

Intergovernmental relations in federal and unitary nations: A framework for analysis

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Abstract

This paper applies the value-neutral empirical study approach to examine intergovernmental relations (IGR) in two federal states (the US and Nigeria) and two unitary states (UK and South Africa) using a framework for comparative analysis developed by the authors. The paper presents country studies examining the formal institutional arrangements and their operation in practice, to enable the IGR systems and frameworks in these countries to be sufficiently understood. The four triangulated case studies reflect on convergent and divergent views of the state of IGR in the different nations, the lines of differences and the prevailing views. Each multilayered state has its own system of intergovernmental relations. This system reflects on each case a specific constitutional set up and a specific political history. This paper therefore relates the different constitutional and political regimes and attempts to define generalisable similar trends. The comparative exploration of IGR in the four countries is therefore placed within the larger social and political context of the relationships, both conflictual and consensual, that shape the underlying dynamics of political issues. Hence country studies presented here will not merely describe IGR, but articulate the constitutional/legalistic, institutional, political, socio-economic, and cultural sources of each of the studied nation's patterns of IGR. The thrust is to reflect on the ethno-cultural cleavages and the influence of regional units in shaping IGR and explain the nature of IGR across different policy fields.

Keywords: Intergovernmental relations, cooperative governance, federalism, unitarism, comparative study

Introduction

Extensive studies of IGR from a comparative perspective; especially involving federal and unitary nations have rarely been conducted. It is on the basis of this position that the paper sets itself to analyse IGR in two unitary nations in juxtaposition to two federal nations as stated above. Key comparative factors as stated in the analytical framework (Fig 1) used are the political system, constitutional and legislative arrangements for IGR, spheres/ tiers of government, historical contexts and development perspectives and the institutional arrangements for IGR. The paper also examined the problems and challenges of IGR in the four nations and the ways of improving IGR. To cap the analysis, the paper looked at the expected outcomes of an intergovernmental system using what the authors termed IGR balance of power and cooperative governance indicators. The indicators include among others, a higher degree of autonomy of the different levels of government, co-dependence and co-existence of different levels of government, integrated planning and development across different levels of government, limited jurisdictional overlapping and clearly established and mandated institutions of IGR.

Conceptualising intergovernmental relations

Over the years, classical scholars have largely associated the concept of IGR with federal nations. Particular examples are Anderson (1960) and Elazar (1982). They held two fundamental positions that biased the study of IGR to nations with federal political systems. The first is that IGR is strongly rooted in the philosophical traces of federalism. The second is that IGR structures are only found in nations with a federal system of government. Bello (2014) argued that while the concept is usually associated federal political systems, this should not be construed to mean that IGR do not take place in a unitary system. De Villiers (2012, 677) aptly summed up that the need for IGR transcends 'beyond the dogmatic debate about "federal" and "unitary" forms of state so as to focus on practical challenges of cooperative government' as intergovernmental relations is a 'neutral' word in constitutional debates, whereas "federal" and "unitary" were stigmatised by historic experiences'

McEwen (2015, 5) defined IGR simply as 'relations between governments' and to Sunday (2014) IGR concern the links between different levels of government in a decentralized system that is, the centre, province and district. In other words, it refers to the interactions, relationships and the conduct of officials in the execution of governmental activities. It seeks the achievement of common goals through mutual relationships between and across vertical and horizontal governmental arrangements, alignment and cohesion across all levels of government. The aim of intergovernmental relations therefore, is to enable governmental activities through

promoting synergies for efficiency and effectiveness in order to sustain democracy and strengthen delivery capacity across all levels of government for the common good.

The purpose of comparative intergovernmental relations

Comparative studies of political and public administration systems in general have a long and flourishing tradition and the popularity of the comparative method as an essential tool to the understanding and development of modern day political and international relations theory has steadily increased (Landman (2008). Like any discourse of intellectual order, scholars have substantially differed on its conception, approaches and paradigms among other variables. This has led to contestations between those applying inductive approaches and those using deductive approaches. At the same time it created tension between scholars of the qualitative paradigm on one hand and the quantitative paradigm on the other hand. However, there is strong literature showing that IGR is rarely approached from a comparative perspective. Finifter (1993, 105) noted that ‘comparison is a fundamental tool of analysis. It sharpens our power of description and plays a central role in concept formation by bringing into focus suggestive similarities and contrasts among these’. Stafford (2013) defined comparative analysis as a methodology within political science that is often used in the study of political systems, institutions or processes. This can be done across a local, regional, national and international scale.

