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Abstract

Navigating conflict and fostering co-operation in fiscal federalism

This paper examines intergovernmental fiscal disputes and co-operation mechanisms across federal and decentralised countries. Employing a case study approach and AI tools, the research analyses constitutional court rulings and their influence on the development of fiscal federalism in seven countries: Australia, Belgium, Brazil, Canada, Germany, India and the United States, with additional insights from Spain, the Netherlands and the European Union. The findings reveal significant variations in the nature and frequency of disputes and judicial interventions, highlighting the crucial role of court decisions in shaping fiscal federalism, most notably in the area of taxation. While conflicts are inherent to decentralised systems, their nature and frequency vary based on each country's unique constitutional, political, and economic context. The paper recommends strategies for managing disputes and fostering co-operation, including clearly defining powers and responsibilities, enhancing the role of courts in providing fiscal guidance, strengthening intergovernmental institutions and ensuring adaptability to changing conditions. The study concludes that a proactive, collaborative approach involving all tiers of government is crucial to navigating the complexities of fiscal federalism and promoting effective governance.

Keywords: intergovernmental fiscal disputes, tax disputes, constitutional courts, arbitration, subnational governments, decentralisation, fiscal relations, intergovernmental co-operation

JEL classification: H11; H77; K10; K41

Navigating conflict and fostering co-operation in fiscal federalism

By Sean Dougherty and Tatiana Mota[1]

1. Introduction

1. Intergovernmental disputes pose significant challenges to the cohesive functioning of countries, particularly in federal or decentralised systems where power and resources are distributed across multiple tiers of government. These conflicts can adversely affect the fiscal health of both central and subnational governments, impacting their ability to deliver essential public services. In federal systems, disputes frequently stem from ambiguities in power and resource distribution and the complexities of national constitutions and laws.

2. The judiciary, especially Supreme or Constitutional Court decisions, often have significant implications for the balance of power and fiscal dynamics among federal, state and local entities. Also, central governments often establish specific institutional frameworks and mediation mechanisms that can play relevant parts in fostering dialogue and co-operation to mitigate conflicts.

3. This study is dedicated to conducting an in-depth analysis of these fiscal relations within various countries, focusing on their unique environments. Acknowledging the difficulty of comparing diverse federal structures, the study adopts a case study approach, emphasising an understanding of each country's distinct socio-political and historical context rather than attempting to juxtapose incomparable data.

4. In parallel, it extensively employs artificial intelligence (AI) tools[2] to identify and assess constitutional court rulings that have influenced intergovernmental fiscal relations in various countries. This approach was necessitated by the absence of a comprehensive database and, frequently, a lack of academic literature specifically focused on fiscal disputes between different tiers of government. The utilisation of AI in this context represents an innovative method to bridge the gap in existing research and data, providing a more nuanced understanding of the fiscal dynamics at play within multi-level governmental structures.[3]

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[1] This document was discussed at the 2024 Meeting of the Network on Fiscal Relations across Levels of Government on 25-26 April 2024. It was prepared by Tatiana Mota, advisor to the Network, in collaboration with Sean Dougherty, Head of the Network Secretariat, with inputs from Andoni Nebreda Montes. We especially thank Network delegates, including from all of the case study countries, for their careful feedback. In addition, detailed comments were greatly appreciated from David Bradbury, Hansjörg Blöchliger and Anzhela Cédelle (OECD), Nicola Brassard-Dion (Ottawa), Kass Forman (Toronto), Jarowslaw Kantorowicz (Leiden), Stefan Korioth (Munich), Hanno Kube (Heidelberg), Patricia Popelier (Antwerpen) and Rekha Saxena (Delhi).

[2] The study extensively utilised AI tools, principally ChatGPT4, Claude-2 and Perplexity, for analysis and research. A supplementary annex with more detail on the AI use and approach is available upon request from the authors.

[3] We have verified the existence and main repercussions of each judicial case referenced in this study. Specialists from each country – including scholars and policymakers – have reviewed and provided comments on the paper and

5. The research encompasses case studies for seven countries – Australia, Belgium, Brazil, Canada, Germany, India and the United States – along with more succinct sections for Spain, the Netherlands and the European Union. Selected for their unique federalism contexts, these case studies highlight significant fiscal disputes, their impact on intergovernmental relations and their influence on national economies. They also look at the evolution of mediation institutions and the co-operation mechanisms within these varied settings.

6. Furthermore, this research presents a pioneering comparison of these countries, categorising them based on their governmental structures and judicial systems. We provide a concise summary of each country's governance and judiciary, with a focus on notable constitutional court rulings. The paper also scrutinises the existing frameworks for coordination and co-operation, proposing recommendations to enhance dialogue and improve institutional approaches. These suggestions are designed to effectively address intergovernmental fiscal conflicts, offering insights into how different countries navigate these complex challenges. The primary findings of this study are encapsulated in Box 1.

Box 1. Summary of key findings

- Intergovernmental disputes are a frequent and inherent aspect of the decentralisation process. They are essential for achieving a balance among economic, political and institutional forces within countries. However, the frequency and nature of these disputes vary widely across countries. This variation is influenced by differences in the volume and significance of judicial rulings, and the unique socio-political contexts that shape judicial approaches to fiscal conflicts.
- Constitutional arrangements significantly influence the resolution of intergovernmental fiscal disputes. However, there is limited evidence of the integration of mediation or arbitration mechanisms *within* judicial systems to handle intergovernmental fiscal issues.
- Broader institutional mechanisms that facilitate co-operation and dialogue can be effective in successfully addressing and averting conflicts, as well as providing legal certainty.
- Main recommendations for managing intergovernmental disputes and reducing their negative impacts involve:
  - clarifying powers and responsibilities between central and subnational governments, establishing precise constitutional and legal frameworks that balance fiscal decentralisation with national policy objectives;
  - understanding the role of courts in solving intergovernmental fiscal disputes, as well as encouraging the use of mediation mechanisms to help resolve intergovernmental conflicts before the intervention of courts is warranted;
  - enhancing fiscal coordination and co-operation between governments at central and subnational levels by developing platforms for dialogue, institutional support and collaborative relationships; and
  - maintaining flexibility to adapt to evolving circumstances, re-evaluating and improving fiscal mechanisms.

analysis. However, it is important to note that comparative information on these cases was partially obtained using artificial intelligence tools. Consequently, we include a disclaimer: although we have reviewed the case references with the help of legal experts in each jurisdiction, there is a possibility that some details may not be entirely accurate. A more thorough investigation into each case could potentially reveal additional nuances or discrepancies.

7. Our discussion is structured as follows: Section 2 lays the groundwork by examining essential concepts and prevailing trends in intergovernmental fiscal disputes, along with typical institutional frameworks designed to minimise conflicts. Section 3 provides a comparative analysis of the case studies presented in Annex A, identifying dominant trends in constitutional court rulings and their influence on fiscal relationships across different tiers of government in the selected countries. The study concludes in Sections 4 and 5, where we present our main conclusions and offer recommendations for addressing intergovernmental fiscal disputes and bolstering intergovernmental co-operation.

2. Intergovernmental disputes: Definition and prerogatives

8. Intergovernmental disputes, defined as conflicts or disagreements between different levels of government within a federal or decentralised system,[4] arise over a range of issues, including the division of powers, allocation of resources or interpretation of laws and/or constitutional and institutional arrangements. These disagreements are particularly prevalent in federal systems where power is divided between various levels of government, often leading to disagreements over questions of legal and constitutional interpretation, and disputes over jurisdictional authority. Federal systems typically feature complex constitutions and institutional arrangements, which can be challenging to interpret and apply, thereby heightening the potential for conflict. In contrast, such disputes are less common in unitary systems, where authority is centralised in a single level of government.[5]

9. These conflicts are inherently complex and challenging to resolve, involving multiple levels of government with distinct interests and perspectives. When brought before the courts, they can lead to lengthy and costly legal battles, incurring expenses such as legal fees, expert witnesses and other litigation costs. This not only strains the resources of the governments involved but also impacts the citizens they serve. Moreover, these disputes can significantly affect the delivery of public services. Governments embroiled in legal conflicts may face delays in the implementation of their policies and programmes and may have fewer resources and time to devote to their primary function of service delivery, leading to economic losses and eroding trust and co-operation between different government tiers.[6]

10. Given these challenges, it is crucial to minimise the adverse consequences of intergovernmental disputes and seek more efficient and effective conflict prevention and resolution methods.

The nature of each country's division of powers and prerogatives in allocating authority directly impacts the types and frequency of intergovernmental disputes

11. The division of power between central and regional or local governments varies significantly across countries, often determined by reference to their constitutional and institutional arrangements, which are influenced strongly by historical and cultural factors. For instance, in the United States, the central government holds relatively more power compared to other federal countries like Canada. This difference stems from the United States' formation as a union of independent states, where the central government

[4] Such as between federal and state governments in the United States or between the European Union and its member states (examples of a federation and a confederation).

[5] Constitutional disputes are not only common but essential for resolving conflicts between different levels of government and addressing gaps in the constitution, which is often incomplete. Scholars note that supreme or constitutional courts play a crucial role in what is known as *implicit constitutional change*. These courts can effectively alter the constitution when formal political processes for amendment are blocked or when the requirements for an amendment, such as a super-majority or the agreement of lower-level governments, are too stringent (Voigt, 1999).

[6] For example, a dispute between the European Union and a member state over a trade agreement could result in trade restrictions, adversely affecting businesses and consumers in both jurisdictions.

was established to address broader national needs such as defence and foreign policy. In contrast, Canada, with origins as a British colony, has afforded more power to regional governments.[7]

12. Additionally, federalism can surge as a solution to societal challenges. In countries with diverse cultural or ethnic groups, it can provide each group with its own government, reducing conflict and promoting peace and stability. This approach is evident in Belgium, a federal country divided into linguistic communities and regions. Similarly, the European Union, a confederation of sovereign states, has experienced member states cede some power to a central authority to achieve common objectives like economic and monetary integration.

13. Federalism is also a dynamic process, constantly seeking a balance between integration and differentiation, or between demands for regional autonomy and the need for national cohesion and efficiency. Here, autonomy refers to the ability of subnational governments to self-organize, make decisions and represent their interests in central decision-making. Cohesion, on the other hand, involves maintaining the integrity of the entire system through mutual respect, common interest and solidarity (Popelier, 2021).

14. In this context, disputes are inherent to the existence of decentralised systems. The division of powers creates a natural rivalry among governments, leading to political forces attempting to shift power in either a centralist or decentralist direction. Consequently, an arbitrator, typically a court, is often required to interpret the constitutional or institutional rules and arbitrate on any disputes. The development of federalism and judicial review over time are thus closely intertwined, influencing each other[8] (Rose & Goelzhauser, 2018; Vale, 2013).

15. The diverse power structures and functions across countries complicate defining intergovernmental disputes uniformly. The nature and frequency of disagreements vary due to each nation's unique institutional framework and culture, as observed in their diverse court cases. Constitutional court rulings in federal countries relate to an array of subjects, varying from administrative, civil and criminal law. In fiscal federalism, conflicts often involve issues such as taxation authority and financial resource distribution, alongside jurisdictional disputes where both central and state governments assert control over the same policy area or when the extent of their respective jurisdictions is unclear. Other significant but less frequent conflict areas include environmental regulation, education, social policy and individual rights (Popelier, 2017).

16. To ensure practicality and consistency, this study will focus on the decisions made by Constitutional and Supreme Courts in various countries regarding intergovernmental fiscal disputes, specifically those related to the distribution of fiscal powers between central and subnational governments.[9] The following heat map presents a visualisation of the frequency and intensity of legal disputes across six critical sectors: Taxation Authority, Resource Distribution, Healthcare Financing, Education Policy, Environmental Regulation, and Subnational Insolvency. This representation categorises the intensity of

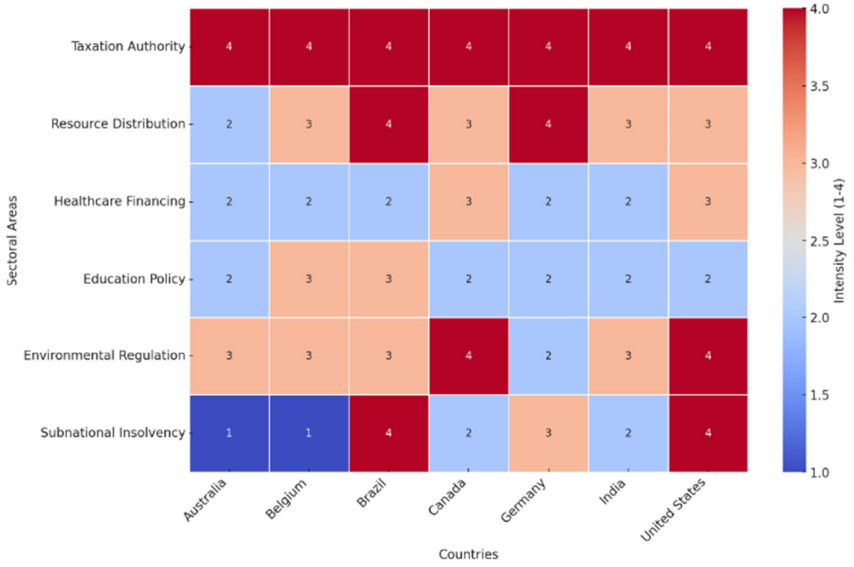
[7] In these countries, as the central government was initially responsible for governing a vast territory, giving the regional governments more autonomy was more efficient.

[8] Legal conflicts often reveal deeper problems with how responsibilities are divided within governmental structures, and these issues may not be solvable through political means alone. By resolving these disputes through legal channels, clarity and stability can be restored. Thus, legal adjudication plays a beneficial role in maintaining order. From a normative perspective, involving courts in disputes between governments is not necessarily negative. In some situations, court decisions are preferable because they carry stronger authority and can establish clear precedents for the future. Conversely, resolutions achieved through intergovernmental discussions might be temporary and heavily dependent on the current political atmosphere.

[9] Examples of such powers include the authority to tax income, consumption, property, or borrow money; control over spending in specific sectors; and the provision of public services like education, healthcare, and infrastructure.

how countries handle intergovernmental legal disputes in these essential areas, using a scale from 1 to 4. Here, 1 denotes the lowest intensity and 4 signifies the highest.[10]

Figure 1. Legal conflict intensities in fiscal federalism across countries



Source: ChatGPT4/DA prompt, using the case studies from this paper as inputs.

17. In most federal countries, the division of fiscal powers between central and regional or local governments is constitutionally defined. For instance, the United States Constitution grants the federal government powers to tax imports, borrow money and manage defence expenditures, while allowing states to tax income, regulate commerce within their borders and provide for their citizens' health, safety and welfare. However, in some countries, intergovernmental fiscal powers are outlined in laws other than the constitution. For example, the Fiscal Arrangements Act[11] sets out the division of fiscal powers between the federal government and the provincial and territorial governments in Canada (Boadway & Watts, 2004; Voigt & Blume, 2012).

18. The central government typically holds the authority to decide on intergovernmental fiscal powers. However, these powers are sometimes negotiated between central and regional or local governments, as seen in Canada, where federal, provincial and territorial governments negotiate new fiscal arrangements every five years.

19. Intergovernmental fiscal powers can also be a source of conflict. One relevant example occurs when the central government may wish to raise taxes to fund a national program, while regional or local governments may prefer to reduce taxes to alleviate their citizens' burdens. Balancing the fiscal powers of central and regional or local governments is crucial and this balance varies depending on each country's specific circumstances, subnational autonomy and institutional structure.

20. The judiciary, as an arbiter of these disputes, plays an essential position in shaping financial relations across levels of government. When the judiciary makes decisions that impact the allocation or usage of funds, it can have important implications for the fiscal health of one or both parties involved. For

[10] This heat map is a "synthetic" representation of the case studies' content, using an AI reading. Intergovernmental transfers, including equalisation systems and revenue-sharing grants, are included under "Resource Distribution".

[11] Available from the Canadian Justice Law website: https://laws-lois.justice.gc.ca/eng/acts/f-8/FullText.html.

instance, the central government may find itself in a position where it needs to allocate additional resources to comply with a judicial mandate or to support a subnational government facing financial distress. On the other hand, subnational governments, which are closer to the community level, may bear the brunt of these financial challenges. They are typically tasked with the critical responsibility of ensuring that essential public services remain uninterrupted, even in times of fiscal strain.

21. In most federal countries, the judiciary is divided into federal and state courts. Federal courts have jurisdiction over cases involving federal law, international law, or treaties, while state courts handle cases involving state law, such as criminal or family law cases and contract disputes.[12] Generally, there is a hierarchy within the federal courts, with the highest court typically being the Supreme Court or Constitutional Court, which reviews decisions from lower federal and state courts. In the United States, for example, the federal judiciary comprises district courts, circuit courts of appeals and the Supreme Court. Respectively, they represent the trial courts, the intermediate appellate courts, and the highest court in the legal hierarchy of the federal system. The Supreme Court holds the final say on constitutional interpretation.[13]

22. Federal courts are decisive in resolving intergovernmental disputes, especially when disagreements arise between the federal government and a state, or between states, regarding the interpretation of federal law or fiscal authority. They often resolve intergovernmental disputes by applying the law to the facts of the case and resolutions can take various forms. For example, courts may declare that one level of government has the authority over a claim or may issue an injunction to prevent another level of government from acting. In some cases, they may order one level of government to conduct payments or transfer resources to another level of government. Their role is to protect the rights of each tier of government, resolving intergovernmental disputes fairly and impartially. Therefore, when a federal court decides on an intergovernmental dispute, it is not just interpreting the law or the constitution, but also deciding on the balance of power between the federal government and the states.

23. However, the judiciary is not always the sole arbiter of intergovernmental fiscal disputes. Litigation can be costly, time-consuming and may not always yield satisfactory outcomes for either party. Several factors, including the nature of the dispute, the relationship between the parties and available resources, can influence whether a dispute is resolved judicially or through other means. Alternatives to judicial resolution include intergovernmental agreements, agreements between the executive and legislative branches or potentially legislative responses. Institutional bodies created to foster co-operation among different tiers of government, as well as mediation and moderation techniques, are essential in finding the right balance of powers and providing solutions to conflicts.

Typical institutional arrangements to minimise intergovernmental conflicts involve creating boards and committees that foster co-operation, complemented by mediation

24. Institutional setups can mitigate intergovernmental conflicts by fostering communication, co-operation and effective conflict resolution mechanisms. Central governments have established various institutions and committees, bringing together stakeholders from different government levels, as well as public or private entities and the scientific community. These bodies are instrumental in coordinating policies across subnational jurisdictions, promoting dialogue and facilitating consensus-building forums. Notable examples include the National Association of State Budget Officers in the United States,[14]

[12] State courts also have jurisdiction to hear cases that involve federal law, but only if the federal courts have not already taken jurisdiction over the case.

[13] Available from: United States Courts (https://www.uscourts.gov/about-federal-courts/court-role-and-structure) and Offices of the United States Attorneys (https://www.justice.gov/usao/justice-101/federal-courts).

[14] Available from: https://www.nasbo.org/home.

the National Economic Policy Board in Brazil[15] and the National Cabinet in Australia,[16] each playing a significant part in harmonising intergovernmental relations and coordinating public policies.

25. Globally, there is an increasing trend toward establishing independent, non-partisan institutions that provide critical oversight and analysis to support policy development and decision-making. These institutions can be categorised into three types: Independent Fiscal Commissions (IFCs), Independent Productivity Commissions (IPCs) and Regulatory Oversight Bodies (ROBs). IFCs are tasked with delivering non-partisan analysis of fiscal policy and performance, while IPCs focus on identifying strategies and tools to enhance productivity. ROBs, on the other hand, oversee the design, implementation, delivery and evaluation of regulations over time (Dougherty et al., 2021). Particularly relevant in the context of fiscal decentralisation are IFCs and ROBs, due to their roles in fiscal scrutiny and policy coordination (Ivanyna & Shah, 2014; OECD, 2021). These bodies are crucial in reducing intergovernmental conflicts, offering objective and impartial analysis of fiscal matters, suggesting policies to mitigate risks and ensuring consistent policy coordination across various government levels.

26. Intergovernmental fiscal co-operation has become increasingly crucial due to the tendency of governments to decentralise public services over recent decades (Hanson & Zeemering, 2021). Effective coordination is essential to avoid disruptions in public services, regulatory barriers, or suboptimal policy implementation. The COVID-19 pandemic particularly highlighted the importance of such co-operation in addressing complex challenges and enhancing subnational financial resilience, notably considering policy coordination, resource management, transparency and regulatory frameworks (de Biase & Dougherty, 2021; de Mello & Ter-Minassian, 2022).

27. Coordination is broadly categorised into two primary types: vertical and horizontal. Vertical coordination is critical for preventing conflicting objectives between different government levels, which could lead to contradictory or poorly aligned policies. This is especially relevant in government functions such as environmental policy, healthcare and public investment. Horizontal coordination, on the other hand, involves collaboration between jurisdictions at the same governmental level. It either complements or replaces vertical coordination and is vital for addressing regional spillovers and ensuring regional consistency (Ter-Minassian & de Mello, 2016).

28. Effective coordination necessitates well-established communication channels, regular interactions between authorities from different jurisdictions, an understanding of territorial diffusion effects and bipartisan coordination. Institutions such as the Councils of Federations, National Cabinets and technical councils, which convene various government levels, scientific experts and sectoral authorities, are essential to bolster capacity and promote both vertical and horizontal co-operation.[17]

29. To reduce intergovernmental conflicts, these institutional arrangements should adhere to fundamental principles such as communication, co-operation, transparency and accountability. Consistent communication and co-operation, even outside conflict situations,[18] are essential for building trust and understanding between governments, thereby facilitating conflict resolution. Transparency in financial and

[15] Available from: https://www.confaz.fazenda.gov.br.

[16] Available from: https://federation.gov.au/national-cabinet.

[17] The response to the COVID-19 pandemic illustrates this need: in Brazil, all subnational governments were involved in the regional response, while in the United States, existing state collaborations and relationships among public officials aided their joint efforts. Similarly, Australia's National Cabinet effectively coordinated decision-making and responses during the crisis.

[18] By establishing clear lines of communication, shared goals and co-operative frameworks, institutions can proactively address and resolve conflicts before they escalate into formal disputes. This preventative approach not only fosters harmonious intergovernmental relationships but also enhances the effectiveness of governance by ensuring that governmental entities operate in a coordinated and mutually supportive manner.

policy matters reduces the likelihood of misunderstandings and conflicts, while accountability ensures that governments act in the best interests of their citizens, even amidst competing interests. Adhering to these principles is crucial for creating a collaborative and effective intergovernmental fiscal environment.

