

Perspectives on local government's place in federal systems and central–local relations

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**Editor's introduction**

To expand on the themes identified by Tomas Hachard's paper *Capacity, voice and opportunity: advancing municipal engagement in Canadian federal relations*, the Journal commissioned six personal 'perspectives' from a diverse group of other Commonwealth countries – Australia, India, New Zealand, Nigeria, South Africa and the United Kingdom (UK). This replicated the model adopted in Issue 26 for Zack Taylor's paper on *Regionalism from above: intergovernmental relations in Canadian metropolitan governance*. Similarly, the purpose was to establish a broader picture of issues and trends across the Commonwealth, rather than 'review' Hachard's work.

Of the six countries, three (Australia, India and Nigeria) are formal federations like Canada; one (South Africa) is constitutionally a quasi-federation with 'autonomous' provinces but a dominant national government; and the other two (New Zealand and UK) are unitary states. Within the UK, Scotland, Wales and Northern Ireland enjoy varying degrees of 'self-rule', but England – the focus of the perspective – is governed directly from the centre.

Local government is recognised and to some extent empowered under the constitutions of India, Nigeria and South Africa, but only in South Africa does this entail wide-ranging rights to engagement in inter-government processes. There have been two failed referendums that sought to recognise local government in Australia's federal constitution. New Zealand and the UK do not have formal written constitutions.

Despite these differences the themes that emerge from the six perspectives are broadly similar. Whatever constitutions may or may not say, local government remains very much a junior partner or agent of central governments, whether national or state/provincial. And having a meaningful, productive role in inter-government relations relies heavily on the goodwill and support of one or both levels of central government. It also depends on the extent to which local governments enhance their

‘soft’ power and influence by working collectively through associations; making constructive contributions to national and/or state/provincial policy agendas and programmes; and winning the confidence and trust of their communities through effective leadership, good governance, and sound local planning and service delivery.

Regrettably, local government often fails to perform adequately across one or more of those domains. This may be a consequence of the aggressive pursuit of narrow political, local or personal interests – sometimes outright corruption – but all the perspectives see frequently overbearing and thoughtless control by national and/or state/provincial governments as a key factor. All too often democratic local government is treated as merely their agent, to be used as they see fit regardless of local realities and preferences. In particular, financial constraints loom large, including limits on local revenue-raising, inadequate transfers of central revenues, and unfunded mandates. Thus, even though local government may be seen as a useful, even essential, partner in delivering programmes and projects, central dictates, interventions or disregard may reduce its on-the-ground capacity to perform.

In such circumstances, the intent and provisions of constitutions that notionally safeguard and empower capable, democratic local government may make little difference in practice. In federations, local governments may be the ‘hapless victims’ of states seeking to entrench their own status and powers against perceived encroachment by a proactive and better-resourced federal government. A trend to re-centralisation by either state or national governments may be discerned in several countries, while elsewhere moves towards devolution at local and regional levels have stalled or fallen short of expectations.

None of this means that local government’s experience of inter-government relations is uniformly bad. The perspectives point to numerous examples of effective collaboration through formal agreements, consultative forums, joint planning and projects, and increased funding support. They also identify opportunities to build on existing central–local relationships that have the potential to enable the parties to address shared challenges, although in most countries this will require more robust institutions and policy frameworks for cooperation than exist at present. Two overarching questions stand out: How and to what extent can the prevailing top-down culture of government be altered – or at least ameliorated? What more can local government itself, working both collectively and with its communities, do to secure its position and advance local democracy and well-being?

Advancing municipal engagement in federal relations – an Australian perspective

John Phillimore and Alan Fenna

Canada and Australia are federations with important similarities but also important differences. Both are parliamentary federations and both are structured around the American-style division of powers usually referred to as ‘dual federalism’. Both countries use single-member electoral systems whereby communities have their ‘local member’ representing them in parliament, ensuring that local issues are politically salient.

Canada, though, is a bicommunal federation and (largely as a result) markedly less centralised than Australia (Dardanelli et al. 2019). In common with other federations, the nature and challenges of modern government mean that in both Canada and Australia ‘jurisdictional boundaries have blurred’ and intergovernmental relations play a crucial role. Since they are not institutionalised, those structures and processes of intergovernmental relations are at the mercy of changing political conditions as well as the existing power balance between the central government and the constituent units (Phillimore and Fenna 2017).

Hachard’s paper on how intergovernmental relations in Canada might be reformed to include municipalities has an air of familiarity to an Australian audience. As in Canada, Australian local government lacks federal constitutional status, and like Canada there have been calls for that to be changed by amendment to the Commonwealth constitution. Local government falls entirely within state jurisdiction (but while provided for in state constitutions, it is made clearly subordinate). Australia has gone further than Canada in this regard, though. A proposal was put to voters in 1988 to amend the Commonwealth constitution by according recognition (though no powers) to local government. That was rejected by a solid majority of voters (66%) and by voters in all jurisdictions. An earlier proposal to give the Commonwealth authority to make grants to local government was likewise rejected by voters in 1974. Legislation was passed in 2013 for a third attempt, again involving only very modest recognition, but the initiative stalled.

The focus in these amendments on constitutionalising a direct link between the Commonwealth government and local government provides a good indication of one of the main problems with such recognition: it further undermines the already-weakened position of the states in the federation. Other than that, it is not clear what constitutional recognition would achieve. Indeed, it has not been so much about recognising local government, as legitimising the Commonwealth’s roles in managing, influencing or supporting local government. These roles have, perhaps unlike Canada, tended to have a partisan basis in Australia. In particular, they reflect the extent to which, when the Labor Party is in office nationally, it tends to assert a guiding role in urban planning and development notwithstanding that being a matter of state government jurisdiction. It is facilitated in doing this by the very high degree

of vertical fiscal imbalance in Australia, whereby the Commonwealth is in a very strong position to exercise the spending power (Fenna 2008, 2019). The Commonwealth's involvement in urban development and local government commenced in earnest in the 1970s under the Whitlam Labor Government, which also introduced a system of financial assistance grants to local governments that mirrored, to some extent, the fiscal equalisation system operating for the states. The Whitlam government's activism in the area of local government was part and parcel of its broad move to assert itself across a number of areas of state jurisdiction.

Local government is less significant in Australia than in Canada. This is in part a consequence of its fragmented nature. For example, Western Australia's capital city, Perth, with a population of only 2.1 million, has 30 local governments, and the state as a whole (population 2.7 million) has 137 local governments. While this is an extreme case compared to other states, fragmentation has been the norm in all states and is the reason that amalgamation is "*the most salient public policy issue*" for Australian local government (Grant and Drew 2017, p. 6). There is one exception, Brisbane, but that is the only capital city with a single local government area covering even half of its greater urban population.

The other, related, reason for local government's lesser status is the demographic dominance of capital cities in Australia – what geographers call urban primacy (Wilkinson et al. 2022). Two thirds of Australians live in a capital city region. In most states – with Queensland being a partial exception – running that region is difficult to differentiate from running the state. Planning, public transport, law and order are all the responsibilities of state governments. In most states, the local government minister is low in the Cabinet pecking order – certainly well below that of the planning, transport or infrastructure minister.

Intergovernmental relations are not greatly dissimilar in the two countries. Canada has a more established horizontal arrangement whereby the provinces and territories work together, the Council of the Federation. Australia, meanwhile, has somewhat more established vertical relations, with its first ministers meeting as the Council of Australian Governments (COAG) from 1992 until 2020, and once the COVID-19 pandemic struck, as 'National Cabinet' (Fenna 2021). As in Canada, local government occupies a marginal place in those arrangements. The president of the Australian Local Government Association (ALGA) had a seat at the COAG table, and while that in itself may not have translated into great influence, it did provide local government with a valuable entrée to "*key ministerial councils, inter-government forums and meetings of senior officials*" (Sansom 2022), although these have tended to wax and wane in number over the years. Currently, ALGA is represented on or invited to ministerial meetings relating to infrastructure and transport, emergency management, food regulation, and the 'Closing the Gap' agenda (aimed at improving the lives of Indigenous Australians).

