

Intergovernmental Councils And The Stability Of Federal Systems

Abstract

Intergovernmental councils not only increase the effectiveness and efficiency of public policy-making, they can also contribute to federal stability. Regular meetings of members of governments shape the way federal systems deal with the increasingly interdependent relationship between the governments of a federation. When policy problems cut across jurisdictions, governments' autonomy is at stake. Looking at examples of major reforms of fiscal policy in Australia, Canada, Germany, and Switzerland, this article identifies the conditions under which intergovernmental councils protect governments' authority, discretion, and resources so as to avoid federal tensions. Federal governments, in particular, have been eager to get involved in many policy areas for which the constituent units are responsible. Hence, the extent to which intergovernmental councils contribute to the stability of today's federations ultimately depends on their ability to make the federal government agree on joint solutions with the federated entities.

Introduction: The Purpose of Intergovernmental Councils

Various interdependencies exist between the governments of a federation. In response to these interdependencies, many federations across the world have established intergovernmental councils, especially since the second half of the 20th century. A prominent example is the Council of the Federation, established by Canada's premiers in 2003. Councils such as the Swiss Conference of Ministers of Education (established 1897) were created even before. Intergovernmental councils are more or less regular meetings of members of the executive branch of different governments of a federal system (prime-ministers, ministers). Different types of councils exist depending on their policy scope, regional focus, and the participation or not of the federal government (Bolleyer, 2009).

In federal states, power is distributed between two levels of government (Elazar, 1987; Hueglin & Fenna, 2015; Riker, 1964; Watts, 2008), but this division of power is never neat. Governments are mutually dependent in many regards. Responsibilities overlap, policy areas interact, and many public issues cut across several policy areas. Consequently, most policy problems concern several governments of a federation. In the course of the 20th century, these interdependencies have increased. Against this backdrop, it is widely acknowledged in the literature on intergovernmental relations and policy coordination that intergovernmental councils can increase the effectiveness and efficiency of policy-making by avoiding redundancies, duplication, and overlaps (Bolleyer, 2009; Poirier, Saunders, & Kincaid, 2015). However, by making governments reach joint solutions to policy problems that cut across jurisdictions, intergovernmental councils also contribute to federal stability.

Disruptive Unilateralism and Federal (In)Stability

In federal states, changes to the distribution of power require the consent of both levels of government (Watts, 2008, p. 9). When policy problems affect several governments of a federation, but individual governments decide to solve them unilaterally, this fundamental principle of federalism is violated. The reason is that such unilateralism potentially limits the other governments' autonomy. They lose power without giving their consent, which can cause tensions in federal relations and thus lead to federal instability. Such unilateralism can take three forms. The harshest type of unilateral problem-solving consists of individual solutions, which governments enact on their own without considering their impacts on other governments and without the latter being consulted. Federal imposition, the second type of unilateralism, can be more or less disruptive. If governments jointly adopt a policy solution, so that both levels give their formal consent, but the federal government defines all or the key parameters, confronting the federated entities with a *fait accompli*, the constituent units lose a significant degree of autonomy, though less so than in the case of individual solutions. Autonomy losses of the federated entities are less important, though not negligible, if the federal government only sets minor parameters of a jointly adopted policy solution. Non-compliance with a joint solution, finally, can be as disruptive as individual solutions if governments ignore the existence of a jointly-agreed solution altogether. On the other hand, non-compliance might be less harsh, namely when one or all governments defect on certain parts of the jointly adopted solution only. Ultimately, the disruptive character of the three types of unilateral solutions also depends on the extent to which they run against the interests and preferences of the governments which potentially lose power. If unilateral solutions correspond to some or most interests of the other governments, losses of discretion (or authority) may be more acceptable to them. Thus, such unilateralism is less likely to cause federal tensions.

Collaborative Joint Solutions and the Design of Intergovernmental Councils

‘Collaborative joint solutions’, on the other hand, avoid unwanted shifts of autonomy. Whereas they may alter the distribution of power, such changes are agreed upon by all federal actors, and federal stability is maintained. Joint solutions are collaborative if they are not only formally adopted by all governments, but if all governments are involved in their design, and if all governments comply with them.

