

# Comparative Conclusions

N I C O   S T E Y T L E R

The classical model of federalism is premised on two orders of government: the federal government and the states (or provinces, *Länder*, or cantons). Local government was not recognized 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. 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 recognized 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 regions. Large municipal governments that have been formed in metropolitan regions 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 organizations 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. In some countries, there has been constitutional recognition of local government as an order in its own right. 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.

#### COUNTRY CHARACTERISTICS

The twelve federal countries in this volume have very different origins, structures, and dynamics. Material factors that not only influence the federal systems as a whole<sup>1</sup> but also have a bearing on local government’s functioning are the geographical, demographic, economic, and political contexts in which they function.

Canada, the United States, Brazil, Australia, and India have among the largest geographical areas in the world, with sizes ranging from Canada’s 9.9 million square kilometres to India’s 3.2 million square kilometres. Even the remaining countries, ranging from Mexico (1.9 million km<sup>2</sup>) to Germany (357,000 km<sup>2</sup>), dwarf the two smallest countries in the sample, Austria (83,000 km<sup>2</sup>) and Switzerland (41,000 km<sup>2</sup>). Due to the geographic vastness of thinly populated areas 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 (1.1 billion) and the United States (303 million), large numbers of local governments have been established. The population sizes of the next group of countries – Brazil (184 million), Nigeria (144 million), Mexico (103 million), and Germany (82 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 (48 million), Spain (44 million), Canada (33 million), and Australia

(21 million) – where South Africa and Australia have a fraction of the local governments of the others, even fewer than the two smallest countries: Austria (8.3 million) and Switzerland (7.6 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 urbanization.<sup>2</sup> Between the United States (83% urbanized) and Australia (75%) fall Canada, Brazil, Spain, Germany, Switzerland, and Austria. In developing countries, a low to medium level of urbanization is found – India (25%), Nigeria (50%), and South Africa (58%) – although this is changing rapidly. Setting the trend is Brazil. In 1970 it was only 56% urbanized, a figure that had jumped dramatically to 81.2% by 2000. Mexico also moved quickly to its current level of 65%. 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 discernable. The first includes some of the richest countries in the world – Switzerland, Canada, Austria, Australia, the United States, and Germany – with between US\$58,000 and US\$36,000 per person (with Spain making considerable ground since its entry into the European Union). The middle-income group includes Brazil, Mexico, and South Africa, with between US\$9,000 and US\$12,000 per person.<sup>3</sup> India and Nigeria make up the low-income group, with US\$2,200 and US\$917 per person respectively. Both the middle- and low-income countries display enormous disparities in wealth, with Brazil and South Africa having the world's highest Gini coefficients of inequality. With the rapid growth in the economy of India, existing inequality will be further exacerbated. The *combination of urbanization and poverty* places local government at the coal face of intense demands for local services.

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 multilingual countries, such as Canada, India, and Switzerland. In other multilingual countries, such as South Africa and Nigeria, central regulation of local government minimizes the significance of cultural or linguistic diversity.

The countries are more or less evenly divided between presidential and parliamentary systems. The governance model of the national and state governments is most often replicated for local government.<sup>4</sup> 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.

The governance systems of the twelve countries function within significantly different political milieus. A stable party system is found in the United States, Switzerland, Canada, and Australia, as well as in Germany and Austria (following the Second World War) and in India (after Independence in 1947). The remaining five countries achieved democratic governance in the last quarter of the twentieth century, moving from authoritarian, military, minority, and one-party dominance to democracy. However, a stable party system is yet to develop in Brazil, and one-party dominance features strongly in South Africa 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.

## HISTORY, STRUCTURES, AND INSTITUTIONS

### *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 the colonial British as “the little republics” because of their democratic nature. In Europe local government institutions have equally ancient origins, predating the nation-state in Spain and Germany. Along with colonial rule, the colonies of the British Empire received the English local council structures. In the United States, 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 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 predated 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 nondemocratic countries was often linked to decentralization.

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, organized around Mahatma 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 democratization and decentralization also featured in Nigeria, Brazil, and South Africa. In the first steps toward civilian rule in Nigeria in 1976, local government was reorganized 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 recognized as a constituent member 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.

The argument that the emergence of strong local governments in Brazil and South Africa was influenced by the desire of the federal governments to cut back on the powers of the state governments<sup>5</sup> has some merit and may also have some explanatory value in Nigeria and India. The Nigerian reforms of 1976 were in part a response to the mismanagement of local government by the state governments. The 1993 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 decentralization with democracy has had on the evolution of local governments in these countries.<sup>6</sup>

### *Local Government Institutions*

In comparison to the 271 state government institutions (excluding federal territories) in the twelve countries, there are nearly 370,000 local government institutions. Like the states, local governments cover the entire land surface in most countries. The exceptions are the two largest countries – Canada and 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 substate 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 also are 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 also prevalent. 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 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.

*Basic multipurpose unit* 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 United States, Canada, and South Africa, to small rural municipalities with no more than a few hundred people in Germany, Spain, Switzerland, Austria, India, 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 over 2 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 the rural-urban divide is present in all the countries, only in India is a formal distinction drawn in the Constitution between rural and urban local governments, with the main difference being the scope and nature of powers and functions.<sup>7</sup> In contrast to this formal urban-rural divide, the demarcation of South Africa, with a population of 48 million, into 283 very large municipalities has explicitly sought to link rural hinterlands with urban centres.

*Two-tier structures* Often following the urban-rural divide are umbrella municipalities that function in the same geographical rural areas as a number of the basic-unit municipalities, thus splitting local government competences and functions between two spheres of government. This is not, however, the norm, and half the countries in the sample (i.e., Australia, Austria, Brazil, Mexico, Nigeria, and Switzerland) have a single-tier system. 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 fifty provinces (as local government entities) coordinate and provide services for over 8,000 municipalities, of which more than 80% have fewer than 5,000 inhabitants. This pattern is also reflected in Germany and India, where the two-tier system finds specific application in the context of the urban-rural divide. Germany's 323 counties (*kreise*) exclude the 116 urban municipalities (with more than 100,000 inhabitants) and serve the remaining 12,125 municipalities, 40% of which have populations of fewer than 1,000 persons. Running counter to this pattern is the grouping of South Africa's 231 nonmetropolitan municipalities into forty-six 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.

*Single-purpose municipal governments* Found in the United States, and to a lesser extent in Canada and Switzerland, are single-purpose local governments. They perform important functions in the United States, 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, whereas in Switzerland only six cantons still have "school municipalities," the general trend being for the single-purpose municipalities to be incorporated into the multipurpose political municipalities. 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 services more effectively and efficiently.

*Indigenous local government institutions* In the American, African, and Asian countries that were subject to European colonization, indigenous populations or indigenous forms of governance often continued to exist alongside or to intersect with local governance. The approach in the United States, Canada, Australia, and Brazil has been to regard matters of indigenous communities and their welfare as either a federal or state issue, removing them from the domain of local government.<sup>8</sup> This neat division of competences, however, does not reflect the demographic distribution of indigenous populations. In Canada, for example, more than half of aborigines live outside recognized indigenous territories, but the federal government does not take responsibility for them, and the costs of services are generally borne by the provincial and local governments.