30. Mediation serves as an effective tool in addressing intergovernmental conflicts across various countries, offering distinct advantages over other conflict resolution methods like litigation or arbitration. Firstly, mediation is inherently voluntary, requiring both conflicting parties to participate willingly. This aspect is particularly pertinent in intergovernmental disputes where parties often have divergent interests and priorities. Secondly, the confidentiality of the mediation process ensures that discussions remain private unless both parties consent to disclosure.[19] Thirdly, mediation's flexibility allows the process to be customised to suit the specific needs of the parties involved. Fourthly and importantly, mediation focuses on facilitating a mutually agreeable solution. The mediator's function is not to make decisions but to assist the parties in identifying their interests, developing resolution options and reaching a consensus that satisfies both sides.

31. Beyond these benefits, mediation is often more cost-effective and time-efficient compared to litigation or arbitration. It also significantly preserves the relationship between the parties, which is vital in intergovernmental contexts where future collaboration is likely.

32. Intergovernmental dialogue forums represent another form of mediation that is effective in resolving intergovernmental conflicts. These forums offer a space for open dialogue and exploration of resolution strategies. They can be facilitated by a neutral third party or managed by the parties themselves. For instance, the European Fiscal Compact, a treaty signed in 2012 by most EU member states,[20] is an example of an agreement aimed at strengthening fiscal discipline within the European Union. It was negotiated as a response to the European debt crisis and sought to enforce budgetary rules among member states, representing a form of intergovernmental fiscal agreement.

3. Comparative Analysis

33. In this section, we utilise the case studies presented in Annex A for comparative analysis, focusing on identifying and elucidating the dominant trends in constitutional court rulings and their influence on fiscal relationships across different tiers of government in the selected countries. Our analysis explores these trends by studying these nations' distinct governmental and judicial structures.[21] We further assess the prevailing frameworks for coordination and co-operation, complementing the discussion with specific case examples.

34. The analysis aims to highlight the diversity in judicial interpretation and its effects on federal frameworks, to scrutinise the mechanisms that support or hinder collaboration between different government tiers, and to provide in-depth insights into the complex nature of intergovernmental relations within diverse federal systems.

[19] This confidentiality is crucial in intergovernmental conflicts due to potential political ramifications.

[20] The fiscal compact as enshrined in the "Treaty on Stability, Coordination and Governance in the Economic and Monetary Union" was agreed upon at the EU summit on 30 January 2012 and signed on 2 March by the Heads of State or Governments of all EU countries, with the exception of the United Kingdom and Czechia.

[21] Comparing data from countries with differing geographical, economic, and legal contexts is a sensitive endeavour. Readers are advised to approach the information in this report with care, taking into account the nuances and distinct contexts specific to each country.

Intergovernmental disputes are a frequent and inherent aspect of the decentralisation process in the examined countries

35. In federal and decentralised government structures, the process of decentralisation inherently leads to conflicts between various tiers of government. These conflicts typically arise from unclear divisions of power and responsibilities, particularly in how authority and resources are allocated. These disputes are crucial not only for resolving intergovernmental conflicts but also for providing clarity over the prevailing constitutional and institutional arrangements. Often, legal conflicts expose deeper issues in the division of governmental responsibilities that cannot be resolved politically. Resolving these disputes legally can restore clarity and stability, as court decisions hold authority and set clear precedents. Countries like Brazil, Canada, India, Belgium, Australia, Germany and the United States exemplify these challenges with their intricate distribution of power, leading to interpretational differences, conflicting policy objectives and fiscal resource disputes.

36. For example, in Brazil, the 1988 Constitution aimed for fiscal decentralisation but led to ongoing fiscal disputes. The lack of clear power realignment among different government levels, particularly in shared services, has resulted in fiscal imbalances and disagreements over policy priorities, fund allocation, resource distribution and revenue-sharing mechanisms (Mendes, 2020; Rigolon & Giambiagi, 1999).

37. Canada, transitioning from dualistic federalism to a more centralised structure influenced by World War II agreements and rising costs of provincial responsibilities, faces fiscal imbalances within its federalism. The country addresses these through major federal transfers like the Canada Health Transfer and Canada Social Transfer, reflecting the federal government's influence over provincial policy directions (Brouillet, 2017; Brun et al., 2014; Lecours, 2019).

38. India's fiscal federalism, originating from the 1935 Government of India Act, has evolved into a complex relationship between central and state governments. The Finance Commission, under Article 280 of the Indian Constitution, is instrumental in defining financial relationships and allocating resources, as evidenced by the Fifteenth Finance Commission's allocation decisions and grants[22] (Singh, 2021).

39. Box 2 presents the case of the Netherlands' youth protection services reform. This case underscores the complexities and challenges of decentralising essential public services and offers insights into the practical implications of such reforms in decentralised governance.

40. The courts, particularly constitutional courts, play a crucial role in these contexts. Their function in maintaining a balance between national unity and the autonomy of subnational entities is paramount. These courts significantly influence the decentralisation of services by interpreting the constitution, thus defining the scope of decentralisation and the distribution of responsibilities among government levels.

41. In Belgium, constitutional jurisprudence has emphasised the importance of adequate funding for decentralised powers, particularly for smaller linguistic communities, as seen in judgments like n. 159/2008 for the German-speaking Community and n. 104/2008 addressing financial disparities in Brussels (Popelier & Lemmens, 2015). In Australia, cases such as Pape v. Federal Commissioner of Taxation (2014) and Commonwealth v. State of Tasmania (1983) highlight the High Court's role in fiscal power distribution disputes.[23]

42. In Germany, the Federal Constitutional Court (FCC) has repeatedly addressed the challenges of the fiscal equalisation system, particularly in its decisions from 1952, 1986 and 1992. Initially, these rulings did not bring about significant changes. However, the situation changed notably in 1999 when Bavaria, Baden-Württemberg and Hesse challenged the constitutionality of the system. The Court ruled that the fiscal equalisation system required a specified standard to provide predictability to the fiscal foundation of

[22] The Fifteenth Finance Commission allocated 41% of the net divisible pool (NDP) to subnational governments as tax devolution and provided revenue deficit grants under Article 275, along with funds for disaster management and state-specific grants.

[23] These Australian rulings lean towards centralisation, influencing fiscal relations across government levels.

the Federation and the Länder. This decision led to a mandate for the federal legislator to revamp the system by 2005 (Brand, 2006; Werner, 2018).

43. In the United States, a landmark ruling such as the National Federation of Independent Business v. Sebelius (2012) highlighted the federal government's authority to condition healthcare funding on states' compliance with specific requirements, demonstrating federal leverage in state healthcare policies. This case displays how constitutional court rulings can directly influence the dynamics of fiscal federalism and the decentralisation of services.

Box 2. The Netherlands' Youth Care Decentralisation Programme

In 2015, the Dutch government embarked on a major policy shift, transferring the responsibility for youth protection services to local municipalities.[24] This move aimed to achieve three main goals: reducing operational costs, shortening service wait times and streamlining administrative processes for care providers.[25] The premise was that local governments, being closer to their communities, would manage these services more effectively.[26]

However, by 2021, a prolonged dispute over youth service funding led the Dutch government to allocate an additional €1.3 billion to municipalities for 2022.[27] This decision was in response to the increased financial strain on municipalities since the 2015 policy change. Despite this additional funding, municipalities faced ongoing budgetary challenges, with youth service costs rising significantly since 2005. The funding came with the condition that municipalities implement cost-saving measures and reduce youth service spending by €200 million the following year.

By 2023, the decentralisation effort encountered major obstacles, including delays in service provision to families.[28] The Netherlands Court of Audit's 2023 report, aptly titled 'Organised Impotence',[29] offered a critical assessment of the situation post-reform. It pointed out that the transfer resulted in a disorganised system, burdening both municipalities and care providers. The report criticised the blurred lines in financial, administrative and supervisory responsibilities between youth protection and other

[24] The Youth Reform Agenda in the Netherlands was critically examined by a "committee of wise men," who provided independent oversight and recommendations on the decentralisation of youth care services. Their verdict emphasised the importance of local governments in organising tailored solutions and the necessity for an integrated approach to youth care. The committee aimed to ensure effective decentralisation, balancing central and local government responsibilities. For more detailed information, refer to the original document: https://open.overheid.nl/documenten/ronl-5cf0e11c-a061-4bbd-8f2c-55e614f6940b/pdf.

[25] The reform was based on the assumptions that local governments are capable of devising customised solutions in collaboration with youth and their communities, that managing youth care in a single entity creates a stimulus effect, and that youth care intersects with various policy areas, allowing local governments to adopt a holistic approach. This integrated strategy was anticipated to enhance the efficiency and effectiveness of youth protection services.

[26] The Child and Youth Act (2015). Available from: https://wetten.overheid.nl/BWBR0034925/2021-11-06.

[27] The Holland Times: "Dutch municipalities to receive 1.3 billion extra euros for youth care". Available from: https://www.hollandtimes.nl/earliereditions/2021/2021-edition-5-july/dutch-municipalities-to-receive-1-3-billion-extra-euros-for-youth-care/

[28] Netherlands Court of Audit "No control of failing youth protection". Available from: https://english.rekenkamer.nl/topics/social-services/news/2023/04/13/no-control-of-failing-youth-protection.

[29] Netherlands Court of Audit "Organised Impotence". Available from: https://english.rekenkamer.nl/topics/social-services/documents/reports/2023/04/13/organised-impotence

youth care forms. It also noted shortcomings in the supervision of key aspects of youth protection, leading to service inefficiencies.

In response, a significant agreement was reached on 19 June 2023 with the approval of the Youth Reform Agenda.[30] This collaborative effort, involving client organisations, professional associations, youth care providers, municipalities and the national government, aimed to rectify the flaws of the decentralisation process. The agenda focuses on enhancing the quality and affordability of youth care, emphasising appropriate and effective help for children and families. The agreement also established a multi-year financial framework for 2023-2028 between central and local governments. This framework aims to address local government deficits in youth care through additional, though gradually decreasing, funding, alongside increasing revenues from reforms.[31]

To support these reforms, amendments to the Child and Youth Act were proposed to better define youth assistance and distinguish it from other services, as well as to provide demarcation and standardisation of services. The reforms also require municipalities to jointly procure some specialist care in their regions, fostering efficiency and standardisation in service delivery.

This case study of the Netherlands' youth protection services reform highlights the complexities of decentralising vital public services. It underscores the necessity for clear financial and administrative frameworks, effective stakeholder coordination and sufficient funding. These elements are crucial to ensure that decentralisation does not compromise the quality and accessibility of essential services for vulnerable groups, particularly children and families requiring protection and care.

44. These examples illustrate the varied impacts of constitutional court decisions on service decentralisation, affecting power balance, funding mechanisms and policy directions.

45. In this context, effective management of decentralisation policies is crucial in mitigating the negative impacts of intergovernmental disputes. Implementing clear governance structures, distinctly defining powers and establishing robust conflict resolution mechanisms are essential. Successful decentralisation balances local autonomy with federal or central government objectives, ensuring efficient and high-quality service delivery that aligns with local needs while upholding national standards. Dialogue, co-operation and consensus-building among different government tiers are key to this balanced approach.

Court rulings regarding intergovernmental fiscal disputes have shown significant variation across the countries under examination.

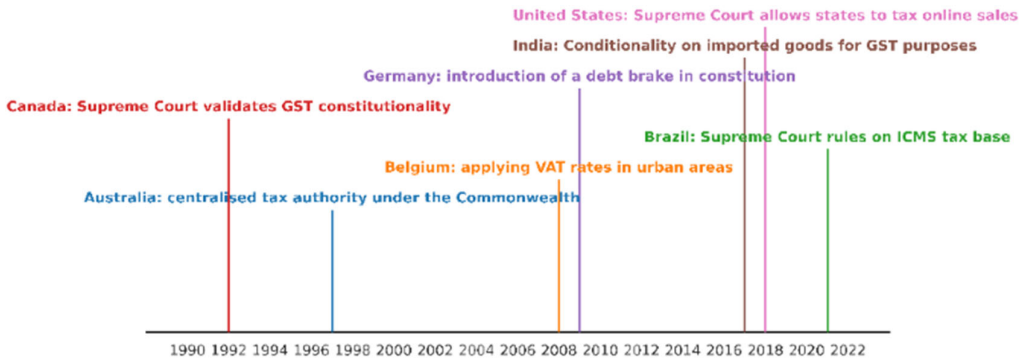
46. Constitutional Court rulings on intergovernmental fiscal disputes exhibit significant variation across countries, influenced by diverse factors. These variations primarily arise from each nation's unique constitutional and institutional frameworks, which define the distribution of powers and responsibilities between central and subnational governments. The constitution of each country establishes specific guidelines and principles, thereby influencing the courts' interpretations and decisions on matters of fiscal autonomy and decentralisation. Additionally, the historical context and legal precedents within each nation crucially shape the judiciary's approach to these disputes, with some courts having a tradition of reinforcing strong central control over fiscal matters, while others lean towards enhancing local autonomy and decentralisation.

[30] Youth Reform Agenda (2023). Available from: https://www.voordejeugdenhetgezin.nl/documenten/publicaties/2023/06/19/hervormingsagenda-jeugd-2023-2028

[31] This arrangement highlights the ongoing debate over the distribution of financial risks in decentralised tasks, particularly concerning who should bear the responsibility for financial strains — municipalities or central government.

47. The analysis depicted in Figure 1's heat map reveals that disputes concerning taxation authority are widespread among the countries studied. These disputes examine the scope of governmental powers regarding taxation and expenditure, as well as the rights and responsibilities associated with managing fiscal affairs. Such disputes have been consistently observed over several decades. Complementing this, Figure 2 offers a timeline showcasing key tax-related rulings for each country, highlighting their significance in shaping fiscal policies and intergovernmental relations.

Figure 2. Timeline of key taxation authority rulings by country (based on the case studies)



Source: ChatGPT4/DA prompt, using the case studies from this paper as input. Further information on these rulings is available in Annex A.

48. Additionally, Box 3 provides a comparative illustration of how court rulings in Canada and Australia have diverged concerning the subnational taxing authority.

49. The prevailing literature on the impact of court decisions on federalism focuses on assessing whether Supreme or Constitutional Court decisions demonstrate a centralist or federalist orientation. This means evaluating if the rulings tend to support the interests of the federal or central government versus those of subnational governments.

50. To illustrate, in Australia, the High Court's interpretation of the Constitution has largely favoured centralisation, particularly evident in the landmark 1920 Engineers case. This ruling had a significant impact on Australian federalism, broadening the Commonwealth's powers and diminishing the doctrine of implied intergovernmental immunities, steering Australia towards a more centralised federation[32] (Aroney & Kincaid, 2017).

51. In contrast, Belgium's federal model tends to protect subnational governments' interests. The country's federal system divides authority between the national government and subnational communities and regions, with a focus on addressing ethnolinguistic and territorial affairs. The communities manage issues relevant to their language groups, while the regions exercise powers based on geography, thereby emphasising the autonomy of subnational entities (Popelier & Lemmens, 2015).

52. Interestingly, there has been a noticeable shift in judicial tendencies in many of the analysed countries. Initially, there was a pronounced inclination towards centralism, but recent decades have seen a move towards more decentralised or federalist approaches in court rulings, increasingly favouring subnational governments or promoting co-operative federalism.

53. For instance, Brazil's Supreme Federal Court (STF) initially leaned towards centralisation post the 1988 Constitution, amplifying the Federal Government's legislative competencies. A notable instance of

[32] Although it has also led to ongoing federal-state tensions over the extent of Commonwealth power.

this approach was the cautious suspension of norms in state constitutions pending a comprehensive assessment of the States' constituent power. However, in matters related to the Fiscal Responsibility Law (LRF),[33] the STF has increasingly supported subnational governments, emphasising the protection of essential public services for impoverished populations[34] (Anselmo, 2006; Borges, 2021; Mendes, 2020).

Box 3. Comparative analysis of taxing power rulings in Canada and Australia

The adjudications of the Supreme Court of Canada in the "Reference re Goods and Services Tax" (1992) and "Reference re Quebec Sales Tax" (1994), juxtaposed with the Australian High Court's decision in Ha v. New South Wales (1997), offer a compelling comparative perspective on the delineation of taxation powers within different federal systems.

In Canada, the "Reference re Goods and Services Tax" case affirmed the federal government's constitutional authority to implement the Goods and Services Tax (GST), a value-added tax key for the national fiscal strategy. This decision reinforced the federal government's fiscal capacity, underpinning its ability to fund various programs and services. The Supreme Court's endorsement of the GST as constitutionally legitimate not only solidified federal economic governance but also highlighted the centralised nature of fiscal authority in the Canadian federation (Major & McCabe, 2014).

Conversely, the "Reference re Quebec Sales Tax" case illuminated the decentralised aspect of Canadian federalism, where the Supreme Court unanimously upheld Quebec's legislative authority to amend its provincial sales tax (QST). This ruling emphasised the provinces' constitutional right to levy direct taxes, as per section 92(2) of the Constitution Act, 1867, even when such taxes resemble federal impositions. The Court's decision in this case delineated the distinct and autonomous fiscal powers of the provinces, affirming the coexistence of federal and provincial taxation jurisdictions within Canada's federal framework.

In contrast, the Australian High Court's decision in Ha vs. New South Wales (1997) highlighted a different trajectory in the balance of federalism. The Court favoured the Commonwealth over the states in an intergovernmental fiscal dispute, challenging the narrow interpretation of excise duties by the State of New South Wales. By broadening the definition of excise duties to include taxes on the sale or distribution of goods, the High Court effectively centralised fiscal authority under the Commonwealth, as per Section 90 of the Australian Constitution. This ruling underscored the constitutional limitations on state powers in imposing certain types of taxes, thereby reinforcing the fiscal predominance of the Commonwealth in Australian intergovernmental relations.

These cases collectively illustrate the essential role of constitutional courts in shaping the balance of federalism in Canada and Australia. While the Canadian Supreme Court's decisions reflect a more balanced approach between federal and provincial powers, allowing for a degree of fiscal autonomy at the provincial level, the Australian High Court's decision in Ha vs. New South Wales tilts towards a more centralised fiscal authority under the Commonwealth. These decisions, rendered within a similar period, underscore the distinct constitutional architectures and federal dynamics in Canada and Australia, highlighting each court's crucial role in interpreting and enforcing the balance between federal and subnational governments in these two countries.

54. In India, the Supreme Court has historically favoured centralisation. However, since the 1990s, there has been a shift towards federalism. While the courts traditionally upheld centralist principles, recent

[33] The LRF was promulgated on May 4th, 2000.

[34] Despite the absence of a clear definition of what constitutes "essential services".

years have seen a growing focus on upholding state rights, particularly in cases concerning the Union government's overreach into state administrative powers. This shift marks an evolution in the Indian judicial perspective on federal-state relations (Gupta, 2021; Saxena, 2013; Popelier, 2017; Tewari & Saxena, 2017; Swenden, & Saxena, 2021).

55. The political independence of courts also significantly influences their decision-making on federalist or centralist matters. A more autonomous judiciary is likely more inclined to make bold decisions that could alter the fiscal dynamics between government levels. However, while courts may lean towards either federalist or unitarist tendencies, their rulings are often swayed by institutional and political forces. These forces can prompt courts to prefer one approach over another. It is important to acknowledge that even independent courts are not entirely isolated from political dynamics. They interpret constitutions that may inherently favour federalist or centralist principles. Moreover, these political and institutional pressures play a key role in determining the extent of influence a federation's high court has on the federal system's structure, including whether the court has a major, minor, or negligible role in shaping federal arrangements.

56. Furthermore, the political and economic context of a country considerably shapes how courts address fiscal disputes. Depending on the circumstances, courts may side with centralisation to promote national economic stability or decentralisation to spur regional development or meet local needs. The nature of these disputes can lead to a variety of outcomes, including decisions on revenue sharing, allocation of expenditure responsibilities, and complex fiscal equalisation issues. Consequently, the variation in constitutional court rulings on intergovernmental fiscal disputes across countries reflects a complex interplay of constitutional, historical, political, economic and legal factors, along with the specifics of each dispute and the judiciary's role within the national framework.

57. For instance, in Germany, the distribution of legislative authority between the federation and the Länder has evolved over time, significantly influenced by the FCC's interpretations. The FCC's reading of Article 72, paragraph 2 of the Basic Law after its amendment in 1994 favoured the Länder, stipulating that the federal parliament could only exercise concurrent powers under specific conditions, such as impending law fragmentation or significant economic disparities between the Länder. This interpretation limited the federal parliament's authority and introduced ambiguity in applying concurrent powers. To clarify these issues, the federal legislator amended the constitution in 2006, leading to more distinct competence categories and explicit regulation of concurrent powers (Art. 72). Also, in response to the FCC questioning the constitutionality of federal and local administrative co-operation in the field of basic support for persons seeking employment, a new joint taskforce (Art. 91e) was introduced to address joint decision-making concerns in 2010 (Rau, 2003).

58. This dynamic interaction between constitutional law and politics in Germany highlights the FCC's role: it shapes the trajectory of federalism and serves as an impartial judge. The FCC has been crucial in defining the allocation of legislative power between Germany's federation and the Länder (Baier, 2011; Benz, 2017).

The structure of the judiciary in various countries significantly influences the resolution of intergovernmental fiscal disputes.

59. In federations, the judiciary's structure is integral to understanding and resolving intergovernmental fiscal disputes, a concept that must be viewed within the broader context of each federation's unique characteristics and constitutional design. The resolution of fiscal disputes in such systems can be deeply influenced by the allocation of judicial power and the organisation of the court system. Two primary considerations are key to this understanding: the division of judicial power between different levels of government and the specific structure of the court system, whether it is distinct for each government level or shared (Saunders, 2019).

60. In certain federations, judicial power is clearly divided between federal and state or regional governments, with each tier possessing distinct responsibilities and jurisdictions. This delineation significantly impacts how fiscal disputes are resolved, determining which court or level of judiciary is authorised to adjudicate specific disputes. The capacity of these judicial systems to interpret and apply laws uniformly across different government levels is essential for maintaining legal coherence and balance in federal systems.

