



**Occasional Paper Series**

**Number 45**

# **Intergovernmental Councils and the Coordination of Public Policy Making**

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# Intergovernmental Councils and the Coordination of Public Policy Making

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ISSN: 1922-558X (online ISSN 1922-5598)

Occasional Paper Series Number 45  
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Suggested citation for Forum of Federations' publications:  
**Rupak Chattopadhyay, Handbook of Federal Countries 2009 (Forum of Federations, Oxford Press, 2009)**

**Abstract**

Intergovernmental relations have become the workhorse of federal systems across the world. As the formal institutions through which the governments of a federation interact, intergovernmental councils shape the making of public policy in many decentralized and decentralizing countries. Many intergovernmental councils have been created with the purpose of fostering the efficiency of public service delivery. But intergovernmental councils also fulfill another purpose: if well designed, they ensure that governments make policy decisions as equal and reliable partners so that intergovernmental relations respect the federal balance of power, and the “federal spirit.” Against this backdrop, this article sets out principles of council design that make these intergovernmental meetings effective safeguards of federalism.

## The Proliferation of Intergovernmental Councils

In 2003, Canada's provincial and territorial Premiers solemnly established the Council of the Federation (CoF) to replace the Annual Premiers' Conferences (APC). Under the framework of the Council of the Federation, the Premiers would meet more often and be supported by a permanent secretariat located in Ottawa. According to CoF's founding agreement, the new council was expected to revitalize interprovincial relations and, by implication, Canadian federalism.<sup>1</sup> By creating the CoF, the provinces also hoped to improve their relationship with the federal government. Ten years earlier, the Swiss cantons had established a similar institution, the Conference of Cantonal Governments (*Konferenz der Kantonsregierungen*, KdK) to pursue the same goal of improving policy coordination across levels of government.<sup>2</sup> KdK meets frequently, also has a permanent secretariat, and is supported by several working groups and committees. The council has become a crucial partner for the federal government. Although the latter is not a formal member of the council, it is often invited to meetings as a guest. Other intergovernmental councils, such as the 123-year-old Swiss Conference of Ministers of Education (*Erziehungsdirektorenkonferenz* (EDK)), have a track record of coordinating public policy making. Further examples include the Council of Australian Governments (COAG), set up in 1995 by Australia's federal government to coordinate microeconomic reform with the states.<sup>3</sup> In countries such as Belgium and Spain, the creation of intergovernmental institutions has been part of the transformation from a unitary into a federal system.

Intergovernmental councils exist in all federations. Every federal state has more or less institutionalized meetings through which the members of the different governments (prime ministers, premiers, governors, ministers) of a federation coordinate their policies. Since the second half of the 20<sup>th</sup> century, their number has significantly increased. Only about 50 councils existed in 1950 in the Western federations whereas over 260 councils are active today (see Graph 1). Intergovernmental councils exist for education policy, fiscal policy, health care, and many other policy areas.

These councils have shaped the way federations run their economies, provide health care, and organize schooling, for example. This article sheds light on their purpose, focusing on how intergovernmental councils can enhance the stability of a federal system.

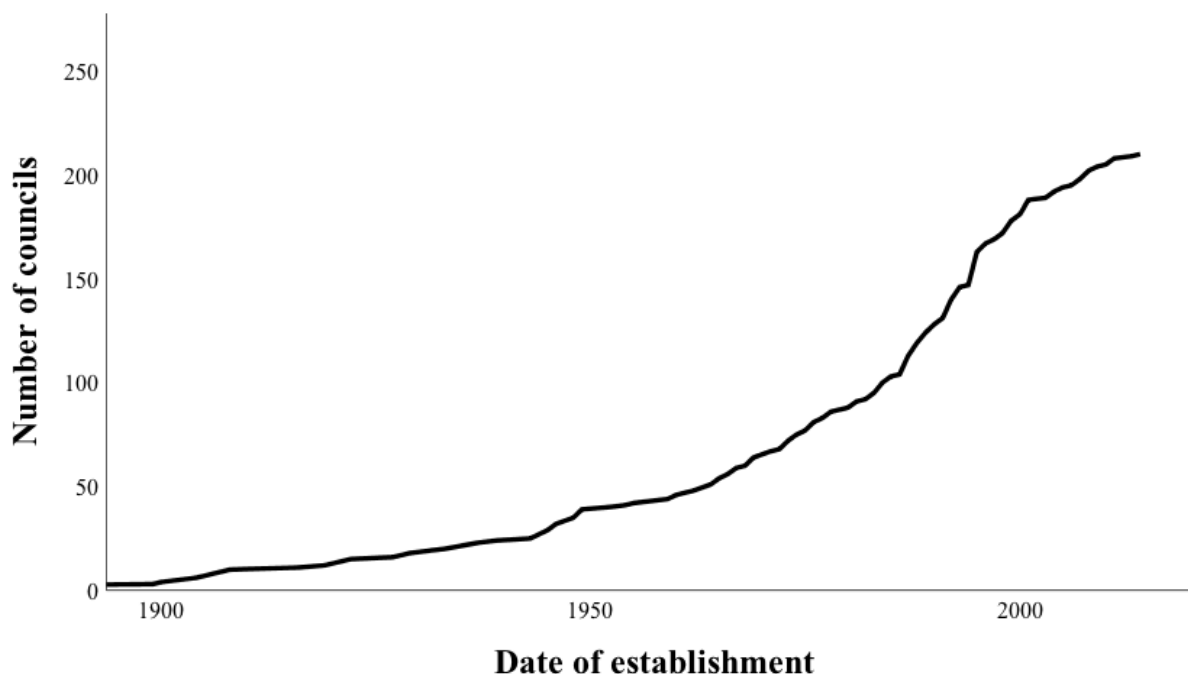
Graph 1: Intergovernmental councils in Australia, Austria, Belgium, Canada, Germany, Spain, Switzerland, and the US.

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<sup>1</sup> Council of the Federation Founding Agreement, 5 December 2003.

<sup>2</sup> Johanna Schnabel and Sean Mueller, "Vertical Influence or Horizontal Coordination? The Purpose of Intergovernmental Councils in Switzerland," *Regional & Federal Studies* 27, no. 5 (2017): 549–72.

