

**Constructing a Theory of Intergovernmental Agreements:
An Institutional Approach**

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By their very nature, federations require coordination between different spheres of government in order to function effectively. Officials across all areas of government must work with their counterparts amongst national, subnational and local governments in order to design, fund and implement policy. This need for coordination can be met in a number of ways, but one of the most common means is through the formation of intergovernmental agreements. These agreements range from promises to exchange information and contact lists, the establishment and funding of new government programs, or even changes of a country's constitution. Agreements also come in many forms, including: informal understandings between bureaucrats, negotiated outcomes of intergovernmental meetings, written compacts between ministers and large-scale, publically scrutinized accords. Despite their impact and variety, intergovernmental agreements remain an understudied phenomenon, particularly in a comparative context. Though some scholars have conducted research on the issue, they often confine their research to a particular domestic context (see Saunders 1995, Poirier 2003, Ridgeway 1971 and Zimmerman 2002 as examples) or as a secondary consideration to wider issues of intergovernmental relations and federalism (see Painter 1996, Bolleyer 2009, or Elazar 1965, for instance). In order to advance the study of comparative federalism as a whole, and intergovernmental agreements specifically, theoretical consideration needs to be given to this topic. This paper will propose that intergovernmental agreements should be viewed as a form of institutionalization based on new institutionalist theory, including B. Guy Peters' four attributes of institutional research in political science. This paper will examine the explanatory power of the institutionalist perspective by examining existing literature and intergovernmental agreements, and then utilize this institutional approach to suggest six motives for institutionalization through the formation of agreements, followed by seven factors that might help or hinder this process of institutionalization.

Institutional Approaches:

Before examining the existing literature on intergovernmental agreements, it is necessary to define the institutional approach that will be applied in this paper. As one of the principal approaches to the study of political science, the study of institutions or institutionalism is well-developed. The application of existing institutional theory in other contexts can aid in the development of institutional theory for the study of intergovernmental agreements.

In his 1999 work, *Institutional Theory in Political Science*, B. Guy Peters examines the development of institutional study within the discipline. In particular, he succinctly identifies four attributes that distinguish the study of institutions from other approaches:

- 1) The study of institutions must involve some form of structure, which can either be formal (such as a legislature) or informal (such as a network or a set of shared norms). This structure must transcend individual actors; it cannot simply be broken down into its individual components while retaining its same qualities.
- 2) An institution must be enduring over time; the structure must outlast the individuals who comprise it. Otherwise, it can be classified as a meeting or gathering, but not an institution.
- 3) Institutions must affect individual behaviour, or more specifically, they must constrain behaviour. The degree to which an institution accomplishes this is a measure of its potency.

- 4) Finally, there must be some sense of shared meaning or norms for a structure to be classified as an institution. Without a level of common understanding, an institution cannot function effectively as its qualities may be misunderstood.

These attributes that Peters observes amongst all institutional approaches to the study of politics create a set of parameters for crafting a theory of institutions within the field of federalism and intergovernmental relations. Within this context, these four stipulations can be tailored to focus on governments as the individual actors.

The last element of Peters' description of institutionalism raises a major point of contention in the literature on institutions in political science: the place of norms. The question of whether institutions can exist via norms, as opposed to rules and laws, is important given that intergovernmental relations possesses an important informal element (Watts 2008, 118). In their 1984 article, "The New Institutionalism: Organizational Factors in Political Life" March and Olsen argued that institutions can constrain behaviour by creating a set of norms which participants acknowledge and follow (744). Atkinson (1993) elaborates on the informal qualities of institutions, arguing that their salient quality is the "networks of organizational capacity", and the connections between individuals and groups which present a sense of structure. On the other side of the spectrum, some theorists argue that rules and laws, rather than norms, are the key aspects of institutions. Weaver and Rockman (2001) see institutions as "important frameworks of rules, capabilities and constraints which determine (in part) the behaviour of actors". These create explicit boundaries that strongly affect any participants or their activities, including policy outcomes in government (9).