61. Additionally, the structure of the court system, whether it involves separate courts for each level of government or a shared system, is paramount. Federations adopt varying approaches; some maintain completely independent court systems for each level, while others employ integrated court systems serving multiple tiers. This choice influences the efficiency and equity of dispute resolution. Separate systems may lead to more localised adjudication but could also result in inconsistencies in legal interpretation across regions. Conversely, shared systems promote uniformity in legal rulings but might struggle with addressing local specificities (Saunders, 2019).

62. Switzerland presents a unique case as it operates without a constitutional court. The resolution of conflicts requires political consensus rather than judicial interpretation. This distinctive feature of the Swiss political system has engendered a culture of meticulous precision in the drafting of its constitution, with a notable emphasis on the delineation of fiscal responsibilities and powers[35] (Blöchliger & Kantorowicz, 2015). This arrangement contrasts sharply with the practices observed in other federations, where the division of tax powers often remains a contentious issue, leading to legal disputes and requiring judicial intervention for resolution.

63. In Australia, the High Court's focus on federalism is shaped by its constitutional context, where there is a lack of comprehensive enumeration of fundamental rights. The Court primarily concentrates on delineating power between the Commonwealth and states, influenced by foundational interpretations of the Constitution (Aroney, 2017). Australia's rigid constitutional amendment process, with only a few successful amendments, reflects the challenges in changing its constitutional framework (Arcioni & Stone, 2020).

64. Belgium's Constitutional Court protects the autonomy of federated entities, favouring decentralisation within its federal framework, marked by successive constitutional reforms (Peeters & Mosselmans, 2017; Verdonck & Deschouwer, 2003). Similarly, Canada's Supreme Court operates within a unique appellate jurisdiction, necessary due to Canada's dual legal system[36] (Brouillet, 2017).

65. India's judiciary, comprising the Supreme Court, High Courts and District Courts, reflects its British common law heritage. The Supreme Court and High Courts, as constitutional courts, hold the power to adjudicate matters with constitutional implications, with appointments made by the President following consultations (Tewari & Saxena, 2017). The U.S. federal judiciary system, consisting of district courts, circuit courts and the Supreme Court, is instrumental in shaping state powers and federal branches, with federal judges enjoying life tenure and appointed by the President (Somin, 2017).

66. These examples from Australia, Belgium, Canada, India and the United States underscore how the judiciary's structure in different federations may influence the resolution of intergovernmental fiscal disputes. The judiciary's role in interpreting constitutional frameworks, the division of judicial power and

[35] In the context of taxation, Switzerland's constitution stands out for its clarity and specificity. Tax powers are not only precisely allocated among different levels of government—federal, cantonal, and municipal—but the constitution also goes a step further to stipulate maximum rates for federal income tax. This level of detail and foresight in constitutional drafting ensures a high degree of fiscal autonomy for SNGs while maintaining a coherent framework for national fiscal policy (Blöchliger & Kantorowicz, 2015).

[36] Moreover, the Court's evolution from a dualistic to a more co-operative federalism highlights its role in fostering intergovernmental co-operation.

the organisation of court systems are critical factors in how these disputes are managed, reflecting the unique federal structure and legal tradition of each country. Understanding these aspects is essential for ensuring that judicial arrangements align with the broader objectives and principles of the federation.

67. In another example, Box 4 highlights the European Court of Justice's decisions concerning the interpretation of EU law, assessing whether domestic provisions of a particular Member State breach EU law, and providing general guidance for future conflicts.

Box 4. The European Court of Justice rulings on tax and fiscal matters among EU member states

The Court of Justice of the European Union (CJEU), established by the Treaty of Paris in 1951, is the highest judicial authority on matters of EU law. Its primary mandate involves ensuring uniform interpretation and application of EU law across all member states while resolving legal disputes between national governments and EU institutions. The CJEU consists of two courts: the Court of Justice (ECJ) and the General Court.

The ECJ consists of one judge from each of the 27 EU countries, along with eleven advocates general. It deals with requests for preliminary rulings from national courts, actions for annulment and appeals. The General Court has two judges from each EU country and handles cases brought by individuals, companies, and, in some instances, EU governments, particularly those related to competition law, trade, agriculture, and trademarks.[37]

The CJEU has played a crucial role in resolving tax and fiscal conflicts among EU member states, ensuring their tax practices align with EU laws, including the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). These cases significantly impact the taxation of multinational companies within the EU, among other issues. Notable ECJ rulings that have shaped fiscal policy and tax practices in the EU include:[38]

- Cadbury Schweppes plc v. Commissioners of Inland Revenue (C-196/04).[39] The case concerns the UK's controlled foreign company (CFC) rules, which sought to tax profits of subsidiaries located in low-tax jurisdictions. Cadbury Schweppes argued that these rules restricted the freedom of establishment by penalising UK companies for setting up subsidiaries in other EU member states. The ECJ held that the UK CFC rules constituted a restriction on the freedom of establishment guaranteed by Articles 49 and 54 of the TFEU. The Court acknowledged that the restriction could be justified if it targeted wholly artificial arrangements designed to circumvent national tax laws and emphasised the need to distinguish between genuine economic activities and purely artificial arrangements aimed at tax avoidance. CFC rules could be applied only if the subsidiary did not engage in genuine economic activities in the host member state. The ruling in Cadbury Schweppes established that while member states can enact measures to prevent tax avoidance, such measures must not hinder the freedom of establishment unless they specifically target artificial arrangements devoid of any economic substance.

[37] Judges and advocates general are appointed jointly by national governments for renewable six-year terms, with each Court electing its own President to serve a renewable three-year term.

[38] For a list of an extensive ECJ´s decisions regarding direct taxation: Haslehner, W. (Ed.). (2015). *Landmark Decisions of the ECJ in Direct Taxation*. Kluwer Law International BV.

[39] InfoCuria. C-196/04. Available from: https://curia.europa.eu/juris/liste.jsf?language=en&num=C-196/04.

- Lankhorst-Hohorst (Case C-324/00).[40] The case involved German thin capitalization rules, which aimed to counteract tax avoidance by limiting the deductibility of interest paid on loans from foreign shareholders. The question was whether these rules violated the freedom of establishment by treating cross-border situations less favourably than domestic ones. The ECJ ruled that the German thin capitalisation rules constituted a restriction on the freedom of establishment guaranteed by Articles 49 and 44 of the TFEU and found that the rules discriminated against non-resident companies because they applied more stringent conditions to interest payments made to foreign parent companies compared to domestic parent companies. The ECJ considered whether the restriction could be justified by the need to prevent tax avoidance. However, it concluded that the rules were not appropriate and proportionate for achieving this aim since they applied generally without considering whether the transactions were genuine or merely artificial arrangements designed to avoid taxes.
- N Luxembourg I et al. (cases C-115/16,[41] C-118/16,[42], C-119/16,[43], and C-299/16).[44] The case concerns whether certain tax advantages could be denied based on the concept of abuse of rights, even if the formal requirements of the Parent-Subsidiary Directive were met. The cases revolved around withholding tax exemptions on profit distributions between parent companies and their subsidiaries within the EU. The ECJ held that the benefits of the Parent-Subsidiary Directive could be denied if there was an abuse of rights. This includes situations where the arrangements were put in place solely to obtain a tax advantage and did not reflect economic reality. The Court emphasised the need to look at the substance of the arrangements rather than their form. It stated that member states could deny tax benefits if they could prove that the arrangements were artificial and intended solely to avoid tax and confirmed that the anti-abuse provisions in the Directive itself and in national law are applicable. Member states must apply these provisions to counteract purely artificial arrangements aimed at obtaining unjustified tax advantages.
- X-GmbH (Case C-135/17).[45] The case involves a German company involved in the trading of goods across EU borders, X-GmbH, and centres around the interpretation of Article 138(1) of the EU VAT Directive (Directive 2006/112/EC). This provision deals with the conditions for VAT exemption on intra-community supplies of goods, particularly the requirements for proving that goods have been transported from one EU Member State to another. The main question addressed by the CJEU was whether the VAT exemption under Article 138(1) of the VAT Directive can be denied solely because the supplier has not provided proof of transport within a time frame required by national legislation, even if all other substantive conditions for the exemption are met. The court highlighted that the substantive conditions for VAT exemption, namely the actual transport of goods from one Member State to another and the supply of goods to a taxable person acting as such in another Member State, are paramount. It was also stated that national legislation cannot impose additional formal requirements (such as specific time frames for providing proof of transport) that would override these substantive conditions and acknowledged that while proof of transport is essential to verify the intra-community supply, the lack of timely provision of such proof does not, by itself, justify denying the VAT exemption if the substantive conditions are otherwise met.

[40] InfoCuria. C-324/00. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-324/00&language=en.

[41] InfoCuria. C-115/16. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-115/16&language=en.

[42] InfoCuria. C-118/16. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-118/16&language=en.

[43] InfoCuria. C-119/16. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-119/16&language=en.

[44] InfoCuria. C-299/16. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-299/16&language=en.

[45] InfoCuria. C-135/17. Available from: https://curia.europa.eu/juris/liste.jsf?num=C-135/17&language=en.

There is limited evidence in our study cases of the implementation of mediation mechanisms in the judicial systems handling intergovernmental fiscal disputes.

68. Within the judiciary structures of various countries, mediation and alternative dispute resolution (ADR) methods are gaining recognition as essential tools for solving disputes, including fiscal conflicts. These methods offer notable benefits such as efficiency, timeliness and cost-effectiveness. ADR provides a quicker resolution path compared to traditional legal proceedings, which is essential for addressing fiscal issues promptly and preventing conflicts that can disrupt government operations and economic stability. Moreover, the cost-effectiveness of ADR is significant for government entities aiming to resolve disputes without excessive legal expenses, thus allocating more resources toward public services.

69. The flexibility of ADR allows for creative problem-solving, leading to personalised solutions that may not be possible through standard court rulings. Emphasising collaboration and consensus-building, ADR helps preserve and strengthen intergovernmental relationships, fostering a co-operative atmosphere conducive to future collaboration. The confidentiality of ADR processes encourages frank discussions, facilitating sincere negotiations and agreements while avoiding the politicisation of disputes. The expertise of mediators or arbitrators, often with specialised knowledge in fiscal matters, is beneficial in understanding the intricacies of these disputes and devising appropriate resolutions.

70. Although several countries are increasingly integrating mediation and ADR processes into their judicial systems, these are particularly used for non-fiscal disputes or private parties.[46] In Belgium, a 2019 reform grants judges the authority to mandate mediation at the onset of legal proceedings, either on their own accord or at a party's request, particularly when reconciliation appears feasible.[47] Austria also requires mediation in certain tenancy and family law disputes and encourages it in criminal cases to promote reconciliation between victims and offenders.[48] In Germany, the judiciary actively employs ADR methods particularly to labour law and arbitration through the German Institution for Arbitration (DIS).[49] Similarly, in the United States, the Internal Revenue Service (IRS) uses ADR methods primarily with private parties.[50]

71. Regarding intergovernmental fiscal disputes, there is limited evidence in our study cases of the implementation of ADR or other mediation mechanisms in the country's judicial systems. There can be various reasons for this. Intergovernmental fiscal conflicts often involve a multitude of actors, governments, agencies and authorities, including political and technical personnel, economists, lawyers and administrators. The complexity and scale of these disputes often require more co-operative approaches, involving broader policy and administrative mechanisms beyond the judiciary. Hence, while ADR and mediation offer significant advantages, their application in the specific context of intergovernmental fiscal disputes necessitates a more nuanced and multifaceted approach that considers the unique nature of these conflicts and the diverse stakeholders involved.

72. Furthermore, the impact of court-related mediation on judicial proceedings in European legal systems is modest, even in cases not involving intergovernmental fiscal disputes. Only a quarter of states and entities routinely provide data on the use of court-related mediation. This data spans a range of case

[46] Relevant to note that the evolving emphasis on mandatory mediation in parts of Europe aims to enhance resolution and reconciliation in legal disputes, as noted by the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ, 2022).

[47] This reform extends to legal entities under public law, who can now engage in court-related mediation.

[48] In Austria, certain tenancy law disputes require mediation before court proceedings and family law matters may involve mandatory mediation ordered by a judge, especially when it serves the child's best interest.

[49] The German Mediation Act of 2012 and the Güterichterverfahren, involving a settlement judge, demonstrate a commitment to ADR, but their application to intergovernmental conflicts is not explicitly evident in our case studies (Flecke-Giammarco et al., 2020).

[50] For instance, the Federal Mediation and Conciliation Service (FMCS) mediates labour-management disputes involving federal entities.

types, such as civil, commercial, family, administrative, labour, criminal and consumer cases. Nonetheless, the data is inadequate for drawing conclusive insights, and the total number of mediation cases remains generally low, constituting only a small fraction of overall court caseloads (CEPEJ, 2022).

Strong intergovernmental institutions are instrumental in the prevention and effective resolution of intergovernmental fiscal disputes.

73. The creation of robust intergovernmental institutions, such as committees, boards and councils, is instrumental in resolving intergovernmental fiscal disputes, primarily by fostering enhanced co-operation and communication between various levels of government. These institutions set up formal platforms for enhanced co-operation and communication across various government levels, facilitating dialogue and negotiation. This process is essential in developing a comprehensive understanding of fiscal challenges and in crafting collaborative solutions. Additionally, these institutions serve as neutral mediators in disputes, offering mechanisms for consensus-building and ensuring that all parties have their concerns addressed, thereby reconciling conflicting interests and facilitating mutually agreeable resolutions.

74. Furthermore, these intergovernmental institutions significantly contribute to formulating and recommending uniform policies and standards for fiscal management across different governmental tiers. The consistency achieved through these uniform policies helps reduce the inconsistencies that often lead to fiscal disputes. Moreover, the expertise provided by these bodies, typically comprising specialists in finance, law and public administration, is invaluable. They analyse fiscal issues, assess policy impacts and offer technical guidance. Additionally, they are responsible for monitoring the implementation of fiscal policies and agreements, evaluating their effectiveness and suggesting necessary adjustments or reforms. This oversight ensures that fiscal arrangements are both relevant and effective.

75. These institutions promote accountability and transparency in fiscal matters by facilitating open discussions and requiring financial disclosures. This transparency is crucial in fostering trust both within governmental bodies and among the public. Additionally, they establish a structured approach for governments to collaboratively address evolving economic and political situations, enabling the adjustment of fiscal policies to meet emerging challenges.

76. In federal systems across the globe, the creation of intergovernmental institutions has played a key role in successfully resolving fiscal disputes. This is demonstrated by the practices observed in all the countries included in our case study. In Australia, the Council of Australian Governments (COAG) and its successor body, the National Cabinet,[51] represent a prime example of an intergovernmental forum, bringing together leaders from the Commonwealth, states and territories. It has addressed financial, economic and public policy issues, operating through various working groups. The Australian case study highlights the crucial role of the National Cabinet in boosting the economy's efficiency through reduced bureaucracy and streamlined regulations.

77. In Belgium, the High Council of Finance advises on budgetary policies and serves as a platform for dialogue and consensus-building among different government levels on fiscal matters. Its influence was evident in the formulation of the Belgian Stability Programme, which outlined strategies for achieving budgetary targets and economic growth. Similarly, Brazil's National Council for Fiscal Policy (CONFAZ) is another example of a relevant intergovernmental institution. Comprising state-level Finance Secretaries and chaired by the Federal Minister for Finance, CONFAZ has been instrumental in harmonising tax policies and procedures across the country. It played a critical role in the implementation of the ICMS tax reform, a major step in streamlining state-level taxation.

[51] In 2020, the COAG was replaced by the National Cabinet, prompted by the need for a more streamlined and effective decision-making instance during the COVID-19 pandemic.

78. In Canada, the Federal-Provincial-Territorial (FPT) meetings of finance ministers foster collaborative governance, particularly in economic and fiscal policymaking. These meetings were crucial in developing a coordinated response during the global financial crisis and the COVID-19 pandemic, exemplifying the essence of co-operative federalism. The FPT meetings have proven particularly critical during economic challenges, exemplified by the enhancement of the Canada Pension Plan in 2017 and the recent agreement to increase health-related transfers. Additionally, FTP meetings involve not just high-level bureaucrats, but also span various levels of government, ranging from ministers to secretaries and technical advisors. This ensures that public policies are developed and refined at multiple levels for adequate implementation, highlighting the essence of co-operative federalism in Canada.

79. India's GST Council, chaired by the Union Finance Minister and including State Finance Ministers, is central to coordinating tax policies and decisions across the country. A notable achievement of the GST Council is the implementation of a dual GST model, which has been a major step in reforming India's taxation system.

80. In the United States, several institutions such as the Intergovernmental Fiscal Relations Committee (IGFR), the National Association of State Budget Officers (NASBO) and the National Governors Association (NGA) promote collaboration across government tiers in fiscal matters. The IGFR, for example, has been instrumental in facilitating discussions on state and local government fiscal sustainability, while NASBO and NGA have provided platforms for sharing best practices in financial management and advocating on behalf of their constituencies.

81. These examples from different countries underscore the significant role of intergovernmental institutions in federal systems. They demonstrate how such bodies facilitate dialogue, build consensus, harmonise policies and promote collaborative governance, thereby ensuring the effective resolution of intergovernmental fiscal disputes. Additionally, collaborative dynamics among the executive and legislative branches can promote adaptability and reform, facilitating the evolution of legal frameworks and fiscal arrangements in response to changing conditions. This flexibility is essential to reduce the frequency and severity of intergovernmental fiscal disputes, ensuring a dynamic and responsive governance structure.

82. Examples from Belgium and Germany highlight the effectiveness of these strong institutional connections. In Belgium, fiscal management during crises involves a mix of political and administrative strategies, avoiding strict fiscal rules for voluntary agreements among Communities and Regions to limit deficits and debts, with the federal government playing a leading role in fiscal consolidation. This approach, supported by the regionalised party system and the involvement of expert bodies like the High Council of Finance, has been crucial in tackling collective action challenges in fiscal management (Troupin et al., 2015; Schnabel, 2019).

83. In Germany, institutions like the Bundesrat and the Vermittlungsausschuss (Joint Committee) exemplify how institutional co-operation can resolve fiscal disputes. The Bundesrat facilitates Länder representation at the federal level, integrating regional interests into federal decision-making and acting as a mediator in disputes.[52] The Vermittlungsausschuss, comprising representatives from both the Bundesrat and Bundestag, plays a central role in fostering intergovernmental co-operation and resolving legislative disputes, embodying Germany's commitment to co-operative federalism and emphasising the importance of consensus and democratic governance[53] (Jeffery, 2007; Axer, 2010).

[52] As a federal constitutional body, the Bundesrat represents both the entire nation (the Federation) and the individual federal states (the 16 Länder). Its primary role is to advocate for the interests of the Länder at the national level, while also ensuring that these interests align with the broader needs of the Federation. Further details are available at: https://www.bundesrat.de/EN/funktionen-en/funktion-en/funktion-en-node.html.

[53] The Vermittlungsausschuss mediates conflicts, proposes balanced legislative amendments, and oversees budgetary matters to ensure coherent fiscal policies across governance levels.

Future challenges in managing intergovernmental fiscal disputes: navigating evolving landscapes

84. The management of intergovernmental fiscal disputes is set to face numerous challenges, owing to evolving political, economic and social landscapes. A key challenge is the shifting dynamics of federal-state relationships, influenced by changes in political ideologies and power structures. Such shifts can result in new disputes over fiscal autonomy, revenue sharing and jurisdictional authority. Compounding these challenges is economic volatility, driven by global financial uncertainties, which adds strain to resources and leads to conflicts over funding allocations and budget priorities. Additionally, as economies diversify, the complexity of tax systems increases, potentially sparking disputes in tax administration, revenue distribution and the need for modernisation, particularly in digital economies.

85. Demographic changes, such as ageing populations and urbanisation, along with evolving social demands, are likely to exacerbate conflicts over resource distribution and service provision. Environmental challenges like climate change require coordinated fiscal responses, which may lead to disputes over funding responsibilities and cost distribution. Technological disparities across regions can also create conflicts over technology infrastructure investments and revenue allocations. Furthermore, legal and constitutional reforms might provoke new disputes or necessitate renegotiating existing agreements, as they reshape fiscal relationships between various levels of government.

86. Collaboration and consensus-building are vital yet complex challenges in this evolving landscape. Fiscal issues' interconnectedness demands collaborative approaches, but achieving consensus among diverse political, regional and administrative entities is intricate. Globalisation adds further challenges, such as cross-border fiscal issues and tax competition, requiring coordination between national and subnational governments. Therefore, innovative and adaptable strategies are essential to address these challenges, emphasising the need for sustainable and effective mechanisms in intergovernmental fiscal relations.

87. Our case studies reveal specific examples related to these future challenges. Belgium, for instance, struggles with the mismatch between decentralised expenditure responsibilities and revenue authority, leading to vertical fiscal gaps and greater reliance on transfers. The need for improved fiscal policy coordination is paramount to enhance the efficiency of its decentralised fiscal framework.

88. Additionally, subnational insolvency presents a significant challenge, as evidenced in countries like Germany, the United States and Brazil. These instances have led to intricate legal and financial conflicts, highlighting the complexities of managing such fiscal crises at the subnational level. In Germany, the Berlin case in 2006 saw the city seeking federal assistance for its debt, but the Federal Constitutional Court emphasised the responsibility of individual Länder for their fiscal policies and denied aid as the Länder Berlin's budgetary situation was simply tight, but resolvable on its own, underscoring that supplementary grants for the purpose of aiding the budget consolidation of a financially weak Land are subject to a strict ultima ratio principle.

89. In 2013, Detroit faced the largest municipal bankruptcy in U.S. history, with a staggering debt of approximately USD 18 billion. The crisis stemmed from a combination of factors, including a declining population, an eroding tax base and long-term financial mismanagement. The city's journey through Chapter 9 bankruptcy protection involved intricate legal deliberations and restructuring efforts. This case highlights the complexity of intergovernmental fiscal disputes, as it required coordinated efforts between municipal, state and federal authorities to navigate legal challenges, creditor negotiations and the restructuring process. Detroit's bankruptcy underscores the need for effective fiscal management and robust legal frameworks within federal systems.

90. Brazil presents a different aspect of this challenge. The country has witnessed a pattern of 'bailout games', where subnational governments, knowing they might be bailed out by the Federal government, have lacked incentives for prudent financial management. This behaviour led to multiple bailouts, rescuing the solvency of various states and municipalities and culminating in substantial fiscal costs. Recent rulings

by Brazil's STF mandated federal rescue for states like Minas Gerais, Goiás, Espírito Santo and Paraná, which faced severe liquidity constraints. These decisions, emphasising co-operative federalism and the preservation of competencies among federated entities, point to the STF's positioning of the Federal government as a guarantor within Brazil's intergovernmental relations. However, this approach also perpetuates a culture of subnational fiscal indiscipline, rooted in the design of the 1988 Constitution (Dantas, 2020; Echeverria & Ribeiro, 2018).