<sup>3</sup> Martin Painter, *Collaborative Federalism. Economic Reform in Australia in the 1990s* (Cambridge: Cambridge University Press, 1998).



Council membership can vary quite significantly, depending on a council's policy scope, regional focus, and the participation or not of the federal government.<sup>4</sup> Every federation has a generalist council whose members (prime ministers, premiers or governors) discuss cross-sectoral or highly political policy issues (see Box 1).

#### Box 1: Generalist councils

- Australia: Council of the Australian Governments (COAG), 1992
- Austria: Conference of State Governors (LHK, *Landeshauptleutekonferenz*), 1945
- Belgium: Deliberation Committee (*Comité de Concertation*) (1980)
- Canada: First Ministers' Conferences (FMM), 906
- Germany: Conference of the Prime-Ministers of the *Länder* (MPK, *Ministerpräsidentenkonferenz*) (1948)
- Spain: Presidents' Conference (2004)
- Switzerland: Conference of Cantonal Governments (KdK, *Konferenz der Kantonsregierungen*), 1993
- United States: National Governors Association (NGA), 1908

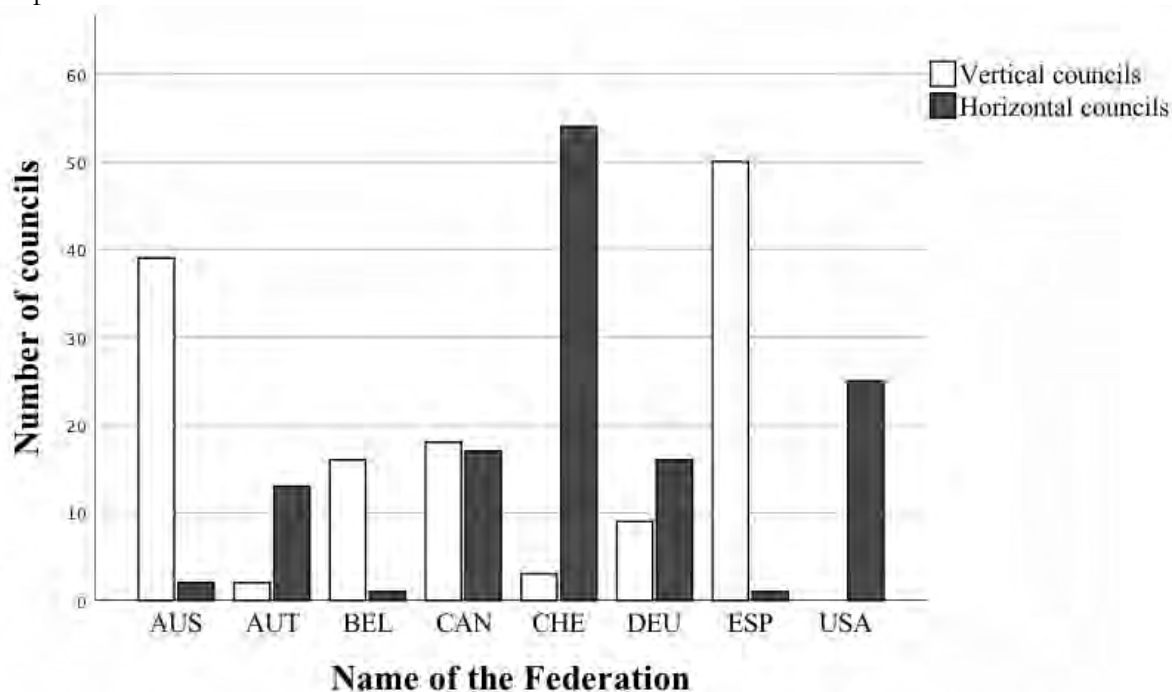
Alongside these councils, several policy-specific councils focus on individual policy areas and, often, more technical matters. These councils include ministers responsible for a specific portfolio, e.g. education, health care, finances. Sometimes, they operate under the auspices of a generalist council. Ministerial councils in Australia, for instance, constitute the so-called COAG council system and receive instructions from COAG. In Canada and Switzerland, regional councils have been created by

<sup>4</sup> Nicole Bolleyer, *Intergovernmental Cooperation. Rational Choices in Federal Systems and Beyond* (Oxford: Oxford University Press, 2009).

the provinces and cantons of a specific region. Spain's bilateral commissions comprise the federal government and an Autonomous Community.

The federal government participates in many councils. But the constituent units have also created their own councils. The former are thus vertical institutions while the latter are horizontal ones.<sup>5</sup> COAG, the Deliberation Committee, FMM, and the Presidents' Conference in Spain are vertical councils that include the federal government – as are most ministerial councils in Australia, Belgium, and Spain. Austria's Conference of State Governors, Germany's Conference of the Prime-Ministers of the *Länder*, Switzerland's Conference of Cantonal Governments, and the National Governors Association, but also most policy-specific councils in Austria, Switzerland, and the United States, in contrast, are horizontal councils, meaning that the federal government participates only as a guest, if at all (Graph 2). Canada and Germany have a roughly equal share of vertical and horizontal councils.

Graph 2: Share of vertical and horizontal councils



The way intergovernmental councils operate may also vary quite significantly.<sup>6</sup> Some intergovernmental forums, such as the Conference of Cantonal Governments, meet several times a year; rely on a well-developed organizational structure; discuss a wide range of policy matters; and produce intergovernmental agreements or establish joint agencies. Others meet on an ad hoc basis; lack the support of working groups and committees; and merely issue statements or publish reports, if at all. Examples are Canada's First Ministers' Meetings and the Interministerial Conferences in Belgium. Intergovernmental councils also vary in the direction of their operation and the motivation

<sup>5</sup> See Bolleyer.