What gives comparative analysis of IGR systems relevance? This question may seem conjectural and rudimentary but is very fundamental. A number of scholars (Stoker, 1991, Ile, 2007, Chandler, 2005) have attempted to answer it and concluded that studies of IGR are generally country-specific, for instance, studies of IGR in the U.S make little reference to the theories that currently describe British practice and vice versa British studies often makes very little if any reference to U.S theory. In the same context, IGR in unitary nations often studied as central local relations have rarely been approached from a comparative perspective. Within Britain, for instance, most established frameworks for analysing IGR present the notion that local government is remote from being an agent of the centre but have the capacity to ensure local discretion. Making particular reference to Britain, Stoker, (1991: 147) noted that ‘the national local-government system influences and is influenced by local authorities. It is an important source of ideas and values’. Chandler (2005, 269) added that studies in the US, in contrast, have suggested that the influence of the federal government over state and local authorities has markedly increased and there is a serious danger of loss of local autonomy. For instance bargaining between central and local governments in the U.S could be succeeded by a ‘centralized inclusive model’ which would suggest considerable mandating activity, with little regard for the costs or prerogatives of state and local governments.

According to Peters and Pierre (2001, 131) while it is also true that IGR in different national jurisdictions are developing according to the trajectory of institutional relationships which is typical of that national context, the triggering mechanisms have been, on the whole, fairly similar across the world. There is thus ‘sufficient uniformity in these developments across different jurisdictions to allow a discussion on the causes, mechanisms and consequences’ of a new or emerging type of relationship between institutions at different levels or general IGR trends across nations in different jurisdictions. What we are thus witnessing is a gradual institutional and inter-institutional change reflecting both similar problems facing countries in different parts of the world and, at the same time, the trajectory of institutional change in each national context. Therefore, analysis of IGR across nations will provide the basis of understanding generalisable IGR trends and context specific issues which can as well be shaped by experiences from other nations.

Framework for comparative intergovernmental relations

As noted above, this paper applies a framework for analysis of IGR in different nations developed by the authors. The framework provides a new, rich baseline for understanding and comparing some key factors bearing common trends in the IGR discourses of the selected nations. With the aid of the said framework, the analysis therefore seeks to make sense of the different qualities and patterns of IGR across four nations with different political systems and constitutional discourses (UK, South Africa, US and Nigeria), by mapping different variables that are theorized as having explanatory relevance for a country’s IGR system. As the basis of unpacking IGR processes, cross nation studies reference concrete examples of policy areas in which IGR are central, contentious and effective. Following descriptions of main trends, principal mechanisms and processes of IGR, the different country studies will each highlight the efficiencies and dysfunctional areas including suggested solutions to improve the relations. The basis of these assessments are multiple cross cutting issues which are: constitutional and legislative frameworks on IGR, systems of governments, calibration of the

different levels of government, historical contexts and development perspectives, institutional frameworks for IGR and problems and challenges of IGR (refer to fig 1 below).

