THE EUROPEAN MODEL OF GOVERNANCE BEYOND EUROPE:

THE APPLICABILITY OF THE CONCEPT OF MULTI-LEVEL GOVERNANCE TO THE COMPARATIVE STUDY OF INTERGOVERNMENTAL RELATIONS IN PARLIAMENTARY AND PRESIDENTIAL FEDERATIONS

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Section 1: Introduction: Recent Theoretical Contributions to the Comparative Study of Intergovernmental Relations

This paper is intended both to incorporate parts of our earlier paper presented to the Santiago IPSA World Congress and to revise and expand on that paper (Stein and Turkewitsch 2009). We argued in it that the concept of multi-level governance (MLG), most closely associated with the process of intergovernmental relations in the European Union, is useful for the comparative analysis of intergovernmental relations (IGR) in federations because it encourages a focus on the vertical and horizontal governmental and non-governmental policy-making structures at different levels and in different sectors of the overall intergovernmental process. It also places greater emphasis on cooperative as opposed to conflictual aspects of intergovernmental relations.

These patterns of consultation and coordination in parliamentary and presidential federations were most fully and innovatively sketched by an eminent authority of comparative federalism, Ronald L. Watts, of the Institute of Intergovernmental Relations, Queen’s University, Canada. In chapter 7 (Intergovernmental Relations) of his pioneering study, Comparing Federal Systems, first published in 1996 and now in its 3rd edition (2008), he identifies “executive federalism” as the dominant pattern of intergovernmental relations “especially characteristic of parliamentary federations”. He defines “executive federalism”, in Donald Smiley’s original terms, as an “ongoing pattern of relations between elected executives and appointed officials of the two levels of government.” (Smiley 1980: 92). But he adds that in parliamentary federations “first ministers and cabinet ministers responsible to their legislatures tend to predominate within both levels of government.” (Watts 2008: 118). He also points out that the institutions and processes of executive federalism “have usually developed pragmatically rather than by constitutional requirement”, and “in such federations as Canada, Australia, Germany, India and Malaysia, they range extensively from meetings of officials to councils of ministers and first ministers’ meetings.” He notes that “where executive federalism” has been the characteristic mode of intergovernmental relations, governments have each established their own internal specialized intragovernmental organizations to coordinate their relations with other governments within the federation.” Finally, he cites the Council of Australian Governments, first established in 1992, and the cooperative framework of intergovernmental relations established in Canada in 1999 by the Social Union Framework Agreement (SUFA) (but not including Quebec) as two recent examples of the institutionalization of executive federalism in parliamentary federations (Watts 2008: 119).

Interestingly, Watts argues that “among contemporary federations, executive federalism in intergovernmental relations is probably the most extensively developed in Australia and Germany”, rather than Canada, even though this concept was initially framed and disseminated by Canadian academics. He also considers the Bundesrat to be the principal current venue of Germany’s executive federalism, and the activation in the 1990s of the constitutionally defined Inter-State Council in India to represent an important recent formal institutionalization of this pattern of intergovernmental relations in India.

Watts does not provide as detailed or comprehensive an analysis of patterns of intergovernmental relations in “presidential federations”. Rather than describing these systems as “presidential federations”, he refers to them as systems “where there has been a separation of legislative and executive powers within each [level of] government of a federation.” He includes as case examples of this type of federation the United States, the Latin American federations (Brazil, Argentina, Mexico and Venezuela), and Switzerland. He views the dominant and most representative patterns of intergovernmental relations in such a federation to be “more dispersed”, and characterized by “a variety of channels between executives, legislators and administrators in different governments, often in crisscrossing patterns.” Particularly notable among these interactions are the lobbying activities by representatives of the unit or state governments directed specifically to federal legislators (Watts 2008: 119).
Another rather different pattern of intergovernmental relations discussed by Watts involves formal interactions that are conducted exclusively among the governments of constituent units or states, and which exclude the central government. This type of arrangement is sometimes referred to as “federalism without Washington” (in the U.S.) or “federalism without Berne” (in Switzerland). Also included by him in this category are regular meetings of recently institutionalized unit-level intergovernmental structures such as the provincially and territorially constituted Council of the Federation in Canada, established in 2003, and functionally equivalent institutions in Australia and Switzerland (Watts 2008:119-120).

Watts also highlights more informal patterns of intergovernmental relations in these federations, particularly those of the parliamentary type. For example, he points to a tendency in federations in which the same party is dominant in both levels of government for intergovernmental issues to be addressed within the informal structures of that party itself, rather than in more formal intergovernmental channels. Examples of this pattern may be found in the initial decades of the Indian federation, in which the Congress Party tended to win legislative majorities and to form the government (or a major part of the governing coalition) at both the central and state levels. A similar informal intergovernmental pattern has also operated in Malaysia and South Africa. This use of informal party structures to negotiate intergovernmental issues had also been previously identified by William Riker in his comparative study Federalism (1964: chapter 5).

This initial effort by Watts to compare cross-nationally the patterns of intergovernmental relations in federations, while valuable and innovative, is nevertheless quite sketchy and limited in scope. And although he does include a short (2 ½ pages) chapter on Multilevel Federal Systems (chapter 9) in Comparing Federal Systems, it is even briefer and more sketchy than his chapter 7 on Intergovernmental Relations. While touching on the impact of “supra-federal organizations” and “local governments” in that chapter, he does not include in it any additional contributions to existing theories of multi-level governance (MLG), or relate his comments in that chapter to his earlier analysis of intergovernmental relations.

Watts has laid the groundwork for a more comprehensive and more nuanced comparative analysis of patterns of intergovernmental relations (IGR) in “parliamentary” and “separation of powers” federations that exist today. The initial theoretical and empirical insights offered by him should now be subjected to more extensive empirical examination and application, and more critical evaluation. The currently functioning federations categorized by him as clearly falling into one or another of the traditional regime or institutional types of liberal democracies should be carefully studied both theoretically and empirically and compared, and then reclassified. And new “emergent” federations that have recently been established should be placed alongside older and more “mature” federations for further comparative scrutiny and possible projection of their future paths of development. We began this comparative process in an earlier paper presented to an IPSA RC 28 Conference in Berlin in September 2008 (Stein-Turkewitsch 2008b), in which we compared two prototypical “mature” federations of each regime type distinguished by Watts, Canada as the “parliamentary federation” and the United States as the “presidential federation”. At the Santiago IPSA Congress in July 2009 we continued this comparative analysis by comparing seven other federations, three of the “parliamentary” type (Australia, Germany and India) and four of the “presidential” type (Brazil, Argentina, Mexico and Nigeria). The first two, like Canada, were characterized as “mature” federations, and the third, India was viewed as an “emergent” parliamentary federation. All four “presidential federations” were considered to be “emergent” presidential federations. By “emergent” we mean not fully politically formed or developed.

In section 2 (Other Recent Theoretical Contributions to the Study of Intergovernmental Relations in Federal Systems) we will review two other theoretical and comparative contributions to the study of
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intergovernmental relations in federal systems that have appeared since Watts first outlined his ideas on this subject in 1996. The first will be drawn from recent publications by another author, R. Daniel Kelemen and the second will be based on two of our earlier papers on federalism, intergovernmental relations and multilevel governance. The first of our two papers compares the patterns of intergovernmental relations in two prototypical mature parliamentary and presidential federations, Canada and the United States (Stein and Turkewitsch 2008b). The second conducts a comparison among seven other “parliamentary” and “presidential” federations: Australia, Germany, India, Brazil, Argentina, Mexico and Nigeria. We will attempt to summarize and distil from these comparisons the main theoretical propositions that have been framed thus far about the patterns of intergovernmental relations in federations of both the parliamentary and presidential types. In sections 3 (Prototype of the Emergent Parliamentary Federation: India) and 4 (Prototype of the Emergent Presidential Federation: Brazil) patterns of Intergovernmental Relations in an “emergent” Parliamentary Federation: the case of India) and section 4 (Patterns of Intergovernmental Relations in an “emergent” Presidential Federation: the case of Brazil), we will describe empirically, compare and present some of our further theoretical insights about the patterns of intergovernmental relations in these two prototypical “emergent” federations. In section 5 (Analysis and Conclusions) we will attempt to frame some further theoretical generalizations about the patterns of intergovernmental relations in parliamentary and presidential federations, based on our comparative analysis of India and Brazil in the two preceding sections of this paper, and on our earlier comparative analyses of other cases. We will highlight again some of the shared features or commonalities in patterns of intergovernmental relations of parliamentary and presidential federations and the major differences between them. We will also examine other factors besides regime-institutional features that may have shaped these intergovernmental patterns, and speculate on how they seem to interact in this process. Thirdly, we will consider whether these two prototypical cases of “emergent” federations (as we previously did for the prototypes of “mature” federations, Canada and the United States), are capable of drawing on the theory and experience of multilevel governance (MLG) structures in the European Union and of adapting them to their own federal systems. Finally, we will consider what implications our study may have for the evolving theory and concepts of institutional and multi-level governance, as described in the writings of Pierre and Peters (Pierre and Peters 2005), and for any general discussion on this topic in our IPSA Luxembourg conference panel.