<sup>6</sup> Bolleyer, *Intergovernmental Cooperation. Rational Choices in Federal Systems and Beyond*; César Colino, "Intergovernmental Relations in the Spanish Federal System: In Search of a Model," in *The Ways of Federalism and the Horizons of Territorial Autonomy in Spain*, ed. Alberto López-Basaguren and Leire Escajedo San Epifanio, vol. 2 (Berlin, Heidelberg: Springer Berlin Heidelberg, 2013), 111–24; Markus Meyer, *Die Interkantonale Konferenz - Ein Mittel Der Kantone Zur Zusammenarbeit Auf Regierungsebene* (Bern: Stämpfli Verlag AG Bern, 2006).



that defines their purpose.<sup>7</sup> EDK's main purpose, for example, consists in coordinating policy making on the cantonal level, while the KdK concentrates its efforts on influencing federal decision-making.<sup>8</sup> First Ministers' Meetings primarily serve the federal government and the provinces as an arena to exchange information. As this article shows, these differences in the way councils operate matter.

Intergovernmental councils have been created because the governments of every federation increasingly face public problems that cut across their jurisdictions and responsibilities. In federal countries, power is distributed between two levels of government.<sup>9</sup> Not only is this division of power never neat, but economic integration, globalization, welfare policies, the knowledge society, climate change, and other social issues exceeding jurisdictional borders have made the federal government and the constituent units mutually dependent in many ways when delivering public policies. Most policy issues concern several if not all governments of a federation. Via intergovernmental councils, the different governments coordinate their policy making so as to provide public services efficiently. In so doing, they avoid contradictory legislation, duplication, and redundancies. They ensure the mobility of the population, harmonize regulations, and provide equal access to welfare policies.<sup>10</sup> However, efficient policy making is not intergovernmental councils' only purpose. By making governments reach joint solutions to policy problems that cut across jurisdictions, intergovernmental councils can also contribute to the stability of a federation. They can ensure that the autonomy of each government is respected in public policy making. The extent to which they do so depends, however, on their design. Only if federal stability is maintained, can federalism deliver on its fundamental purpose which is to combine unity and diversity, i.e. to provide policies tailored to local preferences while at the same time ensuring a minimum of coherence in public service delivery. Due to societal demands for harmonization and national solutions, for example, federal governments, in particular, seem to feel increasingly legitimized to get involved in many public decisions even if they are beyond their constitutional jurisdiction. Consequently, the autonomy of the constituent units is at stake. The mutual dependence of the governments of a federation thus has implications for the way power is distributed, which in turn affects federal stability. Therefore, the way federations manage interdependencies matters. This article highlights the importance of intergovernmental councils with regard to the stability of federal systems. Focusing on fiscal and education policy in four Western federations (Australia, Canada, Germany, Switzerland), it draws on examples of major reforms introduced in these countries since the 1990s to identify principles of council design that make robust intergovernmental relations (Table 1).

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<sup>7</sup> Nathalie Behnke and Sean Mueller, "The Purpose of Intergovernmental Councils: A Framework for Analysis and Comparison," *Regional & Federal Studies* 27, no. 5 (2017): 507–27.

<sup>8</sup> Schnabel and Mueller, "Vertical Influence or Horizontal Coordination? The Purpose of Intergovernmental Councils in Switzerland."

<sup>9</sup> Thomas O Hueglin and Alan Fenna, *Comparative Federalism: A Systematic Inquiry*, Second Edition (Toronto: University of Toronto Press, 2015); Ronald L Watts, *Comparing Federal Systems* (Montreal & Kingston: McGill Queen's University Press, 2008); Daniel J. Elazar, *Exploring Federalism* (Tuscaloosa, London: The University of Alabama Press, 1987); William H. Riker, *Federalism. Origin, Operation, Significance* (Boston and Toronto: Little, Brown and Company, 1964).

<sup>10</sup> Bolleyer, *Intergovernmental Cooperation. Rational Choices in Federal Systems and Beyond*; Johanne Poirier, Cheryl Saunders, and John Kincaid, eds., *Intergovernmental Relations in Federal Systems. Comparative Structures and Dynamics* (Don Mills: Oxford University Press, 2015).

Table 1: Intergovernmental Councils and Policy Reforms

Federation	Reform	Councils
<b>Fiscal policy</b>		
Australia	Intergovernmental Agreement on Federal Financial Relations (IGA-FFR, 2008)	<ul style="list-style-type: none"> <li>• Council of the Australian Governments (COAG)</li> <li>• Ministerial Council on Federal Financial Relations</li> </ul>
Canada	Social Union Framework Agreement (SUFA, 1999)	<ul style="list-style-type: none"> <li>• First Ministers Meetings (FMM)</li> <li>• Annual Premiers' Conferences</li> <li>• Federal-Provincial-Territorial Council on Social Policy Renewal</li> <li>• Provincial-Territorial Council on Social Policy Renewal</li> </ul>
Germany	Debt Brake (2009)	<ul style="list-style-type: none"> <li>• Federalism Reform Commission II</li> <li>• <i>Bundesrat</i></li> <li>• Stability Council</li> </ul>
Switzerland	Corporate Tax Reform III (2016)	<ul style="list-style-type: none"> <li>• <i>Projektorganisation Unternehmenssteuerreform III</i></li> <li>• Conference of Finance Directors (FDK)</li> <li>• Conference of Cantonal Governments (KdK)</li> </ul>
<b>Education policy</b>		
Australia	Australian Curriculum (2011)	<ul style="list-style-type: none"> <li>• Education Council</li> <li>• COAG</li> <li>• (Council of the Australian Federation, CAF)</li> </ul>
Canada	Canada Millennium Scholarship Foundation (CMSF, 1998), Canadian Foundation for Innovation (CFI, 1997), Canada Education Savings Grants (CESG, 1998), Canada Research Chairs program (CRC, 2000)	<ul style="list-style-type: none"> <li>• Council of Education Ministers, Canada (CMEC)</li> <li>• (FMM)</li> </ul>
Germany	National Education Standards (2003-12)	<ul style="list-style-type: none"> <li>• Conference of Ministers of Education (<i>Kultusministerkonferenz</i>, KMK)</li> </ul>
Switzerland	Intercantonal Agreement on Harmonization of Compulsory Education (HarmoS, 2007)	<ul style="list-style-type: none"> <li>• Conference of Cantonal Directors of Education (<i>Erziehungsdirektorenkonferenz</i>, EDK)</li> </ul>

In all four federations, fiscal and education policy have changed significantly since the 1990s and these changes always involved both levels of government. Whether governments successfully coordinated public policy making in such a way that respects each government's autonomy depended considerably on the design of the intergovernmental councils in both policy areas – namely their capacity to process federally salient policy problems, their level of institutionalization, and the role assigned to the federal government. The article thus shows that council design is a crucial factor for federal stability when public issues concern several governments of a federation and require a coordinated effort. However, intergovernmental councils do not operate in isolation. Mechanisms and institutions outside the council system –the party system, external pressure, policy ideas, constituent units' participation in federal decision-making, and the federal spending power – also shape intergovernmental coordination by strengthening or undermining their effectiveness.