By contrast with COAG, though, National Cabinet initially did not include ALGA at all. After protest, ALGA was invited to the annual meeting that brings together first ministers and treasurers. More

recently, under the newly (May 2022) elected Labor government led by Prime Minister Anthony Albanese, local government has been given a more prominent role – perhaps reflecting Albanese’s former role in 2007–2010 as minister for infrastructure and transport, regional development and local government. Under his new government, ALGA has now been invited to National Cabinet for one meeting a year, and it was invited to a National Jobs and Skills Summit held soon after the government was elected. The new government has also committed to convening a Local Government Ministers’ Forum (along with ALGA), and to re-establishing the Australian Council of Local Government (McBain MP 2022). This latter body was first introduced by Albanese in 2008 and brings together the prime minister, Commonwealth ministers, mayors, shire presidents and other local government stakeholders from across Australia. This enables direct representations from local government to the Commonwealth rather than through the peak body, ALGA.

Commonwealth Coalition (conservative) governments have not tended to be as active in local government affairs, although they have always strongly supported road funding, especially in regional areas. Historically, the Coalition opposed the two referendums on constitutional recognition of local government. It also abolished the Council of Local Government when it returned to government federally in 2013. A few years later, under a new prime minister, that government did introduce a series of ‘City Deals’ involving major investments aimed at promoting urban development in key Australian cities. The extent to which these deals involved significant shifts in governance or intergovernmental relations is questionable, though (Gooding 2022, p. 161). Many consisted of practical and transactional projects, and relied mainly on investment by Commonwealth and state governments. For example, the Perth City Deal included 15 projects, only four of which explicitly involved the City of Perth (Australian Government et al. n.d.). At least two of those latter projects have since involved significant conflict between the state government and the city, with the state likely to prevail through its financial, legislative and planning powers (Law 2022). ‘Business as usual’ in intergovernmental relations would seem to be ongoing.

The differences between local government in Canada and Australia mean that the ‘ways forward’ suggested for Canada by Hachard are not so relevant or applicable to the Australian case. In particular, his first suggestion of a need for municipalities, especially of big cities, to invest and become more involved in intergovernmental relations, is unlikely to have much traction in Australia, given that there is no municipal government in Australia that warrants a seat at the federal intergovernmental relations table. Similarly, there is little prospect of another of Hachard’s suggestions – expanded trilateral relations (involving all three levels of government) – becoming more prominent. Neither the Commonwealth nor state governments has any strong motivation to do so – the states, for obvious and traditional reasons, and the Commonwealth, because it tends to involve local governments as a way of getting *around* the states, as much as working with them.

Rather, it is Hachard's second suggested way forward – that of reforming relations between local governments and the provinces – that would seem on face value to have the most applicability. If local governments need a better working relationship with senior government in Australia it is with their respective state governments. Here the Australian case is in line with the suggestion that there be enhanced structures of cooperation between municipal governments and provincial governments in Canada. State governments in Australia typically have a 'partnership agreement' in place with their respective local government associations, outlining principles and processes by which the two levels of government will deal with each other (e.g. NSW Government and Local Government NSW 2019). But it is not clear how much of a seat at the table that gives the latter. The two concerns that Hachard mentions in relation to municipal–provincial relations – the prevailing power imbalance and the limited scope of municipal involvement in provincial policy-making – are equally prevalent in Australia and unlikely to change soon.

A review of Western Australian local government legislation in 2020 noted, approvingly, British Columbia's Community Charter Act which includes a set of principles for municipal–provincial relations, including the need for mutual respect, consultation and cooperation. The review panel recommended that a new Western Australian Act should "*include a set of principles for intergovernmental relations that make clear local government's role and obligations as part of the broader system of government, and that underpin a range of ongoing arrangements such as the State Local Government Partnership*" (LGRP 2020, p. 20). However, the state government's subsequent set of local government reforms have not included anything about intergovernmental relations, despite adopting several other of the review panel's recommendations.

In effect, local government involvement in intergovernmental relations in Australia is granted from above, not earned from below or protected in constitutional or even legislative form. Such involvement is generally based on the perceived advantage of doing so by the relevant higher level of government. The Commonwealth sees occasional utility in having local government at the table. The states have a more ongoing relationship with local governments in areas requiring their assistance and governance, such as local planning, emergency management, environmental health, or local transport. But states almost always retain the potential to override and overrule local government, and hence keep ongoing, permanent bodies to a minimum, in order to maintain flexibility in policy-making. In this sense, they are only mirroring the form of intergovernmental relations that exists between them and the Commonwealth, where the latter largely calls the shots – though there the states have significantly greater constitutional protection. This dynamic is unlikely to change in the future.

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Urban local governments in India’s federal structure: status and opportunities

K K Pandey

Introduction

India’s Constitution Amendment (74th) Act (CAA) of 1992 shaped a basis for empowerment of Urban Local Governments (ULGs) through devolution of powers enabled under Article 243. As elsewhere in the developing economies, the Act provided constitutional recognition to ULGs as a vibrant democratic unit of self-government and local democracy. With this political, functional and fiscal empowerment, ULGs are receiving increased attention in India’s political economy and national vision to make the country a developed nation ‘@ 2047’, the 100th anniversary of independence (see Consultation on Vision India@2047, Government of India 2022).

Yet legislative action is only the beginning in this dynamic process and requires due follow-up at the intergovernmental level to further harness the local governance potential of ULGs.

- First, the current discretionary devolution of powers and functions by states (Articles 243W and Y) needs to be made mandatory in order to assign powers, authority and responsibility along with fiscal strengthening as may be suggested by State Finance Commissions.
- Second, ULGs need to act collectively as a pressure group to raise issues in the federal system. This requires autonomous bodies to combine the voices of groups of ULGs at different levels: national, state and city; and these associations need to meet and deliberate regularly with similar bodies for city managers, planners, architects, economists etc.
- Third, many local areas classified as urban by the census of India, and which contributed 30% of urban growth over the period 2001–2011, are still within the rural local government system and need to be accorded the status of city governments by their respective states.
- Fourth, the decentralisation provisions of the 1992 Act could not cover ‘grassroots’ governance below the level of town/city hall. Ward committees or some form of local councils need to be created in line with the practices adopted at Aizawl (Mizoram state) and Bengaluru respectively.
- Fifth, a national urban policy, in continuation of the draft framework pending since 2018, should be finalised to expedite actions on unfinished elements of reform, with a focus on legislative changes, development of the municipal public service, reasonable tenure of mayors/chairpersons/commissioners, and improved financial management, as suggested by successive reports and stakeholders.

The beginning of urban focus

Under India’s federal structure, ULGs are creatures of provincial government (the states). As noted above, their role has undergone a process of empowerment with the enactment of the 1992 Constitution Amendment that provided for political, functional and fiscal decentralisation. This was followed by enabling legislation by the respective states, and by reforms at national and state level in terms of programmes, schemes, model laws, codes, manuals, by-laws etc.

The enabling legislation and follow up covered certain uniform structural changes in ULGs including:

1. Continuity in their elected bodies (which prior to the 1992 Act had frequently been suspended by states) to ensure bottom-up political leadership, together with increased representation of women (33–50%) and disadvantaged groups. States may now only *dissolve* elected bodies, and fresh elections must be held within six months (Article 243ZA).