Section 2: Other Recent Theoretical Contributions to the Study of Intergovernmental Relations in Federal Systems: a summary analysis

a) Kelemen’s Regulatory Federalism in “Fused” Power and “Fragmented” Power Federations

A Harvard University constitutional law specialist, R. Daniel Kelemen, with a particular interest in regulatory law, has also conducted a comparative study of what he calls “regulatory federalism” in “fused” and “fragmented” power systems (Kelemen 2000, 2004, 2007, 2009). He argues that in parliamentary federations, especially those of the executive-dominant Westminster type, the combination of a fusion of executive-legislative powers at both levels of the federal system and an upper legislative chamber with weak constituent unit representation at the national level tends to produce a decentralized pattern of center-state relations in most intergovernmental policy areas. This appears to be the case both for intergovernmental legislation in which a high degree of what Kelemen calls “discretionary federalism” is used in enabling legislation and delegation, and for intergovernmental regulation in which the central legislature sets rules for implementing informal intergovernmental agreements.

A major explanation for the decentralized pattern and discretionary style of intergovernmental decision-making in these circumstances, according to Kelemen, is that this kind of flexibility and decision-making latitude at the central level of a “fused” federation enables its political executive to maintain its dominant policy-making role over other structures operating at the same level (such as the
national legislature and judiciary), and over governments at the constituent unit or state level of the federation. But it is willing to delegate those discretionary powers to the unit governments at the implementation stage of intergovernmental legislation and regulation, since its own administration is not large, varied enough, or sufficiently attuned to local conditions to make detailed and complex decisions of policy application and implementation for its entire national population across a large and heterogeneous geographic environment (Kelemen 2004:20).

However, the pattern of intergovernmental legislation and regulation in “separation-of-powers” (or presidential) federations, according to Kelemen, is quite different. This is especially the case in those federations in which power is sharply divided among competing structures both horizontally (i.e. at the same level of government, such as the political executive, legislature and judiciary) and vertically (i.e. in separate structures operating at two different levels of the federation, or in structures at the same level that directly represent these different levels). In Kelemen’s view this type of federation tends to produce a more centralized pattern of intergovernmental policy-making and regulation, which he describes as “non-discretionary regulatory federalism”.

Kelemen explains this more centralized and less discretionary style of intergovernmental relations largely in terms of the particular goals of the federal legislature in such federations. He argues that this legislature tends to enact detailed, action-enforcing statutes and regulations because it desires to limit or prevent the exercise of too much discretion by the institution representing its major competing governmental branch, the federal executive, and by state governments. In pursuing this objective, it also seeks to forge an informal alliance with the federal judiciary; it does this by enabling the courts, in their traditional function of interpreting detailed legislation or regulations, to exercise substantial constraining power on these same two structures (the federal executive and state governments). The result is that there is a high degree of judicialization of intergovernmental policy-making in such federations, and the federal executive is constrained from overturning easily any judicial interpretations of intergovernmental statutes and regulations (Kelemen 2004: 18).

Kelemen classifies Canada and Australia as each approximating the ideal-type of a “fused” or “concentrated” power federation in its intergovernmental policy-making. He considers the United States to be an example of the ideal-type of a “fragmented” power federation because of the numerous veto groups in its governmental decision-making process. And he cites Germany, due to its strong representation of Länder governments in its upper legislative chamber, the Bundesrat, as an example of a federation which falls approximately halfway between these two ideal-type federations. Somewhat surprisingly, however, he categorizes the European Union in its intergovernmental policymaking, like the U.S., as an example of the ideal-type of “fragmented” power federation, rather than, like Germany, as a halfway house or “concentrated” power federation (Kelemen 2004: 21).

Kelemen also introduces a developmental dimension in his description of the patterns of intergovernmental relations in the ideal-type federations. He argues that in the early stages of these intergovernmental processes, the differences in the patterns of regulatory federalism are most marked. But they become more indistinct and convergent over time and at later stages in the intergovernmental relations process. This dynamic tends to be propelled by the initial policy differences between “lax states” and “strict states” in a given regulatory field. Kelemen believes that the federal government naturally seeks to reduce or minimize these policy differences, since it is motivated by “the politics of competence” (Kelemen 2004: 13-14). This includes recognition by the federal government of both the need to guard against bureaucratic and political “drift,” and the need for it to capitalize on the durability and “stickiness” of legislation from one government or administration to the next, even where there is a change in its partisan composition (Kelemen 2004: 16).
Kelemen’s theoretical argument concerning the pattern of intergovernmental relations in federal systems, although occasionally quite imaginative and suggestive, like that of Watts, is also fraught with serious ambiguities and weaknesses. In the first place, although he describes it as a “theory of regulatory federalism”, it is not clear whether he intends it to apply only to regulatory policy-making, or to include statutory legislation as well. For example, in a number of places in his argument he describes his theory as intended to encompass legislative statutes and enabling laws, and not merely regulatory rules. Secondly, he lays far too much stress on the extent to which the political behaviour of leading actors or representatives of political institutions is governed by a desire to augment or maximize the power of that body in its ongoing political struggle with other structures or institutions perceived to be in competition with it. Thus the federal legislature in a “fragmented federation” is portrayed as framing detailed regulatory rules and implementing legislation largely in order to prevent the federal executive or state governments from exercising excessive authority over a given intergovernmental policy matter. However, the federal legislature’s concern for detail and precision in legislation and regulation might be motivated just as strongly by a desire to ensure that the intent and content of an intergovernmental agreement are actually followed in the statutory legislation or regulation, rather than distorted or purposely undermined. Thirdly, it is unclear why the federal executive in a “fused” power federation would be willing to surrender so much discretionary authority to state governments at the implementation stage of intergovernmental policy agreements if its major concern is to maintain control of the policy agenda that it is seeking to advance in that area.

Other important criticisms of Kelemen’s theory have been leveled by Bossmann Asare, Paul Cairney and Donley Studlar in a paper entitled “Federalism and Multilevel Governance in Tobacco Policy”, which was recently published in the Journal of Public Policy (January 2009). They point out that by defining federalism and intergovernmental relations in terms of only two vertical structures and the “politics of competence” exercised by them, Kelemen creates an oversimplified and excessively “top-down” perspective on the process of policy-making in federal systems. In their view, in a “federal-like” system such as the United Kingdom, there may be more “bottom-up” innovative policy-making in the devolved regions of the UK in, for example, tobacco control policy or environmental policy than Kelemen’s framework allows for, since “that structure tends to emphasize federal-like structures rather than behaviour.” In the United Kingdom, although there is no constitutionally established court to act as a mediator between the center and the autonomous regions, the conventional practice thus far has been “for the central government to accept ‘bottom-up’ policy proposals by the regions, because the national government in the UK respects most decisions made in the devolved territories.” (Asare, Cairney and Studlar 2009: 83).

Secondly, they note that in the European Union the intergovernmental process is much more complex than Kelemen suggests. In their view it is more like that of Germany (i.e. occupying an intermediate or halfway position between the ideal type of a “fused power” federation of the Westminster-style parliamentary government and the ideal type of the “fragmented power” federation such as the United States. Their rationale is that the European Union has a more fragmented and less concentrated institutional structure and policy process at its pan-European or supranational level than do “concentrated power” federations of the Westminster style parliamentary system like Canada and Australia. But it also has a stronger representative and direct policy-making role for its constituent units, the European nation-states, in the pan-European intergovernmental process than do “separation of powers” federations like the United States.

Thirdly, they charge Kelemen with drawing too sharp a distinction between the relationships among the member states in the EU processes and those within each of the member states, including the regions and urban localities. In their view, he neglects the influence that federations or “federal-like” nation-states such as Germany and the UK that are EU members can exercise on the policy-making
processes and behaviour of the EU as a whole, and vice versa. He also fails to take account of the impact on the EU of regions and urban governments within those individual member-states. The degree of fragmentation or concentration of power within the EU may be simultaneously shaped or influenced in different directions by corresponding or different configurations of power within each of their individual member states and sub-national regions and local governments. The overall vector or outcome of these conflicting forces is difficult to determine.

Finally, and most important, Asare, Cairney and Studlar observe that within the “shifting and uncertain patterns of governance” of the EU system, the Brussels-based supranational government is “just one actor upon a contested stage” (Bache and Flinders 2004). They call for closer academic attention to “policy networks, the role of interest groups, and the blurred boundaries between government and non-governmental action.” (Asare, Cairney and Studlar 2009: 84). They also note that the theoretical focus of multilevel governance (MLG) differs from that of federalism in contending that states and international organizations are caught in a web of interdependencies. The flexibility of the MLG framework is that “it allows intergovernmental processes to be explored empirically in different and contrasting ways.” They include “a relatively stable set of intergovernmental relationships among a comparatively small number of actors, with policy responsibility allocated according to territory, and overlaps between jurisdictions minimized (i.e. Hooghe & Marks’ Type 1 MLG). But they also embrace a “relatively complex and fluid process, with the delegation of responsibility related to the nature of the policy (i.e. its functionality) rather than its territoriality (i.e. Hooghe & Marks’ Type 2 MLG). In other words, in studying intergovernmental relations in the EU, Asare, Cairney and Studlar call for greater “focus on the balance of authority among multiple governmental levels rather than, as in Kelemen’s work, “an either-or struggle between only two” (Asare, Cairney and Studlar 2009: 55).