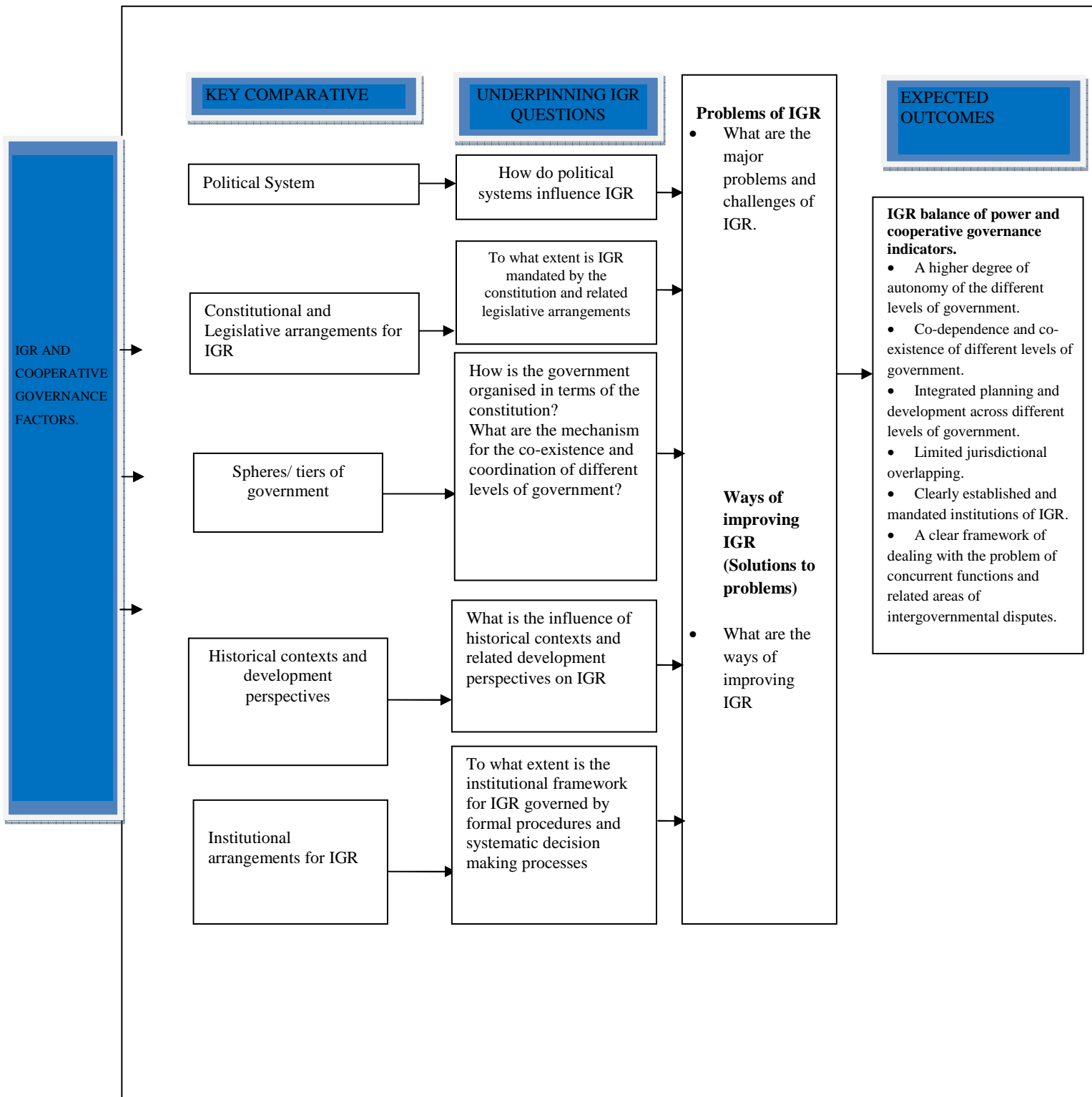


Fig 1: Analytical framework for comparative IGR studies

The influence of political systems on intergovernmental relations

The understanding of systems of government in both conceptual and practical terms presents a fertile ground upon which the influence of a system of government on IGR can be examined. There are two basic systems of government which are unitary and federal but perhaps classifying a nation as either unitary or federal is a difficult task as nations may pose both unitary and federal characteristics (Mdliva 2012). Gerring et al (2007, 4) dismissed the unitary/ federal distinctions as least important and argued that an 'existing unitary state could be federalized and these federal units could be of any shape, size, and number'. At the same time existing states of a federal nation could be brought into one unitary Constitution. Arguing in the context of nation building in German, Constanz (2007, 1) concurred with the above view but added that most nations, German included have often vacillated along two rival discourses in the course of nation building, that is 'federative nationalism' on the one hand and 'federal unitarism' on the other. However, this study maintains that nations can be clearly distinguished as either unitary or federal on the strength of constitutional provisions or particular normative attributes.

To cement the above view, the Department of Provincial and Local Government of the Republic of South Africa (2007) argued that co-operative government and IGR are laden concepts that may be explained within a particular governance system of a country. As explained earlier most scholars confuse IGR and federalism as conceptual synonyms. However, these are two distinct constructs in both concept and application. In the same context Mathebula (2004) observed that in multi-tiered unitary systems, there is an equivalent tendency to equate IGR with decentralisation or a form of allocating certain constitutional or any other form of power to sub-national units. Gerring et al (2007) added that generally, much has been written about the putative virtues and vices of unitary and federal governments but little empirical testing of the impact of such systems on the quality of governance has been conducted. Although the issue under discussion here is IGR, it is important therefore, to unbundle the different systems of government and explore their value in configuring relations between different levels of government. For example while South Africa is generally considered to be a unitary nation, Malan (2005) identified 50 features of the Constitution of South Africa (Act 108 of 1996) that resembles a federal nation with far reaching implications on IGR.

In the case of the federal nations under study, the U.S and Nigeria, many scholars have reacted to the size and complexity of their federal and IGR systems and rejected the existence of comprehensible patterns of activity that can be defined, described, and understood. To them, federal politics and the IGR systems are extensively complex and varied to the extent that patterns seldom emerge, or if they do, they seldom last long enough to explain very much. In this context, Anton (2014) argued that US federalism, for instance, is a 'wilderness of single instance,' comprehensible only through close examination of individual cases and events. To Wright et al (2009) the IGR system of the US contains very few continuous or near-perfect harmonious inter jurisdictional relationships. Most constitutional, institutional, political, organizational, and policy making interactions reflect regular tensions, conflicts, and cleavages.

However it is important to note that like unitarism, federalism is a constantly adapting system of government. Events in history and related futuristic projections force change in the distribution of power between all levels of government depending on what was/ and is necessary and what the people desire at any particular time is (Wright et al 2009). The US, for instance, has experienced many types of federalism for a simple reason that, events cause change and federalism works to adapt and accommodate itself to change. The rulings of the Supreme Court have greatly helped to define the distribution of power in case decisions and make clear to the nation the current state of federalism (Young, 2007, Boyd, 1997, Iwuoha, 2013). This is necessary, for federalism may never cease to alter the distribution of power between national and state governments and the relationships between the two. Federalism in the US has transformed and evolved through different phases reflecting variations in the allocation of authority between the federal government and the states. Iwuoha (2013) argued that the historical dynamism in the practice of federalism in the US is practically a product of administrative response to 'political interests, administrative efficiency, and the necessity to develop a uniform standard in some areas of public policy.' Equally important, the prevailing theme anchored on the values of human rights, liberty and security and the desire to attain a coherent and harmonised system of such rights issues for the protection of citizens' rights gives flavour for the changing patterns in US federalism.