The second approach has been to recognize indigenous governance structures as legitimate and on par with the formal, democratic local government institutions. Mexico has fully 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 recognized in Oaxaca State, where, in 2006, 421 of 570 municipalities were so governed. In India the 73rd Amendment of 1993 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 that 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 (limited to 20% of council membership and without the right to vote).

### *Multiplicity and Consolidation of Local Government Institutions*

In comparison to the twelve countries' limited numbers of states, most countries have a large number of local governments. In India 243,095 local governments serve the interests of 1.1 billion people. In 2007 the United States had 89,476 local institutions. The European countries have uniformly high numbers of local governments (Germany, 12,241; Spain, 8,151; Austria, 2,358; and Switzerland, 2,775). Brazil and Mexico, with 5,563 and 2,445 municipalities respectively, also reflect this pattern. Only Nigeria (770), Australia (around 700), and South Africa (283) have fewer than 1,000 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 United States, Canada, Germany, India, Spain, Austria, and Switzerland) have ratios of between 3,000 and 8,000 citizens per local government. For the second group, the average number of persons per institution ranges from 33,000 in Brazil to 36,000 in Australia and 42,000 in Mexico. In the last group, South Africa and Nigeria have an average of 169,000 and 186,000 residents per municipality respectively.

Due to the high level of urbanization in most of the twelve countries, the averages are misleading; the vast majority of municipalities have very small

populations. For example, more than half of Switzerland's municipalities have fewer than 1,000 inhabitants. The same holds true in Germany, Spain, the United States, Canada, India, Brazil, and Mexico. The large numbers of municipalities with very small populations reflect the processes of industrialization and urbanization that took place during 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 9,000 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 nonpartisan 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 localized interests it represents. Austria, where the small village-type municipality is set to become entrenched constitutionally, perhaps best illustrates these sentiments.

In contrast to the village notion of local government, there are movements in Australia and South Africa to create much larger local government units through consolidation as well as a movement in Nigeria to prevent an increase in the number of local governments. Apart from the United States, where there has been an increase in the number of special districts over the past fifty years, Brazil is the only country where there has been a strong increase in the number of local governments during the past twenty years, a movement driven by perverse fiscal incentives that were eventually stopped by federal intervention.

The motives behind consolidating municipalities in South Africa and Australia (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 spillover effects. These goals are valued in most countries, but consolidation efforts have mostly not met with success, mainly because of voter resistance. In Australia and South Africa, consolidation was possible because it was effected without voter approval – in Australia by the states 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 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 Canada, for example, a few urban municipalities are a force provincial governments have to reckon with: Winnipeg has 55% of the population of Manitoba, Halifax 31% of Nova Scotia, Calgary 30% of Alberta, Montreal 21% of Quebec, and Toronto 20% of Ontario. As Robert Young observes: "This weight confers political strength, despite municipalities' constitutional weaknesses." Likewise, 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. With reference to Spain, Francisco Velasco Caballero reports that "the great differences in size are a source of the various dysfunctional elements in the structure of local government because the interests of the larger municipalities are difficult to reconcile with those of the more numerous smaller ones." For example, the large Spanish cities question the need for provinces, whereas the smaller ones depend on them for survival. The divergence of interests also manifests itself in organized local government. Although the high number of municipalities makes a unified voice of local government essential, the divergence of interests makes organized 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.

### *The 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 Paulo, Mexico City, Mumbai, New York, and Lagos. The New York metropolitan area includes 22 million people. The Mexico City metropolitan area houses over 18 million (almost 20% of the country's entire population) located in the Federal District and three states. Greater Mumbai has 16.4 million people, and Sao Paulo has 19 million. The urban complex of Lagos is regarded as the fastest growing mega-city in the world,<sup>9</sup> with an estimated 2006 population ranging from 9.1 million to 17.5 million. These metropolitan regions 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.

Three broad approaches to metropolitan governance can be discerned.<sup>10</sup> 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 bypasses local governments altogether, locating metropolitan-wide governance in the hands of the states. Where states dominate local government, no single approach is usually followed. Michael Pagano shows that the major characterization of the regional governance models of metropolitan areas in the United States has been their heterogenous adaptation to their environments. Similar variations are also found in Australia and Canada.

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 1999 and in South Africa between 1995 and 2000. The organization of the Montreal metropolitan area in Quebec still reflects this model.

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 over 2 million people comprises only a portion of the larger Toronto metropolitan area and thus remains too small to manage regional transport and land-use planning, matters in which the Province of Ontario has taken the lead. That there are three contiguous metropolitan municipalities in Gauteng Province in South Africa shows the difficulty of consolidating an entire metropolitan region.

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 Germany new administrative entities – higher level associations of municipalities (e.g., Region Hanover and Region Stuttgart) – have been established to fulfil local public tasks.

In a number of countries (e.g., Mexico, India, Brazil, and Nigeria), effective cooperation is not always achieved. The Mexico City metropolitan area incorporates nearly eighty municipalities in three states, plus the sixteen divisions of the Federal District. 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. A worst case is probably the metropolitan region of Lagos, Nigeria. Habu Galadima observes that the twenty municipalities comprising the state of Lagos divide, rather than unify, the urban region.

Where metropolitan areas have been balkanized 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.<sup>11</sup> Apart from Brisbane (which contains 40% of the metropolitan region's population), the major state capital cities of Sydney, Melbourne, Adelaide, and Perth are fractured into a number of small municipalities. 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 thirty-two 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.

Consolidated large-city governments, in contrast to the myriad small local government structures, command considerable resources and political clout. They clamour for more power and resources, which brings them into competition with state governments. Mayors of large cities become better known internationally than their state premiers.<sup>12</sup> The national leader of the opposition in South Africa dons the mayoral chain of the City of Cape Town rather than take a seat in the national Parliament. The consolidation of resources in large urban municipalities produces autonomy, which brings competition with state governments. It is thus not surprising that state governments in Australia and Spain eschew the growth of metropolitan local governments.

The relationship is not always one of competition but often materializes in cooperation and coordination over a range of areas because even the most consolidated local governments do not include the entire metropolitan area. The cooperation may also extend to the federal government. As metropolitan regions are important to the health and wealth of the nation, federal governments also engage directly with metropolitan governments.

*Federal Capital Cities*

Only some capital cities (e.g., Delhi, Mexico City, 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) the capital has no special status and is governed by local governments as any other city.

In a number of countries, to avoid favouring any constituent state, 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 approves the budget of the capital but leaves the governance of the city to an elected local authority. Nigeria followed this example. Although the newly created 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.

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 semistate status, its government doubling up as the local authority. Brasilia, 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. The Federal District in Mexico City was subject to federal control before being given the status of a state in 1997.