### **Unilateralism and the Distribution of Power**

In federal countries, changes to the distribution of power require the consent of both levels of government.<sup>11</sup> When policy problems affect several governments of a federation but individual governments decide on policy unilaterally, i.e. without consulting the other governments, this fundamental principle of federalism can be violated. The reason is that unilateral policy making potentially limits the other governments' autonomy without them consenting to such (often informal and implicit) changes in the federal balance of power.–changes which are often informal and implicit. For example, if one government pursues fiscal policies that result in a downgrading of its credit rating, interest rates are likely to increase for the other governments of the federation as well.<sup>12</sup> Consequently, the fiscal indiscipline of one government restricts the others in their decisions to borrow. Because it impinges on the autonomy of other governments, unilateralism destabilizes the federal balance of power. In day-to-day policy making unilateralism mainly affects governments' autonomy with respect to their scope of action, though it may also lead to authority losses. Whether federal instabilities are major or minor, the implications they have for the system depends on the number of policy areas in which unilateralism occurs and the significance of the policy issues at stake.

Unilateralism can take three forms: individual policies, federal imposition, and non-compliance. Governments solve policy problems unilaterally if they establish their *own policies* (or policy programs) to solve a policy problem that concerns several of them without consulting the other governments. In the 1990s, for example, Canada's federal government single-handedly established several programs and agencies to fund university-based research and access to higher education – although the provinces had to provide the necessary infrastructure and administer these programs. Ottawa created the Millennium Scholarship Foundation, the Canadian Foundation for Innovation, the Canada Research Chairs, and the Education Saving Grants without considering the impacts on the provinces and their education policies. Consequently, the provinces had to implement policies without being able to determine their objectives and design. Not only did the federal government encroach in areas of provincial jurisdiction, but its policies were also not welcomed by most provinces. The latter would have preferred federal grants instead of direct payments to individuals. They also claimed that the federal programs led to unnecessary duplication given that provincial programs already existed or were

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<sup>11</sup> Watts, *Comparing Federal Systems*, 9.

<sup>12</sup> Luc Eyraud and Raquel Gomez Sirera, "Constraints on Subnational Fiscal Policy," in *Designing a European Fiscal Union. Lessons from the Experience of Fiscal Federations*, eds. Carlo Cottarelli and Martine Guergil (London, New York: Routledge, 2015), 90–132; Robert P. Inman, "Do Balanced Budget Rules Work? U.S. Experience and Possible Lessons for the EMU," *National Bureau of Economic Research*, 1996; Dietmar Braun, Christian Ruiz-Palmero, and Johanna Schnabel, *Consolidation Policies in Federal States: Conflicts and Solutions* (Abingdon, New York: Routledge, 2017).

being developed.<sup>13</sup> This shift in the federal balance of power towards the central government can be seen as destabilizing federal relations in education policy. Individual spending and borrowing decisions of some German *Länder* in the 1990s had similar disruptive effects on federal relations, but mainly affected the federal government's autonomy.<sup>14</sup>

Another type of unilateral policy making is federal imposition, whereby the federal government forces the constituent units to agree to a policy that it conceived. Especially if it depends on the constituent units and their expertise to implement a policy, the federal government is likely to try to coordinate policy making with the constituent governments and to enact a joint policy solution but then impose its own specific priorities on them. Australia's federal government, for example, forced a national curriculum on the states. The states formally agreed to the introduction of the Australian Curriculum by signing the National Education Agreement, but the Commonwealth decided about the introduction of a national curriculum and defined the framework for curriculum development. Although the federal government and the states jointly adopted the policy at a COAG meeting, the Commonwealth designed it largely on its own, making its funding for education conditional upon the implementation of federation-wide learning standards and content. The states thus lost discretion in school policy. The Intergovernmental Agreement on Federal Financial Relations (IGA-FFR, 2008), which streamlined the system of federal grants by merging over 90 specific-purpose-grants into five block grants, was also mainly designed by the federal government in Canberra. This is not to ignore that the states could influence certain aspects of curriculum development and the new transfer arrangements. Their loss of autonomy was thus less severe than that experienced by the Canadian provinces when Ottawa forced them to sign the Social Union Framework Agreement (SUFA) in 1999, an agreement it had fully drafted on its own.

*Non-compliance* with a jointly-adopted policy solution is another instance of unilateral policy-making especially when it reverses changes to the power balance that all governments have endorsed. SUFA, for example, required Canada's federal government to consult the provinces when using its spending power to create new policies or change existing ones. Nevertheless, Ottawa continued to make its spending decisions without consulting the provinces. In fact, it ignored the agreement's existence altogether so that the limits on the federal spending that would protect provincial autonomy were ineffective. Australia's Commonwealth government did not ignore the existence of the IGA-FFR as such; nevertheless, it defected from several of its provisions.

Ultimately, the disruptive character of unilateral decision-making, regardless of its form, also depends on the extent to which interests and preferences of the different governments clash. If unilateral solutions correspond to some or most of the policy priorities of the other governments, they may be acceptable to them, in which case unilateralism is less likely to cause federal tensions. The Australian Curriculum is a case in point. Although they disliked a national curriculum dictated by the federal government, the states were already working together to harmonize education policy and thus were not entirely opposed to the idea of joint learning standards and assessments.<sup>15</sup>

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<sup>13</sup> APC, "39th Annual Premiers' Conference: News Releases," 1998.

<sup>14</sup> Dominic Heinz, "Varieties of Joint Decision Making: The Second Federal Reform," *German Politics* 21, no. 1 (2012): 129–42.

<sup>15</sup> CAF, "Federalist Paper 2: The Future of Schooling in Australia," 2007, <http://education.qld.gov.au/publication/production/reports/pdfs/federalist-paper.pdf>.