Intergovernmental councils encourage governments of a federation to find collaborative joint solutions. However, the extent to which they successfully incentivise governments to reach such solutions depends on their design. Firstly, councils have to operate in such a way that they are able to process federally salient matters, instead of excluding them from their agenda. In the latter case, a joint solution is not even developed or governments merely agree on the lowest common denominator.^[1] If politicians can send their staff to represent them at council meetings, this condition is not fulfilled. Officials lack the legitimacy to make political decisions, and coordination will be limited to technical, non-contentious issues. The use of circular resolution as opposed to face-to-face decision-making also compromises councils’ ability to deal with federally salient policy problems. Secondly, councils should be highly institutionalised, so that coordination is a continuous process in the course of which interests and preferences of all governments are accommodated. Moreover, a high level of institutionalisation increases exit costs. Thirdly, the federal government must not dominate councils’ agenda so that it cannot impose policy solutions on the constituent units. Meetings should be chaired on a rotating basis, and the council secretariat should be independent. Put differently, the federal government must not preside council meetings on a permanent basis and it should not oversee the council administration.

Intergovernmental Councils and Fiscal Policy

Such strong councils exist in Germany and Switzerland, as the enactment of two recent reforms of fiscal policy shows. In federal systems, fiscal policy is a particularly salient policy area, where agreement can be difficult to reach. Yet, both the Debt Brake (2009) in Germany and Switzerland’s Corporate Tax Reform III (CRT III)^[1] are examples of collaborative joint solutions brought about by intergovernmental councils. All governments participated in the development of these reforms and jointly adopted them. Losses of autonomy were equally distributed. All German Länder but Saarland have implemented the Debt Brake by introducing deficit and debt limits in their legislation, which is an indicator of compliance.^[2]

The councils involved in the enactment of the Debt Brake, namely the Federalism Reform Commission II and the German Bundesrat, have the capacity to deal with a federally salient matter such as deficit and debt limits. While the Debt Brake shows certain signs of a lowest common denominator solution, which suggests that certain aspects had to be excluded from the agenda for their contentiousness, it nevertheless constitutes a comprehensive solution to the deficit problem. 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 CRT III, discussed various aspects of the new tax system, so that a comprehensive solution was established. Further reasons why these councils reached agreement on such sensitive issues as deficit-making and corporate taxes is that external pressure was high. Germany had to solve its debt problem after enacting fiscal stimulus measures during the Global Financial Crisis (Heinz, 2012). Additional pressure came from the Constitutional Court. Pressure on Switzerland to reform its corporate tax system came from the European Union and the OECD as well as international tax competition.

The councils that developed these reforms are highly institutionalised. Thus, they met on a regular basis, as stipulated in their terms of reference. In a first phase, council members built consensus on the broader directions of reform, 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 amongst the constituent units. Broad coalitions in Switzerland also fostered consensus-building. Parties across the spectrum agreed on the need to reform the tax system, as did parties in Germany with regard to fiscal consolidation. Given that the reform processes were hence inclusive, comprehensive, and continuous, the joint solutions were acceptable to all governments.

Finally, the federal governments do not dominate these councils. The federal government and the Länder met in the Federalism Reform Commission II as partners that pursued the joint goal of limiting deficits and debts. The Swiss federal finance minister chaired the meetings of the Projektorganisation. Nevertheless, the federal government used the council to consult the cantons instead of imposing a policy upon them. One reason why the federal government refrained from dominating the Projektorganisation's agenda is that Article 45 of the Federal Constitution requires the federal government to consult the cantons when federal legislation affects them. Similarly, Germany's federal government was generally more inclined to collaborate with the Länder since the latter could have vetoed any legislation in the federal legislature.

In Australia and Canada, in contrast, the councils working on similarly significant reforms in fiscal policy operate in such a way that unilateral problem-solving prevails. Both the Intergovernmental Agreement on Federal Financial Relations (IGA-FFR, 2008) and the Social Union Framework Agreement (SUFA, 1999) were largely designed by the federal governments in Canberra and Ottawa. Moreover, the federal governments failed to comply in the aftermath, even though the two reforms were formally adopted by the two levels of governments.

