to offset the centralist and controlling tendencies of the states. In the wake of Covid-19, those tendencies appear stronger than ever. There is now an evident risk that, at least in some parts of the country, municipalities will be relegated simply to the role of 'line managers',[63] while the ideals of 'local democracy' become no more than empty words.[64] Local government might not be facing an existential threat, but to secure

[62] One-hundred-and-forty local governments, representing 50 per cent of Australia's population, are members of the Cities Power Partnership taking action on climate change. See https://citiespowerpartnership.org.au (accessed 1 August 2021).

[63] Australian Housing and Urban Research Institute (n 15).

[64] Graham Sansom, 'Not So Simple: The Origins and Implications of Central Coast Council's "Financial Calamity"' (LogoNet Australia, 2021), https://bit.ly/3xkkgDN (accessed 1 August 2021).

a valued role in the federation it needs to strengthen its democratic base, demonstrate its *collective* worth, and engender consistently productive relationships at all levels. It may now have an opportunity to do just that. In May 2022 Australians elected a federal Labor government under Prime Minister Anthony Albanese, who was the local government minister from 2007 to 2010 and responsible for supportive initiatives such as the establishment of ACLG and ACELG. Labor's 2022 election platform recognised local government's potential to play a significant role in the federation. Among other things, it foreshadowed reinstating ACLG and restructuring the City Deals as genuine partnerships involving local government. The ball is now in local government's court to seize the opportunity by crafting an effective *national* response.

CHAPTER 4

Austria

Karl Kössler

This chapter explores the role of local government in Austria's federal system. It argues that municipalities play a rather junior role compared to federal and *Länder* government levels, and that the practice of 'three-level federalism' is essentially confined to financial relations, though even here local governments do not really enjoy equal standing. Unsurprisingly, the associations representing local government continue to call for a stronger voice in political and constitutional affairs. In addition, the chapter shows that while various crises (especially those besetting the smaller municipalities) exacerbate structural problems, they can also work as catalysts for much-needed reform. The global financial crisis of 2007–2008 played precisely such a role; whether the Covid-19 pandemic will do so too remains to be seen.

K. Kössler (✉)
Institute for Comparative Federalism, Eurac Research, Bolzano/Bozen, Italy
e-mail: karl.koessler@eurac.edu

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_4

1 Country Overview

As a country made up predominantly of mountain, forest, and grassland regions, Austria's local government structure is characterised by its high number of small and rural municipalities. In 2020, 8.9 million people lived in a territory of 83,883 km^2 comprising a total of 2095 municipalities.[1] Of these municipalities, 1842 (88 per cent) have less than 5000 inhabitants, 244 have between 5001 and 50,000 inhabitants, and only nine have populations larger than that.[2] While six municipalities are home to no more than 100 people, the capital city Vienna has a population of 1.9 million, or some 22 per cent of Austria's total population. Vienna and the eight next largest cities drive population growth and are forecast to account for nearly two-thirds of this growth up to 2040.[3] Meanwhile, 40 per cent of Austrian local governments have experienced a decline in population over the last decade, with small rural municipalities in the northern parts of Styria, Carinthia, and Lower Austria being the most affected.

With regard to general socioeconomic indicators, the country has benefitted from positive long-term trends, even though the Covid-19 pandemic is having a significant impact. Compared to many other countries, Austria is relatively wealthy, as can be seen in its high Human Development Index (HDI) score of 0.92 in 2020, which gave the country a ranking of 18th place in the world in that year.[4]

In terms of the legal and political system that sets the scene for local government, several characteristics should be borne in mind. Austria belongs to the civil law tradition and was established as a 'democratic

[1] Statistik Austria, 'Population Reaches 8.93 Million at the Beginning of 2021', www.statistik.at/web_en/statistics/PeopleSociety/population/125348.html (accessed 9 June 2021).

[2] Österreichische Gemeindebund, 'Struktur der Gemeinden', https://gemeindebund.at/themen-zahlen-und-fakten-struktur-der-gemeinden/ (accessed 9 June 2021).

[3] ÖROK, 'Kleinräumige Bevölkerungsprognose für Österreich 2018 bis 2040' (2019), www.oerok.gv.at/fileadmin/user_upload/Bilder/2.Reiter-Raum_u._Region/2.Daten_und_Grundlagen/Bevoelkerungsprognosen/Prognose_2018/Bericht_BevPrognose_2018.pdf (accessed 9 June 2021).

[4] UNDP, 'Human Development Report 2020. The Next Frontier: Human Development and the Anthropocene', http://hdr.undp.org/en/2020-report (accessed 9 June 2021).

republic'[5] and 'federal state' consisting of nine 'autonomous *Länder*'[6] in 1920. Its politics have long been dominated by two parties: the Social Democratic Party of Austria (SPÖ) and the conservative Austrian People's Party (ÖVP). Their combined share of votes amounted to more than 80 per cent in all the national parliamentary elections held between 1945 and 1986. Since then, however, other parties (especially the right-wing Freedom Party of Austria, FPÖ, and, more recently, the liberal-left Green Party) have become increasingly influential. In January 2020, a federal government coalition brought together the ÖVP and the Greens to form a ruling bloc. Meanwhile, in the *Länder*, the two-party domination of politics has declined similarly, and though the ÖVP and the SPÖ still hold all governor positions (the ÖVP with six and the SPÖ with three), ruling coalitions in six of the nine *Länder* include various smaller parties.

2 History, Structures, and Institutions of Local Government

Autonomous municipalities in Austria were the fruit of the liberal-democratic revolution of 1848, and the following year witnessed the adoption of both a new constitution and with it a Provisional Law on Municipalities. In 1862, a further new law established several elements of local government which continue to exist today, including the differentiation between delegated and autonomous powers. Due to political disagreements, the Austrian Constitution of 1920[7] included only general provisions on local government and any reforms were deferred until 1925.[8]

[5] Constitution of 1920, article 1.

[6] Constitution of 1920, article 2.

[7] The Austrian Constitution in a broad sense consists of the main document, that is, the Federal Constitutional Act of 1920, a number of additional federal constitutional acts, single constitutional provisions in ordinary federal laws and certain international treaties with constitutional rank. 'The Constitution' in this chapter refers to the main document adopted in 1920. If other parts of constitutional law are referred to (for example, the 1948 Financial Constitutional Act), this is done explicitly.

[8] Harald Eberhard, 'Austria. Municipalities as the "Third Tier" of Austrian Federalism', in Carlo Panara and Michael R Varney (eds) *Local Government in Europe: The 'Fourth Level' in the EU Multilayered System of Governance* (Routledge, 2015) 1–25.

Pending some consensual solution, the basic provisions of the 1862 law remained in force until 1962. It was only then—a full century later—that a comprehensive constitutional amendment took place. This amendment supplemented the local government principles of 1920 with a number of more concrete provisions, especially regarding the relations between the mayor and the municipal council. Subsequent amendments have addressed the regulation of municipal associations and the possibility of introducing instruments of direct democracy (1984); the constitutional entrenchment of Austria's two local government associations (1988); the authorisation of the *Länder* constitutions to opt for direct mayoral elections (1994); and authorisation of inter-municipal cooperation (2011).

Despite these substantial amendments, today there is still no provision for autonomous entities standing between Austria's *Länder* and the municipalities such that the latter can be regarded as synonymous with 'local governments'.[9] The 79 district commissions (*Bezirkshauptmannschaften*) that stand above the municipalities are merely administrative units which perform a variety of functions for the federal and *Land* governments and are led by civil servants of the respective *Land* instead of by political bodies. The Constitution of 1920 in fact already had enabled second-tier local governments with elected authorities. This was done by pooling 'ordinary' municipalities and thus creating so-called 'regional' municipalities (*Gebietsgemeinden*).[10] However, establishing these was dependent on a constitutional amendment—and lack of political consensus has made this impossible ever since. As a result, across the country 'ordinary' municipalities have remained the only tier of local government (as the government level closest to the people). There is no direct rule by the federal or *Länder* governments over any parts of Austrian territory, including even military areas.

The Austrian Constitution adheres in general to the principle of municipal uniformity, though the 15 cities constitute an important exception to this. In terms of article 116(3) of the Constitution, certain cities have their own statutes and perform both ordinary municipal functions and those exercised concerning other municipalities by the above-mentioned

[9] Anna Gamper, 'The Third Tier in Austria: Legal Profiles and Trends of Local Government' (2008) 8(1) *Croatian Public Administration* 71–94.

[10] Article 120.

district commissions.[11] A first group of cities enjoys this status on account of their historical rights. Most of these rights remain important today. For example, all *Länder* capitals except for Bregenz (Vorarlberg) have their own statute, though similar historical rights also apply to Rust (in Burgenland), despite its only having 2000 inhabitants. Explicit recognition by their respective *Land* grants this status to a second group of cities. Article 116(3) stipulates as conditions for this that the city must have a population of at least 20,000 inhabitants; that the interests of the *Land* are not impaired; and that there is a specific request from the municipality concerned. Only when these conditions are met can an ordinary *Land* law enact city statute. Other categories of local government are Austria's 186 cities (without the 'own city' statute) and 771 market towns. These are ordinary municipalities from a constitutional perspective and merely have their importance recognised with this designation through *Länder* legislation.

In line with the principle of municipal uniformity, there are few asymmetries from a legal perspective: the cities with own statutes performing district functions[12]; the status of the capital Vienna as the only city which is also a *Land*[13]; the obligation of municipalities with at least 10,000 inhabitants to undergo an audit by the Austrian Court of Auditors[14]; and tax revenue-sharing based on the population size of local governments.

A predictable corollary of the principle of municipal uniformity, which requires all to basically fulfil the same responsibilities, is that municipalities are struggling in terms of their administrative and financial capacities. For this reason, inter-municipal cooperation through agreements and the creation of joint institutions has become extremely important. With the rising demand for costly social services such as old-age homes, nurseries, and after-school child care, joint provision is becoming the norm.

With regard to inter-municipal cooperation in general and municipal associations (*Gemeindeverbände*) in particular, recent decades have shown the clear advantages of having partial and flexible regulation at both

[11] On their role in a comparative perspective, see Karl Kössler and Annika Kress, 'European Cities between Self-Government and Subordination: Their Role as Policy-Takers and Policy-Makers', in Ernst Hirsch Ballin et al. (eds) *European Yearbook of Constitutional Law 2020: The City in Constitutional Law* (TMC Asser Press, 2021) 273–302.

[12] Article 116(3).

[13] Article 108.

[14] Article 127a.

the federal and *Land* levels.[15] Municipal associations (which grew from 285 in 1980 to 2500 in 2012) are distinct legal entities under public law and have been regulated since 1962 by article 116a of the Constitution.[16] They are used in particular in areas which need considerable investment. Voluntary associations are local initiatives which are approved by the respective *Land* if certain constitutionally entrenched criteria are met. Mandatory associations may be established by either federal or *Land* legislation after consultation with the municipalities concerned, and are often concerned with specific issues such as waste management. In both cases, however, it is the associations that act *instead* of the participating municipalities, and the latter do not have a legal right to issue instructions which bind the former.

A constitutional amendment in 2011 brought in several major changes. First, associations can now be established to fulfil more than a single purpose, though the principles of economy, efficiency, and expediency and the status of the participating municipalities as self-governing entities[17] exclude the possibility of transferring too many, or too essential, autonomous functions to an association.[18] Secondly, the reform enabled the creation of associations across *Länder* boundaries. Thirdly, all institutions of associations that are to perform autonomous functions have to be established according to certain democratic principles: all participating municipalities must be represented in the assembly, and they (and not citizens directly) also elect the members of this assembly (usually mayors), the chairperson, and, if it exists, the executive board.

Apart from municipal associations under public law, there are also alternative inter-municipal institutions under private law (for example, registered societies or companies of municipalities). They are complemented by public law instruments without legal personality such as

[15] Andreas Kiefer and Franz Schausberger, 'Republic of Austria', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 38–74.

[16] Peter Bußjäger, 'Neue Rechtsgrundlagen der Gemeindekooperation in Österreich', in Elisabeth Alber and Carolin Zwilling (eds) *Gemeinden im Europäischen Mehrebenensystem: Herausforderungen im 21. Jahrhundert* (Nomos, 2014) 43–60.

[17] Constitution, article 116(1).

[18] Harald Stolzlechner, 'Bundesverfassungsrechtliche Schranken der Bildung von Gemeindeverbänden', in Peter Bußjäger and Niklas Sonntag (eds) *Gemeindekooperationen* (Braumüller, 2012) 13–28.

administrative associations (*Verwaltungsgemeinschaften*). The latter are often established for the joint operation of municipal offices and for carrying out day-to-day tasks such as procurement or accounting. As for inter-municipal agreements, since the advent of the above reform of 2011, public law accords (regulated by article 116b of the Constitution) complement the alternative of private law contracts (regulated by article 116(2)).[19] Overall, there is a clear trend towards inter-municipal cooperation regulated under private law, largely on account of its greater flexibility, though only public law contracts can regulate areas in which the municipality acts in an authoritative manner (through official orders, ordinances, and the like).[20] After the reforms of 2011, inter-municipal cooperation has also come to be regarded as a viable alternative to boundary changes through mergers of local governments.

While inter-municipal boundaries were often disputed and sometimes changed during the time of demarcation in the mid-nineteenth century, waves of mergers have occurred only since the 1950s.[21] Such mergers—especially during the 1960s and 1970s in Lower Austria, Kärnten, and Burgenland as well as in 2014 in Styria—resulted in a reduction of municipalities from 4099 in 1951 to today's 2095. There has been, however, no consistent trend in this regard, and the three decades from the mid-1970s onwards have seen a slight increase in the number of local governments.

Any alterations to municipal boundaries typically require (according to the respective municipal codes of *Länder*) only a *Land* government ordinance, if the municipalities concerned agree, and otherwise an ordinary law. Municipal codes differ slightly regarding the procedures for consulting local governments and including populations in the decision-making process.[22] They also often stipulate specific criteria for merger approval by the *Land*, such as geographic location, the ability to carry out

[19] See section 7.

[20] Markus Matschek, *Interkommunale Zusammenarbeit* (Österreichischer Gemeindebund, 2011) 56.

[21] Niklas Sonntag, 'Interkommunale Zusammenarbeit und Gemeindezusammenlegungen in Tirol', in Elisabeth Alber, Alice Engl, and Günther Pallaver (eds) *Politika 2016: Südtiroler Jahrbuch für Politik* (Edition Raetia, 2016) 323–338.

[22] Council of Europe Congress of Local and Regional Authorities, 'Monitoring of the European Charter of Local Self-Government in Austria', CG-FORUM(2020)01-03final (8 September 2020) paras 112–114.

functions, or public interests with regard to infrastructure, demography, and finances.

In addition, the Constitutional Court emphasised that while the equality principle under article 7 of the Constitution—which generally disallows legislation not based on reasonable grounds (*Sachlichkeitsgebot*)—was typically satisfied in the case of mergers between small municipalities, it was necessary for both economic and cultural interests to be considered.[23] For mergers to happen, it was necessary to have an evaluation of the precise circumstances of each individual case. Thus, in 1983, the Constitutional Court invalidated an amalgamation in Lower Austria that it saw as a violation of article 7, given that the distance between the remote municipalities concerned and the lack of infrastructural links would prevent any actual improvement to the local government structure.[24] However, the Court did uphold Styria's territorial reform in 2010–2015, which then reduced the number of municipalities from 542 to 287. For the Court, article 7 would be violated only if any proposed amalgamation were 'due to very particular circumstances foreseeably absolutely inappropriate' to improving a local government structure.[25]

With the judgement, the Court reiterated an important principle from earlier rulings.[26] This was that while the Constitution does not allow the collective abolition of municipalities as a level of government, it does (with one notable exception) permit the abolition of individual municipalities.[27] Consequently, even though consultation proved to be not in favour of amalgamation in 15 per cent of the cases, Styria's reform was judged lawful since all criteria stemming from the municipal code and case law were met and local communities as well as elected officials had been duly consulted.

[23] VfSlg 8108/1977.

[24] VfSlg 9819/1983.

[25] VfSlg 19894/2014.

[26] VfSlg 6697/1972; 7830/1976; 9373/1982.

[27] Only cities with own statutes that had this statute before the constitutional reform of 1962 cannot be abolished. See Franz Fallend, Armin Mühlböck and Elisabeth Wolfgruber, 'Die österreischische Gemeinde: Fundament oder "Restgröße" im Mehrebenensystem von Kommunen, Ländern, Bund und Europäischer Union?' in Forum Politische Bildung (ed) *Regionalismus, Föderalismus, Supranationalismus* (Vienna and Innsbruck, 2001) 45–61.

3 Constitutional Recognition of Local Government

With regard to the recognition of local government in national and subnational constitutional law, Austria is an outlier in two respects. First, while other, older federal systems are typically either silent on local government or mention it only as a subject for subnational regulation, article 116(1) of Austria's1920 Constitution emphasised that '[t]he municipality is a territorial entity with a right to self-government and at the same time an administrative unit'. Even though it did not place them on an equal footing with the nine *Länder* (only the latter are expressly mentioned as constituent units of the federal state),[28] the strong recognition of local self-government is remarkable. It can be traced as far back as the abovementioned 1849 law which proclaimed in article 1 that '[t]he foundation of the free state is the free municipality'.

Secondly, Austria differs significantly from most other federal countries in the extent and depth of constitutional recognition that it gives to local government. Articles 115–120 of the Constitution go beyond the mere recognition of local government in their specification and (over)regulation of many issues, including the organisation, powers, and intergovernmental relations of municipalities. The resulting uniformity has been reinforced on occasion by the Constitutional Court. In one instance, in a landmark ruling, the Court invalidated the introduction of direct mayoral elections by the *Land* Tyrol and based its judgement on a quite extensive interpretation of constitutional limits.[29] The argument was that the fundamental constitutional principle of representative democracy, from which there only few exceptions, established at least implicit restraints that Tyrol had failed to observe when exercising its legitimate power to regulate local government under article 115(2).

Importantly, this extensive regulation of local government in the national Constitution and in case law considerably diminishes the leeway of both *Länder* legislation and their constitutions, given that the latter are not allowed to 'affect' the federal constitution.[30] This provision is

[28] Article 2(2).

[29] VfSlg 13500/1993.

[30] Article 99.

construed by the Constitutional Court as one that prohibits contradictions to both explicit provisions and implicit principles.[31] Within these limits, the *Länder* constitutions typically contain rules on issues such as the territorial structure of local government; local elections; municipal taxes; the representation of local interests in the *Land*'s legislative procedures; and direct democracy in municipalities. Unless federal legislative competence is explicitly stipulated, Article 115(2) of the Constitution not only allows ordinary *Land* legislation (based on national and subnational constitutional regulations) to regulate local government but even requires it to do so.[32]

The European Charter of Local Self-government (adopted under the auspices of the Council of Europe) provides another source for the recognition of municipal autonomy. In several other countries, the Charter has binding effects only under international law, but in Austria it has been incorporated into domestic law. However, the real impact is diminished by opt-outs (through reservations and declarations) concerning certain provisions. Moreover, the remaining provisions were considered by Parliament as not directly applicable without domestic law,[33] while the Constitutional Court regarded others as insufficiently precise to be judicially enforceable.[34]

In contrast to the provisions of the Charter, the above constitutional guarantees of self-government are both binding and judicially enforceable. Municipalities may lodge appeals against decisions of supervisory authorities with the Administrative Court or Constitutional Court (being courts of last resort),[35] and in the latter court also invoke their constitutional right to self-government. They are, in addition, allowed to challenge directly any ordinances or laws of the federal and *Land* governments that unlawfully deny them the exercise of their autonomous functions, whether by assigning these as the delegated tasks of municipalities or by

[31] VfSlg 5676/1968.

[32] See, for instance, the federal competence to establish municipal associations for certain tasks (article 116a (2)) and to regulate the supervision of certain autonomous functions (119a (3)).

[33] Anna Gamper, 'Local Government in Austria', in Angel Manuel Moreno (ed) *Local Government in the Member States of the European Union: A Comparative Legal Perspective* (INAP, 2012) 23–44.

[34] VfSlg 13235/1992.

[35] Article 119a (9).

assigning them to federal or *Land* authorities.[36] Both local policing and spatial planning have been the objects of important court proceedings in recent years.[37]

As for Austria's capital city, Vienna, since 1921 it has had the status of not only a municipality (as a city with its own statute) but also a *Land* in its own right. This has several implications: in terms of article 108 of the Constitution, city institutions are simultaneously *Land* institutions; the mayor is also *Land* governor (even if he or she would be referred to as mayor); and the mayor is elected by the municipal council (*Gemeinderat*), as are the other members of the city's executive board (*Stadtsenat*). In addition, Vienna receives funding (within Austria's system of revenue-sharing) both as *Land* and as municipality (though it is important to note that it has responsibilities to fulfil in both roles. Some further particularities are linked to Vienna's special status as capital city even if these are rather few compared to other capitals.[38] These include the rules which require the supreme federal authorities to have their seats there,[39] as is also required of the first chamber of Parliament, as provided by article 25(1) of the Constitution.

4 Governance Role of Local Government

In assessing the governance role of municipalities, two points should be noted. First, Austria's local governments do not enjoy original powers of their own. The Constitution distributes powers between federal and *Länder* governments: administrative functions for municipalities have to be conferred upon them explicitly in a secondary distribution through federal or *Land* legislation. Secondly, article 118(1) of the Constitution) distinguishes between autonomous and delegated powers. The distinction, which has characterised the local government system since the mid-nineteenth century, is important because it determines the degree to which municipal authorities are policymakers or mere agents of other levels of government.

[36] See section 4.

[37] VfSlg 20031/2015; 20318/2019.

[38] Karl Kössler, *The Status of Capital Cities*, Report for the Council of Europe Congress of Local and Regional Authorities, CG-FORUM (2021)01-04final (12 February 2021).

[39] Article 5(1).

With regard to autonomous functions, article 116(1) (which enshrines a municipality's 'right to self-government') is complemented by the entrenchment of a subsidiarity principle in article 118(2). According to this provision, autonomous powers comprise 'all matters that exclusively or preponderantly concern the local community' and which are 'suited to performance by the community within its local boundaries'. It also stipulates that '[l]egislation shall expressly specify matters of that kind', such that the list of autonomous functions in article 118(3) is neither exhaustive nor able in itself to serve as the sufficient legal basis. Federal and *Land* legislation must transfer all matters that fulfil the criteria of article 118(2). If legislation fails to do so, it remains in force and is binding for the municipalities until specifically invalidated by the Constitutional Court.[40]

The key element that grants a municipality some leeway in the performance of its autonomous functions is article 118(4). It specifies that a municipality acts in this area 'on its own responsibility free from instructions and under exclusion of legal redress to administrative authorities outside the municipality'. This provision is all the more remarkable since Austria otherwise adheres to the principle of ministerial accountability within a hierarchy culminating in the federal or *Land* government member responsible. Despite their relative freedom from instructions, in regard to autonomous functions municipalities still remain subject to supervision and, as provided by article 118(4) of the Constitution, are required to perform them 'within the framework of the laws and ordinances of the federal and Land governments'.[41] The latter reference reiterates (specifically for the municipalities) the general principle of legality according to which '[t]he entire public administration shall be based on law'.[42]

The Constitutional Court interprets rather strictly the requirement that municipalities act only based on law from the higher government levels.[43] There are some exceptions, though. One of them concerns urgent police ordinances: a municipality may issue these under article

[40] VfSlg 6944/1972; 8719/1979.

[41] See section 6.

[42] Article 18(1).

[43] VfSlG 6944/1972; 8719/1979; 10953/1986; 11633/1988; 12555/1990; 13633/1993.

118(6) 'on its own initiative … for the prevention of imminent or elimination of existing nuisances interfering with local communal life'. In practice, though, actions based directly on the Constitution are of quite limited importance.[44]

Another exception relates to economic activities: article 118(2) expressly defines them as part of autonomous functions. Article 116(2) characterises the municipality as 'an independent economic entity', one entitled 'to possess assets of all kinds', 'to operate economic enterprises', and able to engage in such activities without enabling legislation.[45] However, the fact that all economic activities are prescribed to remain 'within the limits of the general federal and *Länder* laws' has been interpreted as subjecting them at least to several constitutional restraints, such as the principles of expediency, efficiency, and economy, the criteria for autonomous functions, and fundamental rights. Many local governments in fact own real estate and run municipal companies or hold shares in them, both for providing services as well as for making a profit.

Alongside the two special cases of local police ordinances and economic activities, other autonomous functions include the election of municipal institutions; responsibility for local roads and other infrastructure; public transport; landscape protection; building permits; local land-use planning; water supply; waste disposal; pre-school and school education; social services; and sports and cultural activities. Overall, recent decades have seen a shift in focus away from the traditional functions of public administration (such as taxation, permits, and policing) to the provision of general services of public interest, which shall be offered at affordable prices and with comparable quality in all parts of the municipal territory.

Local government performance of autonomous functions has been defined since 1920 by the principle of the 'abstract uniform municipality'. This means that (aside from statutory cities and the capital Vienna) all municipalities have symmetrical responsibilities, irrespective of asymmetries arising from territorial size, population size, or economic and administrative capacity. A minimum standard for the discharge of responsibilities has to be ensured in all cases, despite the fact that the criterion of 'local concern' (articulated with the subsidiarity principle in article 118(2)) can lead to significant differences among municipalities in the

[44] Eberhard (n 8) 12.

[45] VfSlg 17.557/2005.

extent and forms of the performance of these responsibilities. It is evident that the insistence on abstract uniformity can create significant challenges, especially for small and rural local governments.

When a municipality is unable or unwilling to perform the necessary functions alone, there are (besides the radical solution of a merger) several potential solutions. Upon request by a municipality, an ordinance of the respective *Land* government may transfer specified autonomous functions to a *Land* or federal authority, as provided by article 118(7) of the Constitution. This solution has proved—in practice—to have quite considerable relevance.[46] In addition, manifold varieties of inter-municipal cooperation (already described)[47] exist, and local governments are also allowed to form public–private partnerships (PPP). Even when tasks are outsourced, local governments usually maintain decision-making and controlling powers. Austria is often characterised as a country in which the regulatory framework is not particularly amenable to cooperation with private actors and where scepticism towards privatisation is widespread (particularly so among local councillors).[48] Yet—mostly due to financial pressures—recent years have witnessed a trend towards commissioning private companies to perform some public services. Typical areas of these private–public partnerships (PPPs) are public transport,[49] housing,[50] and, increasingly (with the notable exception of Vienna), even the once clearly public tasks of the provision of water and disposal of wastewater.[51]

[46] Bußjäger (n 16) 45.

[47] See section 2.

[48] Eran Razin and Anna Hazan, 'Attitudes of European Local Councillors towards Local Governance Reforms: A North–South Divide?' (2014) 40(2) *Local Government Studies* 264–291.

[49] Alexandra Schantl, 'Organization of Public Transport in Austria Focusing on Functional Urban Regions (City Regions)', in Alexandra Schantl, Dalilah Pichler and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 11–15, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

[50] Lena Rücker and Alexandra Schantl, 'Social Housing: The Case of Vienna', in Alexandra Schantl, Dalilah Pichler and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 21–27, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

[51] Lena Rücker, 'Municipal Water and Wastewater Management in Austria', in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 16–20, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

As mentioned previously, the autonomous functions of municipalities are complemented by those delegated to them through federal or *Land* laws, as provided by article 119(1) of the Constitution. Since the Constitution neither enumerates delegated functions nor entrenches them in a general clause, national and subnational legislatures are left entirely free in this regard. In practice, though, federal and *Land* laws on nearly all subject matter are heavily reliant on the involvement of local governments for at least some tasks.

While we have observed that some leeway exists with regard to autonomous functions, mayors have less freedom of manoeuvre. As mayors are in charge of delegated functions as federal or *Land* authorities, they are bound to instructions from these superordinate government levels[52] and may even be removed from office on grounds of negligence.[53] An instruction from a higher level of government may be disregarded by a mayor only for the reasons exhaustively listed in article 20(1), namely if it 'was given by an authority not competent in the matter or compliance would infringe the criminal code'. However, the Constitution allows the mayor to assign specified categories of delegated tasks to members of the municipal board or to other local authorities. They are then bound to follow mayoral instructions, as provided by article 119(3). Some of the most typical of these delegated functions in Austrian municipalities are the organisation of federal and *Land* elections, as well as registration tasks such as the listing of citizens, marriages, births, and deaths. For other government levels, mayors also play a key role on the ground as officials closest to citizens—notably, in times of emergencies regarding civil protection in the event of natural disasters or urgent public health measures.

As for the institutions performing the autonomous and delegated functions of municipalities, article 117 of the Constitution provides a uniform minimum standard that the respective *Land* legislation must observe. Mandatory local authorities are the municipal council, municipal (executive) board (city council, city senate), and the mayor.

The municipal council falls short—given the absence of legislative powers—of being a parliament, but it is a generally representative

[52] Article 119(2).

[53] Article 119(4).

body, does exercise a range of autonomous functions, and has extensive decision-making powers over (for instance) budgetary issues. It is usually granted residual competence for all matters not expressly assigned to other institutions.[54] Any other institutions which perform autonomous functions remain accountable to the municipal council.[55]

The council is elected on the basis of proportional representation by equal, direct, personal and secret suffrage by all persons domiciled in the municipality, as provided by article 117(2)) of the Constitution. Voting rights are prescribed in this provision in great detail and (following the principle of homogeneous electoral systems)[56] in close alignment with the rules for the federal parliament. However, a number of *Länder* have made use of the space for some deviation, and, in 2004, lowered the minimum voting age for municipal elections from 18 to 16 years old. A few years later, this change was adopted in national elections. In addition to the Austrian Constitution's detailed regulation of local elections, it includes provisions regarding quora and majorities for decisions of the municipal council[57] as well as the (non-)public nature of its meetings.[58]

Given the lesser role of municipal boards, the Constitution has few provisions about them. These do not go much beyond the rules above regarding the performance of certain delegated functions by municipal boards on behalf of a mayor and rules stipulating that they are accountable to municipal councils whenever they perform autonomous functions. Moreover, there is a provision that electoral parties have a right to be represented on such boards in accordance with their strength on municipal councils, as provided by article 117(5).

The mayor plays a central role as (usually) the chairperson of both the municipal council and the municipal board. He or she represents the municipality in its dealings with external actors, especially regarding economic activities, and manages the budget and local property issues. While the mayor is certainly the key player concerning delegated functions, he or she remains in charge of autonomous functions together with the municipal board only up to certain financial limits, and the municipal

[54] Gamper (n 33), 33.

[55] Article 118(5).

[56] VfSlG 17264/2004.

[57] Article 117(3).

[58] Article 117(4).

council remains the ultimate decision-making body. The tradition was that the municipal council elected the mayor,[59] but this was challenged by the introduction of direct mayoral elections in the Tyrol *Land* in 1991. The Constitutional Court held that this innovation violated the Constitution since the latter places the municipal council at the centre of local autonomy, not least through the above-mentioned accountability to it of all other institutions, as provided by article 118(5).[60] Any deviation from the quasi-parliamentary system at the local level would require explicit constitutional authorisation. Such authorisation subsequently appeared when article 117(6) was amended in 1994 to allow the *Länder* constitutions to introduce direct election of the mayor by those eligible to vote in municipal council elections. All the *Länder* (with the exceptions of Lower Austria, Styria, and Vienna) have made use of this possibility, though sometimes excluding the statutory cities.

Unlike the three institutions mentioned above, the municipal office is not a local authority with decision-making powers. Instead, it serves merely to provide administrative assistance to all functions, both autonomous and delegated. This supporting role is clearly circumscribed in *Länder* legislation and is rooted in article 117(7) of the Constitution, according to which municipal offices take care of all the 'business of the municipalities'.

Beyond the constitutional minimum standard requiring the above-mentioned local authorities, *Länder* laws may establish additional bodies or empower the municipalities to do so. Typical examples of additional institutions are the chief magistrate and the municipal treasurer. In addition, Austria's two largest cities feature elected representatives for their urban districts. While this innovation was introduced in Graz in 1993, direct elections in Vienna date back to the mid-nineteenth century. When Vienna extended the right to vote for district assemblies to non-European Union (EU) citizens with at least five years of permanent residence in the city, the Constitutional Court ruled this reform as unconstitutional.[61] The 'people' in article 1 of the Constitution on Austria's democratic character was read as 'citizens', such that elections to all general representative bodies (even below parliamentary level) would have to follow

[59] Article 117(6).

[60] VfSlg 13500/1993.

[61] VfSlg 17264/2004.

uniform constitutional principles. This reasoning has been criticised since then as unduly restrictive of the constitutional autonomy of the *Länder* and consequently of federalism as a whole.[62]

While article 1 has been interpreted as enshrining a general preference for representative democracy with only few exceptions,[63] these exceptions are also in place at the local level. Article 117(8) expressly stipulates that the *Länder* may provide 'for the direct participation and assistance of those entitled to vote in the municipal council election' with regard to autonomous functions. In contrast to the direct mayoral elections, this provision does not require entrenchment in the *Länder* constitutions but only in ordinary legislation. The range of possible instruments is thereby not limited to those anticipated at the federal and *Länder* levels (that is, referendum, popular initiative, and popular consultation), but also includes other forms of participation.[64]

Of these instruments, the referendum (*Volksabstimmung*) is the most powerful, and is often used to veto resolutions made by municipal councils (though these typically have the power to decide whether to hold a referendum). The popular initiative (*Volksbegehren*) is available in all *Länder*, but in some cases is restricted to statutory cities. In most cases, a proposal put forward with enough votes must be deliberated upon, but it does not have to be implemented. The popular consultation (*Volksbefragung*) is similarly not binding. It is the oldest and used brought into action especially around planning decisions and large municipal projects. The above instruments cannot be brought into play with regard to decisions such as taxation, legal acts concerning individuals, municipal staff, and fundamental rights. Other factors also serve to limit the impact of participatory processes: the often very high thresholds for initiating them; their politicisation through targeted use by political parties for agenda-setting; and the prevalence of their status as merely non-binding tools.[65] This status in particular seems to contrast with the actual attitudes of

[62] Anna Gamper, 'Die Rolle der Bauprinzipien in der Judikatur des Österreichischen Verfassungsgerichtshofes' (2007) 55(1) *Jahrbuch des Öffentlichen Rechts* 537–567.

[63] VfSlg 16241/2001.

[64] Peter Oberndorfer and Katharina Pabel, 'Einrichtungen der direkten Demokratie in den Gemeinden', in Katharina Pabel (ed) *Das österreichische Gemeinderecht* (2015) 1–57.

[65] Werner Pleschberger, 'Kommunale direkte Demokratie in Österreich – Strukturelle und prozedurale Probleme und Reformvorschläge', in Theo Öhlinger and Klaus Poier (eds) *Direkte Demokratie und Parlamentarismus* (Böhlau Verlag, 2015) 359–396.

Austrian local councillors, who (unlike their counterparts in other European countries) appear to be more open to active consultation with the people as well as to forms of co-decision-making.[66]

With regard to participatory processes, there is considerable local variation between the *Länder*. Vorarlberg has a particularly strong tradition of popular participation. In 2013, it entrenched participatory democracy in article 1(4) of the *Land* constitution and set up a dedicated *Land* Office for Voluntary Work and Participation. Vorarlberg also pioneered the establishment of citizen councils (*Bürgerräte*) for the deliberation of policy options.[67] Meanwhile, at the other end of Austria, Vienna launched an Open Data Portal in 2001. This was integrated into an Open Government Implementation Model with four stages: data transparency through public discussion of datasets; participation through the availability of an online platform; collaboration through co-production processes; and, finally, commitment to the comprehensive involvement of stakeholders.[68]

5 Financing Local Government

The Constitution of 1920 deferred the question of intergovernmental financial relations due to a lack of consensus, but referred in its article 13 to the future adoption of a special Financial Constitutional Act (*Finanz-Verfassungsgesetz*). Indeed, this act was not passed until 1948. It stipulates that municipalities have to cover all expenses resulting from the performance of their functions, both autonomous and delegated, unless specific federal or *Land* legislation provides otherwise. Any such legislation must, however, respect the principle of fiscal equality which insists on the efficiency of each government level and of the distribution of functions.

The Financial Constitutional Act identifies in section 6 five broad categories of taxation: exclusive levies of each of the three levels of

[66] Razin and Hazan (n 48).

[67] Kriemhild Büchel Kapeller, 'People's Participation in Vorarlberg: Bürgerräte and Gemeindeentwicklungsprojekte Götzis/Langenegg', in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (Eurac Research, 2021) 93–99, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

[68] Bernhard Krabina, 'Open Government Initiative Vienna' in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (Eurac Research, 2021) 89–92, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

government; taxes shared between the federal, *Länder,* and municipal governments; and those shared between the *Länder* and the municipalities. Ordinary federal and *Land* legislation may each regulate shared taxes, identify exclusive local taxes, and authorise municipal councils to raise certain taxes themselves. *Land* legislation may even oblige the councils to raise taxes when their financial situation makes it necessary to do so. Another key provision in the Financial Constitutional Act is to be found in section 3, which gives (ordinary) federal legislation the extraordinary power to regulate the distribution of taxation rights and revenue shares to all government levels.

On this constitutional basis, the Financial Equalisation Act (*Finanzausgleichsgesetz*) determines for each tax the distribution of the revenue portions between the national government, the *Länder*, and the municipalities. It is re-negotiated every three to eight years. The legislation does not require consent from the *Länder*, the municipalities, or the second parliamentary chamber (as the presumed representative of the *Länder*), though its enactment is preceded by three-level talks that involve local government associations. In practice, however, both the *Länder* and municipalities 'really have no legal alternative but to accept the determination of fiscal relations by the federal government'.[69] Moreover, the Constitutional Court traditionally acts with judicial restraint in this regard and presumes that all parties have been treated fairly if a so-called pact had been reached in the negotiations held prior to enactment.[70] The power to control this distribution of revenue gives the federal government enormous strength, as this system constitutes 84 per cent of the total revenue raised in Austria. It includes all the most lucrative taxes, that is, value-added tax as well as personal and corporate income tax.

As for the revenue sources of local governments, federal tax revenue-sharing (as described above) accounts for 31 per cent of their total revenue. Other federal government transfers make up 2 per cent, with a further 10 per cent coming through transfers from the *Länder*, making a total of 43 per cent for revenue from other government levels. Revenues accruing from their own taxes and fees amount to 38 per cent, with a

[69] Peter Bußjäger, 'Reforms on Fiscal Federalism in Austria', in Gerhard Robbers (ed) *Reforming Federalism—Foreign Experiences for a Reform in Germany* (Peter Lang, 2005) 59–67.

[70] For example, VfSlG 12505/1990; 16849/2003.

further 19 per cent coming from other sources (notably from economic activities).[71]

Among the self-generated revenues, fees for municipal services (such as water, sewage, and waste management, parking, or pre-school education) are of less importance. These account for just 10 per cent of the total municipal income, while taxes make up 28 per cent (the municipality tax—12 per cent—and the real estate tax—3 per cent—are the most significant forms). The municipality tax was introduced in 1993 by federal legislation. It is a business tax which is payable by employers and is calculated on the gross salaries of their employees at a rate of 3 per cent set by the federal government. The rate of the real estate tax payable by individuals owning property is fixed by the municipalities, but only within the limits set by a legal tax cap. However, the amounts currently levied do not reflect the true current value of property because the assessment base has not been adjusted since the last reform of 1973. Overall, local fiscal autonomy has suffered from the abolition of the beverage tax in 2001[72] and from the general lack of discretion regarding existing taxes.[73]

Borrowing is another source of own revenue, and here a distinction between long-term and short-term loans should be observed. Short-term loans are handled rather strictly: they may not exceed certain limits, and usually have to be repaid within the same financial year. Long-term loans are allowed only for capital investment spending, while current operational expenditures must be covered by taxes and fees. Local borrowing is subject to certain restrictions that differ from one *Land* to another. In Burgenland and Carinthia, all such loans must be approved by the *Land* government as the supervisory authority, but in other *Länder* this restriction applies only when a specific financial threshold is exceeded.[74]

Revenues from other government levels come for the most part (31 per cent of a total of 43 per cent) from the federal tax revenue-sharing system described above. The portion of taxes which accrues to the *Länder* and

[71] Karoline Mitterer and Marion Seisenbacher, *Gemeindefinanzdaten 2021—Entwicklungen 2009 bis 2022* (Österreichischer Städtebund, 2021) 13.

[72] René Geißler and Falk Ebinger, 'Austria', in René Geißler, Gerhard Hammerschmid and Christian Raffer (eds) *Local Public Finance in Europe* (Bertelsmann Stiftung, 2019) 10.

[73] Council of Europe Congress of Local and Regional Authorities, 'Monitoring of the European Charter of Local Self-Government in Austria', (2020) at para 169.

[74] Ibid., para 199.

municipalities within this system is calculated according to two formulae, both of which mainly rely on the number of inhabitants. This means that larger municipalities (especially those with 10,000 inhabitants or more) receive greater revenue through the tiered population-size scheme, which is supposed to compensate them for the provision of infrastructure and services to the benefit of smaller surrounding municipalities. In addition, since larger local governments usually have higher employment, they benefit disproportionately from the municipality tax.

It may seem, then, that the smaller municipalities are short-changed. However, a look at the system of additional transfers from the federal and *Land* governments changes this picture. The 'real grants' that complement federal tax revenue-sharing come mostly from the *Länder* (five times more than from the federal government) and have the effect of rebalancing financial capacity per capita.[75] On average, the latter capacity increases by 42 per cent for municipalities of up to 500 inhabitants and by 13 per cent for those with up to 1,000 inhabitants, while it decreases for all other classes of larger local governments.[76] Similarly, municipalities with low financial capacity receive not only the regular grants available to all (for the support of local investments, especially in infrastructure, and local public services such as child care), but also a variety of non-conditional subsidies to bolster their resources. How much local governments can spend for current expenses and investments varies considerably (per capita investments, for instance, are three times higher in Vorarlberg than in Burgenland and Kärnten).[77] At the same time, transfers also exist from the municipalities to their *Land*, as the latter determines mandatory local levies, above all those to co-finance social services and the hospitals run by the *Land*. In fact, on average, Austrian municipalities transfer more funds to their *Land* than they receive.[78]

As for local government expenditure, most of it goes towards the provision of services such as water and waste management or the maintenance of sports and cultural facilities (30 per cent); health care (8 per cent) and social services (13 per cent); and education (19 per cent). Spending

[75] Geißler and Ebinger (n 72) 11.

[76] For an excellent overview of the financial capacity of larger and smaller local government before and after revenue-sharing, see Mitterer and Seisenbacher (n 71) 9.

[77] Ibid., 22.

[78] Geißler and Ebinger (n 72) 11.

over the last decade has been most dynamic in the latter three areas, having increased by about 50 per cent.[79] All spending has to follow the budget; deviations are admissible only if based on a revised budget submitted to and approved by the municipal council. Local governments have an obligation to report their budgets to their respective *Länder,* though these have no power of approval, save with respect to certain loans, as mentioned above. The *Länder* delivers these reports to the National Statistics Office for the aggregation of data and a quality check. To enhance transparency, a remarkable 56 per cent of Austria's local governments agreed to have their budget data published on the website *Open Spending Austria*, though a number of smaller rural municipalities and those in the southern and western parts of the country have been reluctant to participate in this initiative.[80]

Two intergovernmental agreements concluded on the basis of article 15a of the Constitution are significant with regard to local spending and its relation to revenue. While this provision was initially understood as authorising national–subnational accords, a specific constitutional law in 1998 empowered Austria's two local government associations to be parties to these agreements. The one regarding a consultation mechanism foresees that national or subnational governments must provide information about the administrative and financial impact on other government levels of planned laws or by-laws. A party to the agreement may then refer the matter to a tripartite consultation committee. In the absence of reaching consensus in this body, costs must be covered by the party considering the act. Overall, this mechanism has strengthened intergovernmental talks and increased awareness of the cost issue. At the same time, certain procedural problems remain, notably the problems of inaccurate assessments of the financial impact and of granting insufficient time for review of what are sometimes very comprehensive legislative acts.[81] Moreover, while the consultation mechanism has led to either the adaptation or abandonment of some initiatives, it has not entirely solved the problem of un(der)funded mandates; as such, devolving functions to

[79] Mitterer and Seisenbacher (n 71) 19.

[80] Krabina (n 68).

[81] Kiefer and Schausberger (n 15) 58.

municipalities without adequate funding remains a concern (especially in the case of health care and social services).[82]

The second three-level accord established the Austrian Stability Pact. In line with EU criteria, this requires all government levels to achieve differentiated budget goals, either by limiting their deficit or even closing with a surplus. Although a *Land* is not formally obliged to bail out failing municipalities, the possibility of bankruptcy seems more a matter of theory than practice: the last municipal bankruptcy dates back to the 1930s.[83] In recent years, local governments have been faced with two significant budgetary challenges. The first is the doubling of the municipal debt since the global financial crisis of 2007–2008, and the second the negative impact of the Covid-19 pandemic (which is still difficult to assess). The Austrian Stability Pact of 2012 attempted to respond to the first crisis by regulating intergovernmental budgetary coordination and putting in place debt brakes in line with EU commitments. The pact is widely regarded as another step towards centralised fiscal policy.[84]

6 Supervising Local Government

When it comes to the supervision of local governments, it is again crucial to differentiate between their autonomous and delegated functions. With regard to the performance of autonomous tasks, the lack of explicit direction is compensated for by the granting of powers of oversight. Importantly, such supervision may only concern the question of lawfulness, and particularly whether a municipality has gone beyond the scope of its autonomous functions.[85] The supervisory authorities may rely on several constitutionally defined instruments, as provided by articles 119a (4–8). These instruments range from the right to information to much broader and more intrusive measures such as the reservation to approve certain local ordinances; the annulment of unlawful ordinances; execution by substitution if absolutely necessary; and even the dissolution of the municipal council, when this measure is envisaged as a last resort in

[82] Sanja Korac, 'Building Capacities or Resting on Laurels', in Ileana Steccolini, Martin Jones, and Iris Saliterer (eds) *Governmental Financial Resilience* (Emerald, 2017) 17–34.

[83] Geißler and Ebinger (n 72) 15.

[84] Ibid., 9.

[85] Article 119a(1).

the federal and *Land* legislation on supervision. These powers of supervision are exercised in the first instance by the district commissions and, at second instance, either by the *Land* governor for the federal government or by the subnational government for the respective *Land*.

In addition to such legal supervision, the respective *Land* is also authorised to carry out financial supervision with a view to economy, efficiency, and expediency.[86] The mayor has to report within three months on the measures taken to comply with the non-public recommendations. Moreover, *ex post* audits with public reports are carried out by two sets of independent bodies. First, there are courts of auditors in all *Länder*, but only in several *Länder* do these check municipal budgets. Secondly, financial controls are performed by the Austrian Court of Auditors, but only on local governments with at least 10,000 inhabitants (before 2011 at least 20,000) plus two additional municipalities per year upon a substantiated request by the respective *Land*, as provided by Article 127a.

In practice, supervision is interpreted quite differently from *Land* to *Land*, such that, for example, the hiring of staff or granting of loans is closely scrutinised in some while almost rubber-stamped in others.[87] Although the actual degree of supervision varies, excessive control is not generally considered as one of the main problems of local governments, especially when contrasted with the much more critical offloading of tasks by other government levels and the problem of scarce financial resources.[88]

7 Intergovernmental Relations

To function well, Austria's system of cooperative federalism, with its closely intertwined government levels, has a clear need for efficient intergovernmental relations. Local governments are not formally involved in the federal legislative process, and a proposal at Austria's constitutional convention (2003–2005) to give a certain number of municipalities the right to introduce bills failed. The country's two local government associations do, however, play at least a consultative role in the legislative process.

[86] Article 119a(2).

[87] See also section 5.

[88] Kiefer and Schausberger (n 15) 55–56.

The Austrian Association of Cities and Towns (*Österreichischer Städtebund*) was founded in 1915 and has 257 members, while the Austrian Association of (formerly Rural) Municipalities (*Österreichischer [Land]Gemeindebund*) has been active since 1947 and currently represents 2084 of the country's 2095 local governments. Although the former is typically associated with the Social Democrats and the latter with the People's Party, the importance of this party divide is decreasing. While an urban–rural divide is clear from the (former) names of both organisations, there is no strict separation, as double membership is possible. Both associations are private legal entities acting on a voluntary basis and funded exclusively by member contributions, even though, since 1988, they have been acknowledged in article 115(3) of the Constitution as representative institutions. Their real influence is due not to their administrative capacity (both associations are relatively short-staffed) but rather to the fact of the united front they present in advocating for local interests, as well as in the case of the Association of Cities and Towns to the fact that it is led by the powerful figure of the mayor of Vienna.

The role of both organisations received a boost during the late 1980s with their constitutional entrenchment and enlistment by the national government as allies in the process of Austria's accession to the EU.[89] Both the subsequent need to comply with EU requirements concerning public deficits and the pressure from the municipalities to change unsatisfactory financial relations later gave rise to the consultation mechanism and the Stability Pact mentioned above. Beyond finances, the local government associations are regularly consulted regarding draft federal and *Länder* legislation. Since the 1950s, Austria's emerging tradition of consensual politics had led to the practice of informal consultation.[90]

A particularly important area for intergovernmental relations is spatial planning. This involves all government levels, with municipalities responsible for local development plans and permits.[91] The Austrian Spatial Planning Conference (*Österreichische Raumordnungskonferenz*) thus brings together federal government members, the *Länder* governors,

[89] Fallend, Mühlböck and Wolfgruber (n 27) 57.

[90] Kiefer and Schausberger (n 15) 57.

[91] Nikola Hochholdinger, 'Austrian Conference of Spatial Planning: ÖROK' in Alexandra Schantl, Dalilah Pichler, and Thomas Prorok (eds) *Local Government in Austria Responses to Urban-Rural Challenges* (2021) 80–84, https://zenodo.org/record/5711026#.Yi7-TjXSI2x.

and the presidents of the two local government associations, and decides on the basis of unanimity. The forum adopts guidelines which—though not legally binding—become a key political reference point.

A remarkable development in intergovernmental relations between municipalities and *Länder* took place in 2011 when it became possible for them to conclude public law agreements as long as the respective *Land* legislation foresees them. With this innovation, what had been an instrument traditionally limited under article 15a of the Constitution to national–subnational relations was now opened to subnational–local relations. The uptake of this instrument has been complicated, however, by the fact that it is entirely at the discretion of the *Länder* legislatures whether they authorise their municipalities to conclude such agreements. In fact, they began to do so only several years after the constitutional amendment (for example, Styria and Vorarlberg).

8 Political Culture of Local Governance

Austria's local party system is well-known for being dominated by the national parties. A recent study does not contradict this, but makes the case for a more nuanced view by pointing to considerable variation in regard to this dominance depending on the organisational density of the national parties in different parts of the country. This density is lower in rural areas, thus leaving more space for local (that is, non-partisan) proportional representation (PR) lists in elections.[92] The diffusion of such lists varies across the country, being particularly common in the most western *Länder* of Tyrol and Vorarlberg.

Local elections are usually held separately from the *Land* and national elections, and are also scheduled at different dates in each *Land*. Voter turnout is generally lower than in federal elections, where participation since 1990 has ranged between 74 and 84 per cent. The 2017 elections of municipal councils in Burgenland saw an exceptionally high turnout of 81 per cent, but voter participation has been generally about 65 per cent in most of the *Länder*, even dropping to 53 per cent in Vorarlberg.

With regard to gender representation, data show that local politics remains a male-dominated domain. While the number of female mayors

[92] Laurenz Ennser-Jedenastik and Martin Ejnar Hansen, 'The Contingent Nature of Local Party System Nationalisation: The Case of Austria 1985–2009' (2013) 39(6) *Local Government Studies* 777–791.

increased quite considerably from 45 in 2003 to 160 in 2017, the latter figure still represents less than 8 per cent of all Austrian mayors.[93]

Recruitment for municipal office is intertwined with political activity at other government levels, which is due in large part to the dominance of national parties in local politics. Members of the federal and *Land* parliaments often have a background in local politics and tend to retain their offices as local councillors or mayors. Even so, the experience of intergovernmental relations shows that these dual mandates have done little in actuality to safeguard the interests of municipalities vis-à-vis the other government levels.[94]

9 Covid-19's Impact on the Role of Local Government

In general, Austrian municipalities have played a greater role in regard to the socioeconomic impact of the Covid-19 pandemic than in the direct health emergency response.[95] This is largely because the public health response was the prerogative of the district health departments: these were responsible for quarantining infected people and the closure of businesses. While municipal authorities were involved in directing certain public health measures (by providing information, or co-ordinating the work of local stakeholders such as volunteers), the socioeconomic impact of the pandemic was their main concern. The municipalities, as the main providers of basic services, had to adapt to radically changed circumstances, particularly so with regard to public transportation and child care, and enable a significant move to digital communication. In addition, they often came proactively to the rescue of local companies by granting them financial assistance or by deferring the payment of fees in view of companies' considerable income losses.

The pandemic produced major budgetary challenges. New pandemic-related tasks combined with the lack of cost-cutting margins in relation to basic services resulted in increased spending, while revenue decreased

[93] Genderatlas, 'Frauen als Ortschefinnen immer noch unterrepräsentiert', https://genderatlas.at/articles/buergermeisterinnen.html (accessed 10 June 2021).

[94] Fallend, Mühlböck and Wolfgruber (n 27) 56.

[95] Karl Kössler, 'Managing the Coronavirus Pandemic in Austria: From National Unity to a De Facto Unitary State?', in Nico Steytler (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2021) 70–87.

significantly with the loss of shared taxes, especially reduced income tax receipts, and of certain exclusive local taxes.[96] The fact of economic downturn and rising unemployment seriously affected the income arising from the municipality tax, which alone was expected to shrink by 20 per cent to 40 per cent. In addition, incoming revenue deteriorated due to the decline in certain fee payments (such as those for child care) and—of great importance to many Austrian municipalities—the reduction in tourist taxes. While municipalities have been promised EUR 1 billion for local investments, it is feared that this sum will only help make up the EUR 1.1 billion of revenue losses accruing from a tax reform intended to relaunch the economy.[97] In these circumstances, it is hardly surprising that Covid-19 has revived discussion of, first, overdue reforms to the real estate tax as a relatively crisis-proof income source and, secondly, the extremely complex Financial Equalisation Act.

While it remains to be seen whether these reforms will occur, the pandemic did not essentially change the mechanisms of intergovernmental relations, and the existing structures have remained firmly in place. Indeed, when new specialised mechanisms were introduced, local governments were not granted a prominent role in them. Take, for example, the Corona Commission, created in September 2020. Its task was to prepare a weekly assessment of the Covid-19 risk and to issue appropriate recommendations. The Commission was made up of five experts nominated by the national government; five civil servants selected from national ministries; and one representative from each of the nine *Länder*—but no representative of the municipalities. Here we can see how intergovernmental relations concerning the pandemic response contrast with the three-level mechanisms previously discussed, particularly mechanisms to do with financial relations and spatial planning.

[96] For an illustration of how Covid-19 has affected the various components of municipal income, see Peter Biwald and Karoline Mitterer, 'Städte und Gemeinden in der Corona-Krise—Ist ein Rettungspaket notwendig?', www.kdz.eu/de/aktuelles/blog/staedte-und-gemeinden-der-corona-krise-ist-ein-rettungspaket-notwendig (accessed 10 June 2021).

[97] Karoline Mitterer, 'Corona-Krise trifft Gemeinden auch 2021 stark: Weitere Unterstützungsmaßnahmen sind erforderlich', www.kdz.eu/de/presse/corona-krise-trifft-gemeinden-auch-2021-stark (accessed 10 June 2021).

10 Emerging Issues and Trends

This chapter has examined the status and role played by municipalities in Austria's system of federal and *Länder* governments. It seems fair to conclude that their status and role is that of the junior player in a system of 'two and a half partners'. In this regard, Austrian local governments resemble those of many other federal countries.[98] Three-level federalism remains limited for the most part to financial relations, as we have seen with the consultation mechanism, the Stability Pact and the negotiations around the Financial Equalization Act. Moreover, as this chapter has pointed out, even in the area of finances, municipalities are not entirely on an equal footing with the *Länder* governments. It therefore comes as no surprise that both local government associations continue to push for a stronger constitutional voice. They did this at Austria's constitutional convention (2003–2005) where they proposed—to no avail—that there should be municipal representation alongside the *Länder* in the second chamber of the federal parliament. They continue to argue today for constitutional amendments that would give them a say in intergovernmental relations with regard to all matters that concern them.[99] As for the role of municipalities vis-à-vis subnational governments, the scenario known from other countries, of an 'hourglass federalism'[100]—in which subnational governments are squeezed in the middle between the national and local levels—does not apply in Austria. The country's system of local government has only nine municipalities with more than 50,000 inhabitants, as a result of which subnational governments do not feel threatened by large and influential metropolitan cities. So, for instance, the city government of Vienna is not in a contest for power with a *Land* because it is, through the above-mentioned double role, itself a *Land* government. Similarly, Graz, as the second-largest Austrian city, accounts only for 23 per cent of the population of Styria. This is a far cry from the demographic, economic, and political weight that (to take a Canadian example) the city of Winnipeg has within Manitoba, with its 55 per cent of the provincial population.

[98] Francesco Palermo and Karl Kössler, *Comparative Federalism: Constitutional Arrangements and Case Law* (Hart Publishing, 2017) 315.

[99] Council of Europe Congress of Local and Regional Authorities (n 74) at paras 110–111.

[100] Thomas Courchene, 'Hourglass Federalism', (2004) *Policy Options* 12.

When it comes to the role of Austria's municipalities in the international arena, there are differences between the smaller rural municipalities and the larger urban local governments. Unsurprisingly, it is the latter that are more active in international associations: Vienna is, for instance, a key member of the United Cities and Local Governments (UCLG). This gives it a platform to shape and coordinate policies concerning globally relevant issues such as environmental protection and migration. Although an EU regulation issued in 2006 on European Groupings of Territorial Cooperation (EGTC) created the possibility for municipalities to be part of public bodies for cross-border cooperation under European and domestic law, this so far has remained a domain of *Länder* governments.[101] Indeed, most of the international activities of local governments (such as town-twinning) continue to be based on private contracts under article 116(2) of the Constitution. Regarding their place in EU decision-making, it is important to note that article 23d(1) obliges the federal government to inform municipalities about all EU projects which affect either their autonomous functions or other important interests. However, the federal government must only consider comments on such projects. Municipalities do not enjoy the same right as the *Länder* parliaments to issue a formal statement as to whether they regard an EU project as violating the principle of subsidiarity.[102]

Crises have played a major role in many of the current developments and reforms, either those recently implemented or now under discussion. To be sure, the fact that smaller local governments have struggled to keep up with an increasing range of public services has long been recognised as a structural problem, one compounded by the constitutional principle of the 'abstract uniform municipality'. It was the budget constraints and cost-reduction imperatives that emerged in the wake of the global financial crisis of 2007–2008 that accelerated the push for reform and led to the constitutional amendments of 2011 which reinforced inter-municipal cooperation. Similarly, public law agreements under the new article 116b would lend themselves to application in many areas such as spatial planning or even policing.[103] Even though there is some uncertainty as to

[101] Sonntag (n 21) 328.

[102] Article 23g(3).

[103] Harald Eberhard, 'Die öffentlich-rechtliche Vereinbarung zwischen Gemeinden', in Peter Bußjäger and Niklas Sonntag (eds) *Gemeindekooperationen* (Braumüller, 2012) 44–46.

how well this possibility will be used, the case of agreements under article 15a of the Constitution should be borne in mind which initially were met with such hesitancy and still have today become (as emphasised in this chapter) a key feature in intergovernmental relations. Similarly, the possibility (since 2011) of establishing municipal associations for more than a single task may yet prove to have far-reaching implications. Despite the above-mentioned constitutional limits, which exclude a transfer to multi-purpose associations of either too many or too essential tasks, this arguably provides an opportunity to create second-tier local governments structurally similar to counties in other countries.[104] Roughly a decade after this last significant local government reform, another crisis, the Covid-19 pandemic, has once more ignited discussion about some difficult but necessary changes, especially with regard to the municipal real estate tax and the Financial Equalization Act. Of course, it remains to be seen whether the radically altered economic and political context will act as a catalyst for much-needed reform or, on the contrary, only worsen the situation of Austria's local governments.

[104] Bußjäger (n 16) 60.

CHAPTER 5

Brazil

Sol Garson and Kleber Castro

In Brazil, local government matters. Of its 5568 municipalities, 45 had more than 500,000 inhabitants each in 2018, corresponding to about 30 per cent of the population and 38 per cent of gross domestic product (GDP). In 2019, municipalities spent an amount equivalent to 7 per cent of GDP on service delivery, exceeding the 6.2 per cent spent by the 26 states and the Federal District.[1]

After a period of authoritarian government (1964–1985) that ended with deep fiscal crisis, primarily at the federal level, a wave of democratisation encouraged Brazilians to address popular demands in local arenas. Decentralisation of service delivery came to be associated with democratisation, given that the new Constitution of 1988 recognised municipalities

[1] In this article, unless otherwise stated, the term 'states' includes the Federal District.

S. Garson (✉)
Institute of Economics, Federal University of Rio de Janeiro, Rio de Janeiro, Brazil
e-mail: solgarson@gmail.com

K. Castro
FNP, Brasília, Brazil
e-mail: kleber.castro@fnp.org.br

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_5

as members of the federation with powers of self-organisation. Political autonomy, however, does not necessarily mean financial autonomy: municipalities generally rely on federal transfers for financial support. Furthermore, in contrast to most federations, Brazil's municipalities tend to have weak ties with their home states, consequently finding it difficult to cooperate with them on problems that extend beyond local jurisdictions; at the same time, municipalities maintain direct relations with the federal government in the implementation of public policy in matters such as health care.

With the aim of understanding the place and role of municipalities in the Brazilian federation, this chapter[2] begins with an overview of the country's key political and economic features, after which it explores the historical development of local government under a federal system that alternates between periods of power centralisation and decentralisation. Municipalities' legislative and operational responsibilities are defined in the Constitution, which as such circumscribes their governance role in the federation. However, increased responsibilities for service delivery have required increased revenue, not only from federal and state transfers but from improved exploitation of municipal tax bases. Despite their progress in expanding funding sources, municipalities still rely heavily on federal and state support, a situation that highlights tensions between financial dependence and political autonomy. A discussion of relations with other orders of government reveals the possibilities for, and difficulties of, cooperation, as well as showing the importance of local political dynamics and instruments of popular participation. The final section draws attention to the importance of the metropolitan regions and identifies emerging issues relating to municipalities in Brazil.

[2] This chapter draws on elements of Luiz César de Queiroz Ribeiro and Sol Garson Braule Pintol, 'Brazil', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 75–105.

1 Country Overview

Brazil became a federal republic in 1889, one encompassing, in 2020, a federal government (the Union), 26 states, a federal district (Brasília), and 5568 municipalities.[3] As the fifth-largest national territory in the world, Brazil extends across 8.5 million km^2 and accounts for nearly half (47 per cent) of South America's land area. Similarly, ranked as the world's sixth-most populated country in 2020, it has 212 million inhabitants. Its population growth rate has fallen, however, from an average of 2.8 per cent per year between 1950 and 1980 to 1.6 per cent between 1991 and 2000; for 2019/2020, the growth rate was estimated at 0.8 per cent per year.

Brazil's population originated largely from indigenous peoples who mixed with early European settlers (mainly Portuguese) and black African slave-labourers imported during the colonial era. At the end of that era in 1822, a period of intense immigration, lasting for more than 100 years, saw an influx of arrivals—generally poor people in search of labour—from Italy, Portugal, Germany, Spain, Poland, Lebanon, Syria, and Japan. Today, the descendants of European immigrants are concentrated in the south of the country and in the country's major city, São Paulo (Southwest Region). Although there are no marked ethnic struggles, social differences clearly exist, with black people by and large making up the country's lower socioeconomic classes. Portuguese is the official language, and, according to a census in 2010, 74 per cent of the population subscribe to the dominant Roman Catholic faith. Protestants account for a further 15 per cent of the population and show a steady increase in numbers.

A highly urbanised country, Brazil is divided into five administrative regions: the North, Northeast, Centre-West, Southeast, and South. By 1970, 55.9 per cent of the total population then of 93 million were

[3] For general background, see Celina Souza, 'Federal Republic of Brazil', in John Kincaid and G Alan Tarr (eds) *Constitutional Origins, Structure, and Change in Federal Countries* (McGill-Queen's University Press, 2005) 76–102; Marcelo Piancastelli, 'Federal Republic of Brazil', in Akhtar Majeed, Ronald L Watts and Douglas M Brown *Distribution of Powers and Responsibilities in Federal Countries* (McGill-Queen's University Press, 2005) 66–90; and Fernando Rezende, 'Federal Republic of Brazil', in Anwar Shah *The Practice of Fiscal Federalism: Comparative Perspectives* (McGill-Queen's University Press, 2007) 74–97. See also Fernando Rezende and José Roberto Afonso, 'The Brazilian Federation: Facts, Challenges and Perspectives', in Jessica S Walack and TN Srinivasan (eds) *Federalism and Economic Reform: International Perspectives* (Cambridge University Press, 2006) 143–188.

already living in urban areas. The Southeast had the highest urbanisation rate, with 72.7 per cent of the population classified as urban. It was estimated that, by the end of 2020, almost 90 per cent of the population were living in urban areas.

In 2020, gross domestic product (GDP) amounted to USD 3154 trillion PPP (current international $),[4] a per capita GDP of USD 14,893. Brazil ranks among the countries with the highest degree of inequality in income distribution, but aside from differences in household income, it also has huge regional economic imbalances. In 2018, 42 per cent of the population lived in the four states of the Southeast, which produced 53 per cent of the total GDP; by contrast, the Northeast comprised 27 per cent of the population but accounted for only 14 per cent of GDP.

To turn to the country's governance, Brazil has a presidential system of government. The President serves as the head of state and head of government; he or she and the vice president are directly elected for a four-year term, are chosen by an absolute majority of popular votes, and may be re-elected only once for a consecutive term. Ministers of state are in turn appointed by the President. As for the federal legislature, it is bicameral, and all bills must be submitted to both chambers. The upper house, the Senate, has three seats per state, totalling 81 members; the lower house, the Chamber of Deputies, has 513. Senators are elected for eight-year terms[5]; deputies, for four-year terms.

Neither a state's population size nor its economic importance is proportional to its political representation in these houses. For example, São Paulo, both the richest and most populous state, representing 22 per cent of the population and 32 per cent of GDP in 2018, has 70 representatives in the lower house, or 13.6 per cent of 513 seats, whereas the minimum number of deputies for the smallest state is eight—this is the case with Amapá, a North region state, which accounted in 2018 for 0.4 per cent of the total population and 0.2 per cent of GDP yet, but had 1.5 per cent of the seats. The system results in the poorer states of the North and Northeast having more representatives in the federal arena.

[4] GDP expressed in current international dollars, converted by purchasing power parity (PPP). See World Bank, 'GDP, PPP (Current International $)', factorhttps://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?end=2020&locations=BR&name_desc=false&start=2017 (accessed 20 June 2021).

[5] Due to the fact that the term of the senators is eight years, there are rounds of elections for two-thirds of the Senate every four years and for one-third of it four years later.

States are represented equally in the Senate, which, besides voting on all bills, has competence in many areas, including the exclusive competence to set limits on the public debt of the three orders of government—an extremely sensitive issue for intergovernmental relations. In the states and the Federal District, the chief executive and the head of the government is the governor, who appoints the state secretaries. The legislative structure is unicameral, with members elected to serve a four-year term. Every state has its own constitution. Both the Union and the states are provided with judicial branches. The Federal Supreme Court, which adjudicates on all constitutional matters, is composed of 11 judges, appointed for life by the President with the Senate's approval.

After two decades of military rule, Brazil regained democracy in 1985. Since then, its party-political system has been one of the most fragmented in the world. Currently, no less than 30 parties share the 513 seats of the Chamber of Deputies, with the number of representatives per party ranging from 54 in the case of the Workers' Party (*Partido dos Trabalhadores,* PT) to less than five, in that of seven other parties. The fragmentary party system demands that the President invests considerable effort into forging alliances to support executive proposals, which increases the cost of coalition management.

In this regard, the relationship between the executive and legislature is the subject of much controversy among scholars. On the one hand, some argue that the Constitution restored powers of the Congress that had been weakened during the dictatorship (1964–1985)[6]; on the other, the view is that the executive branch retained its legislative powers, thereby ensuring that the President's legislative agenda is always favourably received. Indeed, most bills have been presented by the executive, which has counted on the support of a disciplined governmental party coalition and in so doing achieved a great degree of success. During the period 1989–1994, 1259 federal laws were enacted, 79 per cent of which originated from the executive and only 14 per cent from the legislature; the remaining 7 per cent came from the judicial branch, in accordance with its prerogatives. Nevertheless, some scholars take the view that the power of state governors over their state representatives

[6] Argelina Cheibub Figueiredo and Fernando Limongi, 'Constitutional Change, Legislative Performance and Institutional Consolidation', (October 1995) 29 *Revista Brasileira de Ciências Sociais* 175–200, www.scielo.br/j/rbcsoc/a/TRzMhQMVDX7S7TKcjSgrC5x/?lang=en (accessed 12 March 2021).

in the Congress can constitute an obstacle, and hence a countervailing force, to initiatives by the federal executive.[7]

2 History, Structures, and Institutions of Local Government

Although municipal autonomy has been debated in Brazil since imperial times, municipalities—the country's only political and administrative units of local government—have been recognised as constituent members of the federation only since the Constitution of 1988.

Further back in history, administrative and political decentralisation were at the heart of what came to be known as the 'municipalism' ideology that gained importance following the Constitution of 1946, which restored federalism and elections for state executives and legislators, as well as for mayors and councillors.[8] Nearly 20 years later, a military government took power in 1964 and enacted the Constitution of 1967, which centralised public revenue. To compensate states and municipalities for the loss of revenue, special funds were created to redistribute part of the federal revenues, mainly to poorer units. Towards the end of the 1970s, the authoritarian regime came under crisis and, in the beginning of the 1980s, suffered significant defeats in state and federal legislatures. The state and municipal elections of 1982, the first to be held through direct vote since 1965, allowed governors to recover some of their sources of power, through either alliances with local political leaders or strong support from the urban masses.

This wave of democratisation encouraged citizens to address their demands to the subnational governments closest to them.[9] The theory that associated re-democratisation with decentralisation reached its pinnacle in discussions held at the Constituent Assembly in 1988. Faced with a weakened central power, governors and mayors united to fight

[7] David Samuels and Fernando Luiz Abrucio, 'Federalism and Democratic Transitions: The "New" Politics of the Governors in Brazil', *Publius: The Journal of Federalism* 30 (Spring 2000) 43–62; Barry Ames, *The Deadlock of Democracy in Brazil: Interests, Identities, and Institutions in Comparative Politics* (University of Michigan Press, 2000).

[8] President Getúlio Vargas ruled as dictator from 1930 to 1934 and again from 1937 to 1945.

[9] See generally Frances Hagopian, *Traditional Politics and Regime Change in Brazil* (Cambridge University Press, 1996).

for a larger share of public revenue. Functional responsibilities and role distribution, however, did not receive the same attention. Local governments provide a large range of public services, such as health, education, and refuse removal. In the absence of institutions to facilitate intergovernmental cooperation, decentralisation thus proceeded in a disorganised way. Institutional difficulties such as lack of coordination and mechanisms of cooperation remain in effect to this day,[10] although there has been progress in certain areas such as health services.

These difficulties have a wider context. States are entirely divided into municipalities: in 2020, the country's 5568 municipalities were spread across its 26 states, with the number of municipalities per state varying from 15 in the northern state of Roraima to 853 in the south-eastern one of Minas Gerais. Furthermore, municipalities vary greatly in population size, with the smallest—that of Serra da Saudade—standing at 776 people and the largest—that of São Paulo (a municipality with the same name as its home state)—at 12.3 million. Analysis of how municipalities are distributed according to size reveals a high concentration of small units: 22.4 per cent of them have up to 5000 people, and another 21.6 per cent range have populations ranging from 5000 to 10,000. Even together, however, these two groups account for only 6.1 per cent of the population.

Comprising yet a third group are 16 municipalities, mostly state capitals, with more than 1 million people each and together accommodating up to 43.3 million. Brasília, the Federal District and capital of the country is located in the Centre-West region. With a population of three million in 2020, it has a state status: the Federal District has a governor and performs the tasks of both a state and a municipality. Metropolitan regions, which are created by federal and state law, are not dependent on any special institution of territorial management, as discussed in more detail in the final section.

Notably, in 2018, 48 per cent of Brazil's GDP was generated in the 70 richest cities, where about one-third of the country's population resides. Irrespective of this high diversity among the cities, though, a symmetrical—or one-size-fits-all—approach is generally adopted in dealing with municipal issues. As a result, solutions to municipal problems are prone to ignoring particular factors that could be salient, such as population size,

[10] Sergio Prado, *Cinco ensaios sobre federalismo e a federação brasileira* (Unicamp, IE, Campinas, Coleção Teses, 2017).

specifically urban activities, and the metropolitan characteristics of many of the major cities.

Municipalities may be created by dismemberment from larger ones, invariably so at the initiative of local politicians aiming to gain control of votes and, not unrelatedly, the financial resources that are transferred to the municipality by its home state and the federal government. Often, however, the newborn municipality not only has a small population but poor political, institutional, and financial capabilities.

Under article 18 of the 1988 Constitution, as originally promulgated, the establishment, merger, fusion, and dismemberment of municipalities were to be effected by means of a state law, following consultation—via plebiscite—with the population of the municipalities 'directly interested' in the dismemberment. This meant that only the district (an administrative division of municipalities) interested in the separation would vote. The creation of a multitude of new municipalities is attributable to this rule, as demonstrated by the fact that the number of municipalities increased from 4189 in 1988 to 5437 in 1995 and, thereafter, to the current 5568.

However, since 1996, following Constitutional Amendment No. 15, the position has changed. The establishment, merger, fusion, and subdivision of municipalities are now mandated by a state law, within a framework set forth in a supplementary federal law. In terms of this state law, municipal feasibility studies must be conducted; likewise, the publication of these studies, as well as subsequent consultation—again via plebiscite—with the population of the municipalities concerned, must take place as a prerequisite of the state law.

These constitutional directives aimed at deterring the creation of new municipalities, most of which are entirely dependent on the federal government, have been successful, despite the fact that the federal complementary law—which is anticipated to define both the necessary period for the change and the content of the feasibility studies—has not yet been approved by the Congress. However, for municipalities that had initiated the process of subdivision before the enactment of Constitutional Amendment No. 15, a local plebiscite suffices—with the result that, as mentioned, the number of municipalities increased from 5437 at the end of 1995 to the present 5568. The opposite movement, the merger or fusion of municipalities, is not considered a politically viable alternative even though it may well be shown to make sense in terms of management efficiency.

3 Constitutional Recognition of Local Government

Local government autonomy stands out as a characteristic of Brazilian federalism. As mentioned, the 1988 Constitution entrenches municipal autonomy in articles 1, 29, and 30, prohibiting its suppression or subjection to any kind of restriction, not even by means of constitutional amendment.[11]

Article 1 asserts that municipalities, states, and the Federal District are indissolubly united, forming the Federative Republic of Brazil. Article 29 provides that municipal autonomy is based on the right of municipalities to govern according to their own organic laws, a provision that thus prevents federal and state rulers from interfering in their internal affairs. The organic law must be voted for and approved by two-thirds of the municipal councillors. Article 29 further defines the political organisation of municipalities, sets out rules for the election of the mayor, deputy mayor, and councillors, and outlines the parameters for their remuneration, subject to constitutional limits.

As for article 30, it grants municipalities the power to enact laws on matters of local interest and to supplement federal and state legislation. The same article states that municipalities are entitled to organise and render, directly or by concession or permission, public services of local interest, as well as to promote, wherever fitting, adequate land use, by means of planning and control of urban land use, apportionment, and occupation.

The Constitution of 1988 introduced deep-seated changes to the structure of Brazilian federalism. Souza describes this as the creation of a new institutional environment involving an increase both in the political and taxing powers of subnational governments and in the empowerment of local communities in decision-making on public policy.[12]

Most municipalities, however, are highly dependent on other orders of government. Despite their economic and social differences, symmetrical treatment is almost absolute. Articles 29 to 31 (and some others in the Constitution) prescribe in a detailed way the legal regime of the

[11] Constitution of 1988, article 60.

[12] Celina Souza, 'Sistema Brasileño de Gobierno Local: Innovaciones Institucionales y Sustentabilidad', http://bibliotecavirtual.clacso.org.ar/ar/libros/edicion/diseno/souza.pdf (accessed 14 July 2006).

municipalities, with no distinction being made between the size of the population or any other special feature of individual municipalities.

This notwithstanding, it is acknowledged that strong economies and the size of a population may translate into political power and, in some cases, into the better technical capability of public servants. Although they do not have a seat within the federal government, some municipalities feel entitled to negotiate directly with it, not only on issues concerning public policy but also with respect to their capacity to borrow from national public institutions as well as from foreign banks and multilateral institutions. Smaller municipalities depend mostly on their state congressmen, who play the role of 'federal councillors' in trying to resolve municipal problems with the help of the national government.

According to Ferrari, the right to self-organisation is the most important legal feature of municipal status,[13] one that prohibits states from interfering in the direct affairs of municipalities: the political autonomy of municipalities is legally asserted. Among other principles, the Constitution includes the right of residents to elect their local officials—the mayor, the deputy mayor, and the councillors—without interference from the federal or state governments. In addition, municipal autonomy entails legislating on matters of local interest (for example land use) and deciding how to provide public services, organise territory, and use municipal financial resources (or, in other words, determining the municipal budget).

This no doubt serves the purpose of enhancing the accountability of municipalities as the order of government closest to the people, and after 20 years of constitutional recognition of municipal autonomy, positive results are certainly observable. Cities, mainly the larger ones, have been trying to modernise tax administration to increase the collection of municipal tax revenues and thereby enhance the main services delivered to the population, such as health and education. However, other consequences of municipal autonomy require attention. In particular, the weakening of the power of the home state may lead to greater difficulty in cooperating on public policies the scope of which cannot be restricted to municipal borders, as it frequently happens in metropolitan regions.

[13] Sergio Ferrari, *Constituição Estadual e Federação* (Lumen Juris, 2003) 283.

4 Governance Role of Local Government

The division of competences among Brazil's three levels of government encompasses the legislative mandate and the administrative responsibilities assigned to each one by law. The rigid division of legislative competences in the Constitution favours the federal government, to which most legislative competences are allocated.[14] Among the latter are civil and commercial law, credit policy, transport and traffic, mineral resources, immigration, and social security. When concurrent competences are assigned, as in the case of tax, budgetary, financial, economic, and urban legislation, the role of the Union is limited to setting general directives; even so, federal legislation frequently goes into much detail, leaving almost no room for supplementary state or local legislation.

Administrative responsibilities for service provision are shared more flexibly, following the historical trend of decentralisation. Social areas, such as education, health, and social assistance (excepting social security),[15] fall in the category of concurrent competences of the three orders of government. Federal laws, such as the 1990 Health Organic Law and the 1993 Social Assistance Organic Law, have established mechanisms and instruments for cooperative federalism. These legal instruments, mainly regulating the social areas, partially fill the gap created by the lack of a complementary law, which is anticipated to set out the rules for cooperation between the three orders of government with respect to concurrent competences.[16]

Despite their creation by state law, municipalities are considered autonomous, being entitled, under article 29 of the Constitution, to the right of self-organisation. As a result, their administrative structures—secretariats and public enterprises, among others—follow municipal organic laws.

Exclusive municipal competences, as per article 30 of the Constitution, include the collection of local taxes, the provision of local services directly or by concession or permission (such as public transport), and setting directives for, and inspection of, land use. Concurrent competences, as per article 23, include health and social assistance; protection

[14] Constitution of 1988, article 22.

[15] The federal government manages the general social security system. States and municipalities may have their own public-servant pension schemes.

[16] Constitution of 1988, article 23.

of the environment and historical, artistic, and cultural assets; guarantees of access to culture, education, and science; incentives for agriculture and cattle-breeding and the organisation of food distribution; development of housing programmes, including house improvements and sanitation utilities; combating poverty and social marginalisation; inspection of concessions for research and exploitation of hydro and mineral resources; traffic safety; and the promotion of tourism and sports.

According to article 211, municipalities prioritise basic education (learners aged seven to 14), pre-school education (those aged four to six), and day-care centres (ages one to three); states prioritise high school (ages 15 to 17), but concurrently basic education (ages seven to 14).[17] In 2020, there were 47.3 million enrolments in basic education, with the municipal school network taking the lion's share of 48.4 per cent of them. By contrast, the state network was responsible for 32.1 per cent of enrolments and the private network, 18.6 per cent. The federal government had a share of less than 1 per cent of all enrolments.[18]

The Constitution empowers local governments to grant concessions (that is, contracts) for the provision of services of local interest, such as public transportation and waste collection and disposal. Inter-municipal transportation is a competence of the states, as such requiring that state and municipal agencies in high-density regions work together to implement joint plans for the transportation network.[19]

Similarly, municipalities increasingly have joined forces through participation in consortia established for the provision of public services.[20] According to the Brazilian Institute of Geography and Statistics (IBGE)—the federal bureau of statistics—public consortia are widespread. Here,

[17] In addition, states develop technical education units and most of the youth and adult education units.

[18] INEP, *Censo da Educação Básica: 2020 Resumo Técnico*, https://download.inep.gov.br/publicacoes/institucionais/estatisticas_e_indicadores/resumo_tecnico_censo_escolar_2020.pdf (February, 2022).

[19] Fernando Rezende and Sol Garson Braule Pinto, 'Financing Metropolitan Areas in Brazil: Political, Institutional, Legal Obstacles and Emergence of New Proposals for Improving Coordination' (2006) 10(1) *Revista de Economia Contemporânea* 5–34.

[20] According to Law 11.107 of 6 April 2005, the Union, the states, the Federal District, and the municipalities may participate in public consortia, which are associations of governments formed with the objective of developing a common activity or pooling their resources for achieving a common goal. Public consortia must be established by contract.

the Union, states, and municipalities collaborate in managing specific activities to serve common interests in the provision of public services. Such consortia are especially important in metropolitan spaces, but also enable small municipalities to increase efficiency and reduce costs in the delivery of public services.

According to the IBGE,[21] 69.2 per cent of municipalities are part of at least one public consortium. Of these consortia, 95.1 per cent are associations of municipalities—13.8 per cent of these involve home states and only 0.8 per cent, the federal government. Most are engaged in service delivery in the fields of health, the environment, and solid waste management.

Private-sector participation in the provision of public services continues to face political obstacles. There is a widespread perception that the transfer of essential public services by means of concession or privatisation may hinder low-income families from accessing them. It has been argued that these families would be unable to pay the service charges necessary to fairly remunerate the invested capital. Politicians have thus been cautious not to advocate for an expanded role for private investment in essential services such as sanitation.

In 2000 the federal Fiscal Responsibility Law (LRF) was passed to improve planning, control, transparency, and accountability in the public sector. Although certain provisions of the LRF could be seen as creating short-term constraints on spending, it is anticipated that they will contribute to public savings over the medium and long term. This framework may also yield new possibilities for increased private-sector participation in financing and supplying urban services, while facilitating partnerships essential to the provision of key urban services.[22]

In Brazil, the political institutions of a municipality are similar to those of the Union. The mayor, directly elected through a two-round system, is the chief executive of a municipality and entitled to appoint the municipal executive; the legislative structure is also unicameral, with members of the municipal chamber—the councillors—elected to four-year terms.

Mayors traditionally rule in a fashion similar to that of the President of the country. They are the spokespersons for local demands and interests before the municipal chamber and other orders of government, as well as

[21] IBGE, 'Perfil dos Municípios Brasileiros 2019', www.ibge.gov.br/ (accessed 1 June 2021).

[22] Ibid.

before different interest groups in the community. As heads of the executive, mayors perform political, executive, and administrative functions. They can initiate or propose bills for approval by the municipal chamber. As leaders, they also deal with community organisations and other groups, as well as with grassroots leaders, soliciting their support when necessary and consulting with them to better understand their needs in an effort to enhance local governance.

The number of councillors, which is proportional to the municipality's population, ranges from nine to 55.[23] The municipal chamber is assigned three basic functions: the legislative function of adopting laws on matters of exclusive municipal competence; a supervisory function of controlling local administration; and an administrative function in relation to the domestic organisation of the chamber itself. A Court of Accounts is responsible for the external supervision of the chamber, including the management of its financial resources.

Mayors and councillors are full-time officials. Although they receive salaries, they are not entitled to pension benefits. Their salary levels are regulated by the municipal chamber in terms of the limits set by the Constitution.[24]

5 Financing Local Government

Since the mid-1980s, municipalities have become increasingly important role-players in Brazilian federalism, especially given their involvement in implementing universal public policies like education and health—a trend reflected in fiscal indicators such as revenues and expenses. In other words, an increase in municipal usage of the public sector's available revenues has been accompanied by a significant expansion in the competences of these local governments.

[23] The composition of a municipal chamber follows the provisions of the municipality's organic law, within the limits set by the federal Constitution. Maintenance of the chambers, including monthly payments to councillors (within the limits set by federal law), is guaranteed by transfers from the municipal budget.

[24] Article 29 of the Constitution limits councillors' salaries according to the population of the municipality. Amounts may vary within a range of 20 to 75% of the salary of the members of the state legislative assembly. The limit of the mayors' salaries follows article 37 of the Constitution. This article sets the amount received by the ministers of the federal Supreme Court as the ceiling for the direct or indirect public administration of any of the powers of the Union, the states, the federal district, and the municipalities.

Municipal tax revenue jumped from 3 per cent of GDP in 1988 to 6.7 per cent of GDP in 2017.[25] Municipal participation in total tax collection—by federal, state, and municipal governments—rose from 13 to 20 per cent over these nearly 30 years during which the total tax burden leapt from 22.4 to 33.6 per cent of GDP. This statistic takes into account taxes collected by the municipalities and the participation in taxes collected by federal and state governments. Most of the increase in available municipal revenue comes from efforts at own tax collection and not from intergovernmental transfers, albeit this relationship varies considerably between municipalities. In 2017, about 37 per cent of tax revenues available to municipalities stemmed from their own resources; in 1988—the year of the federal Constitution—this indicator was little more than 20 per cent of the total.

Local governments have the competence to impose and collect taxes on urban property and land (IPTU), on real estate transfers (ITBI), and on service activities (ISS), as well as to charge fees for services, such as refuse collection and issuing business licence, and exact contributions for public lighting.[26] However, the autonomy of local governments in developing legislative material on their taxes is limited. Much of the regulation of the taxes on ISS and IPTU—the main local taxes—is provided by the Constitution, its complementary laws, and the National Tax Code.

Generally, own tax revenues have greater relevance for the municipal budgets of populous municipalities than for those of smaller ones. This is due to the fact that large and economically developed urban centres benefit from a significant concentration both of services with added value and of high-value real estate assets.[27] In recent years, municipal tax collection in such cities has proven quite satisfactory, thanks not only to their large tax bases but their greater investment in modernising tax administration and inspection.

[25] José Roberto R Afonso and Kleber Pacheco de Castro, 'Carga Tributaria Brasileña en perspectiva histórica: Estadísticas revisadas' (2019) 45 *Revista de Administración Tributaria* 139–154.

[26] City halls can create new fees to fund the services provided, but may not create new taxes. They are limited to those already mentioned: the IPTU, ITBI and ISS.

[27] Angela Penalva dos Santos and Kleber Pacheco de Castro, 'Local Governments' Tax Burden in Brazil: Evolution and Characteristics', in Jolanta Iwin-Garzyńska (ed) *Taxes and Taxation Trends* (IntechOpen, 2018) 245–262.

Notwithstanding the ISS's good performance, though, territorial conflicts arise when some city halls form tax havens by reducing tax rates or the tax base to attract companies. This has become especially common in the case of activities that can be carried out at a distance, such as financial and insurance services, and which require specific regulation. The IPTU, on the other hand, suffers from problems related to the updating of the real estate registry and to official estimates of property values. Although many cities have recently been making efforts to address these issues, the revenue potential of this tax remains to be explored in full.[28]

Despite the growing importance of own revenues, most local governments' resources—particularly those of smaller municipalities—derive from transfers from the federal and state governments.[29] The main intergovernmental transfers to municipalities come from a share of federal and state taxes channelled through the federal Fund for Participation of Municipalities (FPM) and the State Value Added Tax (ICMS). Even in large cities, intergovernmental transfers are a crucial revenue stream: for instance, in Brazil's largest city, São Paulo, about one-third of its current revenue comes from transfers. The FPM and ICMS transfers have important distributional problems, however, and fail to mitigate the strong budgetary heterogeneity between municipalities. While the ICMS tends to be favourable to the locations that host large industrial enterprises, the FPM tends to concentrate (relatively) in the smaller municipalities.

Generally, municipal tax revenues and intergovernmental transfers represent more than 80 per cent of current revenues. In 2019, about 27.9 per cent of total municipal revenues came from own taxes (taxes and fees) and 63.1 per cent from transfers (current and capital), mostly intergovernmental.[30] Other resources stemmed from, inter alia, concessions and credit operations. The main item of municipal revenue in 2019 was the ICMS state transfer, representing about 17 per cent of total revenue.

[28] Kleber Pacheco de Castro e José Roberto R Afonso, 'IPTU: Avaliação de potencial e utilização sob a ótica da teoria dos conjuntos fuzzy' (2017) 51(5) *Revista de Administração Pública, [s.l.]* 828–853.

[29] José Roberto R Afonso and Erika Amorim Arajo, 'Local Government Organisation and Finance: Brazil', in Anwar Shah (ed) *Local Governance in Developing Countries* (The World Bank, 2006) 318–418.

[30] Secretaria do Tesouro Nacional, *Balanço do Setor Público Nacional: Ano base 2019* (STN, 2020) 86.

This was followed by the FPM, at 14 per cent of the total. There were also transfers from the Education Fund (FUNDEB) and federal transfers to finance health services under the Unified Health System (SUS), which accounted for 12 and 7.4 per cent of the total, respectively. Among own revenues, the ISS and IPTU accounted for 10 and 7 per cent, respectively.

This composition varies significantly with the population size of the municipalities, however.[31] Large cities, with at least one million inhabitants, obtain, on average, about 53 per cent of their current revenue from own tax revenue. At the opposite extreme, in cities with up to 10,000 inhabitants, only 8 per cent of current revenue comes from own taxes and fees, making these cities highly dependent on other spheres of government. Almost 50 per cent of their revenue is obtained from the FPM and ICMS, whereas large cities exhibit a percentage of 17 per cent.

The constitutional revenue-sharing system results in a very favourable picture for small municipalities when one looks at per capita revenue. Transfers to municipalities with up to 10,000 inhabitants are 10 times greater than own tax collection, while in municipalities with more than one million inhabitants, tax collection rarely exceeds transfers. All in all, per capita revenue distribution is biased towards small municipalities and unfavourable to those in the middle bands (see Table 1).

Over and above transfers distributed according to the revenue-sharing system set out in the Constitution, another category of transfers has grown in importance: those 'oriented' by the Union and linked to the provision of specific services. Such transfers have increased in tandem with the decentralisation of competences that has been under way since 1988 and are focused on the implementation of national policies in areas such as health, education, and social assistance. According to some political scientists, their strict earmarking rules limit decision-making by municipalities even though they increase the latter's available resources.[32] Nevertheless, the increase in transfers to health, by the Union, and to education, by the states, has been essential for decentralising and expanding these services in recent years.

Since the provision of health and education services requires extensive human and material resources, municipal personnel expenses and other current expenses also show a growth rate above that seen in other

[31] Dos Santos and de Castro (n 27).

[32] Marta Arretche, *Democracia, Federalismo e Centralização no Brasil* (Editora FGV, 2012) 232.

Table 1 Composition of municipal per capita revenue by population range (2019)

Population range	*Number of municipalities*	*Average per capita current revenue (in R$)*	*Composition %*		
			Taxes, fees and contributions	*Current transfers*	*Other current revenue*
Up to 10,000	2423	3963.26	8.3%	88.1%	3.6%
10,000 to 20,000	1318	2987.25	10.2%	86.0%	3.7%
20,000 to 50,000	1082	2907.82	14.3%	80.3%	5.4%
50,000 to 100,000	348	2902.71	21.1%	71.6%	7.4%
100,000 to 250,000	202	3204.22	25.7%	64.7%	9.7%
250,000 to 500,000	66	3106.81	35.0%	56.3%	8.7%
500,000 to 1 million	29	3172.21	36.0%	54.5%	9.5%
Above 1 million	16	3549.73	53.1%	39.5%	7.4%
Total	5484	3206.22	29.2%	63.6%	7.2%

Source Prepared by authors. 2019 R$ per USD purchasing power parities (PPPs) = 2281 [STN – Ministry of Economy and Federal Bureau of Statistics (IBGE)]
Note Sample of 5485 municipalities, which represents 93% of all municipalities and approximately 97% of Brazil's population in 2019

spheres of government. In 1995, 18.3 per cent of public sector personnel expenses were the responsibility of the municipalities,[33] while in 2019 this percentage had increased to 26.8 per cent, according to National Treasury data. At the same time, the participation of municipalities in total public employment increased from 40.6 to 57.9 per cent.[34]

On the expenditure side, personnel expenses (payroll and social contributions) and other current expenses represented, respectively, about 52 and 40 per cent of the municipalities' budget in 2019, with little significant variation according to population size. Although the burden of social security benefits for retired employees is much lower for muni-

[33] De Queiroz Ribeiro and Braule Pinto (n 2) 76–105.

[34] Felix Lopez and Erivelton Guedes, 'Três décadas de evolução do funcionalismo público no Brasil (1986-2017)', *Texto para Discussão n. 2579* (Ipea) 56.

cipalities than for states and the federal government, it becomes more significant in larger cities. This situation may get worse since local governments, in keeping with their constitutional mandate, take over the area of primary education without having built sound social security systems. This is demonstrated by the growth in the proportion of municipal civil servants relative to the total number of civil servants in the Brazilian public sector, a figure which, according to recent estimates, already stands at 60 per cent.[35]

Expenditure on debt service, in turn, accounted for just under 1 per cent of the municipal budget, much of which was concentrated in large municipalities. Investment expenses consumed, on average, 5.6 per cent of the local budget. In this case, there is also little variation between municipalities in different population ranges.

The expenses by functions of government show that a large part of the municipal budget is dedicated to social areas: 27 per cent for education, 25 per cent for health, and 3 per cent for social assistance. These functions, especially health, have become ever more prominent in the municipal budget. According to the Federal Constitution (article 212) municipalities must spend at least 25 per cent of their main revenue from taxes and transfers on education and 15 per cent on health. In the latter case, the average real municipal expenditure is already approaching 25 per cent of revenue, according to data from the *Sistema de Informações sobre Orçamentos Públicos em Saúde* (SIOPS).[36]

This increase in health and education expenditure reduces the scope for spending in other areas, including those related to basic responsibilities of cities such as urban services. The latter represented 8.8 per cent of municipal expenditures in 2019, whereas in 2005 it accounted for 10.8 per cent of the total.[37] Expenditure on municipal legislation accounts, on average, for 2.5 per cent of the budget of city halls, but has a clear inverse relationship with population size, being more relevant in small municipalities. Finally, public security spending has increased in municipalities in the wake of the fiscal crisis in states (which are responsible for this area). In 2019, 1 per cent of the local budget was allocated to this area.

The composition of municipal budgets reveals a deep contrast between municipalities' financial status and their political autonomy. The smaller

[35] Ibid.

[36] Available at http://siops-asp.datasus.gov.br/cgi/siops/serhist/MUNICIPIO/indicadores.HTM (accessed 1 June 2021).

[37] De Queiroz Ribeiro and Braule Pinto (n 2).

the municipality, the larger the gap is between political and financial autonomy. Even major cities (where own revenue is more significant) cannot be considered financially autonomous, due to extensive revenue-earmarking by the Union and states. The result is a lack of efficiency and accountability, as service delivery varies according to available resources and not to the needs of the population.

There is widespread recognition that Brazil's high tax burden, about 35 per cent of GDP, is not translated into corresponding services for the people: notwithstanding the large amount of public expenditure, the quality of these services is considered poor. The uneven distribution of institutional capacity among subnational governments is at odds with the continuing process of decentralisation. Among the reasons for inefficiency are the rigidity of the budget composition, the lack of consistent programmes to improve management, and the difficulties that the different orders of government face when attempting to cooperate with each in the provision of public services.

6 Supervising Local Government

Supervision of local government is a task shared by the federal executive, the states, the municipal chambers, and the courts of accounts. The federal Ministry of Economy developed a system of control to ensure transparency and compliance with legal requirements in regard to, inter alia, limits on indebtedness, personnel expenditure, and the assignment of own resources to education and health. In terms of the Fiscal Responsibility Law, compliance with those requirements is necessary for receiving discretionary transfers from the federal government. Other ministries, such as those of health and education, monitor the use of funds that are transferred to municipalities to implement particular federal policies and programmes. Furthermore, the federal Court of Accounts, which is in charge of monitoring the federal government, may audit the use of federal funds transferred to states and municipalities.

According to article 31 of the Constitution, supervision of a municipality shall be exercised by the Municipal Council (*Câmara dos Vereadores*) but through outside control. Article 71 appoints the courts of accounts as ancillary bodies of the Council to monitor budget execution and fiscal accounts, as well as enforce other specific legal requirements. The Constitution expanded the competence of these courts, granting them the power to impose fines on both elected and non-elected

public officials. Although not technically part of the judicial system, the courts operate as quasi-independent judicial authorities. They have several features typical of judicial bodies, such as strict procedural rules, collegial decision-making, security of tenure for their board members, civil-service status for their employees, and applying the right of reply.[38]

There is a Court of Accounts in each state to supervise and monitor both the state and the municipalities. In some of these states, however, there is one court to supervise the state and another to deal with all the municipalities. The major municipalities of São Paulo and Rio de Janeiro have courts of accounts dedicated only to them.

States do not exercise any kind of regular supervision of municipalities. However, they may monitor the use of discretionary transfers following agreements between municipalities and their states.

Despite broad municipal administrative and political autonomy, there is room for the state or Union to intervene in a municipality. According to article 35 of the Constitution, the four instances where intervention is permissible are (1) a funded debt is not paid for two consecutive years, without reasons of *force majeure*; (2) failure to render proper accounts; (3) failure to assign a minimum amount of revenue to health and education, as required by the Constitution; and (4) the Court of Justice grants a petition to ensure observance of the principles indicated in the state constitution or to enforce the law or judicial orders and decisions.

7 Intergovernmental Relations

Local governments are major partners in the implementation of national public policies, especially those policies aimed at guaranteeing key social rights. The proximity of local governments to citizens may improve efficiency in assigning scarce public resources, particularly those related to social welfare.

Relations between the federal government and municipalities should be based on close cooperation. Sharing tax revenue, for example, is aimed at compensating for huge regional economic imbalances. Cooperation

[38] Carlos Mauricio Figueiredo, Marcus André Melo and Carlos Pereira, 'Political and Electoral Uncertainty Enhances Accountability: A Comparative Analysis of the Independent Courts of Accounts in Brazil', paper presented at the 9th Annual Conference of the International Society for New Institutional Economics (ISNIE), Barcelona, Spain, 22–24 September 2005.

between the Union and subnational governments on specific public policies, such as health and education, seeks to ensure that basic social welfare is accessible to all citizens and complies with national standards, irrespective of the region in which citizens live. Cooperation in certain areas, such as the National Health System (SUS), may be governed by federal legislation. Other joint initiatives may be developed through voluntary agreements (for example, in regard to environmental protection).

Since 1994, when the fiscal stability Real Plan was launched, intergovernmental relations were restructured to such an extent that the type of federalism that emerged in the wake of the 1988 Constitution was reshaped. By controlling subnational debt, the federal government was able to impose fiscal supervision. Treating highly indebted municipalities in the same way as those with low or non-existent debt harmed municipal autonomy. In addition, faced with the increased earmarking of resources (such as the minimum investment thresholds in health in 2000), local governments have lost their leeway to seek creative solutions and prioritise the needs of their citizens.

However, restrictions and the co-responsibility of municipalities for maintaining sound fiscal regimes may force local governments to seek greater rationality and efficiency in managing public resources. The procedures and limits set by the Fiscal Responsibility Law (for instance in regard to indebtedness and personnel expenditure) stimulate the diffusion of good bureaucratic practices and compliance with the law. This notwithstanding, restrictions may have the adverse effect of discouraging innovation in public policy. Furthermore, strict limits on the use of resources may harm efficiency because governments, instead of providing the services required by their populations, will offer those legally prescribed.

Cooperation of state governments with municipalities is generally restricted to the revenue-sharing system, as mandated in the Constitution. Although part of the state value-added tax is shared according to a state law, this law is not used by the states as an instrument to enforce cooperative policies. As discussed above, states lack the institutional capacity to coordinate municipalities. States, therefore, must resort to, and rely on, the political alliances of governors with mayors, which are clearly inadequate mechanisms to sustain long-term project development.

In attempting to push a shared agenda, municipalities have formed representative institutions through which their concerns are voiced collectively. These institutions have enabled municipalities to exert political influence on various orders of government, but more so on the federal

government. At present, mayors convene in national associations, two of which are particularly important. A national front of mayors—*Frente Nacional de Prefeitos* (FNP)—represents mainly the mayors of major cities, while the *Confederação Nacional de Municípios* (CNM) represents those of small municipalities. These associations have direct access to the President, the Congress, and state governors in order to address problems in the areas of finance, health, and education, among other things.

In addition to national associations, state and micro-regional organisations meet regularly to exchange management experiences and to fight for common municipal interests. It is worth noting that these initiatives to organise local government have proved more successful in the southern states, where the European heritage is stronger.

8 Political Culture of Local Governance

The federal Constitution guarantees the political autonomy of municipalities. Mayors, deputy mayors, and councillors are elected directly in municipal elections held simultaneously throughout the country. These elections for a four-year term fall in the middle of the four-year term of the President, state governors, the Congress (senators and federal deputies), and state deputies. This means that, every two years, Brazil elects political representatives at either the local or national and state level.

Municipal elections, even in small municipalities, are contested by the same political parties that contest the national and state elections. These parties are organised nationally. Nevertheless, campaigning for votes locally may be the starting-point for a political career in the national arena. Often the mayors of large cities and important capital cities pursue nomination as candidates for state governments and even the presidency.[39] Similarly, the mayors and city councillors of inner cities may be elected for the state or even the federal chamber.

In 2020, these positions were filled by municipal elections, with 5565 mayors, 5565 vice mayors, and 56,810 councillors occupying these positions in municipal politics. Although voting has been obligatory since 1932,[40] Brazil is experiencing increasing abstention in the electoral process. From 1996 to 2012, the rate was about 18.1 per cent. In 2016,

[39] Marco Antônio Carvalho Teixeira, 'O Jogo Político nos Municípios e as Eleições', in *Os Municípios e as Eleições de 2000* (Fundação Konrad Adenauer, 2000) 99.

[40] Voting is mandatory, but optional for people over 16 and under 18, over 70, and illiterates.

abstention in the first-round elections was at 17.6 per cent, lower than second-round's 21.6 per cent, but in 2020, second-round elections registered abstention of almost 30 per cent. Political scientists agree that the Covid-19 pandemic may explain most of the difference. The economic crisis and the reduction, or even lack, of income due to rising unemployment affected voters' behaviour. Besides that, the pandemic drastically curtailed face-to-face political events.

As far as gender representation is concerned, 34 per cent of the candidates in the 2020 election (mayors and councillors) were women. There was a slight increase in the number of women elected as mayors: in the 2016 election, 11.7 per cent of elected mayors were women, and in 2020, 12 per cent. Yet in the capital cities, just one woman was elected in 2016 and another in 2020. The number of women councillors increased from 13.5 to 16 per cent in the same period.

In regard to racial representation, in the 2020 municipal elections, blacks and browns increased their participation as candidates. About 50 per cent of candidates described themselves as blacks and browns.[41] They comprised more than 30 per cent of the elected mayors as well as 45 per cent of municipal councillors,[42] although far less than the participation of browns and blacks in Brazilian population at that time—56 per cent of total population.

9 Covid-19's Impact on the Role of Local Government

Covid-19 is arguably the biggest health crisis Brazil has ever faced, but its management during the period from 2020 until the beginning of 2021 was questionable, with the President worsening the situation by down-playing or denying the pandemic's impact on society. Against that backdrop, this section examines federative relations and the role of local governments in the context of Covid-19.

Due to Brazil's strong decentralisation of public health services, subnational governments have played a fundamental role in combating the pandemic. In 2019, municipalities were responsible for 50 per cent of

[41] The Superior Electoral Court discloses statistics by racial condition following the classification adopted by the Instituto Brasileiro de Geografia e Estatística—IBGE, the Brasilian federal bureau of statistics; White, brown, black, non-informed, indigenous and yellow people. https://www.tse.jus.br/eleicoes/estatisticas/estatisticas-eleitorais.

[42] See www.tse.jus.br/eleicoes/estatisticas/estatisticas-eleitorais (accessed February 2021).

expenditure in health care, 60 per cent of which was financed from their own purse.[43] Ten years earlier, municipalities already accounted for 46 per cent of that expenditure. Considering state governments' presence, federal government participation is residual—it is limited, basically, to hospitals at federal universities. As a result, subnational governments were at the frontline of the high growth in demand for services associated with the treatment of Covid-19, services which required a large number of additional resources.

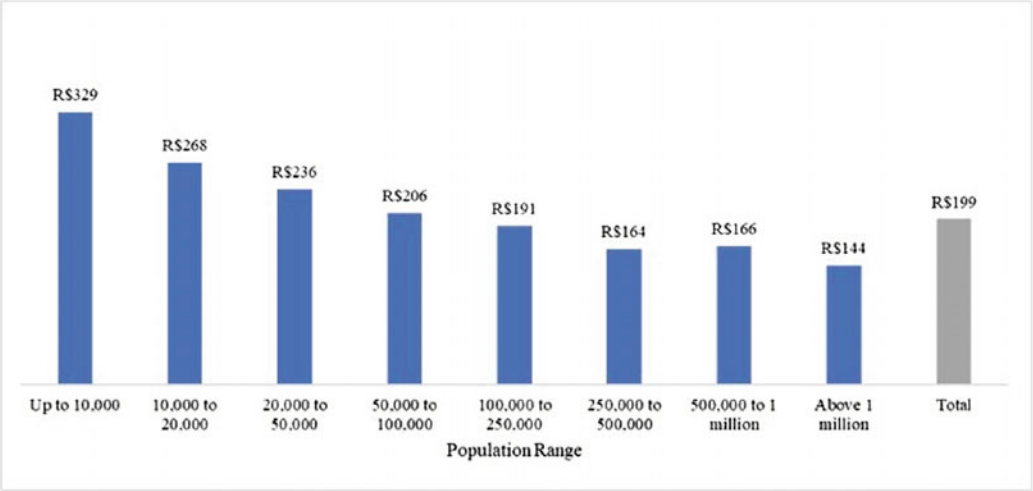
At the same time, however, the control measures of social isolation and restriction on movement resulted (notably in the first months of the pandemic) in a reduction of economic activity, along with a drop in tax collection at the three levels of government and a consequent decrease in constitutional transfers from the Union and the states to the municipalities. Moreover, city governments have restrictive rules for carrying out credit operations and are prohibited by the golden rule from financing current expenses out of capital revenue. Under those circumstances, the federal government had to grant extraordinary transfers.

In 2020, the federal government adopted three major measures[44] amounting to approximately 1.2 per cent of the GDP. Resources were earmarked in part for health expenditures and the remainder for discretionary use. Some analysts believed that the volume of resources assigned to municipalities was more than adequate to compensate them for their loss of revenue and increase in expenses due to the pandemic.[45] However, given that federal criteria for assigning resources did not consider factors such as the diversity of municipalities' fiscal structures and their responsibilities for health-care delivery, the result was that some municipalities were overcompensated while others were left underfinanced and unable to honour their additional commitments. As a rule, medium and large municipalities were passed over in the distribution of federal resources within the scope of Covid-19 in 2020. An initial analysis, based on per capita distribution, shows that there is an inverse relationship between federal extraordinary transfers and population size (see Fig. 1).

[43] Statistics available at SIGA Brasil, 'an information system on the federal public budget', www.12.senado.leg.br/orcamento/sigabrasil (accessed 1 February 2021). See also Secretaria Do Tesouro Nacional (n 30).

[44] The measures: Act 14.041/2020; Complementary Act 173/2020; and Ordinance 1.666 of the Ministry of Health.

[45] Marcos Mendes, *As Finanças Municipais em 2020* (Insper, 2020) 21.



Prepared by the authors; 2020 R$ per US$ Purchasing power parities (PPPs)=2.362 Sources: Ministry of Economy and Federal Bureau of Statistics - IBGE Federal Legislation Law 14.041/2020, Complementary Law 173/2020, Ordinance MS 1.666/2020,available at: http://www.planalto.gov.br/ccivil_03/leis

Fig. 1 Extraordinary federal transfers to municipalities (2020—R$ per capita)

Furthermore, it is important to consider that the effects of Covid-19 tend to be more acute in large urban centres, owing not only to the greater circulation of people, but also to the concentration of hospital beds—among them the intensive care units (ICUs) specifically set aside for Covid-19. In Brazil, given its territorial distribution of health care, small municipalities send their patients for treatment in nearby medium and large cities. It is an effect of the regionalisation of medium- and high-complexity medical procedures—something consistent with efficiency of public spending on health. Factors like these, however, were not considered when allocating federal transfers, resulting in a poor distribution of resources.

More important than direct transfers to city halls was emergency assistance to families, an intervention which wound up fulfilling the dual role of averting a deeper economic crisis and, consequently, of enabling tax collection to recover more quickly than otherwise. A study[46] points out that in the absence of emergency aid, Brazil's GDP in 2020 could have shrunk by between 8.4 and 14.8 per cent—officially, however, the drop was 4.1 per cent, according to the IBGE.[47]

In addition to the impact of Covid-19 on the budget of the municipalities, what should be noted is the relevance that mayors and governors assumed, and the role they played, in not denying the pandemic but confronting the federal government and adopting measures recommended by international organisations and health experts.

Use of personal protection equipment (masks and sanitisers) and restrictions on the movement of people to reduce the rate of infection came about thanks only to the efforts of state and municipal governments. When faced with dramatic pictures of the use of hospital beds in public hospitals, mayors adopted a stance aligned with science—a stance diametrically opposed to the federal government's. Indeed, the Union attempted to restrict the autonomy of subnational governments with regard to measures to combat Covid-19. The Supreme Court, however,

[46] Marina Sanches and Matias Cardomingo e Laura Carvalho, 'Quão mais fundo poderia ter sido esse poço? Analisando o efeito estabilizador do Auxílio Emergencial em 2020', in *Nota de Política Econômica nº 007* (MADE/USP, 2021) 8.

[47] Available at https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/30166-pib-cresce-3-2-no-4-tri-mas-fecha-2020-com-queda-de-4-1-a-maior-em-25-anos (accessed 1 February 2021).

confirmed the competing competence of subnational governments in this case.[48]

Due to the great fiscal and socioeconomic differences between local governments and the evolution of the disease itself, the measures local governments took to combat Covid-19 diverged significantly while also lacking essential coordination. In other words, there was indeed cohesion among local governments—notable, given their history of competition and disagreement—but with little coordination. This characteristic hindered their work and led to inefficiencies. The vacuum left by the federal government in dealing with the problem can be cited as the main reason for the coordination problems the Brazilian federation faced during the pandemic. For example, no crisis management committee was established in order to bring together representatives of the three levels of government and ensure a smooth, synchronised response, or allow local and regional governments to play a more active role in managing the crisis.

Even so, some local governments, depending on their fiscal capacity, took steps to mitigate the socioeconomic effects of the pandemic. A survey of 302 municipalities found that they implemented the following measures, among others: distribution of food baskets to vulnerable populations (98 per cent); investments in health care (96 per cent); social assistance policies for the vulnerable populations such as the homeless or destitute (91 per cent); protection of women and children from domestic violence (76 per cent); employment guarantee policies (50 per cent); aid policies for local companies (43 per cent); and basic income grants to the most vulnerable (39 per cent).[49]

As regards direct measures in health and of a socioeconomic nature, the city of Niterói, in the state of Rio de Janeiro, became an exemplary performer and was lauded in the international media by the likes of Deutsche Welle[50] and El Pais.[51] It is important to note, however, that

[48] Available at www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=441447 (accessed 5 July 2021).

[49] IBOPE, *Pesquisa Impactos da COVID-19 nos Municípios* (São Paulo: IBOPE Inteligência, 2020) 52.

[50] Available at www.dw.com/pt-br/como-niter%C3%B3i-se-tornou-exemplo-na-prepara%C3%A7%C3%A3o-contra-a-covid-19/a-53042311.

[51] Available at https://brasil.elpais.com/brasil/2020-05-07/niteroi-se-antecipa-ao-coronavirus-e-planeja-testar-mais-que-eua-e-coreia-do-sul.html.

Niterói is a point outside the curve in terms of revenue structure and local economic dynamics—among other things, it enjoys an important flow of resources from oil royalties. This is not common for municipalities in Brazil, where federal 'help' to local governments is usually fully warranted.

Local governments were still playing a proactive role at the beginning of 2021, a point at which the country underwent its second, and more lethal, wave of Covid-19. Given the inefficiency (and consequent delay) of the federal government in acquiring vaccines, and supplies to produce vaccines in national laboratories, the municipalities agreed to purchase vaccines—something unprecedented in the history of the country, given that a successful National Immunisation Plan has been in place since the mid-1970s (albeit relegated to the background by the federal government during the pandemic). Led by the FNP, a large consortium of municipalities was created for the joint acquisition of vaccines.[52] The consortium's endeavour was legally supported not only by a 2005 law but by a Supreme Court decision made in favour of the municipalities due to the urgent need to vaccinate the population.

