8. Intergovernmental relations: the lifeblood of federalism

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EXPLANATION OF INTERGOVERNMENTAL RELATIONS IN FEDERAL SYSTEMS

Federalism is profoundly relational. Both the theory and concrete incarnation of federalism rest on a combination of self-rule (or autonomy) and joint rule (concerted action, cohesion) (Popelier 2021). Regardless of the actual configuration, every federal system will – by definition and necessity – entail interaction between federal partners. Intergovernmental relations (IGR) refer to the institutions, mechanisms, processes and power plays through which this interaction unfolds between federal partners (Poirier, Saunders and Kincaid 2015).

In most federations, vast domains of policy development and implementation require some collaboration – or generate friction – between orders of government. Through IGR, federal actors redistribute resources, share information, make joint decisions, and elaborate interlocking arrangements. IGR structures the interface between exclusive, but closely related, powers. It can also help clarify ‘who actually does what’ in the context of shared or concurrent jurisdiction. IGR can also lead to an order of government trenching on another order’s jurisdiction in ways that contravene the formal division of powers. Competing models of IGR can co-exist in a federation, depending on periods or policy issue (Agranoff 2007).

IGR can be vertical (between federal authorities and constituent units), horizontal (between the latter), bilateral or multilateral. Increasingly, federalism scholarship considers actors beyond those with formal constitutional authority. These actors may include local governments, indigenous nations, minorities, and civil society or private sector actors. Sometimes, federal authorities bypass constituent regional units to deal directly with local governments or citizens in a way that ‘squeezes out’ constituent units and generates ‘hourglass federalism’ (Courchene 2004). Federal design is complex. IGR generates, and unveils, additional layers of complexity in public action.
IGR occurs through rich networks of institutions and mechanisms. Cooperative IGR techniques include the legislative branch but far more frequently the executive branch of government. The former include legislative harmonization, delegation of administrative or regulatory functions by one order of government to another, dedicated parliamentary committees, or, more rarely, direct interaction between elected officials of distinct orders of government, sometimes through regionally based associations. At the executive level, federal diplomacy occurs through high-level ministerial councils and often intense and constant interaction between policy specialists from the various orders of government, including, in some contexts, dedicated IGR departments (Schnabel 2017). IGR can also involve arms-length or administrative agencies to which the various orders of government delegate certain functions. The myriad of intergovernmental agreements concluded between federal actors (occasionally with third parties), and which may be legally binding or not, plays essential functions in nearly every federal system (Poirier 2004; Parker 2015; Fahey 2020).

The dynamics of IGR depend on specific institutional arrangements, history, party politics, constitutional and political culture, form of government, socio-demographic diversity, resource distribution, policy areas, and timing. Even in a single federal system, IGR oscillates between institutionalization and informality. More recent federal systems, particularly those that arose through devolution from a unitary structure, tend to anticipate and institutionalize interaction to a greater extent than older federations. Similarly, civil law federations more often provide legal frameworks for intergovernmental institutions and cooperative processes than do their more pragmatic counterparts influenced by the Anglo-American and common law tradition. The latter more often consider virtually all IGR to be almost exclusively political in nature (even if affected by court decisions, for instance). For example, the former more readily recognize some form of constitutionalized ‘federal loyalty’ or duty of good faith, which must guide the actions of various orders of government and which courts can oversee (Poirier and Saunders 2015; Fleiner and Saunders 2013; Gamper 2010). Of course, many federal regimes fall somewhere between this dichotomy (Poirier and Saunders 2015).

Regardless of where IGR is situated on the scale of (in)formality, it plays similar roles in various federations. IGR helps determine who does what, who pays for what, and how things are done in specific policy areas. IGR also contributes to the gradual, ad hoc transformation of dualist federal systems into more integrated ones, in the (re)creation of regional blocks within a particular federation, on the margins of the official federal architecture and without recourse to formal constitutional amendments (Osaghae 2015). In this respect, IGR is an instrument of para-constitutional engineering that can significantly affect the federal equilibrium (Poirier and Hartery 2022).
Despite its prevalence, IGR can be hard to decipher because relations can often unfold behind closed doors or at administrative and operational levels. Thus, IGR is essential, ubiquitous, idiosyncratic, and yet, opaque (Poirier 2019). In nearly all federal systems, IGR reinforces the executive branch to the detriment of the legislative and judicial ones, which can create serious issues of transparency, accountability, and respect for the ‘federal rule of law’.

