

Nigeria's Intergovernmental Relations: A Comparative Analysis of 1963 And 1999 Constitutions

Awodokun Ayotunde Abraham
Department of Public Administration
Distance Learning Institute
University of Lagos
Corresponding author: aydokun@yahoo.com

Abstract

The essential feature of federated States is the division of political power between the federating States and Central Governments. Each tier of government has the final say in respect of matters assigned to it by the constitution. The central and state governments to achieve their set goals, the different levels of government must interact. This interaction of the various levels of government is referred to as intergovernmental relations. This paper Examines Nigeria's Intergovernmental Relations Under 1963 Republican Constitution and 1999 Constitution, with the aim of determining whether a centralized constitutional provision as we have it under 1999 or decentralized provisions as we had it under 1963 constitution can enhance better intergovernmental relations and facilitates development and healthy competition among states in Nigeria. This study was qualitative in approach and gathered data are content analyzed, using the three-fold typology formulated by Diel S. Wright as framework of analysis. It was discovered that the 1963 constitution gave high level of Autonomy to the regions, and this enhanced development in various dimensions and healthy competition among the Regions, while 1999 constitutional provisions skewed in favour of the federal government as evidenced in the exclusive legislative list and revenue sharing formula. It shows that this present arrangement inhibits pace of development in the country particularly in the areas of social infrastructure, security and even internally generated revenue.

Keywords: Federalism, Constitution, Intergovernmental Relations, Interactions, State Development.

Introduction

Federalism is about division of Power between central and component units of Government, with each tier of government having the final say in respect of matters assign to it by the Constitution. This definition is in tune with Federal Principle which means the method of dividing powers so that general and regional governments are each, within a sphere, coordinate and independent Wheare (1953). On the other hand, intergovernmental relations are interactions that take place among the different levels of government within a state. Interaction between the units of government is necessary to ensure a robust collaborative relationship between the federating states and central units of government for the mutual benefits of all the units. Intergovernmental relations

operate at the interface between what the constitution provides and what the practical reality of the country requires. Therefore, it helps to maintain a balance between the interest of the central government and interest of the states, not only that it promotes cooperation and coordination between different levels of government, which in turn ensures that the policies of one level of government are not in conflict with those of another the concept of intergovernmental relations is practiced both in Federal and Unitary System of government, it is however, more pronounced in Federal systems. Intergovernmental relation involves different areas of interaction: Ayoade (1980) identifies nine areas of interaction.

- i. Federal - State
- ii. Federal - Local

- iii. Federal - Civic Groups
- iv. State - State
- v. State - Local
- vi. State - Civic Groups
- vii. Local - Local
- viii. Local - Civic Groups
- ix. Inter - Civic Groups

This study is divided into four sections. Section I examines the theory and practice of federalism, Section II examines the framework for this paper using typical models of intergovernmental relations as formulated by Deil. S. Wright. Section III examines comparative analysis of Intergovernmental relations under 1963 and 1999 constitutions. Section IV considers findings and conclusion and recommendations.

Theory and Practice of Federalism K. C. Wheare's Legal – Institutional Theory

There are a lot of theories on federalism, this paper will consider the legal- institutional theory of KC Wheares because no theory of federalism will have meaning and significance without the legal framework provided by federal arrangement. Second, the legal institutional by formulation is considered because this paper uses constitution as basis of comparison, also, inter governmental relations operates at the interface between what the constitution provides and what the practical reality of the

country requires. KC Wheareviews federal government as a constitutional arrangement which divides law making powers and functions between two levels of government. According to Wheare, this constitutional form, is brought about by circumstances where people are prepared to give up only certain limited powers and wish to retain other limited powers, both sets of powers to be excersied by coordinate authorities Dare (1979).

In other words, Wheare sees “Federalism as an appropriate form of government to offer to Communities or state of distinct, differing nationality who wish to form a common government and to behave as one people for some purpose, but wish to remain independent and in particular, to retain their nationality in all their aspects”. It is on this legalistic approach of KC wheare, that intergovernmental relations can have more expression.

