68TH COMMONWEALTH PARLIAMENTARY CONFERENCE

The Commonwealth – A Global Partner

WORKSHOP RESEARCH BRIEFING

By Matthew Salik

Commonwealth Parliamentary Association | CPA Headquarters Secretariat | Houses of Parliament | Richmond House | London SW1A 0AA | United Kingdom | Tel.: +44 (0)20 7799 1460 | Email: hq.sec@cpahq.org | CPC@cpahq.org | Website: www.cpahq.org

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Executive Summary

The protection and preservation of the distribution of powers in multi-level governance systems—whether federal or devolved—is a key consideration for modern democracies. This report examines how the allocation of legislative authority between national Parliaments and provincial, territorial, or devolved legislatures is established and, importantly, how it is maintained in the face of centralising pressures. Drawing on the Commonwealth Charter and the Commonwealth (Latimer House) Principles, this briefing establishes a framework that values the principles of institutional responsibility and non-encroachment.

Through comparative case studies of a diverse range of governance models—including federal states like Australia, asymmetric federations like St Kitts and Nevis, statutory devolutionary arrangements in the UK and Trinidad and Tobago, and consensual partnerships like the free association of the Cook Islands and Niue—the report identifies both the constitutional and political mechanisms that shape these relationships. The analysis reveals a consistent pattern: regardless of the legal framework, the autonomy of sub-national legislatures is subject to ongoing dynamics from the national Parliament and Executive.

The report identifies three primary areas of focus in sub-national autonomy:

1. **Fiscal Arrangements:** A significant discrepancy in revenue-raising capacity (vertical fiscal imbalance) often results in provincial and devolved governments being fiscally dependent on the centre, allowing national governments to use conditional grants to influence policy in areas where they do not have direct legislative competence.
2. **Political Centralisation:** The prevalence of a single political party or the executive can influence the character of cooperative governance, as seen in the use of centralising powers such as India's Article 356 or the UK's Section 35.
3. **Legal and Constitutional Authority:** National Parliaments can enact laws that affect sub-national legislative space, as demonstrated by the UK's Internal Market Act 2020 and Canada's federal carbon pricing legislation.

While a robust, independent judiciary is a significant safeguard, as evidenced by landmark cases in India and Canada, the report concludes that legal protections alone are not sufficient. The dynamic balance of power requires a combination of clear legal frameworks, a measure of fiscal independence, and a consistent political commitment to the principles of mutual respect and institutional responsibility. The recommendations provided aim to strengthen these safeguards, ensuring that the Commonwealth's shared values of democracy and good governance are upheld in practice.

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Introduction

In an increasingly complex and interconnected world, the architecture of governance has become a critical determinant of a state's stability and democratic health. Within the Commonwealth, a diverse family of 56 nations, a significant number have adopted multi-level governance systems to manage vast territories and accommodate regional, ethnic, or historical differences. This includes federal states like Australia, Canada, India, and Nigeria, where legislative powers are constitutionally divided between a central government and sub-national units, and unitary states like the United Kingdom, Kenya, and South Africa, which have chosen to devolve authority to regional or provincial bodies. This briefing also examines more unique models, including the relationship between the UK and its Overseas Territories, the devolution of powers to Tobago within Trinidad and Tobago, the hybrid federalism of St Kitts and Nevis, and the free association of the Cook Islands and Niue with New Zealand.

The defining characteristic of these systems is the distribution of power, a vertical dimension of the classic separation of powers doctrine. In a federal state, this distribution is enshrined in the constitution, with sub-national legislatures possessing guaranteed legislative competence that cannot be unilaterally withdrawn. In a devolved system, the central Parliament grants power to regional legislatures through statute, retaining ultimate legal sovereignty. Regardless of the model, a key consideration remains how to prevent the national government and its Parliament from influencing or intruding upon the legitimate functions of the provincial, territorial, or devolved legislatures.

This research briefing undertakes a comparative analysis of this critical issue within a broad range of Commonwealth jurisdictions. Its purpose is to go beyond a simple description of legal frameworks to investigate the real-world dynamics of power, identifying the key factors that enable centralisation and examining the mechanisms, both political and legal, designed to safeguard sub-national autonomy. The report will argue that the most profound challenges to this autonomy are often not direct legislative actions but rather the subtle yet powerful forces of fiscal arrangements and executive authority. By examining how these issues manifest in diverse contexts, this briefing aims to provide Commonwealth Parliamentarians with a nuanced understanding of the ongoing efforts to protect the distribution of powers in a multi-level state.

Section 1: The Commonwealth's Normative Framework for Governance

The principles of good governance within the Commonwealth are not merely abstract ideals; they are a shared normative foundation articulated in key documents that guide member states. These principles extend beyond the traditional horizontal distribution of power among the Legislature, Executive, and Judiciary to inform the vertical relationship between national and sub-national governments.

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The Commonwealth Charter: A Statement of Shared Values

The Commonwealth Charter serves as a modern declaration of the shared values and aspirations of the association's member states. It affirms core principles such as democracy, human rights, the rule of law, and good governance [1]. A key principle explicitly recognised is the separation of powers. The Charter states that maintaining the integrity of the roles of the Legislature, Executive, and Judiciary is of paramount importance, as these institutions are the "guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance" [1]. This commitment provides a strong basis for evaluating the conduct of governments at all levels. It establishes that accountability, transparency, and a legitimate exercise of power are not only desirable but are foundational to Commonwealth membership. The Charter's emphasis on free and fair elections, and the role of Parliaments and local governments as essential elements in democratic governance, further underscores the importance of a robust, multi-level system [1].

