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# The purpose of intergovernmental councils: A framework for analysis and comparison

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## ABSTRACT

Intergovernmental councils (IGCs) are specific, institutionalized forums of intergovernmental relations. They provide essential horizontal and/or vertical executive channels for preparing, deciding, and implementing multilevel policies. We assume there to be variation, both across federal systems and policy domains, in the purpose they serve – from mutual influence and protection of autonomy through joint decision-making to mere exchange of information – the use that central or sub-state actors make of IGCs, as well as their effectivity. In order to map and explain such variation, this introductory article provides a framework for analysis that includes both conceptual building blocks and conjectural relationships, laying the comparative groundwork for the case studies included in this Special Issue. Findings from the case studies indicate that it is primarily the institutional architecture, but also the structure of the multilevel party system, that account for variation in the purpose and effectiveness of IGCs.

**KEYWORDS** Federalism; intergovernmental councils; multilevel governance; comparative politics

## Introduction

Regional power is on the rise: as the creators of the ‘Regional Authority Index’ demonstrate persuasively in their updated volume (Hooghe et al., 2016), regionalization and decentralization have been world-wide trends over the past 50 years. To the degree that the complexity of state architectures increases by creating sub-state units or empowering constituent units with more autonomy or co-decision rights, the question of how best to organize inter-governmental relations becomes relevant. In economically developed, peaceful democracies, one answer to this question have been intergovernmental councils (IGCs). IGCs bring together members of the executive branch of the sub-state units, with or without a representative of the central government. Most often they are established on a voluntary basis, because their members expect benefits from organizing joint decisions or

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actions in those councils over individual action. To date, however, the great variety of IGCs in multilevel architectures has not yet been explored systematically, neither with regard to their form of institutionalization nor with regard to the function they fulfil in making intergovernmental relations (IGR) work. It is thus the aim of this special issue to describe and analyse the purposes of IGCs in a subset of the mentioned economically developed, peaceful federations: Australia, Canada, Germany, Spain, Switzerland, the UK, and the USA.

This Introduction provides a framework for analysis of the operation and effectiveness of IGCs in these countries and, by extension, in established Western federations more generally. The insights generated here cannot, however, be extended to the management of IGR in less economically developed and/or more conflict-prone federal countries. The next section provides the background to our research and highlights the need for in-depth investigation. We then lay out our conceptual framework and the core notions and conjectures guiding the individual case studies in this issue. In the fourth section, we explain our case selection strategy for the contributions assembled in this special issue and provide brief summaries of the major empirical results of each. The final section concludes with an outlook on desiderata concerning further empirical investigation and specific variables not considered here.

### **Why study IGCs?**

IGCs form a subset of IGR, and are of great and growing importance for multi-level states (Agranoff, 2004a; Bolleyer, 2009; Nerenberg, 2011; Poirier et al., 2015). The allocation of different powers and/or functions to different orders of government calls for both vertical and horizontal coordination: political decisions in one region often have consequences for the citizens of another, and administrative action by the central government may even affect the citizens of all regions. Coordination is possible both in a negative sense – that is, avoiding externalities – and in a positive one – that is, gaining a surplus from coordinated action. At the same time, federalism is often justified by the need to keep government in check (Hamilton et al., 2003 [1787]) or ensure competition (Oates, 1972), with some scholars (e.g. Erk, 2007) highlighting its close connection with territorially entrenched societal diversity, too. Federal arrangements thus enable multiple power centres and open the opportunity to tailor policies to different preferences in different regions – although this may maintain or even foster socio-economic inequality. In addition, while the emergence and growth of the welfare state has sometimes questioned the precise division of powers between central and regional levels, the principle of territorial differentiation of state activity has remained a core feature of federal political systems.

While federalism engenders competition and conflict, there is also an in-built incentive for coordination and cooperation in both the horizontal and the vertical dimension. For example, in its pursuit of national regulation, the US government often tries to influence subnational<sup>1</sup> politics (Kincaid, 2015), while the States may wish for this or that piece of legislation to be enacted nation-wide (Smith, 2015: 421). Horizontally, too, subnational entities may compete for resources and funding, but also coordinate their actions in order to avoid externalities and jurisdictional conflicts (Parker, 2015; Gilardi and Wasserfallen, 2016) and/or strengthen their collective position vis-à-vis the central government (Beer, 1978: 18–19; Hegele and Behnke, 2013; Karlhofer and Pallaver, 2013). All these more or less-institutionalized, more or less frequent and intense, horizontal and vertical forms of interaction are forms of IGR.

As the term *intergovernmental* suggests, coordination takes place primarily among the *executives* of the central government and the constituent units. The relevant actors for our analysis are thus governments as complex actors (Scharpf, 1997: 52), composed of leading politicians and senior bureaucrats in the executive institutions – government chancelleries and ministries. In this sense, it is essentially elite behaviour that shapes the processes and results of IGR, although avenues for parliamentary or even popular influence (both nation-wide and regionally, as in Switzerland) may exist alongside. However, governments are not unitary actors – to understand the politics of IGR satisfactorily, we need to deconstruct and take into account processes of preference formation *within* governments as well, where party-political and departmental conflicts need to be accommodated. Furthermore, in analysing IGCs we adopt ‘the view of the sub-states’ (echoing Elazar, 1966), taking their preferences and strategies as points of departure, while also taking into account central government actors, as they are most often highly relevant counterparts in sub-state action. Accordingly, we analyse both horizontal interactions among sub-states as well as vertical relations, that is, when the central government is involved.

In a world of growing functional complexity, policy overlap and citizen demand, IGR are ‘the oil in the federal machinery’, as Poirier and Saunders (2015a: 2; also 2015b) express it. Broadly speaking, relations between political units in a multilevel structure can be organized according to various kinds of institutions and processes, such as second chambers (Patterson and Mughan, 1999; Swenden 2004); intergovernmental agreements (Parker, 2015); or joint agencies and functional authorities (Watts, 2008: 11; also Peters, 2015; Poirier et al., 2015). In addition, constitutional courts, the party system, and external influences – such as the recent economic crisis or Europeanization – often play an important role in shaping these relations (Scharpf, 2006; Baier, 2012).

The subset of *executive-based IGCs*, however, has received only little scholarly attention. Comparative federalism scholarship broadly acknowledges the

existence of IGCs as one particular institutional manifestation of IGR without, however, paying them close attention (e.g. Watts, 2008: 117ff.; Hueglin and Fenna, 2015: 238ff.). In his comparative exposition of IGR based on Australian evidence, Phillimore (2013: 232) lists them as executive institutions of IGR, which can be either peak bodies (i.e. meetings of heads of sub-state governments) or sectoral councils with or without the participation of the central government. In basic introductory works to IGR, such as Poirier and Saunders (2015a: 11), IGCs are mentioned in passing as executive processes and institutions. In Bolleyer's (2009: 25) treatment, they are defined as 'intergovernmental arrangements with medium-level institutionalization and strong levels of integration'. Bolleyer et al. (2014: 372) also allude to IGCs when they hypothesize that the stronger and less dependent on the centre sub-state governments are, the more likely IGR will be organized in a multilateral fashion both horizontally and vertically.

As for country-specific studies, there is often disagreement regarding the relevance of IGCs. Kincaid and Stenberg (2011), for example, highlight the importance of the ACIR (Advisory Commission on Intergovernmental Relations – a now defunct IGC – as a forum for information sharing, deliberation and policy-formulation in the USA. Others, meanwhile, see IGCs as being decidedly secondary to interstate compacts in the USA (Woods and Bowman, 2011; Zimmermann, 2011; see also Bochsler, 2009) or informal, personal networks (Johns et al., 2007). Elsewhere, they are acknowledged as reflecting the weakness of federal institutions (e.g. in Austria; Karlhofer and Pallaver, 2013) or their weakness is in turn identified as a main obstacle for non-functioning IGR (e.g. in the UK; Trench, 2003).

As we define them here, IGCs are institutions that bring together the leading executive politicians and senior civil servants of various or all governments in a federation. While for some IGCs the presence of a representative of the central government is optional and for others mandatory, here such participation is not a defining criterion. Rather, both versions of IGCs – purely horizontal or including a vertical dimension – are possible. At a minimum, IGCs meet more or less regularly; at the maximum, they possess a professional secretariat and permanently occupy physical space, usually in the national capital (e.g. the Swiss 'House of the Cantons' in Berne). Other typical features include the publication of meeting material such as protocols, press releases, public statements or even reports. All these aspects contribute to the more or less institutionalized character of IGCs.

The workings of IGCs are sometimes related to cooperative federalism (Painter, 1996; Hueglin and Fenna, 2015: 243), but IGCs increasingly play a role in various multi-level systems, be they classic federal states, devolved arrangements (Keating, 2000), or systems federalizing in the holding-together manner (Stepan, 1999). It is thus by no means clear which purpose IGCs fulfil in

a particular multilevel system. Specifically, no systematic treatment of the purpose of IGCs has yet been undertaken.

This special issue's goal is thus to add to existing scholarship in two respects. First, it provides a foundation for cross-country comparison by assembling *descriptions* on the origin, operation and impact of IGCs in seven federal countries. Second, it provides *explanations* for the different purposes of IGCs across federal systems and policy fields. As there is yet no theory on IGCs in federal systems – compared to, for example, medium-range theories for soft-budget constraints (Rodden and Wibbles, 2002; Rodden, 2003); second chambers (Stepan, 1999), regional authority (Hooghe et al., 2016); or territorially entrenched societal diversity (Erk, 2007) – we must cast our theoretical net widely at this stage (see the third section).

The search for such a theory is motivated not least by real-world developments: both the number and scope of IGCs have increased considerably over the past 20 years or so. IGCs matter not only in traditional federal states, but in all kinds of multilevel systems where powers and/or functions are allocated to different government layers. In administrative federations such as Germany, Austria and Switzerland, IGCs have a long history, a high degree of institutionalization, and a good record of solving policy problems. They play a pivotal role not only in everyday policy-making, but also in preparing constitutional reforms (Behnke, 2010; Bolleyer et al., 2014; Geißler et al., 2015). Even in rather dualist federal countries such as the USA, Canada or Australia, peak IGCs have recently been institutionalized or reformed. Here the focus is clearly on balancing vertical power relations but also, occasionally, on horizontal policy coordination (Cameron and Simeon, 2002; Bowman, 2004; Phillimore, 2013).

Other states have only recently begun to allocate competences to different levels of government, such as the UK (Trench, 2003; McEwen et al., 2012) or Spain (Agranoff, 2004a; Nieto, 2008). Here, the need to establish functioning IGCs is felt most acutely, and best practices are sought from international comparison (McEwen et al., 2015). The coming into existence of some kind of IGCs can accordingly be observed in all those countries. They tend to reflect the asymmetric nature of the state and mirror the prevalence of vertical bilateralism:

- In 2004, the Spanish Conference of Presidents was created to bring together regional prime ministers with their national counterpart (Morales et al., 2015: 358–359; also Nieto, 2008, Colino, 2013).
- In Italy, too, its regions (and the two autonomous provinces) are becoming more and more involved in both horizontal and vertical networks (Bifulco, 2006; Griglio, 2013; Palermo and Wilson, 2014).
- In the UK, finally, efforts at strengthening the effectivity of IGR have intensified after the failed independence referendum in Scotland (McEwen and

Petersohn, 2015; McEwen et al., 2015), and IGR are unlikely to disappear in the wake of Brexit, to put it mildly.<sup>2</sup>

It is therefore the aim of this special issue to advance our understanding of how IGCs shape political processes in multilevel states in a both descriptive and analytical perspective.

### **Analytical framework**

The framework presented next operates within the following scope conditions: economically developed, peaceful, and democratic federal political systems (cf. also Watts, 2008). Democracy and the rule of law mean that we can expect the regulations of constitutional documents to be adhered to. Peace excludes recourse to violence or even outright war in dealing with other regions or the central government. Economic development, finally, ensures the possibility for taxation regimes, state capacity, and the availability of staff, goods, and other resources to tailor public policies.

Within this universe of cases, our core premise is that IGCs are established for a reason. The original reason for their creation may have faded, or changed, yet as persisting institutions there must at least be sufficient support for them to continue. But what exactly are IGCs expected to deliver, why, and with what effect? As we outline in this section, being institutions of IGR (Agranoff, 2004b; Bolleyer, 2009: 18), IGCs operate either bi- or multilaterally, horizontally or vertically, and in the latter dimension either in a bottom-up or a top-down fashion.

By investigating the existence, types and activities of IGCs, we are interested in knowing *what purpose(s) they serve and how effective they are* in this regard. Which aims are IGCs meant to pursue with regard to their fellow sub-national actors as well as with regard to the central level? Systematic evidence and knowledge of this kind, from different contexts and on different policies, is necessary for improving federal theory because it helps us understand how federal systems actually work. Often hidden from a strictly constitutional reading of federalism, knowledge on IGCs is equivalent to looking behind the scenes of territorial politics.

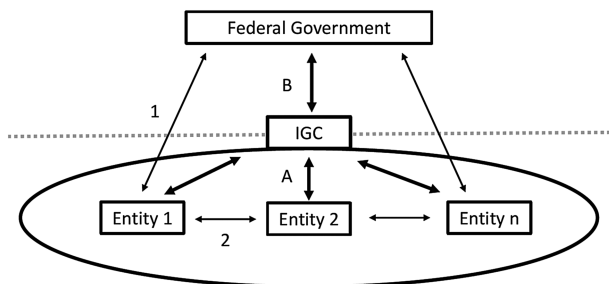
Based on the existing literature, we know that the purpose of IGCs varies *across federations* (according to their institutional structure or federal culture, as suggested by Bolleyer et al., 2014; also Bolleyer, 2009) as well as *across policy fields* (Radin, 2012). It is obviously important in this regard whether a policy field is the exclusive jurisdiction of the centre, a shared jurisdiction, or an exclusively regional jurisdiction, and also whether the central government can rely on its own field agencies or needs the regional governments for implementation. IGCs may also serve different purposes at different stages of the policy cycle.



To investigate the purpose of IGCs empirically, the contributions to this special issue cover seven different liberal-democratic federal political systems: Australia, Canada, Germany, Spain, Switzerland, the UK, and the USA. This promises valuable insights into processes of multilevel government. To ensure comparability, we proceed in three steps. First, we outline possible types of relations between the federal units that can become subjected to IGCs. Second, we clarify the core concept of our analysis – the purpose of IGCs in terms of direction and motivation. Third, we explore possible sources of variation in the purpose of IGCs.

The arrows in Figure 1 denote different types of IGR and the location of IGCs at the intersection of the regional and national spheres (grey line). Arrow 1 refers to bilateral vertical relations between the central government and individual sub-states. These can be bottom-up, top-down, or both. Arrow 2 depicts horizontal interaction. Both 1 and 2 refer to perhaps the most widely studied aspects of federal systems and summarize the classic understanding of vertical and horizontal IGR. Things get more interesting, and more complex, once we turn to the core of Figure 1. Here, we have conceptualized the way in which individual sub-states relate to the IGC (arrow A). These relations stay at the horizontal level (below the grey line) and yet are different in character from classic horizontalism (arrow 2) because they involve the IGC as an additional political player. Vertically, IGCs can also deal with the federal government (arrow B). Again, such relations are conceptually different from classic verticalism (arrow 1), because the IGC is a collective actor and may represent either sub-national or national interests or a sub-set of them.

It is the lettered relationships (A + B) that this Special Issue investigates – without, however, ignoring the existence of non-IGC related connections (1 + 2). Note how IGCs are located precisely on the border between the horizontal and vertical spheres, as they are potentially used in both dimensions of federal interaction. Therefore, IGCs have the potential to transcend the shared rule/self-rule dichotomy (Elazar, 1987; Watts, 2008; Mueller, 2014; McEwen and Petersohn, 2015; Hooghe et al., 2016). As extensions of sub-national



**Figure 1.** Patterns of IGR.

autonomy, they can entrench regional competences and protect them from central government encroachment (Bednar, 2009), while as institutions potentially uniting all sub-national entities, they can be used for nation-wide coordination, harmonized regulation, or uniform implementation – even by the central government.

Next, we define our core concept: the *purpose* of IGCs. IGCs do not emerge out of the blue. Rather, actors pursue an aim in establishing them, and they may use them – once established – strategically. We thus conceive of the purpose of an IGC not as an objectively given, static position in the institutional framework of a federation. Rather, an IGC's purpose is derived from analysing the interests, strategies and relative power of central government and sub-state representatives when they interact with each other. We therefore operationalise an IGC's purpose through the goals and actions of its members. The two dimensions that matter most in getting to the core of an IGC's purpose so defined are the direction of interaction and its motivation. This is because federal systems are essentially concerned with distributing power on a territorial basis, that is vertically as well as horizontally, and because political actors operate within this multilevel structure but otherwise pursue largely similar goals as in unitary states.

The *direction* of interaction – bottom-up, top-down or horizontal – is determined by the actors involved as well as the hierarchy among them. If sub-state units interact without the central government, IGCs are horizontal; if the central government is involved, IGCs are vertical. In the vertical direction, we distinguish whether an interaction is top-down, that is, when the central government makes use of an IGC to get the sub-states to act (or refrain from acting) in a certain way. By contrast, interaction is bottom-up if sub-states use the IGC to induce the central government to certain (in)action in their favour. Furthermore, vertical IGCs can either be of multi- or bilateral character, depending on whether they bring all or only one sub-state entity to the table with the central government. Horizontally, IGCs are by definition institutions of multilateralism, comprising anybody between some and all sub-states.<sup>3</sup>

These three directions form the rows in Table 1, where the columns unpack IGCs' *motivation*. The latter comes in four basic variants: influencing other units, that is either the central government or other sub-states; preserving jurisdictional autonomy and existing competences from outside interference; coordination of joint action or decisions, including conflict prevention and resolution; and information exchange, that is, the sharing of knowledge, expertise, or lessons learned.

In the federalism literature (e.g. Bochsler, 2009; Bolleyer, 2009), the motivation for forming and using IGCs is often understood as an effort of sub-states to *influence* decision-making at the national level and/or protect them from encroachment (top left in Table 1). However, from an economic point of

**Table 1.** Motivation and direction of IGCs' purpose, with examples.

Direction	Motivation			Information exchange
	Influence	Autonomy protection	Coordination	
Vertical and bottom-up (multi- or bilateral)	Sub-states aim at getting a certain policy onto the national agenda	Sub-states prevent federal encroachment	Sub-states propose and fed. gov. agrees on policy	Sub-states inform fed. gov. on their position
Vertical and top-down (multi- or bilateral)	Fed. gov. aims at implementing a uniform policy	Fed. gov. prevents sub-state encroachment into national policy areas	Fed. gov. proposes and sub-states agree on a certain policy	Fed. gov. informs sub-states on national (or EU) issues
Horizontal	Sub-states aim at getting other sub-states to join a common course of action	Sub-states protect their right to act individually against other sub-states	Sub-states agree amongst each other on a certain policy	Sub-states inform each other on best practices

view, it is a sheer puzzle that IGCs are established at all, since the assumption is that competition among sub-states creates a collective action problem for horizontal cooperation and requires a Leviathan – the central government – to constrain them towards joint action (Oates, 1985; Volden, 2005; Weibust, 2013). Similarly, federal theories influenced by the US 'model' of dual federalism (Riker, 1964) emphasize the vertical competition of governments and regard the federal and sub-state levels as essentially antagonistic (Filippov et al., 2004). Each level would try to increase its own sphere of competence, which may lead – depending on the relative power of the levels – to either centripetal or centrifugal tendencies (Bednar, 2009). In this antagonistic power game, sub-states may preserve or increase their collective power by uniting horizontally: hence, together is better for the sub-states *at the expense of* the central government.

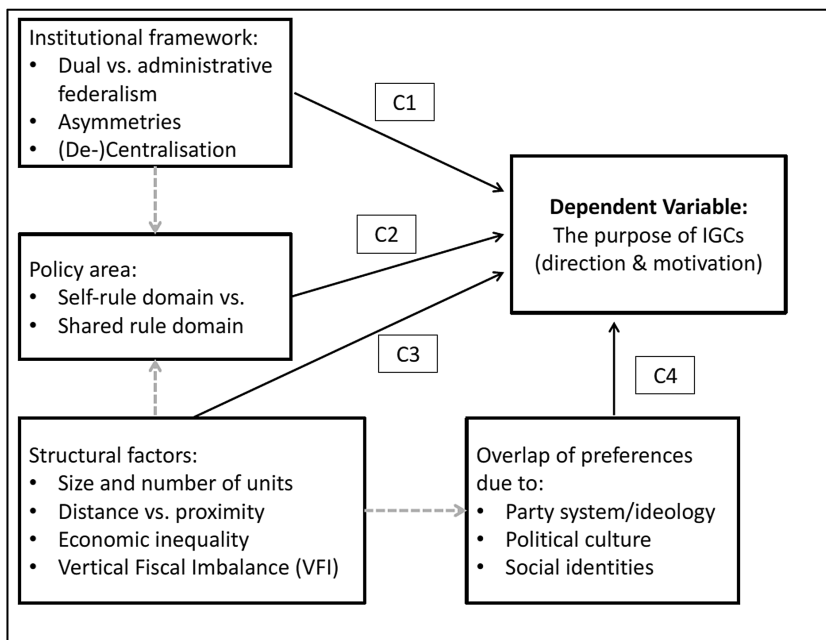
The constituent units may, however, have an altogether different motivation for uniting. IGCs can serve a more harmonious purpose, such as coordinating action by exchanging information (Bolleyer, 2009: 19; bottom right in Table 1). The provision of information is important in matters of implementation, where it may serve to establish common standards, give examples of best (or worst) practice, and help to avoid negative externalities or profit from positive ones. Regarding legislation, the information function can direct the interest of sub-state governments to specific issues, and IGCs can be used to gather systematic evidence on new topics and even involve the central government in position-taking. In this win–win relationship, together is better *for everybody*, not just the sub-states.

In our perspective, then, the question stemming from an economic perspective on how sub-states solve the collective action problem in establishing IGCs seems less relevant. There are good reasons to expect that establishing

IGCs is in line with the sub-states' self-interest, because they provide them with influence and/or information in the horizontal and/or vertical dimension. The puzzle is thus not so much why IGCs form, but which different purposes they serve and why. The case-studies in this Special Issue explore the extent to which these different combinations of motivation and direction play a role in the workings of 'their' IGCs. For there is no automatic link between a certain direction and a certain motivation, and the question of frequency is subject to comparative empirical investigation.

This brings us to the third and final step of our framework: possible *explanatory factors* for systematic variation in the purpose of IGCs. In Figure 2, we arrange those factors and their conjectured causal relations into four sets. Since there is yet no theory of IGCs, we have decided to prioritize breadth over depth – it will be up to the seven case studies and the concluding section of this introduction to explore and contrast the meaning of individual factors.

To begin with, we expect the institutional framework to have an effect via the character of federalism, *de jure* asymmetries, and the degree of (de)centralization (C1). Next, we expect the purpose of IGCs to vary depending on whether a policy area is subject to exclusive sub-state jurisdiction (self-rule) or to national or joint jurisdiction (shared rule): for example, in self-rule domains we expect less vertical interaction (C2). Structural asymmetries



**Figure 2.** Explanatory factors and their conjectured causal relationships.

between federal units are also likely to have an impact, for example, differences in size and number of units (a few large entities might be less reliant on coordination than many small ones), geographic proximity (raising the likelihood of spillovers), economic strength (unlikely to lead to horizontal coordination) and fiscal power, or also vertical fiscal imbalance (VFI, with sub-states dependent on federal money) (C3). Finally, the purpose of IGCs may also depend on the constellation of interests of the actors involved or, more precisely, on the degree of interest overlap (C4). Such overlaps can be party-ideological, cultural, or due to shared social characteristics such as a common language. For the moment, we leave open the question whether and how these four independent variable boxes are related to each other. Instead, we next take a closer look at our key conjectural connections:

C1: The federal architecture determines the extent of dual or 'interstate' federalism, which promotes extended areas of self-rule (Broschek, 2012). By contrast, administrative or 'intrastate' federalism gives rise to extended areas of shared rule. Degrees of fiscal, legislative and political (de-)centralisation also play a role, as do legally entrenched asymmetries (e.g. Scottish vs. Welsh devolution, Jeffery, 2006). The distinction between the rights to decide and to act might be useful in this regard (Biela et al., 2013). Thus, where there is strong vertical competition, we concomitantly expect primarily vertical interaction as an expression of the antagonistic forces between levels of government – for example to avoid legislative centralization of certain policy areas or to shift costs upwards (Mueller et al., 2015).

C2: We also expect a direct influence of the type of jurisdiction in a policy domain (self-rule vs. shared rule) on the purpose of an IGC. Matters of shared rule, where by definition both the federal and sub-state governments are involved, are more likely to require vertical interaction. In contrast, matters of regional self-rule are most likely associated with horizontal relations, if at all. Since in one and the same polity competences in one policy field may be organised as self-rule and in others as shared rule domains, we expect the purpose of IGCs to also vary according to policy field.

C3: The purpose, and often the very existence of IGCs, further depends on structural factors. Confronted with strong horizontal economic inequality, for example in terms of natural resources or tax potential, collective action will be less likely than when all sub-states share similar needs. By contrast, geographically proximate sub-states are more likely to cooperate (Bochsler, 2009), whereas larger regions are more likely to act alone.

C4: Finally, the motivation and direction of IGC action also depend on the degree of congruence of interests and preferences among the federal units. Congruence of interests at the actor-level can have different sources: party-political, cultural or social. If sub-state actors share highly congruent interests, they tend to seek common influence because they feel powerful. Low congruence of interests, on the other hand, diminishes the likelihood for collective action, and we would at best expect information exchange.

Unfortunately, there is no place here to explore further nuances in these variables, some of which – such as VFI, societal diversity or party politics – are the source of whole sub-literatures (e.g. Riker, 1964; Rodden, 2003; Erk, 2007). Instead, the following section explains our case selection strategy and provides brief summaries of the subsequent empirical studies.

## Case selection and findings

The seven studies included in this Special Issue all address the purpose of IGCs. The USA, Canada, Australia, Germany, Switzerland, Spain and the UK were selected not only based on their representativeness, size and relevance, but also because of their variation on a key independent variable – the institutional structure – which ranges from dual to cooperative federal arrangements and from centralized to decentralized. All seven are Western-style democratic regimes combining market economies with functioning state structures – a methodological advantage in the sense that these factors are held constant. So because all countries possess some sort of institutionalized IGCs, their purpose cannot vary because of democracy or economic development. The downside of this approach is theoretical, that is, the impossibility to say anything about the lack of these conditions – how IGCs function in non-democratic, developing and/or war-torn contexts must be left for future research.

The studies assembled here pursue two complementary goals. First, each study contributes to building a comparative picture, adding descriptive evidence on the purpose of IGCs in its context. This includes locating IGCs in the overall territorial architecture and qualifying their relation to other important institutions. Second, the analytic framework and hypotheses formulated above outline different problems that may be relevant in one or several cases but not necessarily in all. Here, the contributions add explanatory power. This includes assessing the effectiveness of IGCs in serving their intended purpose. We now briefly summarize each case study.

The German analysis by Hegele and Behnke reveals a picture of highly institutionalized, frequent, and primarily horizontal IGC activity. There are 18 policy-specific IGCs plus one that unites all 16 regional prime ministers. Because the German federation stands out for its uniquely high degree of regional government influence at the national level (via the *Bundesrat*), IGCs can afford to focus on horizontal interaction. Nevertheless, exploring variation across three policy sectors, the authors find that in shared-rule areas (such as finance and environment) horizontal influence-seeking is present, too, while regional defence of *Land* autonomy is a matter only in the self-rule area (internal affairs). Party affiliation does matter in IGCs, but in a differentiated manner: While party lines are successfully used to formally structure the negotiation process, the many different party combinations in Länder government

coalitions cut across territorial interests. As a consequence, differences in party ideologies rarely preclude compromises in IGC negotiations.

Similar outcomes, but with a different institutional point of departure, appear from the Swiss case study. Schnabel and Mueller highlight the division of labour between the Conference of Cantonal Governments as the *political* council for influencing the federal level and various sector- and region-specific IGCs as arenas for the coordination of rather technical aspects of *policy-making* (e.g. curriculum harmonization). Faced with the same need to coordinate both vertically and horizontally as in Germany, the absence of a proper territorial chamber has led to the creation of the Conference of Cantonal Governments, in 1993, while horizontal policy coordination is centuries old. As in Germany, party politics does not play a major role in Switzerland – cantonal governments are usually united in their defence against centralization, also because *de facto* oversized coalitions are omnipresent.

The lack of an influential second chamber is an issue also in Canada, where despite the dualist nature of the federation, horizontal and vertical cooperation has been a prominent issue at least since the 1970s and has continuously gained in importance. Simmons shows how this plays out in a situation of single-party governments across the board, where national and regional prime ministers dictate the timing, frequency, relevance and issues of IGC activity. She analyses the founding document and all communiqués of the Council of the Federation, created in 2003 on the instigation not least of the Quebec government. Her analysis reveals the Council's main purposes to be bottom-up, for example, calling for federal funding, as well as horizontal action, thereby covering the whole range from 'relatively softer' forms of coordination (agreement on the need to take stock of own approaches) to 'relatively harder' ones (agreement to dispute resolution mechanism).

Turning to the USA, the picture radically changes – not so much regarding the *de facto* abandonment of dualism at the expense of cooperative federalism, as Bowman explains, but because fragmentation, polarization and competition are more prominent than elsewhere. Consequently, there are several nation-wide IGCs – for example, of Governors (NGA), State Governments (CSG) and State Legislatures (NCSL) – and some even have subgroups along the Democrat vs. Republican divide. Also, if the CSG operates primarily in the horizontal dimension, serving the rather technical dissemination of best practices, the NGA is oriented bottom-up in lobbying Congress to defend State interests. As in Switzerland, this defensive role is most effective when all States pull in the same direction, but horizontal interest convergence is becoming increasingly precarious because IGCs suffer from collective action problems.

In the Australian study, Fenna and Phillimore describe how the combination of US-style dualism, Canada-style parliamentarism and German-style societal homogeneity has spurred centralization. Similar to Canada, the

Council of Australian Governments and its auxiliary ministerial councils are clearly dominated by the incumbent prime minister. Vertical dominance is aided by weak horizontal cooperation. This is true in particular for the exclusively regional Council for the Australian Federation, created only in 2006 when all states were led by a party in opposition nationally. With only eight players at sub-national level but wide variation in economic conditions and capacities, incentives for bilateral negotiations with the national government are strong, while horizontal cooperation is relegated to informal relations. This relative weakness of the constituent units makes them dependent on agreeing on nation-wide solutions only under the shadow of hierarchy of the Commonwealth government.

While technically only a 'regionalized state', Spain has nonetheless established a range of Sectorial Conferences, each bringing together the respective national minister with their 17 regional counterparts. The functioning of those councils – in particular depending on the party-political composition of central and regional governments – is the focus of Léon's contribution. As in Australia, central government representatives dominate these bodies and horizontal IGCs are almost entirely absent. Moreover, as a result of the decentralization process, bilateral vertical negotiations abound and party politics trump territorial interests. The resulting stalemate between the national government and opposition-led regions may, however, be broken through the proliferation of power-sharing governments in the Swiss image. Whether the processes hypothesized by Léon (minority governments in need of external support; ideological congruence and compromises through coalitions; and inter-party trust through bargaining) actually happen remains to be seen, as party system fragmentation only started in 2015.

As described by McEwen the multilevel institutional structure in the UK is similarly still in flux. Traditionally, vertical bilateral relations have been more common, informal and effective than multilateral ones, mirroring the asymmetric state architecture. Nevertheless, vertical government incongruence after 2007 and two big constitutional questions (Scottish independence and Brexit) have given a more prominent role to the Joint Ministerial Committee as a forum for multilateral discussion. Longing for a 'parity of esteem' (most acutely in Scotland), all devolved governments regard IGCs as serving primarily the purposes of influencing Westminster and Whitehall, both at home and (still) in Brussels. From the perspective of London, however, 'the UK *Government* engages with the Devolved *Administrations*' [emphasis in original], and there is a lack of common interests among the regions, too.

The overall picture emerging from these seven case-studies is thus one of great variation in origin, design, and operation of IGCs. If we now focus on the purpose of IGCs and apply our analytic framework, we can classify the seven countries as shown in Table 2.



**Table 2.** The dominant purpose of IGCs in seven federal systems.

Direction	Motivation			
	Influence	Autonomy protection	Coordination	Information exchange
Vertical and bottom-up (multilateral)	CH (KdK), USA (NGA)	CH, USA (NGA)	D, CH	D, CH
Vertical and bottom-up (bilateral)	UK, ESP	UK, ESP	–	–
Vertical and top-down (multilateral)	CAN, AUS	CAN, AUS	CAN, AUS, UK	CAN, AUS, UK
Vertical and top-down (bilateral)	–	–	UK, ESP	UK, ESP
Horizontal	–	–	D, CH (policy-specific), USA (CSG)	D, CH (policy-specific), USA (CSG)

Note: KdK = Conference of Cantonal Governments, NGA = National Governors Association, CSG = Council of State Governments.

While in most countries investigated, IGCs are attributed different purposes, only in Germany are coordination and information exchange more important than influence and autonomy protection. Together with Switzerland, and to a lesser extent also the USA, Germany is also the only country where IGCs serve primarily horizontal purposes. However, Swiss IGCs also function in a bottom-up manner to influence federal decision-making (in the case of the KdK) or autonomy protection (e.g. in education). The opposite is the case in Canada and Australia, where IGCs are used in a top-down manner by the central government to direct policies at sub-state level. US IGCs are similar to Swiss ones, minus the strong horizontal function, and are best at vetoing the central government's plans. IGCs in the UK and Spain are primarily bilateral and vertical due to the asymmetric power distribution and the importance of party politics (which in both cases continue to negotiate de/centralization reforms). Regional governments use these primarily to protect their autonomy, and both levels of government use these to influence the other level, but informal relations outside the IGCs also play an important role.

In terms of impact, there seems to be a direct link between the strength of multilateral horizontal interaction and vertical effectiveness. German and Swiss IGCs are very effective in pursuing their interests vis-à-vis the central government, followed by the US NGA – provided States can agree. By contrast, in Australia and Canada IGCs can be said to be effective only from the point of view of the central government, since several PMs made effective use of them for designing and implementing nationwide policies. This can be explained by the strong positions of single-party government leaders in parliamentary systems and inter-regional interest divergence. In Spain and the UK, IGCs are not (yet) very effective. This may be due to the co-existence with informal negotiation networks, the bilateral nature of territorial negotiations and fluid party alignments.

## Conclusion

We conclude this Introduction by returning to our explanatory framework (Figure 2), where four sets of factors were highlighted. Regarding *institutions*, it has appeared that dual and administrative systems do operate differently in this respect, but less so than originally thought. On the one hand, even in dual systems such as the USA, Canada or Australia, IGCs are used for vertical cooperation and bottom-up influence. On the other hand, symmetric and administrative federations do lead to more horizontal coordination and information exchange via IGCs than either asymmetric or dual systems.

In terms of *variation across policy fields*, to the extent that horizontal cooperation takes place, as in Switzerland and Germany, it is more intense in self-rule domains, where policy-specific IGCs coordinate the implementation, while the two generalist IGCs (the KdK and the *Ministerpräsidentenkonferenz*, respectively) are used for strategic planning and (in the Swiss case) aim at vertical influence in shared rule domains. This distinction did not seem to matter for IGC activity in the other countries.

Among the *structural factors*, size might play a role: although both the most and the least populous country in our sample, the USA and Switzerland, possess strongly fragmented IGCs, both also have many constituent units (50 vs. 26). Canadian and Australian provinces, by contrast, are generally larger and fewer in number, which might explain the lower necessity to rely on IGCs. Geography is relevant insofar as common borders seem to promote interaction. Regional IGCs complement nationwide ones in most states. In the UK, by contrast, the lack of common borders between the devolved regions seems to hinder the emergence of common concerns. Uniting horizontally against the central government is further aggravated there by the fact that the devolved regions account for less than 16 percent of the overall population.

Finally, on the *overlap of preferences* we can say that party ideology provides common alignments in the working of IGCs in all case studies – even in Switzerland, where power sharing abounds and overlap is thus stable and widespread. Vertical congruence between sub-state and central governments is especially relevant in parliamentary Spain, UK, Australia, and Germany, but less so in Canada because of the truncated party systems. While in times of incongruity, Australian IGCs were used less frequently, in such phases regional governments in Spain and the UK managed to strengthen the influence of (bilateral) IGCs because the informal channels for IGR coordination along party lines were no longer available.

Three ways forward can thus be delineated. While it has been shown that IGCs matter differently according to the different institutional framework in which they operate, still more work needs to be done to unpack the internal operation of IGCs. Precisely how are decisions taken, which sub-states take the

lead in which policy domains, and what role does the anticipated reaction by the central government play? A second avenue for further research is a more systematic mapping of sub-state governments' structural and ideological preferences and how that feeds into the selection of different instruments. IGCs are, after all, just one of the many tools sub-state (and central) governments have at their disposal, and the question then becomes why IGCs are sometimes chosen and sometimes not.

## Notes

1. We use 'sub-state' and 'subnational' interchangeably to do justice to political systems with multiple nations within one overarching polity (e.g. Canada or the UK).
2. Note that the UK Supreme Court decision of January 2017 did not rule out the political inclusion of the devolved institutions from the process of EU withdrawal, but merely stated their consent was 'not a legal requirement' (UK Supreme Court, 2017, para. 150). We thank Nicola McEwen for pointing this out.
3. There may also be horizontal bilateral relations, e.g. concordats or bilateral agreements, but they would not typically involve institutionalization in IGC format.

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# Horizontal coordination in cooperative federalism: The purpose of ministerial conferences in Germany

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## ABSTRACT

Intergovernmental councils in Germany comprise 18 sectoral ministerial conferences and the prime ministerial conference as peak organization. They complement the *Bundesrat* as institutions of Intergovernmental Relations in the German system of cooperative federalism, dealing with matters of shared rule as well as self-rule. Based on expert interviews among ministerial bureaucrats, this contribution finds that contrary to conventional wisdom, vertical influence and autonomy protection are not their main purpose. Rather, they serve primarily information exchange and coordination. Still, the emphasis on either influence and autonomy protection or coordination and information as well as the directions of interaction vary across policy sectors. We further investigate constitutional allocation of power and party political composition as determinants on the specific purpose of ministerial conferences. The findings suggest that the allocation of power is more important than party political composition in explaining variation between sectoral ministerial conferences.

**KEYWORDS** Intergovernmental relations; cooperative federalism; Germany; shared rule/self-rule; policy sectors

## Introduction

Around the turn of the millennium, German federalism underwent an intense reform effort aimed at disentangling institutions and policy-making (Benz, 2006). A number of legislative powers were re-allocated to either the federal or the *Länder* level, thereby reducing the amount of laws requiring approval in the second chamber, the *Bundesrat* (Stecker, 2016). The reform did not, however, change the cooperative nature of German federalism or its long established practice of coordinated law- and policy-making. Ten years on, the ideological pendulum has swung back, and the necessity of joint decision-making and close coordination between levels of government has been broadly accepted. The *Länder* are unable to decide and finance overarching tasks, such as social security or academic education, autonomously (Kropp and Behnke, 2016); and even where autonomous decision-making is

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possible, the aim of securing comparable implementation of federal laws and uniform living standards across the territory deeply engrained in the German federal culture encourages cooperative solutions.

Intergovernmental councils (IGCs) play an important role in this joint decision-making and voluntary cooperation. Germany has one of the most elaborate systems of IGCs among federal countries in the world: 18 sectoral ministerial conferences and one prime ministerial conferences as primarily horizontal coordination bodies complement the German *Bundesrat* as the paradigmatic institution of shared rule and provide for smooth processes of intergovernmental negotiation and decision. To date, there has, however, been little systematic research on the specific purpose that those ministerial conferences serve (but see Hegele and Behnke, 2013; Auel, 2014). In particular, it is far from clear how influential the federal government is in those conferences; how the conferences distinguish their dealings from *Bundesrat* proceedings; and how decisions taken in the conferences influence federal policy-making. While all ministerial conferences are used for influence, information, and coordination, they display interesting variation in their specific patterns of interaction. By comparing IGCs across different policy sectors, we can track determinants of those different patterns while holding the majority of possible confounding factors constant. This paper aims, first, at elucidating the nature and purpose of IGCs in the German federal system in general, and, second, at investigating variation of IGCs across policy sectors and its determinants. It thus enhances our understanding of the different purposes that IGCs serve, nationally and in comparative perspective.

In the next section, we develop our framework for analysis. We operationalize the dependent variable in our analysis, the purpose of IGCs. Then we derive two sets of variables which might provide an explanation for variation in purpose across sectoral conferences. Those are the authority distribution in different policy sectors along the self-rule/shared rule distinction and the party political composition of conference members. The analysis proceeds in two steps. First, we locate German ministerial conferences in the historic and institutional context of German federalism, deriving from this description a general evaluation of the purpose of German ministerial conferences. In this respect, it is particularly important to understand the division of labour between the *Bundesrat* and the ministerial conferences, as the *Bundesrat* is a unique institution in federal systems. Second, we display different patterns of purpose in three sectoral conferences and investigate the effect of the proposed explanatory variables. In the conclusion, we discuss the implication of our finding for the research and theory of IGCs.

### **Explaining varying purposes of IGCs**

Following the approach outlined in the introduction to this Special Issue, we conceptualize the purpose of IGCs two-dimensionally. One dimension

describes the *direction of interaction*: horizontal among the constituent units or vertical between the central government and the constituent units. Vertical relations can be either bottom-up, that is, initiated by the sub-states or top-down, that is, the federal level is the main driver of the relation. The second dimension describes the *motivation of actors* in the IGCs, of which four types have been identified: influence, autonomy (protection), coordination, and information. Within this framework, the purpose of a specific IGC can consist of one motive or a combination of several motives, in one or in both directions. By categorizing an IGC along those dimensions, we gain a differentiated understanding of the actors that profit from an IGC (which level of government dominates? are negotiations mainly bi- or multilateral?) and of its position in the vertical and horizontal distribution of power in the federal architecture.

In Germany, the sectoral ministerial conferences display varying institutional settings and actor constellations, as will be elaborated below. In terms of the institutional setting, one important difference between conferences is the division of powers, that is, whether the conferences deal with matters of self-rule or of shared rule. Thus, in analogy to the assumptions developed in the introduction to this Special Issue (see C2), we conceptualize the institutional setting of an IGC as the distribution of authority in that specific policy sector. In terms of actor constellations, the party political composition of governments is a relevant factor in intergovernmental relations (IGR), as research on the *Bundesrat* (e.g. Lehbruch, 2000; Leunig and Träger, 2014) and comparative research on intergovernmental arrangements more generally (e.g. Bolleyer, 2011) have shown. Thus, we conceptualize the degree of preference overlap (see C4 in the introduction to this Special Issue) as the party political composition of an IGC. Indeed, different conferences in Germany represent varying distributions of authority along the self-rule/shared rule dimension and expose varying patterns of preference overlap in their party political composition.