In Brazil, the federal state was a complicating factor in a situation of acute crisis, yet at the same time it was the federative model—and, within it, the action taken by subnational governments—that enabled the country to avert a potential humanitarian disaster.

10 Emerging Issues and Trends

This chapter has discussed the place and role of municipalities in Brazil, which are responsible for meeting the growing social obligations assigned to them by the Constitution. As mentioned, they spend more on service delivery than the 26 states and the Federal District, and are responsible for 44 per cent of direct public investment, yet face several challenges.

Regardless of regional inequality with respect to economic and technical capabilities, municipalities have the same status as political and administrative units, and thus are accorded symmetrical treatment with respect to their rights and duties. Besides that, scarce resources, most of

[52] By 16 March 2021, about 2400 municipalities had already joined the consortium. List available at https://multimidia.fnp.org.br/biblioteca/documentos/item/932-lista-final-municipios-que-manifestaram-interesse-em-aderir-ao-consorcio-publico-para-compra-de-vacinas (accessed 5 July 2021).

which are earmarked, reduce the room for decision-making in local policies aiming to fulfil the specific needs of the population. Furthermore, elected representatives, who are entitled to vote on the budget, are rarely able to understand, or interested in, the social and economic needs of the cities and their populations. In closing this chapter, some emerging issues are briefly discussed.

On the fiscal side, there are two important issues to address: tax reform, and growing concern about civil servants' own social security systems, a theme that explains most of the fiscal difficulties currently experienced by the states.

In recent years, the tax reform agenda has been discussed in the Congress, although it does not always receive the necessary interest from the federal government. Changes in the country's tax system have direct implications for municipal revenue and autonomy. Indirect taxes in Brazil, under the competence of the three spheres of government, are the focus of the reform proposals under discussion. The greatest risk for municipalities is losing their main tax, ISS, and receiving, as compensation, transfers from other spheres. Giving up the tax with the greatest potential revenue could overhaul the horizontal distribution of resources among local governments, substantially harming the fiscal condition of medium and large cities, whose major tax is the ISS.

As mentioned, the diversity among municipalities usually translates into conflicting interests, as is the case with tax reform. An increase in transfers may benefit small municipalities and more than compensate for the loss of ISS collection, but the opposite result is anticipated by medium and large cities, making it difficult to reach consensus.

Brazil made an important pension reform in 2019, under Constitutional Amendment 103. However, the new directives concerning fiscal sustainability are not obligatory for states and municipalities, since the text leaves it up to each state and municipality to approve, in its respective legislative house, a more stringent regime of its own. This has impacted on just more than 2000 municipalities which have their own regimes (the rest, linked to the general regime, have already been affected by the reform). The mayors of these cities allege political difficulty in approving reforms of this scope, due to pressure from civil servants and resistance in the City Council. Not by chance, just over a year after the amendment, few municipalities had approved changes to the rules of their regimes. Their own regimes, however, present a clear trajectory of unsustainability

in the long term, requiring the adoption of new rules as quickly as possible.

Federative coordination assumes particular importance in the implementation of public policies, an area in which municipalities still need to make progress. In the health sector, a tripartite intergovernmental commission would be an innovation in public policy management—it would serve as a forum for negotiation, discussion, and decision-making among managers in regard to operational matters and to the development of national, state, and regional pacts towards a unified health system. The institutionalisation of intergovernmental arenas is thus an important point for federative coordination.

Another important challenge concerns the multiple dimensions of providing urban services relating to transportation. The urban public transport sector, concentrated mostly in metropolitan regions, has been subject to financing problems over time, given that it is based on a model in which the user bears the sole responsibility for the cost of the service. With a few exceptions, there is no public fund to subsidise tariffs in a sector essential for the urban economy and the welfare of citizens who have to spend an increasing amount of time commuting between their residence and workplace. The recent increase of mobile applications (such as Uber) and other sharing platforms has aggravated the financial situation of concessionary companies year after year. The Covid-19 pandemic added yet another challenge: How to operate on a minimal scale in a scenario of social isolation and the growth of remote work, while still complying with the health protocols required in this new reality?

In addition to being highly urbanised, Brazil has a complex urban system. The survey Area of Influence of Cities—REGIC 2018, produced by the IBGE—defines the hierarchy of Brazilian urban centres and delimits the areas of influence associated with them.[53] The survey identified 15 main urban centres from which all cities in the country receive direct influence, whether from one or more metropolises simultaneously.

The theme of metropolitan regions—MRs—deserves attention. The history of these institutions is marked by two phases. In the 1970s, the federal government, to support national development planning, created nine MRs to be managed and controlled by state governments. The MRs

[53] For more information about REGIC, go to https://www.ibge.gov.br/geociencias/cartas-e-mapas/redes-geograficas/15798-regioes-de-influencia-das-cidades.html?=&t=o-que-e.

were supposed to play an administrative coordination role, both in the provision of services of common interest to the states and municipalities and in regional and local planning. Within a framework of high federal centralisation, however, they had no decision-making power. The second phase commenced with the enactment of the 1988 Constitution. Its decentralisation drive entailed important changes in the management of MRs. As mentioned, municipalities were elevated to members of the federation with a status like that of states. The competence to create and organise metropolitan areas, however, was transferred from the national government to the states, a move politically inconsistent with the new status of municipalities.

Insofar as states cannot interfere with municipal autonomy, the MRs, created to oversee the organisational and operational integration of public services, have remained mere administrative institutions without political status or legislative power. Without effective means to enforce coordination, a state government cannot prevent conflicting and overlapping policies from arising between municipalities in an MR and between those municipalities and the state. Furthermore, there are no legal criteria to guide the identification of urban agglomerations with metropolitan functions that should be classified as MRs. The political interests of state governors and mayors prevail in defining the boundaries of metropolitan areas. Presently, there are 76 metropolitan regions, which comprise 1038 municipalities spread across 23 of the 26 states.

Examining the metropolitan reality in 2005, Observatório das Metropóles conducted a national study of major urban spaces, in particular those nucleated around state capital cities, to assess the importance of these agglomerations in the national and regional urban network.[54] Only 15 urban agglomerations, where population and wealth as well as the direction and coordination of the national economy are concentrated, were identified as real MRs,[55] which is nearly half the number of officially recognised MRs. The economic relevance of these 15 agglomerations,

[54] Observatório das Metropóles is a virtual institute committed to the study of metropolitan problems, comprising more than 200 researchers working at 51 institutions, such as government agencies and nongovernmental organisations, under the joint coordination of the Urban and Regional Planning and Research Institute (IPPUR) at the Federal University of Rio de Janeiro and the Federation of Social and Educational Assistance Agencies (FASE).

[55] Indicators to identify clusters with metropolitan status and to rank them were population, number of bank branches, mass of personal income, concentration of cutting-edge

each of which includes a large number of municipalities, is remarkable. In 2004, about 67 million people lived in their 295 municipalities, within 154,000 km^2. Although this represents only 1.8 per cent of the country's surface, it hosts 39 per cent of the economically active population and 43 per cent of the labour force in the manufacturing industry. Yet these are the same areas where unequal social conditions often manifest their most perverse effects.

Notwithstanding the social and economic importance of MRs, institutional arrangements and public policies to boost state and local government coordination in metropolitan areas have not yet been developed. The result is a gap between deep social needs and the institutional capacity to formulate and implement feasible solutions. The lack of incentives for cooperation between municipalities (and between them and the states) induces autarchic behaviour when confronting problems that have impacts beyond jurisdictional borders. For example, investments in infrastructure made by the state and by the municipalities along the territory of a metropolitan region are not coordinated, as a result wasting scarce resources.

In 2015, Law 13,089 brought to life the Statute of the Metropolis with the purpose of establishing guidelines for the planning, management, and implementation of public functions of common interest to metropolitan areas and urban agglomerations through

> sharing of responsibilities and actions between entities of the Federation in terms of organization, planning and execution of public functions of common interest, through the execution of an integrated and articulated system of planning, projects, financial restructuring, implementation, operation and management.[56]

One of the instruments to be used is an integrated development plan *(Plano de Desenvolvimento Urbano Integrado*, PDUI) approved by state law. It should be prepared jointly by representatives of the state, the municipalities that are members of the regional unit, and civil society organisations. Presently, only a few MRs have approved their PDUIs. Besides the institutional difficulties faced by MRs, the deterioration of

activities related to those considered productive, financial movement, headquarters of the 500 largest companies in Brazil, and number of airline passengers.

[56] Law 13.089 of 12 January 2015.

the fiscal situation of most states and the shortage of resources for investment by the states and municipalities serve to postpone once more the search for solutions for the deep problems experienced by people living in metropolitan areas.

This chapter has highlighted the importance of municipalities in Brazil, a country of continental dimensions where regional economic and income inequality prevails. Decentralisation accords municipalities a prominent role in providing services to citizens, as was evidenced in the Covid-19 pandemic. The lack of federal coordination during this period was, to a large extent, compensated for by municipal initiatives which, it is true, had a generous contribution of federal resources. As such, the municipal role should remain and even expand, not only for the duration of the triple crisis—health, economic, and social—but also because of unmet demands that have accumulated in areas where municipalities have a strong presence, such as education, as a result of the stoppage of activities and the failure to develop alternative ways to deliver education and social assistance in the context of an impoverished population.

CHAPTER 6

Canada

Enid Slack and Zack Taylor

The vast majority of Canadians live within the jurisdiction of a general-purpose municipality to which they elect representatives and pay taxes and fees, and from which they receive a wide range of services. Municipalities function in a variety of contexts, from ones of rapid growth, as in

The authors acknowledge the work of Jon Taylor, who undertook background research for this chapter. This work was supported by SSHRC Insight Development Grant #430-2019-00807. The authors wish to thank Neil Bradford, Tomas Hachard, Andrew Sancton, and Almos Tassonyi for comments on an earlier draft.

E. Slack
Institute on Municipal Finance and Governance (IMFG), School of Cities, University of Toronto, Toronto, Canada
e-mail: enid.slack@utoronto.ca

Z. Taylor (✉)
Department of Political Science and Local Government Program, University of Western Ontario, London, Canada
e-mail: zack.taylor@uwo.ca

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_6

metropolitan areas, to ones of relative or absolute decline, as occurs on the periphery. More widely, they function in a context of intergovernmental entanglement: in Canada, local governance is multilevel governance, in which local government plays an essential role.

1 Country Overview

Canada is a vast, and for the most part, sparsely populated country. With a land area of 8.8 million km^2, its territorial jurisdiction is exceeded only by Russia and China, yet only 0.67 per cent of the land area is built-up.[1] Nevertheless, Canada is a highly urbanised nation, with most of its 38 million inhabitants living in a narrow band of settlement along the border with the US. About one-quarter of Canadians live in the Toronto region, a further 12 per cent in greater Montréal, and another 7 per cent in metropolitan Vancouver.[2] Fully 71 per cent live in settlements inhabited by more than 100,000 people—designated by Statistics Canada as 'census metropolitan areas' (CMAs)—and most of the remainder, in smaller urban settings.

Canada's ethno-linguistic composition reflects its colonial history. Prior to European colonisation, what is now Canada was inhabited by indigenous peoples whose economic life, culture, and governance were intertwined with the diverse physical environments they occupied. The establishment at the turn of the seventeenth century of permanent European settlements in what is now Québec and the Atlantic provinces initiated a centuries-long process of westward and northward colonisation. Indigenous peoples today comprise about 5 per cent of the population, with about half of them living in cities. In reflection of the country's colonial origins, French is the native language of 21 per cent of the population, and English, of 56 per cent. Canada is also a nation of contemporary immigrants: its annual population growth rate of 1 per cent is fuelled by an open immigration policy that prioritises skills, education, and knowledge of Canada's two official languages, English and French. In 2016, 22 per cent of the population had been born abroad, with the

[1] Statistics Canada, 'Human Activity and the Environment, Cat. 16-201-X' (2011) Government of Canada, www.150.statcan.gc.ca/n1/pub/16-201-x/2017000/app-ann/tbl/tbl-a1-eng.htm (accessed 5 July 2021).

[2] Zack Taylor, 'Theme and Variations: Metropolitan Governance in Canada' (2020) 49(3) *IMFG Papers on Municipal Finance and Governance* 3.

most common countries of origin being the People's Republic of China, India, and the Philippines.

With a gross domestic product (GDP) of USD 1.9 trillion, or USD 48,405 per capita, Canada is a wealthy, advanced industrialised country with a diversified economy based on natural-resource extraction, manufacturing, and services.[3] The export-oriented manufacturing base centred in Ontario and Québec has been eroded by lagging productivity, unfavourable currency exchange rates, rising protectionism among trading partners, and automation. Canada's largest export industry, the heavy oil and natural gas extraction sectors predominantly located in Alberta, Saskatchewan, and Newfoundland and Labrador, has faced persistent difficulty in accessing global markets. Canada's largest cities, and Toronto in particular, have become globally significant hubs of financial and other high-value-added services, and have in recent years accounted for most net job creation.

Canada therefore has a highly regionalised economy that has recently concentrated considerable wealth in large cities. Nevertheless, according to the Organisation for Economic Co-operation and Development (OECD), Canada's Gini index of income inequality is 0.303, lower than that of other English-speaking countries but higher than in Northern Europe and Scandinavia, perhaps reflecting the socioeconomic impact of its universal health insurance and income-support programmes.[4]

Canada has a variation of the British Westminster system of government and a common law legal system.[5] Provincial government institutions mirror the national ones, except that they are unicameral. The prime minister, as head of government and (in practice) the leader of the largest parliamentary party, has greater political autonomy than in Britain or Australia, as he or she is selected by the party's mass membership, not the governing party caucus. Parliamentarians are elected using a single-member plurality system, which magnifies the size of the winning party's representation and often produces stable majority governments.

While the federal government has superior access to revenues and the ability to redistribute wealth between groups and regions, the provinces

[3] OECD, 'Country Statistical Profile: Canada' (2021), https://data.oecd.org/canada.htm (accessed 5 July 2021).

[4] OECD, 'Income Inequality (Indicator)' (2021), https://doi.org/10.1787/459aa7f1-en (accessed 5 July 2021).

[5] Québec remains a partial exception; it retains many aspects of French civil law.

deliver most social programmes, including health care, education, and social assistance. As a result, many important policy questions are debated and settled through 'federal-provincial diplomacy' rather than through intra-party brokerage or within a regionally representative upper legislative chamber.[6] Provincial governments, along with the courts, a free press, and an active citizenry, are the primary checks against arbitrary action by the federal executive.

2 History, Structures, and Institutions of Local Government

While Canadian local government comprises a variety of types of public entities, the predominant type, and that which is most often identified as such, is the general-purpose municipal corporation. Municipalities are established by, and draw their powers from, provincial legislation: they are 'creatures of the provinces'. There are about 3700 municipalities in Canada, including upper-tier authorities in two-tier arrangements.[7] No official count is kept because the federal government does not collect information about local government institutions. It would be incorrect to say that there is a typical Canadian format of local government, or a national local government 'system'. Each province has evolved its own local government system tailored to its local conditions, resulting in considerable variation in institutional forms across the country.

Although the Canadian population is concentrated within larger metropolitan settlements, municipal governments are on average quite small—the average population of lower- and single-tier municipalities is under 10,000. Canada's largest municipality is the City of Toronto, with 2.8 million residents; the smallest has only a few inhabitants. Prince Edward Island and Saskatchewan have the most municipalities in proportion to the population residing within them, at about 70 municipalities per 100,000; Ontario has the least, at 1.8. The national average is 9.5 municipalities per 100,000. These ratios have declined over time through population growth and municipal amalgamations.

[6] Richard Simeon, *Federal-Provincial Diplomacy: The Making of Recent Policy in Canada* (University of Toronto Press, 1972).

[7] Zack Taylor and Neil Bradford, 'Governing Canadian Cities', in Markus Moos, Tara Vinodrai, and Ryan Walker (eds) *Canadian Cities in Transition* (Oxford University Press, 2020) 33–50.

While permanent urban settlements had existed since the seventeenth century, they had been governed through colonial administrative systems. Patterned on the British model, the earliest municipal corporations were established by charter during the colonial period.[8] The first was Saint John, New Brunswick, in 1785, followed by Montréal, Québec City, Toronto, Halifax, Kingston, and Hamilton in the 1830s and 1840s. These charters arose less from local demand than from the desire of colonial authorities to decentralise administration.

A key turning-point was the enactment of the Municipal Corporations Act, commonly referred to as the Baldwin Act, in 1849, which repealed all existing municipal charters in Upper Canada (now Ontario) and replaced them with a general legal framework.[9] The Baldwin Act became the template for general municipal legislation in the other provinces. Municipal incorporation accelerated during the late 1800s as urbanisation and population growth generated new demands for infrastructure and services, and as provincial governments sought to shed liabilities by decentralising infrastructure financing.[10] Throughout the twentieth century, and especially after the Second World War, municipalities became increasingly involved in the delivery of provincially mandated services, often funded by conditional grants from the provinces. For this reason, there is a tension between municipalities' identities as a democratic government and as a subordinate agent of other levels of government.[11]

Two-tier municipal government is prevalent in much of Ontario and Québec, whereby responsibilities are divided between a county or equivalent entity and constituent municipalities. Successive reforms in these provinces have consolidated two-tier systems into unitary municipalities in some places while leaving two-tier institutions in place in others. The western provinces (British Columbia, Alberta, Saskatchewan, and

[8] For overviews, see Richard Tindal, Susan Tindal, Kennedy Stewart, and Patrick Smith, *Local Government in Canada, 9th Ed* (Nelson, 2017); Zack Taylor, 'If Different Then Why? Explaining the Divergent Political Development of Canadian and American Local Governance' (2014) 49 *International Journal of Canadian Studies* 53–79.

[9] James Aitchison, 'The Municipal Corporations Act of 1849' (1949) 30(2) *Canadian Historical Review* 107–122.

[10] Michael Piva, *The Borrowing Process: Public Finance in the Province of Canada, 1840–1867* (University of Ottawa Press, 1992); Elizabeth Bloomfield, Gerald Bloomfield, and Peter McCaskell, *Urban Growth and Local Services: The Development of Ontario Municipalities to 1981* (Dept. of Geography, University of Guelph, 1983).

[11] Tindal et al. (n 8) 10–16.

Manitoba) and the northern territories never had counties, and so single-tier local government is the norm. Similarly, the four Atlantic provinces have either abolished two-tier county government in favour of single-tier municipalities or never had it in the first place. British Columbia and New Brunswick have taken a comprehensive approach to managing inter-local coordination by establishing county-like entities across provincial territory.

Single- and lower-tier municipalities, be they called cities, towns, districts, townships, or villages, are governed by directly elected councils.[12] No province's boundaries correspond to those of a functional metropolitan area, nor is there an autonomous capital district. Ottawa, the capital, is a single-tier city located in the Province of Ontario. Canada therefore does not possess anything akin to a 'city state'.

2.1 Metropolitan Governance

As Canada's metropolitan areas have grown larger and more complex, provincial governments have intervened to coordinate the activities of local governments, most often with regard to transit, investment attraction and economic development, and land-use planning.[13] This has occurred mainly through three mechanisms. First, some provinces have imposed policy frameworks binding on local governments. Ontario has gone the furthest by adopting a set of 'provincial plans' that promote or restrict urban development in various parts of the extended Toronto region. British Columbia and Québec have established province-wide farmland protection plans the effects of which are particularly noteworthy in the periphery of large metropolitan areas.

Secondly, provincial governments have established task-specific agencies of metropolitan territorial jurisdiction to plan, and in some cases operate, transit in Toronto, Montréal, and Vancouver. While Greater Toronto's Metrolinx is controlled directly by the province with no municipal involvement in its governance, Montréal's *Authorité regionale de transport métropolitain* and Vancouver's Translink both provide for formal municipal involvement in planning and project prioritisation. The

[12] Zack Taylor and Alec Dobson, 'Power and Purpose: Canadian Municipal Law in Transition' (2019) 47 *IMFG Papers on Municipal Finance and Governance* 32–33.

[13] Taylor (n 2) 3.

Ontario, Québec, and Alberta governments have also played a key role in the creation of metropolitan investment attraction agencies for the Toronto, Montréal, and Edmonton regions, respectively.

Other provinces have taken a third, more decentralised approach of reorganising local government institutions to create de facto metropolitan governments (for example, the amalgamations of Windsor in 1935, Winnipeg in 1971, Halifax in 1995, and Ottawa in 2001) or establishing metropolitan institutions that facilitate inter-municipal collaboration.

The most comprehensive example of the latter was the creation of the Municipality of Metropolitan Toronto as an upper-tier unit with 13 lower-tier municipalities in 1954, a model replicated in Winnipeg in 1960. More enduring general-purpose metropolitan bodies are British Columbia's regional districts in Metropolitan Vancouver and Victoria, which were initially established in the mid-1960s and remain in operation today.

The past decade has seen the provincial imposition of compulsory metropolitan boards comprising municipal representatives in Calgary, Edmonton, and Winnipeg. As British Columbia's regional districts, Alberta and Manitoba's metropolitan boards, and Québec's metropolitan communities are constructed as federations of member municipalities, they are generally not viewed as a 'layer' of local government; indeed, this may be a necessary political precondition of their success. Moreover, creating institutional structures that incentivise local initiative to address policy problems and pursue projects that are of metropolitan scope has enabled provinces to transfer political risk to the local sphere.

These three approaches coexist in some instances. Most provinces also provide for municipalities to enter into joint planning and services agreements, or contract with one another for service provision.[14]

2.2 Special-Purpose Bodies and Unincorporated Areas

In addition to general-purpose municipal corporations, there are a multitude of single-purpose bodies. The most visible is the directly elected school board, which administers primary and secondary public education. In most provinces, school boards receive most or all of their funding from the provincial government and have little autonomy over curricula

[14] Zachary Spicer, *The Boundary Bargain: Growth, Development, and the Future of City-County Separation* (McGill-Queen's University Press, 2016).

and labour relations. Several provinces have abolished, or are planning to abolish, elected school boards and directly administer education services.

Special-purpose bodies coexist with general-purpose municipalities.[15] With the exception of school boards, special-purpose bodies such as transit commissions, watershed management boards, police services boards, and library boards are institutionally linked to municipalities, which appoint some or all of their members and contribute to their budgets. For example, 95 per cent of Ontarians live within the jurisdiction of 36 Conservation Authorities—the boundaries of which are defined by watersheds—that are responsible for floodplain management, natural-resource conservation, and parks and recreation services. Their boards comprise delegates from constituent municipalities.

Although a large portion of the country's territory is unincorporated (that is, not under the jurisdiction of a general-purpose municipal government), only 3.1 per cent of Canadians live in such places.[16] Virtually all residents of most provinces live within municipalities. The exceptions are the provinces of New Brunswick and Prince Edward Island, where 30 per cent do not, and Newfoundland and Labrador and British Columbia, where 10 per cent do not. The latter two provinces have vast hinterlands with historically rooted patterns of sparse settlement in remote areas. Services to residents of unincorporated areas are provided either directly by the provincial government, often through regional or local administrative entities, or by freestanding local special-purpose bodies. British Columbia, for example, maintains 196 task-specific 'improvement districts' with directly elected boards of trustees that may be responsible for diking, irrigation, fire protection, and so on.[17]

[15] Jack Lucas, *Hidden in Plain View: Local Agencies, Boards, and Commissions in Canada. IMFG Perspectives 4* (Institute on Municipal Finance and Governance, Munk School of Global Affairs, University of Toronto, 2013).

[16] Taylor and Bradford (n 7) 36.

[17] British Columbia, 'Improvement Districts', www2.gov.bc.ca/gov/content/governments/local-governments/improvement-districts-governance-bodies/improvement-districts (accessed 5 July 2021).

2.3 Indigenous Governance

Although they are 'local' in the sense of being delineated (mostly) by sub-provincial territories, Indigenous authorities are not considered municipalities or local governments. By virtue of their historical nation-to-nation relationship with the British Crown (and de facto with the federal government), indigenous governments of various types and constitutional status lie outside provincial jurisdiction. Their relationship with nearby municipalities, including through formal agreements, is the subject of increasing scholarly attention.[18]

3 Constitutional Recognition of Local Government

Canadian municipalities have no independent constitutional status. Under the division of powers in Canada's 1867 Constitution, local government is an enumerated responsibility of provincial government. Provincial governments therefore have plenary authority over the existence, institutional structures, boundaries, responsibilities, and financing of municipalities. All authority exercised by municipalities is delegated by the provinces through legislation and regulation.

4 Governance Role of Local Government

The provincial legal architecture that constitutes municipal government is straightforward. Building on the above-mentioned Baldwin Act, most provinces have adopted one or more general statutes that prescribe municipalities' institutional structure and authority, typically establishing a hierarchy whereby more populous municipalities are permitted areas of jurisdiction not granted to smaller ones. The acts confer a general grant of authority supplemented by a list of enumerated areas of jurisdiction. Some general municipal acts are wide-ranging, including land-use planning authority, the conduct and financing of municipal elections, and so on, while others hive them off into separate pieces of general legislation.

[18] Christopher Alcantara and Jen Nelles, *A Quiet Evolution: The Emergence of Indigenous-Local Intergovernmental Partnerships in Canada* (University of Toronto Press, 2016).

Some provinces have adopted parallel general acts governing different categories of municipality, typically along urban/rural lines.

As a result of the general statutory approach, there is a high degree of symmetry in the powers afforded to municipalities within each province. This is supplemented by the routine passage of special legislation pertaining to individual municipalities and addressing idiosyncratic circumstances not covered by general legislation.

Several of the core municipalities of large metropolitan areas are not governed by general municipal legislation, but instead derive their existence and authority from a separate act, sometimes referred to as a charter. The City of Vancouver, for example, has been governed by its own legislation since its initial incorporation in 1886. More recently, Winnipeg and Toronto have become legally detached from the general municipal framework, operating under their own legislation.

Other provinces have taken an alternative approach of 'layering' additional legal frameworks on top of the general system. Montréal and the Alberta cities of Calgary and Edmonton, for example, are governed by the same municipal laws as other municipalities in their provinces, but also have supplementary powers conferred by special legislation. The real-world impacts of these separate arrangements for large municipalities remain unclear.[19] Revenue-raising powers, for example, tend to be similar for all municipalities in a province regardless of special legislation.[20]

Over the past 25 years, almost every province has overhauled its municipal legislation to shift from a model of 'express powers' to a more flexible 'spheres of jurisdiction' one and established a permissive grant of authority enabling municipal councils to act for the well-being of their residents. Most municipalities now enjoy 'natural person powers', which enable them to enter independently into contracts with individuals and corporations and establish corporate bodies. Recent jurisprudence has interpreted these powers generously.[21]

[19] Andrew Sancton, 'The False Panacea of City Charters? A Political Perspective on the Case of Toronto' (2016) 9(3) *SPP Research Papers*; Harry Kitchen, 'Is "Charter-City Status" a Solution for Financing City Services in Canada—or Is That a Myth?' (2016) 9(2) *SPP Research Papers*.

[20] One exception is the City of Toronto Act, which permits the city to levy additional taxes but not the major taxes such as income, sales, or fuel taxes.

[21] Taylor and Dobson (n 12) 12.

In toto, local governments across Canada spent more than CAD 108 billion in 2019, or almost CAD 2900 per capita on average. Expenditures are made on a wide range of services, including water, sewers, and waste management; transport (roads and transit); fire and police protection; health; social services and housing; recreation and culture; and planning and development (see Table 1 for the distribution of expenditures by function).[22]

Although the largest expenditure category, on average, is transportation, there are notable differences among the provinces in terms of the distribution of municipal expenditures. In Ontario, for example, local governments spend, on average, one-quarter of their budgets on social services, whereas municipalities in most other provinces spend little or nothing because social services are a provincial responsibility. Ontario municipalities also stand out, along with Nova Scotia's, because they spend more on health than municipalities in other provinces. Québec and

Table 1 Distribution of municipal expenditures in Canada (2019)

Municipal expenditure	*Percentage of total municipal expenditures*
Transport	18.1
Social protection	13.3
General public services	13.2
Recreation and culture	11.1
Police services	11.0
Fire protection services	5.8
Water supply	4.9
Wastewater management	4.6
Waste management	4.1
Housing and community development	3.3
Health	2.9
Public debt transactions	2.8
Other expenditures	4.9
Total expenditures	100.00

Source Calculated from Statistics Canada, 'Table 10-10-0024-01, Canadian Classification of Functions of Government, by General Government Component' (Government of Canada, 2019)
Note Municipal expenditures include expenditures of municipalities plus other local public institutions, not including school boards.

[22] We display 2019 fiscal data to avoid biases introduced by the extraordinary governmental response to the COVID-19 pandemic.

Alberta municipalities spend more than 25 per cent of their total expenditures on transportation, which is considerably more than the average of 18 per cent for the country. British Columbia local governments spend more of their budget on recreation and culture than those in other provinces.

While it is difficult to generalise and available data are not recent,[23] there seems to be a greater tendency to perform functions 'in-house' than by contract with private entities in Canada compared to other countries. Although most functions are performed by local government employees, it is fairly common for municipalities to contract out solid waste collection, for example, and some have engaged in public–private partnerships for water and wastewater treatment systems.[24]

In 2012, municipal and local government enterprise employees totalled 680,000 of the 3.6 million public sector employees (19 per cent). School boards employed an additional 682,000.[25] While many regulated professions are represented in municipal employment, including planners, lawyers, engineers, nurses, accountants, police officers, firefighters, and social workers, there is no civil service system. Local governments are free to define job descriptions, organise their internal administrative structures, and hire and fire with little limitation. Municipal employees are generally unionised and enjoy collective bargaining rights.

The executive and legislative body of the municipality is the council. While most heads of council in larger urban municipalities serve on a full-time basis, councillors, even in larger municipalities, often serve part-time and hold outside employment. Council's role is to legislate and give policy direction to staff, who execute its decisions under its supervision. In most municipalities, the administration is directed by a small leadership team with functional responsibilities and led by a chief administrative officer or city manager. It is common for the head of council to work closely with senior administrators. In some provinces, certain municipal positions, such as the clerk, treasurer, and municipal engineer, are required by statute.

[23] Robert Hebdon and Patrice Jalette, 'The Restructuring of Municipal Services: A Canada–United States Comparison' (2008) 26 *Environment and Planning C: Government and Policy* 144–158.

[24] Andrew Sancton, *Canadian Local Government: An Urban Perspective* (3rd ed) (Oxford University Press, 2021) 261–266.

[25] Statistics Canada, 'Table 10-10-0025-01. Public Sector Employment, Wages and Salaries, Seasonally Unadjusted and Adjusted' (Government of Canada, 2012).

Local elected officials are held accountable through elections, which are held every four years independently of provincial and federal elections. While in some provinces non-resident property owners are entitled to vote in local elections, the municipal franchise is in effect identical to that at the provincial or federal level: Canadian citizens aged 18 or over. Councillors are today elected from single-member wards in most larger municipalities. At-large election—that is, by the total municipal electorate rather than by ward—is more common in smaller municipalities, with the exception of British Columbia where it is the norm.

The head of council (called the mayor in cities and towns and the reeve in rural townships) is directly elected at-large except in many municipalities in Newfoundland and Labrador. In Ontario and Québec, upper-tier municipal councils comprise delegates of member lower-tier municipalities' councils, and the head of council (called the warden in counties and the chair in Ontario's regional municipalities) is generally selected by council members, although some are directly elected. In all cases, heads of council sit as voting members of the council and have few powers beyond those of other councillors, including the ability to declare emergencies. They have no veto or separate role in budgeting. Outside British Columbia, they have no authority to hire and fire staff. The principal roles of the head of council are to represent the municipality, initiate proposals, and broker consensus among the councillors.

Local government is far more accessible to the public than other levels. By legal requirement, all council deliberations are open to the public except for *in camera* meetings held under prescribed circumstances. Residents are entitled to give deputations to council and council committees. By law or custom, many policy development processes entail extensive public consultation and open meetings.

5 Financing Local Government

Canadian local governments have no constitutional revenue-raising powers: they are limited to the taxing authority that is delegated to them by provincial governments.[26] Provincial governments determine

[26] Lisa Philipps, Enid Slack, Lindsay Tedds, and Heather Evans, 'Introduction', in Lisa Philipps, Enid Slack, Lindsay Tedds, and Heather Evans (eds) *Funding the Canadian City* (Canadian Tax Foundation and Institute on Municipal Finance and Governance, 2019) 1–20.

what responsibilities are assigned to local governments, which revenues they can raise, and how much they can borrow. Municipalities are not permitted to budget for an operating deficit and if they do, they are required to cover it in the next fiscal year.

Table 2 provides a breakdown of Canadian municipalities' main revenue sources. Overall, 80 per cent of revenues are raised locally, with the remainder coming from federal and provincial transfers. On average across the country, the property tax accounts for more than 46 per cent of municipal revenues and user fees, for almost 23 per cent.

As with expenditures, there is wide variation in revenue sources. User fees represent a somewhat smaller percentage of municipal revenues in Québec, for example, where property taxes (not user fees) are largely used to pay for water. Provincial and federal transfers range from less than 9 per cent of revenues in British Columbia municipalities to a high of 47 per cent in Prince Edward Island. Transfers account for more than 20 per cent of total municipal revenues in Ontario, where social services are cost-shared with the provincial government. Lot levies (also known as development charges), which are used to pay for growth-related capital costs associated with new development, are significant in Ontario, Saskatchewan, Alberta, and British Columbia. Land transfer taxes (included in property-related taxes) are levied by municipalities in

Table 2 Distribution of municipal revenues in Canada (2019)

Municipal revenue source	*Percentage of total municipal revenues*
Recurrent property tax	46.0
Other taxes on property	1.5
Taxes on goods and services	0.7
Lot levies and motor vehicle taxes*	7.2
User fees	22.7
Other revenue	3.3
Total own-source revenue	81.4
Intergovernmental transfers	18.6
Total revenue	100.0

Source Calculated from Statistics Canada, 'Table 10-10-0020-01, Canadian Government Finance Statistics for Municipalities and Other Local Public Administrations (X 1,000,000)' (Government of Canada, 2019)

* The actual category for lot levies and motor vehicle taxes is 'tax on use of goods and permission to use goods or perform activities'

Québec and Nova Scotia, and by the City of Toronto. Some local governments have additional taxing powers, such as accommodation and vehicle taxes, but these represent a relatively small proportion of revenues.[27]

Although it has been suggested that local governments suffer from a vertical fiscal imbalance in Canada, existing data do not permit a calculation of its extent. With respect to taxation, municipal governments raised only 10 per cent of all taxes collected in 2020; the federal government accounted for 45 per cent, and provincial governments, the rest.[28] In terms of expenditures, the federal government accounts for only 29 per cent of total government expenditures, and provinces and municipalities combined account for 71 per cent, but we do not know the distribution between provincial and local governments.[29] Local governments own about 60 per cent of public infrastructure.[30] These numbers point to vertical fiscal imbalance, but better data are needed to confirm it.

5.1 Property Taxes

The single-largest municipal revenue source is the property tax. Property taxes are governed by provincial legislation, so their application differs across provinces.[31] In some provinces, the assessment of property values for tax purposes is determined by the province or a provincial agency;

[27] For a breakdown of revenues for the largest city in each province, see Jean-Philippe Meloche and François Vaillancourt 'Municipal Financing Opportunities in Canada: How Do Cities Use Their Fiscal Space?' (2021) 52 *IMFG Papers on Municipal Finance and Governance*.

[28] Statistics Canada, 'Table 10-10-0015-01, Statement of Government Operations and Balance Sheet, Government Finance Statistics (X 1,000,000)' (Government of Canada, 2020), https://doi.org/10.25318/1010001501-eng (accessed 5 July 2021).

[29] Thomas Hachard, 'It Takes Three: Making Space for Cities in Canadian Federalism' (2020) 31 *IMFG Perspectives*. Statistics Canada provides consolidated provincial-local expenditure and revenue data but does not separate provincial governments from local governments.

[30] Infrastructure Canada, 'Investing in Canada: Canada's Long-Term Infrastructure Plan' (Government of Canada, 2018), www.infrastructure.gc.ca/site/alt-format/pdf/plan/icp-pic/IC-InvestingInCanadaPlan-ENG.pdf (accessed 5 July 2021).

[31] For a detailed account of the characteristics of the property tax in different provinces and an examination of the broader issues around property taxation in Canada, see Harry Kitchen, Enid Slack, and Tomas Hachard, *Property Taxes in Canada: Current Issues and Future Prospects* (Institute on Municipal Finance and Governance, Munk School of Global Affairs, University of Toronto, 2019); Harry Kitchen and Almos Tassonyi, 'Municipal

in others, it is determined locally. Reassessments may be done annually (as in British Columbia) or every few years. In terms of tax rates, in some provinces (Alberta, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador), municipalities are free to set their own tax rates without provincial interference. In others, the provincial government directly controls or limits tax rates on some property classes. Residents and businesses benefit from different exemptions, tax incentives, tax breaks, and other schemes to address the supposedly regressive and volatile nature of the property tax, depending on the province. All but two provinces levy a provincial property tax, in some cases to pay for education.

Some have argued that property taxes are sufficient to cover the costs of municipal services,[32] but others have suggested that local governments in Canada would benefit from a broader mix of taxes.[33] In particular, a mix of taxes would give local governments more flexibility to respond to local conditions such as changes in the economy, demographic changes, and changes in expenditure needs. The two taxes that have the potential to bring in the most revenues for local governments are income and sales taxes, but neither of these taxes is permitted at the local level anywhere in Canada.[34]

Available data do not enable us to determine what proportion of transfers to local governments is federal versus provincial. Information from selected provinces, however, indicates that the bulk of transfers tend to be from the provincial government. The vast majority of provincial transfers are conditional, but most provinces also give unconditional grants to local governments in the form of direct grants, equalisation, or revenue-sharing.[35]

Taxes and User Fees', in H Kerr, K McKenzie, and Jack Mintz (eds) *Tax Policy in Canada* (Canadian Tax Foundation, 2012).

[32] Bev Dahlby and Melville McMillan, 'What Is the Role of Property and Property-Related Taxes? An Assessment of Municipal Property Taxes, Land Transfer Taxes, and Tax Increment Financing', in Philipps, Slack, Tedds and Evans (eds) (n 26) 45–73.

[33] Harry Kitchen and Enid Slack, 'More Tax Sources for Canada's Largest Cities: Why, What, and How?' (2016) 27 *IMFG Papers on Municipal Finance and Governance*.

[34] A comparison of Toronto and seven other international cities shows that, with the exception of London, UK, the major cities have more tax options than Toronto. See Enid Slack, *How Much Local Fiscal Autonomy Do Cities Have? A Comparison of Eight Cities Around the World* (Institute on Municipal Finance and Governance, University of Toronto, 2017).

[35] Richard Bird and Enid Slack, 'Provincial-Local Equalization in Canada: Time for a Change?' (2021) 57 *IMFG Papers on Municipal Finance and Governance*.

Direct grants are provided in six provinces and range from flat amounts and per capita grants to partial rebates of the provincial portion of the Harmonised Sales Tax, a federally administered value-added tax. Six provinces provide equalisation grants to municipalities. In Nova Scotia and New Brunswick, the formula explicitly recognises both expenditure need and fiscal capacity; the other provinces take account only of fiscal capacity, although population size is sometimes used as a proxy for expenditure need. Three provinces have provincial-local revenue-sharing systems. British Columbia shares traffic fine revenue and provincial gaming revenues; Saskatchewan shares provincial sales tax revenues on a per capita basis; and Québec shares natural-resources royalty revenue with municipalities that have mining, oil, and gas production sites and, since 2021, provides a share of the difference between the value of one percentage point of the Québec sales tax in the most recent year and the value of one percentage point for the reference year 2017–2018.[36]

5.2 Federal Transfers

Although the federal government has no constitutional authority over local government, it can give money to cities and has been doing so increasingly. Since the early 2000s, the federal government has established conditional grant programmes that channel funds, sometimes directly and sometimes through the provinces or municipal associations, to municipalities and other local partners for housing, transit, economic development, climate change adaptation projects, and indigenous services. The largest of these programmes, the post-2015 'Investing in Canada' plan, which is to disburse CAD 180 billion over a decade, is directed towards infrastructure broadly defined.[37] In parallel, the federal government is funding affordable housing through a 10-year, CAD 40-billion National Housing Strategy, and participates in 'local immigration partnerships' that bring all orders of government and local service agencies together to assist in

[36] Gouvernement du Québec. 2022. Partenariat 2020–2024: Pour des municipalités et des regions encore plus fortes. Québec: Affairs municipals et habitation. https://www.mamh.gouv.qc.ca/fileadmin/publications/organisation_municipale/accord_partenariat/Partenariat2020-2024_Entente.pdf (accessed 24 February 2022).

[37] Neil Bradford, 'A National Urban Policy for Canada? The Implicit Federal Agenda', *Canadian Regional Development Policy: Flexible Governance and Adaptive Implementation* (2018) 9–10.

immigrant integration. The federal government also engages with municipalities in areas under its exclusive jurisdiction. For example, Urban Programming for Indigenous Peoples channels federal funds to local partnership organisations that set priorities and coordinate services.

In addition to these grants, the federal government provides block transfers for municipal infrastructure.[38] The Canada Community-Building Fund (formerly known as the Gas Tax Transfer) provides permanent funding for local infrastructure investments.[39] Funds are allocated on a per capita basis, with payments flowing to designated signatories—provinces, territories, municipal associations, and the City of Toronto. Conditions are modest: funds must be spent on municipal infrastructure, provinces must not claw back their own funding, and municipalities must demonstrate progress towards federally defined sustainability objectives.

6 Supervising Local Government

All provinces have established cabinet-level departments that monitor municipal activities and finances and provide policy support. Most have established administrative tribunals that rule on appeals of municipal land-use decisions. In rare circumstances, provincial governments have dismissed locally elected councils and installed administrators to resolve problems of fiscal insolvency or political dysfunction. Compared to American states, provincial governments are highly involved in municipal affairs. Provincial supervision of municipal finances, incorporation, and boundary change, among other things, has been, and may continue to be, an effective means of adaptation to changing circumstances, although it is sometimes arbitrary or politically motivated, or perceived as such.

6.1 Municipal Borrowing

As provinces are the ultimate guarantors of municipal debt, they developed an early interest in supervising municipal solvency. During the Great

[38] For a description of programmes, see www.infrastructure.gc.ca/prog/programs-infc-summary-eng.html (accessed 5 July 2021).

[39] Erika Adams and Alan Maslove, 'The Federal Gas Tax Cession: From Advocacy Efforts to Thirteen Signed Agreements', in Caroline Andrew and Katharine Graham (eds) *Canada in Cities: The Politics and Policy of Federal-Local Governance* (McGill-Queen's University Press, 2014) 102–130.

Depression, provincial governments dismissed the councils of insolvent municipalities and administered them directly. As a result of this experience, all provinces set statutory limits on how much municipalities can borrow.[40] In most provinces, a formula-based approach is used; in others, restrictions occur through provincial approval. For example, in Newfoundland and Labrador and Québec, ministerial approval is required for borrowing; in Saskatchewan, borrowing restrictions are established by the Saskatchewan Municipal Board upon application.

Formulas vary across provinces.[41] Generally, provinces impose limits on debt servicing costs and/or the amount of debt. For example, debt service costs cannot exceed 10 per cent of own-source revenues in Nova Scotia, 20 per cent of annual revenue in Manitoba, 25 per cent of own-source revenues in British Columbia and Ontario (with the exception of the City of Toronto which faces no provincial borrowing limits), and 25 per cent or 35 per cent of revenues in Alberta, depending on the municipality.[42] Limits on the amount of debt are 2 per cent of the assessed value of property in New Brunswick, 7 per cent of municipal assessment in Manitoba, and 1.5 or two times the amount of local revenue excluding capital transfers depending on the municipality in Alberta. In British Columbia, the aggregate debt of the City of Vancouver cannot exceed 20 per cent of assessed value based on average assessment for the previous two years. Its own policy limit is 10 per cent of operating expenditures, however.

To encourage municipalities to borrow more, several provinces have lowered the cost of borrowing through pooling of municipal debt. Municipal finance authorities have been established in most provinces. Examples include the Municipal Finance Authority of British Columbia, the Municipal Capital Borrowing Board in New Brunswick, Nova Scotia Municipal Finance Corporation, and the Newfoundland and Labrador Municipal Financing Corporation. In Ontario, Infrastructure Ontario,

[40] Richard Bird and Almos Tassonyi, 'Constraining Subnational Fiscal Behavior in Canada: Different Approaches, Similar Results?', in Jonathan Rodden, Gunnar Edkeland, and Jennie Litvack (eds) *Fiscal Decentralisation and the Hard Budget Constraint* (MIT Press, 2003) 85–133.

[41] Enid Slack and Almos Tassonyi, 'Financing Urban Infrastructure in Canada: Overview, Trends, and Issues', in Richard Bird and Enid Slack *Financing Infrastructure: Who Should Pay?* (McGill-Queen's University Press, 2017) 21–53.

[42] The City of Toronto imposes its own limit of 10% of property tax revenues.

which is a crown corporation with a mandate to manage large scale infrastructure projects, operates similarly to an infrastructure bank. In some provinces, such as Nova Scotia and New Brunswick, all municipalities must borrow through the provincial authority. In other provinces, larger cities are not required to borrow through the provincial authority. For example, Winnipeg, Regina, Saskatoon, Edmonton, Calgary, and Vancouver issue their own debt rather than going through the provincial agencies.

Provinces also supervise incorporation and boundary change. Ontario transferred this oversight function to an appointed board early in the twentieth century, and most other provinces followed its example. Oversight of incorporation and boundary change came to be exercised by ministries of municipal affairs in most provinces after the Second World War.

Ontario's imposition of a metropolitan amalgamation on the bankrupt City of Windsor and its neighbours in 1930 signalled a shift from passive to active supervision of incorporation and boundary change.[43] Several provinces have restructured local government since the Second World War.[44] The creation of the two-tier Metropolitan Toronto government in 1954 set the template for the subsequent reconstruction of county governments in growing urban areas in the 1960s and 1970s across Ontario and Québec, which later amalgamated many of these units into single-tier municipalities in the 1990s and 2000s. New Brunswick abolished its counties in 1967, taking over service delivery in unincorporated areas directly. Ontario, Manitoba, New Brunswick, and Nova Scotia have at various times promoted or imposed the merger of mostly small and rural municipalities into larger units. The result of these actions has been an overall reduction in the number of municipalities across the country even as the national population has grown.

[43] Larry Kulisek and Trevor Price, 'Ontario Municipal Policy Affecting Local Autonomy: A Case Study Involving Windsor and Toronto' (1988) 6(3) *Urban History Review* 255–270.

[44] Joseph Garcea and Edward LeSage, *Municipal Reform in Canada: Reconfiguration, Re-Empowerment, and Rebalancing* (Oxford University Press, 2005).

7 Intergovernmental Relations

While the federal and provincial governments possess the fiscal resources to redistribute wealth across space and the expertise and technical knowledge to craft sophisticated policies, local governments own and operate most urban infrastructure, regulate land use, and deliver a wide range of local services. Many aspects of Canadian local governance are therefore multilevel in nature, although this intergovernmental division of labour is not always explicit. Many federal and provincial policies and programmes that have disproportionate impacts in cities or rural areas are framed in general terms and are not conventionally thought of as 'urban' or 'rural' policies.[45] By virtue of their constitutional jurisdiction over municipal affairs, provincial governments lead most explicit policy activities directed towards localities. As a result, municipalities' primary intergovernmental relationship is with the provincial government, although federal engagement with local actors is increasing in a variety of policy areas.

Provinces are involved in almost every aspect of municipal service delivery through cost-sharing, policy-making, regulation, or other forms of entanglement. In Ontario, for example, the cost-sharing arrangements between the provincial government and municipalities have been described as a 'tangled web' of overlapping obligations.[46] While some authorised municipal functions are exercised at their own initiative and funded by own-source revenues, others are mandated by the provincial government. Provinces contribute to municipal budgets through unconditional and conditional grants, the latter influencing local priorities. As a result, municipalities play a dual role: in some policy domains, they act as agents of provincial governments, while in others they exercise considerable discretion.

Municipalities interact with provincial departments on a wide range of administrative issues. Planning and fiscal matters are overseen by ministries of municipal affairs; however, local governments frequently also interact with departments responsible for housing, environmental protection, natural resources, agriculture, and transportation, among others.

[45] Bradford (n 37).

[46] André Coté and Michael Fenn, 'Provincial-Municipal Relations in Ontario: Approaching an Inflection Point' (Institute on Municipal Finance and Governance, University of Toronto, 2014).

These interactions are typically between administrators rather than elected officials. Mayors may interact with provincial legislators or ministers to raise issues of political importance to them, or to unblock stalled administrative processes. The provincial–municipal relationship is essentially hierarchical. Despite occasional political controversy, however, the general tenor of provincial-local relations is cooperative in most provinces.

Although it may be beneficial to disentangle provincial and municipal involvement by assigning responsibility to one government or the other, some services may benefit from greater coordination and cooperation among orders of government.[47] The question of who does what has been debated from time to time in Canada, with the pendulum swinging between entanglement and disentanglement in the full range of policy areas.

Municipalities also engage with provincial governments collectively through municipal associations.[48] These associations employ professional staff who collect information from and provide support to members, and lobby on behalf of their members for changes to provincial laws, regulations, and fiscal arrangements. Premiers and ministers often speak at their annual meetings, sometimes using the occasion to announce policy changes. Provinces also consult with associations as representatives of their sector. In some provinces there is a single association, while in others separate organisations represent rural and urban municipalities or French and English municipalities. There is a perennial tension within these organisations between large and small municipalities that have quite different needs. Montréal and Toronto have at times chosen not to participate in province-wide associations, preferring instead to interact with provincial governments bilaterally, or in concert with other large municipalities.

As the federal government has no constitutional responsibility for local government, and provincial governments jealously guard their jurisdiction, no enduring 'municipal affairs' ministry, department, or agency has

[47] Enid Slack 'Cities in Canadian Fiscal Federalism: The Forgotten Partner', in *Fiscal Federalism Conference* (University of Ottawa, 2021).

[48] Alison Shott, 'Municipal Associations, Membership Composition, and Interest Representation in Local-Provincial Relations' (Dept. of Political Science, University of Western Ontario, 2015).

emerged at the national level.[49] Rather, municipalities interact with functional departments charged with administering specific programmes to which they are parties. The Federation of Canadian Municipalities (FCM) advocates on behalf of its 2000 member municipalities.

There is precedent for agreements between individual municipalities and the federal government, sometimes with provincial participation, but these are exceptional events. For example, the federal government's extensive holdings of centrally located derelict former railway and port lands have led to intense and sustained intergovernmental interaction directed towards urban redevelopment in Vancouver, Toronto, and Montréal.[50] Federal–municipal urban development agreements with Vancouver and Winnipeg targeting specific localised social problems were neglected or not renewed in the 2000s.[51]

The federal infrastructure and housing grant programmes mentioned above are generally implemented through bilateral agreements with provinces, which delegate operational decision-making authority to recipient municipalities. These new arrangements are notable for their higher federal contributions than previously and the greater autonomy afforded to local governments within federal guidelines and reporting requirements. They are also notable for their inclusion of local non-governmental actors in decision-making and service delivery. In this sense, they represent forays into multilevel governance rather than traditional intergovernmental relations.

[49] Zachary Spicer, 'The Rise and Fall of the Ministry of State for Urban Affairs: A Re-Evaluation' (2011) 5(2) *Canadian Political Science Review* 117–126; Neil Bradford *Whither the Federal Urban Agenda? A New Deal in Transition* (Canadian Policy Research Networks, 2007). There have been attempts in the past to establish federal ministries to deal with local governments, such as the Ministry of State for Urban Affairs in the 1970s and the Ministry of State for Infrastructure and Communities in 2004, but both of these were short-lived.

[50] Gabriel Eidelman, 'Failure When Fragmented: Public Land Ownership and Waterfront Redevelopment in Chicago, Vancouver, and Toronto' (2016) 54(4) *Urban Affairs Review* 697–731; Robert Young and MC Richa, *Federal Property Policy in Canadian Municipalities* (McGill-Queen's University Press, 2013).

[51] Neil Bradford, 'Policy in Place: Revisiting Canada's Tri-Level Agreements' (2020) 50 *IMFG Papers on Municipal Finance and Governance*.

8 Political Culture of Local Governance

There is a long history of understanding local governments as a form of public enterprise whose shareholders are the property taxpayers to whom they provide services. This perception of local government as essentially apolitical has been reinforced by the enduring local reliance on the property tax and the relatively recent extension of the municipal electoral franchise to non-property-owning citizens. Following the nineteenth-century British model, the local franchise was tied to property ownership and remained so in most provinces until well after the Second World War.

This does not mean there is no conflict in local politics. Decisions regarding land use, infrastructure projects, funding and service levels, and the closing of facilities are often the subject of fierce debate, especially when they affect residents' properties and neighbourhoods. Neighbourhood associations and issue-based groups are common in larger cities and play an important role in shaping policy debates.[52] Public meetings on high-profile issues are well attended, and the media provide significant 'city hall' coverage in the larger cities. Citywide or regional public–private or civic networks are increasingly influential agenda-setting actors.

Participation in municipal elections, which are decoupled from those at other levels, is relatively low. Recent federal and provincial turnout rates have been between 60 and 80 per cent. Average turnout rates over the past decade are 47 per cent in Toronto, 41 per cent in Montréal, and 39 per cent in Vancouver. A recent analysis of the 100 largest municipalities in Canada found an average turnout rate of 36 per cent over the last three election cycles.[53]

While federal and provincial parties sometimes lend their electoral machinery to local candidates, local parties are not linked to provincial or federal parties. Local politics is not viewed as an alternative venue of federal or provincial partisan conflict. Municipal elections are officially non-partisan everywhere except Québec and British Columbia, where provincial law enables candidates to campaign or raise funds collectively

[52] Alexandra Flynn, 'Filling the Gaps: The Role of Business Improvement Areas and Neighbourhood Associations in the City of Toronto' (2019) 45 *IMFG Papers on Municipal Finance and Governance*.

[53] Sandra Breaux, Jérôme Couture, and Royce Koop, 'Turnout in Local Elections: Evidence from Canadian Cities, 2004–2014' (2017) 50(3) *Canadian Journal of Political Science* 699–722.

as parties or electoral organisations. With some exceptions, these organisations are often short-lived. Perhaps the most enduring local party is Vancouver's ironically named Non-Partisan Association, founded in 1937.[54] In Québec, local parties are generally electoral vehicles for mayoral candidates and lose cohesion between elections and disappear when particular personalities leave the scene. While mayors and councillors of nearby municipalities may share political affinities, there is no local party integration across municipal boundaries in British Columbia or Québec metropolitan areas.

9 Covid-19's Impact on the Role of Local Government

Local governments have played an essential coordinating and delivery role in the response to the Covid-19 pandemic, generating profound expenditure pressures. They have had to enforce physical distancing measures, impose passenger limits on transit vehicles, find additional spaces for the homeless population—in part by repurposing municipal facilities or leasing private hotels—and address IT issues so that employees could work from home. At the same time, they have continued providing solid waste, protective, and other services. Additional costs have been offset somewhat by closing municipal facilities (such as libraries and recreation centres), reducing travel budgets, and so on.

The real hit to local governments, however, has been to revenues. Many municipalities have allowed taxpayers to defer property tax payments for 60 or 90 days without penalty or interest payments. User fee revenues from transit have declined significantly, especially in large cities where ridership fell by as much as 90 per cent. Parking, recreational programmes, and other municipal service revenues also declined. As noted, local governments are not permitted to budget for operating deficits. Many ended 2020 with large deficits due to unanticipated revenue loss. In response, they have tapped contingency reserves, deferred capital investment, laid off employees, and raised property taxes. The federal government has transferred billions in assistance to provinces to help municipalities to cover deficits. Specific funds were also allocated,

[54] Andrea Smith, 'The CCF, NPA, and Civic Change: Provincial Forces Behind Vancouver Politics 1930–1940' (1982) 53 *BC Studies* 45–65.

on a matching basis with the provinces, to offset transit system revenue losses.

Covid-19 has brought to light Canada's vertical fiscal imbalance. Although most of the pandemic's impact has been felt by provinces and municipalities, the federal government has the greatest fiscal and borrowing capacity. Some have called for a clarification of the intergovernmental division of responsibilities—who does what and how to pay for it.[55] On a positive note, the pandemic has resulted in unprecedented collaboration among all three orders of government, regardless of political affiliation. Nevertheless, municipalities remain outside the traditional machinery of federal–provincial relations.[56]

10 Emerging Issues and Trends

Local autonomy is on the agenda. As Canada has become more urbanised and an increasing share of the population resides in large, socially diverse, and economically and culturally vibrant metropolitan areas, big-city politicians and activists have demanded an independent constitutional status for municipalities. The constitutional entrenchment of a new order of government is highly unlikely for a variety of reasons, including the high bar set by the amending formula. Some have proposed entrenching an independent status for municipalities in provincial constitutions, but the mechanisms to do so are debatable.[57]

The tension between provincial constitutional supremacy and local desires for greater autonomy will continue, occasionally inflamed by unilateral provincial actions in the municipal sphere that local leaders and citizens believe to be arbitrary and intrusive. While some argue that constitutional status for Canadian municipalities and protection from provincial governments would improve local governance, it should not be forgotten that some fiercely resisted provincial interventions, such as

[55] Enid Slack and Tomas Hachard, 'Now, with a Deal Made to Help Cities, the Work Begins' (2020) *Policy Options*. https://policyoptions.irpp.org/magazines/august-2020/now-with-a-deal-made-to-help-cities-the-work-begins/.

[56] Ibid.

[57] Provincial constitutions are understood to comprise the portions of the federal constitution that pertain to them (which can be amended through bilateral agreement), as well as British colonial legislation, treaties, and unwritten conventions that bear on their creation and union with Canada.

imposed systems of metropolitan coordination and rural land protection, have yielded positive long-term benefits. Provincial supervision of debt financing and the balanced budget requirement mean that there cannot be any visible fiscal crisis at the local level. Still, provincial superintendence has likely also inhibited local policy innovation.

A second issue on the agenda is municipal fiscal health and the infrastructure deficit. Estimating the fiscal health of municipalities in Canada is difficult because of a lack of comparable data. Nevertheless, some have suggested that, on average, Canadian municipalities are doing reasonably well financially.[58] An analysis of the fiscal health of the City of Toronto before the pandemic, for example, suggested that it was sound by most measures—expenditures per capita adjusted for inflation had not increased much over the last decade, property taxes per capita adjusted for inflation have been declining, and debt is manageable for a city of its size.[59] Other major cities exhibit the same trend.[60]

However, municipalities' apparent fiscal health may not reflect their overall health, which has less to do with balanced budgets (which is legally required) than with the quantity and quality of services they provide and the state of their infrastructure. If infrastructure is falling apart, the overall health of the city is in trouble even if the operating budget is balanced. Canadian cities contend that they have insufficient resources to maintain their infrastructure. Perhaps the most cited estimate of the infrastructure deficit is CAD 123 billion, by the Federation of Canadian Municipalities in 2007. For various reasons, this number is questionable and, at the very

[58] Richard Bird and Enid Slack, *Is Your City Healthy? Measuring Urban Fiscal Health* (Institute on Municipal Finance and Governance and Institute of Public Administration of Canada, 2015). Others have argued that local governments are in better fiscal shape than most provinces. See William Robson and Miles Wu, 'Puzzling Plans and Surprise Surpluses: Canada's Cities Need More Transparent Budgets' (2021) *CD Howe Institute Commentary* 592. They argue that many large municipalities run an aggregate budget surplus. But this surplus, derived from accrual accounting, largely comprises physical assets that cannot easily be sold (for example, transit infrastructure) and mandated specific-purpose reserve funds that cannot be used to offset operating deficits. See Financial Accountability Office of Ontario, *Ontario Municipal Finances: An Overview of Municipal Budgets and an Estimate of the Financial Impact of the Covid-19 Pandemic* (Queen's Printer for Ontario, 2020).

[59] Enid Slack and André Coté, 'Is Toronto Fiscally Healthy? A Check-up on the City's Finances' (2014) 7 *IMFG Perspectives;* Slack and Coté, 'Is Toronto Fiscally Healthy? A Check-up on the City's Finances' (2018) *IMFG Perspectives*.

[60] Bird and Slack (n 35) 58.

least, dated.[61] Nevertheless, there is consensus that greater investment in major infrastructure is needed, especially transit and affordable housing.

The federal government is likely to be the key player in addressing the infrastructure deficit. One way to address the fiscal imbalance is for the federal government to increase its financial commitments under the Community-Building Fund and other transfer programmes. In the longer term, the imbalance calls for a clarification of expenditure responsibilities among the orders of government and then a determination of how to pay for those expenditures. The result of this exercise may mean uploading some local expenditures to the provincial or federal governments, for example, or increasing the taxing authority of local governments.

[61] See Slack and Tassonyi (n 41) 41.

CHAPTER 7

Ethiopia

Zemelak Ayitenew Ayele

Local government is the oldest and most important political institution in Ethiopia and one that has direct relevance to the conduct of people's everyday lives. Despite this simple fact, local government does not enjoy the institutional place and status in government that its importance warrants. It has no explicit constitutional recognition and consequently is not endowed with original functions, powers, or sources of finance. It is barely considered in any of the political and legislative reforms taking place in the country. Any democratic and social reform that does take place is, in fact, unlikely to succeed without properly empowering local government and enhancing its democratic mandate. Positive political change 'requires enhancing the political significance and the democratic pedigree of local governments'. The institutional mechanism for achieving this is 'the entrenchment in the national constitution of local government

Z. A. Ayele (✉)
Centre for Federal and Governance Studies, Addis Ababa University, Addis Ababa, Ethiopia
e-mail: zemelak.ayitenew@aau.edu.et

Dullah Omar Institute, University of the Western Cape (UWC), Cape Town, South Africa

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_7

as democratic and politically relevant level of government, alongside the transfer of suitable competences and sufficient resources'.

1 Country Overview

Ethiopia is located in the East African region commonly known as the Horn of Africa. It is, after the secession of Eritrea in May 1991, a land-locked country and shares borders with Eritrea in the north, Sudan and South Sudan in the west, Kenya in the south, Somalia in south-west and south-east, and Djibouti in the east. With a territory 1.13 million km^2 in size, it is the tenth largest country in Africa.[1]

The last time Ethiopia conducted a census was in 2007. As per the 1995 Constitution, it was supposed to have conducted a new census in 2018, but this was postponed indefinitely due to the unrest in different parts of the country.[2] The exact population of the country is thus unknown, though it is estimated at a little under 115 million, making Ethiopia the second most populous country in Africa after Nigeria.[3] The population shows remarkable diversity in ethno-linguistic composition, with close to 80 formally recognised ethnic communities. According to the 2007 census, the Oromo, who make up 35 per cent of the population, are the largest ethnic community, followed by the Amhara, who make up 22 per cent of the population.[4] The Somali, Tigray, Afar, and others comprise the rest of the population. Ethiopia also exhibits religious diversity within the majority, of whom a little more than 60 per cent are adherents of different branches of Christianity (Orthodox, Protestant, and Catholic). Muslims constitute the second largest religious group, representing about 35 per cent of the population.[5]

[1] 'List of African Countries by Area' (Statistics Times, 1 December 2020), http://statisticstimes.com/geography/african-countries-by-area.php (accessed 15 June 2021).

[2] Article 103(5) of the Federal Democratic Republic of Ethiopia (FDRE) Constitution requires a census to be conducted every ten years.

[3] The World Bank, 'Population, Total – Ethiopia' (2020), https://data.worldbank.org/indicator/SP.POP.TOTL?locations=ET (accessed 5 September 2021).

[4] FDRE Population Census Commission, *Summary and Statistical Report of the 2007 Population and Housing Census Results* (2008), https://www.ethiopianreview.com/pdf/001/Cen2007_firstdraft(1).pdf (accessed 16 June 2021).

[5] Ibid.

With a gross domestic product (GDP) per capita of USD 855, Ethiopia belongs to the category of low-income countries. Its economy is largely dependent on agriculture, which makes up half of the country's GDP and 84 per cent of its exports, as well as providing 80 per cent of its total employment; coffee is the country's most significant export item. With a national debt of about USD 40 billion (amounting to 55 per cent of GDP), Ethiopia ranks among the highly indebted countries in the world.[6] Its aim is to diversify its economy and join the group of low- to middle-income countries in 2025.[7] Thanks to the double-digit economic growth it achieved for ten consecutive years (2005–2015), this aspiration seemed within reach. However, the impact of a number of factors suggests that it is unlikely, in the immediate future at least, to enter the ranks of middle-income countries. Covid-19, the plague of locusts, and, above all, the outbreak of civil war in the Tigray state and the consequent economic sanctions imposed by Western countries due to alleged human rights violations, have all undermined the achievement of this goal.[8]

Once a monarchy, Ethiopia became a republic with the overthrow of Emperor Haile Selassie I in 1974. The triumphant Derg became a military junta that ruled the country for the next 17 years.[9] Ethiopia remained a unitary state until 1991. Then, after 17 years of civil war, the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF), a coalition of ethnic-based rebel groups, overthrew the Derg and initiated formal decentralisation.[10] This culminated in the adoption of the 1995 Constitution that entrenched a federal system of government for Ethiopia.[11] Given that the federal system was founded on the right

[6] 'Ethiopia National Debt' (n.d.) *countryeconomy.com*, https://countryeconomy.com/national-debt/ethiopia (accessed 5 September 2021).

[7] World Bank, 'Ethiopia: Overview', https://www.worldbank.org/en/country/ethiopia/overview (accessed 15 June 2021).

[8] Ibid.

[9] See Bahru Zewde, *A History of Modern Ethiopia 1855–1991* (Addis Ababa University Press, 2002).

[10] The EPRDF was founded by the Tigray People's Liberation Front (TPLF) and Ethiopian Peoples' Democratic Movement (EPDM). Some members of the EPDM left the party and formed the Oromo People Democratic Organisation (OPDO) and the Southern Ethiopia People's Democratic Movement (SEPDM). The EPDM later changed itself into the Amhara National Democratic Movement (ANDM). The TPLF was the founder and the most influential member of the EPRDF.

[11] FDRE Constitution, article 1.

to self-determination by the ethnic communities of the country, the ten subnational units of the federation were established along ethnic lines. The subnational units are the Afar, Amhara, Benishangul-Gumuz, Gambella, Harari, Oromia, Sidama, Somali, Southern Nations Nationalities and Peoples (SNNP), and Tigray.[12] The Sidama state was formed as the tenth state of the federation in 2020, after it had seceded from the SNNP. In addition, an eleventh state—the South-West Peoples' State—was also established after a referendum in October 2021. Addis Ababa, the capital of the federation, is a federal city outside the jurisdiction of any of the states.[13]

Government is structured at both federal and state levels.[14] As parts of a dual federal system, the federal and state governments have legislative, executive judicial organs. The federal government has a bicameral parliament composed of the House of Peoples' Representatives (HoPR) and the House of Federations (HoF).[15] The HoPR is composed of directly elected members and exercises legislative functions while the HoF, made up of representatives of the ethnic communities of the country, exercises non-legislative functions, including (importantly) the interpretation of the country's constitution.[16] The Council of Ministers comprises a prime minister, a deputy prime minister, and several other ministers, and enjoys executive powers at the federal level.[17] Ethiopia has a parliamentary form of government and, hence, the Prime Minister is selected by the Members of Parliament from among their number.[18] Federal courts are structured as first instance courts, high courts, and the Supreme Court, which has the final say on issues arising from the laws.[19] The states have a state council, and a cabinet composed of a chief administrator, a deputy chief administrator, and the heads of the state bureaus.[20] All states, save for the Harari and the SNNP, have unicameral state councils.

[12] Ibid., article 47.

[13] Ibid., article 49.

[14] Ibid., article 50(1).

[15] Ibid., article 53.

[16] Ibid., articles 54–68.

[17] Ibid., articles 72–77.

[18] Ibid., article 45.

[19] Ibid., article 78–80.

[20] Ibid., article 50(5) and (6).

Ethiopia has been under the sway of what is often described as 'electoral authoritarianism': the domination of the entire political space in the country by the EPRDF.[21] The party has made use of various institutional mechanisms to maintain its dominance, including a favourable electoral system and legislation intended to weaken opposition parties and civil society organisations.[22] In the 2015 election, the EPRDF claimed a total victory: not a single seat in either parliament or a state council went to the opposition.[23] A massive public protest arose in Oromia soon after these elections, and similar protests followed in other parts of the country. The protests were accompanied by intercommunal conflicts that led to deaths and the displacement of millions, particularly in Oromia, Somali, and SNNP. The public protests, and the response of the government to them, gradually led to a rift among the four members of the EPRDF. This led in turn to a change in the party's leadership, and the rise to power of Abiy Ahmed, the current Prime Minister.

Abiy Ahmed initially acted as a reformer. He oversaw the revision of several pieces of legislation regarded as oppressive, but a number of measures introduced since 2019 have been seen by his political opponents as solely intended to consolidate Ahmed's own power. One of these measures was the merger of members and affiliates of the EPRDF into a new national political party called the Prosperity Party; its formation involved the marginalisation of the Tigray People's Liberation Front (TPLF), the most influential member of the EPRDF.[24] A second was the extension of his term of office. This was done in the name of combating the spread of Covid-19 in a controversial process of constitutional adjudication. These measures widened the rift between the federal government and the TPLF. On 4 November 2020, armed forces loyal

[21] Zemelak Ayele, 'Constitutionalism and Electoral Authoritarianism in Ethiopia: From EPRDF to EPP', in Charles M Fombad and Nico Steytler (eds) *Democracy, Elections, and Constitutionalism in Africa* (Oxford University Press, 2021) 186–217; Kjetil Tronvoll, 'Briefing: The Ethiopian 2010 Federal and Regional Elections: Re-establishing the One-party State' (2011) 110 *African Affairs* 121.

[22] Ibid.

[23] Leonardo R Arriola and Terrence Lyons, 'Ethiopia: The 100% Election' (2016) 27 *Journal of Democracy* 76.

[24] Awol Kassim, 'Why Abiy Ahmed's Prosperity Party Could be Bad News for Ethiopia' *Al Jazeera* (5 December 2019).

to the TPLF attacked different bases of the Ethiopian National Defence Forces (ENDF), igniting an armed conflict in Tigray which ended only two years later.[25]

2 History, Structures, and Institutions of Local Government

Local government institutions are at least as old as Ethiopia itself, which as a state traces its origins to the Axumite Empire that emerged two millennia ago in today's Tigray region and Eritrea.[26] Since then, Ethiopia has had a 'triple layer' of authorities, with an emperor at the centre, provincial governors at the meso-level, and local authorities at the lowest level.[27] Local government institutions were the level closest to the people and (because of this) the most important level, since the central government had limited visible reach into and influence on their lives. The topography of the country, rugged with chains of mountains and valleys crisscrossed by numerous rivers, did not allow the central government to extend to every part of the empire. Its reach beyond the capital was further hindered by a lack of developed infrastructure (such as the roads necessary to connect the different parts of the country).[28] A centralised system of government is a recent phenomenon, beginning only in the second half of the nineteenth century. The limited influence of the central government over the peripheries of the country, coupled with the ethnic and cultural diversity of the people, influenced the emergence of various types of local government institutions. Local authorities enjoyed a significant degree of autonomy from the central government, while accepting responsibility for collecting taxes and tributes and maintaining law and order within their jurisdiction for, and in the name of, the emperor.

[25] 'Tigray Crisis: Ethiopia Orders Military Response After Army Base Seized' (4 November 2020) *BBC*, https://www.bbc.com/news/world-africa-54805088 (accessed 14 June 2021).

[26] Teshale Tibebu, *The Making of Modern Ethiopia 1896–1974* (The Red Sea Press, 1995).

[27] Gebru Tareke, *Ethiopia: Power and Protest: Peasant Revolts in the Twentieth Century* (Cambridge University Press, 1991) 36. See also Zemelak Ayele *Local Government in Ethiopia: Advancing Development and Accommodating Ethnic Minorities* (Nomos, 2014) 88.

[28] Ibid.

In the 1850s, a process of territorial expansion began in Ethiopia, and by the early twentieth century a limited degree of centralisation became possible when different parts of the country were connected with the capital city by means of roads, railways, and other communication systems.[29] Road connectivity was enhanced during the five-year occupation by Italy, which paved the way for even further centralisation by Haile Selassie, who regained his throne after the Italians were expelled in the 1940s.[30] Centralisation reached its zenith under the Derg, the military regime that overthrew Haile Selassie and introduced a form of socialism into the country.[31]

Local administration was one of the first areas of reform addressed by the Derg.[32] It established associations of urban dwellers (UDA) in urban areas. These were structured at three levels: *kebeles* (a new institution created by the Derg), a *kefitegna* zone (made up of several *kebeles* and located in Addis Ababa), and the city level.[33] In the rural areas, peasant associations were established at *kebele*, *woreda,* and provincial levels. These local institutions played a crucial role in the implementation of the Derg*'s* land nationalisation programmes, both urban and rural. They also provided basic services and sought to make certain basic goods (such as food and toiletries) available to the people at an affordable price.[34] However, they were later used to implement the Derg*'s* infamous Red Terror operations and became the basis for the state's apparatus of oppression and control.[35]

The Derg was overthrown by the EPRDF in May 1991 after 17 years of armed struggle. The EPRDF then began a process of decentralisation aimed at responding to the age-old 'question of nationalities'. It was this process that led to the formation of the federal system, with the federal

[29] Zewde (n 9).

[30] Tibebu (n 26) 107.

[31] Zewde (n 9).

[32] For more on this, see John M Cohen and Peter H Koehn, *Ethiopian Provincial and Municipal Government: Imperial Patterns and Post-revolutionary Changes* (African Studies Centre Michigan State University, 1980).

[33] Ayele (n 27) 88.

[34] Ibid.

[35] Ibid.

government standing at the centre and the states (regions) occupying the periphery.

Any level of government below state level is generally considered as local government. There are two types of local government in Ethiopia: ordinary or regular local government, and ethnic local government.[36] Ordinary local government has both *woreda* (district) administration for rural areas and city administration in urban zones. A *woreda* is, as a general rule, established for territorial areas which have populations of about 100,000. However, the states retain the power to create, divide, or amalgamate *woredas*, and have established *woredas* with populations of less than 100,000. Thus, in the early 2000s there were some 600 *woredas,* a number which has seen a significant increase to 1000 *woredas*.[37] There are more than a hundred cities, including Addis Ababa and Dire Dawa. *Woredas* and cities (including Addis Ababa and Dire Dawa) together administratively cover the entire geographical area of the country.

Addis Ababa and Dire Dawa, the two largest cities which are within the jurisdiction of the federal government, also fall within the category of city administration despite having a special political and financial status. Addis Ababa has an estimated population of more than 5 million, while Dire Dawa has close to half a million people.[38] The two cities are not organised under any of the states. Each of them has a city council, a mayor (selected by and from the members of the city council), and a city manager (Fig. 1).[39]

[36] For more on this, see Zemelak Ayele and Yonatan Fessha, 'The Place and Status of Local Government in Federal States: The Case of Ethiopia' 58(4) *African Today* (2012) 89–109.

[37] Preamble. See, for instance, the Aberdeen Declaration, which provides that 'local government should be recognised as a sphere of government. Legal and constitutional recognition are important to protect the fundamental principle of local democracy. Respect for this protection ensures institutional security for local democracy'. Article 2 of the European Charter on Local Self-Government also provides that 'the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution'.

[38] World Population Review, 'Addis Ababa Population 2021', https://worldpopulationreview.com/world-cities/addis-ababa-population (accessed 27 December 2021); World Population Review, 'Addis Ababa Population 2021', https://worldpopulationreview.com/world-cities/dire-dawa-population (accessed 27 December 2021).

[39] See Dire Dawa Government Charter Proclamation No. 416 (2004); Addis Ababa City Government Revised Charter Proclamation No. 361(2003).

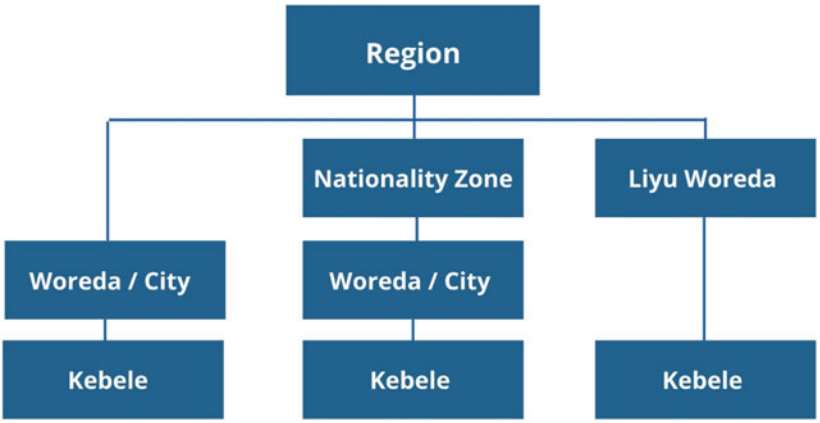


Fig. 1 Organisational structure of local government in Ethiopia (*Source* Prepared by the author)

The ethnic local governments are established in areas where there are intra-state ethnic minorities. They are established either in the form of a *liyu woreda* (special district), or as a nationality zone, each being established along ethnic lines. In principle, any of these can choose to secede from the state within which it is found and so become an autonomous state and a separate member of the federation. The Sidama state was, for instance, a nationality zone before becoming a state in 2020.[40] The *kebele* is the lowest administrative unit found both in rural *woredas* and in cities.

3 Constitutional Recognition of Local Government

Local government is not explicitly recognised under the 1995 Constitution as an autonomous order of government. The Constitution does not allocate any function or power to local government, nor does it establish sources of revenue for it. Local government does not enjoy original functions, powers, or sources of revenue provided by the Constitution. However, the Constitution does make some implicit reference to the two types of local government (ethnic local government and the ordinary local

[40] Ayele (n 27).

government). Article 39(3) of the Constitution provides for the establishment of ethnic local government as an autonomous order of government through its recognition of the right of each ethnic community to establish self-government in the territory it inhabits.

The Constitution also makes passing reference to ordinary local government by requiring the states to establish 'lower units' of government and to transfer 'adequate powers' to them.[41] This provision was reached during the drafting of the Constitution as a compromise between those who sought the explicit recognition of local government under the Constitution and those who maintained that local government should be left exclusively for the states. The Constitution, while leaving the choice open regarding the number of tiers of local government they can establish, implicitly requires the existence of forms of local government which are democratically constituted and 'adequately' empowered.[42]

While lacking explicit recognition in the national constitution, local government enjoys a much more direct recognition in subnational constitutions, though the matter is complicated by the fact that state constitutions in practice have little more than symbolic power since they appear to have little influence over actual decisions by state authorities. In fact, state officials barely refer to the state constitution when passing decisions or making speeches.[43] All in all, the fact of the recognition of local government in state constitutions seems to have little political relevance.

The fact that local government is not recognised in the FDRE Constitution considerably diminishes its political relevance. This is clear from the fact that none of the opposition parties ever took part in the five recent local elections. The sixth local elections—which were supposed to have been held in April 2018—were postponed indefinitely due to the political unrest in the country. In fact, this postponement elicited little response, and no political group or party seems to be concerned about it. This stands in stark contrast with the postponement by almost one year of the general elections for the federal and state governments. This led to a significant outcry and, finally, to an armed confrontation between the federal government and the TPLF.

[41] FDRE Constitution, article 50(4).

[42] Assefa Fiseha, *Federalism and the Accommodation of Diversity in Ethiopia: A Comparative Study* (Wolf Legal Publishers, 2007) 341.

[43] Getachew Disassa, 'The Oromia State Constitution: Hiding Its Light Under a Bushel?' (2020) 6(1) *Ethiopian Journal of Federal Studies* 105–126.

Addis Ababa is constitutionally designated as the capital of the federation. According to article 49, the residents of Addis Ababa have the right to a 'full measure of self-government'. Addis Ababa is thus established as a city with substantial political autonomy. The Constitution also guarantees the right of the residents of the city to be represented in the HoPR.[44] There is no level of state government above Addis Ababa and it thus has a direct relation with the federal government. At the same time, it does not have the status of a state and is not considered a member of the federation. As we will see below (Sect. 10), this situation has led to serious controversy about the status of Addis Ababa and the 'interest' of Oromia over the city.

Dire Dawa, the second federal city, is not mentioned in the Constitution and does not stand on an equal footing with Addis Ababa even though both are federal cities. It was placed under federal jurisdiction because both the Oromia and Somali states claimed ownership of the city and could reach no agreement in this regard. The proclamation that established Dire Dawa as a federal city understood this to be a temporary measure only and to last only until the resolution of the dispute between the two states over 'ownership' of the city was resolved.[45] More than 20 years later, the city remains under federal jurisdiction and the dispute between the two states continues.

4 Governance Role of Local Government

As mentioned, the local government does not enjoy original functions and powers under the federal constitution. The powers and functions of local government are those resulting from the functions and powers of the states. The powers enjoyed by Addis Ababa and Dire Dawa are those defined by the federal laws adopted by the HoPR, and which are therefore open to change or amendment by it.[46]

[44] FDRE Constitution, article 49(4).

[45] Preamble, Proclamation No. 416 (2004).

[46] Proclamation No. 361 (2003); Proclamation No. 416 (2004).

4.1 Functions and Powers of Woredas

The states were supposed to use their constitutions (and other legislation) to define the powers and functions of local government. The state constitutions do not, however, list the functions of local government in any clear or concise manner. Instead, in rather general terms, they simply authorise *woredas* to exercise all powers and functions that they later deem necessary for the purpose of providing social services, while the social services that *woredas* are expected to provide are not themselves established.[47] Some states (Tigray and Benishangul-Gumuz, for example) have used ordinary state laws to define the functional competences of *woredas*. Lacking clear definition in the state constitutions, the functions attributed to *woredas* are most visible in various policy papers, as summarised in Table 1.

Table 1 Functional competences of woredas in practice

- Education
  - Primary and secondary education (grades 1–10)
  - Adult education
  - Printing and distributing primary school textbooks
  - Administering primary schools
- Health
  - Constructing and administering health stations and health posts
  - Administering clinics
  - Controlling and preventing HIV/AIDS and malaria
- Water
  - Constructing wells
  - Supplying drinking water to municipalities
- Agricultural and pastoral development
  - Agricultural extension packages
  - Small-scale indigenous irrigation
- Administering rural land use and other natural resources
- Rural roads connecting *kebeles*

Source State laws and policy papers

[47] See, for instance, Amhara State Constitution (2001), article 84(1); SNNP State Constitution (2001), article 92(1); Tigray State Constitution (2001), article 72(1); Oromia State Constitution (2001), article 79(2).

4.2 *Functions and Powers of Cities*

Proclamations that deal with urban local government describe the functional competences of the cities, while proclamations adopted by the HoPR define those of Addis Ababa and Dire Dawa.[48] Functions within the competences of cities are divided into state functions and municipal functions. State functions are those that are directly linked with reducing poverty, and are guided by Ethiopia's pledge under the Millennium Development Goals (MDGs) Declarations. They can also be linked to the Sustainable Development Goals which followed and replaced the MDGs. These functions include primary school, health, water, and the like. Municipal services are those that are typically provided in urban areas and include responsibilities in regard to cultural, recreational and youth centres, museums, housing, sewerage, streets, street lights, solid waste, fire-fighting, abattoirs, parks, liquor licences, and ambulance services.[49]

Both *woredas* and cities have political institutions: legislative councils and executive councils. Members of the legislative councils are directly elected by the residents of the relevant local government units. Executive councils are composed of a chief administrator and heads of sectoral offices or (in the case of cities) mayors and members of mayoral committees. The *woredas* have administrative institutions which are organised in the form of sectoral offices. As a rule, the *woredas* are entitled to establish their own administrative institutions, based on a state civil service law, and to recruit, hire, and fire their administrative staff, including teachers, nurses, engineers, and the like.[50] However, in practice, the states are usually involved in at least the recruitment stage.[51]

Cities also have city managers who oversee the provision of municipal services. A city manager is accountable to the political institutions of the city, and especially to the mayor. *Woredas* and cities are authorised to exercise planning, legislative and executive powers over their functional

[48] Proclamation No. 361 (2003) and Proclamation No. 416 (2004).

[49] Amhara State (AS) Proclamation 91 (2003), article 8(2)(y) and (z) and (i)–(iii) and article 38(2); Afar State (AfS) Proclamation 33 (2006), article 16(7)–(10); SNNP Proclamation 103 (2006), article 13(6); Oromia State (OS) Proclamation 195 (2015), article 11(1)(k)–(w).

[50] As argued elsewhere, the powers of the *woredas* in the area of hiring and firing their personnel are implied in their power to exercise all powers necessary to prepare and implement their social and economic development plans. See Ayele (n 21).

[51] Ibid.

competencies (albeit these often lack clear definition). They thus adopt short-term and medium-term service delivery plans based on the policies and plans of the federal state governments. The Addis Ababa and Dire Dawa city councils can issue their own proclamations, which put them on par with state councils' laws since other local governments could issue only directives, the lowest form of legislation which a ministry or a sectoral office could issue.[52] *Woredas* councils are authorised to adopt only directives, the lowest form in the hierarchy of laws in Ethiopia. The plans and laws of the local government council are executed by the executive organs and administrative institutions of local government.

5 Financing Local Government

The federal constitution does not provide local governments with distinct and original revenue-raising power. The revenue-raising and expenditure powers of the two federal cities are regulated by federal laws while the financial powers of the *woredas* and the cities in the states are regulated by state constitutions and law.

5.1 The Revenue-Raising and Expenditure Autonomy of Woredas

The state constitutions do not allot any revenue-raising power to *woredas*, although they do authorise them to collect land-use fees, agricultural income tax, and income taxes from their own employees. These sources of revenue are still ones that the Constitution designates as the sources of revenue for the states. The *woredas* thus collect these taxes and fees on behalf of, and based on the rate determined by, the states. Such revenue is not considered to be the internal revenue of *woredas*. In some states (such as Tigray and Benishangul-Gumuz) *woredas* are allowed to collect income tax from the employees of enterprises which secure their business licences from the *woredas*. They are also permitted to collect taxes from small traders and traditional miners[53]; user fees from libraries, clinics, and community halls; licence fees from irrigation schemes and water-wells; and

[52] Proclamation 361 (2003), article 14(1); Proclamation 416 (2004), article 9.

[53] Benishangul-Gumuz State (BGS) Proclamation 86 (2010), article 88; Tigray State (TS) Proclamation 99 (2006), article 39.

fees for the registration of births, deaths, marriages, and divorces.[54] The two states have also introduced a tax-sharing scheme in which a *woreda* is allowed to take a portion of the revenue collected within its territorial limits in the form of state tax or fee. A *woreda* is thus entitled to take a percentage of income collected from land leased for, and income tax collected from, commercial agriculture, as determined by the relevant state.[55]

The state constitutions also authorise *woredas* to identify and utilise sources of revenue that are not being used by the states. The provision seems to have no practical relevance since there is no state tax that the states have not already begun utilising.[56] The provision cannot be interpreted to mean that a *woreda* may create new taxes that do not fall under the authority of the federal or the state governments and collect revenue from them, since a *woreda* may not assume the authority to impose and collect undesignated taxes. An undesignated tax becomes either a federal, regional, or concurrent tax when it is so decided by a joint session of the two federal houses.[57] In short, the provision allowing *woredas* to make use of taxes that are not utilised by the states seems to be meaningless.

Woredas collect some revenue in the form of contributions from their residents for specific development projects (such as water-drilling and the building of schools). They are also allowed to receive revenue for similar projects from donors. A *woreda* is not constitutionally entitled to a revenue transfer from the federal or state government. In practice, though, *woredas* receive a large amount of revenue in the form of unconditional or block grants and conditional or specific-purpose grants from the states. The revenue transfer to *woredas* in the form of a block grant was started with the adoption of the poverty-reduction plan in the early 2000s.

[54] BGS Proclamation 86 (2010), article 89; TS Proclamation 99 (2006), article 39.

[55] BGS Proclamation 86 (2010), article 91; TS Proclamation 99 (2006), article 43. See also Serdar Yilmaz and Varsha Venugopal, *Local Government Accountability and Discretion in Ethiopia* (Georgia State University Andrew Young School of Policy Studies International Studies Program Working Paper, 2008) 8–38.

[56] Solomon Negussie, *Fiscal Federalism in the Ethiopian Ethnic-Based Federal System* (Wolf Legal Publishers, 2006) 145.

[57] FDRE Constitution (1995), article 99.

The amount of money that goes to *woredas* in this way has shown a significant increase in recent years.[58] The states transfer to *woredas* and cities a minimum of 50 per cent of what they receive from the federal government in the form of block grants.[59] Such revenue transfer is based on a predetermined formula and covers more than 70 per cent of a *woreda's* expenditure. Over 80 per cent of the block grant is used to cover the recurrent costs of the *woreda,* and is used mainly for paying salaries for teachers, health workers, and agricultural extension workers. Block grants cannot be used for financing capital expenditures such as the building of schools or road construction: these are usually financed from the budgets of the relevant ministries.[60]

Woredas also receive specific-purpose grants (conditional grants) which can be understood as a form of equalisation grant. These most often come from the federal government, as they finance certain programmes linked to the SDG goals (such as the food-security programme, production safety-net programme, the road fund, and the HIV/AIDS programme).[61] For instance, in the 2019/20 financial year, the federal government earmarked 1.6 per cent of the total federal budget (amounting to ETB 6 billion) for such purposes.[62] Some of this revenue went to the *woredas,* which play a crucial role in the execution of the programmes. In these cases, the federal government does not transfer the money directly to *woredas* but rather to the states (on the understanding that the states will pass these funds on to the *woredas*).

Prior to reforms in the 2000s, *woredas* were required to send their budgets to the state government for approval. This is no longer the case, and the *woredas* enjoy expenditure autonomy in the sense that they can adopt their own budgets. A *woreda* council now has the final say on its own budget.

[58] FDRE Ministry of Finance and Economic Development (MoFED), *Ethiopia: Sustainable Development and Poverty Reduction Program (SDPRP)* (2002).

[59] Marito Garcia and Andrew Sunil Rajkumar, *Achieving Better Service Delivery Through Decentralisation in Ethiopia* (World Bank, 2008) 38.

[60] World Bank, *Ethiopia: Public Expenditure Review* (The International Bank for Reconstruction and Development/The World Bank, 2016) 70.

[61] Ibid.

[62] UNICEF Ethiopia, *Budget Brief Analysis of the 2019/20 Federal Budget Proclamation,* https://uni.cf/3JjW1YQ (accessed 15 June 2021).

5.2 *The Revenue-Raising Powers of the Cities*

The main sources of revenue for the cities are urban land lease fees, land-use fees, and fees for municipal services.[63] They can also collect revenue in the form of municipal service fees including 'market fee, sanitary service, slaughterhouses, fire-brigade services, mortuary and burial services, registration of birth and marriage, building-plan approval, property registration and surveying, and use of municipal equipment, transport or employees'.[64] Some state proclamations authorise cities to borrow money from financial institutions for capital projects.[65] Given that the states themselves are allowed to borrow only with permission from the federal government, it is debatable whether they can actually authorise cities to borrow. Addis Ababa and Dire Dawa have a wider range of revenue sources. These include:

- capital gains tax on properties in the city;
- tax on income earned from rented houses and buildings;
- stamp duties on contracts and agreements, as well as title deed executions;
- user charges on vehicles in the city;
- royalties on the use of forest resources in the city; and
- charges on municipal services.

With authorisation from the federal government, the two federal cities can also borrow from domestic financial institutions for capital projects.[66] Addis Ababa is able to request that the federal government borrows money on its behalf from external sources, once it has identified such sources.[67] Cities are expected to use revenue collected as municipal fees for the provision of municipal services: they do not receive grants from the states or the federal government to cover any expenses relating to the

[63] AfS Proclamation 33 (2006), article 20(1); AS Proclamation 91 (2003), article 49(1); BGS Proclamation 69 (2007), article 42; OS Proclamation 195 (2015), articles 18 and 52; SNNP Proclamation 103 (2006), article 43(1).

[64] Yilmaz and Venugopal (n 55) 21.

[65] See, for instance, OS Proclamation 195(2015), article 52(6).

[66] FDRE Proclamation 361 (2003), article 11(2)(k); FDRE Proclamation 416 (2004), article 9(5)(c).

[67] FDRE Proclamation 361 (2003), article 11(2)(k).

provision of municipal services. They are, however, expected to receive grants for the provision of state services such as education, health care, and the like.

Addis Ababa has a particularly rich source of internal revenue and covers up to 97 per cent of its own expenditure (unlike Dire Dawa).[68] Its annual budget is larger than that of most member states of the federation, with the exceptions of Oromia and Amhara. In 2020–2021, Oromia's budget totalled ETB 91 billion,[69] while Addis Ababa adopted a budget of ETB 61 billion[70]; Amhara had a budget of ETB 62 billion, just one billion birrs greater than that of Addis Ababa.[71]

Despite the fact that state proclamations list revenue transfer as a source of revenue, cities do not receive block grants as the *woredas* do.[72] They receive revenue from the federal government (in case of Addis Ababa and Dire Dawa) and the states (cities within the states), often in the form of conditional grants. The states transfer revenue to cities that can be used for the provision of state services such as education and health care, but these funds as a rule cannot be used for the provision of municipal services. While Addis Ababa covers up to 97 per cent of its expenditure with its own, self-generated revenues, the federal government does provide additional finance for projects that it deems have a national relevance.[73]

Cities have full autonomy in expenditure and can adopt their own budget without approval from more senior levels of government.[74]

[68] Federal Democratic Republic of Ethiopia (The City of Addis Ababa) Public Expenditure and Financial Accountability: Performance Assessment Report Final Report (2 December 2019), 18.

[69] 'Oromia Approves 90 Bn Birr Budget, Appointment of Officials' (26 July 2020) *Fana Broadcasting Corporate*, https://bit.ly/37x8n2u (accessed 13 June 2021).

[70] 'City Council Approves 61 Billion Birr Budget for Fiscal Year' (4 August 2020) *Fana Broadcasting Corporate,* https://bit.ly/3JkZOVD (accessed 13 June 2021).

[71] 'Amhara Approves over 62 Bn Birr Budget for 2013 Ethiopian Fiscal Year' (26 July 2020) *Fana Broadcasting Corporate*, https://bit.ly/3JjWtq0 (accessed 13 June 2021).

[72] OS Proclamation 195 (2015), article 52(1)(b).

[73] FDRE Proclamation 416 (2004), article 46(1); FDRE Proclamation 361 (2003), article 55(1).

[74] OS Proclamation 195 (2015), article 11(1)(c).

6 Supervising Local Government

6.1 State Supervision Over Local Government

States can and indeed do regulate local government by using their powers to adopt subnational constitutions and to formulate and implement policies and strategies for matters of state social service provision.[75] An important aspect of regulation comes through the ways in which the states use constitutions to define the structure of local government (its functions and competences). In addition, the states are responsible for numerous laws aimed at the regulation of local government. Proclamations are used to define the political institutions, powers, and functions of cities, setting up the legislative framework in which cities function. The states also develop annual plans that set the minimum targets *woredas* and cities in every sector of service delivery must meet. Such plans are expected to be consistent with national social and economic development policies and strategies, such that the planning and implementation of social services and economic development undertaken by a *woreda* or a city are in line with both national and state policy frameworks.

The states retain the power to monitor the *woredas* and the cities to see if they are fulfilling their mandates, but in states where ethnic local governments are in place (such as the SNNP and Amhara), the zonal governments often directly oversee the activities of *woredas* and cities within them. This reflects the enhanced political status that ethnic local governments have compared to regular local governments.[76] In states such as Oromia and Somali where no ethnic local government exists, *woredas* and cities report to the states directly or through zonal administrators which are in any case run by state appointees.[77] The states seldom establish institutions with exclusive monitoring powers over the *woredas* and cities. Every sectoral office monitors its counterpart at the *woreda* level so that education bureaus, health bureaus, and the like monitor the

[75] FDRE Constitution (1995), article 52(2)(c).

[76] AS Constitution (2001), article 86(1); SNNP Constitution (2001), articles 91(2) and 100(2)(g); BGS Constitution (2002), article 87(1).

[77] AS Constitution (2001), article 71(3); FDRE Proclamation 361 (2003), article 11(2)(f); FDRE Proclamation 416 (2004), article 9(5)(a).

activities of *woredas* that relate to their respective sectors.[78] In Tigray and Benishangul-Gumuz, 'an administrative and security affairs bureau' is charged with the responsibility of monitoring *woredas*, without, however, excluding other sectoral offices from doing so. Cities are usually overseen and supported by a bureau of urban development, especially in relation to their municipal functions.[79]

The principal method of state monitoring is self-reporting coupled with occasional on-site inspections by state officials. A *woreda* chief administrator and a mayor send quarterly reports to the relevant state on the overall condition of the *woreda* and city, respectively.[80] In addition, each sectoral office of the *woreda* or the city submits periodic reports on its activities to its state counterpart.[81] The report regarding the municipal functions of a city goes to the state bureau of urban development.[82]

The constitutions of the states, other than the Tigray constitution, are silent on the conditions for state intervention in local government. The Tigray state constitution authorises state intervention in a *woreda* or a city administration in several circumstances: if and when a *woreda* endangers the state constitutional order; if it fails to maintain peace and security; and if it fails to exercise its legal and constitutional functions and powers effectively.[83] This intervention clause, commonly known as the 'Siye Abraha intervention clause', was inserted into the Tigray state constitution in response to internal political divisions within the TPLF.[84]

[78] Chris Heymans and Mohammed Mussa, *Intergovernmental Fiscal Reforms in Ethiopia: Trends and Issues* (Document of the World Bank. Unpublished manuscript, 2004) 9.

[79] AS Proclamation 91 (2003), article 62; OS Proclamation 195 (2015), article 2(13); AfS Proclamation 33 (2005), article 19; BGS Proclamation 69 (2007), article 55; SNNP Proclamation 103 (2006), article 53.

[80] AS Constitution (2001), article 93(2)(h); BGS Constitution (2002), article 94(2)(h); Gambella State (GS) Constitution (2002), article 97(2)(h); SNNP Constitution (2001), article 100(2)(g); OS Constitution (2001), article 87(2)(f); TS Constitution (2001), article 82(2)(g).

[81] Heymans and Mussa (n 78).

[82] The MoF and MoUC are authorised to follow up the activities of the federal cities, in particular those that are related to the municipal functions of the cities.

[83] TS Constitution (2001), article 73(4).

[84] In the early 2000s, there was a disagreement between Meles Zenawi, the then Prime Minister, and the chairperson of the TPLF and EPRDF, as well some senior members of the TPLF, including Siye Abraha, the then Minister of Defence. Many people, including

The Constitution identifies several grounds for intervention. These include misappropriation of funds or properties; failure of a *woreda* executive council to convene a meeting for more than six months; and the infringement of any provisions of a state law.[85] While these grounds of intervention are rather broadly defined and open the door for undue state intervention, they can be useful when a local government malfunctions in the areas of basic service delivery.

The state constitutions and proclamations which work to regulate such state intervention only provide for the harshest forms of intervention: the suspension and (if seen as necessary) the dissolution of offending councils.[86] Less extreme forms—such as giving warnings and insisting on the proper assumption of responsibilities within a given time frame—are not mentioned in the constitutions.[87] On the dissolution of a local council, the state council orders the state cabinet or the state chief administrator to establish a transitional *woreda* administration. This will then be in charge of the relevant *woreda* or a city for a period of up to one year.[88] The power of the transitional administrator is limited to the execution of existing laws and policies, and the administrator cannot enact new laws. The only legislative power it can exercise is approving the *woreda*'s annual plan and budget.[89]

The intervention clause has rarely been used. The EPRDF controlled all levels of government and the party was structured hierarchically, starting from the base of the *kebele* level. A *woreda* chief administrator was the head of the party at the *woreda* level, and a zonal administrator and a state president were the heads of the party at zonal and state levels.

woreda and city officials, stood in support of Siye and his colleagues, especially people in Tembien, the birthplace of Siye. Zenawi began purging from the party those who supported his opponents when he came out victorious in this internal division. There was no legal mechanism for removing elected local officials who supported or sympathised with Siye, except a recall by the electorate. The intervention clause was inserted to be used in this and similar situations. Assefa Fiseha, 'Local Level Decentralisation in Ethiopia: Case Study of Tigray Regional State' (2020) 13(1) *Law and Development Review* 18.

[85] TS Proclamation 99 (2006), article 58(1); BGS Proclamation 86 (2010), article 103(1).

[86] TS Constitution (2001), article 74(4)(b); OS Proclamation 195 (2015), article 50.

[87] BGS Proclamation 86 (2010), article 103; TS Constitution (2001), article 74(4)(b).

[88] TS Constitution (2001), article 74(6).

[89] TS Constitution (2001), article 74(5)(a).

There was a system of vertical accountability within the party. In practice, this party structure served as an effective means of supervision and intervention from the top.[90]

6.2 Federal Supervision of Local Government

The federal constitution establishes two orders of government, namely at state and federal levels; local government falls within the exclusive competence of the states. The federal government is implicitly forbidden by the Constitution from any direct supervision of local government, though it does supervise the two federal cities, Dire Dawa and Addis Ababa, which are under its direct control. Not only does the federal government regulate[91] and monitor these cities, it also intervenes whenever it deems this necessary. It did so in Addis Ababa following disputed elections in 2005. The next election (after the 2005 general election) to the Addis Ababa city council was held in 2013 with the fourth local election. Diriba Kuma was appointed by the city council as the mayor of the city who served until the expiry of his term in 2018. In July 2018 the Prime Minister nominated Takele Uma as the deputy mayor of the city whose nomination was endorsed by the city council. Takele served in this capacity until he was replaced by Adanech Abebe in September 2021 who was also nominated to the position by the prime minister.[92] Both Takele and Adanech were not members of the city council. The National Electoral Board of Ethiopia (NEBE) decided to have the election to Addis Ababa and Dire Dawa city councils with the general election which was held in June 2021. Adanech Abebe was elected to the Addis Ababa city council and became the mayor of the city.[93]

[90] See Fiseha (n 84).

[91] The two cities' political and administrative institutions, powers and functions are defined in proclamations adopted by the HoPR, which is clearly an aspect of regulation.

[92] 'Adanech Abiebie Appointed as Deputy Mayor of Addis Ababa City' (August 2020) *Fana Broadcast Corporate*, https://bit.ly/37x2QZE (accessed 14 June 2021); 'News: Addis Abeba City Council Appoints a New Mayor' (18 July 2018) Addis Standard, https://addisstandard.com/news-addis-abeba-city-council-appoints-a-new-mayor/ (accessed 21 April 2022).

[93] 'City Council Elects Adanech Abiebie as a Mayor of Addis Ababa' Fana Broadcasting Corporate (28 September 2021) https://www.fanabc.com/english/city-council-elects-adanech-abiebie-as-a-mayor-of-addis-ababa/ (accessed 21 April 2022).

A key question remains as to whether the *woredas* and cities which are within the territories of the ten states can escape the supervisory authority of the federal government. As mentioned above, the federal government has retained the power to 'establish and implement national standards and basic policy criteria for public health, education, science and technology, cultural and historical legacies to directly or indirectly regulate local government'. This provision seems to allow at least the indirect regulation of local government by the federal government.

A related constitutional issue has recently emerged in connection with the dispute between the federal government and the Tigray state. The question here is whether the federal government can initiate direct contact with a local government that has a problematic relationship with the state government. As the relationship between the federal government and the TPLF deteriorated (following the postponement of the sixth general elections in April 2020), the TPLF declared that it would no longer recognise the federal government under the leadership of Abiy Ahmed as legitimate. The state established its own electoral board and held its own elections in September 2020 in defiance of the federal government's warning not to do this. After these disputed elections, the federal government declared that it would not recognise the new Tigray state government. As a result, the HoF ordered the Ministry of Finance not to transfer revenue to the newly established Tigray state government. It stopped short, however, of the forceful removal of the newly established state government of Tigray, which it deemed unconstitutional. Instead, the HoF ordered the federal government to make direct contact with governments of *woredas* and cities for the purpose of ensuring the delivery of basic services to the public.

There was indeed zero chance that the local authorities within the Tigray state would be willing or able to directly interact with the federal government and bypass their bosses at the state level. Even if that were in practice possible, the order of the HoF to make direct contact with *woredas* and cities was constitutionally suspect.[94] In the event, following the 4 November 2021 attack (by forces loyal to the TPLF) on various

[94] Zemelak Ayele, 'Far-sighted Federal Solidarity, Not Power Politics and Legalism, Is Needed to Solve Tigray Dispute' (9 October 2020) *Ethiopian Insight*, https://bit.ly/3jnakBe (accessed 4 June 2021).

bases belonging to the Northern Division of the ENDF, the federal government initiated an armed intervention into the Tigray state.

7 Intergovernmental Relations

7.1 Local–Federal Relations

Intergovernmental relations (IGR) in the Ethiopian federal system is a topic that has received little attention in the past 30 years. There were no formally established IGR fora until recently. Different federal and state agencies with parallel mandates have maintained informal and unstructured interactions with each other.[95] Federal and state legislatures have held ad hoc meetings once or twice a year, while federal sectoral offices (such as ministries of education, agriculture, finance, and economic development) have interacted with their counterparts at the state level. The principal forum for dealing with issues common to the federal and state governments was provided by structures within the EPRDF. As the party was structured around the idea of democratic centralism, relations between the central, state, and local structures of the party were inevitably hierarchical in nature. This meant that state and local governments (under the control of the state and local level structures of the party) had no choice but to implement the policies and decisions adopted by the party's central structures. When the party was faced with major internal division soon after the 2015 elections, interactions between the states and the federal government almost collapsed. In the absence of a functioning IGR forum, the tensions between the federal government and the TPLF-led Tigray state grew worse, ultimately leading to armed conflict.[96]

In the past two years, some efforts have been made to formalise the intergovernmental relations between the federal and state governments. To this effect a policy on IGR was prepared by the HoF, was endorsed

[95] Assefa Fiseha, 'The System of Intergovernmental Relations (IGR) in Ethiopia: In Search of Institutions and Guidelines' (2009) *Journal of Ethiopian Law* 96–113; Ketema Wakjira, 'Institutionalization of IGR in the Ethiopian Federation: Towards Cooperative or Coercive Federalism?' (2017) 4(2) *Ethiopian Journal of Federal Studies* 121–160; Yonatan Fessha and Zemelak Ayele, 'Intergovernmental Relations and Ethnic Federalism in Ethiopia' in Yonatan Fessha, Karl Kossler, and Francesco Palermo (eds) *Intergovernmental Relations in Divided Societies* (Palgrave, 2022) 113–132.

[96] Fessha and Ayele (n 95).

by the HoPR, and resulted in a proclamation in 2021.[97] The Proclamation established several fora for IGR, with these including fora for federal and state legislatures and heads of the executive organs. However, local government has been given no place in these. The proclamation is completely silent on the place and role of local government (including ethnic local government) in these fora. This seems to be a result of the dual nature of an Ethiopian federal system which leaves local government within the exclusive competence of the state, and inhibits any interaction between the federal and local government, except indirectly through the states.

7.2 Local–State Relations

There are no institutional fora to accommodate local-state interactions within any of the ten states. A nationality zone council (composed of members of a state council who are elected from within the zone and representatives of *woredas* within the zone) does bring three levels of government (*woreda*, zonal, and state governments) together and this can, in some sense, be viewed as a forum for cooperation between the three levels of governments. Some state proclamations provide for the establishment of an association of *woredas* and cities that exist within their respective jurisdiction. These will then act to represent 'cities collectively, express their views on matters of their common interest [and] lobby [the regional] government for revision of laws'.[98] The Oromia, the Amhara, and the SNNP states have all made such proclamations. These provide that an association of cities can be established within the respective states, and that these associations can represent cities collectively, and express their views on matters of common interest to state governments.[99] For the moment, no such associations have come into being.

[97] The System of Inter-Governmental Relations in the Federal Democratic Republic of Ethiopia's Determination Proclamation No. 1231 (2021).

[98] SNNP Proclamation 103 (2006), article 52.

[99] OS Proclamation 195 (2015), article 60; Proclamation 103 (2006) of the SNNPR provides that a city association may represent 'cities collectively, express their views on matters of their common interest [and] lobby [the regional] government for revision of laws'. See also OS Proclamation 195 (2015), article 61(2); AS Proclamation 91 (2003), article 66.

The most frequent, regular, and important interactions between state and local government take place through the agency of the sectoral offices.[100] State bureaus of education, health, agriculture, water and sanitation, tourism, and the like regularly interact with their *woreda* counterparts. In areas where there are ethnic local zones, the interactions between *woredas* and state sectoral offices take place through the zonal sectoral offices which 'serve as immediate points of referral for local governments' dealings with [a state]'.[101] The interactions between state bureaus of finance and *woreda* or city offices of finance are perhaps the most important and the most frequent.[102] Revenues (including unconditional and conditional grants) are transferred from a state bureau of finance to the *woreda* office of finance, which receives and administers the transferred revenue.[103] Smooth and regular interactions between the agencies are vital for the functioning of the *woredas*.

7.3 Local-to-Local Interactions

While some state laws provide for cooperation between the *woredas* and the cities, there is no clear regulation governing cooperation between local government units within a state. A case in point is Proclamation 86 (2010) of Benishangul-Gumuz. This provides that *woreda*-to-*woreda* and *woreda*-to-city cooperation within the region may be conducted through joint committees that these local government units can establish to deal with common issues.[104] As mentioned, some city proclamations provide for the establishment of *woreda* associations and city associations. Were these to be established, they could serve as a forum of cooperation among local government units as well as lobbying for the interests of the cities at the state level. This remains a possibility only, as no city association has as yet been established.

Cooperation between local government units of two or more states is also left unregulated. It is not difficult to imagine the kind of common issues that are likely to require cooperation, particularly when borders

[100] Garcia and Rajkumar (n 59); Heymans and Mussa (n 78).

[101] Heymans and Mussa (n 78) 9.

[102] Ibid.

[103] Ibid.

[104] BGS Proclamation 86 (2006), article 106.

are shared. Service delivery, boundary disputes, intercommunal conflicts (especially regarding the pastoralist communities who move across state boundaries): all of these require cooperation between *woredas* of two or more states if they are to be successfully resolved. There is, however, no federal law which regulates interactions between local government units of two or more states, and (as previously mentioned) the IGR proclamation is entirely silent about local government. The city proclamations of Amhara, Oromia, and the SNNP allow the cities to form an association of cities with cities in other states and in other countries.[105] It seems that such an association would be established in accordance with the federal Organisations of Civil Societies Proclamation 1113(2019) and would have the status of a civil society organisation, one which lobbies state and federal governments on behalf of the cities. But, once again, no association of *woredas* or cities has been established to which *woredas* and cities of two or more states are members.

The other forum which brings together cities of different states is what is called 'cities' day' or 'cities' forum'. This is a special event that takes place in a host city and goes on for several days, with more than a hundred cities taking part and each being represented by their mayors and other officials. The events, though, are festive in nature, and are intended in part to showcase the cultures of the host city and its economic strengths rather than serve as occasions for serious discussion of common policy issues. This initiative started in 2009 and seven cities (so far), including Addis Ababa, have acted as hosts. The last cities' forum was held in Jigjiga in Somali state.

Another new forum is the 'Mayors' Forum'. The first of these was held in Addis Ababa in October 2020. Mayors from various cities in the country took part.[106] The formation of the Forum was initiated by the Ministry of Urban Development and Construction (MoUDC) with the aim of creating a national forum in which mayors can meet regularly to discuss common issues. The forum has formed a coordinating board. This

[105] AS Proclamation 91 (2003), article 66(1); SNNP Proclamation 103 (2006), article 52(1); OS Proclamation 195 (2015), article 61(4).

[106] የከንቲባዎች ፎረም በአዲስ አበባ ከተማ የሚገኙ ፕሮጀክቶችን ጎበኙ ('[Participants of] Mayors' Forum Visited Different Projects of Addis Ababa'), https://bit.ly/3vph2MX (accessed 11 June 2021).

is composed of seven members, with Adanech Abebe, the deputy mayor of Addis Ababa, selected as the first chairperson of the board.[107]

8 Political Culture of Local Governance

The state constitutions provide that *woredas* and cities must be run by democratically elected officials, while electoral law provides that local elections must be conducted on a multiparty basis.[108] Neither the state constitution nor the election law states any clear principles with regard to ensuring equitable gender representation. The election law does provide financial incentives for political parties who field female candidates, but these incentives are only for political parties contesting in general elections (elections for parliament and state councils) and not for those taking part in local elections.[109] Five local elections have been held since the establishment of the federal system. The elections were held separately from the general elections in which the federal and state legislatures are elected. In contrast, the election to the Dire Dawa and Addis Ababa councils were held at the same time as the general elections.[110]

The National Electoral Board of Ethiopia (NEBE) put the number of voters who are registered to vote in the local elections at about 30 million. The NEBE's reports also claim that voter turnout in these elections stands in excess of 90 per cent of registered voters.[111] However, these figures do not seem accurate and there are few signs of activity or

[107] ወይዘሮ አዳነች አቤቤ የኢትዮጵያ የከንቲባዎች ፎረም የቦርድ ሰብሳቢ ሆነው ተመረጡ ('Adanech Abebe Selected Chair of the Board of Forum of Mayors') (31 October 2020) *Abyssinia Media*, https://bit.ly/3jmV6MB (accessed 11 June 2021).

[108] Local elections were held in accordance with Proclamation No. 532 (2007). This proclamation was revised as the Ethiopian Electoral, Political Parties' Registration and Election's Code of Conduct Proclamation 1162 (2019). Proclamation 1162 (2019) was expected to be implemented for the first time in the sixth general elections held on 28 June 2021. In any case, both versions provide for local elections held on the basis of multiparty democracy.

[109] Proclamation 1162(2019), article 101(2)(c).

