



Comparative Conclusions

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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.

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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 km², the US (9.8 million km²), Brazil (8.5 million km²), Australia (7.7 million km²), India (3.2 million km²), and Argentina (2.7 million km²). Even the remaining countries, ranging from Mexico (1.9 million km²) to Italy (301,000 km²), dwarf the two smallest countries in the sample, Austria (83,000 km²) and Switzerland (41,000 km²). 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 governments⁸ 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 1980s. 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 [*municípios*], 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 inter-governmental 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 Raffler (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 Bolsonaro 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 inter-governmental 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 Stremmer, 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 Covid-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).

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