This variation in the institutional setting as well as in actor constellations, we assume, shapes the purposes of different ministerial conferences in Germany in the policy sectors they represent.<sup>1</sup> This assumption is in line with insights from (comparative) federalism research that multi-level coordination and IGR follow various patterns in different policy sectors (Wright, 1978: 293ff.). Cameron and Simeon (2002) show that important reforms as results of intergovernmental negotiations followed different patterns in Canada: the internal trade agreement was initiated by the federal government, while the social union was a bottom-up initiative. Also Agranoff and Radin (2015) find different bargaining and negotiation settings in medical and educational policy. In particular, analyses of patterns of federal decision-making in German federalism provide strong evidence for the assumption that IGR indeed differ across policy fields (Scheller and Schmid,

2008; Detterbeck et al., 2010; Radtke et al., 2016). This assumption is furthermore underpinned by policy research, where different types of policies are commonly distinguished according to their consequences for policy-making (see e.g. Windhoff-Héritier, 1987: 21–41; John, 2012: 10).

### ***Allocation of power: self-rule and shared rule***

Self-rule and shared rule are notions used to describe and analyse the institutional set-up and distribution of power within a federation. While the institutional approach has its merits and was used to create what is to date the most encompassing comparative database of federal states, the Regional Authority Index or RAI (Marks et al., 2008; Hooghe et al., 2016), there is reason to think that the RAI's emphasis on formal institutions is to the neglect of relevant other aspects, such as informal processes and actors outside government (Mueller, 2014). Furthermore, the RAI defines and operationalizes self-rule and shared rule at a high level of abstraction. The institutional features that are used as indicators, such as a regional government's law-making power disregard possible variation between policy sectors within one federation. By specifying self-rule and shared rule with the specific constitutional distribution of authorities and thus referring to policy sectors as a lower level of analysis, within-case variation can be taken into account.

The distribution of authority is determined by constitutional provisions and varies across policy sectors. In Germany, most of the legislative powers are either assigned to the federal government or under concurrent legislation where 'the *Länder* shall have power to legislate so long as and to the extent that the Federation has not exercised its legislative power' (article 72 Basic Law). All remaining powers are subject to *Länder* legislation. While foreign policy is assigned to the federal government, policing, culture, and education are assigned to the *Länder* (Scheller and Schmid, 2008). Others again, such as environment or finances, are often subject to joint decision-making. This pattern of assignment indicates the areas of self-rule and shared rule. Self-rule means that one level of government is exclusively responsible for the legislation and execution of a policy, and shared rule means that the two levels of government co-legislate and/or co-execute policies.

Following from this conceptualization, *we expect that in areas of self-rule, the ministerial conferences focus primarily on information exchange, coordination and autonomy protection in a horizontal direction.* Due to the claim for uniformity of living conditions, the *Länder* co-operate even where in principle they could act autonomously. For example, they exchange information on legislative acts or best practice examples in implementation, and more generally coordinate their actions where they deem it useful. Furthermore, *we expect IGC interaction to have a bottom-up direction when the Länder aim to protect their autonomy against federal encroachment.*

*In areas of shared rule, we expect an emphasis on coordination and influence in a vertical direction, both bottom-up and top-down.* In areas of shared rule, the two levels either co-legislate or the federal government legislates and the *Länder* are responsible for implementation. Due to the cooperative nature of German federalism, the levels can be expected to cooperate closely. However, there are also instances of conflict and we thus expect mutual efforts at influencing actors at the other level.

### ***Preference overlap: party political composition***

Party politics are an important factor in intergovernmental negotiations (Bolleyer, 2011; Esselment, 2013), as they create 'ideological grouping and unit[e] interests' (Esselment, 2013: 20) among actors with similar ideological or party political affiliations. Party affiliation in an intergovernmental institution is thus an instance of preference overlap, with members of the same, or ideologically close, party uniting their powers and aiming at influencing others (see C4 in the introduction to this Special Issue). In ministerial conferences, the degree of party political preference overlap can be relevant in two respects. On the one hand, a conference can have a hegemonic, dualistic, or rather pluralist composition, which is likely to affect the chance for compromise in the conference. On the other hand, the degree of congruence of party political composition between a conference and the federal government is likely to affect the vertical relationship in terms of mutual influence or cooperation.

The party political composition is determined by the aggregate effect of separate processes of portfolio allocation and coalition bargains in each *Land*.<sup>2</sup> Some conferences, typically internal affairs, are composed primarily of members from the two big party families, Christian Democrats and Social Democrats, because those departments are generally given to the bigger parties in coalition negotiations. Other departments are typically allocated to smaller parties because they represent a core ideological issue of relevance for the party profile, such as the environmental department for the Greens or the justice department for the liberals (Pappi et al., 2008; Sieberer, 2015). Those latter conferences have thus a broader party political composition than the former ones.

In terms of motivation, when conferences are composed only of the two big parties, the strict ideological cleavage prevents substantive agreement or compromise. *We thus expect those conferences mainly to serve exchange of information and mutual influence.* In situations of broader party political composition, greater variation of positions on the ideological continuum offers opportunities for strategic alliances. *We thus expect a focus on coordination.* Regarding the direction of coordination, we expect that the party congruence of the federal level and the ministerial conferences is important. *The stronger the party political congruence between a ministerial conferences and*

*the federal government, the more vertical interaction, both in bottom-up and top-down direction, can be expected. If the conference is composed broadly or dominated by parties in the federal opposition, horizontal interaction is expected to prevail.*

### **Research design, data collection and case selection**

Analytically, the paper aims first at describing and classifying the purpose of sectoral ministerial conferences in Germany along the two-dimensional conceptualization of purpose; and second, at measuring and explaining variation in purpose across sectoral conferences. As the measurement of purpose requires an in-depth understanding of the processes and dynamics within a ministerial conference, a small-*N* comparative case study is the appropriate method. In this sense, we 'measure' the purpose of specific ministerial conferences in a qualitative–interpretive manner based on evidence from expert interviews indicating a prevalence of certain directions and motivations over others. We conducted 13 expert interviews<sup>3</sup> – personally or by telephone – with civil servants in the higher ranks of the ministerial bureaucracy of the *Länder* and the federal government. Experts were selected based on their position; they all were indicated in the organizational charts of their departments as being responsible for the concomitant ministerial conferences. They were asked in semi-structured interviews about the political role, working routines and interaction, and coordination patterns of their ministerial conferences. Interviews were recorded, transcribed and analysed with CAQDAS (atlas.ti) using topical coding (Hopf, 2000). Interviews are referred to in the text as (IP *x*), with a list in the Appendix indicating the institutional provenience of the experts.

We selected three conferences for in-depth investigation, thereby respecting variation along the self-rule/shared rule as well as along the preference overlap dimension. Those are the ministerial conferences of the Interior (IMK), of Finance (FMK) and of the environment (UMK) (see Table 1). Financial and environmental policies as discussed in the FMK and UMK, respectively, are nearly exclusively matters of shared rule. In internal affairs in contrast, the *Länder* have a higher proportion of self-rule, especially when it comes to policing (Scheller, 2008). The party composition also varies between the conferences. While the departments of the interior, and to a lesser extent also the departments of finance, are usually held by the bigger coalition partners (CDU, SPD), the departments of the environment very often go to the Greens (Pappi et al., 2008).

The limited number of conferences under investigation precludes a systematic test of independent variables. Instead, we conduct a 'soft' test of plausibility of the direction of the expected effects, without, however, inferring from our data any measure of strength or reliability. The expectation that the extent of self-rule and shared rule of a policy sector influences the

**Table 1.** Variation across ministerial conferences.

	IMK	FMK	UMK
Allocation of power	Self-rule	Shared rule	Shared rule
Party political composition <sup>a</sup> (CDU/SPD/Greens/Left)	8/8/0/0	5/7/3/1	2/4/10/0
congruence with federal gov. (CDU/CSU and SPD)	Full	Partial	Low
Foundation date	1954	Early 1950s	1973
Role of federal representative	Guest, no voting rights	Guest, no voting rights	Member with voting rights
Frequency of meetings	Regular: 2 per year irregular topical meetings	11 per year in Berlin, linked to meetings of the <i>Bundesrat</i> finance committee; one 'big' conference outside Berlin	Regular: 2 per year irregular topical meetings
Decision rule	Unanimity (dissenting opinions in protocol amendments)	plurality (before 1970: unanimity)	Unanimity (usually with federal representative, otherwise special clause <sup>4</sup> )

<sup>a</sup>Date of measurement: autumn 2016.

purpose of the sectoral ministerial conferences will be supported if the IMK is oriented more towards horizontal coordination and autonomy protection than the UMK and the FMK. The preference overlap explanation will be supported if interaction in the FMK and the IMK is more vertical than in the UMK and if the IMK (and to a lesser extent the FMK) are focusing on information exchange and influence while the UMK largely serves coordination.

## Ministerial Conferences in Germany

A general overview of the federal architecture in Germany helps to understand the historical emergence, organization and set-up of the ministerial conferences. The specific role of ministerial conferences can, however, only be fully understood when seen in relation to the *Bundesrat*.

### *German federal architecture*

German federalism is characterized by three adjectives: *cooperative* (Kropp, 2010); *unitary* (Hesse, 1962; Lehmbbruch, 2002); and *administrative* (Hueglin and Fenna, 2015) or *executive*. It is called 'cooperative federalism' due to the dense interrelationships and multiple instances of joint decision-making between levels of government – in legislation, planning, implementation and financing of policies (Scharpf et al., 1976). The two levels of government are thus tightly coupled, although the *Länder* have comparatively high autonomy (own constitutions, independent legislative, administrative, fiscal and judicial competences; see Marks et al., 2008). But more important than their

self-rule are the unusually strong rights of shared rule of which they enjoy (approval laws, joint tasks, and joint taxes).

It is called 'unitary federalism' because the formally strong rights of the *Länder* are hedged by a political culture giving high preference to federal unity and loyalty as well as uniform living conditions across the country. In this sense, throughout modern German history, the permanent tension between the desire to ensure uniform living conditions on the one hand and the claim of the *Länder* to regulate matters in their own territory according to regional preferences and exigencies on the other was resolved in favour of the principle of uniformity (Abromeit, 1992). The *Länder* have, in the most part voluntarily, traded rights of self-rule for extended co-decision rights.

The label of 'administrative federalism' emphasizes the functional division of labour between levels of government, where the *Länder* are primarily responsible for implementing laws and regulations, while the federal government is mainly responsible for legislation. And the term 'executive federalism', finally, is owed to the strong role of the executives in IGR and federal co-decision-making. The focus on unity across the territory, the high degree of joint decision-making in combination with the comparatively strong autonomy of 16 *Länder* governments creates an unusually high need for coordination among the *Länder*. In this complex multi-level system, the job of accomplishing coordination in everyday politics and of enabling effective policy-making is generally done by two major institutions of IGR: – the *Bundesrat* and the ministerial conferences of the *Länder*.

### ***Ministerial conferences in Germany***

The 18 ministerial conferences plus the prime ministerial conference in Germany are voluntary meetings between the members of *Länder* governments, some of them with participation of a federal representative. Most conferences were established after the Second World War in the early years of the Federal Republic of Germany (Kunze, 1968). The oldest conferences were founded even before 1949, while the most recent was established in 2007. Although they have no constitutional foundation, they are firmly established and institutionalized with almost ritualized routines of preparing and conducting meetings.

The prime ministerial conference deals primarily with matters requiring cross-sectoral coordination as well as matters of elevated political significance. The sectoral ministerial conferences, in contrast, deal with policy specific matters requiring the expert knowledge of senior civil servants in the *Länder* departments (e.g. Benz et al., 2016 on ministerial conferences on culture). Their denominations correspond roughly with the titles of federal and *Länder* departments, so that every ministry is represented in at least one ministerial conference. The conferences meet between one and four



times a year.<sup>4</sup> Political decisions are taken by the plenum of ministers, but the leading echelons of the ministerial bureaucracy play an important role in preparing and monitoring the conferences. The presidency typically rotates among the *Länder* in a one- or two-year cycle. Each conference has written standing orders and a secretariat. Some conferences have a permanent secretariat; in others the secretariat rotates with the presidency. This working mode represents the principle of equality among the *Länder*, but results in a low degree of continuity. Decisions in the plenum are typically taken by unanimity rule, even though over time the prime ministerial conference (in 2004) and some sectoral conferences introduced qualified majority voting requiring the consent of 13 out of 16 *Länder* (Kropp, 2010: 136). Every *Land* has one vote, and indeed unanimity is often reached, which is also the explicit aim of the meetings (Gutekunst, 1998: 4). If unanimity cannot be reached, either no resolution is taken or a dissenting opinion is attached to the resolution. Resolutions are not legally binding. Rather, *Länder* governments are committed politically to decisions taken jointly at the conferences.

The agendas of ministerial conferences cover a wide array of topics across all types of policy fields, ranging from issues exclusively concerning the *Länder* to issues involving the federal or even the European level. Some topics are quasi-permanent, being updated recurrently from one meeting to the next. Most topics are dealt with in between the meetings by specialized working groups, which mushroom in waves over time and appear in no official account (Zimmer, 2010). The meetings are also used in a symbolic way. The locations for the meetings typically rotate across the country, and social events are set in scene with regular documentation by the media, thus strengthening the corporate identity of the *Länder* and conveying a picture to the public of the *Länder* being relevant actors in the policy-making process (Kunze, 1968).

In their self-portrayal, ministerial conferences are horizontal meetings of the *Ministerpräsidenten* (premiers) or of the ministers of the *Länder* aimed at finding common positions that help to defend *Länder* interests against the federal government. German scholarship thus attributes to them the political role of defence against federal encroachment (Kropp, 2010: 130). By coordinating policies in areas of self-rule or concurrent legislation, the argument goes, the *Länder* ensure uniform policy-making across the territory, thus giving the federal government no reason to get involved or to centralize authority.

This description conveys, however, a lopsided picture of German federalism and neglects its de facto cooperative nature. More frequent is another set of motivations consisting of information and coordination both in horizontal and vertical (bottom-up as well as top-down) direction. German ministerial conferences are used in large part to coordinate implementation of federal laws. Thus a great deal of the discussion in the conferences is information

exchange about technical questions, best practices, interests and positions of actors at both levels. In some instances, the *Länder* actively solicit participation of the federal government, trying to win its support in co-financing *Länder* projects or in representing *Länder* interests in Brussels (Hegele and Behnke, 2013). When it comes to decision-making, the *Länder* as well as the federal government use the ministerial conferences to ensure uniform legislation across the country as well as to reduce frictions and build compromise.

Hence, the German system of IGCs displays a strong inclination towards cooperation and information exchange. In contrast to the strong role of the federal government in IGCs in Canada or Australia (see the contributions of Simmons and of Fenna & Phillimore in this issue), German IGCs are operated autonomously by the *Länder*. Also, the aim of autonomy protection against potential influence from the federal government is less prominent than in those other countries. Instead, the German conferences more broadly contribute to balancing the quest for unity in the federal system by coordinating their actions among formally independent governments both in the horizontal and the vertical direction.

### ***The Bundesrat and the relationship with ministerial conferences***

The purpose of German ministerial conferences must be seen against the background of the second institution of IGR in Germany: the *Bundesrat*, or Federal Council. The *Bundesrat* is the second legislative chamber complementing the Bundestag (Swenden, 2004; Leunig, 2010). It is composed of delegated representatives of the *Länder* governments who exercise co-decision rights in federal legislation. In almost 40%<sup>5</sup> of all federal legislation, the so-called 'approval laws', the *Bundesrat* needs to agree by a positive majority; in all other legislation, the *Bundesrat* can delay the process by calling for a mediation committee. Furthermore, the *Länder* have the right to initiate federal legislation processes through the *Bundesrat*. The *Bundesrat* is the institutionalization of shared rule in German federalism (Lehmbruch, 2000). Decisions in the *Bundesrat* are taken by majority rule. Each *Land* has between three and six votes according to their number of inhabitants, which must be cast *en bloc*. If, for example, coalition bargains do not yield a clear *Land* position on an issue, the *Land* refrains from casting its votes (which effectively are then counted as 'no' votes due to the majority rule). This bloc vote further strengthens the territorial logic of representation in the *Bundesrat*. *Bundesrat* decisions are coordinated intensely between and among the *Länder* in a recurrent three weeks long process mainly by the leading echelons of the ministerial bureaucracy (Schrenk, 2010).

In some instances, the division of labour between the two institutions is obvious. Generally, we can distinguish primary responsibility of one of the two institutions during different stages of the policy cycle. Ministerial

conferences can serve as preparatory bodies for *Bundesrat* sessions in the agenda setting phase (Martens, 2003). In the legislative phase, there is the unwritten rule that federal legislation pending in *Bundesrat* sessions is not simultaneously discussed in ministerial conferences (IP 2). Matters in the exclusive legislative authority of the *Länder* can obviously not be dealt with in the *Bundesrat*. If they are to be coordinated, the ministerial conferences are the appropriate forum. When it comes to implementation, finally, the conferences are the forum of choice, again.

In other instances, the fact that two institutions of IGR exist in parallel offers the actors the opportunity to make a strategic choice between them. MCs are useful in the initiation phase of a federal legislative process, if the *Länder* supporting a legislative proposal need to check whether they can count on the support of (a majority of votes of) the other *Länder*. By setting the topic on the agenda of the respective ministerial conferences, it can be discussed informally, before risking defeat in a *Bundesrat* vote. The same strategy can be used to check on the position and win potential support or sponsorship of the federal government, as the federal government is represented in most conferences. Federal sponsorship of a legislative initiative can be useful because laws initiated by the federal government have a higher rate of getting passed than those initiated by the *Bundesrat* (IP 9). Another instance where strategic considerations shape the choice between the two institutions, are so called 'resolutions' (*EntschlieBungen*), which can be issued by the *Bundesrat* plenum or by the ministerial conferences. A resolution is a legally non-binding request to the federal government to initiate legislation or to raise awareness for a problem. In the *Bundesrat*, a resolution can be reached more easily (majority rule as opposed to unanimity rule in most IGCs); but, as votes are taken in the plenum, sectoral interests always need to be balanced against each other. In ministerial conferences by contrast, resolutions are more difficult to reach (unanimity or qualified majority voting), but can be taken without interference of other sectors. A conference is thus the appropriate venue for inter-sectorally highly contested issues where consensus might be achievable within one sector, but not across sectors (IP 2). Also, if unanimous agreement among the *Länder* is feasible, the ministerial conferences is an attractive venue to pass a resolution, because the unanimous consent is a political statement on its own.

Those examples show that the purpose of a specific ministerial conferences is – in part at least – shaped by strategic considerations of the *Länder* representatives. Of course, it also follows from their institutional set-up and their position in the federal architecture, in particular from the general division of labour between the *Bundesrat* and the conferences. In determining the purpose of a specific IGC, it is thus necessary to consider the institutional framework jointly with specific actor and preference constellations.

## Sectoral variation of purpose

Having established the common institutional features of ministerial conferences in the German federal architecture and in particular in their relation with the *Bundesrat*, we now investigate in greater detail differences in the motivation and direction of intergovernmental negotiations across three sectoral conferences – the conference of ministers of the Interior, of Finance and of the Environment. We thereby draw on empirical evidence gained in the interviews. First, we highlight varying patterns of purpose. Then, we connect them to varying power distributions in the matters dealt with and to the party political composition of the individual conferences.

### *The purpose of sectoral conferences*

Exchange of *information* and *coordination* of actions – in horizontal as well as vertical direction – are the two basic and undisputed purposes of the ministerial conferences in Germany (Table 2). In all three conferences, the *Länder* discuss and coordinate topics in advance, to ensure sufficient support before initiating a legislative procedure in the *Bundesrat* (IP 9). The *Länder* also use the conferences to develop joint strategies, share best practices or introduce working procedures regarding the implementation of legislation (IP 1, IP 2, IP 6). While in the IMK and UMK, politically salient matters are on the agenda, the FMK is largely devoted to technical matters such as harmonization of tax collection procedures or monitoring budgets of jointly financed institutions (IP 13).<sup>6</sup>

In *top-down* direction, the federal government uses the conferences to know what the *Länder* are discussing and planning, because *ex ante* coordination guarantees smooth implementation through the *Länder* (IP 4). In *bottom-up* direction, the *Länder* are similarly interested in information from the federal government. In the FMK, this again relates mostly to technical and unpolitical issues. Especially in the IMK and UMK, the federal government

**Table 2.** Differences in purpose of the ministerial conferences.

	IMK	FMK	UMK
Information horizontal/ vertical bottom-up/top- down	Strong/strong/strong	Strong/strong/strong	Strong/strong/strong
Coordination horizontal/ vertical bottom-up/top- down	Strong/strong/strong (central coordination)	Very strong/strong/ strong (technical matters only)	Strong/strong/strong (central coordination and EU)
Influence horizontal/ vertical bottom-up/ top- down	None/strong/very strong	Very strong (across policy sectors)/ weak/weak	Strong/very strong (EU matters)/very strong (vertical sectoral)
Autonomy protection horizontal/vertical bottom-up/top-down	None/very strong/ none	None/none/none	None/none/none

may be requested to take over responsibility for central coordination or for establishing a central coordination unit because they are better equipped to deal with problems pertaining to several or all *Länder* (IP 1, IP 8).

*Top-down influence* is weakest in the FMK in spite of the active participation of the federal government. A strong antagonism shapes interactions on vertical fiscal relations: the *Länder* maintain a common front towards the federal government, even though they are internally split by the difference between equalization donors and recipients. In the IMK, in contrast, *top-down influence* is most prominent (IP 9). This has several reasons, amongst them the larger financial resources of the federal government, for example to fund policing tasks, and the direct participation of the federal government in EU decision processes (IP 9). In the UMK, the *Länder* try to *influence the federal level bottom-up*, especially using their administrative expertise (IP 2), mostly with the aim of making *Länder* interests heard in EU negotiations, which account for a greater share of the UMK discussions than in the other conferences (IP 2, IP 4, IP 6). Furthermore, another pattern of *vertical sectoral influence* shapes negotiations in the UMK, which is the strong sectoral conflict between the environment and the economy in many topics. A consensus reached in the environmental conference helps the environmental ministers in their cabinets to defend the relevance of environmental issues against these competing interests. In particular the federal minister sometimes requests support from her or his *Länder* counterparts because the unanimous resolution of the UMK gives her a better standing in cabinet (IP 9). In return, the *Länder* can use this channel to *influence* the federal minister's position.

In the UMK, resolutions are sometimes used for *horizontal influence* over *Länder* who attempt to deviate with reference to the unanimity of resolutions made in the past (IP 2). And the FMK is special in exerting *horizontal influence across policy sectors, not across Länder*. As the FMK deals with issues of finance, it is involved in almost every policy initiative of other ministerial conferences, finding itself in a position of institutionalized antagonism to every other conference.

*Vertical autonomy protection* whereby the *Länder* try to or feel the need to collectively protect themselves from federal encroachment was only reported from the IMK (IP 1, IP 9).

To sum up, information and coordination are the basic motivations driving discussions in all the ministerial conferences vertically and horizontally. In the FMK, compared to the other conferences, vertical orientation is weaker, the focus on technical matters is stronger, and it exercises a sectoral horizontal influence on other conferences. The IMK, on the other hand, stands out because it is the only conference where autonomy protection from federal encroachment paired with a strong orientation on mutual vertical influence was reported. The UMK is characterized by a strong vertical orientation, due to the high degree of Europeanization as well as the power-game in the

federal government where the conference backs up the sectoral position of the federal minister in cabinet.

### ***Effects of allocation of power***

We expected that conferences with a high degree of self-rule (i.e. the IMK) primarily serve horizontal information exchange and coordination while also focusing on protecting their autonomy from federal encroachment. Conferences operating in policy areas with a high degree of shared rule (FMK and UMK) on the other hand, would have a stronger vertical focus.

Overall, these expectations can be partly confirmed. Interviewees of all three conferences linked the purpose of their conference to the allocation of powers. The UMK is strongly oriented vertically towards the federal level and the EU – in comparison to, for example, the ministerial conference of culture and education (KMK) where the *Länder* exercise legislative authority (IP 2). This conforms to the distribution of powers: most legislative authority in environmental policy lie with the federal government (IP 4). In the FMK, on the other hand, despite a high degree of shared rule, there is vertical communication, but little mutual effort at influence. This deviation from the expected pattern is due to other institutions of IGR, most notably the Stability Council, where the more political matters are discussed (Korioth, 2016). Neither the UMK nor the FMK regard autonomy protection as a pressing issue, albeit for different reasons: in the UMK, vertical coordination is accepted as mutually conducive; in the FMK, the *Länder* feel self-confident and fear no federal interference.

In the IMK, with its high degree of self-rule, the *Länder* share a common inclination towards close horizontal, but also (contrary to our expectation) to vertical cooperation in cross-border topics such as internal security. More in line with our expectation, the IMK is the only conference where attempts of federal influence were reported and in response the *Länder* feel the need to protect their autonomy against federal encroachment.

### ***Effects of preference overlap***

We expected that a strong juxtaposition of two antagonistic party ideologies as in the IMK would lead predominantly to information exchange or influence. A broader bandwidth of parties as in the UMK and even more so in the FMK would ease coordination. Furthermore, we expected a strong congruence with the federal government coalition (IMK) to promote a vertical interaction pattern while low congruence (UMK and to a lesser extent FMK) would lead to more horizontal interaction.

We found little evidence of relevance of the party political cleavage across the conferences. In all conferences, coordination procedures are traditionally organized along party lines. Representatives from *A-Länder* (SPD) and from

B-Länder (CDU/CSU) hold regular pre-conference meetings to coordinate their positions. As coalitions in *Länder* governments became increasingly 'colourful', the A- and B-pre-conference meetings hosted also ministers from other (ideologically close) parties. Nonetheless, G-pre-conference meetings (of Green ministers) gained relevance, mirroring their increased strength as coalition partners. In the IMK, all ministers belong either to the A- or to the B-group. However, the effect of two opposing ideological blocks is moderated by the fact that the ministers carry 'in their baggage' these diverse positions from the coalition governments in their home *Länder*, which effectively makes negotiations more complex and time consuming (IP 10). Through these indirect coalition effects, the IMK's party politics are not greatly different from more 'colourful' ministerial conferences. In the FMK and even more so in the UMK, these traditional coordination rounds are complicated by a growing number of Green ministers coming from different coalitions with either the SPD or the CDU, hence cross-cutting the traditional A- and B-circles. Concomitantly, they form their own pre-pre-conference round, the so-called 'G-Länder' group, and afterwards join the A- or B- pre-conference round according to their respective coalition partner (IP 9). These party political pre-conferences play a very important role in structuring the conference process, but the actual composition of the conference does not display any effect on the purpose of the conference. Coordination and the search for compromise are important motivations in all three conferences irrespective of party political composition. This expectation thus cannot be confirmed with the data at hand.

Congruence with the federal government, on the other hand, plays a role, yet not in the expected direction. All three conferences uphold vertical information and coordination relations; these are not stronger in the IMK despite full congruence between levels. A minor effect of congruence could be detected insofar as the federal representative is included in the corresponding party political pre-conference. The respective *Länder* group hence has privileged access to information and coordination with the national level. Among the conferences in our sample, however, the effect was not strong. In the FMK, the federal minister comes from the CDU, so participates in the B-group meetings. This relative advantage is moderated, however, by the self-perception of conference members as being experts of highly complex technical matters, united by an '*esprit de corps*' and their strong position towards the federal government. In the bipartite constellation of the IMK, the federal minister meets both the representatives of the A- and of the B-Länder in a tripartite pre-conference meeting, coordinating positions and contributing to efficient decision-making (IP 9). And in the UMK, the federal minister is generally dependent on the support of the entire group of *Länder* ministers to defend her portfolio in the federal cabinet.

The effect of the party cleavage on the purpose of the conference is thus not as clear as we expected. Party lines are used for structuring the process. This



initially increased the efficiency of coordination, but with greater variation in party composition, the rationale of party-internal pre-conference meetings becomes increasingly burdensome. In vertical direction, degrees of sympathy or opposition shape the debating style of members according to their party political congruence with the federal minister. But generally, there is a strong self-perception that party political cleavages are of minor importance.

## Conclusion

In our analysis of the purpose of sectoral ministerial conferences in Germany, we pointed out that German ministerial conferences fulfil a role presumably different from intergovernmental councils in other federations: The primary motivation of German ministerial conferences is not vertical influence or the prevention of federal encroachment. Rather, horizontal interaction and mutual information and coordination (in horizontal and vertical direction) play an important role. This is so due to two factors: first, the cooperative nature of German federalism is strongly oriented towards coordinated action and brings together executive actors from both levels with the aim to build compromise. Second, the specific division of labour between two important intergovernmental institutions, the ministerial conferences on the one hand and the *Bundesrat* as the second legislative chamber on the other, further supports an orientation towards information exchange and coordination because vertical influence is ensured through the *Bundesrat*.

More specifically, by investigating not the ministerial conferences as a whole, but in different policy sectors, we could show in which way institutional (allocation of authority) as well as actor constellations (party political composition) can explain variation in the purpose of sectoral conferences. Contrary to traditional characterizations of German federalism as strongly shaped by party political cleavages (Lehmbruch, 2000; Detterbeck, 2016) – differences in the interaction patterns of three conferences in Germany cannot be explained by the party political composition of the conference (see Leunig and Träger, 2014 for a similar finding for the *Bundesrat*). *Party politics structure the process, in a horizontal and vertical direction, but the orientation on compromise is common to all conferences.* The allocation of authority, that is to say, whether a policy is a matter of self-rule or shared rule, has more explanatory power and contributes to understanding different directions and motivations of interaction. In policy sectors, where the *Länder* have a high degree of self-rule, efforts at top-down influence from the federal government are more pronounced than in shared rule policies. Consequently, as this effort at influence is perceived by the *Länder*, they react with strategies of autonomy protection. Where the *Länder* co-decide by way of shared rule, in contrast, coordination and information as dominant motivations prevail, and interaction occurs in horizontal as well as vertical direction. This is a novel finding, as so far the



link between the allocation of authority in terms of self-rule or shared rule in different policy sectors and patterns of multi-level coordination has not been investigated systematically. While the finding was derived from analysis of ministerial conferences in Germany, we propose the hypothesis that *IGC are oriented more towards information and coordination in areas of shared rule and more towards influence and autonomy protection in areas of self-rule* for further comparative cross-country testing.

## Notes

1. We refer here to the notion of 'policy sectors' because we classify policies according to institutional structures that we find in departments, parliamentary committees or ministerial conferences (Pappi et al., 1995: 38). In this sense, the ministerial conferences of the Interior, for example, is regarded as the institutionalization of the policy sector of interior politics.
2. The party political spectrum in Germany from the left to the right is as follows: a post-socialist left party (Die Linke – the Left); a left-liberal environmental party (Bündnis90/ Die Grünen – the Greens); a traditional social-democratic people's party (SPD); a traditional conservative Christian-democratic party (CDU; complemented by its Bavarian 'sister party', the Christian Social Union CSU which, despite its name, is more right wing conservative than the CDU); the liberal party (FDP – the Free Democrats); and several right-wing and protest parties which played to date however no lasting and relevant role at federal level, among which most recently the anti-European protest party *Allianz für Deutschland* (AFD – Alliance for Germany). These parties are in fact party families, that is, an association of the federal and sub-state organizations (Detterbeck and Renzsch, 2003). The German party system hence is vertically integrated, even though there are tendencies towards regional differences (Detterbeck, 2016), which however will be neglected in this analysis.
3. These were complemented by further interviews with a broader focus as well as in-depth research and analysis of all available information on the ministerial conferences, from the literature and websites of the conferences.
4. For a detailed account of the formal structure and working procedures of the ministerial conferences, see Hegele and Behnke (2013).
5. <http://www.bundesrat.de/DE/dokumente/statistik/statistik-node.html> [Accessed 8 July 2016].
6. This can be explained by the organizational closeness of the FMK to the finance committee of the *Bundesrat*.
7. This is called the '*Länder* formula'. If a decision is only taken by the *Länder*, the wording of the resolution is 'the environmental senators and ministers of the *Länder* have decided'. If unanimity is reached with the federal level, then the wording is 'the UMK has decided' (IP 2, IP 6).

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## Appendix. List of interviews conducted by the authors

IP number	Institutional affiliation of interviewee	Date of interview
IP 1	Ministry of the Interior, Baden-Württemberg	23 February 2016
IP 2	Ministry of the Environment, Baden-Württemberg	24 February 2016
IP 3	Ministry of Finance and Economics, Baden-Württemberg	24 February 2016
IP 4	Federal Ministry for the Environment	2 May 2016
IP 5	Senate Department for Finance, Berlin	2 May 2016
IP 6	Senate Department for the Environment, Berlin	2 May 2016
IP 7	Secretariat of the Ministerial Conference of Finance at the <i>Bundesrat</i>	1 October 2016
IP 8	Ministry for the Environment, Bavaria	4 October 2016
IP 9	Ministry of the Interior, Rhineland-Palatinate	12 October 2016
IP 10	Federal Ministry of the Interior	4 October 2016
IP 11	Ministry of the Interior, Mecklenburg-Western Pomerania	19 October 2016
IP 12	Ministry of Finance, Rhineland-Palatinate	5 October 2016
IP 13	Federal Ministry of Finance	12 October 2016



# Vertical influence or horizontal coordination? The purpose of intergovernmental councils in Switzerland

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## ABSTRACT



In 1993, the Swiss cantons established the conference of cantonal governments (KdK). While the literature on Swiss federalism generally acknowledges the important role of the KdK, little is known about its specific purpose, in particular compared to other, older intergovernmental councils operating in Switzerland. We therefore investigate the purpose of the KdK and contrast it with two other intercantonal conferences with nationwide scope, namely those on education and finance. To do so, we trace two of the most important federal reform processes of the last decade: the latest renewal of fiscal equalization and educational harmonization. We find a division of labour between the KdK and policy-specific councils. While the former aims at vertical political influence, the latter primarily engage in genuine horizontal policy coordination. This flexible and smooth interplay of the two types of councils has contributed to further strengthening the political role of the cantons in the Swiss federation.

**KEYWORDS** Switzerland; federalism; intergovernmental councils; conference of cantonal governments; intergovernmental relations

## Introduction

In Switzerland, intergovernmental councils (IGCs) – called intercantonal conferences – are numerous and long-established. Their importance in a politically, culturally, geographically, and economically fragmented system such as the Swiss federation with its 26 cantons, four language communities, and an increasing urban-rural divide is generally acknowledged (e.g. Bochsler and Sciarini, 2006; Meyer, 2006; Bochsler, 2009; Bolleyer, 2009; Strelbel, 2014; Pfisterer, 2015; Wasserfallen, 2015). However, the following question has not been answered so far: What exactly is the purpose of these conferences? Knowing that matters for at least three reasons: Swiss IGCs are increasingly active, for example through drafting legislative proposals, yet no systematic

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assessment of their actual political effects exists; they are increasingly visible, for example during referendum campaigns, yet we do not know what different functions they serve; and as purely horizontal organizations, they are the ultimate expression of cantonal self-rule, yet by coordinating and reconciling different cantonal interests they also serve to concentrate power in a single, centralized organization.

To understand the purpose of Swiss IGCs, we will analyse and compare the purpose of three conferences: the Conference of Cantonal Governments (*Konferenz der Kantonsregierungen*, KdK), the Conference of Finance Ministers (*Konferenz der kantonalen Finanzdirektorinnen und Finanzdirektoren*, FDK), and the Conference of Education Ministers (*Schweizerische Konferenz der kantonalen Erziehungsdirektoren*, EDK).<sup>1</sup> Purpose is conceptualized as in the introduction to this special issue (Behnke and Mueller, forthcoming). Particular attention will be given to the KdK, founded in 1993 to enable the cantons to speak with one voice when addressing the federal government. In terms of research design, we qualitatively analyse two of the most important policy processes of the last decade (cf. also Sciarini et al., 2015): the renewal of fiscal equalization (2014–16) and the harmonization of basic and secondary education (2004–16). To examine the actual role that the KdK, FDK, and EDK played in these processes, we rely on communiqués and reports published on their websites, interviews with council staff, official documents provided by the federal authorities, newspaper articles, and secondary literature.

Our main argument is that a division of labour has emerged between the KdK, on the one hand, and policy-specific councils, on the other. This division of labour is reflected in different purposes of the two types of councils, that is, in different motivations and directions of activity. The KdK helps the cantons to coordinate their positions on matters on the agenda of the federal government, which the cantons seek to influence in their favour. These matters most often cut across several policy areas. The policy-specific councils, in turn, engage in horizontal policy coordination, mostly to keep the federal government away and protect their autonomy. They tend to deal with issues that clearly belong to a specific policy. We thus conclude that *different* IGCs have *different* purposes and that not all Swiss IGCs seek to influence the federal government to the same degree. Moreover, we find that the purpose of an IGC is a function of the type of policy area in which it operates, namely the degree of decentralization and vertical interdependence of that area.

The second section further elaborates on the need for IGCs in Swiss federalism and highlights our theoretical interest in their purpose. It then describes the current system of Swiss IGCs to contextualize the KdK and the policy-specific conferences. The third section illustrates the division of labour between the KdK and other, policy-specific councils by taking a closer look at the renewal of fiscal equalization and educational harmonization. We

then discuss our main findings and conclude with an overall assessment of the purpose of Swiss IGCs in relation to Swiss federalism.

## **IGCs in the Swiss Federation**

### ***IGCs in the context of cooperative and decentralized federalism***

In the Swiss federation, the cantons enjoy a high degree of legislative and fiscal autonomy (self-rule), which makes Switzerland a decentralized federation. Given the administrative nature of Swiss federalism, they are also responsible for the implementation of federal laws. At the same time, the cantons are granted multiple means to partake in federal decision-making (cf. e.g. Vatter, 2005; Linder, 2012; Mueller and Mazzoleni, 2016). Among these, federal consultations (*Vernehmlassungen*) are the main formal way in which the cantons can address the federal government – even though they must compete with other organized interests such as business organizations, trade unions, churches, parties, or even cities (Vatter, 2016: 465). The lack of a German-style representation of subnational governments at the federal level, however, was one of the reasons why the KdK was founded in 1993 and not by chance are most IGCs seated in the ‘House of Cantons’ in Berne, which some even call the *real* senate.

Switzerland is also a typical example of cooperative federalism (Börzel and Hosli, 2003) in which (federal) policy-making is the result of repeated federal-cantonal interactions (Linder and Vatter, 2001). It is precisely at the crossroads of cooperative federalism and the decentralized state structure that the (potential) purposes of IGCs materialize. The intercantonal conferences can serve the cantons to protect their existing autonomy against federal encroachment (Bednar, 2009). At the same time, IGCs may also enable the cantons to influence federal decision-making in a specific direction.

The need for IGCs is amplified by high degrees of fragmentation and interdependence. *Fragmentation* refers to the high number of cantonal polities (26) and their small average size (BFS, 2016). On top of this are linguistic and religious divides as well as socio-economic and geographic differences between the progressive cities and the conservative countryside. In contrast to Australia or Canada (see Simmons, forthcoming and Fenna and Phillimore, forthcoming), however, this diversity has contributed to strengthening collective action instead of obstructing it. In fact, there is intense coordination among cantons, ranging from the mere exchange of opinions and best practices to more formalized cooperation in the form of intercantonal treaties (Bochsler and Sciarini, 2006: 29; Bolleyer, 2006) between two, several or all 26 cantons.

*Interdependence*, in turn, refers to mutual dependencies of the federal and cantonal levels (cf. also Bolleyer et al., 2014). There are policy areas where both

levels are active, for example, taxation. In others, the cantons implement federal legislation (e.g. healthcare, civil and criminal law), and even some almost exclusively cantonal domains (e.g. primary education or culture) are subject to certain federal rules. This interdependence can provoke conflicts between the two levels of government. Conflicting views of the federal and cantonal governments have indeed led to the biggest showdown to date, namely the successful use of the cantonal referendum in 2004 (Braun, 2004; Fischer, 2006): Given the detrimental knock-on effects of a reform of direct taxation decided at the federal level, the cantons – for the first time ever – used their right to bring a federal law before the people. Thus, instead of suffering a financial loss, in winning the referendum the cantons recorded a political victory. What is more, the political-administrative coordination among cantonal authorities needed to lodge their complaint on time (at least eight cantons must demand a referendum within 100 days) was undertaken by the KdK, proving for the first time its practical usefulness (Fischer, 2006).

However, the literature on Swiss federalism only scarcely deals with IGCs. Among the few existing works on Swiss IGCs, many address the impact of IGCs, agreements, and regionalization on the democratic character of Swiss federalism (e.g. Frenkel, 1986; Moeckli, 2009; Blatter, 2010). More generally, legal and public administration studies (such as Wili, 1988; Wehrli, 1998; Gerotto, 2003; Affolter, 2008) rarely discuss the KdK or other IGCs because they are located outside the formal framework of Swiss federalism.<sup>2</sup> One exception is Meyer (2006), who has gathered information on the status and formal rules of operation of all national conferences from a legal perspective. And while Trees (2005) has analysed interactions between the different councils both on the national and regional level, his interest lay with administrative forms of cooperation only.

The only two scholars who have looked at Swiss IGCs using a political science perspective are Bolleyer (2006, 2009) and Wasserfallen (2015). The former has shown that Swiss councils are highly institutionalized due to voluntary power-sharing mechanisms in cantonal executives. Bolleyer (2009: 154) has also shown that Swiss councils tend to be medium to strongly integrated, meaning that councils coordinate with each other ‘to maintain a strong position towards the federal government’. Wasserfallen (2015) also finds that intercantonal coordination has strengthened the position of cantons vis-à-vis the federal government, which is a first indication that the purpose of at least some Swiss IGCs consists in influencing federal decision-making. Moreover, he contends that intercantonal coordination strengthens the problem-solving capacity of Swiss federalism in general, and that it has softened tax competition (551).

Both the increase in intercantonal activity – via treaties, the establishment of the KdK, the House of Cantons, and the cantonal referendum – and the



existing literature emphasize the importance of IGCs for the operation of Swiss federalism (e.g. Sciarini et al., 2015: 14–15). While the publications in legal and administrative studies cited above provide useful information on the formal rules of operation of the different councils, Bolleyer's and Wasserfallen's contributions suggest that Swiss IGCs contribute to solving specific *political* problems the Swiss federation faces. As a cooperative federation with a politically fragmented landscape, these problems primarily refer to finding a common ground and avoiding policy failure, for example, in a referendum.

However, despite these attempts to shed light on Swiss IGCs, the question about their actual purpose remains unanswered.

### ***The KdK in the web of IGCs***

Switzerland has over 50 IGCs (see the annexe). Except for three very technical ones (SSK, TAK, and SUK), all are exclusively horizontal, meaning that even if the federal government is invited, it cannot co-decide. In contrast to most other federations, Switzerland also has many regional councils that mirror national councils in North-Western, Eastern, Western, and Central Switzerland. Swiss IGCs – particularly the nation-wide ones – are also highly institutionalized (Bolleyer, 2009): They operate according to formally established rules, have a permanent secretariat, and use executive committees and working groups to prepare plenary sessions, while decisions are taken by majority vote.