[110] The NEBE planned to hold the elections to Addis Ababa and Dire Dawa a week after the sixth general elections (federal and state elections). This, however, created a great deal of political controversy. The NEBE then changed its previous decision in this respect, with the elections of the two cities' councils to be held along with the general elections.

[111] Greg Dorey, 'Local Elections 2013' (9 May 2013) Foreign, Commonwealth and Development Office, https://blogs.fcdo.gov.uk/gregdorey/2013/05/09/local-elections-2013/ (accessed 14 June 2021).

canvassing around the local elections. They come and go without any fanfare and there is little campaigning on social or public media or in any other form of publicity. Each of the five recent local elections took place without the participation of any opposition parties (surely a key indicator of open, free, and fair elections). Indeed, the opposition political parties made it known, long before election day, that they would not participate. Consequently, the only runners were the EPRDF and its affiliate parties and these then ran in uncontested local elections which they easily won. The fifth local election was supposed to take place in 2018 but it was indefinitely postponed. Thus, at the present moment, four years have passed since the formal end of the term of office of the local councillors elected in 2013; but this has passed without notice or demur.

Why is it that the local government appears to have little relevance to Ethiopian political life? As mentioned above, the central government sees local government institutions simply as the instruments of centralised control at the local level. At the same time, opposition parties and groupings do not seem to consider local governments as worth their attention: their focus is on the control of the federal government. Control of the federal state government means control over local government.[112]

While opposition parties paid no attention to local government and local elections, those who led the public protests from 2015 to 2018 did. They adopted a strategy of dismantling local government institutions and attacking local officials as a means of putting pressure on the federal government. According to Østebø, the targeting of local administrative structures by protesters had the effect of 'temporarily limiting the state's presence in every corner of the Oromia region'.[113]

[112] Zemelak Ayele, 'Ethiopia: Politics Grows Up, While Power Grows Down' (24 February 2013) *Addis Fortune*.

[113] Terje Østebø, 'Analysis: The Role of the Qeerroo in Future Oromo Politics' (26 May 2021) *Addis Standard*, https://bit.ly/3DWsByJ (accessed 27 December 2021).

9 Covid-19's Impact on the Role of Local Government

The emergence of Covid-19 and the measures taken to combat it neither enhanced nor diminished the role and place of local government.[114] Everyone seemed in agreement that the federal government had to play a leading role in the fight against Covid-19. The reaction of the states and local government to the pandemic has been to wait and see what the federal government would do. This stance might be the result of the general public perception that Covid-19 virus started outside Ethiopia, could only get into the country through the passage of international travellers, and the federal government alone controls the country's ports of entry and exit. Indeed, the initial public demand was for the federal government to restrict international travel and immediately suspend international flights by the country's main carrier, Ethiopian Airlines. The role of local government in seeking to contain the Covid-19 pandemic was limited to enforcing the measures announced by the federal and (to a lesser extent) by state governments. Such measures included enforcing lockdowns in cities in the Oromia and Amhara states and enforcing the rules that prohibit public meetings.[115]

10 Emerging Issues and Trends

Local government is the oldest and most important political institution in Ethiopia and one that has direct relevance to the conduct of people's everyday lives. Despite this simple fact, local government does not enjoy the institutional place and status in government that its importance warrants. It has no explicit constitutional recognition and consequently is not endowed with original functions, powers, or sources of finance. It is barely considered in any of the political and legislative reforms taking place in the country. As has been argued elsewhere, any democratic and social reform that does take place is, in fact, unlikely to succeed

[114] For more on the responses of the federal, state, and local governments to the Covid-19 pandemic, see Zemelak Ayele and Yonatan Fessha, 'Controlling Public Health Emergencies in Federal Systems: The Case of Ethiopia', in Nico Steytler (ed) *Comparative Federalism and Covid-19: Combating the Pandemic* (Routledge, 2022) 319–335.

[115] Ibid.

without properly empowering local government and enhancing its democratic mandate. Positive political change 'requires enhancing the political significance and the democratic pedigree of local governments'. The institutional mechanism for achieving this is 'the entrenchment in the national constitution of local government as democratic and politically relevant level of government, alongside the transfer of suitable competences and sufficient resources'.[116]

[116] Zemelak Ayele, 'Deep Roots are Not Reached by the Frost: Giving Local Roots for Democratic Reforms in Ethiopia', in Adem Abebe (ed) *Public and Constitutional Law Series* (College of Law and Governance, Addis Ababa University, 2020) 232.

CHAPTER 8

Germany

Henrik Scheller

Although municipalities in Germany do not have their own constitutional level of government similar to the federal government or *Länder*, they make an essential contribution to the provision of goods and services of general interest. Municipalities, granted autonomy in self-government by the constitution, operate in a highly charged and politically contested area of governance. On the one hand, municipalities enjoy the right to self-government, and neither the federal government nor the *Länder* may interfere with this arbitrarily. On the other, as a constitutional part of the *Länder*, the municipalities are dependent on them, especially so in financial terms. As a result, municipalities constantly have to balance their derived responsibilities with their voluntary tasks as both formal expectations and specific demands from citizens continue to grow due to a constantly changing global conditions and new types of crises. Municipalities in Germany are torn between fulfilling their administrative implementation mandate, on the one hand, and responding to the

H. Scheller (✉)
German Institute of Urban Affairs, Berlin, Germany
e-mail: Scheller@difu.de

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_8

more immediate claims of local politics and their constituencies, on the other.

1 Country Overview

The Federal Republic 'is a democratic and social federal state', as article 20(1) of the Basic Law (BL) states. The so-called 'eternity clause' of article 79(3) BL protects the federal-state principle just as the inviolability of human dignity guaranteed by article 1 BL: 'Amendments to this Basic Law affecting the division of the Federation into *Länder*, their participation in principle in the legislative process, or the principles laid down in articles 1 and 20 shall be inadmissible'.

On the Federal Republic's 70th anniversary in 2019, many commentators emphasised the stabilising function of the Basic Law. It belongs to the Roman legal tradition of civil law and was originally drafted in 1948/1949 to be no more than a provisional constitution, at the insistence of the Allies. It has, however, gone on to survive even the challenges of German unification, though undergoing various amendments and supplements. All in all, its fundamental constitutional elements remain unchanged, and these include article 20(2) BL which provides: 'All state authority is derived from the people. It shall be exercised by the people through elections and other votes and specific legislative, executive and judicial bodies'.

At the federal and state levels, the institutions of representative democracy in the municipalities are determined in and through regular elections. In the two-tier state structure of Germany, cities and municipalities remain formally part of the *Länder*, and are assigned autonomous self-government at the local level, with this guaranteed by the Constitution.[1] On Germany's reunification in 1990, five new states (plus East Berlin) joined the Federal Republic, expanding the latter's population by about 16 million. To this day, significant differences exist between West and East Germany in political, economic, fiscal, and cultural terms.

While the parliamentary system at the federal level is structured around bicameral institutions (the *Bundestag* and *Bundesrat*), both the *Länder* and the municipalities each has only one directly elected representative body. All citizens are entitled to vote and can take part in the election of

[1] Article 28 BL.

the *Bundestag*. This takes place every four years as a general, direct, free, and secret election. The same system prevails at the state and local levels, although some *Länder* have a five-year election cycle so as to ensure greater political continuity.

The Federal Constitutional Court (*Bundesverfassungsgericht*) has always played a significant role in any conflicts that arise between the federal government, the states, and the municipalities. In addition to the mechanisms for 'Disputes between the Federation and the *Länder*' (*Bund-Länder-Streit*) and 'Abstract Judicial Reviews of Statutes' (*Normenkontrollklagen*), the municipalities enjoy the right to file a 'Municipal Constitutional Complaint' (*Kommunale Verfassungsbeschwerde*) with the Federal Constitutional Court. In addition, in the event of any violation to the guarantee of local self-government, the constitutional court of the respective *Land* or the Federal Constitutional Court can be approached.

With about 83.12 million inhabitants (as of June 2021), the Federal Republic is the most populous member state in the European Union (EU).[2] Of these inhabitants, about 10.5 million are non-German passport-holders, in line with the figure of the country's 12.6 per cent foreign population. While about 32.2 million Germans are non-denominational, the Catholic and Protestant churches have about 22.6 and 20.7 million members, respectively (though various regions are experiencing a strong downward trend in numbers). According to the Research Center of the Federal Office for Migration and Refugees, in 2019 there were between 5.3 and 5.6 million Muslims living in the Federal Republic, amounting to between 6.4 and 6.7 per cent of the total population.[3]

These figures represent a growth of about 900,000 in the Muslim population from the figures established in the 2015 survey. Muslims of Turkish origin continue to make up the largest proportion of this group (about 2.5 million), though they no longer constitute (at 45 per cent) the majority of resident Muslims. Almost 1.5 million (27 per cent) come

[2] Statistisches Bundesamt, 'Bevölkerungsstand 30. Juni 2021: Bevölkerung im 2. Quartal 2021 geringfügig gestiegen' (2021), https://bit.ly/3JoOrfC (accessed 20 December 2021).

[3] *Muslimisches Leben in Deutschland 2020. Studie im Auftrag der Deutschen Islam Konferenz. Forschungsbericht 38* (Nürnberg, Bundesamt für Migration und Flüchtlinge. ed 2021) 37–39.

from an Arabic-speaking country in the Middle East (19 per cent) or North Africa (8 per cent). The significant growth in the number of Muslim residents was undoubtedly the result of the global refugee crisis in 2015–2016. In this period, some 1.2 million people applied for asylum in Germany, an increase on the previous average of about 200,000 people per year.

Despite the massive recession arising from the effects of the Covid-19 pandemic, Germany in 2020 was once again the strongest economy in the EU. With its gross domestic product (GDP) of EUR 3.3 trillion (EUR 35.951 per capita), it forged ahead of both France, with about EUR 2.2 trillion Euro (EUR 31.091 per capita), and Italy, with EUR 1.6 trillion Euro (EUR 28 per capita).[4] Germany's economy is strongly export-oriented, taking third place behind China and Russia with its share of about EUR 1.3 trillion. International organisations and European partners are not alone in viewing this strong export orientation with critical eyes, for it is seen as a burden on the local economy, especially in times of global recession. Local authorities in particular regularly feel the effects of this, as companies pay less tax while, at the same time, employees are entitled to municipal social benefits in the event of unemployment.

2 History, Structures, and Institutions of Local Government

Forms of local self-government in Germany have changed throughout its history. Until as late as the Weimar Republic (1919–1933), municipalities were not regarded as an original part of the state organisation.[5] Article 127 of the Weimar Reich Constitution (WRV) assured the cities that '[m]unicipalities and associations of municipalities have the right of self-government within the limits of the law'. However, this provision was to be found in the second main part of the WRV dealing with the '[b]asic rights and duties of the Germans' and the section about 'Community

[4] Statistisches Bundesamt, 'Deutschland im EU–Vergleich 2021' (2021), https://bit.ly/3DWwVy0 (accessed 20 December 2021).

[5] Oscar W Gabriel and Everhard Holtmann, 'Kommunale Demokratie', in Raban Graf von Westphalen (ed) *Parlamentslehre* (München and Wien, 1993) 471–488; Jörg Bogumil, 'Kommunale Selbstverwaltung', in *ARL—Akademie für Raumforschung und Landesplanung* (ed) *Handwörterbuch der Stadt—und Raumentwicklung* (Akademie für Raumforschung und Landesplanung, Hannover, 2018) 1127–1132.

Life'. The actual assignment and the allocation of corresponding competencies made it clear that the municipalities (ultimately in a tradition going back to the Middle Ages) were primarily restricted in their functions to the performance of tasks of local welfare, for example, 'keeping the family clean, healthy and socially supported',[6] or with providing an elementary school system.[7] Nonetheless, with the growing social legislation in the second half of the nineteenth century, the portfolio of tasks assigned to the municipalities grew significantly.[8] Matthias Erzberger's financial reform of 1919/1920 gave the municipalities a share of the federation's overall tax revenue, while the Basic Law of 1949 brought a further fundamental constitutional change by explicitly recognising the municipalities as part of the overall state organisation. Local government autonomy became an integral part of section II of the Constitution as it addressed the foundations of the federal order and the relationship between the federal government and the *Länder*.

As of 31 December 2020, Germany had 10,796 municipalities.[9] Municipalities constitute the smallest municipal unit. In Germany, a city is defined as an entity with more than 5000 inhabitants.[10] Given the existence of a large number of very small municipalities in the *Länder*, municipalities can come together to form an 'association of local authorities' (*Gemeindeverband*). Such mergers (between at least two municipalities) allow the formation of a single public body to undertake the tasks of local self-government, though without the individual municipalities losing any independence. There are currently 4607 such associations in Germany, in a situation which there are 7846 municipalities with fewer than 5000 inhabitants. Just over half of German's population (51 per cent) live in either small or medium-sized towns. Municipalities and associations of municipalities are usually parts of a county (*Landkreis*). There are 294 of these counties in Germany. Only 107 cities are 'county free'—that is, they do not belong to a county.

[6] Article 119 WRV.

[7] Article 144 WRV.

[8] Gabriel and Holtmann (n 5) 1128.

[9] Statistisches Bundesamt, 'Daten aus dem Gemeindeverzeichnis. Gemeinden in den Ländern nach Einwohnergrößenklassen' (2021).

[10] Bundesinstitut für Bau-, Stadt- und Raumforschung, 'Laufende Stadtbeobachtung – Raumabgrenz-ungen. Stadt- und Gemeindetypen in Deutschland' (2021), https://bit.ly/3Jsp6RT (accessed 20 December 2021).

They include—particularly prominently—the three city-states of Berlin, Hamburg, and Bremen. These cities are both cities and federal states. Between the counties and the states, four states (North Rhine-Westphalia, Bavaria, Hesse, and Baden-Württemberg) still have governmental districts (*Regierungsbezirke*) standing as the decentralised administrative units of the *Länder*.

Even by European standards, Germany has a very high number of municipalities. As a result, there has been a great deal of discussion about both territorial and administrative reform and issues arising from inter-municipal cooperation. The latter is, in particular, a sensitive issue, as it involves responsibilities, resources, and forms of agency that political actors in autonomous municipalities prove reluctant to lose or to delegate. However, inter-municipal cooperation has also had some real success stories, particularly with regard to the joint provision of infrastructural features such as water supply and wastewater disposal, local public transport, environmental protection, culture, health care, and welfare.[11]

Various legally institutionalised forms of cooperation have emerged. These include municipal- or special-purpose associations (*Zweckverband*) and institutions under public law (*Anstalten des öffentlichen Rechts*), with these created for specific purposes or to accomplish a narrow range of tasks. Many municipalities or counties have established joint public enterprises to provide services of general interest, particularly so in the area of local public transport. In addition, there are forms of cooperation such as mayors' conferences (institutionalised or informal), expert panels, round tables, and working groups that involve much lower degrees of legal commitment. These have been joined recently by the idea of inter-municipal business parks, though the latter have not, as yet, been translated into practice.

In Germany, the size of municipalities delineates their public policy-making capacities, both within and beyond their city boundaries. The Federal Spatial Planning Act (*Raumordnungsgesetz*) defines the framework and guidelines for spatial planning in Germany. It is based on the 'Concept of Central Places' (*Zentrale-Orte-Konzept*) first developed by Walter Christaller in 1933.[12] This (theoretical) concept categorises

[11] Thomas Gawron, 'Interkommunale Zusammenarbeit' (2005), https://www.arl-net.de/de/lexica/de/interkommunale-zusammenarbeit (accessed 20 December 2021).

[12] Walter Christaller, *Die Zentralen Orte in Süddeutschland. Eine ökonomisch-geographische Untersuchung über die Gesetzmäßigkeit der Verbreitung und Entwicklung*

municipalities according to their centrality within the region and determines their characteristics in terms of infrastructure and public services. The larger cities have a natural 'spill-over effect' because they also offer important public services to their surrounding areas. The central-places concept describes all municipalities in Germany as upper, middle, or lower centres. Spatial planning then links this categorisation additionally with typical descriptions of the location in space ('central', 'peripheral', 'urban', etc.), making possible a more differentiated classification of the various cities and municipalities. Because they have fewer financial resources and lack adequate staffing, smaller and medium-sized municipalities have less power to shape their affairs, while municipalities covering large areas but with low population densities often have problems with infrastructural maintenance due to a lack of the necessary resources.

Despite being the capital city, Berlin does not enjoy any special status in principle, although it was regulated in a separate law following reunification in 1994. However, the federal scheme for fiscal equalisation treats the capital—as with the other city-states—differently for the purposes of calculation. Here the so-called '*Einwohnerveredelung*' ('population refinement') works to artificially inflate the number of Berlin's inhabitants. This inflation is calculated on the assumption that, because of the city's increasing population, more public services are offered to the surrounding areas (a principle that also underlies the municipal financial equalisation systems of the *Länder*). In addition, Berlin receives earmarked allocations from the federal government specifically for the fulfilment of its capital-city functions, including representative purposes. These include, for example, grants for the extraordinary cultural and museum landscape for which Berlin is famous.

der Siedlungen mit Städtischer Funktion (Wissenschaftliche Buchgesellschaft, 1933, Repr. 1980).

3 Constitutional Recognition of Local Government

The Basic Law guarantees local self-government autonomy in article 28(2):

> Municipalities must be guaranteed the right to regulate all local affairs on their responsibility within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government in accordance with the laws. The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed.

By including this provision in section II ('Federation and *Länder*'), the drafters of the Basic Law underlined their firm understanding that municipalities form an essential part of the federation's state organisation. In addition, article 28(2) BL is interpreted in constitutional law as an 'institutional minimum guarantee', one according to which the municipalities are understood to have an 'overall competence' across their sphere of activity. According to this principle, the municipalities do not act on instruction, but according to the nature of the matter.[13] However, their competence is naturally limited by the 'principle of locality'. In this respect, the cities and municipalities act according to the principle of their responsibility: they are not bound by instructions and orders from the *Länder* and are, in that sense, autonomous. A further limit to municipal action is provided by the constraint that the right of self-government may be exercised only within the framework of existing law. In principle, the autonomy of local self-government is broadly defined and is in keeping with the principle of subsidiarity.[14]

The Basic Law does not provide for any specific institutional arrangements for local self-government, but does require conformity to the homogeneity principle: 'The constitutional order in the *Länder* must conform to the principles of a republican, democratic and social state

[13] Gabriel and Holtmann (n 5) 473.

[14] Daniel Weinstock, 'Cities and Federalism' (2014) 55 *Nomos* 259–290, http://www.jstor.org/stable/24220380 (accessed 20 December 2021).

governed by the rule of law within the meaning of this Basic Law'.[15] In this respect, it is the responsibility of the *Länder* to determine the structures, institutions, and competencies of local self-government in their corresponding municipal constitutions or regulations. Since the federalism reform of 2006, the federal government may also no longer transfer tasks to municipalities. The so-called 'prohibition of encroachment' (*Durchgriffsverbot*) under article 84(1) BL provides that '[f]ederal laws may not entrust municipalities and associations of municipalities with any tasks'. Prior to this reform, the federal government had repeatedly defined tasks—especially in the social sector—for the municipalities to execute. Due to insufficient financial compensation, the municipalities had to record considerable increases in expenditure. In this respect, only the *Länder* are now allowed to assign new tasks to their municipalities. However, this rarely happens, since the *Länder* must also ensure adequate financing for their municipalities.

Any form of the asymmetrical or unequal treatment of municipalities is hardly capable of finding political consensus in Germany, so it is not explicitly provided for in law. Instead, Germany's political culture is strongly shaped by the idea of 'the establishment of equivalent living conditions throughout the federal territory or the maintenance of legal or economic unity',[16] though this is neither a state objective nor a binding constitutional mandate. Nevertheless, the precise wording of the Constitution regularly gives rise to political debate. Most recently, in 2019, the federal government set up a corresponding commission in which various working groups spent more than a year discussing how 'equivalent living conditions' could be defined and how these could be achieved across Germany, particularly in structurally weak regions and municipalities. The commission made a number of proposals and these have been successively implemented. Since municipal law is a matter for the *Länder*, there are natural differences in the competencies, tasks, and financial resources granted to cities and municipalities under state law. The so-called 'degree of municipalisation' (*Kommunalisierungsgrad*)—that is, the share of total expenditure in a federal state which is allocated to the municipal level—therefore exhibits quite discernible differences.

[15] Article 28(1) BL.

[16] Article 72(2) BL.

4 Governance Role of Local Government

German municipalities execute various tasks. They include 'tasks in the local authority's sphere of action' and those that are delegated (*Aufgaben des eigenen und übertragenen Wirkunsgkreises*), as well as 'voluntary' and 'mandatory tasks' ('*freiwillige*' and '*pflichtige Aufgaben*').[17] The municipalities' sphere of action refers to the direct concerns of the 'local community'. In addition, however, the municipalities must also take on tasks assigned by the federal and *Länder* governments. This makes it clear that the municipalities form an important administrative level in the German federal state—even if this constitutionally consists of only two levels of government.

The idea behind this is that the municipalities form the state unit with which people have direct contact and which shapes their daily lives through public services and infrastructure. In the 1930s, the concept of 'services of general interest' (*öffentliche Daseinsvorsorge*) was developed,[18] and to date it shapes the understanding of the state in general and local self-government in particular. The term '*Daseinsvorsorge*' is understood to mean the provision of goods and services essential to a meaningful human existence. This includes those that fall in the category of general interest.[19] In Germany, these include the supply of energy and water; the disposal of sewage and waste; the maintenance of a local public transport systems; postal and telecommunications services; the provision of public media; special financial and insurance services; the maintenance of a basic school and education system; social and charitable services; the fulfilment of fundamental governmental tasks; the running of a police service and judicial system; and the guarantee of both external and internal security.

While some of these tasks are already undertaken by the municipalities, they are often referred to as 'municipal services of general interest'. Their performance is constitutionally anchored in the principle of the welfare state under article 20(1) BL. Here the 'social' services of general interest include (along with other services), youth welfare and care; the provision for kindergartens and child care; the establishment of public schools; the

[17] Horst Dreier, 'Article 28, Rn. 90', in Horst Dreier (ed) *Grundgesetz Kommentar, Band 2* (Auflage, 2006); Alfons Gern, *Deutsches Kommunalrecht* (3rd edition, Nomos Verlagsgesellschaft, 2003) 16.

[18] Ernst Forsthoff, *Die Verwaltung als Leistungsträger* (Stuttgart Kohlhammer, 1938).

[19] Hartmut Maurer, *Allgemeines Verwaltungsrecht* (München, 2011).

provision of basic security services for job-seekers; promotion of (social) housing construction; and social assistance. An essential characteristic of these services is—in keeping with the understanding of public goods—the guarantee of free access to them in all regions at affordable prices.

Along with their 'voluntary self-governing tasks' (culture, sports, economic development, and climate protection), the municipalities are responsible for three types of compulsory duties: self-governance; tasks undertaken on instruction; and contract matters.[20] The municipalities' degree of autonomy with respect to the legal and technical supervision of the *Länder* is visible in the performance of these duties. Obligatory self-government tasks include wastewater disposal; school transportation; fire brigades; the construction and maintenance of school and administrative buildings; and the upkeep of municipal roads. While the municipalities are obliged to attend to all of these, they are free to decide how to do so. Mandatory tasks according to instruction include, for example, security and public order administration and the reimbursement of the costs of housing and heating within the framework of Social Aid Code II (SGB II). These are subject to the legal and technical supervision of the *Länder*. In this, they are similar to commissioned matters such as passport and registration services; registry; health and veterinary offices; and also the conduct of elections and carrying out of censuses. Here, the municipalities merely act as the decentralised administrative bodies responsible to the federal and state governments.

In 2020, the total public budget in Germany amounted to EUR 1.7 billion.[21] This represented an increase in expenditure of 12.1 per cent compared to 2019. At the same time, incoming revenues fell by 3.5 per cent to EUR 1.5 billion, resulting in a deficit of EUR 1.89 billion. This deficit reveals the huge impact of the Covid-19 pandemic: it was the first deficit since 2013 and the biggest since German reunification. In 2019, a financial surplus of EUR 45.2 billion had been achieved. Municipalities account for about 17.5 per cent of the total of public budget spending. In terms of revenue, the municipal share corresponds to about one-fifth

[20] Dreier (n 17).

[21] Statistisches Bundesamt, '189,2 Milliarden Euro öffentliches Finanzierungsdefizit im Jahr 2020. Öffentlicher Gesamthaushalt mit höchstem Defizit seit der deutschen Vereinigung, Pressemitteilung Nr. 169 vom 7. April 2021' (2021), https://www.destatis.de/DE/Presse/Pressemitteilungen/2021/04/PD21_169_711.html (accessed 20 December 2021).

(about 20 per cent). Despite the Covid-19 pandemic, the municipalities were able to generate a slight increase in revenue in 2020, and consequently a small financial surplus, though this was due mainly to the way the federal government compensated for the loss of local business tax revenue by a series of allocations. Table 1 sets out the public expenditures and revenues of the different federal levels in 2019/2020.

Until the 1990s, Germany had had four different types of council constitutions. The historical roots of this variation are to be found in the small-scale statehood that characterised Germany until 1919. During the nineteenth century, Germany had as many as 48 kingdoms as well as a plethora of dukedoms and principalities on account of a specific tradition of inheritance law and as a result of a multitude of martial conflicts over the centuries. This complex history allowed for distinctions between the 'South German' (*Süddeutsche*) and the 'Rhenish Mayoral Constitutions' (*Rheinische Bürgermeisterverfassung*), the 'North

Table 1 Expenditure and revenue of the Federation, the *Länder*, the municipalities, and the social insurances (2019–2020)

	Total in euro	*Federation in %*	Länder *in %*	*Municipalities in %*	*Social insurance in %*
Adjusted expenses					
2020	1,678,622	30.48	29.03	17.47	44.59
2019	1,497,437	26.51	27.86	18.48	45.41
Change in %	12.1	14.98	4.20	−5.47	−1.81
Adjusted revenues					
2020	1,489,365	25.64	30.47	19.82	48.39
2019	1,542,690	26.69	28.13	18.30	44.60
Change in %	−3.5	−7.3	8.32	8.31	8.50
Financial balance					
2020	−189,228	−129,860	−33,455	1982	−27,895
2019	45,182	14,814	16,595	5,625	8,148
Change in %	−76.12	−88.59	−50.40	−64.76	−70.79

Source Statistisches Bundesamt (2021)

German Council Constitution' (*Norddeutsche Ratsverfassung*), and the 'Magistrate Constitution' (*Magistratsverfassung*).[22]

The basic structure of all of these was, however, the same. The political structure of the municipalities was made up of a city council directly elected by the citizens, and this formed committees to carry out its work; a mayor; and the administration. The main distinguishing feature between them concerned the election of the mayor and its role, function, and duties. The 'Southern German Mayoral Constitution' has now become established in most German states. It was initially widespread in Bavaria and Baden-Württemberg, providing for a direct election of the mayor as well as the city council.

However, the legislative periods of the two institutions have different terms, with the result that the council majority and the post of mayor may well belong to opposing political parties. This form of checks and balances is intended to avoid partisan thinking and to promote compromises in the interests of the local community. The prerequisites for this are certainly most likely to be met at the municipal level. This is because, in Germany, party affiliations usually play a subordinate role in a local politics, which is dominated by local personalities and where (issue-related) grand coalitions are often formed between the particular local actors involved. The mayor's position in the 'Southern German Mayoral Constitution' is strong: he or she executes the council's resolutions, represents the municipality externally, and is responsible for managing the municipal administration. In addition, he or she is—in most cases—also the chair of council and therefore has responsibilities which the council cannot withdraw (matters of instruction and day-to-day administration).

Council representatives are elected directly by the residents of the city every four or five years and work on an honorary basis. In larger cities, the representatives do receive a small expense allowance for their work, which mainly takes place in the afternoons and evenings. This is why the councils are often referred to as 'after-work parliaments'. The city council appoints a chairperson from among its members, and he or she is responsible for conducting the plenary sessions. Committees are established at the beginning of the legislative period for the preparation of special technical proposals. In most of the *Länder*, the mayors of the

[22] Hans-Georg Wehling, 'Unterschiedliche Verfassungsmodelle: Süddeutsche Ratsverfassung', in Bundeszentrale für Politische Bildung (ed) (2006) 242 *Informationen zur Politischen Bildung*.

cities are also elected by direct vote. The legislative periods of the mayors and the councils are usually not congruent. In most municipalities, the mayor is the head of the administration, so he or she is responsible for implementing the council's decisions and also represents the municipality externally. In larger cities, the heads of central departments of the administration (especially finance, climate protection and construction, social affairs, and public order) are referred to as council members and/or as mayors. Following the departmental principle (*Ressortprinzip*), these have technical and personnel responsibility for their respective specialised administration. The mayor (together with the city council) is responsible for determining policy guidelines.

In line with the collegial principle (*Kollegialprinzip*), important policy measures are usually coordinated on a weekly basis. With the introduction of the 'New Governance Model' (*Neues Steuerungsmodell*) (the German manifestation of the New Public Management approach) in the mid-1990s, many municipalities have externalised or privatised parts of their administrations. Local governance then usually takes the form of a 'corporate' structure. In this structure, the mayor's college is referred to as the 'City's Board of Directors' (*Verwaltungsrat*). In Germany, however, the New Public Management approach has not gained widespread acceptance. The structures of German administration (in the sense understood by Max Weber) proved to be too established and path-dependent.[23]

In contrast with the federal level, forms of direct democracy in Germany are practised at the municipal level. The instruments, procedures, and issues that can be subject to such procedures differ between the *Länder*. Most municipal constitutions provide for a two-stage procedure. The 'citizens' petition' (*Bürgerbegehren*) is the first stage. This serves as a request for the implementation of a citizens' referendum, which forms the second stage. Berlin, Bremen, and Thuringia have a three-stage procedure in which the citizens' petition must be preceded by an application for approval. For a citizens' petition to be successful, people must collect a certain number of signatures within a set period. The threshold to be reached for this varies between 2 and 15 per cent of the eligible voters in the different *Länder* and municipalities. If the necessary signatures are collected, the respective city or municipal council must deal with the petition and hold a referendum—in other words, a vote in which all citizens

[23] Max Weber, *Wirtschaft und Gesellschaft. Grundriß der verstehenden Soziologie* (Erste Auflage veröffentlicht, 1921/1922, Tübingen, 1972).

eligible to vote can participate. For this reason, referenda often take place on the same day as the municipal elections. A special type of plebiscite is a petition for a referendum. In these petitions, the citizens do not formulate their political proposal, but rather demand the repeal of a recent decision by the city council. The number of citizens' petitions has increased significantly in recent years.[24]

5 Financing Local Government

According to article 28(2) BL, the autonomy of local self-government 'shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed'. In principle, the *Länder* must ensure that counties, cities, and municipalities receive adequate funds (constitutionally, the municipalities are constituent parts of them). The 'two-tier dogma' in the German fiscal constitution prohibits any direct or immediate financial relation between the federal government and the municipalities. This ruling also applies to the federal government's grants in the context of mixed financing.

The Basic Law provides for this in the form of the so-called 'Joint Tasks' (*Gemeinschaftsaufgaben*) under article 91(a) to (e) BL and also in the 'Financial Assistance for Investments' (*Finanzhilfen*) under article 104(b) to (d) BL (generally used to promote municipal investment projects). Such federal grants are either passed on to the municipalities via the *Länder* or formally granted by the *Länder*, which—as in the case of 'federal laws providing for money grants' (*Geldleistungsgesetze*) under article 104(a) (3) and (4) BL—receive a corresponding reimbursement from the federal government.

Following the 'federal principle of standing up for one another' (*bündisches Prinzip des Einstehens füreinander*), the task of providing the municipalities with adequate financial resources is thus the responsibility of the respective *Länder*. The federal principle of solidarity (*bündnisches*

[24] Henrik Scheller, Christian Raffer, Katja Rietzler, and Carsten Kühl, *Baustelle Zukunftsfähige Infrastruktur. Ansätze zum Abbau Nichtmonetärer Investitionshemmnisse bei öffentlichen Infrastrukturvorhaben* (Wiso Diskurs 12/2021, herausgegeben von der Friedrich-Ebert-Stiftung, Berlin, 2021).

Solidarprinzip) is also taken into account in the municipal financial equilisation systems of the *Länder*, which provide for both participation of the municipalities in the revenues of the *Länder* and a horizontal redistribution of revenues via corresponding financial equalisation apportionments.

The two-tier structure of the German fiscal constitution means that the general principle set out in article 104(a)(1) BL does not apply, or at most applies indirectly, to the relationship between the federation and the municipalities. This provides that the 'Federation and the *Länder* shall separately finance the expenditures resulting from the discharge of their respective responsibilities insofar as this Basic Law does not otherwise provide'. It is true that all constitutions of the *Länder* now also contain such provisions for the relationship between the *Land* and the municipalities. However, these regulations do not apply in the case of the cost-intensive transfers of tasks from the federal government and the EU to the municipalities. After increasing significantly in recent years, these are now no longer allowed.

The municipal constitutions of all *Länder* contain the so-called principles for the generation of income and revenue for the municipalities. There is a fixed order of priority in the sources of income that are allowed. Municipalities can levy user and/or service charges from citizens (in particular contributions and fees); they are also allowed to generate tax revenues; and finally, some borrowing is permitted. Borrowing is allowed only as an exception when no other means of raising funds is possible or if it is otherwise uneconomical. This order is based on equivalence-theory considerations: those who benefit at the local level from special services and infrastructure of general interest should pay a corresponding contribution to them and also exercise political control over the use of these funds. At the same time, there is also the duty to take into account the economic forces of those liable for the levy, to strike an appropriate balance of interests between those liable for the levy, and to avoid the threat of permanent borrowing.

In constitutional practice, the financing of the German municipalities works somewhat differently. It is no coincidence that almost 40 per cent of the revenue structure of the municipalities comes from allocations provided by the *Länder* and federal governments, whereas tax revenues account for more or less another 40 per cent. Fees and contributions (which are supposed to be the main source of municipal funding) account for only about 8 per cent of revenue. Another 12 per cent comes from other revenue sources (donations, sales proceeds, fines, inheritances, and

so on). Among the tax revenues, trade tax (16.6 per cent) and the share from income tax (14.9 per cent) that the municipalities receive from this composite tax play a special role. In addition, there is also the property tax, a share from the value-added tax, and the so-called petty taxes (dog tax, hotel taxes, tourism levies, and so on).[25]

The financial constitution of the Basic Law not only standardises the tax and revenue sources of the federal and *Länder* governments. According to article 106(6) BL, 'revenue from taxes on real property and trades shall accrue to the municipalities'. In addition, 'revenue from local taxes on consumption and expenditures shall accrue to the municipalities or, as may be provided for by *Land* legislation, to associations of municipalities'. Like the trade tax, the property tax is a real or object tax that taxes the property of the tax debtor regardless of his or her living conditions and ability to pay.[26] The legal basis for the land tax is the Federal Property Tax Act. In Germany, a distinction is made between property taxes A and B. The former is levied on business properties, while the latter (B) is levied on property that belongs to the agricultural or forestry sectors. Other business and residential properties are subject to property tax B. In terms of revenue, property tax B is much more important than property tax A. According to article 106(6) BL, '[m]unicipalities shall be authorised to establish the rates at which taxes on real property and trades are levied, within the framework of the laws'.

For decades, this measure was subject to intense criticism. In 2018, the Federal Constitutional Court ruled that the property tax in its current form was legally valid only until 2024 and needed comprehensive reform. Criticism was not only directed at the assessment basis (decisive for calculating individual tax liability). To determine the assessed value of a property, the tax assessment figures from 1964 and 1935 were used. There were also complaints about multiple taxation, since the real estate tax was added to the existing taxation on personal income. In the meantime, the federal government—after protracted negotiations with the *Länder*—has passed a constitutional reform and, with it, proposed a new version of the Property Tax Act. However, the *Länder* now have to pass their Property Tax Laws by 2024, and the many critics of the proposal fear

[25] Bundesvereinigung der kommunalen Spitzenverbände, Durchschnittliche relative Einnahmen der Gemeinden in Flächenländern 2018.

[26] Klaus Tipke and Joachim Lang, *Steuerrecht* (Otto Schmidt, 2002) 544.

that this leaves insufficient time for due consideration, especially when this will involve a revaluation of about 80 million properties.[27]

According to article 106(6) BL, municipalities have the right to levy trade tax in addition to property tax. All domestic commercial enterprises are subject to this trade tax, irrespective of the individual capacity of the shareholders. However, self-employed professionals such as lawyers, doctors, and architects (as well as agricultural and forestry enterprises) are not considered under this article as commercial enterprises, and are consequently exempt from trade tax liability. This is a sore point for critics and continues to feed debates around tax reform. The assessment rates that the municipalities are entitled to levy on property and trade tax under article 106(6) BL are set independently by the municipalities on an annual basis. Cities in metropolitan areas, which usually have a high concentration of commercial enterprises as well as a well-developed infrastructure, tend to levy higher rates of trade tax than the smaller municipalities, which already have comparatively few enterprises.

The trade tax is thus an important factor in the location of businesses. The smaller, economically weak municipalities (which only have a low tax capacity) try to attract businesses by offering low trade tax rates. Unfortunately, this tactic, when combined with the tax concessions offered as an incentive for companies to relocate, contributes to the oft-lamented financial weakness of the municipalities. All in all, criticism of the existing municipal finance system in Germany is focused on the trade tax, and academics have repeatedly called for either the abolition or replacement of this tax. The municipalities and the municipal umbrella associations are also inclined towards corresponding reforms—albeit in a mirror-image of this, advocating for a 'revitalisation of the trade tax' and thus calling for an abolition of the various exceptions.

The most important pillar of municipal financial resources is the allocations that come from the municipal fiscal equalisation systems of the *Länder*. With the exceptions of the city-states of Berlin and Hamburg, all *Länder* constitutions provide for these. Their constitutional basis for these equalisation systems is given by article 106(7) BL. This stipulates that

[27] Henrik Scheller, 'Die Reform der Grundsteuer – Strukturerhalt statt Föderalisierung?', in Europäisches Zentrum für Föderalismusforschung Tübingen (ed) *2020: Jahrbuch des Föderalismus 2020. Föderalismus, Subsidiarität und Regionen in Europa* (Nomos, 2020).

> an overall percentage of the *Land* share of total revenue from joint taxes, to be determined by *Land* legislation, shall accrue to the municipalities or associations of municipalities. In all other respects, *Land* legislation shall determine whether and to what extent revenue from *Land* taxes shall accrue to municipalities (associations of municipalities).

This provision of the Basic Law already specifies the important distinction that exists between the 'obligatory' and the 'voluntary' tax-revenue-sharing system that obtains between the individual *Länder* and their municipalities.

In contrast to the federal-state fiscal equalisation system, the municipal schemes are tax-needs equalisation schemes. These try to take into account not only the financial strength of the municipalities but also to balance this against financial needs. Fiscal equalisation generally has four functions: fiscal, redistributive, spatial planning, and stabilisation.[28] To fulfil these, the *Länder* grant their municipalities what are called 'untied key allocations' (*ungebundene Schlüsselzuweisungen*) and 'earmarked investment allocations' (*zweckgebundene Investitionszuweisungen*). These allocations are drawn from the combined tax base, which itself has been standardised in the respective Fiscal Equalisation Acts of the *Länder*. These allocations are usually granted in advance from the fiscal equalisation fund. They can be used only for investment projects in areas such as schooling, science, public transport, road construction, social welfare, and health, with all of these granted only according to often quite detailed specifications. The remaining 'key mass' (*Schlüsselmasse*) is then used to grant untied key allocations to the individual municipalities so as to equalise the differences in financial strength. Such allocations include both allocations for financially struggling municipalities and lump sums for investment purposes.

In constitutional practice, however, the financial and budgetary situation of the municipalities in Germany has been complex and ambivalent for some years. From 2015 until the outbreak of the Covid-19 pandemic in 2020, the municipalities (as aggregated without the city-states) generated a surplus both in core and additional or extra budgets due to positive macroeconomic development. As is shown in Table 1, even in 2020 the municipalities were able to generate a surplus of about EUR

[28] Hans Pagenkopf, *Der Finanzausgleich im Bundesstaat: Theorie und Praxis* (Kohlhammer, 1981) 276.

1.9 billion due to the extensive support measures put into action by the federal government, with the result that the feared budget slumps initially failed to materialise. When the overall economic situation is positive, this is usually marked by high trade tax and income tax revenues, along with relatively low social spending (due to high employment rates). The outbreak of Covid-19 and the social distancing measures imposed as a result have impacted severely on this development, though even now the full extent of the damage to public budgets is only slowly becoming apparent.

In point of fact, some municipalities were already heavily indebted even before Covid-19. By the end of 2020, municipalities were indebted to the non-public sector by a total of about EUR 132 billion. This is about 6 per cent of the approximately EUR 2.171 billion assigned to the overall public budget (comprising funds for the federal, state, and local governments and social security funds). Seventy-two per cent of the municipalities' debt was made up of loans and securities debts, and 28 per cent by cash credits.[29] For years, this kind of indebtedness had been seen both as general evidence of inadequate funding but also, and more specifically, as an indicator of disparities between municipalities (the distribution of credit market debt per capita in the core municipal budgets shows a considerable spread between the *Länder*). In 2020, Saarland (with debts of EUR 3419 per capita), Rhineland-Palatinate (EUR 2958), and North Rhine-Westphalia (EUR 2597) were the worst offenders, with their average per capita debt standing at a higher level than the overall German average. Municipalities in the states of Brandenburg (EUR 566), Saxony (EUR 548), and Baden-Württemberg (EUR 494) were the least indebted.

With the imposition of the economic lockdown in reaction to the Covid-19 pandemic, public sector budgets could also be seen to be undergoing drastic changes. Given the collapse in tax revenues and the resulting budget deficits, it will no longer be possible to continue along the consolidation path of previous years. Instead, it is more likely that municipal debt, for the time being at least, will continue to grow. For example, in a survey conducted by the German Institute of Urban Affairs (DIFU)

[29] Statistisches Bundesamt, '2021 Pro-Kopf-Verschuldung steigt im Jahr 2020 auf über 26 000 Euro. Öffentliche Schulden binnen Jahresfrist um 273,8 Milliarden Euro gestiegen, Pressemitteilung Nr. 357 vom 28. Juli 2021' (2021), https://bit.ly/3M9YtmH (accessed 20 December 2021).

in April 2020, almost all municipal treasuries stated that they expected revenues to fall sharply in the current year, particularly so in the areas of taxation and revenues from economic activity. At the same time, expenditures will increase, especially in the areas of material expenditures and social expenditures.[30]

The pandemic will have also other negative consequences for budgets. Since municipalities realise about 55 per cent of all public investments in the Federal Republic in spending on the reconstruction and expansion of various public infrastructures (such as roads, bridges, schools, administrative buildings as well as water and energy supply), massive losses of tax revenue will be correspondingly consequential. Any reduction in investment would bring an end to all the positive achievements of recent years. According to information and analysis from DIFU, the investment backlog for all municipalities with 2000 or more inhabitants already amounted (in 2021) to some EUR 159 billion.[31]

At the moment, municipalities are under conflicting pressures with regard to their fiscal and budgetary responsibilities. The urge to consolidate is met by the rise of spending requirements at a time of growing investment backlogs. The Covid-19 pandemic has only increased these pressures and exacerbated the conflict between objectives. Municipalities have had to weigh up the extent to which investment activities and budget consolidation can or should be postponed due to the fact of rising social spending in the face of the growing number of both unemployed and short-term employees. Increases in expenditure on compulsory social tasks and high consolidation pressure lead necessarily to less investment, as this is one of the few areas of expenditure in municipal budgets that can be most easily dispensed with. Many municipalities are also now obliged to reduce their deficits (most of which have accumulated over many years) before they can contract new liabilities. In this situation, they often only have recourse to cash credits or liquidity protection loans. According to *Länder* municipal budget ordinances, however, these can only be used to finance current administrative expenses, and not investments.

[30] Stephan Brand, Johannes Steinbrecher, and Elisabeth Krone, 'Kommunalfinanzen in der Covid-19-Krise: Einbruch erwartet, Investitionen unter Druck' (2020) 289 *KfW Research Fokus Volkswirtschaft*.

[31] Christian Raffer and Henrik Scheller, *KfW-Kommunalpanel* (herausgegeben von der KfW-Bankengruppe, Frankfurt/Main, 2022).

6 Supervising Local Government

Since local self-government in Germany must take place 'within the limits prescribed by the laws',[32] the Federal Constitutional Court has stated the need to monitor compliance with these laws.[33] Such supervision is the responsibility of the *Länder*. In principle, there are two main forms of supervision. First, when municipalities carry out the tasks assigned to them by the *Länder*, they are subject to technical supervision. Secondly, with regard to tasks undertaken within their sphere of action, municipalities are subject merely to legal supervision, and their performance of these tasks is simply checked for compliance with the relevant *Länder*, federal, and EU laws.[34] The municipal supervisory authorities are organised according to the respective constitutional law of the *Land* in question.[35] Here, all that has to be monitored is the compatibility of municipal actions with the applicable legal system. This characteristic explains the origin of the terms 'legal supervision' (*Rechtsaufsicht*) or 'general supervision' (*allgemeine Aufsicht*). Municipal supervision may not include any expediency or discretionary control of voluntary or obligatory self-government tasks. Above all, the supervisory authority may not substitute its own discretion for municipal discretion.[36]

The municipal supervisory authorities of the *Länder* are organised in several tiers.[37] Distinctions are made between the lower, upper, and highest supervisory authorities. The lower supervisory authority for municipalities belonging to counties is the chief administrative officer of the county, the *Landrat*. In the case of county-free cities and the larger cities belonging to counties, the lower supervisory authority is usually that of the district government (*Bezirksregierung*). In *Länder*

[32] Article 28(2) BL.

[33] Uwe Lübking and Klaus Vogelsang, *Die Kommunalaufsicht. Aufgaben—Rechtsgrundlagen—Organisation* (Erich Schmidt Verlag, 1998) 33.

[34] Ibid., 50.

[35] Ibid., 71 and 74; Steffen Zabler, Christian Person, and Falk Ebinger, 'Finanzaufsicht in den Ländern: Struktur, Recht und ihr (fraglicher) Effekt auf die kommunale Verschuldung' (2016) 16(1) *Zeitschrift für Kommunalfinanzen (ZKF)* 6–12 (8).

[36] Lübking and Vogelsang (n 33) 81.

[37] Falk Ebinger, René Geißler, Friederike-Sophie Niemann, Christian Person, and Steffen Zabler, 'Die kommunale Finanzaufsicht. Strukturen, Rationalitäten und Umsetzung im Ländervergleich' (2017) 1 *Analysen und Konzepte* 7.

which do not have an intermediate level (Brandenburg, Mecklenburg-Western Pomerania, Saarland, Schleswig–Holstein), the lower supervisory authority is the minister of the interior. Thuringia is the only *Land* with a special feature in that the municipal supervision of the independent cities is assigned to the *Land's* administrative office (*Verwaltungsamt*). The state minister of the interior is the highest municipal supervisory authority in all *Länder*.[38]

It is generally understood that supervision by the municipal supervisory authorities should not be conducted in a patronising manner: municipal supervisors must rather act in a 'community-friendly' manner.[39] Only clear violations of the law may provoke interventions by municipal supervisors.[40] When exercising legal supervision, supervisory authorities must not be influenced by political considerations or base their decision on expediency. The municipal supervisory authorities play a special role in matters of budgetary policy since every municipal budget must be approved by the responsible authority. If this approval is not yet given, municipalities must work with a provisional budget only. Given the large number of municipalities, it often happens that municipalities are only allowed the right to limit expenditure up to halfway through the budget year, excepting obligatory liabilities (payment of salaries, debt service, and expenditure for maintenance measures).

Municipal supervisors have to check whether a municipality's budget is balanced and does not stand in danger of becoming overindebted and advise accordingly.[41] Any objections by the supervisory authorities may only extend to the budget volume of the municipalities under review as a whole, or to the obligation taken on to balance the budget. No particular task or action envisaged by a municipality may itself be the ground for an objection. The point at which the municipal budget is no longer compatible with the principle of 'economy and thrift' (and is therefore subject to objection by the supervisory authority) is decided on a case-by-case basis. Neither can the supervisory authority prescribe any specific savings

[38] Lübking and Vogelsang (n 33) 74.

[39] Ebinger, et al. (n 37) 8; René Geißler, 'Das Verhältnis zFinanzaufsicht und Kämmereien in Nordrhein-Westfalen' (2018) 1 *Der Gemeindehaushalt* 1–5, 6.

[40] Lübking and Vogelsang (n 33) 82–84.

[41] Ibid, 90. Geißler (n 39) 6.

measures since the idea of voluntary self-governing expenditure stands at the core of the autonomy of local self-government.

With regard to municipal staffing plans, objections can be lodged with regard to overstaffing or the violation of salary regulations. Even if the financial and budgetary situation of the municipality is strained and the fulfilment of mandatory tasks consequently endangered, the supervisory authority does not have the power to object to any specific voluntary services. In such cases, the supervisory authority may only recommend a reduction of funding to voluntary services as a whole, without the promotion or cancellation of specific individual projects.[42]

7 Intergovernmental Relations

The Basic Law does not provide for municipalities to have a formal say in federal and state legislation, despite the fact that they are responsible for the local implementation of various laws. However, the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*—GGO) do grant municipalities the possibility of a special right to be heard. Paragraph 47(1) of the Joint Rules states that the 'draft of a bill shall be submitted to the *Länder*, central municipal associations and the *Länder*'s representations to the Federation as early as possible if their interests are affected …'.

Municipal interests are represented in legislative processes by three municipal umbrella organisations. These are the Association of German Cities (*Deutscher Städtetag*—DST), which represents about 3400 large cities and almost 53 million inhabitants; the Association of Towns and Municipalities (*Deutscher Städte- und Gemeindebund*—DStGB), representing about 10,000 medium-sized and smaller municipalities; and the German County Association (*Deutscher Landkreistag*—DLT), which covers the 249 counties and thus 56 million inhabitants and about 96 per cent of Germany's surface area.

The associations must be heard in the parliamentary meetings held to discuss draft bills. In addition, the Chancellor holds both regular and informal meetings with the presidents and chief executives of the three umbrella associations. There were many such exchanges during

[42] BayVerfGH 1989; Lübking and Vogelsang (n 33) 123 f.

both the refugee crisis and the Covid-19 pandemic, as it was clear that municipalities played a significant role in managing these crises.

Despite the emphasis in Germany on the self-governing autonomy of municipalities, urban development policy is understood as cross-sectional in nature. As such, it aims at the further development of the urban area as a whole, in the context of regional development. It thus seeks to ensure careful coordination between various individual policies. Following the 2021 federal election, the new Ministry of Housing, Urban Development, and Construction has assumed responsibility for the conduct of urban development policy. Since municipalities are constitutionally part of the *Länder*, a large proportion of the measures initiated by the federal government in this field are carried out in close coordination with them. Already in the 1970s, Fritz Scharpf characterised such cooperation as *Politikverflechtung* ('joint-decision-making').[43]

The Spatial Planning Act (*Raumordnungsgesetz*—ROG) and the Building Code (*Baugesetzbuch*—BauGB) provide the legal framework for urban development policy. According to article 74(1) BL, the federal government is responsible for 'urban real estate transactions, land law (except for laws regarding development fees), and the law on rental subsidies, subsidies for old debts, homebuilding loan premiums, miners' homebuilding, and pit villages'. Other sources of law relevant to urban development policy include the Federal Act on Protection against Harmful Effects on the Environment caused by Air Pollution, Noise, Vibrations and Similar Processes (*Bundesimmissionsschutzgesetz*), and the Ordinance on the Use of Land for Building Purposes (*Baunutzungsverordnung*). At the *Länder* level, further legislation includes the state-planning laws, the state spatial planning and development programmes, and the building codes of the 16 *Länder*, which are based on a model-building code of the Working Group of the *Länders'* Ministries of Construction (ARGEBAU). The federal government supports urban development measures by the *Länder* and municipalities with various funding programmes.

At the municipal level, urban development policy has various planning instruments at its disposal, with most of these designed for a medium- to long-term planning horizon. These include (in addition to the usual land use, project and development plans, and zoning plans): Integrated Urban Development Concepts (*Integrierte Stadtentwicklungskonzepte* [INSEK]);

[43] Fritz W Scharpf, Bernd Reissert, and Fritz Schnabel, *Politikverflechtung. Theorie und Empirie des Kooperativen Föderalismus in der Bundesrepublik* (Kronberg i.Ts., 1976).

urban development plans or programmes; district development plans; individual specialised plans, such as traffic development and noise abatement; and economic, housing, and cultural development plans. In addition, many municipalities are now putting in place climate protection programmes and local sustainability strategies in line with the United Nations Sustainable Development Goals (SDGs).

Aside from the question of the technical coordination of the various sub-plans and strategies and their binding effect and obligation, such a wide range of instruments already illustrates that most municipalities are striving to organise urban development as an integrated process. In this context, the effects of 'glocal' megatrends (including climate change, demographic change, digitalisation, and changes in ecosystems) are becoming more and more visible, especially at municipal level, and are resulting in a wide array of new transformation needs for urban infrastructures. As part of this constant change, urban policies and governance approaches need to be constantly reoriented and adapted. Methods for achieving this in urban development are diverse: continuous monitoring and benchmarking; the use of statistical indicators, population forecasts, demand and trend analyses of public services, scenario techniques, and policy analyses; in addition, planning forums and quantitative and qualitative methods of citizen participation are important contributions.

8 Political Culture of Local Governance

In recent decades, the party system in the Federal Republic has become increasingly diverse. There are now six parties represented in the *Bundestag*: the CDU (Christian Democratic Union); the CSU (Christian Social Union); the SPD (Social Democratic Party of Germany); Alliance 90/The Greens; the Left Party; and the right-wing populist AfD (*Alternative für Deutschland*). In the *Länder* and in the municipalities, the party systems broadly correspond to this structure, but (at least in the past) there have been challenges to it where strictly regional parties have been able to win that were able to attract significant shares of the vote in individual *Länder*. One such party is the Free Voters (*Freie Wähler*), which has won representation on many city councils in Bavaria and currently at the *Land* government level. In the cities, the 'splinter parties' have also asserted themselves and been especially successful in doing so by addressing city-specific problems. Such small and locally organised parties (which usually see themselves as representing protest movements) have

proved to be able to hold their own in some elections and have managed to get their representatives onto city councils.

In Germany, municipal elections are often held at the same time as other elections (to the *Bundestag* or the *Länder* parliaments), although this is not necessary. When local elections take place halfway through the tenure of a *Länder* parliament, these elections can also act as a litmus test for the *Land* government in question, though in most instances it is the local conditions and context that prove to be decisive. Local elections are often highly personalised around well-known local figures. First-ballot elections for mayor are rarely decisive and run-off elections are often necessary, with personality and popular appeal playing a large role in deciding these. Another factor here is the candidate's visible commitment to the city, held to be evident in very specific local issues, such as the construction of schools, roads, and leisure facilities; the financial situation; or the city's image beyond the region. It is not for nothing that many mayors—and especially in the smaller or medium-sized towns—will often hold on to their position for many years and across successive elections.

In Germany, local politics is regarded as a training ground and a necessary staging point for up-and-coming politicians. The local association (*Ortsverband*) provides the smallest unit in the federal structure of the established parties and in the cities, individual neighbourhoods and districts usually have such local associations. The next highest units are the associations at district, regional, and *Land* levels; their representatives are delegated at the municipal level. All in all, there are many opportunities available for politically active people to make their mark and raise their profiles. At the same time, the incumbents of many city councils are ageing and there is a preponderance of male representatives. According to a 2020 survey, some 91 per cent of mayors were male, with only 9 per cent female (down from 11 per cent in 2015); the larger the municipality, the less likely it is to have a woman at its head. The reasons cited for this gender imbalance in the top municipal offices are the large number of candidates, but also the 'dirty election campaigns' to which women, in particular, are exposed. About a third of German majors are over 60 years old, and only one-fifth of them are younger than 45.[44]

[44] Kathrin Mahler Walther and Helga Lukoschat, 'Bürgermeisterinnen und Bürgermeister in Deutschland 30 Jahre nach der Wiedervereinigung' (Europäische Akademie für Frauen in Politik und Wirtschaft Berlin e.V. (EAF), 2020) 5–6.

9 Covid-19's Impact on the Role of Local Government

The long-term consequences of the Covid-19 pandemic for the municipalities in Germany are yet to be seen. The municipalities proved their worth as courageous crisis managers in this unprecedented situation, even though the lockdown measures were imposed by the federal and *Länder* governments and the federal crisis management as a whole was criticised for being inconsistent as the pandemic progressed. Cities, for example, organised the vaccination campaign in specially established vaccination and testing centres, albeit with regional variations in delivery.

In the summer of 2020, the federal government launched an extensive Covid-19 stimulus package. For municipalities alone, this package provided (depending on the form of calculation adopted) about EUR 21 billion for 2020 and in parts also for 2021.[45] From this amount, about EUR 11.8 billion was earmarked to compensate for the shortfall in municipal trade tax revenues in 2020. The remainder was divided between an increase in the federal government's share of expenditure on housing and heating benefits (about EUR 3.4 billion per year); a one-off increase in regionalisation funds to compensate for Covid-related burdens on local public transport (about EUR 2.5 billion); and the launch of both new and an increase in existing funding programmes like the 'Investment Program For Daycare Expansion' (*KiTa-Ausbau-Programm*), the 'DigitalPact' (*DigitalPakt*) for the digital modernisation of schools, the 'All-Day Care Programme' for children (*Ganztagsbetreuungsprogramm*), and the 'Joint Task for the Improvement of Regional Economic Structures'(*Gemeinschaftsaufgabe Wirtschaftsförderung*).[46]

Despite this financial support, the municipalities are currently focused on the question of how reduced tax revenues will be treated in the calculation for allocations in the *Länder's* municipal financial equalisation systems. For years to come—depending on the development of the overall economic situation and on federal-state financial programmes—the scope

[45] Bundesministerium der Finanzen (BMF), Monatsbericht April 2020, 8; Sebastian Dullien, Silke Tober, and Achim Truger, 'Wege aus der Wirtschaftskrise: Der Spagat zwischen Wachstumsstabilisierung und sozial-ökologischer Transformation' (2020) *WSI-Mitteilungen* Jg. 73(06/2020) 403–410.

[46] Koalitionsausschuss der Großen Koalition 2020, 'Corona-Folgen bekämpfen Wohlstand sichern, Zukunftsfähigkeit stärken' (Ergebnisse des Koalitionsausschusses 3. Juni 2020, Berlin).

for municipal budgets will remain restricted by the considerable revenue shortfalls and the simultaneous increases in social spending necessities. This will be exacerbated by the fact that social and technical infrastructure (such as local public transport, day-care centres, and sports facilities) have had to be maintained without revenue from fees. At the same time, the investment backlog of municipalities (which has existed for years) continues to grow, including for the provision of digital infrastructure.[47]

Looking beyond Covid-19, other issues and trends are likely to become important for urban development in Germany. Attention is starting to focus on the future digitalisation of urban development and on the growth of smart cities. Covid-19 made it clear that German administration in general (and local government in particular) was lagging behind in terms of digitalisation. The social fears and social distancing associated with the lockdown led to a surge in the acceptance and adoption of digital communication technologies in a surprisingly short space of time.[48] The digitalisation push is likely to have a lasting negative impact on brick-and-mortar retail in particular and so on the vitality of many city centres already suffering from the spate of store closures resulting from the lockdown. Covid-19 accelerated a trend that has been taking place for some time and further endangers the urbanity of many German city centres. A central question for the post-Covid-19 city is therefore likely to be how retailers can cooperatively combine digital and analogue sales. It is highly likely that many city centres will be stabilised only if their residential, and leisure functions are considerably strengthened.[49] In regard to such questions, pre-Covid discussions about new city-compatible forms of 'urban production' (with regard to the intersection of work, habitation, leisure and urban culture) are coming back into focus.[50]

[47] Raffer and Scheller (n 31) 19; Stephan Brand and Johannes Steinbrecher, 'Kommunalfinanzierung in der Covid-19-Krise – Einschnitte, aber keine Zeitenwende' (2021) 101(1) *Wirtschaftsdienst* 46–53.

[48] Roger Keil, 'The Space and Time a Pandemic Makes' (2020) 56(3) *disP—The Planning Review* 4–9.

[49] Ulrich Hatzfeld and Petra Weis, *Die "Neuen Innenstädte": Zwischen Multifunktionalität und Gemeingut* (Friedrich-Ebert-Stiftung, Abteilung Wirtschafts- und Sozialpolitik, 2021).

[50] Jens Libbe and Sandra Wagner-Endres, 'Urbane Produktion in der Zukunftsstadt. Perspektiven für Forschung und Praxis', https://bit.ly/361QNDy (accessed 20 December 2021); Dieter Läpple, 'Perspektiven einer Produktiven Stadt', in Klaus Schäfer (ed)

The first lockdown in spring 2020 highlighted the importance of the need for public open spaces in residential areas. The recognition of this need can only exacerbate the pre-existing conflicts for municipalities between those supporting open space preservation and those promoting residential and commercial land development. Covid-19 promoted the advantages of working from home, something Germany had been somewhat behind in recognising in comparison with the rest of Europe.[51] Working from home is likely to have a significant long-term impact, and particularly with regard to the existing structures of urban–rural linkages and the forms of inner-city commuting.[52] Demand for residential as opposed to workplace locations is likely to increase and with this, the additional demand for residential forms that enable the integration of workplaces will rise. On the other hand, there is likely to be a significant decline in the demand for office space, both in city centres and in decentralised locations. The lockdown saw a decrease in the overall number of transport movements.[53] At the same time, transport purposes also changed in their weighting, for example, as a result of forced online trade and the modal split shifted from public transport to private transport. All in all, the long-term post-Covid-19 impacts on transport remain unclear, though the loss of confidence in public transport is likely to be recovered.

Many of these topics and trends are now being examined by means of a variety of pilot projects in cities across Germany. Practice-oriented urban research has also taken up many of these issues in association with individual cities and the municipal umbrella associations. The federal government is providing support for this research through extensive research funding programmes. The goal of all of these efforts is to strengthen the resilience of municipalities and minimise the risks arising from such crises in the future. What remains an open question is whether any of these initiatives will bring urban development more closely into

Aufbruch aus der Zwischenstadt. Urbanisierung durch Migration und Nutzungsmischung (Bielefeld, 2018) 150–175.

[51] Darja Reuschke and Alan Felstead, 'Changing Workplace Geographies in the COVID-19 Crisis' (2020) 10(2) *Dialogues in Human Geography*.

[52] Arno Bunzel and Carsten Kühl, *Stadtentwicklung in Coronazeiten—eine Standortbestimmung* (Sonderveröffentlichung Deutsches Institut für Urbanistik, 2020).

[53] Mahmudur Rahman Fatmi, 'COVID-19 Impact on Urban Mobility' (2020) 9(3) *Journal of Urban Management* 270–275.

alignment with the transformation of cities necessary for the realisation of the SDGs.

10 Emerging Issues and Trends

In both political and academic discourse, federalism in Germany has, for many years, been the object of considerable (sometimes intensely critical) analysis and debate. The use of terms such as 'unitary federal state', 'disguised unitary state', 'screwed-up federal state', or 'cooperative central state' all illustrate the extent to which critics in Germany dispute the meanings of federalism.[54] The main fault lines are perceived as the mechanisms for joint-decision-making between the different levels and the sluggishness, and supposed blockages of political reform due to the specific compounded structure of German federalism. For this reason, the model of 'hourglass federalism' is repeatedly proffered as an alternative. With the shrinkage of the competencies of the *Länder*, the municipalities gain in importance as does the federal government, which benefits primarily because of its greater budgetary autonomy. Ultimately, the 2015–2016 refugee crisis and the 2020 Covid-19 crisis significantly strengthened both the role and the self-confidence of municipalities as local crisis managers.

The key principle of subsidiarity is also under pressure. It is increasingly seen as a rather theoretical approach to justifying federal services of general interest from the smallest unit or the lowest level. This raises the question of the extent to which a normative 're-foundation' of the federal principle can take subsidiarity as a starting point. What concrete constitutional and practical implications would this have? German federalism is based on a two-tier state structure that, *qua* prohibition of encroachment,[55] does not permit direct relations between the federal government and local authorities. The deviation from the historical path would therefore be significant were this to be adopted. However, the Federal Constitutional Court has also repeatedly strengthened the

[54] Konrad Hesse, *Der Unitarische Bundesstaat* (Müller, 1962); Heidrun Abromeit, *Der Verkappte Einheitsstaat* (Opladen, 1993); Roland Lhotta, 'Der "verkorkste Bundesstaat": Anmerkungen zur bundesstaatlichen Reformdiskussion' (1993) 24(1) *Zeitschrift für Parlamentsfragen* 117–132.

[55] Article 84(1) BL.

autonomy of municipal self-government and has spoken of a 'modified two-tier structure'.[56]

Municipalities in Germany do not have their constitutional level, but they make an essential contribution to the provision of goods and services of general interest. Municipalities, granted autonomy in self-government by the constitution, operate in a highly charged and politically contested area of governance. On the one hand, municipalities enjoy the right to self-government, and neither the federal government nor the *Länder* may interfere with this arbitrarily. On the other, as a constitutional part of the *Länder*, the municipalities are dependent on them, and especially so in financial terms. As a result, municipalities constantly have to balance their derived responsibilities with their voluntary tasks as both formal expectations and specific demands from citizens continue to grow. Municipalities in Germany are torn between fulfilling their administrative implementation mandate, on the one hand, and responding to the more immediate claims of local politics and their constituencies, on the other.

In this situation, even the oft-repeated demands for more subsidiarity, municipal self-determination, and solidarity turn out, on closer examination, to be by no means as municipal-friendly as might at first be thought. This is because the granting of more competencies would logically also have to entail adjustments to the financial autonomy of the municipalities. This is something that the federal and state governments remain reluctant to discuss because of their own financial shortages. Along with the many 'glocal' megatrends (digitalisation, climate change, new types of pandemics, and the economisation of many areas of life, and so on), what we are observing is both the emergence of new forms of deterritorialisation and also entirely new forms of spatial connectivity due to the new mobility and communication technologies. At the same time, we may also be witnessing a renewed intensification of the urban–rural conflict as, in the rural regions, the conclusions of policy-making processes generated in transnational terms are met with incomprehension. With the transnationalisation of a growing number of policy-making processes, their results meet with growing incomprehension and, in some cases, even resistance in the more rural regions.

[56] BVerfGE 101, 158–238.

CHAPTER 9

India

Niranjan Sahoo

India's most ambitious experiment with decentralisation began in 1992 with the passage of path-breaking 73rd and 74th Constitutional Amendments. The twin Acts which instituinalised local self-government in India concided with the opening of the economy, rapid migration, social mobility, increased urbanisation, among others. The historic Constitutional Amendments 73 and 74 of 1992 set out, for the first time, to provide local bodies within the country's federal system with certain mandatory structures and powers. A standout contribution of the twin Acts is the increased levels of participation from marginalised groups (including women and Scheduled Castes and Scheduled Tribes) and inclusion of mllions of new voices in the decision-making processes of local governments. However, the historic move is not without its obstacles and challenges. The new experiment continues to face veciferous resistance by state-level elites as well as feudal and bureaucratic leadership, in addition to a range of structural challenges, which has significantly impeded the deepening of decentralisation and self-governance in the

N. Sahoo (✉)
Observer Research Foundation, New Delhi, India
e-mail: niranjansahoo@orfonline.org

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_9

country. In short, despite many gains the transformative potentials of 73rd and 74th Amendments remain far from being realised.

1 Country Overview

With a population of more than 1.37 billion, India is, after China, the second most populous country in the world.[1] With an area of 3,287,263 km^2, it has 28 states and eight union territories. Ethnically and linguistically, India is one of the most diverse countries in the world. Twenty-nine of its languages are spoken by more than one million people, while another 122 languages are spoken by groups of at least 10,000. India is the fifth-largest economy in the world by nominal gross domestic product (GDP) and the third largest in terms of purchasing power parity (PPP). According to projections by the International Monetary Fund (IMF), it is set to remain the fastest-growing large economy for many years to come.[2]

The Indian Constitution came into effect on 26 January 1950 and saw the adoption of a parliamentary form of government with a competitive multiparty system. The executive, legislative, and judicial branches of government draw their power and jurisdiction from the Constitution and are bound by it. The head of the executive is the President and the Council of the Parliament (consisting of two houses known as House of the People, or *Lok Sabha*, and the Council of States, or *Rajya Sabha*). The Prime Minister is the head of the Council of Ministers, which is there to aid and advise the President in the performance of day-to-day constitutional duties. Under the Constitution, India enjoys a fairly independent judiciary, and the executive is accountable to the legislature.

In the 76 years since independence, against all odds, India's democracy has survived many challenges and shown great resilience in carrying forward the idea and practice of constitutional governance. Except for the brief period in which democracy was suspended (1975–1977), India has regularly held free and fair elections. With its multiparty system of

[1] PTI, 'India May Overtake China as Most Populous Country Sooner Than UN Projections of 2027: Report' (12 May 2021) *The Economic Times*, https://economictimes.indiatimes.com/news/india/india-may-overtake-china-as-most-populous-country-sooner-than-un-projections-of-2027-report/articleshow/82576669.cms (accessed 24 January 2022).

[2] Ministry of Finance, Government of India, 'Summary of the Economic Survey 2021–2022' (2021), https://pib.gov.in/PressReleasePage.aspx?PRID=1793826 (accessed 21 January 2023).

nine national parties and as many as 54 state-level or regional parties, India holds elections throughout the year. While the Bharatiya Janata Party-led coalition, the National Democratic Alliance (NDA), has enjoyed hegemony since 2014, many individual states are run by regional parties.[3]

The Constitution provides for a federal system, with a clear division of powers between its constituent units. Although the word 'federation' is nowhere mentioned in the Constitution, article 1 states that 'India, that is Bharat, shall be a union of states'. Originally, the framers of the Constitution envisaged two levels of government (central and state level), with no consideration of third-tier government. Despite this, local government systems were in operation prior to their constitutional recognition in 1992. The Seventh Schedule of the Constitution gave a detailed description of the powers of the centre and states under the Union List, State List, and Concurrent List.[4] In the original constitutional scheme, there was an inherent bias towards the Union government (with some analysts consequently referring to the Constitution as quasi-federal in form).[5] This bias was due to concerns for national unity as well as administrative coherence. Central government enjoys superior authority to that of the states, and this is manifested in various ways, such as the power to create state boundaries, control over financial resources, greater legislative powers, and the power to impose emergency rules on the states.[6] However, despite this constitutional bias towards the centre, the states have adequate autonomy in significant policy areas (such as health), and here they enjoy considerable autonomy. Some of the key features of the

[3] KC Suri, 'Emergence of BJP's Dominance and its Durability' (6 March 2021) 56(10) *Economic and Political Weekly*, https://www.epw.in/engage/article/emergence-bjps-dominance-and-its-durability (accessed 24 January 2023).

[4] Niranjan Sahoo, 'Centre-State Relations in India: Time for a New Framework', *ORF Occasional Paper #62* (9 April 2015), https://www.orfonline.org/research/centre-state-relations-in-india-time-for-a-new-framework/ (accessed 22 January 2023).

[5] KC Wheare, *Federal Government* (Oxford: Oxford University Press, 1949). See an excellent interpretation of Wheare's formulation by Ashwini K. Ray, 'Reflections on Quasi-federal Democracy' (16 June 2021) *The Hindu*, https://www.thehindu.com/opinion/lead/reflections-on-the-quasi-federal-democracy/article36905863.ece (accessed 22 January 2023).

[6] Ambar Kumar Ghosh, 'The Paradox of "Centralised Federalism": An Analysis of the Challenges to India's Federal Design', *ORF Occasional Paper* (September 2020), https://www.orfonline.org/research/the-paradox-of-centralised-federalism/ (accessed 22 January 2023).

Indian democratic system are the clear division of powers between the centre and the states; the independent judiciary; the bicameral legislature; and adherence to the principle of constitutional supremacy.

Accountability in governance is enforced in various ways, with the holding of periodic elections as a critical instrument for enforcing accountability by the citizens. In addition, the executive—that is, governments at both federal and state levels—is held to account through the proceedings of the parliament or assembly. Here the government is called to account for its actions via debates on bills or issues placed on the floor of Parliament, via questions the opposition is allowed to pose to ministers during question hour or in committee proceedings, and via the possibility of posing 'no confidence' motions. Finally, the government or executive branch can be held accountable by the judiciary, largely through the judicial review of executive and legislative actions.

2 History, Structures, and Institutions of Local Government

The concept of local government in India has a long history. The British government (under Lord Ripon in 1882) recognised the existence of the long-standing form of *Sabhas* (associations) and *panchayats* (meetings of village elders).[7] After independence, Part IV of the new Constitution asserted (under its directive principles of state policy) that '[t]he state shall take steps to organise village *panchayats* and endow them with such power and authority as may be necessary to enable them to function as units of self-government'. However, this injunction was honoured more in the breach than the observance and was largely made to symbolically honour Mahatma Gandhi's vision of *Gram Swaraj* or village republic.[8]

While the *panchayats* did not find special favour with the constitution-makers, many Indian states introduced them, though in various guises.[9] After several poverty-alleviation programmes and community-development initiatives of the Union government failed to meet the

[7] Ramya Parthasarathy and Vijayendra Rao, 'Deliberative Democracy in India', *World Bank Group Policy Research Working Paper 7995* (March 2017), https://documents1.worldbank.org/curated/en/428681488809552560/pdf/WPS7995.pdf (accessed 12 May 2022).

[8] Kuldeep Mathur, *Panchayati Raj* (Oxford University Press, 2013).

[9] Ibid.

desired objectives, the states demanded the establishment of some kind of intermediary institutions to handle and improve service delivery. The Union government set up the Balwant Rai Mehta Committee in 1956 to study the situation and to recommend steps for the establishment of a third-tier government in rural areas. In 1957, the Committee recommended a three-tier *Panchayati Raj* system which would consist of *Zilla Parishads*, *Panchayati Samitis*, and *Gram Panchayats*.

Following the recommendations of the Balwant Rai Mehta Committee, several states established local governments. By 1959, more than 200,000 village *panchayats* had been set up across India. However, they were largely ineffective and exclusionary, owing to their lack of financial and functional autonomy, together with the domination of *Gram Panchayats* by economic and social elites. In addition, regular elections to *panchayat* posts were not held, mitigating their democratic spirit and the avowed aim of promoting political participation. These problems led to the setting up of another committee by the newly elected Janata Party government in 1977. The Ashok Mehta Committee (1978) made several important recommendations urging the revival of decentralisation and *Panchayati Raj*.[10] However, only three states took these recommendations forward; Karnataka, Andhra Pradesh, and West Bengal took the necessary steps for the establishment of the *panchayats*.

Rajiv Gandhi's premiership (1984–1989) saw a surge of interest in local government. The increasing realisation that a top-down approach resulted in the failure of many development schemes, coupled with the increasing emphasis globally on decentralisation, led to renewed debate on the revival of third-tier government. The first major attempts at this—though unsuccessful—came through with the proposed Constitutional Amendments 64 and 65 in 1989.[11] Decentralisation came to the fore in the early 1990s when definitive constitutional recognition of *panchayats* and urban local bodies arose from amendment bills introduced by the Congress-led government under the leadership of PV Narasimha Rao.

[10] Ibid., 29–30.

[11] The twin bills, introduced as part of Rajiv Gandhi's promise to ensure maximum democracy and devolution, failed to pass as they fell short by five votes in the *Rajya Sabha*. The Upper House opposed them on the ground that they sought to strengthen centralisation in the federal system.

The controversial provisions of the 64th and 65th Amendment Bills were successfully addressed and, in their place, Constitution Amendment Acts 73 and 74 were passed in 1992. Constitution Amendment Act (CAA) 73 created a three-tier structure of self-governance for all rural areas, with the exception of the tribal zones in the Fifth Scheduled Areas (which were already governed through their tribal *panchayats*, or traditional justice system, or *nyay panchayats*). For these to be included in the new *panchayat* system, the 73rd CAA expected Parliament to create legislation for the protection of their cultural and linguistic identities.

2.1 Urban Local Bodies

Although they date back to ancient times, the contemporary form of municipal institutions or urban local bodies (ULBs) was developed by the British colonial administration. The first municipal corporation was set up in Madras in 1688 and similar corporations were established in Bombay and Calcutta in 1762. Lord Ripon, known as the father of municipal self-governance in India, moved a resolution for the establishment of a network of local self-government institutions, the institution of financial devolution, and the introduction of elections as the basis for the Constitution of local bodies.[12] His resolution led to the passage of the Bombay City Municipal Corporation Act (1888) and the establishment of Bombay City Council. This had both elected and nominated members.

Following independence in 1947, municipal institutions received little or no focused attention from the framers of the Constitution. ULBs only found a passing mention in two entries: Entry 5 of list 11 of the Seventh Schedule (state list), which states that '[l]ocal government, that is say, the constitution and powers of Municipal Corporations, improvement trusts, District Boards, mining settlement authorities … for the purpose of local self-government or village administration'; and Entry 20 of the concurrent list, which states: 'Economic and Social Planning, Urban Planning would fall within the ambit of both entry 5 of the state list and entry 20 of the concurrent list'.[13]

[12] Rumi Aijaz, 'Challenges for Urban Local Governments in India', *Asia Research Centre Working Paper 19* (2007) 10–11, http://eprints.lse.ac.uk/25190/ (accessed 15 January 2023).

[13] See Annapurna Nanda, 'Urban Local Government in India: Challenges and Prospects' (2015) *Anudhyan: An International Journal of Social Sciences (AIJSS)*

However, ULBs did receive attention from the state governments. For instance, the Uttar Pradesh government in 1953 established municipal corporations in five cities, leading to the eventual passage of the Uttar Pradesh Municipal Corporation Act, 1959.[14] The Maharashtra Regional Town and Country Planning Act proved to be one of the most comprehensive pieces of urban legislation that sought to integrate regional and city planning efforts.[15] Following this, the planned city of Navi Mumbai started taking shape as an alternative node in Bombay. At the federal level, the Union government created a statutory authority called the Improvement Trust to plan for Indian cities, and in 1957 established the Delhi Development Authority (DDA) to manage urban expansion in the national capital region.

Beyond these scattered initiatives, there was no pan-Indian response for the governing of urban areas. The year 1985 was a landmark for ULBs, as the federal government established the Ministry of Urban Development (MoUD). In 1986, the MoUD's first step in trying to understand 'the urban' and to plan a pan-Indian vision of urban governance came with the establishment of the National Commission on Urbanisation. This was chaired by the well-known architect and urban planner, Charles Correa.[16] Though promising, the initiative did not translate into anything meaningful for local urban bodies at the national level.

In 1989, Rajiv Gandhi's government put forward CAA 65. This sought to provide a firm legal basis for the ULBs, but was rejected by the majority. Only in 1992 did the ULBs receive proper legal recognition

131–144, https://www.rnlkwc.ac.in/pdf/anudhyan/volume1/Urban-Local-Government-in-India-Challenges-and-Prospects-Dr-Annapurna-Nanda.pdf (accessed 25 January 2023).

[14] Ramesh H Makwana, 'The Role and Crisis of Women Leader at the Village Panchayat: Concerns of Gujarat Women' (Jan–Mar 2009) 70(1) *The Indian Journal of Political Science* 91–105, http://www.jstor.org/stable/41856498 (accessed 25 January 2023).

[15] KC Sivaramkrishnan, 'Urban Development and Metro Governance' (30 July 2011) *Economic and Political Weekly*, https://www.epw.in/journal/2011/31/review-urban-affairs-review-issues-specials/urban-development-and-metro-governance (accessed 26 January 2023).

[16] Tiekender Singh Panwar, 'Democratise and Empower City Governments' (20 January 2022) *The Hindu*, https://www.thehindu.com/opinion/op-ed/democratise-and-empower-city-governments/article38293949.ece (accessed 22 January 2023).

with the passage of 74th CAA.[17] This added Part IXA to the Constitution, which laid out the structure, composition, and powers of municipal institutions. It brought to an end the multiple structures which had been created by various states in ad hoc fashion[18] and provided for a three-tier structure made up of *Nagar Panchayat* or town councils in transitional areas (rural in character but likely to develop urban characteristics over time); municipal councils for smaller urban areas; and municipal corporations for larger urban areas (see below for a detailed discussion of them).

2.2 Governance of Metropolitan Areas

The relatively low levels of urbanisation at the time meant that the question of municipal organisation attracted little attention from either the drafters of the Constitution or the country's political leadership. In 1950, the urban population stood at about 11 per cent, with significant growth taking off after the 1980s.[19] The 2011 Census estimated the urban population at 377 million, with the percentage rising from 27.7 per cent in 2001 to 31.1 per cent in 2011.[20] According to the 2020 Census Population projection (2020), India's urban population is likely to reach 590 million by 2035, second only to that of China.[21] While the 2011 Census counted 7953 towns or cities in the country, the real growth of the urban population in the past decades has been concentrated in metropolitan cities.[22]

[17] Nanda (n 13).

[18] Aijaz (n 12).

[19] Jonathan Colmer, 'Urbanisation, Growth and Development: Evidence from India', *London School of Economics Working Paper* (2018), https://www.shram.org/uploadFiles/20180110111049.pdf (accessed 22 January 2023).

[20] RB Bhagat, 'Emerging Pattern of Urbanisation in India' (20 August 2011) 46(34) *Economic and Political Weekly*, https://subscription.epw.in/journal/2011/34/commentary/emerging-pattern-urbanisation-india.html (accessed 25 January 2023).

[21] Madhur Sharma and Anwesha Malik, 'Urbanisation in India: What Is Municipal Financing?' (23 January 2023), https://accountabilityindia.in/blog/urbanisation-in-india-urban-local-bodies/ (accessed 25 January 2023).

[22] Class I cities or towns, which have at least 1,00,000 persons, increased from 24 in 1901 to 468 in 2011. The current census counted 264.9 million people, constituting 70 per cent of the total urban population, living in Class I UAs/Towns. It should be noted that 53 metro cities (population above one million) account for nearly 45 per

According to the 2011 Census, there are 52 metropolises or metropolitan cities (defined by having over one million inhabitants) in 16 states and one union territory (National Capital Territory, Delhi). The greater concentration of metropolises is found in Uttar Pradesh and Kerala (seven each); Maharashtra (six); and Gujarat, Tamil Nadu, and Madhya Pradesh, each with four.[23] Some of the largest metropolitan cities (with populations over 4 million) are Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bengaluru, Ahmedabad, Pune, and Surat. With their populations standing at more than 10 million, Delhi, Kolkata, Mumbai, and Chennai were categorised as megacities in the 2011 Census. However, more recent assessments would now count Hyderabad, Bengaluru, and Ahmedabad as megacities.

Since India has not established standard criteria for defining or categorising metropolises or metropolitan areas, it mainly uses population size as the basic criterion for classification. Thus, under article 243P(C) of the Constitution, a metropolitan area is defined as one with a population of one million or more, distributed across one or more districts and consisting of two or more municipalities or *panchayats* or other contiguous areas. While the Census of India also uses the same population criterion, it does not explicitly use the term 'metropolitan area'; instead, it provides for what it calls 'million-plus' urban agglomerations or cities.[24] Several rounds of the National Sample Survey (NSS) adopted a similar approach by grouping together cities with populations of more than one million into a separate stratum. While 74th CAA offers a definition of 'metropolitan areas', 'metropolitan regions' are not defined, and state governments define and classify them as they like. Thus, a

cent of the increase in India's urban population recorded in the most recent census, whereas other cities and towns constitute 55 per cent of the total addition in the urban population. Jitendra Kumar, 'Metropolises in Indian Urban System: 1901–2011' (2015) 6(3) *European Journal of Geography* 41–51, https://eurogeojournal.eu/articles/EJG040603KUMAR.pdf (accessed 25 January 2023).

[23] Kumar (n 22) 43.

[24] Kaye Lushington and Amlanjyoti Goswami, 'Metropolitan Governance in India: Legal-Institutional Challenges and Prospects' (2015) *Indian Institute for Human Settlements*, https://iihs.co.in/knowledge-gateway/wp-content/uploads/2017/10/MetroGovPaper_final-20.10.2015_Reduced-Size.pdf (accessed 25 January 2023).

metropolitan area can form a part of a metropolitan region, and the two often overlap.[25]

These persistent definitional ambiguities present something of a practical challenge. There are problems for metropolitan areas in arranging or aligning boundaries when varied institutional arrangements present conflicting jurisdictional claims. A combination of census-based area categorisations—such as census towns, integrated townships, cantonment boards, and urban outgrowths that exist within or around the boundaries of metropolitan areas—creates numerous complexities and governance challenges.[26] Thus a census town could also include *panchayats* as well as the statutory urban authorities proper to a metropolitan area, as can be seen in the fact that the Electronics City Industries Association in Bengaluru provides a wide variety of municipal services within its locality.

In addition to questions of classification and the overlapping of boundaries or institutional jurisdictions, the urban governance system (particularly in metropolitan areas) suffers from a range of other institutional and governance complexities. New institutional forms like Industrial Townships and Special Economic Zones (SEZs) have added further layers of governance to metropolitan cities. According to article 243Q, industrial townships fall outside municipal governance and the jurisdiction of ULBs.[27] State governors have been given the power to declare an industrial township, one which will then offer its own municipal services. These areas do not need to create municipal structures for administration and service delivery. Similarly, SEZs are excluded from municipal jurisdiction. As per the SEZ Policy,[28] these entities are placed outside municipal limits and state governments can establish their internal governance structures.

[25] In recent times, the MoUD's Urban and Regional Development Plans, Formulation and Implementation Guidelines, 2014, have adopted another set of criteria for classification and redefined areas, ones based on the Census 2011 Master Plan formulation in numbers and emerging agglomerations. Accordingly, 'Metropolitan City I' is an area which has a population ranging from one million to five million; 'Metropolitan City II' has a population of five million to 10 million; and a megalopolis has a population greater than 10 million. Ibid, 23.

[26] Lushington and Goswami (n 24).

[27] Ibid.

[28] Department of Commerce, SEZ Division, 'Guidelines for Development of SEZs' (2009), http://sezindia.nic.in/upload/uploadfiles/files/4state%20policy%20of%20sez%2020091.pdf (accessed 26 January 2023).

It is worth noting that these exclusions, at least by implication, undermine the spirit of representative democracy and betray the principles of local self-governance. In addition, entities such as Metropolitan Planning Committees (MPCs) will have no role in the planning and development of entire metropolitan areas.

As far as governance arrangements are concerned, a metropolitan region or area is made up of at least one municipal corporation, several municipalities, and (in many cases) city *panchayats*, all of which fall under its jurisdiction. A metropolitan area may also consist simply of numerous local rural bodies (*panchayats*). In terms of territorial jurisdictions, save for the National Capital Region (NCR), Delhi, all the metropolitan cities' jurisdictions are confined to one state. In terms of their basic composition and governance forms (see below for details), the municipal corporations and municipalities are made up of municipal wards. Wards are represented by ward councillors, who are chosen in regular elections. Any political party or coalition of parties that wins the majority of wards is eligible to choose the mayor or municipal chairperson from the elected ward councillors. In addition, CAA 74 establishes two new institutions for ULBs (and particularly for those in metropolitan areas): the Ward Committee and the Metropolitan Planning Committee (see below for further discussion).

India has adopted a mayoral system for metropolitan areas. In terms of its powers, tenure, and methods of election, the mayoral system varies from one state to the other (hardly surprising when the state government holds the power in the states). In most states, mayors are elected by ward councillors, but in a handful of states (such as Uttarakhand, Madhya Pradesh, Chhattisgarh, Uttar Pradesh, and Tamil Nadu), mayors are chosen by direct election.[29]

With regard to their power and status, there are two contrasting models for the position of mayor. The dominant model is that provided by the commissioner system or 'Bombay System'. This has its origins in the Bombay Municipal Corporation Act of 1888. The commissioner system distributes powers and responsibilities between the executive (the municipal commissioner, who is drawn from the elite Indian Administrative Services) and deliberative bodies (the corporation and the standing

[29] Moushumi Das Gupta, 'Indian Cities could get London-style Directly Elected Mayors' (18 July 2016) *Hindustan Times*, https://www.hindustantimes.com/india-news/modi-pushes-for-directly-elected-mayors-stronger-city-administrations/story-2voogUn9qH0dEexh28ZlXN.html (accessed 26 January 2023).

committee). This model provides the municipal commissioner, rather than the elected mayor, with wide-ranging powers.[30]

In contrast, the Kolkata system consists of the mayor working in a council system. The 1980 Calcutta Municipal Corporation Act was the first legislation in India to introduce a cabinet-style of political executive to the municipal corporation. The executive council is responsible to the electorate under the mayor-in-council model. The municipal authority is divided between three entities: the corporation, the mayor-in-council, and the mayor. The corporation is the highest body, consisting of elected councillors representing each of the 141 wards. The mayor-in-council consists of the mayor, the deputy mayor, and selected members of the corporation. Here executive power is exercised by the mayor-in-council and not the commissioner (as in the Bombay system). However, most states have adopted the Bombay system, which gives primacy to the non-elected commissioner.[31]

2.3 Parastatal Authorities

Various development authorities within the metropolitan area are generally responsible for planning and for specific development functions. Nearly all the states have created their planning and development authorities around specific services such as water, sewerage, land, waste management, and road and city infrastructure. So, for instance, Odisha established the Odisha Water Supply and Sewerage Board to address urban water supply and sanitation, while Karnataka created as many as three dozen urban development authorities and 52 town planning authorities to optimise planned development in its major urban areas. While these development agencies do perform critical functions, it should be

[30] Although all budget decisions have to be approved by the standing committee, the commissioner takes most of the initiatives related to policy-making and the awarding of contracts. See Joel Ruet and Stephanie Tawa Lama-Rewal, *Governing India's Metropolises* (Routledge, 2009) 35–36.

[31] However, even though the commissioner, known as Chief Executive Officer in the MIC model, is theoretically subservient to the MIC, in practice he or she wields enough power and authority to guide the city's administration and political leadership. Ruet and Lama-Rewal (n 30) 36.

noted that they significantly undermine the functional autonomy of ULBs and particularly that of metropolitan governments.[32]

2.4 National Capital Territory of Delhi (NCTD)

Of all the large metropolitan cities, only Delhi is governed by central laws. As it is the seat of the federal government, at least three overlapping levels of government look after Delhi's governance: the central government; the government of the NCTD,[33] which is itself a half-state with its own assembly, chief minister and council of ministers; and the Municipal Corporation of Delhi (MCD).[34] In addition, more than a hundred parastatal agencies (falling directly under the control of different central ministries or state departments) handle specialised services such as land, water, sanitation, and urban planning.[35]

The fact of this multiplication of responsible bodies leads to many institutional anomalies. For instance, the Delhi municipality has one of the smallest portfolios: its electricity is managed by the Delhi Vidyut Board; its water, by the Delhi Jal Board; and mass transportation, by the Delhi Transport Corporation. Meanwhile, unlike other states, the NCTD has no control over land. This is managed by the Delhi Development Authority, a parastatal set up in 1957 to formulate a master plan for the city and placed under the authority of the Central Ministry of Urban Development. In addition, the NCTD government has no control of the police and the maintenance of law and order. With its multiplicity of agencies and the frequent overlap of jurisdictions, the national government often

[32] Chetan Vaidya, 'Urban Issues, Reform and the Way Forward in India', *Department of Economic Affairs, Government of India Working Paper No.4* (July 2009), https://dea.gov.in/sites/default/files/Urbanissues_reforms.pdf (accessed 27 January 2023).

[33] A quasi-state was created by the National Capital Territory of Delhi (NCTD) Act of 1991.

[34] In addition to the MCD, the city has two other urban local bodies, the New Delhi Municipal Council and the Delhi Cantonment Board, each with small territories and specific constituencies (the central government and the diplomatic missions in the former case, the armed forces in the latter case).

[35] Niranjan Sahoo and Rupak Chattopadhyay, 'Proposing a New Governance Structure for Delhi' (31 March 2021) *Hindustan Times*, https://www.hindustantimes.com/cities/delhi-news/proposing-a-new-governance-structure-for-delhi-101617193012640.html?utm_source=twitter (accessed 26 June 2023).

experiences governance deadlock, especially so when different parties are in power at the centre and the NCTD levels.

3 Constitutional Recognition of Local Government

Constitution Amendment Acts 73 and 74 made provisions for rural and urban areas, respectively. They were passed only after a prolonged period of political bargaining and a series of trade-offs designed to appeal to state-level leaders vociferously opposed to devolution.[36] The Acts formally heralded the constitutional beginnings and institutionalisation of local self-governance in India.

3.1 Constitution Amendment Act 73, 1992

The 73rd CAA was passed in 1992 and finally came into force in April 1993 after an entirely new section (Part IX) was written into the Constitution. The Act mandated a three-tier *panchayat* system, echoing the recommendations of the Balwant Rai Mehta Committee, with the *Gram Panchayat* at the village level, *Panchayat Samiti* at the block or intermediate level, and *Zilla Parishad* at the district level (see Fig. 1). In addition, it mandated direct and regular elections to *Panchayati Raj* Institutions (PRIs) every five years and the reservation of seats as well as the position of chairperson for Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion to their population in constituencies.[37] Significantly, the Act also provided for the reservation of one-third of the seats for women. For the first time, PRIs were made eligible to receive grants-in-aid from state consolidated funds, and the Act mandated the

[36] Rajiv Gandhi's successor, PV Narasimha Rao, had to use persuasion and hard bargaining (including the creation of the MPLAD fund to placate Members of Parliament) so as to pass the 73rd and 74th CAAs in 1992. Although these twin Acts were passed, they were considerably diluted from the original bills.

[37] A noteworthy aspect of 73rd CAA is that it mandates direct and regular elections to *panchayats* every five years by the state election commissions. To keep the civic electoral process outside states' influence and ensure fairness, the 73rd CAA divests the supervision, direction, and control of all *panchayat* elections to the state election commission. This has ensured elections at regular intervals, unlike in the past decades when elections were mired in partisanship controversies. Any delay in elections now attracts wider attention, including judicial intervention given its constitutional sanctity under the 73rd CAA.

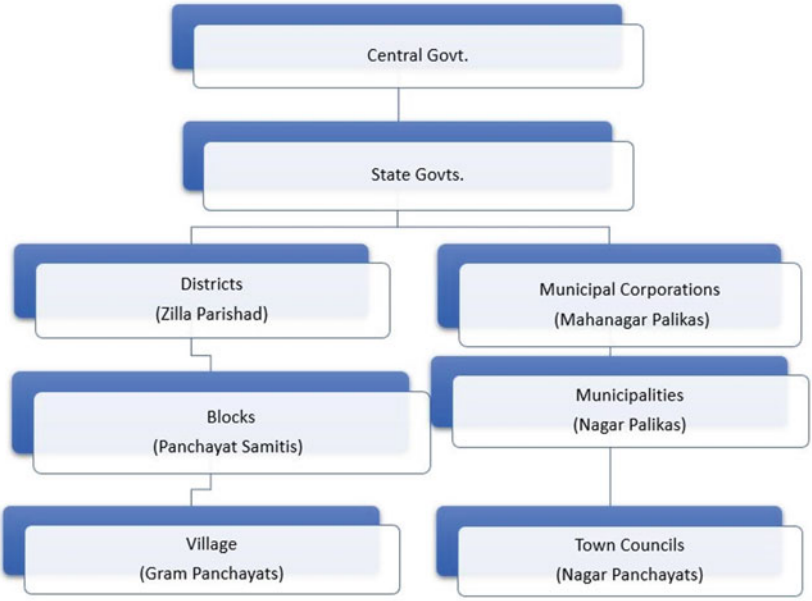


Fig. 1 Structure of local governance

establishment of state finance commissions (a body that recommends the allocation of finances—taxes, duties, levies, and grants-in-aid—between local bodies and the state government).[38]

3.2 Constitution Amendment Act 74, 1992

The 74th CAA, which came into force in 1993, provides for the constitutional recognition of urban local bodies. The Act envisages three-tier municipalities, with *Nagar Panchayats* in peri-urban areas, municipal councils in 'smaller urban areas', and municipal corporations in 'larger urban areas'. It also provides for direct elections every five years to municipalities; reservation of seats for SCs and STs in proportion to their population; and reservation of one-third of seats for women. Furthermore, the Act mandates the creation of a Finance Commission at the state

[38] Mathur (n 8) 41–42.

level to determine the sharing of taxes, duties, and funds from the State Consolidated Fund. Significantly, the 74th Amendment divested 'devolution by the State Legislature of powers and responsibilities upon the Municipalities' from the XII Schedule, listing 18 subjects such as urban poverty alleviation, public health and sanitation, and social development programmes.

3.3 Panchayats: Extension to Scheduled Areas Act, 1996

The *Panchayats* (Extension to Scheduled Areas) Act (PESA), passed in 1996, further developed the recommendation of 73rd CAA, which sought the extension of local self-governance to Scheduled and Tribal Areas. This legislation emerged from the recommendations of the Bhuria Committee of 1995, which was constituted following a recognition of the need to empower the country's tribal areas with self-governance institutions other than their own traditional systems of justice and governance.[39]

Following the Committee's report, PESA was introduced and expanded the Ninth Schedule of the Constitution, allowing for the formation of *Gram Sabhas* in Fifth Scheduled Areas, as well as programmes for 'social and economic development' and poverty alleviation. Notably, the Act reserves 50 per cent of seats for STs, while the office of chairperson may be occupied only by a candidate belonging to the ST community. PESA covers as many as 10 Indian states that have enacted the confirming legislation.[40]

3.4 Devolution of Powers

The most important aspect of the 73rd CAA is that, for the first time, it identifies 29 functions for *panchayats* (under the Eleventh Schedule of the Constitution). Article 243G of the Constitution empowers the state

[39] Prior to the introduction of PESA, tribal advisory councils existed, with substantive powers vested in governors and the Union government with regard to financial and administrative matters, as emphasised in the Fifth Schedule of the Constitution pertaining to Scheduled Areas. However, for various reasons these powers or institutions did not help the cause of tribal populations.

[40] These states are Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan, and Telangana.

legislature to pass laws to facilitate the devolution of power and responsibilities (functions, funds, and functionaries, popularly termed the 3Fs)[41] to *panchayats* at appropriate levels. Among the major functions to be devolved are those regarding provisions in rural areas for needs such as primary and secondary education; health; sanitation; drinking water; and economic development. Article 243G also specifically mandates the devolution of administrative and fiscal powers to *panchayats* so that they are able to plan and implement development activities at the local level.[42]

In the case of ULBs, the 74th CAA (XIIth Schedule) identifies 18 functions for the states to transfer to their respective urban bodies. These include poverty alleviation; regulation of land use; slum development; public health; education; sanitation; and social development programmes. The devolution of the 3Fs to ULBs (in comparison to that achieved by the *panchayats*) has been patchy, as most state governments have shown considerable reluctance so far to transferring core functions to municipal institutions.[43]

4 Governance Role of Local Government

The twin amendments recognised *panchayats* and municipals as 'unit of self-government', thereby significantly expanding the governance roles of these vital but long-neglected institutions.[44]

4.1 Governance Role of Rural Local Bodies or Panchayats

The 73rd CAA put in place mandatory three-tier structures for rural areas, together with a supporting system intended to enable these structures in the performance of the functions devolved to them by states. PRIs are responsible for the preparation of development plans and programmes

[41] Accountability Initiative: Centre for Policy Research, 'Administrative Decentralisation in India—The 3Fs' (2010) 1(2) *Panchayat Briefs* 2–3, https://accountabilityindia.in/sites/default/files/policy-brief/panchayatbrief2.pdf (accessed 11 May 2022).

[42] Ibid.

[43] EP Nivedita and Srikabth Viswanatha, 'Lesson from the Pandemic: Empowering Local Bodies Is a Priority to Improve Public Health' (12 July 2021) *The Print*, https://theprint.in/opinion/lesson-from-the-pandemic-empowering-local-bodies-is-a-priority-to-improve-public-health/694275/ (accessed 26 January 2023).

[44] Mathur (n 8) 40–41.

for their areas; the auditing of *panchayat* accounts; and the selection of the beneficiaries of the various welfare programmes within their jurisdictions. Their core administrative functions include the maintenance of village records and the construction, maintenance, and repair of village roads, canals, wells, and so on. Additionally, PRIs are expected to assist and promote village- or rural-based industries; public health; sanitation; education; and the welfare of women and children. Importantly, under article 243H, *panchayats* are authorised to levy, collect, and appropriate taxes, duties, tolls, fees, and the like so as to become self-sustaining institutions.

Panchayats are also tasked with quasi-judicial functions. These include the resolution of petty civil and criminal disputes (such as minor thefts and financial disputes) either by separate *adalat* or *nyaya panchayats* (village courts).[45] On the whole, *panchayats* are expected to act as self-governing institutions that promote participation by the people and work to secure the development of their jurisdictions.

To accomplish these roles and functions, 73rd CAA has created a three-tier institutional structure, with *Gram Panchayat* at village level, *Panchayat Samiti* at block level, and *Zilla Parishad* at district level. These have to function in tandem with both the respective state government and central-level institutions.

Gram Sabha, the legislative body of *Gram Panchayat*, is the vital unit of the PRIs. It has been designed to act as the main forum where villagers can debate their problems face-to-face with elected representatives and send their demands to the *Gram Panchayat* (executive body) for follow-up action. The decisions taken by the *Gram Sabha* cannot be overridden by any other body.[46] In short, *Gram Sabha* is envisaged as a village parliament.

The executive body *Gram Panchayat* (GP) is made up of 10 to 15 members who are directly elected by the *Gram Sabhas*. It forms the base of the *panchayat* pyramid. Each GP consists of several village wards; in

[45] India Development Review, 'IDR Explains: Local Government in India' (28 January 2020), https://idronline.org/idr-explains-local-government-in-india/ (accessed 26 January 2023).

[46] In reality, *Gram Sabha* decisions, including key resolutions, are bypassed or annulled by block- and-district-level officials with increasing regularity. See Nihar Gokhale, 'This Is How States Illegally Rejected Forest-Dwellers' Land Claims' (2019) *The Wire*, https://thewire.in/rights/this-is-how-states-illegally-rejected-forest-dwellers-land-claims (accessed 27 January 2023).

turn, each ward has an elected member known as a *Panch*. The *Sarpanch*, the head of the *Gram Panchayat*, is elected by the *Gram Sabha*. In other words, each *Gram Panchayat* is made up of the *Sarpanch* and the *Panch*. The *Gram Panchayat* is accountable to the *Gram Sabha*. The *Gram Panchayat*'s major roles include developmental and social issues; the construction and maintenance of schools; the maintenance of village roads and drainage systems; and the levying and collection of local taxes. Importantly, the selection of the beneficiaries of different central and state schemes comes under the purview of the *Gram Panchayat*.

As a link institution between GP and *Zilla Parishad*, the *Panchayat Samiti* (PS) plays a crucial role in facilitating any issues or demands raised at GP level. A PS comprises all *sarpanches* and *Upa sarpanches* (nominee or vice *sarpanch*) of the block; Members of Parliament (MP) within the jurisdiction; members of the state legislative assembly (MLAs); and members of legislative council (MLC). In addition, there are associate members such as representatives from cooperative societies, and members from the *Zilla Parishad*. *Samiti* is headed by a chairperson. The *Gram Panchayat* members nominate their *Sarpanch* and *Upa Sarpanch* from among their ranks, and these participate in the selection of the chairperson and vice-chairperson. The executive officer (EO) is a block level official who acts as the head of the administration of the PS.[47]

Zilla Parishad (ZP) or *District Panchayat* occupies the apex of the *panchayat* pyramid. It supervises the operations of all the *Panchayat Samitis* and *Gram Panchayats* within its jurisdiction and facilitates the distribution of funding across all *Gram Panchayats*. Importantly, ZP is in charge of developing district-level development plans. Similar to *Gram Panchayat*, *District Panchayat* is an elected body made up by the chairpersons of *Panchayat Samitis* and the MPs and MLAs of the district. ZP is assisted by a chief executive officer who is appointed by the state government to carry out the administration of the ZP along with a chief accounting officer and chief planning officer. The *Zilla Parishad* chairperson is the political head of the district *panchayat*.

In these ways, and through its creation of a uniform institutional framework, the passage of 73rd CAA injected a fresh dose of energy into the formerly moribund and neglected local bodies at work in the rural areas. In addition to the constitutional recognition this represented, 73rd

[47] Participatory Research in Asia (PRIA), 'What Is a Panchayat' (2019), https://www.pria.org/panchayathub/panchayat_text_view.php (accessed 27 January 2023).

CAA also sought to put in place certain levels of power and functionality. In practice though, many areas of the constitutional vision of the 73rd CAA remain unrealised.

A major setback to decentralised governance stems from very limited devolution by the respective states to *panchayats*. While a few states like Kerala have devolved all 29 functions, others such as Punjab, Jharkhand, and Goa have not done so. The lack of definitive provisions for decentralisation has meant a continued lack of administrative and functional devolution. Several state governments are yet to grant appropriate powers and authority to these grassroots institutions. However, the problem is not merely about how many functions have been devolved. Even where functions have been devolved to *panchayats*, this has often been achieved only on paper. In addition, there has been continued resistance from political and bureaucratic elites at state level who see these institutions as a threat to their power and dominance. Several states continue to create parallel bodies that usurp the functions assigned to *panchayats*.[48] The governance role of *panchayats* has been further eroded by a host of other issues, including lack of capacity, widespread corruption, and pressures from the feudal or caste leaders.

4.2 Governance Role of Urban Local Bodies

The 74th CAA not only assured the ULBs a right of existence, it also extended their traditional role (of merely delivering civic amenities) to that of taking part in the preparation of plans for local development and development projects and programmes.[49] The 74th CAA empowered the states to devolve 18 functions (as listed in the XIIth Schedule) to the ULBs. These functions include poverty alleviation; regulation of land use; slum development; public health, education, and sanitation; and running social development programmes. The State Municipal Acts list a range of functions (both obligatory and optional) for the municipal

[48] For example, despite the passage of the 73rd CAA, state governments have created rural development agencies to provide specific services in direct competition with PRIs. See Lalita Chandrasekhar, *Undermining Local Democracy* (Routledge, 2014).

[49] Ramanath Jha, 'The Unfinished Business of Decentralised Urban Governance in India', *ORF Issue Brief No. 340* (February 2020) 11, https://www.orfonline.org/wp-content/uploads/2020/02/ORF_Issue_Brief_340_Decentralised_Governance.pdf (accessed 22 October 2022).

bodies. However, given that the devolution of functions has been left at the discretion of the states, there is significant variation in the transfer of these functions. While states like Kerala have devolved most functions to the municipalities, others (such as Goa) have done little. Under state acts, the municipal functions fall into six categories: (i) public health and sanitation; (ii) public works; (iii) medical relief; (iv) education; (v) development; and (vi) administration.[50] While these are compulsory, the ULBs also have numerous optional or discretionary functions (such as the construction and maintenance of rescue homes, orphanages, and housing for the poor), and these are carried out subject to the availability of resources.

To perform the above-mentioned governance functions, the 74th CAA has mandated states to create three-tier municipal bodies. These are made up of the town council or *Nagar Panchayat* for transitional areas; municipal councils for smaller urban areas; and municipal corporations for bigger urban areas (see Fig. 1). The ULBs at their respective levels are expected to perform both deliberative and executive functions. The ULBs, be they corporations, councils or municipal boards, or councils comprising elected representatives, constitute the deliberative part. They act like a mini-parliament in terms of debate and discussion on municipal governance and performance; pass the budget of the urban local body; and adopt policies regarding, inter alia, taxation, resources, and the pricing of services. The deliberative body is usually headed by a mayor (in the case of large cities or metropolitan areas) or a chairperson (in the case of municipal councils), and monitors the activities of municipal administration so as to hold the executive accountable. Meanwhile, the executive part of municipal administration is handled by the municipal officials assigned by the state government. For instance, in the municipal corporations, the municipal commissioner (usually drawn from the ranks of the elite Indian Administrative Service, or IAS) acts as the executive head, and all other departmental officers (such as health officers and engineers) operate under his or her supervision and control. A similar format is followed in the ULB hierarchy. The following are some of the key institutions in ULBs that are tasked with major governance functions.

Each municipality or corporation is divided into wards. In small and medium municipalities, the average population per ward varies from 1500 to 6000, while in larger cities or metropoles, the ward size is fairly large,

[50] Aijaz (n 12).

ranging from 30,000 to 200,000 inhabitants. The 74th CAA provides for the creation of ward committees in all municipalities with a population of 300,000 or more, and two or more wards can be combined to constitute the basis for a ward committee.

The 74th CAA also empowers states to constitute district planning committees (DPCs) at the district level so as to consolidate the plans made by the *panchayats* and the municipalities. To ensure the democratic character of the DPC, the Act also stipulates that no less than four-fifths of committee members should be elected from the members of the *panchayats* at the district level (*Zilla Parishad*) and from the municipalities in the district. Nonetheless, the success of the DPC in fulfilling its mandate is patchy, as many states are reluctant to create the forum, let alone empower it once in existence.[51]

The 74th CAA provides for a metropolitan planning committee (MPC) to be formed by the state governments. Its purpose is to develop large municipal areas surrounding the main city corporation, with these encompassing a number of local bodies. It further mandates that MPCs be formed in every metropolitan area with a population of one million or more. The chief purpose of the MPC is to prepare draft development plans. The CAA stipulates that no less than two-thirds of the members of the committee should be elected by elected members from the municipalities and by the chairpersons of the *panchayats* in the metropolitan area according to population size. The remaining third of the committee members are to be independent technical experts and technical assistants.[52] The organisational structure of metropolitan planning committees also involves MPs and members of the legislative assembly.

While 74th CAA has brought visible transformation in the status and functioning of urban bodies, these still have a long way to go before becoming genuinely self-governing institutions. The major stumbling block is the incomplete devolution of powers from the states. According

[51] 'Decentralisation Has Fallen Off the Agenda' (16 January 2016) *The Businessline*, https://www.thehindubusinessline.com/opinion/decentralisation-has-fallen-off-the-agenda/article9272167.ece (accessed 26 January 2023).

[52] Arindam Biswas, 'Establishing Metropolitan Governance and Local Governance Simultaneously: Lesson from India's 74th Constitutional Amendment Act' (September 2020) 9(3) *Journal of Urban Management* 316–330, https://www.sciencedirect.com/science/article/pii/S2226585618301365#:~:text=The%2074th%20CAA%20envisages%20an,indirect%20participation%20in%20metropolitan%20development (accessed 26 January 2023).

to a recent study, 'no state has devolved all [18 of] the municipal functions, [making] the municipal bodies … dependent on the state for funds and decision-making'.[53] Furthermore, even when functions are delegated to urban bodies, they are decentralised only in name, with formal decentralisation often not translated into decentralisation in practice. An exemplary instance is that of Karnataka, where urban local bodies control only three of the 18 subjects listed in the XIIth Schedule.[54] The problem stems from the fact that 'the [74th] Amendment Act failed to spell out a well-defined functional domain for ULBs'.[55]

The mushrooming of parallel development authorities by the states and the federal government has further undermined or stunted the governance role of ULBs. In fact, on average, every state has about two dozen development and planning bodies which provide specific urban services, with these having little or no links with ULBs and their democratic accountability mechanisms.[56] Finally, and as discussed in the previous section, the weak mayoral system (and especially the commissioner system) allows state officials to call the shots on urban matters.

5 Financing Local Government

The most critical element in making local governments self-reliant is financing: the ability of local governments to impose taxes and raise local resources. This factor received very little attention in the early years of decentralisation. To enable *panchayats* and municipalities to become self-governing, the 73rd and 74th CAA made a genuine attempt to provide these institutions with some independent financial basis, and all Indian states have accorded at least minimal taxation powers to *Gram Panchayats*. While far from lucrative, these new sources of revenue are symbolically important for institutions which previously had little or no power to levy taxes.

[53] Praja Foundation, *Urban Governance Index 2020* (8 December 2020), https://www.praja.org/praja_docs/praja_downloads/Highlights%20of%20UGI%202020.pdf (accessed 12 May 2022).

[54] Nivedita and Viswanath (n 43).

[55] Jha (n 49).

[56] Vaidya (n 32) 13–14.

With regard to PRIs, article 243H empowers state legislatures to provide them with the authority to levy, collect, and appropriate taxes, duties, tolls, and fees subject to certain conditions and limits.[57] In this regard, the Union Ministry of *Panchayat Raj* (MoPR) has listed 24 taxes and duties that the *Gram Panchayats* can levy. The most important of these are the property or building tax; the vacant land (other than agriculture land) tax; duties or taxes on village produce sold in the village; tax on advertisements and hoardings; professional and entertainment tax; and factory tax.

In addition to the grant of taxation powers, a range of statutory and discretionary transfers and borrowings also exist to fund the workings of the PRIs. Every five years sees the establishment of a finance commission by the respective states to enable the statutory transfer of funds from states to *panchayats*, while in addition (also at five-year intervals) a national finance commission is constituted to provide a range of supplementary grants for the local bodies. Moreover, *panchayats* can benefit from numerous centrally funded schemes, as the local bodies often supervise and implement a range of mega-programmes.[58] The reality is that the *panchayats* do not generate enough revenue from internal sources to fulfil their constitutional mandate. They obtain as much as 80 per cent to 95 per cent of their revenue from external sources, and mainly as loans and grants-in-aid from states and the central government.[59] Among the key factors that contribute to low internal revenues for PRIs are a lack in capacity to properly impose taxes, due to ambiguous taxation norms; a lack of reliable records; and inadequate financial devolution by states on matters of taxations and levies.[60]

With regard to municipalities, the 74th CAA made significant improvements to past arrangements by providing a number of revenue-earning

[57] Ministry of Panchayati Raj notification, Government of India, 'Strengthening of Panchayati Raj Institutions' (6 April 2022), https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1814116 (accessed 20 January 2023).

[58] Mathur (n 8) 66–67.

