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**BACKGROUND PAPER**

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**ENGAGING LOCAL ASPECTS OF MULTILEVEL FEDERAL GOVERNANCE**

A background paper for the Roundtable on Local Government/International Cities

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When federal constitutions first emerged in the United States (1789), Canada (1867) and Australia (1901), local communities were very important. Yet despite the fact that cultural, economic and social life took place for the most part within a local context, local communities and their governments were not incorporated into the representative character or principled foundations of federal institutions. Instead, new federal communities -- states or provinces -- were created, often based on pre-existing colonial boundaries. As federal states matured, state and provincial governments became the fundamental political units in the federal scheme of things, and the local receded. Local governments left scarcely any imprint on the constitutional or institutional structures of federal states.

Yet within these historical constraints, local governments are emerging as major players in modern federalism. Our near exclusive focus on national-provincial (or national-state) relations in federal theory, constitutional debate and, to a lesser degree, federal practice has blinded us to the significant role played by local governments in contemporary federal states. It is difficult to deny that local governments and the communities they serve will become increasingly important in the lives of citizens. The failure to reflect this reality in the design of federalism will erode the effectiveness and legitimacy of federal institutions as we move into the 21st century.

The paper begins by presenting the current federal-municipal relationship through three dimensions: the current constitutional recognition of local governments; fiscal transfers between national and local governments, and intergovernmental relations between the two. The analysis then shifts to forecasts about the future role of local governments and urban life more broadly considered. The argument to be pursued is that globalization will enhance the role of the local in federal states. The paper concludes by raising some points for discussion by the Roundtable.

The focus throughout is on the national-local relationship; the paper does not address the very important relationship between local and state/provincial governments. The analysis, moreover, draws heavily from only five federal states: Australia, Germany, Mexico, the United States, and particularly Canada. I hope workshop participants will be able to build in the federal experience of other countries.

## **Constitutional Recognition**

Local governments tend to receive scant formal recognition in federal constitutions, although constitutional convention is far from uniform. In three of the five federal countries examined (Australia, Canada and the United States), municipalities are granted no constitutionally entrenched powers. In the Canadian constitution, section 92 mentions only that "Municipal Institutions in the Province" are assigned to the exclusive jurisdiction of the provinces. Municipal governments are not mentioned explicitly in the American Constitution, falling instead within the residual powers exercised by state legislative assemblies. Indeed, it has been argued (perhaps too stridently) that the federal system established at Philadelphia "terminated the last vestiges of cities' political independence," leaving them as the "creature[s] of the state." Like Canada and the United States, Australia does not formally recognize local governments in her Constitution, and indeed a 1988 referendum to include local governments in the national constitution was decisively defeated. However, while this was a non-issue at constitutional conventions in the 1890s, it has been a recurrent theme in constitutional conventions since the mid-1970s. Constitutional entrenchment is seen as a measure to ensure local governments "financial security, autonomy, powers and protection of local authorities from dismissal by state governments."

Municipal governments are constitutionally recognized in Mexico and Germany, with differing results. The Mexican Constitution explicitly recognizes municipal districts as *municipio libre* (free/autonomous governmental units). In practice, however, the country's powers are highly concentrated in Mexico City. The presidential executive "has almost unrestrained authority over the legislative and judicial branches" and this power extends vertically to "lower levels of government, making state governors dependant on presidential initiatives and placing the municipality at the bottom of the federal-state-local pyramid in all matters concerning its own governance." In Germany, the right of municipal governments to regulate local affairs is expressly guaranteed by the Basic Law. A special situation is created by the fact that three of the sixteen German states (Laender) also have the status of local governments: the Free and Hanseatic City of Hamburg, the Free Hanseatic City of Bremen, and Berlin.

The general conclusion is that local governments rest on a frail foundation within the national constitutions of contemporary federal systems. (Their position within state or provincial constitutions, where such exist, is much stronger; Australia provides a good example.) The German exceptions are interesting because they represent a rare case of municipalities being incorporated into federal institutions (such as Senates). It is perhaps not coincidental that the most contemporary of the five constitutions noted above carries the most explicit recognition of local government, although such governments in Germany have roots deep in pre-federal antiquity.

## **Fiscal Relations**

Although municipal governments may be generally (but not universally) viewed as creatures of the state or provincial governments, this has not been a major constraint on national government intervention in municipal affairs. The most common vehicle of such intervention has been the ability of national governments to spend their tax revenues as they see fit, regardless of the constitutional division of legislative authority. Again, however, federal practice with respect to the spending power is not consistent:

