



Examples and lessons from three-tier federalism

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Question

Please identify countries (lower, middle or upper income) with a three-tier federal structure (federal, state, local), where exclusive legislative powers are granted to local government. What lessons emerge from literature analysing these national governance structures?

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1. Overview

Federalism is an organising principle according to which a political community or alliance is divided into constituent political units, which are afforded substantial autonomy and contribute to shaping the will of the higher political authority. In most federal systems, municipalities are integrated units or members of the state governments. Argentina, Brazil, South Africa and Switzerland are countries that have adopted a relatively unusual three-tier federal structure in which exclusive legislative powers are granted to the local government level, below state and provincial government.¹

Decentralisation brings services closer to the average person and has the potential to increase citizen participation in prioritising services and the way they are delivered. In principle, this has the potential to improve overall accountability and give greater voice to the users of services, including the poor and vulnerable. However, having three spheres of government operating with a degree of autonomy makes for complex relationships that may impact negatively on the effectiveness and efficiency of government. Moreover, whilst the idea of devolving powers to the lowest possible level is attractive in principle, it is only likely to lead to improved outcomes if the lowest level has the capacity and competence to assume those powers.

This rapid review synthesises findings from academic, practitioner, and policy literature. Whilst there is a large body of literature that analyses various aspects of federalism, authors seldom focus on the experience of countries which have implemented this particular three-tier structure. Those studies that do address this area tend to be found either in peer-reviewed academic journals or as part of edited collections published by large international development organisations. The literature surveyed for this report did not incorporate gender concerns.

Key findings

- The central government in Argentina has encountered difficulties in implementing social policy through national-local policy collaboration due to low levels of constitutional autonomy and decision-making authority at the municipal level.
- By contrast, the successful experience of social protection programmes in Brazil indicates that municipalities can facilitate the social policy goals established by central government provided national policies are implemented directly at the municipal level, without being captured by state governors.
- In South Africa, many municipalities have been compelled to take on complex responsibilities despite lacking the technical and administrative competence to discharge them successfully. As a result, the country has experienced a failure of policy and an erosion of good governance at local government level.
- In Switzerland, the complexity of the relations between the provincial and municipal levels of government have been considered non-transparent and inefficient, and have led to various reform initiatives designed to promote greater co-operation.

¹ This is not an exhaustive list of countries with this federal structure, but rather represents the examples that were found during a rapid review of recent evidence. For the purpose of this review, 'local government' refers to the lowest level of government in the three-tier structure, and this is used interchangeably with 'municipal government'.

2. Country profiles

Argentina

Federal structure

Argentina is a federal country divided into 23 states and one autonomous city, Buenos Aires. These autonomous states are divided into 2218 autonomous municipalities, with the exception of Buenos Aires which is divided into 15 communes subdivided into 48 neighborhoods (OECD 2016).

Argentine local governments, in their executive and legislative branches, are made up of elected officers. Mayors and councilors are appointed through free elections held autonomously or coinciding with provincial or national elections (Asensio 2006).

The legal status and autonomy of Argentine municipalities are secured through provincial constitutions. Therefore the effective autonomy of municipalities depends on the scope granted to them by their corresponding province. Municipalities are subject to intervention from provincial governments if they do not properly carry out their duties. This intervention can entail removing authorities from office and replacing them with others appointed provisionally by a higher level of government (Ibid).

Municipalities are financed through their own taxes, through transfers from other government levels, and through credit (Ibid).

Division of powers and responsibilities

The provinces have political, judicial, administrative and financial autonomy. According to the 1994 Federal Constitution of Argentina, provinces can establish their own constitutions and laws, and they have the power to elect their authorities and organise their own administrations of justice. The provinces can create regions for socio-economic development, and can also enter into international agreements, provided they do not conflict with national foreign policy. The provinces also manage the natural resources in their territories and may be responsible for secondary education (Asensio 2006).

