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Reviewing Intergovernmental Institutions in Federal Systems: Opportunity for Cooperation

HARRISON SCHAFER*

INTRODUCTION

This Article surveys intergovernmental institutions across federal states. Generally, these institutions offer meaningful cooperation for the different levels of government when addressing state problems. These institutions, however, often lack political authority to bind institutional members or implement authoritative state actions.

This Article proceeds in two general parts. First, this Article taxonomizes intergovernmental institutions across federal systems. Though few intergovernmental institutions are constitutionally mandated bodies, several federal states have enacted legislation to formalize these institutions while others simply utilize informal arrangements. This taxonomy will primarily discuss contemporary institutions within federal systems and focus exclusively on executive institutions.¹ The taxonomy categorizes these institutions into two general categories based on the composition of the bodies: vertical and horizontal. Vertical institutions include members that are accountable to different levels of government while horizontal institutions are comprised of members responsible to the same level of government. Intergovernmental institutions will also be classified as either constitutional bodies, statutory bodies, or the result of formal and informal agreements. Second, this Article offers brief remarks on the effectiveness, transparency, and power of these institutions. Intergovernmental institutions wield nominal political authority, but

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¹ Of course, intergovernmental institutions may also be legislative and institutional. For example, national legislatures in federal states often include a house that incorporates members from constituent members. This Article, however, does not address national legislatures. Nor does the Article address judiciaries that are responsible to different levels of governments or bodies that facilitate intergovernmental relations by mediating interstate disputes.

intergovernmental institutions may nevertheless play an important role in federal states. Though these institutions offer benefits related to intergovernmental relations, intergovernmental institutions suffer from accountability, transparency, and logistical drawbacks.

I. INTERGOVERNMENTAL RELATIONS & OPERATIONALIZATION

Federal states were traditionally conceived as layered states where different levels of government wield distinct and identifiable “domains of power and responsibility.”² Increasingly, however, the different realms of autonomy and authority are shared across these levels.³ Thus, federal states may be politically divided among the federal or national level, a regional level, such as states in the United States or *cantons* in Switzerland, and oftentimes at a municipal or local level.⁴ These divisions of political power within federal states have often reflected a necessary dispersion to compensate for a diverse and large democracy—multiple levels of government can encourage democratic participation, legitimacy, and efficiency.⁵ Importantly, federal states distribute state power, such as legislative competencies, among these different levels of government pursuant to constitutional provisions.⁶

To maintain political control over the dispersed state and preserve the state as a whole, federal states must maintain intergovernmental relationships. Distribution of state power across different levels of government tends to benefit from coordination among the different levels of government to effectively manage state problems. Intergovernmental relations, therefore, relates

² Brian R. Opeskin, *Mechanisms for Intergovernmental Relations in Federation*, 52 INT’L SCIENCE J. 129, 129 (2001) (describing “dual federalism”).

³ *Id.*

⁴ See INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS, BUSINESS COUNCIL OF AUSTRALIA 1, 1 (2006), https://d3n8a8pro7vhm.cloudfront.net/bca/pages/2638/attachments/original/1531460858/appendix-1_intergovernmental-relations-in-federal-systems_28-10-2006.pdf?1531460858.

⁵ See Cheryl Saunders, *The Interdependence of Federalism and Democracy in Australia*, in FEDERALISM AS DECISION-MAKING CHANGES IN STRUCTURES, PROCEDURES AND POLICIES 27–31 (Francesco Palermo & Elisabeth Alber, eds., 2015).

⁶ *Id.*

to the mechanisms and processes that states develop to facilitate cooperative action across the different levels of government, though these institutions may also aid interstate action as well.⁷ Intergovernmental institutions may be defined as the institutional bodies that operationalize intergovernmental relations in federal states.

For this Article, intergovernmental institutions are the formal or informal bodies that either incorporate actors across the different levels of government or that incorporate several governmental actors from the same level of government, e.g. *Länder* in Austria. Consequently, this definition includes a variety of bodies that wield different levels of legal status. These institutions may be constitutionally mandated bodies, statutorily created bodies, and bodies that lack formal legal status. Intergovernmental institutions are as diverse as the federal states that implement them, and these institutions respond to distinct political, historical, social, and geographical factors within states.⁸

This Article will categorize intergovernmental institutions into two broad categories—vertical and horizontal—and then further delineate smaller pools of institutions based on the primary purpose of the institution or based upon the institution’s constituent members. Significant or noteworthy institutions within these subcategories will then be examined in detail. The discussion within the subcategories will examine membership, functions of the body, efficacy, and status of the institution. Though lacking generalizable characteristics, policy-focused institutions will be briefly discussed. Lastly, the Article offers reflections on intergovernmental institutions and areas deserving further research.