[59] Ministry of Finance, Government of India, *Economic Survey 2018–19: Volume-1* (July 2019), https://www.indiabudget.gov.in/budget2019-20/economicsurvey/doc/echapter.pdf (accessed 24 January 2023).

[60] India Development Review (n 45) 3.

provisions, including the key power to impose taxes.[61] Urban local bodies generate their revenue from internal and external sources. Internal revenue comes from taxes such as those on land or from property taxes, but also from non-tax sources such as rents and user fees. External revenue comes from a range of levies, tolls, duties, and fees that are due to local bodies and are collected by the state and federal governments. In addition, other important sources of revenue include grants-in-aid from the consolidated funds of the state; loans from the state and federal governments (though these are to be used for only capital expenditure); and monies from financial intermediaries, domestic institutions, capital markets, and even grants from donor agencies.[62] Municipal bonds are also a popular instrument for raising resources. All in all, between 2017 and 2021, nine municipal corporations (including Ahmedabad, Greater Hyderabad, Bhopal, Ghaziabad, Surat, and Pune) managed to raise USD 1 billion.[63]

In reality, ULBs (particularly those in smaller cities and towns) barely generate enough revenue to meet their own running expenses, let alone provide all the obligatory services. With their limited powers to impose taxes, local bodies still rely on grants from state governments and the central government. For example, between 2014/15 and 2018/19, ULBs' own revenue was always less than 50 per cent, with the highest level, 41 per cent, achieved in 2018/19.[64] Municipal revenues are in serious decline. They contributed only about 1 per cent of the country's

[61] Article 243X of the Constitution entrusts state governments with the power to impose taxes, duties, tolls, and fees, and allows them to assign revenues from specific sources to ULBs. Article 243Y assigns state finance commissions (SFCs) the task of reviewing and recommending devolution of tax revenues and grants-in-aids to ULBs. See Jha (n 49) 11–12.

[62] Reserve Bank of India, 'Municipal Finances in India: An Overview' (2022) 5–6, https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/01OVERVIEW88D43E7D95D444A187D2F0B18F724E84.PDF (accessed 27 January 2023).

[63] TCA Sharad Raghavan '"India's Urban Local Bodies Among Weekest Globally": RBI Decries Reliance on State, Central Grants' (11 November 2022) *The Print*, https://theprint.in/india/governance/indias-urban-local-bodies-among-weakest-globally-rbi-decries-reliance-on-state-central-grants/1209487/ (accessed 27 January 2023).

[64] Comptroller and Auditor General (CAG), Government of India, 'Financial Resources of Urban Local Bodies' (2020) 12, https://cag.gov.in/uploads/download_audit_report/2020/Chapter%205%20Financial%20Resources%20of%20Urban%20local%20bodies-05f757c1fa0b4f3.80297299.pdf (accessed 25 January 2023).

GDP and reached a low of 0.43 per cent in 2017/18 ('the lowest in the last eight years').

This sharp decline is due largely to the passage of the GST Act in 2017. This took many of the local taxes away from municipalities. In addition, Amendment Act 74 mandated the establishment of state finance commissions (SFCs) to recommend revenue transfers for local bodies, but many states are delaying the Constitution of SFCs, and even where these have been established, actual implementation is usually delayed by states 'on some pretext or other'.[65] All in all, intergovernmental financial transfers to local bodies have been rendered ineffectual for decentralisation and have proved to be an inefficient way of financing third-tier institutions.[66]

6 Supervising Local Government

Local government is recognised in the State List (Seventh Schedule of the Constitution), and the states enjoy overriding powers over *panchayats* and municipalities (except large corporations). State governments can supervise and control local governments in multiple ways: legislative, administrative, financial, and judicial. Being a creature of state legislation (following the Conformity Act passed by respective states in the wake of the 73rd CAA), the state legislature exercises controlling powers over local bodies via a range of new laws, amendments, and ordinances soliciting information regarding their performances and so on, which impacts directly on the functioning and autonomy of these bodies. However, the most effective tools are administrative and financial.

State government supervises the functioning of local bodies through designated officials drawn from district and block levels. States have overriding powers to decide on major appointments—such as those of officials, advisers, and office-bearers such as the president and vice-president—as well as on the removal of members. State governments are also vested with various powers, among them the power to approve by laws and rules framed by the *panchayats* and municipal bodies, and to issue memoranda and directives containing advice and suggestions. However, the most important aspect of administrative supervision lies in

[65] Ibid.

[66] The Fifteenth Finance Commission (2020) observed that 'tax devolutions are a more objective form of transfer of resources as compared to other forms of transfers which are more discretionary and empirically found to be less progressive'.

the state governments' complete control of the hiring and firing of the personnel of the local bodies. Although the 73rd and 74th CAAs bestow the title of 'self-governing institutions', many such institutions (especially the *panchayats*) have no personnel of their own. All the personnel of *panchayats* are drawn from block and district administration, with these under the control of the state governments. Even core maintenance and development functions are performed by the line departments of the state concerned.[67]

The situation for the municipalities is a little better. They do have the right to employ clerks and class-IV employees, but this still depends on the approval of the state governments; moreover, since the provincialisation of municipal services, state governments have control over staffing from the post of assistant up. This control starts at the point of recruitment and includes questions of transfer, promotion, conditions of service, and conduct and discipline. Furthermore, the municipal commissioner (in the case of corporations) in whom the executive power is vested is someone appointed by the state government.[68]

Of all the administrative powers that the state has over the local bodies, however, it is the power to dissolve or supersede local bodies under certain specific circumstances that is the most lethal. If, in the opinion of the government, any *panchayat* abuses its powers or is not competent to perform, makes persistent errors in the performance of its duties, or wilfully disregards any instruction issued by the competent authority, the government can choose to dissolve it.[69] Telangana, for instance, has given sweeping powers to the district collector to suspend or even dismiss a *sarpanch* for misconduct or embezzlement. Section 37 of the Telangana Gram Panchayat Act[70] allows the district collector to act against a

[67] Prabhat Kumar Datta and Inderjeet Singh Sodhi, 'The Rise of the Panchayati Raj Institutions as the Third Tier in Indian Federalism: Where the Shoe Pinches' (2021) *Indian Journal of Public Administration* 17–18.

[68] Ramanath Jha, 'Strengthening Municipal Leadership in India: The Potentials of Directly Elected Mayors with Executive Powers', *ORF Occasional Paper No.168* (2018), https://www.orfonline.org/research/43785-strengthening-municipal-leadership-india-potential-directly-elected-mayors-executive-powers/ (accessed 27 January 2023).

[69] Mohindra Singh, Mohinder Singh, and Vijay Kumar, 'State Control Over Panchayati Raj Institutions' (April–June 2005) 66(2) *Indian Journal of Political Science* 223–224.

[70] Pradeep Chhibber and Pranav Gupta, 'There Is Hardly Any Autonomy at Panchayat Level' (21 January 2023) *The Hindu*, https://www.thehindu.com/opinion/lead/there-is-hardly-any-autonomy-at-the-panchayat-level/article66414499.ece (accessed 27 January

sarpanch or other elected officials if they refuse to carry out the orders of the district collector or commissioner or government. The only solace for local bodies facing dissolution is that elections to replace representatives have to be conducted within six months of dissolution.

Finally, the state governments supervise and control the activities of local bodies simply through their hold on the purse strings. Since the state is the source for grants-in-aid, it supervises the expenditures incurred by local bodies within the prescribed financial limits and undertakes checks or inspections from time to time in order to check on any misuse. In terms of articles 243J and 243Z of the Constitution, financial control of local bodies is also exerted through the sanctioning of the budget and auditing of accounts.

Thus, notwithstanding their constitutional status and the devolution of several functions, local governments (with the exception of large corporations) are tightly supervised and controlled by state governments. This has ensured that the autonomy of these institutions and their self-governing character remains a reality only on paper.

7 Intergovernmental Relations

The twin amendments of 1992 formally added a third-tier to India's existing federal architecture.[71] As with most three-tier federations, local governments in India do not enjoy direct relations with the federal government, even though central institutions try to engage, motivate, and facilitate a range of activities related to local governments. In India, three ministries—the Ministry of Panchayati Raj, the MoUD, and Housing and Urban Poverty Alleviation (HUPA)—have all established contacts and engagements with local bodies at multiple levels. The subordinate offices, departments, and agencies of these central ministries engage with local government through various contact points, with the overall aim being to supplement governance at local levels. With the central government's launch of various 'flagship' schemes in recent decades, intergovernmental

2023).

[71] Ibid.

coordination with local governments (via the respective state departments or municipal councils) has deepened and been consolidated.[72]

Federal initiatives such as the Jawaharlal Nehru National Urban Renewal Mission (launched in 2005) and the Smart Cities Mission (2015) have tried to engage institutions in consultative processes and sought to bring in urban bodies to address key issues such as transportation and city infrastructure.[73] The 2006 Mahatma Gandhi National Rural Employment Act made *Gram Panchayats* key actors in the implementation of this massive rural employment scheme. *Panchayats* across all the major states have found places in the consultative process engaged by the Ministry of Panchayati Raj and its departments and agencies. At the same time, though, these initiatives have created new flashpoints in federal relations as many states see them as instances of the central government's trespassing on their autonomy.[74]

State government plays the primary role in sustaining intergovernmental relations with local governments. Local bodies remain within the ambit of the State List, and states' governments retain appellate and overriding powers over local institutions. In view of this, the standing or position of the local bodies in intergovernmental processes depends largely on the particular framework created by the state. In the absence of any formalised universal structure for intergovernmental coordination, together with the lack of organised local government associations or lobbies in both rural and urban areas, everything is effectively left to the prerogative of state governments. A handful of states (such as Kerala and Karnataka) have allowed adequate spaces for local governments in the new decentralised power-sharing framework. Most states, however, can be seen as deploying local bodies (with the exception of corporations)

[72] See KK Pandey, 'Administration of Urban Development and Urban Service Delivery: Theme Paper for the 56th Annual Members' Conference' (2017) *Indian Institute of Public Administration*, https://www.iipa.org.in/new/upload/theme2012.pdf (accessed 27 January 2023).

[73] *The Economic Times*, 'JNNURM: Largest Urban Renewal Programme Comes with Strings, but Succeeding in Places' (17 March 2014), https://economictimes.indiatimes.com/opinion/et-commentary/jnnurm-largest-urban-renewal-programme-comes-with-strings-but-succeeding-in-places/articleshow/32176241.cms (accessed 27 January 2023).

[74] PS Arun, 'The Sustained Attack on Federalism' (6 July 2022) *The Hindu*, https://www.thehindu.com/opinion/op-ed/the-sustained-attack-on-federalism/article37999902.ece (accessed 25 January 2023).

simply as an extended arm of the state administration, rather than as self-governing units that are allowed to work autonomously.[75] On the whole, local governments are kept out of the decision-making processes engaged in by federal and state governments even when these have a bearing on local affairs.

To sum up, the standing of the local bodies in existing intergovernmental processes depends mainly on the framework created by the state. Aside from a small number of states, most simply use local bodies as an extended arm of the state administration and do not allow them to function as self-governing units. What has made matters worse for local bodies is that both the centre and the states have promoted (and financially and administratively invested in) dozens of parastatals (such as housing boards, improvement trusts, town and country planning boards, and development authorities) which handle the specific functions that, ideally, local bodies should be in charge of.[76] Paradoxically, the Covid-19 pandemic created greater opportunities for cooperation between local bodies and the higher orders of government.[77]

8 Political Culture of Local Governance

Since the passage of CAA 73 and 74, local bodies have emerged as key sites of political competition. Despite the norm of not permitting the display of party symbols in local elections, parties are fiercely competitive and leave no stone unturned in the fight to win local polls. Political parties like the Bharatiya Janata Party and Trinamool Congress fight *Panchayat* elections with the same vigour as in state or national elections.[78] Similarly, political competition at the level of municipalities (particularly in the large metropolitan governments) is equally intense.

The popularity of local governments is evident in a consistently high turnout by voters in local elections. Two main factors have generated

[75] Ibid.

[76] Pandey (n 72).

[77] TR Raghunandan, 'Local Governments in a State of Despair' (15 August 2022) *The Hindu*, https://www.thehindu.com/opinion/op-ed/local-governments-in-a-state-of-disrepair/article65768571.ece?homepage=true (accessed 26 January 2023).

[78] Richard Mahapatra, '*Panchayat* Elections are Set to Become All the More Important' (15 May 2017) *Down to Earth*, https://www.downtoearth.org.in/news/governance/panchayats-in-presidential-india-57786 (accessed 26 January 2023).

strong participation in local polls, where the *panchayats*, in particular, have attracted unprecedented attention from parties and voters. The first is the simple fact that more than 70 per cent of development programmes are implemented by PRIs and these bodies play a crucial role in the identification of beneficiaries for several welfare schemes. The second is that the adoption of an elaborate system of affirmative action (which reserves a substantial number of seats for socially disadvantaged communities and for women) has generated much wider interest among disadvantaged groups in the local bodies than elsewhere.[79]

The 73rd and 74th CAAs ensured the mandatory reservation of one-third of seats for women at all levels of the third-tier system, just as they did for members of the Scheduled Caste and Scheduled Tribes. This was intended to ensure the visible representation of women and caste and tribal members in local self-governing bodies. It has been an enabling process, particularly considering the gross underrepresentation of these groups in politics, and especially in parliament and state assemblies. The political representation scene at the *panchayat* level clearly vindicates the vision of the drafters of the new legislation.

Currently, India has 260,512 *panchayats*, with 3.1 million elected representatives no less than 1.3 million of whom are women (see Table 1). This figure represents the most successful dimension of India's affirmative action campaign for women. Compared to just 7–8 per cent representation in Parliament and the state assemblies, a full 49 per cent of elected representatives are women, with the figure reaching above 50 per cent in states such as Odisha and Bihar.[80] Furthermore, of the 1.3 million women representatives, 86,000 chair their respective local bodies.[81] It is remarkable progress if one considers that, before 1985, PRIs in Punjab,

[79] Ministry of Panchayati Raj, Government of India, 'Report of the Working Group on Panchayati Raj Institutions and Rural Governance' (2011) 12–14, http://nrcddp.org/file_upload/Report%20of%20the%20Working%20Groupon%20panchayati%20raj%20insti..pdf (accessed 26 January 2023).

[80] Niranjan Sahoo, 'Decentralisation @25: Glass Half Full Yet', *Observer Research Foundation* (5 May 2018), https://staging.orfonline.org/expert-speak/decentralisation25-glass-half-full-yet/ (accessed 26 January 2023).

[81] Ibid.

Table 1 Elected women representatives at various levels of PRIs (2019)

Level of government	*No. of* panchayats	*No. of elected representatives*	*No. of elected women representatives*
Gram *Panchayat*	253,268	2,903,277	1,292,203
Block *Panchayat*	6614	180,000	75,620
District *Panchayat*	630	17,527	8091

Source Ministry of Panchayati Raj, Government of India, 2019

Madhya Pradesh, Gujarat, West Bengal, and Rajasthan had only two female participants, while there were none at all in Uttar Pradesh.[82]

To sum up, local government has now firmly secured its place in the popular imagination and in local political culture. This is due largely to the fact of rising political competition at local levels and the growing importance of local bodies in the implementation of development schemes and socio-economic programmes. While this augurs well for democratic decentralisation, it is important to note that local bodies have become a key site of federal competition and contestation.

9 Covid-19's Impact on the Role of Local Government

The Covid-19 pandemic had a major negative impact on India's economy and devastated its fragile health system. It also presented significant challenges to the capacities of federal and state governments, but, in doing so, it also opened a rare window of opportunity for local governments in India.[83]

Given that urban areas emerged as hotspots for the spread of infection, the pandemic significantly tested the capacities of the ULBs. As municipalities are engaged in protecting 'public health (and) sanitation

[82] Avantika Singh, 'Examining Women's Role in Panchayati Raj' (22 April 2021) *The Daily Guardian*.

[83] Niranjan Sahoo and Ambar Ghosh, 'The COVID-19 Challenge to Indian Federalism', *ORF Occasional Paper* (29 June 2021) 29 (2–4), https://www.orfonline.org/research/the-covid-19-challenge-to-indian-federalism/ (accessed 26 January 2023).

conservancy', maintaining 'burials and burial grounds; cremations, cremation grounds and electric crematoriums', and recording 'vital statistics including registration of births and deaths' (these duties as listed in the Twelfth Schedule of Constitution), the ULBs emerged as the first line of support for people. Given the proximity of ULBs, the federal government and states were quick to recognise their importance in managing the pandemic. Several municipal corporations occupied centre-stage in the fight against the pandemic. Mumbai's Brihanmumbai Municipal Corporation (BMC) is a prime example of the key role played by ULBs in containing the spread of the virus and addressing related challenges. Placing itself on a war footing, the BMC provided a daily 'COVID-19 Response War Room Dashboard'. This provided disaggregated information regarding factors such as Covid-19 cases as well as information on the availability of hospital beds, data regarding contact tracing, and details about containment zones.[84] Likewise, many other municipal corporations (such as the Greater Chennai Corporation, GCC) played a key role in vaccinating the city's population.[85]

Panchayats also emerged as frontline institutions in the battle against the pandemic, especially so in the vast rural regions, where health infrastructure is thin on the ground. Since PRIs in many states are vested with the important duties of maintaining primary health-care centres, hospitals and dispensaries, as well as engaging in social welfare, they formed the locus of implementing pandemic containment strategies in remote regions. In some states, the chief ministers conferred the authority of district magistrates on the *sarpanches* of the *Gram Panchayats*, significantly devolving power from the centre.[86] PRIs worked closely with other

[84] Malathi Iyer, 'Mumbai: Private Hospitals Outdo BMC in Vaccinations on Friday, Saturday' (30 May 2021) *The Times of India*, https://timesofindia.indiatimes.com/city/mumbai/maharashtra-pvt-hosps-outdo-bmc-in-vaccinations-on-fri-sat/articleshow/83077570.cms (accessed 24 May 2022).

[85] T Ramakrishnan, '25 per cent of Posts for Heads of Local Bodies Reserved for SC/STs' (3 August 2016) *The Hindu*, https://www.thehindu.com/news/cities/chennai/25-per-cent-of-posts-for-heads-of-local-bodies-reserved-for-scsts/article2480417.ece (accessed 24 May 2022).

[86] Priya Ranjun Sahu, 'Not Being Kept in Loop: Odisha's Sarpanches on CM's Power Decentralisation Move' (14 May 2020) *Down to Earth*, https://www.downtoearth.org.in/news/governance/not-being-kept-in-loop-odisha-s-sarpanches-on-cm-s-power-decentralisation-move-71113 (accessed 25 May 2022).

stakeholders (such as accredited health workers and school teachers) at the local level to spread awareness regarding pandemic mitigation measures.[87]

Yet the active contribution of third-tier institutions in the fight against viral pandemic was not without a multitude of institutional and procedural challenges. The foremost of these was financial. Always low on revenue, local bodies found that pandemic-related activities exacerbated the financial crunch on them. Even the relatively large and prosperous Pune Municipal Corporation struggled to raise adequate funds during the pandemic. It received only a quarter of its estimated income from property tax in the first month of the fiscal year 2020, and only 0.001 per cent from development revenue (from activities such as construction).[88] Similarly, the BMC was forced to impose a flat 20 per cent cut to its revenue expenditure across all departments.[89]

Apart from financial problems, the lack of policy-making influence among third-tier institutions, in addition to the prevalence of hierarchical intergovernmental relations, posed a major challenge to the development of effective localised responses to Covid-19. As the Ministry of Housing and Urban Affairs put it, '[T]here is a lack of autonomy in these urban local governing bodies' decision-making'.[90] Moreover, during the crisis, district magistrates (DMs) and members of the elite civil service had a number of overarching powers conferred upon them that infringed the autonomy of local governments. DMs in many states (such as Andhra

[87] Anwesha Dutta and Harry W Fischer, 'The Local Governance of COVID-19: Disease Prevention and Social Security in Rural India' (2021) 138 *World Development*, https://doi.org/10.1016/j.worlddev.2020.105234 (accessed 25 May 2022).

[88] Jha (n 68).

[89] Chaitanya Marpakwar, '20 per cent Cut in BMC Revenue Expenditure Due to Increased Spending on Tackling Covid-19' (10 June 2020) *Mumbai Mirror*, https://mumbaimirror.indiatimes.com/coronavirus/news/20-cut-in-bmc-revenue-expenditure/articleshow/78244360.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (accessed 25 May 2022).

[90] Karishma Mehrotra, 'Urban Affairs Ministry Recommends Amending Constitution for Greater Municipal Autonomy' (4 March 2021) *The Indian Express*, https://indianexpress.com/article/india/urban-affairs-ministry-recommends-amending-constitution-for-greater-municipal-autonomy-7214029/ (accessed 21 May 2022).

Pradesh, Assam, and Uttar Pradesh) drew on emergency powers to take over medical facilities and allocate funds to local bodies.[91]

In spite of these challenges, local governments proved to be integral instruments of state policy during the pandemic. This was well acknowledged by the federal government in the course of fighting the pandemic.[92]

10 Emerging Issues and Trends

Ideas of local self-governance and the spirit of decentralisation have taken root in India's federal system, notwithstanding numerous challenges. Democratic decentralisation (particularly after the passage of the twin Acts of 1992) has in many ways opened up and democratised the traditional political space by bringing new voices and fresh issues to the fore. The increase in the number of elected representatives, along with the emphasis on the inclusion of women at third-tier levels, is testimony to the legitimisation of local governance. Of the 3.1 million elected representatives, a record number of 1.3 million are women. As far as grassroots politics is concerned, this represents the most successful aspect of India's affirmative action policy for women.

Another major development has been the ever-increasing levels of voter participation in the local polls. This indicates that a much stronger political culture is taking root as people demonstrate their interest in and expectations of democratic institutions. More notably, since the enactment of the twin Acts, elections to local bodies are being held with greater regularity and the once-endemic arbitrary dissolution of local bodies by the states is now much less frequent.

Significantly, the pandemic opened the eyes of many to the resilience and usefulness of local bodies as the first line of defence for the majority

[91] Mohammad Hanmza Farooqui and Sanjana Malhotra, 'Role of the District Collector in the COVID-19 Response' (May 2020) *Accountability Initiative: Centre for Policy Research*, https://accountabilityindia.in/primer/role-of-the-district-collector-district-magistrate-or-deputy-commissioner-in-the-covid-19-response/ (accessed 25 January 2023).

[92] 'Centre Identifies 4 Cities as Role Models for Handling Covid-19 Pandemic' (25 May 2020) *Hindustan Times*, https://www.hindustantimes.com/india-news/centre-identifies-4-model-cities-for-covid-handling/story-9dm4dVcsqvZU0YGWMynbEN.html (accessed 25 January 2023).

of the population. Despite their very limited resources and the many institutional constraints, rural and urban local bodies alike were able to offer conspicuous aid to the state governments in critical areas of pandemic management.

However, notwithstanding significant progress on many fronts, several notable challenges remain regarding the ability of local bodies to fulfil their constitutional mandate. A key factor in the stunted growth of local governments is the fact of very limited devolution. With the exception of a few states such as Kerala (which has devolved all 29 functions to *panchayats*), most states (Punjab, Jharkhand, Goa, and others) have stuck to limited devolution. The lack of definitive provisions for decentralisation has resulted in a continued lack of administrative and functional devolution. Several state governments are yet to grant appropriate powers and authority to grassroots institutions. However, the problem is not merely how many functions have, in fact, been devolved. For even those where this has happened, devolution remains largely in name only; added to this is the fact of continued resistance from state-level political and bureaucratic elites who see these institutions as a threat to their own continued power and domination. In addition, several states continue to create and promote parallel bodies to take over the functions assigned for *panchayats*, thus effectively undermining their legitimacy.

The devolution story is even worse in the case of urban bodies. According to one recent study, 'no state has devolved all (18 of) the municipal functions, (making) the municipal bodies … dependent on the state for funds and decision-making'.[93] Even when functions are delegated to urban bodies, they are decentralised in name only: formal decentralisation is often not translated into practice. Take, for instance, the case of Karnataka. Of the 18 subjects listed in the Twelfth Schedule, its ULBs have complete control of only three.[94] This challenge stems from the fact that 'the (74th) Amendment Act failed to spell out a well-defined functional domain for ULBs'.[95]

The weakness of the mayoral system (the commissioner system) in the large municipal corporations also reflects the lack of functional autonomy that urban bodies have despite their constitutional status. Mayors in most

[93] Praja Foundation (n 53).

[94] Nivedita and Viswanath (n 43).

[95] Jha (n 68) 23.

Indian cities are relegated to secondary status while, across the world, the trend is the significant strengthening of mayoral authority through the granting of executive powers. In India's eight major cities, mayors are responsible for managing no more than three of 10 critical functions, and do not have effective control over finance or staffing (the two areas most important for good governance).[96]

A part of the problem here stems from the political elites' continued bias towards the rural voter (rural India comprises more than 65 per cent of the total population). For decades, political leaders at both the state and national levels have focused on the rural concerns of the majority of the population. Urban issues, in consequence, have received relatively little attention from political leaders and other key decision-makers. This has led to a somewhat skewed balance of power, one which favours rural issues and interests, in the attempt, as one analyst has put it, 'to get the votes in the village and use that power to rule and plunder the cities'.[97] The rural bias is compounded by parastatal organisations (created by states to handle specific portfolios such as health, water, and education) and the resistance from bureaucratic elites who see genuine devolution to third-tier local bodies as a considerable threat to their powers and authority. To sum up, cities and towns lack the power and autonomy necessary if they are to fulfil their constitutional mandate as the self-governing institutions deemed necessary to meet the urgent challenges of India's rapid urbanisation.

Finally, it needs to be fully acknowledged that corruption also poses a significant challenge to service delivery in PRIs and ULBs. With funds from numerous central and state-level welfare schemes flowing through *panchayats*, these have become major sites of corrupt practices. An important study of local governments in Karnataka found that 55–65 per cent of funds earmarked for development in local bodies are misappropriated by elected representatives, contractors, and government officials.[98] The

[96] Jason Miklian and Niranjan Sahoo, 'Supporting a More Inclusive and Responsive Urban India' (2016) 3 *PRIO Policy Brief*, https://www.prio.org/publications/9011 (accessed 26 January 2023).

[97] Shekhar Gupta, 'Anticipating India' (26 April 2014) *The Indian Express*, https://indianexpress.com/article/opinion/columns/anticipating-india/ (accessed 26 January 2023).

[98] V Vijayalakshmi, 'Corruption and Local Governance: Evidence from Karnataka' (2006) *Working Papers 311, IDEAS*, https://ideas.repec.org/p/ess/wpaper/id311.html (accessed 26 January 2023).

prevalence of corruption has contributed to the weakening of the institution of *panchayats*, demonstrating that the problem of corruption among PRIs is a deep national trend, one that stands as a significant barrier to both public welfare and effective local governance.

To conclude, for local bodies to emerge as institutions of self-governance, they need to fulfil at least three basic conditions.[99] First, they must have institutional existence in the sense that decisions are taken by the people's representatives. Secondly, they need to have the institutional capacity to make their own rules independently (including the hiring and firing of personnel); and, last but not least, they need financial viability in terms of the power to raise the finances necessary for meeting their responsibilities. In other words, local bodies should enjoy the necessary functional, administrative, and financial autonomy that alone will deliver the desired outcomes. Given the levels of resistance to all of this from the state-level politicians and higher bureaucracy, it is going to be a long, drawn-out battle for local governments to become an active agent in a truly decentralised federal system.

[99] Mahi Pal, 'Panchayati Raj and Rural Governance' (10 January 2004) 39(2) *Economic and Political Weekly*, https://www.epw.in/journal/2004/02/commentary/panchayati-raj-and-rural-governance.html (accessed 26 January 2023).

CHAPTER 10

Italy

Elisabeth Alber, Alice Valdesalici, and Greta Klotz

Italy is a parliamentary republic characterised by perfect bicameralism, with a second chamber that does not guarantee the representation of territorial interests. The different types of local government (metropolitan cities, provinces, municipalities), along with variations on them (various kinds of inter-municipal cooperation), form part of a system of asymmetrical regionalism, one that includes 15 ordinary and five special regions.

This chapter is the product of a joint effort. However, Elisabeth Alber authored Sects. 1, 2, 4, 9 and 10, Alice Valdesalici wrote Sects. 3, 5 and 6, while Greta Klotz is responsible for Sects. 7 and 8. The open access charges for this chapter were funded by Eurac Research Open Access Fund.

E. Alber (✉) · A. Valdesalici · G. Klotz
Eurac Research Institute for Comparative Federalism, Bolzano, Italy
e-mail: Elisabeth.Alber@eurac.edu

A. Valdesalici
e-mail: alice.valdesalici@eurac.edu

G. Klotz
e-mail: greta.klotz@eurac.edu

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_10

Local governments are caught between national and regional legislation in a situation in which the national legislature has the upper hand. Although the system of local government was and still is quite symmetrical on the whole, in practice it is less than fully symmetrical with regard both to the performance of local governments and to their role in intergovernmental relations. Local governments are in search of role-clarity amidst a background of unstable politics and several seasons of unfinished (federal) reforms. Meanwhile, intergovernmental relations are complicated by structural challenges, by a range of socio-demographic trends such as urbanisation and the hyper-fragmentation of local governments, and by the unique challenges arising from the financial crisis of 2008 as well as the current Covid-19 pandemic.

1 Country Overview

In 2021, the total population of Italy amounted to 59 million, with the largest number of people living in the northern region of Lombardy (about one-sixth of the entire population).[1] Lazio, in the centre, and Campania, in the south, are the second and third most populous regions. The largest cities are located in each of these three regions: Milan, Rome, and Naples. As the capital city, Rome enjoys a special status different to that of any other metropolitan city.

Though not provided for as such in the Constitution, Italy's official language is Standard Italian. Minority languages and local dialects do, however, also remain powerful, and in some parts of the country they form particular language regimes at regional and local levels. This is in line with the constitutional provision for the safeguarding of linguistic minorities, as provided by article 6 of the Constitution. The degree of protection ranges from the relatively weak safeguards afforded by ordinary legislation to the stronger forms of protection enshrined in some of the special regions' statutes.[2] The stronger protective regimes take the form of a multilingual public sphere, one covering either an entire region (as

[1] ISTAT, *Indicatori demografici* (3 May 2021), www.istat.it/it/archivio/257243 (accessed 20 June 2021).

[2] Elisabeth Alber, 'Italy's Socio-Linguistic Situation and Language Policies: Multifaceted, Multilevel, Asymmetric' (2022) *Forum of Federations—Occasional Paper Series*.

in Aosta Valley and Trentino-South Tyrol)[3] or specific parts of a region's local government system (as in Friuli Venezia Giulia).[4]

Local governance practice also varies in relation to geographical factors, demographic trends, and the characteristics of regional economies. Geographically, plains make up about one-fifth of the country and are confined to the great northern triangle of the Po Valley; the rest of the territory is divided more or less evenly between hilly and mountainous land. In general, the rural population is in decline, with more than two-thirds of the population now living in urban areas. Of Italy's 7904 municipalities, almost 70 per cent have less than 5000 inhabitants and many also have less than 1000 inhabitants. The number of municipalities varies greatly from one region to another.[5] Fiscal capacities also vary significantly between local governments, with metropolitan cities having greater economic strength than other municipalities. Metropolitan cities are evenly distributed across Italy's territory of 302,073 km^2 and enjoy special status, while medium-sized cities are more numerous in the north than in the south.

Other important variables are the territorial differences between regional economies. A north–south cleavage persists in which fiscal capacities vary significantly from one region to another. Estimated at about EUR 35,400, the gross domestic product (GDP) per capita (nominal income) in northern regions is significantly higher than that in the southern regions (estimated at EUR 18,500).[6]

[3] Roberto Louvin and Nicolò Paolo Alessi, 'The Maze of Languages in Aosta Valley (Italy)' (2020) 3–4 *EJM* 167–190; Elisabeth Alber, 'South Tyrol's Model of Conflict Resolution: Territorial Autonomy and Power-Sharing', in Sören Keil and Allison McCulloch (eds) *Power-Sharing in Europe* (Palgrave Macmillan, 2021) 171–199.

[4] Zaira Vidau, 'The Legal Protection of National and Linguistic Minorities in the Region of Friuli-Venezia Giulia: A Comparison of the Three Regional Laws for "Slovene Linguistic Minority", for the "Friulian Language" and for "German-Speaking Minorities"' (2013) 71 *Razprave in Gradivo/Treatises and Documents* 27–52.

[5] ISTAT, *Codici statistici delle unità amministrative territoriali: comuni, città metropolitane, province e regioni* (17 January 2022) (accessed 5 March 2022).

[6] ISTAT, *Conti Economici Territoriali 2020*, www.istat.it/it/archivio/237813 (accessed 1 June 2021).

2 History, Structures, and Institutions of Local Government

2.1 The Long Tradition of Municipalities

Italy's municipal tradition can be traced back as far as the Middle Ages. After the collapse of Napoleon's rule over Italy in 1814, the nation-state declared in 1861 emerged from more than 40 years of civic conflict. Administrative unification was consequently a priority of the Kingdom of Italy, and laws were enacted to establish a network of decentralised ministerial bodies that could exert some control over powerful currents of local identity. The immediate general aims were to seek to protect the unification project against existing centrifugal tendencies; to repair the institutional weaknesses of the pre-unification Italian kingdoms; and to bring local authorities under uniform legislation and administration.[7] However, the highly centralised structure of government proved unable to standardise local realities.

The rise of fascism in 1922 undermined the limited democratic reforms to local government that had been introduced slowly until then. In the post-war period, and with the adoption of the Constitution in 1948, the promotion of local autonomies and administrative decentralisation became a basic principle of the Italian system.[8] Articles 117 and 118 of the Constitution grant both legislative and administrative powers to ordinary regions. The constitutional provisions, however, were not implemented for quite some time. It was only with the creation of ordinary regions in 1970 that the responsibilities of local governments in sectoral policy-making were expanded. In practice, local governments were caught between the demands of regional and national regulatory frameworks, in addition to which the regional legislature was imposing an additional source of law, one that determined (in part at least) the scope of local government. The situation was different for the special regions, as they had the upper hand over local governments.

[7] Robert D Putnam, Robert Leonardi, and Raffaella Y Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton University Press, 1994).

[8] Constitution, article 5.

2.2 *The Empowerment of Local Government Since the 1990s*

In 1990, the first general law on local government was enacted—Law 142/1990—and the 1990s saw the adoption of a number of additional measures that enabled local governments to become more active and autonomous. Financial autonomy was increased; preventive control over the legitimacy of administrative acts reduced; and the direct election of mayors and presidents of provinces—a district type local authority of a larger geographical scope between the region and municipalities—was introduced.

The adoption of a number of changes to the regime of administrative functions was also crucial in empowering local governments. The most important of these was Law 59/1997 which (along with its implementing legislative decrees) introduced the principle of subsidiarity and took on constitutional authority in the 2001 reform. Italian constitutional law makes a distinction between vertical and horizontal subsidiarity.[9] Vertical subsidiarity concerns the distribution of powers across different levels of government, whereas horizontal subsidiarity addresses collaborative governance (the foundation of participatory democracy practice) between the public sector and civil society.[10]

In 2001, the Italian national legislature approved a wide-ranging reform of the 1948 Constitution. The distribution of competences between the state (the central level of government) and the regions was significantly altered by the transfer of legislative and administrative power to the regions. Until 2001, ordinary regions could legislate only on a few subjects as listed in the Constitution, and only in the framework specifically provided by national law. The special regions, on the other hand, already enjoyed much broader autonomy within the legislative—often exclusive—powers as laid down by each autonomy statute. The 2001

[9] Giuseppe Martinico, 'Federalism, Regionalism, and the Principle of Subsidiarity', in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 189–205.

[10] Roberta Bartoletti and Franca Faccioli, 'Public Engagement, Local Policies, and Citizens' Participation: An Italian Case Study of Civic Collaboration' (2016) 2(3) *Social Media + Society*. On local collaborative governance in Alpine states including Italy, see Martina Trettel et al., *Democratic Innovation and Participatory Democracy in the Alpine Area: Comparative Report* (2019), https://bia.unibz.it/discovery/fulldisplay/alma991005772950001241/39UBZ_INST:ResearchRepository (accessed 1 June 2021).

constitutional reform softened this difference by turning the distribution of legislative powers upside-down.

Now it is the exclusive legislative competences of the state as well as subject matters that relate to concurrent legislation (the state is responsible for the principles and the regions for the details) that are specifically listed in the Constitution.[11] Regions retain residual powers. The reform also eliminated the need for pre-enactment review of regional law and local administrative acts. With regard to administrative functions, the reform constitutionalised the principle of (vertical) subsidiarity.[12] Consequently, administrative functions now have to be carried out by the institutions closest to the citizens, unless these functions are already attributed to the provinces, metropolitan cities, and regions, or to the state.

Due to the absence of interim rules, the 2001 constitutional reform presents many interpretative problems. Regional governments often have asked the Constitutional Court (ItCC) to set aside national measures that infringe on regional competences; as a result, the ItCC has come to assume a quasi-political role in the implementation of the reform, and politics thus continue to hold it back. In its judgment 303/2003, the ItCC used the subsidiarity principle 'as a Trojan horse to reshape the distribution of competences'.[13] The central question of the judgment is whether it is legitimate for the state to retain administrative functions on matters in relation to which it is not vested with exclusive legislative competence. The ItCC held that the rigid, principled allocation of competences just did not work. It noted the need for a certain flexibility and the need for instruments which would guarantee governance through shared interests across government levels. Thus, when the state takes over administrative competences in the name of the principle of subsidiarity, it can likewise assume the corresponding legislative competence, in accordance with the principle of legality. The ItCC also stressed the relevance of the principle of loyal cooperation between the regions and the state whenever the state legislator for reasons of guaranteeing uniformity derogates from the classical application of the principle of subsidiarity. Regarding the constitutional autonomy of municipalities, the case-law upheld the

[11] Constitution, article 117(2) and (3).

[12] Constitution, article 118(1).

[13] Martinico (n 9) 195.

principle of subsidiarity as classically applied, using it as a shield against regional laws (for many see ItCC judgment 179 of 2019).

The 2001 constitutional reform strengthened the financial autonomy of regions as well as local government. In terms of article 119 of the Constitution, municipalities, provinces, metropolitan cities, and regions shall have financial autonomy with regard both to revenue and expenditure (see Sect. 5 for further discussion). However, this financial autonomy has to be balanced against the principles of solidarity, coordination, and cohesion; it is thus limited by actions the state undertakes, particularly actions with regard to the coordination of public finances, which—as provided by article 117(3) of the Constitution—is understood as a concurrent state-regions competence.

2.3 The Many and Complex Types of Local Government

Municipalities, provinces, and metropolitan cities are the main types of local government in Italy. Indeed, the Constitution, in its article 114(1) (as amended in 2001), envisages Italy as composed of municipalities, metropolitan cities, and provinces. As of early 2022, there are 7904 municipalities; 14 metropolitan cities (10 in ordinary regions, four in special regions); and 83 provinces. These are all autonomous entities with elected bodies and their own statutes, powers, and functions. As the capital, Rome enjoys special autonomy, as provided by article 114(3) of the Constitution, and is specifically referred to in different laws (for example, the fiscal federalism framework law 42/2009 that had foreseen interim rules).

Each municipality answers to a province or a metropolitan city, but municipalities may also directly relate to a region or the state when necessary. A municipality may acquire city status at the behest of the President of the Republic (different rules apply in special regions). Several forms of inter-municipal cooperation (a competence that formally rests with the region) refer to both national and regional legislation. There are three main types of association: by agreement, through consortia, and by the union of municipalities (often as the precursor to municipal merger). Section 4 discusses municipal mergers, and the workings of the recently introduced metropolitan cities.

3 Constitutional Recognition of Local Government

A first reading of article 114(1) of the Constitution appears to suggest that all types of local government enjoy equal standing. The provision lists municipalities, provinces, and metropolitan cities as autonomous entities which have their own statutes, powers, and functions. However, some scholars disagree with such an interpretation, arguing that the article is intended as an expression of the concept of functional spheres, and not of hierarchical levels of government.[14] Such a reading is suggested by the fact that, in practice, different types of local government have different powers and different political weights.[15]

Local authorities have no legislative powers and consequently no original powers of taxation. They may set and regulate taxes only if the national or regional legislatures provide for this—something which is rare. The national legislature holds exclusive competence with regard to the 'electoral system, the governing bodies, and the determination of the fundamental functions of municipalities, provinces and metropolitan cities'[16]; all other matters are the exclusive competence of regions.[17] This means that the state is unable to undertake comprehensive regulation of the local government system and that local government—at least on paper—falls under the responsibility of the regional and national legislatures.

However, despite the formal allocation of powers, the regional role is in fact rather constrained. This is because, first of all, the ItCC has adopted an extensive reading of the above-mentioned national competence. Secondly, this allocation scheme functions without prejudice to the other responsibilities of the central authority. The latter are not always considered as a competence title in the classical sense but rather have a cross-cutting nature, as is evident, for example, in the concurrent competence of coordinating public finances. In addition, national laws often introduce detailed regulations rather than basic principles. The

[14] Francesco Staderini, Paolo Caretti, and Pietro Milazzo, *Diritto degli enti locali* (Cedam, 2019) 38.

[15] Franco Pizzetti, 'Le nuove esigenze di "governance" in un sistema policentrico "esploso"' (2001) *Le Regioni* 1153–1196.

[16] Constitution, article 117(2).

[17] Constitution, article 117(4).

exclusive national power as to the 'determination of the basic level of benefits relating to civil and social rights to be guaranteed throughout the national territory', as provided by article 117(2) of the Constitution, serves as another example of competences having transversal nature. Irrespective of the matter at hand, whenever a regional law provides benefits that are related to civil and welfare rights (such as health care, education, social assistance, and public transport), there is a duty to comply with predetermined national standards.

According to article 114(2) of the Constitution all types of local government are qualified as autonomous entities. Along with financial autonomy (see Sect. 5 below), the autonomy for a local government to adopt its own statutes is considered fundamental. Even so, this power is constrained by the above-mentioned competence of the state to determine the electoral system and the governing bodies thereof. Although local statutes may be considered as atypical sources of law, the fact that there is a need for a national law prescribing the contents of the statute and the procedure for its development is already very telling.[18] The principles set forth by the national legislature are enshrined in the Consolidated Text of Local Authorities (TUEL), which includes a non-exhaustive list of possible contents (for example, criteria regarding the institutional organisation and the powers of the different organs). Local statutes also establish the basic rules for each local entity, and these rules are ranked higher than regulatory acts in the hierarchy of norms, thanks to the complicated procedure for their approval.

Only in 2001 were metropolitan cities constitutionally entrenched as a type of local government, and then only established in law 56/2014. The regions had no role in their creation.

Local governments are allotted regulatory responsibilities of two types: the first is associated with their organisation, and the second with the implementation of their functions, as provided by article 117(6) of the Constitution. They are also charged with carrying out both their own functions as well as delegated administrative functions. As a rule, municipalities take precedence in the allocation of administrative powers. They are liable for all of them, if and to the extent that a certain function shall not be assigned to the upper levels of government if deemed

[18] Enrico Carloni and Fulvio Cortese, *Diritto delle autonomie territoriali* (Cedam, 2020) 55.

necessary pursuant to the principles of subsidiarity, differentiation, and proportionality.[19]

Overall, constitutional guarantees regarding local government are rather weak: the constitutional framework leaves large room for interpretation. Constitutional case-law does argue that neither the regional nor the national legislatures can nullify local autonomy,[20] but it does not exclude interventions by these two to redefine the scope of local autonomy in the exercise of their constitutionally allocated legislative powers.[21]

At the same time, local authorities do not enjoy direct access to the ItCC in the event of the violation of their competences. Their prerogatives can be invoked only indirectly through the regional government, which can raise a question of constitutional legitimacy at the request of the council of local authorities.[22] In addition, constitutional provisions regarding local governments are not self-executing and are bedevilled by frequent use of vague concepts. Similarly, the exercise of administrative functions necessarily finds its legitimation in the (national or regional) law that defines the content and the limits of the related power.

So far, the discussion has dealt only with local government in the ordinary regions. In the special regions, the allocation of competence is decided by the statutes of autonomy. While the general rule is that jurisdiction over local authorities is classified as an exclusive regional power, in the case of the special regions there are profound differences because each of them has a different system of powers in place, one which is the result of bilateral negotiations with the state. On top of that, the effective scope of special autonomy (that is, the content and the boundaries of the powers transferred from the state to the special region) depends on the particular rules set out in the enactment decrees. The latter are by-laws of quasi-constitutional rank adopted on a bilateral basis for the implementation of the autonomy statutes.[23]

[19] Constitution, article 118.

[20] Italian Constitutional Court judgment 83/1997.

[21] Italian Constitutional Court judgment 286/1997.

[22] Italian Constitutional Court judgment 196/2004.

[23] Francesco Palermo and Alice Valdesalici, 'Irreversibly Different: A Country Study of Constitutional Asymmetry in Italy', in Patricia Popelier and Maja Sahadžić (eds) *Constitutional Asymmetry in Multinational Federalism: Managing Multinationalism in Multi-Tiered Systems* (Springer, 2019) 287–315.

4 Governance Role of Local Government

4.1 Municipalities

There is no single piece of legislation that comprehensively identifies all the competences of the municipalities. The fundamental areas of competence are derived from a highly complex web of state and regional legislation. These include general administration and management (including personnel); early childhood education and care as well as school infrastructure (for pre-school and primary schools); local mobility, transport, and roads; land management and environmental development; social welfare; and culture and recreation. The upland municipalities—mountainous/remote municipalities—enjoy a larger scope when it comes to development schemes that are linked to national, regional, or EU frameworks for socioeconomic measures.

A directly elected mayor heads a municipality, assisted by a board, only one-third of whose members can be drawn from the council. The system for electing a mayor differs from small to medium and large municipalities or cities. He or she is elected at the same time as the council to whom he or she is responsible. The number of local councillors varies according to the number of inhabitants, and fluctuates between 12 and 60 members.

National legislation specifies how functions shall be exercised if and when municipalities cooperate. With the exception of single-municipal islands (and the exclave municipality of Campione d'Italia), municipalities of up to 5000 inhabitants, or municipalities up to 3000 inhabitants, have to exercise basic functions jointly; there are special rules for the common exercise of functions in the case of municipalities with less than 1000 inhabitants. In case of defaulting municipalities, the prefect of the province, that is the representative of the state, sets a deadline within which action has to be taken; once this deadline has expired, an external commissioner takes over.

Voluntary inter-municipal cooperation takes place in three forms: through agreements, consortia, and the union of municipalities. Agreements can be set up between two or more municipalities for the delivery of a service or the fulfilment of a task for a period of at least three years. Unless the regional legislature has accepted an exception, the general rule is that, for the exercise of certain functions, a minimum demographic limit of 10,000 inhabitants, or (in the special case of mountain communities) 3000 inhabitants, is required. Such agreements are highly adaptable. They can be 'closed' (with a fixed number of members) or 'open' (with

the possibility for others to join at a later stage, and after obtaining the consent of all the municipalities that cooperate in the agreement). Agreements do not foresee the establishment of further bodies, and one of the partnering municipalities functions as coordinator.

Unlike agreements, consortia need to be established with an assembly and a management board. Municipalities and other entities form a consortium when they intend to manage one or more public services together. Meanwhile, unions of municipalities—differing from consortia—jointly exercise an array of functions and services. They are made up of two or more municipalities and have their own by-laws and organs. The minimum demographic limits are the same as for an agreement (though with exceptions that can be set by the region).

It is noteworthy that personnel costs for a union of municipalities must not exceed the sum of staff costs previously incurred by each of the municipalities concerned: indeed, the aim should be to accumulate progressive cost savings. The union of municipalities is often a precursor to the merger of municipalities. Such mergers (which are also regulated by the regional legislature) have been encouraged and regulated by the national legislature since the 1990s, though with little success.[24]

Mergers are bottom-up processes in which it is obligatory to hold a consultative referendum involving all the citizens of the affected municipalities. There are many differences (and some innovative approaches) when it comes to the details of procedure and in the interpretation of the results of such referendums. Regions may adopt a *dirigiste* role or act as a mere executor of the popular will.[25] In addition, Law 56/2014 refers to the possibility of merger by incorporation. With regard to the merger strictu sensu (that is, the abolition of the existing municipalities and the establishment of a new municipality), incorporation does not establish a new municipality: it results in the abolition of the incorporated municipality, which then formally becomes part of a pre-existing municipality.

[24] Elisabeth Alber and Alice Valdesalici, 'Framing Subnational 'Institutional Innovation' and 'Participatory Democracy' in Italy: Some Findings on Current Structures, Procedures and Dynamics', in Francesco Palermo and Elisabeth Alber (eds), *Federalism as Decision-Making. Changes in Structures, Procedures and Policies* (Brill Nijhoff, 2015) 448–478.

[25] Elisabeth Alber, *Mergers of Municipalities—A Comparison of Procedures and Their Implications* (Zenodo, 2021), https://doi.org/10.5281/zenodo.5254948.

4.2 Provinces

With the exception of the two autonomous provinces of Bolzano/Bozen and Trento, provinces have competence in the following areas: coordination of territorial and urban planning; transport planning within provincial remit; support services to municipalities (such as data collection); maintenance of schools; and various management issues in the territory concerned. They also exercise fundamental functions such as strategic territorial development; mediating in institutional relations; and (in cooperation with municipalities) carrying out certain aspects of service procurement. The regions may attribute more competences to the province in specific sectors that fall under their own competences. Before 2014, provinces were responsible for many more issues (including the coordination of municipal proposals in matters of regional economic and territorial planning).

Provincial councils are made up of 10–16 members, who are elected from the mayors and municipal councillors. The president of a province is freely elected by the mayors and municipal councillors of the province from the mayors of municipalities within it. The provincial assemblies are composed of the mayors of all the municipalities within the territory of the province. As with metropolitan cities, Law 56/2014 finds direct application (with regard to provinces) in ordinary regions only. Accordingly, a province shall no longer be a representative entity in terms of population, but rather a large-scale territorial entity. While the state wanted to abolish the province as an intermediate layer of local authority, the constitutional reform proposed for the removal of the provinces was voted down in a referendum on 4 December 2016, and few regions have reduced the actual number of their provinces.

4.3 Metropolitan Cities

Metropolitan cities are (or at least supposed to be) responsible for all the administrative areas that the Constitution and legislation attributes to provinces. Law 56/2014 outlines six areas of competence: three-year strategic plans; urban planning; the coordination of public services; local infrastructure; economic and social development; and the coordination of infrastructure for information and communication technology.

Three issues in particular are noteworthy. First, Law 56/2014 refers to the creation of metropolitan cities in ordinary regions, while at the same

time urging special regions to provide the necessary framework for their establishment. Secondly, the national legislature did not properly engage in the necessary exercise of revising the spatial and socio-demographic parameters for identifying the metropolitan cities. Finally, a metropolitan city can be established only by a parliamentary change to Law 56/2014. An approach as centralised as this does not leave any room for local populations or municipalities to truly play a role. The main organs of the metropolitan cities are the mayor, the council (24 councillors for the most populated city and 14 for the least populated, with these elected from the mayors and members of the existing municipal councils), and the metropolitan conference, which is made up of the mayors of all the municipalities belonging to the metropolitan city. The metropolitan mayor—unlike the president of the provinces—is not elected by the mayors and council members of the municipalities in the metropolitan city; as a rule, the mayor of the capital of the former province becomes the metropolitan mayor.[26]

5 Financing Local Government

Article 119 of the Constitution refers to the financial system of territorial entities, including local governments.[27] Following the 2001 constitutional reform, all entities must be fiscally (and politically) accountable for their financing (the self-sufficiency principle). Financial autonomy (with respect to both revenue and expenditure)[28] is to be grounded in the provision of autonomous resources, that is, revenues linked to the fiscal capacity of the territory.[29] Prior to 2001, subnational finance was based mainly on a system of state grants. Now, given the recognition of autonomy on the revenue side, the system requires territorial entities to be more accountable in their financing.

The relevant funding scheme consists of own tax sources, shared taxes, un-earmarked equalisation transfers, and any extra transfers to cope

[26] Milan, Rome, and Naples, however, opted for direct election of the mayor and council.

[27] Alice Valdesalici, 'Financial Relations in the Italian Regional System', in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 82–99.

[28] Constitution, article 119 para 1.

[29] Constitution, article 119 para 2.

with exceptional circumstances.[30] The Constitution provides a taxonomy of possible local sources and, in a closed list, enumerates the different types of possible revenue. These resources are meant to finance the functions of local governments in full. To the extent that the Italian Constitution is respected (with regard to the principle of the coordination of public finance and the tax system), territorial entities are allowed to set and levy taxes as well as collect revenue of their own. Subnational authorities are also entitled to a share in state tax revenues that are related to their territories, and able (eventually) to profit from solidarity mechanisms. The state is responsible for providing equalisation transfers (with no strings attached) to territories with a lower per capita fiscal capacity. Usually, no further vertical transfers are permitted, but in extraordinary circumstances specific-purpose grants can be allocated to particular entities.

The implementation of these constitutional provisions has been left to the ordinary legislature, which in turn has delegated the task to national government (though the matter ideally would have called for a broader and more stable consensus than that secured by the political majority of the moment). The fiscal federalism Law 42/2009 (along with a number of subsequent governmental decrees) outlines a set of rules that, in general, have not been implemented despite the structural metamorphosis experienced in local financing: between 2010 and 2020, the latter resulted in an overall increase in tax revenues and a corresponding decrease (of 32 per cent) in transfers.[31]

Since local authorities are not vested with legislative powers, local financing in the ordinary regions is based mostly on the devolved taxes set and regulated by the state. Municipalities, by contrast, have certain powers over devolved taxes (though within the limits set by the national or regional legislatures), and are entitled to the revenue generated in their own territories. An illustration of this is that in 2018 tax revenues accounted for 45 per cent of overall municipal revenues, while non-earmarked equalisation transfers accounted for 8 per cent, and extra transfers about 14 per cent (of which 13.3 per cent were from public

[30] Constitution, article 119, paras 2–3, 5.

[31] See IFEL, *La finanza comunale in sintesi: Rapporto 2019*, https://bit.ly/3gURIr5 (accessed 5 July 2021).

administrations and the balance from the European Union (EU) and private institutions).[32]

Since 2014, the major municipal tax source has been the single municipal tax, a local tax on property or housing (main houses excluded), and a local tax on waste.[33] Municipalities are also entitled to a surtax on individual income tax. This is based on a fixed rate defined by national law and an optional rate that each municipality can determine, though with an upper limit of 0.8 per cent. Tax benefits can be set within the constraints provided by the national legislation. The tourist tax is an interesting example. As municipalities have the power to choose to set it or not, it may be regarded as an own-but-devolved tax. Despite the margin of flexibility allowed, its rate was frozen between 2016 and 2018, with the Covid-19 emergency having brought about its re-centralisation.

An inter-municipal equalisation fund set up by the state in 2012 provides for non-earmarked transfers in order to correct horizontal imbalances. Its aim is gradually to replace the pre-2001 transfer-based scheme that was grounded in 'historic spending' (referring to the resources spent in the previous financial year). The new scheme is based on a number of predefined parameters that are to be applied uniformly to all entities according to standard costs and needs. With this in mind, article 11 of Law 42/2009 puts two mechanisms in place. The first ensures the funding of fundamental functions (about 80 per cent of local spending), while the second deals with the funding of all other (non-essential) functions, amounting to about 20 per cent of local spending.[34] Essential functions are to be financed in full through the assessment of standard costs and needs, whereas non-essential functions are financed only in part, and the two categories are equalised differently.

Although the national parliament set up the municipal solidarity fund in 2012, it was only in 2015 that the transition towards the new system began. The solidarity fund is financed through a share of revenue generated from the local tax on properties, with only a selection of local tax

[32] Other sources come from revenue of a non-tax nature (18%), capital revenue (13%), and borrowing (1.3%). See ISTAT, 'Finanza locale, 2018', www.istat.it/it/archivio/248208 (accessed 5 July 2021).

[33] In 2020, the local tax for public services provided by municipalities was abolished.

[34] As per article 117 para 2 of the Constitution, setting uniform countrywide standards for the basic functions of local entities is an exclusive legislative competence of the national authority.

revenues taken as a benchmark to determine who is entitled to benefit from it.[35] Save for a few minor exceptions, no further transfers are available to municipalities (though an additional fund was established by the national executive to deal with the Covid-19 emergency).[36]

The financing scheme for provinces and metropolitan cities replicates this structure and depends mainly on devolved and/or shared taxes, plus equalisation transfers from the fund for the financial consolidation of provinces. The legal framework, however, is more complex. With regard to the provinces, this complexity is the result of austerity measures that have reduced provincial finances progressively and of an ongoing process of territorial reorganisation, while the entire system of financing metropolitan cities remains undefined. Law 42/2009 (in article 15) assigns considerable tax autonomy to the cities, but subordinates its actual operation to the adoption of a further legislative act. Law 56/2014 similarly fails to provide rules for financing cities, and so, despite cities' augmented functions, the provincial scheme, with its reduced resources, still applies. On account of this, cities are highly dependent on national and regional transfers, with their budgets having been severely affected by national austerity measures adopted to cope with the economic and financial crisis—a situation which has resulted in significant problems of underfunded mandates.[37]

While municipal funding in ordinary regions is mainly centre-driven, this is not the case with special regions. In the first place, national financial rules do not apply directly to them, albeit that they have been asked to reform their financial structures to bring them in line with national basic principles. Specific regulations have to be agreed between each special region and the state in bilateral negotiations. Secondly, a number of special regions (in the north) manage local finances and have been assigned legislative competence in regard to local taxes, fees, and surtaxes

[35] Revenue from the Single Municipal Tax accounted for 38.23% (2015) and 24.43% (2016) of all the resources distributed through the fund.

[36] Article 6, Decree Law 34/2020, converted, with amendments, by Law 77/2020. The endowment of the fund has been increased by article 39 para 1 Decree Law 104/2020, converted, with amendments, by Law 126/2020.

[37] Karl Kössler and Annika Kress, 'European Cities Between Self-Government and Subordination: Their Role as Policy-Takers and Policy-Makers', in Ernst MH Ballin Hirsch, Gerhard Van der Schyff, and Maartje De Visser (eds) *European Yearbook of Constitutional Law* (T.M.C. Asser Press, 2020) 271–300, 292.

on national taxes. Meanwhile, local funding is charged to the regional budget.[38] In Sicily and Sardinia, such arrangements exist in theory rather than practice. While their special statutes allow for local finance as a regional competence, in actuality this remains largely under state control and financial regulation is the same as for local entities in the ordinary regions, although both islands contribute in part to funding local entities from their own budgets.[39]

Italy's territorial entities must all comply with the principle of a balanced budget, with regions (special and ordinary) being responsible for ensuring adherence to this principle. The application of the principle to local authorities is specified in article 9 of Law 243/2012, which, in paragraph 1, prescribes the achievement of a non-negative value—on an accrual basis—in the balance between final revenues and final expenditures.

Local entities can borrow only within well-defined qualitative and quantitative constraints. In terms of article 10 paragraph 1 of the Constitution, they may incur debt only for investment expenditure; the pluri-annual regional budget has to provide the financial backing of the relative amortisation burdens; and the economic burden has to constitute less than 8 per cent (including interest) of current revenue. The aims here are to keep the growth of the debt burden under control and minimise the chances of territorial entities incurring major debt. Any deviations from the equilibrium are allowed only after an agreement has been reached among the interested local governments at regional level.[40] Such infra-regional agreements can result in compensatory measures that allow extra flexibility to certain entities to the detriment of others (though only to foster investment spending). Each region can assign extra financial leeway to some of its local governments. This is done by borrowing financial surplus from those entities that do not spend all the resources at their

[38] Elena D'Orlando and Emanuele F Grisostolo, 'La disciplina degli enti locali tra uniformità e differenziazione', in Francesco Palermo and Sara Parolari (eds) *Le variabili della specialità: Evidenze e riscontri tra soluzioni istituzionali e politiche settoriali* (ESI, 2018) 99–159, 140.

[39] Emanuele Barone Ricciardelli, 'Le novità in materia di finanza delle Regioni Sicilia e Sardegna' (2007) 12(3) *Tributi Locali e Regionali* 331–344, 332.

[40] Such agreements might also be reached on a nationwide basis by involving the national level.

disposal. It is through this mechanism that the ordinary regions have gained traction in local finance.

6 Supervising Local Government

Following the elimination of the preventive controls on local acts by the state or the regions in 2001, the instrument of extraordinary annulment[41] is now the main form of control and oversight. Accordingly, the national government—via presidential decree and after consultation with the council of state—has the power to annul any acts of local authorities which are found to be illegal in any way.

As provided by article 120 of the Constitution, the national government can also assume control if a local authority fails to comply with international law (or EU legislation); where there is any serious risk to public safety and security; when it is necessary to preserve the legal or economic unity of the state; and to guarantee basic levels of civil and social rights. Although article 120 was intended as a safeguard clause to be activated only in extraordinary circumstances, the Constitutional Court, in its judgment 43/2004, ruled that this power can also be activated when necessary if specified through ordinary legislation. Any such interventions by the state, however, must be taken only in line with the principles of subsidiarity and loyal cooperation.

These supervisory powers co-exist alongside controls on the structures and functions of local government that arise from the national authority's exclusive legislative competence in regard to local governing bodies. The dissolution of local councils and dismissal of mayors or provincial presidents is allowed under two broad categories of failing performance, the first legal and the second administrative. Dissolution and/or dismissal are permissible, first, when there are either serious infringements of the law (including acts in breach of the Constitution) or severe and persistent violations of the law, or, secondly, on public order grounds. Similarly, concerns about the functioning of an entity and its governing bodies—including lack of approval for specific acts (such as the budget), cases of permanent impairment or resignation of a president of the province or of a mayor, and cases of concurrent resignation of half plus one of the council members—may trigger intervention. The law also foresees special

[41] Consolidated Text of Local Authorities, article 138.

forms of control to monitor compliance with emergency regulations on waste collection and disposal,[42] as well as controls that apply in cases of corruption due to the capture of local government by organised crime.[43]

Administrative controls also exist. They can be either internal or external, that is, applied by the entity itself (reflecting a shift in the management of public affairs) or involving the Court of Audit, a politically impartial body.[44] The Court is vested with both consultative and judicial functions, and is responsible for scrutinising the finances of local governments. Of interest is the fact that local entities within each region have the power to appoint one member per regional section of the Court. The 2012 reform, provided by Law Decree 174/2012, reinforced the role of the Court to cope with new economic and financial pressures. The controls have been strengthened and supplemented in the light of the principles of coordination of public finance and the need to comply with EU obligations.

The Court determines if there are financial imbalances, failures to cover expenses, violations of financial obligations, or flaunting of borrowing constraints. It also assesses the regularity of each local government's financial management, planning, and internal controls, and can impose sanctions on these governments. In case of financial collapse, the declaration of bankruptcy is ordered by a commissioner *ad acta* and the local council is dissolved if it is unable to restore economic and financial regularity.

Dissolutions of municipal councils are increasingly frequent and affect the entire territory. Between 2010 and 2020, the majority of these cases (some 63 per cent) were rooted in political conflicts, with failures in the functioning of the governing bodies (for instance, through a mayor's death or removal from office) accounting for a further 19.2 per cent. Infiltration of local government by the mafia (mainly in southern municipalities) led to 7.5 per cent of dissolutions, while economic breakdown

[42] Law Decree 172/2008.

[43] Law Decree 94/2009.

[44] Stefano Villamena, 'Italy: Organisation and Responsibilities of the Local Authorities in Italy Between Unity and Autonomy', in Carlo Panara and Michael R Varney (eds) *Local Government in Europe: The 'Fourth Level' in the EU Multi-Layered System of Governance* (Routledge, 2013) 183–230, 222.

due to financial collapse or failure to approve the budget accounted for a further 5.9 per cent of cases.[45]

7 Intergovernmental Relations

Local governments assert their interests within an intricate web of multilateral relations where central or regional governments have the last word. Furthermore, they act in concert through various nationwide associations. The largest of these is the National Association of Italian Municipalities (ANCI). It was established as a non-profit organisation in 1901, and by 2020, its membership had grown to encompass 7107[46] of the country's 7903 municipalities—that is, about 90 per cent of local authorities.[47] Its political significance is manifest also through the role within the formal intergovernmental relations with the state.

ANCI's main objectives are to represent the interests of the municipalities, the various forms of inter-municipal cooperation, and metropolitan cities. It consults with its members and draws up policy papers or draft laws. It has branches in all regions and in the two autonomous provinces. Its national council coordinates the programmatic and strategic direction. This consists among others of the presidents of the regional branches of the association, all the mayors of the capital cities of the regions and provinces, and the mayors of the metropolitan cities. ANCI also draws on special interest bodies, such as the one representing municipalities of up to 5000 inhabitants.

Alongside ANCI, other associations represent small municipalities[48] and mountain communities,[49] while *Unione delle Province d'Italia*

[45] Openpolis, Fuori dal comune. I comuni e gli altri enti sciolti e commissariati in Italia, 2019, https://www.openpolis.it/wp-content/uploads/2019/12/Fuori-dal-comune-2019.pdf (accessed 28 February 2021).

[46] See Associazione Nazionale Comuni Italiani (ANCI), www.anci.it/anci-e/ (accessed 5 July 2021).

[47] See ISTAT, 'Codici statistici delle unità amministrative territoriali, novitá per l'anno 2019' (30 June 2021), www.istat.it/it/archivio/6789 (accessed 5 July 2021).

[48] See Associazione Nazionale Piccolo Comuni di Italia, www.anpci.it (accessed 5 July 2021).

[49] See, for example, *Autononomie Locali Italiani*, an association of 2500 local governments of various sizes (municipalities, provinces, and mountain communities) that, together with certain regions, campaigns for further federalisation of Italy, or *Unione Nazionale Comuni Comunità Enti Montani*, which represents mountain municipalities.

(UPI)) represents the provinces (with the exception of the two autonomous provinces of the special region Trentino-South Tyrol).[50] Despite the broad array of organisations representing local governments, the impact of local governments on national and regional decision-making remains limited and depends very much on contextual factors and the nature of specific issues. Though these activities provide important platforms for representation and guarantee exchange among local actors.

At national level, the Department for Regional Affairs and Autonomies is responsible for the coordination of the relations between the state, the regions, and the local authorities. The Constitution does not outline any specific mechanisms for cooperation between the state and other levels of government. There are two consultative bodies to involve local governments in decision-making, regulated by national legislation only (by ministerial decrees in 1996, and reformed by Decree Law 281/1997).[51]

These two bodies are, first, the State-Cities and Local Autonomies Conference, which brings together representatives of the state and local authorities and deals with state-local government issues. It has advisory and information functions and discusses issues that impact on local government tasks, organisation, and finances. It is chaired by the Italian prime minister or, by delegation, by the Minister of the Interior or the Minister of Regional Affairs; the national ministers of finance, economy, infrastructure, and health also participate. Local authorities are represented by the president of the National Association of Italian Municipalities (ANCI), the president of the Union of Italian Provinces (UPI), 14 mayors appointed by ANCI, and six presidents of provinces appointed by UPI. Through the stipulation that five of the 14 mayors appointed by ANCI must represent major Italian cities, special attention is given to urban areas.[52] In practice, urban areas are over-represented in a context in which 70 per cent of Italian municipalities have less than 5000 citizens. The mayors of major cities not only enjoy a role in the national council

[50] See www.provinceditalia.it/ (accessed 5 July 2021).

[51] Raffaele Bifulco, 'The Italian Model of State-Local Autonomies Conferences (Also) in the Light of Federal Experiences', in Jörg Luther, Paolo Passaglia, and Rolando Tarchi (eds) *A World of Second Chambers: Handbook for Constitutional Studies on Bicameralism* (Giuffrè, 2006) 1051–1083.

[52] Greta Klotz, *Intergovernmental Relations of Local Governments in Italy: An Introduction* (Zenodo, 2021) https://doi.org/10.5281/zenodo.5255080.

of the largest interest group, ANCI, but also have formal representation in the Conference's system—this underlines their political significance. This Conference holds meetings (not open to the public) at least once a month, but the prime minister and the presidents of ANCI and UPI are allowed to call additional meetings.

The 26 members of the Conference are simultaneously members of the Joint Conference, the second consultative body. It is further composed of all the regional presidents and the presidents of the two autonomous provinces. This Joint Conference brings together the State-Regions Conference and the State-Cities and Local Autonomies Conference, and brings together three levels of government. In terms of Decree Law 281/1997, this intergovernmental body has to be consulted whenever draft laws affect regional or local affairs. Most of its opinions, agreements, and decisions are concerned with the structure and function of local governments in relation to financial policies and the draft budget law.

The Conferences system is the only institutionalised mechanism through which the executives of local governments meet regularly with members of national and regional governments, yet although its liaison function and advisory role are of paramount importance to the political process, it is—as a mechanism—not well-oiled. Discussions are often limited to technical issues that have been decided on already at other levels of government.[53] Nonetheless, it has allowed for strong though informal relations to form between individual members, albeit that there are considerable differences across territories in the nature of these relations.[54]

Regions, instead of the state, are constitutionally under an obligation to establish an advisory body to enhance cooperation with municipalities in the territory. Following the 2001 constitutional reform, they are required, in terms of article 123 of the Constitution, to set up a Council of Local Authorities (CAL) to act as a consultative body whenever regional legislation impacts on local affairs. The composition and organisation of these councils are open to interpretation. After some

[53] Guido Carpani, 'La collaborazione strutturata tra Regioni e tra queste e lo Stato: Nuovi equilibri e linee evolutive dei raccordi "verticali" ed "orizzontali"' (2009) *federalismi.it*.

[54] Silvia Bolgherini, Marco Di Giulio, and Andrea Lippi, 'From the Change of the Pattern to the Change in the Pattern: The Trilateral Game in the Italian Intergovernmental Relations' (2018) 4(1) *European Policy Analysis* 48–71.

delay, most of the regions established CALs; in addition, the five special regions (for Trentino-South Tyrol: the two autonomous provinces) have all decided to do the same, even though, in terms of Constitutional Court judgement 370/2006, they are not obliged to establish such councils. For the moment, CALs play only a marginal role.[55]

8 Political Culture of Local Governance

The performance of local governments is, of course, also affected by instabilities in national and regional politics as well as by the country's limited implementation of federal reforms.[56] Historically, Italian regions (and, with them, their local governments) were 'politically coloured' by their adhesion to particular ideologies or party coalitions and their extremely stable voting patterns.[57] This, however, is no longer the case. Regions once traditionally governed by the centre-left now have major cities where the mayors belong to the centre-right (or even the right *tout court*), while others that usually opted for the centre-right have a growing number of left-leaning municipalities. In short, today's party system is highly unstable and dynamic. The two main coalition blocs of centre-right and centre-left are increasingly fragmented, with the break-up of old parties, the formation of new ones, shifting alliances, and very high voter-volatility becoming the norm. Unsurprisingly, Italian citizens have little faith in political parties.[58]

Voter turnout for elections is declining, as the most recent local elections demonstrate (with an overall turnout of only 54.6 per cent and even lower turnouts below 50 per cent in major cities such as Milan, Naples, Turin, and Rome).[59] Local elections (and especially those in the

[55] Elena di Carpegna Brivio, 'Il CAL tra sogno e realtà. Problemi attuali delle istituzioni di raccordo nel sistema regionale delle fonti' (2018) *federalismi.it*.

[56] Günther Pallaver and Marco Brunazzo, 'Italy: The Pendulum of "Federal" Regionalism', in Ferdinand Karlhofer and Günther Pallaver (eds), *Federal Power-Sharing in Europe* (Nomos, 2017) 149–180.

[57] Ilvo Diamanti, *Mappe dell'Italia politica. Bianco, rosso, verde, azzurro … e tricolore* (il Mulino, 2009).

[58] In a national survey in 2020, 48% of respondents thought democracy could function without political parties. Gruppo L'Espresso, *Gli Italiani e lo Stato – Rapporto 2020* (23), www.demos.it/a01794.php (accessed 1 June 2021).

[59] On 2–3 October 2021, local elections were held in 1153 municipalities, among them 19 capital cities of provinces and six capital cities of regions.

capital cities of provinces and regions) are generally taken as an indicator of the popularity of national parties, and their outcomes are consequently 'nationalised' by the media. In this sense, they can also be regarded as 'second-order' elections which send messages to the parties in office at the national level.[60] Accordingly, electoral results in major cities are often interpreted as a confirmation (or not) of the strength of a party in the respective region, and as the prelude for a realignment of power relations at the national level.

At the same time, though, the territorialisation of parties is an emerging trend both in the regions and at local levels.[61] Local party systems include a high number of civic movements that respond to local interests and do not follow the ideologies of national parties. Although the bipolar party system continues to dominate in some strategically important municipalities, this is increasingly challenged by the presence of civic movements.[62] The latter are highly diverse in nature, differing from one local government to another, and often take the form of a list centred on a particular individual.

Mayors have been elected directly since 1993, and while this undoubtedly has contributed to the democratisation of local politics, it has also worked to 'personalise' local elections. The political influence of the mayor has increased as the influence of political minorities has decreased.[63] This trend is reinforced by the electoral system in place for municipalities with more than 15,000 inhabitants. In this system, if a mayoral candidate does not win the election with an absolute majority, a second ballot takes place to force a choice between the two candidates with the most votes in the first ballot. It often results in a competition

[60] Davide Angelucci and Aldo Paparo, 'Le Elezioni in Italia' (2019) 82 *Quaderni dell'Osservatorio elettorale* 191–217.

[61] Marco Brunazzo and Günther Pallaver, 'From Important Parties to Pivotal Parties: The Role of Regional Parties in Italy's Second Republic', in Robert Kaiser and Jana Edelmann (eds) *Crisis as a Permanent Condition? The Italian Political System Between Transition and Reform Resistance* (Nomos, 2016) 35–59; Alessandro Chiaramonte and Vincenzo Emanuele, 'Multipolarismo a geometria variabile: Il sistema partitico delle città' (2016) *CISE Centro Italiano di Studi elettorali*, https://cise.luiss.it/cise/wp-content/uploads/2016/07/DCISE8_129-138.pdf (accessed 1 June 2021).

[62] Angelucci and Paparo (n 60).

[63] Bolgherini, Di Giulio and Lippi (n 54) 62.

between candidates who are 'tied' to politics at national level, and this is especially the case in elections for metropolitan cities.[64]

With regard to gender representation, the number of women in local executives remains imbalanced, though here there are significant differences between Italy's various subnational governments.[65] None of the 14 metropolitan cities has a female mayor, while Ancona is the only one of the 20 regional capital cities to have a woman as mayor.[66] In 2017, there were only 1087 female mayors out of more than 7000 mayors in total.[67]

To increase the representation of women, several regulations have been put forward regarding lists of candidates as well as the composition of local executives. For municipalities in ordinary regions, Law 215/2012 introduced the rule that, for municipalities with more than 5000 inhabitants, no gender may be represented by more than two-thirds of the candidate lists. The same law introduced the 'double gender preference' option: this provides the possibility of casting two preference votes, but if both votes are used, then they must be divided between male and female candidates.

The special regions also have their means of promoting equal opportunities in politics. For instance, Regional Law 2/2018 of the autonomous region of Trentino-South Tyrol prescribes that each gender can have no more than two-thirds representation on a candidate list, while the special regions of Sicily (as provided by Regional Law 17/2016) and the Aosta Valley (as provided by Regional Law 1/2015) have introduced systems with, respectively, two (one vote per gender) and three (at least one has to be for a different gender) preference votes.

[64] Many politicians begin their careers at the local level. One example is Matteo Renzi, who was mayor of the City of Florence and then became the country's prime minister. In a reverse phenomenon, national politicians, such as former ministers, run for mayors of major cities or presidents of regions.

[65] Domenico Carbone and Fatima Farina, 'Women in the Local Political System in Italy: A Longitudinal Perspective' (2020) 12(3) *Contemporary Italian Politics* 314–328.

[66] Data refer to October 2021.

[67] *Il Sole 24 Ore*, www.ilsole24ore.com/art/solo-due-sindache-donna-25-capoluoghi-AEal8ImB (accessed 1 June 2021).

9 Covid-19's Impact on the Role of Local Government

On 31 January 2020, one day after the World Health Organization (WHO) declared the Covid-19 outbreak a public emergency of international concern, the Italian government declared a national state of emergency. The country's first cases were reported on 17 February 2020 in two small towns in Lombardy and Veneto. At that point, the national strategy was to contain the pandemic through local ordinances, while a regional ordinance (introducing quarantine measures for some Lombardy municipalities) was issued on 21 February. The national government vested subnational authorities with the power to adopt containment and management measures adequate and proportionate to the evolution of the epidemiological situation, as provided by article 1 para 1 of Law Decree 6/2020 of 23 February. Later decrees and ordinances—issued by the prime minister, the civil protection department, and Minister of Health—addressed the issue of who the competent subnational authorities were and what their margin of action was in more detail. Regulatory chaos and court litigation fast became the rule, with examples abounding of the tug of war between local and regional authorities, on the one hand, and the national government, on the other. Many local and regional ordinances were (rightly) nullified on the grounds that such ordinances may not contradict national legislation and that they may not, in the absence of a specific health risk, restrict freedom of movement.[68]

From early March 2020, the prime minister imposed a 'hard lockdown' (to last until May) on the entire country through a series of ministerial decrees. Local authorities were left with little room for manoeuvre, despite the fact that the TUEL grants them the power to issue emergency ordinances.[69] Despite the centralisation of authority, municipal power was

[68] Elisabeth Alber, Erika Arban, Paolo Colasante, Adriano Dirri, and Francesco Palermo, 'Facing the Pandemic: Italy's Functional "Health Federalism" and Dysfunctional Cooperation', in Nico Steytler (ed), *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2022) 15–32.

[69] According to articles 50(5) and 54 of the TUEL, mayors can enact urgent and necessary ordinances in the event of local health emergencies. The same law also grants the mayor the power to enact ordinances acting as officer of the national government in situations when public safety and urban security are under threat. Furthermore, article 32(3) of Law 833/1978 raises the possibility for mayors to adopt emergency ordinances in areas normally falling under the jurisdiction of the Minister of Health.

not entirely compromised, and local governments proved to be essential in handling the emergency, given that local government in Italy plays a crucial role in the delivery of health services.

The national health service is structured to work at national, regional, and local levels. Health protection is a competence shared between the state and the regions: the national government sets the fundamental principles and goals; determines the core benefit package of health services which are guaranteed across the country; and allocates national funds to the regions. Regions, in turn, are responsible for the organisation and delivery of health care. Local health authorities run community health services and primary care directly, while secondary and specialist care is delivered either directly or through public hospitals and accredited private providers.

Similarly, all civil protection responsibilities necessarily involve local governments. Within the civil protection system, local (and regional) governments, acting in terms of a framework of national regulations, formulate and implement their own emergency programmes, and transmit data to the national civil protection department as the operative arm of the national government. Meanwhile, the coordination of municipal police and national police forces has been crucial for monitoring Covid-19 containment measures.

Local governments were at the forefront when it came to decoding, understanding, and communicating national Covid-19 measures to citizens and monitoring local measures. With regard to socioeconomic action, (in)activity at the local level demonstrated how (un)prepared local authorities were, how relevant they were, and how much potential they hold as institutions. Solidarity and socioeconomic relief measures were implemented through public–private partnerships and territorial networks that mobilised informal relationships among communities.

From autumn 2020 onwards, the national government continued to rule by decree (and on the basis of calculations linked to a catalogue of 21 indicators). It imposed a policy of phased lockdowns in which subnational entities transitioned from stricter to softer measures and enjoyed increasing latitude in their responses to Covid-19. All in all, whether subnational authorities maintained a stance in favour of or against the central government hinged largely on their financial dependence on Rome and their internal leadership capacity. Local governments as a rule were unable to fulfil costly responsibilities in pandemic management on their own, not least because they were suffering from severe fiscal consolidation

measures due to Italy's debt burden (reaching 134.8 per cent of GDP in 2019). They thus became more dependent on the state.

10 Emerging Issues and Trends

Article 5 of the 1948 Constitution emphasises the need for decentralisation and local self-government. In this, it acknowledges Italy's long tradition of local government. Historically, local entities have enjoyed very limited competences, and it was only with the TUEL reform of 1990 (and subsequent associated legislation) that their governance role was significantly enhanced, with the 2001 constitutional reform creating a design for a federal-like governance structure. In and through these initiatives, municipalities, provinces, metropolitan cities, regions, and the state were accorded the same nature of constitutive entities, in a logic of governance based on the principles of subsidiarity and loyal cooperation.

The 2001 constitutional design reconstructed Italy according to a bottom-up legal logic, but so far Italian politics has failed to bring this logic to realisation through actual implementation. Local governments remain caught between national and regional legislators, and in practice they have limited space for manoeuvre. The latest major reform, Law 56/2014, illustrates the situation well. Here the state reasserted its power over local government (in the ordinary regions), a position that was affirmed by Constitutional Court judgement 50/2015—the latter marks the Court's shift from decisions favouring the regions to ones favouring the central authority in times of economic crisis.[70]

As can be seen from the discussion in this chapter, clarifying the role of local government in relation to the national and regional legislators is anything but simple. Although article 114 of the Constitution places them on an equal footing, municipalities, provinces, and metropolitan cities are all affected differently by acts that originate from upper levels of government, while additional differences come into play from one

[70] Four regions challenged 58 paragraphs of Law 56/2014 before the Constitutional Court on the alleged grounds that they were interfering with regional competences. The arguments—ruled as baseless—were: regions must have a role in creating metropolitan cities; any modification of boundaries of local authorities is of regional competence; and the new provisions regarding metropolitan cities create a democratic deficit for local self-government. Erik Longo, 'Local Governments and Metropolitan Cities', in Erika Arban, Giuseppe Martinico, and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge, 2021) 152–163, 159–169.

ordinary region to another. Such differences depend largely on the dominance of party-political cultures that have never fully embraced the idea of a genuinely decentralised Italy. The situation in special regions in part differs.

It is clear that, in the years to come, the number, size, and role of the different types and sub-types of local government will remain at the centre of debate in both academia and politics. At the same time, relations between the different types of local government, the regions, and the state will continue to be path-dependent, with local political idiosyncrasies crucially affecting the performance of local governments. Local governments (and regions) will continue to take positions for or against the state based mainly on the extent of their financial dependence on Rome.

The authoritative Local Autonomy Index (which assesses European local governments) gives Italian municipalities a relatively high score of two out of three for their decision-making power.[71] In practice, though, municipal capacity is limited and the system of inter-administrative cooperation is generally considered to be poorly developed, as reported by an expert panel to the Congress of Local and Regional Authorities of the Council of Europe (CoE) after its most recent monitoring visit.[72] The 2017 Congress Report noted that the principle of self-government in Italy is soundly anchored from a constitutional viewpoint, but it also pointed out that (from the perspective of the principles and standards enshrined in the European Charter of Local Self-Government of the CoE), the system of self-government has a number of significant weak points.[73] These include a lack of the necessary financial resources and personnel; the absence of effective consultation on financial matters; significant democratic deficits with regard to the organisation of metropolitan cities and provinces; a lack of clarity with regard to the competences of metropolitan cities and provinces; and a general lack of clarity on relations between

[71] Andreas Ladner, Nicolas Keuffer, and Harald Baldersheim, 'Dataset: Appendix A', in *Local Autonomy Index for European countries (1990–2014)* Italy (ITA), Release 1.0 (Brussels: European Commission).

[72] Jakob Wienen and Stewart Dickson, 'Local and Regional Democracy in Italy', *Report of the Congress of Local and Regional Authorities CG33* (2017) 17 (18 October 2017) 14.

[73] The Charter was adopted in 1985. Italy ratified it in 1990 without reservations or territorial limitations.

metropolitan cities and provinces to other local governments and between the latter three and the upper levels of government.

In essence, Law 56/2014, not being based on a detailed and participatory exercise of revising the role and necessities of local government, has augmented imbalances and complex relations between and across levels of government instead of favouring territorial simplification and quality in service delivery.

The effects of the Covid-19 pandemic have impacted significantly on all forms of local government. For the immediate future, rather than fulfilling their constitutional role as local administrative policy-makers, they will continue to act simply as intermediaries with the state (and regions). However, the capacity for innovation and cost-effectiveness that local governments exhibited during the pandemic could make a difference inasmuch as the response to the pandemic underlined the value of active citizenship and community engagement, both of which are central to the notion of local government. If so, the pandemic will have shown the importance of the old injunction to 'make a virtue of necessity'.

CHAPTER 11

Mexico

Mónica Unda-Gutierrez and Alejandra Reyes

The decentralisation that began in Mexico in the early 1980s was one of a series of changes to have shaped the evolution of the country's system of municipal government. Despite the still-limited nature of local governance, and recent attempts under the last two federal administrations to recentralise power, municipalities are increasingly relevant actors in Mexico's economic, social, and political life. This chapter provides a framework for understanding the evolution and current functioning of municipal government in Mexico. It shows how decentralisation measures

The authors wish to thank the following for their insightful comments: Brian Palmer-Rubin, Ady Carrera Hernández, Carlos Brown Solá, Humberto Morones Hernández, Antonio Sánchez Bernal, Carlos Moreno Jaimes and Jorge Ibarra Salazar.

M. Unda-Gutierrez
Marquette University, Milwaukee, WI, USA
e-mail: monica.unda-gutierrez@marquette.edu

A. Reyes (✉)
University of California, Irvine, CA, USA
e-mail: lreyesru@uci.edu

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_11

have changed the nature of municipal government, and at the same time examines the limits imposed on it by legal strictures, fiscal challenges, and intergovernmental relations.

1 Country Overview

Mexico is the thirteenth largest country in the world, with a territory of 1,960,189 km^2. It is divided into 32 states[1] and 2469 municipalities. The population stands at 126,014,024, making Mexico the world's 10th most populous country. It is also culturally diverse, with 68 different native languages. Nevertheless, whereas 16 per cent of the population spoke an indigenous language in 1930, this had decreased to 6.14 per cent by 2020 (equating to 7,364,645 people). The most common indigenous languages are Nahuatl, Maya, and Tzeltal. Today, 61 per cent of those who speak an indigenous language live in five states: Chiapas, Oaxaca, Veracruz, Puebla, and Yucatan. Mexico's indigenous peoples have been marginalised historically, and, in 2018, it was estimated that 70 per cent of them—compared to 39 per cent of the non-indigenous population—were living in poverty.[2]

While Mexico is still a predominantly Catholic country, the proportion of its Catholic population is decreasing. In 1900, 99.5 per cent of the population were registered as Catholic. It took a century to see this figure come down to 88 per cent,[3] but only 20 years for it to drop even further to the 77 per cent recorded in 2020—a decline observed across all age groups.

In terms of economic growth, Mexico has underperformed in the last four decades. The economy has grown at a 2.3 per cent annual rate since the early 1980s, while the population has seen an annual growth rate of 1.6 per cent. These gloomy numbers stand in a stark contrast with the

[1] In 2016, Mexico City was granted the status of a state, making it the country's 32nd state. It comprises 16 boroughs.

[2] Data on poverty taken from CONEVAL (National Council for the Evaluation of Social Development Policy), an autonomous constitutional organisation that, among other objectives, oversees the measurement of poverty. CONEVAL, 'Medición de la Pobreza. Pobreza en la Población Indígena', www.coneval.org.mx/Medicion/MP/Paginas/Pobreza_Indigena.aspx (accessed 11 August 2021).

[3] INEGI (National Institute on Statistical and Geographical Information), 'La diversidad religiosa en México' (2005) and 'Censo General de Población y Vivienda' (2000).

rapid growth (and consequent social gains) which the economy experienced in the import-substitution period of industrialisation where, from the early 1930s to the early 1980s, gross domestic product (GDP) grew between 5 and 6 per cent per year.

Like South Africa, Argentina, and Brazil, Mexico is an upper-middle-income country. Its GDP per capita in 2019 (2010 USD 10,268) placed it 65th on the World Bank Development Indicators' list of 186 countries, while the size of its economy put it in 14th place.[4] The service sector is the predominant locus of economic activity, contributing 64 per cent of GDP and employing 61 per cent of the working population. The primary and secondary sectors are responsible for 3.2 per cent and 29 per cent of GDP and employ 12 per cent and 27 per cent of workers, respectively. Meanwhile, in the past 20 years, the informal economy has generated about 23 per cent of GDP[5] and employed 56.2 per cent of the working population.[6]

Mexico is a highly unequal country, with a Gini coefficient of 0.454 in 2018. The north is the richer and more industrialised part of the country, whereas the south is poorer and less developed. According to the national poverty line (which takes into account income poverty and six indicators of social deprivation), 43.9 per cent of the population was poor in 2020; however, in the same year only 23 per cent of Mexicans fell below the international poverty line for upper-middle-income countries.[7] The United Nations Human Development Index (HDI)[8] ranks Mexico 74th out of 187 countries, with an HDI of 0.779. Analphabets account for 4.7

[4] The World Bank, 'World Development Indicators', https://datacatalog.worldbank.org/dataset/world-development-indicators (accessed 11 August 2021).

[5] GDP indicators are taken from INEGI, 'Medición de la informalidad', www.inegi.org.mx/temas/pibmed/ (accessed 11 August 2021).

[6] INEGI, 'Encuesta Nacional de Ocupación y Empleo [National Survey on Working and Employment Conditions]', www.inegi.org.mx/programas/enoe/15ymas/#Tabulados (accessed 11 August 2021).

[7] As of 2011, the poverty line for upper-middle countries is USD 5.5 in Purchasing Power Parity.

[8] The HDI is a comprehensive measure of development that takes into consideration income, education, and health indicators.

per cent of the population, the average years of schooling are 9.7, and life expectancy is 75 years.[9]

Mexico is a federal republic and a young democracy. The federal government has three branches—executive, legislative, and judicial. The federal legislative branch consists of the Chamber of Deputies (500 deputies) and the Senate (128 senators). Every six years Mexicans elect the president and governors, who have no option for re-election; in contrast, municipal and legislative elections for the three levels of government take place every three years. After a change in the Constitution, mayors (since the 2018 elections) can be re-elected for a second term of office; similarly, legislative members of the three levels of government can be re-elected: senators can be elected for two consecutive terms (12 years), and federal and local deputies, for four consecutive terms (12 years).[10]

The Mexican Constitution endows the legislature with a robust capacity to legislate and control the executive.[11] During the 70-year period of one-party dominance, however, informal practices prevented the legislature from using its powers.[12] Historically, the federal executive has been dominant, both horizontally over the legislative and judicial powers[13] and vertically over state and local governments.[14] The 1997 elections, in which the long-time dominant party lost its absolute majority in the lower chamber, raised expectations that the legislature would become a genuine counterbalancing force. These expectations,

[9] INEGI, 'Censo de Población y Vivienda 2020', www.inegi.org.mx/programas/ccpv/2020/ (accessed 11 August 2021).

[10] Mexican Constitution, articles 59, 115, 116, and 122.

[11] María A Casar, 'Las relaciones entre el poder ejecutivo y el legislativo: El caso de México' (1999) 6(1) *Política y Gobierno* 83–128.

[12] Jeffrey Weldon, 'El proceso presupuestario en México: Defendiendo el poder del bolsillo' (1997) 60(10) *Perfiles Latinoamericanos* 101–24.

[13] Jeffrey Weldon, 'Las fuentes políticas del presidencialismo en México', in Scott Mainwaring and Matthew Soberg Shugart (eds) *Presidencialismo y Democracia en América Latina* (Paidos, 2002) 175–211.

[14] Jeffrey Weldon, 'The Legal and Partisan Framework of the Legislative Delegation of the Budget in Mexico', in Scott Morgenstern and Benito Nacif (eds) *Legislative Politics in Latin America* (Cambridge University Press, 2002) 377–410.

however, have not been fulfilled, particularly in the fiscal domain, where the executive branch predominates.[15]

Mexico's polity has changed dramatically in the last three decades and now reflects the adoption of a multi-party system at national and subnational levels. In the 1990s, the country began to open up politically from the ground up, with the system dominated by the Institutional Revolutionary Party (PRI) showing cracks under the pressure of increasing numbers of opposition victories in subnational governments. Increasingly, competitive elections at the subnational level have become the norm, with congressional elections also contributing to a far more competitive electoral landscape. After 71 years of one-party rule by the PRI, the centre-right National Action Party (PAN) won the presidency in 2000.[16]

2 History, Structures, and Institutions of Local Government

The facts of colonial rule, independence, and a vast diversity of indigenous governance structures have generated considerable tension around the country's choice of institutional frameworks. In particular, Mexico has long been torn between centralist and federalist impulses.[17] After independence in 1821, the 1824 Constitution introduced the notion of federalism, but the Constitutional Laws of 1836 reflected a centralist turn, one that lasted until 1847 (when the Federal District was reconstituted). In 1857 the Federal Constitution renewed the federalist impetus by recognising states (but not municipalities). However, political power was progressively centralised both before and after the Mexican Revolution (1910–1924), notwithstanding the establishment of a federal system of government in the 1917 Constitution. The creation of the National Revolutionary Party (the precursor of the PRI) in 1929 advanced centralism through its system of one-party rule.

[15] Mónica Unda-Gutierrez, 'The Superfluous Congress: Executive Dominance and Business Lobbying in Mexico's 2013 Tax Reform' (2021) 37(1) *Mexican Studies* 93–122.

[16] In 2006 the presidential election was won by the PAN (Felipe Calderón-Hinojosa); in 2012 by the PRI (Enrique Peña-Nieto); and in 2018 by MORENA (Andrés Manuel López-Obrador).

[17] María del Carmen Salinas Sandoval, Diana Birrichaga Gardida, and Antonio Escobar Ohmstede (eds) *Poder y gobierno local en México, 1808–1857* (El Colegio Mexiquense; El Colegio de Michoacán; Universidad Autónoma del Estado de México, 2011).

Although the 1917 Constitution proclaimed 'free' municipalities as the country's basic territorial units, in practice municipalities have '[remained] at the bottom of the federal-state-local pyramid in all matters concerning their own governance'.[18] The 1970s saw a range of incipient decentralisation efforts. These focused on administrative, spatial, and economic deconcentration from the Federal District (Mexico City), the country's political and economic centre.[19] They were followed by an array of decentralisation efforts that mirrored those sweeping across the Latin American region at large when the 1980s debt crisis prompted radical political and economic reform. Paradoxically (given the lack of political freedom under Auguste Pinochet's dictatorship and in Mexico's state of one-party rule), Chile and Mexico were among the pioneers of these reforms.[20] Mexico's Municipal Reform of 1983 was arguably the first step 'at weaning municipalities from their traditional dependence on state and federal control and largesse'.[21]

In the 1980s, the prominence of the then Federal District began to shrink as cities along the US border and north of Mexico City's metropolitan region (an area known as *el bajio*) gained a comparative advantage in economic production and export markets. In 1988, the PRI lost key elections in urban centres. These factors may have compelled President Carlos Salinas de Gortari to expand revenue-sharing between the central and local governments as well as share further decision-making power over public investments with the states. The expenditure of subnational governments as a percentage of total governmental expenditure consequently grew from 22 per cent in 1980 to 31.9 per cent in 2000. Nevertheless, only about 4 per cent of total government expenditure was funnelled through local governments at the turn of the millennium.[22]

[18] Victoria E Rodríguez, 'Recasting Federalism in Mexico' (1998) 28(1) *Publius: The Journal of Federalism* 235–254.

[19] As in some other federalist countries, the country's capital had a distinct legal status without the constitutional sovereignty of other states.

[20] Tim Campbell, *The Quiet Revolution: Decentralization and the Rise of Political Participation in Latin American Cities* (Pittsburgh Press, 2003).

[21] Rodríguez (n 18).

[22] The World Bank and United Cities and Local Governments, *Decentralization and Local Democracy in the World: First Global Report by United Cities and Local Governments* (UCLG, 2008).

In addition, a targeted social welfare programme, the National Solidarity Programme (PRONASOL), allowed local community groups to decide what public projects to fund. In 1992, and despite criticisms of its bypassing of municipal and state powers, the newly formed Ministry of Social Development (SEDESOL) took control of this programme. It went on to become the federal agency through which all major budgetary resources were channelled, with these being apportioned to state rather than municipal governments.

A new administration under President Ernesto Zedillo (1994–2000) promoted the New Federalism project. This strengthened state governments and also encouraged the judicial and legislative branches to take more active roles in government. While municipal funds were increasingly earmarked by state and federal governments, placing municipalities in a subordinate position, by 1998 about 50 per cent of funds previously handled by PRONASOL had come to be administered by municipalities.[23]

Decentralisation in Mexico has faced a number of serious challenges, notably the limited revenue capacity of local governments. Outdated property registers and exemptions have led to low and inefficient levels of revenue collection. Thus, until the 1990s, municipal service provision (including water and drainage) was generally inadequate (particularly in rural and impoverished municipalities), as was the ability to recoup municipal investments. Similarly, limited access to credit of the municipalities hindered municipalities' ability to carry out infrastructure projects. State level, and on occasion federal level, institutions have thus had to intervene in local service and infrastructure delivery, including in the case of drinking water, town management, electricity, road infrastructure, and tax collection. Intergovernmental coordination, however, has remained challenging. In addition, local governments struggle to formulate, implement, and oversee their policies and programmes, while rural and low-income municipalities have found it difficult to assess and meet their own needs given their limited resources and institutional capacity.[24]

[23] Rodolfo García del Castillo, 'Los gobiernos locales en México ante el Nuevo Federalismo' (1996) 7 *Política y Cultura* 97–122.

[24] José Rodolfo Arturo Vega Hernández, 'El Municipio en la Reforma del Estado Federal', in Máximo Gámiz Parral and José Enrique Rivera Rodríguez (eds) *Las Aportaciones de las Entidades Federativas a la Reforma del Estado* (Instituto de Investigaciones Jurídicas de la UNAM, 2005) 333–362.

More recently, large and intermediate cities and their mayors have become more proactive in economic development as well as more visible nationally and internationally. Local innovations—such as participatory strategies, metropolitan coordination, and civic comptrollers to monitor the use of resources—have also emerged in some cities.[25] Progress at an overall level has been uneven, though, particularly given that, as cities grow to become larger metropolitan regions, new problems arise of fragmentation in governance. In this regard, while municipalities in Mexico remain single-tier institutions and metropolitan areas have no autonomous administrations, since 2016 the General Law on Human Settlements, Regional Management, and Urban Development (LGAHOTDU) has provided a model for metropolitan governance (constituted by commissions, councils, and planning institutes); however, it has not been implemented in a coordinated fashion yet.[26]

It is pertinent to close this section by revisiting Mexico City's evolution from a Federal District to the 32nd state of the country and considering how this shift advanced its political and administrative autonomy. From the 1980s, there were increasing civic and political demands for greater local autonomy, given that the governance, finances, and legislation of the country's capital fell under the jurisdiction of the federal government. An Assembly of Representatives was formed in 1986, and a decade later the city held its first mayoral elections following the approval in 1994 of the Statute of the Government of the Federal District. Prior to this, the local government head, or regent, had been appointed by the president. The Assembly of Representatives then became a legislative assembly, which enabled the local government to strengthen its revenue capacity. In sharp contrast to the rest of the country, local taxes and fees provide close to half the city's resources, a proportion which has continued to grow despite the capital's decreasing national dominance. The establishment of a Metropolitan Development Council in 2008 helped to deal with regional service provision and environmental protection, while in

[25] Enrique Cabrero Mendoza, 'Gobierno y política local en México: Luces y sombras de las reformas descentralizadoras' (2010) 47(3) *Política y Sociedad* 165–186.

[26] Section 10 contains a fuller discussion of this topic.

2009 a socioeconomic council was formed in order to broaden public participation in policy-making and law proposals.[27]

Nevertheless, the national congress and president retained significant decision-making authority over the city (through control of public debt and the power to appoint the attorney-general and local secretary of public security). Furthermore, boroughs (*delegaciones*) had no municipal rights or duties, although they could elect their heads of government and manage their own budgets. Further reforms and autonomy were sought, but initiatives in this regard had trouble passing through the Senate. In 2009, the local legislative assembly created a special commission to examine the initiatives. In 2015, a bill was eventually approved by the Senate and House of Representatives to dissolve the Federal District and make it a city-state. This reform also allowed for the formation of a local-state congress and the drafting of the first local constitution a year later. The latter reflects the city's progressive character in its inclusion of a collective right to the city, direct-democracy provisions (for example, participatory budgeting and referenda), immigrant and indigenous rights, and a range of other human, civil, and labour rights. In spite of continuing challenges, this process clearly represents a step forward in the long and arduous process of federalisation.[28]

Alongside Mexico City's 16 boroughs, Mexico has 2469 municipalities within the remaining 31 states. The most highly populated municipality is Tijuana in Baja California (1,922,523 inhabitants) on the northern border, followed by Iztapalapa in Mexico City (1,835,486). Oaxaca has several of the least-populated municipalities, some of which have as few as 93 inhabitants. There are also significant differences in territorial size, which range from 33,092 km^2 to just 2 km^2. Municipalities in Mexico are still being established, with San Quintín the newest. Approved by Baja California's state congress in February 2020, it is composed of 140,000 inhabitants in a territory of more than 33,000 km^2.

Although municipalities are subject to the constitutions of their respective states and their laws laid down by their councils, all municipalities

[27] Alejandra Reyes, *The Evolution of Local Governance in Mexico City: Pursuing Autonomy in a Growing Region* (IMFG at University of Toronto's Munk School of Global Affairs & Public Policy, 2019).

[28] Ibid.

have the same powers and importance under the Federal Constitution—there are no single-purpose elected local authorities. In practice, however, their political and economic power varies considerably due to factors that range from size and socioeconomic standing to natural attributes and location.[29] In municipalities governed by indigenous customs, representatives are elected by assemblies and can remain in office from one to three years (as discussed further below).[30]

3 Constitutional Recognition of Local Government

In terms of article 40 of the Constitution, Mexico is a representative, democratic, secular, and federal republic comprising free and sovereign states and Mexico City. Local governments (that is, municipalities) are constitutionally recognised as the basis of the territorial, administrative, and political organisation of states. The legal framework that regulates municipalities is broad and complex, with its elements ranging from constitutional norms to local regulations. Article 115 of the Constitution sets out the general principles for municipalities and state constitutions—the latter are the main legal instruments defining the responsibilities and limits of local governments.[31]

The Mexican Constitution was adopted in 1917 as a result of the Revolution (1910–1920).[32] Although members of the constituent assembly that drafted the Constitution discussed the possibility of giving local governments greater autonomy, this was not reflected in the original version of article 115 above. However, amendments to this article in

[29] Boris Graizbord, 'United Mexican States', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 200–233.

[30] Most other municipalities denominate rural areas outside of the urban or municipal seats as delegations that get to elect the representatives who execute the city council's decisions.

[31] Salvador Valencia Carmona, *El municipio mexicano: génesis, evolución y perspectivas contemporáneas* (Secretaría de Gobernación; Secretaría de Cultura; INEHR; Universidad Nacional Autónoma de México, 2016).

[32] A decade long series of armed regional conflicts, which ended with the 33-year dictatorship of Porfirio Díaz and established a constitutional republic. See Alan Knight, *The Mexican Revolution. Volume I Porfirians, Liberals and Peasants*, (Cambridge University Press, 1986).

1983 and 1999 sought to fill in the various gaps in the 1917 version. These included lack of clarity on municipalities' taxing powers (since 1983 municipalities are entitled to collect taxes and levies on real estate) and expenditure assignments, as well as on ways in which to resolve disputes between states and municipalities.[33] The amendments were intended to deepen fiscal and administrative decentralisation, but de facto local self-government has proved difficult to attain. In this regard, municipalities still differ significantly, with their socioeconomic characteristics and institutional capacity being key factors that determine the extent of their autonomy and efficacy of performance.[34]

Article 115 delineates the main institutional arrangements for local governments in eight sections. Section I deals with the most salient governance issues. Municipalities are *governed*—a term with specific value in context[35]—by a municipal council (*ayuntamiento*) composed of a mayor (*presidente municipal*), a receiver (*síndico*), and several councillors (*regidores*),[36] all of whom are democratically elected. There is no intermediate authority between the municipal council and the state government and state constitutions must allow immediate re-election for mayors and councillors for up to one additional term. This last provision is one of the most recent and meaningful changes made to local political institutions: the first re-elected mayors and councillors began their second terms in 2018.

[33] Jorge Carpizo, *Estudios constitucionales* (4th edition, Porrúa-UNAM, 1994).

[34] Carlos Moreno-Jaimes, 'Los límites políticos de la capacidad institucional: Un análisis de los gobiernos municipales en México' (2007) 26(2) *Revista de Ciencia Política* 131–153.

[35] The 1999 constitutional reform changed the wording of article 115 section 1, which previously stated that 'municipalities are *administered* by a municipal council …' and now states 'municipalities are *governed* by a municipal council …' (emphases added). Some argue that this was a big step in recognising municipalities as a government unit; according to others, it was just a cosmetic change, given that municipalities still lack the most basic governing functions, such as legislating. See Blanca Acedo, *A cien años del municipio libre como institución constitucional, 1914–2014* (Senado de la República, 2015).

[36] The receiver is responsible for legal affairs and supervises the appropriate use of public resources. Councillors are citizens' representatives. See Antonio Sánchez Bernal and Jarumy Rosas Arellano, 'Los gobiernos locales en México', in José Manuel Ruano De la Fuente and Camilo Vial Cossani (eds) *Manual de Gobiernos Locales en Iberoamérica* (Universidad Autónoma de Chile, Centro Latinoamericano de Administración para el Desarrollo, 2016).

Section II establishes the legal capabilities of municipalities, namely the issuing of laws and norms in line with state laws. Municipal laws provide the general basis for public management; they also set out administrative procedures between the municipal council and citizens, rules for cooperation between states and municipalities in the provision of public services, and norms that guarantee citizen participation. Section III lists the tasks and public services to be performed by municipalities; section IV deals with the rules governing municipal public finances; section V specifies the authority of local government in regard to urban planning issues; and section VII concerns public safety provisions.[37]

Local governments in Mexico are treated equally under the Constitution. While the capital city is subject to a number of special provisions, recent changes have, to some extent, standardised its legal treatment—like states, Mexico City now has a constitution, and its government is divided between executive, legislative, and judicial powers that must be exercised in republican, representative, democratic and secular fashion. The general principles and institutional basis of Mexico City are set out in article 122 of the Constitution.

Mexico City's 16 mayoralties (*alcaldías*) are political and administrative bodies made up by a mayor and a number of city council members who are elected on the principles of relative majority and proportional representation. They hold three-year terms and (as in municipalities) can be re-elected for a consecutive term. Mexico City's budget and administration are unitarian. The taxing powers reside in Mexico City's government, and not in the mayoralties. Mexico City's chief of government must get the approval of the legislature on real estate-based contributions, such as tax rates and cadastral values. *Alcaldías* must have their budgets approved by the city's legislature and are not entitled to incur debt directly. Mexico City's constitution provides the basis and criteria for determining the budget allocation for the mayoralties. Given the city's status as the capital, the federal lower chamber can approve ad hoc resources for inclusion in Mexico City's federal budget, this to cover the costs of its being the country's capital.

Beyond its political boundaries, Mexico City's metropolitan region encompasses a further 60 municipalities, one in the state of Hidalgo and 59 in the state of Mexico. Together these have an aggregate population of

[37] These are discussed further in Sects. 4–6.

almost 22 million. Article 122 (section C) of the Constitution recognises the urban challenges posed by such a conglomerate and specifies that the national congress must set legal terms to ensure coordinating mechanisms for urban planification and public service provision at the regional level. It also proposes the creation of a metropolitan development council to establish the necessary agreements for human settlements, environmental protection, ecological preservation and restoration, potable water, sewer, transportation, waste management, and public safety. However, no law concerning the metropolitan governance of Mexico City has been issued.

4 Governance Role of Local Government

Article 115 of the Mexican Constitution establishes that municipalities are responsible for providing (a) potable water, drainage, sewer, wastewater disposal, and treatment; (b) street lighting; (c) collection, transportation, treatment, and disposal of solid waste; (d) public markets; (e) cemeteries; (f) slaughterhouses; (g) roads, parks, and equipment; (h) public safety, preventive, and transit police; and (i) other responsibilities that state legislatures consider appropriate to municipalities' socioeconomic conditions and fiscal and administrative capacity.[38] The article also establishes the legal framework for municipal associations and coordinated service provision among several local governments, and for agreements between local and state governments for joint service provision.

Article 115 places preventive policing under the power of mayors in accordance with state public safety law. Yet governors can supersede mayors if they deem it necessary. As in other areas, the lack of municipal resources takes its toll. The members of the local security forces receive low wages, have low education levels, are not formally trained, and

[38] A notable case is worth mentioning. *Luz y Fuerza del Centro* was a decentralised public agency in charge of energy provision in central Mexico, including all of Mexico City, 80 municipalities in Estado de México, five in Hidalgo, two in Morelos, and two in Puebla. It was abolished in 2009 by presidential decree and subsumed into the Federal Electricity Commission (CFE, for its acronym in Spanish), a state company in charge of energy provision across the country. Although they were contested, the arguments informing this decree included economic stagnation and inadequate collection from large consumers, including municipalities, universities, public offices, industries, and banks.

have little in the way of employment security.[39] This has resulted in high levels of corruption in many municipal police forces, and even in collusion with organised crime. Under these conditions, some rural and indigenous municipalities have seen a need to form self-defence units (in Michoacán and Guerrero, for example). Given the pressing safety concerns, it has been proposed that local police forces be replaced by state or federal leadership (*mandos únicos*).[40]

Under article 115, municipalities also have authority over urban planning matters, although local intervention must remain in line with federal and state urban laws. Local governments can draft, approve, and manage zoning and urban development plans; authorise and monitor land use; regulate urban land tenure; grant licences and construction permits; participate in the determination of territorial and nature reserves; and participate in the drafting and implementation of public transport programmes within their territory.

Given the federal level's increasing difficulties in taking sole charge of complex matters such as health, education, and environmental protection, and due to an increasing dispersion of power, the distribution of capacities between different government levels has been made more flexible thanks to the existence and coordination of concurrent powers. While powers have generally been transferred to states rather than municipalities, municipal coffers have grown considerably since the 1990s. This has been due mainly to federal and state transfers, which together account for almost three-quarters of municipal revenues, though property taxation makes up the bulk of resources raised directly by local governments. Nationally, however, about 36 per cent of such levies stem from Mexico City, and rates of collection are low compared to other countries. Property tax collection as a percentage of GDP is only 0.3 per cent in Mexico, compared to 1.1 per cent in Chile, 1.5 per cent in Brazil, and 1.6 per cent in Colombia. Not surprisingly, less than 2 per cent of public revenue comes from local governments, although they account for a little more than 8 per cent of public spending. Thirty-five per cent of public spending

[39] AN Redacción, 'Policías y tránsitos ganan en promedio 8 mil 774 pesos mensuales y trabajan más de 65 horas a la semana: Inegi', *Aristegui Noticias* (11 July 2017), https://bit.ly/3sRZw2n (accessed 11 August 2021).

[40] José René Olivos Campos, *Derecho municipal* (Universidad Michoacana de San Nicolás de Hidalgo, 2011).

goes into paying municipal staff; 23 per cent goes to public investment; and 17 per cent to the management and maintenance of municipal facilities and assets.[41]

Municipalities are governed chiefly by a council composed of councillors and trustees. These are elected through a system of direct and popular vote, balanced by relative majority and proportional representation so as to better represent the country's increasing political plurality. In actuality, however, there are often artificial majorities among council members. These have a tendency to follow the agendas and political directions of the mayors, inhibiting the independence and counterweight roles that are meant to exist between the two. Real issues of accountability and representation continue to exist,[42] and there remain limited opportunities for independent civic groups or individuals to run for office without the support of an established political party.[43] In 2016, for instance, there were only 308 independent candidates for the 1819 disputed local offices, and only nine independents won in elections. In theory, municipal re-election is intended to promote medium- and long-term policy-making, the professionalisation of public service, and accountability through electoral endorsement by citizens; but, in practice, mayors can run for re-election only if backed by their political parties, thus inhibiting voters' abilities to reward or punish local administrations through the ballots.[44]

One exception to this general situation deserves mention: the case of municipalities governed by internal regulatory systems, commonly called *usos y costumbres*, or indigenous customs. Here the representatives are elected by assemblies and can remain in office for one to three years.[45] The Zapatista uprisings in Chiapas pushed for the inclusion of indigenous rights in the Constitution, including the right of municipalities with

[41] IMCO, *Barómetro de información presupuestal municipal* 2020 (2020).

[42] The same political dependency obtains between mayors and their state governors, and is due in part to the alignment of local and state elections. As political pluralism has expanded, however, increasing political tension and confrontation has often hindered intergovernmental coordination.

[43] Juan Fernando Ibarra del Cueto, 'Desarrollo reciente y perspectivas de reforma del gobierno local', in Antonia Martínez and José Francisco Parra (eds) *El Estado postransicional en México: Un análisis sobre los cambios políticos y sus efectos en actores e instituciones* (Fundación Ortega y Gasset, 2010).

[44] César Resendiz, *Reelección municipal y rendición de cuentas: ¿Cómo lograr el círculo virtuoso?* (Instituto Mexicano para la Competitividad AC, 2016).