Municipalities are essentially self-governed. This self-government includes an assembly, an executive, and courts that rule on misdemeanors or minor infractions that affect urban coexistence (Ibid). Municipalities have both exclusive and shared competences. Their exclusive powers include waste management, markets and cemeteries, public transportation and the construction and regulation of public roads. They also share responsibility for primary education, primary health care, water and sewerage, regional roads construction and maintenance with provinces. Some major municipalities have *de facto* responsibility for health care services and the maintenance of school buildings (OECD 2016). However, ultimately the definition and rules regulating municipalities (including the extent of their autonomy, borrowing capacity, and the percentage of provincial resources they receive) are decided by each province's constitution (Fenwick 2010).

Issues and lessons

Municipal autonomy and social policy. Although they enjoy certain exclusive competences, municipalities in Argentina have relatively limited powers in comparison to other countries with three-tier federal systems. According to Fenwick (2010), the low level of constitutional autonomy and decision-

making authority at the municipal level is directly responsible for the fact that Argentina has achieved less social policy success through national-local policy collaboration than other federal countries (notably Brazil, which is discussed below). As noted above, municipalities depend on formal recognition from provinces for their status as an official third tier of government. This means that federal politics in Argentina is predominately played out between central and provincial levels of government. These dynamics are highly politicised due to Argentina's majoritarian political dynamics, which have traditionally been dominated by two parties (Ibid: 167). The figureheads for public policy-making in Argentina are provincial governors, who are responsible for providing the majority of public social goods. Governors can block national social policy goals and prevent municipalities from exercising their own agency. Equally, national elites do not always have sufficient political incentive to try to impose policy at the sub-national level, partly because of the institutional requirement in Argentina to achieve single-party majorities (Ibid: 168).

Fenwick (2010) argues that these political and institutional dynamics restrict the ability of the national government to successfully implement social protection programmes, and dis-incentivise municipalities to implement social policy initiatives in a uniform manner throughout the country. It was intended that *Programa Familias* - Argentina's national social protection initiative - would bypass provincial intermediation, to reduce the risk that it would be subject to political manipulation. However, according to Fenwick (2010), in practice the majoritarian nature of Argentina's political system has impeded the national policy goal at the heart of the programme. According to conventional electoral logic, it makes little sense for local governments to participate in the implementation of a national programme if they are not aligned through partisanship with the ruling national elites. In the Argentine case, municipal mayors therefore have little incentive to carry out policies in collaboration with the national government, unless it is supported by their provincial government (Ibid).

This situation is exacerbated by the fact that mayors cannot personally claim credit for the successful implementation of the programme within their territory. Within the design of *Familias*, "municipalities just sit back and watch."² In many cases this impedes their willingness to co-operate with the programme's implementation – a problem which is deepened by the fact that, in the context of Argentina's party-centred political dynamics, majors are generally more concerned with seeking office than pursuing public policy (Ibid). Low levels of municipal autonomy within the context of majoritarian political dynamics does not provide mayors with an incentive to provide constituency services in order to forge their careers - but does provide them with an incentive to use patronage to develop patronage networks. As a result of these dynamics, inconsistent implementation has been the main policy challenge for the success of poverty alleviation programs in Argentina (Ibid).

Brazil

Federal structure

The Brazilian constitution of 1988 established municipal government as a third tier of government. Municipalities were given the same status as members of the federation as the intermediate government, sharing the same rights and duties of states. All Brazilian municipal governments enjoy the

² Information obtained from an interview with the ex-director of social development, Municipality of La Matanza. September 29, 2006 [San Justo]; cited in Fenwick (2010: 174).

same legal status (Alfonso and Araujo 2006). Although politically autonomous, local governments still largely depend on the federal government for financial support (Ribeiro and Pinto 2009).

Every municipal government holds its own elections. The mayor and the municipal council members are selected directly by the voters for a four-year term. In municipalities with more than 200,000 voters, a second-run election must be held if no candidate achieves a majority. As in the national and state legislative body, municipal councilors are elected through a system of open-list proportional representation. The number of councilors varies according to the municipality's population (Alfonso and Araujo 2006).

States are entirely divided into municipalities. The number of municipalities varies from 15 in the northern state of Roraima to 853 in Southeastern Minas Gerais. Municipalities also vary widely in size of population, from the smallest, Nova Castilho (close to 1,000 people), to the largest, São Paulo (10.9 million people) (Ribeiro and Pinto 2009).