⁷ See Business Council, *supra* note 1, at 4; Opeskin, *supra* note 2, at 129.

⁸ See Johanne Poirier & Cheryl Saunders, *Cooperative Mechanisms and Intergovernmental Relations in Federal Regimes*, in *DIALOGUES ON INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS* 3 (Rupak Chattopadhyay & Karl Nerenberg, eds., 2010).

II. TAXONOMY

Overwhelmingly, federal states employ executive institutions more than any other type of intergovernmental body. Executive institutions, interestingly, are especially prominent in states with Westminster systems due to the executive dominance of parliament. Because of their popularity, executive intergovernmental institutions vary greatly in their legal status across federal states.

A. *Vertical Institutions*

Vertical institutions are composed of members who, either directly or indirectly, represent different levels of government within a federal state. This relationship may be between two levels of government, e.g. between the national and state level, or among all constituent members of a state, which may include territories, local governments, and autonomous communities.

1. *Chief Minister Conferences*

Across all federal states, the most popular executive institution for intergovernmental relations is the chief minister conference.⁹ The name of this executive institution describes the primary composition of the bodies. Chief minister conferences normally consist of the chief executives of each significant level of government,¹⁰ though some states also incorporate heads of local government.¹¹ For example, the Council of Australian Governments includes not only the federal prime minister and the heads of states and territories, but also the president of the Australian Local Government Association,¹² an organization representing over 500 municipal councils across

⁹ Poirier & Saunders, at 5.

¹⁰ See, e.g., John Phillimore & Jeffrey Harwood, *Intergovernmental Relations in Australia: Increasing Engagement Within a Centralizing Dynamic*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 53–54 (Poirier et al., eds., 2015) (describing the Council of Australian Governments); M.P. Singh & Rekha Saxena, *Intergovernmental Relations in India: From Centralization to Decentralization*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 252–53 (Poirier et al., eds., 2015) (describing the Interstate Council of India).

¹¹ See, e.g., Phillimore & Harwood, *supra* note 10, at 54.

¹² *Id.*

Australia.¹³ Similarly, South Africa's chief minister conference also incorporates a representative for organized local governments.¹⁴ The federal level of government, however, often enjoys the greatest representation on these bodies as union ministers frequently join chief minister conferences¹⁵ or because the chief federal minister wields the authority to appoint additional members to the body.¹⁶

States have employed a variety of methods to implement chief minister conferences. Some states, like Australia¹⁷ and Canada,¹⁸ have created chief minister conferences simply through formal and informal agreements. Such institutions have sprung forth from a concentrated need for coordination across different levels of government in response to internal problems, e.g. barriers to trade or differences in tax policies. Other states, such as India¹⁹ and Nigeria,²⁰ have constitutional provisions that mandate the creation of chief minister conferences. States have also enacted legislation to implement chief minister conferences. Notably, South Africa's Intergovernmental Relations Framework Act provides a useful example of comprehensive legislation designed to implement institutions to promote intergovernmental relations.²¹ Unlike the constitutional provisions, South Africa's legislation provides a comprehensive legal foundation and guidance for the role and operation of its chief minister conference.

¹³ *About ALGA*, AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION, <https://alga.asn.au/about-alga/> (last visited Oct. 24, 2019).

¹⁴ Intergovernmental Relations Framework Act 13 of 2005 § 6 (S. Afr.).

¹⁵ *See Singh & Saxena, supra* note 10, at 253 (noting that key union ministers also serve on the Interstate Council).

¹⁶ Intergovernmental Relations Framework Act 13 of 2005, GN 482 of GG 27898 Part 1 § 6 (15 Aug. 2005) (S. Afr.).

¹⁷ *See Phillipmore & Harwood, supra* note 10, at 53

¹⁸ *See* NICOLA MCEWEN, BETTINA PETERSOHN & COREE BROWN SWAN, R INTERGOVERNMENTAL RELATIONS & PARLIAMENTARY SCRUTINY: A COMPARATIVE OVERVIEW 32 (2015), https://www.parliament.scot/2015.09.30_IGR_External_Research_Report_FINAL.pdf.