[45] Olivos Campos (n 40).

significant indigenous populations to elect their authorities outside of the conventional political party system. Municipalities in Baja California Sur, Chiapas, Guerrero, Michoacán, and Oaxaca now elect authorities through this system, with Oaxaca performing particularly well. Close to 75 per cent of the 570 Oaxacan municipalities elect their representatives under this scheme, and, in 1995, the Oaxacan State Congress approved a legal reform to allow this and reflect the pluralist culture and identity of the state.[46]

To return to the regular municipal councils, they enjoy approximate legislative functions, approve municipal budgets, and oversee the approval of policies and programmes. Their size varies according to state law and municipal population. Mayors, while also part of the municipal councils, are generally responsible for leading public administration, commanding the municipal police, convening and presiding council sessions, legally representing the municipality (although this can be delegated to council), enforcing normative provisions (for example, tax collection and management), and implementing municipal programmes.[47]

The question of civic participation remains largely unaddressed. A third of states do not have regulations for municipal referenda, and only a third of them even consider the question of local consultations within their regulatory frameworks. In 2014, political reforms enabled citizens to introduce bills and call and vote on public consultations. States may establish other participative initiatives, such as neighbourhood consultations, citizen comptrollers, public hearings, and participatory budgeting, but their use varies widely across the country. Mexico City has the largest number of participatory mechanisms in its civic participation law (ten provisions), while Campeche, Nuevo León, and Puebla do not have a parallel law and only regulate for one participatory initiative each. In addition, some states place actual barriers to civic initiatives. Nayarit requires that 5 per cent of voters sign any petition to introduce a bill; this restriction is notably higher than the 0.13 per cent federal requirement. Referenda are also virtually inoperable in some states due to a lack of

[46] Instituto Estatal Electoral y de Participación Ciudadana de Oaxaca, 'Sistemas Normativos Indígenas: Catálogo de Municipios Sujetos al Régimen de Sistemas Normativos Indígenas 2018', https://bit.ly/3H6poN0 (accessed 11 August 2021).

[47] Jorge Fernández Ruiz, *Las Elecciones Municipales* (Tribunal Electoral del Poder Judicial de la Federación, 2010).

legislation for regulating them, while in others, diverging requirements—ranging from 0.4 per cent (Mexico City) to 25 per cent (Tlaxcala) of their electorates—make it difficult for some constituencies to conduct a plebiscite.[48]

5 Financing Local Government

Since the 1983 constitutional reform to article 115 (which increased municipalities' fiscal autonomy), decentralisation and democratisation processes have transformed local government in Mexico.[49] Currently, local governments are free to administer their own finances. Municipalities can raise funds through licences, permits, fines, charges, fees for services, property taxes (including different kinds of value capture), the enforcement of private law (for example, financial products or the sale or lease of real estate), and income collected by public law functions (other than taxes and duties). Local governments' comprehensive annual financial reports must be audited by the state legislatures' auditing body.[50]

The property tax is the main municipal tax. It currently accounts for, on average, 9 per cent of total municipal revenue and represents 0.2 per cent of GDP[51] and was transferred to municipal governments in the early 1980s. At first, municipalities had to sign agreements with state governments to get their support in administering the property tax.[52] The states charged a lot for this. Municipalities began to improve their capacity to administer it themselves, with the result that such agreements were on the

[48] Resendiz (n 44).

[49] Jesús Silva Herzog, 'Diario de los debates de la Cámara de Diputados del Congreso de los Estados Unidos Mexicanos, LII Legislatura' (11 December 1982) 49(1), http://cronica.diputados.gob.mx/DDebates/52/1er/Ord/19821211.html (accessed 11 August 2021).

[50] See Sect. 6 for more on the role of the Chief Audit Office.

[51] The amount collected in property tax by Mexican municipalities is extremely low in comparison to other similar Latin American countries. See Mónica Unda-Gutierrez, 'Una hacienda local pobre: Qué explica la recaudación predial en México' (2021) 36(1) *Estudios Demográficos y Urbanos* 49–88; Mónica Unda-Gutierrez, 'Los límites de la recaudación predial en los municipios urbanos de México: Un estudio de casos' (2018) 33(3) *Estudios Demográficos y Urbanos* 601–637.

[52] Salvador Santana, 'Acciones necesarias para la implementación de la reciente reforma al artículo 115 constitucional: Aspectos hacendarios' (2000) 72 *Hacienda Municipal* 15–22.

way out by the late 1990s. In 1997, municipalities attained the capacity to propose rates and assessment methods for property taxes to state legislatures (which enjoyed the right to grant approval for cadastral values and tax rates). But in 2013 the Fiscal Coordination Law granted incentives to municipalities to sign agreements with their state governments and to cede property tax administration to them again, thus reversing some of the fiscal decentralisation gains that municipalities had made.

Despite legal changes intended to promote fiscal decentralisation, the capacity of states and municipalities to increase their own revenue levels remains low. In 2017, 94.3 per cent of tax revenue was collected by the federal government, 4.1 per cent by states, and only 1.6 per cent by municipalities.[53] Figure 1 shows the limited extent to which municipalities self-finance their budgets, namely 22.6 per cent (a third of which comes from the property tax). States fare even lower in this regard, at 9.5 per cent.

The decrease in self-generated revenue as a proportion of the total municipal revenue since 1970 is explained largely by the drastic growth of fiscal transfers, almost all of which are entirely provided by the federal government (Fig. 2). Earmarked and non-earmarked transfers to municipalities grew by 15 per cent annually between 1982 and 2015. Both types

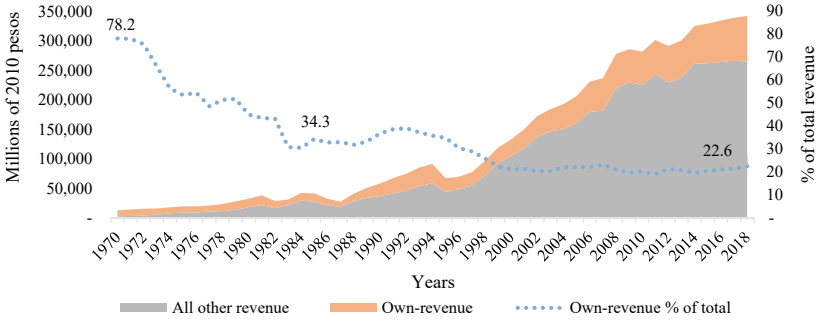


Fig. 1 Municipal own revenue (*Sources* Authors' own calculations, based on INEGI, 1984, 1985, and 1990 and the INEGI database, 'Estadisticas de Finanzas Públicas Estatales y Municipales')

[53] OECD Fiscal Decentralisation Database, www.oecd.org/tax/fiscal-decentralisation-database.htm#C_3 (accessed 11 October 2020).

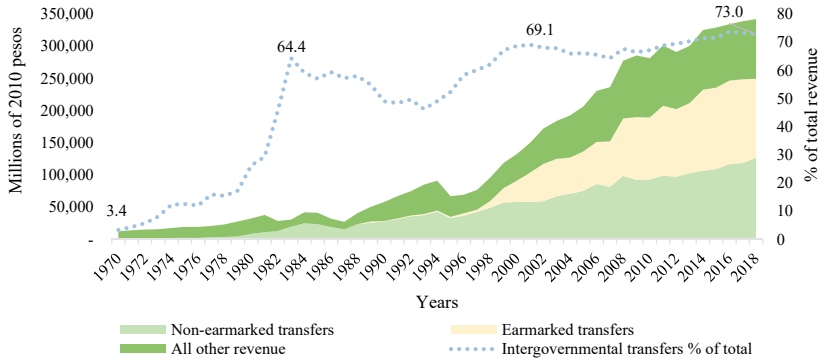


Fig. 2 Municipal earmarked and non-earmarked fiscal transfers (*Sources* Authors' own calculations, based on INEGI, 1984, 1985, and 1990 and the INEGI database, 'Estadisticas de Finanzas Públicas Estatales y Municipales')

of transfers currently provide 73 per cent of the total municipal revenue.[54] This vertical fiscal imbalance is one of the most outstanding characteristics of municipal budgets in Mexico.

Municipalities are greatly dependent on higher levels of government.[55] Non-earmarked fiscal transfers are rooted in the National Fiscal Coordination System (SNCF). In terms of this system, which originated in the early 1980s, states and municipalities gave up some of their tax powers in exchange for compensatory non-conditional grants. These were sourced from the main federal taxes: income tax, value-added tax, and excises.[56]

In 1997, a reform to the Law on Fiscal Coordination formally enacted earmarked fiscal transfers (see Fig. 2). These are managed by two main funds: the fund for the strengthening of municipalities (FORTAMUN)[57]

[54] An additional 4% of municipal revenue comes from financing (debt).

[55] Jorge Ibarra Salazar, A Sandoval Musi, and L Sotres Cervantes, 'Participaciones Federales y Dependencia de los Gobiernos Municipales en México 1975–1995' (2001) 61(237) *Investigación Económica* 25–62.

[56] Mónica Unda-Gutierrez and Carlos Moreno Jaimes, 'La recaudación del impuesto predial: Un análisis de sus determinantes económicos en el período 1969–2010' (2015) 60(225) *Revista Mexicana de Ciencias Políticas y Sociales* 53–84.

[57] Resources from FORTAMUN are allocated to financial obligations, water waste management, the modernisation of revenue collection systems, and public safety. Most of the FORTAMUN is used to cover the payroll of police forces and debt obligations.

and the fund for municipal social infrastructure (FAISM).[58] This kind of funding is aimed at equalising municipalities by reducing horizontal imbalances between municipalities.[59] Not surprisingly, it is the rural and less populated municipalities—which tend to experience higher levels of poverty, illiteracy, and lack of electricity and water access[60]—that are more dependent than others on these conditional transfers. Smaller municipalities spend more on investment and public works than larger ones. This is clearly an effect of the importance that conditional transfers (to be spent on public works, for instance) have had in municipal budgets since 1998, particularly for municipalities with less than 250,000 inhabitants; thanks to the conditionality of federal funds, they now seem to invest more.

The Law on Fiscal Coordination changed the formulas behind the distribution of non-earmarked transfers in 1991 and again in 2007 so as to neutralise the potential disincentive that such transfers could pose for own revenue levies. As a result, property tax revenue and water fees, among other variables, determine the amount of resources transferred to municipalities.[61] Municipalities that collected more could receive more earmarked transfers.

It is important to note that state legislatures are entitled to determine the criteria for allocating unconditional transfers to municipalities. The Law on Fiscal Coordination provides that states must pass on to municipalities at least 20 per cent of what they receive in unconditional transfers (very few states share more than the mandatory 20 per cent and most just

[58] Resources from FAISM are allocated to potable water, sewage, drainage, rural lighting, basic infrastructure in clinics and schools, housing improvement, and infrastructure maintenance.

[59] For more on the criteria to distribute earmarked transfers and the consequential effects, see Jorge Ibarra Salazar, 'Fundamentos de la Nueva Fórmula de Asignación del Fondo de Aportaciones para la Infraestructura Social en México' (2018) 85 (1) *El Trimestre Económico* 195–218.

[60] Mónica Unda-Gutierrez, *Finanzas Municipales en México: Porqué unos Municipios Recaudan más y Gastan Mejor* (Lincoln Institute of Land Policy, 2019) 84–87, 89.

[61] According to Unda-Gutierrez and Moreno Jaimes (n 56) and Unda-Gutierrez (n 51), these changes have probably been effective, given that fiscal transfers do not disincentivise property tax collection.

replicate the formula used by the federal government to distribute unconditional transfers).[62] In addition, in terms of article 46 on conditional transfers, the legislatures' auditing body (namely the states' Chief Audit Office) and federal government, through the Ministry of Finance, have the power of oversight to ensure that conditional resources are indeed spent on what they have been earmarked for.[63]

The legal framework for subnational debt is provided by article 117 of the Constitution and the 2016 Law of Financial Discipline of States and Municipalities. Section VII of article 117 stipulates that states (i) cannot acquire debt directly from international creditors; (ii) should incur debt only to finance investment or debt restructuring; and (iii) require a two-thirds vote in their legislatures for approving the debt limits and conditions for both states and municipalities.

The Law of Financial Discipline aims to foster sustainable subnational finances by promoting financial discipline, responsible debt use, and transparency of financial information. Its article 19 provides that municipalities should operate on the principle of having balanced budgets.[64] The law also institutes a warning system to flag debt-related risk in states and municipalities; aims to ensure that debt is acquired at the lowest possible financial cost; and determines that the federal government can provide collateral for states and municipalities to access better debt terms.[65] At the end of 2020, the municipal debt balance as a proportion of subnational debt was 7.2 per cent, with 25 municipalities constituting 55 per cent of this.[66] 50 per cent of municipal debt is contracted with commercial

[62] By doing so, state governments have missed the opportunity to influence municipal governments' tax performance (that is, through incentives that grant more funds to those that collect more through own revenue sources).

[63] See Sect. 6 for more on the auditing role of federal and state governments.

[64] Ley de Disciplina Financiera de las Entidades Federativas y los Municipios, Diario Oficial de la Federación, 27 April 2016 (last reformed 30 January 2018).

[65] Centro de Estudios de las Finanzas Públicas, *Deuda Federal y de entidades federativas* (Cámara de Diputados LXIII Legislatura, 2016).

[66] Six hundred and eighteen municipalities report their financial obligations, as part of the alert system, in the Single Public Record (*Registro Público Único*) of the Ministry of Finance.

banks; 42 per cent with development banks; and just 3 per cent through bond markets.[67]

6 Supervising Local Government

Local governments in Mexico are supervised primarily by the federal government (through national laws such as the Law of Financial Discipline of States and Municipalities) and by the ample regulations provided by state legislatures. Article 115 of the Constitution defines the main tenets for the supervision of local governments. A 1999 amendment to this established that state legislatures should determine what procedures to follow in cases of conflict between municipalities and states concerning (i) agreements to provide services assigned to municipalities signed by both entities; (ii) budgetary issues; and (iii) public safety policies. Prior to this amendment, local governments did not have a clear legal route to challenge state legislatures in cases such as the rejection of property tax rates, or the cadastral values proposed by municipalities.[68] In addition, the state legislature must approve the municipal annual 'revenue law' and audit the comprehensive annual financial report.

Local governments are the least autonomous of the three tiers of government. Nonetheless, there are significant variations in the type of supervision exercised by states, the formulation of local laws and codes, and the level of accountability demanded of municipalities.[69] In the last thirty years, decentralisation and democratisation processes have made municipalities wealthier and more independent. Consequently, the more developed municipalities are now in a better position to challenge the control and supervision exercised over them by state and national governments.

The role of the Federal Chief Audit Office (ASF) is important. This technical body oversees and controls the use of public money through audits. The ASF audits comprehensive financial reports from a sample of municipalities every year. These reports are public and concentrate on

[67] Centro de Estudios de Finanzas Publicas, *Obligaciones Financieras de los Municipios de México: Tercer Trimestre de 2020* (Cámara de Diputados LXIV Legislatura, 2020).

[68] Such as the dispute the Supreme Court of Justice resolved between the state of Queretaro and the municipality of Queretaro in 2014. The Supreme Court ruled in favour of the municipality.

[69] Graizbord (n 29).

the municipal use of federal funds. The most relevant ASF reports on municipalities are those on the two main earmarked transfers: the fund for the strengthening of municipalities (FORTAMUN) and the fund for municipal social infrastructure (FAISM). In 2019, irregularities mainly consisted in failing to supply supporting documentation for expenditures: 56 per cent of FORTAMUN and 40 per cent of FAISM funds in the sample analysed by the ASF did not comply with this requirement. In addition, 33 per cent of FAISM funds were found to be invested in public works that were not in use.[70]

7 Intergovernmental Relations

Since the early 1980s, when the pool of tax revenue that provides for intergovernmental transfers and the formulas that determine the distribution of fiscal resources were established, the National Fiscal Coordination System (SNCF) and the Law on Fiscal Coordination set the principles and norms that regulate fiscal intergovernmental relations.[71] The SNCF consists of a pair of committees of fiscal or tax officers, the INDETEC[72] (an institute created in the late 1970s to support the professional development of subnational finance ministries) and (since 2014) the largest association of Mexican municipalities, the CONAMM (*Conferencia Nacional de Municipios de Mexico*).

Beyond the fiscal and financial ties that exist among the different tiers of government, municipalities must also take part in the design, implementation, and evaluation of public policies on public safety, urban planning, education, and social development. In some cases, constitutional provisions set out the main guidelines that shape relations between municipalities and the higher levels of government; in other cases, national or

[70] ASF, 'Fondo de Aportaciones para la Infraestructura Social, Cuenta Pública 2019', https://informe.asf.gob.mx/ (accessed 12 August 2021).

[71] For more on the historical evolution of fiscal federalism in Mexico, see David Colmenares Páramo, 'Retos del federalismo fiscal mexicano' (1999) 49(5) *Comercio Exterior* 415–431; Thomas Courchene, Alberto Díaz-Cayeros, and Steven B Webb, 'Historical Forces: Geographical and Political', in Marcelo Giugale and Steven Webb (eds) *Achievements and Challenges of Fiscal Decentralization. Lessons from Mexico* (The World Bank, 2000) 123–138; Luis Aboites, *Excepciones y privilegios: modernización tributaria y centralización política 1922–1972* (El Colegio de México, 2003).

[72] Instituto para el Desarrollo Técnico de las Haciendas Públicas, www.indetec.gob.mx/ (accessed 12 August 2021).

general laws dictate the ways in which the three tiers of governments should interact.

However, there are many grey areas when it comes to regulating how municipalities should engage with state and federal governments in service provision and public policy matters more generally. As is widely understood, while the Constitution establishes concurrent responsibilities among levels of government in different domains, it does do without establishing precise competences for each level of government. This fault is replicated in secondary laws and regulations, and is one of the main problems facing Mexican federalism.

While the issuance of general or national laws on specific domains does provide some clarity about the rules for intergovernmental relations in areas such as education, health, and social development, there are still many areas of uncertainty, albeit with exceptions. For instance, since 1993, the General Education Law has recognised municipalities in Mexico as educational authorities and consequently granted them—in theory, at least—more powers in this area. The most recent reform to this law, in 2019, clearly establishes that municipalities can promote and provide educational services; maintain state and municipal public schools; coordinate with the federal and state governments to unify their educational activities; identify regional needs; request curriculum changes to the Ministry of Public Education (SEP) to address local or regional contexts; and contribute to the editing of free public textbooks. In Mexico City, municipalities and their councils now help with the maintenance of educational facilities and the provision of safety, water, and electricity to them.

Since 2004, the National Law on Social Development has partnered municipalities with the federal government in its poverty-reduction strategy. In broad terms, this means municipalities can take part in the formation of social policy alongside state and federal governments. The Law on Social Development allows for the establishment of ad hoc agreements to frame collaboration mechanisms between municipalities and education or health providers. Both national and general laws normally entail the formation of national boards or committees on which different stakeholders (including municipal governments) take a seat. These national boards and committees help stakeholders work together in the design, implementation, and evaluation of specific public policies.

To add a further dimension to this messy array of intergovernmental frameworks, it is worth noting that at times specific funds are created

to tackle local issues in which the different levels of governments must necessarily work together. This is the case with both the Municipal Public Safety Fund[73] and the Metropolitan Fund. Finally, it should also be noted that in all of these partnerships, municipalities tend to play a subordinate role in which they follow orders and directions given by the state and federal governments.[74]

8 Political Culture of Local Governance

Competitive elections at the subnational level have been an emerging trend since the 1990s.[75] At the local level, since 2004 close to 60 per cent of municipalities have elected a mayor from a party different to that of the previous mayor, a trend that points to a high degree of alternation in political incumbency. In 2016, the landscape was dominated by three parties, the PRI, PAN, and PRD (the left-wing Democratic Revolution Party), but with the election in 2018, the president's party, MORENA (the left-wing National Regeneration Movement) became a major political force. In 2019, 37.8 per cent of the population was governed by a MORENA mayor, 25.2 per cent by a PAN mayor, 14 per cent by a PRI mayor, and 7.7 per cent by a PRD one. In 2019, 11 states were led by the PRI, nine by the PAN, six by MORENA, and two by the PRD.

The major national parties usually dominate the municipal and state elections, though new political parties are sometimes formed at the subnational level. Coalitions between the major national parties are also common. Occasionally, subnational parties form to support a particular gubernatorial candidate and/or group of mayoral or state legislative candidates. Since the 2014 electoral reform which allowed for this, it is now also more common for candidates for office to run as 'independents' without party affiliation.

[73] Programa de Fortalecimiento para la Seguridad FORTASEG, www.gob.mx/sesnsp/acciones-y-programas/programa-de-fortalecimiento-para-la-seguridad-fortaseg (accessed 12 August 2021).

[74] Rodolfo García del Castillo, 'Los Municipios Mexicanos: Evolución, Contexto y Desafíos Actuales' (2015) 11 *Revista Iberoamericana de Estudios Municipales* 115–143.

[75] On the impact of increasing competitiveness in municipal elections on the provision of public services, see Carlos Moreno-Jaimes, 'Do Competitive Elections Produce Better-Quality Governments? Evidence from Mexican Municipalities, 1990–2000' (2007) 42(2) *Latin American Research Review* 136–153.

The existence of large subnational budgets, together with the possibilities of discretion over spending, endows the posts of subnational executives with great power and importance. This is leading to mayoral and gubernatorial elections with high levels of campaign spending, media coverage, and voter turnout. Subnational elections have become increasingly competitive since 2000 and only a handful of states have yet to experience party alternation. Nonetheless, subnational elections tend to have slightly lower turnouts if they do not coincide with federal elections. Elections for governors, mayors, and state legislatures usually coincide with federal elections. Federal elections are held every three years, alternating between general elections (when the president is on the ballot) and intermediate elections, when only federal legislators (deputies and senators) are on the ballot.

Mexico is far from having equitable gender representation in politics. Historically, women have been kept in the margins of political power at all levels of government. To date, Mexico has not had a female president and has only nine female state governors. In 2002, the federal government adopted a new quota system. This required political parties to have women as at least 30 per cent of their nominees for national legislature competitions.[76] The system does have several loopholes, however, allowing parties to evade compliance despite the multiple reforms in place to strengthen quotas. Female under-representation is especially pronounced at the local level, where the percentage of female municipal presidents remains in single digits.[77]

Subnational politicians are closely linked with their co-partisans at national level. In most states, the slate of candidates for municipal president under a given party is coordinated by state-level party organisations. The most common path to the governorship of a state is having served previously as a senator or mayor in the capital or other major metropolitan area in that state. Once in office, municipal presidents rely on federal and state-level politicians who exercise some discretion over budgetary transfers and infrastructure spending at the municipal level. Consequently, municipalities benefit in budgetary terms when the mayor and governor

[76] Jennifer M Piscopo, 'Leveraging Informality, Rewriting Formal Rules: The Implementation of Gender Parity in Mexico', in Georgina Waylen (ed) *Gender and Informal Institutions* (Rowman & Littlefield, 2017) 143–144.

[77] Verónica Vázquez García, 'Mujeres y gobiernos municipales en México: Lo que sabemos y lo que falta por saber' (2010) 19(1) *Gestión y Política Pública* 111–154.

belong to the same party.[78] The degree of control that national-level party leaders (including the president) exercise over subnational politicians of the same party has certainly declined as Mexico moves away from its dominant-party system. As the country began to transition to competitive multi-party elections in the 1990s and 2000s, the balance of power started to shift slightly towards subnational party organisations.[79]

Mexican political culture, as is the case with many semi-institutionalised democracies, is characterised by a high degree of patronage. It is manipulated by powerful political figures (*caudillos*, to use the common Spanish term) who reward political allies. In the twentieth century, Mexico developed a sophisticated form of patronage-based *caudillismo* through the hierarchically organised dominant party, the PRI.[80] Although the PRI has suffered a significant decline as a political force in Mexico, its mode of governing remains entrenched. All too often, important decisions (government contracts, hiring of bureaucrats, selection of nominees for political office, criminal prosecutions) are motivated more by political loyalty than by objective criteria.

Federal and state-level politicians routinely abuse their discretion to stack the deck in favour of their allies at the lower levels of government. Hence the uneven approach to confronting organised crime by the federal government under Felipe Calderón (PAN, 2006–2012), as well as the many examples of preferential intergovernmental transfer to co-partisans. Calderón's administration executed a strategy of cooperation only with co-partisan subnational officials to reduce violence and prosecuted many for participation in organised crime as an electoral strategy.[81]

[78] Jorge Ibarra Salazar, Héctor González, and Lidia Sotres Cervantes, 'Aspectos Políticos de la Dependencia Financiera en los Municipios Mexicanos' (2013) 3(217) *Revista Mexicana de Ciencias Políticas y Sociales* 139–170.

[79] Joy Langston, *Democratization and Authoritarian Party Survival: Mexico's PRI* (Oxford University Press, 2017).

[80] Brian Palmer-Rubin, 'Evading the Patronage Trap: Organizational Capacity and Demand Making in Mexico' (2019) 52(13–14) *Comparative Political Studies* 2097–2134; Brian Palmer-Rubin, Candelaria Garay, and Mathias Poertner, 'Incentives for Organizational Participation: A Recruitment Experiment in Mexico' (2021) 54(1) *Comparative Political Studies* 110–143.

[81] Guillermo Trejo and Sandra Ley, 'Federalism, Drugs, and Violence: Why Intergovernmental Partisan Conflict Stimulated Inter-Cartel Violence in Mexico' (2016) 23(1) *Polítca y Gobierno: México* 11–56.

9 Covid-19's Impact on the Role of Local Government

Local responses to the many challenges of the Covid-19 pandemic have been limited by the simple fact of limited local capacity, which is particularly evident in health-related matters. Municipalities have been urged to replicate the health and safety strategies outlined by the federal and state governments, namely, social distancing protocols, sanitisation of public offices and spaces, closure of non-essential business, and dissemination of information. The Mexican Network of Municipalities for Health agreed to support the health sector in case detection, with training provided in schools and medical units, and by ensuring the suspension of classes at all educational levels on 20 March 2020.[82] On 7 June 2021, in-person classes were voluntarily resumed in more than 24,000 basic and higher education schools (receiving over 1.6 million students) in 15 states at low epidemiological risk. At the time of writing, the new face-to-face school cycle was scheduled to start on 30 August 2021.

In 2020, local governments tended to focus on containing the economic repercussions of the pandemic. They did so (with some regional variation) by providing modest financial relief to small businesses; tax exemptions; payment extension; discounted service provision and instalment plans; lower rents in public markets; and food supplies. Few local governments imposed fines (or used force) on those who violated curfews. At the same time, some states supported municipalities with advanced or special transfers for personal protective equipment or through tax forgiveness—such measures helped to strengthen coordination between state and local governments and the private sector.[83]

With internet access being limited in Mexico (particularly so among rural and low-income households), the pandemic and social distancing protocols have highlighted the need for local administrations to use the internet, digital communication, and social media to modernise their management of service provision. This move reinforced the international

[82] Martha Patricia Patiño Fierro and Gerardo Cruz Reyes, *Las medidas adoptadas por las entidades federativas ante la emergencia del Covid-19* (Instituto Belisario Domínguez, 2020).

[83] Ibid.

push to promote transparency and automated record-keeping in government procedures on the grounds that systematic information-gathering enables better future decision-making.[84]

From January 2021, local governments and private businesses were allowed to buy vaccines from the approved pharmaceutical brands, Pfizer-BioNTech and AstraZeneca-Oxford. Local governments, as businesses, were encouraged to vaccinate their own employees and had to specify where they would provide such vaccines to the federal health minister to avoid overlap with the National Vaccination Plan. While this decree was intended to expand choices, the federal government also encouraged local governments to contribute to the National Vaccination Plan's purchase of vaccines, so that federal resources might go to other needs.[85]

10 Emerging Issues and Trends

Mexico has been a predominantly urban country (in terms of population) for several decades. Close to 85 per cent of the country's urban population (over 75 million people) live in metropolitan areas, which have grown significantly since the 1990s. There were 37 metropolitan areas in 1990, which increased to 55 in 2000, and 155 metropolitan municipalities in 1990 compared to 345 in 2005.[86] Today, all Mexican states have at least one of the country's 74 metropolitan areas, defined as such given their relatively large population sizes and the number of municipalities that they functionally and socioeconomically integrate—417 in total. As a result of growing suburbanisation in the last 20 years, the peri-urban municipalities that house residents who work in the urban cores have also been incorporated into the metropolitan areas, even though they are often located at some distance from them.[87] Metropolitan areas are

[84] Oscar Y Carrera Mora et al., 'E-Gobierno local en México en tiempos de Covid-19' (2021) 26(94) *Revista Venezolana de Gerencia* 678–695.

[85] Emilia López Pérez, 'México autorizará que empresas y gobiernos locales puedan adquirir vacunas COVID: AMLO' *El Financiero* (22 January 2021), www.elfinanciero.com.mx/salud/mexico-autorizara-que-empresas-y-gobiernos-locales-puedan-adquirir-vacunas-covid-amlo/ (accessed 12 August 2021).

[86] Alejandra Reyes, *From the Top Down: The Governance of Urban Development in Mexico* (IMFG at University of Toronto's Munk School of Global Affairs & Public Policy, 2020).

[87] The criteria for incorporation are a proximity of 15 km or less to the urban core and an average urban density of at least 20 inhabitants per hectare.

defined as having more than 100,000 inhabitants and bringing together two or more municipalities whose socioeconomic functions and activities necessitate shared planning and urban policies. Since 2013, the Ministry of Rural, Regional, and Urban Development (SEDATU) has been placed in control of metropolitan delimitations. It is responsible for establishing the framework for the planning and management of metropolitan development across the three levels of government and facilitating systematic information gathering.

The 2016 General Law on Human Settlements, Regional Management, and Urban Development also provides a definition of metropolitan areas. These are defined as population centres or conurbations containing intricate and significant socioeconomic interactions that result in a regional unit of strategic influence and importance for national development. As a result, this law opened up the possibility of the institutional management of these regions and consequently of supporting local governments in fulfilling their urban development responsibilities when their capacities are limited.[88] Specifically, it prescribes that metropolitan commissions should coordinate the formulation, approval, management, evaluation, and compliance of metropolitan programmes, whereas metropolitan advisory councils should promote public and interinstitutional consultations during such processes.

The commissions as well as councils must be composed of representatives from the three levels of governments, but councils should also include experts and members of civil society. In interstate metropolitan areas, commissions must be made up of representatives from each state and municipality in the area, with a SEDATU chair for the purposes of institutional coordination.

Once metropolitan[89] programmes are approved, municipalities have a year to issue or adapt their urban development plans and programmes so that they align with metropolitan ones. As of 2021, metropolitan planning institutes within the 2016 law are defined as agencies to be formed and operated in coordination by states and municipalities that make up a given

[88] SEDATU-CONAPO-INEGI, *Delimitación de las zonas metropolitanas de México 2015* (2018).

[89] Metropolitan programmes may deal with land-use planning, mobility, public space, housing, urban infrastructure, water management, ecological preservation, waste management, climate adaptation, security, and other actions proposed by the commission.

metropolitan area, although the federal government should also promote and support them.[90]

Regional efforts to promote metropolitan governance have emerged before, and one in particular merits attention. The state legislature of Jalisco promoted and ratified changes in the legal and regulatory frameworks in 2012 to strengthen the capacity of the Metropolitan Planning Institute (IMEPLAN) of its capital, Guadalajara, the second largest metro area in Mexico. While there are a few other metropolitan institutes that carry out research and provide policy recommendations, Guadalajara's IMEPLAN has become a national model. This is because of the legal and administrative powers it enjoys to improve service and infrastructure provision; manage urban growth and the associated risks; and address other environmental and socioeconomic concerns. While the IMEPLAN cannot override local plans, it can revise their alignment with the metropolitan land-use plan (previously approved by the nine municipalities within the metropolitan region).

A source of contention has been that the state government and large core municipalities have been disproportionately influential in agenda-setting, mainly due to their larger financial and institutional capacities. Nonetheless, all municipalities enjoy the same voting power. The institute is financed by a trust funded by the state. Federal funds have also been channelled to it in the past, and there was an unsuccessful initiative to add proportional municipal contributions. However, the feeble nature of municipal finances thwarted this effort.[91]

IMEPLAN has also entered into meaningful agreements with other institutions at various levels, ranging from the state's Human Rights Commission to UN Habitat. International collaboration has resulted too in funding for the institute, mostly for research purposes. The state of Jalisco's metropolitan coordination law facilitated the creation of a metropolitan board composed of the IMEPLAN, municipal mayors, the governor, a metropolitan citizen council, and a metropolitan planning advisory council.[92] The state (through its inter-municipal system of waste

[90] Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano, Diario Oficial, 28 November 2016 (last reformed 1 June 2021).

[91] IMEPLAN, www.imeplan.mx/en/home (accessed 12 August 2021).

[92] Ibid.

management) also entered into an agreement with France to exchange best inter-municipal practices.[93]

Alongside civil society's general support of such an initiative, the Guadalajara/Jalisco case points to the importance of political will and the need for budgetary allocations at the state level to promote metropolitan governance. While this model of governance has begun to be replicated elsewhere, metropolitan coordination efforts at the national level have not yet appeared. Local governments are not always willing to come together or reach a compromise. This failure is often due to their very different financial conditions or their party-political divisions. In addition, the delineation of what metropolitan governance needs to accomplish is contentious, particularly so around topics such as redistribution, affordable housing, and land-use management.[94] Metropolitan coordination mostly occurs when pressing and shared issues at stake, such as those around service provision. It rarely takes place over matters arising from medium- and long-term needs, such as minimising negative externalities, promoting redistribution, or managing environmental concerns. However, it is the case that, both nationally and globally, 'increasingly pressing and shared issues are making more and more cities join forces to address and collaborate on joint or metropolitan agendas'.[95]

Despite the pressing need to coordinate and centralise certain functions, Mexico's federal and state governments continue to promote a top-down model of local governance. In this vertical fashion, the last federal administration imposed Urban Growth Boundaries (UGBs) on 394 Mexican cities or towns. This measure was intended to counteract urban sprawl and to follow the global trend of promoting compact and connected urban development. However,

> the lack of local consultation to implement the UGBs exposes the political and administrative centralization still prevalent in Mexico, as well as the extent to which federal and state-level policies continue to overshadow local administrative and fiscal capacities. Despite being a federalist country, Mexico continues to centralize many of its functions and policy. On the

[93] Gobierno de México, 'Acciones de Cooperación Internacional con Gobiernos Locales', https://bit.ly/36v6i6V (accessed 12 August 2021).

[94] Reyes (n 27).

[95] Ibid., 14.

other hand, local governments have been slow to innovate fiscal, regulatory, and land-use mechanisms to improve their finances and capacities, and to manage adequately matters such as urban development.[96]

Given the de facto power of the executive branch in Mexico, the recent shift to allow for mayoral re-elections may help to incentivise further the local transparency, accountability, innovation, and long-term planning that was previously hindered by short three-year administrations. For significant improvements to occur, the federal and state governments would also have to relinquish more of their administrative and fiscal control and move to supporting the smaller and poorer municipalities—irrespective of the political affiliation of their mayors.

[96] Ibid.

CHAPTER 12

Nepal

Khim Lal Devkota and Gopi Krishna Khanal

Nepal is the youngest federal country in the world. It moved from a unitary system of governance to a federal democratic republican system through a constitution enacted in September 2015. This comprehensive reform created three tiers of governments: federal, provincial, and local. The State power in the previous unitary system was divided into three tiers of government. In terms of functional responsibilities, Nepal's government structure is devolved, with a generally pyramidal distribution of duties (that is, with more expenditure responsibilities at the provincial and local levels and fewer at the federal). In contrast, the Constitution provides most revenue-raising rights to the federal government. The Constitution provides for intergovernmental fiscal transfers to reduce the gap between functional responsibilities and revenue-raising rights. According to this arrangement, the province and local governments

K. L. Devkota
National Assembly, Kathmandu, Nepal

G. K. Khanal (✉)
Government of Nepal, Kathmandu, Nepal
e-mail: gopikhanal@gmail.com

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_12

receive four grant types, namely, fiscal equalisation, conditional, special, and matching grants.

The history of local government in Nepal is more than 100 years old. But it is only through the 2015 Constitution that the local level has been constitutionally empowered. The Constitution clearly outlines the authority of local levels, which specify the exclusive as well as concurrent list of authority and functions.

The Constitution provides local government's ample space within which to safeguard their political, fiscal, and administrative autonomy. It fully recognises them as an integral part of federalism in Nepal. Their powers and functions are broadly outlined in the Constitution, which embraces the principles of federalism, inclusiveness, and republicanism and envisages non-hierarchical relationships among the three levels of government.

The main responsibility of the local level is to deliver essential basic services to the people. The Local Government Operation Act, 2017, provides detailed descriptions of the power and functions of local governments in this regard. They also have some judicial functions.

Local elections are held every five years. At least one-third of women's representation is ensured by the Constitution. After the promulgation of the new Constitution, the local level election was held in May–September, 2017. Exactly 5 years cycle, the second term election was held in May 2022.

Local governments meet their expenditure needs mainly through tax revenues, fiscal transfers, borrowings, and royalties on natural resources. Citizens have great faith and trust in the local level. Nepali citizens have more confidence in the local government than the federal and provincial governments.

1 Country Overview

The Federal Democratic Republic of Nepal extends for about 800 km along the Himalayas. With an area of 147,516 km^2 and a population of about 30 million in 2021, the country is situated in a transitional mountain area between the fertile Gangetic plain of India and the arid plateau of Tibet.[1] The northern mountain belt is girded by the Himalayas,

[1] Asian Development Bank, *Economic Policies for Sustainable Development* (International Centre for Integrated Mountain Development, 1992).

which contain eight of the world's highest peaks including Mount Everest (8848.86 m), the highest of them all. The middle hilly region comprises numerous peaks, basins, and fertile valleys, and is home to Kathmandu, the capital city of Nepal, and Pokhara. The southern part, known as Terai, borders India and contains most of the country's fertile land and dense forests.

Geopolitically, Nepal is landlocked, with the nearest seaport—the Indian city of Calcutta—a thousand kilometres away. Nepal's population derives mainly from the Indo-Aryan and Tibeto-Burman family. Hinduism and Buddhism, the two major religions, have moulded the country's cultural and social fabric since the dawn of history: according to the population census of 2021, 81.19 per cent of people follow Hinduism, one of the oldest religions in the world, while about 8.2 per cent follow Buddhism.[2]

Unlike many other developing countries, Nepal commenced modernisation late in the day and under unfavourable circumstances. The pace of economic development has been slow due to limited modern infrastructure in highly rugged and difficult terrain, scarcity of exploitable natural resources, a small skilled labour force, and a landlocked situation. With a meagre per capita income of a predicted sum of USD 1400 in 2023, the country is struggling to bring sustainable prosperity to its people.[3] In the 2019–2020 financial year (FY), Nepal's gross domestic product (GDP) was NPR 4266.32 billion (around USD 39 billion). The country has narrow fiscal space, as the tax-to-GDP ratio was just 20 per cent for FY 2020/21. National economic growth has averaged 4 per cent over the last decade (2011–2020); it was 6.4 per cent in FY 2018/19. However, due to the outbreak of Covid-19, it declined to minus 2.1 per cent in FY 2019/20.[4]

Nepal adopted a new Constitution in September 2015 that marks a paradigm shift in the system, mechanism, structure, and functioning of subnational governments (provincial and local). Following the declaration of the federal republic through the Interim Constitution in 2006, elections for the Constituent Assembly (CA) were held in 2008. The first meeting of the CA abolished the 240-year-long monarchy, but it

[2] Central Bureau of Statistics, *Nepal Statistical Year Book* (Government of Nepal, Central Bureau of Statistics, 2019).

[3] Government of Nepal, *Economic Survey: FY 2020/21* (Ministry of Finance, 2021).

[4] Central Bureau of Statistics, *Annual Growth Rate of GDP by Economic Activities 2021* (Government of Nepal, Central Bureau of Statistics, 2021).

failed to draft a Constitution and was dissolved in 2012. A second CA was elected in 2013 and succeeded in promulgating the Constitution in 2015. This divides state power between the three levels of government, federal, provincial, and local. Structurally, there are seven provinces and 753 local governments. The functional responsibilities of federal units (federal, provincial, and local) are set out in schedules 5, 6, 7, 8, and 9 of the Constitution, which outline the exclusive and concurrent list of functions of federal units.

The federal parliament in Nepal is composed of the House of Representatives (Lower House) and the National Assembly (Upper House). Of the 275 members of the Lower House, 165 come from the first-past-the-post electoral system, and the rest from a proportional electoral system. The Upper House consists of 59 members. Of these, 56 come from an electoral college composed of provincial parliamentary members and chiefs and deputy chiefs of local governments; the president, on the recommendation of the government, nominates the remaining three members.

The provinces have a unicameral parliamentary system. Out of 550 members in all the provinces, 330 come from the first-past-the-post electoral system and the balance from a proportional electoral system. At the local level, all seats come through the first-past-the-post electoral system. At least one-third of representation is guaranteed for women in all electoral systems (local to federal). The head of state is the president, while the prime minister holds the position of the head of the executive. The role of the president is largely ceremonial—the functioning of the government is managed entirely by the prime minister, who is appointed by parliament.

To be a recognised political party according to election law, one must gain 3 per cent of the votes in the proportional representation electoral system and win at least one seat in the first-past-the-post electoral system. The procedures and rules of a political party should be democratic, and party office-bearers should be elected every five years. In the general election held in 2017, five political parties were able to fulfil these criteria.

The legal system in Nepal is based primarily on the common law, which has been largely influenced by the British common law system. The Supreme Court is the highest legal authority in Nepal and has substantial autonomy from other branches of government. Judges are appointed by a judicial committee headed by the chief justice of the Supreme Court.

Constitutionally speaking, federal units must be accountable to citizens. However, concerns have been raised about how effective voting is in making the governments accountable to the people, given the low levels of awareness among ordinary citizens about their rights and responsibilities. Parliamentary committees have been formed to exercise oversight of governmental decisions, while constitutional bodies such as the Commission for the Investigation of the Abuse of Authority (CIAA), the Office of Auditors-General, and the National Human Rights Commission play important roles in maintaining the vertical accountability of the executive branch of government, including subnational executives. At the local level, a monitoring committee acts under the coordination of the deputy chiefs of local government.

The journey to federalism as mandated by the 2015 Constitution is proceeding well despite the monumental challenges ahead. The shift to federalism has resolved long-standing political conflicts and brought peace in Nepal; substantial responsibilities in local service delivery have been devolved constitutionally to local governments in an unprecedented manner; and for the time being, the country's political landscape seems supportive of local government.

2 History, Structures, and Institutions of Local Government

The history of local governance as the formulation and execution of collective action at local level in Nepal goes back to the early Vedic period (probably 1500 BC), when discourses about life and the universe were organised in an open environment under the leadership of the great saint called Rishi. The Kirats, one of the early rulers in Nepal, divided their territory into clusters, known as 'thumbs', which for administrative purposes were composed of five elected members. During the Lichhavi period (443–1143 AD) each village had a local government institution called '*Panchali*'. It was empowered to collect taxes for the maintenance of irrigation canals, religious monuments, and burial grounds.

During the mediaeval period (1144–1843 AD), the Malla kings in Kathmandu valley devolved some powers and responsibilities to the Panchayat to resolve local conflicts and implement local development. Rana rulers (1846–1950 AD) established 'the Bhotahity Municipal Office', which was the predecessor of Kathmandu metropolitan city,

established in 1976. In 1962, King Mahendra promulgated a new constitution that created the elected local governments known as the District Panchayat, Village Panchayat, and Municipal Panchayat. However, the Panchayats served largely as the administrative outposts of the central government and lacked many features of democratic governance.

When the multi-party democratic system was restored in 1990, the Local Self-Governance Act of 1999 laid the foundation for a system of devolved local government in Nepal. At the time, two-tier systems of local government—the Village Development Committee (VDC) in rural areas, the municipality in urban areas, and District Development Committees (DDCs) at the intermediary level—were institutionalised. There were 75 DDC, 217 municipalities, and 3157 VDCs.[5]

The DDCs were the leading development agencies in the district. They were divided into sub-districts, or *Ilaka*, ranging in number from nine to 17. Each district had a council that served as a district-level parliament. District councils were responsible for approving annual plans and budgets for district development.[6] The DDC had an executive committee comprising a chairperson, vice chairperson, and members. The VDC and municipalities were the lower tiers of local government. Each VDC was divided into nine wards. Municipalities were divided into nine to 35 wards. Municipalities were categorised into metropolitan, sub-metropolitan, and municipalities.

The Local Self-Governance Act of 1999 provided local governments with greater political, administrative, and financial powers to lead, facilitate, and manage local governance.[7] However, due to the Maoist conflict[8]

[5] Gopi K. Khanal, 'Fiscal Decentralisation and Municipal Performance in Nepal' (2016) *Journal of Management and Development* 59–87.

[6] In the unitary system of government, districts (initially 75 but later increased to 77) were established as administrative and development units. Almost all sectoral offices, including security (the army, police, and so on), were based in the districts. There are still some district offices. The District Administration Office, which is a centralised unit of the federal government, does the distribution of identity cards.

[7] Khim Lal Devkota, 'Impact of Fiscal Decentralisation on Economic Growth in the Districts of Nepal', *International Centre for Public Policy Working Papers*, at AYSPS, GSU paper 1420 (International Centre for Public Policy, Andrew Young School of Policy Studies, Georgia State University, 2014).

[8] The Communist Party of Nepal (Maoist) engaged in an armed conflict against the Government of Nepal between 1996 and 2006. The Comprehensive Peace Accord signed with the government on 21 November 2006 ended this conflict. The main goal of the

of 1996–2006, the true spirit of this law could not materialise fully. After 2006, there were no local elections until 2017, when local governments were elected in terms of the new federal dispensation.

In 2015, Nepal adopted a federal system of government, and in March 2016, the following year, the government established a local-level restructuring commission (LLRC). The LLRC initially recommended that there be 719 local governments across the country, but some regional parties were opposed to this number and demanded more local governments in Terai. To address this demand, the government increased local governments to 753, a number made up of 460 rural and 293 urban municipalities.

Urban municipalities consist of metropolitan cities (larger urban municipalities), sub-metropolitan cities (medium-size urban municipalities), and municipalities (smaller-size urban municipalities). There are six metropolitan cities,[9] 11 sub-metropolitan cities,[10] and 276 municipalities in Nepal. Of the country's total population, nearly 63 per cent of people live in an urban municipality—however, urban municipalities comprise only one-third of Nepal's geographical area. Depending on population size and other factors, each local government is divided into between five and 35 wards.[11] Wards are the smallest local government units. There are 6743 such wards across 753 local governments.

At the intermediary level between local governments and provinces, there are 77 District Coordination Committees (DCCs), which are responsible for monitoring and coordinating rural and urban municipalities. The chairpersons and members of these institutions are elected by members of the local government assembly. However, the committees are not as influential as their predecessors, that is, the DDCs. DCCs

Maoist movement was to end 240 years of monarchy and bring a republican governance system.

[9] They include Kathmandu (the capital city), Pokhara, Lalitpur, Bharatpur, Birgunj, and Biratnagar.

[10] They include Janakpur, Ghorai, Hetauda, Dhangadi, Tulsipur, Itahari, Nepalgunj, Butwol, Dharan, Kaliya, and Simara-Jeetpur.

[11] The Government of Nepal determines it in a way such as to establish at least five and a maximum of 21 wards in a rural municipality and at least nine and a maximum of 35 wards in a municipality.

do not have the same revenue rights as the erstwhile DDCs, and their expenditures are borne by the provincial and federal governments.[12]

Local governments in Nepal vary widely in size and capacity. They range in population size from 538 to about one million, and in land area, from 7 km^2 to 2420 km^2. The Kathmandu Metropolitan City (the capital) has the largest population, one representing 3.72 per cent of the national population (Census, 2011). However, no matter how large or small the population or land area, there is no difference between local governments in terms of the power they exercise. Nepal has thus adopted a symmetrical system of power distribution for local government.

In the course of implementing administrative federalism, the government enacted the Employees Adjustment Act of 2017 to create the necessary mechanisms for service delivery at subnational levels. The government integrated about 102,991 civil servants into new roles at the federal, provincial, and local levels; as part of this, 43 per cent of public employees were integrated at the local government level.[13] According to the Department of Personnel Civil Record, there are 138,327 permanent civil service posts in Nepal, of which 66,908 (49 per cent) are in local governments. However, only 44,321 civil servants in the central civil service opted to work under the local governments. The local governments inherited 12,097 staff members from local bodies (their predecessor) and other sectors.[14]

At present, all 753 local governments under the federal structure are fully functional. Most local governments have their own ward-level offices. Each ward has a ward chair and four ward members elected directly from the people. Ward offices are responsible for overall ward-level development. The Local Government Operation Act of 2017 (LGOA) accoutres these offices with dozens of responsibilities.

[12] As per article 220 of the Constitution, its role is, inter alia, (a) to ensure coordination between the rural municipality and urban municipality within the district; (b) to monitor development and construction works; (c) to ensure coordination between the federal and provincial government offices and rural and urban municipalities in the district; and (d) to perform other functions as provided for in provincial law.

[13] Ministry of Federal Affairs and General Administration (2021).

[14] Department of Civil Records, *Annual report 2020/21* (Department of Civil Records, 2021).

Many sectoral offices previously managed by the central government have been transferred to local governments. In the course of the implementation of federalism, 27 hospitals, 308 Ayurvedic Pharmacies, 209 primary health centres, 3809 health posts, 753 agriculture service centres, and 999 veterinary centres were transferred to local levels.[15] There is also progress in increasing the number of these sectoral institutions.

As per the LGOA, the federal government can change the boundary demarcation, number, name, centre, and number of wards of local governments at the recommendation of the respective provincial governments.[16] Local assemblies must pass the proposal by a two-thirds vote and forward it to the federal government through the provincial government. Changing boundaries and ward numbers at the local level should be based on population, geography, and level of development; in this regard, there is a legal provision that two or more local levels can be merged through an amalgamation process. The LGOA, in short, authorises the federal government to declare a Municipality, Sub-Metropolitan City, or Metropolitan City based on the fulfilment of criteria such as population, revenue, level of development, in consultation with the concerned local governments and provincial government.

The cooperative spirit of the Constitution has opened up various opportunities for local governments to collaborate with each other and manage joint investment in matters such as solid waste management, fire control, pollution control, environment management, and local infrastructure. However, as yet there are no formal institutions to guide such mutual cooperation and investment. Local governments thus have acted on their own initiative on many occasions. For example, municipalities in Kathmandu Valley have entered into a memorandum of understanding to manage solid waste management. Similarly, many local governments across the east–west highways in Terai, the southern plain of Nepal, have made joint investments to manage landfill sites and fire trucks. Some municipalities are busy establishing joint authorities to carry out projects that can work to their mutual benefit thanks to improved efficiency. The Innovative Partnership Fund, a federal initiative to invest innovative proposals of local governments, has the provisions for joint investment

[15] Government of Nepal, *Economic Survey: FY 2018/19* (Ministry of Finance).

[16] As per the information of the Ministry of Federal Affairs and General Administration till 25 April 2022, 66 local levels have changed the centre, 21 have changed the name, and 21 have changed both the name and the centre.

in the areas of local economic development, service delivery, and good governance.

Nepal is a country with an abundant stock of social capital generated by the many community organisations that are active in the lives of people and provide them with a cushion of social security. Traditional youth clubs, cultural organisations, mothers' groups, indigenous tribal organisations, religious groups, community forest groups, and many others have a strong influence on the behaviour of local governments, albeit informally. These groups are active in nature conservation, in resolving conflicts, in providing support, in doing public work, and in promoting participatory development. For example, the Tole Lane Organisation (community organisations formed by the local governments) across the country provide community services to the people, mobilising them for public works and offering them support of different kinds.

3 Constitutional Recognition of Local Government

Local governments in Nepal are the creation of the Constitution, and enjoy unprecedented political, fiscal, and administrative powers and responsibilities that are guaranteed by it; as such, they deliver a wide range of specified services within their geographical jurisdictions. Local governments did not have any such constitutional rights prior to Nepal's federalisation. Instead, they exercised decentralised power created by law—even elected officials at that time used to seek legitimacy from their political masters in the national capital, which resulted in weak downwards accountability to the local citizenry.

The 2015 Constitution has given considerable functional responsibility to local governments, including the rights of state power. The federalism envisaged by the Constitution treats the federal units as autonomous to all sets of governments. Article 56 states:

> The main structure of the Federal Democratic Republic of Nepal shall be of three levels, namely the Federal, Provincial and the Local. The Federal, Provincial and Local levels shall exercise the power of the State of Nepal under this Constitution and law.

Accordingly, the Constitution devolves powers and responsibilities to local government as part of unbundling by the Government of Nepal.

As Devotka noted in 2020, most of the federal and subnational governments' laws and regulations, including the LGOA, have stemmed from these exercises in unbundling.[17]

The Constitution provides local governments ample space within which to safeguard their political, fiscal, and administrative autonomy. It fully recognises them as an integral part of federalism in Nepal. Their powers and functions are broadly outlined in the Constitution, which embraces the principles of federalism, inclusiveness, and republicanism and envisages non-hierarchical relationships among the three levels of government.

The Constitution, on the one hand, ensures the autonomy of local governments through their exclusive functions; on the other, through shared concurrent functions it promotes the cooperative principles of federalism that make all levels of government interdependent upon each other. Local governments thus have extensive powers to prepare annual budgets and formulate and implement laws, policies, and plans on any matters within their respective jurisdictions, as provided by article 59 of the Constitution. The Constitution states that the executive power of the local governments shall be vested in the rural municipality executive or the urban municipality executive. It also broadly lists the exclusive and concurrent sources of revenues of local governments. They may levy tax by law on matters falling within their domain without prejudice to national economic policies, on carriage of goods and services, capital and labour market, and on the neighbouring province or local level, as provided by article 228 of the Constitution.

Notably, while the Constitution gives the federal government the right to dissolve provincial parliaments and governments, there is no such provision in the case of local governments. Neither the federal nor provincial government has any right to dissolve local governments. Similarly, there is no provision to remove local-level representatives for any reason other than corruption. There is hence stability at the local level: elected representatives can work with confidence for up to five years.

Furthermore, the Constitution draws no distinction between the rights of local governments depending on whether they are rural or urban

[17] Khim Lal Devkota, 'Intergovernmental Fiscal Relations in a Federal Nepal', *International Center for Public Policy Working Paper Series*, at AYSPS, GSU paper 2013 (International Centre for Public Policy, Andrew Young School of Policy Studies, Georgia State University, 2020).

municipalities. All local governments have equal rights. Likewise, there are no differences between metropolitan cities and municipalities.

Finally, the Constitution provides local governments with an important means to influence the decisions of the federal parliament, albeit implicitly. There is a constitutional provision in article 86 of the Constitution for local governments' representatives to vote for the members of the national assembly, that is, the Upper House of Parliament.

4 Governance Role of Local Government

Local governments in Nepal provide a political space for citizens to participate in public governance at local level. As listed in Schedules 8 and 9 the Constitution grants significant political, administrative, and development roles to local governments in an unprecedented manner, listing 22 exclusive functions and an additional 15 concurrent functions. The exclusive functional responsibilities assigned to the local governments include the city police, management of local services, basic and secondary education, basic health and sanitation, management of local markets, local roads, irrigation, drinking water, small electricity projects, and alternative energy. Some functions are included in the concurrent list of federal, provincial, and local competences. These include education, health, drinking water, irrigation, agriculture, roads, forests, and mines. Local governments have the right to enact laws in the areas of their exclusive functions; however, in the case of concurrent rights, the laws should not contradict federal and provincial laws.

The LGOA is the key federal law for local governments, as it elaborates in detail on the structure, power, functions, and responsibilities of local governments. The constitutional rights of the local governments are enshrined in this law. As per the LGOA, local governments should act as a democratic and accountable government at the local level, ensure sustainable and permanent service to the local community, promote social and economic development, create a safe and healthy environment, and involve the community in the local governance system.

Local governments in Nepal also have some agency functions. For example, they have been involved in the distribution of social security allowances, the updating of voter lists, collection of information about natural disasters, distribution of relief goods, and the implementation of federal programmes during emergencies such as the Covid-19 pandemic. Though the primary responsibility for such functions lies with the federal

government, local governments have been implementing these agency functions. It is a general tendency for upper-level governments to transfer implementation responsibilities to local governments if they do not have their own agencies at local level.

On the administrative front, local governments in Nepal rely on the central government for employing key public officials. However, this is a temporary provision. The LGOA has the provision that employees at the local government level should be appointed through the Provincial Public Service Commissions. These commissions have been formed in all the provinces by 2021. However, due to the lack of civil service law, they have not been able to function properly. Local governments have the authority to determine the size and structure of their workforce. Local assemblies can decide on the number of posts and the organogram of the civil service apparatus on the basis of management surveys. However, the Chief Administrative Officer (CAO), the bureaucratic head of a local government, is deputed by the federal government. The CAO is responsible for executing decisions made by the executive or legislative organs. There is a dispute over whether to send the CAO from the federal government or from the provincial government.

The federal and provincial governments allocate a substantial quantity of resources to local governments in the form of conditional grants with a list of projects. Often these projects are selected at the centre and sent to local governments for implementation. In the case of conditional grants, local governments are often the administrative outposts of the centre and the provinces.

The main responsibility of the local level is to deliver essential basic services to the people. The LGOA provides detailed descriptions of the power and functions of local governments in this regard. The Act even provides a detailed list of functions of the ward committee. Wards are the constituent units of local governments and the units closest to the people for the purposes of delivering local-level services. Unlike in the past, these constituent units have substantial responsibilities, with most of Nepal's local-level civil servants working in ward offices.

Local governments also have some judicial functions. The judicial committee, headed by a deputy mayor or chairperson, serves such a judicial function since it has the key role to resolve local disputes within its jurisdiction. The decisions of this committee are similar to court

decisions. Provision is made for appeals against the decisions of the judicial committee—such appeals can be lodged with district or higher-level courts.

The rural municipality executive and urban municipality executive serve as the executive organs of local governments, and the rural municipality council and urban municipality council, as their legislative bodies. In each local government, the chief and deputy chief (the mayor and deputy mayor in an urban municipality, and the chairman and deputy chairman in a rural municipality), ward chair, and ward members are elected via the first-past-the-post electoral system. These elected representatives nominate two additional members in the rural municipality and three in the urban municipality. Local assemblies formulate policies, rules, laws, and standards, and approve annual budgets and periodic (that is, multi-year) plans.

5 Financing Local Government

The Constitution assigns local governments the powers to raise tax revenue from local taxes such as property tax, house rent tax, house land registration fees, vehicle tax, service charges, tourism fees, advertisement tax, business tax, land tax, and entertainment tax. Details in regard to financing local government[18] are contained in the LGOA as well as the Intergovernmental Fiscal Arrangement Act of 2017 (IGFA). Local governments meet their expenditure needs mainly through tax revenues, fiscal transfers, borrowings, and royalties on natural resources.

Certain revenue-raising rights at the local level overlap with and duplicate similar rights at the provincial level. The land registration fee, vehicle tax, entertainment tax, and advertisement tax are on the list of exclusive revenue headings at both the provincial and local levels. To resolve this problem, the IGFA provides a 'single tax administration system'. What this entails is that one level of government collects revenue and distributes it to the other. For example, the provincial government collects vehicle tax and shares 40 per cent of it with the local governments; with the rest of the overlapping taxes, local governments collect and share them with the

[18] For more information on the fiscal architecture of Nepal's subnational governments, see https://icepp.gsu.edu/files/2021/07/21-12-Subnational-Fiscal-Architecture-of-Nepal.pdf (accessed 20 July 2021).

provinces. Those who collect keep 60 per cent and share the remaining 40 per cent with others.

The IGFA provides the provinces with the right to determine the tax base and rate of these shared taxes. With other tax revenue rights, local governments have the power to choose the tax base, assess the tax base, decide the tax rate, collect the tax, and retain the tax proceeds. They have full autonomy to formulate policies and plans in regard to these non-shared tax sources—it is not necessary to follow the federal or provincial governments' directives. This is in line with article 60 of the Constitution, which states that 'the local level may impose taxes on matters falling within their respective jurisdiction and collect revenue from these sources'.

The federal government 'owns' more than 80 per cent of all revenue, but this does not mean that it uses all the revenue it raises. Part of this revenue goes to the subnational units through revenue-sharing and fiscal-transfer channels.[19] Local government' share of revenue from natural-resource royalties is distributed to local government mostly on the basis of derivation, that is, sharing is based largely on the location where the resource is exploited. Revenue from value-added tax (VAT) and internal excise duties are shared on a grant basis, with the central government distributing such revenue to provinces and local governments on the basis of a formula determined by the National Natural Resources and Fiscal Commission (NNRFC). Local governments have a legal entitlement to receive 15 per cent of fiscal resources from VAT and excise duties from domestic production under the revenue-sharing arrangement. The IGFA has the provision to distribute 25 per cent of royalties from natural resources to local governments. These natural resources include mountaineering, forestry, electricity generation, and mining. The Constitution's royalty-distribution provisions in regard to natural resources are placed on the concurrent list of all three levels of government. As per the IGFA, the NNRFC sets a formula for the horizontal distribution of VAT, excise duty, and natural-resource royalties.

Article 60 of the Constitution states that the amount of fiscal transfers to subnational entities will be as per the recommendation of the NNRFC and that the entities receive four types of grants: a fiscal equalisation grant,

[19] Devkota (n 17).

a conditional grant, a special grant, and a matching grant. Local governments in Nepal receive fiscal transfers from all these four sources on a regular basis. Intergovernmental fiscal transfers are important instruments to correct vertical and horizontal fiscal imbalances in the fiscal capacities of local governments. The federal government sets the total grant pool—the NNRFC's role is to set the formula and criteria for the allocation.

Local governments in Nepal are also entitled to receive fiscal transfers from their respective provinces. The provinces have demonstrated commitment to the spirit of the Constitution in this regard in that they have been duly providing fiscal equalisation grants to their local governments on the basis of a formula set by the NNRFC. They also provide conditional grants, special grants, and matching grants to local governments.

The NNRFC is the key institution to design intergovernmental fiscal transfer mechanisms that reduce instances of vertical and horizontal fiscal imbalance. Based on its roles and responsibilities as stipulated in article 251 of the Constitution, the commission makes recommendations for the implementation of fiscal federalism and for the mobilisation of natural resources to all tiers of government. In particular, the NNRFC's role is crucial in designing and implementing a balanced and transparent intergovernmental fiscal transfer mechanism and in resolving potential disputes that could arise between the tiers of government, especially in the areas of fiscal-sharing and natural-resource mobilisation. The NNRFC is the custodian of fiscal federalism in Nepal.

The IGFA states that local governments cannot obtain any kind of foreign grant or assistance without prior approval of the federal government, and nor can they implement any plan or programme with foreign grant or assistance without written permission from the federal Ministry of Finance. Similarly, in the case of internal loans the legal provision is that they may take out such loans only provided that they obtain the consent of the central government before doing so. As per the IGFA of 2017, the NNRFC sets the maximum threshold of internal loans. As decided by the NNRFC, local governments may borrow up to 12 per cent of their revenue from own-source revenues and revenue-sharing.[20]

[20] Internal loan-limit recommendations by the NNRFC to the federal, provincial, and local governments for the financial year 2020–21.

For purposes of local borrowing, there exists an old entity called the Town Development Fund (TDF).[21] To borrow from it, local governments do not need any approval from the federal government. The TDF is a specialised agency of the federal government that provides loans to local governments and mainly so to urban municipalities.

To look at the revenue basket of local governments, their total revenue in FY 2018/19 amounted to NPR 343 billion. Of this revenue, grant transfers, revenue-sharing, tax revenue, and cash balances[22] amounted to NPR 226 billion (65.89 per cent), NPR 49 billion (14.29 per cent), NPR 27 billion (7.87 per cent), and NPR 41 billion (11.95 per cent), respectively.[23] In regard to revenue-sharing, the revenue above includes vehicle-tax-sharing with provinces. Similarly, in regard to fiscal transfers, grant transfers from provinces are also included. It is not clear, though, how much of the total revenue at the local level comes from the provinces, given that the provinces' revenue base has not been established properly yet. The provincial contribution to local-level revenue can be estimated at roughly 10 per cent.[24]

Local-level expenditure in FY 2018/19 amounted to NPR 269 billion, or 24.23 per cent of national expenditure. Furthermore, the share of local government expenditure in GDP for FY 2018/19 amounted to about 8 per cent. The local level spent about 79 per cent of the total revenue of NPR 343 billion in FY 2018/19. There is no official breakdown of sectoral expenditure in the total expenditure at local level. Going by newspaper reports, however, the lion's share of it would appear to have been on road infrastructure.

The budget of the federal government for FY 2020/21 was NPR 1474 billion. Of this budget, the local level received NPR 324 billion (about 22 per cent) in fiscal transfers including revenue-sharing. By contrast, the

[21] Formed in 1989, it is the only autonomous financial intermediary institution established by the Government of Nepal. It provides debt financing to the urban local governments. The government is developing this entity as an infrastructure-financing entity for all the subnational levels.

[22] Unspent budget allocations from a previous year are called a 'cash balance'. This amount includes fiscal equalisation grants and internal revenue. Other grant types return to the granting body.

[23] Office of the Auditor General, *57th Annual report of Office of the Auditor General* (2020).

[24] Ibid.

provinces received only NPR 161 billion (10.92 per cent). Of the NPR 324 billion transferred to the local level, NPR 161 billion (about 50 per cent) includes conditional grants, most of which were for school teachers' salaries. The fiscal equalisation grant (unconditional) contributed 28 per cent.[25] Similarly, out of the total provincial budget of NPR 264 billion for FY 2020/21, the provinces transferred about 11 per cent of it to the local level.[26]

Whatever the category of grants, fiscal transfers to the local level reveal that vertical allocation is smooth and well balanced. There are no complaints among local-level representatives about the grants allocated to them. Indeed, the fiscal equalisation grant, revenue-sharing, and natural-resource royalty-sharing are formula-based—the NNRFC designs the need-based formula and recommends it to the federal and provincial governments.[27]

As per the IGFA, the local level has to follow the federal government's prescribed revenue and expenditure tools, including in regard to accounting and reporting of financial transactions. The local level must follow the chart of accounts set by the federal government for recording income and expenditure. The Office of Auditors-General, a constitutional body noted earlier, is responsible for auditing the financial records of all levels of government, including those of local governments.

6 Supervising Local Government

Local government in Nepal is based on the principle of subsidiarity and interrelationship without subordination. However, there remain plenty of areas where superior levels of government can override the laws and decisions of local governments, given that they are empowered to issue recommendations and instructions to local governments not to go beyond the Constitution and the law—recommendations and instructions with which the local level must abide. In this regard, article 232(8) of the Constitution states that

[25] For detail on this grant, see https://icepp.gsu.edu/files/2020/11/paper2017a.pdf (accessed 21 July 2021).

[26] See https://kathmandupost.com/columns/2021/03/07/three-years-of-provincial-governments (accessed 21 July 2021).

[27] For more on formula-based transfers, see the NNRFC's website at https://nnrfc.gov.np/ (accessed 21 July 2021).

> the Government of Nepal may, directly or through the provincial government, render necessary assistance to, and give necessary directives to, any local governments, under this Constitution and the federal law. It shall be the duty of local governments to abide by such directives.

On the basis of this provision, the federal government's liaising ministry, the Ministry of Federal Affairs and General Administration, issues circulars to local governments on matters such as staff management and service facilities, financial statements, and planning and budgeting. In turn, local governments have complained that the federal government has not paid much attention to capacitating them in the years since the local elections of 2017.

Article 56 of the Constitution divides state power between the federal, provincial, and local levels. Under the Constitution, the executive power of the federal and provincial governments is vested in the federal and provincial council of ministers, respectively. However, the provision that executive power at the local level is, as per article 214(1), also subject to federal law has led to speculation that the local level must abide by all laws issued by the federal government. In drafting laws, local governments have to follow the law-making process provided by their provincial government, as stipulated by article 226(2). The local government assembly's meeting procedures and rules, the formation of committees, and facilities receivable by members of local government levels shall be based on provincial laws, as provided by article 227 of the Constitution.

Moreover, as regards concurrent rights, the Constitution states that local government laws shall not contradict those of the federal and provincial governments; in the case of exclusive functions, they have been given autonomy. However, the Coordination and Intergovernmental Relationships Act of 2020 stipulates that any law at the local level should not contradict the laws of the federal and the provincial governments. Local government officials are of the view that this law, too, has interfered with the exclusive rights of the local level.

In addition, there are 13 different constitutional commissions in Nepal, among them the CIAA, Office of Auditor General, and NNRFC. These bodies play crucial roles in holding the three levels of government accountable to the Constitution and the rule of law; in particular, they have the right to provide advice and instruction to local governments on their thematic areas. For example, the CIAA gives instructions on corruption-related issues, the Office of Auditor General on accounting,

auditing, and fiscal discipline issues, and the NNRFC on aspects of fiscal federalism. There are also various sectoral committees in the federal and provincial parliaments. These committees likewise have the power to draw attention to local-level issues and direct local governments to improve their governance.

That having been said, the court is the most powerful body for giving instructions when decisions are made outside the Constitution and law. In October 2019, the Supreme Court ordered local governments not to provide the monthly salary for elected local government representatives. There is no provision for providing the salary to local representatives in the Constitution. However, local representatives are entitled to get some allowances and other basic facilities as per the law made by the respective provinces.

The Ministry of Federal Affairs and General Administration is the focal ministry of local government. The Chief Administrative Officer of local government is deputed by this Ministry. Their main roles are to administer local staff and execute the decisions of their respective local government. Though the local governments are the creatures of the Constitution, Nepal has largely adopted the Dillion's rule whereby local governments have the power only to do what is expressly authorised by the Constitution.

One of the fundamental features of local governments in Nepal is that they enjoy security and predictability of tenure. There is no provision in the Constitution for dissolving local governments, nor is there any provision to impeach locally elected officials. The posts of locally elected officials become vacant only when they die, resign, or are officially charged with corruption in court by the CIAA.

The umbrella law for local government, that is the LGOA, stipulates that local governments' periodic, annual, and strategic sectoral plans should be consistent with the policies, goals, objectives, timelines, and processes of the federal and provincial governments' plans. Similarly, the IGFA states that local governments' expenditure and accounting systems should be in line with that of the federal government.

The federal government recently rolled out the local government institutional self-assessment (LISA) framework to assess the performance of local governments. A monitoring tool driven by the federal government, the framework contains 100 performance-related indicators. Each local government is to carry out an annual self-assessment, discuss the scores in its assembly meeting, and report its achievements to the federal

and provincial government. The Ministry of Federal Affairs and General Administration is to publish an annual consolidated report that ranks local governments on the basis of their scores. The objective of the framework is to foster positive competition among local governments in improving service delivery and governance.

7 Intergovernmental Relations

Nepal has adopted a model of cooperative federalism in which all three levels of government are bound to support each other, interact with each other, and develop effective relationships among themselves in order to fulfil their roles and responsibilities for the benefit of citizens at large. Article 232 of the Constitution stipulates that relations between the federation, the provinces, and the local level are based on the principles of cooperation, coordination, and co-existence. The Constitution makes several provisions for vertical and horizontal coordination in order to foster a non-hierarchical relationship between the three levels of government. A range of institutional mechanisms are established to this end, on the basis that strengthening intergovernmental relationships is crucial for the functioning of political, fiscal, and administrative federalism.

Local government associations are important vehicles for consolidating horizontal coordination among local governments. These institutions have provided the political space for local governments to discuss common issues and exercise their rights collectively. Currently, there are three such associations: the Municipal Association of Nepal (MuAN), the National Association of Rural Municipalities in Nepal (NARMIN), and the Association of District Coordination Committees of Nepal (ADCCN). The MuAN coordinates municipalities, while the NARMIN does so for rural municipalities; the ADCCN[28] works at the intermediary level and was established in 1995. As the DCCs do not have a significant role under the federal Constitution, their presence is almost negligible. However, the MuAN and NARMIN have been influential in advocating for the rights of local governments. During the drafting of the LGOA, local government associations made concerted efforts to convince political

[28] Before the advent of federalism, the District Coordination Committee (DCC) was called the District Development Committee (DDC) and was highly influential. Now that the DDC has been scrapped and replaced by the DCC, the latter does not have any significant role.

elites to spell out their roles and responsibilities clearly in the Constitution, particularly given that some of these elites were in favour of keeping local governments under the shadow of the provinces.

The Ministry of Federal Affairs and General Administration is the local government's contact point with the federal government. Under the former system of unitary government, it was influential in providing strategic guidelines to the then local governments, but in the federal system its role has changed significantly in that it no longer has any fiscal power over them; nevertheless, it can now influence local governments through the Chief Administrative Officers which it deputies. At the provincial level, the Office of the Chief Minister and Council of Ministers is the contact point for local governments. In practice, they have been in contact with any of the ministries as per their requirements, though there is a legal provision in the LGOA that have to make such contact through the Ministry of Federal Affairs and General Administration.

The Constitution has given state power to the local level and established the latter's relationship with the federal and provincial levels on a non-hierarchical basis. However, as in a hierarchical order, the federal government—whether directly, or indirectly through the provincial government—may give necessary directives to local governments. Article 235 of the Constitution states that the federal parliament shall make the necessary laws to maintain coordination between the federal, provincial, and local levels. Accordingly, the federal government enacted the Intergovernmental Relation (IGR) Act of 2020. This law governs vertical and horizontal coordination among the three tiers of government in the areas of planning, budgeting, legislation, and public financial management, among many others. It stipulates that the local level shall not pass any law that contradicts the laws of the federal and provincial governments. The IGR Act also provides some broad guidelines for the federal government. For example, its article 3 states that the federal and provincial government shall not encroach upon the exclusive rights of the local level.

In a similar vein, the provincial parliament has the authority to draft a coordination law to settle political disputes between provincial and local governments and between local governments. As of October 2021, no provinces had enacted this law—all the provinces were waiting for a federal coordination law.

On the operational front, the LGOA requires that local governments' plans and programmes must be aligned with those of the federal and

provincial levels: local governments have to formulate and implement periodic, annual, strategic, and sectoral medium-term development plans in pursuance of the policies, targets, goals, timelines, and processes of the federal and provincial governments. On the fiscal front, the IGFA has devised several cooperation and coordination mechanisms for the three tiers of government. The deadline for the submission of budgets by the local levels is provided in this federal law, which states that local governments should follow federal economic and fiscal policies as well as prepare a periodic statement of income and expenditures in a framework prescribed by the federal government. In particular, they should submit quarterly statements of their income and expenditures to the federal finance ministry within 30 days of the end of each quarter.

For its part, the IGR Act establishes a Provincial Coordinating Council to enable provincial and local governments to discuss issues of planning and implementation. The Chief Minister chairs the council, and provision is duly made for local governments to be represented in this body. Similarly, the IGFA provides for an Intergovernmental Fiscal Relations Council to discuss financial management issues. The federal finance minister chairs this council. All the provincial finance ministers, including some of the local-level representatives, are its members. The federal government nominates each one of the local-level representatives from the provinces. In addition, as per the IGR Act, local-level representatives are entitled to participation in the National Coordination Council and other thematic Committees, as a result of which local-level voices also heard in these forums.[29]

8 Political Culture of Local Governance

Nepal has adopted a multi-party federal system to steer its governance. Articles 269–72 of the Constitution outline the structure and functions of political parties; at an individual level, any person eligible in terms of the relevant laws can stand for election, but there is little prospect of independent candidates winning elections. However, in the local election of 2022, independent candidates won seats in key cities like Kathmandu, Dharan, Dhangadi, and Janakpur. Local executives and local assemblies

[29] For more on IGR institutions and related matters, see https://icepp.gsu.edu/files/2020/07/paper2013.pdf (accessed 21 July 2021).

are strongly influenced by party politics, with the result that electoral success depends largely on affiliation with a popular political party. In areas dominated by particular ethnic communities, a candidate's ethnicity is also an important factor, given that ethnic and minority communities generally prefer candidates from their own communities.

Local elections are dominated by both the general local-level development agenda and the area-specific service delivery agenda. Local roads, sanitation, local employment, drinking water, irrigation, local health, and education—these are the key priorities among local-level voters in Nepal. Incurring campaign expenditures in pleasing voters before election day is something that matters in rural constituencies, and candidates often vie among each other to attract voters through informal channels.

Local elections are held every five years. At least one-third of the seats in local executive and local assemblies are reserved for women representatives. In nominating two candidates (mayor/chairman and deputy mayor/deputy chairman) for election, each political party must nominate at least one woman. The country's first local elections under the federal system were held in 2017 in three rounds: on 14 May, 28 June, and 18 September. According to the Election Commission of Nepal, voter turnout was 73.81 per cent for the first round, 73.38 per cent for the second, and 77 per cent for the third.[30] A total of 35,041 local representatives were elected, of whom 14,352, or 40.96 per cent, were women.[31] In the 2022 election, the women ratio is 41.22 per cent. As noted, there is a mandatory provision in the law that party-political nominees for chief and deputy chief must be gender-representative—if a party nominates a man as chief, the nominee for deputy chief must be a woman, and vice versa. As a result of this affirmative action, most of the deputy chiefs of local governments are women.

9 Covid-19's Impact on the Role of Local Government

A 31-year-old Nepali student who came to Nepal on 9 January 2020 from the Chinese city of Wuhan and was diagnosed with Covid-19 on 23 January 2020 was the country's first recorded coronavirus case; the first

[30] Local Level Election Result, 2017, Election Commission of Nepal.

[31] Ibid.

death occurred on 14 May 2020. A countrywide lockdown came into effect on 24 March 2020 and ended on 21 July 2020. In response to the second wave of the pandemic, the country was again locked down for about 60 days (in April–June 2021).

The outbreak of Covid-19 has had a serious impact on Nepal's economy. In FY 2018/19 the country's economic growth stood at 6.4 per cent, with the government projecting 8.5 per cent in FY 2019/20, but it declined to negative 2.1 per cent.[32] According to the Central Bank of Nepal, 61 per cent of industries and businesses were completely closed[33] during the pandemic period, while, according to government sources, Nepal lost about NPR 200 billion[34] in GDP in FY 2019/20.

On 29 February 2020, the government formed a high-level committee under the leadership of the Deputy Prime Minister to prevent and control the spread of Covid-19. A month later, it was disbanded and another powerful organisation, the Covid-19 Crisis Management Centre (CCMC), was established. At the subnational level, provincial-level crisis management committees (PLCMCs) were formed, with the mayors of provincial capitals serving as ex-officio members. The PLCMCs were responsible for coordinating local governments and mobilising resources to control the pandemic. Local governments worked closely with the people to implement the federal and provincial governments' policies, rules, and directives.

Local governments were in direct, daily contact with the people in the prevention and control of the outbreak of Covid-19, playing an important role in the medical and non-medical sectors. Many of the steps taken by local governments were common ones, but some were original and creative. During the pandemic, they facilitated the implementation of the federal government's nationwide blockade in their localities, mobilised local communities to raise awareness, and spent their own resources for prevention, control, and treatment. They also mobilised resources from

[32] Information on the current economic situation of the country. Ministry of Finance, July 2021.

[33] See https://www.nrb.org.np/contents/uploads/2021/01/Follow-up-Survey-Report-on-Impact-of-COVID-19-in-Nepalese-Economy.pdf (accessed 5 April 2021).

[34] See https://ekantipur.com/news/2020/11/05/160453834768582797.html (accessed 5 April 2021).

various sectors and conducted public awareness campaigns and health programmes.

Local governments in Nepal operated frontline health desks, managed quarantines, ran isolation centres, set up swab collection booths, identified infected areas, conducted contact tracing, helped to collect swabs, facilitated health care by purchasing PCR (polymerase chain reaction) testing equipment and other equipment, and formulated guidelines and procedures on various issues, including isolation centres. They regularly fed information about the disease transmission to provincial and federal health information systems. They also worked to boost the morale of infected people, provided necessary equipment and medicines, and delivered food and other relief items to targeted groups, including the poor and vulnerable. They identified and collected information about people who arrived from inside or outside of the country, provided door-to-door health care, helped schools run virtual classes, assisted in the collection and distribution of farm products such as milk, fruit, and vegetables, and provided risk allowances as an incentive for staff directly involved in combatting the pandemic, including security personnel.

Each local government set up a separate fund to distribute relief packages. The federal and provincial governments also assisted in the distribution of relief and the management of quarantines and isolation centres by local governments. Local governments were authorised by the federal and provincial governments to spend the amount of the fiscal equalisation grant and revenue-sharing on pandemic-related tasks.[35] Some local governments ran food banks for relief distribution; a few even set up 'labour banks' to aid the employment of marginalised people. In addition, local governments brought tax-exemption programmes to citizens, and issued incentive grants so as to increase agricultural production.

Since the pandemic broke out, the health sector's physical and human infrastructure at local levels has improved significantly. At first, Nepal had no laboratory facilities to test for Covid-19; at the time of writing, it had about a hundred such facilities throughout the country.[36] Similarly,

[35] See https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7775003/ (accessed 5 April 2021).

[36] Outbreak of COVID-19 Prevention and Control Efforts by different levels of government, a study report by Ministry of Federal Affairs and General Administration, March 2021.

the first Covid-19 patient had to be taken to the capital city of Kathmandu for treatment—even there, only one or two government hospitals could provide treatment; currently, more than six dozen hospitals across the country can treat Covid-19. Of the country's 753 local authorities, 349 have had no access to any kind of hospital within their geographical boundaries.[37] To fill this gap, the federal government launched a programme to establish at least one health facility in every local government. The pandemic, in short, has provided the impetus for improving local-level self-reliance in terms of health infrastructure and for increasing Nepal's decentralisation of health services.

When the catastrophic earthquake of 2015 hit Nepal, there were no elected representatives at the local level. The local governments run by civil servants provided services, including relief distribution, in coordination with local political parties, but there were some structural problems in managing relief, rescue, and post-earthquake reconstruction in the absence of elected representatives. Elected local governments have been relatively more successful in handling the Covid-19 pandemic. Indeed, when there is a crisis in a country, citizens appreciate the importance of having an elected government at their doorsteps. In the case of Covid-19, elected local governments have demonstrably been the drivers of Nepal's frontline response to the pandemic. Among other things, they were instrumental in enabling foreigners to reach their homes safely during the lockdown. Overall, the pandemic and its challenges have seen a sense of self-worth develop at the local level.

10 Emerging Issues and Trends

With the promulgation of the Constitution in 2015, Nepal has embarked on the journey of federalism as the roadway of its politics. Despite some contested views about the federal system among political actors, federalism has become an integral part of governance in the country. Contemporary political forces are bound to consolidate this system of governance despite the likelihood of a few bumps in the road ahead towards the actualisation of its full benefits. The elections held in 2017 erected the very foundations of federalism in Nepal. All levels of government from centre to local now have elected officials; the provinces

[37] Ministry of Federal Affairs and General Administration information, as of April 2022.

have begun to emerge as strong presences; and local governments have been functional in many ways, enabling them to become the proximate government of the people.

As is the case elsewhere, Nepal is urbanising at an increasing pace, and this transformation is irreversible. With about 66.8 per cent of its population living in urban municipalities, the country has reached a critical point in the need to generate economic opportunities and provide access to basic urban services such as infrastructure, sanitation, education, housing, and health care in a planned and coordinated manner. Of a total of 753 local-level entities, 293 are urban municipalities[38] and 23 of them have a population of more than 100,000. But given the pace of urbanisation, local governments have not been able to keep up with the demand for urban services, and nor have they been successful in creating employment and income opportunities, as a result of which job-seeking youths are forced to go abroad. Managing urbanisation and financing urban services will be the challenging issues for local governments in the time to come.

Many local governments are facing an acute shortage of the human resources they require in order to carry out their day-to-day business. Most of the former local-level units have now been transformed into wards, with the offices of ward committees becoming the backbone of the local governments that are responsible for delivering the majority of local services. These offices do not have a sufficient number of critical human resources, including ward secretaries—some ward offices do not even have their own office buildings.

Despite their security of position under the Constitution and the unprecedented level of power and authority vested in them, local governments are struggling to become vibrant, dynamic institutions that serve the interests of the local citizenry sustainably and inclusively. A persistent problem is elite capture at local level, as a result of which local bureaucrats and politicians are inclined to serve their own interests rather than those of the local public. These Leviathanesque tendencies are often criticised in Nepal. De jure, local governments are autonomous in their jurisdictions; de facto, they are controlled by political bosses at the regional and/or central level.

The Constitution of Nepal does not permit the local level to seek direct cooperation with foreign development partners such as international

[38] Khim Lal Devkota, 'Kathmandu Metropolitan City in the Throes of Urbanisation', *An Annual Publication of Kathmandu Metropolitan City* (2020).

NGOs. Instead, this has to be sought with the permission of the federal government—the prior consent of the federal government is required to maintain relations with the international community. However, a substantial number of local governments in Nepal have sister relations with local governments in foreign countries, relations which have helped many local governments to mobilise foreign cooperation for mutual benefit on an informal basis. For example, Kathmandu Metropolitan City has relations with 16 cities,[39] among them the American cities of Boulder, Fredericksburg, and Rochester. Likewise, MuAN is a member of CITYNET and United Cities and Local Governments, with its president having been elected in 2021 as president of the latter's Asia–Pacific chapter.[40] Nevertheless, the federal government has not been flexible when it comes to the growing interaction that local governments enjoy with the outside world. Balancing the forces of localisation and globalisation will be challenging tasks in the future.

When the Constitution was being drafted, there was talk of keeping the local level under the thumb of the provinces, but by the time it was promulgated, local government had been given its own constitutionally enshrined autonomous identity. Now such talk has begun to return, with provincial authorities believing that the local level should be under their control. There is thus a problem in the coordination of the provinces and the local levels. A further, or perhaps underlying, problem is that the provinces tend to discount the local levels, while the local levels tend to undermine the provinces.

There are significant overlaps and duplications in functional assignments among the three levels of government. The Government of Nepal needs to update the unbundling report and implement it accordingly. The federal and provincial governments should enact all laws related to the concurrent lists of the Constitution. This would enable local governments to pass laws in accordance with the provisions of federal and provincial laws. A comparison of the laws drafted by different levels of government shows that certain of them have overlapping, even conflicting, provisions. For example, some provisions of the Industrial Enterprise Act not only contradict the LGOA but violate the very principle of subsidiarity embedded in the Constitution.

[39] See http://kathmandu.gov.np/kmc-relation/?lang=en (accessed 5 April 2021).

[40] Information provided from the Municipal Association of Nepal.

Fiscal federalism is the lifeblood of federal governance, yet it is weakened by the horizontal and vertical fiscal gaps that are evident among local governments. In particular, the fiscal dependency of rural local governments on the centre is very high. While relatively urban municipalities are in a better position than them to mobilise own-source revenues, the majority of the rural municipalities depend on central transfers to meet their current expenditures. The federal and provincial governments should thus seek to build local capacity through initiatives such as the Provincial and Local Governance Support Programme.

Lastly, the Constitution has mandated the NNRFC as the custodian of fiscal federalism and given it the task of slicing up and sharing the fiscal cake according to the expenditure needs of subnational governments. The efficacy of fiscal federalism will thus be determined largely by the effectiveness of this independent constitutional institution. As such, it will have to be strengthened to ensure a rational allocation of fiscal resources to local governments.

CHAPTER 13

Nigeria

Rotimi T. Suberu

Major constitutional reforms in Nigeria positioned local government as the third tier of the country's federal system after the central government and the states. The reforms entrenched the boundaries of Local Government Areas (LGAs); codified a schedule of exclusive, advisory, and concurrent functions for the localities; mandated the transfer of federal and state revenue to local authorities; and guarantee the existence of democratically elected local councils. Despite the grand constitutional rhetoric of three-tier federalism, however, local government in Nigeria remains chronically weak and thereby contributes to the violent instability plaguing the north-east and other areas of the country.

A burgeoning literature has identified multiple factors driving the travails of Nigerian local government: persistent intergovernmental contestation over the constitutional status of localities; relentless agitation for reorganisation of local boundaries; inadequate funding and professional staff; the unresolved roles of traditional chieftaincy institutions; and massive corruption and mismanagement. Essentially, however, local government in Nigeria has hardly been reflective of the agency of local

R. T. Suberu (✉)
Bennington College, Bennington, VT, USA
e-mail: rsuberu@bennington.edu

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_13

grassroots' communities. Instead, the centralising agendas of a paternalistic federal government, and the political machinations of predatory subnational state governments, have undermined the development of truly local institutions of government. The pages that follow examine the historical, constitutional, and intergovernmental contexts of Nigeria's delocalised local government system, an exploration that begins with an overview of the country.

1 Country Overview

Located in West Africa and endowed with a landmass of 924,000 km^2, Nigeria is bordered to the south by the Gulf of Guinea, to the west and east by Benin and Cameroon, and to the north by Niger and Chad. Africa's most consistently federal polity, Nigeria is also the continent's demographic giant, a multi-ethnic colossus, and the biggest oil producer with the largest economy. Along with its cyclical alternations between military and civilian regimes, Nigeria's complex ethnic demography and oil-centric political economy have shaped the evolution of its local government and federal systems.

With an estimated population of 220 million in 2021, and an annual population growth rate of 2.5 per cent, Nigeria is expected to displace the US as the third most populous country in the world by 2050. This population includes three major ethnic groups (the Muslim Hausa-Fulani in the north, Christian Igbo in the south-east, and religiously bi-communal Yoruba in the south-west), more than 200 smaller ethnolinguistic communities (the so-called ethnic minorities), and about equal numbers of Muslims and Christians.

The imperative to regulate this enormous diversity animates the development, redesigns, and dynamics of Nigerian federalism. Successive military administrations, in particular, have sought to cauterise the combustible centrifugal instability inherent in Nigeria's diversity by fragmenting large regional governments into smaller constituent states and by empowering the localities in order to 'further weaken the states'.[1] From only three ethnic-majority-dominated regions at independence in 1960, the Nigerian federation today consists of 36 constituent states and the federal capital territory of Abuja, 774 constitutionally designated local

[1] World Bank, *State and Local Governance in Nigeria* (2002) 8.

government areas, and six quasi-official geopolitical zones: the Northwest, Northeast, and Northcentral zones in the more populous, predominantly Muslim, and poorer northern half of the country, and the Southwest, Southeast, and South-South (Niger Delta) zones in the predominantly Christian and less populous, but oil-rich, south.

Oil revenues decisively influence politics and governance in Nigeria. Petroleum exports increased from 26 per cent of total exports and 7 per cent of public revenues in 1965 to 93 per cent of exports and 82 per cent of government revenues by 1974.[2] Despite volatile global oil prices and recent increases in Nigeria's non-oil tax revenues, the country's political economy continues to be 'built around a model of centrally redistributed oil money'.[3] Oil revenues have facilitated the political centralisation of the federation, while compounding the country's governance and socioeconomic challenges.

Although it is regarded as a middle-income country, with a 2019 gross domestic product (GDP) of about USD 448.1 billion, Nigeria belongs within the low human development category. According to the World Bank, 40 per cent of the Nigerian population live below the poverty line, while another 25 per cent are vulnerable.[4] Despite repeated official attempts at governance reform, multiple economic and political woes continue to plague Nigeria: extreme rates of unemployment and underemployment; sluggish non-oil growth; failure to diversify public finances away from dependence on hydrocarbons; double-digit inflation; high debt service payments; huge infrastructural gaps; low spending on health and education; weak institutions; complex security crises; and rampant ethno-political instability. The Boko Haram Islamist insurgency in the Northeast, for instance, has killed an estimated 350,000 people and displaced more than three million.[5]

After the collapse of a parliamentary-style First Republic (1960–1966), two extended periods of military rule (1966–1979 and 1984–1999), the failure of a presidential Second Republic (1979–1983), and the abortion

[2] Peter Lewis, *Growing Apart: Oil, Politics, and Economic Change in Indonesia and Nigeria* (University of Michigan Press, 2007) 56.

[3] Sarah Burns and Oliver Owen, *Nigeria: No Longer an Oil State?* Oxford Martins School Working Paper (2019) 3.

[4] See www.worldbank.org/en/country/nigeria/overview (accessed 29 August 2021).

[5] International Crisis Group, 'Managing Vigilantism in Nigeria', Africa Report No. 308, 21 April 2022, 3.

of a protracted transition to the Third Republic (1986–1993), Nigeria inaugurated its Fourth Republic in 1999. Under the 1999 Constitution, the Nigerian president is elected for a maximum of two four-year terms on a plurality-plus-geographical-distribution rule: to be successful, a candidate for the Nigerian presidency must win the highest number of votes and at least a quarter of the votes in two-thirds of Nigeria's 36 states and in Abuja. Successful candidates for state governorships similarly can serve only a maximum of two four-year terms and must win a plurality of votes plus a quarter of votes in two-thirds of the LGAs in their respective states.

Nigeria's bicameral federal legislature and unicameral state legislatures, by contrast, are elected for unlimited four-year terms on a simple plurality rule in single-member districts. The country's federal Senate consists of 109 legislators (including three senators from each state and one senator from Abuja), while the federal House of Representatives comprises 360 members.

Elections to federal and state executives and legislatures are conducted by an Independent National Electoral Commission (INEC), while local government elections are conducted in each state by the State Independent Electoral Commission (SIEC). INEC prepares the electoral register for, and registers the political parties that participate in, all national, state, and local elections. The INEC is appointed by the President, subject to senatorial approval, while SIEC is appointed by the governor, subject to ratification by the state house of assembly. While electoral processes in Nigeria are violently corrupt and contentious, the federal and state elections that are conducted by INEC are more credible than local elections that are administered by SIEC. Elections at the federal level produced a historic alternation in the presidency from the Peoples' Democratic Party (PDP) to the All Progressives Congress (APC) in 2015.

The Nigerian judicial system actively mediates electoral contention in the country. The system is based predominantly on the common law tradition, with accommodations for indigenous customary and Islamic laws. There is an elaborate hierarchy of state and federal courts, with the federal Supreme Court at the apex. The major state courts include the State High Court and the Customary and Sharia Courts of Appeal, while the federal courts include the federal High Court and Court of Appeal. The federal Court of Appeal and Supreme court exercise appellate jurisdiction over the state courts. In addition, the 1999 Constitution established a powerful federation-wide National Judicial Council (NJC), under the chairmanship of the Chief Justice at the Supreme Court, to

oversee the appointment, funding, and discipline of all major federal and state courts. Although susceptible to centralised control by the Chief Justice, the NJC has enhanced judicial independence, enabling the courts to play an important role in arbitrating intergovernmental conflicts including conflicts over the control of local government.

2 History, Structures, and Institutions of Local Government

Although Nigeria's 1999 Constitution did not accord any formal role in the local government system to traditional authorities, local government in modern Nigeria has its roots in British 'indirect rule' of colonised peoples through their indigenous or native political institutions. Following Britain's 'amalgamation' of Nigeria as a single political entity in 1914, the Native Authority Ordinance of 1916 established a uniform legal foundation for native administration throughout the country.[6] The Ordinance defined a native authority as any officially designated chief, native, or native tribunal, and it empowered such authority to preserve order, control crime, and craft by-laws. Modifications to the Ordinance cemented the roles of native authorities as agents of British colonial residents and district officers, rather than autonomous and representative local institutions. The Native Revenue Ordinance of 1917 made financial provisions for the native authorities, while the Townships Ordinance of the same year regulated local administration in more urbanised settlements. The Native Authority Ordinance of 1933 broadened the definition of native authority to encompass any native council or group of natives, while providing a consolidated legal framework on the procedures and finances of native authorities. The Native Authority Ordinance of 1943 authorised the establishment of native police forces and prisons, while the Statement of Policy of 1947 clarified the division of labour between the central government and native authorities in such fields as education, public works, public health, and veterinary services.

[6] RE Wraith, 'Local Government', in John Mackintosh (ed) *Nigerian Government and Politics* (Northwestern University Press, 1966) 200–267; Alex Gboyega, *Political Values and Local Government in Nigeria* (Malthouse Press, 1987); Habu Galadima, 'Federal Republic of Nigeria', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Sy*stems (McGill-Queen's University Press, 2009) 234–297.

The 1940s, however, witnessed an advance towards decolonisation and representative government in response to growing nationalism in Nigeria. The Richards Constitution of 1945 used the native authorities as electoral colleges for selecting Nigerian representatives into regional councils in the north, west, and east of the country and, thence, into a central legislature. In the 1950s, the country's three regional governments assumed responsibility for the design and reform of local government. Thereafter, the history of Nigerian local government can be summarised in terms of three major waves of local government reforms, each of which was followed by periods of institutional decay and decline.

During the 1950s, the first wave of local government reforms involved attempts by regional governments to transform native administration into modern local government through the introduction of local representative institutions. The Eastern Region's Local Government Ordinance of 1950 pioneered this wave of reform by establishing a three-tiered system of relatively autonomous county, district, and local councils. Under the Ordinance, councillors would be 'elected directly to local councils and thence indirectly to district and country councils'.[7] Subsequently, the Western Local Government Law of 1952 provided for direct elections into local and district councils and indirect elections into divisional councils. In both regions, native chiefs retained only a minority of seats in local government.

Unlike the two southern regions, the Northern Region was less inclined to implement a rapid transformation of native administration into a modern democratic system of local government. Instead, reflecting the enduring legacy of indirect rule in its Muslim emirates, the North mostly preserved the powers of the emirs and other traditional chiefs under a new 1954 law for its multi-tiered native authority system. Significantly, the North retained the anachronistic and arguably pejorative label of 'native authority' for its local institutions. Nonetheless, beginning with its non-emirate sections, the Northern region gradually introduced varying proportions of elected members into the native authorities. By the 1960s, emirs and other chiefs had effectively 'disappeared as sole native authorities'.[8]

[7] Wraith (n 6) 214.

[8] Ibid., 243.

Despite its democratisation or liberalisation during the first wave of local reforms, the Nigerian local government barely lived up to expectations for a regime of accountable local representation. To varying degrees, the tiers of local government were plagued by inefficiency, ineffectiveness, remoteness, repressiveness, unrepresentativeness, over-politicisation, jobbery, bribery, nepotism, and regional government interventionism. In the Western Region, for instance, by 1965, all councils had been suspended and replaced with regionally appointed sole administrators or management committees.[9]

The intervention of the soldiers, the dissolution of the regions into smaller states, and the onset of civil war (1966–1970) compounded the decline of local government. The soldiers divested the local government of powers over local police, prisons, and courts. They tinkered continuously with the local structures inherited from the First Republic, fragmenting some of the larger Northern native authorities, consolidating many of the smaller Southern councils, and deploying senior civil servants to the localities as sole administrators, executive council managers, or chief resident, divisional, and development officers.[10] None of these experiments approximated the liberal democratic aspirations of the local government reforms of the 1950s.

Following a takeover of the military regime by a new cohort of soldiers in 1975, a second wave of local government reform was launched in Nigeria in 1976. Guided in part by the recommendations of a major Public Service Review Commission, the 1976 reforms imposed a nationally uniform, single-tier local government system throughout the federation, while specifying a population range (between 150,000 and 800,000) for all local councils. Henceforth, reflecting the military's quest to homogenise Nigeria's local governance in the name of national integration, all LGAs in the country would have similar structures, including personnel and pay systems, with no distinctions between rural, urban, and municipal areas. Furthermore, in order to meet the prescribed population range, small towns and villages were merged to create a single LGA, while large metropolitan cities were divided into multiple LGAs 'without

[9] Ibid., 239.

[10] Oyeleye Oyediran and Alex Gboyega, 'Local Government and Administration', in Oyeleye Oyediran (ed) *Nigerian Government and Politics under Military Rule* (St Martin's Press, 1979) 169–191.

an overarching metropolitan authority to oversee the effective planning and management of the whole metropolitan area'.[11]

The 1976 reforms also transferred significant portions of federally collected revenues to the LGAs, reaffirmed the functional responsibility of the localities to deliver basic services at the local level, and provided for the training of local government personnel. The reforms divested traditional rulers of any formal (as distinct from informal, advisory, or indirect) roles in local government, established directly or indirectly elected local councils, and promoted local democracy as the foundation for national democratisation.

But the second wave of local government reform proved short-lived, effectively ending with the inauguration of the Second Republic in 1979.[12] Defying the relevant provisions of the 1979 Constitution, state governments in the Second Republic failed to conduct local government elections and, instead, replaced elected councils with appointed committees. The states also encroached on statutorily guaranteed local government functions and finances, while proliferating local government areas for largely partisan reasons. The number of LGAs increased from 301 in 1976 to 781 by 1981. Following the collapse of the Second Republic, however, the military regime restored the 301 LGAs, while appointing a Committee on the Review of Local Government Administration in Nigeria (the Dasuki Committee). After an intra-military coup in 1985, a new military administration initiated a third wave of local government reform in the country.

The essence of Nigeria's third-wave local government reforms, which overlapped with the military's programme of political transition to a Third Republic (1986–1993), was to revive and consolidate the goals of the 1976 reforms. Third-wave local government reforms in Nigeria advanced the military's vision of a nationally uniform or delocalised local government system by entrenching the boundaries, structures, and powers of local government areas in the 1989 Constitution. The reforms empowered the federal government to conduct local government elections, while expanding and directly transferring federal revenue allocations to the

[11] Akin Mabogunje, 'Promoting Good Governance: What Can We, the People, Do?', Lecture delivered at Lead City University, Ibadan (8 July 2011).

[12] Dele Olowu, 'Governance and Policy Relevance of the Nigerian 40-Year Grassroots Revolution: 1976–2016' (2019) 85(4) *International Review of Administrative Sciences* 726–742.

localities. The reforms also abolished or diminished several agencies that state governments had traditionally used to control or manipulate the localities, including state ministries of local government. Consistent with the principle of a nationally uniform local government system, the third-wave reforms provided for a presidential system of local government throughout the federation, including the at-large election of the LGA executive chairman (and vice-chairman), election by wards of members of the LGA legislative council, and appointment of a cabinet of departmental heads or supervisory councillors by the chairman.[13]

But third-wave local government reforms were inconsistently implemented, with the military government itself taking several actions that sabotaged the integrity of the reforms. The soldiers, for instance, imposed capricious directives and controls on local authorities and dismissed democratically elected local councils.[14] The military arbitrarily created local government areas, increasing the number of localities from 301 in 1984 to 449 in 1989, 589 in 1991, and 774 during 1996–1997.[15] The reforms effectively collapsed with the military's annulment of presidential elections and the termination of the transition to the Third Republic in 1993. Compared to the 1989 Constitution for the Third Republic, the 1999 Constitution for the Fourth Republic afforded less protection for local government as a third tier of the federal system.

3 Constitutional Recognition of Local Government

Prior to the military's 1979 Constitution, local governments in Nigeria barely received any constitutional recognition. Instead, subnational regional or state statutory laws and edicts regulated local government in the Nigerian federation. Reflecting the soldiers' desire to entrench the concept of three-tier federalism, however, the military-supervised federal constitutions of 1979, 1989, and 1999 included more or less elaborate provisions on the structures, functions, and finances of local government.

[13] Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1989, sectsions 283–307.

[14] Alex Gboyega, 'Protecting Local Governments from Arbitrary State and Federal Interference' (1991) 21(4) *Publius: The Journal of Federalism* 45–59.

[15] Rotimi Suberu, *Federalism and Ethnic Conflict in Nigeria* (United States Institute of Peace Press, 2001) 106–108.

The 1999 Constitution entrenched Nigeria's 774 localities, including 768 LGAs in the 36 states and six 'area councils' in Abuja. A rigorous process of constitutional amendment is required to alter the number and boundaries of these localities. A law to create a new LGA, for instance, must 'define such area as clearly as practicable', consider the 'administrative convenience', the 'common interest', and 'traditional association' of the affected community.[16] In addition, however, the law must be approved by two-thirds of the local councillors and state legislators representing the proposed area, by a two-thirds majority of the people (voters) in the affected local government, by a simple majority of local councils in the affected state, and by a two-thirds majority of the state legislators. Moreover, an Act of the National Assembly is required, under section 8(5) and (6) of the Constitution, to 'make consequential provisions with respect to the names and headquarters' of any newly created local government areas after 'adequate returns' must have been made to the Assembly by a state legislature.

What is more, section 3 of the Constitution, which lists the number of states and localities in the federation, can be amended only with the approval of a two-thirds majority in each House of the National Assembly plus the supporting 'resolution of the Houses of Assembly of not less than two-thirds of all the states'. In essence, these complex requirements make it virtually impossible to alter the number and boundaries of Nigeria's 774 localities. Consequently, all new local government units created by the states after 1999 were downgraded and redesignated as local council development areas (LCDAs), rather than fully fledged LGAs.

In addition to entrenching local boundaries, the 1999 Constitution guarantees 'the system of local government by democratically elected councils', while mandating the government of every state to 'ensure their existence under a law which provides for the establishment, structure, composition, finance, and functions of such councils', as provided by section 7. The concurrent legislative list of the Constitution empowers state legislatures to enact laws on elections to local councils 'in addition to but not inconsistent with any made by the National Assembly'.

Similar to the legislative lists prescribing the exclusive, concurrent, and residual powers and functions of national and state governments, the Constitution provides a 'Fourth Schedule' on the 'functions of a local

[16] Section 7.

government council'. The functions include advising state governments on economic development and planning, establishing and maintaining a wide range of local services and public goods (for example, cemeteries, motor parks, and public conveniences), and participating with state governments to provide basic educational, health, and agricultural services.

To support these local functions, the Constitution not only empowers the localities to levy and collect local rates and issue various licenses, but also provides for the allocation of federal and state revenues to local governments. The National Assembly, acting on the advice of the President and the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC), is required to enact legislation for the distribution of major federally collected revenues (the 'Federation Account') 'among the federal and state governments and the local government councils in each state'.[17] The Constitution also requires each state to pay local 'councils in its area of jurisdiction such proportion of its revenue on such terms and in such manner as may be prescribed by the National Assembly'. Furthermore, each state shall maintain a 'State Joint Local Government Account into which shall be paid such allocations to the local government councils of the state from the Federation Account and from the Government of the State'. Finally, all revenues 'standing to the credit of the local government councils of a State shall be distributed among the councils on such terms and in such manner as may be prescribed by the House of Assembly of the State'.[18]

In comparative terms, the provisions above on local government in the 1999 Constitution exceeded the recognition that the 1979 Constitution accorded to local government. The major difference between the 1979 and 1999 constitutions is that the former did not explicitly entrench the boundaries of the localities, thereby promoting the proliferation of new LGAs during the Second Republic.[19] Of the three military constitutions of 1979, 1989, and 1999, however, the 1989 Constitution included the boldest attempt to establish local government as a separate order of government. The Constitution entrenched the number (then 449) of LGAs in the federation, while empowering state governments to create

[17] Section 162.

[18] Ibid.

[19] Sections 7–8.

a maximum of seven development areas in each LGA. In addition, the 1989 Constitution provided for the direct allocation of federal revenues to the localities, while establishing a National Primary Education Fund/ National Primary Education Commission to relieve the financial burden on localities of primary-school teachers' salaries.

The 1989 Constitution also empowered the national electoral commission (rather than the state-level electoral commission) to conduct local government elections, prescribed a three-year tenure for each council, and outlined elaborate conditions for the election of the chairman, vice-chairman, and councillors of local governments. Furthermore, the 1989 Constitution gave recognition to several local government bodies, including the office of Auditor-General of Local Governments in each state, a Traditional Council for a local government area or group of areas, and the Local Government Service Commission (LGSC).[20] Yet the challenges that plagued Nigeria's third-wave local government reforms (see above) under the 1989 Constitution suggest that robust constitutional designs may not always translate into effective governance at the local level.

4 Governance Role of Local Government

While the colonial native authority system gave local government an important regulatory role in maintaining political order, the democratisation and liberalisation of local government during the first wave of local reforms in Nigeria emphasised and expanded the public welfare (as distinct from the purely regulatory or coercive) functions of the localities.[21] In the former Eastern Region, for instance, local authorities by 1964 provided and operated '14 teacher training colleges, 16 secondary schools, and 1, 800 primary schools', while 'offering 90 scholarships to universities, 56 to technical colleges and over 3, 000 to secondary schools'. In the same year, local authorities in the East provided, maintained, or constructed '63 general health centres, 146 maternity centres, 278 dispensaries, 963 bridges, 15,000 miles of road and 351 customary courts'.[22] Overall, in the Eastern Region, as elsewhere in the federation,

[20] Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1989.

[21] Wraith (n 6) 207.

[22] Ibid., 220–221.

expenditure by local authorities in the early 1960s accounted for about one-fifth of all public expenditure.[23]

Reforms of the local government system since the 1970s included the codification in the national constitution of the advisory, exclusive, and concurrent functions of the localities. While the advisory functions of LGAs involved 'making recommendations to a state commission on economic planning [and development]', their exclusive functions covered a broad range of responsibilities. These included licensing, control, and regulation of small businesses (shops, kiosks, bakeries, restaurants, liquor stores, outdoor advertising); the establishment, maintenance, and regulation of markets, motor parks, public conveniences, sewage, cemeteries, burial grounds, and homes for the infirm; the construction and maintenance of roads, streets and street lighting, and 'such public facilities as may be prescribed from time to time by the House of Assembly of a state'; and the collection of rates, including the 'assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by [the state legislature]'. However, the most important governance role of the localities involved the 'shared' functions of delivering basic educational and health services under state supervision and in accordance with federal policy.[24]

The military's delineation and homogenisation of the advisory, exclusive, and shared functions of the localities did not enhance the functional integrity and autonomy of local government. Instead, multiple factors combined to diminish the governance role of the localities since the collapse of the First Republic and the advent of military rule. For starters, the fragmentation of the regions produced smaller and weaker states that were less secure, and more abusive and intrusive, than the old regional governments in their relations with the localities. In addition, the proliferation of subnational state and local governments created huge demands for administrative and professional personnel that proved unsustainable at the local level despite the establishment of training programmes and service commissions for local government personnel.

The promotion of local government reform by soldiers as part of a broader strategy of centralised national integration not only eroded the authority of the states to regulate the localities, but also directly

[23] Ibid.

[24] Constitution of the Federal Republic of Nigeria 1999, Fourth Schedule.

encouraged the expansion and intrusion of the federal government into local functions. A spectacular mutation of such intrusiveness in the post-military era after 1999 involved the 'zonal intervention' or constituency projects 'nominated' by federal legislators, funded by the federal budget, and delivered or supervised by federal ministries, departments, and agencies (MDAs). These projects included the construction, rehabilitation, and/or furnishing of primary-school classroom blocks (and offices and toilets), vocational or skills acquisition centres, primary health-care centres and cottage hospitals, markets, village bridges and roads, community town halls, motorised boreholes, erosion controls, and rural electrification projects. The projects also involved the delivery to grassroots communities of free medical outreach programmes, skills acquisition and training programmes, and economic 'empowerment' tools such as generating sets, grinding machines, sewing machines, and tricycles and motorcycles.[25] Often plagued by corruption, patronage, mismanagement, and weak monitoring, these direct federal intervention projects could arguably be delivered more effectively, efficiently, and transparently by local government.

At the same time, federal takeover of local police and prisons, along with state takeover of local courts, eliminated an important historical governance function of the localities in maintaining public order at the grassroots level. The epidemic of insecurity in Northern Nigeria in the Fourth Republic was not unconnected to the disappearance of native authority policing structures, the imposition of a dysfunctional unitary police system, and the disenfranchisement of indigenous organic structures of chieftaincy governance. The reliance of several conflict-mitigating interventions on the revalorisation of these structures underscored the pitfalls of marginalising traditional institutions in the formal local government system.[26]

Meanwhile, as a result of the proliferation of subnational governments and identities, local governments were saddled with issuing controversial indigene certificates that excluded so-called non-indigenes (Nigerians living in states or localities in which they have no ancestral ties) from public opportunities and services available to indigenes. In many states in

[25] See https://yourbudgit.com/wp-content/uploads/2019/12/2018-Constituency-Project-Report.pdf (accessed 30 August 2021).

[26] Leif Brottem, 'The Growing Complexity of Farmer-Herder Conflict in West and Central Africa', *Africa Security Brief*, Africa Centre for Strategic Studies (July 2021) 4.

the ethno-religiously combustible Northcentral zone in particular, these indigene practices fostered ferocious inter-group violence and mayhem, which local councils lacked the authority and resources to contain.

The allocation of federal revenues to the localities since military rule notwithstanding, resource and financial constraints continued to undermine the governance role of the localities. Simultaneously with an increase in federal revenue transfers to local authorities in the 1990s, local government was exclusively assigned the burden of paying the salaries of teachers in an expanding primary-school system. The attendant wage obligations hobbled the capacity of local governments to undertake any other functions. The implementation of uniform pay scales, including federal wage increases, across all local governments compounded the fiscal crisis of the localities. Such wage obligations were particularly detrimental to the financial integrity of poorer, rural localities, several of which repeatedly struggled to pay the salaries and allowances of their workers.[27]

5 Financing Local Government

A steep decline in internally generated local revenues, the virtual disappearance of grants-in-aid from regional state governments, an overwhelming dependence on federal revenue transfers, and the unsustainability of loan financing, define the contemporary financial position of Nigeria's localities. Local revenue sources include more than 40 items, but the most notable sources are community and poll taxes, tenement rates, land registration and other local fees and licenses, earnings from government enterprises and investments, and rent on kiosks and other local government property. Historically, locally collected taxes, rates, and 'miscellaneous fees and licences' provided up to 70 per cent of total local government revenues in the old Northern and Western regions, and more than 40 per cent of local revenues in the Eastern Region.[28] But the culture of revenue-collecting and self-supporting subnational authorities changed with the influx and infusion of centrally collected and redistributed oil revenues in the 1970s. Currently, locally collected revenues constitute, on average, less than 10 per cent of local government revenue.

[27] Stuti Khemani, 'Local Government Accountability for Health Service Delivery in Nigeria' (2006) 15(2) *Journal of African Economies* 285–312.

[28] Wraith (n 6) 223, 236, 247.

Beyond their displacement by oil rents, local revenue sources face enormous impediments to their generation in the Nigerian context.[29] Pervasive poverty renders incomes too small to sustain robust tax systems, while an extensive informal sector facilitates high rates of tax avoidance and evasion. A strong local administrative machinery for revenue collection, including regular and accurate valuations of property, is mostly lacking. This has led many local authorities to hire tax consultants, who often resort to aggressive, abusive, and counterproductive strategies of revenue collection. Meanwhile, local governments' commercial undertakings (for example, bus transit firms, poultry schemes, and farms) are often operated inefficiently, thereby dissipating rather than generating revenue.[30] Yet another impediment to autonomous local revenue generation involves the overbearing revenue powers of the higher orders of government. Local government, as already indicated, constitutionally can only assess tenement rates, while state legislatures levy the rates. In practice, several Nigerian state governments have taken over this potentially (and universally) important local revenue source.

