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BACKGROUND PAPER

STRUCTURES OF INTERGOVERNMENTAL RELATIONS

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Introduction

Federalism divides the sovereignty of the state between a central government and regional governments. This establishes two sets of relations, one of which is of primary importance and which will receive the most concentrated attention in this note, and the other of which is of secondary importance, although it is by no means insignificant.

The relations which are of primary importance are those between the constituent units of a federation and the central government. Just as the the relative authority and jurisdiction of the two orders of government are matters of abiding concern in federal countries, so too are the relations and the interdependencies which prevail between them.

Then there are the relations which obtain among the sub-national units of a federation.

Intergovernmental relations of both kinds profoundly shape the way in which a particular federation functions. Indeed, intergovernmental relations (IGR) is the workhorse of any federal system; it is the privileged instrument by which the job - whatever the job - gets done. IGR operates at the interface between what the constitution provides and what the practical reality of the country requires.

The nature of modern life has made the relations between and among governments increasingly important. While the theory of cleanly separated jurisdictions and watertight compartments may have made some sense in the 19th century, it is clearly passé today. It is not only within classical federations that one finds a blurring of jurisdictions and an unremitting intergovernmental need for discussion, negotiation and exchange; this necessity is found throughout public life in both the domestic and international spheres, witness the increasing importance of what has come to be called 'multigovernance'.

What Shapes the Structure of Intergovernmental Relations?

Relations among governments within a federation assume their distinctive form as a consequence of:

- the society of which they are a part,
- the constitutional regime within which they are set,
- the governmental institutions of which they are in part the expression, and
- the internal and external conditions which shape the life of the given country at a particular time.

Listed below are some of the chief factors which contribute to the shaping of intergovernmental relations. These are combined in distinctive ways in each federal country to create the unique pattern of intergovernmental institutions and processes characteristic of that society.

Demographic and Geographical Factors

The size of the country, the size of the population and the distribution of the population on the territory may all affect the structures and processes of IGR. Russia's federal experience will be very different from that of, say, Switzerland, if for no other reason than that the former is the largest country in the world, spanning a dozen time zones, while the latter is a tiny country tucked into the heart of Western Europe. India, with a population of almost a billion people, crowded into a subcontinent, will conduct its federal affairs differently from the Republic of Comoros, composed of three islands in the Indian Ocean and a population of less than 600,000. The absence of territorial contiguity is clearly another consideration.

Social and Cultural Factors

The racial, religious, linguistic and cultural composition of a given country often sets the terms of the federal bargain, ruling in or out certain institutional forms and practices. Belgium, Canada, India, Malaysia and Switzerland, with their multilingual and multicultural societies, stand in contrast to the socially more homogeneous federations of Australia, Austria, Germany and the United States.

A common language simplifies federal interchange; the existence of more than one official language, or the absence of a readily available lingua franca makes IGR communications more difficult. Profound socio-cultural differences within a country may create mutual ignorance and suspicions which inhibit effective intergovernmental relations. The existence of a significant, concentrated cultural minority may encourage a greater degree of formalization of IGR rules and processes than might otherwise be the case.

Historical Factors

The force of tradition and common political experience will affect the capacity of a federation to sustain or overhaul its intergovernmental relations. A political community with a long, common experience of federalism will enjoy advantages and suffer disadvantages unknown to a newly created federal society. For better or for worse, the norms and practices of IGR in Canada and the United States are set in channels of traditional practice and behaviour, whereas the possibility, for good or ill, of a radical change in arrangements may exist in a newly federal country such as Russia. In addition, as Russian experience suggests, the intergovernmental relations of a country in which the rule of law has but shallow roots, will be profoundly shaped by that reality.