The Latimer House Principles: Operationalising the Separation of Powers

Building upon the Charter's broad values, the Commonwealth (Latimer House) Principles provide more detailed and practical guidance on the relationship between the three branches of government [2, 3]. The Principles highlight the necessity for a legislature to be able to carry out its functions "free from unlawful interference" [2]. Most pertinent to the subject of this briefing is a core tenet that calls for institutional responsibility and restraint: "Each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by the other institutions" [2]. This principle of non-encroachment is a direct and powerful tool for analysing the relationship between national and sub-national Parliaments. It provides a benchmark for evaluating whether a national government, in its legislative, executive, or financial actions, is operating within its constitutional or statutory limits. An act of a national Parliament that legislates on a matter explicitly within the competence of a provincial legislature, or an executive decision to use financial leverage to bypass a sub-national government's democratic will, constitutes a violation of this principle. The essence of the Latimer House Principles is that a balance of power, both horizontally and vertically, is essential for a healthy and accountable democratic system. The report's analysis will use this principle as a lens to scrutinise the centralising pressures evident in Commonwealth jurisdictions.

Section 2: Comparative Case Studies: Models of Power Division in Commonwealth Jurisdictions

The legal and constitutional frameworks for dividing power in the Commonwealth's multi-level states are diverse, yet the challenges to sub-national autonomy often follow similar patterns. The

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following case studies illustrate how these systems function in practice, highlighting both the formal rules and the political realities that shape intergovernmental relations.

Part A: Federal Models

Australia

The Australian federation, established in 1901, is governed by a Constitution that grants the Commonwealth Parliament specific, enumerated powers, such as defence and foreign policy, while leaving all other "residual powers" to the six states and two territories [4]. While the Constitution provides a clear division of legislative competence, stating that Commonwealth law prevails in cases of inconsistency, the balance of power has been fundamentally influenced by a phenomenon known as vertical fiscal imbalance (VFI) [5].

VFI is the significant discrepancy between the national government's immense revenue-raising capacity and the states' major service-delivery obligations [5]. This imbalance is largely the product of the Commonwealth's assumption of income taxes during World War II, a move upheld by the High Court in the First and Second Uniform Tax cases [5]. With the states heavily reliant on central funding to meet their responsibilities in health and education, the Commonwealth has gained significant influence over state policy [6]. The primary mechanism for this influence is Section 96 of the Constitution, which empowers the Commonwealth to grant financial assistance to any state "on such terms and conditions as the Parliament thinks fit" [5]. The High Court has interpreted this power so broadly that the Commonwealth can attach conditions to funding in areas where it has no direct legislative authority, using its financial capacity to guide policy and operate within the constitutional division of powers [6, 7].

This dynamic reveals a fundamental aspect of federalism: a legal framework for the division of powers can be influenced by a de facto financial centralisation. The Commonwealth can influence national policy across jurisdictions through conditional payments, cooperative federalism, and the political influence that comes with controlling the vast majority of tax revenue, thereby affecting the legislative autonomy of the states [6].

Canada

Canada is a federation with an exhaustive distribution of powers between the national government and ten provinces (there are also three territories), with the authority of national government and provinces deriving from the Constitution Act, 1867 [8]. Legislative powers are assigned to either federal (Section 91) or provincial (Section 92) jurisdiction [8]. The Supreme Court of Canada acts as the ultimate arbiter, interpreting the Constitution through various doctrines to resolve intergovernmental disputes. The doctrine of paramountcy provides that where a valid provincial law and a valid federal law conflict, the federal law will prevail to the extent of the inconsistency [9, 10]. This is limited to situations where there is a clear "operational incompatibility" between the laws, preventing one from being obeyed without violating the other [9].

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The primary challenge to provincial autonomy has come from the federal spending power, which allows the central government to use its financial capacity to fund programs in areas of provincial jurisdiction, such as healthcare [11, 12]. This has led to long-standing disputes, with provinces asserting that federal funding comes with conditions that affect their exclusive legislative competence [12]. A recent and prominent example of this dynamic is the federal carbon tax imposed via the Greenhouse Gas Pollution Pricing Act (GHGPPA). Provinces such as Alberta, Ontario, and Saskatchewan challenged the legislation, arguing that it was an unconstitutional intrusion on provincial jurisdiction [13, 14]. However, the Supreme Court of Canada, in a landmark 2021 ruling, upheld the law, reasoning that the issue of climate change was a matter of national concern that required a coordinated, national approach, thus justifying the federal action [14]. This case demonstrates how judicial interpretation can adapt the constitutional balance to address new, pan-national challenges, but also highlights the ongoing friction between the two levels of government.

Intergovernmental relations in Canada are a key feature of its federalism. While not formally anchored in the Constitution, protocols and conventions have evolved over time to facilitate information exchange, consultations, and consensus-building among federal, provincial, and territorial executives. The Canadian Intergovernmental Conference Secretariat (CICS) is an impartial agency that provides administrative support for a wide range of these meetings, including those for ministers responsible for finance and the environment. Academic and policy analyses have focused on the challenges to Canada's fiscal federalism, such as a rapidly aging population, climate change, rising provincial debt, and increased federal involvement in areas traditionally under provincial authority. These studies highlight the need for reforms to ensure the long-term sustainability and effectiveness of intergovernmental relations.