We agree with these co-authors (AC&S) that “although ‘regulatory federalism’, in Kelemen’s terms, has the advantage of parsimony, one of the problems in theorizing federalism in this way has been the differences in policy authority in such systems worldwide. The EU, with its level of suprastate authority, is unlikely to behave like state-centered federal systems for all policy areas [or perhaps even for two]. The very design of the EU gives it different amounts of competence in various policies.” There is an increasingly large empirical literature on policy-making in the EU to support this contention (See for example, Leibfried and Pierson, eds. 1995).

b) Stein and Turkewitsch (2009) on Intergovernmental Relations and Multilevel Governance

In a revised version of our 2008 paper, which will be published in a Handbook on Multilevel Governance later this year (Enderlein, Wälti and Zurn (eds.), Edward Elgar, forthcoming) we argued that the concept of multilevel governance, recently devised as an analytical tool applicable to the unique structure and pattern of intergovernmental relations in the European Union, can also contribute to an understanding of recent developments in intergovernmental relations in Canada and the United States. We described the changing patterns of intergovernmental policymaking that have evolved historically in these federations, particularly in three policy areas: fiscal policy, health care policy and environmental policy. And we compared concepts of intergovernmental relations drawn from traditional studies of federalism with newer models and descriptions of federalism and intergovernmental relations in these countries, including those that are based on a concept of multi-level governance (MLG).

As we stated above, Watts failed to provide a clear evolutionary or dynamic concept of intergovernmental relations for either “parliamentary” or “separation of powers” federations. He did observe, however, that
“the entire system [of intergovernmental relations] has evolved over a lengthy period of time, primarily as a result of informal and ad hoc political structural changes.” And he noted that “the rules for such a system are usually undefined, and there are no explicit provisions or detailed descriptions of their existence, status, or procedures of operation in any written constitution or government document.” (Watts 2008: 118).

In an earlier 2008 paper (Stein and Turkewitsch 2008b) we argued that in Canada these structural developments paralleled the evolving historical pattern of intergovernmental relations. There were initially, in the first half century after Confederation in 1867, intermittent and irregular communications and consultations among separate “watertight” compartments of government. A similar pattern of what was later called “dual federalism” operated through most of the nineteenth century in the United States. However this dualistic pattern of intergovernmental relations began to break down in both countries in the first half of the twentieth century. After World War II a full-fledged period of “cooperative federalism” between federal and provincial/state ministers and officials evolved in the two countries. This involved generally amicable consultations and discussions over the sharing of policy responsibilities in most areas of government, as welfare state programs were instituted.

At first during this period of “cooperative federalism” the federal government and officials in both countries clearly dominated in such meetings over their provincial/state counterparts, and the main direction of intergovernmental policy-making was set at that level. But after 1960 the evolutionary paths of intergovernmental relations in the two federal systems began to diverge quite sharply. In Canada the provincial governments became more vocal in their demands for greater autonomy from the central government, led by Quebec, and for increased financial support to meet their growing policy expenditures in areas of provincial jurisdiction. The atmosphere in federal-provincial meetings changed from relative amicability to one of frequently strong disagreement and heated conflict. This marked the beginning of what most specialists on Canadian federalism have described as “executive federalism”. It was characterized by a mode of joint intergovernmental policy and decision-making that most closely resembled the conflictual style of diplomatic negotiations at the international level. In the United States, on the other hand, despite the substantial growth in the number of expert intergovernmental bureaucrats at each level of the federal system, the political executives and their officials at the national level continued to dominate in the intergovernmental sessions. Moreover, intergovernmental relations were increasingly conducted in the U.S. via direct lobbying by states’ representatives of members of the US Senate.

This divergent pattern of intergovernmental relations in the two countries operated between 1960 and 1980. At that point some aspects of a renewed convergence in the mode of conducting intergovernmental relations began to emerge. In Canada a further decade of highly conflictual bargaining among first ministers during a period of intense constitutional reform negotiations from 1980 to 1992 produced relatively little joint agreement. Beginning in the early years of the next decade, the psychological environment of intergovernmental meetings shifted from conflict and widespread animosity among intergovernmental representatives to a more positive attitude of collaboration and partnership. In the United States, a more harmonious phase in intergovernmental relations, despite the simultaneous erosion and dismantling of what were considered by some to be excessively bureaucratic and statist intergovernmental organizations and agencies, was ushered in by conservative Republican President Ronald Reagan. His more decentralized attitude toward federalism and conciliatory posture toward the state governments was embodied in what he described as his concept of “new federalism”. A similar attitude was also promoted during the presidency of his Republican successor, George H.W. Bush, and later even by a Democratic President, Bill Clinton. These trends toward fostering greater partnership in intergovernmental relations led inevitably to the extension of the pattern of intergovernmental relations both vertically and horizontally in the two countries. Each took greater steps toward vertical expansion of their modes of intergovernmental action to embrace more supranational and subnational structures than had previously been the case. And they also broadened their horizontal partnerships to include private
sector interest groups and third sector not-for-profit organizations in intergovernmental policy-making. There are other indications that the patterns of intergovernmental relations within the European Union that political analysts have designated as forms of multilevel governance have begun to be adopted as useful frameworks for analyzing future intergovernmental relations in the two countries. In fact some distinguished experts of intergovernmental relations in those federations have already begun to comment on these developments (see, for example, in Canada, Meekison et al., eds., 2004:23, and in the United States, Conlan and Posner 2008:4)

In our Santiago IPSA Congress paper, as stated above, we took some further steps toward the comparative analysis of intergovernmental relations in parliamentary and presidential federations by comparing seven other parliamentary and presidential federations. We found some common characteristics manifested exclusively in the parliamentary federations that we analyzed, and some commonalities exhibited only in the presidential federations that we studied. We also found some features shared by both types of federations, which we will discuss in greater detail in section 5 below.

For example, in the parliamentary federations that we compared there was a common pattern of centralized executive federalism in which intergovernmental decision-making was largely conducted jointly by the two major levels of government behind closed doors, was largely unaccountable and uncommunicative to other government bodies such as elected legislatures and courts, was frequently hierarchical in its patterns of decision-making behaviour, and was predominantly conflictual and “bargaining-oriented” in its style of interaction. It also tended to include only public or governmental actors such as cabinet ministers and top public servants, and to shut out of this intergovernmental process the representatives of interest groups, social movements, public opinion and the media. This pattern tended to emerge in all parliamentary federations particularly after World War II, as their governments became more involved in state-interventionist economic management and welfare-state policies, and the scope and complexity of interactions between the two major levels of government greatly increased. In parliamentary federations, unlike in presidential federations, these expanded interactions are concentrated in the top executive and administrative levels because the fusion of executive and legislative structures that exists in all Westminster-style parliamentary governments prevents elected legislatures in those systems from operating as an effective check on executive power. This pattern, as has been widely acknowledged by most political observers, has generated problems of accountability, transparency and “democratic deficits” in all such systems. And these problems are clearly more evident in parliamentary federations than in presidential federations.

However, the extent to which constituent units have a direct or indirect representation in second legislative chambers appears to have a mitigating impact on the democratic deficit problem in parliamentary federations. This seems to be particularly true of parliamentary federations that have upper houses comprised of provincially-appointed representatives who are involved in national and joint intergovernmental decision-making, such as the German Bundesrat. But it may also be the case to some degree for upper houses in other parliamentary federations composed largely of elected regional representatives, such as the Australian Senate or the Indian Rajya Sabha. We will examine this aspect of intergovernmental relations more fully in our analysis of Indian federalism in the next section of this paper.

In the emergent presidential federations that we compared, their less concentrated and more pluralistic governmental structures associated with their horizontal separation of powers tend to favour intergovernmental patterns of decision-making that are somewhat more open and transparent, more cooperative, and more egalitarian in decision-making behaviour. They are also more open to lobbies of interest groups, social movements, and public opinion and media representatives. In that way, they resemble patterns of intergovernmental decision-making that we found in their “mature” presidential
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federation counterpart, the United States. In that system patterns of intergovernmental action focus on the upper house of Congress, the Senate, and the views of state executives and legislatures, as well as interest group and media lobbies, are mediated largely through that body. However, even these systems, particularly when they have experienced alternative and lengthy periods of authoritarian civil or military rule, exhibit a propensity for concentration of governmental decision-making power in their national executives.

In our earlier (Stein and Turkewitsch 2008b) paper, we also argued that the changing patterns of intergovernmental relations in Canada and the United States might be best understood by modifying European multilevel governance concepts to fit the North American context. We therefore recommended that:

1) There should be increased focus in the comparative study of intergovernmental relations in Canada and the United States on those vertical and horizontal governmental and non-governmental policy structures that are generally omitted in traditional studies of federalism in North America, but that are now normally included in studies of multilevel government policy-making in Europe. These include structures operating at the supranational regional and international levels, such as the European Commission, Council, Parliament and Court, and in the World Trade Organization, World Bank, International Monetary Fund, and the United Nations.