The one body to stand out is the KdK, established in October 1993, in the wake of Switzerland's failed accession to the European Economic Area, through written agreement between the governments of all 26 Swiss cantons (KdK, 2006). Cantons claimed that they had been grossly excluded from negotiating the treaty even though Europeanization increasingly affected cantonal domains (Bochsler and Sciarini, 2006: 24; Fischer, 2006: 137).

The KdK was created to enhance the capacity of the cantons to defend their interests at the federal level. Article 1.2 of the founding agreement states that the KdK seeks 'to promote cooperation between the cantons within the scope of their powers, and to ensure the necessary coordination between and information to the cantons in canton-related Confederation matters' (KdK, 2006). Thus, according to the council's founding agreement, its focus is both horizontal and vertical. Nevertheless, horizontal coordination is not an end in itself, but rather a precondition for the KdK to exert vertical influence. So, in terms of direction and motivation (cf. Introduction to this special issue), the KdK aims at influencing federal decision-making. This suggests that its purpose is directed at vertical interactions in a bottom-up perspective. Moreover, the KdK concentrates on policy issues that cut across several policy areas. This becomes most visible if one looks at the more specific mandate of the KdK, which is to work on

- the renewal and continued development of federalism;
- the division of tasks between the Confederation and the cantons;
- participation in the federal decision-making process;
- the implementation of federal tasks by the cantons;
- foreign and integration policy. (KdK, 2006)

Nevertheless, although for the Plenary Assembly to take decisions at least 18 consenting cantons are required (KdK, 2006: Arts 9 and 10), individual cantonal governments always ‘retain the right to issue their own opinion’ (Art. 10.2). This shows how the KdK is intended to strengthen cantonal autonomy, not restrict it.

In terms of actual operation, a look at the council’s website – indicative of how it portrays itself to the public – reveals that the KdK seeks a voice in federal decision-making by issuing public statements, reports, and legal advice on matters related to federal decision-making; sending letters to the federal government; participating in federal consultations; and by choosing the members for federal-cantonal working groups (i.e. permanent or ad hoc expert committees; cf. Beetschen and Rebmann, 2016). All this corroborates the hypothesis that the KdK’s purpose is vertical influence. Moreover, the KdK participates in the so-called Federal Dialogue (*Dialogue confédéral*), that is, meetings with representatives of the federal government twice a year to exchange information and discuss policy matters of interest to both levels of government.<sup>3</sup>

The KdK is a novel organization insofar as for the first time a *nation-wide* organization (i.e. consisting of all 26 cantons) focuses on *cross-sectoral* policy issues. It is important to highlight that the members of the KdK are the 26 cantonal *governments* (KdK, 2006: Art. 2.1), and not the cantons as such. This makes the KdK a distinct institution compared to similar generalist councils in other federations. However, although different members of a cantonal government may attend KdK meetings on different occasions,<sup>4</sup> a typical press release will start with ‘The cantons have decided that ...’, that is, adopt a position suggesting a strong collective voice.

At the same time, the KdK found itself added onto an already existing web of IGCs (Auer, 2016: 330). However, all these other IGCs are either policy-specific, that is regrouping only those cantonal ministers responsible for a given policy area, geographically limited to one of four macro-regions, or both (see the annexe). The different roles of the KdK and the policy-specific conferences are formalized in a framework document (KdK, 2012). This document also stipulates that KdK statements amount to positions of the *cantons* whereas the statements of policy-specific conferences are positions only of the respective *conference* (Arts 5.2 and 5.3). Thus, statements of the KdK have a stronger political character compared to those of the policy-specific conferences. This is not to ignore that the importance of the latter varies

with the importance of the underlying policy sector: education and finance are archetypes of cantonal autonomy, whereas forestry and civil protection, for example, are relatively low-salient self-rule domains. Hence, EDK and FDK statements have a stronger political character compared to conferences on forestry and civil protection.

The KdK is not a 'peak council' that directs other IGCs – in contrast to the Council of Australian Governments, for example (see Fenna and Phillimore, forthcoming) – but it interacts with these other councils (KdK, 2006, Arts 3.3 and 4). Interviewees from both the EDK and FDK even relate that from time to time tensions arise with the KdK when it comes to determining which conference should submit a statement or who has the lead in interacting with the federal government; generally, these tensions are resolved in the corridors of the House of Cantons.<sup>5</sup>

## **The purpose of intercantonal conferences in the renewal of fiscal equalization and the harmonization of education policy**

### ***Research design and case selection***

To examine the actual purpose of Swiss IGCs, we compare two reform processes in a cross-case study (Gerring, 2007). The advantage of this qualitative method is internal validity: it enables us to identify the factors and mechanisms behind the purpose of the different IGCs. The focus consists in comparing the role of the KdK and two policy-specific conferences (EDK and FDK). The aim of this section is to identify whether the activities of these IGCs assisted the cantons in influencing the federal government, protecting their autonomy, engaging in policy coordination, or exchanging information. This will shed light on the *motivation* of their purpose (see also Behnke and Mueller, forthcoming). To detect whether their *direction* is horizontal or vertical, we examine whether cantons merely interacted among themselves or (also) with the federal government.

For both processes, Table 1 splits the decision-making cycle into different steps. These are later followed to identify the moments, instruments, and consequences of actions taken by IGCs. Our data consists of IGC communiqués and reports; complemented by media coverage,<sup>6</sup> secondary literature, and official documentation provided by the federal authorities; and personal interviews with staff of all three IGCs. Given that negotiations at meetings of Swiss IGCs take place behind closed doors and since minutes or other recordings are not available, we must rely on these sources.

The reform of fiscal equalization was initiated as early as in 1992, decided in 2004, and implemented as of 2008 (e.g. Mueller and Vatter, 2016). What we focus on here, however, is the second renewal of equalization payments, beginning with the evaluation report in March 2014 (pre-parliamentary phase),

**Table 1.** The policy-making phases of two federal reforms.

Phase	Activity	Fiscal equalization renewal	Educational harmonization
<i>Pre-parliamentary</i>	Problem definition and initiation	March 2014 (evaluation report)	30 April 1997
	1st draft and consultation phase	14 March–30 June 2014	14 May–15 October 2004
	2nd draft and government proposal	3 September 2014	17 August 2005 <sup>a</sup>
<i>Parliamentary</i>	Committees and plenary 1st chamber	9 December 2014–19 June 2015	5 October–16 December 2005
	Committees and plenary 2nd chamber		
<i>Post-parliamentary</i>	Federal act	19 June 2015	16 December 2005
	Referendum	None <sup>b</sup>	21 May 2006 (obligatory)
	Implementation Evaluation	1 January 2016–(2019)	2004, 2007 and 2011 June 2015 (EDK) and July 2016 (FG)

Source: Curia Vista (2014–15), Curia Vista (1997–2005), and BR (2016).

<sup>a</sup>Opinion (proposal by parliamentary committee).

<sup>b</sup>Failed attempt to launch cantonal referendum by cantons SH, ZG, SZ and NW (see text); FG = Federal Government. Framework adapted from Vatter (2016: 53) and Linder (2012: 333).

culminating in a parliamentary decree in June 2015 (parliamentary phase) and resulting in new payments as of 2016 (implementation). The next evaluation report, due in 2019, will start a new cycle. Educational harmonization, our second case,<sup>7</sup> began with a parliamentary motion in 1997 (pre-parliamentary phase), resulted in the Federal Act of December 2005 (parliamentary phase) approved by referendum in 2006, and was implemented through inter-cantonal coordination, as it concerned self-rule. A new cycle began in July 2016 with the federal consultation on a reform of the Language Act, which included an evaluation of current efforts (BR, 2016).

The selection of these two reforms is based on the most important decision-making processes identified by Sciarini et al. (2015: 12) as well as dictated by the need to maximize variation on a key variable, namely whether a policy belongs primarily to the federal government (fiscal equalization) or the cantons (education). Given the cooperative and non-centralized nature of Swiss federalism, we expect horizontal interaction to dominate in cantonal domains but bottom-up activity in areas where the Confederation and the cantons are interdependent. Accordingly, the KdK should surface in the latter but not the former process. At the same time, the FDK and EDK are well representative of national policy-specific conferences in that they have a permanent secretariat, meet frequently, and use majority voting. Both conferences are also located in the House of Cantons.

Comparing only two reform processes, even important ones and with variation on the type of power-sharing, can only tell us so much about the purpose of IGCs. Moreover, in focusing on the renewal of fiscal equalization rather than the initial reform, we are dealing with an output in the form of

a parliamentary decree, whereas the education reform resulted in a constitutional amendment. Finally, there is also a lag of some nine years between these two endpoints (May 2006 vs. June 2015). Nevertheless, we still think a comparison can yield useful insights because both education and finance are hugely relevant, be that symbolically or in terms of actual expenditure. Also, even parliamentary acts can be brought to a vote via the optional referendum. The difference in timing between the two processes becomes less pronounced if we consider that the federal government's evaluation started much earlier and that it relates to a much longer process of frequent evaluations of fiscal equalization initiated by the reform of fiscal arrangements decided in 2004 and implemented in 2008 (BR, 2016). Finally, as shown by Sciarini et al. (2015: 39–48), both education and fiscal equalization belong to a specific sub-set of Swiss decision-making: largely untouched by Europeanization but with a strong intergovernmental component domestically.

### ***Fiscal equalization reform***

Fiscal equalization squarely falls into the domain of vertical interdependence, with one third paid for by cantons and the other two thirds by the federal level.<sup>8</sup> All transfers are unconditional. What is more, fiscal equalization is defined by federal legislation (Arts 47(2) and 135 of the Federal Constitution as well as the Federal Act on Fiscal Equalization and Cost Compensation). To monitor its effectiveness, the federal government is required to present an evaluation report to the federal parliament every four years. Both chambers must then approve this report as well as a bill containing a four-year framework for all transfers (FDF, 2015). In addition to being an interdependent domain, fiscal equalization cuts across various other policies (e.g. taxation, economic development, urbanization, immigration or agriculture: all somehow taken into account in calculating equalization payments).

The KdK has had the lead in all matters related to the evaluation report and renewal of fiscal equalization. The FDK submitted a statement to the KdK in May 2014 (FDK, 2014) on which the KdK then based its own, official statement sent to the federal government in June 2014 (KdK, 2014b). The KdK also nominated the cantonal representatives to the federal-cantonal commission (*Fachgruppe Wirksamkeitsbericht NFA*) that had to evaluate fiscal equalization.<sup>9</sup> In addition to this, the KdK participated in hearings of the parliamentary committees. In October 2014, for example, the finance committee of the Council of States received a delegation of KdK and FDK representatives (KdK, 2014a). Cantonal efforts intensified once the evaluation report was published. To influence the parliamentary phase, they issued several joint statements.

Yet the fact that fiscal equalization had important redistributive implications made it more difficult to forge a consensus of all cantons. Therefore, the consolidation of cantonal preferences through horizontal coordination to

exercise vertical influence required a considerable effort of the KdK. Statements of the KdK and FDK submitted to the federal government represented majority positions and explicitly mentioned minority positions. What is more, cantons also submitted individual statements. Finally, the net payers used the 'Conference of NFA-Donors' to lobby on their own (Konferenz der NFA-Geberkantone, 2014b; NZZ, 2014b), since equalization beneficiaries were and still are a majority in the KdK. Therefore, in June 2014 a joint statement of all net payers was sent to the Federal Council (Konferenz der NFA-Geberkantone, 2014b) and a position paper on future modifications of fiscal equalization arrangements published (Konferenz der NFA-Geberkantone, 2014a).

The main line of conflict ran between equalization contributors and beneficiaries and most efforts by the KdK focused on finding a compromise between the two on equalization endowments. The evaluation report had found that the target of 85% of 'resource equalisation' had been more than fulfilled and recommended cuts (NZZ, 2014a, 2014b). Net payers agreed with this recommendation whereas beneficiaries claimed that 85% merely represented a minimum, and the cuts were therefore unnecessary (Trein and Braun, 2016). The dispute boiled down to whether payments from the resource equalization fund should be cut by 330 million CHF a year (196 by the federal government and 134 by the donor cantons) or not. These cuts were proposed by the Federal Government in September 2014 and approved three times by the National Council (in March and June 2015) – but twice rejected in the Council of States (in December 2014 and March 2015) (Curia Vista, 2014–15).

With both chambers having equal powers, the stalemate between them was only solved thanks to a 'compromise proposal' by the KdK, halving the cuts to 165 million CHF (98 million CHF in federal contributions and 67 million CHF in cantonal payments) (KdK, 2015; NZZ Online, 2015b, 2015c). In June 2016, both chambers accepted that solution (Curia Vista, 2014–15). The eventually victorious KdK proposal had however been approved by only 19 cantons (thus just about reaching the quorum of 18), with Basel City and Vaud the only donor cantons to have voted in favour and Basel Country having abstained (NZZ, 2015a). Nevertheless, the KdK had succeeded in producing a cantonal statement to solve the stalemate on federal decision-making, making the cantons the facilitators of compromise. The subsequent cantonal referendum against the Federal Act launched by four donor cantons (SH, ZG, SZ and NW), obviously lacking KdK support since it attacked the solution proposed by the very same, failed to reach the required number of eight (NZZ, 2015b).

The KdK remained active in the post-parliamentary phase, too. In 2015, members of the cantonal parliaments of Zug and Schwyz announced their intention to suspend their canton's membership in the KdK (SZ, 2015; ZG, 2015). These challenges were defeated through the creation of a KdK

working group to analyse future reform options, presented in March 2016 (KdK, 2016). Noteworthy is the fact that the working group is composed of three members each appointed by the donor cantons and the cantonal beneficiaries, including Zug and Schwyz (KdK, 2015). Thus, the KdK has managed to keep the cantonal front united, enabling it to intensify its efforts to influence the next federal policy cycle by already now elaborating suggestions for fiscal equalization reform.

### ***Harmonization of education***

Our second process concerns primary and secondary education. Here, the cantons have exclusive jurisdiction over most aspects and education cuts much less into other policy areas. Nevertheless, the revision of the federal constitutional articles on education (Art. 61a-64a) in 2006 has given the Confederation a right to intervene if cantons fail to harmonize 'school entry age and compulsory school attendance, the duration and objectives of levels of education, and the transition from one level to another, as well as the recognition of qualifications' (Art. 62.4). This has thus introduced a 'shadow of hierarchy' into the education area.

The Intercantonal Agreement on the Harmonisation of Compulsory Education (*Interkantonale Vereinbarung über die Harmonisierung der obligatorischen Schule*, HarmoS) of 2007 was meant to achieve exactly such harmonization (EDK, 2011).<sup>10</sup> The EDK's official language policy (agreed in 2004) and its definition of fundamental educational targets (published in 2011) are further instances of autonomous horizontal coordination and implementation. But while the prevention of federal intervention was one reason why the cantons decided to harmonize school curricula, it mostly served the purpose of creating economies of scale and preventing negative spillovers from unilateral action, that is, amounts to genuine policy coordination.

Indeed, both the constitutional revision of 2006 and HarmoS were answers to the results of the first PISA study (broadcast in 2000) and public pressure on the cantons to increase education quality, mobility, social permeability, and equality of opportunities (Fischer et al., 2010). To formalize their commitment to implementing the revised constitutional article on education, in 2007 the cantons signed HarmoS. The agreement entered into force in 2009. Even though it is currently binding only for the 15 cantons that have ratified it (BR, 2016: 4), it has triggered adjustment efforts in all cantons and led to more harmonization across the whole nation (EDK, 2015). HarmoS standardizes school structures and mandates the EDK to develop a number of educational targets to streamline cantonal curricula (EDK, 2007; NZZ Online, 2007, 2012).

In addition to this nation-wide agreement, regional agreements and regional school curricula have been adopted. Most coordination took place



within the EDK (or its regional and language-specific equivalents: D-EDK, BZK, NW EDK, and CIIP; see the annexe) and the KdK has not been involved in this process. As EDK representatives have pointed out,<sup>11</sup> the EDK made it clear towards the KdK that the latter had 'no mandate to participate'. One reason for this is that the EDK had been engaged in the coordination of primary and secondary education long before the KdK even came into being. For example, already in 1970 members of EDK signed the *Schulkonkordat* (Agreement on the Coordination of Education), and in the 1990s the EDK launched a debate on the future directions of this *Schulkonkordat*.

This process further intensified in the early 2000s, when the EDK participated in the elaboration of the modification of the constitutional articles on education and simultaneously initiated HarmoS (Fischer et al., 2010; EDK, 2011). While the actual modification of the constitutional articles on education was initiated by the federal parliament (see Table 1), the EDK managed to turn it from a top-down into a bottom-up process. After rejecting the federal government's version of the new articles, the EDK participated in the drafting of a new version that was subsequently accepted by parliament (Fischer et al., 2010).<sup>12</sup> Thus, the EDK participated in the pre-parliamentary phase, seeking to protect the autonomy of the cantons. In the parliamentary phase, the EDK continued to provide input. While the participation of the EDK in the pre-parliamentary and parliamentary phases implies that the purpose of the council was to engage in horizontal coordination to exercise influence on the federal level, the attention of the council turned to genuine horizontal coordination during the implementation phase.

In fact, it was in the implementation phase that the council was most active since it engaged in drafting HarmoS and continues to monitor its implementation. Members of EDK first endorsed an initial version of the agreement and submitted it for consultation among the cantons. After having collected cantonal statements, a new version was submitted to the plenary assembly which subsequently adopted it (Iff et al., 2009; EDK, 2011). But whereas HarmoS' focus is on horizontal harmonization, it also has a certain vertical orientation since, among others, it is expected to prevent that the federal government intervenes. Thus, HarmoS harmonizes wherever necessary to foster mobility and quality but leaves linguistic regions and individual cantons with the discretion to develop school curricula that satisfy local needs. Even cantons that have refused to ratify the agreement participate in these regional curricula. Thus, the EDK finds that although some cantons have not ratified HarmoS, the level of harmonization of primary and secondary education is high (EDK, 2015; NZZ Online, 2015a).

Moreover, while HarmoS defined four basic goals at the national level, it was left to the three 'linguistic regions' to specify the more concrete learning goals and 'competences' for the first nine years of schooling (preceded by two years of Kindergarten). In concretizing these educational goals into specific,



acquirable and measurable competences, the three language regions, via their regional councils or alone (Ticino), autonomously developed their so-called study plans. The French-speaking cantons and Ticino have already implemented their plans in summer 2011 and 2015, respectively. The final version of the German-speaking study plan was approved by the D-EDK only in autumn 2014 and most cantons have yet to introduce it (EDK, 2015).

Nevertheless, despite the progress on harmonization, in July 2016 the federal government intervened by proposing a more detailed federal regulation regarding the teaching of first and second foreign languages (BR, 2016). In fact, the federal government found itself ‘compelled’, by Art. 62.4 FC, to propose nation-wide standards because a number of German-speaking cantons announced modifications to the teaching of French that would violate the 2004 agreement among cantons (BR, 2016: 4–6, 10). The move by the federal government in this area of legislation (at the crossroads of language and education policy) is unprecedented and has encountered wide criticism – not least by the EDK itself (2016). Clearly the EDK will once more play a crucial role in this new process. In fact, its success in fulfilling its purpose will depend on its ability to prevent the federal government from imposing too strict a federal regulation – or better still: none at all.<sup>13</sup>

## Discussion

As the most recent renewal of fiscal equalization and the harmonization of education policy show, the IGCs participating in these processes have played different roles. Table 2 summarizes our main findings. It shows that the purpose of IGCs relates to the character of a policy sector and the main level responsible for it, that is, to the extent to which a policy sector is a

**Table 2.** Summary of case-study findings.

	Fiscal equalization	Education reform
<b>Importance of policy sector</b>	Very high	Very high
<b>Main level responsible</b>	Federal government	Cantons
<b>Character of policy sector</b>	Vertical interdependence and cross-sectoral	Non-centralized and specific
<b>Lead IGC</b>	KdK	EDK
<b>Subsidiary IGC(s)</b>	FDK	Regional and language-specific EDKs + TI
<b>Primary direction of IGC activity</b>	Bottom-up	Horizontal
<b>Primary motivation</b>	Influencing federal policy	Policy coordination (achieving harmonization)
<b>Secondary direction of IGC activity</b>	Horizontal	Bottom-up
<b>Secondary motivation</b>	Coordinating cantonal interests	Defending cantonal autonomy
<b>Outcome</b>	Small reduction of federal equalization payments	Federal shadow of hierarchy + inter-cantonal school harmonization

self-rule domain or one where the federal and cantonal governments are interdependent. Distinguishing between primary and secondary direction and motivation is useful for it shows the flexibility of IGC activity that straddles the divide between what is only cantonal and what is also federal (see also Behnke and Mueller, forthcoming).

The three IGCs observed here fulfil different purposes. On the one hand, the KdK takes the lead in areas where the federal government and the cantons are interdependent (fiscal equalization). Trying to influence the federal government means sitting in working groups, participating in federal consultation, issuing public statements, and even drafting legislative proposals. Where necessary, the KdK consults a policy-specific council, in the case above the FDK, and they work together. But towards the outside the KdK remains in charge.<sup>14</sup> Consequently, we can summarize that the KdK's purpose is directed at vertical, bottom-up interaction and that it is motivated by the cantons' wish to exert influence over federal decision-making. Nevertheless, the KdK also engaged in horizontal activities to coordinate cantonal interests, but only as a prelude to vertical influence. Therefore, we refer to horizontal coordination as a secondary purpose of the KdK.

On the other hand, the KdK was not involved at all in educational harmonization, which concerned a decentralized, even non-centralized domain (self-rule). Here, the EDK had the lead and cantons engaged in horizontal activities to coordinate their policies to achieve harmonization of education policy. However, the cantons also used the EDK to play defence and protect their autonomy. Therefore, the harmonization of primary and secondary education also contains elements of vertical coordination, mostly when the cantons tried to influence the federal government during the modification of the constitutional articles on education. Here, the EDK was instrumental in softening federal regulation: The Confederation would intervene only if harmonization failed. The EDK subsequently focused on the implementation phase through developing a nation-wide framework for harmonization (HarmoS), based on which the regional conferences then developed language-specific school curricula. Vertical coordination to defend cantonal autonomy is thus a secondary purpose of this council.

In addition to differing in the directions and motivations of their activities, the KdK and EDK also focused on different phases of the policy cycle. The KdK was most active in the pre-parliamentary and parliamentary phases to give a vertical voice to cantonal interests. The EDK mainly dealt with implementation – apart from the modification of the constitutional articles of education, where the EDK's secondary purpose materialized and the cantons tried to influence federal decision-making to protect their autonomy. This also confirms the expectation outlined in the Introduction to this special issue that influencing the federal level focuses on the agenda-setting phase whereas genuine

horizontal coordination matters during the implementation phase, where economies of scale can be produced and negative externalities avoided.

Moreover, our observations suggest that the two types of IGCs also differ in that the KdK focuses on issues of cross-sectoral implications, which can be explained by its composition (i.e. the fact that cantonal *governments* and not portfolio ministers are members of this IGC). The EDK, on the other hand, focused on more specific issues that did not cut across policy areas and which required portfolio expertise.

In sum, the nation-wide but policy-specific IGCs such as the EDK primarily focus on genuine horizontal coordination in decentralized policy areas (self-rule). To the extent that vertical engagement to protect cantonal autonomy is present, it is clearly subordinated to the horizontal purpose. In fact, the EDK has been engaged in harmonizing basic and secondary education since the 1970s, long before the federal government became active in this area (Hega, 1999). The KdK, in turn, concentrates on policy areas in which the federal government and the cantons are interdependent. Here, it is horizontal coordination that is subordinated to vertical influence, for it takes at least 18 agreeing cantonal governments before the KdK can speak on behalf of 'the cantons'.

## Conclusion

This paper has investigated the *purpose* of IGCs in the Swiss federation. It departed from the premise that the need for their existence arises because of policy interdependence and institutional fragmentation in a context of decentralized and administrative federalism. Moreover, the lack of formal representation at the federal level has laid bare the lack of cantonal influence over important cross-sectoral domains such as European integration. That is why the Swiss cantons established the KdK in 1993 to give the cantons a better, single voice. However, the KdK was merely added onto an already existing, dense net of regional, nation-wide, policy-specific, and/or generalist IGCs.

We found that a division of labour has emerged between the KdK on the one hand and the policy-specific conferences such as the EDK and FDK (and others not further analysed here; see the annexe) on the other. This shows that there can be considerable variation even within a given federation as to the purpose of IGCs. Our analyses indicate that a lot depends on the character of the policy area in which a given IGC operates. More precisely, in Switzerland, it matters whether the federal government and the cantons are interdependent (e.g. fiscal equalization) or whether a policy area is decentralized (e.g. education).

Through the KdK, the cantons now dispose of an institution that focuses on cross-cutting policy areas and specializes in influencing the federal level. The KdK has therefore improved the collective influence of the cantons over

national decision-making – as we have seen in the case of fiscal equalization, a large majority of cantons (19 out of 26, or 73%) was able to see its proposal become federal law. This IGC thus to some extent replaces the Council of States, who lost its role as the representation of the cantons at the federal level. And while the KdK lacks formal law-making powers, it has skilfully made use of direct democracy – both the successful cantonal referendum of 2004 and the failure of four donor cantons in 2015 to launch another one testify to that.

While the effect of the KdK thus seems to have been to *politically* strengthen the decentralized character of the Swiss federation through focused and effective bottom-up influence, the actions of policy-specific IGCs such as the EDK potentially strengthen its *functional* decentralization. The magic formula here is ‘cooperation to avoid centralization’. Such cooperation, and the consensus-oriented culture of Switzerland more generally, also fosters interactions *between* IGCs, as shown through the example of the FDK supporting the work of the KdK on the renewal of fiscal equalization. Moreover, to avoid inter-IGC conflicts, a framework document has even been adopted. Overall, then, the establishment of the KdK in 1993 has led to cooperation instead of competition with the other IGCs. We interpret this to have further cemented the cooperative capacity of Switzerland’s federalism: not only within the cantonal and federal governments and inside the IGCs, but also between the latter.

Of course, given its limitation to only two reform processes and three IGCs, our study can merely provide preliminary findings. Particularly the EDK is probably a most likely counter-pole in the division of labour: finding it to defend its policy area so vigorously against both federal and KdK intrusion could not only have been expected because of its strongly institutionalized nature, but also because education lies at the heart of cantonal self-rule. Future studies should therefore enlarge our scope and cover more areas and/or IGCs to validate our findings – especially by including policy areas from the other three sets identified by Sciarini et al. (2015: 42–43), that is, directly and indirectly Europeanized domains as well as purely domestic policy processes where traditional patterns of corporatism persist.

## Notes

1. All three have different names and acronyms in the other national languages, for example *Conférence des gouvernements cantonaux* (CdC), *Conférence des directrices et directeurs cantonaux des finances* (CDF), and *Conférence suisse des directeurs cantonaux de l’instruction publique* (CPID), in French. For ease of reading, we use the German acronyms throughout.
2. Auer (2016: 328) even goes as far as to call the KdK ‘a monster’ because of its thin legal basis.

3. Cf. <https://www.bj.admin.ch/bj/fr/home/staat/foederalismus/dialog.html> (May 2017).
4. In fact, it is up to the cantonal governments to decide who among them should participate in plenary meetings of the KdK: some designate permanent delegates, others rotate periodically, and others still decide based on the specific policy discussed (interview at the KdK, 30 November 2016).
5. Interview at the EDK, 3 December 2015, Interview at the FDK, 5 February 2016.
6. The *Neue Zürcher Zeitung* (NZZ) has been chosen as one of the largest quality newspapers in Switzerland, but we are far from claiming exhaustiveness in this regard.
7. Strictly speaking, the constitutional article on education and the development, adoption, and implementation of the *HarmoS* agreement are two separate processes. However, as the latter was used as an argument during the former, we have merged the two.
8. On the Swiss fiscal equalization system, see FDF, 2015; Cappelletti et al., 2014; Mueller and Vatter, 2016.
9. According to Art. 48 of the 2003 Law on fiscal equalization, the commission consists of an equal share of federal and cantonal representatives. As representatives of the cantons, the KdK chose five public servants of cantonal departments of finance. One staff member each of the KdK and the FDK additionally participated in meetings of the commission as visitors (Federal Council, 2014: 243–244).
10. See [http://edudoc.ch/record/24711/files/HarmoS\\_d.pdf](http://edudoc.ch/record/24711/files/HarmoS_d.pdf) [1.10.2016] for a German version.
11. Interview with EDK, 3 December 2015.
12. Interview with EDK, 3 December 2015.
13. This seems to have been achieved as we write; see NZZ of 16.12.2016, at <http://www.nzz.ch/schweiz/sprachenstreit-bundesrat-greift-doch-nicht-ein-ld.135236> [24.12.2016].
14. The example of the 'Corporate Tax Reform III' (rejected in a popular vote on February 2017) confirms this finding (Interview with FDK, 6 February 2016).

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## Annexe: Intergovernmental councils in Switzerland (as of summer 2016)

### Vertical

#### Generalist

Name	Est.
Conference of Heads of Chancelleries ( <i>Staatsschreiberkonferenz, SSK</i> )	1900

#### Policy-specific

Name	Est.
Tripartite Agglomerations Conference ( <i>Tripartite Agglomerationskonferenz, TAK</i> )	2001
Swiss University Conference ( <i>Schweizerische Universitätskonferenz, SUK</i> )	1969

### Horizontal

#### Nation-wide

#### Generalist

Name	Est.
Conference of Cantonal Governments ( <i>Konferenz der Kantonsregierungen, KdK</i> )	1993

#### Policy-specific

Name	Est.
Conference of Cantonal Finance Directors ( <i>Konferenz der kantonalen Finanzdirektoren, FDK</i> )	1904
Swiss Conference of Cantonal Directors of Education ( <i>Schweizerische Konferenz der kantonalen Erziehungsdirektoren, EDK</i> )	1897
Conference of Cantonal Energy Directors ( <i>Konferenz kantonaler Energiedirektoren, EnDK</i> )	1979
Conference of Cantonal Directors for Public Transports ( <i>Konferenz der kantonalen Direktoren des öffentlichen Verkehrs, KöV</i> )	1990
Conference of Cantonal Forest Directors ( <i>Konferenz der Forstdirektorinnen und -direktoren, FoDK</i> ) <sup>a</sup>	1931
Swiss Conference of Directors of Construction, Planning and Environment ( <i>Schweizerische Bau-, Planungs- und Umweltdirektorenkonferenz, BPUK</i> )	1922
Konferenz of Cantonal Directors of Economy ( <i>Konferenz kantonaler Volkswirtschaftsdirektoren, VDK</i> )	1944
Conference of Directors for Hunting ( <i>Konferenz der Jagddirektorinnen und -direktoren, JDK</i> )	2010
Conference of Cantonal Directors of Social Affairs ( <i>Konferenz der kantonalen Sozialdirektoren, SODK</i> )	1943
Conference of the Cantons for the Protection of Children and Adults ( <i>Konferenz der Kantone für Kindes- und Erwachsenenschutz, KOKES</i> )	1944
Conference of Cantonal Directors of Justice and Police ( <i>Konferenz der kantonalen Justiz- und Polizeidirektoren, KKJPD</i> )	1905
Conference of Cantonal Directors for Military, Civil Protection and Firefighters ( <i>Regierungskonferenz Militär, Zivilschutz und Feuerwehr, RK MZF</i> )	1928

(Continued)

Continued.

Name	Est.
Conference of Cantonal Surveillance Authorities of Civil Registry Services ( <i>Konferenz der kantonalen Aufsichtsbehörden im Zivilstandswesen, KAZ</i> )	1929
Conference of Cantonal Directors for Lottery ( <i>Fachdirektorenkonferenz Lotteriemarkt und Lotteriegesezt, FDKL</i> )	2006
Conference of Cantonal Directors for Agriculture ( <i>Konferenz der kantonalen Landwirtschaftsdirektoren, LDK</i> )	1922
Conference of Cantonal Directors for Health ( <i>Schweizerische Konferenz der kantonalen Gesundheitsdirektorinnen und -direktoren, GDK</i> )	1919

## Regional Generalist

Name	Est.
Conference of Eastern Switzerland ( <i>Ostschweizer Regierungskonferenz, ORK</i> )	1964
Conference of Northwest Switzerland ( <i>Nordwestschweizer Regierungskonferenz, NWRK</i> )	1971
Conference of Central Switzerland ( <i>Zentralschweizer Regierungskonferenz, ZRK</i> )	1966
Conference of Western Switzerland ( <i>Conférence des Gouvernements de Suisse Occidentale, CGSO</i> )	1993
Conference of the Mountain Cantons ( <i>Regierungskonferenz der Gebirgskantone, RKGK</i> )	1981
Zurich Metropolitan Area Conference ( <i>Metropolitankonferenz Zürich</i> )	2009

## Policy-specific

Name	Est.
Conference of Cantonal Finance Directors ( <i>Konferenz der kantonalen Finanzdirektoren, FDK</i> )	1904
Regional Conference for Public Transport in Eastern Switzerland ( <i>Regionalkonferenz öffentlicher Verkehr Ostschweiz, RÖV Ost</i> )	1999
Conference of Cantonal Directors of Education of Eastern Switzerland and Liechtenstein ( <i>Erziehungsdirektoren-Konferenz der Ostschweizer Kantone und des Fürstentums Liechtenstein, EDK-Ost</i> )	1971
Conference of Cantonal Directors of Education of German-speaking Switzerland ( <i>Deutschschweizer Erziehungsdirektoren-Konferenz, D-EDK</i> )	2011
Conference of Directors of Construction, Planning and Environment of Eastern Switzerland ( <i>Bau-, Planungs- und Umweltdirektorenkonferenz der Ostschweizer Kantone, BPUK-Ost</i> )	1998
Conference of Cantonal Finance Directors of Eastern Switzerland ( <i>Finanzdirektoren-Konferenz Ost, FDK-Ost</i> )	1998
Conference of Cantonal Directors of Economy of Eastern Switzerland ( <i>Volkswirtschaftsdirektorenkonferenz Ost, VDK-Ost</i> )	1995
Conference of Cantonal Directors of Social Affairs of Eastern Switzerland ( <i>Sozialdirektorenkonferenz Ost, SODK+</i> )	1999
Conference of Cantonal Directors for Health of Eastern Switzerland and Liechtenstein ( <i>Schweizerische Konferenz der kantonalen Gesundheitsdirektorinnen und -direktoren der Ostschweizer Kantone und des Fürstentums Liechtenstein, GDK-Ost</i> )	1991
Conference of Cantonal Directors of Justice and Police of Eastern Switzerland ( <i>Ostschweizer Justiz- und Polizeidirektorenkonferenz, OJPD</i> )	ca. 1996
Criminal Justice Committee of Eastern Switzerland ( <i>Ostschweizer Strafvollzugskommission, OSK</i> )	1976
	1874

(Continued)

## Continued.

Name	Est.
Intercantonal Conference of Education of French-speaking Switzerland and Ticino ( <i>Conférence intercantonale de l'instruction publique de la Suisse romande et du Tessin</i> , CIIP)	
Konferenz of Cantonal Directors of Economy of Western Switzerland ( <i>Conférence des directeurs cantonaux de l'économie publique de Suisse Occidentale</i> , CDEP-SO)	1989
Conference of Health and Social Affairs of French- and Italian-speaking Switzerland ( <i>Conférence latine des affaires sanitaires et sociales</i> , CLASS)	1981
Conference of Directors of Construction, Planning and Environment of Western and Italian-speaking Switzerland ( <i>Conférence des directeurs des travaux publics, de l'aménagement du territoire et de la protection de l'environnement de la Suisse Occidentale et Latine</i> , CDTAPSOL)	2001
Conference for Public Transport of Western Switzerland ( <i>Conférence des transports de Suisse Occidentale</i> , CTSO)	2000
Conference of Cantonal Finance Directors of French-speaking cantons, Berne and Ticino ( <i>Conférence latine des directeurs cantonaux des finances des cantons romands, Berne et Tessin</i> , CLDF)	1984
Conference of Cantonal Directors of Justice and Police of French- and Italian-speaking Switzerland ( <i>Conférence latine des chefs de département de justice et police</i> , CLDJP)	1960
Conference of Cantonal Directors for Lottery and Gambling of French- and Italian-speaking Switzerland ( <i>Conférence romande de la loterie et des jeux</i> , CRLJ)	1937
Conference of Cantonal Directors for Health of North-Western Switzerland ( <i>Gesundheitsdirektorenkonferenz der Nordwestschweiz</i> (GDK NWCH))	n.a.
Conference of Cantonal Directors for Public Transports of North-Western Switzerland ( <i>Nordwestschweizer Konferenz der kantonalen Direktoren des öffentlichen Verkehrs</i> , KöV NWCH)	1997
Conference of Cantonal Directors of Education of North-Western Switzerland ( <i>Nordwestschweizer Erziehungsdirektoren-Konferenz</i> , NW EDK)	1966
Conference of Cantonal Directors of Education of Central Switzerland ( <i>Bildungsdirektoren-Konferenz Zentralschweiz</i> , BKZ)	1974
Conference of Directors of Construction of Central Switzerland ( <i>Zentralschweizer Baudirektorenkonferenz</i> , ZBDK)	n.a.
Conference of Health and Social Affairs of Central Switzerland ( <i>Zentralschweizer Gesundheits- und Sozialdirektorenkonferenz</i> , ZGSDK)	1974
Conference of Cantonal Directors of the Environment ( <i>Zentralschweizer Umweltschutzdirektorenkonferenz</i> , ZUDK)	1995
Conference of Cantonal Directors of Economy of Central Switzerland ( <i>Zentralschweizer Volkswirtschaftsdirektorenkonferenz</i> , ZVDK)	1992
Conference of Cantonal Directors for Public Transports of Central Switzerland ( <i>Zentralschweizer Konferenz der Direktoren des öffentlichen Verkehrs</i> , ZKöV)	1995
Conference of Cantonal Finance Directors of Central Switzerland ( <i>Zentralschweizer Finanzdirektorenkonferenz</i> , ZFDK)	n.a.
Conference of Heads of Chancelleries of Central Switzerland ( <i>Zentralschweizer Staatsschreiberkonferenz</i> , ZSK)	2001
Conference of Cantonal Directors of Police of Central Switzerland ( <i>Zentralschweizer Polizeidirektorinnen- und -direktorenkonferenz</i> , ZPDK)	n.a.
Conference of NFA Donors ( <i>Konferenz der NFA-Geberkantone</i> )	2005

<sup>a</sup>In 2016, the FoDK and the JDK have merged and constitute now the Conference for Forests, Fauna and Countryside (*Konferenz für Wald, Waldtiere und Landschaft*, KWL).

Source: Own collection based on websites and information from council staff.



# Canadian multilateral intergovernmental institutions and the limits of institutional innovation

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## ABSTRACT

In 2003, the premiers of Canada's ten provinces and three territories established the Council of the Federation (CoF) to strengthen interprovincial cooperation and exercise leadership on national issues. However, the purpose of CoF in practice has not been the subject of systematic study. Against the backdrop of its predecessor, the Annual Premiers' Conference, and the broader institutional and economic forces that contribute more generally to weak institutionalization of Canada's multilateral intergovernmental forums, this paper considers the functioning of CoF in practice by analysing the nature of the joint positions of premiers expressed in communiqués it has issued to the end of Conservative government rule, 2015. This analysis reveals the spectrum of 'vertical' and 'horizontal' measures that CoF has undertaken, and the nature of integration of CoF with other multilateral intergovernmental forums. It concludes that CoF is not immune to the underlying forces contributing more generally to the weak institutionalization of multilateral intergovernmental councils.

**KEYWORDS** Canada; federalism; intergovernmental relations; Council of the Federation; intergovernmental forums

## Introduction

Intergovernmental relations between the two orders of government in Canada (provincial and federal), and among provincial governments, are a routine feature of Canadian politics; and, as in many other federations, these relations can be carried out through vertical (federal/provincial/territorial) and horizontal (provincial/territorial) multilateral intergovernmental forums by the elected and/or appointed officials of the executive branch of government.<sup>1</sup> Bilateral and/or multilateral relations among unelected public servants with their counterparts in different jurisdictions are daily occurrences across a spectrum of policy areas. However, the focus of this special issue is on the much less frequent meetings of forums for multilateral engagement among elected politicians.

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Despite the Canadian federation's 'dualist' origins, several institutional and economic realities have, over time, shifted the two orders of government from autonomously exercising powers in their spheres of jurisdiction, to more entangled arrangements (Gagnon and Simeon, 2010). While intergovernmentalism is a necessity, the relatively weak institutionalization of Canada's political horizontal and vertical multilateral intergovernmental forums reflects and contributes to the high degree of discretion of prime ministers (in the case of vertical) and premiers (in the case of horizontal) in determining patterns of intergovernmental forum activity and the significance of intergovernmental forums at any given time. Since the early 2000s, two noteworthy intergovernmental developments have taken place. The first was the creation in 2003 of the Council of the Federation (CoF). Like the Conference of Cantonal Governments in Switzerland, discussed in Schnabel and Mueller's contribution to this special issue, CoF is a relatively new institution, and provides an opportunity for constituent units of the federation to speak with one voice, circumventing federal attempts to 'divide and conquer' provincial governments. Its stated purpose is to strengthen provincial-territorial cooperation; and exercise leadership on national issues of importance in the provinces and territories (Council of the Federation, 2003). It replaces the longstanding tradition of the Annual Premiers' Conference (APC) and reflects a formalization of this horizontal intergovernmental forum. The second development was the decided preference of the former Prime Minister Stephen Harper (2005–15) to avoid multilateral intergovernmentalism, and to disentangle federal and provincial constitutionally defined areas of jurisdiction, with each order of government operating more independently from the other. Within the context of the latter, what happened to multilateral intergovernmental forums over the decade, and what has been the role of the new CoF in practice? Given that, for the better part of CoF's existence, the Prime Minister in power chose not to play the intergovernmental game of multilateralism, it is timely to now ask what kind of cooperation and leadership the Council exercised; how is it structurally similar to or different from the APC; and what is its relationship to provincial-territorial sectoral intergovernmental forums? These questions matter for several reasons. First, when CoF was first created, it appeared that 'interprovincial collaboration (was) on the verge of entering into new and as yet uncharted waters' (Meekison, 2004: 176). More than a decade later, 'the advances (it) achieved remain fragile (and) little known' (Adam et al., 2015: 149). Second, there is a longstanding argument among federal and provincial governments about which order of government is the more responsible steward of the federation. The media often characterize meetings of Premiers as an opportunity to collectively campaign for more federal funding and to defend provincial autonomy from federal encroachment (Ibbitson, 2000). Harper's retreat from multilateralism provides chance to explore the nature cooperation and leadership possible when premiers

have the opportunity to take the national stage. Third, comparatively speaking, Canada's intergovernmental forums have limited governance structure and coordination among them (Bolleyer, 2009). To date, it is not clear if or how CoF's activity in practice affects this characterization, and if or how it interacts with sectoral intergovernmental forums.