¹⁹ INDIA CONST. art 263.

²⁰ Constitution of Nigeria (1999), cap.8.

²¹ *See* Intergovernmental Relations Framework Act 825 of 2005 (S. Afr.).

Despite the variety in legal statuses of chief minister conferences, these institutions overwhelmingly lack actual legal authority that binds constituent members. For example, India's Interstate Council largely serves as a forum for debate and rarely generates subsequent action by its members.²² Instead, the conferences normally produce reports, recommendations, and guidance to other state institutions such as parliament and executive heads of government. Normally, the federal chief minister convenes meetings, chairs the meetings, and often sets the agenda for conference meetings.²³

These conferences still serve important intergovernmental roles despite the institution's lack of traditional state power. Specifically, conferences—such as Spain's Conference of Presidents or Australia's Council of Australian Governments—are important forums for encouraging political unity and providing informal avenues for intergovernmental negotiations on important state issues.²⁴ Despite frequent lack of authority, these institutions can guide national and local policies and coordinate intergovernmental actions against internal challenges.²⁵

1. Ministerial Intergovernmental Bodies

The name of this category represents the primary composition and role of these institutions. These bodies are normally comprised of the federal minister for a specific department or cabinet, such as education or finance, the corresponding state level minister, and a litany of other ministers across different levels of government.²⁶ Ministerial bodies, like the chief minister conferences,

²² Singh & Saxena, *supra* note 10, 253.

²³ See, e.g., *id.* at 252 (noting that the Indian Prime Minister chairs and convenes Interstate Council meetings).

²⁴ See McEwen et al., *supra* note 18, at 46; Martin Painter, *The Council of Australian Governments and Intergovernmental Relations: A Case of Cooperative Federalism*, 26 PUBLIUS 103, 103–107 (1996).

²⁵ See e.g., Derek Powell, *Constructing a Developmental State in South Africa: The Corporation of Intergovernmental Relations*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 325 (Poirier et al., eds., 2015) (mentioning that the President's Coordinating Council helped plan and prepare the 2010 FIFA World Cup).

²⁶ See e.g., Robert Agranaoff & Juan Antonio Ramos Gallarin, *Toward Federal Democracy in Spain: An Examination of Intergovernmental Relations*, in 27 PUBLIUS 1, 6–7 (1997) (describing the Consejo de Política Fiscal y Financiera de las Comunidades Autónomas, an institution composed of finance ministers from Spain's autonomous committees, the federal minister of finance).

may also incorporate representatives from local governments. For example, Australia’s ministerial councils may incorporate representatives from municipal councils if the council’s work will impact local governments.²⁷ Since the federal government typically has many ministers and respective portfolios, several ministerial bodies will often be operating within federal states.²⁸ These institutions are normal intergovernmental bodies and are implemented in Spain, Nigeria, Argentina, South Africa, Canada, Belgium, Switzerland, and Austria.²⁹

Ministerial bodies are mostly the product of arrangements lacking legal authority,³⁰ but some surveyed systems have implemented ministerial bodies through formal legal action such as legislation³¹ or executive order. For example, South Africa’s IGR Act represents an impressive implementation and foundation of intergovernmental institutions with its “national intergovernmental forums.”³² This legislation allows any cabinet member to establish a ministerial body to “promote and facilitate intergovernmental relations in the functional area” for which the minister holds the portfolio.³³ Within a state, however, all ministerial bodies may not share the same legal status. For instance, several ministerial bodies within Canada are the result of

²⁷ COMMONWEALTH-STATE RELATIONS BRANCH DEPARTMENT OF THE PRIME MINISTER AND CABINET, GUIDANCE ON COAG COUNCILS, § 2.5 (Aug. 2016), <https://www.coag.gov.au/sites/default/files/files/guidance-on-coag-councils.docx>.

²⁸ Phillimore & Harwood, *supra* note 10, at 55 (noting that Australia has utilized anywhere from forty to eighty different bodies).

²⁹ Andreas Ladner, *Switzerland: Subsidiarity, Power-Sharing, and Direct Democracy*, in THE OXFORD HANDBOOK OF LOCAL AND REGIONAL DEMOCRACY IN EUROPE 213–14 (Frank Hendriks et al., eds., 2011).