Certain scholars focus on bridging the gap between the two extremes in this debate, arguing that institutional constraints come from both formal and informal features. According to Douglass North: "Institutions are a set of rules, compliance procedures and moral and ethical behavioural norms designed to constrain behaviour of individuals in the interests of maximizing wealth or utility of principals" (1980, 201-2002). This broader definition encompasses a wider range of potential institutions, allowing for less formal and explicit norms-based arrangements, as well as those founded on rules and laws. Such an approach is appropriate for a comparative study of intergovernmental institutions as the type of agreements and their respective levels of institutionalization may vary from country to country (Bolleyer 2009, 18-20). North's work is also important for explicitly clarifying that institutions are sites for interaction and do not necessarily produce cooperative outcomes, an important consideration for intergovernmental relations, where conflict is always a possibility.

The final area of institutional theory worth noting is found in international relations. This field of study bears some commonalities to federalism and intergovernmental relations, notably the focus on governments as the principal actors and the presence of divided sovereignty. Robert Keohane has defined institutions as "persistent and connected sets of rules (formal and informal) that prescribe behavioural roles, constrain activity and shape expectations" (Keohane 1989, 3). He further specifies this definition by distinguishing agreements - "explicit rules agreed upon by more than one state" - and regimes - which arise "when states recognize these agreements have continual validity" (Keohane 1993, 28). This distinction acknowledges that institutions, at least internationally, require continued participation and consent to remain relevant (echoing the contention in Peters' fourth argument). Downs et al. (1996) observe that international institutions are a means of creating clear and stable policy coordination between governments, filling a need created by the lack of a dominant central authority. The idea of coordination between actors, each with an independent basis of power, is relevant to intergovernmental

relations as governments in federal systems also possess independent authority to act – albeit often within the restrictions of constitutional law and the authority possessed by the federal government.

What does this brief snapshot of institutional theory in other branches of political science tell us about the study of intergovernmental agreements? Peters’ four criteria remain a good starting point, with clear benchmarks for what an institutional approach must contain. Intergovernmental agreements must possess a structure that transcends their individual governments and this structure must endure over time in some form; agreements must constrain behaviour in some form and must have some shared sense of meaning or understanding. Other contributions from institutional theory also remind us that they can be both formal and informal, founded on rules and laws or norms and traditions. This provides the basic theoretical parameters by which the existing literature on intergovernmental agreements can be discussed in a comparative context.

Current Approaches to the Study of Intergovernmental Agreements

Any attempt to construct an institutional basis for the comparative study of intergovernmental agreements can be broken down into three components: how do intergovernmental agreements fit within institutional theory, why do governments seek to create these institutions, and what factors might help or hinder their formation? Unfortunately, current scholarship on intergovernmental agreements – somewhat limited to begin with – is seldom so deliberate; much of the focus is on particular national contexts, restricted to a particular policy area, or briefly examining agreements as but one part of the vast apparatus that is federalism and intergovernmental relations. Despite this, the existing literature does provide insights into these three areas, particularly how agreements fit within the scope of institutionalist theory.

The study of comparative federalism as a whole certainly supports an institutional approach to the study of agreements. Much of the literature concerns the comparison of institutional features of federations, such as constitutions, government types (specifically responsible government versus separation of powers models), upper chambers and finances.¹ The study of intergovernmental agreements extends from this tradition, as their creation is often influenced by the status of these institutional considerations. Agreements may amend federal constitutions, or help to clarify authority in areas in which there is no clear direction; they help the functioning of fiscal federalism, by coordinating spending and social programs across different governments. As such, intergovernmental agreements remain a logical, but unexplored, niche in the existing institutional studies of comparative federalism.