2. Initiation of metropolitan/district planning committees (Articles 243ZD and 243ZE) to suitably address distributional and jurisdictional aspects of infrastructure, services and financial resources across the administrative and physical extent of cities and city-regions.
3. A quantum jump in fiscal transfers from the central government and states, allocated by National and State Finance Commissions constituted every five years (UN-Habitat 2018). This has brought a normative base and predictability to transfers, along with untied funds and local elasticity and autonomy to prepare bottom-up budgets at the ULG level.
4. The 2021–2026 allocation by the 15th National Finance Commission (NFC) for the first time covers urban agglomerations as a single unit for environmental, productivity and quality of life considerations.

The structural changes as above are also accompanied by procedural support with the Urban and Regional Development Plan Formulation and Implementation Guidelines 1997, the Model Municipal Law 2003, the 2007 National Municipal Accounting Training Manual and Codes (prepared by states), the National Urban Housing and Habitat policy 2007, plus a range of other enabling provisions. In particular, the insertion of clause (c) in Article 280(3) of the constitution gave a reference to the NFC to directly allocate funds to ULGs.¹ The NFC allocation has increased dramatically in line with a greater focus on urban services. Also, the urban reform agenda has been included under other schemes and programmes covering investment, finance, operation and maintenance etc.

Benefits of empowerment

The move to empowerment and follow-up action has benefitted ULGs in a threefold manner: (i) capacity enhancement and a broader scope of activities, with increased flexibility and an expanded functional domain; (ii) a greater say for ULGs in the intergovernmental/institutional framework around local governance;² and (iii) new financing options such as municipal bonds and monetisation or leasing of land holdings.³

Overall, capacity enhancement includes continuity of the elected body, wider representation, 18 new functions under Schedule XII of the constitution, rationalisation of fiscal transfers through the Finance Commissions, as well as additional financing options and greater budget flexibility to address local priorities. In addition to bonds and sale or leasing of property, some ULGs have taken innovative steps

¹https://www.constitutionofindia.net/constitution_of_india/finance__property__contracts_and_suits/articles/Article%20280

² The Indian government is giving due recognition to ULGs and seeking to involve them with other agencies with the aim that they will handle a wider range of activities in due course.

³ Municipal bonds have vast potential to improve liquidity for investment and monetisation of land is on the agenda of potential profit-sharing with development agencies (the NFC has suggested a 50% share for ULGs). The New Delhi Municipal body receives millions of Rupiah from leasing properties.

to raise revenues through levying impact fees (eg Hyderabad and other towns in Andhra Pradesh and Telangana states) and public-private partnerships (PPP) projects (eg for sewage treatment).

ULGs' voice has undergone a significant boost with entrenchment of elected bodies. Yet state level associations of elected and non-elected officials remain non-existent or are not functioning effectively.⁴ Further, the national level association of municipal corporations is not meeting regularly nor having a significant impact in the urban domain to deliberate upon and raise local issues efficiently. As a general rule, non-government and civil society organisations are similarly ineffectual.

An unfinished agenda

The provisions of Article 243 of the constitution offer the potential to empower and increase the capacity of ULGs. However, there remains a large unfinished agenda. Key areas for attention are as follows.

- States taking advantage of their discretionary power to adopt a 'Go Slow' approach to extending important new functions and fiscal instruments with vast revenue potential (land, environment, planning, value capture etc) to all ULGs across their jurisdiction, particularly limiting action on environment, climate change, disaster management, poverty alleviation and land and town planning.
- Similarly, metropolitan and district planning committees that were expected to prepare consolidated plans to address jurisdictional and distributional issues and to forward funding estimates to State and National Finance Commissions, have either not been established or are not performing their expected task.
- The tenure of mayors/chairpersons of ULGs is not consistent across the states: it varies from one year to five years. For example, the Municipal Corporation of Delhi provides a tenure of one year for the post, whereas tenure in Uttar Pradesh state is five years. Also, the average tenure of Municipal Commissioners as per a survey by Janaagraha is less than ten months.⁵ In both cases, the period of office is often too short for mayors/chairpersons and commissioners to fully understand city issues during their tenure.
- Similarly, there are differences in the way mayors/chairpersons are elected, depending on the state's enabling legislation. For example, direct election in Uttar Pradesh, but indirect in Karnataka and Delhi). This needs to be rationalised.

⁴ Associations for city managers and elected leaders were formed during 1995–2005 as part of Indo-US cooperation but over time they have become defunct and need reorientation.

⁵ See: <https://www.janaagraha.org/ncsr/reports/ASICS-2017.pdf> Janaagraha is a non-government organisation with a mission to transform quality of life in India's cities and towns. It works with citizens to catalyse active citizenship in city neighbourhoods and with governments to institute reforms to city governance.

- In many ULGs the process of decentralisation has not yet extended to the grassroots level. Various initiatives need wider replication. For example, in Bengaluru ward committees are headed by a councillor and tasked with operation and maintenance of roads and preparing micro plans for waste management (Pandy 2022a, p. 72). In the capital city of Mizoram local councils serving populations of around 1,500 are elected to handle local functions such as retaining walls, distribution of gas and other basic services (Government of Mizoram 2010).
- A multiplicity of agencies with overlapping responsibilities is another problem. For example, the Municipal Corporation of Delhi does not control water supply, sewage, part of roads, poverty alleviation, land and, slums (all of which are handled by the Union Territory government). Many other states have a similarly inadequate allocation of municipal functions to ULGs. For example, in Bengaluru land management and water supply and sewerage are with separate agencies, whereas solid waste management, roads, streets, flyover, over bridges are with the civic body.
- In some major cities ULGs are deprived of the ability to capture land value gains due to the states' discretionary powers under Article 243W of the constitution. On the other hand, small- and medium-sized cities may have the full range of municipal functions within their domain (Pandy 2022b).
- Further, the civic bodies often have an acute shortage of staff and professional expertise in various disciplines. In many cases one Chief Executive Officer or Engineer serves two or more civic bodies, leaving limited time for each. This can also cause a disconnect between the civic body and citizens and dilute accountability (Pandy 2022b).
- Around half the localities (3,894 out of 8,000) classified by the census of India as under transition to urban centres, and which accounted for 30% of urban growth during 2001–2011, are not duly included in the urban system of local government and are still governed by the village system (Deshpande 2018). They need to be granted city status by their respective states in order to advance resource mobilisation for infrastructure and services.
- A National Urban Policy to assess and flag key issues and strategies has yet to be finalised. The government of India prepared a draft framework in 2018 but it is still pending.

Overall, the continued wide variations and gaps in the fiscal powers and functions of towns need to be addressed by legislative reforms that make devolution mandatory rather than subject to the discretion given to the states under Article 243 of the constitution. ULGs have to be enabled to create and maintain assets efficiently.

Opportunities and conclusion

First, the Prime Minister of India on 30 September 2022 indicated that cities will shape India's destiny and ensure India becomes a developed nation during next 25 years (India News 2022). This statement reinforces the economic, spatial and regional potential of urban areas and paves the way for follow-up actions in intergovernmental strategies. The programmes of successive governments since 1993, including the most recent Urban Missions (flagship programmes of the government of India since 2014), have placed special emphasis on governance, infrastructure, finance, climate change and poverty alleviation.

The second important opportunity covers the vast potential of creating a network of multi-modal connectivity (roads, airports, rail) across the country) through an outlay of Rs.7.5 trillion under the PM Gati Shakti Master Plan (Drishti The Vision Foundation 2022). This Master Plan involves a digital platform bringing together 16 ministries for integrated planning and coordinated implementation of infrastructure connectivity projects. It is also an opportunity to link urban centres with the micro, small and medium enterprise (MSME) sector to accelerate economic activities, taking advantage of proposed reductions in logistics costs. This is particularly important for ULGs or potential ULGs in less urbanised states to help provide millions of jobs for surplus labour in underdeveloped hinterlands as part of structural transition.