While, the traditional organisation of most unitary nations have reflected centralisation of powers, paradoxically, the unitary nations under study (UK and South Africa) have extensively devolved governmental systems to the extent that some scholars have considered South Africa in particular to be a federal nation (de Villiers, 2012, Sindane, 2010, Malan, 2005, Thornhill, 2002). Sindane (2010) argued that the South African Constitution provides for not less than eighteen federal characteristics, all of which define the relations between the national

and provincial governments while Malan (2005) sees more than 50 clauses in the Constitution that resembles a federal system of government. These include a written constitution, which is regarded by a number of scholars as a prerequisite for any state with substantial federal characteristics, the process for amending the constitution, a bicameral parliament, composed of the National Assembly and the National Council of Provinces, constitutional recognition of regional governments, Judicial arbitration or the Constitutional Court which presides over constitutional matters, self-rule by provinces (also contained in Schedule 5 of the South African Constitution, i.e. exclusive functions for provinces) and shared rule/responsibilities between the provinces and the national government which are predominantly contained in Schedule 4, the role of the National Council of Provinces which is mainly to ensure that the provincial interests are taken into account, the provision for the autonomy of provinces, section 40(1) of the South African Constitution, several provisions for fiscal autonomy of provinces, separate legislative authority for provinces, permanence of provincial boundaries, the right of every province to write their own constitution; etc. At the same time the UK's extensively devolved union gives substantial powers to Scotland, Wales, England and Northern Ireland. All these factors make a system of government a key determinant of the dimensions of IGR.

Historical contexts and development perspectives on intergovernmental relations

In all the countries under study, the present state of IGR is reflective of certain fundamental transformations. The study of the systems of government, calibration of the levels of government and their powers have evolved over the course of the history of the different countries. At different points in time, the balance and boundaries between the national and sub national governments have changed substantially. In the twentieth century, for instance, the role of the federal government of the US expanded dramatically, and it continues to expand in the twenty-first century. The historical approach is therefore fundamental in studying intergovernmental systems as most IGR approaches and processes suffer from a lack of historical perspective. Classical scholars such as Graves (1964, 231) argued that historical analysis is a prerequisite to 'accurate diagnosis' and 'adequate solution' of the problems of IGR.

The IGR system of the UK, for example, reflects a complex history from centralist to a devolved system and the reorganisation of the functions and authority of the various levels of government. The recent reorganization of local government cited by Jones (2014) has made more complex relationships between the tiers of local authorities, especially in the cities where a single-tier system had prevailed. The establishment of new functional agencies for water and the health services, distinct from local authorities, has further fragmented local power. To enhance sustainable IGR in this system requires both elected members and administrators to possess diplomatic skills to relate their own authority with tiers both above and below and with other public agencies involved in providing services in their area. In the same context regional devolution has been advocated by nationalist movements in Wales and Scotland and by some in England with the objective to reduce the power of the central government and involve the public more in government. Seven models of devolution are currently under discussion.

The UK is a devolved union of Scotland, Wales, England and Northern Ireland. Devolution was, according to the Select Committee on the Constitution 2nd Report (2002, 70), both a 'response to and an attempt to influence public opinion'. It was a response to a feeling amongst many people in Scotland, Wales and Northern Ireland that rule from Westminster did not satisfy their political aspirations. Trench (2014) argued that by demonstrating that the UK could provide a framework that met those aspirations it was hoped that support for the Union could be maintained and perhaps even strengthened. Criticism was however centred on whether devolution would strengthen the Union, as some feared that it would prove to be the slippery slope towards the break-up of the Union. Generally, as summed by Gallagher (2012) the last dozen years has seen the UK moving from having one government to several, and more recently to having clear party divisions between the different levels of government

In the same context, scholars have generally categorised the development of American federalism into four distinct but connecting phases with far reaching implications on her IGR system. These are dual federalism (1789-1945), cooperative federalism (1937-1963) regulated federalism (1963-1981) and new federalism (1981-date) (George and Benson, 1965, Rosenbloom and Kravchuk, 2002, Iwuoha, 2013). Young (2001) understood dual federalism, also referred to as divided sovereignty or layer cake federalism, as a political arrangement in which power is divided between the federal and state governments in clearly defined terms, with state governments exercising those powers accorded to them without interference from the federal government. Dual federalism differed from cooperative federalism in that under the latter state governments often administered federal programs, and states depended on federal grants to support state government programs. State

governments eventually became dependent of the federal government in order to administer many of their programs, like housing and transportation whereas regulated federalism is a form of federalism in which Congress imposed legislation on states and localities, requiring them to meet national standards. New federalism, according to Iwuoha (2013) allows the states to reclaim some power while recognizing the federal government as the highest governmental power and seeks to balance to federal control with state and local autonomy.