Moving from this “macro” level of understanding, Peters’ four criteria of institutionalism provides a guideline for examining literature specific to intergovernmental agreements. The first two criteria – that institutions must transcend individual actors and must endure over time – have certainly been addressed in the literature on agreements, if sometimes indirectly. Daniel Elazar has categorized intergovernmental agreements within the wider scope of mechanisms of intergovernmental relations by dividing them into two categories. Informal mechanisms, including meetings, exchange of personnel or expertise and services, are more common, but are

¹ It would be impossible to entirely list all the works of comparative federalism that utilize an institutional approach, any list would surely include the seminal works of K.C. Wheare (1963) and William Riker (1964), as well as the recent works by Ronald Watts (1999a, 2008). More recent texts in the “Forum of Federations” series, including Kincaid and Tarr (2005), Majeed, Watts and Brown (2006) and Shah (2008) are contemporary examples of broad comparative reviews of the institutional elements of federations.

not enforceable or permanent. Formal mechanisms, which include intergovernmental agreements, are more infrequent, but are also lasting, even permanent, and add to the existing structure of the federal system (Elazar 1965, 18). In this, Elazar sees agreements as extending the initial compact of the federal system and the devices that affect the functioning of governments.

The idea that institutions must transcend individual actors can also be found in the fact that many agreements form agencies to monitor and administer their provisions (Zimmerman, 2002). This is a common practice in the United States, where the Constitution empowers state governments to enter into treaties with each other (Article I, Section 10), which are often regulated by commissions so that they can be administered beyond the particular interests of the involved parties. While this is most often used in the United States, the formation of new bodies to implement the provisions of an agreement is not uncommon in Australia, Canada and Switzerland as well (see Council of Australian Governments, and Linder and Vatter 2001). Though the creation of such institutions represents only a portion of intergovernmental agreements, it does indicate that agreements can possess a high degree of formality and institutionalization.

The issue of an agreement's legality and enforceability is one common theme throughout the literature, and one that has an impact on issues of structure and longevity. In the Swiss context, intergovernmental agreements (known as concordats) are legally binding treaties between governments, with the same force as any law (Linder and Vatter 2001, 105). Similarly, intergovernmental agreements in Spain and joint tasks in Germany are also entered into law (Saunders 1995, 72). In the United States, interstate compacts must be passed by both state legislatures and the national Congress, thereby becoming national and state law (Ridgeway 1971, 19-22). In all of these cases, the legally binding nature of many intergovernmental agreements fulfills Peters' criteria of structure transcending individuals and permanence, the same as a statute would.

Given the differences between federations, however, the legality of agreements is not an effective standard for institutionalization. Examining the development of the economic union in both Australia and Canada, Douglas Brown briefly addresses intergovernmental agreements and their enforcement, identifying that while agreements are often constructed like legislation, they are not meant to be judicable - at least in the Australian and Canadian contexts (Brown 2002, 164). Even when parliaments and legislatures pass implementing legislation - a more common practice in Australia than Canada - governments have chosen parliamentary supremacy as opposed to trusting the courts. Poirier (2003) confirms this in her study of intergovernmental agreements in Canada, which focuses on the legal status (or lack thereof) of these institutions. Saunders finds that any signatory in these federations can abrogate agreements independently, citing the 1990 *Canada Assistance Plan Reference* by the Supreme Court of Canada as well as decisions by Australia's high court, including *Tasmania v. Commonwealth* in 1983 the Railway Line case between South Australia and the Commonwealth (Saunders 1995 and also Painter 1998).

Even lacking an independent commission or strict legality and enforceability by the judiciary, intergovernmental agreements can still fulfill the first two institutional conditions. Australia and Canada are quite active in the formation of intergovernmental agreements, many of

which are renewed due to their continued relevance.² Moreover, agreements such as the Intergovernmental Agreement on Federal Financial Relations in Australia and the Agreement on Internal Trade in Canada, demonstrate that even significant national issues can be addressed in an agreement that remains important to the functioning of the federation, even if it lacks strict judicability.