Over the last three decades ULGs in India have been undergoing a transformation into a vibrant unit of self-government in the federal intergovernmental system. The constitutional amendment of 1993 built a solid foundation. The unfinished agenda needs attention, but the voice of ULGs through their elected bodies, wider representation of diverse communities, and improved allocation of intergovernmental fiscal transfers can make them a powerful pressure group in political economy. The national vision to make India a developed nation '@2047' provides further opportunities to improve governance, infrastructure and finances across the urban local government sector.

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New Zealand's tenuous central–local relations

Jean Drage

Much of the rhetoric around the relationship between local and central government in New Zealand emphasises the power imbalance of a unitary system in which the centre holds most of the cards and devolves little to the second tier of government. An uneasy relationship, it creates continued uncertainty, mistrust and, at times, significant reform based purely on the prevailing political ideology. However, stepping aside from the political to look at the development of policy from an intergovernmental approach, as Hachard does, provides an opportunity to focus on several recent and innovative approaches to collaboration. In doing so, this paper briefly canvasses whether these comparatively new methods of working together will ultimately influence an increasingly fraught policy agenda or a local democratic system beset by creeping centralisation.

But first, some context. New Zealand's local government lacks fundamental protection given that its legal status derives from current legislation rather than being entrenched in a written constitution. Nevertheless, it does have a degree of autonomy as much of its expenditure is funded from its own sources – mainly property tax ('rates'), user charges and investments – so enabling local councils to respond to local needs and to initiate local projects. However, this system is under considerable strain due to the increasing level of rates; the failure of central government to address the inadequate contribution it makes towards local community infrastructure projects; and the unfunded mandates imposed on local councils through legislative change. This is despite several major reviews of these funding inequities that have clearly outlined the core issues and recommended solutions.

Despite this, efforts to improve what can be a fractious relationship between the two levels of government did lead to a period of significant collaboration in the first decade of the 21st century. New local government legislation, at this time, focused on measures to empower local councils, including through a limited power of general competence: a first step towards a degree of power sharing. A further

step forward was a Central/Local Government Forum, chaired by the then prime minister, which worked on developing a relationship that acknowledged local government's contribution and the increasing dependence of central government on local councils to achieve policy outcomes.

However, many of these gains have since been undermined through continual challenges to, and increased intervention in, the autonomy of local government. There have been disputes over resources that resulted in the suspension of local democracy in one large regional authority for almost ten years (Drage 2016, p.10). Also, there have been ongoing changes to the legislated purpose of local government, more demanding oversight of and interference in local councils' operations, and reductions in opportunities for public participation. All while central government has continued to be a reluctant partner to working with local government on solutions to today's major policy concerns.

Even in the face of major crises where one might assume both levels of government would work closely on immediate response and recovery, the heavy hand of central government assumed control. Following the disastrous earthquakes in 2011 in the Christchurch region, where 185 people died, several thousand were injured and many more lost their homes, central government's 'command and control' model took precedence, overriding the local council's critical role in its own communities' recovery. The more recent response to the COVID epidemic also demonstrated the centralised nature of decision-making in New Zealand that, although comparatively successful in preventing the disease's spread and stimulating fiscal recovery, also pointed to the importance of the 'boots on the ground' role of local health services and local councils in ensuring an adequate response (McNeill and Asquith 2022, p. 775). In essence, a whole of government approach. And more recent moves by the current Labour government to centralise health services, water services and planning (so ignoring the diversity and different needs of local communities) are all exacerbating the tension between the two levels of government and will significantly change local council relationships with their communities.

The core issue here is a lack of understanding of the separate roles of local and central government. Central government may have statutory power to reform and regulate the second tier, but local councils are not simply its agents. In fact, local councils are ultimately accountable to their local communities who fund the majority of their activities. As a consequence: *"Central government analysis of policy and regulatory proposals often fails to correctly define the problem being addressed, underestimate the costs to local government and shows little understanding of the practical implications for councils across their diversity of circumstances"* (New Zealand Productivity Commission 2020, p. 15). Calling for a reset in the relationship, the Commission recommended central government needed greater knowledge and understanding of local government, more constructive engagement in the policy process and a 'Partners in Regulation' protocol to ensure better definition of problems and desired outcomes, along with adequate funding (p. 29).

There has been more collaboration recently in approaches taken by central government to identify policy issues across government, to gather local information, and to facilitate local government involvement in policy-making. And some local authorities are also working together within their regions, and with the involvement of government ministers, on formal intergovernmental approaches to planning. Nonetheless, the outcomes from these approaches are mixed.

At the heads of government level, the prime minister and cabinet ministers have met formally for more than two decades with local council leaders who are part of Local Government New Zealand, the peak association of local authorities. This Central/Local Government Forum has been a ‘seat at the table’ approach to working together which initially worked well. It met several times a year to address strategic issues and identify ways to work together more effectively. But these formal meetings are now only convened once a year, the agenda being for central government to outline its policy programme. There is no agreed framework for working together or for future action, so the Forum no longer works as initially intended.

On the other hand, at the policy level an intergovernmental process has been built into the public sector in recent years to work towards policy being developed across government departments. This process includes both guidelines and structural partnerships for engagement between central and local governments. In particular, the Department of Prime Minister and Cabinet (2019) has developed a set of guidelines to assist central government agencies to engage effectively with local government.

Central–local government partnership groups also work as part of the local government policy team in the Department of Internal Affairs, which provides policy advice to the Minister of Local Government. The goal here is to facilitate work programmes that ensure local councils’ involvement in central government policy-making across the country. Staff work on collaborative ways of ensuring local councils have the opportunity to shape central government policy in the development stages rather than in reaction to decisions already made. This process is also one of relationship building across both tiers of government.

Another central government initiative here has been the appointment of Regional Public Service Commissioners in regions across the country to coordinate the work of central government on the ground by joining with communities and local decision-makers, including local government. These Commissioners report quarterly to regional Mayoral Forums providing an information link.

But possibly the most successful intergovernmental process currently underway is that of the regional urban growth partnerships between groups of local councils, *tangata whenua* (local Māori) and central government. One example of this local government initiative is the Urban Growth Partnership in the Canterbury region where the local councils have joined with Ngāi Tahu (the regional Māori group) and health and transport authorities alongside central government Cabinet Ministers. The goal is to drive

strategic planning and work programmes across several policy areas to manage long-term growth: transport, affordable housing, mitigation around natural hazards and climate change, and access to social services. This partnership has been formalised through a joint memorandum of understanding and quarterly meetings of all parties involved, the purpose being to bring a collaborative approach across government to future proofing local regions.

During her tenure as mayor of Christchurch, New Zealand's second largest city council, Lianne Dalziel found that “*neither central government ministers nor their advisors throughout the public service fully understand local government and the benefits local policy makers bring to the table. Nor do they understand the constraints under which local governments operate*” (Dalziel, 2021, p. 108). An intergovernmental approach to the policy process requires formal agreements, the will to work collaboratively and strengthened relationships across the policy spectrum. Urban growth partnerships are clearly one way of increasing the capacity of local councils working within regional joined-up groupings, as are clear expectations of partners to this process and outcomes to be achieved. The challenge, of course, is the political will to ensure this whole of government process endures electoral change and funding demands.

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Beyond the autonomy myth: local governments and intergovernmental relations in Nigeria

Eghosa E Osaghae

The comparative frame

Nigeria's contemporary local government experience shares a lot in common with those of Canada and the comparative cases discussed in Hachard's article, although it is important to point out for conceptual clarification that local governments in Nigeria are also called local councils, but never municipalities.