2) There should be greater emphasis on macro-level concepts drawn from MLG studies in Europe such as “networks” and “webs” of interaction.

3) There should be increasing integration in intergovernmental studies in North America of federal and provincial/state interactions with urban and municipal governments in both countries.

4) There should be further refinement, prior to any application to studies of intergovernmental relations in North America, of the complex, fluid, but rather vague and functionally-oriented Type 2 MLG concept proposed by Marks and Hooghe (2003), and endorsed recently by Asare et al. (2009), as we noted on page 6 above.

5) There should likewise be incorporation into these MLG applications of recent modifications and extensions of the concept, such as those proposed by Bache and Flinders (2004), Gualini (2004) and Peters and Pierre (2004). No individual definition of the MLG concept should be given priority.

6) Somewhat closer attention should be given to how the European Union has managed to establish what appears to be a more cooperative and collaborative mode of intergovernmental relations, including examination of its interlocking structure, its more collectivist and communitarian continental European federal cultural traditions, etc.

7) An effort should be made in the application of the MLG concept to intergovernmental relations in North America to avoid unanimous or near-unanimous voting requirements in intergovernmental policy-making that might lead to what Fritz Scharpf has aptly described as “a joint decision trap” (Scharpf 1988) and a tendency to foster a “race to the bottom” in intergovernmental decision-making.

Finally, we called in that paper for an extension of the somewhat limited North American and European Union intergovernmental academic focus thus far to other federations of the “parliamentary” and “presidential” (“separation of powers”) type, and perhaps also to hybrid forms of federalism that exist in the current international political system.
Section 3: The Pattern of Intergovernmental Relations in “emergent” Parliamentary and Presidential Federations: India and Brazil

a) Introduction

There are several questions that we will address in this section (section 3) or in the next section (section 4), and attempt to answer comparatively. They are:

1) How did the systems of intergovernmental relations originate in the other “parliamentary federations” (besides Canada) whose patterns of intergovernmental relations we are comparing in this paper? Were their IGR systems initially identified in their original written constitution? Or were they, like that of Canada, largely undefined in that constitution and other government documents? Was their constitutional origin based at least in part on any other “parliamentary” or “presidential” federations? And what was the relative balance between the central and constituent unit governments in the formal division of legislative powers between the two levels of government?

2) Did their patterns of intergovernmental relations evolve historically in parallel with the changing socio-economic and political structures of federalism in their countries? Were these structures largely ad hoc and informal in nature? Did these federations manifest ideal-typical intergovernmental relations patterns similar to those of Canada and the United States, the two pioneers of “parliamentary” and “presidential” federations (as noted in section 2 b) above)? For example, did these evolutionary patterns include “dual federalism” (“watertight compartments” or “arms-length” intergovernmental relations) similar to those that have been identified in Canada and the United States in the nineteenth and early twentieth centuries; “cooperative federalism” reflecting dominant federal government leadership and financial initiatives; “coordinate federalism” (“executive federalism”) in which the two principal levels of government enjoyed essentially equal legal and political status and engaged in diplomatic-type negotiations; “constitutional federalism,” in which intergovernmental relations designed to achieve constitutional reform were dominant; “collaborative federalism” in which the two levels sought to establish harmonious partnerships; and “multi-level federalism” extending intergovernmental decision-making upwards to the supranational level, downwards to the local level, and outwards to the private or third (non-profit) sector, on the model of multi-level governance (MLG) adopted by the European Union?

3) What are the likely future patterns of intergovernmental relations in these federations? Are multi-level governance (MLG) patterns likely to be combined with current patterns of intergovernmental relations in such federal systems? We will leave this final overriding question until our Conclusion in section 5.

b) The Prototype of the Emergent Parliamentary Federation: India

Historical, Constitutional and Institutional Aspects of Federalism and IGR

The Indian federal system was established in its 1949 Constitution, which was adapted in large part from the pattern of indirect rule or dyarchy established during the British Raj in the Government of India Act of 1935. Both of these Indian constitutions were heavily influenced by the 1867 British North American Act, Canada’s founding constitution. But the Indian constitutional framers studiously avoided any direct reference to “federalism” or “federal government”, since they were anxious to establish a highly centralized and politically dominant central government in order to ensure a modicum of unity for what was a very large and extremely diverse population comprised of numerous religious, caste, ethnic and linguistic groups. As in Canada’s original constitution, the 1947 Indian Constitution assigned exclusive jurisdiction in foreign affairs and defence, and major economic powers to the central government.
The system of federalism and intergovernmental relations that the Indian Constitution brought into being was at best a “quasi-federal” rather than a “federal” one, in which the Union Government could completely overawe the state governments. Central to this pattern of intergovernmental relations was Article 356, providing for President’s rule, which gave the Indian President, on the advice of the Union Cabinet, power to combat alleged political instability or breakdown in a state by removing the premier and government from office and dissolving the elected state legislature at will. It was further enhanced by a provision enabling the Prime Minister to exercise emergency powers and limit the principle of executive responsibility to the elected legislature at both the union and state levels. This “quasi-federal” constitutional status was reinforced by the central role in economic planning and management assigned to the Planning Commission, an arm of the federal government whose members were entirely selected by and composed of Union Government appointees. And Article 263, providing for regular intergovernmental consultations through the Inter-State Council (ISC), remained a dead letter until the early 1990s (Saxena 2002: 3).

India’s evolving pattern of intergovernmental relations was a highly centralized one until the early 1990s; therefore it did not resemble very closely evolutionary trends of “cooperative federalism” in post-World War II Canada, Australia and Germany during this period. The Union Government was completely dominant over the states in all areas of intergovernmental decision-making during the period of one-party dominance under the Congress Party from 1947 to the late 1980s, particularly during the first thirty years of this period, when the Congress Party was able to form majority governments both at the Union level and in most of the states. This center-dominant pattern was reinforced by the frequent resort to President’s rule by the Union Government during the same period, often for purely partisan reasons. Perhaps the most obvious political event reflecting this strong centralist bias was the invocation of Emergency Powers by Prime Minister Indira Gandhi and her Congress cabinet between 1974 and 1976, in response to a serious threat to overturn her government (Singh and Verney 2003: 17). But the gradual decline of the Congress Party at both levels of the Indian federal system and the emergence of a multiparty and coalition pattern of government by the late 1980s produced a watershed change in the pattern of federalism and intergovernmental relations, beginning in the early 1990s. In the first place, the Inter-State Council, the organization that was intended to conduct regular meetings of first ministers, was finally established by the President of India on a regular basis in 1990, and it continued to meet intermittently after that. But “despite there being this enabling constitutional provision, constitutionally-entrenched inter-governmental agencies …have not been all that important and functionally consequential in India” (Saxena 2002: 36). Secondly, although the Indian Supreme Court had been quite deferential in its federal rulings toward the Union Government until the early 1990s, it departed from that pattern in a case involving the invocation of President’s rule in 1994. This was the pathbreaking judgment in S.R. Bommai vs. The Union of India (1994), in which the Court declared that the power of the President to exercise President’s rule on the advice of the Union Executive was not absolute, but could only be done legitimately “on the basis of certain determinable criteria that should bear relationship with the objective realities of the case concerned.” It also established that the elected legislature of a state whose government had been dismissed by the Union government until the central Parliament had voted in favour of that action could not be dissolved until the Union Government had won majority approval of that decision in the Indian national Parliament (Saxena 2002: 33). Thirdly, the permanent shift from one-party dominance to multi-partism in the 1989 Union elections enabled the state governments subsequently to strengthen themselves politically vis-a-vis the central government. Since then, “India has witnessed a strong spell of federal governance that seems likely to continue in the foreseeable future.” (Ibid., p. 35). Finally, the joint Union-State intergovernmental economic agency, the National Development Council (NDC), that, like the ISC, was established outside the constitutional framework by the Nehru Government in 1950, “has become more significant in many ways in the field of economic policy-making and planning than the ISC has been in the political field.” The supporting evidence for this is the fact that “the NDC has met more
regularly [in recent years] to approve five–year plans and annual plans on behalf of both the Union and State governments” (Saxena 2002:36). Therefore, as Singh and Verney have written,

“India is widely believed to have become more of a federation…and more federalism means that power is wielded by other institutions than the Center, notably by the states, but also by numerous interest groups from business to farmers.” (Singh and Verney 2003: 20).