91. Finally, the case of Spain's taxation on substantial fortunes serves as a current example, illustrating the difficulties in establishing equitable tax mechanisms within a changing economic environment. Box 5 provides further details on this case.

Box 5. Spain's taxation policies on large estates

The ITSGF (temporary solidarity tax on large fortunes)[54] has been introduced as a national measure in Spain to harmonise wealth taxation across various regions in 2022, 2023 and 2024.[55] This addresses the disparities caused by some Autonomous Communities (CCAA) that have lowered their wealth taxes. Under this system, a national tax is applied, and any wealth tax already paid at the regional level is deducted. As a result, the ITSGF is only paid in areas where the regional wealth tax has been reduced or eliminated. On November 7, 2023, Spain's Constitutional Court affirmed the legality of the ITSGF, which is applied in addition to Spain's existing wealth tax. The ITSGF features progressive rates: 1.7% on net assets between €3 million and €5,347,998, 2.1% on assets between €5,347,998 and €10,695,996 and 3.5% on assets exceeding €10,695,996. This tax applies to Spanish residents' global wealth and non-residents' wealth located in Spain. Exemptions from the wealth tax, including family businesses, primary residences (up to €300,000) and certain pension plans, also apply to the ITSGF.[56]

Once the ITSGF was constitutionally approved, the CCAA decided to remove the tax breaks on the wealth tax. This change ensured that residents in their regions paid the regional wealth tax instead of the central government tax, shifting the tax burden back to the local level. For instance, the Community of Madrid will start levying a wealth tax on estates exceeding 3 million euros following the Constitutional Court's dismissal[57] of its challenge against a state-imposed tax aimed at regions that offer tax reductions on such wealth. In 2023, the ITSGF generated 623 million euros nationwide, with 89% (555 million euros) collected in the Community of Madrid from 10,302 taxpayers. Across Spain, 12,010 large estates, representing just 0.1% of taxpayers, paid an average of 52,000 euros for this tax, which supplements the Wealth Tax. This state tax, targeting net assets over 3 million euros, is accrued annually on December 31, with declarations submitted between July 1 and 31. To prevent double taxation, taxpayers only pay the Solidarity Tax on asset portions not taxed by their Autonomous Community's Wealth Tax. The amount paid in the Wealth Tax is deducted from this new tax's payment, leading to most collections coming from large assets in Autonomous Communities that had previously reduced or removed this tax. Nevertheless, Madrid and Andalusia have implemented rules that effectively nullify the wealth tax for their residents.[58] Opposition in Madrid to the wealth tax on fortunes over 3 million euros stems from concerns about economic impact and regional autonomy. Critics argue

[54] Acronym for: Impuesto temporal de Solidaridad de las Grandes Fortunas.

[55] The ITSGF has been extended to 2024 by Royal Decree Law 8/2023.

[56] KPMG. Spain: Wealth tax-related legislative proposals. Available from: https://kpmg.com/us/en/home/insights/2022/11/tnf-spain-wealth-tax-related-proposals.html.

[57] Constitutional Court of Spain. Decision 149/2023, November, 7. Available from: https://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/29821.

[58] In Madrid, the allowance has been in effect since 2009, while in Andalusia, it started in 2022 (Article 2. of Law 3/2008 and consolidated text approved by Article 20 of Legislative Decree 1/2010; Article 25 bis of Law 5/2021, and Royal Decree-Law 7/2022, respectively).

that the tax could discourage investment and lead to wealthy residents relocating. The local government also fears a significant loss of foreign investment, potentially affecting Madrid's competitiveness.

Following the ITSGF's constitutional validation, the Madrid Assembly has proposed two legislative initiatives for 2023 to adjust tax measures in the Wealth Tax[59] and Personal Income Tax.[60] The first initiative aims to remove the benefit to ensure resources are allocated to the Wealth Tax collection instead of ITSGF collection, and the second involves the maintenance of tax rates for the income tax.

4. Recommendations

92. In light of the complexities and variations in intergovernmental fiscal disputes observed across different countries, this section proposes targeted recommendations. These are derived from our comprehensive comparative analysis and case studies, aiming to inform policy and institutional strategies for more effective management of such disputes.

Provide a clear definition of power and responsibilities in decentralised systems

93. Our findings demonstrate that decisions by constitutional courts significantly influence the decentralisation of services, impacting the balance of power, funding mechanisms, and policy directions in both federated and centralised governments. Managing decentralisation policies effectively is crucial to mitigate the negative effects of intergovernmental disputes. It is essential to implement clear governance structures, define powers distinctly, and establish robust conflict resolution mechanisms. Successful decentralisation requires balancing local autonomy with federal or central government objectives to ensure efficient and high-quality service delivery that meets local needs while maintaining national standards. Fostering dialogue, co-operation, and consensus-building among different government tiers is key to achieving this balance. In this context, our recommendations include:

a. **Provide Clarity in Powers and Responsibilities:** Establish precise constitutional and legal frameworks that clearly delineate the powers and responsibilities of different government levels to prevent ambiguities that often lead to fiscal disputes. This clarity will streamline decision-making processes and reduce jurisdictional conflicts.

b. **Enhance the Balance in Fiscal Decentralisation:** While local autonomy enables tailored regional solutions, it should be balanced with overarching national standards. This ensures uniformity and equity in service provision and fiscal management, aligning local initiatives with national policy objectives.

c. **Understand the role of courts in providing guidance and supervision in fiscal matters**: Constitutional and supreme courts provide guidance and oversight in fiscal matters, maintaining equilibrium between national unity and subnational autonomy. We encourage the use of mediation and arbitration to prevent intergovernmental conflicts from reaching courts. These require the consideration of unique aspects of these conflicts and the multiple stakeholders involved.

Enhance fiscal coordination and co-operation

94. Our findings highlight the crucial role of strong intergovernmental institutions in preventing and effectively resolving fiscal disputes between government levels. The establishment of robust

[59] Madrid Assembly. Proposal nº 4/2023. Available from: https://www.asambleamadrid.es/static/docs/registro-ep/RGEP14485-23.pdf.

[60] Madrid Assembly. Proposal nº 3/2023. Available from https://www.asambleamadrid.es/static/docs/registro-ep/RGEP14483-23.pdf.

intergovernmental bodies such as committees, boards, and councils enhances co-operation and communication across different governmental tiers. These institutions provide formal platforms for dialogue and negotiation, which are vital for developing a shared understanding of fiscal challenges and formulating collaborative solutions. They also act as neutral mediators, offering consensus-building mechanisms that address and reconcile conflicting interests, facilitating mutually agreeable resolutions.

95. Furthermore, these institutions play a significant role in formulating and recommending uniform fiscal policies and standards, which helps to minimise inconsistencies that often trigger disputes. The expertise of these bodies, comprising specialists in finance, law, and public administration to analyse fiscal strategies, assess policy impacts and provide technical guidance, is instrumental in monitoring and evaluating the implementation of fiscal policies and agreements, suggesting necessary adjustments to ensure relevance and effectiveness. In this context, our recommendations include:

a. **Develop Platforms for Dialogue and Co-operation:** Establish regular meetings and collaborative frameworks among federal, state, and local governments to facilitate consensus-building, harmonise policy directions, and ensure cohesive fiscal management across different government tiers.

b. **Strengthen Intergovernmental Institutions:** Enhance the role of committees and councils in fostering co-operation. These institutions provide platforms for building consensus, harmonising policies, and resolving disputes, thereby improving fiscal management efficiency. They also ensure compliance with fiscal rules and transparency in financial management. Additionally, establishing collaborative relationships among the executive and legislative branches can ensure a comprehensive approach to fiscal issues, balancing different perspectives and facilitating smoother policy implementation.

Ensure adaptability to changing conditions, providing stability and coordination for future challenges

96. Our findings highlight that the management of intergovernmental fiscal disputes will increasingly face complex challenges due to evolving political, economic, and social landscapes. Shifts in federal-state relationships, influenced by political ideologies and structural changes, often lead to new disputes over fiscal autonomy, revenue sharing, and jurisdictional authority. Additionally, economic volatility and the increasing complexity of tax systems, especially in digital economies, exacerbate conflicts over funding allocations and budget priorities. These dynamics are further complicated by demographic shifts, such as ageing populations and urbanisation, which intensify conflicts over resource distribution and service provision. This evolving landscape demands collaborative and adaptable governance strategies to effectively manage and resolve these disputes. In this context, our recommendations include:

a. **Proactively preparing and planning**: we emphasise the need for innovative and adaptable strategies to address these challenges effectively. Governance structures should be flexible to adapt to shifting economic, political, and social conditions, including demographic changes, environmental challenges, and technological advancements. This adaptability is crucial for providing stability and facilitating global coordination to manage future intergovernmental fiscal challenges efficiently.

97. These recommendations, tailored to the complexities of intergovernmental fiscal relations, aim to foster a balanced and sustainable approach to fiscal federalism. They highlight the importance of clarity in roles, judicial guidance, cautious yet innovative conflict resolution and robust co-operation across all government levels.

5. Conclusion

98. This document has presented an institutional overview of the practice of constitutional courts and intergovernmental bodies in interpreting and safeguarding the division of powers between central and

subnational entities within the context of intergovernmental fiscal disputes. By delving into the intricacies of federal systems through detailed case studies from a diverse array of nations, the study has illuminated the complex dynamics of fiscal federalism, offering an updated perspective on shifts in power among government tiers, influenced by judicial rulings and legislative changes in decentralised countries.

99. The primary contribution of this project lies in its comprehensive analysis of the judicial and institutional mechanisms in place across various federal systems, focusing on their role in resolving intergovernmental fiscal disputes. The study underscores the essential role of Constitutional Court cases and political conflicts in shaping these disputes, as well as the potential for mediation and intergovernmental bodies in conflict resolution. However, our findings suggest that real mediation forums and techniques are not widely established or effectively utilised in many federal countries. This gap indicates a need for stronger institutional capacities to handle fiscal disputes more efficiently, rather than relying predominantly on court adjudication.

100. Policy recommendations emanating from this study advocate for providing clear definitions of power and responsibilities among central and subnational governments, understanding the role of courts in providing guidance and supervision in fiscal matters, enhancing fiscal coordination and co-operation and ensuring adaptability to changing conditions. These recommendations are informed by the diverse experiences and approaches of the countries studied, highlighting best practices that can be adapted and adopted by others.

101. A notable observation from the case studies is the impact of the COVID-19 pandemic, which has served as a testament to the capability of local governments to collaborate effectively under pressing circumstances. This co-operation, essential for managing a crisis that affects the entire economy and the provision of critical health services, also revealed the influence of political affiliation on the ease or difficulty of achieving such co-operation. The varied responses, dictated in part by political leanings, underscore the importance of establishing mechanisms that transcend political divides to ensure effective governance, especially in times of crisis.

102. This paper calls for a proactive approach to managing intergovernmental fiscal disputes. Federal countries stand to benefit significantly from providing a clear definition of power and responsibilities among central and subnational governments, enhancing co-operation among governmental branches and intergovernmental institutions to collectively work towards a more harmonious and efficient system of governance.

Annex A. Case studies

103. In this appendix, we present the case studies that underpin the conclusions of our study, offering an in-depth look at the government and legal systems of each case. We highlight key decisions from the Constitutional Courts in these countries, focusing on their influence in defining or clarifying laws and legal concepts relevant to local and regional governments. Furthermore, we examine the function and effect of various bodies and committees dedicated to fostering communication and co-operation across different levels of government in each of the countries analysed.

Australia

104. The Commonwealth of Australia, functioning as the federal government, is structured under a parliamentary system permeated with federalism. At its helm is the Governor-General, representing the monarch, appointed on the recommendation of the Prime Minister, who leads the majority party or coalition in the House of Representatives. The Commonwealth's jurisdiction extends over a broad array of sectors, including but not limited to foreign affairs, defence, fiscal and monetary policy, customs, communications, immigration and citizenship. It operates through various departments and agencies, each specialised in their respective domains. Additionally, the Commonwealth plays an essential role in harmonising the activities of the states and territories, sometimes leveraging financial grants to encourage policy alignment.

105. Australia's federal structure encompasses six states and two self-governing territories.[61] There are also eight other territories. The states and self-governing territories each have exclusive authority over key areas such as education, healthcare, law enforcement, transportation, local governance and land management. Additionally, there exists a sphere of concurrent powers where the Commonwealth, states and territories share responsibilities. This includes taxation, industrial relations, corporate regulation, environmental policy and consumer protection.

106. The Commonwealth Parliament is bicameral, comprising the House of Representatives and the Senate. The House, reflecting the Commonwealth's populace, has 151 members elected from individual constituencies for three-year terms. The Senate, representing the states, consists of 76 members. State senators are elected for six-year terms, and territory senators for three-year terms, from state and territory-wide constituencies, ensuring regional representation.

107. The Australian judiciary, an essential pillar of governance, includes a network of courts at both federal and state or territory levels. There are also tribunals at the federal, state and territory levels. The courts adjudicate criminal and civil matters. Federal courts handle matters under federal jurisdiction, such as taxation and industrial relations, while state and territory courts also deal with local issues like crime.

[61] There exists a key constitutional distinction in the self-governing status between the Australian Capital Territory (ACT) and the Northern Territory (NT). The ACT possesses a higher degree of autonomy as a self-governing territory pursuant to the Australian Capital Territory (Self-Government) Act 1988. Comparatively, while the NT shares similar rights of internal self-governance granted through the Northern Territory (Self-Government) Act 1978, it maintains a quasi-state constitutional standing with fewer devolved competencies than the ACT. This differential autonomy is further exemplified by repeated referendums in the NT rejecting proposals to advance to official statehood with codified self-governing authority equivalent to Australia's six states. In contrast, the ACT is recognised as exercising maximal self-governing powers analogous to statehood within the existing federalist framework, barring specific powers constitutionally reserved for the Commonwealth.

108. The High Court of Australia, seated in Canberra, stands as the apex of this judicial hierarchy.[62] As the ultimate arbiter in the interpretation of the Australian Constitution,[63] the High Court possesses the authority to adjudicate disputes on the balance of power between the Commonwealth and the states, including those about intergovernmental fiscal matters, such as the extent of the Commonwealth's power to tax and spend, the rights and responsibilities of state governments in managing their own financial affairs and the distribution of fiscal resources and responsibilities across different levels of government. It not only interprets and enforces the Constitution but also hears appeals from inferior courts and adjudicates cases of original jurisdiction.

109. Complementing the High Court are the Federal Court of Australia and the various state and territory Supreme Courts. While the Federal Court primarily addresses matters of federal law, including aspects of taxation and finance that could influence intergovernmental fiscal relations, it is the state's Supreme Courts that often deal with issues more localised in nature, yet with potential implications for state fiscal autonomy. These courts collectively ensure that laws adhere to the constitutional framework, safeguarding the principles of federalism.

110. In Australian constitutional law, the lack of a comprehensive enumeration of fundamental rights within both the Australian Constitution and state constitutions has led to a significant focus on federalism within the High Court's jurisprudence.[64] This emphasis primarily revolves around delineating the power distribution between the Commonwealth and the states. The High Court has historically grappled with three foundational interpretations of the Constitution: as a statute of the British Parliament, as a federal compact among Australian states and as a social contract validated by the consent of the Australian populace (Aroney, 2017).

111. These interpretations are not mutually exclusive and have informed the Court's diverse modalities of constitutional reasoning. This reasoning encompasses an analysis of the text, the structure, the historical context, established legal doctrines, political morality and comparative law, reflecting the Court's adherence to its English common law origins.[65] Such a multifaceted approach enables a nuanced and evolving understanding of the Constitution in response to contemporary legal and societal challenges (Aroney, 2011).

112. The landmark Engineers case[66] of 1920 epitomises the Court's approach towards centralisation in federalist jurisprudence. The case involved a dispute between the Amalgamated Society of Engineers (ASE), a union representing engineers and the Adelaide Steamship Company, a shipping company. The ASE lodged a claim with the Commonwealth Court of Conciliation and Arbitration (CCCA) seeking an award for its members who were employed by the Adelaide Steamship Company and other employers in the shipping industry. The CCCA awarded the ASE's members several benefits, including higher wages and better working conditions. The Adelaide Steamship Company appealed the CCCA's award to the High Court, arguing that the CCCA did not have the power to make the award. The High Court unanimously

[62] Comprising seven Justices appointed by the Governor-General upon the Prime Minister's advice, its members serve until the age of 70, barring earlier resignation or retirement.

[63] The power to interpret the Constitution is not confined to the High Court alone. All Australian courts have the authority to consider constitutional questions, as they are all obligated to discern and apply the law, which may occasionally necessitate the application of constitutional principles.

[64] The Australian Constitution and state constitutions lack a comprehensive list of fundamental rights, instead containing only a few dispersed guarantees.

[65] On modalities of constitutional interpretation, refer to Bobbitt (1982). On their application in Australia, refer to Aroney (2011).

[66] Amalgamated Society of Engineers v. Adelaide Steamship Co Ltd (1920) 28 CLR 129.

rejected the Adelaide Steamship Company's arguments and held that the CCCA had the power to make an award in the dispute, even though the employers involved were in different states and territories.

113. The Engineers' case is widely regarded as a cornerstone in Australian constitutional jurisprudence, setting a precedent that profoundly influenced subsequent legal interpretations and legislative practices in the country. This High Court decision reinterpreted the Australian Constitution, seen as an enactment of the British Parliament, intended to manifest the will of the Australian people. It shifted from a narrow to a broader understanding of Commonwealth powers, enhancing the federal government's legislative reach, especially in areas shared with state jurisdictions. This shift diminished the doctrine of implied intergovernmental immunities, steering Australia towards a more centralised federation. Over time, however, this expansive view of federal authority has raised concerns among state officials regarding the extent of the Commonwealth's power, underscoring persistent federal-state tensions (Aroney & Kincaid, 2017).

114. The following table enumerates some relevant Australian High Court decisions impacting federalism and intergovernmental relations.

Table 1. Key high court of Australia decisions on intergovernmental fiscal disputes and federalism

Case Name	Year	Issue	Decision	Central Gov. v. SNGs	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
Williams v. Commonwealth (2012) 248 C.L.R. 156 (School Chaplains Case)	2012	Whether the Commonwealth can provide funding to religious organisations for the provision of chaplaincy services in public schools.	The Commonwealth cannot provide funding for the provision of chaplaincy services in public schools. The Commonwealth executive requires legislative authority before it can spend public money unless spending is supported by the executive power under s 61.	SNGs	Constitution, section 61	Nationwide	The decision limited the Commonwealth's ability to fund certain programs.	Impacts on the budget of religious organisations	Clarified the principle that the Commonwealth cannot spend money without legislative authority outside of spending supported by executive power.
JT International SA v Commonwealth of Australia (2011) 250 CLR	2011	Whether the Commonwealth has the power to make laws regulating the sale of tobacco products and whether those laws infringe the just terms requirement in s 51(xxxi).	Under its trade and commerce power, the Commonwealth can make laws regulating the sale of tobacco products. The impugned laws did not infringe s 51(xxxi) as the laws did not have the effect of acquiring 'property'. For an acquisition to engage the s 51(xxxi) requirement for providing just terms, an acquisition must involve the accrual to some person of a proprietary benefit or interest	Central Gov.	Constitution, section 51(xxxi)	Nationwide	Reaffirmed the Commonwealth's broad trade and commerce power.	Positive impact on public health	Affects the regulation of tobacco products in Australia, which is important for public health.
Pape v. Federal Commissioner of Taxation: (2009) 238 CLR 1	2009	Whether s 81 empowers the Commonwealth to appropriate and spend money out of the consolidated revenue fund.	The Commonwealth did not have an unlimited power to spend for any purpose under the appropriation provisions in ss 81 and 83 of the Constitution. Rather, Commonwealth spending had to be referable to the executive power (including the implied nationhood power) or a head of legislative power.	SNGs	Sections 51 (xxxix), 61, 81 and 83 of the Constitution	Nationwide	The Commonwealth cannot spend money purely on reliance on s 81.	Strengthened the states' financial position	Affects the Commonwealth's ability to spend money.