The main thrust of this paper is that contrary to the impression created by Nigerian scholars, especially in the 1980s and 1990s, that local governments in the country are autonomous and constitute a separate order in the distribution of powers (Gboyega 1987; Osaghae 1989; Oyediran 2001), they are subordinate to state governments (notwithstanding that they have enumerated functions and guaranteed constitutional status and revenue allocation), and feature sparingly in formal (and informal) intergovernmental bodies, mostly at the discretion of state and federal governments.

To this extent, local governments in Nigeria face basically the same challenges as those identified in Canada and other federal systems, including restricted and subjugated roles in intergovernmental relations (IGR), poor funding, and low capacities that make it difficult for them to perform optimally and deliver services in allotted spheres. The Nigerian case also shows that rivalries between central and state governments over control of local governments, and between states and local councils, especially those in urban areas and big cities, over legislative competences, are also key to the problems of local government and help to explain why state governments especially find it necessary to assert control over localities.

One of the major consequences of the resulting intergovernmental constraints is that local governments have had to work outside the formal IGR frameworks to empower and emancipate themselves. The formation of common interest associations and advocacy groups to advance the interests of local governments represents a major vehicle for doing this. The ongoing process of constitutional review in Nigeria has enabled local governments, mainly acting through the Association of Local Government of Nigeria (ALGON), to demand reforms hinged on local autonomy and abolition of state–local joint accounts,⁶ though it should be noted that in the constitutional conferences that took place in 1994/95, 2005 and 2014, local governments qua local governments were not represented. In the final analysis, however, the imperatives of subsidiarity and cooperative governance make it almost impossible to ignore or exclude local governments totally from the intergovernmental grid.

The myth of local government autonomy

Nigeria emerged as a reference point for scholars of comparative federalism and local government following the country's 1976 reforms, which made it the second federal system, after Marshall Tito's Yugoslavia, to grant autonomy to local government. Many believed that this act transformed the federal system from the conventional two-order (federal–state) power-sharing system to a three-order (federal–state–local) system. The elevated status of local governments was enshrined in the 1979 and 1999 constitutions. The 1999 constitution not only lists the 774 local governments in the country, thereby guaranteeing their existence, but also asserts in Section 7(1) that: "*The system of local government by democratically elected local government councils is under this Constitution guaranteed.*" It goes on to

⁶ A mechanism by which states control the distribution of federal funding to local governments.

bind states “to ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.”

The fourth Schedule of the constitution spells out in detail the functions of councils to deliver a wide range of local services. Local government’s functions also include participation in the government of a state with respect to the provision and maintenance of primary, adult and vocational education; development of agriculture and natural resources, other than the exploitation of materials; provision and maintenance of health services; and such other functions as may be conferred on a local government council by the House of Assembly of the state. Presumably in order to strengthen the overall intergovernmental (that is state–local) frame of local functions and the roles of local governments within it, councils are further expected to consider and make recommendations to state commissions on economic planning or any similar body on the economic development of states, particularly in areas of authority that directly affect the localities – in fact, Section 7(3) of the constitution makes participation in the economic planning and development of the area within the state a *duty* of the local government council.

The functions allocated to local governments do not, however, give them any part in the distribution of exclusive and concurrent legislative lists or residual matters which belong to the states, implying that Nigeria is effectively a two-order federal system (Osaghae 1992, 1994). Local governments can exercise functions, but have no powers of their own, and this has been the case even though local governments were supposedly autonomous. It is also somewhat curious that local government is not included in the concurrent list given the history of federal–state relations and federal interventions in local government matters since the 1976 reforms.

Another important autonomising element of the constitution is the statutory allocation of revenue to local governments as a tier of government, alongside federal and state. According to Section 162(3):

Any amount standing to the credit of the Federation Account [the account to which all revenues accruing to the federation are paid] shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

Under the extant vertical revenue sharing formula, the federal government gets 52.68%; state governments 26.72%; local governments 20.60%; and derivation payments to oil-producing states 13% (in the ongoing review of the sharing formula, the federal government has proposed 50.65%, 25.62%, and 23.73% respectively for federal, states and local governments). Revenue is then shared horizontally among local governments on the basis of land mass, population, equity, a social development factor (measured as primary school enrolment, hospital beds, and mean annual rainfall). Section 162 further provides that:

Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by

the National Assembly [and that] the amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on terms and manner as may be prescribed by the House of Assembly of the State.

Under the Allocation of Revenue Act (1982), local governments are entitled to 10% of revenues generated internally by the states.

The foregoing constitutional provisions are far-reaching, and have arguably strengthened local governments in Nigeria, but they do not imply autonomy nor in practice confer autonomy on local councils. However, given that autonomy was contemplated and pursued in the past as a way of strengthening local government councils, it is perhaps more accurate to say that there has been a departure from the trajectory of autonomy that followed the 1976 reforms, and that local governments are now weaker and worse off than they once were, especially in the 1990s. This development deserves some explanation. Local government autonomy was arguably one of the levers of the centrist designs of successive military governments that held sway in the country from the mid-1960s until 1999. The military sought to emasculate state governments which replaced the old powerful regions that were accused of badly dividing the country and leading it to civil war. For the first time, the federal government bypassed states and took over the creation, structuring and funding of a uniform local government system in which local councils literally served as ‘alternatives’ to states for purposes of representation and inclusive and participatory development (bringing government closer to the people, as it was said).

The pronouncement of autonomy by military fiat was one of the ways to reduce the powers of the states, and indeed, the idea of abolishing states and replacing them with local governments was once debated under the highly experimental government of General Ibrahim Babangida (1985–1993). It is instructive that in the 1990s when some local governments flexed muscles with state governments over responsibility for refuse disposal and management of primary education, the federal government supported the local authorities against the states. State–local government ministries were also abolished at one point to the same ends. The inclusion of local governments as direct recipients of allocations from the federation account, decree of areas of (exclusive) local government competences, restructuring and strengthening of local councils that involved extension of the presidential system, and treatment of council chairmen as governors in their domains, all signposted federal moves to empower local governments at the expense of states. To all intents and purposes, local government autonomy was a military project that could only last as long as the military remained in power.

Return to democratic constitutional rule therefore offered state governments the opportunity to reassert themselves, and the emasculation of local government powers was a major project. The constitutional provisions referred to above reflected the upper hand gained by states in their struggle to halt federal incursions into local government. By giving states responsibility for the establishment, structure,

composition, finance and functions of local government, the constitution restored state control and supremacy over local councils. State–local joint accounts in particular have been used by states to curtail the financial autonomy of local councils with allocations from the federation account often withheld by state governments which also make sundry illegal deductions from local funds (until 2000, allocations were collected directly by local governments from the federal pay offices in their states). State electoral commissions which conduct elections for local councils have also been used to ensure that only clients and loyalists of state governors manage the councils. Thus, governors frequently change the tenures of council chairpersons and suspend elected local councils which are replaced with caretaker committees with no fixed tenures. States have also used local government service commissions (which are not provided for in the constitution) to direct local government policies and to appoint and supervise key personnel.

It is noteworthy that local governments have turned out to be hapless victims of the highhandedness of state governments, as the protection they enjoyed from the federal government under military rule has waned considerably. Although in the debates that have followed the constitutional review process, spokespersons of the federal government including senators and members of the house of representatives have strongly supported the restoration of local government autonomy, this has not been to undermine states, but rather to strengthen the capacities of local governments for service delivery at the local level. The attempt by President Obasanjo to restore federal surety of local government autonomy in 2004 by withholding local government allocations to Lagos State from the federation account on the grounds that the state had no powers to create new local councils, was successfully challenged in the Supreme Court, which ruled that the federal government has no powers to withhold allocations to local governments of a state.