³⁰ See Marc-Antoine Adam et al., *Intergovernmental Relations in Canada*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 146–48 (Poirier et al., eds., 2015).

³¹ E.g., Maria Jesus Garcia Morales & Xavier Arbos Marin, *Intergovernmental Relations in Spain: An Essential but Underestimated Element of the State of Autonomies*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 360 (Johanne Poirier et al., eds., 2015) (noting that Spain’s “sectoral conferences” are governed by federal legislation).

³² Intergovernmental Relations Framework Act 13 of 2005, GN 482 of GG 27898, Chapter 2, Part 2 (15 Aug. 2005) (S. Afr.).

³³ *Id.*

memorandums of understanding that are essentially dictated by the federal members,³⁴ while other institutions may be grounded in binding agreements.³⁵

Like the chief minister conferences, the majority of ministerial bodies provide nonbinding action and support intergovernmental efforts across the state. Overwhelmingly, these bodies serve as coordinating institutions for ministers—the ministers will often discuss implementing policies in their respective spheres of government. Ministerial bodies normally provide a platform for state ministers to voice thoughts on national policy.³⁶

B. Horizontal Institutions

Horizontal institutions are comprised of members across a single order of government, e.g. several representatives from local governments. Consequently, these institutions are utilized by the lower orders of government within a federal state.

1. Regional Conferences

Unlike vertical intergovernmental institutions, regional conferences do not formally incorporate federal representatives into the institutions' composition. These conferences, however, may informally seek dialogue with members of the federal government. These institutions serve a significant role in advocating for state-level power and coordination for unified state action when interacting with union level actors—meetings among the state representatives provide a valuable forum for harmonizing policies before negotiating with the federal level of government. Membership is naturally limited to the member states within the federal state or a group of municipalities throughout the state.

³⁴ See *About Us*, COUNCIL OF MINISTERS OF EDUCATION, CANADA, https://www.cmec.ca/11/About_Us.html (last visited Sept. 22, 2019) (noting that the CMEC is governed by an “Agreed Memorandum”).

³⁵ See Agreement on Internal Trade, Fourteenth Protocol of Amendment, Consolidated Version, part V chap. 16, art. 1601 (2015) (Can.) *repealed by* Canadian Free Trade Agreement, part V, ch. 11, art. 1101 (2017).

³⁶ See e.g., Powell, *supra* note 25, at 327.

Regional conferences, like chief minister bodies, enjoy a range of implementation mechanisms. These institutions, however, are primarily the result of formal and informal agreements among states in an effort to improve states' position in relation to the federal level of government.³⁷ For instance, Canada's Council of the Federation was formally recognized in an intergovernmental agreement after years of informal operation.³⁸ Research seems to suggest that state conferences are more often supported by legislation than municipal conferences.

Though most regional conferences are simply informal bodies, these institutions sometimes bind members. Because state conferences operate to coordinate states' positions on issues when interacting with federal or extraterritorial actors, conference actions routinely formally or informally bind members. State conference action, however, is often developing joint positions on policy issues, potentially to alleviate concerns of seceding authority to a nongovernmental institution.³⁹ In their day-to-day operations, state conferences embody a spirit of power-sharing. For example, within both Germany and Austria's state conferences, chairs of the Conferences rotate annually among the states, and the locations for meetings track the current chair.⁴⁰

Municipal conferences are similarly structured and oriented. Membership may be voluntary, like Australia's Local Government Association or Switzerland's *Städteverband*, which allows Swiss communities with more than 5,000 inhabitants to apply.⁴¹ Alternatively, membership may be automatic, such as in South Africa's District Intergovernmental Forums, which include all

³⁷ See e.g., Roland Lhotta & Julia von Blumethal, *Intergovernmental Relations in the Federal Republic of Germany: Complex Co-operation & Party Politics*, in INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS 218 (Poirier et al., eds., 2015).

³⁸ McEwan et al., *supra* note 18, at 34.

³⁹ Yvonne Hegele & Nathalie Behnke, *Horizontal Coordination in Cooperative Federalism: The Purpose of Ministerial Conferences in Germany*, 27 REGIONAL & FED. STUD 1, 22–23 (2017).

⁴⁰ Lhotta & von Blumethal, *supra* note 37, at 219; Ferdinand Karlhofer & Günther Pallaver, *Strength Through Weakness: State Executive Power and Federal Reform in Austria*, 19 SWISS POL. SCI. REV. 41, 48–49 (2013).