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 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 (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.

#### CONSTITUTIONAL RECOGNITION

The experience across the twelve 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.

In the classic dual federal systems, with a clear division of powers and functions between the federal and state governments, local government falls within the latter's jurisdiction. In the constitutions of the United States 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. The Anglo-American model of dual federalism was also followed when the federations of India and Nigeria were founded in 1949 and 1954 respectively. 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. The only exception is Austria, where local government is defined by the notion that the "free municipality [is] the basis of the state," as echoed in its 1920 republican Constitution. 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 decentralization. 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 democratization and decentralization was drawn much more forcefully when Brazil emerged from military dictatorship in the late 1980s. The Brazilian Constitution of 1988 not only defines the federation as comprising states and local governments, but the latter's powers and autonomy are spelled out in detail. South Africa in its emergence from 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 also be ascribed to the process of redemocratizing 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 dominant reason for the constitutional recognition of local government in the 73rd and 74th Amendments to the Indian Constitution in 1993 was to bind states to democratize localities, based 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 1993 amendments retained 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.

#### *Forms of Constitutional Recognition*

In the nine 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 on par with the states, thus keeping the dyadic nature of the federal systems more or less intact.

In all nine constitutions, there is some reference to the principle of local self-government. In the Mexican Constitution it is evoked by reference to "free municipalities."<sup>13</sup> The Swiss Constitution guarantees the "autonomy" of municipalities.<sup>14</sup> South Africa's Constitution confers on a municipality "the right to govern on its own initiative."<sup>15</sup> 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 and South Africa), the powers of local government (India, Nigeria, Brazil, and South Africa), access to revenue and taxing powers (Germany, Brazil, and South Africa), 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 operationalized 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 falls within the domain of the states. Mexico, India, and Nigeria follow this path. The detailed provisions of their 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 1993 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* or 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 operationalized by state law. It is thus argued by Galadima that Nigeria’s Constitution does not guarantee the autonomy of local government, only the democratic election of local councils.

In the second group of countries, characterized by more centralized federal systems, the regulation of local government is a concurrent function exercised by both the federation and the state. In Germany, Austria, Spain, and South Africa, 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 – the state being responsible for fundamental regulation and the autonomous communities for the nonfundamental aspects.<sup>16</sup> The result is that there is a fair measure of uniformity in the local government system.

The constitutions of Brazil and South Africa set local government in these two 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 when it states 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 recognizing local governments as

constituent parts of the federal structure has led, *inter alia*, to the inclusion of organized local government in national institutions, such as South Africa's National Council of Provinces. In both 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 national government plays the dominant regulatory function, prescribing the form, functioning, and financial management of local government in detail. However, the hierarchy of a dyadic system is still evident. Provinces are still constitutionally mandated to supervise municipalities and may in prescribed circumstances intervene, including by dismissing elected councils.

#### S U B N A T I O N A L C O N S T I T U T I O N A L R E C O G N I T I O N

Given the general view 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 their state constitutions. 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 services. As Pagano notes, home-rule provisions have been granted by states that believe in increasing the authority of local governments, whereas others have kept the scope and authority restricted. 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. The recent reforms of the statutes of autonomy in Catalonia (2006) and Andalusia (2007) have increased the scope of regional powers and afforded more local autonomy. The ability of these statutes to trump the

“fundamental” central government laws over local government, however, is contested. In contrast, many state constitutions in Brazil do not yet recognize the increased autonomy of local government achieved under the 1988 Constitution, minimizing municipal competences via provisions that are regarded as unconstitutional.

### *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. Foremost, recognition is some brake on state power. In India it was only after the 1993 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 may scupper the realization of local self-government. Nigeria 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 the 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. However, as Martin Burgi reports, constitutionally entrenched local self-government may often be a fiction in Germany; the complaint is that very detailed federal and state legislation – and even European Union (EU) regulations – often leaves little to the general competence of local government.

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. Local government’s constitutionally listed power to reticulate electricity continues to prevent the national government from restructuring the electricity industry by conferring that power on parastatals. 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 has mainly been the large metropolitan municipalities that have been able to reap the benefits of their constitutional status.

Constitutional recognition is not a prerequisite for local autonomy. In Australia a measure of financial autonomy has been achieved despite the

absence of constitutional recognition. Yet constitutional recognition remains on the political agenda. Although two attempts to amend the federal Constitution failed in 1974 and 1988, the matter is again on the agenda of the new Labour government. Without local government's inclusion in some manner in a constitution, the fundamental dyadic structure of the federal system remains intact despite increased statutory powers, as the Canadian experience suggests. Some provinces (i.e., Alberta, British Columbia, Ontario, and Manitoba) have sought to imbue local governments, particularly the cities, with greater autonomy through ordinary legislation, conferring on them so-called "natural person" powers to do anything to achieve local government purposes, provided it is consistent with federal and provincial law. Young's assessment of these developments is that they have not fundamentally transformed the constitutional nature of local governments or their finances.

#### GOVERNANCE ROLE OF LOCAL GOVERNMENT

The role that local government plays in the governance of a country varies from country to country and from state to state. In some countries, local government is responsible for around one-quarter of all government expenditure, providing a host of services. In others, its contribution to overall government expenditure and provision of services is much more modest. Its governance role is further defined by a double mandate – one derived from its constituency, the other from states and the federal government. Both the scope of functions and the lines of accountability shape local government's status as an autonomous order of government.

##### *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 have thus 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. The dual nature of local governments often stems from their origins as parts of state governments. The US counties were originally administrative units of the states, and they still provide social welfare as an assignment from the states. A more functional reason for the dual nature of local governments is that, being closest to the people, they perform tasks more efficiently and effectively.

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. Most countries report 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 followed 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. In Canada the list of prescribed activities has grown steadily, but this has occurred increasingly without new financing. This is a predicament shared also by local governments in Australia, South Africa, Mexico, and Switzerland.

The functions assigned exclusively to local governments are infrequently captured in constitutions but more usually prescribed in state (and sometimes federal) legislation. Only in Brazil and South Africa do local governments draw directly from the Constitution for the delineation of their powers. Although such powers are thus protected from incursion by the 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. Concurrency between all three spheres of government is prescribed in the Brazilian Constitution with respect to education, health, and social assistance. 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.

Although local government functions are listed in the Indian, Nigerian, and Mexican constitutions, these provisions must be actualized 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 Germany, Switzerland, and Austria, where the principle of local self-government is constitutionally protected, local governments may act within this restricted autonomous sphere. 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 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 realization.

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 United States 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. Most Australian states give local councils the power of "general competence." In Canada this is done, as noted above, by conferring "natural person" powers on local governments. 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 Germany local governments have a "general competence," meaning that a local authority does not act illegally if it takes measures in an area that is not explicitly given to it by legislation, the only exception being the need for a legal basis for measures regulating or restricting rights and freedoms of individuals. In Spain, too, local governments engage in new tasks without express authorization – for example, in providing social services, such as the integration of immigrants.