India

India's constitutional structure is often described as "quasi-federal," possessing both federal and unitary features [15]. While the Constitution divides legislative powers into Union, State, and Concurrent Lists, the Union government is granted significant centralising authority, including control over residuary powers and the precedence of Union law in cases of conflict [15, 16].

A significant and historically controversial issue for state autonomy in India is the power of the Union executive to declare President's Rule under Article 356 of the Constitution [17, 18]. This provision allows the central government to suspend a state legislature and assume its administration in the event of a "constitutional breakdown" [19]. Since 1950, Article 356 has been used on over 125 occasions, with a history of being perceived as a political tool to dismiss opposition-led state governments [17, 18]. The erosion of democratic mandates and the creation of distrust between the Union and the states have been significant consequences [17]. While the Supreme Court, in the landmark S.R. Bommai v. Union of India case (1994), made the proclamation of President's Rule subject to judicial review, this remedy is often delayed, as the political changes have already occurred [19].

Further centralisation has resulted from the implementation of the Goods and Services Tax (GST), which has consolidated taxation powers and reduced the states' ability to set their own tax rates

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[20]. The GST Council, which makes recommendations on tax policy, gives the central government a weighted vote of one-third, which allows it to block proposals [21]. This has led to ongoing issues, including revenue shortfalls for states and delays in compensation payments [20].

Nigeria

Nigeria's federal system has undergone a complex evolution, transforming from a three-region structure to its current form with 36 states and a Federal Capital Territory [22]. While the Constitution provides for a division of power, the system has been characterised by a mix of political instability, military rule, and centralisation [23].

A profound aspect of state autonomy is the issue of resource control. Nigeria's economy is highly dependent on oil, yet the federal government retains a disproportionate share of the revenues [24, 25]. The current revenue allocation formula sees the central government receive 52.68% of all revenues, leaving the 36 states and 774 local councils to share the remainder [24, 26]. This centralisation has arguably perpetuated long-running discontent and militant agitation in the oil-rich Niger Delta, with demands for a fairer distribution of wealth [27, 28]. The historical proliferation of new states, often driven by sub-state ethnic and tribal-interest groups, has strengthened the centre [22]. The creation of more, often non-economically viable, states has increased their financial dependence on federal funds, making them more subject to the central government and intensifying the competition for revenue [23]. The ongoing review of the revenue allocation formula by the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) is a critical attempt to address this core centralising force and promote genuine fiscal federalism [26, 29].

Part B: Unitary Models with Devolution

United Kingdom

The UK is a classic example of a unitary state where devolution is a statutory, not a constitutional, arrangement [30]. The Westminster Parliament retains legal sovereignty and can, in principle, legislate on any matter or even repeal the Acts that created the devolved legislatures in Scotland, Wales, and Northern Ireland [30]. While the Scotland Act 2016 and Wales Act 2017 have affirmed the permanence of these institutions by constitutional convention, the ultimate power remains with Westminster [30].

The relationship is governed by the Sewel Convention, a non-legal constitutional rule that Westminster will "not normally" legislate on devolved matters without the consent of the relevant devolved legislature [31, 32]. While this convention has been recognised in statute, the Supreme Court has confirmed that it is "binding in honour only" [31]. The Brexit process highlighted the fragility of this convention, as the UK Parliament passed key legislation without the consent of the devolved bodies, arguing that the circumstances were "exceptional" [31].

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The boundaries of devolved legislative competence have become increasingly contested in recent years. A 2023 report by the Institute for Government highlights that this trend has been driven by post-Brexit constitutional adjustments, judicial interventions that have increasingly constrained devolved powers, and centralising legislation such as the Internal Market Act 2020 and the Retained EU Law (Revocation and Reform) Act 2023. These developments have led to more frequent legal disputes, particularly in Scotland and Wales. The Retained EU Law (Revocation and Reform) Act 2023 allowed UK ministers to revoke or amend retained EU law without the consent of devolved legislatures, raising concerns about executive overreach and the influence on devolved autonomy. Furthermore, in 2023, the UK Government made the unprecedented move of using Section 35 of the Scotland Act 1998 to veto the Scottish Parliament's Gender Recognition Reform Bill [33]. This demonstrates a clear legal mechanism for the central government to influence a devolved legislature's will, even on a matter within its competence, if it affects a "reserved matter" like equal opportunities [33]. The Labour Party's 2024 manifesto included commitments to "reset" the UK's relationship with the devolved nations, suggesting potential reforms to intergovernmental mechanisms and constitutional conventions.

Kenya

Devolution in Kenya, established by the transformative 2010 Constitution, was a direct response to long-standing grievances related to the over-centralisation of power and resources [35, 36]. The Constitution created a system with two levels of government, national and county, which are "distinct but interdependent" [35, 37]. The Constitution assigns specific functions to both levels and enshrines the principle of consultation and cooperation in their relationship [38].