Beyond the question of structure and permanence, do intergovernmental agreements constrain behaviour? There are multiple examples of this occurring. Many agreements commit governments to the disbursement of funds, which would restrict them from spending on other government priorities. Tanja Borzel (2000 17-18, 38-40) finds that agreements may occur for a few reasons, including: cooperation and coordination, the realization of greater economic or political gains, and – most importantly for this consideration - the ability for nation-wide institutions to constrain the power of the national government as well as allow sub-national actors to access its resources. Arthur Benz also confirms that economic and political incentives play a strong role in intergovernmental mechanisms, including the creation of new federal institutions. Specifically, Benz notes that conflicts surrounding distribution of resources can be a significant area of disagreement, prompting measures to encourage cooperation, such as the formation of new agreements (Benz 1999, 57). Brown found that agreements can influence behaviour in less direct methods, with their chief functions being communication and administrative guidance (2002, 109). Ridgeway (1971) meanwhile argues that agreements can also be used by subnational governments to prevent the intrusion of federal authorities. Examining compacts in the United States, she observes that one of their uses is to create a solution to cross-border issues between states before the federal government imposes their own agenda. Any of these examples presents possibilities for how intergovernmental agreements constrain governments.

The final criterion, the need for some shared norms or understanding for the functioning of an institution, has a small, but important, effect for intergovernmental agreements. An institution cannot function without at least some common understanding amongst members. As is the case in international relations, the degree of independence possessed by governments in a federation means that this common understanding is crucial, for without it, there is often no compelling force to keep participants involved and the institution functioning.³ This is especially true in federations in which there is no independent authority that can govern or enforce an agreement (as is the case in Australia and Canada). Without a common purpose, these agreements would be ineffective – for example, how can an agreement involving the exchange of prisoners between jurisdictions in the United States be effective if one party believes it does not need to maintain the prison capacity to accommodate its obligations? The continued formation and functioning of such agreements demonstrates that this dilemma is overcome constantly via numerous agreements across most federations.

Bolleyer's 2009 study, *Intergovernmental Cooperation*, provides an excellent example of how institutional theory and the study of intergovernmental relations, including agreements, can function in practice. She argues that agreements exist within the wider context of intergovernmental relations and their development further institutionalizes the system of

² Examples of continually renewed agreements include the Housing Agreements, Medicare and Crime Coordination agreements in Australia, whereas Canada has seen the renewal of many agricultural accords, hospital insurance exchanges between the provinces and transportation coordination agreements, to name only a few.

³ Depending on the type of agreement and the federation, the federal government may serve in this role by offering incentives for participation, often in financial form.

interactions between governments (Bolleyer 2009, 172). Some of these structures may be more institutionalized than others – returning to the idea in institutional theory of rules versus norms-based approaches – but all contribute to new institutions within a federal system.

Reasons for Institutionalization:

When examining the formation of individual intergovernmental agreements, three basic questions can guide the analysis: why do governments interact, why do they seek to institutionalize via intergovernmental agreements, and why does institutionalization occur or not? Answering these three queries will provide the basis for gaining some understanding of intergovernmental institutions that is not presently available.

The simplest and most general question of the three – why do governments interact – is worth mentioning insofar as it provides the basis for the initial interaction from which institutionalization may arise. Several reasons can be suggested for why governments in federation interact, including: a desire to address common concerns facing multiple governments; a need to deal with externalities that fall outside their constitutional or geographical jurisdictions; a means of financing plans that a single government would not be able to undertake by itself; a need to coordinate between different constitutional jurisdictions due to overlapping or incomplete powers; and a movement to harmonize policy across boundaries in order to limit potentially detrimental effects of competition. While not necessarily exhaustive, these explanations have a common theme: they represent situations in which a single government is unable to achieve its current policy objectives within its current capabilities, leading to interaction with other governments - a necessary precursor to institutionalization via an agreement.

Beyond basic interaction, governments can choose to form institutions. Six reasons can be identified for governments choosing to form an intergovernmental agreement, as opposed to interacting in a less institutionalized fashion.