REASONS TO STUDY IGR

Political scientists, economists, historians, policy analysts, and constitutional and administrative law specialists who seek to decode the federal phenomenon all have to delve into IGR at some point. This allows us to contrast the formal constitutional set-up and theory with the reality of federalism ‘as it is lived’.

Questions related to IGR are likely to affect every theme examined in this volume, from second chambers to fiscal federalism, division of powers and courts to constitutionalism, political (and legal) culture to electoral regimes, local government to asymmetry, plurinational federalism and relations with indigenous peoples to conflict resolution and secession, and from the potential and pitfalls of federalism for gender equality and democracy to comparative methodology. Similarly, it is nearly impossible to understand specific case studies – whether they focus on particular federations, institutions, or policy areas – without reflecting on the IGR dynamics and mechanics through which interaction actually occurs between orders of government. All these angles require consideration for the equilibrium between autonomy and cohesion, self-rule and joint rule. IGR is often the pivot for balance between both sides of this equation. Thus, the reason to study IGR is that it is nearly impossible to understand federalism without doing so.

HOW IGR FITS INTO FEDERALISM RESEARCH AND STUDY

The literature broaches IGR from countless angles. The following illustrations are far from exhaustive.

- Political processes largely determine the nature and dynamics of IGR. Scholars seek to capture the motivation behind the decision to cooperate or not (Bolleyer 2019; Parker 2015) or to assess the impact of IGR on the federal balance (e.g., its centralizing or decentralizing effect). In this context, IGR can described as collaborative, cooperative, competitive, egalitarian, hierarchical, confederal, even coercive (Kincaid 1990; Stephens and Wikstrom 2007).
• IGR also refers to the means through which interaction occurs between orders of government. For instance, second chambers are often presented as an essential centerpiece of any federal system. Yet, bicameralism has not met its promise of offering effective participation to constituent units (Saunders 2020; Fessha 2021). Instead, various forms of IGR may offer more effective, flexible, adapted means of securing the ‘joint rule’ dimension of federalism (Palermo 2018).

• Political science and law literatures also seek to capture the mechanisms and institutions that structure interlocking action in decision-making, with executive institutions and processes getting the most focus. Remarkably under-studied are the ways in which the legislative branch contributes to federal interaction, including harmonization of laws, delegation of regulatory and administrative powers from one order to another, sharing best practices, or – at least in parliamentary federations – scrutiny of collaborative actions undertaken by the various executive branches.

• Trends in constitutional interpretation favoring overlapping jurisdiction, even in formally dualist federations, have IGR implications (Steytler 2017). If several orders of government can act, there might be duplication, tension, emulation, or negotiations. Most policy areas in federal systems involve some interaction between orders of government at the policy development, implementation and evaluation stages.

• Federal theory often posits that federalism enhances democracy, notably by increasing opportunities for political participation and the ability of citizens to lobby different orders of government to enact policy preferences. However, in most federal systems, IGR is notoriously executive-dominated, and, in some cases, the decisions that emerge from intergovernmental negotiations are shielded from effective parliamentary and judicial scrutiny. Thus, the intersection between federalism, democracy and the rule of law has profound IGR implications (Benz 2017).

• Feminist scholars have examined how federalism offers both opportunities and challenges for gender equality (Vickers 2019). One might hypothesize that IGR reinforces the executive branches in ways that can marginalize gains made by women – and other minorities – in political participation in elected assemblies. Top-level IGR is arguably not only executive- but also male-dominated. In some federations, however, women are present in large numbers in the less visible layers of public administration where concrete collaboration, information-sharing, and the like occurs. Exploring this dimension of IGR through a gender lens might yield enlightening insights.

• Certain issues, though not framed as studies of IGR per se, can be understood through the IGR lens. For instance, explorations of ‘federal loyalty’ (Gamper 2010) or the ‘federal spirit’ (Burgess 2012) are about the commitment to maintaining good faith and constructive relations between federal
partners. Similarly, exploring nested and competing national identities in plurinational federations (Gagnon 2021) indirectly raises issues of relati-

LEARNING OBJECTIVES

When studying IGR, students should understand that:

• IGR is an essential component of the ‘shared rule’ dimension of federalism.
• Every federal system includes both institutionalized and informal IGR. The definition of what is (in)formal partly depends on the disciplinary and legal culture lenses being used by authors.
• IGR may be cooperative, competitive, coercive, or collusive depending on time period, partisan politics, and policy area.