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 others, a uniform approach to the distribution of powers and functions within a state is usually prevalent. For example, in Australia all councils operate under the same state legislation, regardless of location, size, or capacity.

### *Focus of Powers and Functions*

Although there are numerous differences in the scope and extent of the functions typically performed by local governments, there is also a large measure of coincidence. Generally speaking, the coincidental functions concern basic household utilities (such as water, sewage, 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 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. Second, social welfare (including social security) is not a local function in Mexico, South Africa, Nigeria, Spain, and India. Third, 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, and Spain. Local police can be found in Austria (but only in a few municipalities), Brazil (in a few cities but with limited authority), Canada, India (in a few large cities but with limited authority), South Africa (only in metropolitan municipalities), Spain, Switzerland, and the United States (where local police are numerous and exercise substantial authority). The functional area of policing illustrates the general point about the imprecise nature of comparisons across jurisdictions; the types of public security provided by local authorities vary enormously, and the practice within a country is often hugely divergent. Fourth, health services are not provided by Spanish or, except for limited environmental healthcare, 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, and India, concurrency is mandated in the 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. The high level of cooperation in Switzerland, however, has led, in a number of areas of overlapping jurisdiction, to political entanglement (*Politikverflechtung*). There are tightly interwoven policy structures, with no sphere taking a strong lead in areas such as roads, energy, public health, and social assistance. Without clear allocations of responsibilities and decision making, accountability to constituencies inevitably suffers.

Following the practice of other orders of government (and at times at their behest, as in the State of Victoria in Australia), local governments increasingly apply the business model of New Public Management to deliver services. They corporatize municipal administrations, create public entities under their control, or privatize services altogether. In Canada quasi-independent institutions, agencies, boards, and commissions have been

created in order to insulate administration from political pressures and allow expertise to dominate.

In the United States the catch phrase that government should steer and not row is reflected in the private sector's engagement in service provision. In Germany the focus is also 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 toward privatization. This is also the case in Australia, Spain, Switzerland, and Austria. In Canada there also is a clear but contested trend toward outsourcing services through public-private partnerships. The contestation has been the most pronounced in Brazil and South Africa. Although the Brazilian Constitution allows municipalities to outsource municipal functions such as public transportation and waste management, private-sector provision of services faces political opposition because it is seen as hurting the poor. There has thus been little movement toward the privatization of essential services.

A distinguishing feature of local service delivery is the use of consortia formed by a number of local governments. Due to the large numbers of small local governments, the benefits of economies of scale, and the consolidation of skills and resources, particularly in urban areas, intermunicipal agreements are often encouraged and facilitated by federal and state legislation and incentives. Consortia are also formed between municipalities and state governments, and in Brazil 20% of municipalities are in consortia with states on health, education, and social assistance.

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. At the top end of the scale are countries where local governments are responsible for approximately one-quarter of total government expenditure, namely the United States, Switzerland, and South Africa. There is a middle group of countries where local government's contribution is around 15%, namely Brazil, Austria, Germany, Spain, and Nigeria. At the low end of the scale, with a limited contribution of between 5% and 8%, are Australia, India, Mexico, and Canada. 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 in Australia is a mere 6.4% of the total expenditure. 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 the United States and Switzerland is there a measure of equivalence.

The size of local government's contribution to the national expenditure is not necessarily linked to the size of its personnel complement. Given that much of local government's services are labour-intensive rather than cost-intensive, local government employees' portion of the total of all civil servants is considerably higher than their portion of local government's expenditure contribution. In Switzerland, Germany, Canada, and Austria, local administrators constitute approximately one-third of the entire civil service. In the United States the figure jumps to nearly two-thirds. In Spain, Nigeria, and Brazil, the figure is around one-quarter, whereas in the rest of the countries the figure is below 15%. Again, the significant variable is the provision of education.

### *Institutions Exercising Power*

One of the principal strengths of local government is the democratic ethos of exercising public power. It is indeed the only order of government where, due to the smallness of its constituent parts, direct democracy in the form of assemblies can be practised. The norm, however, is the election of representative councils and executives, often complemented by participatory governance. The predominant ethos is also that elected representatives perform voluntary public service on a part-time basis. In contrast to the other orders of government, there is often 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 7 councillors in the smallest local municipality to 210 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 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. Second, Canadian and Australian landowners, as rate payers, 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 United States, Nigeria, Mexico, and Brazil. However, in a number of countries with an imbedded parliamentary tradition, the trend is toward direct elections. Both systems are present in Switzerland, India, Canada, Australia, Germany, and Austria. Only South Africa and Spain are the exceptions. The trend has been prompted, Burgi

observes with reference to Germany, by the effort to boost electoral turnout and increase democratic legitimacy. He also reports that this has made mayors more independent of councils and has increased their political influence. In Austria, where direct elections take place in six of the nine *Länder*, the experience is that the combination of the parliamentary and presidential systems does not always work well in practice where there is no political alignment between the mayor and the council.

In the presidential system the separation of powers between the executive and the legislature follows automatically. In the parliamentary system (i.e., Canada, Australia, India, Spain, and South Africa), both legislative and executive functions are fused in the council. In South Africa even 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 parliamentarization 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.

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 still survives in the least and most populated countries in this study. In a number of Swiss cantons, there are still municipal assemblies where the 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. Fewer than 20% of municipalities have a local assembly, and as Andreas Ladner reports, the rate of participation in municipal assemblies is rather low, decreasing drastically as the size of the municipality increases. In India the inclusion of all eligible voters in a *panchayat* (village assembly) is aimed at ensuring direct democracy. Although these assemblies are statutory bodies, their role is not yet significant because state governments have not devolved specific functions to them.

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 United States, 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 privatization of municipal services. Some cities in Brazil have been at the forefront of participatory budget processes. Only in Nigeria is little progress reported with regard to popular participation in local governance.

The relationship between local political structures and municipal administrators is a further reflection of the contested nature of local self-government. In some countries, autonomy over the hiring and firing of personnel is seen as an essential component of local self-government, whereas in others a high level of state control is exercised over all aspects of the administration. In Germany the employment and dismissal of administrators is seen as part of the right to self-government. The same could be said of the United States, Canada, Australia, and South Africa. At the other end of the scale is India, where the system of urban administration is centrally controlled. As members of the Indian Administrative Service, senior officials are appointed by the state, which directly impacts the relationship between the elected council and the officials. Dominant is the so-called “Bombay model,” in which the state appoints a commissioner as the chief executive officer of a municipal corporation, granting this individual enormous executive power. This leaves the mayor devoid of powers and authority and reduces elected councillors principally to an advisory capacity. In the rural areas, most of the *panchayat* staff are delegated state employees. In Nigeria the states also control the appointment of senior levels of local administrations, leaving only lower-level appointments to local councils. Given state jurisdiction over local government, both approaches can be found in one country. In Austria, for example, some states require the approval of every appointment and promotion, whereas others leave these decisions mostly in the hands of the elected council.