Firstly, governments may seek to construct an enduring relationship. Agreements have the advantage of creating a structure which, if effective, can outlast their original participants. While it may be argued that behavioural norms alone may achieve similar effects, institutions have the advantage of being public and potentially less ambiguous in terms of their responsibilities and privileges. For example, the formation of the Council of Australian Governments (COAG) has created an institutionalized setting for the practice of executive federalism, leading to at least one meeting per year since its inception in 1992. By contrast, First Ministers' Meetings in Canada occur on an ad hoc basis, by invitation of the Prime Minister, and only ten have been held during this same eighteen year period.⁴

Secondly, governments may seek to codify existing norms, strengthening them through an institution. Institutionalization may strengthen norms by providing clarity by creating explicit rules and providing a means of enforcement. The previous example of the COAG illustrates this phenomenon, as well as the formation of the Council of the Federation by the Premiers of Canada's provinces. In both cases, participant governments created agreements in order to formalize and institutionalize existing practices based on norms. A policy-oriented instance of

⁴ Information regarding meetings of the COAG can be found at their website www.coag.gov.au/coag_meeting_outcomes/archive.cfm while a listing of Canadian First Ministers' Conferences can be obtained from the Canadian Intergovernmental Conference Secretariat, http://www.scics.gc.ca/pubs/fmp_e.pdf.

this can be found in the series of bilateral agreements in Switzerland between the cantons entrenching coordination in the distribution of family allowances.

Thirdly, governments may attempt to institutionalize in order to create more effective cooperation. Theorists cite institutions as a means to overcome the dilemmas involved in securing lasting cooperation (Axelrod 1984). This is achieved through a number of qualities that an institution may possess: they can create a means to disseminate information among participants; they can clarify rules and procedures whose ambiguity may have impeded cooperation; and they can increase the likelihood of continued interaction between the participants which can limit the possibility of defection (Benz 1999, 57). The Murray-Darling Basin Agreement in Australia and any of the water management compacts of the United States (such as the Arkansas River Basin, Great Lakes Water Resources or the Delaware River Basin Compacts, to name but three) illustrate the desire of governments to create permanent institutions to help manage shared resources (all of these include permanent, independent commissions to assist with management). The absence of the institutionalized setting provided by the conclusion of relevant intergovernmental agreements might have led to mismanagement of these resources as individual actors may have attempted to maximize individual utility to the detriment of all.

Fourth, national and subnational governments may create agreements as a means of resolving previous conflicts. They may be a solution to existing disputes or simply as a means of preventing or reducing the incidence of future conflicts. This was one of the goals of the Social Union Framework Agreement in Canada, which attempted to resolve a dispute between the federal government and the provinces concerning the reliability of federal transfer payments following cutbacks in the 1995 Federal Budget. As Quebec refused to sign on to the agreement, it was ultimately unsuccessful in achieving the goal of resolving the conflict.

Fifth, agreements may be used for political reasons, specifically making an explicit statement or action on a particular issue. Amongst their qualities, these intergovernmental institutions are visible and more easily observed than “ad hoc” interactions and thus, policymakers can use them to demonstrate that they are addressing topics of concern to citizens and interest groups. Intergovernmental agreements provide something tangible that politicians and bureaucrats alike can refer back to when questioned about what they have done to address concerns. While they were clearly made for substantive reasons, the Intergovernmental Agreement on Federal Financial Relations in Australia, the Millennium Scholarship Agreements in Canada and the Emergency Management Assistance Compact in the United States have all been publicized by governments to demonstrate action on important files.

Finally, intergovernmental institutions can be the result of a powerful government that seeks to address a specific policy goal that they cannot achieve by themselves. This scenario can occur when other reasons for institutionalization are not present while at the same time a government possesses the resources to compel other governments into an agreement. This is similar to the effects of a hegemonic power in international relations theory. This can often be seen in Australia, where the federal government possesses the financial means to initiate a new program, as well as concurrent legislative authority, but lacks the ability to fully administer it (Painter 1996). The 1983 Medicare and 1984 Commonwealth-State Housing Agreements provide examples of the federal government’s power in action.

In order for an intergovernmental agreement to be formed, one of these six factors must be present. Without at least one of these reasons for institutionalization, interaction may exist, but there will be no reason for participants to develop this into an agreement. However, the presence of one of these six motives for intergovernmental agreement formation does not

guarantee that such institutionalization will occur. There are a number of possible variables that could impede the creation of an intergovernmental institution, even when an initial reason for it exists.