Collaborative joint solutions, on the other hand, enhance federal stability because they respect the autonomy of the governments of a federation. Collaboration avoids restricting the scope of action of other governments against their will. Although policy solutions jointly adopted by the governments of a federation may alter the distribution of power, informally or formally, such changes are agreed upon by all of them. Federal stability is maintained because a new consensus is found on the right balance between unity and diversity.<sup>16</sup> Such coordinated policies are formally adopted by all governments, meaning that all of them contribute to their design and comply with them.<sup>17</sup> The German Debt Brake, introduced in 2009 to foster the fiscal discipline of both the federal government and the *Länder*, is a good example. The Debt Brake was developed by the two levels of government and adopted by the bicameral parliament, in which the *Länder* governments are represented via the *Bundesrat* (which can be considered to be an intergovernmental council). Although the Debt Brake's effectiveness is contested,<sup>18</sup> all governments have adopted or are in the process of adopting legislation to implement the new fiscal rule, which is an indicator of compliance. Besides, the implementation of the constitutional provisions through *Länder* legislation also confirms the acceptance of the new fiscal responsibility framework.<sup>19</sup>

A collaborative solution to a different problem concerning the two levels of government has also been found in Switzerland, where the federal government and the cantons jointly developed and adopted the Corporate Tax Reform III (CTR III) in response to the international pressure to abolish tax exemptions for holdings and other special corporations.<sup>20</sup> Similarly, the introduction and implementation of national education standards in Germany has been shaped by collaboration rather than unilateralism. So has the harmonization of education in Switzerland where the cantons established the Intercantonal Agreement on Harmonization of Compulsory Education (HarmoS) and agreed to develop a regional curriculum in both the German-speaking and French-speaking parts of the country. Besides, by coordinating policy making in an area for which they are responsible, the constituent units in Germany and Switzerland avoided unilateralism by the central government. The

<sup>16</sup> Arthur Benz, *Constitutional Policy in Multilevel Government: The Art of Keeping the Balance* (Oxford: Oxford University Press, 2016).

<sup>17</sup> This is not to ignore that differences in the bargaining power of individual governments exist given their different size, fiscal capacity etc. However, well-designed councils ensure that each government are allowed to raise issues and put forward proposals.

<sup>18</sup> FAZ, "Die Deutsche Null," *FAZ*, September 13, 2014; FAZ, "Der gefesselte Riese," *FAZ*, September 25, 2014, <http://www.faz.net/aktuell/politik/inland/die-finanzlage-nordrhein-westfalens-der-gefesselte-riese-13172041.html>; Stuttgarter Zeitung, "Kretschmann übernimmt Vorsitz der Regierungschefs," *Stuttgarter Zeitung*, October 23, 2013; Volker Giersch, "Besser eigenständig als fremdbestimmt," in *Ist das Saarland noch zu retten? Analysen und Prognosen zur Eigenständigkeit in Zeiten der Schuldenbremse*, ed. Daniel Kirch (Saarbrücken: Gollenstein Verlag, 2014), 37–60; Daniel Kirch, "Einleitung," in *Ist das Saarland noch zu retten? Analysen und Prognosen zur Eigenständigkeit in Zeiten der Schuldenbremse*, ed. Daniel Kirch (Saarbrücken: Gollenstein Verlag, 2014), 7–9; FAZ.net, "Staatsschulden sinken auf weniger als 2 Billionen Euro," *FAZ.Net*, June 29, 2017, <http://www.faz.net/aktuell/wirtschaft/wirtschaftspolitik/erstmal-seit-jahren-staatsschulden-sinken-auf-weniger-als-2-billionen-euro-15082689.html>; Ralph Brügelmann, Rolf Kroker, and Thilo Schaefer, "Faktencheck Schuldenbremse und Schuldencheck Bundesländer. Eine Analyse des Instituts der Deutschen Wirtschaft (IW)," 2011; BMF, "Kompendium zur Schuldenbremse des Bundes," 2015, [http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche\\_Finzen/Schuldenbremse/kompendium-zur-schuldenbremse-des-bundes.pdf;jsessionid=7EA16BD3D42409A3D1A251507B8D3A82?\\_\\_blob=publicationFile&v=3](http://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finzen/Schuldenbremse/kompendium-zur-schuldenbremse-des-bundes.pdf;jsessionid=7EA16BD3D42409A3D1A251507B8D3A82?__blob=publicationFile&v=3).

<sup>19</sup> Saarland is the only Land not to have passed such legislation. However, Saarland has enacted various measures to consolidate its budget and comply with the conditions attached to the consolidation assistance it receives from the federal government and the other *Länder* (see Giersch, "Besser eigenständig als fremdbestimmt"; Kirch, "Einleitung.")

<sup>20</sup> The CTR III was defeated in popular referendum in 2017 after having passed both chambers of parliament in June 2016. Subsequently, the federal government and the cantons have designed a new tax reform (*Bundesgesetz über die Steuerreform und die AHV-Finanzierung, STAF*). The people approved the reform in a popular referendum in May 2019.

*Länder* and cantons showed that they can establish national standards on their own. Consequently, the federal government had no grounds to create its own education policy or to impose a policy on the federated entities – as long as they comply with the solutions they agreed upon. Hence, horizontal coordination, which implies that the constituent units refrain from unilateral policy-making, can be a means through which they defend their autonomy vis-à-vis the federal government, so that federal unilateralism is also avoided.<sup>21</sup>

### **Council Design**

Intergovernmental councils encourage governments of a federation to coordinate policy making by establishing joint policies instead of pursuing their own policies unilaterally. However, the extent to which they do so depends on three conditions related to councils' institutional design:

1. the federal government's dominance;
2. the capacity to process federally salient policy problems; and
3. the level of institutionalization.

This is not to ignore the fact that intergovernmental councils never operate in isolation. They are embedded in the political system of a federation and its environment. Other institutions such as the party system, the federal spending power, or the constituent units' participation in federal decision-making also shape the way governments coordinate public policy making. Besides, ideas about appropriate and effective solutions and external pressure, coming from supranational or international organizations such as the European Union, the OECD, or the United Nations, also influence intergovernmental policy coordination.