Performance of functions

The point about enumerated local government functions is not only about the implication it has for autonomy, but also about the capacities of local governments to perform them and deliver assigned services, especially in light of the high expectations generated by the hype of autonomy. In the Second Republic (1979–1983), which had the first civilian democracy after the 1976 reforms, local governments were allocated the management of primary schools, but by 1983 when the Republic collapsed, most teachers were owed huge arrears of salaries. Primary education was consequently transferred to state governments. Under the military government of General Babangida (1985–1993), a period some now regard as the golden years of local government in the country; local councils, especially in the urban areas, recorded unprecedented levels of performance in primary health, waste disposal, and road construction and maintenance, thanks to direct funding and other forms of federal support.

Since 1999, however, the overbearing control of states and poor funding, largely as a result of states' refusal to remit federal funds sitting in the joint state–local accounts, as well as the specified 10% of their own revenues, have made it difficult for local councils to perform. There are also the factors of corruption (it is widely believed that most funds allocated to local governments are stolen by elected executives and councillors); inadequate human resources and technical competence (local governments are never able to attract the right calibre of staff other than those seconded by state governments); and the absence of elected leaders and officials who mostly reside in the major cities far away from the localities for which they are responsible (rural local government areas are terribly bad in this regard). The failure of local councils to perform has led to the takeover of many of the functions in the fourth Schedule of the constitution by state governments.

Intergovernmental roles and involvements

Local councils are generally missing from the major intergovernmental statutes and platforms in Nigeria. This reflects the predominance of the federal government (there are 68 items on the exclusive legislative list and 30 on the concurrent list), and that Nigeria is effectively a two-order (federal–state) rather than a trilateral system (Osaghae 1992, 1994). While there are provisions for state representatives in many of the 14 federal executive bodies established by the 1999 constitution, none has representation for local governments. Significantly, these bodies include the Federal Character Commission which regulates the representativeness and inclusivity of federal, state and local institutions and agencies; and the Revenue Mobilisation Allocation and Fiscal Commission which oversees revenue matters in the federation. Local governments are also not represented in the Federation Account Allocation Committee, which meets monthly to distribute revenues to the orders of government and ensure that allocations to states and local councils are fully and promptly paid (the committee is chaired by the federal minister and includes state commissioners of finance, the accountant-general of the federation and two members appointed by the president). Local government interests are presumably subsumed under those of the states, but their exclusion especially from the account allocation committee is partly responsible for some of the lapses and disadvantages they suffer at the hands of state governments. A similar situation exists in the composition of the various National Committees which bring together federal ministers and state commissioners and serve as coordinating bodies for national policies, standards and practices in education, health, agriculture, establishments, and other sectors on the concurrent legislative list. Under emergencies such as the COVID-19 pandemic, these committees play even more crucial roles, but local councils are excluded from membership.

In effect, on the formal side, local government roles are restricted to vertical relations with state governments and horizontal relations with other local governments. Very little exists – or is known – of horizontal relations, in part because there are no frameworks for them other than state-coordinated initiatives that may involve more than one local council. For vertical relations with state governments,

state–local joint revenue accounts and state economic planning committees may provide statutory platforms for state–local relations. However, the evidence suggests that state governments are fully in control of these bodies and sometimes take unilateral decisions notwithstanding that local government and other officials are members. In the case of state–local joint account committees, states are within their ‘rights’ to ensure that they effectively control and monitor expenditure by the executives of local councils, and that funds are properly utilised for purposes of effective grassroots service delivery, a role that legitimises their control.

By contrast, the informal dimension of IGR shows more cooperative relations between states and local governments, and even federal agencies, with respect to initiatives that involve participation by local authorities and communities and for which local authorities may be required to act as distributive outlets or implementing agencies. For example, local governments are informally involved in policing and security architecture, especially in remote areas where federal and state presence is scanty. Council chairmen provide logistical support for police and security teams, using security votes and other budgetary allocations. Local councils have also helped to rehabilitate roads, health centres, and schools, but such involvements are mostly informal, expedient and pragmatic. Party politics and its organisations, for which local governments serve as primary constituencies and wards have also extended the spaces of informal relations and bargaining not only with state authorities but also federal authorities as well. Chairmen of local councils have progressed to becoming top functionaries at the state and federal levels, with a few of them emerging as state governors, federal ministers, and members of the National Assembly.

Finally, the restricted spaces for intergovernmental engagements and ventilation of local government interests have pushed them to seeking alternative means for engaging federal and state authorities and pursuing local government matters in general. The Association of Local Governments of Nigeria (ALGON), an advocacy body registered in 1999 to defend the interests of, and give voice to, local governments in the country, has emerged as the main platform. All the 774 local governments in the country – represented by their chairpersons – are members of the association. ALGON has been very active in demanding autonomy for local governments and abolition of state–local joint accounts. Its effectiveness as a pressure group has however been constrained by a fractious history arising from fierce leadership struggles.

Conclusion

Local governments in Nigeria face similar IGR issues and problems to those in Canada and other federations. The myth of autonomy that supposedly made local government a distinct order of government ended with that of military rule, and today local governments have returned to the paths of subordination to state governments and exclusion/marginalisation from federal governance. Nevertheless, the constitutional recognition of local government functions (not powers) and direct

allocation of revenue from the federation account may yet provide the basis for further strengthening local governments as an integral part of the intergovernmental grid as demanded by ALGON, civil society, local government representatives and even functionaries of the federal government from time to time.

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Local government in intergovernmental relations: reflections on the South African model

D M Powell

Hachard's paper makes the case for reforming Canadian intergovernmental relations at federal and provincial levels to incorporate local government as a formal actor in intergovernmental processes, from which municipalities are 'largely absent'. The gist of the argument for reform appears to be that the continued exclusion of local government from important intergovernmental processes is at variance with the growing influence of municipalities in many more areas of social and economic life today than ever before. Hachard suggests several possible approaches to reform, drawing on the experiences of other federal systems that have 'created space for municipalities', one of which is South Africa, where local government has a formal constitutional, statutory, and strongly institutionalised role to play in intergovernmental relations alongside national and provincial governments. In response, this brief perspective brings the formal legal and institutional undercarriage of the South African model into clearer view, and raises two caveats about the model's usefulness as a point of reference for any future reforms in Canada or elsewhere.

The salient fact about local government's role in intergovernmental relations in South Africa is that it rests on formal constitutional, legislative, and institutional foundations, the main features of which are the following:

- The constitution establishes local government as a full sphere of elected government in its own right (alongside national and provincial spheres) with specific development objects and duties

(Republic of South Africa Constitution 1996, ss 151–4 and 214). Local government has legislative and executive powers of its own in respect of specific functional areas listed in the constitution, the right to self-government, and the right to receive an equitable share of national revenue. National and provincial functions may also be assigned to local government (Republic of South Africa Constitution 1996, s 156(4)). The status of democratic local government in the government of the country is thus constitutionally protected and therefore (short of a constitutional amendment) beyond unwarranted political encroachment by national and provincial governments.