The simplest reason why institutionalization may not occur is that participants may not agree on the existence of a problem or a common solution in negotiations. Even if the existence of an issue of common concern among participants can be agreed upon, this does not guarantee that an agreement can be reached on a common course of action. For instance, while all governments may attempt to create a new intergovernmental agreement for wealth redistribution, such as equalization, participants may not be able to reach agreement on what format this should take.

A second explanation that could explain a failure to institutionalize is the lack of fiscal resources necessary to enact an agreement. Many potential agreements come with certain monetary costs, whether it is in funding a program mandated by an agreement or creating a regulatory agency to administer its provisions, and actors may simply be unable to meet these costs. An example of this is the failed attempts to create hazardous waste management compacts in the United States (Weissert and Hill 1994, 32).

As mentioned, political factors can motivate the creation of intergovernmental agreements so that governments can seek credit for addressing a particular issue. The reverse can also be true, however, as political pressures can impede the formation of an agreement. This can take numerous forms including the opposition of influential interest groups, the activation of public opinion against the formation of a particular agreement or even internal political factors within a government (such as the necessity of maintaining support in a coalition government). It is important to remember that this political pressure can exist within any government, national or subnational, and impede agreement formation.

The presence of an important national, social or cultural group can raise barriers to reaching an agreement, especially when that group is represented by a subnational government. Federalism is often viewed as a means of accommodating minorities within a single state, but these divisions can be exposed during negotiations. The example of Quebec is indicative of this condition, as governments from that province have sought arrangements that are either untenable to other governments or they are simply unwilling to enter anything but asymmetrical arrangements.

Finally, the presence of particular norms may also restrict the formation of an institution, specifically those pertaining to decision-making and the process of negotiation. A norm that all decisions reached must be unanimous could provide a significant impediment, especially when paired with the previous factor (Painter 1996). Norms of confidentiality in negotiations could also affect the outcomes: for example, should there be pressure from interest groups for the formation of an agreement, confidentiality may allow specific governments to avoid blame for refusing to do so.

By approaching agreements from an institutional perspective, it becomes possible to develop a list of reasons for their formation that can be applied to any federation. While individual countries may find that agreements have their impetus in some of these factors, as opposed to others, the common lexicon and theory provides the basis for comparison.

Factors Affecting Institutionalization:

The development of intergovernmental agreements does not exist in a vacuum; as with all aspects of political activity, these institutions exist within particular contexts or systems that may

affect their form, substance and number. These systemic factors can be composed of a variety of constitutional, economic and political variables that define the environment in which intergovernmental agreements can be constructed. The status of these variables may affect the degree of institutionalization in federations and the number of agreements formed, as they can provide a structural setting which can encourage or discourage their creation.⁵ While not necessarily exhaustive, the following list includes seven institutional features that make the motives to institutionalize (as described previously) more or less salient and more or less easy to act upon. As such, these seven variables are likely to have a significant effect on the production of intergovernmental agreements in a federation.

The first variable focuses on how “watertight” the division of powers is between the national and subnational governments. This variable is concerned with the degree of constitutional overlap and shared responsibilities that exist within a federal system. It is expected that the greater the degree of constitutional overlap in competencies, the greater the number of agreements that will occur. This is due to the need to coordinate policies within a field that both levels of government have the legal authority to legislate in; the more areas in which this occurs, the greater the need for coordination (which can lead to intergovernmental agreements). For example, given the large degree of constitutional overlap in Australia we would expect to see governments engage in numerous agreements in order to better define the scope of their powers and the relationships between each other (Leach 1965).

The second variable pertains to how centralized or decentralized the constitutional division of powers is between governments. As with the previous variable, this factor is concerned with how variations in the constitutional framework of a federation can increase or decrease the possibility for agreements to be formed. In a highly centralized federal system, the national government is better able to create policy without the consent of subnational governments than in a federation with a decentralized constitution. South Africa, with its strong central government, is a good candidate for this phenomenon. In a decentralized federal state, many issues that involve multiple or all governments may need to be addressed with an agreement rather than through the existing authority of a more powerful national government.