Constitutional and Institutional Factors

The number and relative size of the units in a federation, the degree of asymmetry among them, whether it possesses a common law or civil law system, whether the government is organized according to parliamentary or presidential/congressional principles - these are all considerations of the utmost importance in determining the nature of IGR structures and processes. It is difficult or impossible for intergovernmental representatives in the United States, with 50 states, or Russia, with 89 assorted sub-national units, to do business in the same room. Again, Russia, with very substantial asymmetry among its 89 assorted republics, oblasts, krajs, okrugs, etc., frequently resulting from bilateral treaties, must conduct its IGR to some degree as a series of relatively unrelated intergovernmental processes; achieving coherence is an awesome challenge. Different legal systems presuppose a certain degree of formality or informality in the structure of government, and this will sharply affect the character of IGR. A parliamentary system, which tends to concentrate power in the executive, and a congressional system, which disperses power among many actors, will produce quite different patterns of IGR, the one, executive dominated, and the other, conducted by the legislative branch as well. An upper house in the national capital, drawing the federal and regional executives into a 'federalized' central legislative process, may do much of the IGR business in a federation.

Political Factors

The type of electoral system can have an impact, not just on the stability of governments,

but on the capacity of the central government to represent minority and regional communities and to generate a degree of cohesion in the federation. While a first-past-the-post or single member plurality electoral system tends to foster stable majority governments, it tends as well to under-represent minority opinion. Countries using various forms of proportional representation, such as Australia, Austria and Switzerland, on the other hand, obtain a more accurate electoral reflection of the actual distribution of votes, but tend to encourage multiparty systems, and, frequently, coalition governments. These forces contribute to the structuring of the political party systems, at both the federal and the regional levels.

The nature of the political party system in a federation will shape its intergovernmental relations. A federation with an integrated national/regional party system is endowed with an integrative capacity missing in a federation differently constituted; relations among governments may take on the appearance at times of relations among fellow politicians within the same political formation. A country, such as Canada, with fairly distinct party systems at the federal and provincial levels, must look elsewhere for the conduct of the business of the federation.

The degree of centralization or decentralization is another factor of significance in shaping IGR. Often the result of evolving historical and political circumstances, rather than formal enunciation in the constitution, the degree of centralization or decentralization shapes the balance of power between the two orders of government and, therefore, the behaviour of the principal players and their relations with one another.

Circumstantial Factors

Finally, we would point to the real-life circumstances in which a federal country finds itself. Normally, this context may not seem to have a palpable effect on IGR, but if one considers the existence of an external threat, such as war, or an internal threat, such as secession, it is possible to appreciate the impact of such circumstantial factors on IGR. War typically has a dramatically centralizing effect on states, federations included, and wartime conditions can sometimes lead to the effective suspension of the federal system and its normal pattern of intergovernmental relations. A serious threat of secession by one of the federation's regional units can also lead the country to take extraordinary defensive measures, thereby altering the normal pattern and practice of IGR. It is important to note, too that the residual impact of these events can be considerable and can frequently be felt long after the crisis has passed. Wartime centralization, for example, is sometimes very difficult to unravel when peace is regained.

The Structures of Intergovernmental Relations

The structures of intergovernmental relations can vary greatly from one federal system to another. While all perform the same general function, namely, to manage the interface among governments, especially between the two orders of government, they display considerable variety - a variety which is directly related to the factors summarized in the previous section of this paper.

Much of the IGR that is carried on within federations is 'pre-structural'. A great deal of the business of the federation will be conducted informally, by telephone, fax and e-mail, and in unstructured encounters between politicians and officials. This is, arguably, as important as any other 'structure' in sustaining the effective conduct of federal affairs; its absence would rapidly make itself felt in any federation.

Intergovernmental relations, however, may vary in scope. It may involve all the units in a federation, only some of the units (for example, a regional, cultural or economic grouping), or only two of the units (either the central government and one of the regional units, or two regional units in bilateral relation with one another).

It may vary as well along the three following dimensions:

- The degree of institutionalization. IGR in a given country may be highly institutionalized, with formal structures and processes that channel

intergovernmental activity, or it may be conducted in an informal, ad hoc fashion, depending heavily on the nature of the circumstances and the preference of the particular political actors.

- The extent to which it is decision-making in character. IGR may involve little more than the sharing of information between and among governments in a federation; or it may entail consultation and the adjustment of policies by one actor in the light of the plans or intentions of another; or it may embody a formal decision-making capacity, where the intergovernmental forum itself is the site where some of the authoritative choices of a federal community are made.
- The degree of transparency. IGR may be practiced behind closed doors with little in the way of popular knowledge or accountability, or it may be embedded in processes which are open to public scrutiny and influence, and constrained by clear lines of democratic responsibility.