State of New South Wales v. Commonwealth: (2006) 229 CLR 1 (Work Choices Case)	2006	Scope of Commonwealth's power to make laws with respect to certain 'employees' and 'employers' under the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth).	The corporations power under s 51(xx) enables the Commonwealth Parliament to enact industrial relations law which prescribes the industrial rights and obligations of corporations and their employees and the means by which they are to conduct their industrial relations	Central Gov.	Section 51(xx) and 51 (xxxv) of the Constitution	Nationwide	Increased Commonwealth power over workplace relations	Reduced bargaining power for workers. Impacted state labour laws and fiscal autonomy.	Altered the division of legislative powers, favouring the Commonwealth. Significant impacts on Australian workers, employers and the national economy.
Ha v. New South Wales (1997) 189 CLR 465	1997	Validity of state-imposed licence fees with respect to duty-free shops.	Ruled licence fees as excise duties, which only the Commonwealth can levy.	Central Gov.	Definition of excise duties under s 90 of the Constitution.	Nationwide	Limited states' revenue-raising capabilities; increased reliance on Commonwealth.	Significant; affected states' financial independence.	Redefined the fiscal balance between the Commonwealth and states.
Commonwealth v. State of Tasmania: (1983) 158 CLR 1 (Tasmanian Dam Case nº1)	1983	Whether the external affairs power extends to allow the Commonwealth to legislate on matters internal to Australia to give effect to treaty obligations.	The Commonwealth can use the external affairs power to legislate for matters internal to Australia to implement international treaty obligations to which Australia is a party.	Central Gov.	Section 51(xxix) of the Constitution	Nationwide	Clarified the scope of the Commonwealth's external affairs power to legislate with respect to treaty obligations in the states and territories.	Impacts the ability of the Commonwealth to legislate on international treaty obligation, possibly affecting industries in the states.	Significant impact on the scope of Commonwealth legislative power with respect to external affairs.
State of Victoria v. Commonwealth: (1971) 122 CLR 353 (Income Tax Case)	1971	Scope of the Commonwealth´s autonomy to use the taxation power to impose a tax on the income of state employees.	The High Court held that the Commonwealth can use the taxation power to impose a tax on the income of state employees.	SNGs	Section 51 (ii) and s 96 of the Constitution	Nationwide	Impacted the scope of the taxation power and its interaction with states	Increased the Commonwealth's tax revenue	Relevant precedent for the development of the Australian tax system
Victoria v. Commonwealth: (1957) 99 CLR 575 . (Uniform Tax Case nº2)	1957	Whether the Commonwealth can use its the grants power to impose a uniform tax on incomes and provide relevant grants to the States from moneys collected from those taxes in circumstances where grants are conditioned upon the States not levying similar taxes. .	The High Court once again upheld the Commonwealth´s power to provide grants to the States on this basis. The Court held that the scope of non-permissible coercion in the context of s 96 is limited to legal compulsion. n. and provide those grants.	Central Gov.	Sections 51(ii) and 96 of the Constitution	Nationwide	Affirmed scope of Commonwealth power over state grants.	Redefined Commonwealth and state taxation powers.	Strong impact on the Commonwealth's and states' finances, as well as the distribution of taxation powers in Australia.
South Australia v. Commonwealth: (1942) 65 CLR 373. (Uniform Tax Case nº 1)	1942	Whether the Commonwealth can use its taxation power and the grants power to impose a uniform tax on incomes and provide relevant grants to the States from moneys collected from those taxes in circumstances where grants are conditioned upon the States not levying similar taxes.	The High Court upheld the Commonwealth´s power to impose a uniform tax on Income, and the scheme did not bar the states from levying their own tax. The grants to states was supported by the grants power under s 96.	Central Gov.	Sections 51(ii), 96 and 99 of the Constitution	Nationwide	Clarified the scope of Commonwealth power over taxation.	Redefined Commonwealth and state taxation powers.	Impacted fiscal power in the Commonwealth, affecting federal-state dynamics and intergovernmental relations
Amalgamated Society of Engineers (ASE) v. State of Victoria: (1920) 28 CLR 129	1920	Whether the Commonwealth can use the conciliation and arbitration power to regulate the wages and conditions of employees in the states.	The Commonwealth can use the conciliation and arbitration power to regulate the wages and conditions of employees, but only to the extent that the regulation is necessary for the effective exercise of the Commonwealth's other powers under the Constitution.	Central Gov.	Section 51(xxxv) of the Constitution	Nationwide	The case resulted in the Commonwealth's power not being qualified by any implied reservation of power by the states.	Impacted the scope of the Commonwealth to regulate wages and conditions of employees in the states	It affected the Commonwealth's ability to regulate wages and conditions, which can have a significant impact on the national economy.

Category definitions:

1. Case Name: The official title of the legal case, typically formatted as "Plaintiff v. Defendant".
2. Year: The year the Constitutional/Supreme Court decided on the case.
3. Issue: A brief description of the primary legal or policy issue that the case addressed.
4. Decision: The Supreme Court's ruling or judgment on the case.
5. Central Gov. vs. SNGs: Indicates whether the decision favoured the Central Government (Central Gov), favoured the state or subnational governments (SNGs), or was neutral in its impact on the balance of power.
6. Legal Principle Invoked: The primary legal or constitutional principle or doctrine central to the case's decision.
7. Range of Decision: Categorises the decision's scope, such as whether it has a nationwide impact, impacts a specific region, or only affects the parties involved.
8. Impact on Intergovernmental Relations: Describes how the decision affects the relationship between different levels of government, such as increasing state autonomy or strengthening federal oversight.
9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

115. The High Court of Australia, in its interpretation of the Constitution, has predominantly preferred a centralised approach, underscoring the pre-eminence of the Commonwealth's legislative authority. This centralisation is characterised by a constriction in the States' capacity for generating own-source revenues and an increase in conditionally structured transfers from the Commonwealth, indicative of a more directive federal fiscal policy. Unfavourable High Court rulings and the strategic utilisation of the Commonwealth's spending power highlight this tendency (Fenna, 2019).

116. A relevant example is the case of Ha v. New South Wales in 1997, in which the Court delivered a significant judgment that favoured the Commonwealth over the states in an intergovernmental fiscal dispute. The crux of the case revolved around the validity of certain provisions of the Business Franchise Licenses (Tobacco) Act 1987 of New South Wales (NSW) under the Australian Constitution. The plaintiffs, involved in the retail and wholesale of tobacco products, challenged the assessments made under the Act, arguing that these constituted duties of excise, which under Section 90 of the Constitution, only the Commonwealth government could impose. The High Court, in its analysis, rejected the narrow interpretation of excise duties advocated by the State of NSW and the defendants. Instead, it upheld a broader interpretation that included taxes on the sale or distribution of goods, not just on production or manufacture. This ruling invalidated the contested sections of the NSW Act, affirming that such impositions were indeed duties of excise and thus within the exclusive purview of the Commonwealth. This decision underscored the constitutional limitations on state powers in imposing certain types of taxes, thereby reinforcing the fiscal predominance of the Commonwealth in Australian intergovernmental relations.[67]

117. In the Tasmanian Dam Case, the Commonwealth sought to leverage its external affairs power to halt Tasmania's construction of a dam on the Franklin River, aiming to protect a World Heritage Site. The High Court held that the external affairs power authorised laws which operated domestically so long as such laws were enacted for the purposes of treaty-implementation.

118. This centralising perspective has led to a broad interpretation of federal powers, extending their reach into various domains without significant restraint from the residual powers of the states. As a consequence, this judicial stance has rendered the states somewhat vulnerable. Their capacity to enact legislation in certain areas is largely contingent upon the Commonwealth's discretion to relinquish control. This dynamic places the states in a position where their legislative autonomy is, to a considerable extent, dependent on the Commonwealth's legislative choices (Crommelin, 1995; Popellier, 2017).

119. Moreover, the rigidity of Australia's constitutional amendment process is evident in the fact that only eight out of forty-five proposed amendments have received the requisite approval from both a national majority and a majority of states, as required by section 128 of the Constitution. This has led to

[67] It is important to note that a cumulative result of such federal fiscal decisions like Ha v. New South Wales has been to lead to a pronounced vertical fiscal imbalance in Australia's federal system, with the Commonwealth wielding greater taxation authority relative to the states.

characterisations of Australia as the "constitutionally frozen continent", a term coined by Sawer (1967),[68] reflecting the challenges in altering the nation's constitutional framework (Arcioni & Stone, 2020).

120. However, it is important to acknowledge that while there is a discernible trend towards centralisation in High Court decisions, the Court has also made significant rulings that reinforce the principles of Australian federalism. These decisions uphold constitutional safeguards that constrain the Commonwealth's legislative and administrative powers, thereby ensuring a degree of autonomy for states and territories. Such rulings are fundamental in maintaining the federal balance, affirming the states' role within the Australian federation and demonstrating the High Court's capacity to act as a counterbalance to excessive centralisation.

121. For instance, in Williams v. Commonwealth (2012) and Williams v. Commonwealth (2014), the High Court determined that the Commonwealth's executive power does not inherently authorise contractual agreements and financial allocations for services like school chaplaincy, absent specific legislative backing. The Court found such spending unconstitutional. This judgment significantly curtailed the Commonwealth's capacity to fund state-level programs directly, even when aligned with national policies.

122. Finally, the 2009 Pape v. Federal Commissioner of Taxation decision challenged the conventional understanding that parliamentary appropriation sufficed as authority for executive expenditure. The Constitution mandates that federal treasury withdrawals require a lawful appropriation (s. 83) and must be "for the purposes of the Commonwealth" (s. 81). The Court elucidated that the Commonwealth must rely on a head of legislative power or the executive power to appropriate and spend money.[69]

123. In the Australian federal system, states retain a significant role in national politics, serving as crucial centres of regional and local political engagement. This sustained influence can be attributed to two primary factors. Firstly, Australia's expansive geography necessitates a decentralised approach to governance, positioning states as vital intermediaries between the federal government and the nation's diverse communities. Secondly, there exists a deep-rooted commitment among Australians to local and state-level political participation. This commitment to regional representation not only strengthens local identity and engagement with regional issues but also acts as a counterpoint to the centralised power of the federal government.

124. Constitutionally, while the High Court has not explicitly reserved certain powers exclusively for the states, it has consistently acknowledged their ongoing significance as distinct governmental entities with independent functions. This acknowledgement highlights the intrinsic role of states within the Australian political framework, even as their specific jurisdictions are increasingly overshadowed by federal dominion (Aroney, 2017).

125. Therefore, despite the challenges posed by the expanding influence of the federal government, Australian states remain indispensable to the country's political fabric. They are instrumental in fostering regional engagement and ensuring local representation. Their constitutional recognition safeguards their persistent involvement in Australia's political architecture, maintaining their relevance even amidst the evolving power dynamics between the federal and state levels.

126. In the context of federative co-operation, several key institutions, committees and bodies in Australia play an essential role in fostering collaboration across government tiers on financial, economic

[68] For more information regarding the almost immutability of the Australian Constitution, refer to: Arcioni, E., & Stone, A. (2020). The paradox of the frozen continent. *Routledge Handbook of Comparative Constitutional Change*, 388.

[69] In another case JT International SA v Commonwealth of Australia (2011) 250 CLR 1 (British American Tobacco Australasia Limited & Ors v Commonwealth of Australia), the plaintiff challenged the validity of certain tax law that regulated the sale of tobacco products. They argued that the laws were an invalid exercise of the Commonwealth's power. The High Court held that the Commonwealth had the power to enact the tax laws in question.

and public policy issues. The National Cabinet stands as the preeminent intergovernmental forum, convening leaders from the Commonwealth, states and territories.[70] Tasked with setting national priorities and orchestrating policy coherence across all government levels, the National Cabinet operates through National Cabinet Reform Committees across key priorities, including Health, Energy, Infrastructure and Transport, Skills and Rural and Regional.[71]

127. The Council on Federal Financial Relations (CFFR), comprised of the Commonwealth and the Treasurers of states and territories, is another crucial forum that allows the Commonwealth, states and territories to deliberate and align their economic policies and manage Commonwealth-State funding agreements. CFFR is charged with the development and upkeep of the Intergovernmental Agreement on Federal Financial Relations, delineating the fiscal relationship principles and guidelines between the Commonwealth and the states and territories. On 28 August 2020, the CFFR implemented new governance arrangements for Commonwealth-state funding agreements, known as the Federation Funding Agreements (FFA) Framework.[72]

128. Finally, the Parliamentary Budget Office (PBO), an autonomous entity, serves as an independent and non-partisan institution dedicated to enhancing the transparency and accountability of fiscal policy and budgetary processes. Its primary function is to provide Parliament with expert analysis and advice on the economic and financial implications of policy proposals, budgetary measures, and the broader fiscal environment. It also advises on the long-term fiscal sustainability of the Australian government.[73]

Belgium

129. Belgium has a federal structure comprising three communities and three regions. The federal government oversees matters of nationwide scope like defence, foreign policy, justice, social welfare and macroeconomic policy. The Flemish (Dutch-speaking), French-speaking and German-speaking communities manage issues in cultural, educational, language and specific social policies. The Flemish Region, Walloon Region and Brussels-Capital Region hold powers over regional interests, including economic development, spatial planning, transport and environmental policy.

130. This federal model divides authority between the national government responsible for common nationwide concerns and the subnational communities and regions addressing ethnolinguistic and territorial affairs, respectively. The communities manage issues relevant to their language groups across the country, while the regions exercise powers based on geography over their portions of national territory (Popelier & Lemmens, 2015).

131. The judicial architecture of Belgium is integral to its federal system, where fiscal powers are intricately allocated among federal, regional and community levels of government. The hierarchy of courts starts with lower courts, handling minor civil and criminal matters, ascending to appellate courts for

[70] The Nation Cabinet replaced the Council of Australian Governments (COAG), which was Australia's main intergovernmental forum from 1992 to 2020. In 2020, the COAG was replaced by the National Cabinet (OECD, 2021). This shift was prompted by the need for a more streamlined and effective decision-making body during the COVID-19 pandemic. The National Cabinet is composed of the Prime Minister along with state and territory Premiers and Chief Ministers, facilitating rapid and coordinated governmental responses to national crises, particularly public health emergencies. This transformation reflects a broader re-evaluation of governance structures, aiming to enhance agility and collaboration at the federal and state levels.

[71] Source: https://federation.gov.au/national-cabinet/national-cabinet-reform-committees.

[72] Source: https://federalfinancialrelations.gov.au/council-federal-financial-relations.

[73] Source: https://www.aph.gov.au/about_parliament/senate/powers_practice_n_procedures/pops/pop64/c05.

reviewing decisions and culminating in the Court of Cassation for legal uniformity. At the apex of this structure, the Constitutional Court ensures that legislative acts comply with the constitutional framework.

132. In the evolving landscape of Belgian federalism, marked by successive constitutional reforms, the Constitutional Court has emerged as a guardian of the autonomy of federated entities, including communities and regions. This role has predominantly favoured decentralisation while concurrently preserving the integral unity of the federal state (Verdonck & Deschouwer, 2003; Peeters & Mosselmans, 2017).

133. Intergovernmental disputes often emerge from divergences in policy interpretation, fiscal distribution and the demarcation of legislative jurisdictions, necessitating a mechanism for resolution. Empirical evidence indicates that the Court is more inclined to invalidate state legislation for overstepping power boundaries, doing so in 38% of related cases, as opposed to 29% concerning federal legislation. This suggests that the Court adopts a non-centralist, or “balanced”, approach to federalism and decentralisation, neither unduly favouring the federal government nor the federated entities (Popelier, 2017; Popelier & Bielen, 2019).

134. Specifically regarding fiscal federalism, the Constitutional Court plays a dual role as both the arbiter and the guardian of the autonomy of federated entities, including communities and regions. Its rulings are crucial in delineating the scope of fiscal competencies and ensuring that the exercise of tax legislation and spending aligns with constitutional principles.[74]

135. Historically, Belgian regions presented limited fiscal autonomy, with heavy reliance on federal grants and shared tax revenues, constituting approximately three-quarters of their expenditures (Swenden, 2006). Communities, due to their partly non-territorial nature, remain entirely dependent on federal grants, lacking tax autonomy. Regions, with their distinct territorial basis, have more potential for greater fiscal autonomy (Swenden & Jans, 2008).

136. However, the sixth state reform in Belgium, implemented in 2015, significantly enhanced the fiscal autonomy of the regions by revising the Special Financing Law. This reform introduced a dual approach of increasing fiscal autonomy and "responsibility" alongside the distribution of grants based on needs, to ensure no community faced impoverishment. A notable change was the replacement of allocated shares of personal income tax (IPP) with a regional additional tax, allowing Regions to control approximately a quarter of all IPP revenues. Regions gained the autonomy to independently set rates for their additional centimes and apply reductions or increases to the IPP, thereby linking their resources more closely with their policies and acknowledging the potential for horizontal fiscal competition[75] (Piron et al., forthcoming).

137. Nevertheless, it is noteworthy that as the decentralisation of expenditure responsibilities continued to outpace the decentralisation of revenue authority, vertical fiscal gaps and greater reliance on transfers from shared resources may have reduced spending discipline. In this context, fostering better fiscal policy coordination across all levels of government would improve the efficiency of Belgium’s decentralised fiscal framework (Wong, 2023).

138. The approach to fiscal management in Belgium, particularly during fiscal crises, has been shaped by a blend of political and administrative strategies. A co-operation agreement involving the federal government and state and regional governments establishes a collaborative framework for budget management. This agreement, although not universally signed, was ratified by the federal parliament as

[74] The general taxation authority is shared across federal, community and regional levels. As delineated in the constitution, the federal government retains the capacity to impose limitations on community and regional tax measures, provided such interventions are deemed necessary.

[75] However, this increased autonomy introduced complexities, particularly in how federal fiscal policy decisions directly impacted regional revenues, highlighting the challenges of balancing autonomy with responsibility, solidarity, and financial sustainability within Belgium's federal system.

well as regional and community legislatures, committing all parties to aim for a medium-term structural balance in budget execution.[76] Since the initiation of this agreement, there have been subsequent multiannual or annual agreements that reinforce and complement the original objectives. The High Council of Finance plays an essential role in this process, issuing an annual report each March.[77] This report provides recommended budgetary trajectories for each level of government and serves as a foundational document for the stability program. However, from 2014 to the present, while the regions and communities acknowledge the guidance provided by the stability program, they have not committed to individual annual targets, indicating a shift in the adherence to the stipulated fiscal discipline (Troupin et al., 2015; Schnabel, 2019).

139. The Constitutional Court's jurisprudence is vital in shaping Belgium's intergovernmental fiscal relations and maintaining the balance of its federal governance structure. The ensuing table juxtaposes some of the disputes of recent years.

Table 2. Belgian Constitutional Court decisions impacting fiscal federalism

Case Name	Year	Issue	Decision	Central Gov. v. SNGs	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
PMU Belge v. Flemish Tax Administration (141/2023)	2023	The case questioned the Flemish Tax Code's refusal to allow the deduction of losses from one period to another for betting companies.	The Court upheld the tax provisions, finding no violation of constitutional principles of equality and non-discrimination.	SNGs	Equality and non-discrimination	Specific to the Flemish region	The decision supports regional legislative autonomy in tax matters, affirming the region's right to establish its tax policies.	This may discourage betting companies due to less favourable tax treatment, impacting their economic viability.	Relevant for businesses in the gambling sector, ensuring they are aware of regional tax obligations and cannot offset losses across periods.
Referral from East Flanders First Instance Tribunal v. Flemish Gov. (138/2023)	2023	The constitutionality of the Flemish Tax Code's prohibition against carrying forward losses for entities exclusively offering non-casino games and bets.	The Court found the tax regime did not violate constitutional mandates of equality and non-discrimination.	SNGs	Equality and non-discrimination	Specific to the Flemish region	Reinforces the region's autonomy in determining tax policies for gambling without federal interference.	Could affect the profitability of betting companies, influencing their financial strategies.	Ensures that regional tax policies are upheld, affecting the gambling industry and its regulation.
Individual v. Flemish Gov. (136/2023)	2023	Whether the VAT Code's provision that does not allow for a suspension of the penalty by a civil court violates constitutional principles.	The Court found the provision unconstitutional, contravening equality and non-discrimination principles.	Neutral	Safeguarding individual rights against punitive fiscal measures	Nationwide	Promotes uniformity in applying tax penalties across civil and criminal courts, reducing disparities.	Promotes uniformity in applying tax penalties, enhancing the predictability of tax enforcement.	Protects the rights of taxpayers against disproportionate punitive measures, ensuring fair treatment under the law.
Rothschild Martin Maurel v. Federal Gov. (130/2023)	2023	The constitutionality of the 2016 tax on credit institutions, particularly regarding its retroactive application.	The Court annulled the provisions for 2016, citing non-compliance with constitutional principles of equality, non-discrimination and non-retroactivity.	Neutral	Equality and non-discrimination, non-retroactivity	Nationwide for tax year 2016	Neutral	Affirms the principle of legal certainty and non-retroactivity in tax law. Removed an unexpected tax burden for the specified year.	Highlights the importance of predictability and fairness in tax legislation, affecting the financial industry's planning and operations.
Anvers First Instance Tribunal v. Federal Gov. (124/2023)	2023	The tax treatment of capital gains on shares and whether the inability to deduct related expenses created a disparity with other taxable profits.	The Court ruled the provisions unconstitutional due to creating an unjustifiable disparity and violating equality and non-discrimination principles.	Neutral	Equality and non-discrimination	Nationwide	Ensures a consistent approach to tax deductions across different types of income, maintaining equitable treatment nationwide.	May influence investment decisions by altering the tax implications of capital gains.	Affects individual investors and the stock market, ensuring fair tax practices and potentially influencing investment behaviours.

[76] The federal government's assumption of the primary burden for fiscal consolidation has been instrumental in securing the acceptance of fiscal discipline among the federated entities.

[77] The regionalised party system and the delegation of fiscal rule development to an expert body, the High Council of Finance, facilitate this dynamic.