Division of powers and responsibilities

After the promulgation of the 1988 constitution, each municipality became entitled to issue its own constitution, known as organic law. An organic law must be voted for and approved by two-thirds of the councillors. The right to self-organisation is the most important legal feature of municipal status. This right prohibits states from interfering in the direct organisation of municipalities. Municipalities are constituent units, deriving both their legal and operational competences directly from the federal Constitution. The political autonomy of municipalities, therefore, is legally asserted. States cannot compel or prohibit actions by municipalities within their jurisdictions (Alfonso and Araujo 2006).

Among other principles, the Constitution includes the right of residents to elect their local municipal officials – the mayor, the deputy mayor, and the councillors – without interference from the federal or state governments. Municipal autonomy entails legislating on matters of local interest (e.g., land use) and deciding how to provide public services, organise territory, and use municipal financial resources. Exclusive competences include the collection of local taxes, the provision of local services directly or under concession/permission, including collective transportation in inner cities and setting directives for, and inspection of, land use (Ribeiro and Pinto 2009)

Functions which are exclusive to the federal government include defense, foreign affairs, environmental management, and labor. Responsibility for social insurance and energy are also concentrated at the federal tier. Public security is a state function, whereas housing and urbanisation are municipal. The three tiers of government share responsibilities for education, health and sanitation (Alfonso and Araujo 2006).

The municipalities enjoy broad autonomy in regard to levying taxes and collecting other forms of income, making expenditures, and hiring public employees, setting their salaries, and contracting debts. The budgets and corresponding rendering of accounts are submitted to the legislative powers of the local governments themselves and do not depend on authorisation or evaluation by the federal government. Local governments have a reasonable amount of leeway with regard to larger transfers from central and state governments connected with fundamental education and public health programs, which operate as general-purpose grants (Alfonso and Araujo 2006).

Issues and lessons

Uniform, strong municipal autonomy. Some authors are critical of the fact that all municipalities in Brazil have the same status as political and administrative units and thus are given symmetric treatment in respect of their rights and duties, regardless of inequality in their economic and technical capabilities (Ribeiro and Pinto 2009).

Another criticism of the Brazilian model of strong municipal autonomy centres on the reduction of the coordinating function of the state authorities. It is suggested that if states lack the necessary instruments to coordinate action within their territory this may result in perverse outcomes, especially in metropolitan regions where the impact of the decisions of one municipality cannot always be contained within its jurisdictional boundaries. Without the effective means to enforce coordination, a state government cannot prevent conflicting and overlapping policies from arising between municipalities and between municipalities and the state (Ibid).

Municipal autonomy and social policy. Brazil's decentralised form of governance has provided opportunities for local governments to experiment with social policies (Sugiyama 2011: 25). Since 1995, locally designed anti-poverty programmes and primary health and basic education initiatives have been nationalised in Brazil, but rely on municipal implementation. Drawing a direct contrast with the experience of social assistance programmes in Argentina (discussed above), Fenwick (2010) asserts that central-local collaboration has been key to enabling the federal government to achieve its target of providing cash transfers to more than 11 million vulnerable families federation-wide, in fewer than three years (2003–2006).

Fenwick (2010) suggests that direct national-local collaboration has enabled the Brazilian government to bypass governors and spread non-contributory welfare goods evenly across its territory. Brazil has a highly fragmented and weak party system. In this context, sub-national political elites have an electoral incentive to pursue social policy goals, making national-local policy collaboration politically feasible as part of a 'race to the top'. Fenwick's broader conclusion is that municipalities can facilitate the ability of the central government to achieve its policy goals, particularly in social arenas. But for this to occur, national policies must be directly implemented at the municipal level, without being captured at the intermediate level by powerful state-based governors.

Fenwick (2010) highlights three institutional factors that provide incentives for successful central-local collaboration with regard to social policy in Brazil: the constitutional autonomy of municipalities, a non-majoritarian political system, and the gradual hardening of sub-national budget constraints.