⁴¹ See *Statuten Schweizerischer Städteverband*, SCHWEIZERISCHEN STÄDTEVERBAND (Aug. 21, 2017), <http://www.corstat.ch/de/regionalstatistik/schweiz-staedteverband/statuten/>.

mayors of local municipalities and the executive mayor of the district.⁴² Apart from Switzerland's model, municipal conferences mirror state conferences in their egalitarian operation. Normally, all members have at least limited power over setting items on meeting agendas and can call for conference meetings.⁴³ Municipal conferences are overwhelmingly designed to facilitate coordinated action on common problems facing municipalities. In furtherance of this role, municipal conferences normally discuss problems or national legislation that will affect municipalities.⁴⁴

The voluntary model for municipal conferences, exemplified by Switzerland and Australia's conferences, present a formalized, bureaucratic and academic operation. Rather than using preexisting governmental structures to determine membership, local government associations, like those in Australia and South Africa, include local government organizations from different states, e.g. the Local Government Association of Queensland is a member of the Australian Local Government Association.⁴⁵ Local government associations then elect executive officers who will serve as representatives in vertical intergovernmental institutions.⁴⁶ The Swiss model, perhaps the oldest intergovernmental institution surveyed in this Article, is an abnormally situated municipal conference due to its somewhat complex composition and its unique authority—the *Städteverband's* political action is sanctioned under Article 50 of the Swiss Constitution and allows for regular consultation with the federal government.⁴⁷ The organization

⁴² Intergovernmental Relations Framework Act 13 of 2005, GN 482 of GG 27898, Chapter 4 § 25 (S. Afr.). Note that despite that this institution technically includes a vertical division of government—district and municipal—this Article treats the DGIFs nevertheless as horizontal because the forum is designed for local governments generally.

⁴³ See e.g., *id.*

⁴⁴ See L. Malan, *Intergovernmental Relations and Co-operative Government in South Africa: The Ten-Year Review*, 24 POLITEIA 226, 235 (2005).

⁴⁵ About ALGA, AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION, <https://alga.asn.au/about-alga/> (last visited Oct. 24, 2019).

⁴⁶ *Id.*

⁴⁷ The *Städteverband* was founded around 1897. See *Städteverband*, SCHWEIZERISCHEN STÄDTEVERBAND, <https://staedteverband.ch/de/Info/stadteverband> (last visited Nov. 14, 2019).

incorporates three levels of membership—voting representatives, nonvoting representatives, and patron members.⁴⁸ Further, the *Städteverband* consists of three core organs that wield different authority and perform separate roles (the assembly of delegates, the governing board, and the inspecting body) and three ancillary bodies (federal politics working group, the standing commission, and an administrative body).⁴⁹ Like local government associations, Switzerland’s municipal conference also serves as a consultative forum for municipalities, but the *Städteverband* also sponsors and provides services, training courses, conferences, studies, and exhibitions on subjects relating to municipal governance.⁵⁰

C. Policy-Specific Institutions

Policy-specific institutions are designed to address specific policy areas or state problems. Unlike the ministerial bodies or chief minister conferences, memberships for policy-specific institutions are often more diverse and varied. Thus, the main difference between these institutions and ministerial bodies lies in membership composition. These institutions do not follow a generalizable formula similar to other intergovernmental institutions discussed within this Article. Overall, these institutions wield wildly varying degrees of political and legal power, though few actually bind governmental members. Overwhelmingly, these institutions are the creation of federal legislation. These institutions may not fall within the normal vertical-horizontal dichotomy. Rather, certain institutions are specifically designed to operate apart from governmental influence but still function to facilitate intergovernmental relations. Though falling outside of the traditional taxonomy this Article formulates, these institutions are nevertheless noteworthy and present interesting approaches to comprehensive interstate action.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* art. II.