Even where the 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, as reported from Australia, the line between policy and administrative decisions is often blurred, giving rise to tensions between politicians and administrators.

In the developing countries in this study, local administrative capacities and resources are spread very unevenly, with the more numerous rural municipalities being poorly skilled and ill-equipped to govern effectively. In Mexico fewer than 40% of municipalities have budget planning and evaluation units, and one-sixth of municipalities do not yet use computers for bookkeeping purposes. In South Africa many rural municipalities are functioning poorly, with frequent protests against poor service delivery. As in Nigeria, corruption is becoming endemic, prompting greater provincial and national intervention. Without skills and resources, local self-government is a mirage.

#### 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, overreliance 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. 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. As Luiz Cesar de Queiroz Ribeiro and Sol Garson note with respect to Brazil, the reality is that "the budget composition of municipalities shows a deep contrast between their financial status and their political autonomy." That there should be transfers of funds to local governments is inevitable where local governments also perform delegated functions, but it is a question of degree. To what extent are local governments able to make decisions reflecting the policy choices of their constituencies? The source of transfers also reflects on the constituent parts of the federal system. Direct transfers from the federal government to local governments breach the usual dual nature of the federal system, often establishing direct intergovernmental relations between the two orders of government without states mediating that relationship.

There are marked differences in the levels of financial self-reliance enjoyed by local governments in this study. In half the countries, local governments show a high to medium level of financial self-reliance in collecting the bulk, or more than half, of their revenue: Australia (90%), South Africa (86%), Canada (84.1%), and Switzerland (76.8%), followed by Spain (68%), Germany (68%), and the United States (64%). Collecting less than half but more than one-third of their income are local governments in Austria (48%), Mexico (41.9%), and Brazil (32.3%). With very modest independent income are local governments in India (6.7%) and Nigeria (3.4%). There are a number of contributing factors. The high level of self-reliance in South Africa, Australia, and Canada 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, uniquely, impose and collect an income tax. Without access to this revenue source, local governments in the mid-range countries that provide social services – Germany, Austria, Mexico, and Brazil – are reliant on sharing in certain revenue streams with either states or the federal government. The dependency of Indian and Nigerian local governments is largely due to their limited taxing powers.

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 depend on transfers. The observation of Queiroz Ribeiro and Garson with reference to Brazil, that the smaller the municipality, the larger the gap between political and financial autonomy, is also applicable to many other countries.

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 dominance 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. In contrast, in the more centralized federal systems, such as Spain and South Africa, national laws govern municipal finances.

Although local financial management is tightly regulated by states, the latter's point of departure is that local governments are responsible for their own financial health. The federal or state governments do not automatically stand as guarantors for local debt. In Germany, for example, there are no bail-out provisions for bankrupt municipalities. In Brazil the Fiscal Responsibility Law of 2000 prohibits the federal government from assisting subnational governments experiencing financial problems related to debt.

### *Own Revenue Sources*

In general, local governments in this study have limited access to exclusive revenue sources. Only in South Africa and Brazil 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 rates and commercial taxes. The second stream is income generated by the trading (or selling) services. The third general source is borrowing.

Property taxes (also referred to as property rates) have traditionally been the principal source of revenue for local government, usually allocated exclusively to this order of government and even enshrined in the constitutions of Germany, Mexico, and South Africa. In a number of countries (i.e., Canada, Australia, Spain, and India), property rates are the mainstay of income. In the United States, for example, they are the main source for school districts and townships, whereas counties and municipalities have diversified, relying much more on their trading services. As a

type of wealth tax, property rates generate little income outside the urban areas and, in Mexico, are not even levied in rural areas.

The power of municipalities to set their own rates shows much variation between countries and within countries. In Australia, for example, local councils enjoy a substantial measure of autonomy in setting rates, but in New South Wales they must secure state permission to increase rates beyond a certain percentage.

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, India, and the United States. Other reasons are more technical, such as outdated valuation rolls in Brazil and 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 safer option of calling for more intergovernmental transfers.

In a number of countries, property rates are not the dominant tax. In Germany and Austria it is commercial or payroll taxes. In the United States 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; one-third of total individual taxation is levied and collected by them. Then there are 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.

Local governments providing water, electricity, and other trading services usually generate income from this source, which is used to cross-subsidize other nonpaying services. In Mexico service charges are even a constitutionally protected source of revenue for local governments. In the United States 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 and tightly controlled by state and/or federal law. Not only is their borrowing keenly regulated, but in a number of countries authorization of superior orders of government must be sought. 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 Spain, the latter require the authorization of the autonomous community 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 (i.e., Australia, Brazil, Canada, India, Mexico, Nigeria, and South Africa), with Germany being among the exceptions. The pattern of borrowing is very similar: it is done mostly by a few large urban municipalities, often by floating bonds.

### *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, as noted above, there are a significant number of countries where local governments are dependent on transfers. Second, federal governments are increasingly the main source of transfers to local government. Third, the increased use of tied transfers (conditional grants) in a number of countries adversely impacts 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 United States and Canada and in Switzerland, where the cantons are the only source of transfers. In others, states play a small or insignificant role in transferring own funds to local governments.

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% of the revenue generated by states, although the situation in practice may be different. A particular source of revenue can also be earmarked for sharing, such as the gasoline tax in the Canadian province of Manitoba, the sales tax of Brazilian states, and state entertainment taxes in India.

As these transfers flow from "entitlements," they are usually untied. However, they are also complemented by a range of conditional 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 a significant number of countries, the transfers by states are merely federal funds being relayed to local government, although the state role

sometimes 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 (i.e., Australia, Spain, South Africa, Nigeria, India, Brazil, Mexico, Germany, and Austria), transfers to local government emanate from the federal government. In some, such as South Africa, Brazil, and Austria, the transfers are direct 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, and Nigeria, 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% 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 most often these are ignored. A recurring theme in most countries is the equalization of resources as a distributive principle of both the federal and the state governments. The exception is Brazil, with the result that horizontal imbalances have increased.

Direct specific-purpose federal grants are found in all countries (except Switzerland), even in those countries where dual federalism is dominant, such as the United States, Canada, and Australia. In Australia municipalities receive specific-purpose grants for roads directly from the federal government, contrary to the Constitution. In the United States 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 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 federal Constitution was recently amended 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 its 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. Queiroz Ribeiro and Garson comment that even in Brazil, where local government enjoys the most elevated status as an order of government, the major cities (where own revenue is significant) cannot be considered financially autonomous due to the extensive earmarking of funds by the federal government and the states. Even so, there are also indicators pointing to greater local autonomy and a multisphere 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. Second, 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 financial relations. In Spain local governments are demanding a greater share in centrally raised taxes. Canadian municipalities want access to taxes that grow with the economy, such as sales taxes and income taxes. On the agenda in Germany are changes to the Basic Law aimed at providing steady and adequate funding for all orders of government in accordance with their respective duties. Political emancipation is an empty shell without the concomitant financial powers and resources. This is not, however, a static situation. In the United States federal relations with local governments have waxed and waned according to whether the federal government's relationship with state governments has been accorded primacy over its relationship with local governments.