Orde van Vlaamse balies v. Federal Gov. (111/2023)	2023	The Flemish Decree's alignment with the EU Charter of Fundamental Rights regarding the automatic exchange of information on cross-border arrangements.	The decision is pending a preliminary question referred to the CJEU, with the Court highlighting procedural concerns.	Neutral	EU Charter of Fundamental Rights	Nationwide	Affects the coherence between EU directives and national legislation, potentially impacting the division of competencies.	Uncertainty in the decision may affect compliance costs and administrative burdens for businesses.	Affects the transparency and efficiency of tax administration, with implications for privacy and fair trial rights.
Matthias Dobbelaere-Welvaert and others v. Federal Gov. (162/2022)	2022	The constitutionality of fiscal administration's access to the Central Contact Point data without notifying the taxpayer.	The Court upheld the legislation, emphasising the importance of combating tax fraud.	Central Gov.	Privacy, judicial oversight	Nationwide	Allows the federal government to enforce tax laws without expanding state powers.	Supports governments' efforts in combating tax fraud, potentially improving tax compliance.	Relevant for taxpayer privacy and the state's ability to enforce tax laws, balancing individual rights with public interest.
N. Drubbel v. Flemish Gov. (83/2022)	2022	The constitutionality of the Flemish Tax Code's domiciliation requirements for tax reductions in shared custody arrangements.	The Court's decision is pending, with the Flemish Government defending the domiciliation criterion.	Neutral	Equality and non-discrimination	Nationwide	Neutral	May influence the financial dynamics of shared custody arrangements, affecting family finances.	Pertains to tax equity in family law, ensuring fair treatment of separated parents in shared custody situations.
Individuals v. Federal Gov. (60/2020)	2020	The fixed taxation of annuity interests and its proportionality to the actual amount received by the annuitant.	The Court highlighted the need for proportionality between tax measures and policy objectives, ensuring equitable treatment.	Neutral	Equality and non-discrimination, proportionality	Nationwide	Encourages a balanced approach to tax legislation, without significantly altering intergovernmental relations.	Affects annuitants, potentially impacting their financial planning and the insurance market.	Ensures that tax policy is fair and proportional, relevant for individuals with annuity contracts and the financial sector.
Erol Ilhan v. Federal Gov. (42/2020)	2020	The constitutionality of registration duties on judgments exceeding 12,500 euros without a scaled exempted amount.	The Court upheld the registration duties, emphasising fiscal efficiency over a scaled exempted amount.	Neutral	Equality and non-discrimination	Nationwide	Maintains the status quo in fiscal administration, without significant impact on intergovernmental relations.	Affects individuals with court judgments, potentially influencing litigation strategies and financial outcomes.	Ensures that fiscal obligations are met following court judgments, relevant for the legal and financial sectors.
Eurovillage Herbeumont v. Federal Gov (32/2020)	2020	The lack of discretionary mitigation measures in the VAT Code's punitive framework for VAT infractions.	The Court acknowledged the constitutional infirmity, with infringements on fairness and proportionality.	Neutral	Equality and non-discrimination, human rights	Nationwide	Neutral	This may lead to a reevaluation of fiscal penalties, affecting businesses and their compliance strategies.	Ensures that fiscal penalties are administered fairly, with implications for businesses and the broader economy.
Le Port de Bruxelles v. Federal Gov. (29/2020)	2020	The transition of port enterprises to corporate tax liability and its alignment with constitutional and EU norms.	The case was withdrawn due to related appeals at the EU level, with the potential for the contested provisions to be retracted.	Neutral	Equality and non-discrimination, EU state aid rules	Nationwide	Reflects the interplay between EU law and national tax law, with implications for the division of competencies.	Affects port authorities and their competitive position, with potential changes to tax obligations.	Aligns national tax law with EU state aid rules, affecting port authorities and the transportation sector.
Elektriciteitsnet Izegem v. Federal Gov. (114/2014)	2014	The tax status of the municipal company ETIZ compared to inter-municipal co-operation structures.	The Court proceeded with a straightforward application of the law without constitutional concerns.	Neutral	Equality and non-discrimination	Specific to the entity involved	Clarifies the tax status of municipal entities without broader implications for intergovernmental relations.	Limited to the municipal entity involved, with no significant economic impact beyond.	Clarifies the tax obligations of municipal companies, ensuring they are treated equitably with similar entities.
Antwerp Port Authority v. Flemish Gov. (183/2014)	2014	The challenge to the Flemish decree on the taxation of unoccupied or abandoned professional buildings.	The Court upheld the decree, affirming the region's legislative competence in tax matters.	SNGs	Regional legislative competence	Specific to the Flemish region	Strengthens regional autonomy in tax legislation, affirming the Flemish region's authority.	It may incentivise property development and use, affecting the real estate market.	Affirms regional legislative powers, impacting property owners and regional economic development.
Individuals v. Federal Gov. (128/2014)	2014	The differential tax treatment of pensions paid by OSSOM compared to life insurance products.	The Court upheld the differential tax treatment, distinguishing between the OSSOM regime and private life insurance.	Neutral	Equality and non-discrimination	Nationwide	Neutral	Affects individuals with OSSOM pensions, influencing their financial and retirement planning.	Ensures clarity in the tax treatment of pensions, affecting individuals affiliated with OSSOM and their financial planning.
Flemish Gov. v. Federal Gov. (93/2014)	2014	Taxation of income and financing competencies devolved under the 6th State Reform.	The Court ruled against the French Community, determining that the federal financing arrangements were reasonable and that total funding or compensation for concession losses was not constitutionally required.	Central Gov.	Division of competencies between federal and regional authorities, taxation rights.	Nationwide	Affects the relationship between federal and regional governments in terms of fiscal autonomy and taxation rights.	This could impact the regional revenue from mobile phone mast concessions and other revenue sources.	Pertains to the broader issue of regional autonomy and federal taxation rights in Belgium.

Ville de Poperinge and others v. Federal Gov. (159/2008)	2008	Legality of the reduced VAT rate applicable in "large cities" and insufficiency of federal funding post-reform.	The Court's ruling was in concurrence with the Community, acknowledging the inadequacy of federal financial provisions in light of the community's expanded legislative powers.	SNGs	Elements of a tax imposition	Nationwide	The decision upholds the legislative power over tax imposition, which may affect the relationship between the federal government and municipalities regarding fiscal policies.	Modifies the application of VAT rates in urban areas, potentially affecting urban development and economic activities in "large cities".	Ensures clarity to the broader application of tax law, urban development and economic policy within Belgian cities.
Walloon Gov. and Brussels-Capital Gov. v. Federal Gov. (104/2008)	2008	Challenge against the modification of VAT Code by Programme Law, alleged violation of EU Directive and constitutional provisions.	The Court stated that the Flemish Community was at a disadvantage in taking on responsibilities in Brussels compared to the French Community and required the federal authorities to negotiate improved financing for the Flemish Community.	SNGs	EU VAT Directive compliance, non-discrimination, proportionality	Nationwide	The case underscores the tension between regional and federal legislative powers and their respective fiscal autonomy.	Potential additional financial burdens on public bodies due to changes in VAT application.	Affects the fiscal operations of public bodies and the application of EU directives in Belgium.
Flemish Gov. v. Federal Gov. (121/2008)	2008	The case concerns the payment of inheritance rights with artworks.	The Court rejected the annulment of the articles. It maintained federal competence over the "service of the tax" and did not affect the regions' competence over the tax law.	Central Gov.	Tax payment	Nationwide	The decision upholds the existing balance of power between the federal level and the regions regarding tax collection.	Allows for the continuation of the practice of accepting artworks as payment for inheritance rights, which could have implications for the art market and tax revenues.	Relevant to the administration of regional inheritance taxes and the acceptance of artworks as payment, which has cultural and fiscal implications.

Category definitions:

1. Case Name: The official title of the legal case, typically formatted as "Plaintiff v. Defendant".
2. Year: The year the Constitutional/Supreme Court decided on the case.
3. Issue: A brief description of the primary legal or policy issue that the case addressed.
4. Decision: The Supreme Court's ruling or judgment on the case.
5. Central Gov. vs. SNGs: Indicates whether the decision favoured the central government (Central Gov.), favoured the state or subnational governments (SNGs), or was neutral in its impact on the balance of power.
6. Legal Principle Invoked: The primary legal or constitutional principle or doctrine central to the case's decision.
7. Range of Decision: Categorises the decision's scope, such as whether it has a nationwide impact, impacts a specific region, or only affects the parties involved.
8. Impact on Intergovernmental Relations: Describes how the decision affects the relationship between different levels of government, such as increasing state autonomy or strengthening federal oversight.
9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

140. These Belgian Constitutional Court's decisions show a particular focus on the delineation of powers between federal and regional authorities, as well as the rights of individual citizens and entities. The 2023 rulings, cases n. 141/2023 and n. 138/2023, centred on the Flemish Tax Code's treatment of losses in the gambling sector, with the Court upholding the legislation's prohibition against carrying forward losses. These decisions support regional legislative autonomy in tax matters, affirming the region's right to establish its tax policies without federal interference. In contrast, the Court's decision n. 130/2023 annulled specific tax provisions for credit institutions, emphasising the principles of equality and non-retroactivity. This ruling, which followed the precedent set by case n. 136/2022, has broader implications for the financial sector and underscores the Court's commitment to ensuring that taxpayers are not subject to retroactive legislative changes, thus affecting the interchange between federal legislation and financial institutions.

141. The decision n. 29/2020, involving "Le Port de Bruxelles", highlighted the interplay between national constitutional law and the European Union´s state aid rules. The case contested the constitutionality of the legislative provisions mandating the transition of port enterprises to corporate tax liability. The petitioner argued that the law infringed upon the principles of equality and non-discrimination enshrined in the Constitution by not granting port authorities the same tax exemptions as other public entities, such as public transport and water treatment companies. The Council of Ministers defended the

provisions as a necessary implementation of the EU Commission's decision (EU) 2017/2115, aimed at rectifying state aid disparities by subjecting port activities to corporate taxation. The case's resolution hinged on the outcome of related appeals at the EU level, with the potential for the contested provisions to be retracted should the EU Commission's decision be overturned. Ultimately, the petitioner's withdrawal of the appeal led to the case's conclusion.

142. Furthermore, the decisions n. 114/2014 and n. 183/2014 explores the Court's interpretative stance on fiscal federalism and the enforcement of constitutional equality. The former, concerning the tax status of "Elektriciteitsnet Izegem", showcases the Court's procedural rigour in applying constitutional norms to municipal tax matters. The absence of a hearing in this case suggests a straightforward legal interpretation, affirming the principles of equality and non-discrimination within the tax regime. In contrast, the latter decision examines the Flemish decree on the taxation of unoccupied buildings, where the Court's upholding of the decree underscores the regional autonomy in fiscal legislation and the specificity of the Flemish legislative competence.

143. In Judgment n. 93/2014, the Constitutional Court adjudicated a nuanced dispute between the federal government and the French Community, rooted in the financing mechanisms post the 6th State Reform. The French Community's contention of inadequate federal funding, especially in light of lost revenues from mobile phone mast concessions, was met with a ruling that upheld the federal government's budgetary allocations as constitutionally sound. This decision reinforced the discretionary power of the federal government in financial arrangements concerning devolved competencies. However, it underscores the ongoing negotiation of fiscal federalism and the complex relationship of legislative powers within Belgium's evolving legal and economic setting.

144. In contrast, some decisions underscore the Court's commitment to ensuring sufficient funding for decentralised powers in Belgian constitutional jurisprudence, with a pronounced focus on the needs of smaller linguistic communities. Judgment n. 159/2008 acknowledged the inadequacy of federal funding for the expanded legislative powers of the German-speaking Community, leading to a mandate for increased federal allocations. This decision resonates with the principles established in Judgment n. 104/2008, which dealt with the financing of the Flemish Community's responsibilities in Brussels following the 2001 State Reform. The Court, in this latter judgment, recognised the disparity in federal funding between the Flemish and French Communities, compelling the federal government to rectify this shortfall. These rulings collectively highlight the Court's commitment to equitable financial support for federated entities, particularly in cases where existing provisions are insufficient. They also illustrate the Court's role in ensuring that devolved competencies are adequately funded while navigating the balance between national fiscal policies and EU regulatory frameworks.

145. Collectively, the presented cases illustrate the Constitutional Court's role in interpreting fiscal legislation and its implications for fiscal federalism in Belgium. The Court's decisions have not only clarified the division of powers and responsibilities between different levels of government but have also addressed the rights of individual entities, thereby shaping the nation's legal and economic landscape. The rulings reflect a balance between safeguarding constitutional principles and recognising the pragmatic needs of governance, with particular attention to the equitable distribution of fiscal powers and the protection of individual and regional rights within the federal structure.

146. This orchestration of fiscal relations between various tiers of government is facilitated by a network of specialised institutions and committees with the objectives of fostering co-operation and resolving intergovernmental fiscal disputes. Foremost among these is the High Council of Finance, an advisory body in the realm of public finance and taxation that offers recommendations on budgetary policies and serves as a foundational platform for dialogue and consensus-building among different government levels on fiscal matters. While it does not directly mediate disputes, its advice often informs the decisions and negotiations that prevent or resolve fiscal conflicts. The Council can act on its own initiative or at the request of the Federal Minister of Finance or the Minister of Budget.

147. Complementing its role is the Inter-ministerial Conferences, which bring together ministers from the federal, regional and community governments. These conferences are instrumental in coordinating policies across various domains, particularly in areas where responsibilities are shared or where policy coherence is essential such as healthcare and environment policy provision. Their meeting frequency and focus are adaptable, responding to the evolving needs of the policy landscape. Additionally, the Consultation Committee has the mandate to prevent and mediate conflicts of interest, which can be particularly important in the context of fiscal disputes. These institutions collectively underscore the complexity and collaborative essence of Belgium's federal structure, highlighting the nuanced interplay between autonomy and co-operation in the governance of fiscal affairs.

Brazil

148. Brazil operates as a federal republic, structured under the 1988 Constitution into three distinct tiers of government, each with specific powers and responsibilities. The Federal Government, at the highest level, oversees national concerns, exercising legislative and executive authority in areas such as defence, foreign relations, monetary policy, national security and overarching economic strategy.

149. The nation is divided into twenty-six States and one Federal District, with State Governments handling regional matters like education, healthcare, public safety, transportation and environmental policies. The third tier consists of 5,568 Municipalities, focusing on local issues and providing services such as urban development, local transportation, infrastructure maintenance and fostering economic growth at the grassroots level.

150. In Brazil's federal system, certain areas, including public health, education and environmental protection, involve shared powers between Federal and State Governments. In cases of legislative overlap or conflict, federal laws generally take precedence over state or municipal laws.

151. The judicial system, integral to Brazil's constitutional framework, is hierarchically organised, with the Supreme Federal Court (STF)[78] at the top. The STF is crucial in interpreting the Constitution and adjudicating constitutional matters, including fiscal intergovernmental disputes. It ensures that the distribution and exercise of fiscal powers among government levels adhere to the constitutional mandate, thus maintaining a balanced federal structure.[79] Moreover, STF decisions set precedents that guide future legislative and executive actions across all government levels.

152. Brazil presents numerous fiscal intergovernmental disputes that often arise from the complexities of its federal system. The 1988 Constitution increased the revenue capacity of States and Municipalities, primarily through increased financial transfers from the Federal Government. However, this shift towards fiscal decentralisation was not adequately accompanied by a clear realignment of powers and responsibilities among the various government levels, particularly in areas of shared services. Consequently, the Constitution did not adequately expand the responsibilities of State and Municipal governments in line with their increased revenue streams. This misalignment has led to relevant fiscal imbalances and laid the groundwork for ongoing fiscal disputes. These typically involve policy priorities, fund allocation, resource distribution and revenue-sharing mechanisms (Rigolon & Giambiagi, 1999; Mendes, 2020).

[78] Acronym for *Supremo Tribunal Federal.*

[79] Below the STF, there are Superior Courts that deal with non-constitutional matters, and further down, State and Federal Courts address more routine legal issues.

153. The Fiscal Responsibility Law (LRF)[80] represents a cornerstone in Brazilian fiscal legislation, epitomising a shift towards enhanced fiscal discipline and transparency. It institutionalised a set of stringent rules and principles aimed at ensuring fiscal prudence and accountability. This law mandates that all levels of government – federal, state and municipal – adhere to strict budgetary constraints, limiting public spending and requiring transparent, responsible fiscal planning and execution. It also limits SNG´s public debt, setting specific targets and rules for government borrowing and expenditure levels.

154. However, LRF faced immediate legal challenges upon its enactment. Important provisions were suspended, impacting the ability of the executive Branch at all government levels to limit the expenses of other powers and bodies with budgetary autonomy and the prohibition of reducing work hours with a corresponding decrease in remuneration to control personnel expense excess. The STF[81] struck down these provisions, continuing its review of other aspects of the law. The suspension of these LRF provisions significantly affected subnational fiscal management. States and municipalities began exploiting loopholes in defining personnel expenses, leading to increased expenditures. Public managers, addressing the prohibition against leaving unpaid expenses exceeding cash balances at the end of their term, resorted to cancelling budgetary commitments without actually eliminating the expenses.[82]

155. In this context, the STF plays a vital role in managing constitutional issues related to fiscal disputes. When conflicts arise among different government levels, especially regarding fiscal policies, the STF acts as the final arbiter. Its decisions guide legislative and executive actions across all government levels, ensuring adherence to constitutional principles in fiscal federalism. The following table displays some relevant STF rulings regarding intergovernmental fiscal disputes.

Table 3. Brazilian Supreme Court decisions impacting federalism and intergovernmental relations

Case Name	Year	Issue	Decision	Central Gov. v. SNGs.	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
Espírito Santo State v. Federal Gov. (ACO 2.178)	2023	The State of ES alleged an economic and financial imbalance in a contract concerning oil and natural gas royalties, due to a miscalculation in the formula set by a contractual amendment and a sharp increase in oil prices. The reduction in the state's debt was not proportionate to the royalties paid to the Union.	The Union was ordered to refund the State an amount equivalent to half of the gains that exceeded the total face value of the contractually ceded royalties.	SNGs	Principles of federative loyalty, solidarity and economic-financial balance of contracts.	State-specific	Established fairness in the royalty distribution criteria between the federal gov. and the State of ES.	Impacts the state's financial stability	Reinforces co-operative federalism
DF Prosecutors Office v. DF Legislative Chamber (RE 851.421)	2021	The possibility of granting a remission of ICMS credits arising from tax benefits previously judged unconstitutional	A State or District Federal law that, supported by a CONFAZ agreement, grants remission of ICMS credits arising from tax benefits previously deemed unconstitutional, is constitutional.	Neutral	Item "g", subsection XII, § 2, Article 155 of the Constitution	State-specific	Enhance intergovernmental co-operation and the state´s administrative competencies. States and DF must obtain approval from CONFAZ to legitimately offer tax and fiscal benefits.	Impacts state´s revenues regarding ICMS.	Delineates fiscal benefits requirements for states.

[80] Enacted in 2000 by Complementary Law 101/2000, the LRF stands as a seminal piece of legislation, underpinning the framework for responsible fiscal management across all tiers of government in Brazil. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp101.html.

[81] Through Brazilian Supreme Federal Court ADI 2.238. Available from: https://portal.stf.jus.br/jurisprudencia/obterInteiroTeor.asp?idDocumento=753826907.

[82] Despite these challenges, the LRF has strengthened the Fiscal Adjustment Program (PAF) and the execution rules of guarantees under Law 9.496, contributing to fiscal adjustment in states and municipalities. It remains a key framework in Brazil's fiscal discipline efforts, though its effectiveness is tempered by enforcement challenges and creative accounting practices.

Goiás State v. Federal Gov. (ACO 3.262)	2021	Goiás State, facing a severe liquidity crisis and insolvency due to its public accounts imbalance, with net current revenue falling below expenses in 2018 and 2019, sought debt refinancing.	The Federal Gov. refinanced the state of Goiás´ debt.	SNGs	Principle of legal certainty, solidarity, continuity of public services.	State-specific	Reinforces solidarity among the federal and state governments. However, highlights the wrong incentives: subnational overspending and bailout game.	Impacts on the continuity of public services.	Reinforced solidarity among the federal and state governments. However, highlights the wrong incentives: subnational overspending and bailout game.
Paraná State v. Federal Gov. (ACO 3.119)	2020	The State of Paraná sought to revise the contract governing royalties and financial compensations from hydroelectric water resource usage, citing economic and financial imbalances.	The Federal Gov. was mandated to repay the State of Paraná for transferred royalties and financial compensations.	SNGs	Principles of federative loyalty, solidarity and economic-financial balance of contracts.	State-specific	Established fairness in the royalty distribution criteria between the federal gov. and the State of Paraná.	Impacts the state's financial stability	Reinforces co-operative federalism. Establishes fairness in the royalty distribution criteria.
PT, PSB, PCdoB v. Federal Gov. (ADI 2.238)	2020	The constitutionality of LRF articles concerning the allocation of resources from various branches to achieve primary result targets and the reduction of public servants' work hours and salaries when personnel expenses surpass legal limits.	Both provisions were declared unconstitutional.	SNGs	The Principle of Irreducibility of Functional Stipend	Nationwide	Balances fiscal responsibility with constitutional protections for public servants.	The executive branch must bear all the burden to meet the primary result target.	Reinforces the protection of public servants' salaries from arbitrary reduction, underlining their financial security and stability in public service.
Minas Gerais State v. Federal Gov. (ACO 3.233)	2018	Minas Gerais state requested the Union to cease unilateral fund blockages and restore any previously blocked amounts to its accounts.	Minas Gerais demands were granted	SNGs	Principle of legal certainty, solidarity among federative entities, continuity of public services.	State-specific	Reinforces solidarity among the federal and state governments. However, highlights the wrong incentives: subnational overspending and bailout game.	Impacts the continuity of public services.	Reinforces solidarity among the federal and state governments. However, highlights the wrong incentives: subnational overspending and bailout game.
Governor of Ceará State v. Legislative Assembly of Ceará State (ADI 429)	2014	Constitutionality of Ceará state granting tax exemptions.	It is unconstitutional for states to grant ICMS-related tax exemptions, incentives and benefits unilaterally	Neutral	Item "g", subsection XII, § 2, Article 155 of the 1988 Federal Constitution.	State-specific	Established fairness among states regarding tax exemptions.	Impacts state´s revenues regarding ICMS.	Avoids "fiscal war" among Brazilian states
Rio Grande do Sul State v. Federal Gov. (ADI 875)	2014	Constitutionality of the distribution of States Participation Fund (FPE) resources	Recognised the unconstitutionality of the existing practices and granted nearly two years for the National Congress to resolve the dispute over the States' Participation Fund	Neutral	Fiscal Autonomy, Federalism	Nationwide	Improves co-operation by affirming the distribution criteria of federal resources to states.	Impacts state revenues.	Impacts the states´ public service provision
Federal Prosecutors Office v. Pará State (ADI 3.246)	2006	Constitutionality of Pará state granting tax exemptions.	It is unconstitutional for states to grant ICMS-related tax exemptions, incentives and benefits unilaterally	Neutral	Item "g", subsection XII, § 2, Article 155 of the 1988 Federal Constitution.	State-specific	Established fairness among states regarding tax exemptions.	Impacts state´s revenues regarding ICMS.	Avoids "fiscal war" among Brazilian states

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5. Central Gov. vs. SNGs: Indicates whether the decision favoured the central government (Central Gov.), favoured the state or subnational governments (SNGs), or was neutral in its impact on the balance of power.
6. Legal Principle Invoked: The primary legal or constitutional principle or doctrine central to the case's decision.
7. Range of Decision: Categorises the decision's scope, such as whether it has a nationwide impact, impacts a specific region, or only affects the parties involved.
8. Impact on Intergovernmental Relations: Describes how the decision affects the relationship between different levels of government, such as increasing state autonomy or strengthening federal oversight.
9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

156. In the initial period following the adoption of Brazil's 1988 Constitution, the STF jurisprudence demonstrated a propensity towards centralisation in addressing intergovernmental disputes. This trend is substantiated by various academic studies,[83] which underscore the STF's role in augmenting the legislative competencies of the Federal Government, both concurrent and exclusive, while simultaneously diminishing the constituent powers of the States. A notable example of this centralising approach was the Court's initial response to the new constitutional framework, involving the cautious suspension of norms in state constitutions.[84] This suspension persisted until the Court could comprehensively assess the extent of the States' constituent power.[85] Ultimately, the STF's definitive rulings favoured a more centralising stance, mandating the Member States' adherence to the legislative process, despite the lack of explicit constitutional provisions in this regard (Anselmo, 2006; Borges, 2021).

157. While the 1988 Constitution established a co-operative federal structure, it entrusted the judiciary with the responsibility to maintain this form, ensuring a balance without veering towards competency centralisation. The STF's decisions reflect a delicate equilibrium between preserving state autonomy and upholding the integrity of the federal legislative process, a recurrent theme in Brazil's constitutional jurisprudence.