The councils involved in preparing SUFA, such as the First Ministers' Meetings (FMM), have the capacity to process federally salient matters. However, they are weakly institutionalised and dominated by the federal government. Few meetings were organised to discuss proposals and drafts of the agreement on Canada's social union before it was signed. Committees, working groups, and a secretariat to prepare recommendations for council meetings are lacking. The federal government decided on the timing of the meetings and their content, even though initial meetings were called upon pressure from the provinces. The few federal-provincial council meetings mostly served the purpose of having the provinces endorse federal proposals. The provinces tried to forge a common front through horizontal councils such as the Annual Premiers' Conferences (APC). But given that these councils are also weakly institutionalised, they failed to transform horizontal coordination into actual leverage.

Similarly, 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, have the capacity to process federally salient policy issues but are dominated by the federal government. Canberra chairs council meetings. Besides, the secretariats of these councils are located within the federal government. Consequently, the federal government used the COAG council system to advance its own agenda with respect to reforming the system of federal transfers to the states. For instance, it called meetings when it saw fit. Yet, both COAG and the Ministerial Council are highly institutionalised. They dedicated several meetings to the reform of the transfer system and committees and working groups reviewed proposals and drafts. Since these structures provided the states with possibilities to provide input, federal imposition was less disruptive compared to SUFA. Several parameters of the IGA-FFR were in fact jointly discussed after proposals and drafts were circulated. Moreover, through the Council of the Australian Federation (CAF), which also met several times, the states jointly defended their preferences vis-à-vis the federal government. Finally, governments were fully congruent when the reform of the transfer system was initiated. Hence, the preferences of the states were also addressed through partisan channels. While SUFA legitimised the federal spending power despite provincial requests to limit it, the IGA-FFR reformed the transfer system of the Australian federation in a way that was acceptable to the states.

The leverage the federal governments of Australia and Canada have through their superior position in the councils in which

they participate makes these councils ineffective safeguards of state and provincial autonomy. What is more, 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.

Intergovernmental Councils under Federal Influence?

Intergovernmental councils can incentivise governments of a federation to respect each the other's autonomy. Federal governments seem to feel increasingly legitimised by societal demands for harmonisation and national solutions to get involved in many areas of public decisions. Consequently, the autonomy of the constituent units is at stake. Hence, intergovernmental councils' contribution to federal stability ultimately depends on their ability to constrain the central government of a federation. Intergovernmental councils can be bulwarks against centralisation. Yet, the enactment of collaborative joint solutions presupposes that the federal government and the constituent units meet as partners. If vertical councils, in which the federal government participates, are designed in such a way that its representatives call meetings and set the agenda, this condition is not fulfilled. Thus, horizontal councils, in which the federal government does not participate, seem to be the better safeguards of federalism (Bednar, 2009). The highly institutionalised Conference of Education Ministers (Erziehungsdirektorenkonferenz, EDK) in Switzerland, for example, enabled the cantons to harmonise education policy without the interference of the federal government. Moreover, by speaking with a strong collective voice, the cantons successfully opposed a centralised policy solution (Schnabel & Mueller, 2017). However, if horizontal councils are weakly institutionalised, the federated entities find it harder to build up a common front vis-à-vis the federal government. But even vertical councils do not have to be weak safeguards of constituent units' autonomy. Vertical councils are not always dominated by the federal government. Moreover, federal governments can rarely ignore the constituent units' interests and preferences altogether even if they dominate a vertical council. A high level of institutionalisation increases the chances that their preferences are not only heard but also addressed. Besides, if the constituent units participate in federal decision-making, federal governments tend to be more inclined to consider them as partners, and are thus more likely to refrain from using councils to impose their policies on the federated entities.

Several councils participate in most policy reforms. It is their interactions that ultimately determine their effectiveness in achieving collaborative joint solutions. Moreover, intergovernmental councils never operate in isolation. They are embedded in the political system of a federation and its environment. Councils interact with the other safeguards of federalism, such as the party system. Their work is facilitated, or complicated, by external pressures and domestic developments. The overall stability of a federation with regard to the management of interdependencies ultimately depends on how these interactions play out across various policy areas.

[1] Policy problems are federally salient when they are important for governments' autonomy. Examples are such matters that touch upon, e.g., the cultural distinctiveness of a federated entity. Governments are more reluctant to coordinate when it comes to such policy problems because to coordinate means that they have to give up a minimum of discretion.

[1] The CRT 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*). A popular referendum is pending.

[2] Compliance cannot be measured for the CRT III given that it was never implemented after the Swiss people rejected it.

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Further Reading

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