Constitutionally autonomous municipalities: The provision of basic health services and primary education in Brazil falls primarily under the jurisdiction of municipalities. In the *Bolsa Familia* programme, municipalities are also responsible for providing and coordinating the required public services already under their jurisdiction, for registering the targeted low-income families in their territory, and for establishing agreements between non-governmental organisations and various local bodies to provide social control for the programme. Within *Bolsa Familia's* organisation, municipal governments act as the primary agents of the federal government. In the highly decentralised federal structure of government, states have veto power and municipalities have policy opt-out privileges. Municipalities had little to lose by participating and supporting *Bolsa Familia*, given that their main responsibility is to be the federation's primary social service provider and that, after 2000, this responsibility was legally enforceable through fiscal regulation imposed by the federal government.

Non-majoritarian political system: In the Brazilian political institutional context, mayors have an incentive to support nationally driven social programmes such as *Bolsa Familia*. They participated in implementing it regardless of their partisan affinity to the federal centre and were able to claim some political credit for themselves, while also stimulating their local economy with small cash inflows. A mass poverty-alleviation programme such as *Bolsa Familia* is a win-win situation for key actors at both the central and the local level. The federal government's ability to govern in Brazil depends on its ability to forge broad governing coalitions both within the national legislature and across levels of executive government. The logic of coalition governance means that the ideological or party-based ownership of policy ideas is less significant. This decreases the incentives of locally-based actors to withhold co-operation or to spoil the implementation of national programmes for fear of party-based punishment from upper levels of their party (Fenwick 2009: 119).

Moreover, state-based power brokers make it difficult for the President to claim credit for targeted expenditures that go through the states, and they have few partisan incentives to facilitate the delivery of public goods federation-wide in the name of common interest (Rodden and Arretche 2004). Therefore, there is a political incentive for the central government to bypass intermediate levels of government and deliver broad national goods, such as *Bolsa Familia*, for which it can claim credit. This is particularly important in Brazil, where the non-majoritarian political system ensures that all votes matter in all territories for the President's success (Ibid: 11). In federal systems such as Mexico and Argentina, where majority-based parties tend to dominate the sub-national level, it is not in the interest of the central government to bypass bureaucratic implementing agencies at the state level (Fenwick 2009: 120).

Brazil's open-list electoral rules provide further incentives for politicians to favour local and regional demands in social policy. In this system, the political survival of state-based federal deputies and governors depends on their ability to claim credit for successful policy outcomes. Those states which are not involved in the implementation of federal poverty-alleviation initiatives lose the opportunity to claim political credit for them. This is a significant cost in a political context in which individualism and personalism are important aspects of sub-national election campaigns (Ibid: 117).

Hard budget constraints exist when sub-national levels of government do not receive outside support to cover excessive spending, and have to terminate spending activities if a deficit persists. According to Fenwick (2010: 161), this approach weakens the interdependent relationship between provincial and local levels of government, and provides a fiscal incentive for sub-national government to implement nationally-financed public policy.

In Brazil, the hardening of budget constraints put in place under the central administration to stabilise macroeconomic performance gave municipalities a new incentive to collaborate with the central government, in order to increase their share of the central government's earmarked grants (Fenwick 2009: 117). Their collaboration with the federal government also enabled them to meet the one per cent they are legally required to spend on social assistance. As one municipal-level technical adviser in a large city claimed, "*Bolsa Familia* allows us to work our fiscal accounts — although the money does not go through them, the total amount transferred into our territory is included on our balance sheets."³ The

³ Interview with senior technical assistant (name withheld), Municipal Secretary of Social Assistance and Social Development, Sao Paulo (February 10, 2006); cited in Fenwick (2009: 117).

broader proposition is that national-local policy collaboration is fiscally encouraged through regulating responsibility for public policy spending and setting sub-national budget targets (Fenwick 2010: 157).

South Africa

Federal structure

Municipal government in South Africa is constitutionally recognised along with provincial and national government, and has an entrenched, though limited, degree of autonomy. South African local government has been given a critical developmental role to play in rebuilding local communities and environments as the basis for a democratic, integrated, prosperous and non-racial society.

231 local municipalities form the basic local government institution. They vary considerably in size and significance: the smallest has a population of 6,844 residents and covers a vast expanse of desert, while the largest municipalities – Buffalo City (East London), Msunduzi (Pietermaritzburg) and Mangaung (Bloemfontein) – are provincial capitals and have declared themselves aspiring metros (Steytler 2005).