Our main argument is that the structural attributes of CoF do not reflect a bold departure from other multilateral intergovernmental forums and, as a result, CoF's activity in practice has not introduced new mechanisms for addressing boundary-crossing policy issues. Through their joint positions in CoF communiqués, premiers have frequently defended provincial jurisdiction from federal encroachment but they also have frequently sought federal collaboration, suggesting that the modern realities of the Canadian federation require federal-provincial coordination, despite Harper's retreat from multilateralism. CoF's horizontal interaction to the end of the Harper era reflects relatively soft measures of coordination with provincial and territorial governments almost always opting for voluntary, non-binding commitments. There is no systematic integration of sectorally specific multilateral intergovernmental forums in the workings of CoF. However, horizontal multilateral intergovernmental councils and CoF in particular are of lesser importance to the functioning of the federation than are intergovernmental councils in some other federations explored in this special issue because provinces remain guided by single-party governments with little to gain through interaction and joint decision-making with other provincial governments. Whereas in other federations, sub-governments' financial dependence on the central government compels intergovernmental activity, provincial governments in Canada are, relatively speaking, more financially self-sufficient, further reducing the need and/or incentive for intergovernmental cooperation.

The first section below presents the context in which CoF was established. It identifies the institutional and economic factors that push the federal, provincial and territorial governments towards intergovernmentalism, and simultaneously place limits on it. It then describes the resulting relatively weakly institutionalized landscape of multilateral intergovernmental forums into which CoF was introduced. The second section interrogates CoF's structure and assesses its similarities to other multilateral intergovernmental forums. The third section explores the resulting patterns of horizontal intergovernmental interaction during the Harper/CoF era, interpreting the purpose of CoF through a content analysis of premiers' collective positions taken in CoF communiqués. As communiqués are the primary output of CoF, they serve as the publicly accessible window through which to observe it. The final section analyses these findings, assessing whether CoF's operation in practice demonstrates attributes associated with intergovernmental forums more generally in the Canadian federation. Since 2015, Prime Minister Justin Trudeau has pledged to establish cooperative, partnership-like

arrangements with the provinces, and has embraced multilateral intergovernmental decision-making. We consider in the conclusion what this might mean for the next decade of multilateral intergovernmental forum activity in Canada.

### **Multilateral intergovernmental forums in the context of a decentralized federation**

Intergovernmental forums for elected executives of the federal, provincial and territorial governments have arisen in part because of weak intrastate federalism – the representation of the provinces in the central institutions of government – and by the practice of Westminster-style parliamentary decision-making with strong party discipline (Simeon and Nugent, 2012). Provincial interests are not well represented in the central institutions of government because of the perceived illegitimacy of the unelected upper chamber (Senate) in which seats are distributed neither according to proportion of the population found in each province, nor on a principle of equal representation per province. The single member plurality electoral system generally produces majority governments with a minority of popular support. It has encouraged the development of a national party system where no two parties are competitive across the entire country at any one time (Smith, 2004). This lack of effective intrastate representation and the routine election of a federal government with support unevenly distributed across the country means that provincial governments (as opposed to senators or the federal government) can claim to be best able to represent the interests of Canadians living within their provinces. This claim is bolstered by the lack of a federated party system. Provincial parties do not necessarily have formal ties to federal ones, even if they share the same name.

At the same time, the Westminster parliamentary system concentrates political authority in the hands of the executive. The political executive or cabinet is almost always drawn from members of the legislature who are part of the governing party. The single member plurality electoral system makes minority governments very rare, and there are no contemporary experiments with coalition governments. When the governing party has a majority of seats, through the exercise of strict party discipline, the cabinet essentially controls every outcome of the legislature. Accordingly, the executives of the federal and provincial governments have the ability to speak authoritatively on behalf of their governments in intergovernmental meetings with their counterparts from other jurisdictions, even though these meetings take place *outside* of legislative settings.

In the 1960s, intergovernmental relations became 'one of the central elements of Canadian governance' because in many policy areas, neither level of government had sufficient constitutional powers and/or financial



resources to act independently (Simeon, 2006: 322). The Canadian Constitution Act 1867 gives each order of government legislative and executive functions over specific policy areas, making them individually responsible for developing laws in their own areas of jurisdiction. Concurrent jurisdiction is limited to agriculture, immigration, regulation of the price of natural resources and contributory pensions (Watts, 2008). Revenue generation through direct and indirect taxation is shared by the federal and provincial governments. But, as provincial 'own source revenues' were inadequate for developing the welfare state, intergovernmental forums became the vehicle through which the federal government enticed cash-strapped provinces to enter into conditional cost-sharing agreements that gave the federal government greater control over the shape of the emerging welfare state. The federal government came to have exclusive control over employment insurance, but education, most of healthcare, and other social services fall under provincial jurisdiction. Out of this context arose the federal 'spending power' an unwritten convention that the federal government can spend or lend funds to any government, institution or individual, and attach conditions on how the funds are spent, even in the absence of direct legislative jurisdiction (Banting, 2012).

As much as executive federalism allows governments to overcome the inflexibilities of the constitution, the same institutional factors that feed executive federalism (weak representation of the constituent units in the central institutions of government; parliamentary government and strict party discipline that concentrates power in the hands of executives leading majority governments) also limit government inclinations to formally interact in intergovernmental councils. Parliamentary sovereignty means that there is little incentive to make intergovernmental agreements legally binding. Each executive is responsible to its own legislature, the members of which, in turn, are responsible to constituents. There is no electoral reward for a provincial government if voters perceive that it sacrificed provincial interests in the development of a national strategy. Canada's intergovernmental forums have no constitutional foundation and are not linked to the legislative processes of the federal and provincial governments.

Another institutional factor affecting patterns of executive federalism is intergovernmental relations specialists in provincial bureaucracies. The cooperative federalism era of welfare state development from post-war through the 1960s, reflects in part the relatively nascent intergovernmental bureaucratic capacity in the provinces, permitting the federal government to play a paternalistic role (Smiley, 1980; Simeon and Robinson, 1990; Cameron and Simeon, 2002; Bakvis and Skogstad, 2012). The 1970s 'province-building' era resulted in mature professionalized provincial bureaucracies and economies, and considerable push-back by provinces when the federal government engaged provinces in their fields of jurisdiction. The legitimacy of the

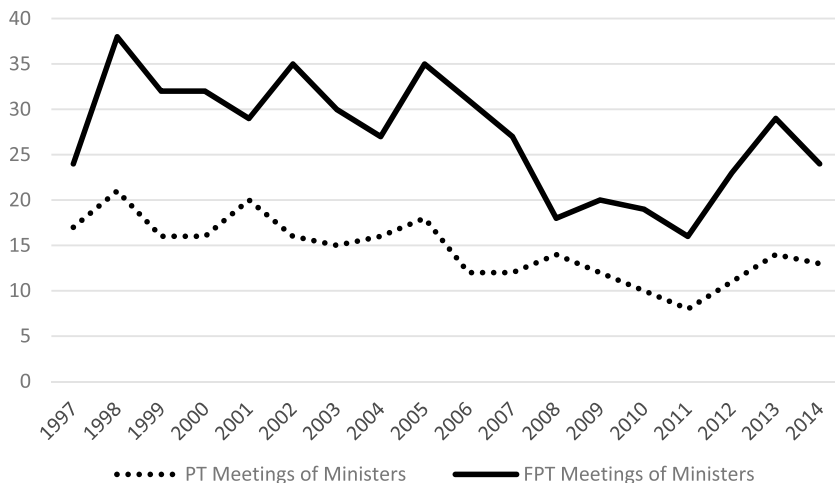
federal spending power was carefully scrutinized by centralized agencies of intergovernmental specialists, created first in Quebec, but in most jurisdictions in the 1970s, and positioned in each federal and provincial government to vet any policy movement in specific sectors to ensure it did not contradict a government's overall intergovernmental strategy (Dupré, 1985). Provincial intergovernmental officials in Quebec, and in the larger, more economically prosperous provinces, have proven particularly adept at identifying and curbing federal attempts to intrude into areas of provincial jurisdiction.

Additionally, federal transfers to provinces have, over time, declined as a proportion of both federal budgets and provincial budgets. They represented, on average, 22% of federal program spending between 1983 and 2015 (Office of the Parliamentary Budget Officer, 2014). One 2015 calculation suggests that federal transfers represent between 10% and 34% of a province's budget, depending on the province's own source fiscal capacity (Eisen et al., 2016). Led by Quebec, provincial governments have argued that conditions on these transfers are unjustified forays into provincial jurisdiction; and, over time, and particularly in the aftermath of major cuts to federal transfers to provinces in 1995, earlier conditional grant models have been replaced with largely unconditional grants (Hobson and St-Helaire, 2000). A multitude of federal-provincial-territorial social policy agreements were brokered over the decade following the Quebec Referendum on sovereignty in 1995. The accountability regime these agreements engendered (reporting to citizens on achievement of results rather than to the federal government as a condition of the receipt of federal funding) indicated a non-hierarchical relationship between the two orders of government. However, relative to the era of cooperative federalism, the federal government lacked the will to use its spending power to craft a pan-Canadian vision, making relatively shallow financial commitments; and provinces also lacked will, evident in the inconsistency of provincial government follow-through with reporting obligations (Graefe et al., 2013; Graefe and Simmons, 2013). Thus, constituent government dependence on federal fiscal transfers in Canada does not grease the wheels of intergovernmentalism in the way it once did or in the way it does in other federations where constituent governments have less access to own source revenues, and more conditions on central government fiscal transfers.

Against this institutional and fiscal backdrop, the landscape of multilateral intergovernmental forums, particularly those involving First Ministers, is marked by flexibility, limited formalization and consensus decision-making. The Prime Minister has sole prerogative to call First Ministers' Conferences or First Ministers' Meetings (FMMs). Throughout constitutional negotiations in the 1970s and 1980s, Prime Minister Pierre Trudeau met on 23 occasions with his provincial counterparts (Graefe and Simmons, 2013). However, Stephen Harper held just two over a decade. By the time Justin Trudeau

held his first FMM following his election in 1997, almost seven years had passed since the previous one. Multilateral meetings of federal, provincial and territorial (FPT) ministers of specific policy areas, are more routine as summarized in Figure 1. The institutionalization of FPT meetings of ministers varies from sector to sector (Simmons, 2004; Inwood et al., 2011), and over time (Wood, 2015). Very few forums have websites or permanent administrative support in the form a secretariat. Multilateral Provincial-Territorial (PT) meetings of ministers of different sectors are also conducted. There is no neatly parallel relationship between PT and FPT sectoral meetings. Some PT meetings are held in advance of FPT meetings; other PT meetings take place out of sync with FPT meetings. As in the case of FPT sectoral meetings, the level of institutionalization varies. However, on the whole, PT councils are less institutionalized than FPT councils.<sup>2</sup>

In terms of horizontal multilateral intergovernmental forums of first ministers, the three territorial leaders and the premiers of the four most western provinces meet annually for the Western Premiers' Conference. The Council of Atlantic Premiers, comprised of the four most easterly provinces also meets annually.<sup>3</sup> These bodies can influence the agenda of the summer meeting of all premiers. Premiers began meeting annually in the 1960s and APCs became opportunities to discuss interprovincial issues and address issues with a federal–provincial dimension. Where possible, premiers would develop a common provincial–territorial position (Meekison, 2004). The main products from APCs were non-binding communiqués reflecting joint positions of the premiers. Like FMMs, the decision-making rule was one of



**Figure 1.** FPT and PT meetings of sectoral ministers 1997–2014. Source: Author's compilations of Canadian intergovernmental conference secretariat data.

consensus. In reality, this frequently meant unanimous agreement on the lowest common denominator.

Studies specifically focused on multilateral intergovernmental forums of elected executives have been sporadic but, they have reached complementary conclusions. Based on their contributors' documentation of peak vertical (prime minister and the premiers) and horizontal (premiers), and vertical sectoral intergovernmental forums, Meekison et al. (2004) conclude that intergovernmental forums are weakly institutionalized, poorly coordinated, and their use highly contingent on prime ministerial discretion. In general, scholars have noted that, following the era of cooperative relations that led to initial welfare state development, meetings have tended to be for position-taking rather than joint decision-making. While governments may come to agreement on generalized principles in a policy area, substantive multilateral intergovernmental agreements are rare (e.g. Bakvis et al., 2009). It is more commonplace that the result is a communiqué reflecting a joint position, which, depending on the profile of the meeting, can pressure governments to shape future policy in their respective jurisdictions. On the rare occasions when formal agreements are issued, their lack of legal status means that any one provincial or federal government can choose to ignore or cancel it, albeit with political consequences.

A more recent detailed comparison of intergovernmental policy capacity in four policy sectors found public servants lacked institutional mechanisms to bridge conflict. Any issues of contention were pushed to the political intergovernmental meetings of ministers or even the prime minister and premiers, who are also under no obligation to find agreement (Inwood et al., 2011). Despite an increase in the volume of intergovernmental meetings during the decade from 1995–2005; and their greater 'density' (regularization of meetings, increase in output in the form of communiqués and other documents), in a comparative context, these are marginal measures of greater institutionalization, defined as 'institutional development and the internal functioning of (intergovernmental arrangements) ... (with) important implications for the member governments' capacity to form collective positions and to agree on shared solutions to boundary-crossing problems' (Bolleyer, 2009: 8). Bolleyer also argues that the forums for first ministers (premiers and the prime minister) are poorly integrated with the forums for ministers of specific policy sectors. Most recently, an in-depth study of the degree of institutionalization and the activity of four sectoral intergovernmental forums (one horizontal; three vertical) concluded that, in the field of human capital development (social services, labour market and post-secondary education) intergovernmental structures 'are not particularly conducive to facilitating constructive dialogue and cooperation between governments' (Wood, 2015: 141). With limited or no formal governance rules to create

stable expectations and promote shared values about cooperative behaviour, Wood observes that policy issues can easily be ignored or avoided.

Provincial–territorial intergovernmental relations – either informal or formal – have been even less scrutinized, despite their importance to the functioning of the federal system. Montpetit and Foucault’s tracing of correlations over time among the legislative agendas of provincial governments, and between provincial and federal governments concludes that horizontal relations have steadily increased since 1970; and, for every decade since the 1960s, they have been ‘at least as important as vertical ones’ (Montpetit and Foucault, 2014: 196). CoF was thought to give institutional permanence and predictability to these relations, yet it is surprising how little is known about what it does and how it functions.

### **The structure of the CoF**

The political context in which CoF was created suggests that there was desire, on the part of the Quebec government in particular, to do federalism differently, exercising leadership on issues of national importance. In light of the 1995 drastic cut to federal transfers to provinces and subsequent unplanned one-time federal increases partially restoring these transfers, premiers attempted in the late 1990s to engage the federal government in devising more formalized rules to bring more predictability to the use (and disuse) of the federal spending power. The result was the 1999 Social Union Framework Agreement (SUFA). While Quebec’s sovereigntist government was the only one not to publicly endorse SUFA, many provinces were not satisfied with the outcome. The experience once again evidenced the power of the prime minister in the context of a FMM, and the ease with which the collective resolve of provinces can be eroded with a federal offer of additional cash on the table.

In 2001, the Quebec Liberal Party declared that it wanted to ‘play a leading role with regard to “interprovincialism”’. When this ‘federalist’ party formed the government in 2003 after almost a decade of ‘sovereigntist’ Parti Québécois governments (and one very narrow win for the ‘no’ side in a provincial referendum on sovereignty), Premier Jean Charest led the premiers in coming to agreement on CoF. The first objective of CoF addresses a horizontal dimension of federalism: ‘Strengthening interprovincial-territorial cooperation, forging closer ties between the members and contributing to the evolution of the Canadian federation.’ The second suggests a vertical agenda: ‘Exercising leadership on national issues of importance to provinces and territories and in improving federal–provincial–territorial relations.’ The third pertains to both vertical and horizontal boundaries between governments: ‘Promoting relations between governments which are based on respect for the constitution and recognition of the diversity within the federation’; while the last speaks to the democratic relationship between CoF and voters: ‘Working

with the greatest respect for transparency and better communication with Canadians' (Council of the Federation, 2003).

According to the preamble of the founding agreement of CoF, there was a 'need to institute a new era of intergovernmental collaboration by promoting a constructive dialogue between the partners of the federation'. To that end premiers thought it 'important to participate in the evolution of the federation and to demonstrate their commitment to leadership through *institutional innovation*' (author emphasis). CoF is to be 'an enduring and evolving institution that will be flexible, efficient and able to anticipate and act quickly to make Canada work better for Canadians' (Council of the Federation, 2003).

CoF is a more institutionalized intergovernmental forum than the APC in that it has a founding agreement; meets twice rather than once a year; and has a permanent secretariat (with a staff of three people) with a board of directors. The agreement formalizes the process of annually rotating chairpersonship among the premiers, and making decisions based on consensus. However, CoF's mandate describes non-binding activities that are very much in keeping with other multilateral intergovernmental forums. It is to be an opportunity to 'exchange viewpoints, information, knowledge and experience', and serves as a forum for provincial and territorial governments to consider any matter that would benefit from a 'pooling of expertise, a greater dialogue between (governments) or the coordination of their actions'. The mandate of the Council emphasizes jurisdictional autonomy. While CoF is to 'develop a common vision of how intergovernmental relations should be conducted', this vision should be 'in keeping with the fundamental values and principles of federalism'. With respect to vertical relations, COF mandate includes 'analys(ing) action or measures of the federal government that in the opinion of the members have a major impact on provinces and territories', with an eye to 'support(ing) productive discussions with the federal government on issues of importance to Canadians' (Council of the Federation, 2003).

While the winter meeting of the premiers usually has a specialized topic, the main meeting remains very similar in format and substance to the previous APCs. The committees of public servants that supported the APC are now institutionalized in the sense that they are recognized in CoF's founding agreement. As with the APC meetings, the majority of the communiqué text – still the main output of the premiers' meetings – has been largely pre-negotiated by the public servants, all so that each jurisdiction can read into the same language their own interpretation of the text.

While the relationship between CoF and the sectoral forums is acknowledged in the founding agreement, there remains no systematic integration of the sectoral PT meetings and the work of CoF. CoF is to 'reinforce the work of sectoral intergovernmental forums by providing direction, when appropriate, on issues that are of concern to the Council'. This measure formalizes the practice of the APC. The founding agreement formalizes the

option of CoF to 'assign specific tasks to an ad hoc committee composed of Ministers responsible for intergovernmental relations or such other Minister designated by a Member'.

Despite emerging from a political context where the federal government was more yielding to provinces' bid to take a leadership role on the national stage than at any time in the post-war period, this structure of CoF reflects modest institutional innovation, and its mandate does not trigger coordination among the provinces much beyond that evident in the APC. The structure of CoF as outlined in the founding agreement does not introduce new instruments or governance rules to promote dialogue and cooperation. This is not unexpected however, given the broader institutional and fiscal context in which intergovernmental relations takes place in Canada. There remains little political or financial incentive for premiers to chisel sovereignty from their legislatures, pooling the resulting fragments through more binding intergovernmental processes.

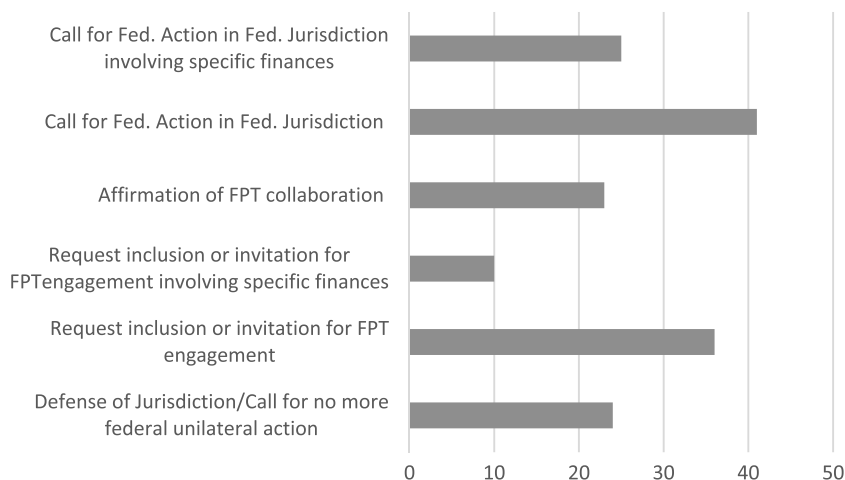
### **The nature of positions in the CoF in practice**

To identify what CoF has done in practice, we have examined every communiqué issued by CoF from its inception to the end of the Harper era. Each time an issue was raised in a communiqué, the position taken by premiers was categorized according to the aspect(s) of CoF objectives and mandate to which it corresponded. Given the objectives and mandate of CoF, there are four dimensions of interest (1) the spectrum of issues addressed by CoF and the frequency with which they were addressed; (2) the kind of engagement reflected in the vertically oriented positions. (3) The kind of collaboration among CoF members reflected in the horizontal positions and (4) whether the position reflected evidence of integration between CoF and other intergovernmental forums: sector-specific working groups of CoF or intergovernmental forums of ministers of a specific policy sector. In total, 91 communiqués were included in the sample. While some communiqués were issue-specific, it is also commonplace for CoF to issue omnibus communiqués addressing multiple issues. In such cases, each issue in the communiqué was addressed separately. Excluded issue-specific communiqués were those scheduling subsequent meetings, related to media accreditation at events; and announcing individuals or organizations receiving annual literacy or water stewardship awards. Because our interest is in intergovernmental relations *in Canada*, the issue-specific communiqués related to work of CoF members outside the federation (e.g. meetings of CoF members with governors of the United States, premiers of the Australian federation; leaders in China) have also been excluded.

The dimensions of interest above are important because, to be engaged in substantive collaboration and coordination, it is assumed that premiers would

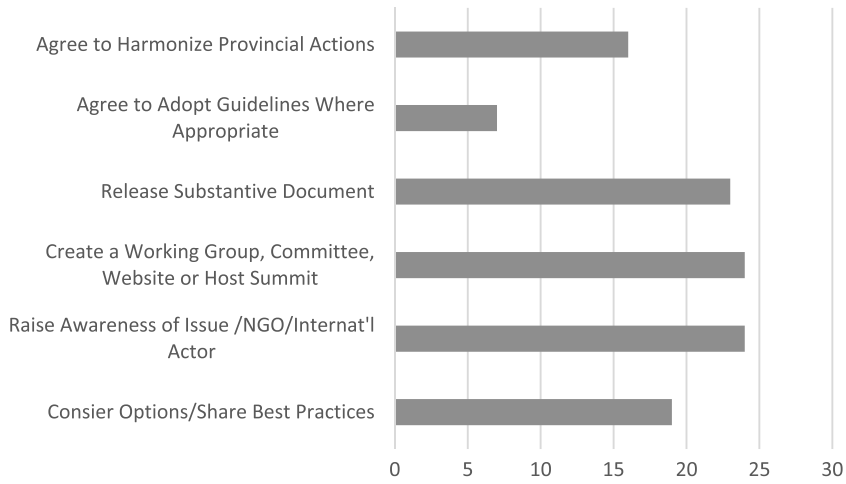
address an issue through their communiqués of more than one meeting. The joint position of the premiers on issues appearing once or twice in the list of positions reflected in CoF communiqués suggests that the nature of the position is of lesser policy consequence than those issues that appear more frequently. Regarding our second and third dimensions of interest, given the dual focus in CoF's mandate on horizontal or vertical oriented activity, we should expect to see evidence of both. Recall that premiers are popularly characterized as federal transfer seeking and jurisdiction-guarding. If this characterization is accurate, we would not expect in our second dimension of interest to see premiers inviting federal engagement, but rather more keen to defend provincial jurisdiction and protest federal unilateral actions. We should also expect to see premiers primarily issuing positions on issue-specific financial dimensions. Through his retreat from multilateralism, Harper took an even greater step back from leadership in areas of policy traditionally affected by the federal spending power than did his predecessor. But, in the absence of institutional innovation in CoF's design, we should not anticipate our third dimension of interest to reveal that premiers rushed to fill this void with CoF-led activities resulting in 'hard' forms of horizontal coordination such as joint, binding decisions affecting a spectrum of policies in specific ways. Given that there is no systematic integration of the sectoral PT meetings in CoF's founding agreement, our fourth dimension of interest should reveal that CoF links to sector-specific multilateral intergovernmental forums remain informal and vague, as in the case of the APCs.

Appendices 1–3 detail the activity of CoF over a 12-year period, and these are summarized in Figures 2–4. Appendix 1 details the nature of vertically

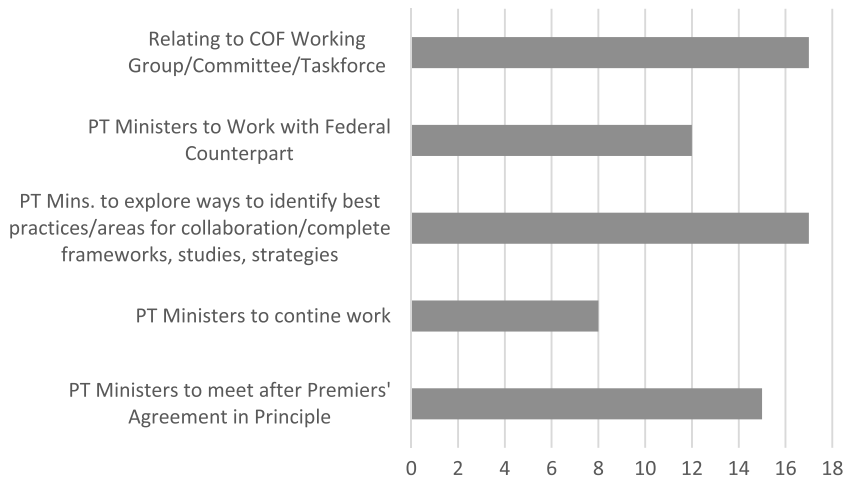


**Figure 2.** Vertically oriented positions outlined in CoF Communiqués 2003–09/2015. Source: Author's compilations.





**Figure 3.** Horizontally oriented positions in CoF Communiqués 2003–09/2015. Source: Author’s compilations.



**Figure 4.** Directions to multilateral sectoral forums and to CoF working groups, committees and taskforces in positions in CoF Communiqués 2003–09/2015. Source: Author’s compilations.

oriented positions; Appendix 2 details the nature of horizontally oriented positions and Appendix 3 details directions to multilateral sectoral forums and to CoF working groups, committees and taskforces. Issues that are repeatedly raised may appear in more than one column of Appendices 1 and 2 as CoF switches tactics in response to federal action or inaction. Also, issues may appear in more than one column because premiers have adopted different

strategies for different dimensions of an issue such as healthcare. The appendices reveal that premiers have issued positions on a wide spectrum of issues, both within their jurisdiction and in federal jurisdiction. Of the issues raised in communiqués, the majority are raised once or twice, and these are wildly diverse. They include, for example, a joint statement on the need for a national diamond strategy, as well as topics such as forestry, sport, mental illness, and judicial and senate appointments of the federal government. Substantive outcomes resulting from ongoing negotiation are likely across a smaller number of issues appearing more frequently. It is not surprising that among the issues addressed by CoF since 2003, fiscal arrangements are mentioned at least once, almost every year. However, other frequently appearing subjects include climate change, internal trade among CoF members, healthcare, issues related to labour market training, and pandemic preparedness/disaster response and recovery. The issue appearing most frequently in the communiqués is the access of provincial economies to international markets and/or global economy.

Turning to the kind of vertical engagement, Appendix 1 and Figure 2 separate Premiers' positions into those reflecting a defensive stance, with provinces seeking to protect themselves from federal encroachment in provincial areas of jurisdiction, those that offer to partner with the federal government in a collaborative relationship or affirm an existing collaborative relationship, and those where CoF governments would like known their collective position on actions they want the federal government to take within federal jurisdiction.<sup>4</sup> These categories are further divided into those issues involving requests for finances, and those issues that do not. This data reveal that the vast majority of vertically oriented collective positions of the premiers did *not* involve requests for specific finances, contrary to popular view. While premiers did issue positions defending provincial jurisdiction, or calling upon an end to unilateral federal actions, they were equally as inclined to issue positions affirming existing FPT collaboration. As a proportion of vertical positions in their entirety, those defending jurisdiction or calling upon an end to unilateral federal actions are less than a quarter. These findings do not support the popular view that premiers value turf protection above all else. It appears that the mandate of 'support(ing) productive discussions with the federal government on issues of importance to Canadians', was primarily delivered through joint positions calling upon the federal government to take a specific action in an area of federal jurisdiction and inviting the federal government to include provinces in a dialogue or inviting the federal government to join provinces in FPT engagement. Figure 2 reveals that, taken together, the most common actions of CoF vis-à-vis the federal government were to request the latter's participation in a collaborative process (for issues with or without a financial dimension), and/or to affirm when such a relationship exists. So, while the federal government retreated from multilateral

engagement with provinces for much of the period examined here, the narrative created by CoF through its communiqués suggests that a great many issues still need to be addressed through a joint FPT approach.

Turning to horizontal actions, Figure 3 creates a spectrum of forms of horizontal collaboration among CoF members reflected in the positions taken in communiqués and confirms our expectations. At the ‘relatively softer’ end of the spectrum of collaboration are statements where premiers agree to ‘consider options’ or ‘take stock of their own approaches’. Indeed, to some observers, these statements might reflect a lack of agreement among governments, rather than agreement to collaborate. At the relatively stronger end of the spectrum of collaboration are statements where premiers announce agreements, the content of which commits governments to particular joint actions or introduces a dispute resolution mechanism when respective government actions conflict. In the middle of the spectrum are activities that demonstrate premiers acting together, but not in ways that affect their provincial autonomy, and in ways that do not requiring them to modify their existing approach to an issue. While there is a great diversity of collaborative activity across a spectrum of policy issues, it hovers predominantly around the middle, involving the creation of websites, committees, working groups and task forces, hosting summits and then issuing the reports from these committees, working groups and task forces. The notable harder forms of collaboration involved the re-negotiation of the Agreement on Internal trade among CoF members, as well as CoF members’ commitment to jointly purchase pharmaceuticals as a way to reduce costs to their respective publicly funded health care systems (Council of the Federation, 2008, 2015). Relative to some of the other forums examined in other contributions to this special issue, these measures of collaboration are, on the whole, not particularly robust. However, the point to be made here is that they are in keeping with the nature of collaborative actions described in the mandate of CoF.

The joint positions of premiers reflected in CoF communiqués also confirm that integration remains weak of Canada’s peak multilateral intergovernmental forums with sectoral multilateral intergovernmental forums. The founding agreement of CoF formalized the existing practice of ad hoc committees of ministers and provided direction to sectoral forums ‘as appropriate’. CoF’s actions in practice could range from limited use of committees and direction to sectoral bodies to a sophisticated system of reporting to CoF and further direction from premiers. Figure 4 details two distinct approaches that CoF appears to have taken simultaneously. The first is to provide direction to PT sectoral intergovernmental forums as one way to pursue horizontal multilateral relations. Figure 4 also reveals that premiers also pursue their vertical agenda through directing sectoral ministers to work with their federal counterpart. From Figure 4 we see that the directions to sectoral councils tend to be general, rather than specific, and when specific, they follow from

an agreement in principle among premiers. A second tactic of the premiers is to create a committee, taskforce or working group, not necessarily of ministers of intergovernmental affairs (as is mentioned in the founding agreement), but by drawing on sectoral actors. It is not always clear when task forces, committees and working groups involve elected executives or administrative representatives, or from what sector is each minister serving on a committee. Premiers' joint positions in communiqués often highlight which premier or premiers will chair committees or working groups. These bodies tend to focus on a specific issue such as vertical fiscal arrangements, climate change and health care innovation; and they are usually maintained for a period of several years. That premiers would play this role as chairs is not outside the mandate of CoF, but it is also not mentioned in the mandate.

Committees of sectoral ministers forming working groups chaired by premiers represent a new form of integration of sectoral and summit or peak intergovernmental bodies. It remains unclear how the ad hoc committees of CoF relate to the established sectoral multilateral intergovernmental forums. For example, there is no obvious relationship between the Fiscal Relations Working Group of CoF and multilateral meetings of Ministers of Finance of the territories and the provinces. The most substantive outcomes from these working groups belong to that on internal trade. It has worked quite successfully to increase the mobility of goods and labour across provinces. Other working groups have fulfilled the mandate of CoF to 'provide an integrated and coordinated approach to federal-provincial-territorial relations through the development of shared common analysis and positions', which do not inhibit any one government's decision-making autonomy.

## Discussion and conclusions

Rather than a normative exploration of the merits of cooperation, this investigation is an empirical one, evidencing whether CoF departs from characteristics illuminated through previous studies of multilateral intergovernmental forums. Based on the dimensions of interest explored above, it is fair to say that if CoF appears to have 'strengthen(ed) interprovincial-territorial cooperation, forging closer ties between the members and contributing to the evolution of the Canadian federation', it has done so in minimal ways. Because the founding agreement codifies many of the activities of the APC, the vessel of CoF looks much like its predecessor. Structurally, CoF is only set apart from its predecessor by its secretariat, and by its working groups chaired by premiers. It is no surprise, then, that it has steered away from uncharted waters of interprovincial collaboration Meekison suggested the federation might be on the verge of entering in 2004.

The evidence above reveals that the Council has both a vertical and horizontal orientation, and that the vertical activity of CoF is not merely defensive,

and seeking financial transfers. On the contrary, premiers sought out federal engagement and/or affirmed existing federal engagement across a diversity of issues. At least rhetorically, premiers' statements suggest that modern policy problems require a joint federal–provincial approach. This finding is especially interesting because the Harper government's stated approach to federalism was to detangle federal and provincial areas of jurisdiction, and he deliberately did not engage premiers collectively. In terms of horizontal activity, premiers did not fill the void left by a federal government disinterested in multilateralism, by engaging in strong forms of horizontal collaboration. The emphasis on softer or weaker forms of collaboration in CoF's mandate ('exchange (of) viewpoints, information, knowledge and experience' and 'dialogue') is apparent in the horizontal joint positions of premiers on issues addressed in CoF communiqués. As the strongest form of collaboration mentioned in CoF's mandate is 'coordination of (governments') actions', we do not see 'leadership on national issues' in the form of provincial and territorial autonomy-challenging joint commitments to specific policy outcomes or harmonization of provincial and territorial legislation (Council of the Federation, 2003). Absent any clarity around new relationships between CoF and sectoral councils in the founding agreement, premiers have adopted two different approaches to integration. By issuing more often than not relatively open ended directions to sectoral ministers, premiers have not tightened integration beyond earlier observations (Bolleyer, 2009). By identifying premiers to chair working groups or committees of sectoral ministers premiers have adopted a new approach to integration, the impact of which is yet unclear.

A sceptic might be inclined to say that premiers' agreement to establish CoF was their attempt to generate a political 'win' for the nationalist (as opposed to sovereigntist) Liberal Quebec premier, but more or less a re-branding of the APC. Historically Quebec has had a healthy distrust of federal governments, and has played a leadership role in multilateral intergovernmental relations as a way of managing this distrust. The Quebec Liberal government's vision to take a leadership role on national issues by formalizing the provincial–territorial collective voice may not have been met with the same enthusiasm in all of the other provinces. Indeed, there is no longstanding shared perception among provincial and territorial governments that horizontal coordination is preferable to diversity; or uniformly held views on the appropriate level of centralization and decentralization in the federation. However, consistent with other observers, (Smith, 2004; Bakvis et al., 2009; Bolleyer, 2009; Broschek, 2010; Simeon and Nugent, 2012; Adam et al., 2015), it has been argued here that the institutional configuration of the single member plurality electoral system, and parliamentary democracy (majoritarian rule, empowered executive) as practiced in Canada (with strict party discipline) limits the likelihood of greater multilateral intergovernmental

institutional experimentation. Coupled with the relatively large degree of fiscal autonomy of provinces, there is little incentive to cede parliamentary sovereignty to intergovernmental bodies, and premiers did not choose to embrace wholly new practices of collaboration and interprovincial-territorial leadership in CoF's founding agreement, or in their activities thereafter.

This analysis of the nature of joint positions of premiers reflected in the communiqués issued by CoF over its first 12 years challenges popular conventions about the purpose of provincial–territorial meetings of premiers. Far from simply for the purpose of lobbying the federal government for funding, and defending provincial jurisdiction, the communiqués reflect a keenness on the part of PT governments to engage with the federal government. With the election of Justin Trudeau in 2015, there is more multilateral momentum, but he is also more willing to make conditional access to federal funding. Such is the case with the federal government's national climate change agreement, the product of a FMM in 2016. The lone provincial hold-out, Saskatchewan, has until the end of the year to join other governments or forgo access to the federal government's two-billion-dollar Low Carbon Economy Fund (Rabson, 2017). As this new era of intergovernmentalism unfolds, it will be interesting to monitor how premiers' vertically oriented joint positions evolve. The number of positions defending provincial jurisdiction/calling for an end to federal unilateral action may indeed rise, and calls for FPT engagement may decline. In the future we may be better able to discern whether premiers' invitations for federal engagement and interest in joint positions on issues under federal jurisdiction were more a political device intended to create the public impression of provincial leadership on the national stage than a genuine shared interest in greater vertical multilateralism.

## Notes

1. There are three territories in northern Canada that do not have the constitutional status of a province and are subordinate to the central government; they only exercise powers delegated to them by the federal government. Over time, representatives of the territorial governments have become regular participants in multilateral intergovernmental forums (Alcantara, 2013). Despite their desire to be treated as governments equal to the Crown, in a nation-to-nation relationship, Indigenous communities are largely treated as stakeholders in intergovernmental relations among federal, provincial and territorial governments, and consulted on an ad hoc basis (Alcantara and Spicer, 2016).
2. The Council of Ministers of Education in Canada (CMEC) starkly contrasts the fluid, ad hoc, weakly institutionalized PT meetings of ministers of various policy sectors. Ministers meet at least once year, and CMEC is supported by a secretariat with 60 staff. An Agreed Memorandum governs CMEC, with funding shared between the federal and provincial governments 25/75%. However, the federal government has no seat at the table of ministers

because education is exclusively provincial jurisdiction. CMEC has an executive of five provinces, and the chair rotates every two years. The secretariat houses, among other things, the Canadian Education Statistics Council, a partnership between CMEC and Statistics Canada (Wood, 2015; see also Wallner, 2014). CMEC is a sui generis case however, buoyed by both local and international expectations around obligations to monitor pupil progress (Graefe et al., 2013).

3. Some provinces have also begun to hold annual joint cabinet meetings with neighbouring provinces (Adam et al., 2015).
4. While 'immigration' is a constitutionally concurrent area of jurisdiction, it appears in the last column of Appendix 1 (CoF governments would like known their collective position on actions they want the federal government to take within federal jurisdiction) because the action they were requesting pertained to the federal aspect of immigration.

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## Appendix 1. Nature and subject matter of vertically oriented positions as indicated in CoF Communiqués 09/2015

Spectrum of vertically directed actions	Defence of provincial autonomy	Call for P/T inclusion in federal gov't. activity or PT engagement	Request for FPT inclusion in federal gov't. activity or PT invitation for FPT engagement and including a financial request	Affirmation of F/P/T collaboration	Call for federal transfer to provinces	Call for federal action independent of provinces
Detail of action	Defence of jurisdiction/ no more federal unilateral action	Request for PT inclusion in federal gov't. activity or PT engagement	Request for FPT inclusion in federal gov't. activity or PT invitation for FPT engagement and including a financial request	Reaffirm existing collaboration with the federal government	For financial transfer to provinces	For action in a policy area of federal jurisdiction
Subject matter	Aboriginal Comm. Programs Emergency Managm't Employment Insurance (2) Equalization Fiscal Arrangements (2) Healthcare funding (5) Immigration Settlement (5) International discussions Infrastructure Labour Market Agreements/ LMDAs (2) Nations Transport for First Old Age Security Statistics Canada	Agriculture Aboriginal Children in Care (3) Broadband technology Bovine Spongiform Encephalopathy Economic Productivity Employment Insurance Fiscal Arrangements (3) Housing Immigration (2) Immigration progs./services (2) Internal Trade (2) Internat'l Market Access (11) Missing and murdered Indigenous Women Pandemic Preparedness/ Disaster Response and Recovery (3) Pharmaceuticals SCC/Senate Apts (2)	Fiscal Arrangements (2) Housing (3) Transport (2) Internat'l promotion of Education Labour Mkt. Dev. Agreements Infrastructure	Ab. Ed. Outcomes Assault on seniors (Crim. Code) BSE (2) Env. Ass. Health Care FMM Healthcare funding Internat'l Env. Neg. Internat'l. Mkt. Access (7) Investment Canada Act Labour Market Pandemic Preparedness/ Disaster Response and Recovery Polar bear conservation Sealing Sport Student visas Transport	Fiscal Arr. (8) Health Care (5) Infrastructure (4) Labour Market (3) Pandemic Preparedness/ Disaster Response and Recovery (3) Seniors	1st Nat'ns Flooding (2) Ab. Healthcare Ab. Labourforce participation Addictive Drugs Border Controls (2) Env. Assess. (3) Immigration (3) Internat'l trade (17) LMA devolution Marine Traffic centres (2) Search and Rescue Response Tax Changes to Knowledge sector Transport. Act (2) Visa Applications (5)

Source: Author's compilations.

## Appendix 2. Spectrum of forms of horizontal collaboration among CoF members as indicated in CoF Communiqués 09/2015

Nature of collaboration	Relatively softer	Relatively harder
Nature of action	Premiers agree on need to: take stock of approaches /consider options/work together/continue to take action/Identify Options/Share Best Practices	Agree to adopt guidelines in their jurisdiction as appropriate/ implement a program
Subject matter	Autism Spectrum Services Climate Change (3) Disaster Management Healthcare (6) Econ/Env/Social inclusion Green Economy Health Promotion Infrastructure Internal Trade Literacy Pharmaceutical Supports for Families	Creation of a collaborative agreement or framework harmonizing actions of provinces and territories  Clinical Practice Guidelines (in Healthcare) Emergency Management Internal Trade (4) -Apprentice Mobility -Mutual recognition of occupational credentials -Transport Regulatory code -Dispute Resolution Mechanism Pharmaceutical purchasing (7)
	Joint statement lobbying a non-govt. entity or international actor, or raising awareness of an issue	Release of substantive document/Plan or Strategy (irrespective of whether content binds signatories)
	Create a working group/ committee/website/ taskforce/community of research/host a summit	20% increase in energy efficiency Green economy Healthcare (3) Truth and Reconciliation Commission Water stewardship
	Addictive Drugs (2) 'Buy American' Campaign (2) Bay of Fundy Boreal Forest Citizen Engagement Confed. Centre of Arts Cyber Bullying Fundamental Freedoms Internat'l Mkt Access (5) Pork Industry Salt Intake Sealing UNESCO World Heritage Site Water stewardship (4)	Aboriginal Children in Care Canada and Global Econ. Climate Change (2) Health Innovation (2) Healthy Living Strategy Nat'l Energy Strategy (2) Fiscal Arrangements (4) Internal Trade Internat'l Education Internat'l Market Access Marketing Internat'l Education Transportation Nat'l Diamond Strategy PSE and Skills Training Strategy Water Charter
	Aboriginal Children in Care Addictive Healthcare Aging population Climate Change (3) E-Government Economic Productivity Fiscal Relations (2) Health and Wellness Healthcare Innovation (2) Infrastructure Immigration and Visa constraints Internal Trade Judicial/Senate Apts Mental Health National Energy Strategy (2) Not for Profit Sector Pension Coverage & Ret. Income Post Sec. Education Water Stewardship (2)	Aboriginal Children in Care Canada and Global Econ. Climate Change (2) Health Innovation (2) Healthy Living Strategy Nat'l Energy Strategy (2) Fiscal Arrangements (4) Internal Trade Internat'l Education Internat'l Market Access Marketing Internat'l Education Transportation Nat'l Diamond Strategy PSE and Skills Training Strategy Water Charter

Source: Author's compilations.



