A Global Dialogue on Federalism

Focusing on important themes of federal governance through country case studies that illustrate federalism's diversity, challenges, and opportunities.

This booklet is the eighth in a series created to provide accessible and comparative information on federal systems. The corresponding book series offers a comprehensive exploration of selected themes while the booklets provide the reader with highlights of each topic, serving as an entry point to the books.

The first booklet featured constitutional origins, structure, and change; the second explored the distribution of powers and responsibilities; the third examined legislative, executive, and judicial governance; the fourth considered fiscal federalism; the fifth focused on foreign relations; and the sixth delved into local government and metropolitan regions. This seventh booklet in the series features diversity and unity: 12 countries with federal features: Australia, Belgium, Brazil, Canada, Ethiopia, Germany, India, Nigeria, Russia, Spain, Switzerland, and the United States.

Future volumes will be devoted to:

POLITICAL PARTIES AND CIVIL SOCIETY IN FEDERAL SYSTEMS

The booklet and book series emerged from the Global Dialogue on Federalism, a joint program of the Forum of Federations and the International Association of Centers for Federal Studies (IACFS). The program creates forums around the world through which experts exchange experiences, ideas, and academic research to identify emerging challenges and inspire new solutions.

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Preface

We are pleased to introduce this booklet, Volume Eight in the Global Dialogue Booklet series, which is devoted to the topic of intergovernmental relations in thirteen federal or federal-type countries/regions. The featured countries/regions are: Argentina, Austria, Australia, Brazil, Canada, the European Union, Germany, India, Nigeria, South Africa, Spain, Switzerland and the United States. Each of these countries/regions has something unique to bring to this important examination of a topic for which there is not yet a common discourse and lexicon internationally.

Over-all, what a reader might conclude from this Booklet is that the subject of intergovernmental relations is an area where much study and investigation is still needed. The founding documents of most federations or federal-type countries/regions make virtually no reference to the rules, guidelines or norms governing cooperation and communication between and among governmental entities. Indeed, as this collection of articles shows, for almost all federal or federal-type systems, intergovernmental relations are still very much a work in progress. Much of what takes place in the intergovernmental domain, in all the countries/regions analyzed, is ad hoc and based on circumstance, culture and custom, rather than law and regulation.

It is impossible, of course, to imagine a system that entailed more than one order or level could function without some generally agreed means for cooperation and communication between and among the entities of government. Yet, this collection of articles underlines the fact that both those who practice and those who study federalism have only quite recently turned their attention to the matter of intergovernmental relations; and, as they have done so, they have developed very different ways of conceptualizing and describing the subject.

That is why booklets such as this one, and the series of which it is a part, can be of such value. They can provide practitioners and researchers alike
Intergovernmental relations in Australia have been crafted pragmatically, taking into account changing conditions in Australian federalism more broadly. In the current context that means that there are increasingly shared functions, as government’s role has widened and demands for national action in a globalized world have increased. There has also been an inexorable centralizing trend, as central government powers have increased through a combination of (relatively rare) constitutional amendments, expansive High Court decisions and a high degree of vertical fiscal imbalance.

As a result, intergovernmental engagement has been primarily led by the Commonwealth government, through a mixture of coercion, opportunism and cooperation. The Commonwealth has used a range of legal, institutional and political mechanisms. Emphasis has been on executive action, with only a limited role for legislatures, to pass necessary legislation. However, as part of community demands for improved governance processes and policy outcomes, there have been increasingly frequent calls (especially from business) to reduce waste and duplication and increase cross-border harmonization within the federation. And so, intergovernmental cooperation is firmly on the national agenda.

The Constitution provides for legal measures to facilitate intergovernmental cooperation. States and Territories can refer specific powers to the Commonwealth (e.g. for regulating corporations), and the Commonwealth can vest its jurisdiction in State courts where this is administratively convenient. Referral of powers is generally viewed suspiciously by States and used relatively rarely. However, governments frequently use mirror or model legislation to enable increased harmonization, while allowing some State variations. Uniform legislation — where one jurisdiction enacts legislation which others then adopt — is also used, and normally arises from intergovernmental discussions.

In recent years the most significant development in intergovernmental relations has been the establishment (in 1992) of the Council of Australian Governments (COAG). This is the peak intergovernmental council on which sit all first ministers and the Australian Local Government Association president.

While meetings of first ministers were not new, the COAG has taken intergovernmental relations to a new level of depth and sophistication. Although not formalized in an intergovernmental agreement, the Council meets regularly and sets much of the policy agenda for Ministerial Councils, and for governments more generally.

However, while the Council of Australian Governments might be thought of as the ‘Cabinet’ of the federation, it is clearly one where the Commonwealth government is first among equals. The Council is, in fact, an administrative entity of the Commonwealth; the Prime Minister calls...
financial and policy power of the Commonwealth. An increasingly dense network of intergovernmental working parties and meetings of officials surrounds COAG, all of which are either attended or supported by secretariats within first ministers’ departments.

The other core intergovernmental bodies are Ministerial Councils. There are over 40 such Councils, dealing with a wide variety of specific policy areas, and involving responsible ministers from all jurisdictions (and sometimes New Zealand).

Councils meet at least annually to develop policy reform measures and take joint action. Most practice consensus decision-making, although some have special voting arrangements associated with particularly significant issues or with resource allocation. Increasingly, their agendas are linked to that of the Council of Australian Governments.

Outcomes from Ministerial Councils and major funding programs may be expressed in legislation, but are also more frequently codified in Intergovernmental Agreements. There are agreements of this sort on issues such as financial relations, food regulations, gene technology, water, and security issues.

Australia also has a long tradition of establishing independent regulatory, policy or advisory institutions to oversee important areas of public policy, such as fiscal equalization, food safety, water, energy and transport regulation, competition policy and vocational training. This is often achieved through a Ministerial Council and an Intergovernmental Agreement. Membership of these institutions is usually jointly selected by the Commonwealth and States to ensure they are not dominated by one or other level of government.

In 2006, following the Canadian example, the Council for the Australian Federation (consisting of State Premiers and Territory Chief Ministers) was established. Aimed at both achieving greater harmonization and influencing national debates, it remains to be seen how it will fare, especially in view of the Council of Australian Governments’ increasing importance.

The election in 2007 of the Rudd Federal Labor Government has seen a much expanded role for the COAG, with more frequent meetings and the conclusion of a new Intergovernmental Agreement on federal financial...