For South Africa and Nigeria, IGR is largely shaped by the colonial contexts. South Africa came out of a strong racist Apartheid regime. Constitutional reform processes in the post independence era were aimed at achieving a synchronised government system that is not dualistic and preferential in terms of serving the interests of blacks and whites. This has extensive ramifications as the thrust of government is to promote inclusive cities, inclusive service delivery frameworks and integrated planning and development. At the same time, as shall be noted later, federalism in Nigeria is strongly rooted in the colonial system.

Constitutional and legislative arrangements for intergovernmental relations

Constitutionalisation and institutionalization of IGR are fundamental elements for cooperative governance and the resolution of intergovernmental conflicts. From Boyd's (1997) views, it seems that most old federations such as the United States, Canada and Australia were born in an era of limited government, so that their founders saw little need for formal mechanisms to manage interdependence. According to Bello (2014), in an era of complex, all pervasive governance, interdependencies and spill overs grow exponentially, with the attendant risks of contradiction and duplication, requiring the development of extensive mechanisms of IGR.

From their outset, most federations emphasized a dualist, separated or divided model of federalism, in which each government would be responsible for both law making and implementation of a defined list of responsibilities, for example, the US from 1789-1945 as according to George and Benson (1965). This according to Iwuoha (2013) is because most federal governments did not anticipate the overlapping and interdependence that defines modern government, and so did not build formal intergovernmental arrangements into their constitutional systems.

The above should however never be construed to imply that their constitutions were silent on some critical determinants of how the intergovernmental relationship would work. According to the Forum of Federalism (2015, 3), in Canada, federal and provincial powers were set out in two separate lists, and the division of powers contains two important residual clauses that is the 'peace, order and good government' clause for the federal government, and the 'property and civil rights' clause for the provinces. In addition, the 'disallowance,' 'declaratory,' and 'reservation' powers all suggested an intergovernmental relationship in which the provinces would be subordinate to overriding federal power. Moreover, federalism was accompanied by a Westminster style parliamentary system, the foundation of which is the accountability of each executive to its own legislature. This would clash directly with a system in which governments instead became accountable to each other, and bound by their collective decisions. Thus in Canada even the minimal institutionalization of the process such as a commitment to annual meetings of First Ministers has not been put in place, despite many proposals to do so. Indeed, constitutional entrenchment was included in three Canadian constitutional agreements, in 1971, 1987, and 1992, but all three failed, leaving the ideas in limbo.

Nigeria, before and after independence, went through an extensive constitutional reform process with far reaching implications on the character of IGR. Different regimes, from military dictatorships and the return to democratic and civilian order all have influenced IGR in various ways. To date the country has gone through ten constitutional phases that have produced the constitutions of 1922, 1946, 1950, 1954, 1959-60, 1963, 1979, 1989, 1995 and 1999. These constitutional and over-arching political events have configured and reconfigured the relationships among the levels of government in Nigeria. Consequently, to understand the nature of intergovernmental relations and why these relations function the way they do or are effective or ineffective, it is important to critically examine this fluid constitutional environment of the Nigerian federal system. In a nutshell the process of constitutional mutation has left in its wake a confusing picture as to the structure of governance, nature and character of IGR. It has impacted on the location of power to enact, amend or re-enact fundamental laws, on roles and responsibilities between different tiers of government and on power and control over resources. While the constitutional history of Nigeria is diverse, this analysis is focused mainly on the 1999 Constitution and its implication on Nigeria's IGR system.

The 1999 Constitution metamorphosed from the 1979 Constitution was a hurried Constitution. According to Lawson (2011) General Abdulsalami Abubakar and the Provisional Ruling Council (PRC) introduced the Constitution without consulting the opinion of the public. In drafting the Constitution, they had less than six

months (November 11th 1998- May 5th, 1999) which was too short for a Constitution of a nation as diverse as Nigeria. Roberts (1999) in Lawson (2011) argues that from the viewpoint of constitutional jurisprudence, the important issue is the extent to which constitutional provisions will enhance IGR within the framework of Nigerian federalism. He further assesses this in respect of the 1999 Constitution using three of the six basic combinations which are national -state -local, national -state and state -local relations. In these Robert's chosen three, major areas where IGR occurs include power relations, revenue allocation, and provision of certain welfare and infrastructural facilities. Regarding allocation of power, the federal government has matters contained in Exclusive Legislative List allocated to it (Second Schedule Part 1), both the federal and state governments have matters allocated to them in the Concurrent Legislative List (Second Schedule, Part II), they include the exclusive functions of a local government council and the participatory state/local government functions (Fourth Schedule). But where there is a conflict between federal and state laws, that of the former takes preference (Section 4(5)), and also where the state executive action clashes with that of the federal, that of the latter supersedes (Section 5(3)). This implies that the federal government can intervene in any matter of public importance if it chooses to do so. To Lawson (2014, 202), it is therefore clear that the constitutional provisions relating to power relations are not likely to enhance IGR as powers are so concentrated at the centre in such a manner 'capable of turning the states and by extension, the local governments to political simpletons always prostrating for political favours from the centre as 66 specific and 2 omnibus items virtually covering the entire range of public affairs are placed in the Exclusive Legislative List'.