### Appendix 3. CoF activities involving integration with multilateral sectoral forums as indicated in CoF Communiqués 2004–15

Forum identified	Direct sectoral ministers at their intergovernmental table	Working group/committee/taskforce of CoF-related activity
Nature of action	... to continue work/continue collaboration	Creating the group; identifying premiers to chair a group; holding a summit; continuing work, directing working group
Subject matter	<p>... to explore ways to improve and promote/ID best practices/ID areas for collaboration/complete frameworks studies, strategies</p> <p>... to work with Federal Counterpart</p>	<p>Climate Change</p> <p>Economy</p> <p>Environmental Assessment</p> <p>Forestry</p> <p>Obesity</p> <p>Pandemic</p> <p>Preparedness/Disaster Response (4)</p> <p>Pharmaceuticals Trade (2)</p> <p>Victimization of Elderly</p>
	<p>Addictive Drugs</p> <p>Child Spousal Support Payments</p> <p>Fiscal Relations</p> <p>Green Economy (2)</p> <p>Healthcare</p> <p>Healthy Living</p> <p>Housing</p> <p>PSE Funding</p> <p>Economic Innovation</p> <p>Duplication in Foreign Credentials</p> <p>Disability</p> <p>Innovation and Competitiveness</p> <p>Skills Training</p> <p>Energy</p> <p>Mental Health</p> <p>International Trade</p>	<p>Aging Population</p> <p>Agreement on Internal Trade</p> <p>Economic Productivity</p> <p>Employment Insurance</p> <p>Energy</p> <p>Fiscal Relations (2)</p> <p>Health Care Innovation (2)</p> <p>Infrastructure</p> <p>Internal Trade</p> <p>National Energy Strategy</p> <p>Pension Coverage and Retirement Income</p> <p>Water Stewardship (3)</p>

Source: Author's compilations.



# Intergovernmental councils and centralization in Australian federalism

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## ABSTRACT

This paper explores how a high level of vertical intergovernmentalism and a low level of horizontal intergovernmentalism reflect as well as contribute to a high degree of centralization in Australian federalism and in the role and activity of intergovernmental councils (IGCs). Pre-eminent among the latter is the Council of Australian Governments (COAG), which sits at the apex of a system of ministerial councils and attendant agencies. Policy coordination is the principal motivation behind the Commonwealth's use of COAG. The States established their own horizontal body in 2006 but that faded quickly in an experience that confirmed the underlying realities of Australian federalism.

**KEYWORDS** Australia; federalism; intergovernmental councils; COAG; intergovernmental relations

## Introduction

Australian federalism is characterized by a *low degree of formal integration* and a *high degree of centralization*. The former reflects original design choices while the latter reflects the way the system has, in practice, changed quite fundamentally over the decades since the Australian Commonwealth was launched on 1 January 1901. This means that intergovernmental arrangements have emerged in an ad hoc adaptive and incremental fashion and have been moulded by the reality of Commonwealth (central) government<sup>1</sup> dominance, underpinned by a high degree of vertical fiscal imbalance (VFI) and the lack of a formal rules-based system of intergovernmental relations (IGR). These features are also reflected in the array of intergovernmental councils (IGCs) that have grown since federation.

The primary purpose of this paper is to outline the main structures and developments of IGCs that have emerged within the broader context of Australian federalism. In light of the centralizing trends and the increasing dominance of the Commonwealth, a second aim is to explain the existence, purpose, and impact of Australian IGCs. For this, we use the analytical

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framework provided by Behnke and Mueller (2017) in their paper introducing this special issue on IGCs in federations.

## Context and theoretical expectations

### *Constitutional design*

Strongly influenced by the American example, the framers of the Australian Constitution designed a federal system based on a legislative division of powers where full responsibility for policy-making, implementation, and administration was assigned to each level of government in their respective policy domains. Although some overlap was inevitable given that a number of the Commonwealth's powers were not made exclusive, the design was fundamentally 'coordinate' or 'dualist' in nature, with each level expected to execute its tasks autonomously (Zines, 1986). The framers were also intent on leaving the great bulk of domestic governance responsibilities with the States, which had been semi-sovereign self-governing colonies in most cases for decades. Thus, the Australian States enjoyed a high degree of 'self-rule', with the new Commonwealth government not granted any authority to legislate in respect of such fields as education; land use and environmental protection; criminal or civil law; policing; local government; health; or social welfare with the exception of old-age pensions.

Not surprisingly given this coordinate design, little provision was made for cooperation between the two levels, either by way of processes or institutions. The Senate has always been popularly elected and has thus functioned as another party chamber rather than as a conduit into national policy-making for the States, or what is sometimes referred to as 'intrastate federalism' (Parker, 2015: 27). The only cooperative mechanism was the requirement that there be an 'Inter-State Commission' – a quasi-judicial body to manage boundary issues.<sup>2</sup> However, this clause has been honoured almost entirely in the breach (Coper, 1989; La Nauze, 1937). As one of the earliest students of Australian IGR noted, despite being patterned closely on the American federal model, the Australian Constitution does not even include the US Constitution's provision for interstate agreements, or 'compacts' (Leach, 1965: 32). These factors, combined with the constitutional guarantee of autonomy for each order of government, means that 'any interaction or joint action has evolved out of practical exigencies, for political and administrative convenience' (Painter, 1998: 23). A correlate of this inattention to IGR is that there is no constitutional obligation on the respective parties to act in good faith; nor have the courts applied any doctrine of what in Germany is called *bundestreue*, the requirement for governments to treat each other as federal partners.

### ***A century of centralization***

Although **coordinate and decentralized** by design, Australian federalism evolved over the twentieth century to be **anything but** (Fenna, 2012a). There has been a steady and marked expansion in the role of the Commonwealth government and this has created extensive overlap and entanglement, with large areas of de facto concurrency. Consequent upon this has been much **greater interaction** between the two levels of government. **Commonwealth dominance** has been effected through a combination of **fiscal power and broad interpretation** of certain key enumerated powers. The main direct and indirect taxes have become exclusive to the Commonwealth, thus creating an acute degree of vertical fiscal imbalance, or 'VFI' (Fenna, 2008). In fiscal year 2015–16, the Commonwealth transferred \$108bn of its \$388bn in total revenues to the States, who in turn were dependent on those transfers for, on average, **46 per cent of their total** spending (Treasury, 2016). That **fiscal superiority**, in turn, has underpinned an extensive use of conditional grants to intervene in areas of State jurisdiction. Thanks in large part to liberal use of the spending power, Australian federalism includes a high degree of what Kincaid (1990) termed **coercive federalism**. Although the States retain important powers and substantial service delivery responsibility, IGRs are very definitely conducted in Australia under what Fritz Scharpf (1994: 41) called **'the shadow of hierarchical authority'**.

The steady march of centralization in Australian federalism reflects, in turn, the absence of underlying federal cleavage in Australian society, that is, Australia's unusual degree of **regional homogeneity** (Aroney, 2010: 19). While Australians demonstrate a commitment to federalism (Brown, 2012), Australia **lacks a federal society** – one where distinct regional identities based in language, ethnicity or culture would provide a counterweight to centralizing tendencies. This in turn has underpinned a 'pragmatic' attitude toward the federal division of powers and taken together these realities mean that **almost any task is seen as fair game for national governments** and an appropriate matter to be addressed by parties in national elections (Gerritsen, 1990; Hollander and Patapan, 2007).

### ***Towards administrative federalism***

It is this centralization and the tremendous growth of central government activity in areas assigned to the States rather than any concurrency originally existing in the division of powers that has driven the development of IGR and IGCs in Australia. The Commonwealth now exercises influence or even control in a wide range of areas for which primary or exclusive responsibility originally lay with the States. And moreover, it exercises this influence in areas where the delivery mechanisms remain in the hands of the States – school

systems; hospitals; environment protection; infrastructure provision; and so on. There is now almost no area of State government operations that is ever completely untouched by Commonwealth funding, laws, policies or intentions. The need for cooperation arises from the fact that policy guidance (or, less kindly, policy intervention or interference) from above means working through – and thus, in a sense, together with – State governments. By contrast, there is far less requirement – or scope – for States to work with each other without the Commonwealth (see below for discussion).

Given the much-noted ‘overlap and duplication’ that characterizes Australian federalism, there are regular calls for federalism to be ‘fixed’, and for an end to the ‘blame game’ between Commonwealth and State governments. Most commonly, this elicits a call for more clearly defined roles and responsibilities between the two orders of government (e.g. BCA 2013; CEDA 2014; NCA 2014). A related response is to recognize that de facto shared jurisdiction is both current reality and to some extent inevitable, and that there is therefore a need for closer and more effective co-operation between governments – which of course brings IGR and IGCs to the fore. Commonwealth fiscal support has often played an important role in securing the requisite co-operation from the States, usually accompanied by mechanisms such as intergovernmental agreements (IGAs) and the establishment of new statutory agencies. These are subject in principle to joint oversight by both levels of government, to support and oversee policy initiatives and monitor their progress (see below). While these statutory agencies are not in themselves IGCs, they are integral to the way many IGCs do their work. These two trends – a general tendency toward **increased Commonwealth power** combined with **bursts of activity in which IGR and IGCs are prominent**, assisted by financial sweeteners from the Commonwealth – have increasingly been the main avenues through which change and reform have occurred in the federation.

### ***Theoretical considerations***

Neither IGCs nor IGR more broadly have generated much generalized, or ‘theoretical’, analysis in the federalism literature. Poirier and Saunders (2015: 488) identified ‘a trend toward more formalised IGR in constitutions, legislation, and binding intergovernmental agreements’. Bolleyer (2009) argued that the constituent units of a federal system are much better equipped to **resist** centralization if they establish **successful horizontal intergovernmental arrangements**, and that, in turn, effective intergovernmentalism is **dependent on the form of government in the constituent units**. The power-sharing form of government characteristic of the Swiss cantons is conducive, while, for Bolleyer, both the **‘power concentrating’ parliamentarism** of the Australian States or Canadian provinces, and the separation-of-powers system in the United States, are uncondusive.



Using comparative institutional analysis, Parker (2015) sought to determine the circumstances under which IGAs are likely to proliferate in federal systems. He found certain factors, namely the **degree of overlap and centralization** in the constitutional division of powers, the size and scope of **federal spending** power and the **welfare state** and – of most relevance here – the existence of lasting **forums for IGR** (e.g. IGCs), are generally conducive to IGAs. By contrast, having a large number of subnational governments and the existence of intrastate federalism (i.e. second legislative chambers that effectively represent subnational interests) are, in Parker's view, likely to inhibit IGA formation.

Meanwhile, the special issue to which this paper contributes focuses specifically on IGCs, be they 'horizontal' arrangements involving only the constituent units, or 'vertical' arrangements with the central government. The framework essay for this special issue (Behnke and Mueller, 2017) identifies four possible reasons why governments create IGCs: to increase influence over their peers; to defend their own autonomy; to coordinate policy; or to share information. That choice is postulated to depend in turn on four sets of explanatory factors: first, the institutional character of the federal system, in particular whether it is dualist or administrative as well as the degree of centralization arising from its operation; second, the degree of intergovernmental overlap in the relevant policy domains and the extent to which these domains can be regarded as being subject to self- or shared-rule; third, structural qualities of the constituent units such as their size and number, distance or proximity to each other, economic similarities, and fiscal strength; and fourth, the degree of preference commonality between the constituent units arising from the party system, political culture or social features such as a common language.

Australian federalism, despite its formally dualistic character, has a high degree of centrally dominated policy overlap across a wide range of policy fields; a small number of geographically distant constituent units with modest coordination needs, considerable variation in economic strength, all with a high level of fiscal dependence on the Commonwealth but sharing a common national identity. On the basis of these characteristics, regarding IGCs we would predict for Australia the following:

- A growth in IGCs over time as a decentralized, dualistic, system has given way to a much more centralized and overlapping one;
- A predominance of 'top-down' vertical IGCs with policy coordination by the Commonwealth as their main purpose; and
- Weak impetus for horizontal coordination.

This paper proceeds via an historical account of each main IGC type, beginning with the most significant – COAG – before returning to these theoretical considerations in the concluding sections.

## COAG: the peak body of Australian federalism

The rather grandly named Council of Australian Governments, or 'COAG', is the peak body of Australian federalism. However, here we use the term 'body' advisedly, for the degree to which COAG *exists* as distinct from merely *occurs* is a moot point. COAG is, in the main, **simply the occasional summit meetings of first ministers from across Australia** rather than an 'institution' in any meaningful sense.

### *Basic structure and origins*

COAG originated from an intense period of policy reform in the early 1990s (see Painter, 1998). Over two years, a series of Special Premiers' Conferences were held that culminated **in 1992 with COAG's establishment**. COAG comprises the heads of government (i.e. prime minister, premiers, and chief ministers respectively) of the Commonwealth, **six States and two Territories**, as well as the president of the Australian Local Government Association. In an unusual development, the premiers and chief ministers took much of the initiative in advancing and uniting around a 'new federalism' agenda during this period, including, in particular, proposals for reform of VFI and a clearer allocation of roles and responsibilities among the levels of government (both stillborn). These reforms were to be balanced with a commitment from the States and Territories to continue and accelerate liberalizing micro-economic reform initiatives to improve national competitiveness.

The main substantive outcome of this process was the National Competition Policy (NCP), which was strongly supported by business, the Commonwealth and many State and Territory political leaders. Reform of VFI remained elusive, but the States nevertheless agreed to the NCP because the competition reforms were undertaken in return for significant financial compensation from the Commonwealth (more than \$4bn in total between 1995 and 2005 in annual grants to the States and Territories).<sup>3</sup> These reforms overwhelmingly concerned sectors and industries within State responsibility – most notably the extensive network utilities owned by the State governments – and entailed the loss of important revenue streams through privatization. Disbursement of the compensation or 'reward' payments was made dependent on the States achieving reform milestones as judged by a new institution, the National Competition Council (NCC). Although established under Commonwealth legislation, candidates for membership of the NCC required majority approval of the States and Territories, and it operated relatively independently of the Commonwealth (Harwood and Phillimore, 2015).

At around the same time as the creation of the NCP, there were a number of other policy and institutional innovations aimed principally at achieving national consistency in business regulation as part of a policy to build a

truly national internal market. Ministerial council deliberations resulted in several new IGAs, accompanied in many cases by new legislation and the creation of new agencies containing a level of joint governance between the Commonwealth and the States. Template or mirror legislation (in which either identical or similar legislation is passed in each parliament) was used on several occasions. Councils of a solely horizontal nature were not part of this schema, reflecting the dominant position occupied by the Commonwealth in most policy areas.

Significantly, COAG has **no statutory basis**, and while formal IGAs abound in Australian federalism, there has not been one devoted to COAG itself. As a consequence of this lack of institutionalization, COAG's purpose and operation has varied over time, **at the whim of the prime minister, who calls and chairs the meetings, and sets their agenda**. States are normally permitted just one nominated item for discussion. Meeting frequency varies depending on the decision of the prime minister. From 1992 to June 2017, there had been 44 COAG meetings in total. Meetings have generally been held once or twice each year (except 1998 when there were none), but COAG met four times in both 2008 and 2009 before reverting back to a more typical frequency in subsequent years.

As a result, COAG has no institutional existence. It remains an occasional and brief (typically 3–4 hours) meeting of leaders, served by a Commonwealth secretariat, without formal rules or status. Moreover, the Commonwealth retains powerful constitutional, financial, and political levers that can be deployed independently should it be dissatisfied with the rate or quality of progress achieved at COAG. These include the ability to legislate unilaterally; to make conditional grants to the States; and to appeal on national interest or practical grounds to voters. However, due partly to the incomplete nature of the Commonwealth's constitutional and political dominance, the ultimate outcome is not always certain to be what the Commonwealth seeks. Achieving those goals may require some concessions to State sensitivities and some State involvement in the formulation of new policy directions or in overseeing institutions assigned with responsibility for implementation and regulation.

### ***Fluctuations***

The early success of COAG obscured the reality that political leaders – and in particular the prime minister – largely determine how IGR will function at any given time. This was never more evident than during the period of conservative Liberal–National Party (customarily known simply as 'the Coalition') government from 1996 to 2007. During this period, Prime Minister John Howard's use of COAG and related IGR mechanisms varied greatly, reflecting his own preferences and responses to the political exigencies of the day.

Two distinct periods can be identified. From 1996 to 2001, COAG met sparingly and the focus of IGR was on bedding down the institutions and processes established in the reform period of the early 1990s. The most celebrated intergovernmental issue in this period – the reform of national gun laws (primarily a State responsibility), initiated in the aftermath of a mass shooting in Tasmania soon after the government's election in 1996 – was resolved without recourse to COAG and was eventually ratified at the Australian Police Ministers Council (APMC).<sup>4</sup> Similarly, the issue of Native Title (land rights for indigenous groups) was determined in direct negotiations with individual States rather than through COAG. Then, from 2002, Prime Minister Howard promoted a much more active role for COAG, involving increased intergovernmental cooperation. This arose from at least three factors.

First was the introduction of a national goods and services tax (GST) in 2000, the net proceeds of which were hypothecated to the States and Territories as unconditional funding, replacing several particularly inefficient State taxes and the annual round of Commonwealth Financial Assistance Grants. Importantly, 'the end of heads of government meetings exclusively focused on revenue sharing ... created "space" for a focus on policy issues' (Anderson, 2008: 503). This in turn led to a broader and more formal agenda for COAG, with a focus on reaching agreement and decisions.

A second factor was the growing threat of terrorism and the need for governments at all levels to respond effectively as part of a national strategy. Proposed Commonwealth legislation and emergency protocols required cooperation from the States, particularly in relation to policing and the courts, to bring about nationally consistent laws.<sup>5</sup> This in turn gave the States some ability to influence and negotiate the details of the changes being sought.

A third key factor affecting COAG was partisanship, and in particular the unusual situation existing between 2002 and 2007 when a Coalition government at the national level confronted Labor governments in all States and Territories across the country.<sup>6</sup> This development had two rather different effects. On the one hand, it 'led to very public displays of mutual admiration and the characterisation of COAG meetings as "love-ins"' – partly for political reasons and partly because COAG assumed the status of a 'summit' with the familiar trappings of diplomacy and an 'opportunity to practise bi-partisan statesmanship', complete with a communiqué and end-of-meeting joint press conference (Anderson, 2008: 501–02). A more ostensibly cooperative approach also reflected lessons learned by State and Territory leaders following the failure of a walkout they staged at a COAG meeting in 2003 at the prime minister's refusal to improve the Commonwealth's funding offer for public hospitals (ABC, 2003). Despite the walkout, the States and Territories proceeded to sign the hospitals agreement (albeit 'with a bayonet thrust into our backs', as

the NSW Premier colourfully phrased it later).<sup>7</sup> This effectively marked the end of political grandstanding at COAG by premiers and chief ministers.

On the other hand, tensions between the Commonwealth and the States increased as the Howard government adopted a more centralist and interventionist strategy, sometimes referred to as 'opportunistic federalism' (Twomey, 2007). The Commonwealth's actions included proposals to take over policy areas from the States and to force policy and administrative changes in areas of State jurisdiction. During the same period, State and Territory Labor governments developed an alternative position on climate change; established the Council for the Australian Federation (discussed below); and, most significantly, proposed a new 'National Reform Agenda'.

### ***Work horse or show pony?***

The reform agenda was a conscious effort by the States, led by Victoria, to reinvigorate federalism reform as Commonwealth funding to the States for the decade-long NCP drew to a close in 2005 (PC, 2006; Treasury and Finance 2006). The new reform agenda included a renewed commitment to completing the competition and regulatory reforms, but focussed primarily on 'human capital', with a new system of facilitation and reward payments, similar to those provided under the NCP, which States would be able to access in return for adopting reform measures and achieving agreed outcomes. To oversee this system, they suggested a reform council be established, analogous to the NCC, with the Commonwealth and the States each nominating half the membership. Experience with the NCC taught them, however, that they would be better off if the new reform council reported to an IGC, in this case COAG, rather than directly to the Commonwealth. In the end, Prime Minister Howard agreed to establish the COAG Reform Council (CRC) in 2006 on those terms, but he refused to provide any significant funding and the Council did not assume an active role until the election of a Labor government led by Kevin Rudd the following year.

The incoming Labor government's reforms to IGR were potentially some of the most significant in Australia's federal history (Fenna and Anderson, 2012). Their cornerstone was acceptance that the Commonwealth's extensive system of conditional grants to the States had grown far too intrusive. The *Intergovernmental Agreement on Federal Financial Relations* of 2008 created a new, simplified architecture of block grants (Treasury, 2009). The *quid pro quo* from the States for this retreat from conditionality was participation in a major scheme for performance monitoring and reporting. This benchmarking of service delivery performance across a broad sweep of State government activities would be carried out by the CRC, reporting to COAG (Fenna, 2014; O'Loughlin, 2012).

However, the new government's agenda was much more ambitious than just the reform of federal financial relations. Seizing on the rare opportunity provided by the existence of Labor governments in power nationally and in all States and Territories, the new prime minister, Kevin Rudd, declared that he would make COAG a 'workhorse for the nation' (Karvelas, 2007) operating under 'a new model of cooperation underpinned by more effective working arrangements' (COAG, 2007: 1). He followed up with an unprecedented eight COAG meetings in two years, including treasurers (finance ministers) as well as first ministers, and adopted and extended the reform agenda initially set out by the State and Territory governments in 2005. Seven COAG working groups were established covering a range of policy areas, each headed by a Commonwealth minister but consisting of both Commonwealth and – remarkably, and tellingly – State officials. These working groups reported on a regular basis back to COAG, where the real decisions were made. The onset of the global financial crisis assisted the reform process as the Commonwealth embarked on a massive spending programme aimed at staving off economic recession. A large increase in funding to the States ensued, both in the five core funding agreements (schools, vocational training, health, housing, and disabilities), but also through numerous additional programmes known as National Partnership Agreements. These various funding agreements were all ratified and announced through COAG.

### ***Normal service resumed***

It was not long, however, before relations between the Commonwealth and the States began to sour, both at the political and the officer level. Despite the professed intentions of the new IGA, State officials argued that Commonwealth agencies continued to adopt intrusively prescriptive approaches to funding (Harwood and Phillimore, 2012; O'Meara and Faithful, 2012). COAG also came to be criticized publicly for being overloaded and ineffective (Editor, 2013).

By early 2010, Prime Minister Rudd had taken a much more critical and assertive stance toward the States, threatening a Commonwealth takeover of the health system (through a constitutional referendum if necessary) unless the States implemented further reforms. The new funding model proposed that the Commonwealth assume responsibility for a larger, fixed, share of public hospital costs but also clawing back a third of the GST revenues that were otherwise going to the States (Rudd, 2010). An unprecedented two-day COAG meeting was held in April 2010, at which hospitals were the main agenda item and after fractious discussion a compromise agreement was reached. Political changes at both national and State levels led to the 2010 compromise agreement being amended at subsequent COAG meetings in 2011. The replacement of Rudd as prime minister in June 2010 via a leadership

coup within the Labor Party, and the election of Coalition governments in the two most populous States, Victoria and New South Wales, considerably weakened the Commonwealth's initial position. In particular, the non-Labor States became far less cooperative.

Under Rudd's successor, Julia Gillard, federalism and IGR issues took a back seat as her minority government faced more pressing political and policy priorities. COAG meetings became less frequent and less focussed on headline issues. In the final year of her leadership, Prime Minister Gillard used COAG to highlight and make progress on two significant policy initiatives involving the States – disabilities reform and schools funding. However, finalization of agreements with the States on these issues was mainly done in bilateral negotiations outside the COAG process, with some State governments attempting to lock-in an agreement with the Commonwealth as the clock ticked down to the 2013 federal election, while others held out in the hope of improving their situation post-election.

The dependence of COAG on the whims and priorities of the incumbent prime minister was further evident following a change of government in 2013. At the first COAG meeting following the election, newly elected Coalition prime minister Tony Abbott announced the need for an approach that 'respects the States and Territories... are sovereign in their own sphere. They should be able to get on with delivering on their responsibilities, with appropriate accountability and without unnecessary interference from the Commonwealth'. The number of ministerial councils reporting to COAG was cut back to just eight and the communiqué noted that '[i]n future, COAG will focus on a few important national priorities, and on outcomes rather than process' (COAG, 2013: 1).

With little extra funding available (unlike the early Rudd era), the new government reverted to former Prime Minister Howard's strategy of excluding discussion about major funding agreements for traditional areas of state responsibility such as hospitals and schools from the COAG agenda. Having held a scheduled meeting in early May 2014, Prime Minister Abbott then refused to convene a further COAG meeting a fortnight later, despite a request to do so from seven of the eight premiers and chief ministers after severe cuts were announced in the federal budget to health and other funding to the States and Territories in contravention of agreements signed by the former Labor government (Grattan, 2014). In similar fashion, despite the communiqué of the May 2014 meeting saying that 'COAG agreed to discuss schools funding at its next meeting', no such discussions were held. Instead, at its April 2016 meeting COAG (2016) noted 'the Commonwealth's contribution to school education is funded through to the end of 2017, and agreed that discussions on new funding arrangements should be concluded by early 2017'. This new funding was announced in May and legislated in June 2017 – all outside of COAG processes.



## **The penumbra of ministerial councils and statutory agencies**

Surrounding COAG are, first of all, a fluctuating number of ministerial councils covering all the main portfolio areas. Below those are now a number of statutory agencies established to implement, administer, and advise in areas of overlapping responsibility.

### ***Ministerial councils***

Ministerial councils involving the Commonwealth and the States date back to 1923, when the Loans Council was established. The first sectoral council was the Agriculture council, established in 1934 (Botterill, 2007). Between then and the early 1990s, the number of councils grew – some initially as purely horizontal inter-State bodies involving the relevant portfolio minister from each subnational jurisdiction, but often also involving the Commonwealth, either as an ‘observer’ or as a full member. The councils were aimed at promoting coordination, preventing overlap in service provision, considering national priorities, and achieving uniformity in administration in some areas. Most are now chaired by the relevant Commonwealth minister and have a secretariat provided by the Commonwealth.

The first COAG meeting in 1992 noted that ‘concerns have been expressed about the growing number of Ministerial Councils, the apparent overlap and duplication in their coverage and blurred lines of accountability to Governments’ (COAG, 1992). It commissioned a ‘review of the scope, distribution and number of Ministerial Councils’. At its next meeting, COAG cut the number of councils from 45 to 21. Several such reviews have been undertaken since, as the number of councils tended to creep back up over time. By 2011, there were once again more than 40 councils; these were reduced to 23 under a new structure of standing and select councils. In 2013, this number was reduced to just eight ‘COAG Councils’ dealing with larger groupings of interest: financial relations; disability reform; transport and infrastructure; energy; industry and skills; law, crime and community safety; education; and health. However, as several of these councils contain sub-groupings (e.g. the law, crime and community safety council holds three separate meetings for attorneys general, police and justice, and emergency management ministers), the reduction in numbers may be misleading.

The current system of ministerial councils is much more explicitly designed as a system with COAG at its apex with the councils bound to it. As the COAG website notes:

COAG Councils support COAG and allow it to focus on key national priorities. Councils provide a forum for intergovernmental collaboration and decision-making. They progress COAG priorities and referrals of work, along with other issues of national significance. In addition, the Councils develop policy



reforms and other advice for COAG consideration, and oversee the delivery and review of reforms agreed by COAG. [COAG n.d.]

Since COAG was formed, ministerial councils have become more formal and less secretive, with the publication of meeting communiqués now being commonplace. COAG also provides written guidelines for their operation. Importantly, these stipulate, ‘councils will make decisions on the basis of consensus, wherever possible’. They also note ‘Commonwealth and state ministers may also meet to deal with important areas of cooperation and decision-making outside the COAG council system’ (DPMC, 2016: 1–2). While no central register is kept, it is evident from media statements and published communiqués that several such ‘non-COAG councils’ continue to meet. These include ministerial councils for Agriculture; Arts and Culture; Environment; Fisheries; and Housing and Homelessness. In addition, ministerial councils (sometimes known as ‘ministerial forums’) linked to legislation and related statutory authorities such as the Murray–Darling Basin Authority, Food Standards Australia and New Zealand,<sup>8</sup> and the Gene Technology Regulator, also continue to meet outside the COAG orbit.

Ministerial councils can be venues of conflict, negotiation, and, not least of all, inertia – partly due to the preference for consensus decisions. On occasion, though, they can also facilitate important reforms. For example, in policing – often regarded as an area of self-rule *par excellence* – the ministerial council was an important venue for significant changes that have seen Australian policing become ‘nationally integrated and Commonwealth-led’ (Manison, 2015). A terrorist incident in 1978 led the Commonwealth to establish the Australian Federal Police in 1979, taking its place alongside existing State and Territory police forces. In 1980 the Commonwealth initiated and established the APMC, which became the peak body for policy and governance in policing. APMC meetings between 1980 and 1983 agreed to a range of national common police services being established through Commonwealth-funded entities. In 1984, a national criminal investigation body was established. This body, now known as the Australian Criminal Intelligence Commission (ACIC), is established under Commonwealth legislation and reports to a Commonwealth Minister, but State and Territory police commissioners sit on its governing board, while police ministers – formally known in ACIC’s legislation as the Intergovernmental Committee, but in effect the ministerial council – provide strategic direction and oversight. The APMC was also the venue where national gun laws were agreed to in 1996. The integration of Australian policing under Commonwealth leadership through the APMC has been a largely consensual process, in contrast to the often heated and drawn-out arguments common in other self-rule areas such as hospitals and schools. This has occurred for several reasons, including the fact that it involved little incursion into the existing domain of the State police forces; reflected

increasing jurisdictional spillover of criminality; involved the participation of States and Territories in the new national policing architecture; and carried with it an injection of Commonwealth funding to underwrite new agencies and facilities.

By contrast, other ministerial councils are better known for resistance and delay by the States in response to Commonwealth initiatives. For example, a study of the Ministerial Council on Education, Employment, Training and Youth Affairs found that the Commonwealth was responsible for raising over 40 per cent of issues there (Jones, 2008). These were aimed at pursuing goals such as national targets for student outcomes and a related system of performance measures; national consistency on issues such as a common school starting age; and a national curriculum. Although nominally committed to these goals, States and Territories delayed real action for many years through tactics such as the proliferation of working groups and the raising of technical objections (Jones, 2008: 166). While effective in terms of preserving autonomy in a key area of self-rule, over time this led to increasing Commonwealth intrusion using the threat of withholding funding, as well as giving public strength to the Commonwealth's push for a national approach. In 2008–09, the situation changed radically, when a rare window of political and funding opportunity opened in the shape of offers of very large increases in Commonwealth funding and the existence of Labor governments at both levels. This led to the creation of ACARA, the Australian Curriculum, Assessment and Reporting Authority, which was achieved primarily through COAG and its working groups pursuing the COAG Reform Agenda, rather than the ministerial council. The council, however, remained important through implementation of several other national partnership agreements and is the body to which ACARA is formally responsible. However, ACARA is playing a powerful new role in driving national reform and inter-agency collaboration (Savage, 2016). The extent to which State and Territory ministers or curriculum officials are involved in setting directions for ACARA is uncertain, and the trend appears to be for them to become implementers of national policy objectives set by the agency.

Ministerial councils are rarely studied, partly due to their traditional opacity. What research has been done shows that State officials often regard councils as a 'part-time activity after the real work is done' (Botterill, 2007: 192), in which the Commonwealth generally dominates and seeks to pursue its policy agenda – although States can find them useful for information sharing and, occasionally, for delaying or preventing actions to which they object. One result has been regular attempts to reform the councils and bring them under greater central control at COAG.

The move to streamline ministerial councils via COAG also reflects a periodic quest by central agencies (at both Commonwealth and State levels) to take greater control of the policy and operational agenda from line agencies

(Gerritsen, 2002). As Botterill (2007: 191) notes in her study of the Agriculture ministerial council, while the council has been useful for addressing technical, cross-border issues, 'the objective of a greater strategic focus ... is not being met'. This is despite – or perhaps even because – of the involvement of COAG; strategic issues were seen as politically too difficult to deal with by the ministerial council and were regarded as more appropriately dealt with at COAG level. During the reform period under Rudd from 2008 to 2010, ministerial councils were effectively 'put out to pasture' with the intensive work being done by COAG working groups. During this period, Commonwealth and State central agency officials expressed their frustration with the lack of interest shown by their respective portfolio ministers in addressing issues on the agenda (Harwood and Phillimore, 2012: 37–38).

Frustration at ministerial councils is not confined to the Commonwealth or to central agencies. The business community has criticized ministerial councils for adding yet another layer to the federal system, contributing to political inertia and a lack of accountability. The Business Council of Australia (BCA, 2006: 36), for example, has commented that

Referring important policy matters to Ministerial Councils for consideration has been equated with giving them the 'kiss of death'. The development of national uniform defamation laws, for example, was debated by the Standing Committee of Attorneys-General for over 20 years.

Like COAG, ministerial councils have no legislative basis, as evidenced by the wide variations in their number over time. The regularity with which COAG has reviewed them in an attempt to reduce their number and clarify their role reflects the informality at the heart of IGR and IGC in Australia. However, *unlike* COAG, they are often referred to in Commonwealth legislation establishing agencies, such as ACARA, which report to the ministerial councils. This gives them an indirect formal existence and helps explain the continued existence of some councils outside the current number of eight COAG councils.

### ***Independent agencies***

Australia has a long tradition of establishing independent agencies for a host of public policy issues, many of which involve shared governance between the States and the Commonwealth (Phillimore and Harwood, 2015: 59). The bulk of these are what Poirier and Saunders (2015: 467) refer to as 'joint institutions', designed to achieve shared goals in specific policy areas and responsible to jointly established and governed bodies. Poirier and Saunders also refer to 'specialised IGR agencies' established by central government to advise it on aspects of IGR. The most significant of these in Australia is the Commonwealth Grants Commission, which plays a key role in Australia's system of horizontal fiscal equalization by advising the Commonwealth Treasurer on the distribution of GST funds to the States and Territories.

The joint institutions cover a multitude of roles, including evaluation (the former CRC and National Water Commission); research and analysis (Australian Bureau of Statistics; Institute for Health and Welfare); policy advice (Food Standards Australia and New Zealand; National Transport Commission); regulation (Australian Competition and Consumer Commission; Office of the Gene Technology Regulator; Great Barrier Reef Park Authority; Australian Energy Regulator, Australian Health Practitioner Regulation Agency); or a combination of these (Australian Curriculum, Assessment and Reporting Authority).

For most of these bodies, membership and operational rules are established through IGA (and associated Commonwealth legislation). In many cases, membership is jointly (or separately) decided by the Commonwealth and the States and Territories, or the States and Territories may have the ability to veto Commonwealth-proposed members. Depending on whether the agency is established by Commonwealth or mirror legislation or by IGA alone, it will report either to a Commonwealth minister or to a ministerial council.

The formal underpinning of these agencies can be contrasted with the CRC, which was created by COAG in 2006 (see above) and which promised at the time to be the crux of the most important new development in Australian federalism. The CRC reported directly to COAG, not to a Commonwealth minister. However, unlike the NCC on which it was modelled, the CRC had no formal legislative status or dedicated IGA underlying it. The Reform Council's vulnerability was demonstrated when the newly elected federal Coalition government abruptly and unilaterally announced its abolition in its first budget in May 2014. As the Commonwealth's provision of facilitation and reward payments to the States had virtually vanished by this time, there was no protest from the States and Territories.

By contrast, statutory agencies are likely to be more permanent, as removing them requires legislative change. Abolition is still possible (e.g. with the Australian National Training Authority in 2004) but rare. In many respects, it could be argued that their proliferation indicates a shift towards a type of 'administrative federalism', but one in which both levels of government delegate responsibility for policy implementation and governance to independent statutory agencies staffed by experts. Thus, it is not an administrative federalism of the German variety where national decisions (involving *Länder* through the *Bundesrat*) are implemented by subnational governments, but rather more like what is called administrative federalism in the United States (Fenna, 2012b). Although formally accountable to their ministerial council, and in most cases with board members and sometimes even the chief executive being appointed by the Commonwealth in association with the States, these agencies tend to develop their own independence, expertise, and authority. Thus, while the extent of direct Commonwealth dominance

and control may be reduced, it is not necessarily replaced by increased State influence.

### **Council for the Australian Federation: a pitiful case of horizontal IGR**

Australia was notable for lacking a formal horizontal IGC, but this situation seemed to be belatedly rectified in 2006 by the establishment – with some fanfare – of the Council for the Australian Federation (CAF) by a memorandum of understanding between the premiers and chief ministers (Menzies, 2012; Tiernan, 2008). CAF was explicitly modelled on Canada's Council of the Federation. In principle, it meets at least yearly or on an 'as needs basis' to provide State and Territory leaders with an opportunity to discuss matters related both to COAG (either in advance or subsequent to COAG meetings) and to cross-jurisdictional issues in which the Commonwealth may have little or no role. It was also intended to provide a platform to communicate broader issues of public interest and sponsored a couple of federalism position papers (Twomey and Withers, 2007; Wanna, Phillimore and Fenna, 2009). CAF has a rotating chair and secretariat. Meeting communiqués are later published on the CAF website.

CAF was established during that unusual period noted above when all State and Territory governments were Labor-led while the Commonwealth government was in Coalition hands. It met three times during this period and used the meetings to press publicly for an emissions trading scheme and funding for the proposed National Reform Agenda. In late 2007, the Coalition also lost power nationally, and Labor won government committed to policies along those lines. From this point on, CAF lost momentum. CAF meetings essentially reverted to the situation prior to its establishment – that is, as a tactical meeting of first ministers just prior to COAG meetings. Its website is virtually inactive, with no communiqués having been issued since April 2013.

The fate of CAF reflects the relatively weak incentives and pressures spurring the development of horizontal IGR in Australia, as opposed to those involving vertical relations between the Commonwealth and the States. This is partly for practical reasons: with only six States (one of which is an island) and two Territories, typically covering very large geographic areas with concentrated metropolitan populations, operational 'boundary' issues are relatively few in number and of minor importance apart from those in which the Commonwealth already takes a keen interest. Prominent among the latter has been regulatory harmonization affecting business; the national energy market; and the management of Australia's major river system, the Murray–Darling, that flows through four of the six States and serves as the boundary between the two most populous ones. Perhaps more significantly,

economic competition between the States, as well as differences in their industrial base and level of fiscal dependence on the Commonwealth, have traditionally meant that they have generally been unable to combine forces politically or institutionally for long enough to act collectively without the Commonwealth or to present a united front in their relationship with the Commonwealth. Partisan differences between the States can also limit their effectiveness.

In essence, the ubiquity of shared jurisdiction across most policy areas resulting from VFI means that COAG is the pre-eminent IGC for first ministers, while ministerial councils occupy a similar role for sectoral ministers. Discussions held solely among the States and Territories are potentially useful for information sharing or planning tactics, but can be conducted informally or on the eve of a COAG or ministerial council meeting. Negotiations with the Commonwealth remain the main game, as that is where the money and power reside.

## Discussion

IGCs are an established feature of Australian federalism. This has become more so since COAG was launched in 1992, but even before that ministerial councils were an important element of the federal machinery. Their nature and operation reflect the underlying realities of Australian federalism. The range of IGCs and their key characteristics are summarized in Table 1.

Overwhelmingly, Australia's IGCs are vertical rather than horizontal, and top-down rather than bottom-up. This is particularly the case with Australia's peak IGR body, COAG, which has no formal basis in statute or IGA and is unambiguously a creature of the Commonwealth. If indeed federal systems are

**Table 1.** Summary of Australian IGCs.

IGC	Membership	Direction	Main purpose	Importance
Council of Australian Governments	Commonwealth States & Territories Local government	Vertical Top-down	Policy coordination Information exchange Influence	Very high
Ministerial Councils	Commonwealth States & Territories (Local government) <sup>a</sup> (New Zealand govt) <sup>a</sup>	Vertical Top-down	Policy coordination Information exchange Influence Autonomy protection	Medium–high
Joint institutions/ statutory agencies	Administrative bodies reporting to Ministerial Councils	Independent	Policy coordination Operational and regulatory activity	Medium–high
Council for the Australian Federation	States & Territories	Horizontal	Information exchange Influence	Very low

<sup>a</sup>Local government and the New Zealand government are members of a small number of ministerial councils.

showing a trend toward 'institutionalisation' of IGRs, that trend is a very modest one in Australia. With no formal basis, COAG has no rules-base. Its secretariat is in the Department of Prime Minister and Cabinet; it meets when the prime minister decrees it shall meet; and its agenda is controlled by the prime minister.

What primarily motivates the Commonwealth to work through COAG is the need for policy coordination with the States. In some areas, the Commonwealth cannot 'go it alone' because of the constitutional obstacles. This was particularly so in the dynamic early years of COAG when agreement was reached to implement the sweeping reforms in State-owned, -managed or -regulated industries under the NCP. In many other areas, the need for cooperation is for practical reasons: the States have always carried the main responsibility for service delivery and it is the Commonwealth's objective to achieve certain ends, not to assume that responsibility for itself. This is often achieved through the mechanism of an IGA and accompanying independent agency, formally responsible to both levels of government via the relevant ministerial council.

Often these vertical relations are fraught and antagonistic, as one would expect in a situation where financial muscle is regularly being used to encroach upon the traditional jurisdiction of the States. This has been the case, for instance, in schools and hospital funding. It is not, however, always so. Other areas such as policing and security have been much more consensual. This reflects the overriding sense of national interest involved and a perceived high level of political risk in these areas that has seen States prepared to cede primary responsibility to the Commonwealth. In some cases, such as terrorism, exogenous shocks have been a contributing factor.

The other motivations for IGCs hypothesized by Behnke and Mueller (2017: 9) – influence, autonomy protection, and information exchange – are also present to some degree at COAG and in ministerial councils, although they are secondary to the main purpose of policy coordination. Information exchange occurs inevitably through the mere fact of personal interactions between key political and bureaucratic personnel. The States have on rare occasions been able to use COAG to influence national policy, such as the adoption of the National Reform Agenda as a successor to the NCP. That was assisted by the unique situation of Labor being in power in all subnational jurisdictions, and the issue being inherently intergovernmental. But the prime minister's control over the calling of COAG meetings and the setting of its formal agenda items limits the States' influence, as witnessed by Prime Minister Abbott's refusal to call a COAG meeting in 2014 despite seven out of eight premiers and chief ministers requesting that he do so. States can on occasion ward off Commonwealth encroachment and attempts to impose national policies. This occurs more commonly at ministerial councils, but is not universally successful (as in the case of the national curriculum). As

ministerial councils become increasingly subject to strategic direction and oversight by COAG, such efforts at maintaining autonomy are likely to become even more difficult.