The evaporation of locally generated revenues has occurred in tandem with the disappearance of state/regional transfers or grants-in-aid to local governments. From providing between 30 and 50 per cent of local revenues in the First Republic, grants from regional states now barely figure in the revenues of localities. With the infusion of central oil revenues into the localities since the 1976 local government reform, state governments have abandoned their financial obligations to the localities, defying a national statutory requirement to pay 10 per cent of states' internally generated revenues to local governments. Many state governments justify the failure to fulfil their financial obligations to the localities on the grounds that local governments retain the proceeds of the pay-as-you-earn (PAYE) personal income tax that are statutorily due to the states from local government employees.[31] Yet the paucity or absence of state funding for localities is consistent with a pattern in which state

[29] BC Smith, 'The Revenue Position of Local Government in Nigeria' (1982) 2(1) *Public Administration and Development* 1–14; ST Akindele, OR Olaopa, and A Sat Obiyan, 'Fiscal Federalism and Local Government Finance in Nigeria: An Examination of Revenue Rights and Fiscal Jurisdiction' (2002) 68(4) *International Review of Administrative Sciences* 557–577.

[30] World Bank (n 1) 49.

[31] World Bank, *Nigeria State Finances Study* (2003) 29.

governments adopt predatory relations with local authorities, including preempting federal transfers to the localities.

Federal transfers to the localities, which are disbursed predominantly according to the horizontal distribution principles of relative population and inter-unit equality, currently constitute the largest proportion of local government revenues, accounting on average for more than 90 per cent of local government revenues. Indeed, the proportion of general Federation Account revenues going to the localities increased remarkably from less than 5 per cent in 1976 'to 10.0 per cent in 1981, 15.0 per cent in 1990, 20.0 per cent in 1992, and 20.6 per cent in 2002'.[32] In addition, local governments currently receive 35 per cent of federally collected value-added tax (VAT) revenues. These federal transfers have increased the quantity, but not the quality, of local finances. Despite their overwhelming importance for local finances, federal transfers to the localities come with multiple challenges and risks.

Oil export-based federal transfers to the localities are subject to disruptions in oil production and prices, with detrimental implications for the stability of local budgets. Local governments' near-exclusive reliance on central transfers detaches local authorities from local political economies and constituencies, thereby compounding the syndrome of delocalisation, while undermining fiscal accountability and promoting political corruption. What is more, the transfers are prone to underpayment by the federal government, interception by the states, and onerous and non-transparent deductions by both orders of government, leaving localities with little or no revenues to undertake any significant development projects.

In theory, local governments can raise loans for capital projects against future federal transfers. However, only large and financially viable localities in relatively prosperous urban centres can afford to raise such loans. Following the 1976 reforms, the 'Federal Government advocated restricting loan financing to revenue generation projects, lest local revenues become overwhelmed with the combined cost of recurrent charges and debt servicing'.[33] Furthermore, borrowing of money by local governments is on neither the exclusive nor concurrent legislative lists of the 1999 Constitution. Such borrowing is a residual subject under the

[32] Dele Olowu and James Wunsch, 'Nigeria: Issues of Capacity and Accountability in Decentralization', in James Wunsch and Tyler Dickovick (eds) *Decentralization in Africa: The Paradox of State Strength* (Lynne Rienner Publishers, 2014) 161–162.

[33] Smith (n 29) 9.

exclusive regulation of state governments, which have a reputation for arbitrary control and punitive supervision of local authorities.

6 Supervising Local Government

The 1976 reforms transformed local government from a subject under the exclusive oversight and control of subnational regional state governments into a matter under concurrent, and often politically contentious, state and federal supervision. Aside from the delivery of basic educational and health services, where local governments essentially operated as agents of federal and state governments, supervision of the localities by other orders of government was prominent in the demarcation of local boundaries and the tenures of local councils, as well as in financial matters and in personnel management.

The demarcation of local boundaries was especially contentious. In an April 2004 letter to the federal Minister of Finance, for instance, President Obasanjo directed that Federation Account revenues should not be released for local councils in several states (including Ebonyi, Katsina, Lagos, Nasarawa, and Niger) in which elections had been conducted in local government units that are not listed in the 1999 Constitution.[34] However, while other states promptly abrogated the new local governments, Lagos sought redress from the Supreme Court. In *AG Lagos v AG Federation* (2004), the Court ambiguously declared the newly created local government units in Lagos to be legal but inchoate in the absence of their ratification by the National Assembly. In addition, the Court ruled that the President could not legally withhold federal transfers to localities in Lagos in so far as the money 'applies to the 20 Local Government Councils [in the state] for the time being recognised by the Constitution and not the new Local Government Areas which are not yet operative'.[35]

Another area of intergovernmental contention involved the wholesale replacement of elected local councils with appointed bodies. State governments in the Fourth Republic justified this undemocratic behaviour on multiple grounds, among them the expiration of the terms of elected councils, legal controversies surrounding the conduct of local elections,

[34] See Rotimi Suberu, 'The Supreme Court and Federalism in Nigeria' (2008) 46(3) *Journal of Modern African Studies* 471.

[35] Ibid., 472.

the absence of adequate financial resources to organise regular local elections, and misconduct on the part of the sacked local government chairmen and councillors. Essentially, however, aborting local democracy enabled the governors, backed by pliant state legislatures, to use local government positions to impose and compensate political loyalists.

While the courts consistently invalidated the sacking of democratically elected councils, such judicial interventions were ineffective because the final judicial determinations came after the expiration of the tenures of the sacked councillors. Typically, the courts resorted to ordering the offending state governments to pay sacked councillors all salaries and allowances due to them during the unserved portions of their tenures.[36] Such outcomes reinforced the rent-seeking nature of Nigerian politics, while effectively leaving the offending state governors and legislatures unpunished for their assaults on local democracy.

In a bid to check such impunity, the federal Attorney General and Minister of Justice in June 2020 asked the Oyo State Government 'to immediately disband all caretaker committees and restore democratically elected representatives to man the local governments'. However, while he acknowledged that it was 'common practice' for governors illegally to 'truncate democratically elected local government councils', the minister not only targeted his intervention at an opposition-controlled state, but also sought to use the federal security agencies forcefully to remove the state-appointed caretaker committees, restore the elected councillors, and preempt a judicial resolution of the crisis.[37] The Oyo State Government successfully obtained an interim judicial injunction that restrained the federal agencies from such forceful intervention, however. Owing to its own partisan shenanigans, the centre could not enforce compliance with the constitutional provisions for democratically elected local government.

Finances were yet another domain of contentious oversight of local government by state and federal governments. Aside from controlling the State Joint Local Government Account (SJLGA), many state governments imposed expenditure ceilings on local councils, while micromanaging

[36] Grace Oladele, 'Legality of the Dissolution of Elected Local Government Councils in Oyo State, Nigeria' (2020) 8(5) *Global Journal of Politics and Law Research* 25–41.

[37] Attorney-General of the Federation and Minister of Justice, 'Unconstitutionality of Dissolution of Elected Local Government Councils and Appointment of Caretaker Committees: The Urgent Need for Compliance with Extant Judicial Decisions' (Federal Ministry of Justice, 14 January 2020).

the preparation and implementation of local budgets. Each state maintained an auditor-general for local governments responsible for regularly auditing the finances of the localities and reporting to the state assembly. However, reflecting the weak commitment of most state governments to financial transparency, the office of auditor-general for local governments remained ineffective, underfunded, and understaffed.[38]

The federal government attempted several times to promote greater transparency and accountability in state governments' management of local finances. In his controversial April 2004 letter, Obasanjo asked the Federal Minister of Finance not to disburse federal financial transfers to the localities via their respective states without (among other conditions) receiving evidence from the state governments that they were fulfilling their own financial obligations to the localities. Obasanjo subsequently signed the Monitoring of Revenue Allocation to Local Government Act of 2005. The Act established and prescribed the membership of the SJLGA Committee, provided for the prompt payment of all federal and state transfers into the SJLGA, guaranteed the distribution of such monies to local councils according to the relevant state laws, and prescribed sanctions for state governments and their functionaries for any violations of the financial rights of the localities. However, the Supreme Court, in *AG Abia & Ors v AG Federation & Ors* (2005), invalidated the Act, faulting it for incorporating several clauses that unconstitutionally encroached on the autonomy and authority of state governments.

Federal oversight of local finances resurfaced as an issue of intergovernmental contention when the Nigerian Financial Intelligence Unit (NFIU) released the 'Guidelines to reduce vulnerabilities created by cash withdrawals from local government funds throughout the federation, effective from 1 June 2019'. The guidelines prohibited any withdrawals from the SJLGA without the monies first reaching the accounts of each local government council, and required that all transactions (above a cash withdrawal limit of half a million Nigerian Naira a day) must be done through valid checks or electronic funds transfer. By promptly challenging and denouncing the guidelines, however, the 36 state governors showed that they would continue to frustrate attempts by the NFIU and other national anti-corruption agencies to impose federal oversight of state-local finances.

[38] World Bank (n 1) 50.

State oversight of local personnel matters was less politically contentious. Following the 1976 reforms, local councils directly appointed, promoted, and disciplined junior staff (Grade Level 01–06), while the Local Government Service Commission (LGSC) of each state recruited and managed the senior staff (GL 07 and above) of local government. The commission would insulate senior local staff from the vicissitudes of local patronage politics, reinforce the concept of a unified local service, and enable poor rural localities to get a reasonable share of qualified personnel through a system in which the LGSC rotated senior staff between localities every three to five years.

Establishing the LGSC, however, created a dual personnel system at the local level, while undermining the authority of localities to control their key staff or creatively develop their personnel systems. Meanwhile, with the LGSC appropriating local government revenues for staff development and training, the LGA staff often lamented the paucity of such training opportunities.[39] Indeed, a perennial challenge involved the underutilisation and inadequacy of the numerous federal training institutions (including the Administrative Staff College of Nigeria and the institutes for administration or local government at three leading public universities) that were designed to meet the human-resources needs of the three orders of government.

7 Intergovernmental Relations

Several bodies mediate the complex intergovernmental relationships (inter-local, state-local, and local-state-federal relations) involving local government in Nigeria. Two major organisations conduct inter-local relations, namely the Association of Local Government of Nigeria (ALGON) and the National Union of Local Government Employees (NULGE). Both institutions often mobilise inter-local opposition against state encroachments on local autonomy.

Previously known as the Nigeria Association of Local Governments (NALGO), ALGON is the umbrella body of all local government chairpersons in the country: it is the equivalent at the local level of the powerful Nigeria Governors Forum (NGF). ALGON promotes inter-local government cooperation, advocates for improving the autonomy

[39] Ibid., 47.

and rights of local governments, and encourages research into local government. In its time as NALGO, the association successfully advocated for the scrapping of State's Ministries of Local Government during the third wave of local government reform.[40] More recently, ALGON campaigned against attempts by certain state legislatures to reduce the statutory terms of local government chairpersons to two years. Although plagued by credible allegations of corruption within its leadership and by controversies about the membership status of chairpersons of local council development areas (LCDAs), ALGON remains vociferous in agitating for the 'liberation of local governments' from 'the shackles' and 'oppressive over-interference' of state governments.[41]

NULGE, for its part, has roots in the staff associations of the defunct native authorities. In its current incarnation as a Nigeria-wide umbrella organisation for all local government employees, NULGE claims to have about one million members throughout the country. It promotes the education, training, and welfare of local government employees, while also advocating for more autonomy for local councils. It supported the NFIU guidelines as 'a bold move to end the financial recklessness by state governors as they feast on funds meant for the 774 local government councils in the federation', and has called for a federal forensic audit of the SJLGA.[42]

The SJLGA Committee is the most contentious of many key institutions for conducting state-local relations in Nigeria, the others being the Ministry of Local Government and Chieftaincy Affairs, SIEC, the State Primary Healthcare Development Agency, the State Universal Basic Education Commission (SUBEC), the Office of the Auditor-General for Local Governments, and the Local Government Service Commission. Under the 'Monitoring of Revenue Allocation to Local Government Act of 2005', the SJLGA committee would be chaired by the commissioner responsible for local government in a state. SJLGA members would include all chairmen of local councils in the state, the accountant-general

[40] Gboyega (n 14) 57.

[41] Association of Local Governments of Nigeria, 'Presentation of the Association of Local Governments of Nigeria', https://uclgafrica-alga.org/wp-content/uploads/2019/12/Presentation-ALGONEn.pdf (accessed 30 August 2021).

[42] Leo Sobechi, 'Executive Order 10: Between Good Governance Push and Presidential Excesses', *The Guardian* (Lagos: 10 June 2020); 'NULGE Urges Buhari to Carry out Forensic Audit on State-LG Joint Accounts', *Vanguard* (Lagos: 5 July 2018).

of the state, a representative of the state revenue board, as well as two federal functionaries, namely, a commissioner of the RMAFC (not being an indigene of the state) and a representative of the accountant-general of the federation. Following the invalidation of the Act, each state independently constituted or maintained its SJLGA Committee, which retained the local government commissioner as chairperson but excluded any federal functionaries.

SJLGA Committees are widely criticised for their complicity in purloining revenues otherwise due to the localities. The 'Borno State SJLGA Distribution and Fiscal Committee Law of 2002', for instance, empowered the committee to make multiple upfront deductions from the Account for the upkeep of emirate councils, the personal emoluments of retired local government staff, and the operations of the local government audit department and the Department/Ministry of Local Government. Other deductions would involve charges for training, stabilisation, and general administration.[43] Such deductions, alongside the burden the councils bear for paying primary-school teachers' salaries, fuel rhetoric in Nigeria about the 'zero allocation' of federal revenues to local government.

Federal government agencies in important relationships with local government include the National Assembly (with its local constituency projects and its ultimate constitutional authority over local boundaries and revenue allocations), the Universal Basic Education Commission (UBEC), the National Primary Healthcare Development Agency (NPHCDA), the National Agricultural Land Development Authority (NALDA), INEC, RMAFC, and the anti-corruption institutions.

The 1984 Dasuki Committee proposed the establishment of a National Local Government Commission to coordinate the multifaceted relationships obtaining between the federal and local (as well as state) governments in Nigeria. While rejecting the proposal for a fully fledged commission, the federal government maintained an office in the presidency to promote harmonious 'intergovernmental relations amongst all tiers of government by providing avenues for close dialogue and collaboration on issues of national importance'.[44]

[43] Jude Okafor, 'Local Government Financial Autonomy in Nigeria: The State Joint Local Government Account' (2010) 6 *Commonwealth Journal of Local Governance* 127–131.

[44] See www.osgf.gov.ng/offices/political-affairs/states-and-local-government-affairs

Currently entitled the Department of State and Local Government Affairs, the office has the following functions: facilitate capacity-building programmes for local government functionaries in collaboration with the Local Government Service Commissions as well as international agencies and donors; serve as a repository of data on subnational governments' developmental policy planning; hold a watching brief for the localities at monthly meetings of Federation Account Allocation Committee (FAAC); monitor the implementation of pensions and schemes of service for local government employees; interface with institutions such as ALGON, NULGE, and the National Council of Traditional Rulers of Nigeria (NCTRN); ensure that states and local governments fulfil their statutory obligations to each other; and take appropriate actions on complaints brought before it by the subnational governments.[45] However, contentious intergovernmental relations may be mediated not only by formal governmental bureaucracies but also, even more decisively, by the informal culture and organisation of party politics.

8 Political Culture of Local Governance

In Nigeria's post-independence history, truly competitive electoral party politics at the local level has been more of an exception than the norm. The largest region (the North) of the First Republic lacked fully representative or elected local government in its core emirate section; no local elections were conducted throughout the duration of the Second Republic; and elected local councils disappeared with the abrogation of the Third Republic at the moment of its final inauguration in 1993. In the Fourth Republic (1999 to date), 25 of the 36 states lacked elective local governments by May 2012. Although the Fourth Republic made some progress in the regularisation of local elections over time, at least 10 states did not have elected councils in October 2021.[46] Meanwhile, of the four local elections conducted during the extended periods of military rule in Nigeria, the two most successful ones (those in 1976 and 1988)

(accessed 30 August 2021).

[45] Ibid.

[46] Shine Your Eye, 'Local Government Elections', www.shineyoureye.org/info/local-government-elections (accessed 28 November 2021).

were conducted on a 'zero-party' (non-partisan) basis, while the elections in 1991 and 1997 were characterised by widespread irregularities.[47]

The poor quality of local elections compounds their low quantity or relative paucity. In the First Republic, for instance, regional and local elections were blatantly and brutally manipulated, leading to the annihilation of opposition parties and the consolidation of one-party systems in the regions.[48] The tendency towards local electoral authoritarianism and one-party local rule has become entrenched in the Fourth Republic, with the governing party in each state typically winning all chairmanship and more than 90 per cent of councillorship contests.[49] Abuja, where local elections are conducted by INEC rather than a SIEC, and Kaduna State, where the government innovatively introduced electronic voting in 2018, are perhaps the only exceptions to the absence of credible local elections in the Fourth Republic.

Nigerian local elections are less competitive than state and national elections, which themselves often do not meet basic standards of electoral transparency and integrity. Local elections have become travesties and farcical rigmaroles, lacking a transparent legal framework and electoral calendar, and rife with litigations, opposition boycotts, voter apathy, 'inflated voter returns, ballot stuffing, altered results, and … intimidation of voters and electoral officers by hired political thugs'.[50]

State governors bear the primary responsibility for the failure of local democracy. The 'governors in collaboration with state assemblies unilaterally change the timeline for the conduct of elections', whimsically determine the 'timing of the release of funds for the conduct of elections', and arbitrarily dissolve and reconstitute SIECs.[51] According to the Forum of States Independent Electoral Commissions, the gubernatorial practice of appointing caretaker committees to run the affairs of local governments has 'negatively impacted on the independence and integrity' of SIECs.

[47] Massoud Omar, 'Ensuring Free, Fair and Credible Elections in Local Governments in Nigeria' (2012) 2(1) *Developing Country Studies* 75–81.

[48] John Mackintosh, 'Electoral Trends and the Tendency to a One-Party System', in J. Mackintosh (ed) *Nigerian Government and Politics* (Allen & Unwin, 1966) 508–544.

[49] Bakare Majeed, 'Why Fresh Move to Transfer LG Polls to INEC May Not Help After All', *Premium Times* (27 November 2021).

[50] Omar (n 47) 77.

[51] See www.fosieconng.org/CONDUCT_OF_LOCAL_GOVERNMENT_ELECTIONS_NIGERIA.html (accessed 30 August 2021).

These commissions 'will be better focused and organised to deliver credible elections only when there is constitutional certainty in terms of the tenure of local governments' and 'when electoral timelines are clear and all political parties and candidates are aware of the same and prepare for the same'.[52]

The absence of a credible multi-party local electoral democracy undermines the inclusiveness, responsiveness, and accountability of local authorities. Responsiveness to local issues and communities is further undermined by the current constitutional requirement that only national political parties can participate in local elections. Local communities, including women's groups, can hardly find effective expression in polity-wide parties that prioritise the capture of centralised power over the advancement of under-represented local interests. In 2015, only '9.8 per cent of councillors and 3.6 per cent of chairpersons were female'.[53]

Not surprisingly, Afrobarometer surveys show that Nigerians generally do not consider local councils to be truly accountable and participatory institutions: '[a] majority of respondents (55 per cent) disapproved of the performance of the local government', while more than three-quarters claimed they had never contacted local government councillors. Less than 30 per cent of Nigerians trust local government officials or believe that local revenues will be used to provide public goods (as distinct from private patronage), including basic health services.[54]

9 Covid-19's Impact on the Role of Local Government

The Covid-19 pandemic made an extensive impact on the Nigerian economy, society, and governance. It adversely affected the global price of oil, Nigeria's dominant foreign-exchange earner, contracting the country's GDP by 3.5 per cent in 2020, and plunging Nigeria into a new

[52] Ibid.

[53] Commonwealth Local Government Forum, Nigeria, www.clgf.org.uk/regions/clgf-west-africa/nigeria/ (accessed 30 August 2021).

[54] 'Public Opinion and Local Government in Nigeria, 2008', *Afrobarometer Briefing Paper No. 53* (December 2008).

wave of economic recession following an earlier recession during 2015–2016. The pandemic compounded Nigeria's already high rates of unemployment, underemployment, and poverty, with Human Rights Watch projecting 'that the pandemic will result in an additional 10.9 million Nigerians entering poverty by 2022'.[55] The pandemic also affected governance and politics, unravelling the budgets of federal and state governments, while providing a pretext for the postponement of local government elections in one state.[56] Most saliently in the context of this chapter, however, the pandemic highlighted the marginality of local government in contemporary Nigerian governance, with the localities merely functioning as operational arenas and implementing agencies for federal and state policies on the pandemic.

Leading Nigeria's response to the pandemic were federal agencies like the presidency, Presidential Task Force (PTF), National Center for Disease Control, Central Bank of Nigeria, Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development, and federal security organisations. Between them these agencies mobilised a multi-million-dollar private-sector coalition against Covid-19 (CACOVID), established and equipped isolation and treatment centres across the federation, designed preventative regulations and guidelines, policed social distancing measures, crafted economic stimulus packages, and delivered the federal government's cash transfers and food assistance programmes to the states and localities.[57]

The federal government explicitly acknowledged and promoted the responsibility of state governments to adopt or adapt the centre's Covid-19 response plan under 'national supervision and coordination'.[58] In addition to implementing the federal government's Covid-19 plan, however, the states mounted Covid-19 responses of their own, including lockdowns (in addition to the federal lockdowns) and associated regulations, economic palliatives, and special task forces.

[55] Human Rights Watch, *Between Hunger and the Virus: The Impact of the Covid-19 Pandemic on People Living in Poverty in Lagos, Nigeria* (2021).

[56] Mercy Corps, 'The Need for Good Governance and Peacebuilding in the Time of Covid-19: Lessons from Northeast Nigeria' (September 2020) 7.

[57] Kayode Fayemi, 'The Role of Nigeria's State Governments in Recovery: Responses to Covid-19-Linked Challenges' (Chatham House, 2 February 2021).

[58] Omeiza Ajayi, Boluwaji Obahopo, and Dirisu Yakubu, 'Covid-19: Churches, Mosques, to Reopen as Schools Remain Shut', *Vanguard* (Lagos: 2 June 2020).

LGAs were the primary operational or reference units for the federal and state Covid-19 intervention strategies, but the local councils themselves played a limited and passive role in responding to the pandemic. The federal government delivered its Covid-19 preparedness and response plan, training programmes for health workers, and vaccine roll-outs through the NPHCDA to Primary Health Care (PHC) centres run by local governments. Local councils were also involved in distributing federal and state food palliatives and in selecting the beneficiaries of the federal government's USD 68 million public works programmes (targeted at unskilled workers unable to earn a living during the pandemic). Yet because they lack genuine popular legitimacy and 'are populated by appointees at the behest of their political patrons and susceptible to high turnover', the local councils could not alleviate 'the extreme politicisation of government aid distributed during the Covid-19 pandemic'.[59] Indeed, according to the civil society activist Idayat Hassan, 'Covid-19 has further exposed the breakdown of accountability and functionality of the Nigerian local government system.'[60]

A functional, autonomous, and accountable local government system could have enhanced Nigeria's management of the pandemic by helping to focus the federal and state interventions more effectively and transparently at ward, community, and household levels; by extending the reach of those interventions from Nigerians in the formal sector to the majority of poor and vulnerable citizens in the country's huge informal sector; by disseminating pertinent sensitisation messages, while challenging Covid-19 denialism, stigma, and vaccine hesitancy; by countering the conduct of some state governments, including Cross River and Kogi, which flouted or obstructed national testing and control measures; and, in general, by mobilising community leaders, traditional chiefs, women, youth groups, and other grassroots organisations behind the national Covid-19 response strategy.

There was, therefore, no approximation in Nigeria of the role that 'local leaders' in countries like the US, Brazil, and India played in proactively responding to the crisis when leaders at the higher orders of

[59] Mercy Corps (n 56) 6.

[60] Idayat Hassan, 'Local Governance in Nigeria: An Unsettling State of Affairs', *Urbanet* (1 September 2020).

government seemed unresponsive or dilatory.[61] The repeated failures of local governance have reinforced ongoing national introspection about the constitutional structures and political future of Nigeria's localities.

10 Emerging Issues and Trends

The formal constitutional institutionalisation of local government as the third tier of Nigerian federalism has not enhanced subnational local autonomy, accountability, and governing capacity.[62] While there is broad consensus in Nigeria that the local government system has failed and even collapsed, there is very little agreement about the main source of this crisis and the pathways to revitalising and reforming the system. Instead, debates on local government in Nigeria have polarised around a centralist perspective and a more federalist approach.

Centralists attribute the crisis of local government in Nigeria primarily to the depredations of state governments and the absence of robust federal protections for the localities. Consequently, the centralists recommend constitutional amendments that would transfer federal revenues directly to the localities and scrap the SJLGA, give INEC the responsibility for conducting local elections and eliminate SIEC, and impose a uniform three- to four-year tenure for all local councils in the federation. Centralists also desire more certainty and less ambiguity regarding the exclusive functions of the localities under the Fourth Schedule. Major proponents of this centralist perspective include ALGON, NULGE, the presidency, and the National Assembly.[63] Yet although it was largely incorporated in the 1989 Constitution, such a centralist approach to local government reform was subsequently abandoned by Nigeria's constitution-makers. Essentially, centralism is antithetical to Nigeria's

[61] Madhavi Rajadhyaksha, 'Five Lessons for Local Governments during Covid-19', *Oxford Policy Management* (April 2020).

[62] Tyler Dickovick and Beatty Riedl, 'African Decentralization in Comparative Perspective', in J Wunsch and T Dickovick (eds) *Decentralization in Africa: The Paradox of State Strength* (Lynne Rienner Publishers, 2014) 249–276.

[63] Emmanuel Samiala, 'NULGE Lauds National Assembly for Passing LG Autonomy Bill', *The Guardian* (Lagos: 2 August 2021); see also Ladipo Adamolekun 'The Idea of Local Government as a Third Tier of Government Revisited: Achievements, Problems and Prospects' (1983) 18(3–4) *Quarterly Journal of Administration* 113–138.

abiding commitment to federalism, including the principle of subnational state control of local matters.

For the federalists, the crisis of local government in Nigeria is rooted in the military's hyper-centralising imposition of a uniform system of local government on the country's diverse society.[64] The uniform system, the federalists claim, has delocalised the local government system, delinking it from the unique political, socioeconomic, cultural, and historical traditions and contexts of the various Nigerian communities. Federalists recommend delisting LGAs from the Federal Constitution and restoring the system of local government that was in place in the Fifties and Sixties, when local authorities were the exclusive preserve of powerful regional governments. The localities of that period were generally more financially autonomous, more functionally robust, better supported by regional political authorities, and more structurally integrated with traditional chieftaincy political institutions. The major proponents of this federalist approach to local government change are the governors. Southern Nigerian intellectuals and ethno-cultural leaders, who consider the current funding and distribution of LGAs to be skewed in favour of the North, also support the approach.

The federalist position received a major endorsement in the 2018 report of the ruling APC Committee on True Federalism. According to the report, 'the constitution should be amended and states be allowed to develop and enact laws for a local administration that is peculiar to each of them'. Nonetheless, the report recommended that 'the existence of democratically elected local councils should be guaranteed under the constitution, albeit under the exclusive administration of the states'.[65]

Indeed, a middle ground can be found between the centralist and federalist perspectives. This intermediate approach would empower the states to develop and adapt their own local government systems within a national framework that maintains the formal constitutional status of the localities as the third tier of the federal system. The uniform structure

[64] Mabogunje (n 10); Victor Ayeni, 'The Illusion of Three-tier Federalism: Rethinking the Nigerian Local Government System' (1994) 7(5) *International Journal of Public Sector Management* 52–65; Okey Ikeanyibe, 'Uniformity in Local Government System and the Governance Model in Nigeria' (2018) 53(1) *Journal of Asian and African Studies* 147–161.

[65] Progressive Governors' Forum, *Report of the APC Committee on True Federalism Volume 2* (Progressive Governors' Forum 2018) 22.

of third-tier localities can be preserved, but the states should enjoy the autonomy to constitute additional tiers of the local government system. Kaduna State's creation of three metropolitan authorities (for its largest cities of Kaduna, Kafanchan, and Zaria) in 2021, along with the more common establishment of LCDAs by the states, exemplify the creative exercise of such residual autonomy of subnational state governments to adapt local administrative boundaries within the framework of a nationally prescribed local government structure.

Local governments should continue to receive federal revenue transfers, but these allocations would be tied to performance indicators and redesigned to match, rather than displace, local revenue generation efforts. Above all, local councils should be integrated into local communities by making them formally accountable to town meetings, community development associations, ward development committees, and other grassroots organisations. Only by forging such downward accountability to local communities can Nigerian local governments be transformed from mere agents of central and state governments into genuine institutions of local representation, participation, and development.

CHAPTER 14

South Africa

Jaap de Visser

Since the year 2000, local government has entered South Africa's system of intergovernmental relations with a new institutional appearance and has been granted constitutional protection. Intergovernmental relations among municipalities, provinces, and the national government have thus become more dynamic yet also more complex and demanding. This chapter analyses the constitutional and policy frameworks for those relations, and provides insight into current debates and the dynamics related to them. The legal and constitutional recognition of local government is impressive and propels it to a status that at times equals or surpasses that of provincial government. Yet this constitutional status provides no guarantee of strong local government. In reality, many municipalities are incapable of asserting their financial and political autonomy for reasons both within and beyond their control.

J. de Visser (✉)
University of the Western Cape, Cape Town, South Africa
e-mail: jdevisser@uwc.ac.za

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_14

1 Country Overview

Located at the southern tip of Africa, South Africa shares borders with Namibia, Botswana, Zimbabwe, Swaziland, and Mozambique, while Lesotho is locked within its borders. Its land mass spans 1,220,813 km^2, and, by 2021, the country had a population of more than 60 million people.[1]

South Africa's remarkable emergence from centuries of racial and colonial domination surprised many who believed the country was heading for disaster during the violence of the late 1980s and early 1990s. Now, some 25 years after the advent of democracy in 1994, South Africa boasts a relatively stable constitutional framework, an independent and functioning judiciary, as well as a human-rights-centred approach to basic service delivery.

During the first 15 years of democracy, South Africa's macroeconomic policy appeared to succeed in balancing financial austerity, inflation control, and trade liberalisation with expanding social investments and the pursuit of infrastructure-led economic growth. However, the subsequent 10 years brought economic mismanagement, corruption at an unfathomable scale, a series of recessions, and then devastation as a result of the Covid-19 pandemic.

For the financial year of 2020–2021, gross debt stood at 80.3 per cent of gross domestic product (GDP), and debt-service costs were expected to average 20.9 per cent of gross tax revenue.[2] The economy contracted by 7.2 per cent in 2020, but was expected to grow by a modest 3.3 and 2.2 per cent in 2021 and 2022, respectively.[3] In the third quarter of 2020, the official unemployment rate rose to 30.8 per cent.[4] Youth unemployment is extremely high, having reached 63.3 per cent for those aged 15–24 years in the first quarter of 2021.[5]

[1] Statistics South Africa, Statistical Release P0302, *Mid-Year Population Estimates 2021* (July 2021) table 1.

[2] National Treasury RSA, *Budget 2021 Highlights* (National Treasury, 2021) www.treasury.gov.za (accessed 29 July 2021).

[3] National Treasury, *2021 Budget Review* (National Treasury, 2007) 11.

[4] Ibid., 19.

[5] Statistics South Africa, *Quarterly Labour Force Survey Quarter 1: 2021* (Statistics South Africa, 2021) 30.

South Africa faces the major socioeconomic challenges of persistent high unemployment, poverty, large wealth disparities (a Gini coefficient of 0.60),[6] and the impact of both the Covid-19 and HIV/AIDS pandemics. South Africa's racial divisions,[7] created and exploited under apartheid, continue to have a significant influence on income, education levels, and life expectancy.

Central to South Africa's strategy to erase these bleak figures is its insistence that local government is key to the development and delivery of basic public services. This insistence is in part dictated by the inevitability of urbanisation. In 1994, 53 per cent of the population lived in urban areas, while in 2011 this had risen to 63 per cent, with just four city-regions accounting for 42 per cent of this population.[8] It is expected that, by 2030, 71.3 per cent of the South African population will live in urban areas. This is expected to rise to 80 per cent by 2050.[9] The four city-regions 'dominate the economy, accounting for more than half the national gross value added (GVA). When other cities and large towns are included, the share rises to 81.4 per cent of the country's GVA, up from 79.4 per cent in 1996'.[10]

These cities are confronted with the challenges of urbanisation, which require innovative and complex responses. For example, cities need to devise approaches to address the pernicious legacy of spatial segregation. Similarly, a new approach is required to tap into the informal employment found in unregulated small businesses and microenterprises. Successful urban and local governments are thus recognised as immediately benefiting both economic growth and poverty alleviation.

South Africa's newly established constitutional democracy, overseen by a new Constitutional Court, managed to deal with the innumerable

[6] Statistics South Africa, *Inequality Trends in South Africa: A Multidimensional Diagnostic of Inequality* (Statistics South Africa, 2019) 5.

[7] For a breakdown of the South Africa population in racial and religious terms, see Nico Steytler, 'Republic of South Africa', in John Kincaid and G. Alan Tarr (eds) *Constitutional Origins, Structure, and Change in Federal Countries* (McGill-Queen's University Press, 2005) 312–346.

[8] Department of Cooperative Governance and Traditional Affairs, *Integrated Urban Development Framework* (Department of Cooperative Governance and Traditional Affairs, 2016) 15.

[9] Ibid., 25.

[10] Ibid., 17.

challenges and tensions that came with the transition to democracy. The Constitution itself is the final product of a series of events and processes that took place while the apartheid government and liberation movements negotiated the country out of crisis. The result was an interim constitution that paved the way for the first democratic elections in 1994, the establishment of Parliament as a constitutional assembly, and the adoption of the final Constitution of 1996.[11]

The Constitution vests national legislative authority in Parliament, which consists of the National Assembly and the National Council of Provinces (NCOP).[12] The 400 National Assembly members are directly elected, while the NCOP, modelled on the German *Bundesrat*, comprises delegations from each province as well as a non-voting local government delegation. National executive authority is vested in the President, elected by the National Assembly, who exercises this authority together with the other members of the cabinet. Cabinet members, appointed by the President, are accountable collectively and individually to Parliament.

The Constitution also establishes and demarcates nine provinces, each with a provincial legislature and a provincial executive. Provincial legislative authority is vested in the provincial legislature. Provincial legislatures range from 30 to 80 directly elected members. A province's executive authority is exercised by a premier, who is elected by the provincial legislature. The premier exercises this authority together with the other members of the Executive Council. They are accountable collectively and individually to their provincial legislature.

There is one judiciary, with the Constitutional Court at the apex as the highest court on all matters. Disputes between spheres of government are decided by the Constitutional Court. The Constitutional Court also has the final say on the constitutionality of national and provincial legislation, and resolves conflicts between validly passed legislation of the three spheres.

[11] See, for example, Janis Van der Westhuizen, 'South Africa (Republic of South Africa)', in Ann L. Griffiths and Karl Nerenberg (eds) *Handbook of Federal Countries* (McGill-Queen's University Press, 2002) 282–295, 284–285.

[12] Sections 42–46.

2 History, Structures, and Institutions of Local Government

South Africa's experience with local and provincial government started in 1910 with the unification of South Africa, which transformed four British colonies into provinces. Local government was introduced as a responsibility of the provinces and no single uniform system of local government existed for the country. Local government was subservient, racist, and consequently illegitimate. The subservience of local government was manifest in that local authorities existed in terms of provincial laws, and their powers and functions were dependent on, and curtailed by, these provincial laws.

After winning the landmark elections of 1948, the National Party (NP) government intensified institutional segregation by providing for the development of separate local authorities for each of the four major racial groups. The leading theme was the principle of 'own management for own areas'. However, in areas outside the black homelands, black local authorities operated under the authority of white municipalities until 1971.[13] Given that black local authorities governed dormitory townships where no commercial activity was permitted, there was no commercial base on which to raise property rates or other income. Even after the government devolved more powers to the black local authorities, they remained illegitimate. The fiscal inadequacy created by the fallacy of self-sufficiency rendered them empty shells that produced nothing but conflict. They became the target of rent boycotts and large-scale popular mobilisation in the mid-1980s.[14]

Separate local government structures were also created for the coloured and Indian populations. These were expected to develop from advisory bodies into fully fledged municipalities equivalent to the white local authorities. However, they suffered the same fate as the black local authorities. Without exception, the well-resourced commercial centres with their viable revenue bases were reserved as white areas. The outlying and poor areas, without meaningful formal economies, were reserved for black

[13] Nazeem Ismail and Chisepo J.J. Mphaisha, *The Final Constitution of South Africa: Local Government Provisions and Their Implications* (Konrad Adenauer Stiftung, 1997) 7.

[14] Department of Constitutional Development, *White Paper on Local Government* (Government Printers, 1998) 2.

people. Following the format of the colonial state, traditional authorities in the homeland areas were tasked with performing local government functions, such as land allocation, agricultural affairs, road infrastructure, and the suppression of cattle diseases.[15]

The transformation of local government into a fully fledged institution of non-racial governance was thus impelled by this legacy of an 'urban economic logic that systematically favoured white urban areas at the cost of black urban and peri-urban areas'.[16]

Negotiations between the apartheid government and the liberation movements on local government commenced in earnest at the beginning of the 1990s. One of the critical features was the adoption of the principle of 'one city, one tax base', which had become the slogan with which the grossly inequitable distribution of resources was opposed by the liberation movements.[17] The emergence of constitutional protection for local government was informed by three main developments. First, most liberation movements had an aversion to federalism because the apartheid policies on territories set aside for black inhabitants had a 'federal' slant to them.[18] The dispute over a federal or unitary South Africa drove a deep wedge between the ANC and the Inkatha Freedom Party, which argued for the recognition of an autonomous Zulu kingdom. Secondly, the liberation movements sought to consolidate and find a constitutional space for the grassroots civic movements that helped overturn the apartheid government. Thirdly, for its part, the NP insisted on the inclusion of checks on the power of an almighty ANC government and became a convert to decentralisation and federalism.

[15] Sam Rugege, 'Traditional Leadership and Its Future Role in Local Governance' (2003) 7(2) *Law, Democracy & Development* 171–200, 173.

[16] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (2) BLCR 1458 (CC) para 122.

[17] Gideon Pimstone, 'Local Government', in Matthew Chaskalson et al. (eds) *Constitutional Law of South Africa* (Juta, 1999) 5A1–5A42 at 5A3.

[18] Nicolas Haysom, 'The Origins of Co-operative Governance: The "Federal" Debates in the Constitution-Making Process', in Norman Levy and Christopher Tapscott (eds) *Intergovernmental Relations in South Africa: The Challenges of Co-operative Government* (IDASA and School of Government, University of the Western Cape, 2001) 43–65, 45. See also Nico Steytler and Johann Mettler, 'Federal Arrangements as a Peacemaking Device during South Africa's Transition to Democracy' (Fall 2001) 31 *Publius: The Journal of Federalism* 93–106.

The 1993 Constitution[19] set the scene for the first democratic elections in 1994 and the formulation of a final Constitution by the newly elected Parliament. It ushered in constitutional recognition for local government and paved the way for the amalgamation of more than a thousand disparate, racially defined local government structures into 842 transitional local authorities.[20]

The 1996 Constitution goes further, and envisages local government as a mature sphere of government. It set the scene for two forms of local government, namely metropolitan local government and non-metropolitan local government. There are eight areas with metropolitan local government—single-tiered metropolitan municipalities that have exclusive municipal authority over their area of jurisdiction.[21] What made these areas 'metropolitan' is defined in legislation with reference to indicators such as population density, movement of people, goods and services, diverse economic activity, and desirability of integrated development planning. The rest of the country is divided into 44 district municipalities. Each district municipality, in turn, is divided into a number of local municipalities, varying from two to eight in number. The total number of local municipalities in the country is 205. The district and local municipalities share authority over their respective jurisdictions and rely on a statutorily defined division of authority. This division is a point of contestation. Local municipalities are the interface with communities and generally perform community services, but the role of district municipalities is less clear. They were initially conceptualised as responsible for regional planning, redistribution between rich and poor municipalities, and providing support to weaker local municipalities, but they have struggled to adapt to these roles.

Deciding on metropolitan or non-metropolitan local governance for a specific municipal area is the prerogative of the independent Municipal Demarcation Board (discussed below).

[19] Constitution of the Republic of South Africa of 1993.

[20] Nico Steytler, 'Local Government in South Africa: Entrenching Decentralised Government', in Nico Steytler (ed) *The Place and Role of Local Government in Federal Systems* (Konrad Adenauer Stiftung, 2006) 183–212, 187.

[21] The eight areas are Johannesburg, Cape Town, eThekwini (Durban), Tshwane (Pretoria), Nelson Mandela Bay (Gqeberga), Ekurhuleni (East Rand), Buffalo City (East London) and Mangaung (Bloemfontein).

Municipalities must be established 'for the whole of the territory of the Republic'.[22] This principle does away with the phenomenon where certain rural areas were governed, not by any form of democratically elected municipal government, but by either a traditional authority or a government official.

Municipal boundaries are determined by the Municipal Demarcation Board. In 1999 and 2000, it demarcation the country into 284 municipalities and paved the way for the first municipal elections on 5 December 2000.[23] On that day, the first generation of municipal councils took over the reins of these newly demarcated areas in terms of a new local government dispensation.

Given South Africa's land mass and population size, it has some of the biggest municipalities in the world. The 284 municipalities established in 2000 were reduced through successive amalgamations to 257 in 2016. Legislation instructs the Municipal Demarcation Board to create local authorities that are financially viable. In addition, they need to be able to redistribute resources from rural to urban areas and from rich towns to outlying poor black areas.

The twin principles of 'wall-to-wall', and democratic, local government meant that the institution of traditional leadership changed dramatically. Rural areas previously under traditional authorities' rule were absorbed into the constitutional system of local government. Traditional authorities were afforded non-voting seats on the municipal council in their area. This relegation to an advisory status continues to anger many traditional leaders.

The concept of a single, unified metropolitan municipality was a new feature in the local government design. It was borne out of the experience of fragmented service delivery and lack of redistribution that resulted from the pre-1994 arrangements, where multiple small local authorities governed a metropolis that, for all intents and purposes, comprised one integrated metropolitan area. For example, the metropolitan area that became the City of Cape Town in 2000 consisted of 60 local authorities in 1994.[24] A new form of metropolitan government was needed

[22] Constitution, section 151(1).

[23] This was later reduced to 283 municipalities and, in 2016, to 257.

[24] See *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC) para 9.

to facilitate citywide development, integrated infrastructure planning, and redistribution of resources within these large cities.[25]

3 Constitutional Recognition of Local Government

The rationale for the constitutional recognition of local government was that South Africa could have a strong agent for development in local government if the latter were afforded a measure of autonomy.

This constitutional recognition is manifested in a number of ways. First, local government is one of the three 'spheres' of government, which are 'distinct', 'interdependent', and 'interrelated'.[26] Secondly, local government is afforded 'the right to govern, on its own initiative, the local government affairs of its community'.[27] To this end, it is given constitutionally recognised and protected powers, with national and provincial governments prohibited from exercising undue interference in it. Thirdly, municipalities enjoy constitutionally guaranteed revenue-raising powers as well as a constitutionally guaranteed entitlement to an 'equitable share' of nationally generated revenue.[28] Fourthly, the Constitution establishes a principle akin to subsidiarity, by providing that certain national and provincial functions that are more effectively exercised by municipalities must be assigned to local government.[29] Fifthly, organised local government is afforded non-voting seats in the NCOP.[30] Lastly, national and provincial parliaments are obliged by the Constitution to consult organised local government on legislation that affects the institutions or functions of local government.[31]

The legal value of this constitutional recognition is significant. The Constitutional Court has, on various occasions, stressed that the new local government order is fundamentally different from the old, in that

[25] Department of Constitutional Development (n 14) 59.

[26] Constitution, section 40(1).

[27] Constitution, section 151(3).

[28] Constitution, section 229.

[29] Constitution, section 156(4).

[30] Constitution, sections 67 and 221(1).

[31] Constitution, section 154(2).

local government now derives powers from the Constitution.[32] It has also established a firm jurisprudential trend, invalidating national and provincial laws and decisions that usurp local government's constitutional powers.[33] However, the practical value of the constitutional recognition is arguably mitigated by capacity problems in local government and the centralised tendencies of major political parties.

One-party dominance across the three spheres of government has enabled the ANC to iron out, within party structures, many tensions and disagreements between organs of state. However, in a number of cases, local government autonomy was upheld and the constitutional protection proved to be of real value.[34] Furthermore, the constitutional protection of local government is a pertinent factor in the development of policies that have an impact on local government. Local government's constitutional right to reticulate electricity and to appoint its own staff, for example, stood tall against government's plans to rescale the electricity function to a regional level and to absorb municipal staff into a single public service.

The extent to which municipalities assert their autonomy varies with the 'political colour' of the municipality. However, it is clear that the urban constituency is asserting this autonomy. Repeated calls have been made by this constituency to the national government to distinguish

[32] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BLCR 1458 (CC); and *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC) para 9.

[33] Jaap de Visser, 'Food Security, Urban Governance and Multilevel Government in Africa', in Robert Home (ed) *Land Issues for Urban Governance in Sub-Saharan Africa* (Springer, 2021) 269–280, 275.

[34] See, for example, *CDA Boerdery (Edms) Bpk and Others v The Nelson Mandela Metropolitan Municipality and Others* 2007 (4) SA 276 (SCA) para 41. See also *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1998 (12) BLCR 1458 (CC); *City of Cape Town and Another v Robertson and Another* 2005 (3) BCLR 199 (CC); *City of Johannesburg Metropolitan Municipality v Chairman of the National Building Regulations Review Board and Others* 2018 (8) BCLR 881 (CC); *Lagoonbay Lifestyle Estate (Pty) Ltd v The Minister for Local Government, Environmental Affairs and Development Planning of the Western Cape & Others* [2013] *ZASCA 13; Maccsand (Pty) Ltd v City of Cape Town and Others* 2012 (4) SA 181 (CC); *Pieterse NO v Lephalale Local Municipality* 2017 (2) BCLR 233 (CC); *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal and Others* 2016 (3) SA 160 (CC).

between the unique challenges that exist in the various spaces governed by local governments.

This diversity manifests itself in two arguments. The first argument is for a reduction of provincial government interference in the affairs of big cities. Whereas small towns may indeed need considerable support from provincial government, well-capacitated municipalities in the bigger cities might best be left to manage their own affairs, so it is argued.[35] The second argument is for more powers. Most of the eight metropolitan municipalities have undergone tremendous growth in resources, capacity, and institutional profile since 2000. In 2019, nine of the biggest municipalities accounted for about 57 per cent of national economic output and 53 per cent of national employment.[36] Their financial self-sufficiency also speaks volumes. For 2014–2015, the eight metropolitan municipalities' budgets relied for 17 per cent of their revenue on nationally raised revenue. In contrast, in the same year, the 70 most rural local municipalities relied for 73 per cent of their budgets on national transfers.[37]

They have outgrown the straitjacket of their constitutional powers (see below) and stand ready to exercise more powers, which often still reside with national or provincial government. A strong argument is being made to afford metropolitan municipalities authority over housing, transport, and electricity generation.[38]

4 Governance Role of Local Government

The Constitution equips local government with original powers by providing that a municipality has authority over the 39 matters listed in Schedules 4B and 5B of the Constitution. These functional areas can be grouped into the following six themes:

[35] South African Cities Network, *State of the Cities Report 2006*, 5–22.

[36] South African Cities Network, *State of the Cities Report 2020*, 6.

[37] National Treasury, *2014 Budget* (National Treasury, 2014) 100.

[38] Jaap de Visser and Anél du Plessis, 'Climate Governance and the Practice of Federalism: South Africa', in Sébastien Jodoin (ed) *Climate Change & Federal Governance* (Forum of Federations, forthcoming).

1. built environment (for example, electricity and water reticulation, sewage, refuse removal, building regulations, planning, storm-water management, noise pollution, cleansing, street lighting, and fencing);
2. social and emergency services (for example, child-care facilities, firefighting, local recreation, sport facilities, and dog licences);
3. health (for example, municipal health care and air pollution);
4. transport (for example, public transport, traffic, parking, municipal roads, municipal airports, and ferries);
5. economy (for example, trading regulations, markets, abattoirs, local tourism, billboards, and liquor and food outlets); and
6. amenities (for example, cemeteries, public spaces, and parks).

However, there often is uncertainty with regard to the cut-off points between municipal competences and those of the national and provincial spheres.[39]

By providing for original taxing powers for municipalities, the Constitution establishes a degree of fiscal autonomy for local government. It grants local government the exclusive right to levy property rates and to impose surcharges on fees for services it provides.[40]

These powers, however, are not exclusive to local government, given that they can be regulated by the national and provincial governments through framework legislation.[41] Such legislation may set the parameters for local by-laws in the form of minimum-standards and monitoring procedures, but may not 'compromise or impede' the ability of local government to perform its functions.[42] If such legislation extends to the detail of local policy-making or usurps municipal executive authority, it violates municipal autonomy.

National and provincial governments may assign or delegate further powers to local government in general or to individual municipalities. The

[39] For a discussion of the challenges of concurrent and overlapping powers, see Nico Steytler and Yonatan Fessha, 'Defining Provincial and Local Government Powers and Functions' (2007) 124 *South African Law Journal* 320–338.

[40] Constitution, section 229.

[41] Certain matters, namely those mentioned in Schedule 5B of the Constitution, can be regulated only by provincial governments. The national government can legislate on those matters only in specific circumstances, as per section 44(2) of the Constitution.

[42] Constitution, section 151(4).

instrument of assignment is a form of devolution. It entails the transfer of discretion over functions and financial risk as well as entitlement to intergovernmental funding. Importantly, as noted above, the Constitution makes the assignment of matters listed as concurrent national and/or provincial competences compulsory if they would be administered most effectively at a local level and if the municipality has the capacity to administer them. Statutes provide for procedures and criteria aimed at preventing unfunded mandates and ensuring that the assigned function will be performed.

However, the instrument of assignment—in the form and procedure envisaged by the Constitution and legislation—is something of an enigma. National and provincial sector departments have used a variety of other instruments to increase local government's involvement in governance. Some of these instruments would qualify as assignments, albeit not following the prescripts of the Constitution. As a result, municipalities are involved in a range of public services without always having sufficient authority or resources. Examples of functions that have been transferred to local government through a variety of (sometimes constitutionally suspect) constructions are primary health care and libraries. In addition, court jurisprudence on socioeconomic rights has resulted in the devolution of new functions to local government. For example, the enforcement of the right of access to housing by the courts has resulted in municipalities being held responsible for providing alternative accommodation to persons who are rendered homeless as a result of evictions or other crises.[43]

The delivery of basic services, such as water, sanitation, electricity, and refuse removal, is the main activity of municipalities.[44] Municipalities spend the majority of their budgets on these four services. An important aspect of the mandate of municipalities is their responsibility to ensure the extension of free basic services. This policy entails the provision, free of charge, of a basic component of water (namely, 25 litres per person per day, or 6 kilolitres per household per month) and a basic component of electricity (namely, 5kWh/50kWp per household per month).

[43] De Visser (n 33) 270.

[44] National Treasury RSA, *Budget 2021* (National Treasury, 2021), www.treasury.gov.za (accessed 29 July 2021) 76.

This mandate was imposed by the national government, and municipalities are expected to fund it by using their equitable share, which is an unconditional grant.

One of the key elements of the vision of developmental local government is the reversal of the inequities of apartheid planning. However, for at least a decade, there was confusion over local government's role in land-use management (town planning), a situation that paralysed efforts in addressing the consequences of apartheid spatial planning.[45] In the end, the Constitutional Court came to the rescue and clarified local government's constitutional power over 'municipal planning'. In *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal*, the City of Johannesburg asked the Constitutional Court to declare parts of the Development Facilitation Act 67 of 1995 (DFA) unconstitutional. The DFA empowered provincial planning tribunals to take land-use decisions, something that, so the City argued, the Constitution reserves for municipalities. The Constitutional Court agreed with the City and declared the DFA unconstitutional.

The judgement underscored the central role that municipalities play in land-use management. It located municipalities at the centre of the land-use management framework. In subsequent years, six similar cases concerning municipal planning powers reached the Constitutional Court, all of which were decided in favour of local government.[46]

4.1 Governance Institutions

Both legislative and executive authority is vested in the municipal council. The council may delegate executive authority either to an indirectly elected executive committee or to an indirectly elected executive mayor, depending on the institutional configuration imposed on it by its provincial government. An executive committee, headed by a mayor, broadly represents the composition of the council. An executive mayor exercises executive authority, assisted by a mayoral committee, which is a cabinet of councillors handpicked by the executive mayor.

[45] S Berrisford, 'Unravelling Apartheid Planning Legislation in South Africa: A Case Study' (2011) *Urban Forum* 247–263.

[46] De Visser (n 33) 270.

Most councillors are part-time. Office bearers such as mayors, speakers, and members of executive structures are full-time. Both part-time and full-time councillors are remunerated and may receive pension benefits. The remuneration of councillors in view of their full- or part-time status is regulated in a national framework, based on factors such as municipal income and population.[47] For example, a metropolitan municipality may award its mayor an annual package of not more than ZAR 1,404,260 (USD 97,000) and its ordinary part-time members, not more than ZAR 525,904 (USD 36,000).[48] For the smallest rural municipality, these amounts would be ZAR 782,582 (USD 54,000) and ZAR 247,360 (USD 19, 000), respectively.

However, the reality for many part-time councillors is that their councillor remuneration is their key source of income. In addition to the community calling, the prospect of having a political career and receiving a regular income is an important motivation for someone to stand as a candidate. The fact that 47 per cent of councillors have not completed a high school qualification is a significant consideration in this regard.[49] It suggests that, for many councillors, there are limited options for well-paid remuneration outside of politics.

Although the public service in provinces is regulated by a National Public Service Act,[50] municipalities have discretion over their municipal administrations. Salaries are thus negotiated between organised local government and labour unions in a Local Government Bargaining Chamber. The discretion over their administration enables municipalities to determine salaries and performance bonuses of the two highest levels of municipal officialdom, as these salaries are not negotiated in the Local Government Bargaining Chamber. The nationally prescribed upper limits must be adhered to, though.

[47] See Determination of Upper Limits of Salaries, Allowance and Benefits of Different Members of Municipal Councils, 2020, GN 43246, *Government Gazette* 475 (24 April 2020).

[48] Exchange rate on 31 July 2021: USD 1 = ZAR 14.45.

[49] Evan Lieberman, Philip Martin and Nina McMurry, 'Voice and Accountability: Evidence from a Survey of South African Local Councillors', Making All Voices Count Research Report (IDS, 2017) 9.

[50] Public Service Act 104 of 1994.

The transformation of municipalities from non-representative, non-responsive bureaucracies into representative and responsive administrations is a key challenge for all municipalities. This is compounded by an acute shortage of skills, particularly in engineering and financial management, as well as by a high turnover in managerial positions.[51]

With limited resources and skills, the constitutional goal of developmental local government is not achieved easily. A 2018 survey revealed that levels of trust in local government are not particularly high (65 per cent). However, they are still higher than trust in the provincial premier (56 per cent) and the national President (57 per cent), and equal to trust in Parliament (65 per cent).[52] The incomplete and imperfect nature of local government transformation is evidenced by the civic protests that emerged from 2005 onwards and which have continued to flare up ever since.[53] Protests revolve around poor records of service delivery and corruption, and were initially aimed mostly at local government.[54] However, civic protest in South Africa has increasingly become a vehicle for discontent and despair and often turns disruptive or violent. This is also partly the background to the violent looting spree that erupted in July 2021 in KwaZulu-Natal and parts of Gauteng.

During the second decade of democratic local government, corruption painfully emerged as its Achilles heel. Across the many municipalities that it governs, the ruling ANC appeared to be devouring itself, torn apart by factions that compete for access to the two key levers for self-enrichment, namely municipal procurement and human resources. The Auditor-General, tasked with auditing municipal books, has produced report after report bemoaning the poor state of municipal finances. According to the report covering the 2019–2020 financial year, only 27 municipalities received a 'clean audit' and 96, an 'unqualified audit

[51] Municipal Demarcation Board, *Municipal Powers and Functions Capacity Assessment 2018* (Municipal Demarcation Board, 2018) 73.

[52] Andrew Faul, 'When Corruption Stops, Trust in Government Can Start' *ISS Today* (12 March 2019) https://issafrica.org/iss-today/when-corruption-stops-trust-in-government-can-start (accessed 30 July 2021).

[53] Tinashe Chigwata, Michael O'Donovan and DM Powell, *Civic Protests and Local Government in South Africa: The Civic Protests Barometer 2007–2016* (Dullah Omar Institute), www.dullahomarinstitute.org.za (accessed 30 July 2021).

[54] Applied Constitutional Studies Laboratory, *Civic Protest Barometer 2018 Fact Sheet #4 (Grievances of Protesters)*, www.dullahomarinstitute.org.za (accessed 30 July 2021).

with findings', both of which signal decent financial management. The remaining 134 municipalities all attracted problematic findings, ranging from 'qualified' (80), 'adverse' (seven), 'disclaimed' (22) to the most dismal category, namely 'outstanding' (25), which means the audit could not be finalised due to lack of information.[55]

The national and provincial governments have been seized with attempts to improve local government capacity. In two decades, the sector has been the target of many policies and programmes to that effect.[56]

5 Financing Local Government

The aggregate size of the overall local government budget in South Africa increased dramatically from ZAR 64 billion (about USD 4.4 billion) in 2001–2002 to ZAR 490 billion (about USD 33.7 billion) in 2020–21,[57] which is evidence of an upward trend in the devolution of expenditure. An assessment of how these budgets are raised is at the heart of any appraisal of the status and function of local government in federal systems. In this regard, local government in South Africa again enjoys an impressive constitutional status, but one that does not tell the full story. This constitutional status is not matched by financial buoyancy in many municipal areas, and is under pressure from centralising tendencies.

Local government revenue comprises own revenue, intergovernmental allocations, and borrowing. Property rates and user charges on services, such as water, electricity, and refuse removal, provide local government with a firm base for generating revenue. However, electricity sales as a source of revenue are under significant threat due to the transformation of the electricity industry into micro-grids and off-grid solutions. Still, these revenue-generating powers afford local government significant discretion over taxing policies. National legislation can authorise local government

[55] Auditor-General, *Consolidated General Report on the Local Government Audit Outcomes MFMA 2019–20* (Auditor-General, 2021) 9.

[56] Phindile Ntliziywana, 'The Professionalisation of Local Government Management in South Africa', in Tinashe Chigwata, Jaap de Visser, and Lungelwa Kaywood (eds) *The Journey to Transform Local Government* (Juta, 2019) 60–63.

[57] National Treasury (n 44) 8; National Treasury, *Release of the Local Government Revenue and Expenditure Report for the Second Quarter of 2020/21* (3 March 2021), https://bit.ly/3M9ujAt (accessed 4 August 2021).

to impose other taxes, levies and duties, but this has not happened on any significant scale.

In addition to their own revenue, municipalities are entitled to an equitable share of nationally collected revenue. Local government's equitable share is determined in a Division of Revenue Act of Parliament, which annually appropriates a split among national, provincial, and local governments.[58] The individual allocations to municipalities are determined through a formula which is a composite of factors that look at the number of poor households in each municipality, the cost of providing free basic services to poor households, the cost of running a municipal administration, and the municipality's tax capacity.[59] The equitable share is an unconditional operating grant. The variations in allocations between municipalities are considerable, reflecting the equalising nature of the formula.

Municipalities also receive a number of conditional grants tied to specific purposes and to be spent subject to national norms. An important example is the Municipal Infrastructure Grant (MIG), which municipalities must use to fund new municipal infrastructure and upgrade existing infrastructure, primarily with the aim of benefiting poor households. The grant is funded by the budgets of various national departments. Most grants flow directly from the national government to municipalities.

Intergovernmental allocations to municipalities are embedded in a national Medium Term Expenditure Framework, a three-year rolling budget that contains the entirety of the government's revenue and expenditure plans and serves to ensure predictability of grant income for municipalities.

A final source of financing is borrowing. Because municipalities raise much of their own revenue, they have more scope to borrow than provinces. The Constitution permits municipalities to borrow funds

[58] Local government's share of nationally raised revenue was stable at 8.9% during 2017/18 and 2018/19. It fell sharply to 8.3% in the 2019/20 budget and rose back to 8.8% in the 2020/21 budget. It is predicted to rise towards 9.0, 9.6 and 9.7% for the 2021/22, 2022/23 and 2023/24 budget. National Treasury RSA, *Budget 2021 Highlights* (National Treasury, 2021), www.treasury.gov.za (accessed 29 July 2021).

[59] Division of Revenue Act 9 of 2021 Explanatory Memorandum 35.

within a national legislative framework. Municipal borrowing has developed slowly as a source of revenue for municipal capital expenditure,[60] with metropolitan municipalities taking the lead.[61] In 2020, it was reported that Johannesburg, Cape Town, and Ekurhuleni issued bonds and that Cape Town, furthermore, issued a 'Green Bond' to finance climate change adaption and mitigation projects.[62] The main reasons why the capital market is not warming up to local government are to do with the weak economic climate, uncertainties in the legal framework, and the lack of proper financial management in local governments.

Additional revenue raised by municipalities may not be deducted from their share of revenue raised nationally or from other allocations. Equally, there is no obligation on the national government to compensate municipalities that do not raise revenue commensurate with their fiscal capacity and tax base. Various provisions in the legal framework for local government make it clear that a municipality's financial good health is primarily the responsibility of the municipality itself. There is thus also no obligation on the national or provincial government to bail out municipalities that run into financial difficulties.

Financial management by municipalities must be conducted in terms of national legislation. This legislation has been put in place in the form of a Municipal Finance Management Act,[63] which is augmented by a series of regulations. The legislation tightly regulates municipal budgeting, revenue and expenditure management, borrowing, accounting, and reporting. It also establishes an elaborate scheme of provincial and national monitoring of local government finances, and enables provincial and national powers to intervene in the financial affairs of municipalities.

As regards the position of municipalities in intergovernmental relations, the revenue-raising capacity of municipalities, compared to that of

[60] Bongani Khumalo, Ghalieb Dawood, and Jugal Mahabir, 'South Africa's Intergovernmental Fiscal Relations System', in Nico Steytler and Yash Ghai (eds) *Devolution in Kenya and South Africa* (Juta, 2015) 217.

[61] South African Cities Network, *State of the City Finances 2020* (SACN, 2020) 32.

[62] Ibid., 33.

[63] Act 56 of 2003.

provincial governments, is a critical factor.[64] On average, local government raises about 73 per cent of its total revenue through local taxes and user charges, whereas provinces raise a mere 3 per cent of their income through own revenue.[65] This adds an important dynamic to the relationship between, on the one hand, those municipalities, particularly the larger and metropolitan municipalities, that raise more than 95 per cent of their current expenditure budgets and, on the other hand, their provincial counterparts, entrusted with supervision over them. Smaller rural municipalities with less robust tax bases are in a completely different position: their dependence on transfers from the national government renders them weak participants in intergovernmental discussions.

Early on in the lifespan of the current local government system, the administration of infrastructure grants was relocated from provincial governments to national governments. This significantly reduced provincial leverage over local governments, as provinces have no control over the disbursement of infrastructure grants.

Of the overall budget of municipalities, capital expenditure on aggregate represents 14.3 per cent in 2020–2021, 13.3 per cent in 2021–2022, and 13.1 per cent in 2022–2023.[66] The fact that a large portion of capital expenditure is funded by grants (mostly conditional) raises concerns about the effect of the grant system on local government infrastructure planning. It is argued that municipalities are increasingly planning around government grants, a situation which tends to impair the local setting of priorities.

6 Supervising Local Government

The supervisory role of national and provincial governments over local government is an essential component of South Africa's local government dispensation. First, the national and provincial governments play a supervisory role in establishing local government institutions and in regulating

[64] On intergovernmental fiscal relations, see Bongani Khumalo and Renosi Mokate, 'Republic of South Africa', in Anwar Shah (ed) *The Practice of Fiscal Federalism: Comparative Perspectives* (McGill-Queen's University Press, 2007) 263–286.

[65] National Treasury, *2014 Budget Review*, 93.

[66] National Treasury, *National Treasury on Operating and Capital Budgets of Municipalities for 2020/21 2 Dec 2020*, https://bit.ly/2TZ8zRS (accessed 4 August 2021).

their institutional framework. The legal framework for local government institutions is predominantly national with provincial governments playing a very modest role in defining local government institutions. This has resulted in a uniform system of local government throughout the country, with little variation between provinces.[67]

The second manifestation of supervision of local government is regulatory supervision by the national and provincial governments. The national government has rapidly produced legislation regulating the exercise of local government functions. For example, the Water Services Act 108 of 1997 regulates local government's exercise of its power regarding potable water supply, while the National Health Act 61 of 2003 deals with local government's powers over municipal health services.

Due to the rapid production of national legislation and slow production of provincial legislation on concurrent competences,[68] there is little variation on this score, too. Greater variations between provinces, however, are starting to emerge slowly, with the Western Cape, Gauteng, and KwaZulu-Natal provinces producing legislation that regulates some local government functions.[69]

The fragmentation of approaches to local government among sector departments is cause for concern. Sector departments dealing with transport, water, health, and other areas that intersect with local government's original powers have often sponsored legislation on those original powers that exhibits a variety of interpretations of the scope for regulatory supervision. Some of these interpretations are tenable and others are not.[70] In addition, some sectors still operate on the basis of regulatory schemes that predate the current local government dispensation and which are therefore premised on the pre-constitutional notion of a subservient municipality. The result is an inconsistent and contradictory approach

[67] One exception perhaps is that the Province of KwaZulu-Natal has opted to exclude the executive-mayor system and operate only with executive-committee systems.

[68] Steytler (n 7) 327.

[69] For example, the Western Cape provincial government adopted regulations on noise pollution in terms of the Environment Conservation Act 73 of 1989. The KwaZulu-Natal government adopted the KwaZulu-Natal Road Traffic Act 7 of 1997, KwaZulu-Natal Health Act 4 of 2000, and KwaZulu-Natal Cemeteries and Crematoria Act 12 of 1996, all of which regulate local government functions.

[70] For examples of the variety of approaches, see Jaap de Visser, *Developmental Local Government: A Case Study of South Africa* (Intersentia, 2005) 174.

to supervisory regulation. For example, municipalities in KwaZulu-Natal have to obtain prior approval for their by-laws on road traffic,[71] whereas their by-laws on municipal health require no such approval.[72] Similarly, the national Department of Trade and Industry requires all municipalities to obtain prior approval for their by-laws on building regulations,[73] whereas the national Department of Forestry and Water Affairs imposes no such requirement on by-laws on water reticulation.[74]

The third manifestation of supervision over local government is monitoring. Both the provincial and national governments can monitor local government's performance. Generic legislation provides for specific national and provincial monitoring powers. The overall scheme is that provincial departments responsible for local government engage in hands-on monitoring, in that they establish a general monitoring system and can request information from municipalities as well as launch investigations into corruption.[75] The monitoring powers of the national government act at more of an arm's length, in that this level of government relies on provincial reports and may launch investigations only if provincial governments fail to do so. In practice, however, municipalities are indeed monitored directly by national departments in terms of sector legislation and conditional grants, a factor which tends to disrupt the balance struck in the generic legislation.[76]

A fourth, and increasingly dominant, manifestation of monitoring local government has arisen with the adoption of the Municipal Finance Management Act. The Act imposes a detailed system of financial management dealing with, among other things, the budget process, revenue management, expenditure control, accounting, and supply-chain management.

Integral to the financial management entailed by the Act is a system of regular reporting to provincial treasuries and (to a lesser extent) the

[71] See KwaZulu-Natal Road Traffic Act 7 of 1997, section 26.

[72] See KwaZulu-Natal Health Act 4 of 2000, section 4.

[73] See National Building Regulations and Building Standards Act 103 of 1977, section 29(8)(a).

[74] See Water Services Act 108 of 1997, section 21.

[75] Municipal Systems Act 32 of 2000, sections 106–108.

[76] For examples of various monitoring schemes that are at odds with the Municipal Systems Act and the Constitution, see de Visser (n 70) 183.

National Treasury. This system enables the national and provincial treasuries to regularly monitor the activities of every municipality. The need for oversight of this kind is apparent. What is more, the continuous interaction between municipalities and national and provincial treasuries on the basis of the various reports stimulates intergovernmental cooperation, sharing of information, joint planning, and integration. However, it may result in municipalities' developing an increasing sense of upward accountability at the cost of local accountability.

A fifth, and essential, part of supervision over local government is the constitutional power that provincial governments have to intervene in municipalities if monitoring activities reveal severe and persistent problems in a municipality.[77] In principle, intervention is a power reserved for provincial governments. Provincial governments may intervene when there are general failures on the part of a municipality to fulfil executive obligations. For example, the provincial government can intervene when a municipality fails to provide basic water supplies or adequate sanitation. The Constitution provides an elaborate menu of interventions, ranging from the take-over of functions to the dissolution of the council and the imposition of a budget. If the province fails to discharge its duty to intervene in critical financial crises, the national government must do so.

Checks and balances are built into the framework for interventions, in that the national minister responsible for local government must approve interventions. The National Council of Provinces also oversees the intervention through an approval power and a power to regularly review the implementation of the intervention. However, in the case of financial interventions, these intergovernmental checks and balances are reduced to a notification.

Provincial interventions in municipalities are a regular occurrence. The mere fact that so many municipalities have experienced two or more interventions[78] indicates that interventions are not working as intended. A key problem is the legal uncertainty surrounding the implementation of interventions—and the inadequacy of the approaches that

[77] Constitution, section 139.

[78] Tracy Ledger and Mahlatse Rampedi, *Mind the Gap: Section 139 Interventions in Theory and Practice* (Public Affairs Research Institute, 2019) 7.

provinces take in response to it.[79] These legal woes have made provinces wary of interventions, with soft, supportive interventions being deemed safer. However, this approach is leading to exactly the opposite result. Provincial governments are now facing resistance, not from municipalities but from communities and local businesses who—exasperated by their collapsing municipalities and the lack of provincial action—are suing them, successfully, for not intervening and thereby forcing them to use their intervention powers.[80] Indeed, in 2021, the national government began to 'leapfrog' over provinces that are unable or unwilling to intervene.[81]

All of this is an indictment of provincial oversight of municipalities. While additional pressure from litigious communities may prompt more interventions, it will not solve an equally stubborn problem, namely that provinces tend to lack the capacity and neutrality that are necessary for conducting interventions. The concept of intervention assumes, after all, the existence of a provincial government capable of overseeing the turnaround of a failing municipality and neutral in the face of the intra- and inter-party tension that underlies the collapse of a municipality. Too often, though, provincial governments fail on either, or sometimes even both, counts: this foredooms their interventions to failure. The root cause of most of South Africa's abject municipal failures is political in nature—they are due, in other words, to internal factional battles or bitter inter-party-political battles that spill over into municipal administrations and paralyse them.[82] At times, the intervention by a province which is, or is perceived to be, favourable to one or other of the warring parties or factions simply compounds that political tension rather than moderating it.

[79] Ibid., 22.

[80] Tinashe Chigwata, 'Courts as a Check on Provincial Interventions: The Makana and Tshwane Interventions' (2020) 15(2) *Local Government Bulletin*.

[81] Government Communications, *Statement on the Cabinet Meeting of 21 May 2021* (2021), www.gcis.gov.za/newsroom/media-releases/statement-cabinet-meeting-12-may-2021 (accessed 28 May 2021).

[82] Ledger and Rampedi (n 78) 1.

7 Intergovernmental Relations

Intergovernmental relations are guided by a conceptual framework provided in the Constitution and entitled 'co-operative government'. These principles give expression to the attributes of 'distinctiveness, interrelatedness and interdependence' granted by the Constitution to the three spheres.[83] For example, in section 41(1), the three spheres are enjoined to respect each other's institutional integrity, cooperate with each other, assist and support each other, consult each other on matters of common interest, and avoid legal proceedings against one another.

The constitutional recognition of organised local government positions local government as a negotiating partner for national and provincial governments and as support structures for municipalities. The Constitution requires national legislation to recognise national and provincial organisations representing municipalities. In addition, it requires legislation determining consultation procedures with organised local government and procedures for organised local government to designate representatives to participate in two significant institutions, the NCOP and the Financial and Fiscal Commission.

In terms of this scheme, the South African Local Government Association (SALGA) has been accredited. SALGA may designate up to ten representatives to participate in the parliamentary proceedings of the NCOP, but they may not vote.[84] However, SALGA's participation in the NCOP has not yet produced the type of intergovernmental engagement envisaged by the Constitution. Representatives are serving councillors who are thus in a 'continuous flux',[85] having to juggle their mandate to their municipality with their duties in Parliament. Another challenge to SALGA's effectiveness is that local government comprises a great variety of municipalities that range from severely under-resourced rural municipalities to metropolitan giants.

South Africa's commitment to containing the centrifugal dynamics of decentralisation has resulted in comprehensive legal and policy frameworks for intergovernmental planning and budgeting. The Integrated

[83] Constitution, section 40(1).

[84] Constitution, section 67.

[85] Norman Levy, Chris Tapscott, Nico Steytler, et al., *The Intergovernmental Relations Audit: Towards a Culture of Co-operative Government* (Department of Provincial and Local Government, 1999) 134.

Development Plan (IDP) stands at the centre of this. Legislation instructs municipalities to adopt and annually review IDPs and base their budgeting on the IDP, rendering it the prime policy document for municipalities. The IDP has three critical features in the context of intergovernmental relations. First, it must be formulated after extensive public participation and therefore contain the local articulation of service delivery and development needs. These needs may fall within or outside a municipality's competency, which relates to the second and third features. The second feature is that IDPs must be aligned with the development plans and strategies of other affected municipalities and the national and provincial governments. Thirdly, this alignment is expected to be a two-way process. IDPs must complement and influence the development plans and strategies of other affected municipalities and the national and provincial governments. The rationale for this scheme is that all service delivery and development efforts by any sphere of government eventually take place within a municipal jurisdiction—hence the IDP as the focal point of coordination and alignment of service delivery.

The implementation of the grand approach to the IDP is hampered by a number of factors. First, participatory processes are often flawed and artificial, compromising the quality of IDP documents. Secondly, too many municipalities fail to filter and prioritise needs in line with realistic budgetary and competency parameters, thus compromising the credibility of IDPs. Thirdly, the engagement of national and provincial sector departments with the IDP, essential for the success of intergovernmental coordination through the IDP, is often inadequate.

The Intergovernmental Relations Framework Act 13 of 2005 is a key piece of legislation for intergovernmental relations. Chapter 3 of the Constitution sketches only principles for intergovernmental relations—this lack of detail reflects an understanding that the development of an efficient framework for relations between governments is best left to the practice of intergovernmental relations. The Act is thus based on the first results of the 'organic growth' of intergovernmental relations.

A significant best practice that developed after 1994 was the emergence of executive intergovernmental relations and intergovernmental forums (IGR forums). The regular meetings of a national minister with his or her nine provincial counterparts—members of the executive councils (MECs) in so-called MinMECs—grew into strong policy-making structures. Except for the MinMECs on education and finance, these were non-statutory. Even though the practice of executive intergovernmental

relations developed most prominently in national-provincial relations against the background of the two levels holding powers concurrently, the practice attracted notice and was replicated in the provincial-local arena. The Intergovernmental Relations Framework Act subsequently provided an overall framework for IGR forums. In the national arena, the President convenes the President's Coordinating Council, comprising key cabinet members, the nine premiers, and a representative of organised local government. The above-mentioned MinMECs continue to convene in terms of the Act, with organised local government represented at MinMECs that deal with local government's constitutional functions. Provincially, the premier convenes a Premier's Intergovernmental Forum, comprising key provincial MECs and mayors of district and metropolitan municipalities; at the district level, the district mayor convenes a District Intergovernmental Forum, comprising all the local mayors in the district.

Apart from capturing best practice, the Act gave new impetus to intergovernmental relations by formalising IGR forums for local government and by securing local government representation on key national IGR forums.

The question is whether these IGR forums contribute to healthier intergovernmental relations, particularly for the sake of local government. The success of local government's representation on the national IGR forums depends on the quality of organised local government's input in these structures, which is an uncertain variable at best. All too often, SALGA has insufficient resources, capacity, or time to provide adequate input at such IGR forums. Powell argues that IGR forums enjoy legitimacy but tend to reinforce hierarchy rather than equal participation.[86] For example, the President's Coordinating Council (PCC) seems to be a body to which local government accounts, rather than one serving as an opportunity for it to participate in national decision-making. A key concern about the composition of the PCC is that metropolitan municipalities have no direct representation on it. The government's

[86] Derek Powell, 'Constructing a Development State in South Africa: The Corporatization of Intergovernmental Relations', in Johanne Poirier, Cheryl Saunders, and John Kincaid (eds) *Intergovernmental Relations in Federal Systems* (Oxford University Press, 2015) 329.

own Integrated Urban Development Framework remarks that '[n]ational-city intergovernmental relations should be strengthened'.[87] However, the composition of the PCC, with metropolitan concerns channelled through one representative of the entire local government sector, is out of sync with the critical importance that metropolitan municipalities have in South Africa.

8 Political Culture of Local Governance

Local government is dominated by the same political parties that operate nationally and provincially. This pattern is informed by a strong party-political culture in local government, as well as by the electoral system, which is a mixture of constituency and party-list elections. 50 per cent of councillors are elected in wards in terms of a first-past-the-post system, with the remaining 50 per cent elected via a closed party-list PR system—an arrangement that, overall, ensures a high degree of proportionality between votes cast and seats obtained. Voter participation in local government elections first increased from 48 per cent in 2000 to 56 per cent and 58 per cent in the 2011 and 2016 general elections, respectively, but fell to 43 per cent in the 2021 general elections.[88] National and provincial elections (held on the same day) fall in the middle of the local government term and consistently record a higher turnout, namely 77 per cent in 2009, 73 per cent in 2014, and 66 per cent in 2019.[89]

The political landscape is dominated by the African National Congress (ANC), which has secured outright majorities in national elections ever since 1994. In 2021, the ANC controlled the central government and eight of the nine provinces with outright majorities. In most of the country's municipalities, it commands outright majorities. However, both the 2016 and 2021 local government elections saw a considerable loss of

[87] Department of Cooperative Governance and Traditional Affairs, *Integrated Urban Development Framework* (Government Printer, 2016) 101.

[88] Thembani Mkhize, Laven Naidoo, Graeme Götz, Rashid Seedat, *Voting patterns in the 2021 local government elections Gauteng* City Region Observatory https://www.gcro.ac.za/outputs/map-of-the-month/detail/voting-patterns-2021-local-government-elections/ (accessed 6 April 2022).

[89] Independent Electoral Commission, *2006 Municipal Elections Report* (Independent Electoral Commission, 2006) 55; Independent Electoral Commission, *2016 Local Government Elections Report* (Independent Electoral Commission, 2016) vii.

support for the ANC local government elections. In 2016, the ANC lost its outright majority in the City of Johannesburg, City of Tshwane, and Nelson Mandela Bay Municipality, which have been governed by unstable coalitions since then. The 2021 saw a further loss of support for the ANC in local government. Its overall support fell to 45.6 per cent, with the party controlling only 122 of the 257 municipalities and leading in 167 municipalities.[90]

The highly centralised party hierarchy that obtains in both the ANC and opposition parties stands in sharp contrast to the decentralised nature of the state. The fielding of candidates in local government elections is determined at regional levels and, in the case of mayoral positions in metropolitan municipalities, at the highest political level. Furthermore, it is common for all political parties, where they are able, to exercise considerable influence and oversight over the appointment of senior municipal administrative officers in councils.[91]

It is a statutory goal that all political parties should seek 50/50 representation of men and women on party lists. In the 2016 general local government elections, the gender split of PR list candidates was indeed almost equal. However, two-thirds of ward candidates were male, and the gender imbalance was even more pronounced among independent ward candidates, where males dominated at 86 per cent compared with 14 per cent female candidates.[92] Women accounted for 58 per cent of voters in the 2016 local government elections.[93] In 2018, the Demarcation Board reported that 40 per cent of mayors were women. Women are even more under-represented at senior management level, where only 20 per cent of municipal managers and 30 per cent of chief financial officers were female.[94]

[90] Independent Electoral Commission, *Municipal Election Results,* https://results.elections.org.za/dashboards/lge/ (accessed 5 April 2022).

[91] Robert Cameron, 'The Upliftment of South African Local Government' (2001) 27 *Local Government Studies* 97–118.

[92] Independent Electoral Commission, *2016 Local Government Elections Report* (Pretoria, Independent Electoral Commission, 2016) 58.

[93] Ibid., 73.

[94] Municipal Demarcation Board, *Municipal Powers and Functions Capacity Assessment 2018* (Municipal Demarcation Board, 2018) 72–73.

9 Covid-19's Impact on the Role of Local Government

The Covid-19 crisis intensified the need for intergovernmental collaboration and was thus an important test for the IGR forums. The PCC ordinarily meets twice a year and is a somewhat low-key event. However, in the early phases of the crisis it met weekly and coordinated the national-provincial response at a political level with local government representation.[95] It seems that even metropolitan mayors were invited to some PCC meetings.

During the pandemic, new intergovernmental coordinating platforms were established at provincial and local levels. Provincial governments convened 'provincial command councils', to which local government was sometimes, but not always, invited. At an administrative level, there was close interaction between local and provincial governments. At the height of the crisis they met almost daily, and the general sentiment was that they functioned reasonably well. A golden thread throughout the crisis was that direct representation of the metros was tenuous, despite their crucial role in combatting the spread of the pandemic and absorbing its economic impact.

10 Emerging Issues and Trends

There are a number of significant trends that relate to the autonomy of local government. First, for many of South Africa's 257 municipalities, their constitutional status is one of 'paper autonomy'. This is due to the absence of political and administrative capacity to assert and exploit this autonomy; to financial dependence on intergovernmental transfers (in the case of rural municipalities); to the over-regulation of local government; and to the dominance of centrally directed party politics.

Secondly, horizontal intergovernmental relations among local governments, and the formation of strong regional structures with provinces, remain underdeveloped. For example, Gauteng, the smallest province, is undoubtedly the nation's economic powerhouse. Three of the eight metropolitan municipalities, namely Johannesburg, Tshwane, and

[95] Nico Steytler, Jaap de Visser, and Tinashe Chigwata, 'South Africa: Surfing towards Centralisation on the Covid-19 Wave', in Nico Steytler (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2022) 336–354.

Ekurhuleni, are in this province, together with two district municipalities. The geographical and functional interlinkages between these municipalities and the province are obvious and strongly suggest regionalisation. The provincial government made attempts in that respect, but ran into the stubborn reality of overly complex intergovernmental relations and cities that are only mildly interested in intergovernmental collaboration.[96]

Thirdly, the trajectory of local government is awkwardly linked to the trajectory of provincial government. Provincial government is the sphere of government with which the ANC, which controls the national government and thus the narrative on potential constitutional change, is the least comfortable.[97] The irony is that the ANC's internal organisation is its biggest obstacle in dealing with provinces decisively. Whatever the ANC's ambivalence is towards provinces as governments, its party-political structure is deeply 'federal', with provincial structures playing a dominant role. These provincial political structures require access to the levers of (provincial) governments. Therefore, for as long as the 'unitarist' ANC remains in power nationally, the debate about the future of provincial governments is likely to remain unresolved. The debate on the future role of provincial governments is informed by the rise of a strong sphere of local government. The financial, political, and economic clout of metropolitan municipalities almost equals that of provinces. However, there are many municipalities whose performance is dismal, and this is likely to counter any trend towards greater devolution of functions to local government.

Local government's relationship with provincial governments is therefore rife with contradictions. On the one hand, provincial governments have little leverage over local government, particularly the larger cities and metropolitan municipalities; they are also often dependent on municipalities for the performance of their own provincial functions. On the other hand, provinces perform strong monitoring and supporting functions vis-à-vis municipalities, particularly those that are struggling to perform their functions. To complicate the relationship even further, provincial governments themselves often lack the capacity, or the political neutrality, to do so effectively.

[96] Jaap de Visser 'City Regions in Pursuit of SDG 11: Institutionalising Multilevel Cooperation in Gauteng, South Africa', in Helmut Aust and Anél Du Plessis (eds) *The Globalisation of Urban Governance: Legal Perspectives on Sustainable Development Goal 11* (Routledge, 2019) 186–207.

[97] Steytler (n 7) 316, 323.

The intergovernmental context within which municipalities operate thus remains unsettled. At the same time, there is little doubt that local government's role in South Africa's decentralised system of government is growing in importance at the expense of the role of provincial governments.

CHAPTER 15

Spain

Francisco Velasco Caballero

In general terms, the Spanish system of local government under the current Constitution (1978) is relatively stable. Various economic crises and social and political changes (such as the emergence of new political parties at the state, regional, and local levels) have brought about several adjustments in the local government system, but have not modified its pillars. Although both state and autonomous communities (regions) tend to reduce local autonomy, this reduction has not been dramatic yet. The constraints on local governments are mainly relevant in financial matters, in which since 2012 state and regional controls on local authorities have significantly increased to ensure the balance and sustainability of local budgets. Currently, the most urgent reforms concern the second tier of local government (provinces), whose contours are not clearly set out either in the Constitution or in the general laws, and the rural municipalities, many of which are continuously losing population and are at risk of disappearing.

F. Velasco Caballero (✉)
Instituto de Derecho Local, Universidad Autónoma de Madrid, Madrid, Spain
e-mail: francisco.velasco@uam.es

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_15

1 Country Overview

The Kingdom of Spain is a member state of the European Union. According to the National Institute of Statistics,[1] it had a population of 47.3 million in 2020 and a territory of 505,990 km^2. This equates to a population density of 93.5 people per km^2, although the population is in fact distributed very unevenly, with its densest concentrations found in large cities (such as Madrid, Barcelona, Valencia, Seville, Malaga, A Coruña, and Murcia) and on the Mediterranean coast. In terms of ethnic origin, Spain is homogeneous and largely Caucasian. However, it is also home to various cultural groups, as is evident from its three other official languages apart from Spanish: Galician, Catalan, and Basque. Immigrants represent 12.9 per cent of the population, and come mainly from Latin America, Eastern European countries (such as Romania), and Morocco. Spain's 2021 gross domestic product (GDP) per capita places it as a high-income country.

Under the Spanish Constitution of 1978, the Kingdom of Spain has three basic levels of government: the central state, the autonomous communities (regions and nationalities), and three mandatory types of local governments: islands, provinces, and municipalities. All three levels of local government are directly guaranteed by the Constitution. In accordance with this constitutional arrangement, Spain currently has 17 autonomous communities (plus two Autonomous Cities: Ceuta and Melilla); 11 islands (seven in the archipelagos of the Canary Islands and four in the Balearic Islands); 50 provinces; and 8133 municipalities.

The Spanish Constitution distributes territorial powers and functions among the three basic levels of government: the central or national state, the autonomous communities, and local governments. The Constitution reserves or expressly allocates certain matters and powers directly to the central state. At the same time, it provides that matters and powers not expressly reserved for the central state can be attributed to each autonomous community through a Statute of Autonomy for each community, with this approved via the 'Organic Law' of the State (an Act voted by the absolute majority of the members of the House of Representatives).

The growing relevance of the autonomous communities, the continuous withdrawal of the central state, and the apparent stability of local

[1] See www.ine.es (accessed 1 August 2021).

governments can be observed clearly in the country's public expenditure. Currently (according to the institution in charge of the general accounting audit),[2] subnational governments are responsible for 44 per cent of total public spending. Expenditure by the autonomous communities has clearly increased in recent years, while local expenditure (that of provinces, municipalities, and islands) has remained stable at between 11 and 13 per cent.[3] This distribution of public expenditure has prompted the Organisation for Economic Co-operation and Development (OECD) to conclude that Spain 'is now one of the most decentralised countries of the OECD'.[4]

The territorial distribution of power is far from symmetrical. The state currently focuses its activity on legislative functions, justice, and the administrative management of selected or strategic matters (such as military defence, or the construction and management of infrastructure of general interest). The autonomous communities carry out legislative tasks and manage the greater part of administrative functions (basically those related to the welfare state, such as education, health, and social assistance). The municipalities apply state and regional laws and provide most of the local public services (public transit, waste management, urban planning, and law enforcement, among others). Finally, the provinces assist and cooperate with the municipalities: their main function is to ensure the provision of local services to the smallest municipalities. In the case of the archipelagos (the Canary and Balearic Islands), their local councils carry out the services of the continental provinces as well as a good deal of the services provided by the autonomous communities. The so-called 'historical territories' of the Basque Country offer some exceptions to this arrangement.

Like the other members of the European Union, Spain is a democratic state of the particular kind referred to by the Constitution as a 'parliamentary monarchy'. Strictly speaking, the monarchy's role is restricted to that of official Head of State. The King, currently Felipe VI, enjoys only very limited constitutional powers. The form of government is parliamentary, both at the state level and within each autonomous community.

[2] See www.igae.pap.hacienda.gob.es (accessed 1 August 2021).

[3] As of 2018. See Ministerio de Hacienda, *Haciendas locales en cifras. 2018* (2020), www.hacienda.gob.es (accessed 2 August 2021). See also Juan Echániz Sans, *Los gobiernos locales después de la crisis* (Fundación Democracia y Gobierno Local, 2019).

[4] OECD/UCLG, *Subnational Governments Around the World: Structure and Finance* (2016) 229.

Significant powers and matters are reserved in favour of the different parliaments (both the national parliament and the parliament of each region or autonomous community). At the state and regional levels, the different cabinets or executive councils direct the politics in their jurisdictions and have some extraordinary legislative powers. Each cabinet owes its legitimacy to its relevant parliament and is directly accountable to it.

The political system is relatively stable. Traditionally, Spain's political life has been dominated by the two large parties, the Spanish Socialist Workers' Party (PSOE) and the (conservative) People's Party (PP). However, in the past decade both of them have been losing their hegemonic positions due to challenges from new parties that have appeared both on the left (*Podemos*) and the right (*Ciudadanos* and *Vox*). In the 2019 national elections, the winner (the PSOE) attracted only 28.3 per cent of all ballots, while the runner-up (the PP) obtained just 21 per cent. In the Basque Country, the nationalist parties (both on the right and left) are in the majority. In the case of Catalonia, parties not only nationalist but openly pro-independence are in the majority.

2 History, Structures, and Institutions of Local Government

At the subnational level of government, a clear distinction is made in Spain between autonomous communities (akin in many respects to the member states of the federal countries) and local governments sensu stricto.

The large number of local governments in Spain is best explained by the ongoing impact of historical-political forces. The current map of local jurisdictions was shaped largely in the early nineteenth century when, following the Napoleonic code, municipalities were created in each town of more than 1,000 inhabitants. In addition (and inspired by the French example of departments), the country was divided into 50 provinces, all dependent on the national government. The current Constitution of 1978 added a further layer of autonomous communities (standing above the provinces and municipalities), and also transformed the provinces into proper local entities (that is, entities not dependent on the central government). Neither the provincial map nor the high number of municipalities was altered.

In accordance with all of the above, and leaving aside the particular case of the two archipelagos (where there is a governing council

for each major island), the primary structure of local government in Spain is based on the existence of two entities: the municipality and the province. However, the Spanish constitutional system does also make allowance for (although does not impose) the existence of other local bodies: those established by the autonomous communities (as is the case of the *comarcas* [counties] in Catalonia and Aragon), as well as some single-purpose bodies established by the municipalities for the efficient management of local public services (such as the metropolitan commonwealths and the consortia). The creation of these other entities is frequently the cause of political conflict: in the case of the *comarcas,* because they try to occupy the functional space that would typically fall to the provinces; in the case of the metropolitan areas, because (at least in the cases of Madrid, Barcelona, and Vigo) they compete for economic power with their respective autonomous communities.

The current structure of local government in Spain is a familiar one to those who study comparative constitutionalism. There are many federal states—Germany and Canada are good examples—which include two or more levels of local government, such as the municipal and regional (or provincial).

The local administrative map of Spain reveals that most municipalities (especially so in the interior of the peninsula) are small or even very small: 85 per cent of them have less than 5000 inhabitants, and many are unviable both financially and functionally. They are highly dependent on assistance from and cooperation with their corresponding provinces and autonomous communities. In recent times, and as a response to the financial crisis of 2008, the conservative national government launched a twofold political initiative, calling for the amalgamation of some municipalities as well as a reinforcement of the role of the upper tier of local government (the provinces). However, neither of these two initiatives (both included in State Law 27/2013, Rationalisation and Sustainability of Local Administration) has proved successful.[5] Great social resistance and mobilisation has been directed against municipal mergers, in addition to which it has been found that the provinces cannot generally replace the small municipalities, given that the Constitution defines provinces as only second-degree jurisdictions. In this regard, one sees a notable difference

[5] Eloisa Carbonell Porras, 'La alteración de términos municipales en la reforma local de 2013: Crónica de un fracaso anunciado' (2018) 9 *Revista de Estudios de la Administración Local y Autonómica: Nueva Época* 5–21.

between Spain and the Anglo-Saxon tradition of having strong upper tiers of local government.

Single-purpose bodies play a secondary role in the general scheme of local governments. These can be set up directly by a municipality or province and have proved to be popular, with 4125 established by the end of 2020 (mainly in the large cities). However, none of them enjoys direct democratic legitimacy, and they serve strictly instrumental purposes in their municipality or province.

Local governments fall under the concurrent jurisdiction of the state and the autonomous communities. According to article 149(1)(18) of the Constitution, the state has the power to establish by law the 'basis of the legal system of the public administrations'. Thus, in describing the provinces and municipalities as 'public administrations', the regulatory powers of the central state over local governments are acknowledged. At the same time, though, the different statutes of autonomy (with different texts and nuances of meaning) confer some exclusive powers over local governments to the corresponding autonomous communities, notwithstanding the fundamental regulation of the state under article 149(1)(18).

After interpreting article 149(1)(18) of the Constitution alongside the statutes of autonomy, the Constitutional Court concluded that the Spanish local system has a 'two-fold nature'[6] in that it is defined both by the laws of the state and the laws of the different autonomous communities. The state is responsible for 'fundamental' regulations, whereas the autonomous communities are responsible for 'non-fundamental' regulations, or the so-called 'development' regulations. As we see below, the state interprets its 'fundamental' powers quite broadly.[7] The 'fundamental' regulations of the state over local governments are found in two Acts. The first is Act 7/1985 of 2 April (On the Basis of the Local System, LBRL), and the second, Royal Legislative Decree 2/2004 of 5 March: this approved the Restated Text of the Local Tax Authorities Act (LHL). The 'fundamental' regulations of the state have served to set clear limits on the regulatory sphere of the autonomous communities.

[6] STC 214/1989, FJ 11.

[7] Francisco Velasco Caballero, 'Organización territorial y régimen local en la reforma del Estatuto de Cataluña: límites constitucionales', in *Autori vari*, *Estudios sobre la reforma del Estatuto* (Institut d'Estudis Autonòmics, 2004) 283 and ff.

2006 saw the beginnings of the reform of various statutes of autonomy, including those of Catalonia and Andalusia. The reform sought to expand regional legislative power (of the autonomous communities) over local governments,[8] but, in 2010, a Constitutional Court ruling halted this institutional evolution in its tracks.[9] Since then, further constitutional rulings—such as Constitutional Court Judgment (*Sentencia del Tribunal Constitucional*, STC) 103/2013 on a special State Act for the largest cities—have confirmed the pre-existing case law since 1989. It is now clear to all that wider regional powers over local governments would be possible only through reform of the Constitution itself.

3 Constitutional Recognition of Local Governments

Article 137 of the Constitution guarantees the 'right to self-government' for municipalities, provinces, and islands, but the constitutional recognition of local autonomy does not imply any direct conferral of power on local authorities. Unlike the case with the detailed constitutional regulation that applies to the autonomous communities,[10] local governments are granted no more than a general and unspecific 'right' to local autonomy, with the Constitution providing no specification regarding what powers such autonomy entails. Indeed, even at the financial level, the Constitution guarantees only the 'financial sufficiency' of local governments, and gives no clear indication of the extent of their powers to raise their own taxes.[11] Similarly, the Constitution makes no clear distinction between provincial and municipal autonomy, and no specific provision is made for the large municipalities or the metropolitan areas. While article 5 of the Constitution expressly names Madrid as the capital of the state, no indication is given as to its autonomy.

[8] Francisco Velasco Caballero, 'El gobierno local en la reforma de los estatutos: Estatutos de autonomía, leyes básicas y leyes autonómicas en el sistema de fuentes del Derecho local', in *Anuario del Gobierno Local 2005* (Barcelona, 2006) 121–152.

[9] STC 31/2010 on the Statute of Catalonia.

[10] Articles 148 and 149 of the Constitution contain a distribution of powers between the autonomous communities and the central state, a distribution complemented by each community's Statute of Autonomy as approved by the Spanish parliament.

[11] SSTC 4/1981, 233/1999, and 82/2020.

In the absence of pervasive constitutional regulation of local autonomy, local self-government is basically shaped by statutory law.[12] National and regional laws are little bridled by the vague guarantee of local-self-government entrenched in the Constitution. In practice, the Constitutional Court has tolerated that the State and of the autonomous communities deeply limit local autonomy, with state and regional laws allowed to structure its powers and resources. In 2013 the Constitutional Court held that municipalities deserve little constitutional deference as to their internal organisation.[13] Additionally, in 2016 it declared that laws can subject local governments to multiple financial controls by the state and relevant autonomous community.[14] Nevertheless, the weakness of the Constitution's protection of local autonomy does not mean that local governments enjoy no actual self-government whatsoever; rather, it means that self-governance (which is comparatively high in Spain) derives more from state and regional statutes than from the Constitution itself.

4 Governance Role of Local Governments

The Constitution does not attribute specific powers, services, or functions to the local governments, nor does it directly distribute local power between provinces, municipalities, and islands. As mentioned, while article 137 grants municipalities, provinces, and islands the right to local autonomy, it gives no precise detail on what this means or how it works. Some scholars suggest that article 137 includes a 'universal clause' for local powers as the main expression of the so-called 'principle of subsidiarity'.[15] In addition, they argue that such universal powers can be limited by law only under the principle of proportionality. German public law and the principle of subsidiarity under article 4(3) of the European Charter on Local Autonomy of 1985 (ratified by Spain in 1988) have obviously influenced legal opinion, but not yet that of the Constitutional Court.[16]

[12] J Mir i Bagó, *El Sistema Español de Competencias Locales* (Marcial Pons, 1991).

[13] STC 103/2013.

[14] STC 111/2016.

[15] José Luis Carro Fernández-Valmayor, 'El debate sobre la autonomía municipal' (1998) 147 *Revista de Administración Pública* 89 and ff.

[16] Article 28 II GG according to German case law since BVerfGE 89, 127 (Rastede).

Several reasons have been put forward to oppose the constitutional recognition of a 'universal clause' of competences based on the principle of subsidiarity. First of all, it has been pointed out that the principle of subsidiarity in favour of local administration can only be understood correctly in a system of the territorial distribution of power in which both the federation and the states are also ruled, with some minor differences, by a constitutional preference for the states over the federation. In other words, the principle of subsidiarity must apply to the entire range of territorial powers, and not only at local level. This is quite different from the Spanish system. Here the autonomous communities hold limited powers, granted to them under an organic law approved by the state (Statute of Autonomy), which includes a residual clause of powers granted to the state, as provided by article 149(3) of the Constitution. To proclaim the principle of subsidiarity in favour of local authorities entails, ultimately, the defence of municipal powers over the powers of the different autonomous communities, without, at the same time, defending the priority of the autonomous communities over the state powers. This option clearly alters the distribution of powers established in the Constitution, as interpreted by the Constitutional Court.

It is still generally accepted that the allocation of powers to local bodies is a task best reserved for both state and regional parliaments.[17] State and regional laws do not act on powers attributed by the Constitution to local governments. Instead, the laws comply with the constitutional mandate of local autonomy, attributing specific powers to the different types of local government. Because of this, local governments do not possess constitutional powers. It cannot be said that the law limits local powers (in order to give them over to the central state or the autonomous communities), or that the principle of proportionality governs this limitation of power.

In any case, Spanish constitutional case law has interpreted the guarantee of local autonomy, as provided by article 137, as guaranteeing 'sufficient participation' by the local governments in the exercise of public power. This interpretation has been reinforced by article 3(4) of the European Charter on Local Autonomy.[18] The constitutional mandate of 'sufficient participation' by the local governments (in matters of local

[17] On this debate, see Francisco Velasco Caballero, *Derecho Local: Sistema de Fuentes* (Marcial Pons, 2009) 45.

[18] STC 159/2001, FJ 4.

interest) does not necessarily require (in the judgement of the Constitutional Court) the attribution to them of decision-making powers on all the matters in which they are concerned. In the eyes of the Spanish Constitutional Court, 'sufficient participation' is guaranteed through procedural interventions in the adoption of decisions at other levels of government (for example, in the drafting of regional planning, or in water or environmental planning), through the integration of local representatives in supra-local government organs (such as in the state organ for education programming), or in the government organs for water resources. 'Power through participation' is considered especially fitting in matters where it is difficult to distinguish local from supra-local interests. In these cases, local autonomy is guaranteed by giving decision powers to a supra-local organ, while allowing for the possibility that local bodies might intervene in the decision-making process.

Today, after 40 years of constitutional jurisprudence on 'sufficient participation', it can be argued that the doctrine has not afforded an effective method for strengthening local governments. While local participation in supra-local decisions is undoubtedly very high, it has generally not been found to be useful. As a result, demands are being made that the 'right to participation' (which ensures the constitutional guarantee of autonomy) be realised through more concrete measures, such as specific decision-making powers (and not just in the rights to procedural or organic intervention in the decisions being made by others).

To repeat, the degree of local power is decided by parliamentary acts made by both the state and the autonomous communities. The general state legislation on local governments (LBRL) distinguishes between municipalities and provinces for this purpose, and contains some of the basic norms regarding the attribution of powers to local bodies. First, the LBRL prescribes that, in all matters of local interest, the laws (both at state and regional levels) must allocate sufficient and specific functions or competences to the corresponding local governments. Secondly, article 4(1) of the LBRL enumerates the types of prerogatives (sanctioning power, taxation, planning) that correspond to municipalities and provinces in their range of responsibilities. It does not specify the competences, functions, and prerogatives of the local entities created by each autonomous community (*comarcas,* metropolitan entities, consortia created by regional laws) or those that have arisen freely from municipal cooperation (associations or commonwealths). All such local entities

(less important than municipalities or provinces) exist in a field of regulation specific to each autonomous community. The following section describes some of the different functions and powers of municipalities and provinces.

4.1 Municipalities

As we have seen, the general state law on local government (LBRL) does not directly assign powers or competences to municipalities. Instead, it lists the matters in which the sectoral laws (of the state or the autonomous communities) must attribute specific powers or competences to the local governments. In the majority of cases, the autonomous communities assign these powers. This is due to the fact that, in general, matters of local interest coincide with those that are attributed by the Statutes of Autonomy to the respective communities. Occasionally, the autonomous communities assign powers to the municipalities in an exclusive manner (such as for the collection of urban waste). At other times, the regional laws assign extensive executive powers to the municipalities, but they then also set up managerial oversight by establishing an administrative entity in which the municipality and the autonomous communities are equally represented, as, for example, with the management of public transport in the metropolitan area of Madrid (this was done by means of a single-purpose entity of the regional government that also incorporates representatives from the municipalities concerned).

Finally, there are also situations in which control is spread across two distinct levels of the decision-making process and the municipality gives initial approval while the autonomous community gives final approval (this is the case with general urban planning). The laws allocating powers (or those which regulate the management of the different services) do not usually contain specific financial provisions. Each municipality draws from its general financial resources (which, as shall be explained later, are regulated by state legislation) to provide the necessary funding. In this way, a clear separation is maintained between the territorial entity that attributes powers, competences, or services (normally the autonomous community) and the level of government that regulates local income (usually the national government).

The LBRL contains a list of fields in which conferring powers on municipalities is compulsory. The laws of the autonomous communities

must always respect this 'minimum list of local matters'.[19] This does not preclude the autonomous communities from allocating further powers or competences that are not included in the LBRL. In addition, the new statutes of autonomy in Catalonia, Andalusia, and Aragon (2006) contain additional lists of fields in which the corresponding regional parliaments must attribute powers to the municipalities. To be precise, the LBRL contains both a list of 'local matters' (fields or matters of obvious local interest) and a list of mandatory local services. As a direct result of the major financial crisis of 2008, State Law 27/2013 reduced both lists slightly in an attempt to lessen municipal expenditure for non-essential services or services that were also provided for by the autonomous communities or by the state government. As the Constitutional Court later pointed out, the shrinkage of the state lists of local matters (those in which regional laws must necessarily attribute powers to the relative municipalities) does not prevent the regional laws from voluntarily allocating any additional powers and services to the local governments of their territory. According to the above, in the LBRL we can find three types of municipal powers.

- Article 25(2) of the LBRL identifies as 'municipal matters' those fields in which there is a clear local interest and which are of concern to every municipal resident (safety in public places, planning for vehicle traffic and pedestrians on urban roads, emergencies, fire extinction and prevention, urban planning, historic-artistic heritage, environmental protection, water supply, slaughterhouses, markets and consumer and user protection, cemeteries and funeral services, urgent social services, water and public lighting, street cleaning, waste, sewage, public transit, cultural and sports activities). In all these areas, the legislation (of the state or the autonomous communities) must confer the relevant powers on the municipalities (though these need not necessarily be exclusive powers).
- According to article 26(1) of the LBRL, municipalities are directly responsible for maintaining a certain level of minimum public services. These required services increase according to the number of

[19] Monica Domínguez Martín, 'Municipios: Competencias y potestades´, in Francisco Velasco Caballero (ed) *Tratado de Derecho Local* (Marcial Pons, 2021) 231–257.

inhabitants.[20] In complementary fashion, article 86(2) of the LBRL 'reserves' certain essential activities or services to the municipalities, ensuring that private firms are banned from competing with local governments. The current list of reserved services includes (for the moment; it is continually being reduced) water supply and purification; waste collection, treatment, and use; and public transit.

- Article 7(4) of the LBRL authorises municipalities to perform supplementary activities on two conditions: that the sustainability of the municipal budget is not put at risk; and that the activity is not already undertaken by the national or regional government. This broad power is referred to by the Constitutional Court as a 'general municipal competence' and is allocated by state law. In practice, municipal councils encounter few objections from national or regional governments to any proposed supplementary activities funded by municipalities from their own revenue sources.

The legal regulations on the management of local powers and services are contained mainly in the regional laws that assign powers to the municipalities. For example, the regional laws that confer the municipal powers and functions around water supply also set the payable fees and foresee possible sanctions for failure in payment. Beyond the details of the regulations themselves, how the different services are organised and operate depends in large measure on each municipality. These operational decisions form part of the 'power of self-organisation' which is guaranteed both by article 4(1)(a) of the LBRL and article 6(2) of the European Charter on Local Autonomy. In this way, and with very

[20] Article 26.1 LBRL: The municipalities shall individually or in association provide, in all cases, the following services:

a. In all municipalities: public lighting, cemetery, garbage collection, street cleaning, residential supply of drinking water, sewer system, access to population centres, paving public highways.
b. In municipalities with population over 5000 inhabitants-equivalent, also: public park, public library, and waste treatment.
c. In municipalities with population over 20,000 inhabitants-equivalent, also: civil emergencies, assessment and provision of urgent social services, fire extinction and prevention, and public sports facilities.
d. In municipalities with population over 50,000 inhabitants-equivalent, also: urban public transit and environmental protection.

few limits, each municipality can choose between managing a power or service directly (through its own departments and agencies) or indirectly, through a public contract or administrative concession. Over the last two decades, contracting-out has been the general trend, although when a number of radical-left parties won local elections in 2015 and took control of cities such as Madrid, Barcelona, and Valencia, a small return to contracting-in began (mainly for water supply and garbage collection).[21] But contracting-out remains by far the most common option for running municipal services.

Some municipal functions must always be managed directly by the staff of permanent civil servants. This is the case for necessary tasks in which public prerogatives or special public interest are involved, as prescribed by article 92(3) of the LBRL. Aside from these cases, every municipal council is allowed to fill its bureaucratic posts either with civil servants or contractual employees. Currently, more than half of all local employees are contract-based (although their contractual conditions strongly resemble those of civil servants). Table 1 presents comparative figures for the employment of civil servants and contractual employees in 2020.

From an overall perspective, and under the contemporary paradigm of greater efficiency in private management, a clear tendency can be observed today towards the provision of local public services under the rules of private law (common law): through municipal-owned companies, or through public procurement. This is an example of what has become known in European law as the 'flight from administrative law'.

Table 1 Civil servants and contractual employees in 2020

	Civil servants	*Contractual employees*	*Others*	*Total*
Municipalities	166,006	266,721	56,059	488,786
Provinces and islandic councils	24,965	23,393	16,489	64,847

Source Ministerio de Política Territorial y Función Pública, Boletín Estadístico del Personal al Servicio de las Administraciones Públicas (2020), www.mptfp.es (accessed 1 July 2021)

[21] Julia Ortega Bernardo and María de Sande Pérez-Bedmar, 'El debate sobre la remunicipalización de los servicios públicos' (2015) 9 *Anuario de Derecho Municipal* 63–96.

According to the Spanish Constitution, every municipal government is based on democratic principles. In addition, article 140 of the Constitution provides that this democratic legitimation consists in the direct election of councillors. However, the Constitution says nothing about mayors, who can be elected directly or indirectly (by the councillors-elect). The electoral system for mayors and councillors or aldermen is contained in the Organic State Law 5/1985 of the General Electoral System. In accordance with this regulation, Spaniards and citizens of the European Union over 18 years old are voters and can run as candidates in each municipality. Municipal residents directly choose a fixed number of councillors or aldermen, grouped together in closed lists of political parties or electoral coalitions. The number of councillors depends on the municipal population size. For the determination of the councillors-elect, a corrected proportional system is followed: the d'Hont rule. Councillors elected in this manner then designate the mayor by majority vote. In recent years, most political parties have considered choosing mayors by direct election, but no legislative initiative has been forthcoming. This possibility has been criticised by scholars who point out that the direct election of mayors could create tensions and conflicts between the councillors (elected through blocked lists drafted by the political parties) and the directly elected mayors.[22]

National and regional laws offer a wide range of participatory mechanisms in addition to direct elections, as does, for instance, the 'popular municipal initiative' introduced by Act 57/2003, Measures for the Modernisation of Local Government. In addition, there are numerous municipal plans and regulations on civic participation; new municipal bodies for participation; the stimulus for participation provided by Local Agenda 21; and many other programmes of subsidies for the promotion of participation. Despite the large list of existing participatory mechanisms, the truth is that the ratio of effective civic engagement is low.[23]

[22] Manuel Arenilla Sáez, 'Sistemas electorales y elección directa del alcalde: Una perspectiva comparada', in Manuel Arenilla Sáez (ed) *La Elección Directa del Alcalde. Reflexiones, efectos y alternativas* (Fundación Democracia y Gobierno Local, 2015) 19–62, 36.

[23] Francisco Velasco Caballero and Carmen Navarro Gómez, 'The New Urban Agenda and Local Citizen Participation: The Spanish Example', in NM Davidson and G Tewari (eds) *Law and the New Urban Agenda: A Comparative Perspective* (Routledge, 2020) 74–86.

With regard to the internal organisation of municipalities, the LBRL clearly distinguishes between government and municipal administration. The LBRL regulates government organs (the decision-making organs) in great detail, but leaves the administrative organisation of municipalities practically without regulation (and therefore open to regional regulation or municipal self-regulation).

Decision-making power in councils is divided between three main government organs: the assembly of council members; the mayor; and the local government commission. However, the distribution of tasks between them is not symmetrical across Spain. Currently, several different systems are at work: 'a common system', applicable to the majority of municipalities and contained entirely in the LBRL; a specific system for 'municipalities of great population' (introduced into the LBRL with the State Act 57/2003 of Measures of Modernisation on Local Government); and, alongside these, the special systems of Madrid (State Act 22/2006) and Barcelona (State Act 1/2006).

In the common system of municipalities, the assembly of council members (which is directly elected by residents) has numerous powers of political or strategic direction (planning, budget) and administrative execution (public procurement, alienation of goods). These powers are substantially different in the large municipalities (such as Madrid and Barcelona) where the assembly concentrates on decisions that are more relevant politically (norms, budgets) and has more political control over the executive organs (mayor and local government commission). The specific ways in which the assembly works in the large cities is commonly described as the 'parliamentisation' of local government.

In the common system municipalities, the mayor directs local politics and exercises numerous administrative functions (leadership of personnel, leadership of the municipal police force, sanctioning powers, licencing). These functions of the mayor are absent in the larger municipalities.

Lastly, most municipalities include an executive organ: the local government commission. The composition and functions of this commission are diverse: in small and ordinary municipalities, the commission is simply there to help the mayor, while in the larger municipalities, it concentrates the executive power and performs most of the functions that, in smaller municipalities, belong to the mayor. It is common for both the mayor and the local government commission to delegate wide powers to particular councillors from the assembly.

4.2 Provinces

The new constitutional order of 1978 did not bring substantial changes to the powers of municipalities (though it did change the way these are exercised: with full autonomy and without upper governmental controls). For the provinces, though, the new constitutional order allowed a significant reduction in their functions, with many of these being taken over by the nascent structure of autonomous communities. The Constitutional Court accepted this reduction of provincial powers in favour of the autonomous communities, but insisted that it should not affect the 'essential core' of provincial autonomy. As stated in STC 32/1981, with regard to the Catalan provincial councils, '[the functional adaptation of the provinces to the new scheme of functional distribution of power] could not lead, except through an amendment of the Constitution, to the elimination of the Province as an entity with autonomy for the management of its own interests'.