In relation to revenue sharing arrangement, the 1999 Constitution establishes an arrangement that provides for statutory allocation of public revenue from the federation account held at the centre to states and local governments [Section 7(6), 162(1) (8)]. The federation may also give grants either conditional or unconditional to a state to supplement the revenue of that state with the prescription of the National Assembly and this is called the Federal grants in aid (Section 164(1)). This fiscal dominance of the federal government is a very great challenge to fiscal federalism. Onimode (1999) refers to this as fiscal unitarism and according to him, it can be adduced to the unified military structure where authority and power are centralized at the top and command and instruction are dictated from top to bottom. With this, it is clear that this dominance will continue to work against the progress and development of the other lower levels of government. In respect to the provision of certain welfare and infrastructural facilities, the different levels of government interrelate in the pursuit of certain programmes of development. Examples of such programmes include Universal Basic Education (UBE) and the Expanded Programme on Immunization (EPI). They also interrelate in the provision of infrastructural facilities such as construction of roads electrification etc. Regarding this, it is clear that the economic predominance of the centre could engender political attitudes that are antithetical to federal practice, including fierce struggles for the control of the centre as this will result in a politicized and conflicting system of IGR with little room for cooperation (Roberts, 1999). With such predominance, the Federal Government could even behave as if it has more stakes in some state than others along political party line (Gboyega, 1990).

Lawson (2014) concluded that the provisions of the 1999 Constitution have in all, emphasized vertical interaction among the three levels of government rather than horizontal relationships. This according to Roberts (1999) could impose limitations to the extent of cooperation among the levels of government and instead promote a dependency structure that would promote the inclusive authority model of IGR. Resistance to the evolution of such structure by sub-national levels of government would result in oppositional politics and negative IGR.

In contrast to Nigeria, Mdliva (2012) argued that the demise of apartheid and the transition to democracy in South Africa ushered fundamental changes to the form and functions of the State. It brought fundamental changes and the restructuring of co-operative governance and intergovernmental relations. The responsibilities, functions and powers of the different spheres of government were changed and streamlined as stated in the Constitution of the Republic of South Africa Act, 108 of 1996. To Malan (2005), the Constitution envisages a state that promotes interaction and co-operation of the different spheres of government on a continuous basis and therefore provides principles to underpin the manner and quality of those interactions. The Constitution of South Africa has been hailed as a master piece in promoting IGR and cooperative governance. According to Nzimakwe and Ntshakala (2015) the Constitution of South Africa is regarded as among the most liberal in the world, since it brought about a political system with a new dimension to IGR in the country. It sought to advance the achievement of government goals through an intergovernmental relations mechanism.

De Villiers (2008) argued that with Chapter 3 of the Constitution and the Intergovernmental Relations Act 2005, South Africa arguably has the most advanced legal arrangements of any Constitution to set out the spirit of national unity, provincial and local autonomy, and the importance of intergovernmental cooperation. Malan

(2005, 226) further argued that the post-1994 government recognised the challenge of creating a system of government that will promote co-operation and intergovernmental relations as outlined in Chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) because a major challenge and recurring theme in the practice of intergovernmental relations is that the Constitution introduces a 'natural tension' between the relative autonomy of a particular sphere of government on the one hand, and the pursuit of a coherent government for South Africa through IGR and collaboration on the other.

In the UK, while devolution arrangements differ in terms of the law, they have certain things in common. One is that the UK parliament at Westminster retains its sovereignty and continues to be able to legislate throughout the United Kingdom. According to the Select Committee on the Constitution 2nd Report (2002) the way in which it does so for both Scotland and Wales raises a number of complex questions. Second is that key functions such as defence, foreign affairs, national security and macro-economic policy issues are retained at UK level. In practice, social security is also retained, although formally devolved to Northern Ireland; the requirements of parity give the Northern Ireland Assembly and Executive very little room to develop a distinctive approach. A third is the financial arrangements underpinning devolution, in which treasury continues to play a dominant role. A fourth is the restraints on all three devolved legislatures or assemblies and their administrations, requiring them to act in compliance with EU law, the European convention on Human Rights, and the UK's international obligations and the fifth is the civil service.

Institutional arrangements for intergovernmental relations

Having looked at constitutional discourses as an aspect of IGR, it is important to fully interrogate the institutionalisation or formalisation of IGR in the studied polities. The fundamental question to ask is perhaps the extent to which intergovernmental bodies act as authoritative decision makers in both unitary and federal systems? To Bello (2014) it seems the alternatives here fall along a continuum. At one end intergovernmental deliberations are primarily about exchanging information and ideas as they provide a forum for discussion. In the middle are processes that emphasize bargaining, negotiation, and persuasion, but with the governments remaining responsible to their own legislatures and electorates for the actions they take. At the other extreme are intergovernmental institutions that can make formal decisions, binding on all the partners.