Models of Inter-Governmental Relations and Nigeria 1963 and 1999 Constitutions

There are numbers of model of inter-governmental relations devised to guide us in understanding inter-governmental relations, besides constitutional sharing of powers. One of the most significant is the three conceptual models formulated by Deil. S. Wright (1985), namely coordinate, inclusive and overlapping models.

Table I
Models of inter-governmental relations

	1	2	3
Designation	Coordinate	Inclusive	Overlapping
Relationship	Independent	Dependent	Interdependence
Authority Pattern	Autonomous	Hierarchy	Bargaining

The above can be explained diagrammatically.

Coordinate Authority Model inclusive Authority Model

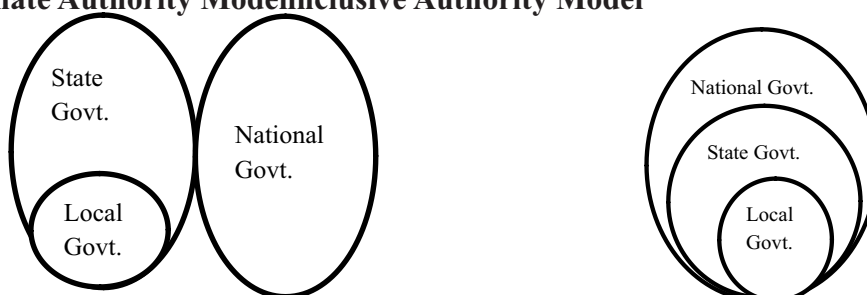


Fig 1

Overlapping Authority Model

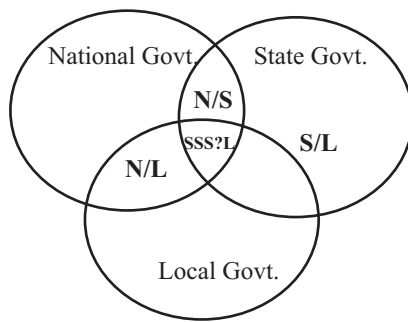


Fig 2

Coordinate – Authority Model of Intergovernmental Relations, sharp distinct boundaries separates the national government and the state government. Local units are, however, included within and are dependent on state government. Therefore, in terms of federal- State relationship, the coordinate authority model implies that the federal and states' governments are independent and autonomous. This model was clearly evidenced in the nature of inter-governmental relations that existed between unit of government between 1963 to 1966. During this period, the regions were independent. (Within the constitutional ambit of the federal government, whereas the local governments are subordinate to the regions later the states) Akande (2022)

Inclusive Authority Model of intergovernmental relations, the federal government is supreme. It conveys the hierarchical nature of authority; other tiers of governments, state and local are subordinate to federal government. This model did not find expression under 1963 and 1999 Constitutions but predominantly in practice between 1966 – 1979, 1983 – 1999 years of military rule in Nigeria, when the legislature, executive and financial powers were vested on the federal government.

Overlapping Authority Model of Intergovernmental relations, power is shared among the three tiers of government. The relationship here is interdependent and authority pattern is bargaining. It is the most ideal model in a true federalism. It is unfortunate that the model did not find expression neither in 1963 and 1999 constitutions under consideration nor any

period in Nigeria.

Section II

Comparative Analysis of Nigeria's Inter-Governmental Relations Under 1963 and 1999 Constitutions

This comparison will focus on three aspects, power sharing, finance and police.

1. Power Sharing Between Central and Federating States

Section 4 (2) of the 1999 Constitution provide thus.

The national assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list.

Section 4 (4) of the Constitution states, “In addition, and without prejudice to the power conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following (a) any matter in the concurrent legislative list... and (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution”.