Since then, constitutional case law has identified the irreducible core of provincial autonomy as being the traditional functions of 'cooperation and assistance' to the municipalities. So, according to STC 109/1998, 'the removal or substantial reduction of such an essential stronghold had to be considered detrimental to the provincial autonomy guaranteed by the Constitution'. This cooperative function is understood, essentially, as spending power. The core of provincial autonomy is regarded as financial autonomy (in terms of spending power).

The constitutional right to provincial autonomy is specified by article 36 of the LBRL in a reduced list of provincial powers based on the idea of cooperation and assistance to the municipalities. While the autonomous communities could have worked to increase provincial powers, in general they have not done so. Instead, they have added further constraints and controls over the provinces, right up to the limits allowed by the Constitutional Court. The reality is that the provinces compete for public authority with the autonomous communities (especially in Catalonia). From the perspective of the autonomous communities, the provinces are frequently considered no more than the remains of the pre-democratic centralised state of the Francoist dictatorship (1939–1975). Several statutes of autonomy modified in 2006–2007 have confirmed the force of this perspective. In the case of Catalonia, the province is intended to be replaced by a new regional territorial entity, the '*veguerías*', while

the regional government in Andalusia also introduced new powers of coordination and control over the provinces.

Contrary to this trend, the economic crisis of 2008 produced State Law 27/2013. This strengthened the autonomy of the provinces at the expense of both the small municipalities and the autonomous communities. It should be noted that its key objectives were financial rather than political, seeking to address the economic unsustainability of the small municipalities. The reform was confirmed by the Constitutional Court (SSTC 111/2016 and 82/2020), although it is worth noting that there have been few practical outcomes. Provincial councils continue to assist the small and medium-sized municipalities, but seldom assume control over the direct provision of public services to citizens.

5 Financing Local Government

The Constitution guarantees the 'financial sufficiency' of local governments, as provided by article 142 of the Constitution, but fails to specify the mechanisms for this guarantee. The existing case law shows that the constitutional guarantee tends to cover spending power rather than income.[24] The local governments that are directly guaranteed by the Constitution (provinces, municipalities, and islands) have not been provided with the constitutional authority to control their own resources, and local revenues are determined by parliamentary rulings (state laws).[25] More precision has been offered in the various statutes of autonomy modified in 2006 and 2007. The new Statute of Autonomy for Catalonia (2006), for example, specifically guarantees a certain amount of local taxation under article 218(3); article 219(1) provides for the unconditional receipt of grants; and article 219(3) provides for the necessary provision of funding for new tasks or powers that the law assigns to local bodies.

The local funding system is currently determined mainly by state law. In 1988 a state act—Act 39/1988 of 28 December on Local Tax Authorities (LHL)—determined the financing of local institutions. The Act was subsequently challenged at the Constitutional Court, but, in STC 233/1999, the Court confirmed its validity in broad outline. The judgement reasserted that the state's power to regulate the 'basis of the legal system

[24] STC 48/2004, FJ 10.

[25] Since STC 4/1981, FJ 15.

of the Public Administrations', as provided by article 149(1)(18) of the Constitution, was considered sufficient to grant the state parliament the power to fully regulate the local financial system. After several minor amendments, the 1988 Local Tax Authorities Act was revised in 2004. Currently, the regulation of local taxation is provided by Royal Legislative Decree 2/2004 of 5 March, which approves the Restated Text of the Local Tax Authorities Act (LHL). In terms of its general provisions, it is similar to the 1988 Act.

Both the 1988 and 2004 versions of the LHL established a 'mixed system' for local financing. A basic distinction is discernible between own-source revenue and national and regional transfers. Own-source revenues include income from local property; earnings from local taxes; profit from credit transactions; and income from fines. Taxes are the most important of these 'local assets'. In terms of local taxes, distinctions are made between public prices and fees (for individualised delivery of local public services); special contributions (though rarely used, this impose taxes on those who benefit especially from public infrastructure); and the five municipal taxes. Although reference is commonly made to 'local taxes', it should be noted that local institutions do not enjoy taxation powers and lack the authority to establish taxes—this authority resides with parliamentary laws issued by the state or the autonomous communities. However, the LHL does recognise that local governments have the power to decide (through the passage of by-laws) on certain non-essential elements of the local taxes established by state or regional laws: these include abatements and tax rates within a narrow legal range.

Municipal taxes contribute the most to the tax income raised by municipalities. These include the Buildings, Facilities and Construction Tax (ICIO); the Increased Value of Urban Land Tax (IIVTNU); the Real Estate Tax (IBI); the Power Haulage Vehicle Tax (IVTM); and (though residual at present) the Business Tax (IAE). On average, municipal tax revenues make up 50 per cent of all revenue. The largest slice of this comes from Real Estate Tax, which makes up 26.17 per cent of all revenue, including the national and regional grants.[26] Compared with other European countries, the existing business tax (IAE) brings in very little.

The own-source revenues of local governments are insufficient for funding necessary local tasks. This conclusion is made especially

[26] Ministerio de Hacienda (n 3) 42.

clear in small municipalities, where tax revenues are correspondingly thin. In response to this, the Local Tax Authorities Act allows these municipalities to receive grants as a supplementary element. In the past, only the state (and not the autonomous communities) transferred tax revenues to local authorities; now both the state and the autonomous communities contribute to local financing by means of transfers. The most important state transfer is the so-called 'share in state revenue'. On average, this unconditional state transfer makes up 32 per cent of the total municipal revenue and is mainly based on the population size of each municipality. It is only for medium-sized and large cities (those with more than 75,000 inhabitants) that a complementary criterion exists, based on the tax revenue collected by the state (principally through personal income tax) in each municipality.

In addition to the general and unconditional state transfers, municipalities receive additional grants from the central state, the autonomous communities, and the provinces. These are frequently earmarked grants and tend to be based on the political priorities of the supra-municipal authority rather than the priorities of the municipalities themselves. As a result, scholars often argue that earmarked grants undermine, or are out of sync with, the constitutional guarantee of local autonomy.[27] Indeed, in recent years various political parties have joined such scholars in insisting on the need for reform of local financing. In 2017, an expert commission appointed by the government prepared a draft document on general reform of local financing.[28] However, serious differences between the large cities (which benefit significantly from the current system) and the small and medium-sized villages and cities meant that this carefully considered proposal was unable to garner enough political support.

Municipalities and provinces generally enjoy complete budgeting power over their income. Only some statutes of autonomy (such as that of the Autonomous Community of Valencia, or the new Statute of Andalusia) provide the autonomous communities with some generic powers to coordinate or oppose the spending priorities of the local budgets. In practice, these regional powers are not really relevant. Nevertheless, while local spending power is in theory quite extensive, in reality

[27] Manuel Medina Guerrero, 'La articulación de la suficiencia financiera de los entes locales', in 1/2004 *Cuadernos de Derecho Local* 38 and ff.

[28] Ministerio de Hacienda, *Informe de la Comisión de Expertos para la reforma de la financiación local* (2017), www.hacienda.gob.es (accessed 2 August 2021).

levels of spending are conditioned in many ways by the other orders of government, as it is the parliamentary statutes (both of the central state but also of the autonomous communities) that determine the tasks and services of local governments, which then have to be reflected in the budgets. On the other hand, since the Organic Law 2/2012 (Budgetary Stability and Financial Sustainability) entered into force, the spending autonomy of local governments is submitted to the strict legal requirement that the local budgets be balanced, what directly prohibits financial deficits in local government. Practical experience since 2012 shows that both the state and the autonomous communities have exhaustively monitored the balancing between income and expenditure in local budgets. On occasions, this tight supervision has led to the suspension of state or regional grants to the non-compliant local governments.

6 Supervising Local Government

With the exception of the financial field, where state and regional controls have been greatly intensified since the Organic Law 2/2012 entered into force, Spain's system of local government allows for very little governmental supervision or control (either by the state or the autonomous communities) over the activity of municipalities and provinces. In this matter there is a basic distinction between political control (that is, the possibility that a state or regional authority amends the political option followed by a local authority) and legal control (understood as the possibility that a state or regional authority supervises that local authorities comply with the laws). Indeed, the Constitutional Court takes the view that the local autonomy guaranteed by article 137 of the Constitution widely forbids any state or regional political controls on local governments.[29] This includes the strict prohibition of any sort of removal of municipal officials, either elected or permanent, and ensures that local government bodies cannot be dissolved on the grounds of mismanagement. The Constitution only allows the state and regional parliaments to authorise selective controls of the corresponding state or regional authorities on the accomplishment of the laws by the local bodies.

At the statutory level, the state LBRL has further reduced the already small margin for state or regional legal control over local authorities

[29] The case law remains stable since STC 4/1981 until today: STC 82/2020.

provided by the Constitution. While the Constitution did not specifically prevent state and regional governments from—selectively—controlling the legality of the local action, articles 63 and ff of the LBRL have ruled out this possibility other than in the financing field. Since the LBRL is a fundamental state regulation, and therefore binding for all regional authorities, it prevents the laws of the autonomous communities from adding further specific legal controls not directly foreseen in the LBRL. This was the argument presented by the Constitutional Court in the STC 159/2001 in relation to a Catalan Law on urban planning. Here the Court considered that certain specific controls on the legality of municipal urban planning activity went beyond the highly restrictive system of governmental controls stipulated in the LBRL. Similar arguments were made in STC 154/2015. As a result of these constitutional and legal constraints on supervision from above, Spanish local autonomy scores high in the European context.[30]

In the LBRL, state and regional control of local authorities was replaced by a complex system of 'intergovernmental relations'. This was based on the idea of full respect being paid to the powers of local institutions and on the principle of cooperation. Aside from the minor obligation to provide information to the supra-local authorities, as stipulated by article 56 of the LBRL, the LBRL establishes legal instruments to prevent conflicts between the state and the autonomous communities, on the one hand, and the local authorities, on the other. In order to prevent or resolve conflicts of authority, articles 57 and 58 of the LBRL promote the 'free cooperation' of public administrations. It is only in cases where voluntary cooperation is not technically possible that the LBRL, as stipulated by articles 10(2) and 59(1), provides for the possibility that the state or the autonomous community establish (by law) procedures for 'coordination'. In this process, possible confrontations between or conflicts with local governments are to be resolved by a final decision of the state or the regional government.

This technique of coordination is included in several laws (of the state or of the autonomous communities) that have to do with significant infrastructure (such as ports, airports, water works) and with urban planning. In all these cases, the location of infrastructure of general interest can be determined by the state or the regional government after hearing

[30] Andreas Ladner, et al., *Patterns of Local Autonomy in Europe* (Palgrave Macmillan, 2019) 184.

the affected municipality. These arrangements for upper coordination, though they undoubtedly serve to limit municipal powers, have been accepted and endorsed in constitutional case law.[31]

Article 60 of the LBRL stipulates that, in exceptional circumstances, supra-local governments can act to replace local bodies by taking over the exercise of their powers. This is possible only when an action or omission by the local institution has violated legal regulations and, further, when this violation directly affects competences exercised by the state or the autonomous community. Therefore, it is not really a control of the legality of the local action by a supra-local administration, but rather an instrument that allows the latter to defend its own powers when faced with possible interference from a local institution. Nevertheless, given the strict requirements set forth in article 60 of the LBRL for exercising this power, as well as the relevance of the constitutional principle of local autonomy, in practice such a coercive mechanism has become useless.

In extreme cases (when local administrations pose a serious threat to general interests or violate constitutional obligations), article 61 of the LBRL provides for the dissolution of the local council (through an order of the state government). Any such dissolution must be accompanied by a call for partial elections to replace the now-dissolved council. This measure clearly represents an instrument of control over local authorities, but given its truly exceptional status, it does nothing to undermine the general conclusion that local governments in Spain are not submitted to ordinary controls by the upper levels of government.[32]

The lack of a system of ordinary governmental supervision over local administrations is compensated by a special regulation. According to this, the state or the autonomous communities can take local governments to the courts over violations of legal regulations by a local institution. According to the LBRL, three types of special judicial remedies exist:

- In the event of a minor violation of legal regulations, article 65 of the LBRL directly empowers the state or autonomous community to challenge local decisions before the courts. Any such challenge,

[31] A pertinent example is STC 40/1998, on planning for ports of general interest (under state authority). See also STC 204/2002 in regard to state airports.

[32] This has been used on only one occasion, when the Council of Marbella (Malaga) was dissolved by means of Royal Decree 421/2006 of 7 April. More than half of the councillors were on trial for corruption.

however, does require the submission of prior notice to the local institution. Only if there is no response to this can the filing of an appropriate claim to the judicial court begin. As the Supreme Court points out, such a challenge does not require any specific impact upon general interests or usurpation of supra-local powers; it requires only a reasoned claim that any legal regulation has been infringed.

- In the event of usurpation of powers, article 66 of the LBRL provides for direct challenge to local activity, with no need for prior notice, and facilitates provisional interruption (by the court) of the local activity that violates legal regulations.
- In the event of local decisions that pose a serious threat to Spain's general interest, article 67 of the LBRL authorises the delegate of the central government (the highest governmental authority of the state in each autonomous community) to bring local action to an immediate halt and, within 10 days, bring a challenge to this action before the Administrative Court. In this scenario, the suspension of the enforcement of the local agreement is a decision made by the supra-local administration (not by a court), though it may be confirmed or denied by the court as soon as the appropriate legal claim has been filed by the national or regional government.

7 Intergovernmental Relations

Given the importance of the constitutional guarantee for local autonomy, the administrative relations of local governments with other, superior, orders of government are frequently explained through recourse to the idea of 'formal equality'. As previously stated, article 137 of the Constitution guarantees the autonomy of the autonomous communities, the provinces, and the municipalities in parallel fashion. Consequently, all the territorial levels of government find themselves in a position of 'formal equality', that is, with each one enjoying autonomy with respect to the others (in theory if not always in practice). Such 'formal equality' tends to be limited to the executive or administrative proceedings of the diverse orders of government. As we have seen, at the normative level, the state laws and those of the autonomous communities prescribe rules for the administration of local life at a high level of detail. Inspired by the ideal of formal equality, the LBRL regulates inter-administrative relations in

ways that focus on cooperation and coordination and gives less attention to questions of control and supervision.

In recent decades, the question of local bodies participating in upper levels of government (and especially in the largest cities) has been a heated political issue, albeit with few concrete results. Early in the new century, and following the experience in Italy, the proposal was made to make the local governments present in the Senate. It consisted of setting up special procedures and committees within the chamber to evaluate the possible effects that legislative projects could produce on local governments. Today, such proposals have been abandoned completely and, in practice, local governments play only a small role in the decision-making processes of the state and the autonomous communities. Here, there are two main tendencies: institutional participation (where representatives from the local entities participate in state organs or regional entities) and functional participation (by issuing reports and proposing possible alternatives in the decision-making procedures of supra-local authorities, such as those referred to state or regional infrastructure).[33]

Traditionally, the Spanish local system includes some forms of institutional participation by municipalities in state bodies or on councils with a cooperative structure (such as the National Commission of Local Administration or, more recently, the General Conference on Local Matters). Here, the representation of local interests is almost exclusively reserved to the Spanish Federation of Municipalities and Provinces (FEMP). This is a free association of local bodies, one formally independent from the state administration (although largely financed by it). Its scope for political agency is very restricted, with the larger national parties (either government or opposition) using it to articulate their own political projects. In the last decade, some autonomous communities have also set up their own cooperative councils, notably the Councils of Local Governments in Andalusia and Catalonia, and the Basque Council of Local Public Policies. In ways similar to FEMP, local participation in those regional councils is carried out through regional associations of local governments.

All of the possibilities above for local government participation certainly do allow for bringing the local perspective into higher levels

[33] See Silvia Díez Sastre and Luis Medina Alcoz, 'La participación de la villa de Madrid en los procedimientos normativos estatales, autonómicos y europeos', in Luciano José Parejo Alfonso (ed) *Estudios sobre la Ley de Capitalidad y de Régimen especial de Madrid* (Barcelona, 2006) 353 and ff.

of government. However, the way in which this happens raises some concerns in regard to the principle of democracy, as there are no real mechanisms for democratic accountability: citizens cannot easily identify who decides on particular matters and thus who should be politically responsible to the voters.[34] All in all, participation of local bodies in supra-local levels of government remains very limited.

Spanish local governments can relate directly both to the state and to the corresponding autonomous community, which exemplifies what is described in constitutional case law as the 'two-fold character' of the Spanish local system.[35] In fact, however, this direct relation with the state is only really relevant within the financial sphere (with regard to transfers from the state to the municipalities and provinces). Other than that, direct administrative relations are scarce or at best sporadic.

The autonomous communities do have direct administrative relations with local bodies, and these extend beyond the financial sphere. Municipal powers usually correspond to those matters that the statutes of autonomy attribute to the different autonomous communities. Due to this correspondence, the administrative connection between local bodies and autonomous administration is particularly close. The close-knit connection is especially important in the two areas of regional planning: urban planning and development, and environmental protection. In both these areas, the regional administration directly and indirectly exerts control over local activities by making their plans and programmes subject to its final approval or authorisation.

8 Political Culture of Local Governance

The local electoral system has been relatively stable during some 40 years of democracy, even though it has seen some diverse electoral results. Little by little, the number of independent candidates and local parties has diminished in favour of national and regional political parties. In addition, since 2015, the proportional electoral system has afforded municipal councils a wide range of electoral choices. This greater diversity has not caused any instability in municipal government, however: the LBRL has

[34] See José María Rodríguez de Santiago, *Los Convenios entre Administraciones Públicas* (Marcial Pons, 1997) 311.

[35] STC 214/1989, FJ 11.

several regulations for containing the risk of instability arising from split councils. These include the balanced distribution of powers between the council and the municipal executive bodies (mayor and executive cabinet) and the weak legal role allowed to councillors if they leave the political parties in whose lists they were elected.

Local elections are in good health. Voter turnout is high (around 65 per cent), sometimes higher than that for regional elections, this despite the fact that in most autonomous communities local and regional elections are held at the same time. The effects of the Organic Law 3/2007 of 22 March (on the Effective Equality of Men and Women) are fast becoming visible. This law requires equal inclusion of women on all electoral lists, and in recent years the number of female councillors has grown a lot and is now up to 35 per cent; nevertheless, the number of women as mayors is still low, at 19 per cent.[36]

The reality of local democracy today is that state or regional parties are visibly and directly present in the exercise of local power, whether because the political elite at local level is the same as the elite in the central structures of the political parties, or because these parties direct local government from a supra-local perspective. In either case, a certain lack of connection can be observed between the constitutional and statutory guarantee of local autonomy (which is based on the existence of local interests) and the actual exercise of this autonomy (which is often linked to the demands of regional and state party-politics). Above all, the situation is in large part the result of an electoral system that favours the selection of candidates by the national parties.

9 Covid-19's Impact on the Role of Local Government

Covid-19 has given rise to many different municipal responses, both in executing decisions adopted by the state and the autonomous communities and in undertaking complementary and additional activities. This diversity is visible in all three stages of the national response to the pandemic: in the initial weeks; during the first state of emergency as declared by the national government; and throughout the never-ending de-escalation process. Municipalities have acted under two legal orders:

[36] Carmen Navarro, Francisco Velasco Caballero and Piotr Zagórski, 'Cuarenta años de elecciones municipales: el sistema electoral y su rendimiento' (2018) 12 *Anuario de Derecho Municipal* 23–49, 42.

the ordinary municipal law (applied in the pre-emergency phase and during the de-escalation process) and the laws provided by the state of emergency that allowed the national government to adopt all manner of necessary measures.

Under emergency law, the municipalities have acted in part simply as the executors of state measures. Thus, for example, the local police corps were essential to the enforcement of the confinement and closure orders issued by the national government. Here it should be noted that only three of the 17 autonomous communities have their own police forces (Catalonia, the Basque Country, and Navarre), and that the effectiveness of national orders has depended to a large extent on the enforcement of these orders by the local police.

While local governments followed the instruction of the national authorities with regard to police action, almost all municipalities took other measures of their own. These included multiple deferrals of local taxes; the suspension of municipal contracts; and multiple grants to people risking social exclusion. In addition, many city councils approved the payment of subsidies to companies, despite the fact that many regional laws do not allocate this power to local authorities.[37]

In the de-escalation phase, the autonomous communities re-assumed many of the powers which had been exercised temporarily by the national ministries during the state of emergency. Regional governments were ordering curfews and the provisional closures of restaurants and bars, and relying on local police to enforce these measures. As vaccinations began to be rolled out, so municipalities started to lose their lead position in the fight against the pandemic. Indeed, while they recognise and pay tribute to the work of the municipalities during the pandemic, the new national and regional plans for reconstruction (especially so the 'Recovery, Transformation and Resilience Plan') provide little space to municipalities as agents in the recovery process or in the management of the enormous economic stimulus package approved by the European Union.

[37] Francisco Velasco Caballero, 'Derecho local y Covid-19' (2020) 59 *Revista Galega de Administración Pública* 5–33.

10 Emerging Issues and Trends

Since the economic crisis of 2008, we have seen how pressures to recentralise power have been present throughout the country. In line with broad economic reform, the State Organic Law 2/2012 (Budgetary Stability and Financial Sustainability) imposed multiple controls on the financial activity of the autonomous communities and local governments, while the secessionist movement in Catalonia resulted in the suspension of Catalan self-government and effected a certain recentralising trend in the country as a whole. Despite the pressures of this general context, local governments have resisted these pressures well. In practice, and despite the legal changes that have taken place in the past decade, municipal autonomy has not declined significantly.

The short and medium term is unlikely to see any great changes to the situation of the municipalities, and ongoing debates around municipal amalgamation are unlikely to lead to any practical results. Similarly, there are unlikely to be any significant changes to municipal powers, as any such changes would have a direct impact on the autonomous communities and therefore require the elaboration of new constitutional and political arrangements.

However, we may well see changes to the second tier of local government. It is possible that the current provinces may suffer as a result of legal changes or political agreements which favour the development of new types of upper local governments. This possible transformation is related to growing political concern about the depopulation of a large part of the rural municipalities in the interior of the country. The current types of local government (municipalities and provinces) have not proved effective in tackling this serious problem. Local governments which are larger than municipalities but smaller than provinces might be in a better position to deal with rural depopulation.

The large Spanish cities—notably Madrid, Barcelona, and Valencia—are experiencing long-standing political and legal tensions with their corresponding autonomous communities. Their status as 'global cities' gives them leading roles in the economic life of the country, but their legal powers are limited to those enjoyed by the small municipalities.[38] Despite the pressures of this paradoxical situation, no easy outcome is

[38] Francisco Velasco Caballero, 'El Derecho de las ciudades globales' (2017) 11 *Anuario de Derecho Municipal* 23–40.

foreseeable. Any institutional upgrade to the power of the largest cities would reduce the influence of the autonomous communities, and this would require a constitutional, political, and legislative consensus which is still far away.

Thus, while it is likely that the Spanish 'global cities' will continue to gain standing in the international sphere, this standing will be cultural and economic, not administrative or institutional. For similar reasons, the metropolitan areas are unlikely to give birth to new and powerful local governments. This will not happen because the creation of new metropolitan government entities would need the approval of the very regional governments that would be in political and economic competition with them. The poor prospects for this kind of local government in Spain are all too evident in the recent experience of the metropolitan area of Vigo, where a metropolitan council was arranged but was never operative.

CHAPTER 16

Switzerland

Andreas Ladner

Local governments play an important role in Switzerland.[1] Despite their small size and their high number, municipalities are quite autonomous and fulfil key functions in the provision of tasks and services. What is especially noticeable is their fiscal and financial autonomy. Municipalities are regulated through cantonal constitutions and laws, which, from a federalist perspective, leads to remarkable diversity among the cantons. At the same time, the growing complexity of the policy landscape necessitates cooperation between municipalities and between different levels of government. Municipalities strive to avoid being reduced to simple

[1] This chapter draws upon the author's new research as well as earlier published articles that describe Switzerland and its municipalities. These include Andreas Ladner, 'Local Government and Metropolitan Regions in Federal Systems: Switzerland', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 329–362; Andreas Ladner, 'Intergovernmental Relations in Switzerland: Towards A New Concept for Allocating Tasks and Balancing Differences', in Michael J Goldsmith and Edward C Page (eds) *Changing Government Relations in Europe: From Localism to Intergovernmentalism* (Routledge/ECPR Studies in European Political Science, 2010) 210–227; Andreas Ladner, 'Switzerland: Subsidiarity, Power

A. Ladner (✉)
Swiss Graduate School of Public Administration, University of Lausanne, Lausanne, Switzerland

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_16

agencies that execute tasks for the cantons and the national government without being involved on an equal basis in decision-making in questions that concern them. Formally, they all have the same status and competences, but time will tell whether this can continue or if more asymmetrical solutions will become necessary.

1 Country Overview

With 8.633 million inhabitants in 2020 and a territory of only 41,000 km^2, Switzerland is a small and densely populated country. It is also heterogeneous, both geographically and culturally, with significant differences existing between its various language areas, as well as among its two different denominations and the growing number of people who belong to no specific church.

Institutionally, the territory is divided into 26 cantons. Compared to local governments in other countries, Switzerland's cantons and municipalities—but so too its cities, agglomerations and metropolitan regions—are rather small. The federal office of statistics counts fifty agglomerations. In 2019, the largest city, Zurich, had 420,000 inhabitants, followed by Geneva (204,000 inhabitants on Swiss territory), and Basel (173,000 inhabitants on Swiss territory). About 75 per cent of the Swiss population live in agglomerations. Out of 26 cantons, eight have less than 100,000 inhabitants.

Federalism and local autonomy have been useful in accommodating the country's diversity. Most cantons and municipalities are more homogeneous than the country as a whole (incongruent federalism), which facilitates local self-government. There are only a few bi- or trilingual as well as denominationally mixed cantons—in these cantons, homogeneity is found at a local level. Another beneficial characteristic is the existence of cross-cutting cleavages. Language, denomination, and economic wealth are not mutually reinforcing there are wealthy cantons to be found in

Sharing and Direct Democracy', in J Loughlin, F Hendriks, and A Lidström (eds) *The Oxford Handbook of Local and Regional Democracy in Europe* (Oxford University Press, 2011) 196–220; and three open access chapters: Andreas Ladner, 'Society, Government, and the Political System', 'The Organisation and Provision of Public Services' and 'The Characteristics of Public Administration in Switzerland', in Andreas Ladner, Nils Soguel, Yves Emery, Sophie Weerts, and Stephane Nahrath (eds) *Swiss Public Administration: Making State Work Successfully* (Palgrave, 2019) 3–42.

each language area, and religious denomination does not coincide with language.

Switzerland can doubtlessly be considered a prosperous country that offers its citizens a high standard of living. The tax burden is comparatively low, and the rate of unemployment usually lower than in neighbouring countries. In the past few years, the rate has varied between 2 per cent and 4 per cent. How these statistics change, however, will depend strongly on the impact of the Covid-19 pandemic. The country's economy is based on a well-qualified labour force performing highly skilled work. The main sectors include microtechnology, biotechnology, and pharmaceuticals, as well as banking and insurance. Most businesses, though, are small or medium-sized.

Switzerland has a high rate of immigration. In addition to the cultural diversity that stems from the existence of different language areas, there is a large and heterogeneous population of non-Swiss residents, one which accounts for about 25 per cent of the country's population.[2] Most of the immigrants moved to Switzerland for occupational reasons or because of their proximity to it, and hail mainly from Germany, Italy, France, and Portugal.[3] There are no important groups of culturally rather different immigrants living in parallel societies.

Switzerland's political system is unique. At the core of this system is the concept of power-sharing, which, as we will see, is not only foundational to federalism and decentralisation at large but also both part and parcel of the way government and decision-making are organised and the means of direct democracy.[4]

All major parties are represented in government. The party composition of the government is not changed easily and remains fairly stable even after elections with major shifts in party strength. From 1959 to December 2003, for example, the four major parties represented in the Federal Council were the Liberal Democrats (FDP),[5] Christian

[2] See https://de.statista.com/statistik/daten/studie/293698/umfrage/auslaenderanteil-in-der-schweiz/ (accessed 21 January 2021).

[3] See www.bfs.admin.ch/bfs/de/home/statistiken/bevoelkerung/migration-integration/auslaendische-bevoelkerung.html (accessed 21 January 2021).

[4] In Arend Lijphart's comparative study, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (Yale University Press, 1999), Switzerland is the ideal type of a consensus democracy.

[5] The acronyms of parties and movements refer to their German names.

Democrats (CVP) and Social Democrats (SP)—with two representatives each—and the Swiss People's Party (SVP), with one representative. Currently, the SVP, as the strongest party, holds two seats, and the CVP (recently renamed *'Die Mitte'*), only one.

The governmental system is a hybrid that combines elements of parliamentary and presidential systems.[6] A top executive body consisting of seven members, each of whom is responsible for a ministry, forms the collective head of state, called the Federal Council. Its members are individually elected by the Federal Assembly (Parliament) for a four-year mandate and cannot be impeached or dismissed; nor are there—should their proposals not find a majority in Parliament—new elections or possibilities to form a new government. The President of the Confederation is replaced annually and is elected by Parliament from among the seven federal councillors. He or she assumes special representative functions for a one-year term.

The power to legislate is in the hands of the parliament, which consists of two chambers with equal powers in all respects, including the right to introduce legislation. The Council of States (chamber of the cantons) has 46 representatives, with two from each of the 20 cantons and one from each of the six half-cantons mostly elected in a majoritarian voting system (Neuchâtel and Jura use a PR system). The strongest parties in the Council of States were, after the 2019 elections, the CVP with 13 seats, followed by the FDP with 12 and the SP with nine. The National Council (the People's Chamber) consists of 200 members elected in a proportional-representation (PR) system. The number of seats of the cantons varies according to their populations: the canton of Zurich, for example, has 34 seats, while Glarus has only one. The strongest party in the National Council after the 2019 elections was the SVP with 53 seats, followed by the SP with 39.

In addition to having the right to vote in elections, Swiss citizens enjoy far-reaching means of direct democracy that allow them to control governments and parliaments and exercise considerable influence over the political agenda. Direct democracy is more than merely an instrument for participating in policy-making, however: it is a fundamental concept of the state, one based on the sovereignty of its citizens, and a strong

[6] See Wolf Linder, *Schweizerische Demokratie: Institutionen – Prozesse – Perspektiven*, 2nd ed (Haupt, 2005) 225; Wolf Linder, *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies*, 3rd ed (Palgrave Macmillan, 2010).

bulwark against extension of the competences of political authorities—it is, in a nutshell, a form of power-sharing. Between 1848, the year in which Switzerland was founded, and February 2021, Swiss citizens voted on no less than 637 issues.[7]

By means of referendums, citizens entitled to vote may challenge parliamentary decisions, such as federal laws, generally binding decisions of the Confederation, and international treaties of indefinite duration. If the proposal concerns an amendment of the Constitution, membership of an international organisation for collective security, or adherence to a supranational community, then a referendum—and hence a ballot—is compulsory and, together with the majority of citizens, a majority of cantons must accept the proposal. Additionally, citizens, parties, or interest groups can put forward an initiative to amend the Constitution. For an initiative to be accepted, a majority vote is required among the people and the cantons.

In federalist fashion, the organisational autonomy of cantons and municipalities is extensive. Nevertheless, with some important exceptions, the political institutions at the cantonal and local levels are similar to those at the national level. Multi-party government, consensus democracy and far-reaching means of direct democracy are also the rule. Governments are directly elected by citizens, and in the case the smaller, and mainly German-speaking municipalities, there is a citizen assembly instead of a parliament. In these gatherings of all citizens entitled to vote, the important decisions are taken by a show of hands.[8]

[7] See www.bfs.admin.ch/bfs/de/home/statistiken/politik/abstimmungen.html (accessed 26 January 2020). Of the 637 issues, 240 were compulsory referendums, 193 were optional referendums, and 220 were initiatives. The period covered is 1848 to 28 February 2021. If there is a counter-proposal to an initiative, it is counted as one issue.

[8] Andreas Ladner, *Gemeindeversammlung und Gemeindeparlament: Überlegungen und empirische Befunde zur Ausgestaltung der Legislativfunktion in den Schweizer Gemeinden* (Cahier de l'IDHEAP Nr. 292, 2016).

2 History, Structures, and Institutions of Local Government

Municipalities are located in a three-layered state organisation as the lowest level and the one closest to the citizens. They are older than the cantons and date back to the Middle Ages. To satisfy basic human needs for protection and mutual help, associations of persons that extended beyond family or clans were formed. From such neighbourhoods and cooperatives, municipalities evolved through a long process characterised by an increase in self-regulatory competence until they became politically and legally self-responsible.[9] In the countryside, the cultivation of arable land, use of pasture (*Allmend*) and woods, and pursuit of common endeavours required a binding agreement between farmers. In the towns, the granting of the market right and the protection afforded by city walls made citizenship very attractive.

The beginnings of the modern municipal system date back to the Helvetic Republic (1798–1802). Under the old Swiss Confederacy, citizenship was granted by each town and village to all long-time residents only. They enjoyed access to community property and, in some cases, additional protection under the law. However, under the Helvetic Republic, during which time the territory was occupied by France, municipalities became more like administrative units within a top-down system. Certain privileges were abolished, but the circle of citizens of a municipality was expanded to those living in the municipality. This 'principle of inhabitants' was abolished after the Helvetic Republic, but was revived with the creation of the Swiss nation-state in 1847.

A short civil war (*Sonderbundskrieg*) in 1847 saw the defeat of conservatives who opposed a national government with extensive power and instead sought to defend the influence of the cantons (and that of the monasteries and Jesuits). The majority of cantons and their male citizens accepted the new Constitution and agreed to a federalist nation-state with a national executive and a parliament. In the process, the cantons consented to relinquishing some of their rights and transferring them to a level of government above them.

[9] See Peter Steiner, 'Gemeinde', in *Historisches Lexikon der Schweiz* (2013), https://hls-dhs-dss.ch/de/articles/010261/2013-04-05/#HEntstehungsgeschichte (accessed 22 March 2021).

Indeed, a federalist system seemed the only solution for securing the allegiance of conservatives as well as cultural minorities in the French- and Italian-speaking areas. The bicameral structure of Parliament—an idea borrowed from the US—was meant to make the nation-state more palatable by giving the less-populous Catholic cantons and losers of the war greater political weight. Conversely, the competences of the federal authorities remained very limited at the beginning, and new competences were granted only slowly to the confederation, with the support of the majority of cantons and citizens needed for each major transfer of power. By no means could it be possible for the national government to intervene in the internal organisation of the cantons and their municipalities.

In 1874, with the first major revision of the Constitution, a path was opened for greater unification and centralisation. The new Constitution increased the powers of the federal government and gave additional democratic rights to the electorate. These sweeping reforms also introduced the institution of the federal-level referendum. The orientation of the new Constitution was clearly anti-clerical. Subsequently, more and more competences were transferred from the cantons to the federal state, in general with the consent of the majority of the cantons and their citizens, who maintained residual power in the Swiss political system.

In the course of the reforms, all Swiss (male) citizens received the right to vote as well at the local level, that is, in the municipalities where they lived. This transfer of political rights from well-established, long-time Burghers to ordinary inhabitants was an important step in the creation of democratic local government. In time this right was extended to women, though it remains the case to this day that in most municipalities non-Swiss residents do not have the right to vote.

Given the bottom-up creation of the Swiss nation-state and the country's historical lack of any central power, the importance of self-government and autonomy of decentralised units becomes only too evident. Local government is the expression of the democratic self-organisation of the citizens or inhabitants within a territory, and essentially concerns matters that are close to the people and decisions for which they are responsible. Since local government is—as we see in more detail below—itself financed by citizens, they regard the right to local governance as an institution of their own to be defended, rather than as something granted to them by a higher authority.

In recent years, however, this notion of self-sufficient local government has been under increasing challenge. Modern societies in a globalised

world must address issues that go beyond the reach of local government, and public policies entail complexities that cannot be addressed without highly professional and specialised knowledge. This sets limits to local government, especially when it is based on numerous small municipalities. Hence, there is a trend towards greater centralisation, with a shift of competences to higher political levels and the creation of larger municipalities. Comparative studies show that Swiss municipalities are nevertheless among the most autonomous municipalities in Europe as well as worldwide.[10]

Remarkable in this respect are their large number and small size. Starting with about 3200 municipalities in the middle of the nineteenth century, Switzerland had 2172 of them as of 1 January 2021. Although there has been a considerable wave of amalgamations since the 1990s, the municipalities are still very small, with about half of them in 2019 having less than 1500 inhabitants.

Apart from amalgamations of municipalities, there has also been increasing cooperation between different levels of the state and between municipalities themselves. The basic principles of reform activities are—at least at the moment—not particularly contested, with some of them echoing the tenets of New Public Management. For instance, in view of the principle of subsidiarity and delegating tasks whenever possible and reasonable to the lowest state level, local facilities and services should be provided in an efficient and effective manner. Similarly, the principle of fiscal equivalence ('who pays decides, who decides pays') underlies the allocation of competences for the different functions.

When it comes to territorial inequalities, the norm is that equalisation efforts should guarantee minimal standards for ensuring decent financial conditions. The idea of multi-purpose municipalities is also upheld; functionally oriented single-purpose municipalities, despite some shining examples inherited from the past, are not seen as a viable option. There are, however, various forms of inter-municipal cooperation focusing on a single purpose only, such as fire brigades, education, water supply, and wastewater disposal.

[10] Andreas Ladner, et al., *Patterns of Local Autonomy in Europe* (Palgrave, 2019).

3 Constitutional Recognition of Local Government

For a long time, Swiss municipalities were not formally recognised by the national Constitution. This was by no means a sign of a lack of importance, but a situation that arose because municipalities are creatures of the cantons. The national Constitution deals with the cantons, and the cantonal constitutions, with the municipalities—this was meant to be the prevailing pattern. The lack of centralised legislation engendered remarkable complexity, with 26 different constitutions and related laws applying to the country's municipalities. The increasing complexity of certain political problems, however, has made greater cooperation necessary and led to what are known as tripartite policy arrangements that bring all three levels of the state around a table to agree on joint solutions. The constitutional basis for this form of cooperation is found in article 50[11] of the national Constitution, which stipulates that:

1. The autonomy of the communes is guaranteed in accordance with cantonal law.
2. The Confederation shall take account in its activities of the possible consequences for the communes.
3. In doing so, it shall take account of the special position of the cities and urban areas as well as the mountain regions.

This article also presents the grounds on which to consult municipalities and cities when it comes to tasks they have to execute. As a new constitutional article which has existed only since 1999, article 50 has strengthened municipalities in relation to cantons and the confederation. Its introduction, however, was not a fundamental reorganisation of intergovernmental affairs but rather an attempt to provide the legal grounds for practices that already had changed anyway.

In cantonal constitutions, one finds different ways to recognise and organise municipalities. Some cantonal constitutions name all municipalities, whereas in others they are only generally mentioned.

[11] The comprehensive amendment of which this article was a part was approved by the people and the cantons on 18 April 1999 by majorities of 59.2% of voters and 14 out of 26 cantons, respectively. The revised text replaced the previous Federal Constitution of 29 May 1874, and came into force on 1 January 2000.

All local governments enjoy equal or symmetrical constitutional recognition, at least canton-wise. The reality is quite different, and a municipality of a few hundred inhabitants can hardly be compared to a city like Zurich, with more than 400,000 inhabitants. Large cities have more tasks, more competences, and more influence at a higher level.

There is no formal representation of municipalities at national level, and offices for local and municipal affairs exist only at cantonal level. In some cantons, municipalities are able to influence the cantonal political agenda by means of direct democracy (*Behördenreferendum*). Attempts to increase the influence of the larger cities and of the municipalities more generally are made via collective bodies. The Association of the Swiss Cities is active at national level, while associations of municipalities operate at national level as well as in the cantons. These lobby organisations are also invited to participate in consultation processes when laws touch upon municipalities. Possibly the simplest and most effective way to influence decisions at higher levels is through direct representation in parliaments at cantonal and national levels. The *'cumul de mandats'* exists in various forms. Members of local executives might be members of the cantonal or national parliament, and the same can be the case for members of local parliaments. In some cities, however, this possibility is ruled out by law, whereas in other cantons or cities it is accepted or even welcomed.

4 Governance Role of Local Government

4.1 Tasks and Functions of Local Government

Swiss municipalities have a residual power: they are free to fulfil any tasks which are not allocated to other tiers of government. At the same time, they also fulfil tasks that are entrusted to them, usually by the cantons and sometimes by the federal government. The classic terms to describe this situation distinguished between the 'own field of action', on the one hand, and, on the other, a 'delegated field of action' where municipalities basically serve as agents of the cantonal or national authorities. Nowadays, tasks are described instead in terms of autonomy: if it is up to the municipalities to decide whether they want to do something and how it is to be done, their autonomy is high; if they simply have to execute what they are asked to do, their autonomy is low.

One of the reasons is that, during the last decade, the principle of fiscal equivalence became increasingly prominent in organising the allocation

of tasks. It even found recognition in the Federal Constitution, as can be seen in article 43(a) concerning cooperation between the federal government and the cantons: '2) The collective body that benefits from a public service bears the costs thereof; and 3) The collective body that bears the costs of a public service may decide on the nature of that service'. Since municipalities, as we will see in the next section, pay a significant amount of their expenses with their 'own' revenue, they want to decide on what to do and how to do it; likewise, if they are serving as agents and fulfilling tasks entrusted to them by higher levels, they expect these levels to contribute to funding these tasks. Yet although this may sound straightforward in theory, in practice things are not always as clear. Some tasks might necessitate supra-local regulation and guidance, and at any rate municipalities cannot necessarily pay their own way in everything they do, even if they undertake it out of their free will.

There is no nationwide catalogue enumerating the functions of the Swiss municipalities, since this also depends on the cantons. Tasks generally provided directly are, apart from all activities that concern the political and administrative self-organisation of the municipality, the basic municipal infrastructure such as water supply, wastewater and local roads, as well as waste disposal. Construction—in particular spatial planning and zoning and the approval of building applications—is also part of the portfolio of tasks of practically every municipality, nor should running fire departments be forgotten. Primary education and social welfare, albeit in different forms, as well as the provision of services in the areas of culture, sports, and landscape, townscape and environmental protection, are considered municipal activities for nine out of 10 municipalities. By contrast, police duties, child care for families, support for the elderly, old people's homes and nursing homes, home care for the sick and elderly, public transport, and energy supply are described less frequently as municipal tasks, albeit that 70 per cent to 80 per cent of municipalities undertake them.

Some tasks are theoretically in the hands of the municipalities, but there is simply no demand for them, for example, because the municipalities are too small. This is notably so in the case of social welfare or social work, a field that includes care for drug addicts, support and care for the unemployed, care for asylum seekers, the integration of foreigners, and activities for younger people.

Apart from the fact that municipalities vary in size, there are also differences between the cantons. Such cantonal differences prove to be greatest in the area of social affairs. In areas of responsibility such as care for

the unemployed and asylum seekers, as well as youth work and family-supporting child care, municipalities in the French-speaking cantons have somewhat fewer competences and responsibilities than municipalities in German-speaking Switzerland. A similar situation can be observed with care for the elderly, although the differences between the language regions are less pronounced. Cantonal differences are also found in regard to economic development and security, especially when it comes to municipal police tasks. In many cases, policing is located at the cantonal rather than the municipal level. The smallest variations among the cantons are in the areas of government and administration, construction and the environment, infrastructure and transport, and education, culture, and sports.

It can thus be seen that the spectrum of tasks handled by the municipalities is in most cases very complex and covers a wide variety of subject areas, from government and administration to construction and the environment to economic development.

The importance of the municipalities and their involvement in different functions are also visible in their financial expenditures and the number of people they employ. About a quarter of the expenditures of all three levels of government are incurred by municipalities. They bear the largest shares in the areas of environmental protection and spatial planning, as well as in the areas of culture and sports. Expenditure on education and social security is also particularly significant for municipalities. Similarly, about a quarter of public administration jobs, in the narrower sense, are financed by the municipalities. If one considers the entirety of public sector jobs, the municipalities' share is about one-fifth.[12]

4.2 Structure of Local Government

A core characteristic of Swiss municipalities is the militia system (*Milizsystem*), in which citizens exercise various offices of authority on a part-time and honorary basis. This applies, among other things, to the executive as the governing body of the municipality, as well as to commissions with independent administrative powers. In many places, militia

[12] Andreas Ladner and Alexander Haus, *Aufgabenerbringung der Gemeinden in der Schweiz: Organisation, Zuständigkeiten und Auswirkungen* (Cahier de l'IDHEAP Nr. 319, 2021) 41–43.

politicians ensure the provision of public services in cooperation with full-time administrative staff. Although the functioning of most municipalities depends on the militia system, it is nowadays often not possible to find enough volunteers to fill the numerous offices of authority.

In cities, full-time city councils (executives) are responsible not only for political-strategic leadership, but also for the operational management of their departments. Organisational structures in medium-sized municipalities are particularly widespread, with part-time municipal councillors managing the policies of their departments while a managing director oversees administrative operations. In the smallest municipalities, by contrast, municipal councils are involved in the day-to-day business of the administration.

The execution of important state tasks takes place in small and rather autonomous units. Together with the militia system, this ensures a high degree of proximity to citizens. Regional and local conditions in the provision of public services can be taken into account in close detail. However, it leads inevitably to the question of whether the price for this is inefficiency (including duplication) and inequality in the provision of services.

Not least because of the small size of many municipalities, there are various forms of cooperation when it comes to the organisation of the different tasks. These forms of cooperation have both vertical and horizontal dimensions. Along the vertical dimension, a clear separation of tasks, competences, and responsibilities between different levels is not possible, which then precludes any attempts to move towards a dualist model clearly separating tasks between state levels. Instead, the integrated, or cooperative, model is, with all its shortcomings in terms of coordination, responsibility and flow of information, the only possible form.

Since small municipalities are not optimal for all tasks, there is intensive inter-municipal cooperation in Switzerland. On average, municipalities perform about 60 per cent of their tasks independently, that is, solely through the local administrative and militia system. If the communes do not perform a task themselves, they prefer to cooperate with other communes. This type of setting is found in two-thirds of the municipalities in the fire department and medical care at home (*Spitex*). Almost every second municipality relies on inter-municipal cooperation (IMC) in regard to social welfare and care and support for the elderly. IMC solutions are particularly widespread in French-speaking areas, often in

the form of public corporations. German-speaking municipalities differ from the other language regions in that they are less likely to enter into IMC. If they do, they are more likely to rely on contractual solutions. In general, private law IMC solutions such as foundations, associations, or stock corporations are not very popular. Compared with the early 2000s, the growth in new collaborations has slowed somewhat. However, in view of the IMC already in place in many parts of the country, this finding is not surprising. The importance of IMC for municipal-task performance remains very high.[13]

The demands of New Public Management for a lean state, including the outsourcing of public tasks to private providers, have so far had only a limited impact on the organisation of municipal tasks. Overall, the involvement of private parties in task performance is hardly widespread. It is mainly large municipalities and communes in German-speaking Switzerland that use the services of private companies. They do so mainly in areas where specialised knowledge is required, such as information technology, spatial and zoning planning, and supplementary child care.

After a somewhat quieter phase at the beginning of the 2000s, municipalities are now once again facing increasing challenges and difficulties on multiple fronts. On the one hand, performance limits in the fulfilment of public tasks have increased. Municipalities are increasingly reaching their limits in the areas of social welfare, care for asylum seekers, spatial and zoning planning, and government and administration, regardless of their size. The municipalities in Ticino are most affected, followed by those in western and German-speaking Switzerland. On the other hand, the municipal financial situation has worsened in recent years. More municipalities have been forced to raise their tax rates. Furthermore, debt has increased in quite a few places, and the number of net recipients in the fiscal equalisation systems has grown. In addition, about half of the municipalities still complain that there are not enough qualified candidates available for the executive and thus for key municipal offices. This recruitment problem mainly affects the many communes with between 500 and 2000 inhabitants as well as the communes of some smaller cantons.

[13] See Reto Steiner and Claire Kaiser, 'Die Gemeindeverwaltungen', in Andreas Ladner, Jean-Loup Chappelet, Yves Emery, Peter Knoepfel, Luzius Mader, Nils Soguel, and Frédéric Varone (eds) *Handbuch der öffentlichen Verwaltung in der Schweiz* (NZZ Libro, 2013) 149–166.

Despite these figures, the financial situation of Swiss municipalities is not as bad as it may sound. Municipalities have the lowest indebtedness of all three levels of government, and the majority of them still have some financial leeway.

4.3 Local Political Systems

The institutional expression of subnational democracy in a federalist country with a large number of autonomous municipalities results in a variety of different political systems.[14] The cantons have constitutions of their own in which they define, in compliance with the Federal Constitution, their own political institutions and lay down the framework for the municipalities. There are 26 different cantonal laws telling municipalities how to set up and organise their political institutions. Many of these laws impose very limited institutional requirements on their municipalities.

Each municipality has an executive board and a mayor, and in almost all cases they are elected directly by citizens. Executives at the municipal level have between three and 30 seats.[15] The average executive size at the local level is about six members.[16] Being a member of the cantonal government is, with some exceptions, a full-time job, whereas at the local level only very few executives, and mainly in the big cities, are remunerated on a full-time basis. A large majority of office holders do this, as previously mentioned, on a part-time or voluntary basis.

Very much as at the national level, governments at subnational level are collegial boards with joint responsibilities. It is only at the local level that the mayor has a more distinct role and is elected separately. The dominant electoral system for executives is majority voting, which is used by a little more than 70 per cent of municipalities.[17] Majority voting, however, does not necessarily lead to single-party governments.

[14] For more on local democracy and the local political systems, see also Ladner (2011) (n 1).

[15] Andreas Ladner, 'Laymen and Executives in Swiss Local Government', in Rikke Berg and Nirmala Rao (eds) *Transforming Political Leadership in Local Government* (Palgrave Macmillan, 2005).

[16] Andreas Ladner, *Die Schweizer Gemeinden im Wandel: Politische Institutionen und lokale Politik* (Cahier de l'IDHEAP Nr. 237, 2008) 11.

[17] Ladner (2005) (n 15).

At the local level, there are two different legislative systems. About 20 per cent of municipalities have a local parliament, usually called the municipal or city council. This is a body of between 10 and 125 representatives, who are usually elected, in a PR system, by the citizens entitled to vote in the municipality. The rest of the municipalities have a municipal assembly called the *Gemeindeversammlung*—this is a gathering or meeting of all citizens entitled to vote, and represents a form of direct democracy in the tradition of Rousseau and the ancient Greeks. The competences of the council and the assembly are similar. They both have a control and an input function as far as the activities of the executive are concerned, and they decide on all important projects and proposals that are not within the competence of the executive or the citizens at the polls. Typical concerns of local parliaments or assemblies are municipal projects of some importance and with financial consequences above a certain amount, and the acceptance of the municipal account, that is to say the budget. Changes of municipal decrees and regulations, and sometimes changes in the tax rate, are decided at the polls.

Which form—parliament or assembly—a municipality chooses depends on its size and cultural background. Larger municipalities, and almost all cities, have a local parliament, and local parliaments are more widespread in the French-speaking cantons, where the tradition of representative democracy is much stronger than elsewhere in Switzerland. In the German-speaking areas, certain municipalities with well above 10,000 inhabitants still have a local assembly. The division of power prohibits the mayor and the other members of the executive from simultaneously being members of the local parliament.

For the executive, it makes quite a difference whether it faces a local parliament or a municipal assembly, as a local executive enjoys more freedom when it has to deal with an assembly. The members of the executive are usually better informed about the different issues at stake and know how to persuade their citizens. Nevertheless, sometimes the decisions of the citizens are unpredictable, depending on the kind and number of people turning up at the assembly. In municipalities with a local parliament, the executive has to deal with parties and party politics. This means there is a more visible and clearly structured political debate and the positions of the different actors are known in advance. However, it is erroneous to believe that the parliament is able to steer and control

local politics in all matters. The gaps in political knowledge and understanding between members of parliament and members of the executive make such a task very difficult.

The municipal assembly is the most genuine form of direct democracy practised in Switzerland. Such a gathering of all citizens entitled to vote in the municipality takes place two to four times a year. The assembly takes binding decisions on changes in municipal rules, public policies, and public spending. Everyone is entitled to have a say, and the decisions are made—unless a secret vote is requested—by a show of hands. At first sight, decision-making by municipal assembly looks very much like directly aggregative voter democracy, where one simply counts the votes and lets the majority decide. However, a municipal assembly also has an important deliberative element. Prior to decisions, there is room for discussion in which citizens can influence projects and make new suggestions. Moreover, the opportunity to hear the arguments of different protagonists can increase mutual understanding.

Regardless of whether they have a parliament or an assembly, though, Swiss municipalities have other forms of direct democracy, among them being referendums and initiatives. In municipalities with a parliament, direct democracy is directed against decisions of executive and parliament; in municipalities with an assembly, direct democracy addresses the executive as well as decisions of the assembly.

It is impossible within the confines of this chapter, to give an overview of the different forms and uses of direct democracy at the local level. There is some literature about their application in cities which shows that in German-speaking cities, referendums and initiatives are more frequent than elsewhere. In the case of the City of Zurich, there have been more than 850 votes on local issues between 1934 and 2008. Furthermore, taking all three levels together, a Swiss voter, having spent his or her whole life in Zurich, will have been asked to decide on about 1800 issues over the last 60 years. Other forms of participatory democracy, such as participatory planning, open dialogues with citizens, and citizen polls, do take place, but they are institutionalised only to a minor extent, usually in terms of a general legal stipulation that those who are affected by a new act should be consulted for their views. The City of Zurich, for example,

has documented some 50 cases over 15 years in which the authorities elicited civic participation in their projects.[18]

Often these new forms of citizen participation take place in regard to large projects, such as major new infrastructural developments or tramways and roads. Quite often, too, citizens are informed or integrated in amalgamation projects at a very early stage. This new trend, however, would seem to be less motivated by democratisation than by necessity. Given that citizens usually have to decide at the polls whether they agree with a new project anyway, it is prudent for authorities to engage and address potential opponents at the outset. Be that as it may, the existing means of direct democracy generally provide citizens with sufficient opportunities to participate in matters of public import.

5 Financing Local Government

The decisive factor that gives Swiss municipalities their power and makes democratic local self-government meaningful is their far-reaching financial and fiscal autonomy. Municipalities have the competences to borrow money and to set—within a wide latitude of discretion—the tax rate for wealth and income tax.

In this regard, Switzerland is fully compliant with the European Charter of Local Self-Government of 1985, which provides that local authorities shall be entitled, within the national economic policy, to adequate financial resources of their own that they may dispose of freely within the framework of their powers. Additionally, the financial resources should match their responsibilities and derive partly from local taxes and charges which they themselves determine within certain limits. In terms of the Charter, municipalities' revenues shall be diversified to cope with financial risks and social change, while financial equalisation procedures shall compensate for unequal distribution of potential resources and financial burdens.

Local authorities, moreover, shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them. As far as possible, grants to local authorities shall not be earmarked

[18] Joëlle Pianzola and Andreas Ladner, 'Voluntary Public Participation Procedures in the City of Zürich: A Step Beyond Direct Democracy?', in Leon Van den Dool, Frank Hendriks, Alberto Gianoli, and Linze Schaap (eds) *The Quest of Good Urban Governance* (Springer, 2015).

for the financing of specific projects, and the provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

All these requirements apply almost perfectly to Swiss municipalities. The weakest points are the low percentage of unconditional grants and the lack of a formal consultation about the redistribution of resources from higher levels. These weaknesses, however, are of minor importance, since municipalities have a high percentage of direct income, as well as various other ways to influence higher-level decisions.

The expenditure of municipalities in relation to the total public expenditure of the Confederation, cantons and municipalities underlines the importance of the local level. In 2019, the ratio was 20.2 per cent, which is fairly high for federalist countries, at least higher than in Austria and Germany and about as high as in Canada.[19] Compared to unitary states such as Sweden or Denmark, however, such a figure is low, since these countries score about 50 per cent and higher. The reason for this is the existence of an intermediate layer, the cantons. In unitary countries such a layer does not exist, creating more room for the municipalities. In Switzerland, cantons are responsible for a rather high percentage of expenditures, leaving the federal government among the different governments with the lowest budget.

In terms of expenditures as a percentage of GDP, Swiss municipalities amount to 6.6 per cent, which is a little more than 50 per cent of the cantonal expenditures but not quite half of the national government's expenditure. These figures, however, also reflect the generally low percentage of public expenditure in Switzerland. As for revenue, about two-thirds of local government income stems from direct tax, mainly on the income, wealth, and benefit of their citizens and the local economy.[20] Another third stems from fees and charges for municipal services. Transfers from higher levels and from other municipalities amount to about 15 per cent. Swiss municipalities are thus only to a minor extent dependent

[19] See OECD Fiscal Decentralisation Database—OECD, Tables 4 and 5 (accessed 17 March 2021).

[20] Alain Schönenberger, 'Öffentliche Finanzen der Schweiz', in Andreas Ladner et al. (eds) *Handbuch der öffentlichen Verwaltung in der Schweiz* (NZZ Libro, 2013) 565–586.

on transfer payments, which cover the costs of tasks they have to carry out on behalf of higher levels of government.

The fact that these transfers are not unconditional is thus of minor importance, because the financial autonomy of municipalities resides in their freedom to set the tax rate according to their needs and aspirations. This, however, leads to another problem. Since resources and needs differ from one municipality to another, municipalities are not all equally able to cover their expenses through self-generated income, which hence raises the need for a powerful equalisation system.

The idea behind the equalisation scheme is that it operates, at least theoretically, with minimal standards. All municipalities should be able to provide necessary services and facilities of a good quality. Furthermore, it is the potential resources (taxpayers, local economy) which are taken into account, not the spending behaviour of the local politicians or the existing tax rate. The equalisation scheme has a vertical dimension (from the canton to the poorer municipalities) and a horizontal one (from the richer to the poorer municipalities). In 2017, about two-thirds of municipalities benefited from financial equalisation, while about 30 per cent were among the funders. The most recent report on the functioning of the equalisation scheme in the canton of Zürich shows that, without equalisation, the tax rate of the 162 municipalities in the canton would vary between 30 and 350 per cent—in fact, varies between 72 and 130 per cent. This means that, in some municipalities, most of the income is directly transferred to the poorer municipalities.[21]

Even after equalisation, though, there are considerable differences between municipalities and cantons as far as the tax burden is concerned. In poor municipalities in cantons like Jura or Valais, the tax burden can be four times higher than in rich municipalities in the cantons of Zug or Schwyz; in the City of Zurich, taxpayers bring more tax money to the town hall than to the canton. In the City of Lausanne, the largest share of tax revenue goes to the canton.

Municipalities are responsible for their own households. They are allowed to borrow money and to make debt. Their debt ratio, however, is rather low compared to other levels of government, which also have a low indebtedness. The debt ratio of Switzerland's state sector was about 30 per cent of GDP during the last few years before the Covid-19 crisis.

[21] See Kanton Zürich, *Gemeinde und Wirksamkeitsbericht Kanton Zürich 2021: Berichtsperiode 2. Januar 2016 bis 1. Januar 2020* (Zürich: January 2020).

The share of the municipalities is a bit more than 20 per cent of the total debt, leaving about half of the debt to the national government.

With the municipalities being responsible for their own expenses, there is no political control by higher levels on how they spend their money. Indeed, the canton limits itself to a financial oversight. Debt brakes, however, have become increasingly popular, and are also debated at a local level. They basically force municipalities to equalise revenues and expenditures over a certain period.

The most coercive control of municipal expenditures is, however, direct democracy. Local authorities have only limited financial spending competences: if they want to increase their expenditure for a particular project within the municipality, a positive decision by the citizens is needed. The citizens, for their part, know that an increase in expenditure could have an impact on the tax rate, so they usually think twice before they accept a new project. When it comes to public expenditure, local authorities are thus subjected to a high degree of accountability.

In terms of their financial commitment to the various functions of governance, Swiss municipalities spend the most money on education and social security, followed by transportation and communication, environmental protection and planning, culture, sports and leisure and public order. 'General administration' accounts for 8 per cent of the municipal financial budget. This includes expenditure on the executive and legislative branches (a specific form of administrative expense) and general administrative expenses that cannot be allocated to specific tasks.

Important for the municipalities and their citizens is that they (municipalities) perform a larger majority of their tasks with their own employees. Public administration accounts for two-thirds of the employees of the public sector in Switzerland. About a quarter of these employees work for municipalities, 50 per cent for cantonal and 10 per cent for the national administrations.[22] This bolsters the notion that municipalities are governed or administered not by forces above them but by themselves.

[22] Andreas Ladner with Laetitia Mathys, *Der Schweizer Föderalismus im Wandel: Überlegungen und empirische Befunde zur territorialen Gliederung und der Organisation der staatlichen Aufgabenerbringung in der Schweiz* (Cahier de l'IDHEAP Nr. 305, 2018) 139.

6 Supervising Local Government

Local government in Switzerland is, generally speaking, about the self-organisation of citizens within specific territorial perimeters, and is not per se a form of decentralisation of the central state. The control of municipalities by higher-level authorities is hence a delicate matter. Although there are nuanced differences in this regard—especially between the language areas, with the French-speaking part leaning towards the French model of a unitary state—in Switzerland there is no such thing as municipalities being subject to uniform, universalised, centralised political control.

Autonomous municipalities are, nevertheless, part of a canton and the nation-state, and therefore of a larger political system. As such, the principle of autonomy has to be reconciled with the principle of the unity of the canton and the state. This principle of unity, together with the need for effective administration of activities, justifies (even compels) the establishment of channels of vertical coordination and, along with these channels, the assertion of means of supervision.

This is indispensable in the exercise of governments' responsibilities and for the management of collective interests. Systems of control prevent an administration from surpassing its limits and guarantee the preservation of public interest, community interest, and individual rights. At the same time, any supervision unnecessary for this goal could threaten local autonomy unnecessarily. Issues of control are particularly salient when governance hinges on mutual interdependence, which demands coordinated action and the alignment of municipal action with the superordinate legal framework and the general interest.[23]

The rationale for capturing the different degrees of administrative supervision is based on the distinction between control of expediency (policy) and control of legality. It unfolds in cases of low autonomy where the higher level controls the expediency of decisions and of higher autonomy where the higher level's control is restricted to matters of legality. In the Swiss case, higher levels are basically concerned to ensure compliance with the law.[24]

Cooperation between the cantons and the municipalities seems to be rather good although not perfect. This, at least, is what the municipalities in the author's surveys say. About 45 per cent described it as good to

[23] Ladner et al. (2019) (n 1) 175.

[24] Ibid., 182.

rather good and another 30 per cent as okay.[25] These figures have hardly changed since the late 1980s.

Local government is supervised by the cantons. The supervision is legal and financial rather than political. This means in essence that cantonal authorities can override local governments' decisions when they are not in line with the law and regulations set by a higher level, but the authorities cannot intervene when they simply do not approve of the political decision. There is control of the financial behaviour of municipalities and of the local accounts; there are rules for elections that have to be followed; and there is an obligation to be transparent and inform the citizens. What the municipalities do within the range of their competences or the results of the election is not the concern of the canton. However, if a municipality fails to maintain its financial health and sinks it into bankruptcy, or does not have enough candidates for the different mandates, the canton must take over the administration of the municipality (*Kommisarische Verwaltung*). This intervention is meant to be transitory. So far, there have only been a few cases where this has happened.

7 Intergovernmental Relations

With the Council of States, the consultation procedure, the double majority for changes of the Constitution, and the implementation of federal policies, Swiss federalism offers cantons various powerful instruments by which to bring their influence to bear. These instruments—located in the process of policy formulation as well as in the decision-making process and in the process of implementation—are referred to as the vertical instruments of federalism.[26]

As for the municipalities, there is no second chamber in the cantonal parliament, nor is their consent needed when it comes to a vote. The access by municipalities to decisions at cantonal level even varies from one canton to another. In some cantons there are direct democratic means reserved for the municipalities (initiatives, referendums), but the most important way to influence cantonal politics in favour of the municipalities is through elected members in the cantonal parliaments and

[25] Ladner (n 22) 98.

[26] Adrian Vatter, 'Federalism', in Ulrich Klöti et al. (eds) *Handbook of Swiss Politics* (Neue Zürcher Zeitung Publishing, 2004) 78.

through interest groups such as the cantonal associations of municipalities (although they do not exist in all cantons) and the cantonal associations of mayors or senior municipal administrators.

The access of municipalities and cities to decisions at federal level is less formalised. The associations of Swiss municipalities and the association of Swiss cities take part in the pre-parliamentary consultation procedure and generally operate as lobby organisations. In particular, cities—with the backing of article 12 of the new Constitution—have tried to gain more influence recently by arguing that their problems (traffic in the metropolitan area, drug abuse, integration of foreigners, asylum seekers) are not properly addressed in the arena of federal politics. In general, however, it is still felt that municipalities are supposed to deal only with the canton, and that the cantons should be the ones to address the federal state. On special occasions and when needed, the large cities have more to say and a more direct form of access to the federal government.

New approaches to policy-making and intergovernmental relations are being forged through ongoing attempts to promote tripartite policy-making and bring together politicians and civil servants from all three levels, usually in the House of the Cantons in Berne, to address complex political problems jointly. This new form of non-hierarchical, tripartite partnership is replacing the classic pattern—in which the national level deals with the cantonal level and the cantonal level with the local level—with a style of governance focused on joint policy-making.[27] Through these means, problems of immigration and integration, for example, have been addressed successfully.

Political parties are expected to play an important linkage function across state levels. However, they are generally weak, at least in organisational terms. Federalism splits the party system into 26 different cantonal party systems, and the small size of many municipalities inhibits the parties from organising themselves at the local level throughout country. Also, the balance of power differs at the national and the cantonal level. At the national level, the two most important parties (as mentioned previously) are the SVP and SP; in the cantonal parliaments, the CVP (*Die Mitte*) and the Radical Party (FDP, *Die Liberalen*) are far stronger, drawing their

[27] Andreas Ladner, 'La gouvernance: La solution pour und réorganisation territoriale de la Suisse?', in Luc Vodoz, Laurent Thévoz, and Prisca Faure (eds) *Les Horizons de la Gouvernance Territoriale* (PPUR, 2013) 70.

support, as they do, from smaller cantons in the country's mountain areas where the CVP and, to a lesser extent, the FDP are well represented.

More important than the political parties are the politicians. The typical career-path of a Swiss politician involves moving up the ladder from the municipality to the federal level. There, they represent not only their political party but also their municipality or their canton. Having members of a municipal executive represented in a cantonal parliament or a member of a cantonal government in the federal parliament is another way to ensure the lower level's influence, though this practice is not accepted in all cantons.

8 Political Culture of Local Governance

In keeping with Switzerland's high degree of local-level autonomy and self-government, politics has been an issue in a great number of municipalities. Until the late 1980s, even the small municipalities had local political parties organised on their territory. This has changed since then. In municipalities with 2000 inhabitants, there are still organised local political parties, and members of the local government usually belong to one of these parties; in smaller municipalities, however, political parties do not find enough members and are of minor importance—indeed, most representatives in the local executive do not belong to any particular party. These shifts towards non-partisan government in smaller municipalities are quite novel and split Swiss municipalities into two groups: on the one hand, the larger municipalities where politics more or less follows the conflict lines of national politics, with more or less the same political actors relying on more or less the same techniques characteristic of the national level; and, on the other, the many small municipalities where politics tends to centre on individuals and where party affiliation is of limited significance.

Electoral participation in local elections is relatively low and scores below 50 per cent. This can be explained partly by the far-reaching nature of direct democracy, which affords citizens the opportunity to influence politics more directly and more often than through the polls. Interest in politics and engagement in political debate is, by implication, greater than the low electoral turnout suggests. In fact, the turnout at local elections

is highest in small municipalities with only a few hundred inhabitants,[28] which is all the more remarkable given that voters in these municipalities have little in the way of real electoral choices: often there are not more credible candidates than there are seats. The higher turnout in smaller municipalities is thus probably due to factors of proximity and heightened sense of civic duty. Here, the voters know most of the candidates personally, and voting is a way to express support for them (or the opposite). Social control might also be greater.

In the late 1980s, women were hardly represented in local government, and a huge majority of the municipalities had a local executive without any women at all. This has changed dramatically over the years. Now there is scarcely a municipality without a woman, and about a quarter of the members of a local executive (government) are women.[29] On higher levels of government, in cantonal and federal executives and parliaments, however, women are sometimes even better represented in local government than men, which is to some extent due to political parties' actively pursuing strategies to bring more women into politics.

Local political parties are generally independent and concerned with local politics; cantonal parties care about cantonal issues, and the national parties, about issues of national importance. The traditional political career starts in a local party, and politicians at higher levels seldom omit to mention their political past in a municipality. A cantonal party, or even a national party, does not intervene in the daily business of local parties or try to influence their selection of candidates. Local parties are a potential field of recruitment for higher-level politicians. Personal ties across the different levels play an important role in Swiss politics, and the *cumul de mandate* is not generally considered to be negative, especially not if it helps to represent the local government's interest at a higher political level.

[28] Reto Steiner, Andreas Ladner, Claire Kaiser, Alexander Haus, Ada Amsellem, and Nicolas Keuffer, *Zustand und Entwicklung der Schweizer Gemeinden, Ergebnisse des nationalen Gemeindemonitorings 2017* (Somedia Buchverlag, Edition Rüegger, 2021) 65–68.

[29] Ibid., 81–82.

9 Covid-19's Impact on the Role of Local Government

Local governments have not played a major role in coping with the Covid-19 pandemic, and are hardly mentioned in legislation on communicable diseases. The main actors are the Federal Council, the Federal Office of Public Health, and the Conference of the members of the cantonal governments responsible for the health sector. The role of the municipalities, and more particularly the cities, has been to implement higher-level policies, run services and facilities in accordance with higher-level restrictions, and, where possible, enforce the rules. Apart from some policing, Switzerland's approach has been liberal, in addition to which there were some attempts by municipalities to assist the local economy and vulnerable members of society.

As with many things related to Covid-19, the problems and debates in Switzerland have been similar to those in other countries. Some have demanded that the federal government adopt a more coordinated and centralised strategy for the country as a whole, while others have insisted on their specific situation in terms of their population and their economy needs (density, age structure, dependency on workers from other countries, etc.). Although the legal grounds for a transfer of competences had been prepared a few years ago, and the cantons are used to cooperating and negotiating, the situation appeared to have been more challenging. It is perhaps premature to make a final analysis of the merits and flaws of the different actors involved, but in terms of communication and in the way to distinguish between scientific knowledge and political needs there seems to be room for improvement.

During 2020–2021, crucial questions emerged relating to the support that certain sectors of the economy were going to receive and how the costs would be split. The cantons were waiting for stronger involvement by the federal government, while the federal government in turn wanted cantons to be more active. Local government, given its dependence on tax income, was particularly concerned by the pandemic's impact on its local revenue base and the prospect of unemployment becoming a long-term phenomenon. Cities had to cope mainly with sanitary problems at schools, sports facilities, cultural events, restaurants, and so on.

On balance, however, it is unlikely that Covid-19 will lead to a fundamental change in the balance of power or the allocation of competences

and responsibilities. At best, indeed, local government in future could become a more prominent actor in joint problem-solving.

10 Emerging Issues and Trends

Seeing as local government appears to work well, and citizens are satisfied with the services they receive and the possibilities they have to influence local political decisions democratically,[30] there is little impetus for dramatic change in Switzerland. Nevertheless, potential reforms are being debated.

The small size of Swiss municipalities has led to a wave of amalgamations across the country. Amalgamations, however, have to be driven by the municipalities themselves—the cantons have little scope for intervention, while the national government is not concerned with the internal organisation of cantons. The number of municipalities is thus still very high for such a small country. It is unlikely that Switzerland will follow the example of Denmark, where in 2007 the number of municipalities was reduced to 98. Instead of amalgamating, municipalities tend to rely on inter-municipal cooperation. Amalgamations in the near future are likely to take place in cantons such as Berne and Vaud, where municipalities are relatively small. In these cantons, however, more tasks are in the hands of the cantonal authorities than they are in cantons such as Zurich, where municipalities are usually larger and more powerful.

That having been said, talk of far-reaching reform in a federalist country like Switzerland can make one lose sight of the fact that, first, within its cantons, it already has remarkable diversity in its systems of local government, and, secondly, that federalism protects municipalities from interventions by the national government.

Formally, municipalities all have the same status and competences, but time will tell whether this will continue to be the case or if more asymmetrical solutions will have to be introduced. Functional, single-purpose municipalities are not entirely new in Switzerland, but have become more popular again in the most recent debates about territorial reforms. Still,

[30] See Bas Denters, Andreas Ladner, Poul Erik Mouritzen, and Lawrence E Rose, 'Reforming Local Governments in Times of Crisis: Values and Expectations of Good Local Governance in Comparative Perspective', in Sabine Kuhlmann and Geert Bouckaert (eds) *Local Public Sector Reforms in Times of Crisis: National Trajectories and International Comparisons* (Palgrave Macmillan, 2016) 333–345.

given the sovereignty of the cantons and the high degree of autonomy of the municipalities, the spirit of the Swiss territorial organisation will most probably prevail. Neither the cantons nor the municipalities are willing to see their freedom and leeway to act being restricted.

In any case, diversity is not perceived as negative, and the centralisation or transfer of too much power to the national level is not a viable solution. What is likely, though, is that there will be an increase in vertical cooperation. Dualistic models of federalism with a clear division of tasks between levels of government are difficult to apply in such a small country—improvements will thus have to be made in how such cooperation between the three levels is organised.

CHAPTER 17

United States of America

Meryl Justin Chertoff

Municipalities in the United States (US), particularly those in its largest metropolitan areas, drive economic growth and innovation and are home to the majority of the nation's population, but their political status under the federal constitutional system of divided government is relatively weak. That does not mean US cities lack political power; it means that the federalist structure weakens, rather than enhances, city power.

US cities and metropolitan areas were home to 85.9 per cent of the nation's population and 91.1 per cent of real gross domestic product (GDP) in 2018.[1] The New York metropolitan area continues to be the world's single largest economy. It would seem self-evident that such economically powerful, densely populated metropolitan engines would have concomitant political power. Yet the US Constitution does not even mention cities, and the US federal structure has not evolved to reflect 'city power'.

[1] Sara Durr, 'New Report: U.S. Metro Areas Continue to Drive Nation's Economic Growth, Post Fifth Consecutive Year of Increase', *The United States Conference of Mayors* (2019), https://bit.ly/3Ic4oVI (accessed 21 June 2021).

M. J. Chertoff (✉)
Georgetown University Law Center, Washington, DC, USA

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_17

There is a mismatch between the rise of cities on the global stage and their role in the constitutional and federal structure of the US. The formal status of US cities in the constitutional scheme is unchanged after 250 years. Indeed, the past 50 years have seen a growing disjuncture between city growth, in both population and share of GDP, and the political influence of cities on the national stage.[2]

The tension between localism, regionalism, and nationalism has growing salience in US political discourse. This chapter will focus on how local governments exercise power most effectively, whether internally or through a complex matrix of intergovernmental relationships, private-sector dealings, and civil society organisations.

1 Country overview

The United States of America is a large, populous, and diverse nation. More than 328 million people live in a land mass of over nine million km^2. While 76.3 per cent of the American population identify as white alone, the balance are African-American, Latino, or Asian/Asian Pacific, and the proportion of people of colour is growing as a total population. Thirteen point six per cent of the population identify as foreign-born.[3] In a geographically and topographically various nation, Americans cluster in cities: in the coastal megacities of New York and Los Angeles, but so too in cities such as Seattle, San Francisco-Silicon Valley, Houston, Phoenix, and Miami, along with cities like Detroit and Cleveland in the shrinking and financially challenged Rust Belt interior.

Despite the impact of Covid-19, the US still has the largest economy in the world, with a gross domestic product (GPD) in 2019 of USD 21.43 trillion. Nonetheless, the debt of the federal government is expected to reach 104 per cent of GDP in 2021, and 107 per cent of GDP in 2023—the highest such ratio in American history.[4]

The US is a union of 50 separate states, each with its own governor, state legislature, and court system. Each state has its own constitution,

[2] Richard C Schragger, *City Power: Urban Governance in a Global Age* (Oxford University Press, 2016).

[3] United States Census Bureau, 'QuickFacts United States' (2019), www.census.gov/quickfacts/fact/table/US/PST045219 (accessed 28 June 2021).

[4] International Monetary Fund, 'World Economic Outlook Database' (2020), https://bit.ly/3t8Yy3j (accessed 28 June 2021).

but where state statutes or constitutional provisions conflict with the US Constitution, the latter is supreme.

The Constitution of the US establishes a federal, representative, democratic republic. The government is federal in that the states and national governments are dual sovereigns. In Congress, two senators represent each state in the Senate, and members of the House of Representatives are selected by district. These districts correlate, but are not identical, to districts in state legislative elections, and redistricting for both occurs every 10 years, following the decennial census. Population growth and loss in different areas often lead to gains and losses in the number of congressional districts, as well as political shifts in state legislative districts.

The US President is elected every four years by an electoral college in conformity with the results of a popular partisan election held in each state. Each state's slate of presidential electors is then certified by its respective governor.

The President nominates federal judges, who are then confirmed by the US Senate. State judicial selection methods vary. In 39 states, some or all judges are elected, a unique feature of American judicial federalism.[5] The Supreme Court of the US hears selected cases from both the lower federal courts and state courts, although state supreme courts have 'the last word' on matters of their own state's constitutional law, unless there is a conflict with federal law.

The Founders of the US system were not content with those checks, however. Under the Tenth Amendment to the US Constitution, powers not delegated to the central government are reserved to the states. This is the formal basis for US federalism. By contrast, states hold plenary power. That is why the US constitution is sometimes called a 'constitution of grant', while state constitutions are 'constitutions of limitation'.

The first half of the twentieth century brought changes that shifted the balance of power away from the states to the federal government. The Sixteenth Amendment created a federal income tax; the Seventeenth Amendment provided that Senators were to be elected by popular vote, whereas previously they had been selected by state legislatures. The influx of funds to the central government enhanced the growth of infrastructure and saw the beginnings of welfare programmes that accelerated during the Great Depression and New Deal, leading to the rise of what is sometimes

[5] Brennan Center for Justice, 'Judicial Selection: Significant Figures' (2015), https://bit.ly/3w15Qb2 (accessed 29 June 2021).

termed the administrative state—one in which executive agencies exercise powers delegated from Congress.[6]

A final defining element of American politics is the hegemony of a two-party political system comprising Democrats and Republicans. While other parties and non-party affiliations exist, all are minor factors in elections, both locally and nationally.

Each state has its own constitution, and all but one (Nebraska) have bicameral legislatures with an upper and lower house. Members of state legislatures are elected by district, with districts representing geographically compact areas—rural, urban, or suburban—and, often, relatively homogeneous populations. Each state has a popularly elected governor. Unlike the federal government, every state except one has a balanced-budget requirement. This is a significant ratchet incentivising states to accept federal funding, as well as creating pressure to utilise funding tools for major projects that evade the balanced-budget restrictions.

State constitutions are generally easier to amend than the federal constitution. The bill-of-rights provisions of some state constitutions often contain positive rights, among them the right to a thorough and efficient education, and the right to clean air and water. The 'new judicial federalism' entails that the bundle of rights and liberties vary from state to state.[7]

The US has a three-tier system of subnational government. The nation is composed of states (50 in all), and the states, of counties; in turn, counties generally encompass municipalities, albeit that in some large metropolitan areas the county is smaller than the municipal entity. Cities, villages, towns, boroughs, and townships are the basic, and the most 'local', of the general-purpose governments.

In addition, a number of US states have tribal lands—more than 55 million acres of such lands are concentrated in the central and western states. Tribal citizens are also US citizens. Tribal governments have considerable autonomy over tribal lands, analogous to state governments, but their officials do not have a governance role beyond the geographical boundaries of the tribal land.

[6] Harry N Scheiber, 'From the New Deal to the New Federalism, 1933–1983', in Harry N Scheiber (ed) *The New Deal Legacy and the Constitution: A Half Century Retrospect* (University of California, 1984) 1–10.

[7] Jeffrey S Sutton, *Imperfect Solutions: States and the Making of American Constitutional Law* (Oxford University Press, 2018).

Each state has its own state statutes which order its affairs, unless preempted by federal law. State law governs almost exclusively in matters of contract, tort, domestic relations, criminal justice, and trusts and estates, and is interpreted, generally, in the courts of the same state. States have regulatory bodies as well, with delegated authorities from their governors and legislators. The power of governors to override decisions by state agencies is stronger than the same power at the federal level, and the separation of powers in the states is less rigorous than at the federal level. Unless a federal constitutional or statutory issue is involved, most cases involving local government are tried under state law and in the court of the state in which the local government is situated.

2 History, Structures, and Institutions of Local Government

Local general-purpose governments[8] have existed in the US throughout its history, and have been providers of goods and services to citizens and residents. Today, they possess substantial autonomy over their administrative and fiscal affairs, and are politically accountable to voters—both property owners and renters—within their boundaries. The degree of functional responsibility that a local government possesses varies from state to state, based on rules defined at the state level and developed over time.

In 2012, the US Census Bureau counted 90,106 state and local governments, as well as 38,910 general-purpose local governments—the latter consisted of 19,519 municipal governments, 16,360 town and township governments, and 3031 county governments. There were 51,146 special-purpose governments (including independent school districts)—merely five years later, in 2017, interim figures showed marked growth in the number of special districts providing public safety and utility services.[9] In the US, these structures overlap: people receive

[8] A subnational government is any unit below the federal government; thus, 'local' refers to that level of subsidiarity. See Kenneth R Thomas, 'Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power', *Congressional Research Service* (2015), https://fas.org/sgp/crs/misc/RL30315.pdf (accessed 15 July 2021).

[9] United States Census Bureau, 'Table 2. Local Governments by Type and State: 2012' (2012), www.census.gov/data/tables/2012/econ/gus/2012-governments.html (accessed 28 June 2021).

services from, and frequently pay taxes to, a combination of general- and special-purpose entities.

Operating within the states, as of 2018, were 19,495 incorporated places—cities, towns, and villages. Of the incorporated places, 76 per cent have fewer than 5,000 residents; of those, over 40 per cent have fewer than 500 residents. Ten have populations over a million, and 310 have populations over 100,000.[10] These are the major metropolitan areas of the US.

There are also areas that operate outside of local control in every American state and in many of its cities. Federal lands and facilities include military bases, US courthouses, federal buildings, and national parklands. State land and facilities are also located under state control inside the boundaries of local municipalities.

The US capital, Washington, DC, is a city and not a state, but has a hybrid structure combining limited home rule and congressional oversight. It includes the geographically compact federal enclave housing the US Capitol and other essential government buildings. No city-states are present in the US.

As of 2020, there are 3142 counties and county equivalents in the 50 states.[11] Counties are the largest unit of subnational government beneath the state structure. County governments are general-purpose local governments. County officials are selected by direct election. They adopt budgets, raise revenues, and enact local ordinances. They exercise powers assigned by the state, including powers over social welfare, prisons, courts, parks, refuse removal and roads, and have some health-care responsibilities, especially with respect to public health, public hospitals, and health-care services for the indigent. Most cities are subsidiary to their counties, and in some densely populated areas like New York, city and county governments are merged entities.

[10] Amel Toukabri and Lauren Medina, 'Latest City and Town Population Estimates of the Decade Show Three-Fourths of the Nation's Incorporated Places have fewer than 5, 000 People', *United States Census Bureau* (2020), https://bit.ly/3JfCfyA (accessed 29 June 2021); United States Census Bureau, 'Ten U.S. Cities Now Have 1 Million People or More; California and Texas Each Have Three of These People' (2015), www.census.gov/newsroom/press-releases/2015/cb15-89.html (accessed 15 July 2021).

[11] United States Census Bureau, 'Annual Estimates of the Resident Population for Counties in the United States: April 1, 2010 to July 1, 2019' (2020), https://bit.ly/3JaF9Vd (accessed 15 July 2021).

More typically, though, the county is the larger entity with the larger population, and cities exist inside the geographical limits of the county. Here is one example: Middlesex County, New Jersey. With a population of about 800,000 people, it contains several cities with populations of more than 50,000—among them are Edison and Woodbridge, as well as New Brunswick, which is home to the state's university. Middlesex County also contains suburban communities such as Highland Park, a suburban borough contiguous to New Brunswick with a population of about 14,000, along with additional, unincorporated areas that contract for services with the county or other cities.[12] Each city and borough has a mayor, and the county has its own governance structure, the board of freeholders. The county provides public safety and utility services, keeps land and title records, issues licences and permits, and authorises general obligation bonds for capital repairs and improvement backed by its own faith and credit. There is a county level of court, as well as local limited jurisdiction courts for each municipality.

Continuing with New Jersey as our illustration, another structure of governance is the township—Middlesex County's Monroe Township is an example. Townships exist in 20 states. In some of them, townships can assume general government powers, as with municipalities, but in other states, they have limited powers to provide specific services such as roads, bridges, and police services, for which they charge a fee or tax.

Municipal corporations are the cities, towns, villages, and boroughs of the US, the structures most often associated with the idea of 'local government'. They are general-purpose governments and are governed by an elected mayor—the executive official—and/or elected councils. Some cities have a city-manager system, in which the elected council hires a professional manager; even in such city-manager structures, there may be a mayor, albeit that his or her function is ceremonial or in other respects quite limited. The commission form of government is adopted in some cities (as well as counties). In this system, council members serve as commissioners for a specific portfolio of local services. In a few New England towns, a form of direct democracy—the town meeting—persists, with elected officials hearing from constituents and votes being taken there on budgets and ordinances.

[12] 'Middlesex County, NJ', www.middlesexcountynj.gov/Pages/Main.aspx (accessed 30 June 2021).

Special-purpose districts are the most common form of government, and overlap with general-purpose governments. The most numerous are independent school districts. Public education districts are funded by a combination of local property taxes and state-wide funding that varies within each state and is most often allocated by formula.

Other special-purpose districts are growing in number. Independent 'special districts' numbered 38,266 in 2012.[13] The vast majority provide a single service such as fire protection, water supply, housing and community development, flood control, and soil and water conservation. Unlike voting in general-purpose governments, which follows the typical one-person-one-vote rule prevalent in the US, voting in special-district governments may be confined to users of, or ratepayers for, the service the district provides, and voting rights may be allocated proportionally.[14]

Special-purpose districts have both top-down and bottom-up characteristics. Often, they are created by the state, under state legislative authority, to facilitate the delivery of certain services on a regional basis. In the best case, this is to provide efficiencies of service delivery. States may also require local governments to hive off certain services like parks, hospitals, and schools to a quasi-autonomous entity responsible for that service. Some special-purpose districts, if authorised by the legislatures of both states, may even cross state lines. In some cases, such interjurisdictional special-purpose districts also require the approval of Congress—such as the Port Authority of New York and New Jersey, which manages ground, marine, and airport facilities in the New York metropolitan region. This Port Authority is the oldest interjurisdictional special-purpose district in the US.[15]

Special districts may also be created by local governments under enabling legislation by their states. This occurs for several reasons. Because all but two US states and most local governments have a balanced-budget requirement while special districts do not, a special district coterminous with the sub-state government can escape the burden of a balanced budget and take on debt subject to fewer restrictions,

[13] United States Census Bureau, 'Table 9. Special District Governments by Function and State: 2012' (2012), www.census.gov/data/tables/2012/econ/gus/2012-governments.html (accessed 28 June 2021).

[14] *Ball v James*, 451 US 355 (1981).

[15] Richard Briffault and Laurie Reynolds, *Case and Materials* on *State and Local Government Law* (West Academic Publishing, 2016) 13–16.

including accessing the bond market.[16] In other cases, two sub-state governments may determine that efficiencies can be achieved by cooperating to create a special district—in some instances, this is called 'regionalisation' of services.

While the number of county governments in the US has remained relatively stable over time, the 60-year period between 1952–2012 saw a 16 per cent increase in the number of municipal governments, that is, in the 'incorporation' of new municipalities.[17] In addition, municipal boundaries may be changed by the 'annexation' of previously separately incorporated areas or of previously unincorporated areas (as when they shift from being part of a county general government to forming part of a specific municipality inside the county). By contrast, de-annexation or secession is the removal of a territory from an existing municipality. State law—either statutory or constitutional—provides the rules, which vary from state to state.

Annexation is the most common form of boundary change, and may occur by state legislative enactment; by municipal resolution or ordinance; by petition by residents or landowners in the area to be annexed; by judicial determination; or by a regional or state-wide boundary review commission. Often, there is a combination of requirements for annexation. Annexation may be motivated by the need for expanding cities to acquire new land to house their growing population, or by the desire to acquire a particularly desirable parcel (such as a riverfront property).

Depending on state law, annexation may require consent from both jurisdictions, but—particularly so in the American south and west—state law may allow it by unilateral application, subject to judicial review. Annexation comes with the service benefits that accrue from joining a wealthier governance unit, but at the cost of diluting the political power of the absorbed community.

Incorporation of a new municipal entity is governed by similar rules, and may also involve de-annexation or secession from a county as part of

[16] National Conferences of State Legislatures, 'State Balanced Budget Requirements' (1999), www.ncsl.org/research/fiscal-policy/state-balanced-budget-requirements.aspx (accessed 15 July 2021).

[17] United States Census Bureau, 'Table 1. Government Units by State: Census Year 1942 to 2012', www.census.gov/data/tables/2012/econ/gus/2012-governments.html (accessed 28 June 2021).

the process. Incorporation consolidates political power within a community, yet also entails the financial burden of having to support additional municipal services. One other form of boundary change is city-county consolidation.

While state legislative enactments set out the rules for incorporation, annexation, and secession, varying degrees of state court judicial review are required to ascertain the fairness of boundaries even where they have been approved by the voters of one or both communities or by a boundary commission. Questions of need, capacity, and local preference are all involved.[18]

3 Constitutional Recognition of Local Government

The US Constitution is silent on cities, even though cities such as New York, Boston, and Philadelphia were powerful both economically and politically in the early years of the republic. Using this silence, states throughout the nineteenth century sought to assert control over local governance. The legal structure of local autonomy thus moved towards a predominant, if not uniform, understanding of local governments as legally subordinate to the states.

That notion is embodied in Dillon's Rule, named after John F Dillon, who served as an Iowa Supreme Court justice and a US circuit judge. Judge Dillon argued that local governments, as administrative conveniences of the states, have no inherent law-making authority and possess only those powers that are expressly delegated to them by the state or which are indispensable to the purposes of their incorporation. The US Supreme Court endorsed this view in *Hunter v Pittsburgh*.[19]

However, even in the nineteenth century, advocates of local autonomy persuaded some states to amend their constitutions to bar or impose procedural constraints on 'special' legislation that adversely affected cities and served to limit the different forms of local government; similarly, these advocates targeted so-called 'ripper' legislation through which states displaced specific local institutions and responsibilities, or even removed local officials from office. The doctrine of an inherent but constitutionally

[18] Briffault and Reynolds (n 16) 222–252.

[19] 207 US 161, 178–179 (1907).

permitted right to local self-determination—a notion contrary to Dillon's Rule—was advocated by scholars such as, and notably, Thomas Cooley of the Michigan Supreme Court. While the Dillon-Cooley debate remains confined to the realm of legal theory, the issues at stake have implications for local government authority that are of ongoing concern.

As new states began to join the Union after the Civil War, most of them included some degree of home-rule authority for at least their larger cities. The most limited form of home rule was 'initiative' authority, which enabled cities to enact their own rules as to purely local matters. More broadly, some states enacted *'imperio'* authority, giving cities immunity from state interference in their function unless in specific contradiction to state law and rules.[20] After advocacy in the 1950s, states began to grant more extensive plenary authorities to city governments, except to the extent that these authorities were preempted by state law; today, states retain the power to preempt city rules.[21]

Thirty-nine states employ Dillon's Rule; 31 apply it to all local governments and eight only to certain municipalities. A few states have constitutions that do not directly delegate (or direct their legislatures to delegate) police power to local governments, leaving the scope of local authority to state legislatures. Twenty states enshrine home rule in their constitutions for at least some of their local governments.[22]

Even in a home-rule state, limitations are imposed on the ability of cities to levy taxes, change boundaries, and issue debt, and thus act as a constraint on sovereignty. While home rule provides greater formal power to those cities which possess it, that power is limited to governance of the city itself—it does not give cities power in intergovernmental negotiation or in regard to boundaries.

[20] Briffault and Reynolds (n 16) 346–351, 396–397.

[21] National League of Cities, 'Principles of Home Rule for the 21st Century' (2020) 9–12.

[22] Jesse J Richardson, Jr, Meghan Zimmerman Gough, and Robert Puentes, 'Is Home Rule the Answer: Clarifying the Influence of Dillon's Rule on Growth Management', *Brookings Institution* (2003); Dale A Krane, Platon N Rigos, and Melvin B Hill, *Home Rule in America: A Fifty State Handbook* (CQ Press, 2001).

4 Governance Role of Local Government

As noted earlier, local governments operate either under either Dillon's Rule, which requires county and local government to secure permission for newly sought governance authorities, or under home rule, which secures broader power to initiate legislative authority. County officials and city or town mayors are elected, often on party-political lines. City councils, too, are elected, and in some cities it is the council that selects one of its members to serve as mayor. Large cities and counties may have their own court system, particularly for criminal cases and for high-volume matters like traffic, domestic relations, and landlord-tenant disputes; such courts are under the appellate supervision of the state intermediate, appellate, and state supreme courts. Counties and municipalities also have an administrative structure that issues licences and permits as well as reviews land use, zoning, and environmental programming. Large cities have their own health and hospital systems, be it independently or in coordination with private providers.

While in the late twentieth century there was a trend to 'professional' management of cities through the use of a city manager, in recent years the pendulum has begun to swing back, with a 'strong-mayor' movement that has transcended state and even national borders. Advocates of the strong-mayor model point to examples such as former New York City Mayor Michael Bloomberg and former Denver Mayor (later Governor) John Hickenlooper as visionaries and innovators who exercised not only formal power, but excelled at negotiating with other levels of government and the private sector to maximise social goods in the face of budgetary limitations.[23]

5 Financing Local Government

American subnational governments are key economic actors. Their shares in GDP and public spending are above OECD averages, although slightly below the OECD federal countries at 18.6 per cent of GDP and 48.1 per

[23] Arguments for 'strong mayors' as an antidote to weak cities are made in Benjamin Barber, *If Mayors Ruled the World* (Yale University Press, 2013); Bruce Katz and Jennifer Bradley, *The Metropolitan Revolution: How Cities and Metros are Fixing our Broken Politics and Fragile Economy* (Brookings Institution Press, 2013); Richard C Schragger, 'Can Strong Mayors Empower Weak Cities? On the Power of Local Executives in a Federal System' (2006) 115(9) *The Yale Law Journal* 2542–2578.

cent of government expenditures. Subnational governments are also key public employers, accounting for more than 75 per cent of total public-employee spending. Of that, the local government is estimated to account for 11 per cent of GDP.[24]

State and local governments look to a mix of revenue sources. While federal tax dollars return as grants-in-aid to state and local governments, the federal portion of aid to local governments remained relatively static until the injection of short-term emergency Covid-19 relief aid. Deficit spending for operating purposes is not an option for state or local governments, due to balanced-budget constraints. This means that when expenses rise, additional funding sources must be secured.

Tax policy varies greatly between states. Nine do not have an income tax. Most allow local governments to levy property taxes which underwrite a portion of local services. This is especially important for education, although the general revenue share for education from state-level budgets is growing. States can continue to levy taxes on city residents burdened at the same by home-rule authorised municipal taxes. Cities may be permitted by state law to raise revenues through local option taxes; many also charge fees or fines.

States with relatively high numbers of wealthier residents, such as New York, California, Virginia, and Maryland, receive almost one-third of their tax revenues from individual income taxes. Seventeen states allow municipalities, counties, school districts, and special districts to impose additional local income taxes. For example, New York City residents pay 3.078 per cent to 3.876 per cent income tax over and above the 4 per cent to 8.82 per cent state tax rate.[25]

Other states look less to their residents and more to visitors. Nevada and Louisiana—both major tourist destinations—rely heavily on sales taxes, while cities like Las Vegas and New Orleans impose their own city or county sales taxes on top of that.

[24] OECD, 'United States', https://bit.ly/3i5rkeB (accessed 24 June 2021).

[25] Tonya Moreno, 'New York City Income Tax-Rates and Available Credits', *The Balance* (2021), www.thebalance.com/new-york-city-income-tax-3193280 (accessed 15 July 2021).

5.1 *Public Education and Fiscal Federalism: A Key Case*

Public education is required by every state law or state constitution, at least from first through twelfth grade and increasingly at the kindergarten and pre-kindergarten level. Even though there is no federal right to education,[26] congressional enactments authorise spending for some public education programmes and set certain benchmarks for minimum achievement. Education spending is one of the most contentious areas of policy conflict in the US, generating inter-local disputes over school district boundaries, state-local conflicts over the allocation of state-wide funding formulas to correct for inequalities, and federal litigation over civil rights issues. Conflicting interpretations of what a 'right to education' means in a given state, and how it is to be funded, have sparked more than 30 years of litigation in state and federal courts.[27]

That conflict provides insight into the tensions of fiscal federalism in action in the US. The differing ability of high- and low-income communities to generate adequate revenue has led states to devise equalisation formulas to distribute additional state aid to underperforming districts, to districts with a poor property tax base due to low valuations, and to districts with a high proportion of special-needs students. State aid to local school districts is the fastest-growing stream of revenue transfer to a lower level of government. For this reason, it is often a flashpoint for tensions between rural and suburban state legislative districts and densely populated urban centres.

5.2 *Borrowing by Local Governments*

Local governments can borrow funds to build infrastructure and fix assets. Long-term debt for local government capital facilities is restricted by states, usually by capping the amount of debt a local government can issue or by capping its total amount of outstanding debt. When a local government pledges its taxing power to retire debt by guaranteeing its full faith

[26] *San Antonio Indep. School Dist. v Rodriguez*, 411 U.S. 1 (1973).

[27] Emily Parker, '50-State Review: Constitutional Obligations for Public Education', *Education Commission of the States* (2016), https://bit.ly/3MWABEe (accessed 30 June 2021). Notwithstanding these controversies, school spending at the elementary and secondary level compares favourably to that in other OECD nations. See National Center for Education Statistics, 'Education Expenditures by Country', https://nces.ed.gov/programs/coe/indicator/cmd (accessed 21 June 2021).

and credit, it is referred to as a 'general obligation debt'. Local governments can also issue revenue debt if the asset created is likely to generate an income stream. The risk of revenue debt rests with the investor, but since it is not backed by the full faith and credit of the local government, which can affect pricing, either positively or negatively.

Local governments also try to circumvent limitations on their ability to raise revenues (whether through home-rule charter or by petition to the state legislature) by entering the bond market in conjunction with development of special projects or business improvement districts. Historically, municipal bonds have been low-risk, low-yield instruments, but municipalities increasingly push the limits of governance constraints to participate in risky financing regimes. While these creative financing strategies can be successful in creating jobs and infrastructure, for many local governments defaults have led to financial instability and even municipal bankruptcy.

5.3 Property Tax Relief and Tax-Parity Issues

As the cost of services increases, local governments face pressure to increase the tax rate to maintain current levels or to improve quality to attract newer, younger residents. Older homeowners, sometimes on fixed incomes, and commercial property owners, resist these tax increases; meanwhile, mobile capital may threaten to shift its location to secure a preferable package. The result can spill into the political arena at the local or state level. In the last 30 years, a series of measures—including the Taxpayer's Bill of Rights in Colorado, Tax and Expenditure Limits (TELs) in Colorado, Oklahoma, and Oregon, and constitutional amendment by initiative, such as Proposition 13 in California—have all sought to limit local property taxes. Between 1978 and 1980, 43 states implemented some form of property tax relief.[28]

Recent social pressure to create tax parity between commercial property owners and residential owners, to break open communities to newer residents including younger first-time home buyers and communities of colour, and to fund education adequately, has fostered efforts to repeal these measures. The results have been mixed. In California in 2020, an effort to repeal Prop 13 was narrowly defeated; in the same year,

[28] Daniel R Mullins and Bruce A Wallin, 'Tax and Expenditure Limitations: An Introduction and Overview' (2004) 24(4) *Public Budgeting and Finance* 2–15.

Colorado's Gallagher Amendment, its version of a TEL, was repealed, but only after tax limitation legislation was passed in the state legislature.[29]

State-wide limits to local property taxes create greater pressure on local governments to raise revenue from alternate sources. Many local governments generate income through fines and fees levied on individuals and businesses seeking professional and operating licences, or issue tickets for minor vehicular or lifestyle offences.

States seeking additional revenue sources have also turned to creative sources, among them taxation of online purchases, marijuana legalisation, and commuter taxes.[30] The latter were exacerbated by the Covid-19 pandemic of 2020–2021. The question of where local taxes are paid is governed either by interstate compact or by a rule that taxes are due where the service is performed. But what happens when a nation is forced to telecommute due to a pandemic—and when that practice becomes a norm? This is of keen interest in cities such as New York, with a tri-state workforce. In 2021, the US Supreme Court declined to decide this issue, leaving it for state and local governments to sort out.

5.4 Local Government and Federal Government

In the nineteenth century, there was a relationship between the federal government and large cities through shared authority over waterways and ports, at the time the primary internal pathway of interstate commerce. Municipal governments remained largely autonomous from the federal government until the Great Depression of the 1930s, when federal aid programmes poured millions of dollars into local governments. That direct relationship has continued, although it has waxed and waned under different federal administrations.

[29] Legislative Analyst's Office, 'Common Claims about Proposition 13' (2016), https://lao.ca.gov/Publications/Report/3497 (accessed 8 July 2021); Iris J Lav and Erica Williams, 'A Formula for Decline: Lessons from Colorado for States Considering TABOR' *Center on Budget and Policy Priorities* (2010), https://bit.ly/3w3bhX1 (accessed 1 August 2021).

[30] Janelle Cammenga and Jared Walczak, 'States Sales Taxes in the Post-Wayfair Era', *Tax Foundation* (2019), https://bit.ly/3vYlnIJ (accessed 1 August 2021); Eric Pandey, 'Telework's Tax Mess', *Axios* (2021), https://bit.ly/3tPdXF3 (accessed 8 July 2021); Ulrik Boesen, 'How High are Taxes on Recreational Marijuana in Your State?', *Tax Foundation* (2021), https://bit.ly/3q0e3Iy (accessed 8 July 2021).

Though the federal government has reduced direct per capita aid to local governments since the 1980s, the Catalog of Federal Domestic Assistance in 2016 identified 824 programmes with local governments or communities as beneficiaries. Federal aid to local governments comes in three main forms: (1) categorical grants, which are awarded either based on a formula or through a competitive, project-based application; (2) block grants, which are allocated based on a formula, restrict funding to broad goals but allow localities to decide how to spend the money to meet those goals; (3) general revenue-sharing, which directs largely unrestricted funds from federal or state governments to localities based on a formula.[31]

Federal influence over local policy has grown apace with federal aid to local government. Grants-in-aid are a primary mechanism the federal government uses to extend its influence into state and local affairs. In this process, the federal government extends aid to states to finance areas of domestic public spending or to provide swift fiscal relief when severe, unforeseen economic conditions arise. From 1960 to 2016, grant-in-aid spending grew from USD 7 billion to USD 660 billion dollars. Although a portion of this is spending on physical infrastructure, the largest, and largest-growing portion, are social welfare payments to individuals and health-care-insurance coverage, including the Medicaid programme—the latter provides health insurance to Americans whose income is at or near the poverty line. Medicaid requires a state-spending share to complement the (increasingly large) federal share, and is the biggest single component of every state budget in the US.[32]

'Preemption' is the term for federal assumption of regulatory responsibility in fields such as the environment, immigration, fiscal affairs, and service delivery. While federal preemption is in most areas supported by the Commerce Clause of the US Constitution, Congress often imposes requirements, codified through federal regulation, that entail financial

[31] Megan Randall, Sarah Gault, and Tracy Gordon, 'Federal Aid to Local Governments', *Urban Institute* (2016), https://urbn.is/3w6Ofyq (accessed 1 July 2021).

[32] Mercatus Center, 'Grants', George Mason University (2020), www.mercatus.org/system/files/Federal-grant-aid-state-and-local-chart-analysis-pdf.pdf (accessed 15 July 2021); Congressional Research Service, 'Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues' (2019), https://fas.org/sgp/crs/misc/R40638.pdf (accessed 15 July 2021).

costs for lower levels of government, yet does so without funding those costs.

While formalistic federalism requires the federal government to regulate local governments only through the fifty state-level governments, in practical terms, direct federal regulation of US local governments, especially municipal governments, has vastly expanded in the twentieth and twenty-first centuries. Thus, preemption by the federal government touches all subnational government.

Mayors and governors have bridled at the burden placed on their operating budgets, deriding them as 'unfunded mandates'. From 1994 to 1998, USD 54 billion in unfunded mandates were imposed on state and local budgets by actions of Congress, with environmental laws and laws on access for disabled persons creating the most costs. Since 2006 alone, 167 laws passed by Congress created unfunded mandates to state and local governments.[33]

Unfunded mandates are the most oppressive when they impose direct costs. In theory, federal grants-in-aid for programmes like Medicaid do not constitute an unfunded mandate, since a right to refuse the grant alleviates the obligation to pay a local share. However, given that the health-insurance coverage that Medicaid provides is such a basic need for those who cannot afford to pay, and is such a large part of their budgets—one in every six dollars in US health-care costs are paid by Medicaid—federal regulatory requirements present a forced choice for local and state governments.

The increasing burden of unfunded mandates is indicative of a shift from 'cooperative' to 'coercive' fiscal federalism.[34] States are forced to share programme costs with a federal government that, unlike them, is not under the constraint of a balanced-budget requirement. Federal regulatory agencies oversee the use of federal funds to state and local programmes, and may impose financial sanctions on or delay disbursement to local governments that violate regulatory provisions.

[33] Congressional Research Service, 'Unfunded Mandates Reform Act: History, Impact, and Issues' (2020), https://fas.org/sgp/crs/misc/R40957.pdf (accessed 26 June 2021).

[34] John Kincaid, 'From Cooperation to Coercion in American Federalism: Housing, Fragmentation and Preemption 1780–1992' (1992) 9(2) *Journal of Law and Politics* 333–433; Paul L Posner, 'Mandates: The Politics of Coercive Federalism', in Timothy J Conlan and Paul L Posner (eds) *Intergovernmental Management for the 21st Century* (Brookings Institution Press, 2008) 287.

Local governments labour under a double burden of unfunded mandates. Not only can federal-mandate costs be passed through from states to local governments, but states themselves may impose funding mandates on local governments by statute. To limit those state mandates, two devices have been adopted in some states. The first, fiscal noting, requires state legislation to contain an analysis of its impact on local governments; most states have adopted this practice, which emphasises transparency but not accountability. The second device, mandate reimbursement, requires states to internalise the costs of mandates, but has been adopted in only 14 states.[35] Organisations such as the National League of Cities, the US Conference of Mayors, and the National Association of Counties—national coalitions of locally elected leaders that act as interest groups in intergovernmental relations—oppose unfunded mandates by means of intergovernmental lobbying and research reports.

6 Supervising Local Government

State governments monitor the fiscal status of local governments, thereby performing a fiduciary role. An insolvent local government may go under state supervision or monitorship. This occurred in, among others, New York City in 1976, Miami, Florida in 1996, and Buffalo, New York in 2003. Federal bankruptcy protection is also available under Chapter IX of the US Tax Code.[36] Until the 2007–2008 subprime mortgage crisis, municipal bankruptcy in the US was almost non-existent, but over the following 10 years, a number of cities defaulted on their financial obligations, the most spectacular being the bankruptcy in 2013 of Detroit, Michigan. Other municipal bankruptcies are related to public-employee union pension defaults (San Bernardino and Stockton, California), near-bankruptcy in gaming hub Atlantic City (as a result in part of bankruptcies by casinos in the holdings of Donald Trump), and insolvency issues in

[35] Michael A Pagano, 'United States of America', in Nico Steytler (ed) *Local Government and Metropolitan Regions in Federal Systems* (McGill-Queen's University Press, 2009) 378–379.

[36] L Owen Kirkpatrick, 'The New Urban Fiscal Crisis: Finance, Democracy, and Municipal Debt' (2016) 44(1) *Politics & Society* 45–80; Jeff Chapman, Adrienne Lu, and Logan Timmerhoff, 'By the Numbers: A Look at Municipal Bankruptcies over the Past 20 Years', *Pew* (6 July 2020), https://bit.ly/3CFdaKP (accessed 1 July 2021).

major American cities including Chicago, New York City, San Diego, and Colorado Springs.[37]

While federal bankruptcy allows for a restructuring of debt, states do not assume the debt of local governments, and neither the federal nor the state government backs local debt. Local governments rely on their own full faith and credit when they issue general obligation bonds, or rely on a portion of the revenue stream from an income-producing facility when issuing revenue (non-guaranteed) bonds.

State supervision of local government, outside of fiscal supervision, varies from state to state and depends on the degree of home rule accorded to particular municipal governments. Preemption operates within each US state, as well as vertically between federal government and subsidiary government levels. Thus, a state legislature may deprive a local government of the ability to govern specific areas.[38] If a local government challenges that preemption for an area of law which it claims is within its home-rule authority, the state courts often will be the venue for redress.

Punitive preemption, or 'the new preemption' is one of the most significant issues of the US.[39] Historically, states have preempted local law on issues of policy that require uniformity or a comprehensive statewide approach. However, in recent years, the pace of preemption has accelerated. States have preempted local efforts to ban fracking, protect lesbian, gay, bisexual, and transgender (LGBT) rights, ban plastic bags, and construct more affordable housing. In 1999, only two states limited the ability of local governments to set minimum wages, but by 2017 new laws meant that half of the states in the US—25—had such a law. The same applies to local laws regarding sick leave.[40] During the Covid-19 pandemic, the Texas governor prohibited, by executive order, local governments from enforcing mask mandates. In California, the City of

[37] Jamie Peck, 'Transatlantic City, Part I: Conjunctural Urbanism' 54(1) *Urban Studies* 4–30.

[38] See Paul Diller, 'Intrastate Preemption' (2007) 87(5) *Boston University Law Review* 1113–1176.

[39] Richard Briffault, 'The Challenge of the New Preemption' (2018) 70(6) *Stanford Law Review* 1995–2027.

[40] Lori Riverstone-Newell, 'The Rise of State Preemption Laws in Response to Local Policy Innovation' (2017) 47(3) *Publius: The Journal of Federalism* 403–425; Lauren Phillips, 'Impeding Innovation: State Preemption of Progressive Local Regulations' (2017) 117(8) *Columbia Law Review*.

Santa Cruz ended its effort to tax sugar-sweetened beverages (SSBs) citywide when a new state law threatened to withhold local sales tax revenues as punishment for a local tax on SSBs. What these conflicts have in common is that there is a political valence associated with them—in most cases, preemption appears to be a contest between progressive metropolitan areas and conservative state governments. Studies have linked advocacy around these preemptions to business and conservative political interests.[41]

In an effort at remediation, the National League of Cities recently published 'Principles of Home Rule for the 21st Century'. This sets out principles and model language for strengthening home rule and asserts that judge-made doctrine should validate local law in the absence of clear and convincing arguments for state-wide uniformity.[42]

7 Intergovernmental Relations

In the US, the intergovernmental relations of local governments are mediated both formally and informally, with the structural characteristics of US federalism limiting the influence of local government.

Horizontal federalism manifests itself at the local level when local governments compete against one another or strike inter-local agreements. Although it is generally regarded in the US as a means for local governments to compete with each other for talent and investment, horizontal federalism also involves local governments observing, and adopting best practices from, other local governments.[43] However, vertical factors such as taxation, transportation investment, housing, and land-use policy are subject to rules set at the state or even federal level. This thick regulatory environment affects the capacity of large cities to compete with small ones, rural areas to compete with megacities, and municipalities to

[41] Luke Fowler and Stephanie L Witt, 'State Preemption of Local Authority: Explaining Patterns of State Adoption of Preemption Measures' (2019) 49(3) *Publius: The Journal of Federalism* 540–559.

[42] National League of Cities, 'Principles of Home Rule for the 21st Century' (2020), www.nlc.org/wp-content/uploads/2020/02/Home-Rule-Principles-ReportWEB-2-1.pdf (accessed 30 June 2021).

[43] Katherine Levine Einstein, David M Glick, and Maxwell Palmer, 'City Learning: Evidence of Policy Information Diffusion from a Survey of U.S. Mayors' (2018) 72(1) *Political Research Quarterly* 243–258.

compete with contiguous suburbs. Thus, horizontal federalism propels, at one and the same time, a race to excellence and a race to the bottom, given the pressure that local governments are under to cut costs.[44]

Vertical federalism also operates at the local level. While it can serve to shift burdens downward from states to local entities, thus enabling higher-level orders of government to evade costs and accountability, vertical federalism also facilitates negotiation between cities and states to the extent that they can bypass the state and collaborate directly with federal agencies and elected officials. This creates a 'federalism all the way down'.[45]

7.1 City Power—Or State Dominance

Political factors can stack the deck against city power in two key respects. First, the 100 senators in the US Senate are elected state-wide, meaning that rural and less-densely populated states in the US are disproportionately represented in Congress's upper house. Secondly, even in the US House of Representatives, whose members are selected by first-past-the post contests by population-defined districts within the states, the process of redistriction is controlled by the then-majority party in the state legislature such that districts at both the state and federal level are set after the decennial census every 10 years. Redistricting strategies employed by both parties have tended to favour incumbents, meaning that there are few swing races.

The agglomeration in the largest cities of younger, productive workers, newer Americans, and racial minorities tends to concentrate their vote in a limited number of districts; meanwhile, out-migration from cities to suburbs, which tends to turn Red (Republican) districts 'purple' by mixing them with Blue (Democratic) voters, is not happening in great enough numbers in most places to create truly competitive districts. Notable exceptions are large counties in the south and west like Harris County, Texas (home to Houston), Fulton County, Georgia (home to

[44] For some of the rich conversation on this topic, see Allan Erbsen, 'Horizontal Federalism' (2008) 93(2) *Minnesota Law Review* 493–584, 495; Ann O'M Bowman, 'Horizontal Federalism, Exploring Interstate Interactions' (2004) 14(4) *Journal of Public Administration Research and Theory* 535–546.