*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,”<sup>17</sup> they operate in a tightly controlled environment. Only in Switzerland is cantonal supervision weak. Control is exercised, first, by prescribing a regulatory framework for financial decisions, including the proscription of deficit budgeting. The regulatory framework is followed by close supervision through various reporting mechanisms. In this context, the auditor general in the common-law jurisdictions and the more powerful courts of auditors in the civil-law jurisdictions play an important monitoring role. The most severe form of supervision is where certain financial decisions require prior state approval. For example, some Indian states require clearance for spending above a stated maximum. In Mexico and Nigeria local budgets must be approved by the state legislatures.

Expenditure decisions are also directly or indirectly shaped by the superior orders of government. Brazil is unique in that its Constitution prescribes that municipalities should direct no less than 25% of tax revenue and major grants to education and no less than 15% to health. Although the spending power of Spanish local governments is formally very extensive, budgets are in reality conditioned by other orders of government, as central and regional laws determine tasks for which provision must be made locally.

**SUPERVISION OF LOCAL GOVERNMENTS**

Financial control of local governments is but one aspect of the supervisory role that states routinely play. In most countries, states also have various intervention powers, including the dismissal of democratically elected councils. Both the extent of these intervention powers and their practice further elucidate the space of local self-government. Given that supervision (and the variety of intrusions permitted) goes to the heart of local autonomy, local governments may defend their autonomy before the courts in the countries where local government is constitutionally recognized.

In accordance with the dual model, where local government falls within the competence of states, supervision lies at the core of that competence. The scope of supervision may vary from state to state. In Switzerland regional difference is pronounced: municipalities in the German-speaking part have greater autonomy than those in the French-speaking part. Supervision by the federal government is the exception. In Brazil the federal

Ministry of Finance exercises supervision to ensure compliance with legal requirements related to a range of financial activities. Federal line departments also monitor the spending of conditional grants, and state governments do not exercise regular supervision. In South Africa the national government's monitoring role is at arms length because only the provinces can instigate investigations into municipal finances. However, with direct flows of conditional grants from the national departments to municipalities, the former also exercise a monitoring function.

The intervention powers of states are mostly confined to enforcing the applicable legal framework, be it state or federal law, leaving policy and implementation choices to municipalities. In Switzerland 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, cantons may also review the appropriateness of decisions. A similar approach is followed in Germany and Spain. 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 all countries.

Although extensive supervisory powers are present in all countries, indicating the subordinate constitutional position of local governments, the practice paints a different picture. Intrusive supervision is very rare in some countries, but more regular in others. 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. A second factor is the size of the municipality and the relative strength of the state; supervision of metropolitan municipalities in South Africa is often beyond the reach of provincial departments. A third factor is the political culture in a particular state, as exemplified in Australia.

Although intervention powers defy local autonomy, the argument made by Andreas Kiefer and Franz Schausberger with reference to Austria holds true elsewhere as well. It is not so much the extent of intervention powers by the states that threatens local autonomy because these powers are usually implemented in a municipal friendly way. Rather, local autonomy is hollowed out financially through the imposition of increasing numbers of

cost-intensive functions, thus limiting municipalities' ability to define and act on their own priorities.

## 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 more equalitarian. 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. Given the overlap in responsibilities, extensive financial relations, and the need to coproduce services, cooperation between the three orders of government is a necessary consequence. Moreover, extensive collaboration is needed where local governments are required to implement policies and legislation formulated by the other orders of government.<sup>18</sup> In local governments' relations with both states and federal governments, organized local government plays a crucial role in articulating and defending their interests.

### *State-Local Relations*

Within the dominant constitutional and statutory framework, local governments' primary relationship is 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 mostly financially independent, has led to a relationship based on partnership, as reflected in numerous cooperation protocols concluded between local and state governments. Although Young describes local governments in Canada as "policy takers, not full partners," there are recent provincial initiatives to involve municipalities in joint planning. Such developments are also found in Mexico and Nigeria. At the state level, organized local government plays an important role in most countries, voicing the concerns of its members and, in some countries, becoming a formal negotiating partner of state governments. In states where local governments have no direct linkages with the federal government, the states play the role of intermediary of local concerns.

### *Federal-Local Relations*

An emerging trend in at least six of the twelve countries in this study is a formalized relationship between local and federal governments. This is to

be expected in Brazil and South Africa, where local government is recognized as a fully fledged order of government. In the more centralized federations, such as Austria and Spain, 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 United States, Canada, Germany, and Nigeria, the interaction is much more informal; organized local governments act as lobby groups rather than as negotiating partners. Where organized local government is weak, as in Mexico and India, interaction is absent or limited.

The focus of the federal government's engagement with local government is usually consultation on federal policy or legislation affecting local government. Different modes of consultation are discernable. The most formal mode is local governments' participation in federal institutions through their representatives in organized local government. Less formal is the inclusion of local governments in decision-making processes through various consultation procedures. South Africa is unique in that organized local government is a nonvoting 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 organized 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 Australia organized local government is a member of the Council of Australian Governments, comprising the executives of the federal and state governments.

Some consultation forums are very specific in focus. In Switzerland the Tripartite Conference of Swiss Agglomerations, comprising the federal government, the cantons, and organized local government, promotes vertical cooperation in policy fields relevant to metropolitan areas. Ladner describes this development as the first step away from traditional cooperative federalism – comprising the federal government and the cantons only – and toward multisphere governance. Likewise, in Canada the federal government has signed tripartite agreements with two cities, Vancouver and Winnipeg, and with their provinces, British Columbia and Manitoba, on key issues of urban development.

The emergence of tri-level policymaking comes with its costs. Tripartite negotiation causes delays and generates high transaction costs, and the management of such relations can be overly complex. Consultation and consensus seeking also impact on accountability; where responsibility is widely shared, the accountability of each sphere becomes murky.

Finally, it should be mentioned that local governments in the EU countries also play a consultative role in EU decision making. Austria, Germany,

and Spain have local representation on the country delegation to the EU Committee of the Regions, the advisory body to the EU Commission on matters affecting regions and local government.

### *Organized Local Government*

Given the sheer numbers of local governments, their effective engagement with the state and federal governments on local issues must, inevitably, be channelled through organized local government. South Africa and Austria have gone as far as explicitly accommodating the need for organized local government in their constitutions.

