



CHAPTER 1

Introduction

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While local government is found in all federal countries, its place and role in the governance of these countries vary considerably. In some, local government is considered an essential part of the federal nature of the state and recognised in the constitution as such; in others, it is simply a creature of the subnational states or provinces and firmly under their thumb. When referring to local government, it is more correct to refer to local governments (plural), as these institutions come in all shapes and sizes and perform widely divergent functions. They range from metropolitan municipalities, mega-cities, counties, municipal councils of cities and large towns to small town councils and village assemblies. Their focus is either multi-purpose, in the case of municipalities, or single purpose, in the case of special districts or school districts. What unites these institutions of state is that there is usually no level of government below them. That is also their strength and democratic claim: they are the government closest to the people.

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N. Steytler (ed.), *The Forum of Federations Handbook on Local
Government in Federal Systems*,

https://doi.org/10.1007/978-3-031-41283-7_1

The earliest federal constitutions (United States (US), Switzerland, Canada, and Australia) did not refer to local government at all (and if they did, then merely as a competence of state or provincial government as is the case in Canada). Local government was thus merely a creature of statute at the discretion of the state or province. Since the Second World War, however, federal constitutions have increasingly recognised local government as a constituent part of the federal state. A principal reason for this growing recognition of local government is the democratic potential of the government closest to the people. This was the case in Germany, Brazil, Nigeria, South Africa, and Nepal. In India, entrenching local self-rule in the Constitution was seen also as vital for the mobilisation of local resources for development. On the other hand, changes to the Swiss Constitution giving recognition to local government merely recorded the entrenched status of municipalities in the political life of that country.

The place and role of local government have also come strongly to the fore in the governance of metropolitan areas. Where local governments have to deal with the challenges of massive conurbations, they are also staking claims to be partners at the federal table of government. Many large metropolitan governments' budgets are larger than those of states or provinces in the same country. Their claim is thus for money, power, and respect. Urban governments require new fiscal tools to meet their increasing responsibilities, they need powers commensurate to the challenges of urbanisation, and finally, given the vital role they play in the social and economic well-being of the country as a whole, they want respect—a seat at the table of government. Ran Hirshl¹ argues that since the vast majority of the population in developed economies lives in cities and the Global South is witnessing a dramatic growth in mega-cities, cities must deal with the challenges of environmental protection, climate change, poverty, and international migration. Yet they are not constitutionally recognised to play a meaningful role in this regard. In federal systems the situation is no different, if not more complicated. Although there is increasing constitutional recognition of local government as opposed to cities per se, cities are usually under the full or partial control of state governments. Increasingly, there are strong arguments for

¹ *City, State: Constitutionalism and the Megacity* (Oxford University Press, 2020).

cities to play a greater role as a distinct type of local authority and for this role to find expression in the federal framework of governance.²

In systems where the federal state is conceived as comprising only the federal government and states or provinces, the former usually has little or no direct relations with local government, with the concerns and interests of the latter being mediated by the states or provinces. Where governmental powers are divided and shared among the three orders of government, direct relations between the federal government and local government usually follow, producing an inherently more complex and dynamic system of government.

Increasingly, local government plays a significant role in government. The constitutional recognition of local government over the past few decades bears testimony to this. In an age of globalisation when the world is getting smaller, communities have a renewed interest in the comfort zone which government closest to them may offer. Although the majority of local governments are still to be found in small towns and villages, with town hall meetings exemplifying local self-government, the majority of the population in most countries live in cities, the governance of which is not only more complex but also affects the health and well-being of the entire country. These developments in the role and place of local government impose new demands on the theory and practice of federalism.

These dynamics were brought dramatically to the fore in 2020 by the Covid-19 pandemic.³ First, the pandemic tested the federal nature of federations in general, raising the question of whether the federal dispensation helped or hindered the management of the pandemic. In some federations, such as the US and Brazil, the federal government dragged its heels while subnational governments led the imposition of effective curative and preventive measures, thus acting as a check and balance on federal (in)action. Secondly, local governments were often at the cutting edge of the pandemic and the implementation of response measures. In some cases, they were merely the implementers of federal policies, but in others they devised innovative measures to curb the pandemic. Given the federal dynamics that emerged in each country, the question is what

² Erika Arban (ed), *Cities in Federal Constitutional Theory* (Oxford University Press, 2022).

³ See Nico Steytler (ed), *Comparative Federalism and Covid-19: Combating the Pandemic* (Routledge, 2022).

the long-term consequences might be for the federal system in general and the role and place of local government in particular. Will the system return to the old patterns of functioning, or has the management of the pandemic triggered more long-lasting reforms?

The purpose of this *Handbook* is to examine the role and place of local government in 16 federal or federal-type countries and to explore their relationship with the other orders of government and their impact on the system of federalism as a whole. Consistent with the purpose of the Forum of Federation to assist countries in learning from each other's experiences, country chapters explain not only the formal institutional arrangements but also their operation in practice. For the sake of comparative analysis, the chapters have been structured according to a template that guides the information each chapter contains.