- the Australian Federation is beset with “extreme vertical fiscal imbalance” resulting from the Commonwealth’s monopolization of income and consumption taxation. As a consequence, state and local authorities are dependent on the federal government for the bulk of their operating budgets. For example, “while the states and local sector raises only 22% of taxation revenue ... [the] combined sector accounts for 46% of current outlays and 76% of capital outlays; it is responsible for 70% of the public debt and delivers most of the people intensive public services.” Fiscal connections between the Commonwealth and local governments include general purpose grants, direct grants, and grants to state governments earmarked for local use. General purpose grants are dispensed through structures which allow the state and federal governments to set conditions for the use of the monies by local governments. Direct grants are conducted under the authority of the Grants Commission Act 1973, which marked the first peacetime interaction to take place directly between the Commonwealth and local governments. The list of major direct grants currently includes The Aged or Disabled Persons’ Home Act, The Home Nursing Subsidy Act, The Delivered Meals Subsidy Act, The Handicapped Persons Assistance Act, and The Homeless Persons Act. Federal grants made to state governments and earmarked for local government expenditure cover programs such as home care services, senior citizens’ centres, preschools and child care centres, and capital grants for leisure assistance. In most cases, however, federal funds are transferred through State grant commissions, which recommend allocations to local authorities. The State, therefore, remains a critically important intermediary between Commonwealth funding and local authorities.
- in the United States, federal fiscal aid to local governments dates from the 1930s and President Roosevelt’s New Deal programs. From that time forward federal intervention steadily increased, reaching a peak in the mid-1970s. As a consequence, local authorities have become increasingly dependent on federal grants. Federal grants to large cities in the 1970s increased greatly as a result of two main initiatives: the “New Federalism proposals of the Nixon administration, which resulted in the adoption of general revenue sharing and the community development block grant ... and comprehensive employment and training programs,” and the Carter administration’s 1977 Economic Stimulus Package. Funding arrangements also changed. From the allocation of funds directly to “special authorities and community organizations,” based on perceived need, to a funding arrangement where all funds were dispensed directly through and by city hall.
- the Mexican governmental system has been characterized to date by a high degree of centralization, which is only now starting to erode, and this has carried with it financial dependence for local authorities. The president’s broad range of constitutional and “meta-constitutional powers” are “unwritten norms of the Mexican political system.” He has the power to “amend the Constitution, to act as chief legislator, to establish himself as the ultimate authority in electoral matters, to assume jurisdiction in judicial matters, and [most importantly for our purposes] to remove governors, municipal presidents, and legislators at the federal and local level.” Strong executive leadership is replicated at the state and municipal level by the Governor and Municipal president respectively. The state governor distributes all federal funds within the municipal districts. The municipalities are in effect dependent on federal and state governments both economically and politically. In the last two decades, this dependency has increased through more direct service delivery to the local areas by the federal government. Thus while the Mexican

Constitution formally recognizes the political autonomy of the municipal districts, it fails to provide an institutional structure to realize that autonomy.

- in Canada, direct federal fiscal intervention in municipal affairs is very rare. Although the federal spending power has been used extensively within provincial areas of jurisdiction such as health and post-secondary education, it has rarely been extended to municipal governments. A recent exception was the tri-lateral infrastructure program in which the federal, provincial and municipal governments jointly funded infrastructure projects.
- German municipalities are responsible (among other things) for local transportation, utilities, sewage, and the building and maintenance of schools, hospitals and sports facilities. In addressing these and other responsibilities, they have a considerable measure of financial autonomy. They can raise their own taxes, and also receive both 15 percent of the national income tax and equalization payments from state government.

In summary, the financial dependency of local governments is highly variable in both degree (Germany, for instance, is an illustration of relatively high autonomy) and source of that dependency (national or state authorities).

### **Intergovernmental Relations**

In most respects, intergovernmental relations come hand in glove with fiscal entanglements; they tend to follow fiscal channels rather than formal, constitutional channels. The more financially involved national governments are with local affairs, the more extensive the intergovernmental ties tend to be between the national and municipal governments. Here again, however, we find substantial national variation. For example:

- in Canada, federal-municipal relations are at best embryonic. An ill-fated federal Secretary of State for Urban Affairs was created in the early 1970s with this end in mind, but it was quickly disbanded. Today's relationships are informal and episodic. Provincial governments have effectively imposed themselves between local governments and the national government, with only a small trickle of money flowing through or around this barrier.
- in Germany, local governments are organized into a nation-wide political association, the Deutsche Staedtetag, but their primary intergovernmental relationships are with state governments and not the federal government. It is the Laender and not the national government who decide whether federal laws will be implemented by local governments or by the Laender themselves.
- in Australia, the multiplication of programs for which the local governments are dependent on federal funds, means that local governments have become increasingly interwoven with the "federal bureaucracy through federal legislation and the national visions and aspirations of politicians."
- in the United States the larger cities have extensive contacts with the national executive and legislature; political channels are not restricted to state governments or state representatives in Washington.

The development of extensive intergovernmental relations is not necessarily constrained by the absence of constitutional recognition for local governments. Nor is it dependent upon formal channels of legislative representation. Rather, it

appears to be tightly linked to financial flows.

## Globalization and International Cities

To summarize the argument thus far, we find that local governments tend to be poorly integrated into either federal theory or the formal institutional structures of federal states (see table one). In some cases, and Canada is an extreme example, this marginalization is coupled with very limited political and financial entanglements between national and local governments. In other cases, and here the United States is a good example, the national government has used its spending power to nurture complex and extensive engagements with local governments.