1. Financial Institutions

These institutions are generally aimed at tax harmonization and the distribution of revenue across the different levels of government. These bodies are primarily advisory, but there some examples of financial institutions that wield binding powers.⁵¹ Membership for financial institutions vary, and some may not inherently appear to be intergovernmental based purely on membership. For instance, Australia's Commonwealth Grants Commission partly forbids any individual who is employed by federal or state government from serving on the Commission.⁵² Despite the members potentially lacking direct responsibility to state or federal governments, commissioners still serve an intergovernmental role by acting as an intermediary for the states and the federal government. Upon application from a state for a specific federal grants, the Commission must inquire and report to the Minister of the Treasury advice on the fiscal impact of the grant.⁵³ The Commission provides feedback and recommendations to the federal government on matters related to state financial assistance and aims to achieve horizontal fiscal equalization.⁵⁴

On the other hand, South Africa's Financial and Fiscal Commission of South Africa utilizes a more direct intergovernmental approach to membership. The Commission consists of three individuals selected from a list compiled by the Premiers, two individuals selected from a list compiled by local governments, a chairperson, a deputy chairperson, and two additional individuals who all serve no more than five years per term.⁵⁵ These bodies are primarily the creation of federal legislation. Further, financial institutions primarily serve as advisory bodies for

⁵¹ See, e.g., Commonwealth Grants Commission Act of 1976 (Austl.); Neil Warren, *Reform of the Commonwealth Grants Commission: It's All in the Detail*, 31 U. NEW SOUTH WALES L.J. 530, 530 (2008).

⁵² Commonwealth Grants Commission Act, *supra* note 51, § 8.

⁵³ See *id.* § 16(1).

⁵⁴ Warren, *supra* note 51, at 530.

⁵⁵ Financial and Fiscal Commission Act 99 of 1997 § 5 (S. Afr.).

the federal government. By advising the federal government, the financial institutions help provide better fiscal management and application for state level governments.

2. *Infrastructural Institutions*

There are few examples of Infrastructural Institutions—these bodies serve niche roles and often require preexisting, developed governmental institutions to support them. Infrastructural Institutions mostly provide advice on harmonizing building codes and construction safety recommendations. Like financial institutions, Infrastructural Institutions may utilize technocratic or governmental actors as members. For instance, the Austrian Institute of Construction Engineering includes delegates from the federal states themselves that may not be members of government.⁵⁶ Conversely, South Africa’s Infrastructure Coordinating Council consists of the federal president, the deputy president, any minister chosen by the president (primarily ministers holding a portfolio related to infrastructure), each premier representing the nine provinces, executive mayors of metropolitan councils, and the chairperson of the South African Local Government Association.⁵⁷ The Coordinating Council directly monitors and directs major development projects that are deemed “strategic integrated projects.”⁵⁸ Council chairpersons of the Provincial Infrastructure Coordinating Council coordinate executive governmental actors that are impacted by the projects to implement necessary governmental action, which may include public condemnation in furtherance of the project.⁵⁹

⁵⁶ *About Us*, AUSTRIAN INSTITUTE OF CONSTRUCTION ENGINEERING, <https://www.oib.or.at/en/about-us> (last visited Nov. 14, 2019).

⁵⁷ Infrastructure Development Act 23 of 2014 § 3 (S. Afr.).

⁵⁸ *Id.* part 4.

⁵⁹ Powell, *supra* note 25, at 328.

1. Public Health Institutions

Intergovernmental public health institutions serve a crucial role in coordinating the power of the state to address vital public health services and problems such as disease prevention and healthcare management. These, like other policy institutions, provide a body to promote harmonization and unified intergovernmental action. Such is the case with Brazil's Tripartite Committee for Health. Created by ministerial decree amid the state's decentralization efforts and push towards healthy policy integration, the Committee aims to achieve agreements regarding the nationwide operation of the Unified Health System, Brazil's nationalized healthcare system.⁶⁰ The Committee generally operates as a forum where representatives from each level of government discuss, negotiate, and reach decisions on the decentralization of Brazil's health policy.⁶¹

The Committee is composed of representatives from all three levels of government: five representatives of the federal Ministry of Health, five representatives from the National Council of State Health Secretaries, and five representatives from the National Council of Municipal Health Secretaries.⁶² Each level of government appoints their respective representatives to the Committee. Though there are formal rules pertaining to setting items on the agenda for Committee meetings, the forum is often dominated by the federal Ministry of Health.⁶³ These regulations normally implement mechanisms for funding, planning, managing and organizing public health services throughout the country.⁶⁴ Committee decisions on these regulations are made on the basis of consensus, and these decisions also bind the representative members.⁶⁵ Moreover, the Committee

⁶⁰ See Alcides S. Miranda, *Intergovernmental Health Policy Decisions in Brazil: Cooperation Strategies for Political Mediation*, 22 HEALTH POL'Y PLAN. 186 (2007).