For this volume, 16 very different federal or federal-type countries have been selected: Argentina, Australia, Austria, Brazil, Canada, Ethiopia, Germany, India, Italy, Mexico, Nepal, Nigeria, South Africa, Spain, Switzerland, and the US. These countries—among them the major federations and quasi-federations in the world—represent divergent economic and social conditions as well as distinct political and institutional arrangements. Old established federations can thus be compared with more recent additions to the federal family, even with those such as Spain and South Africa that deny a familial connection despite the presence of some federal features in their constitutional make-up. From a constitutional perspective, as noted above, the old federal constitutions (those of the US, Switzerland, Canada, and Australia) did not refer to local government, and if they did, merely as a competence of the states or provinces. In contrast, ever since the Second World War, the other countries in this sample have all given recognition to local government, although not always as a full-fledged order of government.

More important than constitutional recognition of local government is the practice of intergovernmental relations, which gives a better reflection of the role and place of local governments in the federal system. We ask whether local government has become a partner in the federal system of government or whether it is still under the tutelage of states or provinces. In this context, are direct relations emerging between local government and the federal government, or do states mediate that relationship? Where local government is recognised as a partner in the federal system of government, how has this affected the relationship between the federal government and states? Is there competition for power and resources

between states and large local governments such as metropolitan cities? Where local government is a partner in the federal system, what impact has this had on the system as a whole? Have intergovernmental relations become more complex and unwieldy, with less accountability to each order of government's constituency?

In addressing these questions, the country chapters, as noted, have been written to an agreed template in order to ensure coverage of similar issues. Meaningful comparisons can then follow. Each chapter commences with an introductory overview providing the geographical, demographic, and economic context of the federal polity and its political institutions. The second section focuses on the history, structures, and institutions of local government. The historical development of local government is sketched, tracing the evolution of its role over time. As mentioned above, the collective term 'local government' includes counties, municipalities, townships, town councils, school districts, special districts, rural local authorities, villages, and traditional or traditional authorities. The myriad institutions also differ in having either multiple purposes or a single purpose. An important factor in this context is the institutional arrangements for the governance of metropolitan regions. The governance of federal capital cities is also examined.

The third section is concerned with the constitutional recognition of local government. The focus is on the reasons for, and the scope, nature, and consequences of, recognition in both federal and state constitutions. The broad question about the constitutional nature of this order of government is answered through a number of subsidiary questions:

- Is local government accorded powers that make local self-government meaningful?
- Does local government have original taxing powers?
- Are there special features in the constitution, such as directly according local government a seat in the federal government?
- Does the capital city have a special status?
- If there is no national recognition, does local government receive any protection in subnational constitutions? If so, what is the nature of such recognition?
- More broadly, what is the impact of the constitutional recognition of local self-government or absence thereof? Does it enhance democratic and accountable government? Does it lead to greater political participation and better government?

Section 4 analyses the overall governance role that local governments play in a country. This depends on the exercise both of their own functions and of those administered on behalf of the state and federal governments. The focus then shifts to the institutions that exercise power and perform the functions of local government. Issues addressed include the following:

- What are the powers and functions of local government? Are the powers constitutionally entrenched or conferred in legislation? Is the allocation of powers symmetrical or asymmetrical, depending on the size of a local authority?
- Are there powers that local government has sole responsibility for and others which are shared with other orders of government?
- To what extent do local authorities serve as agents for other orders of government?
- Are local authorities under an obligation (by federal or state law) to perform certain functions and provide certain services? If so, how are they financed?
- Given their powers and functions, what do local authorities actually do? What functions are the core of local government in terms of expenditure and personnel? Do they provide, directly or indirectly, goods and services such as water, sewage, waste management, electricity, public transport, and housing? Is there a tendency to privatise these services?
- What is the contribution of local government to total government expenditure (compared to federal and state or provincial governments)?

Having ascertained the powers and functions of local governments, the focus shifts to the institutions that exercise power and fulfil the functions of local government.

- What are the political institutions of local authorities? What is the democratic nature of local government? How are councils elected?
- Do elected councils fuse legislative and executive branches of government?
- Is the mayor directly or indirectly elected?

- How is executive power exercised—in committee or by an executive mayor?
- How do communities hold elected representatives accountable? Are there participatory processes of decision-making?