**Partisan Political, Socioeconomic and Cultural Factors Shaping IGR**

The operation of Indian federalism since the early 1990s is best explained and understood in terms of informal political, economic, social and cultural forces, rather than constitutional and regime-institutional transformation. According to Singh and Verney in “Challenges to India’s Centralized Parliamentary Federalism”, “Change in India’s federalism has come about less through the adaptation of formal institutions than through the proliferation of state-based political parties aggregating varied interests based on region, caste, class or views on secularism” (Singh and Verney 2003:1). The most important in this respect was the changed pattern of partisan composition at both the national and state levels. At the national level the earlier dominance of the Congress Party in the Indian Parliament had been replaced by a series of loose national coalitions comprised largely of one of the two leading national parties (the Indian National Congress and the Bharatiya Janata Party) and a number of smaller, state-based political parties. At the sub-national level, the previous pattern of mainly collaborative and allied Congress party governments was supplanted by a complex and variegated array of state-oriented parties generally acting in opposition to the central government. Although India’s flexible constitution facilitated this trend by enabling the center’s governing national coalitions to respond sympathetically to many of the state governments’ demands, it was primarily the trend toward greater decentralization in society and the economy that produced a number of “pivotal events” shaping this transformation in the federal system. These included 1) attacks after 1990 against centralized planning associated with Marxist socialism and the unravelling USSR; 2) adoption in 1990 by the Indian Parliament of recommendations for affirmative action in support of the so-called “other backward classes” (OBCs), the unscheduled castes; 3) the intensification in 1992 of Hindu nationalism by the destruction of a Muslim mosque and demands for a Hindu temple to replace it in 1992; and 4) a balance of payments crisis in the economy in 1991 that encouraged “liberalization” of the Indian economy and the beginning of a marked trend toward adoption of a market economy. These events had several important consequences for the evolution of Indian federalism such as weakening the centralist political forces in the national government, promoting the emergence of more capitalist-oriented state governments and parties, and strengthening the power of lower caste “decentralists” at the state level against upper caste “centralists” at the national level (Singh and Verney 2003: 10-14).

Other Indian political observers stress somewhat different but nevertheless important partisan political, economic, social, fiscal federal, and political administrative factors. For example, Amil Ray and John Kincaid anticipated the trend toward decentralization and the emergence of a de facto federalism in the late 1980s by pointing to the consequences of internal strains and conflicts among “second generation” Congress Party leaders in the 1970s and 1980s. In contrast to the more liberal and conciliatory political attitudes of first generation Congress leaders like Prime Ministers Nehru and Shastri toward opposing state party chief ministers and dissenting Congress state politicians, the second generation of Indian leaders who came to power in the 1970s, such as Indira Gandhi, showed much less tolerance toward them. Their strong reaction, including use of such controversial constitutional instruments as central government dismissal of opposing state governments, led to a much greater emphasis on centralization and regimentation both within the Congress Party and in the federal system itself. At the same time the demands for greater decentralization were increasingly vocalized by new Congress Party elites who emerged from economically prosperous rural areas to challenge the industrial
and professional elites within both the governing party and the country. The ultimate result of this challenge was the decline and eventual fall from both central and state government power of the Congress Party (Ray and Kincaid 1988: 147).

Ameresh Bagchi attributed the “Changing Power Relations between the Centre and the States” largely to the impressive economic growth that followed economic liberalization and the successful moves towards economic decentralization in the early 1990s. But he warned that accentuation of regional economic disparities with decentralization and increasing vertical and horizontal fiscal imbalances threatened the long-term stability of this more decentralized federal system (Bagchi 2003: 21). He also extolled the virtues of a political form of federalism that “protects individual rights and freedoms and promotes democratic values” and is “now widely acknowledged to be the best founding principle of polities around the world” (Bagchi 2000: 3025). But he recognized that “although it was generally agreed that Centre-State relations need rethinking, the directions of desirable change are far from clear” (Bagchi 2000: 3034).

Perhaps the most significant event shaping the changing power balance in India’s federal system was the passage in 1992 of the 73rd and 74th Constitutional Amendment Acts. These acts concerned the creation of state finance commissions (SFCs) to devolve fiscal and financial powers from state to local governmental bodies, including both rural local governments (panchayati raj institutions or PRIs) and urban local bodies (ULBs). According to this legislation, the SFCs were charged with the responsibility of reviewing the finances of these local bodies and suggesting measures for improving their finances, including methods for the distribution of revenues to the PRIs and ULBs on both an equitable and efficient basis. They were also directed to make explicit the underlying principles of their suggested measures (Rani 1999: 1632).

The significance of these amendments for the Indian federal system was that it gave formal constitutional status to a third tier of Indian federalism, that of local governments. This constituted a notable extension of federal powers downwards to the sub-state level, consistent with the norms of multi-level governance. Since that time, several studies of local government in India have been undertaken to explore the extent and effectiveness of this reform and its impact on the structure of intergovernmental relations in that country (See, for example, Rani 1999: 1632-1639, Mathew 1999: 529-534, and Palharya 2003: 1024-1028). Each of these articles has highlighted different aspects of this 1992 local government transformation. However, probably the most persuasive evaluation of it appeared in a 2003 article in Publius by Peter Ronald de Souza, in which he examined its implications in the context of Indian democracy. He concluded that because its implementation was very recent, “the jury is still out on how we should judge the impact of this sweeping change of 1993” (de Souza 2003: 99).

The Perils of Extreme Decentralization and Proposals for Federal System Reform

The emergence of this “real” or working federation has increasingly been viewed by Indian political analysts in positive terms in recent years, since it is seen as more congruent with the historical experiences and underlying social, cultural and economic forces in Indian society. However some observers warn of the dangers of excessive decentralization and even national disintegration in the current transformation of India’s party system. For example, Douglas Verney complains that there is an emerging pattern of “quasi-confederacy” in India’s party system due to the existence of too many small and parochial state-oriented parties and too few genuinely national parties at the union level of government. He calls for the adoption of tighter rules restricting recognition and seat representation of parties with fewer than 5% of the popular vote, competing for fewer than one half (272) seats in the lower house (Lok Sabha), and winning fewer than 5% of those seats. He also recommends that new parties that form in
national elections should be required to forge alliances and be classified as “federal” parties in order to be allowed to retain their representation in Parliament (Verney 2003).

Finally, there have been some recent proposals by academics, political commentators and some politicians to transform India from a “parliamentary” to a “presidential” federation, although they have been emphatically rejected by most Indian political elites. A major reason offered in support of such a reform is that it would ensure that the Indian federal system would become more democratic, more transparent and more accountable to the citizenry than is currently the case. Some analysts have pointed to what appears to be an evolving pattern of “executive federalism” in India’s intergovernmental relations, similar to that which has emerged in more “mature” parliamentary federations like Canada and Australia. In those older federations, major intergovernmental policy decisions are made jointly by cabinet members and top officials of both levels of government behind closed doors, without consulting or answering to their elected legislative houses. However, as noted previously on page 11, although article 263 of the original Indian constitution envisaged the institutionalization of similar practices in that country, it was only implemented on an irregular basis in 1990, and has remained largely inoperative since that time. The recommendation by a Commission on Centre-State relations in India in 1989 that a permanent Inter-Governmental Council be established, comprised of first ministers from both the center and the states, was also rejected (Verney 1989: 253).

Stepan and Skatch have argued recently, in an article that compares parliamentary and presidential systems both theoretically and empirically, that parliamentary systems are more conducive to majority rule and implementation of their programs, more capable of ruling effectively in a multiparty setting, less susceptible to military coups, and more supportive of lengthy political careers that provide valuable experience to political systems than are presidential systems (Stepan and Skatch 1994: 32). However, whether or not one agrees with their argument, their findings cannot be applied to India without taking account of its specific federal institutional characteristics. According to Verney, in order for India to become a genuine “parliamentary federation”, it must reconcile what he sees as an apparent contradiction between the parliamentary principle of strong cabinet government responsible to an elective lower house and the federal principle of formally representing regions or states in intergovernmental policymaking. His proposal is for India to reconcile the two principles by providing for some type of effective regional representation in an elected legislative body operating at the center, such as a reformed Indian upper chamber or Rajya Sabha. He refers to this institutional arrangement as “legislative federalism”, in contrast to “executive federalism”, and describes it as a component of a “hybrid political system”. He also considers it to be superior to most current modes of “executive federalism” in parliamentary federations, since it would “bring decision-making back from the provincial and state capitals and ad hoc peripatetic ministerial conclaves to a permanent legislative institution at the centre.” (Verney 1989: 261). And he views his proposal as a major institutional step for India, taking it beyond its current phase of being only partially federal rather than “fully” federal (Verney 1989: 259).