⁶¹ *Id.* at 188.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

may penalize municipalities or states who fail to comply with these decisions by suspending conditional health transfers.⁶⁶

In the United States, which lacks a centralized health policy system, public health services are often shared between state and local governments. In certain states, however, that state department of health dictates the operation of local health agencies. Six states operate centralized public health institutions that “directly govern[] and operate[] local public health agencies.”⁶⁷ Thus, in Arkansas, the State Department of Health coordinates a Center for Local Public Health, which operates local public health units throughout the state.⁶⁸

1. Law Enforcement

Few states employ traditional intergovernmental institutions that primarily govern law enforcement. Instead, federal states rely on informal arrangements or intergovernmental cooperation between individual law enforcement agencies that are governed by jurisdictional or administrative guidelines, e.g. joint task forces. Some states, however, have provided for a body that formalizes otherwise loose intergovernmental cooperation. Regardless of the institutionalization, these bodies lack real political power over representative members. Instead, these institutions simply aid in intergovernmental cooperation.

Interestingly, Nigeria has constitutionally mandated an intergovernmental police force to be administered National Police Council. Pursuant to the 1999 constitution, Nigeria established the Nigeria Police Force, which consists of Inspector-General of Police nominated by the president following advice from the National Police Council, and a Commissioner of Police for each state

⁶⁶ *Id.*

⁶⁷ Eileen Salinsky, *Governmental Public Health: An Overview of State and Local Public Health Agencies*, NAT'L HEALTH POL'Y FORUM, 9 (Aug. 18, 2010), https://www.nhpf.org/library/background-papers/BP77_GovPublicHealth_08-18-2010.pdf.

⁶⁸ *About ADH*, ARKANSAS DEPARTMENT OF HEALTH (2017), <https://www.healthy.arkansas.gov/about-the-arkansas-department-of-health>.

of Nigeria appointed by a separate constitutional institution, the Police Service Commission.⁶⁹ Notably, the Police Force is jurisdictionally delineating pursuant to constitutional provision: generally, the Police Force falls under the command of the Inspector-General of Police while contingents of the Force stationed in a state are primarily under the command of the Commissioner of Police of that state subject to any conflicting authority from the Inspector-General.⁷⁰

The Police Force is administered by the Nigeria Police Council, which consists of the federal president, who serves as chairman; the governor of each state; the chairman of the Police Service Commission; and the Inspector-General of Police.⁷¹ The Council's main function is the general supervision of the Nigeria Police Force and to provide advice to the president on the appointment of the Inspector-General of Police. The Police Force generally facilitates the “gathering, collating and sharing of information and intelligence” relating to criminal activity and aids in providing a uniformly trained police force.⁷²

Switzerland's *Konferenz der Städtischen Sicherheitsdirektorinnen und -direktoren* (KSSD) is a quintessential Swiss intergovernmental institution much like the *Städteverband*. The KSSD is technically an outgrowth of the *Städteverband* and falls within the purview of Article 60 of the Swiss Constitution.⁷³ Members of the KSSD are municipalities with more than 10,000 residents and constitute the three main organs of the institution: the general body, the board, and the steering committee.⁷⁴ Similar to the *Städteverband*, the KSSD encourages information sharing and the production of reports, advice, and responses to security issues facing Swiss municipalities.⁷⁵

⁶⁹ CONSTITUTION OF NIGERIA (1999), § 214.

⁷⁰ *Id.*

⁷¹ *Id.* sched. 3, § 27.

⁷² *Vision and Mission*, NIGERIA POLICE FORCE, https://www.npf.gov.ng/aboutus/vision_mission.php (last visited Oct. 24, 2019).

⁷³ *See* Bundesverfassung [BV] [CONSTITUTION] Apr. 18, 1999, SR 101, art. 60, para. 1 (Switz.).

⁷⁴ Statuten der Konferenz der Städtischen Sicherheitsdirektorinnen und -Direktore, Sept. 24, 2018, art. 4 (Switz.), https://kssd.ch/cmsfiles/statuten_kssd_d_25.05.2018_genehmigt_durch_vorstand_ssv_24.09.2018.pdf.

⁷⁵ *See id.* art. 7–8.