In addition to the four motivations for IGCs identified by Behnke and Mueller, COAG can also provide a visible public stage for prime ministers to advance their own political and policy agenda. At various times, for example, prime ministers Howard and Rudd each used COAG to pursue specific goals (national security and 'national reform' respectively), but they were also each quite prepared to avoid or downplay COAG in different circumstances.

Conspicuous by its absence in the Australian system is horizontal IGR or IGCs. In the very early years, ministerial councils were horizontal, but they are now much more Commonwealth-led. CAF was the exception that 'proved' (i.e. tested) the rule. Had it become solidly established, demonstrated effectiveness, and persisted, the predictions identified at the beginning of this paper would have been called into question. However, that was not the case. CAF came into being under very unusual circumstances (namely, a creature of partisanship and very rare preference overlaps), accomplished little, and faded from the scene very quickly. The Australian States have shown little inclination or ability to foster the kind of horizontal joint action that would protect their position in the federal system. On the two occasions when the States have helped initiate significant reforms – the early 1990s and then again from 2005 to 2007 – their efforts only had real impact once the Commonwealth assumed responsibility via a vertical, top-down IGC (namely COAG), and provided the necessary financial support.

### **Explaining Australia's system of IGCs**

The nature of intergovernmental practices and arrangements in Australia mirrors the realities of a highly centralized federal system where the Commonwealth enjoys, through a combination of broad interpretation of its enumerated powers and a decisive fiscal superiority, a position of clear dominance. In particular, the Commonwealth has an almost unlimited spending power that allows it either to force its way into State jurisdictions or to be seen as an attractive alternative to cash-strapped State governments. That position has been made possible by the absence of the kind of federal society that would underpin more State assertiveness. Drawing on Behnke and Mueller's (2017: 10) four-factor framework, the character and development of Australia's top-down vertical system of IGCs can be readily explained:

- (i) Australia's *institutional framework* is dualist in origin but increasingly entangled in practice, in a context of centralization, Commonwealth fiscal dominance and a growing welfare state (Parker, 2015: 52–55).



This has led to 'a point where Australia can be considered to have quite a dense set of IGR institutions and practices' (Phillimore and Harwood, 2015: 42), including IGCs that are invariably Commonwealth-dominated. However, these IGCs lack formal or strong rules, thus enabling Commonwealth encroachment given its fiscal dominance.

- (ii) IGCs exist in most *policy areas* via ministerial councils and, in some instances, joint institutions in the form of independent statutory agencies. However, the typical self-rule vs. shared-rule dichotomy tends to break down in the Australian case as VFI, combined with the absence of a formal IGR rules-based system, means that virtually any policy area is either actually or potentially a shared rule domain. In some areas of major spending (e.g. schools and hospitals) this is accompanied by greater State resistance and pursuit of autonomy, but in others (e.g. police, security) there is more cooperation and acceptance of Commonwealth leadership. These IGCs enable the Commonwealth to pursue its policy agenda more effectively and efficiently than trying to act alone.
- (iii) *Structural factors* help explain the weakness of collective action by the States, either to work with each other independently of, or in concert against, the Commonwealth. There are only a small number of constituent units with few boundary issues but significant economic differences. These factors make horizontal or bottom-up IGCs unlikely and insignificant.
- (iv) *Interest and preference congruence* such as a weak federal culture has tended to support the system of vertical, top-down IGCs and weak horizontal IGCs. Bipartisan ideological support for market liberalization in the early 1990s assisted in the creation of the National Competition Policy and the creation of COAG, while a brief period of Labor government dominance at all levels in the mid-2000s assisted in the adoption of the COAG National Reform Agenda and the establishment of a national curriculum.

The absence of horizontal IGCs is both a contributing cause and a consequence of Australia's highly top-down system. In so far as it reduces the capacity of the States to collaborate in either making central rule unnecessary by solving national problems themselves, or in fending off attempts at encroachment, the absence of horizontal IGCs contributes to the vertical, top-down, character of Australian IGR. This lack of collective capacity is in large part a result of the structural factors highlighted above: the limited practical need for cooperation between the States, diversity of interests and fiscal dependence. It may also be reinforced by the factors Bolleyer (2009) adduces: the 'power-concentrating' political systems in the States, although it is impossible to determine from either this survey, or indeed her comparative

analysis, whether that is the case. At this point in the evolution of Australian federalism, it is certainly the case that any impetus or possibility for effective collaboration between the States is undercut by Commonwealth dominance.

## Notes

1. The Commonwealth being the Australian government, the States being the six constituent units of the federation, and the Territories being the two self-governing jurisdictions operating on authority delegated from the Commonwealth but functionally similar to States. Reference in this chapter to 'the States' can generally be taken as encompassing the Territories as well.
2. *Constitution of the Commonwealth of Australia*, Section 101: 'There shall be an Inter-State Commission, with such powers of adjudication and administration as the Parliament deems necessary for the execution and maintenance, within the Commonwealth, of the provisions of this Constitution relating to trade and commerce.'
3. The NCP implemented competitive neutrality provisions between private and government businesses; promoted market-oriented reform of public monopolies; rationalized regulatory and pricing frameworks of utilities; and amended laws that hindered competition.
4. *National Firearms Agreement* 1996.
5. *Criminal Code Amendment (Terrorism) Act 2002*.
6. The Coalition was in power federally from March 1996 to late November 2007, when the Rudd Labor government was elected. Labor governed federally until September 2013, when the Coalition re-took office. Labor governments were in power in all States and Territories from 2002 to September 2008, when a Liberal government won the Western Australian election. This meant that for almost a year (November 2007 to September 2008), all governments were Labor. Coalition governments were subsequently elected in several States (Victoria 2010; New South Wales 2011; Queensland 2012).
7. Interestingly, the official communiqué for this COAG meeting does not even mention the hospitals issue, but instead refers solely to a national water plan agreed to by all leaders at the same meeting (COAG, 2003).
8. A number of ministerial councils include New Zealand ministers, due to reasons of economic and environmental regulatory overlap arising from the 'single economic market' established between the two countries.

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## Intergovernmental councils in the United States

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### ABSTRACT

This article focuses on intergovernmental councils (IGCs) in the United States in which prominent state-level executive politicians, that is, governors, play a leadership role. In the US case, these IGCs developed out of a desire to facilitate interstate information exchanges and a need for state governments to join forces to protect their autonomy vis-à-vis the federal government. In this latter role, the councils function as lobbyists for state government interests. The research question driving the analysis has to do with impact: what difference do executive-led IGCs make, either vertically or horizontally, in the US federal system? The question of impact is particularly relevant because growing partisan polarization in contemporary federal and state political institutions complicates collective action by states.

**KEYWORDS** United States; federalism; intergovernmental councils; governors; partisanship

In the United States, intergovernmental councils (IGCs) did not develop from a constitutional provision, and with the exception of the U.S. Advisory Commission on Intergovernmental Relations, neither did they emerge from federal statutes. Instead, they are twentieth-century creations that developed bottom-up out of a desire to facilitate interstate information exchanges and a need for state governments to join forces in an effort to protect their autonomy vis-à-vis the federal government. Over time, many more of these organizations have been created, most involving a specific set of executive branch officials, both elected and appointed. The primary focus of this paper is on the work of the IGCs in which prominent state-level executive politicians, that is, governors, are involved. The research question driving the analysis has to do with impact: what difference do IGCs make, either vertically or horizontally, in the US federal system? As noted in the Introduction to the special issue, IGCs operate in an environment subject to crosscurrents of competition and cooperation, a condition magnified in the US case (Bolleyer, 2009). As partisan polarization increases within federal and state institutions, one may wonder whether US IGCs can generate effective protection of state interests and sustain meaningful intergovernmental cooperation. After all, IGCs rely on

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the development of consensus and collective action, conditions that may be in short supply in an era characterized by the emergence of rival partisan organizations.

The paper begins with a brief description of American federalism that emphasizes federal–state relations, interstate interactions, and safeguards and the representation of interests. This is followed by a discussion of two organizations that function as IGCs, in particular the Council of State Governments (CSG) and the National Governors Association (NGA). In an effort to gauge the impact of these groups, the findings of several relevant studies are analysed in the penultimate section of the paper, followed by concluding comments on the implications of the analysis.

## **American federalism**

In federal systems, one fundamental issue is the maintenance of an appropriate balance of authority and distribution of responsibility between and among the different orders of government. The federal–state relationship is commonly referred to as a ‘vertical’ dimension; the state–state case is often labelled a ‘horizontal’ relationship. In an influential book on American federalism, Bednar (2009) further develops these dimensions by using the image of a triangle to symbolize the relationships of the federal government and state governments.<sup>1</sup> In the triangle, the federal government is at the apex and the states are located at the base (State A is one base point, State B is the other). If federal government actions move into the realm of state authority, it is considered ‘encroachment’. If states fail to comply with a federal directive, if they fail to carry their weight in the federal system, they are said to be ‘shirking’. If State A seeks to off-load the cost of a policy or action to State B, it is engaging in ‘burden-shifting’. Too much encroachment, shirking, or burden-shifting creates stresses that threaten the effective functioning of the federal system. The challenge for the federal system is to allow sufficient flexibility to accommodate necessary adjustments in the relationships symbolized by the triangle as well as to design appropriate safeguards that protect against extreme outcomes, and to recalibrate the system after periods of disruption.

### ***Federal–state relations***

The United States divides sovereignty between a national government and state governments. In the aggregate, it is in the states’ interest to maintain sufficient authority to function as full partners in the federal system. It is in an individual state’s interest to have adequate power to design and customize public policy to fit its particular circumstances, to be the proverbial ‘laboratories of democracy’ cited by U.S. Supreme Court Justice Louis Brandeis



(1932). Within each order of government, power is allocated among three branches that are connected to one another through a series of checks and balances. Chronological treatments of US federalism track the gradual evolution of intergovernmental relations from an initial period of 'dual federalism' in which the assignment of functions and responsibilities to the national government and the states was somewhat precise to a period in which functional responsibilities became more interwoven, often referred to as 'cooperative federalism' (Walker, 1999). As a consequence of this evolution, domestic public policy has become highly intergovernmentalized. Although areas of self-rule continue to exist, the domain of shared rule has expanded greatly. The American federal system has become a partnership between orders of government, a highly complex system bound by the U.S. Constitution, statutes, regulations, and finances ... and importantly, politics.

Yet even with the increase in shared rule, empirical evidence demonstrates that the US federal system has become more centralized over time, that is, encroachment has taken place (Kincaid, 2016). In some instances, this shift in authority has been welcomed by the states, particularly when it has relieved states of a costly functional responsibility. In other cases, federal government intrusion has been unwanted by the states. It is important to note that the pace of this centralization has been uneven and in some instances, federal government actions have actually had a decentralizing effect (Bowman and Krause, 2003). Consequently, it would be erroneous to conclude that centralization has robbed states of a meaningful role in American intergovernmental relations. As Smith (2015: 414) has stated, 'State governments still retain considerable power and authority.'

In the United States, the 50 states have *de jure* symmetry. Each state stands on equal legal footing with every other state, officially possessing the same relationship with the national government regardless of a state's location, the date it entered the union, or the size of its population. *De facto* asymmetries exist among states, of course, be it the size of a state's economy, the extent of its political power, or its supply of natural resources. As a result, despite formal equality, each state's relative influence within the US federal system varies. Importantly, among the states, some have emerged as leaders in designing and adopting new policies, others have tended to lag behind (Boehmke and Skinner, 2012).

### ***Interstate interactions***

State governments interact with each other regularly producing a complex network that links actors, institutions, and organizations across state boundaries. This interstate interaction may occur among geographically determined subsets (e.g. a pair of bordering states or states in a region such as New England) or in affinity groupings (states with economies based in industry

or states whose leaders share similar ideological leanings). The U.S. Constitution, in reaction to the pernicious interstate competition that developed under the Articles of Confederation (1781–89), contains provisions designed to facilitate and clarify interstate interactions, and promote interstate harmony (Zimmerman, 2011). The Constitution also includes an explicit grant of power to Congress to regulate commerce between the states. Constitutional amendments, federal statutes, and court rulings have further clarified how states interact with one another.

In practice, subnational governments are opportunistic; as Bednar (2009: 63) contends, '... intergovernmental rivalry is inevitable.' One concern is that interstate competition could become so intense that it generates what is often called a 'race to the bottom' wherein states adopt potentially counter-productive policies to gain advantages over other states. Oates (2001) has noted that, 'Policymakers in one jurisdiction often have little incentive to worry about the costs that their actions impose on their neighbors.' And while pursuit of this self-interest is an expected behaviour, it can result in the suboptimal performance of the federal system as a whole. Bednar (2009) also argues that, 'States do not automatically take into account the effect that their policy has on the citizens of another state. Policy effects spill across borders, sometimes harming and sometimes helping the people living in neighboring states.' For example, in 2012, the state of Colorado legalized the recreational use of marijuana in the state. Two years later, bordering states Nebraska and Oklahoma, which ban marijuana, filed suit against Colorado in federal court arguing that Colorado's law was having negative spillover effects in their states, in particular increasing costs for law enforcement.<sup>2</sup> One of the ways to mitigate some opportunistic behaviour is for states to join organizations such as IGCs that foster repeated interactions and information exchanges.

### ***Safeguards and the representation of interests***

Institutional features are designed to help keep governments within their bounds and to dispense sanctions when they transgress, that is, encroach, shirk, or burden-shift. Four categories of these safeguards are identified by Bednar (2009): structural, popular, political, and judicial.<sup>3</sup> Structural safeguards include separation of powers; popular safeguards involve citizen electoral participation in government. The organization of the party system is a political safeguard; the courts act as judicial safeguards. These features operate in a complementary way to secure some degree of restraint among governments; however, these safeguards are imperfect.

Nugent (2009) makes the case that additional political safeguards are available to states, especially with regard to federal policymaking and implementation. These include state refusal to comply with federal laws that are not

supported by state officials and state pursuit of 'coordinate governance', such as state passage of legislation that blunts interest group pressure for federal action. State participation in the federal policymaking process is another safeguard as is state exhortation and persuasion in an effort to gain publicity and attract media attention to its position on federal action.

Another institutional feature of American federalism is the prominence of interest groups, organizations that seek to influence public policy in the direction of group preferences. These groups are active throughout the policy process, most notably in agenda-setting and policy formulation and adoption but also in the implementation of policy. Success for these groups is defined by their ability to influence the actions of governments such that group preferences are achieved. Doing so often involves lobbying, a process through which groups build relationships with policymakers, educating them about the group's preferences, and trying to convince them of the virtue of those preferences.

For state governments, the representation of their interests in the federal policymaking process is both different and similar. It is different because as constituent units in the federal system, the states' preferences are represented to some extent by their congressional delegations – the individuals elected from specific legislative districts within a state (House of Representatives) or by a state as a whole (Senate). However, once elected to a national policymaking institution, representatives and senators tend to develop a more expansive perspective (Scheller and Weissert, 2012). Federal executive branch agencies and congressional committees are organized functionally by policy area, not territorially. As a result, policy outcomes matter to national policymakers; representatives and senators may consider functional policy goals more so than the jurisdictional impact of an action (Sbragia, 2006; Creek, 2013). From the perspective of the state, maintaining sufficient authority to govern effectively is a primary concern with regard to actions taken by the federal government, therefore of major interest to a state is how federal policy will be funded and implemented (Derthick, 2001; Sbragia, 2006, Creek, 2013). Reliance on the congressional delegation to represent state interests in the policymaking process has proven insufficient; other organizations and mechanisms have been devised to represent the states' case in the federal arena. In this way, states are similar to other interests in American politics: they seek influence and in an effort to achieve it they create organizations intended to increase the likelihood that their voices are heard and their preferences achieved. It is these interest group-like organizations that function as IGCs in the United States.

### **IGCs: context, motivation, and evolution**

Public interest groups and public officials' associations function as advocates for the interests of their membership: state and local governments and

officials. Many of them fit the definition of 'intergovernmental councils' as set out in the Introduction to this special issue in that they are motivated by matters both horizontal and vertical in nature. They meet regularly, have professional staffs and offices, usually in Washington, D.C. The set of IGCs with the most clout is called the 'Big Seven', three state-level groups and four local level groups. The names of the organizations signal their focus: CSG, NGA, National Conference of State Legislatures (NCSL), National League of Cities (NLC), U.S. Conference of Mayors (USCM), National Association of Counties (NACO), and the International City/County Management Association (ICMA).

For states, the CSG, NGA, and NCSL are the leading organizations for aggregating and representing states' interests, but these three organizations are not the only state-focused public officials' associations. US states operate with a plural executive, a structure that limits the power of the governor by distributing authority to other state-wide elected officials. In other words, most states elect several executive branch officials that, in the federal government, would be presidential appointments. Most states elect a lieutenant governor, an attorney general, a secretary of state, and a state treasurer; some states elect an agriculture commissioner and a state education commissioner. In the remaining states, these offices are appointed, usually by the governor. These officials have created their own professional associations including the National Lieutenant Governors Association (NLGA), National Association of Attorneys General (NAAG), National Association of Secretaries of State (NASS), National Association of State Treasurers (NAST), National Association of State Departments of Agriculture (NASDA), and Council of Chief State School Officers (CCSSO) (see Table 1). These organizations provide an array of services to their members, but one of their common purposes is to represent the interests of their members in the federal arena. For example, if the Nutrition Subcommittee of the House Committee on Agriculture is

**Table 1.** Plural executive: selected state executive branch officials.

Official	Number of states	Elected by voters	Appointed	Public interest group
Governor	50	50	0	NGA
Lieutenant Governor	45	43 <sup>a</sup>	0 <sup>b</sup>	NLGA
Attorney General	50	43	7	NAAG
Secretary of State	47	35	12	NASS
Treasurer	48	36	12	NAST
Education Commissioner	50	13	37	CCSSO
Agriculture Commissioner	50	12	38	NASDA

Source: Table compiled by the author from data available on the websites of CSG (<http://www.csg.org/>) and individual state governments.

<sup>a</sup>The method of election varies, with lieutenant governors elected separately from the governor in 17 states; in 26 states, lieutenant governors are elected with the gubernatorial candidate of the same party.

<sup>b</sup>No lieutenant governors are appointed, but in two states (Tennessee and West Virginia), the lieutenant governor is the individual who has been selected by the state senate as the presiding officer of the senate.

considering a bill that will affect state agricultural interests, the NASDA will attempt to insure that its perspective is communicated to subcommittee members.<sup>4</sup>

It is not just state-wide elected officials who have created public officials' associations. Leaders of major state agencies and departments also have established organizations such as the National Association of State Budget Officers, American Association of State Highway and Transportation Officials, the Association of State and Territorial Solid Waste Management Officials, National Association of Regulatory Commissioners, and the National Association of State Parks Directors, to name but a few. Occupants of these positions may be career civil servants, gubernatorial appointees, and in some instances, such as regulatory commissioners, they may be elected to their positions. As confirmation of the institutionalization of interest groups in American politics, the number of these governmental associations tops 300 (Nugent, 2009). The discussion that follows focuses on two of the most significant IGCs, both part of the Big Seven: the CSG and the NGA.

### ***Council of State Governments***

Although the CSG serves all three branches of state government, governors have traditionally played a leadership role as president of the organization.<sup>5</sup> The CSG (2016) mission statement is concise and somewhat general: CSG champions excellence in state governments to advance the common good. It was founded in 1933 as a nonpartisan organization and all of the states as well as several US territories are members. CSG is headquartered in Lexington, Kentucky and it has a federal affairs office in Washington, D.C. and four regional offices. The staff size at its headquarters is approximately 60 employees; each of the regional offices typically has approximately 10–12 employees. Several affiliated groups and special projects are associated with CSG, both at the headquarters and at some of the regional offices. CSG is funded by dues paid by the states, corporate grants and contributions, investment income, and various enterprises such as publication sales and registration fees.

CSG's focus is primarily horizontal with limited vertical direction. The organization is motivated by information exchange and it has become an information conduit for the states by collecting and analysing data and disseminating the findings throughout the nation. One of its long-standing programmes, Shared State Legislation, facilitates the exchange of legislative ideas among its members. However, CSG does not endorse or advocate on behalf of the shared state legislation, it simply makes the information available to state policymakers.

On its website, CSG states that it 'fosters the exchange of insights and ideas to help state officials shape public policy', but one of the values listed specifically addresses vertical intergovernmental relations: 'Zealously advocate for

the states in our federal system of government' (CSG, 2016). A 2016 CSG resolution on the principles of federalism displayed an intent to protect state authority and it reflected Bednar's (2009) concerns about encroachment:

It is essential that The Council of State Governments dedicate itself to preserving the role of the states as the 'laboratories of democracy' and work both to limit unnecessary federal intrusions into areas of state responsibility and to foster effective cooperation in areas of shared jurisdiction.

CSG is active in numerous policy areas (e.g. energy and environment, health, transportation, and infrastructure) and sponsors different initiatives such as a 2015 effort devoted to workforce development.<sup>6</sup> It also has taken on specific roles including assisting states in the development of interstate compacts and sponsoring a leadership skills programme for state officials. The organization conducts research, publishes reports, and, on occasion, adopts resolutions on issues of state concern that are sent to the President and to Congress.<sup>7</sup> Still, despite some vertically directed actions such as its Federalism Task Force which focuses on federal mandate reform, CSG's principal orientation is horizontal.

### ***National Governors Association***

The NGA, founded in 1908, has adopted the following mission statement that contains both vertical and horizontal elements:

The National Governors Association is the bipartisan organization of the nation's governors. Through NGA, governors share best practices, speak with a collective voice on national policy and develop innovative solutions that improve state government and support the principles of federalism. (2017)

Originally called the Governors' Conference, the organization's role has shifted from social events to more substantive endeavours. Based in Washington, D.C., the NGA has a staff of just over 100 people and it operates a Center for Best Practices that provides research and development assistance to governors. Operating funds come primarily from member dues and, for the Center for Best Practices, from grants and contracts from foundations and the federal government and from fee-for-service programmes. An executive committee and five standing policy committees (health and human services, economic development and commerce, education and workforce, homeland security and public safety, and natural resources) provide the primary structure.

The organizational evolution of the NGA is instructive. Initially, the leadership of the Governors' Conference eschewed efforts to influence national policy, preferring instead to focus more narrowly on matters at the state level. However, during the New Deal period of the 1930s, a time of increasing federal government policy activity, governors become more interested in

engaging in – and taking positions on – national issues (Weissert, 1983). In 1941, the state of New York became the first state to open an office in Washington D.C.; Connecticut followed suit in 1942 (Jensen and Emery, 2011). From then forward, NGA's aperture widened. 'At its 1945 and 1946 meetings, the conference passed resolutions calling both for cooperative and coordinated efforts between state government and the national government in solving national problems and for federal forbearance in policy areas traditionally reserved to states' (Nugent, 2009: 121). The modern NGA was born.

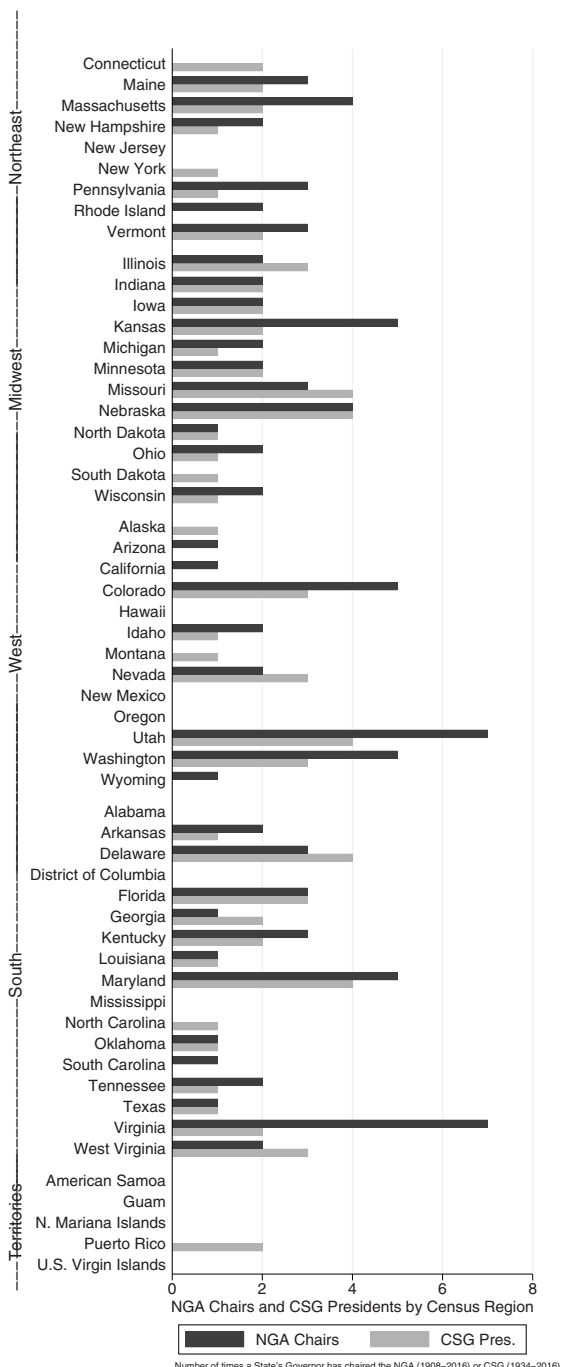
The NGA has embraced its role in national policymaking. Representatives of the organization testify before Congress; moreover, they communicate with executive branch agency personnel. An interesting feature of the NGA is the opportunity for the president of the organization to identify and pursue a specific area of interest, an initiative, during his or her term of office. In 2016–17, the focus was cyber threats, in 2015–16 it was innovative solutions. These initiatives culminate with the creation of a website and the dissemination of materials to the states.

Until 2016, six regional governors associations were in operation (Southern, Western, Midwestern, Northeastern, New England, and Great Lakes) as were two partisan governors associations (Republican, formed in 1963, and Democratic, formed in 1983).<sup>8</sup> These organizations have found niches in which they can operate, and depending on the issue at hand, they can be partners of or rivals to the NGA.<sup>9</sup> The regional groups tend to focus on matters of particular significance in the region (for instance, the Western Governors Association emphasizes natural resources, energy, and public lands issues); the partisan groups have become important fundraisers and contributors to gubernatorial campaigns (Jensen, 2012).

## **IGCs: direction and impact**

### ***Leadership and influence***

Figure 1 shows the pattern of state leadership of CSG and NGA since their establishment (1908 and 1933, respectively) through 2016. As shown in the graph, several states have been particularly active in the leadership of one group (e.g. Utah and Virginia in NGA, Delaware, Maryland, Missouri, Nebraska, and Utah in CSG) while others have not played a leadership role in either organization. New Jersey, Oregon, and Alabama are among the six states whose governors have never served as chair of NGA or president of CSG. Moreover, many large states such as California, Texas, and New York have played only a nominal role in leading the organizations. The relative absence of the largest states – and their considerable clout – from the leadership ranks of CSG and NGA likely lessens the shadow that the organizations cast at the federal level.



**Figure 1.** Leadership of NGA and CSG, by state and region. Source: Figure created by the author from data available on the websites of the NGA (<https://www.nga.org/cms/home.html>) and the CSG (<http://www.csg.org/>).



Both the CSG and the NGA are important forces in horizontal intergovernmental relations as they regularly and effectively serve as venues for information exchange among their members facilitating policy diffusion and learning. The influence they wield in the design of federal policy is an important question to consider as is the related question of the effectiveness with which they protect state interests. Just how substantial is the vertical impact of these IGCs? Schnabel (2016) developed indicators for three aspects of IGCs: their level of institutionalization, the degree to which their actions produce formalized, binding outcomes, and the relative salience of their policy agenda. Evaluating CSG and NGA, she finds that both organizations are highly institutionalized and pursue salient policy issues but their production of formalized, binding outcomes is comparatively low.

The low score for CSG is not surprising given that, despite its stated commitment to advocating for the states in the federal system, its primary mission is of a horizontal nature: information exchange among states and the development of multistate solutions to problems. As for the NGA, the assessment is somewhat more nuanced. Consensus on policy positions is essential for the NGA to function as a credible voice of state government in the federal policymaking arena. Gubernatorial defections from the Association's policy position weaken its impact. As Jensen (2012) has shown, governors defect in two ways: they can withhold paying the state's dues to NGA as several states have done at different times and they can opt out of the national association and devote their energies to the regional or partisan associations.<sup>10</sup> Both options send a strong signal regarding the absence of consensus within the NGA and thereby threaten the organization's credibility and clout in federal policymaking.

The option to shift one's effort (and dues) to a regional or partisan governors' association is not the only avenue for governors interested in influencing federal policy. As the single state-wide elected official who can legitimately claim that he or she is the leader of state government, individual governors can be important forces in Washington, D.C. The NGA often taps specific governors for a lobbying role as part of a coordinated strategy, but on other occasions, governors may choose to act independently. **After all, nearly half of the states maintain offices in Washington, D.C.** and in many instances, these offices are considered to be agents of the governor and the state executive branch (Nugent 2009; Jensen 2016).<sup>11</sup> Not surprisingly, each of these offices tends to be less concerned with policy outcomes except insofar as they affect the state itself. A state's office in Washington, D.C. is more focused on insuring that the state get its rightful (or more) share of federal largesse and blocking policies that would affect the state negatively. Nugent (2009: 129) interviewed a state office staff member who said that a common strategy for state offices is to 'play a lot of defense ... Probably some of the best things we've done have been the things that we've killed ...'

### ***Consideration of impact***

Three recent comprehensive studies analyse the impact of states' advocates, including the NGA, in the federal policymaking process. Herian (2011) conducted a quantitative analysis of 72 lobbying efforts by the NGA (e.g. contacting members of Congress, committees, and congressional leadership) during the period 2001–2006. The NGA's policy preferences were reflected in legislative outcomes in 36 of the 72 instances, for a 50% success rate. Multivariate analysis reveals that the NGA experiences more success in Congress when it is opposing congressional action than when it supports legislation, a not uncommon outcome for many interest groups. Herian (2011) also explores the success of the NGA in achieving its preferences in three cases: (1) blocking the federal government's efforts to claim a substantial proportion of the global tobacco settlement for itself, (2) gaining the authority to collect sales taxes on consumer purchases made via the Internet, and (3) designing and implementing the REAL ID Act.

In the first case study, the tobacco settlement, the state of Mississippi was the initial state to file suit against cigarette manufacturers in an effort to recover Medicaid and other health care costs resulting from unfair practices of the tobacco industry. The attorneys general of other states joined the effort that eventually led to a 1998 settlement requiring five major tobacco companies to make payments to 46 states (and the District of Columbia and five territories) in perpetuity.<sup>12</sup> The settlement required congressional approval and some members of Congress and some executive branch officials (including President Clinton) advocated reallocating much of the settlement to the federal government to offset some of its Medicaid expenditures. The NGA sprang into action reaching out to all of the governors to craft a strategy to defeat the federal attempts to recoup the tobacco funds. A resolution was agreed to stating that the states were entitled to all of the funds awarded to them in the settlement in light of the risks and expenses states incurred during the negotiations and litigation. Further, the governors wanted to insure that programmatic decisions about how the settlement funds were to be spent would be made by each state rather than being imposed by Congress. The governors were unanimous on these points and lobbied Congress vigorously and convincingly for sufficient flexibility. As Herian (2011) shows, in the end, NGA preferences prevailed.

With regard to taxing internet sales, NGA efforts have been less successful. It failed in 1998 to stop the adoption of provisions that prohibit the states from taxing internet sales. (A U.S. Supreme Court ruling requires online retailers with a physical presence in a state to collect state sales taxes; other retailers may voluntarily do so. Even so, state governments estimate that they are losing billions of dollars in revenues as a result of the congressional prohibition.) Since then, the official moratorium on state taxation has been extended

despite NGA's repeated attempts to defeat it. The NGA membership has not been as unified on this issue as it was on the tobacco settlement funds. As Herian (2011) reports, governors of states in which internet-based businesses flourish and where the telecommunications industry holds sway refused to sign NGA letters to Congress in 2000. It is this lack of unanimity that was likely a contributing cause of the legislative logjam that continues. The proposed Marketplace Fairness Act which would allow states to tax internet sales and is supported by the NGA passed the U.S. Senate in 2013 but languished in the House of Representatives. The legislation was reintroduced in the Senate in 2017 by a bipartisan group of senators.

The REAL ID Act, a federal law that requires greater uniformity in state driver's licences and identification cards, was opposed by states and the NGA as an unfunded mandate that carried a high cost of implementation. After the legislation was passed by Congress in 2005, the NGA shifted its focus to the federal administrative rules and regulations that were being promulgated for REAL ID, while still seeking sufficient funding for implementation. In doing so, the NGA joined forces with the NCSL as well as the American Association of Motor Vehicle Administrators. Bills favourable to the coalition's interests to amend REAL ID were introduced in both houses but did not pass. Under pressure from assorted interests, including the NGA, the Department of Homeland Security (DHS), the federal agency responsible for REAL ID has repeatedly postponed its full implementation. Herian's (2011) analysis of REAL ID ends in 2009 but as of 2017, 25 states (and Washington, D.C.) were in compliance with DHS REAL ID rules, 21 states (and 5 territories) had been granted extensions, and 4 states were noncompliant (U.S. Department of Homeland Security, 2017).<sup>13</sup>

In considering the implications of his study, Herian (2011: 174) concludes that his research findings point to 'a gubernatorial theory of intergovernmental governance, one in which governors draw upon their policy expertise and leverage their politically advantageous position to lobby the federal government so as to shape federal policies which impact state governments directly.' Even so, as the data from his three cases show, achieving consensus among the governors of the 50 states is not easy. Furthermore, on issues when they are unified, Congress may not necessarily listen.

Creek (2013: 132) explored two vertical roles that state governments can play in federal policymaking: (1) as interest groups lobbying either individually or collectively through various public officials associations such as the NGA and NCSL, and (2) as policy laboratories educating members of Congress about their policy innovations. Although the intentions of the two roles vary somewhat (safeguard state power vs. policy learning), Creek contends that both types of interactions should have an impact on congressional actions. However, members of Congress face countervailing pressures from myriad interests and groups; they are bombarded by information at every

turn. How effective can state government actors expect to be in this crowded arena? Creek adds a twist to this inquiry by comparing individual state officials with representatives of state public interest groups such as the NGA or NCSL in the policy process.

Analysing witness testimony in congressional hearings over six congresses, Creek (2013) finds that it is quite common for individual states to engage in advocacy. In fact, her data show that this occurs more frequently than advocacy by state IGCs. Prior research on the Affordable Care Act (ACA) (often called 'Obamacare') had shown that the NGA and NCSL were unable to reach consensus on most of the ACA's components, other than general preferences for 'no new unfunded mandates' and 'let states operate insurance exchanges' (Dinan, 2011). ACA was an intensely partisan issue and when the NGA was unable to develop policy positions that its members could agree upon, individual governors stepped into the breach, often with opposing viewpoints. Creek (2013: 55–56) arrives at an important realization:

There are times where the states are willing to stand together to protect their right to a process where they can craft their own policies, as Madison expected in Federalist 45. But there are other times when the policy outcomes are so important to the state that it will not stand alongside other states to demand more flexibility or oppose preemption. At these times the state's policy goals are more important than principles of federalism.

This underscores the basic fact that amid all the intergovernmental interactions that occur, states remain self-interested actors. Cooperation prevails sometimes, but when states' interests diverge, a more competitive interaction pattern develops. IGCs such as the NGA provide a forum for discussion and debate, but resolution of ideological or contentious issues often remains elusive. Achieving consensus and engaging in collective action will be nearly impossible in these situations. Consequently, a governor may choose to act individually, especially if he or she is engaging with a receptive congressional subcommittee.

The issue of vertical influence is explored further by Jensen (2016) in her study of governors' associations and individual state lobbying offices in the nation's capital. She finds that regional governors' associations tend to create their own niches, seldom working together or with the NGA. Moreover, they eschew partisan issues or politically sensitive topics and instead concentrate on questions for which there is agreement within the region. 'They are information gatherers and coordinators', according to Jensen (2016: 149), confirming a relatively harmonious function. Even when the regional associations compete for federal funds, it is not necessarily a zero-sum process, but more about expanding the fiscal pie.

One of the lessons of Jensen's research is that a broad IGC such as the NGA is subject to potential destabilizing effects from the actions of partisan

governors' groups, temporary issue-based gubernatorial coalitions, and individual state lobbyists. Both the Republican Governors Association (RGA) and the Democratic Governors Association (DGA) have risen to prominence as a consequence of the increasing partisan polarization in American politics. In interviews that Jensen (2016) conducted with directors of federal-state liaison offices, many reported that the partisan associations had become more useful to them than the NGA was. At issue is the NGA's commitment to bipartisanship, a claim that was viewed sceptically by some members of both parties. Even as the NGA has expanded the work of its Center for Best Practices, governors whose loyalties to the RGA and DGA are paramount tend to rely on partisan research networks for their information.<sup>14</sup> This is an important development because, as has been noted throughout this paper, one of the foundations of the NGA (and CSG and other IGCs) is the horizontal dimension, working together, sharing information, mobilizing in support of a common course of action. If the horizontal underpinning of an IGC diminishes, its vertical influence likely contracts as well.

Two examples, one the dissolution of a regional governors association and the other the emergence of a new governors' alliance, are instructive. The Southern Governors Association (SGA), the oldest of the regional groups, ceased operation in 2016. It posted this message on its Facebook page: 'With changing times come changing priorities; although SGA's mission of providing a bipartisan forum for regional collaboration served Southern states well for many decades, support for our work has diminished, rendering operations unsustainable.' At the time, of the 16 states that were members of the SGA, three-quarters of the governors were Republicans, one-quarter of them were Democrats. As partisan-focused IGCs institutionalize and align themselves with their national parties, governors may turn to them for policy information and advice, eschewing the more traditional bipartisan organizations.

A different but related example rounds out the picture. Governors of the four largest states – California, Texas, New York, and Florida, which together account for nearly one-third of the US population – created their own coalition in 2004 seeking to jointly influence federal tax legislation. At the time, the governors of all four of these states were Republicans, an infrequent occurrence, and they wanted modifications in the legislation that would benefit their states. And because congressional leadership was similarly Republican, the 'Big Four' as the alliance called itself, received an audience. It was a temporary coalition in that two of the states elected Democratic governors at the next election, but Jensen's (2016) research underscores the NGA's challenge of representing the interests of states as a whole when significant interest-based and partisan-fuelled differences arise. Convergence of interests is becoming less common.

## Discussion and conclusion

State-level, executive-based IGCs in the United States such as the CSG and the NGA occupy a peculiar perch. They are nonprofit organizations led by elected officials and they operate horizontally and vertically, although in differing proportions. They have multiple motivations that ebb and flow as circumstances dictate. They have matured as organizations, successfully navigating some challenges, but struggling at times.

With regard to the vertical dimension, IGCs can potentially serve as a safeguard of federalism in the United States. In theory, IGCs can function as bulwarks against federal encroachment and minimize the temptation of states to shirk, two of the transgressions Bednar (2009) considers inherent in American federalism. **Congressional action affects numerous organized interests and governors lobby from a privileged position as elected officials.** Nugent is relatively sanguine about IGCs as safeguards, arguing that 'it is not clear that states' defenses of their interests are markedly less vital or robust than in the past' (2009: 225). The studies reviewed in this paper suggest that IGCs are an imperfect safeguard, effective in some instances, ineffective in others.<sup>15</sup> In dealing with the federal government, IGCs appear to be more successful when they are in a defensive posture, i.e. blocking or delaying actions. But IGCs such as the NGA face another challenge to their effectiveness: the weakening of organizational loyalty among its membership. As Jensen (2016: 163) notes, 'When allegiances to political party trump allegiances to one's level of government ... the safeguards of federalism are weakened.' The active presence of individual governors (Creek, 2013) and their Washington lobbyists (Jensen, 2016) at the federal level suggests that broad-scale collective action by IGCs will be more difficult.

As partisan politics intensifies in the United States, the likelihood that the leadership of so-called red states and blue states will agree on major policy initiatives seems dubious. For IGCs to function effectively, states have to cooperate, which often means compromise. We have seen the consensus of IGCs become disrupted by the emergence of partisan subsets within the organization. But the impact of this partisanship should not be overstated; some consensus can be brokered. For example, collaboration occurs through interstate compacts (Bowman and Woods, 2007), which are often promulgated by CSG, and multistate legal actions (Provost, 2010), which engage the efforts of the NAAG.<sup>16</sup> But, on many of the weighty intergovernmental issues of the day, consensus is in short supply.<sup>17</sup>

For a short period of time, the United States had a high-level, vertically integrated IGC that was comprised of officials from the federal government and from state and local governments: the U.S.ACIR. Its life and death offer lessons about the difficulty of sustaining an IGC in a perilous political climate. The ACIR, created by Congress in 1959 as an independent, bipartisan

agency, included state officials (four governors and three state legislators), local officials (four mayors and three county governing board members) as well as federal executive branch agency personnel and members of Congress among its 26 members (U.S. ACIR, 1996). Over time, the ACIR became institutionalized: it was funded by congressional appropriations, it had a professional secretariat and permanent physical space in Washington, D.C., and it met regularly to consider intergovernmental issues. Its mission was to strengthen the American federal system by improving the ability of federal, state, and local governments to work together cooperatively, efficiently, and effectively.

Through its data collection and analysis, its comprehensive studies and its technical assistance to governments at all levels, the ACIR eventually became 'a respected voice on intergovernmental issues' (Howell-Moroney and Handley, 2009: 8). It provided a venue that facilitated communication and learning along both vertical and horizontal dimensions and was considered 'a major source of data, policy analysis, and intergovernmental management expertise' (Conlan and Posner, 2008: 4).

Yet, despite the contributions of the ACIR to US intergovernmental relations, it was shut down by Congress after 37 years of operation. A combination of financial and political pressures proved to be its undoing. 'Amid concerns about the growth of the federal deficit and bitter partisanship following the 1994 elections, Congress was looking for expenditure-cut targets, even largely symbolic ones, and the Commission had become vulnerable' (Stenberg, 2011: 170). But the ACIR's demise was not solely a function of external forces. Over time, its vertical integration had weakened as federal officials withdrew from active participation (Stenberg, 2011).

In an article in *Public Administration Review*, Kincaid and Stenberg (2011) pose a series of 'big questions' to be answered in the post-ACIR world. The discussion that accompanies their first question is relevant to the issue of IGCs and cooperative federalism:

... intergovernmental initiatives should be formulated and overseen by elected federal, state, and local officials. In this respect, assembling these officials (and from both political parties) in a peak intergovernmental advisory organization made eminent sense. The ACIR reflected the sine qua non of the idea of cooperative federalism. (Kincaid and Stenberg, 2011: 201)

The statement about the locus for intergovernmental policymaking is compelling. There is scant likelihood that an IGC like the ACIR will be established in the foreseeable future. There was some expectation that organizations such as the Big Seven could step up and fill part of the void left by the termination of the ACIR. This seems less feasible as partisan polarization within IGCs grows and new organizations emerge as potential rivals. CSG is almost completely focused on the horizontal dimension through its efforts to coordinate and in some instances harmonize state policy. Partisan politics constrains NGA



action on salient issues, complicating horizontal actions and limiting vertical impact. After all, one consequence of lessened consensus across states is a corresponding diminution of their vertical influence. As has been shown, when the states speak with one voice, their impact is greater than when they speak with multiple competing voices. The development of effective public policy that leverages the strengths of federal, state, and local governments is certainly a worthy aim. However, it is not apparent that executive-based IGCs are well positioned to play that role in contemporary America.