Despite this robust legal framework, the implementation of devolution has been subject to political and institutional issues, highlighting a gap between legal design and political practice. There have been power-sharing discussions between county governors and national-level administrators, with disagreements over the transfer of assets and staff [39]. The national government's continued retention of assets belonging to the former local government entities has been a key point of contention, serving as a non-legislative tool to influence county governments [39]. Disputes over revenue collection have also led to violent inter-county border disagreements and double taxation [40]. While the Commission on Revenue Allocation (CRA) is mandated to ensure equitable revenue sharing, the national government's delayed release of funds to the counties and a lack of financial autonomy for county assemblies have hampered service delivery [41, 42]. These issues demonstrate that while a strong legal framework is a prerequisite for devolution, it is not a sufficient safeguard against centralisation if there is a lack of political trust and a failure to operationalise key principles in good faith.

South Africa

South Africa's post-apartheid Constitution of 1996 established a system of cooperative governance based on the principle that the national, provincial, and local spheres are "distinctive, interdependent and interrelated" [43]. The Constitution allocates legislative powers concurrently in Schedule 4, allowing both national and provincial legislatures to pass laws on topics such as health, education, and social development [44]. The Intergovernmental Relations Framework Act 2005 formalises a framework for coordination and dispute resolution [45].

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In practice, however, the system has experienced a centralising tendency due to the political prevalence of the African National Congress (ANC) at both national and provincial levels since 1994 [44, 46]. The lack of political pluralism has meant that, despite the constitutional provisions for concurrent powers, there has been "little dynamic tension" between the national and provincial governments, with most provincial executives and legislatures often having to accede to the requests of the central government [44]. This has led to concerns that provincial legislatures are not aways performing their expected roles [44].

The situation in the Western Cape, which is governed by the Democratic Alliance, provides a counterpoint, acting as a key site of intergovernmental disputes over issues like policing and water management [47, 48]. This demonstrates that political diversity can be a crucial driver for the assertion of provincial autonomy.

Malaysia

Malaysia is a federation of thirteen states and three federal territories, operating under a constitutional monarchy. While the Federal Constitution divides powers into Federal, State, and Concurrent Lists, it grants the national government extensive authority, allowing federal law to prevail over state law in the event of a conflict [50, 51].

A primary point of consideration for state autonomy lies in the extensive powers of the national government, including the ability to pass a state law and even suspend state rights through an "Emergency Ordinance" [51]. This gives the federal Parliament broad powers that override most constitutional constraints [51]. State governments are heavily dependent on federal funding, with limited means to generate their own revenue, which has been described as giving them less power than the local governments of other federations [51]. The national government also guides the civil services of most states, providing an informal tool for centralisation [51]. A notable exception is the greater autonomy and fiscal powers afforded to the states of Sabah and Sarawak, which were negotiated as part of the federation process [51, 52]. Recent constitutional amendments aimed at restoring their status as equal partners underscore a legislative effort to protect their unique position and greater autonomy within the federation [52].

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Table 1: Division of Legislative Powers in Commonwealth Jurisdictions

Country	Constitutional/ Statutory Basis	Type of Power Division	Key Lists (Exclusive, Concurrent, Residual/Devolved, Reserved)	Legislative Precedence in Conflict
Australia	Constitution (s. 51)	Federal	Federal (Exclusive/Concurrent), State (Residual)	Federal law prevails (s. 109) [4]
Canada	Constitution Act, 1867 (s. 91, 92)	Federal	Federal (Exclusive), Provincial (Exclusive), Shared (e.g., pensions)	Federal law prevails (paramountcy doctrine) [8, 9]
India	Constitution (Seventh Schedule)	Quasi-Federal	Union, State, Concurrent (with Union holding residuary powers)	Union law prevails [15]
Nigeria	Constitution	Federal	Exclusive Legislative List, Concurrent List	Federal law prevails (S. 4) [53]
United Kingdom	Statute (Scotland Act, Wales Act, etc.)	Devolution (Statutory)	Devolved (specific), Reserved (to Westminster)	Westminster law prevails [30]
Kenya	Constitution (2010)	Devolution (Constitutional)	National, County	National law prevails for non-devolved functions [39]
South Africa	Constitution (1996)	Cooperative Government	National (Exclusive), Provincial (Exclusive), Concurrent	National law prevails under specific conditions [44]

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Country	Constitutional/ Statutory Basis	Type of Power Division	Key Lists (Exclusive, Concurrent, Residual/Devolved, Reserved)	Legislative Precedence in Conflict
Malaysia	Federal Constitution (Ninth Schedule)	Federal	Federal, State, Concurrent	Federal law prevails (Art. 75) [50]

Part C: Other Sub-National Governance Models

The following case studies examine unique governance models that exist outside the traditional federal-unitary binary, ranging from a unitary state with delegated powers to a form of consensual, partnership-based governance. These examples highlight the diverse ways in which constitutional, political, and economic factors shape the relationship between a central government and its sub-national entities.

The British Overseas Territories: A Westminster Unitary Model with Devolved Powers

The relationship between the United Kingdom and its fourteen Overseas Territories (BOTs) is a distinctive form of governance rooted in a unitary state model. Each territory has its own constitution, government, and local laws, and is internally self-governing on most matters.[54] However, the UK Parliament retains ultimate, unlimited legal power to legislate for them.[54] This legal supremacy of the UK Parliament, which can issue Orders in Council to change territory laws and constitutions, is a fundamental difference between the BOTs and the UK's own Crown Dependencies like Isle of Man, Jersey and Guernsey.[56]

The distribution of powers is structured with "reserved" and "devolved" matters.[53] Reserved powers, such as defence, foreign affairs, and internal security (including the police), are the exclusive responsibility of the UK Government and are typically exercised on the ground by a UK-appointed Governor.[54] In contrast, the territories have their own democratically elected legislatures and governments responsible for most public services and justice systems.[54] The UK maintains a political commitment to self-determination but can intervene if necessary to protect core UK interests.[57]

Crucially, the constitutional convention that prevents the UK Parliament from "normally" legislating on devolved matters without the consent of the devolved legislatures in Scotland, Wales, or Northern Ireland does not apply to the BOTs.[31] This underscores that the autonomy of the BOTs is based on delegated authority and political convention rather than on constitutional right.