[45] Heather K Gerken, 'Forward: Federalism All The Way Down' (2010) 124(1) *Harvard Law Review* 4–74.

Atlanta), and Maricopa County, Arizona (home to Phoenix). Not coincidentally, this is where major controversies arose about the integrity of the vote after the 2020 presidential election.[46]

There is a second significant dilution of city power. Because urban dwellers are represented both by local government officials and by representatives sent to their state capital and Congress, the voices of local officials are forced to compete with those of representatives to the state legislature and the Congress. These rivalries, not trivial, can involve interparty conflict, yet even when they do not, the priorities of a mayor and a congresswoman representing a congressional district within her city may be quite different, with the mayor a 'generalist' and the congressional member relying on one or two salient issues or constituencies.

As one partial antidote to this, mayors, county officials, and local officials engage in direct lobbying for their interests. Some maintain their own offices in the nation's capital; others work through organisations such as the US Conference of Mayors, the National League of Cities, and the National Association of County Officials on common issues, often rallying together in resistance to unfunded mandates or out of concerns relating to wage and hour law, federal health-insurance-programme rules, aid to the needy and elderly, emergency prevention and response, environmental regulation, preemption, transportation, and climate change. These informal networks of influence vary in their effectiveness. Major city and county governments seek to influence state legislatures and administrative agencies through similar techniques.[47]

7.2 The Special Case Of Washington, DC

As mentioned, the seat of the federal government is located in Washington, DC. Although DC is a rapidly growing city with a population of 689,545, it has no voting representation in Congress—indeed, until 1963, when an amendment to the US Constitution granted it three seats in the electoral college, its residents were not even able to vote in a presidential election. Washington, DC was granted limited home rule by an Act of Congress in 1973, and now has its own elected mayor, city council,

[46] Jonathan Bydlak, et al., 'Partisan Election Review Efforts in Five States', *Brennan Centre for Justice* (2021), https://bit.ly/35MBJcR (accessed 15 July 2021).

[47] Rebecca Goldstein and Hye Young You, 'Cities as Lobbyists' (2017) 61(4) *American Journal of Political Science* 864–876.

and education system. Congress may preempt legislative action by the District and, until 2005, had total veto power over its proposed budget. It continues to have control over select budget lines.

DC residents have waged an ongoing campaign for statehood, and in non-binding referenda have overwhelmingly supported statehood. However, DC statehood would require, at a minimum, an Act of Congress, and, some argue, a constitutional amendment. Because this could shift the balance of power in Congress, the chance of this happening is low.

8 Political Culture of Local Governance

The US federalist system in an era of polarisation privileges vertical alliances based upon party affiliation. Two parties predominate—the Republican Party and the Democratic Party. In a number of populous states there are upstate-downstate or urban-suburban divides in party dominance, with Democrats prevalent in large urban settings that are home to younger voters, racial minorities, and educated elites, and Republicans dominating rural communities and small towns. Suburban voters are often the elusive 'swing votes' that in an increasing number of cases determine elections by razor-thin margins.

In a number of America's largest cities, the Democratic Party has such overwhelming control that local elections are determined at the party primary phase, with the general election a mere formality. Since political parties select the primary candidates through their internal processes, this means that the party is enormously influential in local races and that the real contest is between the progressive and moderate wings of the Democratic party.

At the level of states, by contrast, Republican candidates have 'trifectas' (control of the governorship and both houses of the state legislature) in 23 of the 50 US states; it is the same case with Democrats in 15 states, while the remaining 12 states are divided.[48] With a more fiscally conservative and rural outlook, and increasingly influenced by the identity politics of the 'Trump wing' of the Republican Party, Republican governors and legislatures use tools such as state preemption to limit the policy agenda of the largest Democrat-controlled cities within their states.

[48] National Conference of State Legislatures, 'State Partisan Composition', www.ncsl.org/research/about-state-legislatures/partisan-composition.aspx (accessed 1 July 2021).

In some municipalities, especially smaller ones, local elections for the executive office or governing council are formally non-partisan; council and governing board elections for special-purpose districts are frequently non-partisan—many local judges are elected, and those elections often do not list the party affiliation of a candidate.

US political parties do not impose minimum numbers of candidates for office on their ticket by gender or by race. As of May 2021, of the 1621 mayors of US cities with populations of 30,000 and above, 407, or 25.1 per cent, were women. Of those women, 91, or 25.6 per cent, were mayors of the 356 cities with populations of 100,000 or above.[49] As of 2020, mayors of more than one-third of US cities were African-American. In 2018, 10 per cent of newly elected mayors were Latino.[50]

Voter turnout in local races is low. In 2016, the average voter turnout in mayoral races was a mere 15 per cent. The number has been steadily sinking.[51] This contrasts with record turnouts in the 2020 national elections in the US, and could presage a turnaround after years of voter indifference to local races.[52] Some state and local elections have begun to adopt ranked-choice voting. For example, the 2021 New York City Democratic mayoral primary, which is likely to determine the choice of mayor in that city, used ranked-choice voting for the first time.[53]

[49] Center for American Women and Politics, 'Women Mayors in U.S. Cities 2021' *Rutgers, Eagleton Institute of Politics*, https://cawp.rutgers.edu/women-mayors-us-cities-2021 (accessed 1 July 2021).

[50] Bloomberg Cities, 'America's Newest Mayors Are Younger, More Diverse' (2018), https://bit.ly/3wa4878 (accessed 1 July 2021).

[51] Kriston Capps, 'In the U.S., Almost No One Votes in Local Elections' (2016) *Bloomberg City Lab*, https://bloom.bg/3wa4bzQ (accessed 1 July 2021); Thomas M Holbrook and Aaron C Weinschenk, 'Campaigns, Mobilization, and Turnout in Mayoral Elections' (2014) 67(1) *Political Research Quarterly* 42–55.

[52] William H Frey, 'Turnout in 2020 Election Spiked Among Both Democratic and Republican Voting Groups, New Census Data Shows', *Brookings Institute* (2020), https://brook.gs/3JbwyRZ (accessed 1 July 2021); Scott Clement and Daniela Santamariña, 'What We Know about the High, Broad Turnout in the 2020 Election' *The Washington Post* (2021), https://wapo.st/3pXvauU (accessed 1 July 2021).

[53] Ester Fuchs and Nicholas Stabile, 'Ranked-Choice Voting: Coming to a Ballot Box Near You' (2021) *Cityland, New York Law School, Center for New York City Law*, www.citylandnyc.org/ranked-choice-voting-coming-to-a-ballot-box-near-you/ (accessed 1 July 2021).

9 Covid-19's Impact on the Role of Local Government

As the Covid-19 pandemic in the US unfolded in 2020–2021, effective mitigation measures in these large metropolitan areas shifted the locus of impact to areas in the south and west that resisted stay-at-home, social-distancing, and masking orders. The pandemic also disproportionately impacted communities of colour, with the rate of illness and death highest in urban areas that are home to black and Latino Americans, especially those at or below the poverty line.[54] While several factors contributed to this disparity, a significant one is that many of these Americans were unable to telecommute during the pandemic; their overall vaccination rates were also lower.

Police powers, including public-health emergency powers, are matters of state law under the US Constitution, with charter cities and county health departments possessing significant concurrent jurisdiction. However, the Center for Disease Control (CDC), a federal agency, historically has played a substantial role in coordinating public-health emergency responses, providing technical support and equipment, and assisting local procurement of countermeasures during emergencies in the past, such as the H1N1 flu outbreak, and in US surveillance of the West Africa Ebola outbreak of 2014–2016.[55]

The Covid-19 pandemic broke historic norms. The CDC was constrained in its response efforts in the early months, and then President Trump encouraged state and local authorities to compete on the open market for personal protective equipment (PPE), ventilators, test kits, and other critical supplies. State and local response was uneven: some states imposed near-complete lockdowns or stay-at-home protocols, whereas others remained largely 'open for business' throughout 2020 and the early months of 2021.

In many respects, the pandemic was an even greater fiscal shock than the recession of 2008 in that it decreased both consumer demand and

[54] Adelle Simmons, et al., 'Health Disparities by Race and Ethnicity during the Covid-19 Pandemic: Current Evidence and Policy Approaches', *Assistant Secretary of Planning and Evaluation, Health & Human Services* (2021), https://aspe.hhs.gov/system/files/pdf/265206/covid-equity-issue-brief.pdf (accessed 15 July 2021).

[55] Lawrence O Gostin and Lindsay F Wiley, 'Governmental Public Health Powers during the Covid-19 Pandemic' (2020) 323(21) *The Journal of the American Medical Association* 2137–2138.

labour supply.[56] By July 2020, economic activity was down 11 per cent nationally. A National League of Cities survey of 900 cities revealed that 70 per cent reported negative fiscal effects from Covid-19, with 90 per cent reporting revenue losses of 21 per cent on average.[57]

In addition, subnational government responses took on partisan tones in a highly polarised election year. Conflicts emerged vertically between mayors and state-wide officials. In some cases, states preempted more rigorous mandates by mayors and county officials—particularly mandatory mask and social-distancing requirements—by defaulting to less rigorous, but uniform, state-wide procedures. Horizontal federalism also was in evidence: in a positive development, states on both the east and west coasts developed compacts to assure uniform requirements for the testing and quarantine of travellers on interstate highways. In a more ominous development, in the early weeks of the pandemic governors and local officials set up checkpoints to turn back interstate travellers.

After vaccination became available, local governments in major cities launched mass campaigns to encourage public acceptance and offered free vaccination at both public and private sites. Republican-led local governments were more muted in their endorsement, but nonetheless generally supported vaccination. By 2021, vaccination was not mandatory in the US, although the Biden administration has made inroads in making it mandatory for federal workers and those in some regulated industries.

The federal government stepped in with relief packages to state and local governments. The largest of these were the Families First Act, the CARES Act of 2020, the Covid relief bill, HR 133, and the American Rescue Plan Act of 2021. Under the CARES Act, 36 of the nation's largest municipalities received about USD 7.9 billion, with additional funds reallocated from money flowing to state governments. Notwithstanding this aid, local governments were forced to cut budgets, with the majority of cities reporting revenue shortfalls in 2020 as well as intensified demand for emergency services. The American Rescue Plan added

[56] Mariely López-Santana and Philip Rocco, 'Fiscal Federalism and Economic Crises in the United States: Lessons from the Covid-19 Pandemic and Great Recession' (2021) 51(2) *Publius: The Journal of Federalism* 365–395.

[57] National League of Cities, 'Cities Are Essential: The Covid-19 Recession' (2020), https://bit.ly/3MWDoNI (accessed 15 July 2021); Laura Hallas, et al., 'Variation in US States' Responses to Covid-19' *Blavatnik School of Government, Oxford University*, https://bit.ly/3vWP110 (accessed 15 July 2021).

USD 65.1 billion in direct aid to American cities, towns, villages, and local tribal governments.

A number of state and local governments postponed individual and business tax payments for 2020 due to economic distress in communities. State and local authorities in a number of locations, and then the CDC nationally, imposed moratoriums on eviction for non-payment of rent by tenants in financial distress. Direct payment cheques to individuals and support for businesses were issued by the federal government under all three of the major legislative enactments.

One issue under US federalism that will require examination after Covid-19 is the degree of authority that local governments possess in a public-health emergency, with respect to their relationship both to the state government and to the federal government.[58] Mayors have argued for greater autonomy and flexibility in resource allocation and more robust public-health emergency authority.

10 Emerging Issues and Trends

Two prevailing trends in contemporary American federalism are polarisation and punitiveness.[59] Specific examples illustrate the trends. The Trump administration's withholding of grant funds to so-called 'sanctuary' jurisdictions is one example of punitive federalism. Sanctuary jurisdictions are local governments that decline to share information or cooperate with federal authorities in enforcing federal immigration law. The local governments justify their position on the grounds that they privilege trust and transparency in order to encourage undocumented individuals to work with government authorities, seek medical care, engage in labour, educate their children, and participate productively in their communities. New federal grant conditions in 2017 required state

[58] Bipartisan Policy Center, 'Positioning America's Public Health System for the Next Pandemic, https://bipartisanpolicy.org/report/preparing-for-the-next-pandemic/ (accessed 30 June 2021).

[59] Greg Goelzhauser and David M Konisky, 'The State of American Federalism 2019–2020: Polarized and Punitive Intergovernmental Relations' (2020) 50(3) *Publius: The Journal of Federalism* 311–343; J Mitchell Pickerill and Cynthia J Bowling, 'Polarized Parties, Politics, and Policies: Fragmented Federalism in 2013-2014' (2014) 44(3) *Publius: The Journal of Federalism* 369–398.

and local governments to share data or lose funds.[60] Local governments filed court challenges and, in most cases, prevailed; at the inception of the Biden Administration, the US Department of Justice dropped legal defences to the challenged federal rules and reversed the policies. What remains uncertain is whether the new administration will seek to use the same forms of punitive federalism but in support of different policy goals.

Another significant development for federalism at the local level has been the elimination for middle- to high-income brackets of the 'SALT'—state and local tax—deduction for individual taxpayers. SALT deductions were provided in federal revenue acts as a protection to local and state governments against federal monopolisation of the tax base. The tax plan signed by President Trump in 2017, called the Tax Cuts and Jobs Act, instituted a cap on the SALT deduction. Starting with the 2018 tax year, the maximum SALT deduction available was USD 10,000; previously, there was no limit. Elimination of the deduction had a disproportionate impact on high local tax states, which tended to be coastal and predominantly Democratic.[61]

Democrats in the 2021 Congress vowed to eliminate the SALT cap. One interesting and perhaps unintended consequence of the elimination of the SALT tax deduction is that it could serve as a driver of mobility, as residents of high-tax states move to states with lower taxes, potentially causing partisan political shifts.

The boom in telecommuting that commenced during the Covid-19 pandemic also has the potential to alter residential patterns in the US, although it is too early to know if the shifts during the emergency period will become permanent.[62] According to one survey, during the pandemic, 71 per cent of workers whose job could be performed from home reported doing it from home all or most of the time as opposed to 20 per cent before the pandemic—more than half said that, given a choice, they

[60] Congressional Research Service, '"Sanctuary" Jurisdictions: Federal, State, and Local Policies and Related Litigation' (2019), https://fas.org/sgp/crs/homesec/R44795.pdf (accessed 1 July 2021).

[61] Government Finance Officers Association, 'The Impact of Eliminating the State and Local Tax Deduction' (2017), https://bit.ly/3I5zBKb (accessed 28 June 2021).

[62] Amanda Barroso, 'About Half of Americans Say their Lives will Remain Changed in Major Ways when the Pandemic Is Over' *Pew Research Center* (2020), https://pewrsr.ch/3CB0d4J (accessed 27 June 2021).

would want to keep working from home even after the pandemic.[63] High commercial real estate vacancy rates in US cities could have a significant impact on the economy of major American cities; tensions are already evident over the tax jurisdiction entitled to tax wages of telecommuting workers; and large cities are reporting reduced sales tax revenues as well.

Notwithstanding the negative impact on cities of Covid-19 and the 'Trump interlude' in American federalism, there are positive developments in horizontal federalism.[64] Local governments have emulated innovations by their peer cities on tobacco use, nutrition and public health, and environmental regulation. At the international level, US mayors have become engaged in efforts that draw on their local experience and at the same time impact on the global commons. Several US mayors play leading roles in the Strong Cities Network to build resilience and combat violent-extremist recruitment.[65] The Global Parliament of Mayors works on common approaches to health, migration, and security.[66] Through the C-40 Cities programme, US mayors committed with their international counterparts to honour the Paris Climate Accords even as the US formally withdrew from them.[67]

A bill in the US Congress, S. 4426, The City and State Diplomacy Act, would establish an office in the US State Department to support the initiatives of major American cities to engage in direct outreach to accomplish trade, sustainable development, and climate goals, among others.[68]

In conclusion, while US local governments continue to be weak as a formal matter, US municipalities are home to nearly two-thirds of the country's population, generate an overwhelming majority of GDP, and are the level of government with the highest degree of accountability and

[63] Kim Parker, Juliana Horowitz, and Rachel Minkin, 'How the Coronavirus Outbreak Has — and Hasn't — Changed the Way Americans Work', *Pew Research Center* (2020), https://pewrsr.ch/3MXBXi7 (accessed 27 June 2021).

[64] John Kincaid, 'Introduction: The Trump Interlude and the States of American Federalism' (2017) 49(3) *State and Local Government* 156–169.

[65] The Strong Cities Network, 'Strong Cities' (2021), https://strongcitiesnetwork.org/en/ (accessed 15 July 2021).

[66] 'Global Parliament of Mayors' (2021), https://globalparliamentofmayors.org/ (accessed 15 July 2021).

[67] The C40 Group, 'C40 Cities' (2021), www.c40.org/ (accessed 15 July 2021).

[68] City and State Diplomacy Act, Sect. 4426, 116th Congress (2020).

responsiveness. Political polarisation and punitive federalism have negative effects on the autonomy of large and diverse US cities; preemption has a negative impact when states interfere with local legislative and regulatory choice. In the US, local governments are at the zenith of their power when operating within their home-rule authority and when leveraging their economic and human capital. The Covid-19 pandemic has again illustrated how important local government is in delivering essential services.

Horizontal federalism may manifest competition among states but also allows local governments to share best practices, and intergovernmental lobbying helps local governments amplify their voice at the state and federal levels. Vertical federalism can be damaging where states punish innovation or privilege the needs of rural and suburban communities, and when the federal government takes corresponding actions. At the international level, major US cities are becoming increasingly networked with their counterparts to address problems affecting the global commons

CHAPTER 18

Comparative Conclusions

Nico Steytler

The purpose of this *Handbook* is to examine the role and place of local government in 16 federal or federal-type countries and to explore their relationship with the other orders of government and their impact on the system of federalism as a whole. As explained in the Introduction, it seeks to answer the overall question of whether the growth of local government with relative autonomy is changing the shape of federal systems. Is there a movement, slow but sure, away from the classical two-order federal system and towards multi-sphere governance? If this is the case, what are the new demands on the theory and practice of federalism?

The classical model of federalism is premised on two orders of government: the federal government and the states (or provinces, *Länder*, cantons, regions, and so on). Local government was not recognised as an order of government but seen as a competence of the constituent states. Within the dual federalism model, where there is a clear division of powers and functions, local government was typically placed within the sole jurisdiction of the states, excluding any direct federal interference.

N. Steytler (✉)
University of the Western Cape, Cape Town, South Africa
e-mail: nsteytler@uwc.ac.za

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7_18

Local governments were mere creatures of states, existing at their will and having no independent relations with the federal government.

Even in systems described as 'administrative federalism', where the legislative and executive competences do not coincide, local government was nevertheless seen as part of the state formation. The general conclusion drawn from both models of federalism is that with no final decision-making powers in a clearly demarcated area, local government had no independent autonomous status that made it an order of government, although this did not necessarily preclude constituent states from granting degrees of autonomy or home rule to various local governments.

The status of local government, the case studies show, is evolving. In some countries, local government is seen as an integral part of the federated state and recognised as such in the federal constitution. Discrete areas of autonomous decision-making in policy and finances are also emerging. In other countries where the traditional subservient position of local governments to state governments is maintained, financial self-reliance is leading to greater policy autonomy. The emerging autonomy, often a result of federal intervention, leads to direct interaction with the federal government.

The recognition of local government as an order of government—often with direct engagement with the federal government—is the most pronounced in metropolitan governments. Large municipal governments that have been formed in metropolitan areas are no longer content to have the same status as village governments and are claiming more resources, power, and status. As the wealth and health of nations are in most countries linked to the productivity and well-being of the highly concentrated metropolitan populations, federal governments have a direct interest in their governance and hence in city governments.

Although local governments (and the organisations representing their interests) often claim their right to sit at the table of government, the evolution of federal systems has been slow, generally going no further than the description of the Austrian system as having 'two and a half partners', with local government representing the half, or being a 'junior partner'. In some countries, there has been constitutional recognition of local government as an order in its own right, with Nepal the latest country to do so in 2015. In others, two-order federalism (also referred to as dyadic federalism) continues to be asserted, confining local government to the jurisdiction of the states; the growth of local government, particularly in large cities, is viewed as a zero-sum game, with the states'

own power and resources being at stake. Despite the generally slow pace of evolution, it is evident that the emergence of local government as a partner in federative governance is becoming a significant element of most federal systems.

1 Country Overviews

Local governments in the 16 federal countries in this volume have very different histories, structures, and dynamics. Material factors that not only influence the federal systems as a whole but also have a bearing on local government's functioning are the geographical, demographic, economic, and political contexts in which they function.[1]

Geographically, Canada, the United States (US), Brazil, Australia, India, and Argentina are among the largest countries in the world, with sizes ranging from Canada's 9.8 million km^2, the US (9.8 million km^2), Brazil (8.5 million km^2), Australia (7.7 million km^2), India (3.2 million km^2), and Argentina (2.7 million km^2). Even the remaining countries, ranging from Mexico (1.9 million km^2) to Italy (301,000 km^2), dwarf the two smallest countries in the sample, Austria (83,000 km^2) and Switzerland (41,000 km^2). Due to the vast thinly populated regions of Canada and Australia, large tracts of land have no local authorities. There is, however, no direct correlation between the size of a country and the number of local authorities.

Population size is somewhat more significant. Where large geographical areas coincide with large populations, such as in India (1.37 billion) and the US (328 million), large numbers of local governments have been established. By 2021, too, the population sizes of the next group of countries—Brazil (212 million), Nigeria (212 million), Ethiopia (115 million), Mexico (126 million), and Germany (83.1 million)—do not necessarily correspond to a high number of local governments. Nigeria, for example, has about one-seventh of the local governments of Brazil. The same is true of the midrange countries—South Africa (58 million), Spain (47

[1] See Cheryl Saunders, 'Legislative, Executive, and Judicial Institutions: A Synthesis', in Katy le Roy and Cheryl Saunders (ed) *Legislative, Executive, and Judicial Governance in Federal Countries* (McGill-Queen's University Press, 2006) 344–6. See also Cheryl Saunders, 'Grappling with the Pandemic: Rich insights into intergovernmental relations', in Nico Steytler (ed) *Comparative Federalism and Covid-19: Combating the Pandemic* (Routledge, 2022).

million), Argentina (40 million), Canada (38 million), Nepal (30 million), and Australia (25.9 million)—where South Africa and Australia have a fraction of the local governments of the others, even fewer than the two smallest countries: Austria (8.9 million people) and Switzerland (8.6 million).

The distribution of the population within each country may have a more important bearing on local governance than sheer size. The majority of countries have a high level of urbanisation.[2] Between Brazil (89 per cent urbanised) and Australia (85–90 per cent) fall the US, Canada, Spain, Germany, Switzerland, and Austria. In developing countries, a low to medium level of urbanisation is found—India (25 per cent), Nigeria (50 per cent), and South Africa (58 per cent)—although this is changing rapidly. Setting the trend is Brazil. In 1970 it was only 56 per cent urbanised, a figure that had jumped dramatically to 89 per cent by 2021. Mexico also moved quickly to its current level of 80 per cent. The urban–rural split has implications not only for the number and size of local governments but also for the distribution of economic resources.

The countries considered in this book exhibit vast disparities in wealth. Taking gross domestic product (GDP) per capita as a measure, three groups of countries are discernible. The first includes some of the richest countries in the world—Switzerland, Canada, Austria, Australia, the US, Germany, Italy, and Spain—with the World Bank's figures for 2021 being between USD 92,000 (Switzerland) and USD 30,000 per person (Spain).[3] The middle-income group includes Argentina, Brazil, Mexico, and South Africa, with between USD 10,000 (Argentina) and USD 7000 per person (South Africa). India, Nigeria, Nepal, and Ethiopia make up the low-income group, with between USD 2200 (India) and USD 925 per person (Ethiopia). The middle-income countries (Argentina, Brazil, Mexico, and South Africa) display enormous disparities in wealth, with South Africa having the world's highest Gini coefficients of inequality.[4] With the rapid growth in the economy of India, existing inequality will be exacerbated. The combination of urbanisation and poverty places local

[2] It should be noted that the definition of what constitutes 'urban' is locally defined, making data on urbanisation comparable only imprecisely.

[3] World Bank, at https://data.worldbank.org/indicator/NY.GDP.PCAP.CN?locations=NG-AU-AT-CH-DE-IT-US-CA-MX-BR-ZA-IN (accessed on 3 February 2023).

[4] World Bank, at https://data.worldbank.org/indicator/SI.POV.GINI?locations=NG-AU-AT-CH-DE-IT-US-CA-MX-BR-ZA-IN (accessed on 3 February 2023).

government in middle- and low-income countries at the coal face of intense demands for local services while lacking in resources to meet them.

Although diversity in respect of language, ethnicity, and culture may be a key ingredient in the architecture of states and provinces, its relevance to local government is less direct. Where local government is the charge of states, culture may affect the institutions and practices of municipalities in multi-ethnic/multilingual countries, such as Canada, Ethiopia, India, Nepal, and Switzerland. In other multilingual countries, such as South Africa and Nigeria, central regulation of local government minimises the significance of cultural or linguistic diversity.

All 16 countries claim to be democracies: they have an elected parliament with a second house representing state interests (with Ethiopia an exception with its House of Federations representing ethnic groups rather than regions). The preponderance of countries (11 of the 16) has parliamentary systems, while Argentina, Brazil, Mexico, Nigeria, and the US are presidential. The governance model of the national and state governments is most often replicated for local government.[5] But this is not always the case. In Austria and Germany, for example, the direct election of mayors is not consistent with the parliamentary systems in the federal and *Land* arenas. In Canada, where a parliamentary system applies at federal and provincial levels, mayors are directly elected at-large, but sit as a voting member of council. The rule of law and an independent judiciary are found in all the countries, an exception being Ethiopia where the highest court adjudicating the constitution is a political institution, the House of Federation, the second house of the national legislature.

The governance systems of the 16 countries function within significantly different political milieus. All the countries are committed democracies, although Ethiopia has been characterised as being an authoritarian democracy under the dominance of the ruling party.[6] A stable democratic system is found in the US, Switzerland, Canada, and Australia, as well as in Germany, Italy, and Austria (following the Second World War) and in India (after Independence in 1947). Emerging from authoritarian

[5] Saunders (2006, n 1) 374.

[6] Zemelak Ayitenew Ayele, 'Constitutionalism and Electoral Authoritarianism in Ethiopia: From the EPRDF to EPP', in Charles M Fombad and Nico Steytler (eds) *Democracy, Elections, and Constitutionalism in Africa* (Oxford University Press, 2021) 169–197.

or military rule in the 1970s and 1980s were Spain (1978), Argentina (1984), and Brazil (1988). Since the end of Cold War, both democratic and federal systems were established in South Africa (1993), Ethiopia (1995), Nigeria (1999), Mexico (re-invigorated after 2000), and Nepal (2015). One-party dominance featured strongly in South Africa, Ethiopia, and Nigeria. As local politics in most countries is inextricably linked to the national political system, it reflects, too, the dynamics of national party politics.

The selection criterion for the countries in this study is that they are either explicitly federations or have significant federal features enshrined in a constitution. They all have at least two orders of government, but the number of subnational units diverges considerably. Large countries with large populations have mostly a large number of units: the US (50 states plus a federal district), Nigeria (36 states plus a federal capital territory), Mexico (32 states), India (28 states, six territories, and a federal city), and Brazil (26 states plus a federal capital). The number of units in large but thinly populated countries varies considerably: Canada has 10 provinces and three territories, Argentina 24 provinces (including Buenos Aires), and Australia six states and two territories. In the rest of the countries, the federal units range from a large number in Switzerland (26 cantons of which six are half cantons) to nine in South Africa. The division of powers between the orders of government also varies considerably, depending whether they have dual or integration systems.[7]

2 History, Structures, and Institutions of Local Government

2.1 History

Local government, defined as a government structure directly interacting with its constituent population without any other order of government in between, has its roots in antiquity. As the basic unit of government, local government in India stems from ancient village governance structures, called *panchayats*, referred to by Mahatma Gandhi as 'the little republics' because of their democratic nature. In Europe, local government institutions have equally ancient origins, predating the nation-state

[7] See Nico Steytler (ed) *Concurrent Powers in Federal Systems: Meaning, Making, Managing* (Brill/Nijhoff, 2017).

in Austria, Italy, Spain, and Germany. Along with colonial rule, the colonies of the British Empire received the English local council structures. In the US, Canada, Australia, South Africa, India, and Nigeria, these local institutions preceded the formation of the countries themselves—and their federal structure—by decades if not centuries. A similar process occurred in Latin America, where the Spanish and Portuguese exported their basic local political institutions to Mexico, Argentina, and Brazil, respectively. Although, at first, local government was simply an arm of colonial government, representative government developed over time.

Local government institutions with various degrees of self-governance pre-dated the federal system, but the act of federation formation invariably resulted in the local institutions becoming the domain of the states within a two-order federal structure and often operating as an arm of the state governments. The 'disappearance' of local government in the shadow of state governments prevailed at least until after the Second World War, when the return to democracy in many non-democratic countries, particular after the fall of the Berlin Wall, was often linked to decentralisation.

Given the proximity of local governments to the people, democratic governance was in practice (if not more in theory) their strength. In India, village self-governance was central to the ideology of India's independence movement, organised around Gandhi's vision of local self-government via *panchayats*: democracy at the top would not be successful unless it was built up from below. This idea also underpinned the constitutional entrenchment of local self-government in West Germany after the end of Nazi rule. The link between democratisation and decentralisation featured too in Nigeria, Brazil, South Africa, and Nepal. In the first steps towards civilian rule in Nigeria in 1976, local government was reorganised to enhance local self-government as part of the transition from centrist military rule. Again, in the 1980s and 1990s, the precursor to returns to civilian rule was local elections. In Brazil, local elections in 1982 preceded the restoration of democracy, and in the 1988 Constitution local government was recognised as a constituent part of the federation. In South Africa, the consolidation and deepening of democracy were in part the reason for local government's elevated position in the 1996 Constitution. In Nepal, a three-level federal system, which included local government, responded to civil conflict and monarchical rule.

The argument that the emergence of strong local governments in Brazil and South Africa was influenced by the desire of the federal governments to cut back on the powers of the state governments[8] has some merit and may also have explanatory value in India. The 1992 constitutional amendments in India were aimed at limiting the stranglehold of states over local governments, including the states' disallowance of local democracy. Undercutting the role of state governments was certainly part of the picture, but this objective does not discount the overall impact that the coupling of decentralisation with democracy has had on the evolution of local governments in these countries.

2.2 Local Government Institutions

In comparison to the 329 state government institutions (excluding federal territories) in the 16 countries, there are more than 380,000 local government institutions. Like the states, local governments cover the entire land surface in most countries. The exceptions are the largest countries—Canada and to a lesser extent Australia where large tracts of uninhabited land remain unincorporated. In contrast to the state legislative and executive institutions, which exhibit a measure of uniformity in purpose and size, the sub-state institutions come in various shapes and sizes, with different purposes and governance functions. This makes it difficult to conceive of local government as a single institution with an identifiable character. Not only are there differences between countries, but because local governments most often fall under the exclusive jurisdiction of state governments, variations between states are also common. Moreover, in terms of the principle of local autonomy, accepted and practised in a number of countries and states, further variation in local governance is prevalent too. Even in the country chapters, it has been difficult to capture the full richness of the variety.

Four main institutional forms of local government can be identified: (1) the basic multipurpose unit (referred to in general as a municipality); (2) county or district governments, often forming part of a two-tiered local governance structure; (3) single-purpose institutions; and (4) indigenous forms of local government.

[8] See J. Tyler Dickovick, 'Municipalization as Central Government Strategy: Central-Regional-Local Politics in Peru, Brazil and South Africa', (2007) 37(1) *Publius: The Journal of Federalism* 1–25.

2.2.1 *Basic Multipurpose Municipality*

The most common institution is the multipurpose municipality, which is directly elected by the inhabitants of a demarcated area and provides a range of services such as the household necessities of water, sewage, refuse removal, sometimes electricity, and basic communal services, including roads and public order. These basic units vary enormously in size, from mega-metropolitan municipalities of several million people in India, the US, Canada, Brazil, Argentina, and South Africa, to small rural municipalities with no more than a few hundred people in Germany, Spain, Switzerland, Austria, India, Italy, and Brazil.

Although the demographic size of the municipalities is closely linked to their rural or urban locations, they are most often, from a regulatory point of view, treated as uniform institutions. Although the Toronto municipality, with a population of 2.8 million, has its own founding statute in provincial law, its powers and functions do not differ substantially from those of small municipalities in rural Ontario, although it does have some additional revenue-raising powers. Although the rural–urban divide is present in all the countries, in Canada (in Ontario and Quebec) and India a formal distinction is drawn between rural and urban local governments, with the main difference being the scope and nature of powers and functions.[9] In contrast to this formal urban–rural divide, the demarcation of South Africa, with a population of 58 million, into 257 very large municipalities has explicitly sought to link rural hinterlands with urban centres.

2.2.2 *Two-Tier Structures*

Given the large number of small primary local units, umbrella municipalities are often used that function in the same geographical areas as a number of primary units, thus splitting local government competences and functions between two tiers of local government. This is not, however, the norm, and half the countries in the sample (i.e., Argentina, Australia, Austria, Brazil, Mexico, Nigeria, and Switzerland) have a single-tier system. Although Nepal has a two-tier system—the urban and rural municipalities forming one tier and the district coordination committees the second—the latter is powerless because it has been given no

[9] Given India's process of urbanisation, the Constitution also provides for the cross-over between rural and urban governance, and states may establish urban *panchayats* for areas in transition from rural to urban.

revenue raising or expenditure powers; their role is confined to one of coordination between municipalities and the provinces and the central government. Canada has a mixed system, with the county system still found in the large provinces. The functions of the umbrella local governments are typically limited to providing area-wide services, such as water, sewage, and transport (where economies of scale make it more efficient), rendering assistance to small municipalities, facilitating cooperation between constituent municipalities, and often serving as administrative arms of the states.

The value of providing economies of scale and coordination in many functional areas finds its best application in the countries with a large number of municipalities but very low population sizes and limited capacity. Spain's 50 provinces (as local government entities) coordinate and provide services for over 8000 municipalities, of which more than 80 per cent have fewer than 5000 inhabitants. This pattern is also reflected in Canada, Germany, Italy, and India, where the two-tier system finds specific application in the context of the urban–rural divide. Germany's 294 counties (*Landkreise*) exclude the 107 urban municipalities (*Kreisfreie Städte*) and serve the remaining 10,775 municipalities (February 2023), 40 per cent of which have populations of fewer than 1000 persons. Italy's 7904 municipalities in urban and rural areas (70 per cent of which have less than 5000 inhabitants) answer to 14 metropolitan municipalities and 83 provinces, respectively. Running counter to this pattern is the grouping of South Africa's 205 non-metropolitan municipalities into 44 district municipalities.

It is therefore not surprising that the value of district municipalities is contested by large urban local municipalities, which experience the districts as a source of duplication and strife. Similar sentiments are found among the large Spanish urban municipalities with respect to provinces.

Ethiopia's 1000 odd local authorities (*woredas*) bring a unique element: they are divided between ordinary ones and ethnic-based ones. Giving further expression to the country's ethnic-based federation, special *woredas* are established in a regional state for a specific ethnic group (a minority in a particular state) which may eventually become a regional state itself.

2.2.3 Single-Purpose Municipal Governments

Found in the US, and to a lesser extent in Canada, are single-purpose local governments. They perform important functions in the US, providing

services such as potable water, wastewater treatment, transit, housing, and port services. The most important of these are the school districts. In Canada elected school boards are still the norm. Single-purpose, democratically elected local government institutions must be distinguished from the myriad public bodies that municipalities create singly or jointly with other municipalities to provide a particular service or services more effectively and efficiently. These cooperative ventures are a response from small municipalities to the threat of amalgamations (for example, in Switzerland and Germany). This is a phenomenon also found in Brazil's urban municipalities facing the governance challenges of metropolitan areas in the fields of water, sanitation, transport, and waste management.

2.2.4 Indigenous Local Government Institutions

In the American, African, and Asian countries that were subject to European colonisation, indigenous forms of governance often continued to exist alongside or intersect with local government structures. The approach in the US, Canada, Australia, and Brazil was to regard matters of indigenous communities and their welfare as either a federal or state issue, removing them from the domain of local government, but recently this approach has changed in some cases.

The second approach has been to recognise indigenous governance structures as legitimate and, often, on par with the formal, democratic local government institutions. Mexico has embraced traditional forms of government by permitting significant indigenous populations to elect their authorities based on traditional and customary practices (*usos y costumbres*). This form of local government is recognised in Oaxaca State, among others, where 75 per cent of the 570 municipalities elect their representatives under this scheme. In India, the 73rd Amendment of 1992 did not apply at first to scheduled tribal areas, exempting traditional tribal village and district councils from holding elections and having reserved seats for women (a dispensation which is progressively being phased out). In Australia, historically, Aborigines and Torres Strait Islanders operated in distinct community councils, but these councils are increasingly being brought into the mainstream to function as regular local councils. In Africa, where traditional leadership is the most pervasive, the least accommodation is given to indigenous governance within the newly entrenched democratic ethos. Both Nigeria and South Africa have eschewed any traditional forms of government that would oust democratically elected local institutions. South Africa has only gone as far as giving

traditional leaders *ex officio* representation in local councils, but limited to 20 per cent of council membership and without the right to vote.

2.3 Multiplicity and Consolidation of Local Government Institutions

Most of the sample countries have a large number of local governments. In India, 243,055 local governments serve the interests of 1.3 billion people. In 2020 the US had more than 90,000 local institutions. Brazil and Mexico, also with large populations, have 5568, and 2469 municipalities, respectively, also reflect this pattern. By contrast, Argentina, with a population of 40 million, has 2294 municipalities. In Europe, however, federations have, for historical reasons, uniformly high numbers of local governments, but the vast majority of municipalities have less than 5000 residents (88 per cent of Austria's 2095 municipalities; 85 per cent of Spain's 8133 municipalities; 72 per cent of Germany's 10,775 municipalities; and 70 per cent of Italy's 7904 municipalities). Half of Switzerland's 2172 municipalities have less than 1500 inhabitants. Only Ethiopia (1000), Nigeria (774), Nepal (753), Australia (around 700), and South Africa (257) have a thousand or fewer local governments. The numbers of local governments come into perspective when compared to population size and demographic distribution.

In terms of population size, three groups are evident. The majority of countries (the US, Canada, Germany, India, Spain, Austria, and Switzerland) have ratios of between 3000 and 10,000 citizens per local government. For the second group, the average number of persons per institution ranges from 17,000 in Argentina, 38,000 in Brazil, 39,000 in Nepal, 47,000 in Australia, and 51,000 in Mexico. In the last group, Ethiopia, South Africa, and Nigeria have an average of 115,000, 229,000, and 284,000 residents per municipality, respectively. Due to the high level of urbanisation in most of the 16 countries, the averages are misleading: the vast majority of municipalities have very small populations, as noted above.

The large numbers of municipalities with very small populations reflect the processes of industrialisation and urbanisation that took place in the nineteenth century in Europe (and the twentieth century elsewhere); although rural areas depopulated dramatically, the numbers of municipalities still reflect the institutions that preceded the industrial revolution. In

Spain, for example, the number of municipalities has not significantly been reduced from the 9000 that existed in 1812. To some degree, the concept of local government has also not shifted from the village concept of governance, where consensual decision-making flowed from non-partisan communal interest in the basic necessities of life such as water, sanitation, and public order. What is evident in most countries is a strong attachment to this traditional form of government and to the value and protection of the localised interests it represents.

In contrast to the village notion of local government, there have been movements in Australia and South Africa to create much larger local government units through consolidation as well as a constitutional limit in Nigeria to prevent an increase in the number of local governments. Apart from the US, where there has been an increase in the number of special districts over the past 50 years, Brazil is the only country where there has been a strong increase in the number of local governments during the 1990s, a movement driven by perverse fiscal incentives that were eventually stopped by a constitutional amendment.

The motives behind consolidating municipalities in Australia, Canada, and South Africa (and limiting local governments in Nigeria) have been the creation of financially viable and efficient municipalities that allow for economies of scale, efficiency of service delivery, better strategic planning, and management of spill-over effects. These goals are valued in most countries, but consolidation efforts have mostly not met with success, mainly because of voter resistance. In Australia, Canada, and South Africa, consolidation was possible because it was effected without voter approval—in Australia and Canada by the states and provinces, respectively, and in South Africa by an independent body, the Municipal Demarcation Board.

What is the relevance of size in the context of local government's place in a federal system? It would appear that size is closely associated with effective autonomy. Very small municipalities reflect and reinforce the commanding position of the states. They lack the necessary resources to address increasing demands for services. Due to their small economic base, they are by and large dependent for survival on transfers from the state or federal governments, a situation that undercuts local autonomy. In sharp contrast, the relatively few large urban municipalities show a much greater degree of autonomy in making and implementing policy choices, spurring them to claim more powers and access to revenue. In South Africa the large metropolitan municipalities are not only financially

autonomous but are also asserting that autonomy. Given the vast difference in power and resources, the interests of large and small municipalities inevitably do not coincide. In Spain, the large cities question the need for provinces, whereas the smaller ones depend on them for survival. The divergence of interests also manifests itself in organised local government. Although the high number of municipalities makes a unified voice of local government essential, the divergence of interests makes organised local government speak in muted tones. Finally, given the importance of the large urban municipalities, states engage directly with them—as, increasingly, do federal governments.

2.4 Governance of Metropolitan Regions

The size of municipalities, their consolidation, and local government structures come together most acutely in the massive urban conglomerations that are found in most countries in this study. Some of the largest cities in the world are found in our sample of federations: Sao Paolo, Mexico City, Mumbai, New York, Lagos, and Buenos Aires, with populations in excess of 10 million people. These and other metropolitan areas are not only economically most productive but, in the developing world, also home to a significant portion of the country's poor. The role of local governments in meeting the demands for the effective and efficient provision of municipal services, transportation, planning, and protecting the environment, to mention a few, has an important bearing on their place in the federal system.[10]

Three broad approaches to metropolitan governance can be discerned. Least prevalent is the amalgamation of local authorities into large metropolitan governments. Within this approach, two variants are found: the first is an incomplete amalgamation with an umbrella metropolitan council established over a number of local councils; the second is the complete amalgamation of municipalities into a unified structure. The second broad approach keeps the constituent local governments intact but seeks consolidation through other means such as consolidating government services in a sector through single-purpose special districts or achieving the same end through various cooperative agreements between local governments. The third broad approach largely bypasses local

[10] Enid Slack and Rupak Chattopadhyay (eds) *Governance and Finance of Metropolitan Areas in Federal Systems* (Oxford University Press Canada, 2013).

governments, locating metropolitan-wide governance in the hands of the states. Where states dominate local government, no single approach is usually followed.

Although the terms 'metropolitan municipalities' are used in some constitutions or legislation (Italy) or metropolitan regions (Brazil), least popular has been the consolidation of metropolitan areas into unified multipurpose political structures. Consolidation of metropolitan regions is seldom complete, particularly when the conurbations are vast. The consolidated Toronto municipality of nearly three million people comprises only a portion of the larger Toronto metropolitan region and thus remains too small to manage regional transport and land-use planning, matters in which the Province of Ontario has taken the lead. It is only South Africa that purposefully sought to establish municipalities inclusive of a metropolitan area. Eight such municipalities have been created, but in the province of Gauteng (population 16 million), three contiguous metropolitan municipalities (Johannesburg with 6 million, Ekurhuleni, 4 million, and Tshwane, 3 million) show the difficulty of consolidating an entire metropolitan region.

The weak form of consolidation entails placing a number of local authorities in a metropolitan area under an overarching coordinating structure and tasking the latter with metropolitan-wide services, planning, and coordination. The two-tier model was first used in Toronto, Ontario, between 1954 and 1998 and in South Africa between 1995 and 2000.

A less ambitious attempt at metropolitan-wide governance is the single-purpose government structure—a prominent feature on the American landscape. Called special districts, these structures have become an important part of metropolitan governance, their growth being more rapid in metropolitan areas than elsewhere. Most metropolitan regions are a jumble of multiple municipalities, and the challenges of regions are tackled with varying degrees of success through voluntary ad hoc agreements. In many US cities, interlocal agreements and contracts have proved to be efficient and beneficial.

In a number of countries (e.g., India, Brazil, and Nigeria), effective cooperation is not always achieved. There have been few efforts at consolidation, and intermunicipal cooperation is based on and maintained by ad hoc voluntary efforts. Intermunicipal agreements (even across state borders) are used, but success is at best sporadic.

Where metropolitan areas have been balkanised into a large number of small local authorities, state governments have assumed responsibility

for metropolitan governance. Australia is the best example of this model, which results in weak urban local government.[11] Apart from Brisbane (where the central city contains 40 per cent of the metropolitan region's population), the major state capital cities of Sydney, Melbourne, Adelaide, and Perth are fractured into a host of small municipalities where the sheer number of municipalities (with only a single tier) rather than their size is the key factor that enables and requires ongoing state dominance. Through special-purpose agencies, the state governments provide key metropolitan-wide services, such as urban transport, main roads, water and sewage, and pollution control.

A similar pattern is found in Spain. When the competition between the metropolitan government of Barcelona and the Autonomous Community of Catalonia surfaced, the latter disaggregated the metropolitan government of Barcelona into 32 municipalities and assumed dominance over the governance of the region. The establishment of the Lagos Mega-City Development Authority, funded and controlled by the federal and two state governments, had a similar effect in that metropolitan region. In Mexico, the federal district of Mexico was transformed in 2015 into a city-state that exercises both state and municipal functions. So, too, the Argentinian federal capital of Buenos Aires was granted in 1994 a special autonomous status, similar to that of a province, and is now called the Autonomous City of Buenos Aires.

2.5 Federal Capital Cities

Only some capital cities (e.g., Delhi, Mexico City, Buenos Aires, Addis Ababa, Rome, Vienna, Berlin, and Madrid) face the challenges of being part of a metropolitan region, but all of them raise the questions of local governments' governance role and their relations with their state and federal governments. Three broad governance models can be identified from our sample of countries: (1) local government governs the city but under the control of the federal government; (2) the capital has the status of a state, and local government is subsumed in that structure; and (3)

[11] Douglas M. Brown calls the states 'city-states' 'in the sense that they make all truly strategic urban development decisions'. Douglas Brown, 'Federal-Municipal Relations in Australia', in Harvey Lazar and Christian Leuprecht (eds) *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems* (McGill-Queen's University Press, 2007) 97–124, 118.

the capital has no special status and is governed by local governments as any other city.[12]

In a number of countries, to avoid favouring any constituent state and find a central location, a capital territory is designated, with its governance in the hands of local government(s) under the supervision or financial tutelage of the federal government. The first example was Washington, DC, where the federal government still has control over select budget lines of the budget of the capital but leaves the governance of the city to an elected local authority subject to a seldom-deployed congressional veto. Nigeria followed this example. Although the Federal Capital Territory at Abuja has the same status as a state, it has no state government. Constitutionally, the territory is divided into six local council areas, but the federal National Assembly assumes the role of the state authority, including funding and approving the budgets of the six local area councils. This model, then, is an uneasy amalgam of federal and local government. Addis Ababa, the capital of Ethiopia, although having an elected local government, is indirectly governed by the federal government.

In the second approach, the capital territory has the status of a state, dominating or absorbing local authorities in that area. The Australian Capital Territory, located at Canberra, has semi-state status, its government doubling up as the local authority. Brasília, as the Federal District of Brazil, has state status, with the governor performing both state and municipal tasks. In Berlin and Vienna, the *Land* and municipal government is one: the elected representatives function both as a *Land* parliament and as a local council, depending on the matter at hand. Madrid is comparable to the extent that the Autonomous Community of Madrid is also a city-state, comprising the entire metropolitan area. There are municipalities in Madrid, but the provincial structure has been consumed by the autonomous community. Buenos Aires was under federal control until 1994 when it was given a special status similar to a province. Likewise, the Federal District in Mexico City was subject to federal control before being given the status of a state in 2016.

In the third group, no special status is attached to the seat of government, and the capital city is governed, like any other city, by local government. Examples are Berne in Switzerland, Ottawa in Canada, and the two seats of government in South Africa: Cape Town, where the

[12] Enid Slack and Rupak Chattopadhyay (eds) *Finance and Governance of Capital Cities in Federal Systems* (McGill-Queen's University Press, 2009).

national Parliament has its seat, and Pretoria, where the national executive is located.

Delhi is a special case, being a mixture of all three models. There is an elected local authority (the Municipal Corporation of Delhi), two bodies nominated by the Union ministries, and a state government for the capital territory. The Union government has direct control over the planning and development of land and the maintenance of law and order. As the constitutionally named capital of Rome, it is a metropolitan city, but enjoys special autonomy, as provided in the Constitution. Kathmandu is named in the Nepalese Constitution as the country's capital, a metropolitan city within Bagmati Province, with no special autonomy status.

3 Constitutional Recognition of Local Government

The experience across the 16 selected countries suggests that constitutional recognition in federal constitutions plays an important role in defining the place of local government in the federal system but is not dispositive of its status or role. There is also great variation in the forms of recognition, which further define the nature of local government's relations with the other orders of government. However, the dyadic federal system remains dominant, subjecting local government in most cases to the jurisdiction of the states and in some cases also the federal government.

In the classic dual federal systems, where a clear division of powers and functions exists between the federal and state governments, local government falls within the latter's jurisdiction. In the constitutions of the US and Australia, which do not mention the existence of local government, local government falls within the residual powers of states. In contrast, the explicit mention of local government in the Canadian Constitution of 1867 allocates it as a competence of the provinces. This approach is also found in Ethiopia's Constitution of 1995, where local government is mentioned only implicitly as a subject of the regions.

The continental models of federalism are no different: the Swiss Constitution of 1848 makes no mention of local government, and the Brazilian Constitution of 1891 makes local government a matter for state legislation. Exceptions are Mexico (1917) and Austria. In the latter article 116(1) of the 1920 Constitution emphasised that '[t]he municipality is a territorial entity with a right to self-government and at the same time an

administrative unit'. Although this Constitution establishes the principle of local autonomy, municipalities are still subject to *Land* legislation.

As noted above, it was only after the Second World War that local government gradually received constitutional recognition, resulting from linking democracy to decentralisation. Local democratic institutions were seen as the building blocks of democracy for countries emerging from authoritarian, military, or minority rule. The principle of local self-government was enshrined in the German Basic Law of 1949 as well as in the Spanish Constitution of 1978 after the fall of General Francisco Franco. The link between democratisation and decentralisation was drawn much more forcefully when Brazil emerged from military dictatorship in the l980s. The Brazilian Constitution of 1988 not only defines the federation as comprising states and local governments, but also spells out the latter's powers and autonomy in detail. South Africa in its emergence from white minority rule and internal conflict also sought to ground its newfound democracy on local government. The recognition of local government as an order of government by the 1999 amendment to the Mexican Constitution can be ascribed as well to the process of re-democratising after decades of one-party authoritarian rule. The recognition of local governments in the 1999 Nigerian Constitution not only secures local democracy but also protects local councils from arbitrary state action. The recognition of local government as a level of government in 2015 Nepal Constitution both reflected democratic and developmental objectives.

The main reason for the constitutional recognition of local government in the 73rd and 74th Amendments to the Indian Constitution in 1992 was to bind states to democratise localities, this on the premise that local democracy is an essential prerequisite for development. Given the opposition by the states to the previous attempts at constitutional recognition, the 1992 amendments retain the dominant position of the states vis-à-vis local governments. The recognition of local self-government in the Swiss Constitution of 1999 had little to do with democracy or development. Given the strong position of local governments in the country's governance prior to 1999, recognition is seen as merely recording that status. The municipalities argued, however, that the recognition now provides a basis to deal directly with the federal government. The 2001 decentralisation reforms in Italy both strengthened the regional governments and local authorities, recognising in the constitution municipalities, provinces, and metropolitan cities.

3.1 Forms of Constitutional Recognition

In the 12 countries with constitutional recognition of local government, the form of such recognition varies considerably. However, in most cases, local government is not explicitly elevated to an order of government, thus keeping the dyadic nature of the federal systems more or less intact. In the 12 constitutions, there is some reference to the principle of 'local self-government'. In the Mexican Constitution it is evoked by reference to 'free municipalities'.[13] The Swiss Constitution guarantees the 'autonomy' of municipalities.[14] South Africa's Constitution confers on a municipality 'the right to govern on its own initiative',[15] borrowing its language from the German Basic Law. In Switzerland and Spain, the right to self-government is the principal provision relating to local government and can be raised by municipalities before the federal constitutional courts. In none of these constitutions is the meaning of local self-government defined with any precision.

In a number of constitutions, recognition goes further than proclaiming merely the general right of local self-government. It deals with substantive issues, including a definition of the democratic institutions of local governments (Mexico, South Africa, and Nepal), the powers of local government (India, Nigeria, Brazil, South Africa, and Nepal), access to revenue and taxing powers (Germany, Brazil, South Africa, Mexico, and Nepal), conditions for state interventions (Mexico and South Africa), and the entitlement to be consulted by the federal government on matters affecting local government (Switzerland and South Africa). However detailed the provisions of the constitutions, the general trend is that local autonomy must be exercised within the limits set by state and federal law. In most cases, the constitutions do not provide operative provisions for local governments; the provisions must be operationalised through state and federal law. This, of course, goes to the heart of the dual federalism issue: who is responsible for local government?

Two patterns are apparent. In the first group, the dual nature of federalism is firmly maintained: explicating and implementing the constitutional provisions fall within the domain of the states. Argentina, Mexico, India, and Nigeria follow this path. The detailed provisions of their

[13] Constitution of 1917, article 115.

[14] Federal Constitution of 1999, article 50.1.

[15] Constitution of 1996, section 151(3).

constitutions, such as the listing of powers and functions (including tax powers), remain merely a promise because the contours of local government powers, functions, and funds are the prerogative of the states. In India the two amendments of 1992 provide a broad framework in which the states must operate but leave to the discretion of the states which of the long list of functions may be exercised by *panchayats* and municipalities. Likewise, the Nigerian constitutional provisions are not operative but must be mediated by state law. Although there is a list of 'exclusive' local government functions, these must still be operationalised by state law. In Germany, the federal constitutional framework sets the general rule of local self-government, but all substantive issues are defined by the states.

In the second group of countries, characterised by more centralised federal systems, the regulation of local government is a concurrent function exercised by both the federation and the state. In Austria, Spain, South Africa, and Nepal, the federal government provides the legal framework and the states fill in the details. The Spanish Constitutional Court has held that the Spanish system has a 'two-fold nature'—defined by the laws of both the central state and the autonomous communities—in terms of which the state is responsible for fundamental regulation and the autonomous communities, for the non-fundamental aspects. The Italian constitutional reforms followed the same approach. The strong federal voice has resulted in a fair measure of uniformity in the local government system.

The constitutions of Brazil, South Africa, and Nepal set local government in these three countries apart from the rest. First, the federation is explicitly defined in terms of three orders of government. Article 1 of Brazil's 1988 Constitution proclaims that the Federal Republic of Brazil is 'formed by the indissoluble union of States, municipalities [*municipios*], as well as the federal district'. The South African Constitution follows a similar pattern, stating in section 40(1) that 'government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated'. The logic of recognising local governments as constituent parts of the federal structure has led, inter alia, to the inclusion of organised local government in national intergovernmental relations institutions, such as South Africa's second house parliament, the National Council of Provinces. The Nepal Constitution depicts the state structure as follows: 'The Federal Democratic Republic of Nepal shall

have three main levels of structure: federal, provincial and local'.[16] It, too, provides that local councillors may participate in the elections of members of the second house of the federal parliament.

In the three constitutions, the scope of local autonomy is described with a measure of detail. In the Brazilian Constitution, local autonomy is secure even from constitutional amendment and is protected from both the federal and the state governments as far as internal affairs are concerned. The nature of autonomy is not absolute, and conditions for intervention are set in the Constitution. Although both the federal and (to a lesser extent) state governments may regulate the exercise of autonomy, municipalities may also rely directly on constitutional provisions. A similar position prevails in South Africa. Municipalities can rely (and have done so) directly on the Constitution in the exercise of their functions as well as assert their power to levy property taxes. As in Brazil, the federal governments of South Africa and Nepal play the dominant regulatory function, prescribing the form, functioning, and financial management of local government in detail. However, the hierarchy of a dyadic system remains evident. Provinces in South Africa are still constitutionally mandated to supervise municipalities and may in prescribed circumstances intervene, including by dismissing elected councils. In Nepal it is, however, the federal government that may dismiss a councillor due to corruption.

3.2 Subnational Constitutional Recognition

Given the general approach that local governments fall within the competence of state governments, most of them (including in the US and Australian states) are accorded some form of recognition in state constitutions. As Canadian provinces do not have unitary constitutional documents, entrenching a sphere of local autonomy in them has not been pursued. In Germany, Switzerland, Austria, Brazil, and Spain, the principle of local self-government is repeated in the subnational constitutions. Further details vary widely. Some US states have entrenched local 'home rule' and, to avoid the strictures of Dillon's *ultra vires* rule, have given expansive powers to local governments to tax, legislate, and provide

[16] Constitution of 2015, article 56(1).

services.[17] The Australian state constitutions are at the other end of the scale: they provide little more than recognition of local government's existence, placing few if any limitations on state sovereignty. No powers are directly conferred, and the recognition that is available can, in most states, be changed by ordinary legislation.

Given that in a number of countries local government falls uncomfortably between federal and state regulation, subnational constitutional regulation itself can become a site of controversy, as seen in Spain and Brazil. In contrast, many state constitutions in Brazil do not yet recognise the increased autonomy of local government achieved under the 1988 Constitution, minimising municipal competences via provisions that are regarded as unconstitutional. In Argentina, all but four provinces recognise in their provincial constitutions the autonomy of local authorities.

3.3 The Significance of Recognition

Given wide differences in the scope and extent of constitutional recognition, the impact of such recognition on the federal system is inevitably varied. First and foremost, recognition is some brake on state power. In India, it was only after the 1992 amendments that states' exclusive jurisdiction over local government was breached. However, where the implementation of the constitutional recognition still lies in the hands of state governments, reluctance or resistance on their part has in many states scuppered the realisation of local self-government. Nigeria, too, presents an example of state governments fundamentally undermining such a constitutional mandate.

Where constitutional recognition is confined to the principle of local self-government, the elusiveness of the concept limits the usefulness of such recognition. The recognition nevertheless remains legally significant. The experience of Germany shows that it protects local governments from excessive restrictions and preserves a 'core sphere' of responsibilities (i.e., finances, local planning, and personnel matters) for local government. It also protects local governments from revocation of responsibilities to higher orders of government; this is allowed only if justified by an overriding public interest.

[17] See further Dale Krane, N Rigos Platon and Melvin B Hill, *Home Rule in America: A Fifty-State Handbook* (CQ Press, 2001).

Where constitutional provisions are directly operative, the shield against federal and state intervention is that much more effective. In South Africa, not only can the Constitutional Court be asked to protect local autonomy, but the Constitution also defines the practice of intergovernmental relations. However, the reality of autonomy lies not only in the Constitution but also in the ability of local government to exercise that autonomy effectively. In South Africa it is mainly the large metropolitan municipalities that have been able to reap the benefits of their constitutional status. The extensive protection of local authorities in the 2015 Nepalese Constitution has yet to be realised in practice, though the first few years have been encouraging.

4 Governance Role of Local Government

The role that local government plays in the governance of a country varies from country to country and state to state. In a few countries, local government is responsible for about one-quarter of all government expenditure, providing a host of services. In others, its contribution to overall government expenditure and provision of services is far more modest. Its governance role is further defined by a double mandate—one derived from its constituency, the other from state and the federal governments. Both the scope of functions and the lines of accountability shape local government's status as an autonomous order of government.

4.1 Source of Powers and Functions

Most local governments perform functions in terms of their autonomous powers as well as execute delegated tasks on behalf of states (and sometimes the federal government). Local governments thus have been described in Germany as having a hybrid character. In addition to their autonomous functions, they are extensively used to implement federal and *Land* legislation, acting as the most subsidiary unit of *Land* administrations. A functional reason for the dual nature of local governments is that, by virtue of being closest to the people, they perform tasks more efficiently and effectively than other levels of government.

The dual role of local governments raises two concerns about local autonomy. The first is that if a substantial part of local administrations is concerned with delegated powers, little remains of their primary function of responding to needs identified by their constituencies. The country

reports note the increasing burden of delegated functions. In Nigeria, the complaint is that in many cases local governments function as mere administrative extensions of state governments. The second concern is that delegated functions from state governments are not always accompanied by matching funds, resulting in unfunded mandates (a matter covered in the next section). Although states prescribe the functions to be performed, local governments must look to their constituencies for funding. This is a predicament shared by local governments in Australia, Canada, South Africa, Mexico, and Switzerland. In Nigeria, the payment of teachers' salaries is a local authority responsibility, but the federal government sets uniform salary scales, which results in a crippling burden on the former.

The functions assigned exclusively to local governments are infrequently captured in constitutions and more usually prescribed in state (and sometimes federal) legislation. Only in Brazil, South Africa, and Nepal do local governments draw directly from the constitution for the delineation of their powers. Although such powers are thus protected from incursion by state governments, the generality of their expression often provides little certainty. Moreover, if the neat distribution of powers between the federal and state governments produces overlaps, a three-way cut is likely to result in more uncertainty. The most complex division of powers is found in Nepal's 2015 Constitution, which sports five lists: exclusive powers of the federal, provincial, local governments, and two lists of concurrent powers, one of which shares powers between the three levels of government. Subnational constitutions in Argentina and Ethiopia also specify local powers and functions.

While concurrency between all three spheres of government in a few specified areas is prescribed in Brazilian (education, health, and social assistance), Argentinian (in provincial constitutions), South African, and Nepalese constitutions, the transversal and cross-cutting nature of matters such as the environment, economic development, and social protection has led to an increase in cooperation and sharing of responsibilities between the three orders of government.

Although the federal government may set framework legislation for these constitutional powers, more often than not it goes into detail, leaving little room for local legislation.

Local government functions are listed in the Indian, Nigerian, and Mexican constitutions, but these provisions must be actualised by state law. The complaint in India is thus that because the assignment of powers

to *panchayats* falls within the states' discretion, no state has yet transferred all the listed powers to local governments in its jurisdiction, leaving most local governments without adequate assigned functions. In Nigeria, a further strategy to diminish the powers of local authorities is the institution of a constituency development fund in terms of which members of the federal parliament direct federal funds to localities in the same functional areas as local governments, thus acting in competition with the latter.

In Germany, Switzerland, and Austria, where the local self-government is constitutionally protected in terms of the principle of subsidiarity, local governments may act within this restricted autonomous space. In Austria this entails competence for the election of local organs, limited taxation, and internal administration. In Switzerland, in terms of the principle of subsidiarity, all activities not explicitly allocated to higher political orders fall into the jurisdiction of municipalities. In Germany local authorities have the 'general competence' to attend to local matters and do not need specifically empowered federal or *Land* legislation to take action locally. In contrast to these three countries, the constitutional guarantee of local self-government in Spain's Constitution depends on state or regional laws for its realisation.

Where local governments are mere creatures of statute, the rule in the common-law countries, at first, was that municipal powers had to be found within an enabling statute. The *ultra vires* doctrine, expressed in the US as Dillon's Rule, holds that any conduct not explicitly within the empowering legislation is invalid. Increasingly, the shackles of this restrictive rule have given way to a more enabling approach. All Australian states give local councils the power of 'general competence' or its equivalent. In Canada this can be done reforming provinces' municipal legislation to give a 'broad grant of authority' and assigning powers using 'spheres of jurisdiction'. Such powers are still subject to the requirement that they be consistent with state and federal law, but the courts have adopted a benevolent interpretation of local competences requiring a high level of conflict to strike down a municipal bylaw for want of compliance with a provincial or federal law. This has brought the common law much closer to the civil law. In Spain, too, local governments engage in new tasks without express authorisation—for example, in providing social services such as the integration of immigrants.

This represents a clear trend which is emerging in a number of countries. Due to the demands of residents, particularly in urban contexts,

local authorities are drawn into providing new services not always listed or envisaged, such as the environment, economic development, and social protection in Argentina, and the care of the elderly and the very young in Switzerland. Local governments, being the closest to the public, have become the first port of call for new social, economic, and environmental demands.

In some countries and states, there is an asymmetrical allocation of functions to local governments relating to (1) the size of the municipality; (2) the urban–rural divide; (3) shared jurisdictions; (4) dedicated single-purpose structures; and/or (5) the capacity of a municipality. In Italy, the powers differ according to whether a local government is classified as a municipality, a province, or metropolitan city. In other countries, a uniform approach to the distribution of powers and functions within a state is usually prevalent. For example, in Australia all councils in a state operate under the same state legislation, regardless of location, size, or capacity, but given flexible, general competence-based provisions, there is scope diversity. The same applies to the constitutional allocation of functions in Brazil, South Africa, and Nepal. Given the variance in local governments' capacity, this often results in a mismatch between powers and capacity. In response, the Austrian constitution provides for the possibility that a local authority lacking in capacity may ask the *Land* government to transfer allocated powers upwards to a state government.

4.2 Focus of Powers and Functions

Although differences abound in the scope and extent of the functions typically performed by local governments, there is also a large measure of uniformity. Generally speaking, the functions concern basic household utilities (such as water, sewage, waste management, and electricity), the built environment (including building regulations, zoning, and planning), roads and traffic, social welfare, health services, culture and leisure, environmental protection, economic development, education (usually only kindergarten, primary, and secondary schooling), and policing. A clear trend in at least some countries is the provision of services beyond the provision of basic utilities (e.g., water, sewage, and energy), with increased activities in land-use planning, environmental management, economic development, and community services. This trend is the most pronounced in those larger urban municipalities that are seeking to develop a new role in urban governance.

The major differences between countries are seen in a few cost-intensive functional areas. First, local governments in Australia, India, Mexico, Spain, South Africa, and Nigeria are not directly involved in the provision of either primary or secondary education. Secondly, social welfare (including social security) is not a local function in Mexico, South Africa, Nigeria, Spain, or India. Thirdly, although the types of public security provision vary enormously, it appears that policing (excluding traffic policing) is not a local function in Australia, India, South Africa, or Spain. Local police can be found in Austria, Brazil (in a few cities but with limited authority), Canada, India (in a few large cities but with limited authority), South Africa (mainly in metropolitan municipalities), Spain, Switzerland, and the US (where local police are numerous and exercise substantial authority). A judicial function is not commonly performed (exceptions are in the US and Nepal). Fourthly, health services are not provided by Spanish or, except for limited environmental health care, South African municipalities. These exceptions have a considerable impact on the budgets of local governments and their portion of overall government expenditure.

Many of the functions are not performed exclusively but are undertaken jointly with other orders of government, some on an assigned, delegated, or agency basis. In Spain, for example, national law provides for municipalities to supply complementary services to other orders of government in education, culture, housing, health, and environmental protection. In the constitutions of Nigeria, Brazil, Argentina, and India, concurrency is mandated in key social policy areas. Where there are overlaps in functions between state and local governments, or where the latter perform a complementary role in providing services, the states frequently dominate the area. However, in most instances of concurrency, coordination is inevitable and pursued purposively. Without clear allocations of responsibilities and decision-making, though, accountability to constituencies inevitably suffers.

Horizontal cooperation between municipalities in the delivery of services is common feature in a number of federations. Due to the large numbers of small local governments, the benefits of economies of scale, the consolidation of skills and resources, particularly in urban areas, and intermunicipal agreements and consortia are often encouraged and facilitated by federal and state legislation and incentives. Indeed, in Italy it is compulsory for small municipalities to cooperate in fulfilling municipal

tasks through, for example, agreements, consortia, and unions of municipalities. In Brazil, more than two-thirds of municipalities are part of at least one consortia in the areas of health, the environment, and solid waste management.

Following the practice of other orders of government (and at times at their behest), local governments increasingly apply the business model of New Public Management to deliver services. They corporatise municipal administrations, create public entities under their control, or privatise services altogether. In Canada, even from the early twentieth century, quasi-independent institutions, agencies, boards, and commissions have been created in order to insulate administration from political pressures and allow expertise to prevail. In the US, the private sector's engagement in the provision of utilities is high. In Germany, the focus is on the enabling rather than the providing state, and in the areas of water and energy supply as well as waste and sewage disposal, the trend has been towards privatisation. This is also the case to varying degrees in Australia, Spain, Switzerland, and Austria. In Canada, too, there is outsourcing of services through public–private partnerships, but it is not widespread. Although a contested trend in Brazil, concessions are granted in the field of transport and waste management. In South Africa, although municipalities are allowed to outsource municipal functions through private–public partnerships, they face political opposition because it is seen as hurting the poor. There has thus been little movement towards outsourcing essential services.

When measured against total government expenditure, local governments perform a limited yet significant portion of government services. In a comparison of local expenditures, funded by both their own revenue and intergovernmental grants and transfers, three groups are apparent.[18] At the top end of the scale are countries where local governments are responsible for more than 20 per cent of total government expenditure, namely the US, Switzerland, Nepal, Brazil, and South Africa. There is a middle group of countries where local government's contribution is between 20 and 10 per cent, namely Australia, Austria, Germany, Spain, and Nigeria. At the low end of the scale, with a limited contribution of less than 10 per cent, are Argentina, Ethiopia, India, and Mexico.

[18] See OECD, at https://www.oecd.org/regional/regional-policy/profile.pdf (accessed 3 February 2023).

These variations depend largely on whether local governments in a particular country are responsible for the cost-intensive social services of education, health, and social welfare. A second variable is the provision of basic utilities. With no responsibility for education or basic utilities, the contribution of local governments is low. In most countries, local governments are not in the same league as state governments; the latter's expenditures are double to quadruple those of their local governments. Only in Switzerland is there a measure of equivalence.

4.3 Institutions Exercising Power

One of the principal strengths of local government is the democratic ethos of exercising public power. It is indeed an order of government where, due to the smallness of its constituent parts, direct democracy in the form of assemblies can readily be practised. The norm, however, is the election of representative councils and executives, often complemented by participatory governance. In some countries there is also an ethos in which elected representatives perform voluntary public service on a part-time basis. In contrast to the other orders of government, there is frequently no separation between the executive and legislative branches in the Montesquieuan sense, as these functions are fused in a single council. Whether this distinction is drawn depends largely on the preference for either presidential or parliamentary systems of executive government, a choice that most often reflects the state and federal models.

Underpinning all the systems is the election of a local representative council, varying in size according to the population of the municipality. In South Africa it ranges from seven councillors in the smallest local municipality to 270 in the largest metropolitan municipality. Voting rights are similar to those in federal and state elections but for two unique exceptions. First, in the European Union (EU) a broader notion of citizenship applies because a citizen of any EU country may vote in a local election in any EU country where he or she is resident. Secondly, Canadian and in some states Australian landowners, as ratepayers, have the right to vote in municipalities where they own property. Direct elections have become the dominant mode of electing a mayor or chairperson of a local government. Following the national and state models, direct elections are found in the US, Nigeria, Mexico, Argentina, and Brazil. However, in a number of countries with an imbedded parliamentary tradition, direct elections are found, for example in Canada. Both systems are present in

Switzerland, India, Canada, Australia, Germany, Italy, Spain (though not in practice), and Austria. Direct elections also occur in Nepal. South Africa and Ethiopia are the exceptions.

The trend towards direct elections seems to be prompted by the effort to boost electoral turnout and increase democratic legitimacy. In Austria, where direct elections take place in six of the nine *Länder*, the experience is that the combination of parliamentary and presidential systems does not always work well in practice where there is no political alignment between the mayor and the council. In Germany, to allow for non-alignment between the two branches of government, the election terms of mayor and the elected council may differ to add a further check and balance to the system of accountability. In the presidential system the separation of powers between the executive and the legislature follows automatically. The directly elected mayors in Canada, as mentioned, sit as a voting member of council. In most parliamentary systems (i.e. Canada, Australia, India, Spain, and South Africa), both legislative and executive functions are fused in the council. In South Africa an executive mayor exercises only delegated power from the council. In Spain the role of councils changes with their size. In large councils, such as those of Madrid and Barcelona, there is a process of parliamentarisation of local government; councils focus on setting norms and on political oversight of mayors and executive committees. This has become increasingly necessary because mayors in large urban municipalities are most often full-time executives. In both indirect (South Africa) and direct election (Argentina, Mexico) systems mayors are limited to two elective terms.

One of the claimed strengths of local governments is their proximity to the people. The traditional village concept of local government is that of the gathering of the village to collectively make decisions affecting local matters. This tradition survives in the least and most populated countries in this study. In a number of Swiss cantons, there are still municipal assemblies where citizens are entitled to cast binding votes on all major issues, such as budgets and tax rates. The choice of this form of government depends on the size of the municipality and on political culture. In India, the inclusion of all eligible voters in a *panchayat* (village assembly) is aimed at ensuring direct democracy. Whereas direct democracy through assemblies is an exception, other forms of public participation in local government are gaining ground. Referendums and popular initiatives have been essential features of the Swiss political system but are also found in the US, Austria, and Germany.

A much more common method has been popular consultation. Perhaps more so than in the other orders of government, a participatory approach to governance has been pronounced in local government, as reflected in expanded community consultation on matters such as budgets, the publication of annual reports, and the privatisation of municipal services. Some cities in Brazil have been at the forefront of participatory budget processes.

The relationship between local political structures and municipal administrators is often a contested terrain. In most federations, autonomy in the hiring and firing of personnel is seen as an essential component of local self-government, whereas in a few others, a high level of state control is exercised over all aspects of the administration. In India, the system of urban administration is centrally controlled. As members of the Indian Administrative Service, senior officials are appointed by the state, which directly affects the relationship between the elected council and the officials. In rural areas, most of the *panchayat* staff are delegated state employees. Given how new the federal system in Nepal is, the central government still employs key municipal personnel, but the 2015 Constitution envisages key local appointments to be made by provincial public service commissions once they are established. In Nigeria, the states also control the appointment of senior levels of local administrations, leaving only lower-level appointments to local councils.

Even where elected officials control appointments, the part-time nature of councillors and executives often translates into strong administrations acting with broad discretion. Elected officials play a limited executive role, acting more as 'a board of directors', whereas day-to-day matters are in the hands of appointed officials. However, the line between policy and administrative decisions is often blurred, giving rise to tensions between politicians and administrators, as reported in South Africa. In countries from the Global South, local administrative capacities and resources are spread very unevenly, with the more numerous rural municipalities being poorly skilled and ill-equipped to govern effectively, including in Argentina, South Africa, and Mexico. In South Africa, many rural municipalities are functioning poorly. As in Nigeria, corruption has been endemic, prompting greater provincial and national intervention.

5 Financing Local Government

The financing of local governments is crucial to understanding their place in a federal system. It reflects on the exercise of local autonomy, determining whether local governments can make and implement policy choices in response to their constituencies' preferences. In short, financial autonomy defines whether local government can be seen as an order of government and a true partner of the federal system of government. Where local governments raise the bulk of their revenue independently, a high level of autonomy follows. Conversely, over-reliance on transfers from state and federal governments, especially if the transfers are tied to particular policy outcomes, usually results in local governments' financial dependency and policy subservience.

With this in mind, 'financial autonomy' for local government is asserted in some constitutions, however without spelling out the detail of how that can be operationalised (Argentina, Germany, Mexico, and Spain). Moreover, whatever the formal powers of local governments, financial self-reliance often determines their ability to make meaningful choices with regard to policy directions and implementation of services. In the majority of countries, there is a wide gap between political autonomy and financial autonomy. However, transfers from superior orders of government are an essential ingredient of all federal systems.

First, transfers of funds to local governments are inevitable where local governments also perform delegated functions; funds follow functions. Secondly, most federal systems subscribe to the principle of fiscal equalisation; with social solidarity a governmental goal and revenue resources unevenly distributed among municipalities (particularly along an urban/rural divide), transfers seek to secure a minimum level of service delivery across the country. The mix of own-source revenue and transfers is a question of degree. To what extent are local governments able to make decisions reflecting the policy choices of their constituencies? The source of transfers also reflects on the constituent parts of the federal system. Direct transfers from the federal government to local governments breach the usual dual nature of the federal system, often establishing direct intergovernmental relations between the two orders of government without states mediating that relationship.

There are marked differences in the levels of financial self-reliance enjoyed by local governments in this study. In half the countries, local governments show a high to medium level of financial self-reliance in

collecting the bulk, or more than half, of their revenue. At the top are Switzerland (85 per cent), Canada (81 per cent), Australia (80 per cent), and South Africa (73 per cent), followed by Germany, the US, Austria, and Spain in the 60 and 50 percentiles. Collecting less than half of their but more than a fifth of their income are local governments in Italy (45 per cent), Ethiopia (40 per cent), Brazil (37 per cent), and Mexico (22 per cent). With very modest independent income (less than 10 per cent) are local governments in Nepal, India, and Nigeria.

These averages are, of course, misleading; for example, in India the major urban municipalities raised 41 per cent of their revenue while in the case of the *panchayats* the amounts are negligible. There are a number of contributing factors. The high level of self-reliance in Australia and South Africa can be attributed to the absence of any major involvement in the provision of the cost-intensive services of schooling, health, or social welfare. These local governments rely mainly on property taxes and service charges. Although Swiss municipalities are responsible for cost-intensive social policy services, they achieve a high level of self-reliance because they impose and collect an income tax in terms of the principle of fiscal equivalence: 'who pays decides, who decides pays'.

Without access to this revenue source, local governments in the midrange countries that provide social services—Germany, Austria, Mexico, and Brazil—are reliant on sharing in certain revenue streams with either states and/or the federal government. The dependency on transfers of Indian *panchayats* is due largely to their limited taxing powers. Although Nepalese municipalities share in a number of important tax sources (for example natural resources), the local government system is yet to be fully implemented. In Nigeria, on the other hand, available own revenue sources are not exploited due to an over-reliance on centrally collected oil revenues.

In the countries with a high level of local self-reliance, the national average masks huge disparities in revenue generation. Where property taxes are the mainstay of local income, rural municipalities most often struggle to raise income from this source and invariably are more dependent on transfers. Usually, the smaller and more rural the municipality, the larger the gap between political and financial autonomy.

Independent of the level of self-reliance of municipalities, a high level of regulation of revenue generation and control over expenditure is effected by states (and even in some countries by the federal government). This includes control of borrowing powers and budget adoption.

Given the predominance of dual federalism, financial regulation is effected mostly by the states. For example, under Mexico's Constitution, the states are pre-eminent: federal law may not limit the power of states to establish taxes or regulate collections of service fees. By contrast, in the more centralised federal systems such as Spain, Italy, and South Africa, national laws govern municipal finances. Most state and federal governments follow a no-bail-out policy to ensure subnational fiscal discipline.[19]

5.1 Own Revenue Sources

In general, local governments in this study have limited access to exclusive revenue sources. Only in Brazil, South Africa, Italy, and Nepal can municipalities rely directly on constitutionally entrenched taxing powers. In Mexico, India, and Nigeria, constitutional promises of income streams must be mediated by state laws. The main sources of own revenue are, first, a range of taxes, the most important of which are property taxes and commercial taxes. The second stream is income generated by the trading (or selling) of services. Although borrowing is merely a financing mechanism, it appears on the revenue side of the budget.

Property taxes (also referred to as property rates) are traditionally the principal source of revenue for local government and usually allocated exclusively to this order of government; such taxes are even enshrined in the constitutions of Germany, Mexico, and South Africa. In a number of countries (Canada, Australia, Spain, Italy, and India), property rates are the mainstay of income. In the US, for example, they are the main source for school districts, whereas counties and municipalities have diversified and rely much more on their trading services. As a type of wealth tax, property rates generate little income outside the urban areas; in Mexico, for example, the property tax in rural areas is collected less effectively.

The power of municipalities to set their own tax rates shows much variation between and within countries. In Australia, for example, local councils enjoy a substantial measure of autonomy in setting rates, but in New South Wales and Victoria they must secure state permission to

[19] See generally Maarten Adriaan Allers and Joes Gordon de Natris, 'Preventing Local Government Defaults: No-Bailout Policy and Its Alternatives', in Rene Geissler, Gerhard Hammerschmid and Christian Raffer (eds) *Local Public Finance: An International Comparative Regulatory Perspective* (Springer, 2021) 187–207.

increase rates beyond a certain percentage, and in South Africa, from the national government.

Although local governments complain that they are underfunded, that property rates do not grow with the economy, and that there is a growing dependence on transfers, a number of contributors to this volume point out that many local governments do not fully exploit the property-tax base. The principal reason appears to be the perceived unpopularity of a higher tax burden, as witnessed in Spain, Australia, and the US. Other reasons are more technical, such as outdated valuation rolls in Brazil or simply the absence of enabling state legislation in India and Nigeria. Property rates are illustrative of a more general trend of local governments not always using their tax powers to the full and preferring the politically more comfortable (and lazy) option of calling for more intergovernmental transfers.

In a number of countries, property rates are not the dominant tax source: in Germany and Austria it is commercial or payroll taxes. In the US, taxes on retail sales and on income are levied by a few municipalities. As noted above, Swiss municipalities play a significant role in imposing an income tax. Then there is a host of taxes, duties, levies, and fines that bring in modest amounts of income, the most proverbial local government tax probably being dog licences. In South Africa and Brazil, taxes on municipal service charges are also a significant source of revenue. In Nepal the provinces and municipalities share the revenue of natural resources taxes and vehicle licences, the former collected by provinces and the latter by municipalities.

Local governments providing water, electricity, and other trading services usually generate income from this source, which is used to cross-subsidise other non-paying services. In Mexico, service charges are even a constitutionally protected source of revenue for local governments. In the US, user charges are the fastest-growing and most important type of own-source revenue for counties and municipalities. A related source in Germany is the profit generated by public enterprises from commercial activities.

Reflecting the general fear that the higher orders of government will have to pay the debt owed when local governments default on loans, their borrowing of money is uniformly tightly controlled by state and/or federal law. Not only is their borrowing keenly regulated, but in a number of countries authorisation of superior orders of government must be sought. Typically, as in Austria, loans may be used only for capital

expenditure and then only within an overall framework agreed upon by the three orders of government. Although both short-term (less than a year) and long-term loans are possible in Argentina, the latter require the authorisation of the province concerned. In Canada, provinces set caps on amounts to be borrowed. The Mexican Constitution proscribes foreign bank loans, and states must approve all bank loans. Given the tight regulatory framework, coupled with intense supervision, it is not surprising that a low rate of borrowing by local governments is reported in most countries. Where borrowing happens, the pattern is very similar: it is done mostly by a few large urban municipalities often done by floating bonds.

5.2 Transfers

The manner and extent of transfers have an important bearing on local governments' autonomy and their relations with the other orders of government. The chapters reveal that, first, all countries pursue, in one form or another, equalisation goals between local governments who find themselves at the opposite sides of self-reliance. Secondly, in a significant number of countries, local governments are dependent on transfers. Thirdly, federal governments are increasingly the main source of transfers to local government. Fourthly, the increased use of tied transfers (conditional grants) in a number of countries adversely impacts on local autonomy.

Following the strictures of dual federalism, in a limited number of countries the state governments are still the primary source of transfers to local government. This is the case in the US and Canada; in Swiss cantons and the German *Länder* they are the only source of transfers. In others, states play a small or insignificant role in transferring own funds to local governments, a consequence of their own dependence on federal transfers.

The transfer of state funds to local governments has been entrenched as a constitutional obligation in Brazil, Nigeria, and Mexico. Broadly, it can be seen as their entitlement to share in the revenue streams of states. For example, in Nigeria local governments are constitutionally entitled to 10 per cent of the revenue generated by states, although in practice it is hardly implemented. A particular source of revenue can also be earmarked for sharing, such as the sales tax of Brazilian states, state entertainment taxes in India, and natural resources taxes in Nepal.

As these transfers flow from 'entitlements', they are usually untied—to be used at the local governments' discretion. They are also complemented by a range of conditional or tied grants pursuing various state policies. The trends run in contrary directions. In Canada the percentage of state transfers for specific purposes has decreased sharply, allowing greater discretion for local governments. In Brazil, the earmarking of transferred funds by states is undercutting the autonomy of even the more self-reliant cities. In Ethiopia such tied grants are used for equalisation purposes.

In a significant number of countries, the transfers by states are merely federal funds being relayed to local government, although the state role usually includes deciding on the horizontal distribution of the funds. Overall, however, state reliance on federal funding to execute stewardship of local governments reveals the threadbare nature of dual federalism. In most of our survey countries (Argentina, Australia, Spain, South Africa, Nigeria, India, Brazil, Mexico, Italy, and Austria), transfers to local government mostly emanate from the federal government. In some, such as South Africa, Brazil, Argentina, and Austria, the transfers are directly from the federal government to local governments, whereas in the others the dual model of federalism is asserted, with the allocation to each municipality being mediated by the states. Either the transfers are unconditional (such as in the case of a constitutional entitlement to the sharing of the federal taxes) or grants are tied to specific purposes.

In Brazil, South Africa, Mexico, Nigeria, and Nepal, there is a constitutional claim on the nationally raised revenue, which in Nigeria and Brazil is complemented by a specific claim on a share of the federally collected sales tax. The distribution is done in a variety of ways. In South Africa the national executive determines the amounts for each local government after considering the recommendations of an independent advisory body, the Financial and Fiscal Commission. More frequently, the individual allocative decisions are made by the states. In Mexico the states must transfer at least 20 per cent of their share of the federal revenue to municipalities. In Australia, federal (untied) financial assistance grants are mediated through state grants commissions. In Nigeria local governments are allocated a set percentage of the federal revenue, which is then distributed by the states, a process that allows for considerable abuse by states in deducting various amounts from the allocated funds. In India, the states must distribute the funds in accordance with the recommendations of the state finance commissions, but in some states they have not been established and where they are, the recommendations are often

ignored. A recurring theme in most countries is that the equalisation of resources is a redistributive principle guiding both the federal and the state governments.

Direct specific-purpose federal grants are found in all countries (except Switzerland), even in those countries where dual federalism is predominant, such as the US, Canada, and Australia. In Australia, municipalities receive increasingly specific-purpose grants for roads and several other functions directly from the federal government, contrary to the Constitution. In the US, the federal government provides support for highways, primary and secondary schools, libraries, hospitals, police services, mass transit, wastewater treatment, and some other local functions. In Canada there has been a substantial growth in direct federal subsidies, although they come from a very small base. No general trend, pointing either to an increased or decreased use of tied transfers, is apparent across the sample.

The general complaint in most countries is the mismatch between funds transferred and the number of functions assigned to local governments, illustrating the double weakness of local governments. They often have little control over the assignment of additional functions by the state or federal governments and even less over access to the necessary funds for their execution. To prevent the financial distress caused by unfunded mandates, an array of structural devices has been attempted in some countries. In Germany the Basic Law was amended in 2006 to prevent the federal government from delegating, without the consent of the *Länder*, cost-intensive functions to local governments. The US Congress in 1995 passed the Unfunded Mandates Reform Act, and the Autonomous Community of Catalonia has linked the assignment of functions to the transfer of the necessary funding.

The financing of local government shows both the latter's limitations and its potential as an order of government. The continued reliance of some local governments on transfers points to their dependence and lack of autonomy in practice. Even so, there are also indicators pointing to greater local autonomy and a multilevel system of government. First, there are local governments with a large degree of financial autonomy, notably the large urban municipalities, which can improve their position should they show the political will to exploit their available tax sources more effectively. Secondly, with increasing flows of federal funding to local governments, their intergovernmental relations are no longer exclusively with states but also with the federal government.

Given the centrality of finances to local autonomy, it is not surprising that a key area for reform is intergovernmental financial relations—an area which received renewed interest after the Covid-19 crisis (see further below).

5.3 Expenditure

The general norm is strict control by state governments (and even national governments in the case of Spain and South Africa) over expenditure decisions. Although the Mexican Constitution provides that municipalities 'shall freely administer their finances',[20] they operate in a tightly controlled environment. Only in Switzerland is cantonal supervision light. Control is exercised, first, by prescribing a regulatory framework for financial decisions, including in some cases the proscription of deficit budgeting (see, for example, Australia, Austria, Canada, Italy, Mexico, Spain, South Africa, and US). The regulatory framework is accompanied by close supervision through various reporting mechanisms. In this context, the auditor-general in common-law jurisdictions and the more powerful courts of auditors in civil-law jurisdictions play an important monitoring role.

6 Supervising Local Government

Supervision of local governments by higher-level governments is usually composed of three distinct activities: legal regulation, monitoring, and interventions. Financial supervision of local governments is the most important focus of this supervisory role that state and federal governments routinely play, but not the only one: in a few countries interventions may also occur due to political instability and service failure. Such interventions may include the dismissal of democratically elected councils. Both the extent of these intervention powers and their practice further define the space of local autonomy.

In dyadic federations, where local government falls within the competence of states, the latter has the responsibility for supervision (see, for example, Argentina, Australia, Ethiopia, Germany, India, Switzerland, and the US). The scope of supervision thus varies from state

[20] Constitution of 1917, article 115.v.

to state. In Switzerland, regional difference is pronounced: municipalities in the German-speaking part have greater autonomy than those in the French-speaking part. In centralised federations, supervision by the federal government is also present. In Brazil the federal Ministry of Finance exercises supervision to ensure compliance with legal requirements related to a range of financial activities. In Mexico, the federal government is also the primary supervisor, as is the case in Italy. In Ethiopia, in the two federal cities—Addis Ababa and Dire Dawa—the federal government is, of course, the only supervisor. In South Africa the national government's monitoring role is at arms-length because only the provinces can instigate investigations and intervention measures in the first instance.

The intervention powers of states are confined mostly to enforcing the applicable legal framework, be it state or federal law, leaving policy and implementation choices to municipalities. In Switzerland, Germany, Spain, and Austria, a clear distinction is made between local governments' areas of autonomous decision-making and their areas of delegated responsibilities. In the former, supervision relates only to questions of legality, whereas in the latter, states may also review the appropriateness of decisions. In South Africa intervention measures include provinces instructing municipalities on a course of action or even performing functions that a municipality has failed to perform. The most extreme instance of intervention is the dismissal of elected councils and appointment of administrators, a power held by the states in most countries, including Australia, Austria, Brazil, Canada, India, Nigeria, South Africa, and Spain. In Italy, in relation to ordinary regions, this power belongs to the federal government, while in special regions, the respective autonomy statutes and implementing legislation regulate the dissolution of a council. The Nepalese Constitution of 2015 allows for no such intervention.

Although extensive supervisory powers are present, indicating the subordinate constitutional position of local governments, practice paints a different picture. Intrusive supervision is very rare in some countries (including Argentina, Australia, Austria, Canada (in British Columbia), Germany, Ethiopia, and Switzerland), but more regular in others (Nigeria, South Africa, and Italy) and increasingly in several Australian states. One explanatory factor is that the extent and level of intrusion by state governments is highly dependent on the stability and strength of local governments. Although Swiss cantons have intervention powers in cases of bankrupt municipalities, they seldom need to use them. The

same applies in Germany and Austria. In Germany, Spain, and Canada, informal and cooperative measures are used to assist and guide municipalities; formal measures are used only as a measure of last resort. In contrast, where skills are unevenly distributed and corruption more commonplace—as in South Africa—interventions are much more prevalent. The regular occurrence of interventions in Nigeria is attributed to political interference. In Ethiopia, the low level of interventions is the result of the dominant ruling party (which governs local authorities as well) using intra-party mechanisms rather than formal legal ones.

7 Intergovernmental Relations

Contrary to the hierarchical supervisory model underpinning local–state relations in most countries in this volume, the practice of intergovernmental relations is often (or should be) more egalitarian. Furthermore, contrary to the dual federalism model, which places local government firmly under the wing of the states, there is increasing interaction between local and federal governments. Tripartite engagements (federal, state, and local governments) are also emerging. Given the overlap in responsibilities, extensive intergovernmental financial relations, shared social problems, spatial planning, and the need to co-produce services such as education and health care, cooperation between the three orders of government has become a necessity. Moreover, extensive collaboration is needed where local governments are required to implement policies and legislation formulated by the other orders of government.[21] In local governments' relations with both states and federal governments, organised local government plays a crucial role in advancing and defending their interests. Indeed, in more recent federal constitutions (or amendments) 'cooperative government' has become a hallmark of these federations—South Africa, Austria, Mexico, and Nepal.

Intergovernmental relations at a horizontal level between municipalities occur in most countries. Not only is there consultation but numerous collective agreements between municipalities in the delivery of services are to be found, for example, in Austria, Brazil, Germany, Italy, Nepal and Switzerland.

[21] See Ronald L. Watts, 'Comparative Conclusions', in Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown (eds) *Distribution of Powers and Responsibilities in Federal Countries* (McGill-Queen's University, 2006) 322–350, 329.

7.1 State–Local Relations

Within dyadic federations, local governments' primary relationship is necessarily with the states. Usually, there is a ministry or department responsible for local government, but most sector departments interact with local governments both bureaucratically and politically. The interaction often reflects a more equal relationship than what the formal legal structures suggest. In Australia, the contradictory situation of municipalities being creatures of statute yet largely financially independent has led to partnerships and numerous cooperation protocols concluded between local and state governments. Such developments are also found in Canada, Ethiopia, Mexico, and Nigeria.

At the state level, organised local government plays an important role in most countries, voicing the concerns of its members and becoming a formal negotiating partner of state governments in Australia and Austria. In countries where local governments have no direct linkages with the federal government, the states play the role of intermediary of local concerns to the federal level. In Switzerland, engagement takes place also on a political level: elected local councillors may be elected to cantonal legislatures in a system of double mandates. More common are intergovernmental relations under the cover of political parties that also have their tentacle in local government, but they tend to be strongly hierarchical, as is the case in Brazil, Ethiopia, and South Africa.

7.2 Federal–Local Relations

An emerging trend in this study is a formalised relationship between local and federal governments. This is to be expected in Brazil, South Africa, and Nepal, where local government is recognised as a fully-fledged order of government. In the more centralised federations, such as Austria, Spain, and Italy, where federal legislation regulates local governments, formal executive linkages are also found. Even in the traditional dyadic federations, such as Switzerland and Australia, local governments participate in federal intergovernmental forums. In the US, Canada, Germany, and Nigeria, the interaction is much more informal: organised local government acts as a lobby group rather than as a negotiating partner.

The focus of the federal government's engagement with local government is usually consultation on federal policy or legislation and financial relations affecting local government. Different modes of consultation

are discernible. The most formal mode is local governments' participation in federal institutions through their representatives in organised local government. Less formal is the inclusion of local governments in decision-making processes through various consultation procedures. South Africa is unique in that organised local government is a non-voting member of the second house of the national Parliament, the National Council of Provinces. It is also a member of the peak intergovernmental relations forum, the President's Coordinating Council, along with the provincial premiers. In Spain and Italy, proposals that municipalities get some representation in the federal parliament came to naught. In Spain, organised local government participates in two cooperative structures: the National Commission of Local Administration and the General Conference on Local Matters, the latter being a body that includes the autonomous communities; in Italy, the State-Cities and Local Autonomies Conference meets monthly on matters of common concern. In Australia, organised local government was a member of the Council of Australian Governments, comprising the executives of the federal and state governments, before it was replaced in 2020 by a new 'National Cabinet'. The Australian Local Government Association attends only selected meetings of that new forum.

7.3 Organised Local Government

Given the sheer numbers of local governments in a country, their effective engagement with the state and federal governments on local issues must, inevitably, be channelled through organised local government. South Africa and Austria lead in this regard by explicitly accommodating the need for organised local government in their constitutions. In Argentina, provision for such bodies is made in provincial constitutions.

The role of organised local government in intergovernmental relations varies across countries. In those countries where local governments have no formal relations with the federal government, organised local government acts as a lobby group for local governments, as is the case in the US and Nigeria. In Australia, Austria, Italy, South Africa, Spain, and Switzerland, the relationship has been formalised: organised local government represents its members on a variety of formal and informal state and federal bodies. In Austria, the two organised local government bodies

have become formal negotiating partners, having been given the constitutional authority to sign agreements, such as a stability pact on debt, on behalf of all local governments.

The strength of organised local government bodies lies in their ability to represent the full spectrum of local governments in a non-partisan manner. Only in Mexico and Austria are these bodies loosely aligned to political parties; in the case of Austria party bias, which is declining, is only indirect as it flows from the urban–rural divide of the associations. In the federal arena, single peak bodies representing the full range of local governments are found in Argentina, Australia, Canada, Nigeria, South Africa, and Spain. Given the diversity of interests of local governments, the countervailing trend is the organisation of local governments along the urban–rural divide in Austria, Brazil, Germany, Italy, Nepal, Switzerland, the US, and some Canadian provinces (where there are also divisions along linguistic lines). Separate institutions have been established by the county-type governments in the US, Germany, and Italy. The task of representing the common interests of highly diverse local governments is difficult. Large cities distrust the ability of local government associations to represent their interests adequately and have formed their own associations, as in Argentina and South Africa.

Given the multiplicity of local governments, organised local government may also play a vital role in the development of local government as an order of government. Its task is to advance and defend local governments' common interests in a non-partisan voice. In this endeavour, it labours under some inherent weaknesses. Unlike states, which relate to federal governments in pursuit of their own interests, organised local governments do so in a representative capacity and in circumstances where it is often difficult to forge a common view for different institutions with divergent interests. As voluntary associations, organised local government bodies cannot (except in Austria) bind local governments as an order of government, making them weak negotiating partners from a state and federal perspective. Consequently, large urban municipalities instead develop their own direct relations with the state and federal governments.

8 Political Culture of Local Governance

In most of the countries under review, there is a strong democratic culture in local communities. With the exception of Nigeria and Ethiopia, local elections are held regularly, with varying degrees of popular participation. Although local government is the government closest to the people, this does not translate uniformly into high local interest. Apart from mandatory voting in Brazil, Argentina, and most of the Australian states, from a comparative perspective high voter participation is reported in Austria, India, Nigeria, Spain, and even in Ethiopia (despite having only the ruling party fielding candidates). By contrast, in Canada, Germany, Italy, South Africa, Switzerland, and some Australian states (where there is no compulsory voting), significantly lower levels of voter turnout than in state and federal elections are encountered. An important influencing factor may be whether local elections coincide with state and national or presidential elections. With the ostensible aim of separating local politics from state and national ones, a number of countries hold local elections on separate dates, often mid-term of the national or presidential and even state elections: Australia, Brazil, Canada, Ethiopia, Germany, South Africa, and Spain (when elections are held with those of the autonomous communities).

Increasingly, representative democracy is complemented by participatory mechanisms during elective terms. As noted above, various instruments of popular participation (e.g., referenda, initiatives, and participatory budgeting) are used between elections, although not always with much success. Whereas in Brazil participatory budgeting and community councils are lauded, in Spain the impact of the new instruments of participation has frequently been minimal; in Canada, participation through non-governmental civic organisations, which are issue-orientated, appears to be on the increase. Switzerland prides itself on various forms of direct democracy.

What makes local politics distinct from state and federal politics is that it is by and large a part-time activity drawing on a strong voluntary ethos. Although executive mayors in large cities hold full-time positions, elected councillors in all the jurisdictions occupy their positions on a part-time basis, often with only allowances and their out-of-pocket expenses covered. The voluntary nature of local participation has mixed results. Whereas high interest is recorded in India, candidates for election are

not always forthcoming in the smaller municipalities of Switzerland and Austria.

That local government is closest to the people also does not necessarily translate into elected representatives being reflective of all the sectors of the communities they represent. Women are still under-represented. A common strategy has been the imposition of quotas for women candidates and elected representatives. Under the 1992 amendments to the Indian Constitution, one-third of councillors must be women, and the Scheduled Classes and Scheduled Tribes must also be represented in proportion to their demographic distribution. In Mexico, Italy, and Nepal, a third of councillors should be women. Under Argentine and Spanish law, parity between women and men candidates is required. The 37 per cent female representation achieved in South Africa stems from party-political policy. Whereas India's mandatory obligation of one-third of women also applies to the chairpersonships of local authorities, most countries report very low levels of women in leadership positions.

In most of the countries in this volume, local political life is by and large driven by political parties. No German municipality or Indian *panchayat* is too small for party contestation. In Austria, Mexico, Nepal South Africa, and Spain, party lists are built into the electoral system. In the other countries, municipalities do not escape party politics either. There are, however, some notable exceptions. In the US, Canada, and Australia (except for some cities), the majority of councils operate on a non-partisan basis, although the political parties are always present in the wings. There are sporadic resurgences of a non-partisan approach to local politics; civic movements focusing on single issues are, for example, found in Italy.

In most countries, local politics forms an inextricable part of the national political party system and is therefore dominated by the major national parties. Few local parties have much success at the polls, and independent candidates do not fare well. Inclusion in national party formations has both advantages and disadvantages. Connections with party leaders in the state and federal governments are an important communication channel for intergovernmental relations. This is exemplified by the double mandates of politicians in Switzerland and Austria. The downside is that it is a one-way communication channel marked by the rule of party bosses in the state or federal capitals who crowd out local issues, as in South Africa, Nigeria, and Mexico. The local-state-federal connectivity is further illustrated by the fact that in many countries

local government is the stepping-stone to a career in state or federal politics (Argentina, Australia, Brazil, Germany, and Mexico, for example). Mayors of large cities may progress to higher office. At the same time, national parties have a great interest in determining municipal leadership in major cities. In South Africa and Nigeria, the leadership of major cities is decided at national or state party headquarters. Overall, there is often a disconnect between the constitutional guarantee of local autonomy and the domination of local matters by national parties.

9 Covid-19's Impact on the Role of Local Government

The global Covid-19 crisis of 2020–2022 also had a major impact on local governments in federal systems.[22] They often share responsibilities in key areas affected by the pandemic. In some countries health care is the primary responsibility of local authorities (for example, in India). Furthermore, in regard to education and disaster management, local authorities are either responsible or perform concurrent duties. Most basic municipal functions became vital in combatting the pandemic, including water, sanitation, public order, and cemeteries. Although the praises of local bodies were sung ('courageous crisis managers' in Germany; an 'impressive performance' in India), the question is: Has there been a contraction or expansion of the relative autonomy of local governments where it existed before? Did local government emerge stronger due to the role it played during the pandemic?

Mayors in Brazil and the US became the first responders when the pandemic broke. In Brazil and the US, they illustrated the importance of a multilevel system of government when they took action in the face of federal presidents leaning towards Covid-19 denialism. In the main, local governments were the implementers of national and state policies and directives in the care of Covid-19 patients and prevention of the spread of infection through lockdowns, social distancing, and, later, vaccination measures. There are also numerous examples where they took the initiative in preventative measures as well as in dealing with the social

[22] See Nico Steytler (ed) *Comparative Federalism and Covid-19: Combatting the Pandemic* (Routledge, 2022). In general, see the detailed country studies, including of those forming part of this volume, Jeff King and Octavio Ferraz (eds), *Oxford Compendium of National Legal Responses to Covid-19* (Oxford University Press, 2021).

and economic consequences of the lockdown regimes. Local governments provided various reliefs from local taxes (for example, Argentina, Australia, Canada, Mexico, Nepal, South Africa, Spain, and the US), social support for vulnerable families and persons (food and temporary housing), and financial support for ailing business (for example, in Argentina, Australia, Austria, Brazil, Nepal, Spain, and Switzerland). Due to limited access to funds, the costly funding of social protection and business rescue fell to the federal government.

Despite the important local role of implementing national and state measures and the sharing of relevant competences, there was not, in general, increased inclusion of local governments in federal and state intergovernmental decision-making structures. Where intergovernmental relations (IGR) were weak before the pandemic, they did not necessarily improve (for example, in Brazil under President Bolsenaro and the US under President Trump). In Argentina, by contrast, there were frequent meetings between the federal president, governors, and the mayor of the Autonomous City of Buenos Aires. Where existing IGR bodies worked before the pandemic, their meetings increased in frequency (Austria and South Africa). In Canada, unprecedented collaboration between the three levels of government is reported. In Australia it took a turn for the worse when organised local government, after the abolition of the Council of Australian Governments, did not find a seat at the new peak federal intergovernmental body, the 'national cabinet' comprising the heads of the Commonwealth and the states.

The pandemic's major impact on local governments was financial. The counter-measures taken, particularly lockdowns, led to a devastating reduction in own-source income (through loss of property taxes, fees, and the like) which, coupled with increased expenditure on amelioration measures, resulted in deficit budgets and pressure on financial sustainability. Rescue packages came mainly from federal coffers, which increased local dependency on transfers.

Although the long-term impact of Covid-19 pandemic is yet to be fully appreciated, it is certainly evident in many ways how local governments go about their business. In Germany, continued working from home and online shopping may have deleterious effects on inner city offices and retail outlets, affecting the 'urbanity' of cities. In other countries, such as Nepal, the crisis improved self-reliance and 'a sense of self-worth', with local elected officials being the front-line drivers of the Covid-19

response. The hope is also expressed that due to a job well done, an increase in autonomy is deserved in Argentina, India, and the US.

But the crisis also had a negative impact, showing the marginality of local authorities in Nigeria and leading to the loss of its seat at the federal intergovernmental table in Australia. Italian local governments may become more financially dependent on the central government. The debt burden also weighs down local government finances in Germany, particularly in a quarter of the financially weaker municipalities. In Ethiopia and Spain, no changes are predicted. More positively, the dire financial situation in localities may trigger debates on the financial sustainability of local governments. Overall, no uniform consequence flowed from the pandemic. In some countries local governments proved their autonomy; in others centralisation increased; and among a third group, the status quo prevailed.

10 Emerging Issues and Trends

The emergence of local government as an institution of self-government over the past half-century has seen the slow reshaping of federal systems. Not only has the hierarchy between local governments and states been attenuated, but states no longer exclusively mediate local interests to federal governments. Direct relations between federal governments and local governments are increasing, and local government is emerging, at least in some countries, as a partner in the federal governance system, albeit performing only a junior role.

The role and place of local government in federal systems is dynamic, and the challenges that local governments face and the emerging trends in dealing with them will indicate how federal systems may evolve. Four interconnected issues stand out: (1) the autonomy of local government; (2) the problem of smallness of rural municipalities; (3) the problem of largeness in metropolitan areas; and (4) globalisation.

10.1 Autonomy

Whether local governments play a dynamic role in a federal system depends largely on the degree of autonomy legally accorded to them. Conversely, where there is a processes of centralisation, how successfully can local governments protect and advance their autonomy? Two trends

in the opposite directions are reported. The first indicates a slow whittling down of local governments' status as an autonomous and important level of government. In Australia, there has been in the past decade a significant weakening in municipalities' federal presence, culminating in the exclusion of organised local government from the peak federal intergovernmental relations body in 2020. In India, Nigeria, and Mexico, the concern is the increasing state control over various local decisions.

More common is the complaint that financial autonomy is routinely hollowed out by the assignment of ever greater administrative responsibilities to local government without matching funds. In some countries, the matter has been addressed by legal reforms, such as in Germany, where the reform of the Basic Law seeks to ensure steady and adequate funding for all orders of government in view of their responsibilities. Local autonomy is also undercut where local governments must rely on transfers to fund local functions, thereby creating dependency on such transfers, which come with conditionalities either directly or indirectly. Moreover, the extensive use of tied transfers further reduces the discretion of local governments. Brazilian municipalities risk losing their main tax revenue base in return for transfers. Local autonomy is also internally compromised in developing countries by a lack of local administrative skills, as is apparent in Brazil, Mexico, Nigeria, Nepal, and South Africa.

The second trend is the call for increased autonomy. German cities argue that they have been successful crisis managers with regard to the global financial crisis of 2008, the refugee crisis of 2015–2016, and the Covid-19 pandemic of 2020–2022. Similar arguments are made by American, Argentine, Canadian, and Italian mayors. The calls for greater autonomy come from the urban municipalities in the metropolitan regions that confront the twin challenges of facilitating national economic growth and addressing the stark social inequality associated with urbanisation, particularly in developing countries.[23] These calls are most

[23] Erika Arban, 'Constitutional Law, Federalism and the City as a unique Socio-economic and Political Space', in Ernst Ballin, Gerhard van der Schyff, Maarten Stremler, and Maartje De Visser (eds), *European Yearbook of Constitutional Law 2020: The City in Constitutional Law* (T.M.C. Asser Press, 2021) 323–345. See also the argument that Ran Hirshl is making in general, namely that owing to the prominence of cities the world over, which house the bulk of the population and produce most of the wealth, they should be recognised constitutionally as an essential element of government. Ran Hirshl, *City, State: Constitutionalism and the Megacity* (Oxford University Press, 2020).

frequently resisted by state governments for fear of the spectre of hour-glass federalism—being squeezed thin between the federal government and burgeoning city governments. Any increase in local powers is seen as a zero-sum game—a decrease in state authority. Most Australian states have ensured that metropolitan areas, home of the majority of the population, remain divided into numerous municipalities that pose little threat to the hegemony of the states. Indian states are similarly resistant to expanding municipal power by not assigning all the powers listed in the 73rd and 74th Amendments to local bodies.

10.2 The Problem of Smallness in Rural Local Bodies

A common issue is the growing dichotomy between the relatively few large and powerful urban municipalities (home to the majority of the population and economic output) and the thousands of small rural municipalities, the latter often declining in population and reliant on financial transfers for survival. Whereas the urban municipalities have access to some tax sources, notably property and business taxes, to fund an array of services, small municipalities struggle to raise own revenue. The divergence of interests is also manifest in the difficulty organised local government has in representing all local governments effectively. How, then, is smallness in local government being dealt with? First, the notion of uniform local government institutions, all with the same functions and powers, is questioned—one size does not fit all. In some countries (e.g., Canada, Spain, Brazil, and South Africa), there are calls for asymmetry—more responsibilities and financial resources for the urban municipalities. Secondly, although amalgamations were once in vogue, in the past decade no country (except Switzerland) reported any substantial drives towards enlarging the capacity of municipalities through mergers. Thirdly, the usefulness of having two-tier structures for purposes of coordination and cooperation (such as the provinces in Spain, the district municipalities in South Africa, and the provinces and metropolitan cities in Italy) is questioned. Fourthly, horizontal cooperation and coordination among municipalities has bloomed in some countries. In Brazil, consortia are a common feature, and small Swiss municipalities collectively provide services. Such cooperation may stretch across state boundaries but so too—in the EU—across international borders.

10.3 The Problem of Largeness in Metropolitan Areas

As elsewhere in the world, federations have their fair share of enormous metropolitan areas that spread across municipal and even state boundaries. With the Global South fast urbanising, such areas will grow in magnitude and problems. They are the site of both economic growth and social and economic hardship. Local government stands central in meeting these challenges.

As noted above, however, very few countries have sought to consolidate local governments in metropolitan areas in order to approach services and planning in a unified manner. Where large, consolidated municipalities have been created in the US, Canada, and South Africa, they do not always include the entire metropolitan region. The progressive consolidation of local governments in metropolitan regions to provide a single governance structure is not evident. States seem to prefer to keep a tight rein on metropolitan areas lest they create urban giants that vie with them for resources and power.

The loose consolidation of municipalities in metropolitan areas through a second-tier coordinating body is also limited to Canada and Italy. The state-driven declaration and organisation of 'metropolitan regions' does not seem to have borne much fruit in Brazil. More emphasis is placed on cooperative initiatives by the municipalities in the region to jointly provide functions with spill-over effects.

Increasingly, tripartite cooperation between the three levels of government is also emerging. Since the health of metropolitan areas is vital to the health of the country as a whole, the federal government wants its concerns dealt with. It is thus at the coalface of governing metropolitan areas that the federal character is shifting towards tripartite governance of the three levels of government.

10.4 Globalisation

A further question is the challenge that globalisation poses to local governments, an issue that does not feature much in the chapters of this volume. The competition between cities for global investments through various tax concessions, noted in Brazil and the US, is not a common theme. The regional integration of Europe, however, is keenly felt in the EU member countries of Austria, Germany, Italy, and Spain. More than two-thirds of all EU legislation has a bearing on state and local

governments.[24] Spanish municipalities find some regulations incomprehensible and resistance to supra-national regulation is building up. The participation of local government in the consultative processes of the EU, notably the Committee of the Regions, is thus important but has little clout. Large cities have autonomously entered the international arena in a number of ways—from participating in transnational integration projects, such as Argentine municipalities in Mercosur and US mayors playing roles in international organisations—in the process bringing organised local government together on a global scale.

10.5 Concluding Remarks

The importance of local government as an order of government is likely to grow. In some of the countries, it enjoys a higher level of trust than the other orders of government. Given that local government is closest to the people, its innovative representative and participatory democracy processes and structures are more likely to bear fruit. There are indications that local governments are responding innovatively to the demands of the time by providing a range of new social services (e.g. caring for an ageing population and integrating immigrants) and by responding to environmental matters such as climate change. Their role as crisis managers during the Covind-19 pandemic has also enhanced their status as an effective level of government. These attributes will underscore the value of local governments as a governance partner in federal systems.

In comparison to states, local governments are far more limited in terms of functions, funds, and the freedom to make policy choices. Although the dual federalism model obtains in a number of countries, thus confining local government relations primarily to states, significant shifts—often informal—suggest that local government is recognised as a partner in the business of governance. There is a disjuncture between the constitutional fiction of state subservience and the practice of intergovernmental relations, especially in financial matters.

Overall, local government's autonomous role in the governance of some countries is significant enough to define the federal character of that country. Although local government is as yet, at best, only a 'half' or 'junior' partner, multilevel governance is an emerging reality.

[24] See Carlo Panara and Michael Varney (eds) *Local Government in Europe: The 'Fourth Level' in the EU Multilayered System of Governance* (Routledge, 2013).

Index

N. Steytler (ed.), *The Forum of Federations Handbook on Local Government in Federal Systems*,
https://doi.org/10.1007/978-3-031-41283-7

H

I

T