The role of organized local government in intergovernmental relations varies across countries. In those countries where local governments have no formal relations with the federal government, organized local government acts as a lobby group for local governments, as is the case in the United States and Nigeria. In Australia, Austria, South Africa, Spain, and Switzerland, the relationship has been formalized; organized local government represents its members on a variety of formal and informal state and federal bodies. In Austria the two organized 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 organized local government bodies lies in their ability to represent the full spectrum of local governments in a nonpartisan manner. Only in Mexico and in two Austrian *Länder* are these bodies organized along party lines. In the federal arena, single peak bodies representing the full range of local governments are found in Australia, Canada, Nigeria, South Africa, and Spain. Given the diversity of interests of local governments, the countervailing trend is the organization of local governments along the urban-rural divide in Austria, Brazil, Germany, Switzerland, the United States, and some Canadian provinces (where there are also divisions along linguistic lines). Separate institutions have been established by the county governments in the United States and Germany. 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. In Canada, Toronto and Montreal have accordingly left their local government bodies and prefer to deal directly with their provinces.

Given the multiplicity of local governments, organized local government plays a vital role in the development of local government as an order of government. Its task is to articulate and defend local governments' common interests in a nonpartisan voice. In this endeavour, it labours under some inherent weaknesses. Unlike states, which relate to federal governments in

pursuit of their own interests, organized local government does 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, organized 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.

#### 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, local elections are held regularly, with varying degrees of popular participation. Although local government is the government closest to the people, this does not uniformly translate into high local interest. Apart from mandatory voting in Brazil and most of the Australian states, high voter participation is reported in Austria, India, Nigeria, Spain, and Switzerland, with local government elections showing an even higher voter turnout than in state and federal elections in India and Switzerland. By contrast, in Canada, Germany, Mexico, South Africa, and some Australian states, significantly lower levels of voter turnout than in state and federal elections are encountered. In the United States the turnout is linked closely with whether local elections coincide with state and presidential elections.

Increasingly, other methods of participatory democracy are gaining currency. 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 hailed, in Spain the impact of the new instruments of participation has frequently been minimal. Yet in Canada participation through nongovernmental civic organizations, which are issue-orientated, appears to be on the increase.

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 ethic. 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 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 Switzerland and Austria.

That local government is closest to the people also does not necessarily translate into elected representatives being descriptively reflective of the communities they represent. Women are still largely underrepresented.

Under the 1993 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. The 40% female representation achieved in South Africa stems from political party policy. Whereas India's mandatory obligation of one-third women also applies to the chairpersonships of local authorities, most countries report very low levels of women in leadership positions, with the highest (around 20%) recorded in Switzerland and the United States.

In most of the countries in this volume, the local political life is by and large driven by political parties. No Swiss municipality or Indian *panchayat* is too small for party contestation. In Austria, Mexico, South Africa, and Spain, party lists are built into the electoral system. There are, however, some notable exceptions. In the United States, Canada, and Australia, the majority of councils operate on a nonpartisan basis, although the political parties are always present in the wings, with elections in the major cities in Canada and the United States being contested along party lines. There may be a resurgence of a nonpartisan approach to local politics, with civic formations focusing on single issues, as witnessed in Germany, Switzerland, and Austria.

In most countries, local politics form an inextricable part of the national political party system and are therefore dominated by the major national parties. Few local parties have much success at the polls. Spain is probably the only country where truly local parties govern small towns and cities, but this is only with the support of one of the larger parties. Inclusion in the 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 potentially multiple mandates of politicians in Switzerland and Austria.<sup>19</sup> 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,<sup>20</sup> 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. Mayors of large cities may progress to higher office, and some may even have presidential ambitions (e.g., in Brazil and the United States). 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 party headquarters. Velasco Caballero captures this broader reality with reference to Spain, pointing out the disconnect between the constitutional guarantee of local autonomy and the domination of local matters by national parties.

## EMERGING THEMES AND ISSUES: LOCAL GOVERNMENT AND THE EVOLUTION OF THE FEDERAL SYSTEM

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, in at least 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. Three interconnected issues stand out: (1) the undifferentiated approach to local governments, (2) the autonomy of local government, and (3) metropolitan governance.

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, often declining in population and reliant on financial transfers for survival. Whereas the urban municipalities have access to some tax sources, notably property taxes and business taxes, to fund an array of services, small municipalities struggle to raise their own revenue. The divergence of interests is also manifest in the difficulty organized local government has in representing all local governments effectively. Different responses to the dichotomy are evident.

First, the notion of uniform local government institutions, all with the same functions and powers, is questioned. In some countries (e.g., Canada, Spain, Brazil, Mexico, and South Africa), there are calls for asymmetry – more responsibilities and financial resources for the urban municipalities, a development that is already underway in Canada. In contrast to this trend is the explicit celebration of smallness in Austria, where the constitutional guarantee of a uniform system of local government is imminent. Although the amalgamation of both urban and rural municipalities remains on the political agenda in a number of countries, there is little progress due to voter opposition. With the continuing amalgamation process in Australia being the exception, the overall trend does not point to a process of substantially reducing the number of municipalities. Where local governments are large and unevenly distributed across a country, as in Nigeria, the calls are for increased numbers. Given the norm of numerous small local governments, the focus has instead shifted to greater intermunicipal cooperation. Such cooperation may stretch across state boundaries but also – in

the European Union – across international borders. Again, as the experience of Switzerland shows, cooperation raises questions of democratic decision making and control where participating municipalities vary in size. Akin to concerns about diversity in size are issues around the variety of local government institutions. In Spain and South Africa the utility of second-tier local governments is questioned.

The second common issue is the concern about the whittling away of local autonomy, manifested in a number of trends. In India, Nigeria, and Mexico, the concern is the excessive control of state government over various local decisions. More common is the complaint that financial autonomy is routinely hollowed out by the assignation of more and more responsibilities to local government by superior orders of government but without matching funds. In some countries, the matter is to be addressed by legal reforms, such as in Germany, where reform of the Basic Law will seek to ensure steady and adequate funding for all orders of government in light of their responsibilities. Local autonomy is also undercut where local governments must rely on transfers to fund local functions, thereby creating dependency. Moreover, the extensive use of tied transfers further reduces the discretion of local governments. Local autonomy is also internally compromised in developing countries by a lack of local administrative skills, as is apparent in Brazil, Mexico, Nigeria, and South Africa.

The promotion of local autonomy is not uncontested. Although states increasingly assign new functions to local governments and stress financial self-reliance, they also perceive the growth of local autonomy – particularly of strong urban municipalities – as a zero-sum game in relation to their own powers since an increase in local powers means a decrease in their own. The long-term development of “hourglass” federalism, with strong central and local governments and a declining state government in the middle, is feared and resisted by states.

In Australia the development of local autonomy is fostered by the federal government. This reflects a shift in power from the states to the federal government, where the latter doles out direct financial aid to municipalities and brings local government into the centre as a member of important federal intergovernmental forums. Recognition of local government in the federal Constitution is also on the agenda of the new Labour government. In Canada, on the other hand, with the new Conservative government, the primacy of provincial-federal relations is asserted, making it unlikely that local government will emerge from the shadow of the provinces. Direct funding of local governments by the federal government is also strongly resisted by the Indian states.