158. A case of particular interest is the Direct Action of Unconstitutionality (ADI875[86]), initiated by the Governor of Rio Grande do Sul against the federal government. The case revolved around the claim that the apportionment criteria of the States Participation Fund[87] were unconstitutional. The Constitution requires that these criteria be defined by a supplementary law, promoting socio-economic balance among the federative entities. The STF's ruling recognised the unconstitutionality of the existing practices and granted nearly two years for the National Congress to resolve the dispute over the States' Participation Fund. This decision exemplified the Court's balanced approach, respecting the federal legislative branch's role in addressing politically sensitive issues while ensuring adherence to constitutional norms (Rodrigues et al., 2017).

159. Recent studies have offered a competing view of the STF's jurisprudence, challenging the earlier perception of its centralist bias. An analysis of 119 STF decisions from the enactment of the 1988 Constitution until 2010 revealed a more nuanced reality: 54% of these decisions favoured State governments, while 46% supported the Federal government (Arlota & Garoupa, 2014).

160. Dantas (2020) notes that fiscal intergovernmental conflicts in the context of original civil actions (ACOs) in the STF primarily involve the redistribution of resources from the Union to the States or the retention of revenues by the Union, indicating a tendency towards decentralising Union resources to the States. Approximately 73% of the ACOs pertain to the regularity of State registrations in federal databases,[88] while 13% relate to the distribution or access to resources by the States. Tax issues, particularly concerning reciprocal immunity, constitutionality and tax compensation, are the third most

[83] Including: Maués (2005); Anselmo (2006); Araújo (2008); Lima (2010); Leoncy (2011); Guimarães (2013); Horbach (2013); and Popelier (2017).

[84] Exemplified in the Brazilian Federal Supreme Court ADIN 276-M.

[85] Brazilian Federal Supreme Court ADIN 276-MC decision mentioned: "*It is imperative to cautiously suspend provisions inscribed in state constitutions that appear to be in disharmony with the federal model pertaining to the legislative process until the Supreme Court defines the extent and scope of the constituent power of the Member States".* (own translation).

[86] Brazilian Federal Supreme Court ADI 875 (2019). Available from: https://jurisprudencia.stf.jus.br/pages/search/sjur176126/false.

[87] Acronym for *Fundo de Participação dos Estados*.

[88] Under articles 25 and 40 of the Fiscal Responsibility Law (LRF), with CAUC being the most recurrent federal conflict in the STF.

frequent theme, underscoring the significance of tax competence distribution in the federal contract's configuration and balance.

161. The STF's less centralised judicial approach is especially evident in rulings related to the LRF. The Court has consistently favoured subnational governments in matters such as suspending debt payments, not executing guarantees in indebtedness contracts, or not applying penalties imposed by the Law. The primary argument has been to protect the impoverished population by preventing the suspension of essential public services, although there is no clear definition of what constitutes essential services (Mendes, 2020).

162. According to Echeverria & Ribeiro (2018), between 1988 and 2017, the STF received 472 filings from States against the Federal government in fiscal matters, ruling in favour of the States in 92.6% of cases. The Justices of the STF assert that political autonomy is inextricable from financial autonomy, which, in a fiscal state, fundamentally relies on the division of tax powers and the sharing of tax collection proceeds.

163. These decisions also risk incentivising subnational governments' reckless behaviour, leading to the "bailout game". Knowing that the Federal government is legally obligated to bail them out, States lack the incentive for prudent financial management. Several bailouts by the Federal government have occurred, rescuing the solvency of subnational governments. The States' broad autonomy to incur debt, coupled with their heavy reliance on resource transfers from the central entity, led to unsustainable state and municipal debts, culminating in the rescue of 25 of the 27 States and over 150 major municipalities, costing approximately R$ 100 billion,[89] representing 11.3% of GDP and 77.9% of the net income of States and Municipalities in December 1998 (Rigolon & Giambiagi, 1999; Dantas, 2020).

164. Recently, the STF has ruled that the Federal government must rescue States like Minas Gerais,[90] Goiás,[91] Espírito Santo[92] and Paraná,[93] which accumulated high debt and faced strong liquidity constraints between 2014 and 2020. These decisions argue that Brazil's intergovernmental relations are based on co-operative federalism, necessitating the preservation of competencies and autonomy among federated entities. The STF has emphasised that the Federal entity must observe federative loyalty, considering the reciprocal interests and social well-being of the entire population (Borges, 2021). However, despite efforts, the 1988 Constitution's design perpetuated a political-administrative culture of subnational fiscal indiscipline. The STF's consistent positioning of the Federal government as the guarantor of Brazilian federalism within the inefficient matrix of the rescue game reinforces this view.

165. Another significant issue in Brazil's fiscal dynamics is the "fiscal war", driven by states and municipalities adopting competitive strategies and offering tax incentives to attract investments. This

[89] Nearly USD 20 billion in 2023.

[90] Brazilian Supreme Federal Court ACO 3.233 (2019). Available from: http://portal.stf.jus.br/processos/downloadPeca.asp? id=15339555073&ext=.pdf.

[91] Brazilian Supreme Federal Court ACO 3.262 (2019). Available from: http://portal.stf.jus.br/processos/downloadPeca.asp? id=15339984858&ext=.pdf.

[92] Brazilian Supreme Federal Court ACO 2.178 (2023). Available from: https://portal.stf.jus.br/jurisprudencia/obterInteiroTeor.asp?idDocumento=766141996.

[93] Brazilian Supreme Federal Court ACO 3.119 (2020). Available from: http://portal.stf.jus.br/processos/downloadPeca.asp? id=15343609725&ext=.pdf.

practice, particularly involving VAT taxes for States (ICMS)[94] and Municipalities (ISS),[95] has eroded state revenues and led to competitive imbalances. Complementary Law 160/2017[96] was enacted to address this, introducing coordination measures and discouraging new incentives, but it also extended the duration of existing incentives[97] (Mendes, 2020).

166. The jurisprudence of the Supreme Federal Court includes several rulings that declare the unconstitutionality of states independently offering tax exemptions, incentives and benefits related to ICMS. Notable decisions, such as ADI 3.246[98] and ADI 429,[99] underscore the importance of a harmonised approach to ICMS across the federation. These rulings highlight that such uniformity not only respects the autonomy of states but also prevents a harmful "fiscal war" between them. Additionally, the Court has made it clear that for states and the Federal District to waive tax debts arising from fiscal benefits legitimately, there must be preliminary approval within the National Council of Finance Policy (CONFAZ).[100] This was reinforced in the case of RE 851.421,[101] where the Court held that any regulation of fiscal benefits involving ICMS must adhere to the Council´s stipulations.[102]

167. Resolving intergovernmental disputes requires finding common ground and fostering co-operation among federal, state and municipal authorities to ensure effective governance and service provision to Brazilian citizens. The CONFAZ constitutes the main intergovernmental forum for tax coordination in the country. It comprises state-level Finance Secretaries, presided over by the Federal Minister for Finance and aims to harmonise tax policies and procedures among the States and the Federal District. Its primary functions include managing tax policy (including ICMS), negotiating tax exemptions, setting interstate tax rates and apportioning revenue distribution for interstate transactions.

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[94] The unique structure of the *Imposto sobre Circulação de Mercadorias e Serviços* - ICMS, which is collected both at the origin and destination in interstate transactions, has inadvertently fostered this fiscal war. States often deploy these incentives by allowing businesses to bypass the tax at the origin, subsequently granting them tax credits that can be applied against taxes in the state where the product is sold. This mechanism effectively transfers a portion of the fiscal incentive burden to the destination state, while the origin state reaps the benefits in terms of employment generation.

[95] Municipalities adjacent to major urban centres often offer lower *Imposto sobre Serviços* - ISS rates to attract service-based companies, even though the majority of these companies' operations may be centred in larger cities. This ongoing fiscal war has significantly eroded state revenues, compelling even reluctant governors to offer similar incentives in an effort to remain competitive.

[96] Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp160.html.

[97] According to Mendes (2020), a fundamental solution to this fiscal war lies in transitioning the ICMS collection from a mixed model to one based entirely on destination, a change that falls under federal jurisdiction. This potential reform, however, has been stalled by the lack of consensus among states, exemplifying the intricate legislative and intergovernmental challenges inherent in Brazil's fiscal federalism.

[98] Brazilian Supreme Federal Court ADI n. 3.246 (2006). Available from: http://redir.stf.jus.br/paginadorpub/paginador.jsp? docTP=AC&docID=363345.

[99] Brazilian Supreme Federal Court ADI n. 429 (2014). Available from: http://redir.stf.jus.br/paginadorpub/paginador.jsp? docTP=TP&docID=7065854.

[100] The National Council for Fiscal Policy (CONFAZ) was established by Complementary Law n. 24/1975. Available at: https://www2.camara.leg.br/legin/fed/leicom/1970-1979/leicomplementar-24-7-janeiro-1975-365215-norma-pl.html.

[101] Brazilian Supreme Federal Court RE 851.421 (2022). Available from: https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=759581532.

[102] Complementary Law 24/1975 is crucial in averting a "fiscal war" among states and upholds the essential role of CONFAZ in sanctioning laws related to state tax concessions.

168. In 2023, Brazil introduced a comprehensive tax reform aimed at simplifying its complex tax system and fostering economic growth.[103] This new legislation represents a significant shift in the country's fiscal policy, addressing long-standing issues related to tax complexity, compliance burdens, and inefficiencies that have historically hampered business operations and investment. The reform consolidates multiple taxes on goods and services into a single Value Added Tax (VAT), thereby reducing the tax compliance burden on businesses and aiming to enhance the overall efficiency of the tax collection process. Additionally, the legislation introduces changes to income tax regulations, including adjustments to personal income tax brackets and reductions in corporate income tax rates, with the intention of stimulating economic activity and attracting foreign investment. The executive and judiciary branches have actively participated in these discussions, reinforcing co-operation among government tiers.

Canada

169. Canada, a constitutional monarchy with a parliamentary system, is represented by King Charles III as the head of state. The Governor General, appointed by the King, performs the monarch's constitutional duties in Canada, including signing legislation, appointing governments and dissolving parliament for elections. In the provinces, the King's representation is vested in lieutenant-governors.

170. This federation, known for one of the lowest population densities globally, comprises ten provinces and three territories. It operates under a dualistic model, where the Constitution delineates powers between federal and provincial governments for legislative and executive functions. This arrangement allows each government level to enforce its own laws. The Constitution explicitly divides jurisdiction, with exclusive federal powers listed under section 91,[104] provincial powers under sections 92 and 93[105] and shared powers under sections 92A(3), 94A and 95.[106]

171. Legislative power is bifurcated between the Federal Parliament in Ottawa and the Provincial Legislatures. The Federal Parliament, responsible for national matters like defence, trade and taxation, consists of the directly elected House of Commons[107] and the appointed Senate,[108] with bills requiring passage by both and Royal Assent from the Governor General. Conversely, Provincial Legislatures, governing local matters like healthcare, education and municipal governance, pass bills through their Legislative Assemblies, with the Lieutenant Governors providing Royal Assent at the provincial level. This system highlights areas of both distinct and overlapping legislative powers.

172. Canada's judicial landscape is multi-tiered, reflecting its federal structure. Each province and territory has its own court system, encompassing Superior or Supreme Courts for serious criminal offences, substantial civil cases and constitutional issues. Courts of Appeal in each region review lower court

[103] The tax reform was introduced by Constitutional Amendment n. 132 on December 23, 2023. It is available from: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc132.htm.

[104] Such as trade and commerce, taxation, money and banking, national defence, criminal law, citizenship, first nations lands and rights.

[105] Property and civil rights, administration of justice, hospitals, education, natural resources, and others.

[106] Including interprovincial trade in natural resources, old age pensions and supplementary benefits, and agriculture and immigration.

[107] Also known as the lower chamber, whose members are elected by the people.

[108] Senators are appointed for life by the federal government.

decisions. Provincial and territorial courts also include lower courts handling the majority of criminal offences, family law[109] and small claims.

173. The Federal Court, addressing issues outlined in federal statutes like citizenship and immigration and the Federal Court of Appeal, which hears appeals from the Federal Court and certain federal tribunals, embody the federal judicial dimension. Specialised courts such as the Tax Court and Indigenous Courts, along with Administrative Tribunals, supplement this structure. At the apex, the Supreme Court of Canada serves as the final arbiter for all cases, encompassing federal disputes and appeals from provincial and territorial courts of appeal and the Federal Court of Appeal. This judicial hierarchy, interlaced with the federal system, underscores Canada's commitment to balancing regional diversity with national governance and legal uniformity.

174. The Supreme Court of Canada operates within a unique appellate jurisdiction, necessitated by Canada's dual legal system in private-law cases. Common law governs in the nine predominantly English-speaking provinces, while Quebec follows civil law. The federal government, under sections 96 and 101 of the Constitution, appoints judges to the superior courts, including the Supreme Court, without formal provincial involvement.

175. Despite this structure, the Supreme Court has evolved from a strictly dualistic approach towards a more co-operative federalism, acknowledging overlapping powers between federal and provincial governments. In several decisions, it has been recognised that the principle of exclusive powers is not absolute, advocating intergovernmental co-operation as a defining feature of contemporary federalism.[110] The Court supports the concurrent operation of statutes from both government levels, acknowledging that each may incidentally influence areas under the other's jurisdiction (the incidental effects rule).[111] Furthermore, it upholds the 'double aspect doctrine', which allows for both federal and provincial legislation in matters having dual aspects[112] (Brouillet, 2017).

176. The Court's influence on the balance of power within Canadian federalism is a topic of ongoing debate, reflecting the complexity of the federal system itself. Two main perspectives emerge in this discourse. The majority view outside Quebec typically sees the Court's decisions as contributing to a more centralised federal system. This perception is rooted in the idea of Canada as a mono-national, territorially unified state, initially established by colonial authorities. In contrast, the prevailing view in Quebec suggests that the Supreme Court's jurisprudence has supported a more decentralised approach, aligning with Quebec's interpretation of Canada as a pluri-national federation. This perspective views Canada as a compact among distinct national and territorial entities, emphasising the protection of governmental autonomy at the provincial level (Brouillet, 2017; Lecours, 2019).

177. In fiscal relation terms, Canadian federalism has been gradually shifting away from a dualistic model towards a more centralised structure since the late 1950s. A significant factor contributing to this shift was a World War II agreement that temporarily transferred personal and corporate income tax sectors to the federal Parliament. Additionally, the costs associated with provincial constitutional responsibilities, such as healthcare, education and social services, escalated following the emergence of the welfare state. This centralisation of fiscal powers, combined with the increased costs of provincial responsibilities, has resulted in a vertical fiscal imbalance within Canadian federalism[113] (Brouillet, 2017; Lecours, 2019).

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[109] Except in Quebec.

[110] Ontario (Attorney General) v. OPSEU, [1987] 2 S.C.R. 2, par. 27.

[111] Attorney General (Que.) v. Kellogg's Co. of Canada et al., [1978] 2 S.C.R. 211.

[112] British Columbia (Attorney General) v. Lafarge Canada Inc., [2007] 2 S.C.R. 86, par. 4.

[113] Conference Board of Canada, *Vertical Fiscal Imbalance: Fiscal Prospects for the Federal and Provincial/Territorial Governments* (Ottawa, 2002): http://www.conferenceboard.ca/e-library/abstract.aspx?did=413.

178. To correct this gap, four major federal transfers play a crucial role in balancing resource allocation and supporting essential public services across provinces and territories.[114] The Canada Health Transfer (CHT) provides funding for healthcare, ensuring universal access to public healthcare services. The Canada Social Transfer (CST) supports post-secondary education, social assistance and social services, including childcare. The Equalisation program addresses fiscal disparities by transferring unconditional funds to less affluent provinces, enabling them to offer comparable public services at reasonably comparable levels of taxation. Lastly, the Territorial Formula Financing (TFF) assists Canada's territories[115] in managing the higher costs of service delivery due to unique challenges like small populations and remote locations.

179. Additionally, the Fiscal Stabilisation Program[116] serves as a critical mechanism to mitigate economic volatility and provide financial support to provinces facing significant fiscal downturns. Established as a part of the federal government's broader fiscal framework, this program is designed to offer economic relief to provincial governments experiencing substantial declines in revenue, primarily due to unforeseen economic shocks or fluctuations in commodity prices.[117] The program functions by providing financial payments to provinces whose revenues drop by more than a specified percentage, thereby cushioning the impact of sudden economic downturns.[118]

180. While these transfers collectively ensure a more equitable distribution of resources and uphold consistent service standards nationwide, they also represent the federal government´s influence over provincial policy directions. The concept of the "power to spend" is relevant in this context. It refers to the capacity of one governmental level to allocate financial resources in areas exclusively governed by another level, without legislating, regulating, or governing those matters directly (Brun et al., 2014). This dynamic is significant because spending actions are not constrained by the distribution of legislative powers and are considered material rather than normative acts. The Supreme Court of Canada has not explicitly ruled on the constitutionality of conditional federal spending in areas of exclusive provincial jurisdiction, but indications suggest that such spending may not be viewed as a normative act requiring constitutional scrutiny (Noël, 2006; Brouillet, 2017).

181. In the landscape of Canadian federalism, several Supreme Court decisions stand out for their impact on the nation's fiscal and economic environment, as well as on the balance of power between federal and provincial governments. The subsequent table details some relevant decisions reinforcing this view:

[114] More detailed information is available at: https://www.canada.ca/en/department-finance/programs/federal-transfers.html#Major.

[115] Yukon, Northwest Territories, and Nunavut.

[116] More detailed information is available at: https://www.canada.ca/en/department-finance/programs/federal-transfers/fiscal-stabilisation-program.html.

[117] This stabilisation mechanism is particularly vital for provinces heavily reliant on natural resources, where global market changes can significantly affect revenue streams.

[118] Canadian Premiers have requested that the Fiscal Stabilisation Program be made more generous. They suggest modifications such as removing the per capita cap, lowering the non-resource revenue threshold, and allowing retroactive payments for the last five years, without affecting other transfer programs. Reference: https://www.canadaspremiers.ca/premiers-united-call-for-federal-partnership-and-action/.

Table 4. Supreme Court Decisions and their impact on Canadian federalism and fiscal policy

Case Name	Year	Issue	Decision	Central Gov v. SNGs	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
Impact Assessment Act (*Reference re Impact Assessment Act*) (2023 SCC 23)	2023	Constitutionality of the IAA, particularly its provisions on the assessment of "designated projects"	The Supreme Court found the "designated projects" portion of the IAA unconstitutional, as it exceeded federal legislative authority	SNGs	Division of Powers	Nation wide	Increases provincial autonomy in environmental regulation, limiting federal oversight on projects within provincial jurisdiction	Influences the development and regulation of major projects (mines and pipelines) within provinces, affecting investments	Significant for Canada's approach to environmental governance and the balance of power between governments
Carbon Pricing Legislation (*Reference re Greenhouse Gas Pollution Pricing Act*) (2021 SCC 11)	2021	Constitutionality of federal carbon pricing scheme.	Upheld the federal government's right to implement a carbon pricing scheme.	Central Gov.	National Concern Doctrine under environmental regulation	Nation wide	Increased federal involvement in environmental regulation	Impacts industries and consumers nationwide, significant for environmental policy	Demonstrates federal authority in nationwide environmental issues
Reference re Pan-Canadian Securities Regulation (2018 SCC 48)	2018	Whether a national securities regulator is constitutional under the division of powers.	Upheld the co-operative approach but did not fully endorse a national regulator.	Neutral	Co-operative Federalism, Division of Powers	Nation wide	Clarified federal and provincial roles in securities regulation	Affects the regulation of Canada's financial and securities markets	Highlights the balance of power in regulating national industries
Comeau (R. v. Comeau) (2018 SCC 15)	2018	Free movement of goods across provincial boundaries and provincial control over alcohol sales.	Upheld provincial restrictions on importing alcohol from other provinces.	SNGs	Free Trade within Canada, Section 121 of the Constitution	Nation wide	Maintained provincial control over alcohol sales and taxation	Implications for provincial revenues and control over local products	Reinforces provincial rights in regulating local trade and commerce
Reference re Securities Act (2011 SCC 66)	2011	Constitutionality of a proposed federal securities act.	Found the proposed act unconstitutional, affirming provincial jurisdiction over securities.	SNGs	Division of Powers	Nation wide	Reinforced provincial control over securities regulation.	Affects the regulation of Canada's financial and securities markets.	Highlights provincial autonomy in economic regulation.
Québec Secession Reference (1998 2 SCR 217)	1998	The legality and implications of a potential unilateral secession of Quebec from Canada.	A unilateral declaration of independence by Quebec would be unconstitutional; a clear secession vote would obligate negotiation.	SNGs (a clear secession vote would oblige negotiation)	Federalism, Provincial Autonomy	Nation wide	Affirmed federal-provincial negotiations in case of secession vote.	Addresses the constitutional and political aspects of secession and national unity.	Crucial for understanding Canadian federalism and the balance of national unity.
Hydro-Québec v. Attorney-General of Canada (1997 3 SCR 213)	1997	The legality of federal environmental legislation affecting a provincial corporation.	Ruled in favour of federal environmental legislation over provincial corporations.	Central Gov.	Environmental Jurisdiction	Nation wide	Impacted provincial corporations' compliance with federal laws.	Pertinent for environmental regulation and corporate governance.	Demonstrates the federal government's reach in environmental issues.
Reference re Quebec Sales Tax (1994 2 SCR 715)	1994	Whether the proposed amendments to the QST were within the legislative authority of the province of Quebec	The proposed amendments were within the legislative authority of the province of Quebec.	SNGs	The power to levy direct taxes	Nation wide	Reaffirmed the provinces' authority to levy direct taxes within their respective jurisdictions.	Ensured that provincial autonomy is respected while upholding the federal government's ability to implement national economic policies.	Significant impact on the way that taxes are levied and collected in Canada, impacting the balance of power between the federal and provincial governments.
Reference re Goods and Services Tax (1992 2 SCR 445)	1992	Constitutionality of the federal government's imposition of the Goods and Services Tax (GST).	Upheld the federal government's authority to levy the GST.	Central Gov.	Taxation Powers	Nation wide	Reinforced the federal government's fiscal authority, potentially impacting federal-provincial fiscal dynamics.	The GST is a major source of revenue for the federal government, influencing the national economy.	Highlights the federal government's capacity to implement nationwide fiscal measures.