### **Dominance of the federal government**

The most important condition for effective policy coordination relating to council design concerns the role of the federal government. The enactment of collaborative joint solutions presupposes that the federal government and the constituent units meet as partners. Therefore, the central government must not dominate an intergovernmental council, meaning that it should not

- chair meetings, or
- provide the council secretariat.

Put differently, meetings should be chaired on a rotating basis, and the council secretariat has to be independent so as to ensure, at least in formal terms, the equal partnership of council members. Else, the federal government can unilaterally set the council agenda and decide whether or not to call meetings. If it chairs intergovernmental meetings and provides the council secretariat, the federal government can advance its own priorities at meetings with the constituent units and thus impose policies on them. By refusing to call meetings or to include items put forward by the constituent units, the central government can refuse to discuss implementation and be held accountable for non-compliance.

As mentioned above, the German Debt Brake and Switzerland's Corporate Tax Reform III were developed collaboratively. An important factor in these collaborative reform processes was the absence of federal dominance in the councils that enacted these reforms. The federal governments did not dominate the Federalism Reform Commission II (*Föderalismuskommission II*) established to prepare the German Debt Brake, nor did it dominate the Bundesrat that adopted it (a horizontal council) and the Stability Council that, indirectly, monitors compliance. The federal government and the *Länder* met in the Federalism Reform Commission II as partners that pursued the joint goal of

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<sup>21</sup> See Behnke and Mueller, "The Purpose of Intergovernmental Councils: A Framework for Analysis and Comparison."

limiting deficits and debts. The Swiss federal finance minister chaired the meetings of the *Projektorganisation Unternehmenssteuerreform* III created to prepare the CTR III. Nevertheless, the federal government used the council to consult the cantons instead of imposing a policy upon them.

Canada's federal government, by contrast, decided on the timing of FMM meetings and their content, even though initial meetings were called because of pressure from the provinces, which enabled it to impose the Social Union Framework Agreement on the provinces. The few federal-provincial council meetings mostly served the purpose of having the provinces endorse federal proposals. In a similar vein, the Council of Australian Governments (COAG) and the Ministerial Council on Commonwealth-State Relations, the councils through which the IGA-FFR was initiated and adopted, are dominated by the federal government. Canberra chairs council meetings and the secretariats of these councils are based at the Department of Prime Minister and Cabinet, a federal agency. Consequently, the federal government used the COAG council system to advance its own agenda of reforming the system of federal transfers to the states. For instance, the federal government called meetings when it saw fit. The Commonwealth's dominance of the COAG council system, of which the Australian Education Council is a part, is also the reason why it could impose the Australian Curriculum on the states, although the federal government does not dominate the Education Council itself.

The federal spending power reinforces the federal government's influence on intergovernmental policy making.<sup>22</sup> What is more, its superior fiscal capacity can also produce a hierarchical relationship between the federal government and the constituent units since it provides the central government with the means to impose a policy on the latter even when it does not formally dominate a council. Canberra and Ottawa have quasi-unlimited spending powers. The power of the purse further increases these governments' capacity to impose policy solutions on the states and provinces by making use of COAG and FMM, councils they dominated. What is more, Ottawa's unrestricted spending power allowed Canada's federal government to establish the Millennium Scholarship Foundation, the Canadian Foundation for Innovation, the Canada Research Chairs, and the Education Saving Grants without consulting the provinces; in fact, it refused to arrange intergovernmental meetings to coordinate the introduction of these programs.

Councils dominated by the federal government are unable to make the federal government refrain from unilateral decisions. This is unless the constituent units participate in federal decision-making, via the second chamber or functional equivalents that provide the constituent units with veto powers at the central government. The constituent units' participation in federal decision-making can mitigate the federal government's dominance of a council. It also poses restrictions on the use of the federal spending power. If the constituent units participate in federal decision-making, the central government tends to be more inclined to consider them as partners, and is thus more likely to refrain from using councils to impose its policies on the federated entities. One reason why the Swiss federal government refrained from dominating the *Projektorganisation's* agenda is that Article 45 of the Federal Constitution requires it to consult the cantons when federal legislation affects them. Germany's federal government was also more inclined to collaborate with the *Länder* in reducing the federations' deficits and debt since the latter could have vetoed any legislation in the federal legislature. In Australia and Canada, similar mechanisms through which the states and provinces can influence federal decision-making,

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<sup>22</sup> Ronald L. Watts, *The Spending Power in Federal Systems: A Comparative Study* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1999); Anthony Gray, "Federal Spending Power in Three Federations: Australia, Canada and the United States," *Common Law World Review* 40, no. 1 (2011): 13–39.



and, by implication, limit the federal government's leverage at intergovernmental meetings, are lacking.<sup>23</sup>

Horizontal councils such as Germany's and Switzerland's education councils, the KMK and EDK (including its regional equivalents), are not dominated by the federal government, the latter not being an official member of these institutions. Therefore, the central government cannot use them to impose policies on the constituent units. It can, however, threaten to enact its own policy. Although the constituent units' participation in federal decision-making prevents it from doing so, the federal government in Germany and Switzerland pressured the *Länder* and the cantons to harmonize education policy. Consequently, the education councils' ability to coordinate subnational policy making to harmonize education was a crucial factor when it came to protecting the constituent units' autonomy in education policy, which related on their capacity to process federally salient policy areas and their level of institutionalization.

### **Capacity to process federally salient policy issues**

The capacity to process federally salient policy problems is another crucial element in council design. Coordination always implies that governments give up some discretion and compromise. However, if a policy problem touches upon issues that are important for their autonomy, so that it is federally salient, governments may be reluctant to coordinate, in which case a joint solution may not be found. Moreover, if a policy problem is federally salient, governments may decide to establish their own solutions or a coordinated solution that is based on the lowest common denominator of interests and preferences, which opens the door to compliance problems. This is especially the case when policies relate to a constituent unit's cultural distinctiveness. Three elements determine a council's capacity to process federally salient policy problems: the policy area, the type of actors, and the way resolutions are made.