From the above, section 4 (4) of the constitution puts a serious limitation on the powers of a state's House of Assembly to legislate on crucial matters on the concurrent legislative list. Also, to further reduce the legislative powers of the federating states, Section 4 (5) of the Constitution state clearly that “if any law enacted by the House of Assembly of a state is inconsistent with any law validity made by the national Assembly, the law made by national assembly shall prevail and that other law shall to the extent of the inconsistency be void:

Thus sections 4 (2) 4 (4) and 4 (5) of the 1999 constitutions confers unlimited legislative power on the centre vis a vis federating states, is no longer in dispute even though the trends toward a strong centre started and became more nurtured during the long periods of military regime

As far as this constitution is concerned, the federating states, essentially, are to play a second fiddle to the centre. Also, the 1999 constitution did not make any explicit provisions for any legislative powers for local government councils, although local government councils in practice, be it under federal or unitary system, has the legislative power to enact bye-laws relating to the functions of a local government council as enumerated in the fourth schedule to the constitution.

In case of 1963 Constitution power sharing relatively favoured the Regions. Section 5 (1) of the constitution stated "Subject to the provisions of this constitution and Nigeria Independence Act, 1960, the constitution of each Region shall have the force of law throughout that Region and if any other law is inconsistent with that Constitution, the provisions of that Constitution shall prevail and the other law shall, to the extent of the inconsistency be void"

Section 5 (2) "Subject to the provisions of this constitution, the constitution of a Region may be altered only by a law enacted by the legislature of that Region" from above

The constitution gave high level of autonomy to the Region which was taken away under 1999 constitution.

Also in the area of alteration of the constitution, section 4 (1) Parliament may alter any of the provisions of this constitution: provided that, in so far as it alters any of the provisions of this section, sections 1, 2, 5, 6, 17, to 36, 38, 41, 42, 43, 50, 51, 52, 62, 67 to 94, 104, 113, 115, 117, 119, 120, 122, to 125, 127, 129, 130, 133 to 147, 150, 152, 154 to 161, 166 and the schedule to this constitution or (in so far as they apply to any of those provisions) sections 66 and 165 of this constitutions, an Act of Parliament shall not come into operation unless each legislative house of at least two regions has passed a resolution

signifying consent to it having effect.

Again, the above section gave the Regions enormous power to ensure that the parliament power was been checked by the Regional legislative houses.

As we have it in 1999 Constitution, the 1963 Constitution did not make any explicit provision for legislative powers for local government council.

From all indications, the centre played a second fiddle to the regions under 1963 constitution.

On the other hand, the Lyttleton Constitution of 1954 provided a protective measure for the Regions with the Regionalization of the civil service, marketing board and judiciary. Both the Western and Eastern as well as Northern Regions had a local government police force and native authority police force respectively which eventually turned out to be instruments of coercion and intimidation by the ruling parties against members / supporters of the opposition. The Pendulum of power in the Late 50s began to swing in favour of the centre vis-a- vis the region. But by and large, the federal government was relegated to the role of playing a second fiddle to the regions. Adesanya (2014).

2. Finance

Under the 1999 Constitution section 4 (2) provides for National Assembly to make laws for the peace order and good government of the Federation with respect to any matter included in exclusive legislative list section 4 (4) states that in addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say (a) any matter in the concurrent legislative list set out in the first Column of part II of the second schedule to this constitution to the extent prescribed in the second Column opposite thereto (b) any matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution section 4 (5) if any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National assembly shall prevail, and that other law shall to the extent of the

inconsistency be void". The above sections of the Constitution amongst others confers on the federal government unlimited legislative powers, it is not difficult to conclude that the federating states and local governments as the second and third tiers of government are subordinate to the federal government. Akinsanya (2014)

The subordination of the federating states and local government is more glaring in the area of finance. Section 162 (4) of the Constitution provides that, any amount standing to the Credit of the states in the federal Account shall be distributed among the state on such term and in such manner as may be prescribed by the National Assembly.

It must be noted that the amount standing to the credit of the state refers to above is 87 % of the total revenue after the deduction of 13% derivation.

Also, section 7 (6) (a) of the Constitution states "The National Assembly shall make provisions for statutory allocation of public revenue to local government council in the federation," from the above it is clear that both federating states and local government are at the mercy of the central government as far as finance is concerned, there is neither fiscal autonomy nor independence on the two tiers of government.

Section 162 (2) of the constitution provides for not less than 13% as derivation i.e. money derived from natural resources. But there was a sharp deviation from 1963 constitution. Section 140 (1) (a) (b) stated that.