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The Crown Dependencies: The Isle of Man

The Crown Dependencies, such as the Isle of Man, have a distinct constitutional relationship with the United Kingdom, which is based on the Crown and historical conventions rather than parliamentary statute [56]. The Isle of Man has its own Parliament, Tynwald, which has a significant degree of self-government. A key issue for Tynwald is the ability of the UK Parliament at Westminster to legislate for the Isle of Man without its consent, a power that was last exercised in 1967 .

This issue was brought into focus between 2017 and 2019 during a series of debates in Westminster on beneficial ownership registers, where UK Parliamentarians considered legislating directly for the Crown Dependencies. In response, Tynwald's Standing Committee on Constitutional and Legal Affairs and Justice published a report in March 2024, which considered the constitutional relationship and made several recommendations aimed at reinforcing the island's self-determination. The report recommended that Tynwald declare its opinion that legislation by the UK Parliament should not be extended to the Isle of Man without Tynwald's consent. This was accepted by the Council of Ministers and approved by Tynwald.

The report also recommended that the Isle of Man Government and the Isle of Man branch of the Commonwealth Parliamentary Association discuss with Westminster colleagues the possibility of codifying a convention that legislation for the Crown Dependencies should not be introduced except on the initiative of the Crown. The Council of Ministers rejected this second recommendation, arguing it was unlikely Westminster would agree to restrict its legislative initiative and that the move could be counterproductive without the support of the Channel Islands. A compromise amendment was proposed by the Speaker of the House of Keys and approved by Tynwald, leading to a declaratory resolution that legislation for the Crown Dependencies should not be introduced at Westminster except on the initiative of the Crown. This case study illustrates the ongoing political and constitutional efforts to clarify and safeguard the autonomy of Crown Dependencies within the broader UK framework.

The Devolution Model: Tobago within Trinidad and Tobago

The relationship between Trinidad and Tobago is a classic example of devolution within a unitary state. Tobago has a measure of self-government through the Tobago House of Assembly (THA), which was re-established in 1980 to address historical disparities between the two islands.[58] The 1996 Tobago House of Assembly Act further deepened this self-rule by giving the THA legal identity and the ability to enter into national and international contracts.[60]

However, the devolution model in Trinidad and Tobago is characterised by a significant power imbalance. The THA is responsible for a broad range of matters, including education, health, and tourism, but it has limited capacity to collect its own taxes, making it fiscally dependent on the central government.[59] Furthermore, any legislative proposal from the THA requires the consent of the national Parliament, and the national Cabinet can refuse to introduce such proposals, and retaining an approval role over Tobago's legislative ambitions.[60]

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This structural imbalance has fuelled ongoing political negotiation, driven by what has been termed "Tobago nationalism" and long-standing demands for greater autonomy.[61] The previous government's support for increased self-governance has been described as ambivalent.[61] Disputes are ultimately resolved through the national legal system, with the Judicial Committee of the Privy Council in London serving as the final court of appeal, which further reinforces the unitary nature of the state and the central government's ultimate authority.[58]

A Hybrid Federalism: St Kitts and Nevis

The Federation of St Kitts and Nevis offers a highly unusual and asymmetrical model of federalism that provides its sub-national unit, Nevis, with a unique degree of autonomy. While St Kitts is governed directly by the federal National Assembly, the constitution explicitly enshrines the Nevis Island Administration (NIA) and its unicameral legislature in Chapter X.[63] This constitutional entrenchment provides a greater level of protection than is found in the devolutionary models, as the union itself was a compromise to address Nevis's historical opposition to joining with St Kitts.[63]

The NIA has significant legislative power to pass laws for the "peace, order and good government" of the island on a list of "specified matters".[64] The federal Parliament's power to legislate on these specified matters is expressly limited and requires the consent of the NIA, except in rare cases related to external affairs or defence.[65] This acts as a strong constitutional check on the central government's authority, preventing it from overreaching into Nevis's areas of competence.

The most powerful constitutional feature of this model is the explicit secession clause, which provides a legal path for Nevis to leave the federation if a two-thirds majority of its citizens vote in favor.[63] The existence of this clause provides Nevis with a powerful form of political leverage and serves as a foundational element that shapes all federal-NIA relations. The NIA also has its own local tax-raising powers and receives proportional financial disbursements from the federal government.[64] This fiscal independence further strengthens the island's autonomy, making this model a distinctive and robust form of sub-national governance.

The Model of Free Association: The Cook Islands and Niue with New Zealand

The relationship between New Zealand and its two associated states, the Cook Islands and Niue, represents a modern, post-colonial governance model. Both territories are constitutionally defined as "self-governing states in free association with New Zealand".[67] This arrangement, established through constitutional acts and referendums, is a consensual partnership that grants the territories a high degree of autonomy.