CONCLUSION

This Article by no means represents an exhaustive taxonomy of intergovernmental institutions. Rather, this Article simply offers a sampling of the most prevalent and, at times, interesting examples of intergovernmental institutions described in the available literature.⁷⁶ Generally, intergovernmental institutions present meaningful opportunities for strengthening the relative bargaining position for lower orders of governments. These institutions may also perform significant actions concerning specific state problems, including tax distribution, public health, and international cooperation. Intergovernmental institutions are not unequivocally beneficial, however, to federal states. Organizations lack public participation and are often obscured from state citizens.

Overall, most federal states employ a wide range of intergovernmental institutions, but many states use similar institutions. Overwhelmingly, the most common form of intergovernmental institution is executive in nature and composition, but some organizations, such as policy-specific institutions, also exist with more specific functions and more varied personnel. While there is broad variation in the method of operationalizing institutions, i.e. legislation rather than an agreement, there are some generalizations that can be drawn. For example, chief minister conferences appear to enjoy more constitutional entrenchment, while horizontal institutions, like municipal or state conferences, are often the result of agreements among members.

Vertical institutions, representing the most collaborative version of intergovernmental institutions, are dominated by federal actors. Structurally, this is seen in the foundation of vertical institutions. The legal arrangements normally afford the federal actor the power to convene the

⁷⁶ Researching intergovernmental institutions is also subject to natural limitations; sources discussing intergovernmental relations in Ethiopia, Argentina, Burma, Comoros, Iraq, Pakistan, Tanzania, the United Arab Emirates, and Micronesia were difficult to locate or were presented in a foreign language.

institution and set the entire agenda while granting other members the ability to recommend for inclusion on the agenda. This procedure is followed for India's Interstate Council and several other states' chief minister conferences. Thus, even if arrangements for vertical institutions call for unanimous or even majority decision-making, the federal member still wields significant authority over the institution by foreclosing certain discussion or institutional action. Federal dominance is likely a product of the federal government's dominance in the state generally; a strong federal government is not likely to cede even nominal authority to other state actors absent overwhelming pressure or federal failures.

Measuring the efficacy of intergovernmental institutions is difficult due to a variety of reasons. As Powell notes, "[t]here are no uniform indicators for measuring the impact of IGR, and causality would be difficult to determine even if they were."⁷⁷ On an abstract level, however, the effectiveness of institutions does not seem to depend on the status of the institution, since even constitutionally mandated bodies often wholly serve advisory roles. In fact, policy specific institutions seem to be the best poised bodies for generating meaningful intergovernmental cooperation despite a lack of political authority. Outputs from intergovernmental institutions are generally limited to advice, coordination, or reports, even though some unique institutions wield abnormally significant abilities to formally bind members to legal action. Consequently, measuring output efficacy across intergovernmental institutions is difficult.

Though most intergovernmental institutions serve an advisory or consultative role, such institutions are not inherently ineffective. The lack of formal institutional action does not define an institution's efficacy. Oftentimes, vertical intergovernmental institutions play a significant role in planning the implementation of national policy by providing a forum for federal actors to

⁷⁷ Powell, *supra* note 25, at 336.

coordinate with state and local governments. These meetings can provide important consultation and discussion between policymakers (here the federal actor) and actors who will be implementing the policy at the ground level (state and local governments). On the other side, vertical institutions allow lower level state actors to discuss local problems with federal actors that may ultimately lead to more effective policy making at the federal level. In horizontal institutions, forums provide state and local actors an opportunity to coordinate a unified front on policy issues that may facilitate negotiations with federal actors outside the intergovernmental institution.

Intergovernmental institutions, despite providing valuable coordination opportunities, also present difficult accountability, transparency, and bureaucratic issues. Generally, there is no true consistency in transparency across intergovernmental institutions. Some institutions meet privately and may not produce public work product. For instance, despite the strength of Germany's *Ministerpräsidentenkonferenzen*, all institutional meetings are shielded from public observation. Thus, such procedures can frustrate democratic accountability by shielding local, state, and federal actors from democratic responsibility for actions and decisions within intergovernmental institutions. If intergovernmental institutions produce outcomes that citizens deem unproductive or negative, citizens may not have a clear understanding of which actor is responsible for which action. Moreover, these institutions seem to rarely seek direct external input from constituencies and do not formally include citizens as members. No surveyed institution invites public participation during institutional meetings, and no institution mandates participation from state citizens. Lastly, intergovernmental institutions necessarily burden the state logistically. Because most institutions incorporate members who serve other governmental roles, service on the intergovernmental institution naturally interferes with the other service.