Financing the governance role of local government is the subject of section 5. Whatever the formal functions and powers of local governments may be, the degree of self-sufficiency in revenue-raising is a strong indicator of the level of local self-governance. A reliance on transfers from state governments is likely to lead to dependency. The focus, then, is on the sources of revenue—whether own or as a result of transfers—and the level of expenditure discretion. The more detailed issues which are probed include the following:

- What is the constitutional and legal framework for the financial management of local authorities?
- Does local government have any constitutionally entrenched revenue-raising powers?
- What are the revenue sources of local government (property taxes, taxes, levies, transfers, and so forth)? Are there any tax-base sharing agreements?
- What are the borrowing powers of local government?
- What percentage of local revenue is self-generated? Is there a vertical fiscal imbalance? How does this compare with state or provincial revenue streams?
- Is there a gap between the assigned duties and functions of local government and the available revenue?
- Is there horizontal fiscal imbalance and are there equalisation policies?
- What are the form and extent of intergovernmental transfers? Conditional, unconditional? Of transfers, how much comes from the federal government and how much from states or provinces?
- Are there controls over local expenditure? May local authorities run budget deficits?
- In general, has local self-government contributed to greater financial accountability and efficiency?

The sixth section examines the theory and practice of supervision of local government exercised by states and the federal governments. Supervision includes standard-setting, support, routine review of decisions, monitoring of performance, and intervention. The extent of supervision has an important bearing on the level of local autonomy. Issues addressed include:

- Can superior levels of government override local laws and decisions?
- Is a superior level of government able to dismiss a democratically elected council? If so, under what circumstances?
- May a superior level of government take over a local authority?
- What has been the practice of supervision? Have superior orders of government exercised a tight rein on local authorities, or allowed a tradition of local autonomy to develop?

Although the states' supervisory role reflects a hierarchical relationship, the practice of intergovernmental relations with other orders of government may suggest a relationship based more on equality. In section 7, the relationships between local government and the states or provinces are outlined. The question is also probed of whether direct relations with the federal government are developing. What is the nature of these relationships? Are they mainly top-down, with the federal or state government dictating outcomes to municipalities, or are there areas in which local government is regarded as a partner in co-determining policies and programmes? In both sets of relations, organised local government plays an important role as the voice of local government and partner in government. How do local authorities organise among themselves to deal with other orders of government? On a national or regional basis? How does organised local government manage the great differences between small rural municipalities and large urban ones?

With regard to local–state/provincial relations, are there state or provincial ministries responsible for local government? Where the relationship is non-hierarchical, are there dedicated structures for intergovernmental relations? Is the local government's relationship with state or provincial government cooperative or conflictual?

Of particular interest are local–federal relations. Issues addressed include:

- Does the federal government relate directly in some instances with local authorities? Are there federal ministries dedicated to local government?
- What impact does local government's relationship with the federal government have on its relationship with state or provincial government?
- Given their size and importance, do the local authorities of metropolitan areas have separate relations with the other orders of government?
- More broadly, how has the emergence of local self-government affected federal–state relations? Has it made intergovernmental relations slower and more complex and cumbersome?

The practice of intergovernmental relations is relevant to section 8, which deals with the political culture of local governance. To what extent have local politics been incorporated into the national-party political system, either facilitating intergovernmental relations or, alternatively, dictating local decisions? More generally, some issues discussed include:

- Are there organised party politics at local level?
- What is the popular interest in local elections? How does voter turnout at local government elections compare to federal and state or provincial elections?
- Is equitable gender representation an issue?
- What link or interaction is there between politics at local level and politics in the other orders of government? Are local politicians often recruited by federal parties? Do federal parties influence local decisions and policies?

Given the role and place of local government in a country's federal system, as described above, section 9 deals with how the Covid-19 pandemic and the measures to combat it impacted on this role and place. Questions addressed include whether, in general, there has been a contraction or expansion of the relative autonomy of local governments where it existed before. What role did local authorities play—proactive or reactively implementing directions from state or provincial and federal governments? Were local governments part of intergovernmental

structures and decision-making, thus presenting a whole-of-government approach to the pandemic? Could the impact of the pandemic on local government lead to more permanent reforms of this order of government?

The final section concerns the role of local government in the evolution of the federal system: what are the main issues of, and emerging trends in, local government that may affect a country's federal system? Four interconnected trends are probed. First, is the autonomy of local government waxing and waning? Secondly, in regard to the problem of smallness of rural municipalities, how do the majority of municipalities, which have less than 5000 inhabitants, cope with the demands and mandates placed on them? Thirdly, as regards the problem of largeness in metropolitan areas, how are they effectively governed in a context where they are the site of both economic growth and social and economic hardship? Finally, have the challenges that globalisation poses to local governments seen greater international connections and cooperation? Are large cities engaging in international relations? How has regional integration, such as in the European Union, affected local governments?

The concluding chapter in this volume gives a comparative analysis of the different themes examined in each chapter. It seeks to answer the overall question of whether the growth of local government with relative autonomy is changing the shape of federal systems. Is there a movement, slow but sure, away from the classical two-order federal system and towards multi-sphere governance? If this is the case, what are the new demands on the theory and practice of federalism?

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