A key legal distinction from other models is that the New Zealand Parliament is explicitly "not empowered to unilaterally pass legislation" for the Cook Islands or Niue.[68] The relationship is non-hierarchical, and New Zealand's responsibilities for foreign affairs and defence are exercised only with the territories' "advice and consent".[68] This makes the associated states effectively sovereign in international law, with countries like the United States formally recognising the Cook Islands as a "sovereign and independent state".[67]

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A central pillar of the free association model is shared citizenship, as Cook Islanders and Niueans are also citizens of New Zealand, with the right of free movement.[69] New Zealand also provides significant economic assistance to the territories.[72] However, as the Cook Islands' graduation to a "High Income Country" in 2019 demonstrates, the model also supports fiscal self-sufficiency, which further strengthens their independence.[69] This form of free association represents the most autonomous model in this comparative analysis, where the relationship is defined by a partnership of equals rather than by the influence of a central power.

Table 2: Key Dynamics in Sub-National Autonomy: A Comparative Summary

Country	Primary Issues for Autonomy	Key Mechanisms of Centralisation	Notable Legal/Political Disputes
Australia	Vertical Fiscal Imbalance	Conditional grants (s. 96), Commonwealth's income tax preponderance	Uniform Tax Cases, School chaplains' case (Williams v Commonwealth) [5]
Canada	Federal Spending Power, Paramountcy Doctrine	Conditional funding transfers, National standards setting	Federal-provincial healthcare disputes, Carbon tax challenges [11, 14]
India	Executive influence, fiscal centralisation	President's Rule (Art. 356), GST Council's weighted vote	Use of Art. 356 (125+ times), GST-related revenue shortfalls [17, 20]
Nigeria	Resource allocation, state proliferation	Revenue allocation formula, Federal guidance of oil revenues	Niger Delta militancy, inter-state competition for revenue [25, 23]
United Kingdom	Statutory nature of devolution, convention erosion	Section 35 veto, Internal Market Act 2020, disregard for Sewel Convention	Brexit-related legislation, Gender Recognition Reform Bill veto [31, 33, 73]
Kenya	Institutional implementation gaps, fiscal disputes	Retention of assets and staff, delayed fund releases, local taxation disputes	Power-sharing discussions between governors and administrators, border disagreements [39, 40]
South Africa	Political prevalence, unfunded mandates	One-party prevalence, national legislation on concurrent matters	Western Cape disputes (policing, water), National

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Country	Primary Issues for Autonomy	Key Mechanisms of Centralisation	Notable Legal/Political Disputes
			Health Insurance (NHI) Bill [48, 74]
Malaysia	Extensive federal powers, emergency ordinances	Federal guidance over state civil services, fiscal reliance	Use of Emergency Ordinance to suspend state rights [51]

Table 3: Comparative Analysis of Other Sub-National Governance Models

Feature	UK Overseas Territories	Trinidad & Tobago (Tobago)	St Kitts and Nevis (Nevis)	Cook Islands & Niue	Isle of Man
Constitutional Status	Unitary State; UK Parliament has ultimate, unlimited power to legislate [54]	Unitary State; THA's powers are delegated by national legislation [59]	Asymmetric Federation; NIA's powers are constitutionally entrenched [63]	Self-governing state in free association with NZ [67]	Crown Dependency; UK Parliament retains ultimate power but by convention does not legislate without consent
Sovereignty	Ultimate legal sovereignty with UK Parliament [54]	Ultimate legal sovereignty with national Parliament in Trinidad [60]	Divided; federal legislative power is restricted on "specified matters" for Nevis [65]	Shared; NZ Parliament cannot unilaterally legislate [68]	Ultimate sovereignty with the Crown, exercised on behalf of Tynwald
Legislative Powers	Internal self-governance on devolved matters; UK Parliament	Handles many government responsibilities, but legislative	Has legislative power on "specified matters" for Nevis, with a	Full legislative power on all matters; NZ handles foreign	Tynwald has legislative power on all internal matters

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Feature	UK Overseas Territories	Trinidad & Tobago (Tobago)	St Kitts and Nevis (Nevis)	Cook Islands & Niue	Isle of Man
	retains ultimate right to legislate [54]	proposals need national Parliament's consent [59]	constitutional check on federal laws [65]	affairs and defence with consent [68]	
Reserved / Central Matters	Defence, foreign affairs, internal security, police [54]	National security, foreign affairs, judiciary, immigration [60]	External affairs, defence [65]	Foreign affairs, defence (by consent and request) [68]	Defence, foreign affairs, nationality, ultimate responsibility for good government
Fiscal Autonomy	Varies, but largely dependent on UK funding and support [54]	Limited tax-raising authority; dependent on central government transfers [59]	Has own local tax-raising powers and receives proportional federal disbursements [64]	High degree of fiscal independence; receives substantial economic assistance from NZ [69, 72]	High degree of fiscal autonomy with its own budget and taxation system
Secession Provision	Political principle of self-determination, but no formal constitutional clause [57]	Agitation for greater autonomy exists, but no constitutional secession clause [61]	Explicit constitutional clause for secession, requiring a two-thirds majority in a referendum [63]	No secession clause, as they are considered self-governing states [67]	No secession clause; relationship based on a voluntary, evolving partnership with the Crown

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Section 3: Dynamics of Inter-Governmental Relations

The case studies reveal a consistent set of factors influencing the separation of powers in multi-level governance. These factors often transcend legal frameworks and find their expression in political and economic realities, manifesting as centralising pressures that can influence sub-national autonomy.