Section 4: The Prototype of the Emergent Presidential Federation: Brazil

Historical Overview of Intergovernmental Relations

Intergovernmental relations in Brazil have evolved through several distinct phases, alternating between periods of centralization and decentralization (Selcher 1989: 167). The first phase, from 1889 (the year of Brazil’s establishment as a federal system) until 1930 (the end of the “first republic”), was one of “dual federalism” (Selcher 1989: 168). Modeled on the American system, Brazil’s states had extensive autonomy, however this gradually gave way to a “quasi-centralized” system in which the two most powerful states (Sao Paulo and Minas Gerais) were dominant. These two states defined the direction of national politics, and the presidencyAlternating between periods of centralization and decentralization (Selcher 1989: 167). The first phase, 1889 (the year of Brazil’s establishment as a federal system) until 1930 (the end of the “first republic”), was one of “dual federalism” (Selcher 1989: 168). Modeled on the American system, Brazil’s states had extensive autonomy, however this gradually gave way to a “quasi-centralized” system in which the two most powerful states (Sao Paulo and Minas Gerais) were dominant. These two states defined the direction of national politics, and the presidency alternated between them (Selcher 1989: 168). The second phase of...
Brazilian federalism was the 1930-1945 dictatorship of Getulio Vargas. Vargas’ first presidency from 1930-45 began the trend towards centralization of federal power. During the “Estado Novo” dictatorship from 1937-45, President Vargas suppressed the opposition, abolished political parties and legislative bodies, and appointed all state governors (Selcher 1989: 168). During this period Brazil was considerably more centralized (Samuels 2000: 44). In 1945, a democratic system was instituted, popular elections were reintroduced, and the powers of the states were increased. During the “Military Republic” from 1964 to 1985 centralization once again prevailed (Samuels 2000: 44). The military regime reduced the political and fiscal autonomy of state and local governments, limiting the importance of federalism, and Brazil became a “quasi-unitary” state (Selcher 1989: 169). The year 1985 marked the return to civilian government and the beginning of a period of democratization and decentralization.

Institutional Features of Federalism and IGR

Scholars of federalism and IGR (i.e. Afonso 2004; Montero 2001a; Souza 1997) point to Brazil, after the adoption of the 1988 constitution, as one of the most decentralized federations, both in terms of fiscal policy and the division of political power (Afonso 2004: 136). Montero (2001a) also points out that Brazil has a very decentralized party system, in which state governors act as party brokers (Montero 2001a: 17). Souza (1994: 606) suggests that decentralization served to strengthen the legislative and judicial branches, as well as the state and local governments, while at the same time weakening the federal executive. Decentralization in the 1988 constitution also led to an increase in the common responsibilities of the federal, state and local levels of government, and gave the lower levels of government a key role, both in policy-making and implementation. In terms of fiscal policy, decentralization led to increased revenues for state and local governments, and a related reduction in federal revenues (Souza 1994: 606).

Shah suggests that the Brazilian system can best be described as one of “cooperative federalism” (Shah 2007: 371). It has three levels of government; both state and local governments are independent units within the federal system. It is noteworthy that local government is recognized in the 1988 constitution (Shah 2007: 371). Both the state and local governments have independent powers of taxation and shared responsibilities for the provision of public services (Rezende 2007: 77). Alternatively, Souza (1997) argues that decentralization has led to what she terms a system of “peripheralised federalism,” in which subnational issues prevail over national ones (Souza 1997: 6).

Rezende (2007) points out that, in practice, most of the responsibilities in the federation are shared. In social policy, apart from pensions and benefits for private sector workers, which is the exclusive responsibility of the federal government, the responsibility for providing education, health care and other social services are shared by state and municipal governments on relatively equal terms. The federal government has shared responsibility for tertiary education and some aspects of health care (Rezende 2007: 77-8).

As in Canada and the U.S., the influence of the federal government on state government is weak in Brazil (Shah 2007: 371). Samuels describes the current era of Brazilian federalism in terms of the “‘New’ Politics of the Governors.” (Samuels 2000: 44). During the transition to democracy, he suggests that it was state interests, rather than national interests that dominated the concerns of key political actors. State governors emerged as powerful national actors in Brazilian politics (Samuels 2000: 45). Samuels contends that although negotiations between the executive and legislative branches at the federal level determine the outcomes of policies,

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1 Brazil has 26 States, one Federal District “and over 5500 municipalities which enjoy federative status and political, administrative and financial autonomy” (Miranda 2007: 187-88).
...some of the most important political actors who influence national politics work through the legislature, but are not members of the legislature. Executive-legislative relations in Brazil today involve a ‘fourth branch’ of the presidential system: state governors (Samuels 2000: 45).

The strong influence of governors in national-level politics means that federal and intergovernmental disputes spill over into federal level executive-legislative relations. Brazil’s governors are “institutional ‘veto players’ who act from outside the halls of Congress, yet who exert influence within the halls of Congress, and whose primary interest is in subnational, not national politics” (Samuels 2000: 45). Thus, many issues on the agenda at the federal level are influenced by the state governors (Samuels 2000: 45). This is in stark contrast to the relatively minor role of state governors at the federal level in the U.S. context, despite the modernization of the states’ institutional capacities in the 1980s and 1990s, which resulted in a stronger role for the governor within each state’s political structure (Stein and Turkewitsch 2008b).

Stepan (2000) describes Brazilian federalism as “demos constraining,” meaning that states which represent a minority of the population can block the desired policies of states representing a majority of the population, as a result of the “overrepresentation” of states with smaller populations in the upper chamber. He argues that the “equal representation of the different states in the federation produces a system of massive over- and under-representation” (Stepan 2000: 148). According to Stepan’s Gini index of inequality to measure the principle of representation to the upper or territorial legislative chamber, Argentina, Brazil and the U.S. (in that order) are the countries in which this “malapportionment” is the most extreme (Stepan 2000, as cited by Souza 2002).

Generally in federal systems the upper or territorial chamber has less legislative power than the lower chamber. This is true in Germany; in India the upper chamber has comparatively even less power. In terms of its legislative power, Brazil’s Senate is modelled on the U.S. system of “relative power symmetry” between the upper and lower chambers, but Brazil’s Senate actually has “more unilateral power to kill a bill passed by the [Chamber of Deputies] than in any other federal democracy” (Stepan 2000: 149-50). As Stepan notes, “in Brazil there is no policy area that is beyond the policy-making competence of the Senate” (Stepan 2000: 149-150).

In terms of constitutional review, Brazil is comparable to the U.S., which also has a “diffused system” in which “judges, at all major levels of the judicial system, can challenge the constitutionality of laws passed by the federal legislature” (Stepan 2000: 152). However, the U.S has several principles that limit the Supreme Court’s right to challenge the right of Congress to “pass laws that are considered binding” (Stepan 2000: 152). Brazil’s system, on the other hand, has a set of legal procedures for constitutional review that makes it easier for judges at all levels of the federal system to challenge the constitutionality of laws than in any other federal system. The system has resulted in a situation in which the Supreme Court is overwhelmed by cases (Stepan 2000: 152).

Given the description of the institutional characteristics offered here, Brazil fits into Kelemen’s category of a “fragmented” power federation. He notes that fragmentation is especially the case in those federations in which power is sharply divided among competing structures both horizontally (i.e. at the same level of government, such as the political executive, legislature and judiciary) and vertically (i.e. in separate structures operating at two different levels of the federation, or in structures at the same level that directly represent these different levels).

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2 He notes that, “Brazil’s system of representation to the Upper or Territorial House is … extreme. There, one vote in the sparsely populated state of Roraima has 144 times the weight in producing a Brazilian senator as does a vote cast in the densely populated state of Sao Paulo” (Stepan 2000: 148).
Echoing Kelemen’s category of “fragmented” power federations, Souza (2002: 20-1) refers to Brazil as a “fragmented polity.” She suggests that Brazilian federalism is characterized by the existence of multiple power centres... [it is] a complex system of political and financial dependence among governmental units, [with] varying routes for influencing and delivering policies, and [with] great disparities among its regions. Since 1988, several competing, although unequal, power centres [in the form of state-level actors] have had access to decision making and to policy implementation, especially in the delivery of social services (Souza 2002: 20-1).

However, it is not as clear that Brazil, as a “fragmented” power federation, has also displayed the more centralized pattern of intergovernmental policy making that Kelemen suggests goes hand-in-hand with this type of federation. Some of the policy areas examined below, such as water management, and health policy, display a more decentralized pattern of intergovernmental policy-making and regulation, rather than the centralized and less discretionary style of IGR that Kelemen suggests follows with a “fragmented” power federation. However, Brazil does display some other characteristics that Kelemen identifies with the “fragmented” power federations, particularly a high degree of judicialization of federal policy-making (Kelemen 2004: 18).

**Political Culture**

In addition to some of the characteristic features of Brazilian political culture evident from the discussion of intergovernmental relations above, there are some further examples worth mentioning. The political culture in Brazil’s bureaucratic system has been described as a “hybrid” culture in which “formalism coexists with informality, and patronage-based standards of authority with meritocratic ones” (Abers and Keck 2006: 604, citing Avritzer 2002: 63–76). They note that in the Brazilian bureaucracy, there is a mix of those who were appointed by powerful politicians and those who achieved their positions on merit (Abers and Keck 2006: 604-605).

Another characteristic feature of the Brazilian policy process is a “tendency to produce legislation in which contentious issues are left unresolved, with the idea being either to negotiate them after the main legislation is passed or to resolve the issues in separate, enabling legislation, whose failure would not necessarily threaten the main body of the law in question” (Abers and Keck 2006: 605).

Abers and Keck suggest that this tendency stems from a desire, on the part of all parties involved, to avoid direct conflict. The result of this form of legislation is often policy indeterminacy or policy that “does not stick,” which is commonly referred to as “não pega” (Abers and Keck 2006: 605).