"There shall be paid by the federation to each region a sum equal to fifty percent of (a) the proceeds of any royalty received by the federation in respect of any minerals extracted in that region and (b) any mining rents derived by the federation during that year from within that region". The derivation percentage under 1963 constitution was equal to fifty percent. While the remaining 50% was shared between the federal government and the regions. Section 140 (2) (a) (b) of the constitution stated that "The federation shall credit to the distributable pool account a sum equal to thirty percent. (a) the proceeds of any royalty received by the federation in respect of any minerals

extracted in that region, and (b) any mining rents derived by the federation from within any region.

From all indications, the above implies that out of the balance of 50%, 30% of it will go to distributable pool account to be shared among the regions on equal basis as stated in section 141. "there shall be paid by the Federation to the Regions at the end of each quarter sums equal to the following fractions of the amount standing to the credit of the Distributable pool account at that date, that is to say..."

- (a) Northern Nigeria forty ninety – fifths
- (b) Western Nigeria Twenty-four ninety – fifth
- (c) Eastern Nigeria Thirty – one Ninety – Fifth.

Regions to contribute towards costs of administration.

In relative terms, there was more fiscal autonomy to the regions under the 1963 constitution.

However, since January 15, 1966, the amount standing to the credit of the federal government has soared and has been progressively increased with the centre becoming much stronger financially and assertive while the Federating states had become more subordinate and dependent on federal purse to discharge their responsibilities to the people. Omitola (2014)

On police matters, the control is exclusively that of the federal government both under 1999 constitution and 1963 constitution. Section 214 (1) of 1999 constitution states that "there shall be a police force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provision of this section no other police force shall be established for the federation or any part thereof". Also, section 105 (1) of 1963 constitution stated that "there shall be a police force for Nigeria, which shall be styled the Nigeria police force". Both constitutions agreed that there shall be Inspector General of Police, and Commissioner of Police for the state / region and that the Nigeria Police Force shall be under the command of the Inspector General of Police. They agreed on establishment of Nigeria Police Council.

However, section 105 (7) of the 1963 constitution stated that “Nothing in this section shall prevent the legislature of a region from making provision for the maintenance by any native authority or local government authority established for a province or any part of a province of a police force for employment within that province.”

The above implies that under 1963 constitution the regional legislatures had the power to employ police force within their provinces. But there were no much details on the mode of operation. Unlike the 1954 Lyttleton Constitution which allowed the establishment of local government police force and native authority police force.

Findings

The study reveals that under 1963 Constitution, power sharing favored the regions, laws made in the regions cannot be declared void even if any other law is inconsistent with the constitution, the provisions for that constitution shall prevail and the other law shall, to the extent of the inconsistency be void. This is made possible by section 5(1) of the 1963 constitution. Also, in the area of alteration, the constitution of a region can only be altered by a law enacted by the legislature of that region. In essence the federal government did not have powers to alter the constitution of the regions. Not only that, an act of parliament shall not come into operation unless each legislative house of at least two regions has passed a resolution signified consent to it having effects. In the contrary 1999 Constitution do not give such powers to the states, however the resolution of the House of Assembly of not less than two thirds of all the States is required to alter the provision of the constitution section 9(3). On finance, as far as 1963. Constitution was concerned it was evidenced that there was more fiscal autonomy and independence to a large extent as the derivation percentage under 1963 constitution was equal to fifty percent – section 40(1). While in the distributable pool account, more percentage was given to the regions than the federal government. On the other hand, the 1999 derivation percentage is thirteen per cent, and the central government carries the lion

share of the funds in distributable pool account to the tune of 52.68% after the deduction of thirteen per cent derivation. Lastly on police matter, my investigation reveals that both 1963 and 1999 constitution are similar on police matter. However, the 1963 constitution had a distinct departure from 1999 constitution in the area that the regional legislature can employ police force in their provinces under the regions – section 105(7). Suleiman (2024). The 1979 constitution designated more subordination of local governments to the states, as the states are to the federal government, so also, the 1999 constitution drafted by the military Junta, the constitution maintain federal system that weakens the states against the powerful centre.