In relation to the relative efficacy of these IGR institutions and forums, the Forum of Federalism (2015) presented the following key questions which should provide the fundamental basis for such institutional frameworks:

- To what extent are the institutions of intergovernmental relations built into formal governing structures?
- To what extent are the operations of the institutions themselves governed by explicit procedures and formal decision rules?
- Are the institutions fluid and ad hoc, developing and changing according to the political needs of the participating governments?

Young multi-tiered systems often face challenges in institutionalising IGR through institutions, forums and practices over a long period of time as may have been the case in established federations and decentralised unitary arrangements. According to de Villiers (2012) the experiences of South Africa in setting up intergovernmental institutions and practices shortly after the promulgation of its 1993 Interim Constitution and the 1996 Final Constitution may be instructive to other emerging multi-tiered systems. These IGR institutions and forums are established to discuss matters of national interest within a specific functional area with provinces and, if appropriate, with organised local government. Malan (2005) viewed that these structures should also discuss performance in order to detect failures and to propose preventative or corrective action. In national IGR structures, development of policy and legislation relating to matters affecting the functional area is discussed as well as the implementation of these policies. Other matters for discussion in the national intergovernmental forums should be the coordination and alignment of strategic and performance plans as well as the priorities, objectives and strategies across national, provincial and local governments.

Nigeria, South Africa and the US have highly formalised IGR institutional frameworks mandated by their constitutions, primary legislation or statutory instruments. In the US, the major IGR institutions are the judiciary and senate while in Nigeria, there are various IGR institutions and forums which include the National Assembly, council of states, the supreme court, federal character commission and the independent electoral commission, the national economic council (NEC), national council on IGR and the revenue mobilisation and allocation and fiscal commission. In South Africa IGR institutions are the national council of provinces (NCOP) and the courts, the financial and fiscal commission, Department of Provincial and Local Government (DPLG) and the South Africa Local Government Association (SALGA). These institutions have various mandates. For example in

South Africa, The NCOP is constitutionally mandated to ensure that provincial interests are taken into account in the national sphere of government. This is done through participation in the national legislative process and by providing a national forum for consideration of issues affecting provinces. In Nigeria, Bello (2014) stated that the NEC has the powers to advise the President concerning economic affairs of the federation and in particular on measures necessary for the coordination of the economic planning efforts or economic programmes of the various governments of the federation. Lastly in the US, the Constitution envisages Congress as the primary site for managing intergovernmental relationships, but this role diminished following the constitutional amendment to require election of Senators. In all the three countries the judiciary has an important role in IGR, particularly dispute/ conflict resolution. According to Cameron (2001), where disputes appear to be unresolvable through the normal processes of IGR, it is sometimes the case that a party to the conflict will choose to take the issue to the courts for definitive resolution. Generally, when courts are called upon to decide such cases and interpret the rules they will help to shape them. Although a court order formally binds only the parties before the court, its impact is always broader. This is because court decisions provide authoritative interpretations of the Constitution that bind other courts in future decisions. Cases thus often have a far reaching impact.

The arrangements for IGR in the UK are mainly non-statutory and informal. According to Cairney (2012, 234) the logic of informal IGR has direct parallels to the 'logic of consultation' between interest groups and governments. The Select Committee on the Constitution 2nd Report (2002) viewed that most institutions established to anchor them have no legal basis; they exist by virtue of a set of intergovernmental agreements, chief among them the Memorandum of Understanding and Supplementary Agreements, whose own legal status is unclear. The devolution statutes such as the Northern Ireland Act 1998, the Scotland Act 1998 and the Government of Wales Act 1998 create a myriad of devolved bodies and the framework for the exercise of their powers, without setting out how the governments will deal with each other. Cairney (2012, 237) added that the overall lack of formality in IGR has been criticised from various perspectives since most contact between 'ministers and parties was by email, telephone or 'quick words when people meet socially', it was not recorded in the same way as formal minuted meetings. The report suggests that such informality depends on the 'fundamental goodwill of each administration toward the others'.

Various scholarly authorities such as The Select Committee on the Constitution 2nd Report (2002) have identified different arrangements for intergovernmental contact in the UK. Their three main dimensions as outlined by The Select Committee on the Constitution 2nd Report (2002) are Memorandum of Understanding, bilateral concordats, and arrangements for meetings between the UK government and devolved governments.