It is possible to categorize IGR structures into three - possibly four - types: intra-jurisdictional; inter-jurisdictional; judicial; and - given the growing impact of globalization on federal states - international. We will discuss each briefly in turn.

Intra-jurisdictional IGR

Several federations have provided for constitutional arrangements that in effect 'federalize the centre'. They have brought the regions into the institutions of the central government.

Frequently, this is done by means of an upper house which, in one form or another, represents the federated regions. The form of appointment effectively defines the manner in which regional interests will receive expression at the centre; by direct election, as in Australia, Switzerland and the United States; by indirect election from the regional legislatures, as in Austria and - to a degree - in India; by direct nomination of delegates by the regional governments, as in Germany; or by some mixture of the above, as in Belgium, Malaysia and Spain. Canada's system of Senate appointment by the central government does not meet the intra-jurisdictional criterion. The major function of most of these upper houses is to review federal legislation from the perspective of the regions and of minority interests. The German Bundesrat, given that it is composed of Laender delegates, performs an explicit intergovernmental role, encouraging collaboration between the national government and the regional executives.

Inter-jurisdictional IGR

There are two categories into which this type of interaction falls: relations between some or all of the regional units and the central government; and relations among some or all of the regional units themselves, in the absence of the central government.

There are a wide array of structures and arrangements federations have fashioned for themselves to facilitate interaction between the regional and the central governments, running from meetings of heads of government (such as First Ministers Conferences in Canada), to meetings of ministers responsible for specific portfolios, to a wide range of meetings of officials and functionaries.

They are not usually mandated or required by the constitution, having developed pragmatically over time in response to a felt need. However, Australia's Loans Council, created by constitutional amendment in 1927, coordinates both federal and provincial borrowing and can take decisions binding on both orders of government.

These institutions can range from purely ad hoc get togethers, addressing an issue of the day, to institutionalized conferences, councils or commissions. The Australian Commonwealth Grants Commission, a standing body since 1933, has provided guidance to the Commonwealth government on redistribution through the equalization program. The Council of Australian Governments, established in 1992, fosters intergovernmental collaboration, particularly with respect to the country's economic development. At times, informal meetings, convened when the occasion requires it, evolve into established

institutions, and begin to receive staff support, develop decision-making norms, and commission and receive work by dependent bodies.

In many federations, there are regular meetings among representatives of some or all of the sub-national governments, meeting on their own. Examples of regional meetings in Canada would be the Western Premiers Conference and the Council of Atlantic Premiers; in the United States, the Great Lakes governors and the New England governors meet regularly to consider regional issues. Cross-border regional meetings between American governors and Canadian provincial premiers have grown out of these activities carried on north and south of the 49th parallel. The Canadian Annual Premiers Conference (APC) brings together all provincial premiers plus territorial leaders. The APC exemplifies how these meetings sometime evolve into more formal bodies with the passing of time. It began as little more than a summer golfing opportunity, but in the 40 years of its existence, and particularly in recent years, it has grown into one of the central intergovernmental institutions of the federation. Sometimes these bodies tackle problems all are encountering in their common fields of responsibility. Very often, as well, the regional executives want to caucus in reference to a federal initiative or in preparation for a meeting with the central government.

As the constituent units gain experience with the ongoing practice of executive federalism, many put in place a staff capacity to coordinate IGR activity within their own shops and to offer strategic advice on intergovernmental objectives and how to achieve them. In such circumstances, the conduct of IGR becomes more strategic, more centralized at both levels, more process driven, and more formal.

IGR and the Judiciary

Where disputes appear to be un-resolvable 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. As war is the extension of diplomacy by other means, so the appeal to the courts can be understood as the extension of IGR into a different arena. Clearly, this is not normal 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, that 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.

International and Other Forms of IGR

Some of the contemporary challenges confronting federal and other states have clear implications for IGR, even if they point to forms of governmental interaction not obviously caught by the conventional definitions of the field.

For example, the aspirations of federal territories for greater degrees of self-determination call for progressive redefinitions of the relationships within the federation and the fashioning of new forms of intergovernmental cooperation.