- The constitution explicitly makes intergovernmental cooperation between the three spheres of government and the avoidance of unnecessary litigation default practices of government for the country (Republic of South Africa Constitution, Chapter 3 and s163). Furthermore, it requires parliament to enact national legislation to regulate intergovernmental relations, the resolution of intergovernmental disputes, municipal finances and revenue-raising powers, as well as the organised representation of local government in intergovernmental relations. The incorporation of local government into intergovernmental relations is thus not a discretionary policy choice for national and provincial governments to make, but a mandatory constitutional obligation and a necessary condition for effective democratic government of the country.
- National legislation regulates local government's participation in intergovernmental relations in a variety of forms. General framework legislation provides for local government's participation in executive intergovernmental relations at national and provincial levels. Legislation provides for 'organised local government' (provincial and national associations of municipalities). Legislation governing municipal financial management provides for local government involvement in fiscal and budget processes. Specific sector legislation provides for local government to participate in intergovernmental relations where municipalities have relevant service delivery responsibilities (eg housing, water, electricity, sanitation sectors). Key national legislation regulating the intergovernmental role of local government includes the Local Government: Municipal Structures Act (117 of 1998), the Local Government: Municipal Systems Act (32 of 2000), the Local Government Municipal Finance Management Act (56 of 2003), and the Intergovernmental Relations Framework Act (13 of 2005). Local government's inclusion in intergovernmental processes is thus highly regulated, institutionalised, and polyvalent, with the type and form of participation depending on its constitutional role within the functional area of government in question.
- Local government engages formally in the intergovernmental structures and processes created by this legislation at both national and provincial levels. Participation is direct – as a municipality, or indirect – as a sphere represented by organised local government, the province within which the municipality falls, or national departments that administer legislation affecting

local government. Thus there are many avenues for local government to have voice and influence.

- The Constitutional Court's jurisprudence has elaborated the normative foundations of municipal intergovernmental constitutionalism. The Court is the highest court on constitutional matters and entrusted with the task of deciding intergovernmental disputes (Republic of South Africa Constitution 1996, s 167). In several seminal cases the Court has reaffirmed local government's constitutional status (*Fedsure Life Assurance*) and autonomy with respect to zoning and municipal land use planning and township development (*City of Johannesburg Metropolitan Municipality*).

The South African model is a peculiar form of intergovernmental relations that emerged in response to the difficult political problems the country faced in making the transition from apartheid to constitutional democracy. Local government's strong formal standing in intergovernmental relations cannot be explained as if it were the inevitable working out in practice of an a priori federal idea of multi-level government.

Federalism lacked a strong national political constituency in the political negotiations and constitution-making processes in the 1990s (Cameron 1999; Powell 2017). And as things stand today, federalism has not become a potent and credible political force in the country. Current political and public opinion probably inclines towards greater central government control of local government rather than towards more decentralisation, due in part to the pervasive maladministration, corruption, and political conflict in many municipalities. Moreover, notions of federalism, decentralisation, subsidiarity and reform rarely if ever appear in the official South African lexicon of intergovernmental relations. These terms have much reduced explanatory and analytical force in the South African context because they are heavily freighted with negative connotations due to their association with the previous apartheid government's attempts to reinforce racial exclusion and separate development in the guise of faux decentralisation strategies.

A second caveat concerns the usefulness and limitations of explaining South Africa's experience through the formal model alone. The South African model was not the product of a single coherent positive blueprint, such that one need only read the formal features of the model set out in the constitution, legislation, and policy to explain what the model is, what path its development followed or how well it has worked in practice. Positive design has certainly shaped institutional form and practice, and is a starting-point for analysis. However, for a more complete understanding of why local government gained strong formal standing in intergovernmental relations, how its intergovernmental role has developed over time, and whether it has promoted government that is effective, accountable, and cooperative, other factors beyond form and functional design must be taken into consideration.

The most important of those factors is that constitutional recognition of local government as a sphere of government was the outcome of the shifting political context in the country in the transition from apartheid to constitutional democracy. The long struggle against apartheid in urban areas saw cities and townships become sites of national conflict and local peace-making. Local political actors were then directly engaged in the political negotiations and constitution-making processes of the 1990s that introduced constitutional democracy, the transition path for democratic local government, and transitional local governments of unity. The period of political transition under the government of national unity lasted until the first democratic national elections in 1999, during which national policy and much (but not all) of the legislative framework for local government was developed and introduced (Cameron 1999; Powell 2017). This was followed by the period of democratic consolidation after 2001, when the new, fully integrated local government system came into operation.

It was only in the years 2001–2005 that the role of local government in intergovernmental relations was formalised, with the enactment of three key pieces of national legislation (the Municipal Systems Act, the Municipal Finance Management Act, and the Intergovernmental Relations Framework Act). At this time, formalising local government's role in intergovernmental relations served wider political objectives beyond giving effect to the constitutional scheme for local government and creating space for local voice in national and provincial programmes. It also strengthened national government's hand to implement institutional, budget, fiscal, and service delivery reforms in the local sphere and to drive national programmes for the provision of free basic municipal services and local economic development (Powell 2012).

Municipal government and intergovernmental relations have also been shaped by countervailing or adverse developments (see generally, Lawless 2007; Powell 2012 and 2015; Palmer et al. 2017). First, the *law of unintended consequences* applies. Policy failure, institutional fragility, and a lack of managerial and technical skills and resources in many municipalities have hollowed out or obstructed the implementation of a system that otherwise looks good on paper. For example, the municipal financial management legislation of 2003 introduced management controls and mandatory national intervention powers to address municipal financial distress, which have not been adequately used to curb the runaway corruption and mismanagement in municipalities.

Second, *power-politics is ever-present* notwithstanding the high principles of intergovernmental cooperation. What may look like an outcome of intergovernmental cooperation is oftentimes one imposed from above more than the result of a negotiated consensus between equal intergovernmental parties, or alternatively one to which local governments have merely acquiesced. Third, *national politics shapes local voice*. One effect of the party list system at all levels is that local elections and politics have steadily taken on a national rather than a local hue.

Fourth, the *fractious internal politics of the African National Congress transmit through to local government*. As a dominant and highly centralised ruling party, the African National Congress is committed to a policy of deploying its cadres into government and public administration at all levels, a practice that has weakened and politicised more than it has strengthened and professionalised municipal administration. Fifth, *turf battles persist between departments over local government policy*. Several national departments have mandates for local government and administer their own related legislation, which at times has resulted in conflicting rather than coherent policy approaches. Sixth, *pervasive rent-seeking and corruption* operates as a shadow regime of special interests within local government (eg as documented in numerous reports by the Auditor-General and the recently published report of the Commission on State Capture, chaired by Chief Justice Zondo of the Constitutional Court).

What learnings can be drawn from the South African experience and usefully applied in other (quasi) federal countries? It is difficult to say. Certainly as regards Canada, the two country contexts are so unlike that the Canadian case for reform would probably derive little ballast from examples drawn from the South African experience. As Hachard concedes, the model is too distinctive and enmeshed in the South African context to be ‘directly transferable’ to the Canadian setting. But as always, something of value is likely to emerge from comparative analysis, provided it is based on a clear understanding of the respective forces at work.

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Intergovernmental confusion in centralised England

Andrew Walker

During the COVID-19 pandemic the deficiencies of the United Kingdom's centralised model of governance – especially in England – came to the fore, and this was particularly evident in the poor coordination between branches of government (Diamond and Laffin 2022). Just as in Canada, local government in the UK is not considered as part of the constitutional architecture. Intergovernmental relations are characterised by informality and a lack of institutionalisation, which means that local government often has to undertake additional responsibilities without corresponding funding, capacity or powers.

The UK has some elements of a federal system, but the constitutional arrangements that frame this are not systematic, nor are they symmetrical. This asymmetry in the UK's governance and its partial devolution/decentralisation of governmental responsibility has fundamentally shaped the design and function of intergovernmental relations. Westminster (the seat of government in London) operates as the government of the whole UK, as well as being *de facto* the government of England, with Scotland, Wales and Northern Ireland to varying degrees governing their own affairs since the steps towards devolution taken by Tony Blair's first Labour government in the late 1990s.