Conclusion

I have examined Nigeria's Intergovernmental relations under 1963 and 1999 Constitutions, KC Wheares legal institution theory was examined using Deil S Wrights model of intergovernmental relations as my framework analysis, emphasis was on three major issues for the basis of comparison namely; power sharing, finance and police matters. The study reveals that the 1963 constitution share high level of autonomy to the regions in the areas of power sharing, finance and police matters which was eroded under 1999 constitution, the center played a second fiddle to the region under 1963 constitution, while the subordination of the federating state and local government is more glaring in the areas of power sharing, finance and police under the 1999 constitution.

Recommendations

This paper recommends the amendment of the 1999 constitution provisions skewed in favour of the federal government as evidenced in the Exclusive legislative list (68 items) against the concurrent legislative list (20 items).

With the recent constitution amendment bills signed into law, on 17th March 2023, was a good omen for development and restructuring that people are clamouring for. For instance, prison, railway and generation of electricity by state were altered in the fifth alteration (No 15). Prisons now

redesignate as correctional service is deleted from exclusive legislative list now in concurrent legislative list, "Railway" in fifth alteration (No 16) the bill seeks to alter the constitution of the Federal Republic of Nigeria 1999 to move the item "railway" from the exclusive list to concurrent legislative list, in fifth alteration (No 17) the bill seeks to alter the constitution of the federal republic of Nigeria 1999 to allow states to generate, transmit and distribute electricity in areas covered by the national grid and for related matters.

Other bills signed were bills on financial independence of state Houses of Assembly and state Judiciary. The state assemblies however failed to vote on the two bills that seek financial and legislative autonomy for local governments. It is strongly believed that other decentralization will follow.

All the above signed billed by the president will help to address the call for true fiscal federalism that will bring about rapid development of state and improved intergovernmental relations among the tiers or levels of government.

References

- Abdulah W. (2004) National Assembly is ignorant of its limitation on Council Creation in Akinsanya A. & Co. (ed) Readings in Nigerian Government and Politics pp 330
- Akande O. D (2022) Theoretical Perspective of Federalism note on Intergovernmental Relations.
- Akinsanya A. (2014) Local Governments in Nigeria's Intergovernmental relations under the 1999 constitution in Adeoye Akinsanya & Co (ed) Readings in Nigerian Government and Politics 2014 New generations books and communication pp 327.
- Akinsanya A. (2014) Nigeria's Intergovernmental Relations under the 1999 constitution in Adeoye Akinsanya & Co (ed) Readings in Nigerian Government and Politics 2014 New Generation Books and Communication.
- Ayoade, J. A. (1980) "Intergovernmental relations in Nigeria" Quarterly Journal of Administration, Vol XIV, No 2, in Augustine N. Eneanya Theory and Practice of Public Administration 2015 University of Lagos Press and Bookshop Ltd. pp 571.
- Dare L.O. (1979) Perspectives on Federalism in Bolaji Akinyemi Co (ed) Readings on Federalism Nigerian Institute of International Affairs pp 27, pp 30
- Omitola B. (2014) Revenue allocation, Resource Control and Nigerian Political Economy in Adeoye Akinsanya & Co (ed) Readings in Nigerian Government and Politics 2014. New Generation Books and Communication. Pg 128.
- Sulaiman I. M (2024). A historical overview and comparative analysis of the pre-independence, independence and post-independence constitutions of Nigeria: Journal of Political Discourse Vol. 2, Issue 1, No1/March 2024.
- Wheare, K. C (1953) Federal Government Oxford University Press London New York Toronto Third Edition Reprinted 1961 pp 11.
- Wright D. S (1985) "models of National, State, Local Relations" American Inter-governmental Relations. Washington D.C Congressional Quarterly Inc in Augustine N. Eneanya. Theory and practice of public. Administration 2015 University of Lagos Press and bookshop Ltd.
- www.Premiumtimesng.com Premium Times of Nigeria 17/03/23 Constitution Amendment: Buhari Signs State Assembly, Judiciary Independence Bills, 18 others into law.