Fiscal Dynamics and Intergovernmental Relations

A lack of genuine fiscal autonomy is a significant and pervasive factor for provincial and devolved legislatures. The vertical fiscal imbalance in Australia, where the Commonwealth collects a disproportionate share of revenue, but the states are responsible for major service delivery, provides the clearest example of this dynamic [6]. This imbalance allows the national government to use conditional grants to guide policy in areas where it has no constitutional competence, blurring the lines of accountability and affecting the integrity of the federal system [6, 7]. Similarly, in Canada, the federal spending power has been a constant source of friction, with the central government using its financial leverage to set national standards, particularly in healthcare, a provincial responsibility [11].

The centralisation of revenue also fuels political disagreements, as seen in Nigeria's consideration of resource allocation and India's post-GST fiscal arrangements [20, 24]. In Nigeria, the highly centralised allocation over oil revenues has led to sustained agitation and an unequal distribution of wealth, demonstrating that a lack of fiscal fairness can breed instability and mistrust between levels of government [25]. In India, the GST has influenced state taxation autonomy, making states more reliant on the central government for revenue and creating a new arena for financial disputes [20]. These examples show that a powerful form of centralisation is often not a direct legislative action, but a more subtle form of economic influence that renders sub-national legislatures reliant on the national government for their very existence. This is also evident in Trinidad and Tobago, where the Tobago House of Assembly's limited tax-raising powers and reliance on central government transfers constrain its capacity for independent action.[59]

Executive and Party Dynamics in Legislative Affairs

Even in systems with constitutionally entrenched distributions of power, the executive branch of the national government can use legal mechanisms to influence a sub-national legislature's will. The UK's use of Section 35 of the Scotland Act to veto the Scottish Parliament's Gender Recognition Reform Bill provides a stark example of this [33]. While the bill concerned a devolved matter, the Secretary of State argued that it would have an adverse effect on a "reserved matter," giving the national executive a powerful, legal override [33]. This contrasts sharply with the pre-1978 approach to devolution, where the UK Government aimed to avoid a "governor-general role" for the Secretary of State [75]. This principle of central parliamentary supremacy is even more pronounced in the UK's relationship with its Overseas Territories, where there is no constitutional convention to prevent unilateral legislation by Westminster.[31]

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In India, the politically motivated application of President's Rule under Article 356 has been a persistent tool for the central executive to challenge opposition-led state governments [17, 18]. While judicial review now exists, the political changes are often in motion before the courts can intervene. The case of South Africa, where the political prevalence of the ANC has led to a lack of genuine legislative friction between the national and provincial levels, demonstrates a different form of centralisation [44, 46]. Here, a single party acts as a centralising force, affecting a deficiency of genuine provincial autonomy and making the constitutional principle of cooperative governance less of a dynamic partnership and more of a top-down structure.

The Role of Legislation and the Judiciary in Power Allocation

National Parliaments can use their legislative authority to create new laws that affect sub-national competence. The UK's Internal Market Act 2020 is a prime example [75]. Passed without devolved consent, the Act's "market access principles" could influence a devolved Parliament's ability to legislate on matters like public health or environmental standards, effectively constraining its policy space [73]. Similarly, Canada's federal carbon pricing legislation, while upheld by the Supreme Court as a matter of national concern, established a "backstop" measure that overrode provincial governments' policy choices [13, 14]. In Trinidad and Tobago, the national Parliament has an effective approval role over legislative proposals from the Tobago House of Assembly, which limits the island's ability to pass its own laws.[60]

The judiciary, however, serves as the final and crucial arbiter in these disputes. The Supreme Court of Canada's upholding of the carbon tax and India's landmark S.R. Bommai judgment, which made the use of President's Rule subject to judicial review, illustrate the vital role of the courts in upholding the constitutional balance [14, 19]. However, the judiciary is not a flawless guardian. Court processes can be slow, and judicial interpretation itself can, at times, contribute to centralisation, as seen in Australia's broad interpretation of the grants power under Section 96 [7]. The ongoing nature of these challenges, from the Internal Market Act 2020 in the UK to inter-county disputes over taxation in Kenya, demonstrates that the protection of sub-national autonomy is a constant, dynamic process that requires vigilance from all branches and levels of government [73, 40].

Policy Recommendations: Strengthening the Separation of Powers

Drawing on the comparative analysis, the following recommendations are proposed to strengthen the distribution of powers and protect the autonomy of provincial, territorial, and devolved legislatures within the Commonwealth.

Recommendations for National Parliaments

- **Legislate for Fiscal Decentralisation:** National Parliaments should reform fiscal arrangements to reduce the vertical fiscal imbalance. This can be achieved by granting sub-national legislatures greater revenue-raising powers or by reforming revenue-sharing

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formulas to be more equitable and less tied to specific conditions. The ongoing review of Nigeria's revenue allocation formula and the efforts of Kenya's Commission on Revenue Allocation provide valuable models for this approach.

- **Strengthen Constitutional Conventions:** In jurisdictions with statutory devolution, national Parliaments should take steps to formalise and strengthen constitutional conventions. This includes providing clear, legally-binding rules on when consent is required for legislation affecting devolved matters.
- **Exercise Institutional Restraint:** The central Executive and Parliament should adhere to the Commonwealth (Latimer House) Principles by exercising responsibility and avoiding encroachment on the legislative and executive functions of sub-national governments. Mechanisms such as India's Article 356 should be used only in the rarest of circumstances, with clear, transparent justification.