## Notes

1. It should be noted that the United States consists of 50 states and 5 territories (American Samoa, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands). The nation's capital, Washington, D.C., is a federal district. Also, more than 500 federally recognized American Indian tribes and Alaska Native tribes have government-to-government relationships with the United States. According to the Federal Bureau of Indian Affairs, approximately 56 million acres of land are held in trust by the United States for the tribes, much of which consists of reservations. The largest is the 16 million acre Navajo Nation Reservation which is located mostly in northeastern Arizona, but also includes small portions of northwestern New Mexico and southern Utah.
2. In 2016, the U.S. Supreme Court, which hears state vs. state lawsuits, declined to consider the case brought by Nebraska and Oklahoma, thereby allowing Colorado's marijuana legalization law to stand. The Court provided no explanation for its decision to dismiss the lawsuit.
3. Bednar (2009) includes a fifth safeguard, intergovernmental retaliation, which she cautions is a severe sanction akin to a state's declaration of secession, one that is best reserved for significant transgressions.
4. In addition to the legislative branch, these organizations also interact regularly with relevant federal executive branch agencies such as, in the case of the Council of Chief State School Officers, the U.S. Department of Education.
5. The CSG served as the secretariat of the NGA and the NCSL for a period of time until each organization had matured sufficiently to hire its own staff. CSG has subsequently functioned as the secretariat for other organizations of state officials.
6. The CSG's workforce development initiative resulted in the 2015 publication of a research report, *A Framework for State Policymakers: Developing Pathways for Ensure a Skilled Workforce for State Prosperity*.
7. Recent CSG resolutions to Congress have supported federal transportation funding, the use of data to inform decision-making, the continuation of the Medicaid state-federal partnership, and intergovernmental collaboration on workforce innovation.
8. The Southern Governors Association, the oldest of the regional governors associations, ceased operation as of 1 July 2016, bringing the number of regional groups to five.
9. Another type of gubernatorial organization is the single-issue governors' association which can emerge over a particular problem or concern that affects a subset of states. See the discussion in Nugent (2009).



10. Texas, Florida, Ohio, Idaho, Maine, and South Carolina are some of the states that have, at times, withheld their NGA dues or pulled out of the organization.
11. In states in which the governor and the legislature are at odds, the legislature may threaten to cease allocating funds for the state office in the nation's capital.
12. Another executive-based IGC, the National Association of Attorneys General, played an important role in the tobacco settlement.
13. Unless noncompliant states receive extensions from DHS, as of January 2018, federal agencies will not accept driver's licences from noncompliant states as a form of identification for individuals boarding aircraft or visiting federal facilities that require identification such as military bases.
14. The RGA and DGA devote much of their energies to campaign strategy and fundraising for gubernatorial races.
15. For example, the NGA played a major role in the Reagan Administration's 'new federalism' initiatives that would have shifted responsibilities for several federal programs to the states. See the discussions in Rose (2013) and Jensen (2016).
16. Research by Nolette (2015) found that the National Association of Attorneys General is also experiencing partisan-fuelled position taking by its membership.
17. After the 2016 presidential election, in an effort to influence the new administration's policy agenda, the NGA sent President-elect Donald Trump a series of recommendations on priority issues such as health care, infrastructure, and tax reform. The recommendations emphasize the need for a cooperative federal-state approach, one that values intergovernmental consultation and insures state flexibility.

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# Intergovernmental councils in Spain: Challenges and opportunities in a changing political context

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## ABSTRACT

This paper reviews the most important characteristics and of the Spanish Intergovernmental Councils (IGCs) and theorizes about the effect of the increasing fragmentation of the party system on the nature and dynamics of multilateral bargaining in IGCs. The essential argument is that party system fragmentation may have an impact on IGCs through its effect on the formation of minority and coalition governments. These types of governments may put an end to the two-bloc confrontation, bring to the system higher levels of party congruence between levels of government and lower the costs of compromise, three factors that may help to grease the bargaining process and, in turn, enhance the achievement of intergovernmental cooperation agreements. The positive effect will be conditional on several factors, namely the ideological coherence of inter-party alliances, the predominant type of government in the system (coalition or single-party minority) and the duration of governments.

**KEYWORDS** Intergovernmental councils; intergovernmental relations; Spain; state of autonomies

## Introduction

The literature on comparative federalism has shown that the division of competences in federal states is a far cry from the neat distribution of powers envisaged by the Founding Fathers in the Federalist Papers (Rodden, 2006). Certainly, modern federal states are characterized by a highly intertwined distribution of governmental authority between the centre and the subnational units, so one of the defining features of federal realities is the predominance of shared authority between levels of government (Beramendi and León, 2015: 211). This characteristic turns intergovernmental relations (IGR) into a critical feature of multi-level structures, as they play a crucial role in greasing the wheels of decentralized governance (Agranoff, 2004), preventing the overlapping of functions, negative spill-over effects across territories and blockages in decision-making processes.

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As in many other institutional dimensions, federal states are not uniform in the way IGR work and are organized. Variation spans from the strong fragmentation of IGR in the USA (O'Toole, 1996) and the highly institutionalized intergovernmental arrangements in Switzerland (Bolleyer, 2009), to the ad hoc coordination between ministries in Canada and Spain (Börzel, 2000; Grau i Creus, 2000; Cameron and Simeon, 2002; Poirier et al., 2015). Although this variation on IGR across federal realities can be partially accounted for by looking at certain constitutional characteristics, such as the formal distribution of competences between levels of government (Swenden, 2006; Bolleyer et al., 2014), constitutional rules can only provide a partial explanation to the understanding of IGR dynamics, which show a more varying pattern over time, across policy areas as well as across constituent units than constitutional rules do.

This paper purports to provide new theoretical insights into the role of institutional factors in intergovernmental cooperation dynamics by exploring the relationship between party system and IGR. In doing so, the paper aims to make a contribution to recent developments in the literature of federalism that recognize the importance of the structure of governments as well as the organizational features of parties and party systems to understand variation among federal realities (Bolleyer, 2009; Benz and Broschek, 2013). The analysis of party systems and IGR is based on the Spanish case, a country in which party politics have traditionally had a very important role on IGR. Since 2015 the Spanish party system at the national and regional level has experienced a profound transformation, reflected in a significant increase in the number of effective parties in national and regional parliaments. Those changes prompt a theoretical discussion developed at the end of the paper as an inductive exercise on the relationship between party system fragmentation, the structure of government and its potential effects on the achievement of intergovernmental agreements. In a more fragmented political scenario, political bargaining between the central governments and regional executives may generally become more difficult when the number of actors and represented interests increase. However, I hypothesize a set of potential mechanisms and conditions whereby higher fragmentation of the Spanish party system may have a positive impact on intergovernmental bargaining and, by extension, on intergovernmental cooperation.

The paper is organized as follows. The next section introduces a discussion on the role of party systems in the literature on comparative federalism. The third section describes the most important characteristics of Spanish Intergovernmental Councils (IGCs) and the fourth section discusses the most important drivers of cooperative agreements in these bodies. The fifth section provides a brief overview of the most relevant changes in the party system since 2015 and introduces a set of theoretical arguments on the effects of

higher levels of party system fragmentation on IGR. The sixth section summaries and points to future research avenues.

### **Party systems, party congruence and IGR**

The role of parties and party systems has traditionally been superficially addressed in the literature on federalism. With some exceptions based on American federalism (Wechsler, 1954; Riker, 1964), the most prominent comparativists in the area have not considered party systems as part of the critical credentials of federal realities (Watts, 1999). Since the mid-1990s, however, several scholars have resumed Riker's seminal classic<sup>1</sup> to provide a better understanding of the role of party systems in federal dynamics, including the nature of IGR. An important variable in shaping the relationship between party politics and intergovernmental dynamics is party congruence between the centre and the subnational units. The motivation of interaction among the centre and the units may depend on the degree of congruence of interests and preferences among them and party affiliation may be one of the most important drivers of congruence between the federal government and subnational units (Behnke and Mueller, 2017). As Poirier et al. (2015: 450–451) state, party politics have a determinative impact on institutions and processes of IGR, and in countries where the same parties are active in both the federal and the constituent units, 'links along partisan lines can circumvent formal institutions'. But this statement is not new. One of the first scholars to explore empirically the role of this variable in IGR were Riker and Schaps (1957), who concluded that intergovernmental conflict was more prevalent the higher the level of 'partisan disharmony' (the term with which they defined party incongruence) between levels of government. Subsequent works have contributed to advance Riker and Schaps' findings by providing a more nuanced theoretical and empirical account on the conditions that moderate the role of party in(congruence) in IGR and, more generally, in the stability of the federation (Filippov et al., 2004).

The role of party in(congruence) in IGR may depend on party system integration. When party systems are highly integrated and partisan congruence is high, the chief federal executive is more capable to command IGR and impose macroeconomic reforms or fiscal discipline onto their subnational copartisans (Jones et al., 2000; Garman et al., 2001; Rodden, 2002; Wibbels, 2005; Rodden, 2006). On the contrary, where parties are not so integrated, partisan congruence is not expected to have a major role in IGR (Poirier et al., 2015: 451).

The mechanism whereby party system integration enhances intergovernmental cooperation has to do with electoral interdependences between national and subnational copartisans. In integrated party systems, federal and state copartisans' electoral fortunes are highly intertwined, meaning that the electoral fates of subnational politicians are driven by the value of

the national party label (Rodden, 2006; Thorlakson, 2007; Thorlakson, 2016). In this context, subnational politicians will be loath to undermine the national party label because their opportunistic behaviour may ultimately damage their own subsequent electoral chances. So when defection is costly, subnational politicians will be more willing to cooperate and coordinate with their national copartisans and it will be easier for the federal chief executive to pursue a cohesive policy agenda that transcends subnational divisions. For some scholars, party integration may ultimately enhance the stability of the federation (Filippov et al., 2004: 192; Rodden, 2006: 121). However, other scholars have a less optimistic view of the role of party system integration. For instance, based on the study of the German case, Arthur Benz states that a vertically integrated party system 'has turned into a burden for federal-Länder negotiations' (2008: 451). Bolleyer also criticizes that partisan congruence divides subnational units along partisan lines, and that may make it easier for the federal government to impose its policies on lower level units 'even if the latter's competences are affected and lower level governments in principle oppose such action' (2009: 3).

Following a logic based on the cost-benefit calculus of actors, Bolleyer et al. (2014) hypothesize that it is the constitutional make-up of the system that moderates the role of party (in)congruence in multi-level cooperation. Where subnational units are constitutionally weaker, the role of party (in)congruence in IGR will be limited, as units are expected to opt for an overall cooperative strategy. By contrast, where the centre and subnational units have a similar constitutional status, partisan differences will have a significant effect on multi-level cooperation because neither level will expect intergovernmental conflict to threaten their status in the system (2014: 373).

Similarly to the studies reviewed above, in Bolleyer's (2009) book the role of 'politics' is also theorized as the critical variable in explaining IGR in Canada, Switzerland and the USA, but in her analysis, the focus is on horizontal coordination, and individual government units' readiness (or disinclination) to engage in cooperation depends on the political dynamics *within* subnational governments. Her fundamental hypothesis is that coordination among subnational units will be more likely in power-sharing governments (i.e. coalition governments) than in power-concentrating ones because the former ensure longer term interaction among political parties and there is higher ideological congruence across subnational units. Similarly, Bolleyer expects the loss of autonomy that cooperation involves to be relatively lower for parties that form part of a coalition government and that are more used to compromise than for actors that rule single-party governments (2009: 6 ff.).

In essence, the theories reviewed above show that the structure of party systems in federal countries defines different aspects of party competition that in turn affect IGR. It does so by defining the set of political gains and costs that subnational politicians reap from intergovernmental cooperation



(for instance, by defining electoral interdependences between levels of government) or certain institutional conditions (such as the types of government that will be formed at the subnational level). Following this approach, this paper purports to advance the literature by exploring the role of party system fragmentation in IGR. More specifically, it provides a theoretical reflection on the effects that the transformation of the Spanish party system since 2015 may have in the operation of Intergovernmental Councils in Spain.

### **Intergovernmental councils in Spain: the Sectorial Conferences**

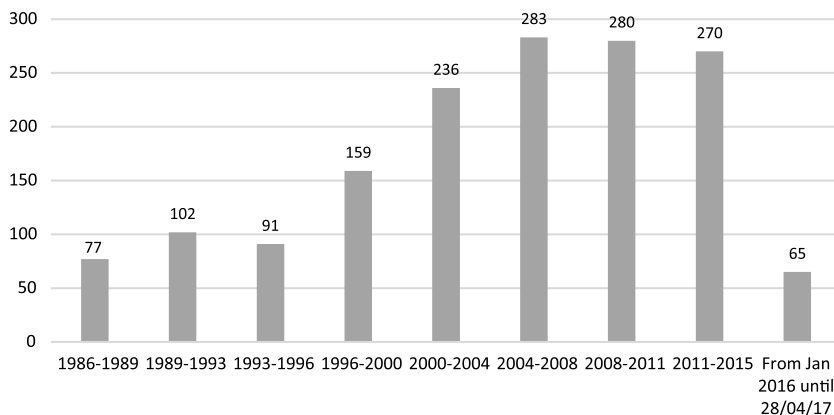
In the aftermath of the democratic transition, the Spanish Constitution (1978) established a devolution system based on choice or voluntariness (*a la carta*), whereby the decision to become Autonomous Communities (ACs) was left to the territorial units. Instead of providing a detailed regulation of what the 'State of Autonomies' would be (a decision that would have jeopardized the necessary ambiguity to make the constitutional agreement possible), the constitution regulated the different legal paths through which regions could access autonomy (Aja, 2003, 2014).<sup>2</sup> Therefore, devolution started and then developed asymmetrically, but since the early 1990s, ongoing decentralization has resulted in increasing homogenization of regional competences through the development of the regional Statutes of Autonomy. At present, ACs' expenditure powers are virtually the same across regions and represent around a third of total expenditures. The only significant asymmetry remaining in the system is regional financing, as the Basque Country and Navarre enjoy full taxation autonomy (León, 2015).

Although decentralization of tax and expenditure powers has travelled fast in Spain (Hooghe et al., 2010), the regulation of the mechanisms of cooperation between the ACs and the central government has traditionally lagged behind. On the one hand, the constitution remained silent on mechanisms of vertical cooperation, and where regulation was provided it was meant to set up controls of the central parliament over horizontal cooperation.<sup>3</sup> On the other hand, politicians have been generally more concerned with the specific division of powers than with the establishment of bi- or multilateral cooperation mechanisms between different levels of government (Pérez Medina, 2009). Generally, IGRs have become increasingly institutionalized, but they have shown high dependence on political dynamics – essentially party competition between the central government and regional governments – as well as on the willingness of political actors to make cooperation work (Colino Cámara et al., 2009; León and Ferrín Pereira, 2011; Aja and Colino, 2014). The constitutional text, however, did regulate central governments' competences of coordination on three areas: economic

planning, research and health care. In these areas, the central government has to set up the general principles.

The most widely used mechanism for multilateral cooperation in the States of Autonomies are the Intergovernmental Councils known as *Sectorial Conferences*, which are formed by the national minister of a particular policy area and the 17 representatives from the ACs (usually the regional ministers of the corresponding area). Although they were institutionalized in 1983, it was not until 1992 that Sectorial Conferences (SCs) were given a systematic regulatory framework. According to the data provided by the Ministry of Finance and Public Administration, at present there exist 44 Sectorial Conferences, but only few of them have met regularly in recent years (Alda and Ramos Gallarín, 2010; García Morales and Arbós, 2015: 359) and they exhibit varying degrees of institutionalization. The most developed ones have second-level bodies that play a fundamental role in the preparation of the meetings and in dealing with more technical decisions. Figure 1 shows the number of SCs meetings by legislature.

As in Germany (see Hegele and Behnke, 2017) or Canada, Spanish SCs are consultative and based on voluntary cooperation, so the agreements are only binding for the regional governments that sign them and decisions are generally adopted unanimously (González Gómez, 2006: 102; de la Peña Varona et al., 2015).<sup>4</sup> The central government has a clear dominant position in SCs, as the Minister convenes the Conference, sets the agenda and chairs the meeting. But what do SCs do? One of the most important functions of SCs is to host the discussions on some of the 'basic' central laws, before their enactment, that will have to be subsequently developed by regional laws. Legislative cooperation in the SCs helps the central government to prevent subsequent legal conflicts with regional governments when the latter have



**Figure 1.** Number of sectorial conferences convened (1986–2017). Source: Spanish Ministry of Finance and Territorial Administrations.

to complement central government's basic legislation, as ACs often file constitutional conflicts before the Constitutional court arguing that the central basic regulation encroaches upon their legislative powers. In addition, vertical legislative cooperation also enhances shared-rule<sup>5</sup> as it allows regional governments to participate in central government legislation, which is generally very limited due to the weak role that the Spanish Senate plays in the decision-making process at the central level.

SCs have also a very important role in policy areas strongly connected to the European Union, as they channel the participation of the ACs in the transposition of European directives and serve to decide joint positions that will be formally defended by the Spanish government at European institutions.<sup>6</sup> In addition, many of the decisions taken at the SCs have to do with the establishment of funding regimes (*convenios*), which are used to allocate central conditional funds between the regions according to the criteria agreed to in the SCs (Pérez Medina, 2009: 30 and ff.; Aja and Colino, 2014: 450). Most projects are co-funded, so regional governments have to supplement central government's funding with additional contributions. These vertical, legally binding funding agreements are simple and flexible cooperation instruments (they are mere contracts signed by the respective governments) that serve a multiplicity of goals, which explains that around 1000 are signed every year (García Morales, 2008: 50). Although they are signed bilaterally, the contents are generally identical across regions (Colino Cámara et al., 2009). As far as horizontal funding agreements are concerned (agreements between two or more ACs), the number of agreements signed only by ACs has been traditionally very limited, although it has increased in recent years (García Morales, 2008; Colino Cámara, 2011).

Finally, in 1999 the law that regulates the SCs was reformed and introduced a new instrument of vertical collaboration, namely joint plans and programmes. These instruments of cooperation involve the development and financing of a plan or programme in areas where the central administration and regional governments share responsibilities and have common objectives (Alda, 2006: 134; Colino Cámara et al., 2009: 58). Joint plans and programmes had existed since the early stages of the creation of the State of Autonomies, but it is in 1999 when a law regulated that the content and evaluation of joint plans and programmes would correspond to Sectorial Conferences.

As described above, the IGR that take place at the SCs are representative of the vertical 'executive-type' model of devolution, where multilateral IGR are dominated by central and regional executive powers.<sup>7</sup> Similar to the Canadian and Australian case, the central Minister has a predominant role as s(h)e convenes, chairs the meetings and decides the agenda items (although they can be amended by the regional governments). There are no formal horizontal sectorial conferences, although there have been some recent attempts to

enhance cooperation among ACs. For instance, in 2008 some regional governments decided to convene several meetings of regional premiers without the central government, which resulted in the institutionalization of a Conference on Regional Governments (*Conferencia de los Gobiernos de las Comunidades Autónomas*) in October 2010 (Colino Cámara, 2011).

The predominance of the executive-type federalism in IGR is in part the result of having weak shared-rule. The weak role of the legislative power in IGR is also reflected in that parliamentary scrutiny over bargaining in the Sectorial Conferences is very limited. There is no requirement of regional parliamentary approval of IGR agreements and, with the exception of Catalonia, there are no formal parliamentary supervision bodies at the regional level that are responsible for tracking agreements with the central government (Aja and Colino, 2014: 457; McEwen et al., 2015). Besides, there is very limited coordination on IGR within regional governments because it is too sectorialized, meaning that each department develops its own agreements with the central government independent from other departments. The alternative route for regional parliaments to check on intergovernmental agreements would be the Senate, but, as it was explained above, it is a weak chamber with limited representation of territorial interests and limited role in IGR. As a result, IGR operate mainly through political parties and when there are jurisdictional conflicts between the central and the regional governments, IGCs have traditionally played a minor role in solving intergovernmental conflict, which usually ends up being resolved through judicial review (the Constitutional Court).

Finally, bilateralism has traditionally played a prominent role in greasing vertical intergovernmental cooperation. In the early stages of the decentralization process the authority given to subnational governments was negotiated bilaterally by each region and the central government in bilateral commissions (known as mixed parity commissions) in which central and regional representatives had to decide on the specific duties, material and human resources to be transferred to ACs. These mixed parity commissions did not disappear after initial transfers were completed (Aja, 2014: 210 and ff.). They have been essential, for instance, in the regulation of regional financing, because any multilateral agreement on regional financing that is approved at the Fiscal and Financing Policy Council (*Consejo de Política Fiscal y Financiera*) has to be ratified bilaterally, that is, outside the Fiscal and Financing Policy Council (León-Alfonso, 2007). In addition, since the year 2000, bilateral commissions have been assigned a role in preventing jurisdictional conflicts between the central government and ACs, seeking to reduce the level of jurisdictional conflict brought to the Constitutional Court by the central government or the regional governments.<sup>8</sup>

## Explaining cooperation in Sectorial Conferences

According to recent contributions in the area (López Nieto, 2006; Colino Cámara et al., 2009; Alda and Ramos Gallarín, 2010; León and Ferrín Pereira, 2011), intergovernmental bargaining in Sectorial Conferences works best and is more likely to result in cooperation agreements where technical bodies have a prominent role, such as secretariats or working committees. Secretariats facilitate the preparation of IGR meetings and the implementation of decisions. And in second-level bodies (usually set up to discuss more technical or specific issues) discussion is less permeable to political pressure and confrontation because participants are civil servants or chiefs of regional departments or central ministerial offices who are usually civil servants (Pérez Medina, 2009: 326) with a more technical (less political) profile (León and Ferrín Pereira, 2011). The level of institutionalization of the SC is actually endogenous to the extent of interdependence between the central and regional governments, as in less intertwined policy areas incentives to cooperate are lower (González Gómez, 2006: 113).

Second, cooperation agreements in Sectorial Conferences are more likely to be achieved where there is an economic stimulus (González Gómez, 2006: 112; García Morales and Arbós, 2015: 366). As explained above, a prominent role of SCs is to decide about the criteria of distribution of central governments' funds. Cooperation is more likely when agreements involve funds because it is a 'win-win' scenario for everyone: regional governments have an interest in increasing the amount of resources devoted to crucial policies such as employment, social policy or education. And cooperation strengthens central government's *spending power* (Watts, 1999), as it allows the central administration to condition ACs' activities in a certain policy area through funding regimes (*convenios*) (Colino Cámara et al., 2009: 59).

Third, Europeanization has also had a positive impact on cooperation in SCs (Börzel, 2000), as it works better in policy areas that are more closely related to the European Union. One reason why this is so is that central and regional governments are highly interdependent in those areas, so none of them can act alone without the other at the European level. In addition, the decision-making process at the European level is tightly scheduled, which urges national governments to reach an internal agreement before defending their position in the European Union (León and Ferrín, 2011). Bargaining processes at the European level are highly institutionalized and regulated, which forces central and regional governments to meet frequently. Repetition of bargaining enforces trust among governments and facilitates agreement in the SCs.

Finally, party politics has been probably the most important driver of IGR (González Gómez and López Nieto, 2006; Colino Cámara et al., 2009; Alda

and Ramos Gallarín, 2010; León and Ferrín Pereira, 2011). The role of political parties in vertical cooperation has been a double-edged sword: on the one hand, the two large state-wide parties (PSOE and PP) have traditionally enhanced cooperation by integrating divergent interests among regions and coordinating the position of their affiliated regions (i.e. ruled by the state-wide party) in party meetings that are usually convened before the Sectorial Conference meeting. The same partisan dynamics dominate IGR in other countries; for the German case (see, for example, Auel, 2014; Lhotta and von Blumenthal, 2015). On the other hand, however, periods of inter-party confrontation between central government and the most important party in opposition have represented a significant obstacle to reaching agreements in Sectorial Conferences. In that context regional governments ruled by the main opposition party would systematically oppose any initiative from central government (Colino Cámara et al., 2009: 36; Alda and Ramos Gallarín, 2010). As a result, SCs dynamics end up reproducing the relationship between government and opposition parties in the lower house. Party discipline is the channel through which party confrontation takes place, as it ensures that regional affiliated governments follow the national party line in the Sectorial Conference. Given these dynamics, agreements over policy issues with strong ideological roots are particularly difficult to achieve.

### **Change in the party system and its consequences**

In 2015, the Spanish party system experienced a profound transformation. Both the regional and the general election that took place that year produced the most divided national and regional parliaments since the country's transition to democracy. As it can be seen in Table 1, in eight out of the 13 ACs with elections in 2015 or 2016 majoritarian governments were replaced by coalition or minority governments (shadowed in Table 1). Changes in the type of government are directly connected to variation in the number of effective parties in regional parliaments, which in 2015 increased to 4.9<sup>9</sup> up from 3.3. Although party fragmentation at the regional has been relatively high (López Nieto, 2003), the effective number of parties at the regional level since 2015 is the highest one since the beginning of the democratic period (Ramos and Simón, 2015: 5).

At the national level, the general election in December 2015 marked the end of bipartisan politics. The conservative People's Party (PP) obtained 123 seats, which marked a huge loss from the overwhelming majority obtained in 2011. The Social-Democratic Party, PSOE, retained the second place but got its worst result to date: 90 seats. Two new parties gained seats: the centre-right *Ciudadanos* (40 seats) and the anti-establishment, leftist *Podemos* (42 seats), which succeeded in building local alliances with left nationalists in Catalonia, Valencia and Galicia that won 27 seats.

**Table 1.** Changes in the type of governments at the central and regional levels.

		Central government			
		2011–16	2016–		
		SPMA Partido Popular (PP)	SPMI Partido Popular (PP)		
		Autonomous communities			
		2011	2015		
	Type of government and incumbent parties	Type of government	Incumbent parties	Parliamentary parties	Parliamentary seats of incumbent parties/total number of seats
Andalucía <sup>a</sup> (2012/2015)	Minority coalition (PSOE+IU)	SPMI	PSOE		47/109
Aragon	SPMI (PP)	SPMI	PSOE		18/67
Asturias	SPMI (Foro Asturias)	SPMI	PSOE		14/45
Baleares	SPMA (PP)	Minority Coalition	PSOE + MES per Mallorca <sup>b</sup>		24/59
Canarias	Majority Coalition (CC-PSOE)	Majority Coalition	PSOE + CC		31/60
Cantabria	SPMA (PP)	Minority Coalition	PRC + PSOE		17/35
Cataluña <sup>a</sup> (2012/2015)	SPMI (Convergència i Unió, CIU)	Minority Coalition	Junts pel Sí (JxSi) <sup>c</sup>		65/135
Castilla la Mancha	SPMA (PP)	Minority	PSOE		15/33
Castilla León	SPMA (PP)	Minority	PP		42/84
Extremadura	SPMI (PSOE)	SPMI	PSOE		30/65
Galicia <sup>a</sup> (2012/2016)	SPMA (PP)	SPMA	PP		41/65
La Rioja	SPMA (PP)	SPMI	PP		15/33
Comunidad de Madrid	SPMA (PP)	SPMI	PP		48/129
Región de Murcia	SPMA (PP)	SPMI	PP		22/45
Navarra	Majority Coalition (UPN-PSOE)	Minority Coalition	Geroa Bai + EH Bildu + Izquierda Euzkera		19/50
Comunidad Valenciana	SPMA (PP)	Minority Coalition	PSOE + Compromís		42/99
País Vasco <sup>a</sup> (2012/2016)	SPMI (PNV)	Minority Coalition	PNV + PSOE		37/75

Notes: CC: *Coalición Canaria*, Canary Coalition; IU: *Izquierda Unida*, United Left; PNV: *Partido Nacionalista Vasco*, Basque Nationalist Party; PP: *Partido Popular*, Popular Party; PRC: *Partido Regionalista Cantabro*, Regionalist Party of Cantabria; PSOE: *Partido Socialista Obrero Español*, Spanish Socialist Party; SPMA: Single-party majority; SPMI: Single-party minority; UPN: *Unión del Pueblo Navarro*, Navarrese People's Union.

<sup>a</sup>Andalusia, Catalonia, Basque Country and Galicia have different electoral cycles than the rest (the last and next-to-last regional election date in those regions are in parentheses). *Regionalista Cantabro* is a coalition formed in 2010 by left-wing regionalist parties.

<sup>b</sup>MES per Mallorca is a coalition created to stand in the 2015 parliamentary election in Catalonia that advocates for secessionism. It is formed by *Convergència Democràtica de Catalunya* (Democratic Convergence of Catalonia), *Esquerra Republicana de Catalunya* (Republican Left of Catalonia) as well as by small secessionist parties.

Failed investiture votes to form a government resulted in the call of new elections, which took place in June 2016. Results did not significantly change the level of party fragmentation in parliament that had resulted from the previous election and a minority government led by *Partido Popular* was subsequently formed. It is important to note that changes in the party system are here to stay, for different reasons. First, the new parties are not small, as UP (the electoral coalition between Podemos and United Left for the 2016 general election), together with the territorial coalitions, has 71 parliamentary representatives, whereas C's has got 32. Second, the new parties have gained representation in the national, regional and local governments and assemblies, so even if they experience an electoral downturn at one level, they may still be able to survive through representation at a different one. Third, there is a profound generational cleavage between the new and the old parties. New parties have been very successful in gaining votes among the very young, whereas the winning PP is the *fourth* preferred option among the youngest voters. We may expect young voters to gradually develop attachment and loyalty to the new parties, which may contribute to entrench the electoral support of the new parties.

The radical change in the Spanish party system poses a question: if, as discussed in the previous section, one of the most important drivers of cooperation in intergovernmental councils has been party politics and, more specifically, party congruence, then how may changes in the party system affect party politics and, in turn, the real operation of intergovernmental bargaining and conflict?

Similar changes in the party system have taken place in other countries during the last decade. For instance, when analysing the effects of the changing nature of the German party system, Lhotta and Blumenthal state 'in the developing five-party system, actors have to adjust to a much more complex setting where alliances change and the trust needed for successful negotiations is fragile' (Lhotta and von Blumenthal, 2015: 231). Benz discusses on the effects of the changing party system in Germany differentiating between its consequences upon conflict and bargaining (Benz, 2016: 16). Benz states that the increasing number of effective parties and the variety of coalitions formed in the *Länder* has decreased intergovernmental conflict because 'confrontation between governments representing parties from different camps has decreased'. However, a more fragmented bargaining setting makes negotiations no less difficult, because: (a) policy positions of governments are now more diverse; and (b) it is more difficult for the federal government to predict the vote of individual *Länder* in the Bundesrat, which turns joint-decision-making into a less predictable process.

In the Spanish system, higher fragmentation in the party system may result in a more difficult bargaining process, but not in the same way as Benz



describes for the German case, basically because there is only limited shared-rule, i.e. no joint-decision-making process between the ACs and the central government whereby formal consent by regional governments is needed. So although political bargaining may generally become more difficult when the number of actors and represented interests increase, I hypothesize below a set of potential mechanisms and conditions whereby the higher fragmentation of the Spanish party system may have a positive impact on inter-governmental bargaining and, in turn, on intergovernmental cooperation.

The way in which I hypothesize the increase in party system fragmentation to have an impact in IGR is through its effects on the formation of governments. Empirical evidence supports a strong connection between the configuration of the party system – measured as the degree of fragmentation, namely the effective number of parties – and type of government. More specifically, more fragmented parliaments are more likely to result in minority or coalition governments and these types of governments exhibit certain characteristics that may be positive to enhance intergovernmental cooperation.

First, increasing fragmentation at the central and regional level may decrease confrontation between ‘blocs’, one representing the ruling party at the national level vs. the other representing the main opposition party at the national level. With a more fragmented national and regional party system, the partisan link between levels of government (the classification of regional governments into ‘affiliated’ and ‘non-affiliated’ ones) is less clear-cut than in a context in which single party governments predominate. Accordingly, we can expect party fragmentation to end two-bloc bipartisan conflict that has characterized IGR in the Spanish Sectorial Conferences for a long time.

The types of governments that are likely to emerge in a fragmented party system (minority governments or coalitions) blur the clear-cut distinction between government and opposition that characterizes IGR driven by regional and national single-party governments. On the one hand, if there is a minority government or a minority coalition, the incumbent party(ies) will require permanent bargaining with parties in the opposition in order to form a legislative majority. This means that parties that are in the opposition at the national or regional level may become allies of the national or regional incumbent party(ies) when it comes to pass legislation in certain policy areas. On the other hand, where national coalition governments are formed, some of the political parties in the coalition at the national level may be at the opposition at the regional level and some may form part of the regional government, and again this may have the effect of undermining the clarity of the party link between the national government and the regional ones. This may blur the distinction between opposition and incumbent parties and, in turn, weaken the ‘bloc’ division-type of regional

governments (affiliated and non-affiliated to the national incumbent party) and, in turn, the dynamics of confrontation.

Second, in a scenario of party system fragmentation we may expect higher ideological congruence between the national and regional governments. Party fragmentation brings more parties to the incumbent position through the formation of coalition governments, and this increases the probability of finding a partisan link between a national and regional executive that may help to grease cooperation in vertical intergovernmental bargaining.

Third, higher levels of interaction between political parties are expected under a more fragmented party system than under a two-party system. More specifically, coalition or minority governments ensure frequent interaction among political parties because the first operate based on compromise, and achieving it requires continuous bargaining among coalition members. In minority governments, too, interaction is driven by the incumbent party's repeated need to build parliamentary majorities in order to pass legislation. Higher levels of interaction between political parties may enhance intergovernmental cooperation by making political parties' policy positions more predictable and/or by increasing trust among actors. As stated above, successful cooperation in Sectorial Conferences has depended to a great extent upon informal relations among participants (León and Ferrín Pereira, 2011). Frequent interaction between political parties has resulted in some Sectorial Conferences in a self-reinforcing positive dynamic: when they meet frequently, they tend to develop closer personal relationships that decrease overall conflict and play a positive role in the achievement of agreements (see Table 2 for a summary of the arguments).

Fourth, as pointed out by Bolleyer (2009: 7), the costs that cooperation involves in terms of autonomy should be relatively lower for coalition parties that are more used to compromise than for parties that rule in single-party governments. Accordingly, in a more fragmented party system parties should expect lower autonomy losses in cooperation, which may enhance intergovernmental agreements. In addition, lower clarity of responsibility in a coalition government (Powell and Whitten, 1993) may make coalition parties more willing to cooperate, as they know that citizens' ability to punish for giving concessions in certain areas (in order to achieve cooperation) will be lower in contexts where responsibility attribution is blurred by a high dispersion of powers between actors.

The theorized impact of an increase in party fragmentation on IGR may become more or less pronounced on condition of several factors. The first one is the type and stability of political alliances that are formed. If political alliances are mostly driven by ideology and give rise to the formation of stable coalition blocs at the national and regional level (a right-wing coalition of parties and a left-wing coalition of parties), then the lines of division

**Table 2.** Expected effects of the fragmentation of the party system upon IGR.

Fragmentation of the party system	Type of government ⇒ Coalition and minority governments	Expected effect on intergovernmental cooperation agreements	Moderated by:
		Negative – Higher number of actors with more heterogeneous preferences hampers the achievement of agreements	Type of electoral competition: if driven by coalition blocs, the division will be more prominent
		Positive – A less clear-cut division between opposition and incumbent governments decreases confrontation between bipartisan blocs	Type of government: ideological congruence is higher under coalition governments than under minority governments
		Positive – Higher levels of ideological congruence between governments grease intergovernmental bargaining	Duration of governments: the longer the duration, the more intense & frequent interaction
		Positive – Higher levels of interaction between actors in the political system increase predictability of policy positions and foster interpersonal trust	Type of government. The higher the number of actors, the lower the clarity of responsibility
		Positive – Lower autonomy costs associated with compromise and lower expected punishment by citizens funanimior making concessions	

between incumbent and opposition governments may still be in place and negatively affect IGR.

The two most important cleavages in the Spanish party system – the centre-periphery and the ideological cleavage – are cross-cutting, which in principle may help to enhance cooperation between political actors. However, the positions of the four most important parties (PP, PSOE, UP and C’s) on the territorial and ideological cleavage largely coincide (the more left-wing, the more pro-devolution and the more-right wing, the less supportive of devolution), which makes cross-cutting alliances less likely. In addition, three of these parties have been so far reluctant to bargain with regional parties that are ideologically close but that endorse secessionism, which may reduce the ideological elasticity of the potential coalitions to be formed. Actually, the types of governments formed at the regional level after the 2015 and 2016 regional elections show that coalition and minority

governments are ideologically coherent, meaning that parties tend to ally with parties that are close in ideology (there are no ideologically inconsistent alliances, i.e. PP+PSOE or C'S+UP).

The second conditional factor may be the types of governments that are formed. Party fragmentation may result in higher party congruence between levels of government (which I hypothesized to have a positive impact on intergovernmental cooperation) if coalitions become the predominant type of government. In minority governments, opposition parties may still play an important role in providing support to the incumbent party in certain legislative areas, but that type of legislative collaboration does not contribute to bond national and regional executives through party lines. The type of government may also affect clarity of responsibility, as we may expect responsibility attribution to be more blurred where power is highly fragmented among different actors than when it is concentrated in one or few of them.

In the aftermath of the transformation of the party system, minority governments have become the predominant type of executive at the regional level, as shown in Table 1. This pattern may, however, change in the mid-term. One of the reasons why political parties were reluctant to form coalition governments after the 2015 regional election was the expectation that developing strong(er) bonds (through coalition agreements) with certain political parties could undermine their electoral prospects in the national elections. Political parties' reluctance was enhanced by a changing political environment with high levels of electoral volatility that undermined the electoral bases of support of traditional parties while nurturing support of new ones.

The third moderating factor is duration of governments, which may affect the frequency of interaction among political parties. Interaction between political parties may result in higher levels of predictability of policy positions as well as enhanced interpersonal trust as long as that interaction is sustained over time. Government survival is more difficult under fragmented party systems. Empirical evidence on the relationship between government duration and type of executive shows that the survival rate of minority governments or minority coalitions is lower than majoritarian coalitions (and, in turn, of single party governments) (Laver and Schofield, 1990; Clark et al., 2013). In consequence, we may expect the benefits of interaction among political parties to unfold the longer the survival of governments, which will be more likely under majoritarian coalition than under minority governments and, above all, under minority coalitions.

In summary, in the previous paragraphs, I have developed a set of arguments on the potential impact of party system fragmentation upon IGR (see Table 2). Although political bargaining and agreements may generally

become more difficult the higher the number of actors and interests represented in the system, there is a set of potential mechanisms whereby higher fragmentation of the party system may have a positive impact on intergovernmental cooperation and, in turn, offset the difficulties of having a larger and more heterogeneous group of political actors. The mechanisms essentially operate through the impact of the party system on the formation of governments. In more fragmented party systems, coalition and minority governments are more likely to be formed, which may put an end to the two-bloc confrontation that has characterized IGR in Spain. Those types of governments may also bring to the system higher levels of party congruence between levels of government, more interaction among political parties as well as lower the costs of compromise for political actors, which may help to grease the bargaining process and, in turn, enhance the achievement of intergovernmental cooperation agreements.

### **Concluding remarks**

Although the role of parties and party systems has traditionally been superficially addressed in the literature on federalism, since the mid-1990s, there is renewed attention on the role that party systems and party in(congruence) may play in explaining federal dynamics, in general, and intergovernmental bargaining and conflict, in particular. Certainly, the most recent studies on IGR based on country-cases (Poirier et al., 2015) show that party politics exhibit a determinative effect in the institutions and processes of IGR in every federation.

Spain is one of those countries in which IGR have been traditionally dominated by party competition. Given the profound transformation of the party system in Spain after the 2015 general and regional elections, this paper has explored the potential effect those changes may have on the nature and dynamics of multilateral IGR in the State of Autonomies. The essential argument is that party system fragmentation may have an impact on vertical IGR through its effects on the formation of minority and coalition governments. I argue that these types of governments may put an end to the two-bloc confrontation that has characterized IGR in Spain, bring to the system higher levels of party congruence between levels of government and lower the costs of compromise for political actors, which may help to grease the bargaining process and, in turn, enhance the achievement of intergovernmental cooperation agreements. The extent to which these factors offset the difficulties in political bargaining that result from having a higher number of actors and interests represented in the system will depend on several conditions, namely the ideological coherence of inter-party alliances, the predominant type of government in the system (coalition or single-party minority) and the duration of governments once formed.

Future research paths in this topic certainly invite to carry out an empirical test of the arguments introduced above. It may take some time until researchers can gather enough empirical evidence to explore whether the dynamics of IGR in the Spanish State of Autonomies unfold as predicted in this paper. However, the theoretical arguments presented in the previous pages are nonetheless valuable, as they help to advance the theoretical systematization of the relationship between party systems, government structures and the nature of intergovernmental bargaining and conflict in federal states.

## Notes

1. Riker suggested that the constitutional structure of a federation is determined by the degree of centralization of the party system, understood as the balance between federal and state interests.
2. When devolution started, four regions – Catalonia, the Basque Country, Andalusia and Galicia – accessed autonomy with higher levels of self-rule (fast-track process), whereas the rest followed the slow-path and were granted more limited authority.
3. Cooperation agreements between regions require the approval of the higher house (Senate).
4. With the exception of the CPFF (Fiscal and Financing Policy Council), which technically is not a Sectorial Conference, where decisions are subject to vote. The central government's vote counts for 50%, so it becomes virtually impossible for the ACs, whatever the combination of parties, to promote and prevent decisions against central government interests.
5. See also Mueller (2013) and Mueller and Mazzoleni (2016).
6. Such as the Sectorial Conferences on Agriculture and Rural development, the Sectorial Conference on Fishing or the Consultative Councils on Fishing and Agriculture European issues (González Gómez, 2006: 112).
7. Another example of the executive-type cooperation is the creation of the Presidents' Conference (*Conferencia de Presidentes*) was created in 2004 and brings together regional premiers and the prime minister. It has been convened intermittently (last time in January 2017).
8. Most of the new regional Statutes of Autonomy approved between 2006 and 2007 have regulated bilateral cooperation more extensively. The Statutes in Catalonia, Andalusia, Aragon, Castile Leon and Extremadura have created new and permanent Bilateral Commissions on Cooperation as permanent bodies. In addition, in Catalonia, Balearic Islands, Andalusia, Aragon and Extremadura the new Statutes have created specific Bilateral Commissions on fiscal and economic issues.
9. See Laakso and Taagepera (1979) to know how the effective number of parties is calculated.