**IGR in Different Policy Areas**

As described above, many of the responsibilities in Brazil are shared across levels of government. In the area of fiscal policy, the “absence of a clear definition of the functions to be performed by each order of government is a major source of continuing [intergovernmental] conflicts” (Rezende 2007: 78). In terms of taxation, federal-state conflicts often arise when the federal government adopts measures, which have the effect of reducing the revenues from manufacturing taxes and income taxes on which Brazil’s revenue-sharing system is based. Another source of intergovernmental conflict between the federal government and the states is federal legislation which affects state tax autonomy. This often results in demands for financial compensation by the states, and the amount of such compensation becomes a source of continuing conflict (Rezende 2007: 78).
Rezende argues that Brazil needs a “well designed institutional arrangement” to help the coordination and functioning of IGR and intergovernmental fiscal arrangements, in particular, and to help mediate conflicts of interest (Rezende 2007: 91-2). Brazil has a “constitutionally-mandated revenue-sharing mechanism that automatically delivers a fixed proportion of income and federal manufacturing tax revenues, plus other minor taxes, to state and local governments, on the basis of predetermined fixed rates” and a number of “specific purpose grants,” rather than a formal equalization programme, such as that in Canada (Rezende 2007: 91-92). The Brazilian system of fiscal transfers results in a high level of horizontal disparities in the distribution of financial resources, and this hinders intergovernmental cooperation in a variety of policy areas (Rezende 2007: 91-92).

While the English-language literature on IGR and federalism in Brazil has tended to focus largely on issues of democratization, decentralization, and/or fiscal policy, more recently, scholars have turned their attention to empirical studies of Brazil’s institutions for IGR in specific policy areas. For example, Miranda (2007) provides a largely descriptive, empirical study of Brazil’s joint health management committee (the “Tripartite Committee”) which was created in 1991 by ministerial decree “to formalize intergovernmental decisions about the implementation of policies of the Brazilian Unified Health System” (Miranda 2007: 186). Each of Brazil’s three levels of government is represented in the committee, which has 15 permanent members. The members include five officials appointed by the Health Minister, five appointed by the national directorate that represents the health management state agency and five appointed by the national directorate that represents municipal health management agencies. The state and municipal representatives are chosen by criteria that distributes membership across Brazil’s five main regions (Miranda 2007: 188). Miranda finds that, overall, the process of decision making within the Tripartite Committee has been characterized by cooperative strategies, negotiation and mediation (Miranda 2007: 190). However, he also suggests that the Committee is characterized by a “predominance of informal decision-making arrangements (Wright 1990, cited by Miranda 2007: 190). Miranda makes no mention of wider public consultations or the involvement of non-governmental groups in the Committee’s decision-making process. These findings mirror descriptions of executive federalism and “federal-provincial diplomacy” (e.g. Simeon 1972) in the Canadian context. However, the Tripartite Committee may not be characteristic of intergovernmental relations in all policy areas. For example, it appears to be in contrast with moves towards participatory policymaking and the participatory budget, as we shall see below.

New Forms and Practices of Intergovernmental Relations in Brazil

In our earlier comparison of intergovernmental relations in presidential and parliamentary federations (Stein and Turkewitsch 2009), we identified Brazil, with its comparatively more multicentred and decentralized system, as a federation in which the application of the MLG approach would be useful to understand its pattern of intergovernmental relations. In the additional research we conducted for this paper on some specific policy areas and issues, we have found areas in which a multi-level governance approach is increasingly relevant; these include: the use of participatory budgeting (Nylen 2002; Wampler 2000; Abers 1998; de Sousa Santos 1998); and environmental policy-making, particularly with respect to the creation of participatory forums in systems of decentralized water management (Abers and Keck 2006), and in terms of the role of Brazilian states in formulating and implementing climate policies, and their participation in transnational networks (Setzer 2009).

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3 This was mirrored in 1994-95 when State Joint Health Management Committees (referred to as “Bipartite Committees”) were created in each of Brazil’s 26 states, which included equal representation for “municipal and state health managers” (Miranda 2007: 188).
In Brazil, the use of participatory budgeting first started in 1989 in the municipality of Porto Alegre, which is the capital city of the state of Rio Grande do Sul (Wampler 2000: 5), and has a population of 1.3 million (Abers 1998: 511). The Porto Alegre participatory budget is one of the best known of examples of its kind (de Sousa Santos 1998: 463). It was instituted after the election to municipal government of the Partido dos Trabalhadores (Workers’ Party), a progressive party, which was founded in the early 1980s from the labour movement (de Sousa Santos 1998: 463). By 2000, participatory budgeting had spread to almost 100 municipal governments and five states in Brazil (Wampler 2000: 5).

The logic behind the implementation of participatory budgeting was to try to overcome clientelistic politics by delegating decision-making authority. Participatory budget “programs [can] provide the means for reformist governments to subvert traditional clientelistic networks” (Wampler 2000: 18). As de Sousa Santos (1998) notes, “the participatory budget promoted by the [municipal government] of Porto Alegre is a form of public government that tries to break away from the authoritarian and patrimonialist tradition of public policies.” The process encourages direct participation by the population in the process of preparing and implementing the budget (de Sousa Santos 1998: 467).

The participatory budget is “both a structure and a process of community participation” in which “all citizens are entitled to participate” (de Sousa Santos 1998: 468). As de Sousa Santos described the system in Porto Alegre in 1998, three types of institutions take part in the participatory budget. The first kind of institution is the administrative units of the municipal executive charged with managing the budgetary debate with the citizens, the most important being the Planning Office (GAPLAN) and the Coordination of the Relations with the Communities (CRC), an agency which mediates between the municipal government and community associations. The second type of institution that participates is community organizations, which are autonomous from the municipal government and are made up mostly of regionally based organizations, representing different city regions. The third type of institution involved in the participatory budget is “designed to establish a permanent mediation and interaction between the two first kinds.” These institutions “are regulatory functioning institutions of community participation” (de Sousa Santos 1998: 468-9). The municipal executive plays an active and prominent role. Through the two institutions mentioned above (GAPLAN and CRC), the executive “coordinates the meetings and sets the agenda” (de Sousa Santos 1998: 468-9; 491).

Municipal authorities have made some changes to the participatory budget over the years (de Sousa Santos 1998: 475). The process itself faced major difficulties including budgetary shortfalls (see de Sousa Santos 1998: 476-7). The participatory budget and the related institutional framework are not legally or constitutionally recognized, and this is the topic of an ongoing dispute in local politics (de Sousa Santos 1998: 467). Furthermore, the local budget is dependent on federal transfers (de Sousa Santos 1998: 506).

As de Sousa Santos describes it, the primary goal of the participatory budget was to “establish a sustained mechanism of joint management of public resources through shared decisions on the allocation of budgetary funds and of government accountability concerning effective implementation of such decisions” (de Sousa Santos 1998: 469). She also notes that the participatory budget represents “a model of co-government” in which political power is shared among a network of institutions. Abers (1998) refers to the participatory budget as an example of “state-fostered civic organizing.” These descriptions and insights are certainly relevant to the application of the concept of multi-level governance in this context. Participatory budgeting displays features of multi-level governance in the sense that it incorporates the outward or horizontal expansion of decision making in fiscal policy at the local level.
Decentralized Water Management

Abers and Keck (2006) examine the emergence of a new form of governance in Brazil that involves “participatory forums in systems of decentralized [water] management.” Decentralizing reforms led to the creation of “a new layer of deliberative governance bodies at the river-basin, state, and national levels to coordinate distinct aspects of water resource management” (Abers and Keck 2006: 603). Abers and Keck apply the concept of multi-level governance to these reforms, specifically referring to Marks’ (1993) definition of MLG. They state that, “[w]e believe that the term is useful in any policy area involving continuous coordination among ‘sovereign’ jurisdictions” (Abers and Keck 2006: 603).

In their case study, Abers and Keck note that a unique type of decentralization occurred. While in other policy areas there was formal decentralization of powers, in this case,

“[d]ecentralization… occurred not between central government and existing lower level spheres, but from state and federal agencies to new regional bodies organized along hydrographic lines (river basins) that overlap traditional administrative boundaries (states and municipalities)” (Abers and Keck 2006: 602).

The Brazilian constitution specifies that “waters located completely within a state are under that state’s jurisdiction, while those that cross state lines are in federal domain” (Abers and Keck 2006: 602). Reforms were instituted during the 1990s by several states, and in 1997 the federal government introduced the National Water Law, which led the way for further reforms. As Abers and Keck note, “[m]ost of these laws created decentralized deliberative and executive bodies (stakeholder committees and water agencies) at the river-basin level. River-basin committees have seats for federal, state and municipal government, civil society and water users (with government usually in the minority)” (Abers and Keck 2006: 602). These committees display some features of the participatory budgets outlined above. The reforms introduced a new “tool” for water management, bulk water charges (known as cobrança), for which industries, farmers and other large-scale users would be charged for the water they drew from rivers and lakes. The river basin committees were granted the power to define the prices for “bulk water use” and to make decisions on how to allocate the revenue (Abers and Keck 2006: 602). Decisions taken at the federal, state and local levels have effects on the deliberative water management forums and their activities. The river basin committees, which are established by state laws, often have to coordinate with federal authorities (Abers and Keck 2006: 602). The system is not without its problems. Governance reforms in Brazil are still ongoing, and the system of bulk water charges has not yet been fully implemented (Abers and Keck 2006: 619).