Problems of intergovernmental relations

The different countries as studied have different IGR problems that largely reflect gaps either in their constitutional frameworks or in the practical implementation of intergovernmental issues. Some of these problems from a generalist perspective may include dealing with concurrent and overlapping authority, the degree of formalisation of intergovernmental institutions and the attendant problems

The problem of concurrency and overlapping authority among spheres of government

According to Steyler (2001), it is widely acknowledged in practice, that the clear allocation of functional areas among different levels of government is a matter of concern as it affects effective service delivery. Although it is not a matter that has brought service delivery to a standstill, in the countries under study, it is a constant irritant for all concerned. A study by de Villiers (2008) on South Africa found out that concurrency under the Constitution imposes no conditions or impediments on the legislative authority of parliament or the provinces. Both spheres may freely legislate on any concurrent matter and their legislation can and should exist alongside each other. De Visser (2005) added that the pre-eminence provisions only determine which legislation prevails in the case of inconsistency. This to de Villiers (2008, 23) is important because it means that the Constitution does not leave scope for the 'field pre-emption' doctrine to apply in South Africa. According to the doctrine, national legislation may pre-empt or exhaust a concurrent field to such an extent that it leaves no scope for the provinces to legislate in that field, rendering invalid any provincial legislation that may be made in that field. In Nigeria, the US and UK the framework for dealing with concurrency are similar to South Africa. Whilst for the two federal nations all the three spheres of government have legislative powers, such powers and legislative enactments thereof, are only developed to the extent that they are consistent with the federal law. Where they are found to be inconsistent with the latter, they are struck down to their level of inconsistency.

Highly informal and under institutionalisation of IGR

While there are clearly established institutions of IGR in the federal nations under review and South Africa, the UK, as noted by Stevenson (2014) is not very interested in managing intergovernmental relations and that is well expressed through an attenuated under-institutionalised set of mechanisms put in place in 1999, and the government has allowed that to weaken or fall further into disuse since then. While the JMC is the key IGR institution, plenary meetings of that ceased altogether between 2002 and 2008, they have been more or less annual since then, but are characterised by grandstanding rather than productive work. The JMC's 'domestic' format has nearly ceased to function, as so few policy issues concern more than one devolved government. The only established format of the JMC which does meet regularly and do more or less of what it is expected to, is the EU format which helps formulate the UK's approaches for major EU Council meetings, though there are problems even there. In reality, most intergovernmental issues are bilateral, but with few exceptions they are dealt with in an ad hoc, casual way, out of sight of public or legislatures, and many important issues slip through the net.

Intergovernmental disputes and conflict resolution

Different levels of government often find themselves in conflict as they deliver services. This calls for effective dispute resolution mechanisms in order to minimise the impact of those dispute on cooperative governance and promote integrated governance. Such disputes and conflicts are a product of a multiplicity of factors, among others, where financial, political and material interests of the different parties are in opposition. In all the studied countries, the judiciary has played a critical role in resolving differences through court orders. However, before litigation, parties involved are usually encouraged to pursue other dispute resolution mechanisms such as conciliation and arbitration. Arguing in the context of the U.S and South Africa, de Villiers (2012) stressed that appeals to courts presents abnormal intergovernmental relations although it offers participants a powerful, but risky strategic tool in the struggle to advance one's intergovernmental interests. It should be noted that it is not simply a mechanism for resolving disputes between the centre and the regions, occasionally; there are unbridgeable conflicts between regional governments, which get settled by the courts. The effect of judicial interpretation can be significant and long-lasting, which is why, in areas of genuine ambiguity, one often finds among the participants a mutual disinclination to force the matter to a court-imposed conclusion.

However, reflecting on the future of IGR dispute resolution in the UK, Stevenson (2014) and Trench (2014) shared the argument that it seems the structure of the disputes avoidance and resolution procedure is fundamentally skewed in the interests of the UK Government and this mechanism presents limitations in commanding much credibility from devolved governments. This exposes the system to the risk of undermining the legitimacy of the whole system of devolution. Trench (2014) further argued that arbitration may not be the answer, and therefore this has the potential to constitute a revolutionary change, to which the UK Government is unlikely to agree. A sticking issue, for instance is that the choice of arbitrator would be contentious under any conditions, but more so as the issues that fall to be considered by this mechanism will be principally political in character. Generally contentious legal issues would be resolved by the UK Supreme Court. The capacity of arbitration to resolve disagreements, of political nature is generally questionable.

Conclusion

This paper examined the context of IGR in federal and unitary nations using an analytical framework developed by the author. It dispelled the classically held view that IGR are a feature in unitary nations and argued that intergovernmental engagements are equally a key issue in unitary nations. The comparative analysis was hinged on a number of cross cutting issues including the constitutional and institutional framework of IGR, systems of government and problems of intergovernmental relations. Political systems of the different government were found to be influential in shaping IGR. Of the nations studied, South Africa, Nigeria and the US have codified and institutionalised IGR systems. However, intergovernmental activity in the UK is largely informal and not supported by legislation save for the devolution laws that allocate functions to the different levels of government. In all cases the judiciary was found to be an important institution in the resolution of intergovernmental conflict but parties were encouraged to pursue other avenues such as conciliation and arbitration before litigation.

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