Councils that have been established and have operated in a redistributive or welfare-related policy area usually have the capacity to deal with contentious matters, else they would not exist anymore. Some councils allow politicians to send bureaucrats to represent them at meetings of the plenary assembly when they are unavailable to attend. However, officials lack the legitimacy to make political decisions. Therefore, only councils in which members cannot send public servants on their behalf have the capacity to process federally salient policy problems. For the same reason, councils using circular resolutions, meaning that they reach agreement through the exchange of letters, are unlikely to process federally salient policy problems: such highly political matters require face-to-face meetings.

The equal partnership in the councils responsible for the Debt Brake and the CTR III was thus not the only factor with respect to the collaborative character of these solutions. The Federalism Reform Commission II, the *Bundesrat*, and the Stability Council had the capacity to process a federally salient issue such as limits to deficits and debt. The Debt Brake shows certain signs of a lowest common denominator solution given that the initial reform agenda aimed at a general overhaul of fiscal federalism, tax policy, and public administration. Although this suggests that certain aspects had to be excluded from the agenda for their contentiousness, the Debt Brake nevertheless constitutes a

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<sup>23</sup> John Summers, "Federalism and Commonwealth-State Relations," in *Government, Politics, Power and Policy in Australia*, ed. John Summers, Dennis Woodward, and Andrew Parkin (Frenchs Forest, NSW: Longman, 2002), 89–117; Marc-Antoine Adam, Josée Bergeron, and Marianne Bonnard, "Intergovernmental Relations in Canada: Competing Visions and Diverse Dynamics," in *Intergovernmental Relations in Federal Systems. Comparative Structures and Dynamics*, ed. Johanne Poirier, Cheryl Saunders, and John Kincaid (Don Mills: Oxford University Press, 2015), 135–73.



comprehensive solution to the deficit problem, which emerged as the most pressing problem requiring solution during the Global Financial Crisis. It can be considered a success that a joint fiscal rule was entrenched in the federal constitution in the first place. Similarly, the *Projektorganisation Unternehmenssteuerreform* III and the Conference of Cantonal Directors of Finance (*Finanzdirektorenkonferenz*, FDK), which were responsible for designing the CTR III, discussed various aspects of the new tax system, so that a comprehensive solution was established. The councils involved in preparing and adopting the Australian Curriculum, the IGA-FFR, and SUFA also have the capacity to process federally salient matters. Consequently, the governments of respectively the Australian and Canadian federation jointly adopted these reforms. Moreover, the different agreements were not limited to the lowest common denominator of the federal government's and the provinces' preferences.

External pressure provides additional incentives to coordinate. Pressure from the OECD to reform education policy were in fact crucial in the harmonization of education policy in Germany and Switzerland. The KMK and EDK lack the capacity to process federally salient policy problems. Yet, in the light of disappointing PISA results in 2001, the constituent units in both countries were under pressure to improve the performance of their students.<sup>24</sup> Besides, the OECD also promoted specific policy ideas, which reduced the federal salience of educational reform. By adhering to similar ideas on how to improve the quality of primary and secondary education, the constituent units found it easier to coordinate their policies, which is why the introduction of education standards in both countries as well as the adoption of HarmoS concordat were possible. Moreover, a strong partisan consensus existed with regard to educational harmonization. Consequently, the governments in the constituent units had to introduce but were also in favor of introducing national standards. External pressure, partisan consensus, and shared ideas can thus compensate for flaws regarding councils' capacity to process federally salient matters.

### **Institutionalization**

However, the capacity to process federally salient policy problems is not enough. Councils also have to be highly institutionalized, meaning that they:

- have predefined functions (i.e. a formal statute or bylaw),
- a permanent secretariat,
- several working groups and committees,
- and meet on a regular and frequent basis.

As a consequence of a high degree of organizational differentiation, policy coordination becomes a continuous and steady process whereby interests and preferences of all governments are accommodated. If councils are highly institutionalized, coordination is more likely to focus on problem solving rather than intergovernmental bargaining and package deals. Problem solving means that council members agree on the general objectives first and then finalize the details of a policy once general agreement is reached.

The councils that developed the German Debt Brake and the CTR III were highly institutionalized. They meet on a regular basis, as stipulated in their terms of reference, had a secretariat and benefitted from the support of working groups and committees. Consequently, a strong problem-solving

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<sup>24</sup> Tonia Bieber and Kerstin Martens, "The OECD PISA Study as a Soft Power in Education? Lessons from Switzerland and the US," *European Journal of Education* 46, no. 1 (2011): 101–16; Dominic Heinz, "Politikverflechtung in der Schulpolitik. Koordination im Wandel," *PVS Politische Vierteljahresschrift* 56, no. 4 (2015): 626–47.

orientation shaped these reforms. In a first phase, the council members agreed on the broader policy objectives, drawing on proposals and recommendations from committees and working groups, going back and forth between different drafts. In a second phase, they settled the more detailed provisions and regulations, again iterating between drafts and their updates. This procedure ensured that all governments could provide input throughout the entire process and at various stages, so that interests and preferences were accommodated. Horizontal councils such as the FDK, the German Conference of Prime Ministers (*Ministerpräsidentenkonferenz*, MPK), and Germany's Conference of Finance Ministers (*Finanzministerkonferenz*, FMK), in which the federal governments do not participate, provided input after building consensus among the constituent units. Because the reform processes were thus inclusive, comprehensive, and continuous, the joint solutions were accepted by all governments. A similar process can be observed in regard to the harmonization of education policy in Germany and Switzerland due to KMK's and EDK's high level of institutionalization. Because governments adhered to similar ideas on educational reform such as the need to introduce or enhance learning standards and student assessments, these councils were more likely to have a problem-solving orientation. Hence, the highly collaborative character of the educational reforms they introduced helped the *Länder* and cantons to convince the federal government of their ability to fulfill their responsibilities in the area of education.

Federal governments can rarely ignore the constituent units' interests and preferences altogether even if they dominate a vertical council. A high level of institutionalization increases the chances that their preferences are not only heard but also addressed. Both COAG and the Ministerial Council of Federal Financial Relations that contributed to the preparation of the IGA-FFR are highly institutionalized. They dedicated several meetings to the reform of the transfer system and committees and working groups reviewed proposals and drafts. Several parameters of the IGA-FFR were in fact jointly discussed after proposals and drafts were circulated. Therefore, federal imposition was less disruptive compared to SUFA. For example, the states successfully asked for more federal funding. Moreover, through the Council of the Australian Federation (CAF), which also met several times, the states gained leverage vis-à-vis the federal government, which led to the creation of the COAG Reform Council. In a similar vein, the high level of institutionalization of Australia's education council allowed the states to shape some elements of the Australian Curriculum and the federal government took previous work of the council of education ministers into consideration.<sup>25</sup> Besides, governments were fully congruent when both the reform of the transfer system and the Australian Curriculum were initiated. Hence, the preferences of the states were also addressed through partisan channels.