The third variable that could affect agreement formation is the existence of intrastate federalism. As Ronald Watts observes, many federations maintain bicameral legislatures, in which the second or upper chamber exists as a forum for the representation of the interests of regions or subnational units (Watts 1999b, 92). In theory, those federations which have effective and active chambers of regional or subnational representation have the ability to resolve issues of common concern within this body, in contrast to intergovernmental relations. This would include countries such as Germany and its Bundesrat or South Africa and its National Council of Provinces, both which allow direct representation of subnational governments. The consequence of this would be a smaller number of intergovernmental agreements formed, as opposed to those federations that lack effective means of intrastate federalism, such as Canada or Malaysia.

The fourth variable relates to the economics of federalism, specifically the size and status of the federal spending power. Federal spending power is the ability of a national government to use its greater financial resources (derived from greater revenue generating powers than subnational governments) to spend money in areas outside its normal jurisdiction (Watts 1999a, 64). The use of this power can be controversial but it creates de facto areas of common

⁵ It should be noted, however, that the existence of a favourable environment for institutionalization (and the persistence of unrealized gains) does not guarantee that a particular agreement will be made, only that the systemic factors may allow or even encourage the development of intergovernmental institutions.

jurisdiction not defined by the constitution. As in the case of constitutional overlap, this can provide new areas for intergovernmental institutions to form. Australia provides a good example of this as the federal government possesses a large share of total government revenue and is able to spend this in state jurisdiction, often forming agreements concerning programs such as housing, pensions and medical insurance (Watts 2008, 177).

The fifth variable that may affect the formation of intergovernmental institutions is the scope of the welfare state and the level of government intervention in the economy⁶. The more areas in which governments create policies and programs, the greater number of areas in which there is a potential for them to interact, cooperate, and enter into conflict. In theory, this would provide more areas where intergovernmental agreements could be formed, leading to the hypothesis that the larger the scope of government activity, the greater the degree of institutionalization that should occur. It is expected that a larger welfare state, such as Germany's would create more opportunities for coordination (and thus agreements) than that found in the United States.

The sixth variable and hypothesis is concerned with the number of subnational governments that exist within a federation. The greater number of governments in a federation, the more difficult it is to reach an agreement, as each additional government increases the potential that interests will conflict. Furthermore, in federations with a large number of subnational governments, such as the United States, India or Switzerland, it is difficult to get policymakers in the same place at the same time to develop agreements. Thus, even simple arithmetic has an effect on intergovernmental institutionalization.

The seventh and final variable to consider focuses on whether a lasting forum for intergovernmental relations exists in a federation. Permanent bodies or annual meetings, such as the Council of Australian Governments, provide for regular and structured interaction between government representatives. The more interaction that exists, the more opportunities that are available for governments to create institutions, increasing the potential number.

These seven factors affecting the formation of intergovernmental agreements provide a useful set of criteria for the further examination of agreements. Beyond simply understanding why a single agreement is formed, these theoretical propositions can grant wider meaning to the place of intergovernmental agreements within federations as a whole.

Conclusion:

By drawing on the existing literature of institutionalism, this paper has provided some general theoretical interpretation for the existing study of intergovernmental agreements, while proposing a clear basis for future scholarship. Intergovernmental agreements meet the four criteria set out by Peters for the study of institutions and existing scholarship has certainly treated agreements in this vein, if perhaps indirectly or implicitly. Moving beyond the existing consensus of agreements as institutions, this paper has proposed six reasons why they form as a means of explaining just what sort of institutions these agreements are and what roles they play in federal systems. Finally, agreements were examined in a wider context – looking at the effects of other institutions on their formation, something that will be the focus of my future study in this area. This will provide all scholars with a common approach to the future study of

⁶ Richard Simeon defines the scope of government activity as: “the range of matters which are subject to public choice and in which governments are involved”. This may be observed in government expenditures, legislation, regulation, and other government activities. See Simeon 1976, 559-561.

intergovernmental agreements, an area that will hopefully receive greater consideration in the future.

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