Again, the drive of indigenous peoples in several federations for self-government raises complex conceptual and policy issues concerning the appropriate relationship that might be established between these emergent political entities and the traditional structures of federalism.

The growth of quasi-governmental international bodies and the emergence of complex multi-tiered political structures which transcend the parameters of states require consideration in any thorough review of intergovernmental relations in federal systems. While it may not always be clear how all of the pieces fit together, it is most certainly apparent that they cannot be easily ignored.

Three North American federations - Canada, the US and Mexico - have combined to create

in NAFTA an international entity which will have a continuing impact on all of the constituent units of the three federal systems. Malaysia similarly is a member of ASEAN, the Association of South East Asian Nations. Both the negotiation of such international pacts as these, and their ongoing management, call for unfamiliar patterns of behaviour and domestic interaction on the part of all the federal members.

In the European Union, which is essentially a confederation with distinct federal dimensions, one finds four federations - Austria, Belgium, Germany and Spain. Sorting out the proper European status of the regional units of each of these federations remains very much a work in progress, with respect to relevant European-level negotiations and representation in Brussels, as well as with respect to the adjustment of the balance of power between centre and region within individual federations.

The forces of globalization are re-shaping most societies, federal countries being no exception; and these forces are in turn altering in many subtle and not so subtle ways the structures and processes of interaction of constituent federal units.

Conclusion

The intergovernmental experience of existing federations displays a rich array of structures, processes, institutions and mechanisms for coping with the inevitable overlap and interdependence that are features of modern life. While each federation has followed a distinctive path, based on its own particular circumstances and conditions, all are responding to the same functional requirement, namely, to find effective ways of managing the interface among governments. The capacity to manage the interface will be of increasing importance in the future as new federal systems are created and as multi-tiered governing structures proliferate in the modern world.

It is easy to get lost in the technicalities of these processes, and to concentrate analysis on the structures and mechanisms by which intergovernmental competition is regulated or intergovernmental cooperation is fostered. There is, however, another, and ultimately more important, context within which to set intergovernmental relations, namely, the framework of democratic norms and values. There are deep democratic challenges facing modern governments of every stripe. There are doubly difficult issues of democracy, citizenship and accountability which confront governments in their relations with one another.

At least it can be said, however, that there is both a theory and fairly muscular institutions which justify the adjective 'democratic' in the phrase, 'the modern democratic state'. So far, there is neither an equivalent theory nor are there equivalent institutions which would permit us to speak comfortably about 'democratic intergovernmental relations'. Yet IGR is a central fact of modern political life - not just in federations - and it is likely to become more so in the years ahead. Democratizing IGR is one of the central challenges confronting governance at the end of the century.

Issues for Roundtable Discussion

The roundtable discussion might begin with a sharing of the practical experience of the participants, addressing the following questions:

- What is the most pressing practical problem confronting intergovernmental relations in your federation? How is it being tackled?
- What would you rate as the most significant recent accomplishment of intergovernmental relations in your country? How was it achieved?
- Have there been important innovations in the structure and conduct of intergovernmental relations in your federation? What impact have these reforms had on IGR in your country?
- The second part of the discussion might turn more to evaluation. It is possible to

assess IGR from the perspective of efficiency, from the perspective of effectiveness, and from the perspective of democracy.

- Is IGR as it is normally practiced a high-cost, time-consuming, inefficient way of achieving public policy goals, or is it an economical process for doing the necessary business of a federal system? Are some IGR patterns more efficient than others? Are there ways of reducing the costs?
- Does IGR impede or facilitate the achievement and implementation of the kind of public policy the country requires? If the role of the state is to provide a broad range of service to its citizens, is IGR helping the national and sub-national governments, which are the agents of the state in a federation, to do their job well?
- Does the practice of intergovernmental relations obstruct citizen participation, obscure government decision-making, confuse the public, and dissipate rather than focus lines of accountability, or has it been forced to align itself with democratic norms
- A final topic that might merit review has to do with the emergence of serious competitors in the 'governance market place.' The nation-state is no longer in a monopoly position, but is having to face serious competition from centres of power above it and emergent power centres within and below it.
- What is the impact of these forces on the nature of intergovernmental relations in federal systems?

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