Depending on the level of instruction and time devoted to IGR, students should also be able to:

• Identify distinct IGR mechanisms (those that involve the legislative and executive branches, agencies, civil service, agreements, etc.).
• Contrast IGR in a particular federal system with others by using analytical concepts such as horizontal, vertical, bilateral, multilateral, formal or informal arrangements or trends.
• Trace major trends in IGR in a particular federal system and understand how relations may evolve through time, policy areas, and so on.
• Contrast IGR modalities and trends between distinct federal systems.
• Recognize the impact of IGR on political and legal accountability (democ-

HOW TO STRUCTURE AND TEACH IGR

Topics to be broached in teaching IGR have been addressed above. This is a possible sequence:

1. Concepts and institutional framework
2. Main IGR actors, institutions and mechanisms
3. Case studies (countries, institutions, policy issues)
4. Major trends
5. Challenges of accountability.

More interesting, perhaps, is the question of how to address the decoding of IGR.

Relevant, effective, and realistic pedagogies will depend on the number of sessions allocated to IGR, whether students are undergraduate or graduate, and whether the course is delivered in a large hall or a small seminar. Methods will also depend on whether evaluations take place through exams or research papers, and, in the latter case, whether students can engage in minimal empirical enquiry. Approaches will depend also on whether IGR is addressed through a comparative lens or a single federation.

Pedagogical approaches might include:

- Critical summary of readings by students, individually or in small teams. Students may be asked to prepare a list of questions for class discussion.
- Large classes may be divided into discussion groups. Cue questions might include:
  - Identify five IGR methods used in a policy area we have been studying.
  - Think of a topic you are studying in a different course (e.g., electoral politics or international relations). How are issues in that course affected by IGR?
  - What is the impact of IGR on the centralized/decentralized nature of the federal system we are studying?
- Given IGR’s practical dimension, guest speakers can lift the veil of federalism ‘as it is lived’. They might include:
  - Policy specialists who deal with intersecting multi-level constitutional powers and policy action. How do they manage? What works or not? What would they do differently? What reforms would they suggest?
  - Political actors who have negotiated federalism matters from seemingly mundane cooperative arrangements to major constitutional reform.
  - Constitutionalists or public law specialists who might explain the formal (and informal) methods of interaction in the particular system.
- Have note takers map out discussion or synthesize presentations by guest speakers.
- In a seminar, create teams of country-specific experts. Have each group synthesize the history, geography, ethno-linguistic diversity, constitutional design, division of powers, political and economic trends, and so on, of a specific federation.
• Once they have presented their findings, the class can explore IGR more transversally in their various federal systems.
• Students could compare second chambers as well as top-level intergovernmental councils, or contrast formal ‘administrative federalism’ (German-style) with interlocking practices in dualist systems where each order has its own civil service mandated to implement its own programs.
• Another way of studying IGR, particularly with graduate students or in specialized seminars, is to see how IGR intervenes at the policy development, funding, and implementation stages of specific policy areas (e.g., environmental protection, immigration, housing).
• If technology allows, class presentations can be completed by commentaries posted on the electronic forum of the class’s teaching platform. Students may be asked to comment on three or four presentations through the term. Comments should not only summarize the presentation, but engage broadly with the rest of the course material.
• In all contexts, building on students’ strengths, prior training or professional experience, interests, or linguistic abilities enriches discussions.

QUESTIONS FOR CLASS DISCUSSIONS OR ESSAYS

1. What are the principal institutions and mechanisms of IGR (as found in constitutional, quasi-constitutional or statutory texts, plus secondary sources)?
2. Do the IGR mechanisms effectively meet policy objectives?
3. How would you characterize IGR in a particular federal regime or time frame: confrontational, collaborative, coercive, collusive? Explain why and give at least three examples.
4. How does IGR illustrate the nature of a particular federal system’s political culture or ‘federal spirit’?
5. Is the way IGR is formalized, or not, a marker of legal culture (e.g., civil law versus common law federations)? Give examples and explain why.
7. Exploring IGR comparatively, discuss advantages and disadvantages of formalized IGR. What are best and worst IGR practices?
8. Should courts police how federal partners interact with each other? If so, how should this be done? Should courts only impose procedural rules, such as consultation, or should they review the outcome of a policy taken without due regard for the federal spirit?
9. Is IGR always executive-led? Is IGR a form of consociational democracy?
10. Is IGR an effective way of including important actors who are not ‘official’ partners in a federation’s functioning, such as municipalities, certain minorities, or indigenous peoples?