Few meetings were organized to discuss proposals and drafts of the agreement on Canada's social union, however, before it was signed. Committees, working groups, and a secretariat to prepare recommendations for council meetings are lacking. Therefore, the preferences of the provinces and the federal government never converged, and different interpretations with regard to the social union prevailed even after SUFA was adopted. Similarly, the provinces' attempt to forge a common front vis-à-vis the federal government through horizontal councils such as the Annual Premiers' Conferences (APC) to gain more leverage failed for the same reason. While the IGA-FFR reformed the transfer system of the Australian federation in a way that was acceptable to the states, SUFA

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<sup>25</sup> Talina Drabsch, "The Australian Curriculum," NSW Parliamentary Research Service Briefing Paper, 2013, [http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/0/B18363C26EC0F93ACA257B1800144FDE/\\$File/The Australian Curriculum.pdf](http://www.parliament.nsw.gov.au/prod/parliament/publications.nsf/0/B18363C26EC0F93ACA257B1800144FDE/$File/The Australian Curriculum.pdf); Glenn C Savage and Kate O'Connor, "National Agendas in Global Times: Curriculum Reforms in Australia and the USA since the 1980s," *Journal of Education Policy* 30, no. 5 (2015): 609–30, <https://doi.org/10.1080/02680939.2014.969321>.

legitimized the federal spending power despite provincial requests to limit it. In a similar vein, CMEC, Canada's education council, failed to achieve what CAF accomplished by contributing to problem solving, i.e. to mitigate the disruptiveness of federal unilateralism, despite the council's fair level of institutionalization. The reason is that CMEC's role was essentially limited to lobbying the federal government through position taking.

### **Council Systems and Federal Stability: Recommendations**

How can governments deal with their increasingly interdependent relationship in such a way that each governments' autonomy is respected? The different experiences in Australia, Canada, Germany and Switzerland with the coordination of education and fiscal policy suggests that to maintain federal stability a council needs to be set up to do three things:

1. Prevent the federal government from dominating intergovernmental relations;
2. Ensure that governments discuss federally salient policy matters; and
3. Foster the emergence of a problem-solving orientation.

Government congruence, overlapping ideas, external pressure, and the constituent units' participation in federal decision-making also facilitate the coordination of public policy making. By contrast, councils that are designed in such a way that the federal government dominates them, are weakly institutionalized, and cannot process federally salient policy issues have a drawback. Such councils undermine government's ability to effectively coordinate policy making and maintain federal stability. This inability is even greater when combined with an unlimited federal spending power, incongruent governments, and diverging policy ideas.

Especially for developing federations, the challenge of designing a solid and well-functioning council system is part of the transformation into a federal state. Nevertheless, shortcomings in council design in several established federations also weaken these countries' ability to delivery public services that respect the federal spirit that underpins their political system. However, by considering the following guidelines, decision makers can design councils that help federalism in fulfilling its purpose:

- **Establish a rotating chair and independent secretariat:** Because of the centralization experienced by many federations, older and younger ones,<sup>26</sup> it seems paramount to avoid any means through which the federal government can dominate intergovernmental relations. As long as the central government determines the intergovernmental agenda, the constituent units are likely to lose autonomy. Although the federal government's dominance of vertical council significantly undermines these councils' ability to engage in collaborative policy making, the majority of vertical councils in Western federations are dominated by the central government. These federations could improve their intergovernmental relations by reforming these councils. When establishing new councils, governments should pay attention to chairing arrangements and the status of the secretariat. This is not to ignore that in some cases, a strong central government may be advantageous, for example if it is difficult to get the constituent units to the bargaining table. But federations must carefully weigh the benefits and disadvantages of a strong central government in intergovernmental relations.
- **Meet frequently:** Councils that meet frequently and regularly are likely to develop their own institutional interests that extend beyond momentary configurations of interests. Consequently, the coordination of policy making continues even if elections change the partisan constellation and, by implication, interest configurations in the federation, especially if they have a well-staffed

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<sup>26</sup> Paolo Dardanelli et al., "Dynamic De/Centralisation in Federations: Comparative Conclusions," *Publius: The Journal of Federalism* 49, no. 1 (2019): 194–219.

secretariat. Besides, frequent and intensive exchanges build trust between decision makers and allow councils to react swiftly to new challenges.

- **Invest in horizontal coordination:** From the perspective of the constituent units, the establishment or strengthening of horizontal councils pays off. Strong councils of subnational governments strengthen their voice vis-à-vis the federal government. By coordinating subnational policy making, the constituent units can keep the central government out of policy areas for which they are responsible. By speaking with one voice they increase their changes to influence federal decisions. But the mere existence of horizontal councils is not enough: these councils also need to be highly institutionalized. In weakly institutionalized councils, the federated entities find it harder to build up and sustain a common front vis-à-vis the federal government.
- **Create working groups:** Councils that are supported by working groups and committees consisting of senior officials that explore different solutions and prepare recommendations help accommodate the various interests of the different governments. However, officials are less concerned about jurisdictions and are not elected, which is why their recommendations must be reviewed by elected politicians.
- **Have different councils:** The interaction of different councils, generalist and policy-specific ones, vertical and horizontal ones, creates robust intergovernmental relations. Ultimately, it is the interaction of different councils that determines governments' ability to reach collaborative joint solutions. In federations with a large number of constituent units, the combination of different national and regional councils is also promising. The Swiss council system is a good model here. These councils work together, ensuring that the subsidiarity principle is respected, meaning that policy making takes place as close to the citizens as possible.

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Cover design by Olakunle Adeniran

ISSN: 1922-558X (online ISSN 1922-5598)



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The Occasional Paper Series is financed in part by the following countries: Brazil, Canada, Ethiopia, Germany, India, and Switzerland