Division of powers and responsibilities

Local government is referred to in the South African Constitution as one of the three spheres of government which are distinct, interdependent and interrelated, and it is afforded the right to govern the local affairs of its community. To that end, it is given constitutionally recognised and protected powers, and the national and provincial governments are prohibited from exercising undue interference.

The Constitution establishes a principle of subsidiarity according to which national and provincial functions that are more effectively exercised by municipalities should be assigned to local government. National and provincial functions can be transferred to local government in general or to individual municipalities, thereby creating the possibility for asymmetrical development of municipalities.

Municipalities enjoy constitutionally guaranteed taxing powers as well as an equitable share of nationally-generated revenue (de Visser, 2009).

Issues and lessons

The competence and autonomy of municipalities. Some authors have argued that the burdens placed on South African local government are too great for many municipalities to cope with, particularly given the lack of technocratic skills in the country in general (de Visser 2009; Steytler 2005; Siddle and Koelble 2016). The legal and constitutional recognition of local government in South Africa propels it to a status that at times equals or surpasses that of provincial government. However, in reality many municipalities are incapable of asserting their financial and political autonomy (de Visser, 2009). This is partly because the size and shape of municipalities varies enormously, ranging from mega-city metros with budgets that exceed those of some provinces, to small, rural, impoverished local municipalities. Yet, formally, a symmetrical legal regime applies to all municipalities. This places a strain on the poorly resourced and skilled municipalities to comply with the rigours of that regime, as well as to exploit the legal space for local self-government. In consequence, the country has experienced a failure of policy and an erosion of good governance at local government level (Steytler 2005; Siddle and Koelble 2016).

A further issue raised in the literature concerns the manner in which policy decisions at the national level affect municipal autonomy. According to Steytler (2005), municipalities are increasingly required to

implement national policies in ways that impact directly on their financial status. For example, after the 2000 election it became government policy that municipalities had to subsidise a basic level of water and electricity for poor households. Although the policy directive has been followed by increased transfers from the national treasury, municipalities have to subsidise part of the cost from their own resources. This can have major implications for municipalities' financial viability, particularly in rural areas (Steytler 2005).

The developmental mandate of local government. According to de Visser (2009), local governments do not have all the powers which are needed to carry out the developmental mandate that has been assigned to them in the Constitution. For example, housing is a shared provincial and national competency, despite the fact that it is a key aspect of development. De Visser (2009) maintains that, in practice, municipalities are the key implementing agents of the housing function, but they perform this function at the behest of provinces, without having any significant policy or fiscal autonomy to make localised decisions. This leads to scenarios in which political tensions can come to the fore, particularly where a municipality and its province are controlled by different political parties (de Visser 2009).

Capacity shortfall. Inappropriate recruitment practices, political interference, and inadequate support from senior governments all contribute to a capacity shortfall which is experienced in South African local government. This lack of capacity (ranging from technical, administrative to financial skills) is particularly problematic given the highly complex range of tasks which are imposed on local authorities (Siddle and Koelble 2016).

Lack of accountability. The devolution of power to local government must be accompanied by effective mechanisms of accountability, anti-corruption, and transparency in order to lead to good governance. However, according to Siddle and Koelble (2016), transparent decision-making, financial and administrative accountability, local leadership and the engagement of communities is absent in many of South Africa's municipalities. Public participation mechanisms are poorly applied, and many appointed or elected officials do not view themselves as accountable to the electorate or the local population.

Switzerland

Federal structure

Switzerland is divided into 26 cantons and 2,815 municipalities. The size of the cantons and the number of municipalities within a canton, as well as the size of the municipalities within and between cantons, varies considerably. Municipalities are under cantonal supervision, although cantons and municipalities have their own political institutions. Each canton and municipality has an executive, which is usually directly elected by the citizens. As with the federal government, almost all executive bodies combine members from different parties. Cantons and larger municipalities have an elected legislature, and cantons as well as municipalities employ various forms of direct democracy. There are two city cantons (Basle-City and Geneva) with almost no autonomous municipalities, and there are mountain cantons (e.g. Graubünden) with strong autonomy of municipalities (Ladner 2009).

The implementation of federal policies is left to cantons and municipalities, with the cantons acting as intermediaries between the confederation and the municipalities (Ibid).