Recommendations for Provincial, Territorial, and Devolved Legislatures

- **Assert Fiscal Autonomy:** Sub-national legislatures should actively seek and utilise all available powers to generate their own revenue, reducing their reliance on central grants. This will provide a more stable and autonomous financial base for policy-making.
- **Strengthen Administrative Capacity:** To counter centralisation and unfunded mandates, sub-national governments should invest in strengthening their institutional and administrative capacities. This includes developing robust legal and financial teams to engage with and, where necessary, challenge the central government.
- **Promote Intergovernmental Collaboration:** Engage in formal and informal intergovernmental forums to foster dialogue, build consensus, and resolve disputes through negotiation and mediation before resorting to legal challenges.
- **Broaden Scrutiny, Accountability and Oversight Mechanisms:** Where applicable, sub-national legislatures should have the capacity to scrutinize the policy, expenditure and administrative implementation of the work of national governments when it relates to areas directly impacting on their jurisdiction.

Recommendations for Intergovernmental Bodies and Civil Society

- **Facilitate Knowledge Sharing:** Organisations like the Commonwealth Parliamentary Association (CPA) should provide a platform for peer-to-peer learning on the challenges of multi-level governance. This includes sharing best practices on fiscal federalism, dispute resolution mechanisms, and the protection of legislative autonomy.
- **Amplify the Voices of Sub-National Legislatures:** These bodies should advocate on the international stage for the unique challenges faced by provinces, states, and devolved nations, ensuring their perspectives are heard in broader discussions on democracy and governance.

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Conclusion

The protection of the distribution of powers in multi-level governance is a constant, dynamic process that balances the forces of centralisation with the desire for regional autonomy. While foundational documents like the Commonwealth Charter and the Latimer House Principles provide a powerful normative framework, the report's analysis demonstrates that legal protections alone are insufficient. In Australia, the fiscal imbalance has made constitutional divisions less relevant; in India, the executive has used a constitutional provision to influence democratic mandates; in the UK, a powerful national Parliament has passed legislation that could affect the policy choices of its devolved partners, and its legal sovereignty over its Overseas Territories remains absolute.

The case studies of Kenya, South Africa, and Malaysia further underscore the complex interplay of political will, institutional capacity, and financial resources. A lack of political trust, a prevalent single party, or an overreliance on a central treasury can each, in its own way, affect the integrity of a multi-level governance system. The contrasting models of St Kitts and Nevis and the free association of the Cook Islands and Niue demonstrate that stronger constitutional entrenchment and fiscal autonomy, including the ultimate safeguard of a secession clause, can provide more robust protection against centralising pressures.

Ultimately, the path to protecting and preserving the distribution of powers in a multi-level context requires a three-pronged approach. First, there must be robust and clear legal frameworks that protect the legislative competence of sub-national legislatures. Second, these legal rules must be supported by a foundation of fiscal autonomy, ensuring that legislative power is not rendered meaningless by financial reliance. Finally, and perhaps most importantly, there must be a consistent political commitment to the principles of cooperation, restraint, and mutual respect, allowing all levels of government to work together to serve their citizens while upholding the democratic values that define the Commonwealth.

Additional Reading

- **The Commonwealth (Latimer House) Principles:** Read the foundational document that guides the relationship between the three branches of government and provides a normative framework for institutional restraint in Commonwealth countries [2, 3].
- **Fiscal Federalism:** Explore the challenges and models of financial devolution, with a focus on issues like vertical fiscal imbalance and revenue sharing in federations such as Australia and Canada [5].
- **Constitutional and Legislative Frameworks:** An in-depth look at the constitutional structures that define the division of powers in federal states like India and Nigeria, and the statutory arrangements that govern devolution in unitary states such as the United Kingdom and Kenya [30].

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- **Analysis of Specific Legal Conflicts:** Examine the details of landmark legal and political disputes, including the use of conditional grants in Australia, the legal challenges to Canada's carbon tax, and the invocation of Article 356 in India [7, 14, 17].

Relevant Organisations

- **The Commonwealth:** A voluntary association of 56 member states committed to shared values articulated in the Commonwealth Charter [1].
- **Commission on Revenue Allocation (CRA):** A Kenyan government commission established to recommend the equitable sharing of revenues between the national and county governments [41].
- **Revenue Mobilisation Allocation and Fiscal Commission (RMAFC):** A Nigerian commission mandated to review the revenue allocation formula among the federal, state, and local governments [29, 26].
- **Intergovernmental Relations Technical Committee (IGRTC):** A Kenyan state agency responsible for the day-to-day administration of the National and County Government Coordinating Summit and the Council of County Governors [38].

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About the CPA

The Commonwealth Parliamentary Association (CPA) connects, develops, promotes and supports Parliamentarians and their staff to identify Benchmarks of good governance and the implementation of the enduring values of the Commonwealth. The CPA collaborates with Parliaments and other organisations, including the intergovernmental community, to achieve its statement of purpose. It brings Parliamentarians and Parliamentary staff together to exchange ideas among themselves and with experts in various fields; to identify Benchmarks of good practices and new policy options they can adopt or adapt in the governance of their societies.

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