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# Still better together? Purpose and power in intergovernmental councils in the UK

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## ABSTRACT

Intergovernmental relations in the United Kingdom were intended to be predominantly informal, but a machinery of intergovernmental councils (IGCs) developed alongside informal relations. This article examines the development, purpose and dynamics of the UK's IGCs, with a particular focus on the multilateral Joint Ministerial Committee and the bilateral Joint Exchequer Committees. These IGCs remain weakly institutionalized and multilateral forums, in particular, are regarded by the devolved governments as providing limited opportunities for exercising influence. By contrast, bilateral IGCs have enabled devolved governments to utilize a range of non-constitutional resources to exert influence, irrespective of their relative constitutional weakness. The Brexit referendum generated an intensification of multilateral IGCs while exposing their weaknesses as forums for the exercise of shared rule. The purpose and dynamics within IGCs are shaped by the asymmetrical distribution of power, continued constitutional hierarchy, party competition and competing nationalist projects.

**KEYWORDS** UK; devolution; intergovernmental relations; JMC; JEC; Brexit

## Introduction

The United Kingdom is a relative newcomer to multi-level government. For much of the twentieth century, it was one of the most centralized states in Europe, save for a period of devolution in Northern Ireland between the partition of the island of Ireland in 1921 to the imposition of direct rule in 1972. The introduction of devolution to Scotland and Wales in 1999 following successful referenda, and its simultaneous, if sporadic, reintroduction to Northern Ireland as part of the peace process,<sup>1</sup> institutionalized varying degrees of self-government to these three territories. England, by far the largest nation of the UK, has continued to be governed by the state-wide institutions, and the absence of devolution in England has created a profound constitutional asymmetry in the structure of the state. This, coupled with the distinctive bottom-

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up motivations which generated the demand for, and ultimately the concession of, varying degrees of self-government, helps to explain why formal inter-governmental relations have at best been an afterthought in the UK's multi-level system.

Intergovernmental relations between the UK and the devolved governments were intended to be mainly informal. Good communication, goodwill and mutual trust were valued above developing mechanisms and forums for formal coordination. A Memorandum of Understanding, a series of concordats between the devolved governments and the departments of the UK Government, and a set of 16 Devolution Guidance Notes were to support a cooperative working culture among civil servants on a day-to-day basis. In keeping with UK parliamentary tradition and its central tenet of Westminster parliamentary sovereignty, none of these agreements (excepting the Good Friday Agreement) has statutory authority and none is binding in law, though Poirier described them as 'soft law instruments, with a slightly harder edge' (Poirier, 2001: 155; see also Rawlings, 2000).

Despite the emphasis upon informality, a machinery of multilateral and, more recently, bilateral intergovernmental councils (henceforth IGCs<sup>2</sup>) has nevertheless developed to facilitate communication, cooperation and constitutional reform. In Bolleyer's terms, these IGCs remain weakly or, in some cases, moderately institutionalized (Bolleyer, 2009). Meetings are mainly irregular and unscheduled, the infrastructure supporting them is often rather ad hoc or minimal, and the IGCs usually lack the capacity to make decisions. The council which represents the centrepiece of UK IGR – the multilateral Joint Ministerial Committee (JMC) – rarely met at all in the early years of devolution (Trench, 2004, 2007). The last decade, however, has witnessed a change. Against the backdrop of increased party political incongruence in the composition of central and devolved governments, a shift from a benign financial settlement to fiscal austerity, and the onset of 'big' constitutional politics – from the Scottish independence referendum to the Brexit referendum – we have seen increasing attention paid to the formal processes of intergovernmental relations. These developments have heightened demands from parliaments, devolved governments and independent commissions for more institutionalized multilateral and bilateral intergovernmental processes (Commission on Devolution in Wales, 2014; Smith Commission, 2014; HL CC, 2015; Welsh Government, 2017).

This article examines the development and dynamics of the UK's IGCs. It asks two key questions: (i) what is the purpose of the UK's IGCs?; and (ii) do they provide channels of meaningful influence for the devolved governments? In addressing the first question, the article looks beyond merely the stated purpose set out in official remits to consider the motivations underpinning the activity and interventions of the governments concerned. In addressing the second question, it examines the power dynamics within IGCs and

questions whether they provide devolved governments with an opportunity to upload their preferences or secure concessions in line with their territorial and policy objectives. After examining the evolution, purpose and power dynamics within multilateral and bilateral IGCs in the UK, the article incorporates a small case study analysis of formal intra-UK intergovernmental relations during the first phase of the process leading to the UK's withdrawal from the European Union, that is, from the referendum to the triggering of Article 50. The period was marked by an intensification of formal IGR, including new multilateral IGCs, while its political salience, the candour of some participants, and parliamentary oversight helped to shine a light on these otherwise opaque processes.

Documents form the primary data underpinning the analysis. These include official communiqués, government publications, intergovernmental agreements, ministers' and ex-ministers' speeches, parliamentary committee reports, and the testimony that those involved in intergovernmental relations have provided to various parliamentary enquiries. These are supplemented by informal interviews with officials and ministers. Given the sensitive and confidential nature of IGR and in the interests of encouraging interviewees to speak openly so as to gain maximum insight, interviews were unrecorded and conducted with the assurance that contributions would be unattributed.

The article argues that constitutional asymmetry has constrained and inhibited the development of IGCs, and governments have taken a pragmatic approach to their use. The plurinational character of the state, especially within the current context of competitive nation-building and contested constitutional politics, shapes the motivations and trust of the actors involved. The non-federal character of the state and the continued hierarchy in the constitutional relationship between the UK Government and the devolved governments affects power dynamics within IGCs, although the latter can sometimes utilize 'soft power' tools to gain concessions. Although convened in unique circumstances, the recent experiences of the Brexit-focused IGCs expose the broader weaknesses of the UK's intergovernmental machinery, as well as the barriers in the way of more formal co-decision processes.

### **Powers and purpose of IGCs**

IGCs represent the formal executive infrastructure through which central and regional governments manage jurisdictional interdependencies. From the perspective of the participating governments, they serve a variety of purposes.

First, IGCs can be used to share or to seek information, either to promote policy learning, to avoid detrimental impact from policy overspill, or to share confidences about policy developments, upcoming events or announcements which are not yet in the public domain. This purpose is

also, and perhaps more effectively, served in less formal networks (Wright, 1982).

The second purpose of IGCs is to negotiate intergovernmental agreements or to coordinate joint action (Parker, 2014). This is especially necessary for more cooperative systems, where the powers and responsibilities of both levels of government overlap or are interlocked. Such systems build in the need to reach joint decisions or coordinate policy implementation into the institutional design, most evidently in the German case (Auel, 2014). More dualist systems, where each level of government enjoys a high degree of political autonomy, contain the need for coordination and co-decision, but do not eliminate it. Participation in such systems may be ad hoc and voluntary, as in Canada, or highly institutionalized as in Belgium (Cameron and Simeon, 2002; Poirier, 2002). The enthusiasm for, and intensity of, IGCs will also be coloured by the policy field: more limited in locally oriented policy spheres, but greater where there is more scope for overspill (e.g. environmental or trade policy), higher political salience (e.g. distributive or constitutional policy), or where implementing international agreements or meeting EU obligations necessitate cooperation (Beyers and Bursens, 2006; Benz, 2016).

Third, IGCs can provide opportunities for the exercise of shared rule, enabling sub-state governments to exert influence over matters that, directly or indirectly, affect their fields of jurisdiction. In systems without a territorial second chamber, they are often the primary forum through which sub-state governments seek to upload their own preferences so as to influence the policies, positions, actions and decisions of other governments, especially – though not exclusively – central government. The extent to which regional governments can exert influence over central government is shaped by the constitutional rules of the game, for example, whether they have rights to co-decision or veto over central government decision-making in areas that impinge upon their competences (Hooghe et al., 2016). Non-constitutional factors matter too, including the relative wealth of each order of government, the balance of power within and across multi-level systems and the political composition of governments (Bolleyer, 2009; McEwen et al, 2012; Aja and Colino, 2014). In the context of party political incongruence, when governments are led by parties that compete against each other, there may be more competition than cooperation between governments. This can result in less willingness to cooperate or make concessions, and less confidence in sharing privileged information.

Fourth, IGCs can also serve the purpose of preserving or enhancing 'self-rule' (Agranoff, 2004; Lublin, 2014: 261). Especially in strong identity regions, both multilateral and bilateral IGCs can be a useful channel through which regional governments aim to maximize their decision-making autonomy, by pushing constitutional boundaries and negotiating increased constitutional

and policy competences, or by preventing central government from encroaching upon regional jurisdiction. This relates to a fifth common purpose of IGCs: to help avoid or resolve jurisdictional or financial disputes, without recourse to the courts.

The features shaping the processes and purpose of IGCs also influence the power dynamics within them. Power relations within IGCs are shaped by formal constitutional rules. The power of sub-state governments may be considerably enhanced where they have co-decision rights, voting strength or the right of veto over key policy, fiscal or treaty-making decisions. This is perhaps most obviously the case in intergovernmental decision-making in Belgium, where the principle of *in foro interno, in foro externo* has given the Regions and Communities considerable influence in determining Belgian positions in relation to trade and other international agreements which affect their competences (Beyers and Bursens, 2013). In multi-level systems like the UK, which do not formally divide sovereignty or remit powers of co-decision to intergovernmental forums, the relationships within IGCs may be more hierarchical, with central governments able to dictate the terms of engagement.

On the other hand, even in non-federal systems, regional governments may be able to at least partially mitigate constitutional inferiority by accessing non-constitutional resources and using 'soft power' diplomacy. Such non-constitutional resources can be wide-ranging. For example, a strong and skilled leader can deploy political nous in intergovernmental negotiations. A sub-state government with a strong popular mandate can bring added legitimacy to intergovernmental deliberations, especially if faced with a relatively weak central government. For example, the SNP's success in the 2015 General Election, when they won 56 of the 59 Scottish seats in the British House of Commons, considerably enhanced the SNP-led Scottish Government's claim to speak for Scotland in the intergovernmental arena.

The literature on small states, which highlights the ways in which these states can exercise influence within the international community despite their smallness, also provides insight into the 'soft power' options open to sub-state regions in the intergovernmental arena. Small states can sometimes overcome structural and resource disadvantages by developing 'counterbalancing strategies' (Panke, 2010), for example, by building alliances with other governments, honing cogent arguments, and investing in network and relationship building with policy actors in EU and international institutions (Arregui and Thomson, 2009; Jakobsen, 2009). Similarly, sub-state governments may be better placed to shape and steer intergovernmental negotiations and outcomes towards their preferences in areas of strategic priority, where they have built expertise and policy capacity within government, and have key alliances within the policy community. In addition, just as small states, through norm advocacy, framing, agenda-setting and diplomacy, can

sometimes shape policy discourse, outputs and practice within EU or international institutions (Ingebritsen, 2002; Björkdahl, 2008), so too might sub-state governments be able to influence the norms, ideas and framing of issues on the intergovernmental agenda.

Power dynamics within intergovernmental arenas may also be shaped by the alliances and antagonisms between the participating governments. Governments in multi-level states, when led by parties that compete against each other within each institutional tier, may be more inclined to regard IGCs as sites of competition rather than cooperation, shaping and constraining the capacity of sub-state governments to secure concessions in intergovernmental deliberations. Territorial politics can also be expected to shape dynamics within IGCs. In federal and multi-level states, cooperative intergovernmental relationships are dependent upon a commitment to mutual interdependence and political unity alongside the recognition of diversity (Elazar, 1987; Burgess, 2012: 188–189). Despite often being designed to stem secessionist pressures, neither a commitment to sharing power nor a desire to maintain unity can be taken for granted in states that are plurinational. Intergovernmental relations are often coloured by competitive nation-building and nationalist claims, especially when secessionist parties are in power, with a detrimental impact on relations of trust and the functioning of IGCs. For example, the Spanish Conference of Presidents stopped meeting after 2012 amid the resurgence of Catalan nationalism over fears that meetings would be politicized (McEwen et al., 2015). As discussed below, competitive nation-building in the UK after the election of the SNP to the government in Scotland in 2007 contributed to an intensification of IGR, but the issue of Scottish independence coloured the nature of the relationships within ministerial conferences, presenting both obstacles to, and opportunities for, meaningful influence for the Scottish Government.

### **Power and purpose of multilateral IGCs**

After the establishment of devolution in Scotland and Wales in 1999, and its re-establishment in Northern Ireland, the UK Government and the devolved governments agreed a Memorandum of Understanding (henceforth MoU) and a series of Concordats intended to guide their day-to-day interaction in a new era of multi-level government. Informal interaction would also be facilitated by the retention of a unified civil service serving Whitehall departments and the Scottish and Welsh administrations, and cooperating closely with the Northern Ireland civil service (Parry, 2012). The MoU also provided for the establishment of a Joint Ministerial Committee (JMC) as a formal council within which the governments would meet, either in plenary format, involving the leaders of each government, or in functional format, with ministerial participation dependent upon the policy under discussion.



### ***The Joint Ministerial Committee***

In the early years of devolution, the JMC met only a few times in plenary and functional formats before becoming largely redundant in 2002 (Trench, 2004). It was only resurrected after the deepening of party political incongruence in the composition of governments after 2007 (McEwen et al., 2012). Thereafter, the JMC was supposed to meet annually in plenary format (JMC(P)) and when required (which was expected to be at least twice a year) in a domestic format (JMC(D)). However, it did not meet in either of these formats between December 2014 and October 2016. Difficulties in agreeing mutually convenient dates amid an intensive electoral cycle, rather than lack of will, appear to explain the failure to convene the JMC(P). By contrast, the JMC(D) was regarded as rather ineffectual and without a clear purpose, especially by the devolved governments, with officials citing asymmetrical devolution as making it difficult to identify agenda items that could engage all participants (HL CC, 2015: 18–19; interview with SG officials, 9 November 2016). The Scottish Government's first Annual Report on Intergovernmental Relations published in June 2017 noted: 'The JMC(D) has not had cause to meet since March 2013 although the option remains open to ministers to reconvene as necessary' (Scottish Government, 2017: 11).

What, then, is the purpose of the JMC(P)? Its formal remit, set out in the MoU, is (i) to consider non-devolved matters which impinge on devolved responsibilities, and devolved matters which impinge on non-devolved responsibilities; (ii) to consider devolved matters if it is beneficial and mutually agreeable to discuss their respective treatment in the different parts of the United Kingdom; (iii) to keep the arrangements for liaison between the UK Government and the devolved administrations under review; and (iv) to consider disputes between the administrations (UK Government et al., 2013). The emphasis upon *consideration* is deliberate, and underlines the weakness of the JMC as a vehicle for shared rule. It was never intended to be a forum for co-decision, nor even routine coordination. The MoU underlined the governments' shared commitment 'wherever possible, to conduct business through normal administrative channels, either at official or Ministerial level' (UK Government et al., 2013: 10).

In 2010, under pressure from the devolved governments, a formal *Protocol for the Avoidance and Resolution of Disputes* was introduced and has been invoked on at least five occasions. This includes an ongoing (at the time of writing) financial dispute lodged by the Scottish and Welsh Governments over the Conservative UK Government's deal with the Democratic Unionist Party (DUP), giving extra money to Northern Ireland in exchange for the DUP's support in the House of Commons. In keeping with the ethos of the civil service and of the intentionally informal nature of UK IGR, the emphasis within the protocol is to prevent disputes from emerging, and to resolve

differences at working level or within the secretariat. The four disputes invoked under the protocol in 2010–11 were resolved without recourse to the ministerial meeting (HL CC, 2015: 14).

There is some scepticism on the part of the devolved administrations as to the effectiveness of the JMC as a forum for resolving disputes, in light of the asymmetry in intergovernmental relationships, and the dominant role of the UK Government (Swenden and McEwen, 2014). For example, the former First Minister of Northern Ireland, Peter Robinson, described the dispute resolution procedure as ‘meaningless’: ‘At the end of the day, the Cabinet Office will decide whether the Treasury was right. We do not think that is a very impartial court to take our case to’ (Robinson, 2015, Q87). A former Secretary of State for Scotland (a ministerial office of the UK Government) referred to the JMC as ‘a forum for dispute declaration, if rarely for dispute resolution’ (Moore, 2016: 11). Scotland’s Deputy First Minister, John Swinney, recalled meetings with the three devolved Administrations:

essentially saying to the UK Government, ‘We disagree with the stance you are taking on fiscal policy, so we want you to relax the fiscal disciplines’. The UK Ministers would go through that and say, ‘We have heard you but we are the UK Government. We have macroeconomic competence. This is our policy; this is what we are doing’. (Swinney, 2016, Q355)

For its part, the UK Government – while formally talking up the value of the JMC – also recognizes that it can be a forum within which the devolved governments air grievances directly to the Prime Minister (interview with UKG official, 22 November 2016; interview with former UK minister, 1 November 2016; see also evidence cited in HL CC, 2015: 17–18). Giving evidence to the Lords Constitution Committee in 2015, Alistair Carmichael, the then Secretary of State for Scotland, implicitly chastized his Scottish Government counterparts for ‘continuing to use the points of interface between the Governments as an excuse for generating grievance or friction between the Governments’ (HL CC, 2015: 14).

These insights are suggestive of an inequality of formal power within the JMC. The JMC is chaired by a UK Government minister and, after its resumption in 2007 until 2017, always met in London. Although served by a joint secretariat made up of officials from each of the governments, the primary authority for the conduct of meetings continues to lie with the UK Government. The devolved governments have complained that there is little opportunity to engage in constructive discussions on key issues of concern, due to lack of time set aside for meetings (Scottish Government, 2015). Senior ministers from the devolved governments have criticized a culture within which they are ‘brought in’ to meetings with the UK Government, instead of the JMC operating as a forum in which four administrations work together. The First Minister of Wales, Carwyn Jones, described the JMC as ‘basically a

Westminster creation that is designed to allow Westminster to discuss issues with the devolved Administrations. It is not jointly owned ... and it is not a proper forum of four Administrations coming together to discuss issues of mutual interest' (Jones, 2015: Q46).

A relationship based on hierarchy has been increasingly challenged, however, especially by the Scottish Government after the election of the pro-independence SNP. Irrespective of disparities in size, constitutional competence and sovereignty between the UK and Scottish governments, SNP Government ministers have drawn upon their status as a *national* government representing what they regard as distinctive national interests – a stance reinforced by the SNP's electoral strength after 2011 and the Conservative-led UK Government's relative weakness in Scotland. SNP Ministers posit the Scottish Government as an equal partner in its engagements with the UK Government, rather than a subordinate player. Deputy First Minister, John Swinney, stressed that effective intergovernmental machinery should be based upon 'parity of esteem' and 'mutual respect and trust' – commonly expressed sentiments among ministers and senior officials. He added: 'The UK Government and devolved administrations are equals in their areas of competence, and this should be recognised in the level of respect between them' (Swinney, 2015). All devolved governments have at various points stressed the need for 'parity of esteem', but there is a competitive, and more assertive, edge in the SNP Government's interaction with the UK Government which reflects its nationalist ambitions. Drawing on his observations as a participant in the JMC, Peter Robinson, observed these dynamics: 'To some extent, there are two devolved institutions, which recognise that they are devolved institutions, and one devolved institution that believes that it is a sovereign state and has the standing of the Government' (Robinson, 2015, Q87).

In assessing the purpose and dynamics within the JMC, it is difficult to disentangle analytically the effects of party political incongruence from the competitive nation-building associated with the independence debate, as in the Scottish case at least, the two coincided. Officials from both the UK and Scottish Governments noted that the independence issue both before and after the referendum contributed to a loss of trust and information-sharing (interview with SG officials, 8 November 2016; interview with UK official, 13 April 2017). This has affected both IGCs and less formal interactions; as one Whitehall official put it, the days when officials from both the UK and Scottish Governments could have frank discussions in a private space are gone (interview with UK official, 13 April 2017). Welsh–UK intergovernmental relations have been conducted under conditions of party political incongruence since 2010. While this has coloured their formal and informal interactions, the constitutional dependence of the Welsh Government on the UK Government to exercise its legislative power was a source of frustration even under conditions

of party congruence (Commission on Devolution in Wales, 2014; Swenden and McEwen, 2014).

### ***The JMC Europe***

A third format of the JMC was always rather distinctive. The JMC (Europe) built upon previous intra-governmental coordination between the Foreign Office and the territorial ministries. In the early years, as 'a good clearing house for colleagues in the UK Government to sort out their interdepartmental issues on European matters' (Wallace, 2017: 17), it gave the devolved governments privileged access to discussions over the UK Government's EU policy formulation. It later evolved to become a forum within which the devolved governments could have their say on upcoming issues to be discussed at European Council meetings (Wallace, 2017: 17). It did not replace informal interaction; as set out in the Concordat on Coordination of European Union Policy Issues, officials would continue to cooperate and share information as a matter of routine (Scott, 2001). But in contrast to the other JMCs, meetings of the JMC(E) were regular rather than ad hoc, conforming to the schedule of the European Council. The UK Government maintained the authority to define the UK's negotiating position in Council meetings, but it used the JMC(E) to take account of devolved government views. The JMC(E) thus provided an opportunity for some influence, especially in areas where the devolved governments could overcome their constitutional inferiority by developing strategic priorities and niche expertise, for example, in fisheries, animal welfare, region-specific agriculture and structural funds (Bulmer et al., 2006: 84–86). As such, the JMC(E) has been generally held in higher regard by ministerial participants and observers (HL CC, 2015: 19; Paun and Munro, 2015: 72–73).

However, there is little evidence to suggest that non-constitutional resources can overcome constitutional weaknesses in multilateral JMCs. Even within the JMC(E), an imbalance of power remains, derived from the UK Government's constitutional authority over EU relations. Officials within devolved governments report that meetings last around an hour and offer limited scope for discussion. Agenda items are set by the upcoming European Council agenda, with papers prepared by the relevant UK Government department. Although they are supposed to be circulated well in advance, papers often arrived late, leaving little time to consult with colleagues in relevant policy departments, or to develop a clear position in advance of meetings. There is some horizontal collaboration between devolved ministers in advance of meetings, but also a perceived hierarchy in the degree of access given to devolved governments, given the resource strength and policy capacity of Scotland compared to Wales and Northern Ireland (Bulmer et al., 2006: 86–87). The lack of follow-up after Council meetings has been a source of frustration for the devolved governments and, usually bystanders

with respect to EU representation,<sup>3</sup> the devolved governments rarely got to know whether their preferences were taken into account either by the UK Government or the European Council (interview with SG officials, 8 November 2016; see also Paun and Munro, 2015: 73). The prospect of Brexit has already affected the JMC(E). Meetings are less frequent, Brexit overshadows its discussions, and the internal restructuring within Whitehall as a result of the creation of the Department for Exiting the European Union has had a knock-on effect on the level of resources and commitment to the JMC(E) (Scottish Government, 2017: 8–9). Although still formally part of the EU pending completion of Article 50 negotiations, the UK is now a disengaged Member State.

### ***Multilateral IGCs beyond the JMC***

The JMC is not the only IGC. Ministers and officials periodically meet in other less formal forums. One example is the so-called ‘Finance Ministers’ Quadrilateral’ (FMQ), which brings together devolved Finance ministers with a UK Treasury Minister to discuss ongoing issues of common concern. The formula-based system of territorial finance and the absence of a system of equalization limit the need for formal ongoing multilateral intergovernmental coordination on financial matters, but the combined effects of vertical fiscal imbalance and fiscal austerity still produce periodic tensions over money (Gallagher, 2012; Swenden and McEwen, 2014). The FMQ normally meets three times per year, but did not meet at all for around three years as bilateral negotiations on finance took precedence (see below). This forum sits outside of the JMC framework, and appears even more hierarchical. It is regarded as useful for sharing relevant financial information by both the UK Government and at least some of the devolved governments (HL CC, 2015: 28). Michael Moore, former Secretary of State for Scotland, described the FMQ rather more critically as ‘a vehicle for the Treasury to hand out announcements to the devolved administrations ... without any negotiation ... Protest was heard, but this was not a place for negotiation and agreement’ (Moore, 2016: 11).

There is more clarity of purpose and equality of status within the British–Irish Council (BIC). Established as a product of the Good Friday Agreement (1998), its eight member governments from across the British Isles meet regularly to ‘exchange information, discuss, consult and use best endeavours to reach agreement on co-operation on matters of mutual interest within the competence of the relevant administrations’ (GFA, strand 3). Its broader purpose, however, is to help maintain peace in Northern Ireland (Clifford and Morphet, 2015). The BIC has a small permanent secretariat based in Edinburgh (5 full-time seconded staff), and conducts its work across 12 policy sectors, with varying levels of activity in each. Although most intergovernmental meetings take place among officials (there were 51 such meetings in 2016), the BIC held 28 ministerial summits between its inception in 1999

to the end of 2016, supplemented by more ad hoc ministerial meetings within work streams, and periodic 'extraordinary' summits on key issues, for example, on the outcome and implications of the Brexit referendum (BIC, 2016). Although its importance to the Northern Ireland peace process is recognized by all parties, the level of commitment varies. Whereas the Irish Taoiseach always attends, the UK Government is usually represented by one or more of the territorial secretaries or, during the coalition, the Deputy PM. The last time a UK Prime Minister attended was in July 2007.

### **The emergence of bilateral IGCs**

Constitutional asymmetry has necessitated bilateral relations. In contrast to multilateral forums like the JMC and the BIC, bilateral exchanges are regarded, especially by devolved governments, as a more effective means of raising issues of concern directly with the UK Government, with more opportunities for influencing outcomes (see, for example, Robinson, 2015). For the most part, bilateral relations are conducted informally. In recent years, however, a new semi-formal machinery of bilateral IGCs has been introduced in Scotland and Wales, emerging from changes in the devolution settlements.<sup>4</sup>

The most notable of these are the Joint Exchequer Committees (JECs). The primary purpose of the JECs was to facilitate the transfer of new tax and borrowing powers derived from the Scotland Acts of 2012 and 2016, and the Wales Acts of 2014 and 2017. In the Scottish case, these included full powers over landfill tax, stamp duty land tax and air passenger duty, new borrowing limits, and steadily increasing responsibility for income tax. Income tax collection and the broader policy framework remain centralized, but following the 2016 Act, the Scottish Government, subject to parliamentary approval, is now responsible for setting the rates, thresholds and bands for all income tax on earnings above the personal allowance (Lecca et al., 2017). In Wales, landfill tax and stamp duty land tax were similarly devolved, along with new borrowing powers and more modest income tax devolution. From 2018, the UK Government will create tax room by reducing the basic, higher and additional rates of income tax for Welsh tax payers by 10 percentage points, leaving the National Assembly for Wales to approve the Welsh Government's rates for each band (Poole et al., 2016). These constitutional reforms meant that new fiscal frameworks had to be negotiated bilaterally. Issues included agreeing a mechanism for 'block grant adjustment' to reduce the size of fiscal transfers in light of increased tax autonomy, limits and rules on borrowing, and compensatory rules to avoid one level of government being detrimentally affected in terms of revenues or spending by the policy decisions of another (the so-called 'no detriment' principle). Although conducted in separate forums, the often challenging experience of the Scottish negotiations informed the development of the Welsh JEC.

In its first incarnation in Scotland, the purpose of the JEC and the relative status and influence of the two governments were never agreed; indeed, disagreement over the 'terms of reference' represented an early area of contention within the committee, reflecting the contrasting perception of the status and authority of each government (JEC, 2011). In this early phase, there was no mechanism for resolving disputes. Consequently, the JEC did not meet at all between 2013 and 2015 when negotiations on block grant adjustment reached stalemate. As one former official engaged in the process noted, there were so many other things going on (notably the run-up to the independence referendum) that the issues of dispute in the JEC got added to the 'too difficult' pile (interview with former SG official, 14 December 2016).

The JEC was resurrected during the passage of the legislation which would become the Scotland Act 2016, and became the site of intense intergovernmental interaction around the contentious issues of how best to adjust the block grant and implement the 'no detriment' principles. These were high stakes negotiations – without agreement, both the Scottish Government and the Scottish Parliament seemed set to withhold consent for the Scotland Bill – which could have seen the devolution legislation fall just weeks prior to the Scottish election. In the event, after 10 inter-ministerial meetings, 5 of which took place over a 5-week period in January–February 2016, a last-gasp compromise agreement was reached in a telephone call between the Prime Minister and the Scottish First Minister (Bell et al., 2016; HM Government/Scottish Government, 2016). The process was less combative in the Welsh case and took less time to agree (a rather different) Fiscal Framework for Wales (HM Government/Welsh Government, 2016; Poole et al., 2017). The process may have been eased by the preparatory work on Welsh territorial finance already carried out by the Independent Commission on Funding and Finance for Wales (Holtham Commission) and the Commission on Devolution in Wales (Silk Commission), the support for its recommendations across the political spectrum and within the wider policy community, as well as the UK Government's desire to avoid another tense and bruising experience in devolution negotiations.

The evolution of the JEC as an example of a bilateral IGC suggests that these operate somewhat differently from the multilateral IGCs discussed above. They are more task-oriented than regular JMC meetings, primarily to facilitate the transfer of new competences and their implementation. Although the long-term use of these forums is not yet clear, there is an expectation that the JECs will be utilized to manage the institutional and financial interdependencies created by the new devolution settlements.

From the point of view of the devolved governments, these bilateral IGCs are forums of equal partners. This was not always a view shared by the UK Government, though its approach changed depending on the ministerial representatives involved, and evolved over time. One former UK Government



minister attending an early meeting of the JEC described it as the worst meeting of his life, because of the intransigence of the Treasury and the lack of understanding and sympathy its representatives had toward devolution (interview, 1 December 2016). A senior Scottish Government official observed that the Treasury, a department whose role is usually to say 'no' to other departments' budget requests, seemed caught off-guard by the need to negotiate (interview, 22 April 2016). Some symbolic concessions to parity were made. The location and chair of JEC meetings rotated between London and Edinburgh or Cardiff. Moreover, the devolved governments were able to negotiate significant concessions. The Scottish Government secured agreement, subject to review, for its preferred method of block grant adjustment, which protects it from losses as a result of differential population growth. The Welsh Government secured a significant reform of the Barnett formula as it applies to Wales, with the introduction of a needs-based element in the calculation of fiscal transfers, addressing a long-running grievance. Both governments secured agreement for some independent oversight of the framework, once implemented – a concession described by one devolved minister as a significant deviation from the working culture of the Treasury (Drakeford, 2017a).

There remains an imbalance in the constitutional authority and resource capacity of each government which would suggest that in any bilateral negotiation, the deck may be stacked in the UK Government's favour. However, the JEC experiences, as with others before it, illustrate how some of the counterbalancing mechanisms Panke (2010) and others have observed in small state diplomacy can be observed within intra-state intergovernmental relations. The Scottish Government and the Welsh Government put more stock in securing positive outcomes from intergovernmental negotiations. As a result, they invest more time and effort identifying key issues and preparing their case, and carry more institutional knowledge about devolution issues. As one observer noted of the Scottish Government in intergovernmental negotiations, 'they do their homework, they have the politics better, and the intellectual arguments better' (interview with former UK Government minister, 1 December 2016). Officials suggested that Whitehall finds it difficult to sustain interest in issues which, from its perspective, seem peripheral, and there are far fewer personnel with knowledge of devolution issues (interview with SG official, 22 April 2016; see also Paun and Munro, 2015). As an illustration, soon after the UK–Scottish Fiscal Framework Agreement was secured, the three Treasury officials most central to the negotiations moved to other departments.

Power dynamics within bilateral IGCs associated with constitutional reform are also shaped by constitutional convention and practice. The UK parliament retains jurisdictional authority for the constitution, and so is legally solely responsible for determining reallocations of power. In practice, however, the process of constitutional reform has usually been driven from within



the devolved nations themselves, often with the explicit support of the UK Government. Territorially based commissions make recommendations, and decisions over the transfer of new powers are sometimes instigated or legitimized by referenda. In accordance with a constitutional convention (often referred to as the Sewel convention), which was itself incorporated into the Scotland Act (2016) and the Wales Act (2017), the Westminster Parliament will not normally legislate with regard to devolved matters without the consent of the devolved legislatures, expressed in legislative consent motions (LCM). According to the Scottish Deputy First Minister, such constitutional practice shaped negotiations within the JEC, following the stipulation of the inter-party Smith Commission report (which paved the way for the Scotland Act 2016) that the two governments agree on a new fiscal framework. 'It was not "it would be nice to"; it had to be agreed between both Governments. That obviously put a particular discipline on getting to an acceptable conclusion for both parties' (Swinney, 2016). The Welsh Cabinet Secretary noted that 'had we not had a fiscal framework, it would have been a very significant barrier to supporting an LCM on the Wales Bill and the Treasury were very well aware of that' (Drakeford, 2017a).

### **IGCs and Brexit**

The UK's planned withdrawal from the European Union promises to affect significantly the relations between the constituent nations of the UK. The referendum result was an expression of British self-determination, following a campaign urging voters to 'take back control'. In Scotland, where 62% voted Remain, it brought the issue of Scottish independence back on to the political agenda. The prospect and impact of a hard border on the island of Ireland, meanwhile, is one of the biggest issues in negotiations with the EU. These and other territorial challenges unleashed by the referendum result have overshadowed the conduct of intergovernmental relations.

The early phase of the Brexit process – from the referendum until the triggering of article 50 – led to an intensification of multilateral intergovernmental relations, especially through formal IGCs. After almost two years without meeting, the JMC(P) was reconvened in October 2016 and met again three months later. The first of these meetings led to the creation of a new sub-committee, the JMC (EU Negotiations), to facilitate intra-UK negotiations and coordination related to Brexit (JMC, 2016). At the second, the leaders agreed to 'intensify their work ahead of the triggering of Article 50 and to continue at the same pace thereafter' (JMC, 2017). The JMC(EN) met four times between November 2016 and February 2017, chaired by the UK Secretary of State for Exiting the European Union. It took eight months for it to reconvene following concerted efforts by Welsh and Scottish ministers for its resumption (Drakeford and Russell, 2017; Sturgeon, 2017).

Unlike the other JMCs, the purpose of the JMC(EN) was much more focused and task-oriented, with the expectation of follow-up. Its remit, agreed by the JMC(P), committed the four governments to 'seek to agree a UK approach to, and objectives for, Article 50 negotiations' and to provide oversight of Brexit negotiations once underway 'to ensure, as far as possible, that outcomes agreed by all four governments are secured from these negotiations' (JMC, 2016). The JMC(EN) provided an opportunity to discuss papers presented by each of the devolved governments. The Welsh Cabinet Secretary suggested that his government's paper, which had emphasized the need for 'free and unfettered access' to the single market, influenced the language of 'free and frictionless trade' subsequently adopted by the UK Government, perhaps mirroring the successful norm advocacy of small states in EU policy and practice (Björkdahl, 2008; Drakeford, 2017b).

It would be a considerable stretch, though, to regard the JMC(EN) as a channel through which the devolved governments have been able to date, to exert meaningful influence. Having raised expectations that the JMC(EN) would seek joint agreement on a UK approach prior to the triggering of Article 50, it singularly failed to do so. The Prime Minister's Lancaster House speech setting down some parameters of the UK approach to Brexit was delivered without consultation, let alone agreement, with the devolved governments. Nor was there consultation on the content or detail of the Article 50 letter sent to the President of the European Council which formally opened the negotiations. Devolved government ministers pointed towards a lack of consultation, information-sharing and poor organization of JMC(EN) meetings. Mark Drakeford described it as a 'frustrating process' that has 'failed to give confidence to devolved Administrations that ... (their) views are making a genuine impact on the thinking of the UK Government' (Drakeford, 2017b). Michael Russell, Minister for UK Negotiations on Scotland's Place in Europe, described it as 'unnecessarily frustrating, and a wasted opportunity' (Rhodes, 2017). By contrast, the Secretary of State for Exiting the European Union claimed that the UK Government had 'bent over backwards' to take heed of concerns in the devolved nations (David, 2017: 14). Privately, UK Government officials conceded that the remit of the JMC(EN) created expectations that would always have been difficult to meet (interview with UK Government official, 8 May 2017).

The JMC(EN) faced some practical and political barriers. The intensification of IGR, in the context of the dramatic organizational impact of Brexit on Whitehall more generally, created resource challenges. Ministers from devolved governments complained about poor administration, communication and the absence, or late circulation of, minutes, agendas and a meaningful work programme (House of Lords EU Committee, 2017: 67–72). The collapse of the Northern Ireland Executive prior to the triggering of Article 50 rendered a four-party agreement within the JMC impossible. Such agreement was in

any event unlikely, given the divergent positions and political mandates of the governments. Yet, the JMC(EN) process also laid bare the challenges of operating IGCs in the UK in the context of perceived and actual constitutional hierarchy. The UK Government recognizes the right of the devolved governments to be consulted with respect to the negotiations, among other stakeholders, but not to co-determine the UK position, nor to exercise veto power over any aspect of the process (see HM Government, 2016; David, 2017: Q7). Moreover, the Secretary of State's testimony to the Lords EU Committee, and the interventions of senior Scottish Government ministers, reveals the extent to which the politics of independence overshadow intergovernmental relations, especially on high salience issues. The competing nationalist agendas of the UK and Scottish governments, in particular, inhibit the development of common goals, trusting relationships and shared confidences.

### **Concluding remarks**

Intergovernmental relations in the UK are shaped by the nature of the UK constitution, the asymmetric distribution of power and the territorial politics that drive the evolution of devolution. The piecemeal and ad hoc approach to constitutional reform emerged without much consideration to the formal mechanisms that may be required to manage the evolving system of multi-level government. Successive UK Governments, in collaboration with the devolved governments, established and utilized IGCs as and when needed. Day-to-day informal interactions were thus supposed to be the norm, and for the first eight years of devolution, they were. With the exception of its European format, the JMC was moribund. Neither the UK nor the devolved governments saw the need to use it. Informal interactions were supported by party political congruence; governments were not competing against one another electorally, ideologically or territorially, and ministers mostly knew one another through party channels. Generous financial settlements also contributed to minimizing intergovernmental tension.

From 2007 onwards, concurrent developments drew attention from governments, parliaments and observers to the need for more robust IGCs, and although still sporadic when contrasted with more institutionalized systems, they have seen increased use since then. With regard to the five purposes of IGCs set out in the analytical framework above, they are less focused on negotiating agreements and coordinating action, and more on information-sharing and, where necessary, resolving disputes. But even here, informal channels are preferred to achieve these ends. From the UK Government's perspective, the JMC is a forum that can enable it to consult with and update the devolved governments and consider their points of view. These viewpoints may inform policy development, but they are unlikely to determine it. The devolution settlements have sought to make a clear distinction between

the respective jurisdiction of each level of government and, despite obvious policy interdependencies, the scope for genuine co-decision has been limited.

Within multilateral IGCs, in particular, the constitutional superiority of the UK Government and the relative weakness of the constitutional authority of the devolved governments has tended to overshadow the non-constitutional resources the latter could bring, and so limiting the extent to which they could exert meaningful influence. It was against this backdrop that we saw an intensification of the JMC process in the context of Brexit. Yet, expectations that this would lead to more focused, more collaborative and more equal deliberations and decision-making were dashed by the experiences of its first few months. The absence of federalism is not only apparent in the structures and distribution of constitutional authority. It is also apparent in the culture that pervades IGR. For the most part, the UK Government neither thinks nor acts like a federal government. Recent initiatives to foster understanding of devolution across Whitehall notwithstanding (Rycroft, 2015), the recognition within at least some federal states of the need to *work at* maintaining the federation through regular intergovernmental communication and negotiation has been lacking within the UK Government for much of the period of devolution.

Reforms to the devolution settlements are the notable exception, however. Although formally a matter for the UK parliament alone, the Sewel convention has given the devolved institutions informal authority, augmented by their niche expertise and sustained interest in devolution matters. As a result, they have been able to exert real influence over the scope of revisions to devolved powers, both informally and especially in bilateral IGCs such as the Joint Exchequer Committees. As such, for the devolved governments, the bilateral IGCs have served a purpose of both exercising shared rule and defending and maximizing their jurisdictional autonomy, with varying degrees of emphasis.

Although the Welsh and Scottish Governments have worked collaboratively in airing their dissatisfaction with the intergovernmental processes, especially in relation to Brexit, their broader motivations are not as aligned. Constitutional hierarchies and resource imbalances mean that the need for devolved governments to engage with and access the UK Government is greater than the latter's need to engage with them. But intergovernmental engagement matters most to the Welsh Government, which may explain why it has taken a lead on advocating reform. Constitutionally, economically and politically, it is weaker than its Scottish and Northern Irish counterparts, with a weaker voice and no exit strategy that could add leverage to intergovernmental negotiations. This may explain why strengthening shared rule through a significant institutionalization of intergovernmental relations – as proposed recently (Welsh Government, 2017) – has been a far greater priority for the Welsh Government than for its counterparts. For its part, the Scottish Government's participation within IGCs, especially under the SNP

administration, has been motivated by its desire to defend territorial interests and maximize its decision-making autonomy. These predominantly nationalist motivations can act as a barrier to co-decision and compromise, limiting the scope for the development of processes of shared rule.

It is impossible to isolate the distinctive effects on the purpose and dynamics of IGCs of changes which occurred simultaneously. Party political incongruence between the administrations, the election of the Scottish National Party, the intensity of constitutional debates before and after the Scottish independence referendum, the restoration of devolution in Northern Ireland, the effects of fiscal austerity on territorial finance, and new constitutional reforms have all shaped the development and dynamics of intergovernmental relations. These political and constitutional developments resulted in greater use of IGCs, but also exposed their shortcomings and heightened dissatisfaction, especially among devolved governments. Finding mechanisms to facilitate intergovernmental cooperation between the UK's governing administrations to their mutual satisfaction remains one of the biggest challenges in UK territorial politics.

## Notes

1. The Northern Ireland Assembly was established in 1999, following the 'Good Friday Agreement' which was endorsed by the UK Government, the Irish Government and eight political parties in Northern Ireland (excluding the DUP, which has been the leading Unionist party, and largest party in the Assembly, since 2007). The Agreement was also backed by popular majorities in separate referenda in Northern Ireland and the Irish Republic – the latter endorsed an amendment to the Irish constitution which permitted the Agreement's ratification. Amid ongoing difficulties in securing peace and conflict resolution, the Assembly's early years were dogged by periods of suspension: between February and May 2000; 24-hour suspensions in August 2001 and September 2001; and from October 2002. A transitional assembly was set up in October 2006, paving the way for the restoration of devolution in 2007. A period of relative stability followed until 2017, when the government collapsed amid a financial scandal.
2. I use the term 'intergovernmental council' or IGC to conform to the terminology of this special issue, though the term itself does not feature prominently among scholars or practitioners of UK IGR.
3. In line with the Concordat, ministers from the devolved governments can be invited to attend EU Council meetings as part of the UK negotiating team. Whereas for Agriculture and Fisheries Council meetings, attendance was commonplace, it was more sporadic or rare in others (informal email exchange with Scottish Government official, August 2017).
4. A separate parallel process led to increased fiscal transfers and a pledge to devolve corporation tax in Northern Ireland, but this was part of a broader set of discussions between the Northern Ireland Executive, the UK Government and the Irish Government to address a fiscal crisis, confront paramilitary activity, and stabilize devolution and peace.

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