While the UK as a whole has been through a process of devolution, England itself has remained particularly centralised. Indeed, the big missing piece of the UK's governmental puzzle is the conundrum of English governance. Despite being by far the most prosperous and populous nation in the UK, England does not have an official place in the constitution or within intergovernmental relations. This is a gap that has been partially plugged in recent years by giving various and varying powers to 'combined authorities' of local governments in the major city-regions (and a few elsewhere), led for the most part by directly elected mayors exercising a measure of executive authority.

While Hachard correctly argues that constitutional recognition for local government would not be a panacea, as it does not guarantee respect and equal consideration, intergovernmental coordination in the UK would significantly benefit from a formal structure of representation for local and regional leaders in parliament. This could take the form of an advisory body to provide input and a voice for local leaders on parliamentary proceedings, but would carry more weight if the second chamber, which in the UK is the unelected House of Lords, were reformed around the representation of local and regional communities. This would give directly elected mayors and other elected local leaders the power to revise and shape legislation, bridging the gap between branches of government, as well as streamlining implementation of policy.

It is telling that the central department responsible for local government in England no longer even has local government in its title. In reality, the Department for Housing, Levelling Up and Communities

(DHLUC) is just one of the many points of contact that councils have in ‘Whitehall’ (the London headquarters of the UK civil service). This results in a patchwork and tangled network of coordination and regulation around a great many policy areas, including statutory services. But it also means there is no single point of contact for local government funding.

Policy directives from Whitehall are often disconnected between departments. The funding and strategies are not aligned on a place-basis. It is down to local leaders, usually councils, to coordinate and reconcile differences in their areas, bringing together agencies and communities so that they work towards shared goals. But, crucially, there is no funding available for this place-leadership, coordinating function.

Also pertinent are Hachard’s points that municipal capacity is a decisive factor in boosting recognition of local and municipal government, and hence the successful functioning of intergovernmental arrangements; as well as his argument that financial arrangements need to be dealt with explicitly.

As Gray and Barford neatly observe it (2018, p. 541), “*public finance is politics hidden in accounting columns*”. The position of local government in the UK relative to the centre is determined largely by the level of centralised control of funding, which is almost unique within the Organization for Economic Cooperation and Development (OECD). In particular, local councils in England are backed into a corner by the limited funding that Westminster makes available to them, by the way that funding is delivered, and by the regulation that restricts how it can be used. Even councils with additional powers and responsibilities delegated through ‘devolution deals’ made between central government and combined authorities can have their hands tied by the fiscal framework they operate in. This situation has been magnified by additional financial pressures caused by COVID-19, the general impact of inflation in the economy, and rapidly escalating energy costs. One of the few options open to local government is the expansion of commercial property portfolios, which some councils have pursued with gusto – a high-risk strategy that has led to some disastrous results. However, the overarching policy framework that pressures councils to adopt this behaviour in the first place is often left out of academic and journalistic criticisms of ‘financialisation’ and related market speculation.

Debates over the respective proportions of funding that should be provided centrally through grants or raised through local rates (property tax), have hinged on what the role of local government should be. On the one hand, councils are seen as ‘mini republics’ – autonomous agents with political and democratic capacity to decide on local policy choices. On the other, they are frequently seen as ‘partners’ (or agents) of central government, required to deliver centrally mandated policy. Even then, the relative autonomy allowed through financial independence has stirred conflicts over local government’s political status. The relationship between central and local government changed significantly throughout the 1970s, with intervention from the centre becoming stronger and more

frequent, and the nature of those interventions switching from legislation that *enabled* councils, to legislation that *controlled*.

The debate about local government's role and funding is by no means new, and seems to keep circling back to the same issues. The Layfield Report, published in 1976, presented a choice between a central or local system of financial control, with an apparent preference for the localist option. The Layfield Inquiry is significant as it demonstrates the unwillingness in central government to adopt measures that would empower local government. The report recommended that tax-raising powers should be devolved to local government on the basis that, according to the renowned scholar of English local government George Jones: "*a decentralised model of governance could not be sustained if central government grant was the predominant source of local government's revenue*" (Communities and Local Government Select Committee 2009, p. 9).

Layfield's radical recommendations were rejected by the government at the time, and by subsequent governments, in favour of a compromise position that retained most elements of the status quo and ceded little to local government. Despite this, the choice posed by Layfield between a central and a local funding system for government is a milestone for proponents of localism.

During this period, as Bogdanor notes (1979, p. 160), councils were picking up extra responsibilities across the board but getting the resources to fulfil them was a political and administrative battle with central government, straining the centre–local relationship and undermining the democratic link with local citizens.

Bogdanor continues:

The crucial factor in the life of the local authority becomes not its standing with its local electorate, but its relationship to Whitehall, and in particular how much money it can squeeze out of the Cabinet in the annual rate support grant negotiations. For it is upon the degree of success of the local authority as a pressure group upon Whitehall, rather than the quality of its management of resources, that improvement in local services primarily depends (1979, p. 160).

The most significant devolution in the UK since the late 1990s took place within England – the 'city deals' and 'devolution deals' between central government and combined authorities of councils – and once again in a context of extremely diminished local public finances. The decision to further reduce the power and capacity of local government while simultaneously passing on responsibility and blame for the impact of spending cuts after the 2008 financial crisis was politically motivated. Under the government's 'Big Society' localist agenda, responsibility was also shifted on to civil society organisations and volunteer effort, bolstered by a narrative of necessary deficit reduction. All this had the almost perverse outcome that certain councils emphasised their technical capacity to manage austerity, while demonstrating their incapacity to challenge Whitehall on the overarching narrative of cuts.

Since 2015 there has been a string of ‘deals’ with combined authorities in city-regions such as Greater Manchester, the Liverpool City Region and the West Midlands. The settlements are based on “*contract-style agreements between central government and local authorities to pursue agreed outcomes in discrete policy areas*” (Sandford 2017, p. 72). This has conditioned the form that any devolved decision-making has taken. In fact, central government’s resistance to a systematic and constitutional change in the structure of centre–local relations indicates its more circumscribed intentions (Sandford 2017, p. 65).

The directly elected English mayors are certainly constrained by the rules of the game set by central government. Without a wide range of ‘hard’ powers at their disposal, soft power is all the more important. These mayors have functions and agency relating to issues like skills and economic development, but only the Greater Manchester mayor has significant responsibilities in health and social care. However, the stress is on their role as spokespersons for their cities in attracting private sector investment and lobbying central government over economic development. To make an impact they depend on coordinating other agencies and using lobbying strategies (Roberts 2020), exercising their power in this less conventional style. They can set the agenda and define the context in which issues are discussed. They use levers of persuasion, partnership and consensus-building. In part, the capacity of the mayor to ‘get things done’ is derived from that soft power, relying on tools and mechanisms that operate away from public input (Ayres 2017).

This came to the fore during the COVID-19 pandemic, most notably when city-region mayors were outspoken in their collective opposition to the government’s lockdown strategy. Andy Burnham, the Labour mayor of the Greater Manchester Combined Authority, said he refused to let people in the North West be treated “*as canaries in the coalmine for an experimental regional lockdown strategy*”. “*It’s wrong*” Burnham argued, “*to place some of the poorest parts of England in a punishing lockdown without proper support*” (Walker 2020).

In summary, the UK’s, and especially England’s, intergovernmental relations are a mix of informal and uncodified arrangements, headed by a loose coalition of departments at the centre. It is little wonder that coordination problems arise in the way they do. As Hachard rightly observes, formal institutions as such are no panacea for unproductive relations: soft power and personality politics will always have a major role to play. But in the UK today, so much militates against local leaders making their voices heard in government that more structured arrangements appear essential.

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