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 urbanization, particularly in developing countries. The trends in metropolitan governance are divergent, with local government not the only player in the field. The progressive consolidation of local governments in metropolitan regions to provide a single governance structure is not evident. Where large consolidated municipalities have been created in the United States, Canada, and South Africa, they do not always include the entire metropolitan region. More emphasis is placed on cooperative initiatives by the municipalities in the region to jointly provide functions with spillover effects. The governance of the metropolitan regions is also increasingly done in partnership with states and, in some countries, with the federal government.

On the basis of the case studies, it is difficult to probe the larger questions of whether, or what kind of, federal arrangements appear to foster more democratic, politically vital, and economically healthy cities. Are they to be found in the federal systems that accord the greatest autonomy to cities, operating within a triangular relationship with the state and federal governments? Are German cities, which have a measure of constitutional autonomy, producing better results than, say, Canadian cities, which have no constitutional recognition? Are the South African metropolitan municipalities outperforming the more fractured Brazilian cities, and does the constitutionally entrenched position of local government in South Africa and Brazil make their cities better able to deal with poverty and economic development than their counterparts in Mexico and India? These are vital questions that should be further explored on the basis of comparable indicators of the democratic and economic well-being of cities. Equally important is the question of whether the governance difficulties of cities in developing countries are attributable to the federal system or arise from the fact of underdevelopment itself. This relationship can be explored only through suitable comparison with centralized systems where cities have little or no autonomy.

A further question is the challenges that globalization may pose to local governments, an issue that does not feature significantly in the chapters of this volume.<sup>21</sup> The competition between cities, noted in Brazil, for global investments through various tax concessions is not a common theme. The regional integration of Europe, however, is keenly felt in the EU member countries of Austria, Germany, and Spain. More than two-thirds of all EU legislation has a bearing on state and local governments. Local governments in Austria fear that compliance with a new open-procurement policy will have an adverse effect on local economic development. The participation of local government in the consultative processes of the European Union, notably the Committee of the Regions, is thus important but, as reported in the case of Germany, gives them little clout.

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 aging population and integrating immigrants) and by responding to environmental matters such as climate change. These attributes will underscore the value of local governments as a governance partner in federal systems.

In comparison to states, local governments are much more limited in terms of functions, funds, and the freedom to make policy choices. Although the dual federalism model holds for a number of countries, thus confining local government relations primarily to states, significant shifts – often informal – suggest that local government is recognized as a partner in the business of governance. The Australian experience illustrates best John Kincaid's observation that because federalism is a dynamic mode of democratic government, it makes "relationships more important than structures per se."<sup>22</sup> There is a disjuncture between the constitutional fiction of state subservience and the practice of intergovernmental relations. 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, multisphere government is an emerging reality. It brings with it new challenges such as managing the increased complexity of relationships, addressing the slowness in consultation and decision-making processes, and ensuring the accountability of the three orders of government.

#### N O T E S

- 1 Cheryl Saunders, "Legislative, Executive, and Judicial Institutions: A Synthesis," in *Legislative, Executive, and Judicial Governance in Federal Countries*, ed. Katy le Roy and Cheryl Saunders, 344–84 (Montreal and Kingston: McGill-Queen's University Press, 2006), 344–6.
- 2 It should be noted that the definition of what constitutes "urban" is locally defined, making data on urbanization only imprecisely comparable.
- 3 UN Data, country profiles, figures for 2006, <http://data.un.org/CountryProfiles> (viewed 15 August 2008).
- 4 Saunders, "Legislative," 374.
- 5 See J. Tyler Dickovick, "Municipalization as Central Government Strategy: Central-Regional-Local Politics in Peru, Brazil and South Africa," *Publius: The Journal of Federalism* 37 (Winter 2007): 1–25.
- 6 See Rudolf Mastenbroek and Nico Steytler, "Local Government and Development: The New Constitutional Enterprise," *Law, Democracy and Development* 1, no. 2 (1997): 233–50.

- 7 Given India's process of urbanization, 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.
- 8 See, for example, John W. Ekstedt, "International Perspectives on Aboriginal Self-Government," in *Aboriginal Self-Government in Canada: Current Trends and Issues*, ed. John H. Hylton, 45–60 (Saskatoon: Purich, 1999).
- 9 UN Habitat, *State of the World's Cities 2006/7: The Millennium Development Goals and Urban Sustainability: 30 Years of Shaping the Habitat Agenda*, [http://www.unhabitat.org/documents/media\\_centre/sowcr2006/SOWCR%202.pdf](http://www.unhabitat.org/documents/media_centre/sowcr2006/SOWCR%202.pdf) (viewed 19 December 2008).
- 10 See Enid Slack, "Managing the Coordination of Service Delivery in Metropolitan Cities: The Role of Metropolitan Governance," Policy Research Working Paper no. 4317, World Bank, August 2007, <http://www.utoronto.ca/mcis/imfg/pdf/world%20bank%20paper%20Aug%202007.pdf> (viewed 21 July 2008).
- 11 Douglas M. Brown calls the states "city-states" "in the sense that they make all truly strategic urban development decisions." See his "Federal-Municipal Relations in Australia," in *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems*, ed. Harvey Lazar and Christian Leuprecht, 97–124 (Montreal and Kingston: McGill-Queen's University Press, 2007), 118.
- 12 Thomas J. Courchene, "Citistates and the State of Cities: Political-Economy and Fiscal-Federalism Dimensions," in *Canada: The State of the Federation 2004 – Municipal-Federal-Provincial Relations in Canada*, ed. Robert Young and Christian Leuprecht, 83–118 (Montreal and Kingston: McGill-Queen's University Press, 2004), 96.
- 13 Constitution of 1917, Article 115.
- 14 Federal Constitution of 1999, Article 50.1.
- 15 Constitution of 1996, Section 151(3).
- 16 STC 214/1989, RJ 11.
- 17 Constitution of 1917, Article 115.IV.
- 18 See Ronald L. Watts, "Comparative Conclusions," in *Distribution of Powers and Responsibilities in Federal Countries*, ed. Akhtar Majeed, Ronald L. Watts, and Douglas M. Brown, 322–50 (Montreal and Kingston: McGill-Queen's University, 2006), 329.
- 19 See Christian Leuprecht and Harvey Lazar, "From Multilevel to 'Multi-Order' Governance?" in *Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems*, ed. Harvey Lazar and Christian Leuprecht, 1–22 (Montreal and Kingston: McGill-Queen's University Press, 2007), 9.
- 20 See also *ibid.*, 10.
- 21 On the limited impact of globalization on federal systems, see Harvey Lazar, Hamish Telford, and Ronald L. Watts, eds, *The Impact of Global and Regional Integration on Federal Systems: A Comparative Analysis* (Montreal and Kingston: McGill-Queen's University Press, 2003).
- 22 John Kincaid, "The Competitive Challenge to Cooperative Federalism: A Theory of Federal Democracy," in *Competition among States and Local Governments: Efficiency and Equity in American Federalism*, ed. Daphne A. Kenyon and John Kincaid, 87–114 (Washington, DC: Urban Institute Press, 1991), 88.