**Table One: Overview of Municipal Arrangements in Five Federal Systems**

	Current Constitutional Recognition	Fiscal Transfers (Federal-Municipal)	Intergovernmental Relations (Federal-Municipal)
<b>Australia</b>	No formal recognition in national constitution. Issue raised at constitutional conventions since mid-1970s.	Municipalities fiscally dependent upon federal transfers which are largely allocated through State commissions.	Municipal governments interwoven with federal bureaucracy.
<b>Canada</b>	Section 92: "Municipal Institutions in the Province" under exclusive provincial jurisdiction.	Direct federal fiscal intervention extremely rare.	Embryonic relations at best. Informal and episodic.
<b>Germany</b>	Basic Law guarantees the right of municipal governments to regulate local affairs.	Municipal governments can raise taxes. Also receive equalization payments and 15% of national income tax.	Municipal authorities organized into nationwide political association.
<b>Mexico</b>	Explicit constitutional recognition as <i>municipio libre</i> . In practice, powers highly centralized in federal government.	Municipalities fiscally dependent upon federal and state transfers.	Largely handled through the government party in the past, just emerging as governmental mechanisms.
<b>United States</b>	No formal constitutional recognition. Municipalities fall within state residual powers. "Creatures of state."	Direct federal fiscal transfers since 1930s. High municipal dependence on federal grants.	Larger cities have extensive direct contacts with federal executive and legislatures.

In all cases, however, interlocking effects of decentralization from within and globalization from without are challenging the marginalization of municipal governments in the constitutional and institutional structures of federal states. Consider the following:

- social service delivery is being progressively decentralized to local governments, and to locally-based not-for-profit organizations. Kantor, for instance, discusses a "New Federal" arrangement taking shape in the United States where there are increasing attempts to "decentralize authority from the national to the local and state levels by means of block grants and/or grants-in-aid ... [I]t has grown to include more and more programs in recent years."
- international cities are becoming more prominent features on the global landscape. Many if not most states and provinces pale in economic, social and cultural power beside such cities as Sydney, Los Angeles, New York and Toronto. These cities, moreover, are not content to speak through their state or provincial governments; Sydney is not New South Wales, and California is not Los Angeles. However, international cities find no reflection in federal theory or constitutional design.
- international cities and cities with international aspirations are marketing

themselves with less and less reference to the national or state-provincial location. As Paul Kantor notes, "the reality is that cities cannot survive economically without jobs, dollars, and tax revenues ... consequently local governments scramble to compete with each other for this capital investment ... in effect cities are highly dependant on private investment decisions." In this competition, there is a risk that cities will disengage their citizens and business communities from their federal context and institutions.

- the notion of "glocalism" suggests that our local environments and lives will become more rather than less important in the wake of globalization. The argument is that if we have a secure and prosperous local community coupled with electronic and airline connections with the global environment, then our provincial and national environments will recede in importance. If we can play on the global stage while still having a place to walk the dog, find a good cup of cappuccino and enjoy face-to-face intercourse with friends and neighbors, we will have less need for our states and countries. Yet federal states are designed almost exclusively around those receding political communities, and fail to reflect the emergent local and global communities.
- cities have become the major drivers of economic prosperity, and the quality of life in urban environments has become a major determinant of the locational decisions made by economic actors.

In short, cities count, and in the years to come will count for more and more. However, this reality is not a sufficient part of the federal calculus.

## **Discussion**

Debate on the issue of municipalities within federalism should keep the following points in mind:

- although the constitutional exclusion of local government is increasingly anomalous, change is unlikely unless constitutional flux exists. Despite the efforts of local governments to defend and assert their autonomy, the immediate political pressure to deliver concrete results surpasses the more abstract long-term concerns for local autonomy.

- the citizens of federal states are overwhelmingly rooted in local communities, and urbanization is an unabated social trend.
- the emergence of self-governing Aboriginal communities makes the constitutional and institutional marginalization of local governments even more anomalous. In Canada, for example, Aboriginal governments representing from several hundred to several thousand residents are rapidly moving towards constitutional recognition as a "third order of government" whereas urban governments representing literally millions of residents enjoy no such recognition. Federal systems built around large states and small Aboriginal communities, but ignoring the urban environments in which most citizens live, may not fully engage their citizens.
- implicit in much of the above is the assumption that national governments need to strengthen their involvement in urban affairs. However, this need not take the form of direct program delivery by national agencies. Not-for-profit organizations and the broader instrumentalities of civil society provide means by which national policy can be pursued within a local

setting.

## **Conclusion**

Local communities and their governments will play a larger role in the lives of citizens in federal states. The continued neglect of this reality in the institutional design of federal states threatens the normative appeal of federalism as a system of government, the legitimacy and relevance of federal institutions, and the efficiency of federal public policy practice. It is therefore worth considering whether federal institutions and practice might be redesigned to harness local governments and international cities more effectively to federal visions.

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