11. Does IGR play different roles in mono-national versus plurinational federations?

12. Is IGR a tool for introducing asymmetry in a federal system that is officially symmetrical (or the opposite)?

13. What mechanisms ensure accountability in IGR: special parliamentary committees, legislative obligations to publish documents concerning the conduct of IGR, or judicial review by certain kinds of courts?

14. Is IGR just a function of party politics? If so, does greater IGR institutionalization mitigate the partisanship that flows from party politics?

15. Select three assigned readings: critically assess them and bring the authors into conversation with one another.

READINGS FOR STUDENTS


TEST/EXAMINATION QUESTIONS

Undergraduate Questions

1. Discuss the main formal institutions and informal practices that structure interaction between orders of government in a specific federal system.
2. What are the main trends in IGR in a specific federation and how have they evolved over time?
3. Does IGR compensate for an inability of the second chamber to ensure proper participation of constitutive units in federal law- and policy-making?
4. Choose a contemporary policy challenge and describe who can do what to address it from a constitutional perspective and who actually does what from an IGR perspective.
5. What is the impact of IGR on the division of powers?

Postgraduate Questions

1. Do you think certain IGR institutions or mechanisms in other federal systems could be ‘imported’ into yours? If so, why? If not, why not? How could this adaptation take place (informally, through IGR negotiation or through a constitutional amendment)?
2. Does mainstream literature miss important IGR mechanisms, trends, or processes present in the global South or within and between indigenous cultures in the North?
3. Are the asymmetry between constituent units and differences of powers between federal authority and components of the federation reinforced by IGR? Is this a positive or problematic effect of IGR? Explain.
4. Should federal loyalty, comity, and spirit affect IGR? If so, should courts ensure that federal partners act accordingly?
5. What are IGR’s implicit para-constitutional functions?
6. Should the legal system structure IGR? If so, how? Is IGR a marker of legal culture? How so?
7. Does IGR generate a ‘democratic deficit’?
POINTs FOR EVALUATION

Elements of evaluation should align with the learning objectives. They will depend on discipline, pedagogical approaches, and level of students’ prior training. Several evaluation points were identified above.

Regardless of the mode of evaluation, students should understand the prevalence of IGR, the wide range of institutions and informal means through which interaction occurs between orders of government, as well as major trends. They should be able to define and distinguish between vertical, horizontal, multilateral, bilateral, asymmetrical, cooperative, competitive, and coercive IGR and provide examples of each. They should be able to describe how IGR shapes policy development, funding, and delivery, and be sensitive to how IGR may reinforce or marginalize official members of the federation. Students should understand that IGR plays out differently in dualist versus integrated federations. In the former, the transformation towards more overlapping jurisdiction and interlocked action might run counter to formal institutions, judicial scrutiny, and parliamentary oversight. In the latter, interaction is somewhat built into the system, and IGR will reinforce how those structural elements function, or sometimes run counter to them.

Graduate students should go beyond description and synthesis and provide a critical assessment of the issues addressed in class. They might build on their own work (in a doctoral thesis for instance) to address an aspect of IGR. They can work in a multi-disciplinary fashion (combining political theory and constitutional law, for instance) or conduct original empirical research. They also could discuss the distinct impact of IGR on plurinational versus mono-national federations, reflect on how institutions adapt to ensure accountability in the IGR context, or the role IGR plays in para-constitutional engineering.

SUGGESTIONS FOR FURTHER READING


Intergovernmental relations: the lifeblood of federalism


Hueglin, Thomas and Alan Fenna (eds.) (2015), Comparative Federalism: A Systematic Inquiry, 2nd edn., Toronto: University of Toronto Press.


REFERENCES (WORKS NOT CITED ABOVE)