Climate Change Policy at the State and Local Levels

Another recent study that applies the concept of multi-level governance in the Brazilian context is also in the area of environmental policy. Setzer (2009) considers the city and state of São Paulo’s climate change policies, and their participation in transnational networks of sub-national governments (TNSG). Setzer also refers to the European literature on multi-level governance, and suggests that these transnational networks can be considered an example of Hooghe and Marks’ (2004) Type II MLG. It “focuses on networks - between public and private actors and, across levels of social organization - and the process of policy-coordination, exchange of information and experience that they facilitate” (Setzer 2009: 3, citing Hooghe and Marks 2003). Setzer also considers an area of the MLG literature which focuses on cities “as a critical arena where climate governance is taking place” (Setzer 2009: 3, Betsill and Bulkeley 2007). Considering this subset of the MLG literature Setzer suggests that it has thus far been overly “North-centric.” We agree that the literature on MLG more broadly has been North and Western-
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centric in its focus, but suggest that this reflects the origins of the concept in the context of the EU. In her application of the concept to São Paulo’s climate change policies, Setzer suggests that the MLG approach “can be applied to the reality of cities and regions from the global South” (Setzer 2009: 10). We agree that the MLG concept is increasingly applicable in Brazil and possibly in other emergent federations, and suggest that more scholars should consider the utility of the MLG approach in such contexts, despite the possible criticism of “concept stretching.”

In terms of the constitutional allocation of power for environmental policy-making in Brazil, there is concurrent jurisdiction for the federal government and the states on the issue of “liability for environmental damages,” while local governments may “legislate whenever local interests are at stake” (Setzer 2009: 8). However, the federal government holds exclusive competence over the sources, generation and pricing of energy. Thus, limited autonomy on the part of state and local governments restricts their ability to implement climate change policies in some respects (Setzer 2009: 8).

Setzer argues that participation by both the city and state of São Paulo in two transnational projects, the “Local Governments for Sustainability Cities for Climate Protection” program and the “Network of Regional Governments for Sustainable Development”, helped to foster action on climate change (Setzer 2009: 2). Setzer points out that there is no national policy on climate change in Brazil. Thus, the state and city of São Paulo have taken on the task of providing incentives for the reduction of greenhouse gas emissions, and in promoting public debate on climate change policy. In some respects, this mirrors actions by states such as California in the United States, which exceeded federal initiatives (see Stein and Turkewitsch 2010 forthcoming). She suggests that participation in the transnational network played an important role in encouraging São Paulo to take on these tasks. Her study highlights the role of formal and informal transnational networks of key public and private actors in this policy area (Setzer 2009: 7).

Part 5: Comparative Analysis and Conclusions

In this final concluding section we examine some of the key theoretical and empirical issues raised in earlier sections of the paper. In particular we provide a comparative analysis of recent patterns of intergovernmental relations in India and Brazil. We highlight both shared features in patterns of intergovernmental relations in these two federations and differences between them. We also offer some tentative theoretical generalizations about the patterns of intergovernmental relations in parliamentary and presidential federations based on our comparative analysis of India and Brazil. We consider the relevance of multi-level governance as an approach and conceptual tool for the study of intergovernmental relations in these two federations, and for “emergent” federations more broadly. We consider this in the context of our discussion of possible future patterns of intergovernmental relations in India and Brazil. Are patterns of multi-level governance likely to be combined with current patterns of intergovernmental relations in these federal systems? Finally, we consider the implications of our study for the analysis of multi-level governance more broadly, and offer some suggestions for further research.

In our examination of intergovernmental relations in Brazil we provided three examples, drawn from different policy areas, in which we suggested that multi-level governance could provide a useful framework for analysis. We found instances of both the horizontal or outward expansion of policy-making in participatory budgeting and decentralized water management, and vertical expansion with respect to the role of transnational networks in climate change policy. As discussed above, we are not the first to apply the concept of MLG in the Brazilian context. In 2006, Abers and Keck used the concept (specifically referring to Marks 1993), to understand and explain decentralized water management. Setzer applied the term in 2009 to climate change policy as initiated by the state and city of São Paulo. As far as our research suggests, no one as yet has applied the concept of multi-level governance to consider the
participatory budget, however we suggest that it can be useful to understand this practice. Existing structures and process of intergovernmental relations had an effect on the emerging multi-level governance processes in all three of these examples. While it might be disputed as to whether three instances of MLG are indicative of broader trends, we suggest that they point to an openness of the both the Brazilian federal system and its existing pattern of intergovernmental relations towards the emergence of multi-level governance. Our examples also point to increasing acceptance of the European concept of MLG by scholars in and of the global South. It appears that the emergence of multi-level governance in practice may continue to follow its application in theory.

We suggest that Brazil’s fragmented and decentralized system made it more open to multi-level governance. In terms of Kelemen’s (2004) categorizations, Brazil fits into the presidential or “separation of powers” type, in which power is sharply divided among competing structures both horizontally (i.e. at the same level of government, such as the political executive, legislature and judiciary) and vertically (i.e. in separate structures operating at two different levels of the federation, or in structures at the same level that directly represent these different levels). He suggests that this type of federation tends to produce a more centralized pattern of intergovernmental policy-making and regulation. However, in contrast, we suggest that this type of federation may be more open to the emergence of multi-level governance. In some respects future trends in Brazil may be comparable to those in the United States (see Stein and Turkewitsch 2010 forthcoming). In Brazil, decentralization since the 1980s was also a major factor that encouraged the development these changing forms and practices of intergovernmental relations. The trend towards the horizontal expansion of policy-making may also be linked to Brazil’s political culture and to key historical factors, particularly attempts to overcome past authoritarian rule. For example, the creation of the participatory budget in Porto Alegre, marked an attempt to overcome tendencies from the authoritarian era and patrimonialist traditions by the Workers’ party which was keen to promote such changes.

With respect to the applicability of the concept of multi-level governance in India, we have found little existing research to suggest that there has been a horizontal or outward expansion of decision-making to include the private sector, NGOs or the non-profit voluntary sector. However, research on this area may become more abundant in the coming years as researchers take into account the moves to a market economy and the emphasis on the private sector that has occurred in India since the 1990s. In terms of the vertical expansion of decision-making, the 1992 constitutional amendments gave local governments constitutional status and devolved some federal powers downwards to the sub-state level. As we discussed above, recent studies of devolution to local government in India have suggested that the impact of these reforms is yet to be fully understood. We conclude that further research is needed on the role of local governments in the context of intergovernmental relations in India. We suggest that the multi-level governance approach might provide a useful lens through which to understand these relatively recent developments. In contrast to the Brazilian case, we have found few studies that consider the role of the supranational actors or transnational agreements on Indian policy-making or intergovernmental relations. Scholars of Indian federalism have overall been less open to applying the concept of multi-level governance than those studying Brazil. However, we suggest that given current domestic and global trends, ideas drawn from multi-level governance may become increasingly applicable in India.

As we noted above, since the early 1990s, some elements of “executive federalism,” have started to become apparent in India, mirroring trends found in Australia, Canada and Germany. We suggest that India’s fusion-of-powers system, intergovernmental relations characterized by “executive federalism” and centralization, have together inhibited the emergence of multi-level governance. As we discussed in our earlier section on India, Verney suggests that executive federalism in India may be a “transitional” phase. He also proposes that India adopt a system that would incorporate effective regional representation in an elected legislative body operating at the center, such as a reformed Indian upper chamber. Verney refers
to this institutional arrangement as “legislative federalism.” Perhaps a move towards “legislative federalism” would make the country more open to the emergence of multi-level governance. On the other hand, in our earlier study of Canada (Stein and Turkewitsch 2010 forthcoming) we found that executive federalism had not hindered the emergence of multi-level governance. Therefore, it may be that changes in political culture, rather than institutional structure, are needed for the emergence of multi-level governance in India. This follows the work of Peters and Pierre, who noted that in Western democracies, “much of the development towards MLG has taken place with few formal, institutional changes within the governments involved in the process” (Peters and Pierre 2005: 105).

Our paper has offered some initial theorizing with respect to the application of the concept of multi-level governance, drawn from the European context, to two emergent federations. We also tentatively suggest, based on our earlier research and the findings presented above, that presidential federations particularly those which are characterized by decentralization and fragmentation of powers, both vertically and horizontally, may be more open to the emergence of multi-level governance than are parliamentary systems, especially those which display characteristics of executive federalism. This suggestion, however, is in need of further refinement. Further research is needed with respect to the role of other variables, such as political cultural, historical, and socio-economic factors in influencing processes of intergovernmental relations. This is an area in which we plan to expand our work. Future research should consider the relevance of multi-level governance as a conceptual tool for the analysis of intergovernmental relations for “emergent” federations more broadly. As scholars focusing on “emergent” federations look to theoretical and analytical tools drawn from the European context, they may in turn, seek to modify and refine these concepts, offering an alternative perspective on multi-level governance beyond Europe.
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