At the municipal level, the executive power is called the municipal council and is in most cases a collegial body elected by citizens. As a rule it consists of five to ten members. The supreme organ of the municipality is either the assembly of all citizens or a communal parliament (Bulliard 2005).

Division of powers and responsibilities

The Swiss federal system operates under the principle of subsidiarity according to which all activities not explicitly assigned to higher political levels remain within the scope of lower-level authorities. Higher levels should thus take over powers of the lower level only when the lower level is not able to assume its responsibilities.

Within the limitations established by federal law, each canton can decide on the organisation and political structure of their territory. They can limit their own cantonal powers or they can delegate some of these powers to municipalities. Municipalities' autonomous and non-autonomous tasks are assigned by states and thus differ from one state to another. They typically include education (pre, primary and secondary schools), health and social welfare, water, electricity, and traffic, local roads, land use planning, natural resource management, recreation and culture, municipal police, etc (OECD 2016). Given their size differences not all municipalities can fulfil the same mandate (Ladner 2009).

Local government is supervised by the canton. The extent of cantonal supervision depends on the legal framework that is given to the municipalities, the size of the municipalities, and the strength of the canton itself. In areas that fall within the competence of the municipalities, supervision is restricted to the lawfulness of the municipalities' activities; in areas that do not fall within the autonomy of the municipalities, supervision also relates to the appropriateness of activities. There are no ways to dismiss an elected council (except for disciplinary matters) or to override local laws and decisions on political grounds without legal or constitutional backing. But cantonal authorities have to step in if a municipality goes bankrupt or is no longer able to elect municipal authorities (Ibid).

Swiss municipalities enjoy far-reaching fiscal sovereignty, financing their activities through taxes, fees, and charges. They have the competence to fix the rate of the local tax on income and property. They are allowed to accumulate surpluses or debt and they prepare a budget which they have to submit to the local parliament, assembly, or directly to citizens in a referendum. Financial control is exercised first by municipal committees and then by the cantonal administration, which supervises the financial administration (Ibid).

Issues and lessons

Maintaining municipal autonomy. According to Ladner (2009), comparative studies indicate that Swiss citizens are quite satisfied not only with their local administrations and the services and facilities provided by local government, but also with the possibilities to influence local politics. However, in recent years, a greater number of government activities have been delegated to the municipalities, whilst the legal restrictions stemming from the federal and cantonal governments have intensified and become more complex. The result has been an increasing loss of autonomy by the municipalities (Ladner 2009).

Since the 1990s there have been a number of attempts to reform local government. The entanglement of tasks and the flow of financial resources between the municipalities and the cantons have been considered non-transparent, ineffective, and inefficient. In almost all cantons, therefore, there have been

attempts to reform the way in which tasks and resources are allocated between the cantons and the municipalities (Ladner 2009).

Facilitating cooperative federalism. In 2001 the three orders of government created the Tripartite Conference of Swiss Agglomerations to encourage policy coordination between the federal, cantonal, and municipal governments. Given the many shared responsibilities – such as transport, spatial planning, environment, social welfare, and healthcare and the strong impact federal policies have on metropolitan areas, this permanent forum is regarded in the literature as a sensible way of facilitating co-operative federalism (Ladner 2009).

Politicians play an important role in linking the different orders of government. The typical career of a Swiss politician involves moving up the ladder from the municipal to the federal government, and a considerable number of politicians represent not only their political party but also their municipality or their canton. Having a member of a municipal executive who is at the same time a member of a cantonal parliament, or having a member of a cantonal government who is also a member in the federal Parliament, is one way to ensure the influence of the canton or municipality across the levels of government (Ibid).

However, in recent years municipalities and local political parties have found it increasingly difficult to recruit enough qualified candidates. On the one hand, the fact that a municipality has a parliament can make it easier for the parties to recruit candidates from among the members of the parliament to run for election to the local executive. On the other hand, the parties have to find enough candidates for their seats in the parliament in the first place. According to survey results, it is hardest to find enough candidates in medium-sized municipalities. By comparison, in the big cities public office is sufficiently prestigious and well-remunerated, while in the very small municipalities these offices are less time-consuming, and it may be harder to refuse an invitation if it is evident that there is nobody else to do the job (Ibid).

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