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6. Legal Principle Invoked: The primary legal or constitutional principle or doctrine central to the case's decision.
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9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

182. The “Reference re Goods and Services Tax” case, adjudicated by the Supreme Court of Canada in 1992, holds significant implications for the Canadian economy and the broader national framework. This landmark decision scrutinised the constitutional validity of the federal government’s imposition of the Goods and Services Tax (GST). In its judgment, the Court affirmed the federal government’s authority to levy this tax, thereby upholding a crucial element of the national fiscal policy. The GST, a value-added tax applied to most goods and services in Canada, represents a critical revenue stream for the federal government, contributing substantially to its fiscal capacity. The Supreme Court’s validation of the GST not only reinforced the federal government’s power, but also ensured a stable and predictable source of income that underpins various federal programs and services. By confirming the constitutional legitimacy of the GST, the Court’s ruling has had enduring effects on Canada’s economic governance, impacting everything from consumer pricing to the scope of federal spending (Major & McCabe, 2014).

183. Moreover, in the 1994 case of “Reference re Quebec Sales Tax”, the Supreme Court of Canada addressed the crucial issue of the division of taxation powers between the federal and provincial governments within the Canadian constitutional framework. The case centred on the proposed amendments to Quebec’s provincial sales tax (QST), which sought to align it closely with the newly introduced federal Goods and Services Tax (GST). The central question revolved around whether these proposed amendments fell within the legislative authority of the province of Quebec. The Court, in a unanimous decision, held that the proposed amendments were indeed within the legislative authority of Quebec. Additionally, it reasoned that the QST amendments, despite their resemblance to the GST, constituted a direct tax, a power explicitly granted to the provinces under section 92(2) of the Constitution Act, 1867. The Court further emphasised that the proposed amendments did not unduly infringe upon the federal government’s exclusive power to regulate trade and commerce.[119]

184. The Québec Secession Reference of 1998 stands as a defining moment in Canadian constitutional law, addressing the legal and political aspects of Quebec’s potential secession. The Supreme Court of Canada ruled that a unilateral declaration of independence by Quebec would be unconstitutional. However, the decision went further, establishing that if a clear majority of Quebecers voted for secession, the rest of Canada would be constitutionally obligated to enter into negotiations. This ruling underscored the principles of federalism and democracy, recognising the balance between the autonomy of provincial entities and the integrity of the Canadian federation.

185. Another decisive case, the 2011 decision in Reference re Securities Act addressed the constitutionality of a proposed federal securities act. The Court found the proposed act unconstitutional, thereby affirming the jurisdiction of the provinces over securities regulation. This decision had far-reaching implications for the Canadian financial markets, reinforcing the decentralised nature of financial regulation in Canada and underscoring the provinces’ autonomy in economic regulation (Lecours, 2019).

186. In contrast, the Carbon Pricing Legislation (Reference re Greenhouse Gas Pollution Pricing Act) case in 2021 underscored the federal government’s authority in environmental policy with significant economic ramifications. The Court upheld the federal government’s right to implement a nationwide carbon pricing scheme, establishing minimum national standards for greenhouse gas (GHG) pricing in Canada and requiring provinces and territories to either implement their own GHG pricing systems that meet or exceed the federal standards or opt into the federal system. This decision directly affected industries and consumers across Canada. It not only emphasised the federal government’s role in addressing national concerns such as climate change but also had substantial implications for the country’s economic policy, indicating a shift towards more centralised decision-making in areas of national importance.

187. More recently, the 2023 decision on the constitutionality of the Impact Assessment Act (IAA) and the Physical Activities Regulations (PA Regulations)[120] marks an influential moment in Canadian

[119] As enshrined in section 91(2) of the Constitution Act, 1867.

[120] *Reference re Impact Assessment Act*.

environmental and constitutional law. This case, arising from a challenge to the IAA enacted in 2019 as part of Canada's federal environmental assessment regime, culminated in the Supreme Court's judgment that the portion of the IAA concerning the assessment of "designated projects" exceeded the bounds of federal legislative authority and was thus unconstitutional. The Court's majority held that the scheme's focus was not limited to regulating effects within federal jurisdiction and that it defined these effects too broadly, overreaching into areas beyond federal competence. This ruling significantly impacts the scope of federal assessment and decision-making over major projects, particularly those located entirely within a province, such as mines and pipelines. It necessitates a re-evaluation and potential amendment of the IAA to align with the constitutional division of powers, thereby reshaping the landscape of environmental regulation and federal-provincial relations in Canada.

188. The peculiar characteristics rooted in the historical and constitutional formation of Canada, combined with the jurisprudence presented above, show that there is no majority position in the doctrine or in the Supreme Court regarding the greater or lesser incidence of federalist decisions. Scholars offer varied interpretations of the Court's decisions. Some, like Roach (2011), view the Court as a proactive legislator, as exemplified in cases like the Québec Secession Reference (1998), which emphasised the autonomy of government orders. Others, such as Baier (2006), Popelier (2017) and Lecours (2019), perceive the Court's approach as balanced and non-centralist, maintaining a reasonable balance in its federalism´s de/centralisation trends throughout the decades, while Brouillet (2017) suggests a tendency to favour federal authority.

189. These divergent perspectives collectively underscore the dynamic nature of Canadian federalism, especially in economic regulation and fiscal policy. In this context, the Supreme Court's decisions are remarkable in maintaining a careful balance between national interests and provincial autonomy. This balancing act has profound implications for Canada's economic framework and intergovernmental relations, underlining the Court's role in steering the country through the intricacies of federal-provincial dynamics. This equilibrium is critical in preserving Canada's unity and economic stability, considering its distinct national identities and regional diversities.

190. Adding to this, several institutions, committees and bodies work to foster intergovernmental collaboration on financial, economic and public policy issues. The Federal-Provincial-Territorial (FPT) meetings of finance ministers[121] are a cornerstone for collaborative governance, particularly in economic and fiscal policymaking. These meetings provide a vital forum for discussing and coordinating a broad spectrum of economic and fiscal policies, such as taxation, government spending, debt management and macroeconomic strategies. This collaboration ensures a cohesive approach to managing Canada's diverse financial landscape, aligning regional and national interests.

191. The FPT meetings have been especially crucial during times of economic challenges, such as the global financial crisis and the COVID-19 pandemic.[122] They have enabled the development of unified economic responses across Canada, harmonising efforts to stimulate growth, control inflation and tackle employment issues. A key illustration of this collaborative efficacy is the 2017 enhancement of the Canada Pension Plan (CPP), a significant milestone in Canada's social and fiscal policy. The enhancement, necessitating consensus among the federal, provincial and territorial governments, marked a major reform since the CPP's inception in 1965. It addressed concerns over the sufficiency of retirement incomes for future generations and involved increasing the income replacement rate and the maximum income subject to CPP contributions[123] (Macdonald, 2019).

[121] These meetings bring together federal, provincial, and territorial finance ministers.

[122] More detailed information is available at: https://www.cbc.ca/news/politics/cpp-provinces-agreement-1.3645278.

[123] More detailed information is available at: https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/payroll/payroll-deductions-contributions/canada-pension-plan-cpp/cpp-enhancement.html.

192. Moreover, these FPT meetings epitomise the essence of co-operative federalism, a defining feature of Canada's political system. These gatherings facilitate critical fiscal mechanisms such as equalisation and transfer payments, essential for preserving fiscal equality among provinces and territories, thereby ensuring the Canadian federation's stability and prosperity.[124] The recent agreement in February 2023 to increase health-related transfers by CAN 46 billion over ten years underscores this.[125] While provinces and territories shoulder the responsibility for delivering health-care services, the federal government's fiscal role has been paramount since the advent of Medicare in the 1950s and 1960s. The new funding is a step towards addressing the increasing fiscal pressures due to factors like population ageing and rising healthcare costs (Béland & Tombe, 2023).

193. Complementarily, officials-level working groups dedicated to addressing technical challenges in intergovernmental fiscal relations are instrumental in paving the way for successful political negotiations.[126] These groups, through their specialised focus and expertise, play a relevant function in the process of fiscal policy formulation and implementation. Key among these are the Fiscal Arrangements Committee (FAC), which deals with federal-provincial fiscal relations; the Senior Financial Arrangements Committee (SFAC), focusing on fiscal issues relevant to the territories; the Canada Pension Plan Committee, overseeing federal-provincial-territorial discussions on the Canada Pension Plan; the Economic and Fiscal Data Sub-Committee, which exchanges information on economic and fiscal forecasts; and the Federal-Provincial Committee on Taxation, facilitating collaboration in tax policy.

194. The Economic Council of Canada, established in 1963, was an advisory body providing economic analysis and policy advice to the Canadian government. Its formation highlighted the need for expert guidance in national economic planning, especially in areas like labour markets, productivity and income distribution. The Council played an instrumental role in informing federal and provincial economic policies and mediating federal-provincial fiscal relations, particularly during economic challenges in the 1970s and 1980s, such as inflation and unemployment. Interestingly, the Council was dissolved in 1993, with its functions absorbed by other governmental entities.

195. Administratively, the Canadian Intergovernmental Conference Secretariat (CICS)[127] is an agency that facilitates intergovernmental collaboration in Canada. Its mandate centres on providing administrative support and planning services for conferences involving federal-provincial-territorial and provincial-territorial leaders, including first ministers, ministers and deputy ministers. The CICS is an impartial entity, funded by both federal and provincial governments.

[124] These are facilitated by the Fiscal Arrangements Committee (FAC), which includes Assistant Deputy Ministers overseeing federal-provincial fiscal relations. The FAC works as an FPT sub-committee that focuses on fiscal transfer topics like the Equalisation program, Canada Health Transfer, Canada Social Transfer, and broader federal-provincial issues.

[125] More detailed information is available at: https://www.canada.ca/en/health-canada/news/2023/02/working-together-to-improve-health-care-for-canadians.html.

[126] More detailed information is available at: https://www.canada.ca/en/department-finance/corporate/transparency/transition-binders/2021/how-finance-works-binder.html.

[127] Website: https://scics.ca/en/.

Germany

196. Germany operates as a federal republic characterised by a decentralised system of government. It is rooted in the Basic Law (Grundgesetz), which serves as the nation's constitution.[128] The country is segmented into 16 states, known as Bundesländer, each endowed with its own constitution, government and parliament. The Länder are generally responsible for carrying out state functions, including legislation and executing the laws.[129] The Federation is authorised to perform state functions only where the Basic Law expressly or implicitly empowers it to do so..

197. The division of political authority and power in Germany is distributed among the Federation, the 16 states (Länder) and the local authorities. While the Federation has exclusive legislative powers in areas of national importance such as foreign affairs, defence and currency, the Länder are entrusted with education, police, culture, media and cultural affairs. However, Länder laws must not conflict with federal laws.[130] In terms of financial autonomy, the Länder have their own revenue sources and can determine their tax rates in certain circumstances.[131] They are also accountable for funding and delivering services in their respective domains. However, the main part of tax legislation competence lies with the Federation.

198. Germany's legislative framework is a parliament, comprising the Bundestag, elected by the people, and the Bundesrat, with members nominated by the Länder.[132] While maintaining distinct power divisions, this federal system embraces co-operative federalism, fostering collaborative policymaking between the Federation and the Länder.

199. The German judiciary is independent, comprised of multi-tiered courts. Federal courts address diverse legal areas, including civil, criminal, administrative, tax, social and labour law, but they solely review specific aspects of previous judgements such as certain severe procedural mistakes or deviations from previous judgements of the FCC. State-level courts, which serve as the primary trial courts, oversee a broad spectrum of cases, including civil and criminal proceedings. Specialised courts adjudicate labour, administrative, tax and social court matters. Judges, recognised for their independence, are appointed based on their expertise.

200. The Federal Constitutional Court (FCC) is Germany's apex court for constitutional issues. It holds the mandate to review laws, court decisions and governmental actions for their alignment with the Basic

[128] The Federal system was introduced in 1871 (at that time with a strong Länder), reformed in 1919 (with a very strong federal state) and in 1949 (finding a compromise between Bund and Länder, which developed into a strong and distributing Bund since reunification in 1990).

[129] As defined by Art. 30, 70 and 83 of the Basic Law.

[130] There is one exception. The Länder have the option to issue Land legislation that deviates from federal legislation when according to Article 72 paragraph (3) no (7) of the Basic Law.

[131] Examples of Länder revenue sources include the property transfer tax and the inheritance tax (Art. 106 (2) of the Basic Law). The Länder have the power to levy taxes mainly in the form of local excise duties, as long as such duties are not equivalent to taxes governed by federal law (Art. 105 (2a) sentence 1 of the Basic Law). In addition, the Länder have the exclusive power to pass legislation on church tax (cf. Art. 140 of the Basic Law in conjunction with Article 137 (6) of the Weimar Constitution) and to determine the tax rate for real property transfer tax (Art. 105 (2a) sentence 2 of the Basic Law). Local authorities have the right to determine the multipliers (Hebesatz) that are applied to the basic rates of real property tax and trade tax (Art. 106 paragraph (6) sentence 2 of the Basic Law) and that influence the amount of revenue collected by local authorities (Federal Ministry of Finance, 2023, p. 6).

[132] The Bundestag is the principal legislative body, responsible for passing federal laws, electing the Chancellor, and overseeing the government. Its members are elected every four years through a mixed-member proportional representation system. The Bundesrat represents the 16 federal states at the level of the federal state (Art. 50 of the Basic Law). It must approve all legislation affecting policy areas under state jurisdiction and can propose legislation to the Bundestag.

Law. The FCC comprises sixteen judges, chosen by the Bundestag and the Bundesrat, serving a non-renewable twelve-year term. While many are law professors, at least three judges from each of the two eight-member senates must have at least three years prior experience in one of the supreme federal courts. It is the ultimate authority in conflicts between federal and Länd law and can overturn decisions made by the Länder's constitutional courts under certain circumstances, but not in all cases. As a federal court, the FCC settles disputes in which the federal government is affected.

201. Local governance in Germany is tasked with managing local authorities (Gemeinden) and delivering crucial community-level services. The Basic Law determines the power distribution between the Federation and the Länder.[133] It sets forth principles of collaboration and coordination among various government tiers, ensuring effective governance and citizen welfare. Article 28 of the Basic Law empowers local authorities to manage their affairs, including financial aspects, autonomously.

202. In situations where powers overlap, federal laws typically supersede state laws if discrepancies arise. Germany's federal structure aims to harmonise the Federation's interests with those of individual states, facilitating regional diversity and autonomy while promoting a cohesive approach to governance and policy formulation. Legislative powers have gravitated largely towards the Federation. This is mainly due to the extensive use of concurrent legislative powers by the Federation. Over the years, the federal legislature—often with the agreement or at the request of the Länder—has enacted laws on a variety of essential issues. This has been done to maintain legal and economic unity and to ensure uniform living conditions across the country. However, an amendment to the Basic Law in 1994 established more restrictive criteria on the exercise of concurrent legislative powers by the Federation (Federal Ministry of Finance, 2023).

203. Intergovernmental disputes can arise from policy disagreements, financial resource allocation, and competencies. A common contention is the distribution of financial resources, with states often asserting that federal allocations are insufficient for fulfilling their duties, leading to fiscal challenges at the state level.

204. The federalist jurisprudence in Germany indicates a notable centralisation and evolution towards joint decision-making in the initial two decades of the federal republic. However, from the 1980s onward, a consistent trend towards decentralisation emerged, either via policy shifts or formal constitutional amendments. The FCC overviewed these developments, with its decisions prompting constitutional amendments and legislative changes that significantly influenced the federal system (Benz, 2017).

205. Post-reunification, Germany's federal system experienced strains due to varying economic and social conditions across the Länder. These disparities resulted in tensions between governmental levels. Consequently, challenges in joint decision-making led both the federal and several Länder governments to reconsider the prevailing structures of co-operative federalism and uniform policy implementation.

206. To navigate these challenges, discussions began on a comprehensive revamp of the federal system, termed "modernising federalism". This initiative aimed to recalibrate the system in response to the nation's evolving challenges. Some states, seeking more autonomy, initiated legal actions before the FCC, while others sought legal recourse to obtain additional federal support during fiscal crises (Benz, 2017). Although there was a declared commitment to inter-state solidarity, states primarily aimed to maximise their share of resources, leading to disputes with other states with similar objectives (Blair & Cullen, 1999).

207. In this context, the FCC's decisions have been instrumental in shaping the fiscal landscape of Germany, especially in matters concerning the distribution of financial resources and responsibilities among different levels of government.

[133] The German states (Länder) generally do not have the authority to legislate their own taxes, except for a few minor taxes. However, they have a constitutional right to receive certain portions of tax revenue, as stipulated in Art. 105 and in Art. 106 of the Basic Law.

208. One of the primary areas where the FCC has been actively involved is the fiscal equalisation system, which aims to balance financial disparities to a certain degree among the Länder.[134] The system redistributes financial resources from wealthier states to less affluent ones to balance the fiscal capacities of the Länder. Over the years, several states, especially the wealthier ones, have challenged the constitutionality of this system. The FCC has addressed these challenges, sometimes demanding more explicit norms and justifications for redistribution (Werner, 2018).

209. In its decisions from 1952, 1986, and 1992, the FCC addressed these challenges without inducing significant changes.[135] However, this understanding changed when the federal states of Baden-Württemberg, Bavaria and Hesse filed successful lawsuits at the FCC.[136] The claimant Länder contended that the system was not only unfair, forcing them to make disproportionate payments to other states, but also lacked mechanisms to motivate these states to bolster their fiscal health. Additionally, they criticised the system's complexity, which, in their view, obfuscated accountability. The Court ruled that the fiscal equalisation system required a specified standard to provide predictability to the fiscal foundation of the Federation and the Länder. Consequently, the federal legislator was mandated to overhaul the system by 2005. This reform, which came into effect in 2005, moderated the financial obligations of affluent Länder and introduced a standards act (Maßstäbegesetz), which defines the standards to be met by the financial equalisation act.[137] (Brand, 2006; Werner, 2018).

210. The FCC has also been involved in cases where individual Länder sought financial assistance from the federal government due to fiscal crises. A notable instance is the Berlin case in 2006, where the government of Berlin sought federal intervention to address its burgeoning debt. The FCC emphasised the responsibility of individual Länder for their fiscal policies and denied further federal aid, as the Land Berlin's budgetary situation was simply tight, but resolvable on its own, underscoring that supplementary grants for the purpose of aiding the budget consolidation of a financially weak Land are subject to a strict ultima ratio principle. While reaffirming the fiscal equalisation principles, the FCC called for robust constitutional safeguards against unchecked public debt (Benz, 2017, p. 214).

211. Heeding the FCC's guidance and responding to concerns about subnational insolvency and the broader European financial crisis, the second Federal Reform Commission introduced a "debt brake" in the German constitution in 2009, a mechanism to curb excessive borrowing.[138] This rule limits the ability of both the federal and Länder governments to take on new debt. While it aims to ensure fiscal discipline, it has also been a subject of debate regarding the flexibility it allows during economic downturns (Benz & Heinz, 2016; Benz, 2017; Schuknecht et al., 2021).

212. Several other FCC judgments highlight the evolving federal-state fiscal dynamics. The subsequent table details some relevant disputes over the years.

[134] The legal framework for financial equalisation among Germany's states, or Länder, is established by Article 107 of the Basic Law.

[135] In reference to Fiscal Equalisation cases I (BVerfGE 1, 117), II (BVerfGE 72, 330-436) & III (BVerfGE 86, 148-279).

[136] Fiscal Equalisation case IV (1999), BVerfGE 101, 158.

[137] The fiscal equalisation system in its current form is still a contentious issue. There is a 2013 case still pending a decision. For more information regarding German fiscal equalisation, refer to Werner (2018).

[138] Further information on the German federal debt break is available at: https://www.bundesfinanzministerium.de/Content/EN/Downloads/Public-Finances/germanys-federal-debt-rule.pdf?__blob=publicationFile&v=5).

Table 5. Overview of key FCC decisions on German federalism and fiscal equalisation

Case	Year	Issue	Decision	Central Gov v. SNGs	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevance to Nation
Berlin case (BVerfGE 116, 327-412)[139]	2006	Berlin seeking federal fiscal assistance. Requirements for classifying a Land's financial situation as a severe budgetary crisis	Ruled Berlin responsible for own fiscal policy	Central Gov.	Specific (Berlin)	State autonomy over fiscal policy. Emphasised state fiscal discipline	Berlin had to implement austerity	Relevant for delineating state/federal responsibility
Baden-Württemberg, Bavaria, Hesse (BVerfGE 101, 158-238)[140]	1999	Fiscal equalisation constitutionality	Continuation of the financial equalisation act as a transitional regulation and order for new regulation	Central Gov.	Nationwide	Rejected claims against fiscal equalisation	Maintained fiscal transfers	Highly relevant to equalisation. Foundation of the standards act (Maßstäbegesetz)
Hamburg, Bremen, Saarland, Schleswig-Holstein (BVerfGE 86, 148-279)[141]	1992	Fiscal equalisation constitutionality	Upheld constitutionality of most of the fiscal equalisation act	Central Gov.	Nationwide	Preserved most of the existing fiscal equalisation system	No fundamental changes to fiscal equalisation transfers	Highly relevant in maintaining the status quo
Baden-Württemberg, Bremen, Hamburg, Hesse, North Rhine-Westphalia, Saarlan (BVerfGE 72, 330-436)[142]	1986	Fiscal equalisation constitutionality	Upheld constitutionality of most of the fiscal equalisation act	Central Gov.	Nationwide	Specified the requirements for distribution criteria for federal supplementary allocations	No fundamental changes to the equalisation system	Highly relevant for the distribution of federal supplementary allocations
Württemberg-Baden, Hamburg (BVerfGE 1, 117)	1952	Fiscal equalisation constitutionality	Upheld constitutionality of the fiscal equalisation act	Central Gov.	Nationwide	Constitutional conformity of a financial equalisation that goes beyond mere subsidies	Maintenance of comprehensive horizontal fiscal equalisation	Highly relevant in establishing the foundation of the current fiscal equalisation
Baden (BVerfGE 1, 14-66)[143]	1951	Constitutional conformity of federal laws regulating the merger of federal Länder	Upheld the key aspects of the legal framework	SNGs	Nationwide	Established framework for merger of Länder	Provided clarity on legislative powers and principles of democracy	Relevant for the relationship between federal and Länder constitutions in particular

Category definitions:

1. Case Name: The title of a review of federal law, formatted as "Plaintiff" and number.
2. Year: The year the Constitutional/Supreme Court decided on the case.
3. Issue: A brief description of the primary legal or policy issue that the case addressed.
4. Decision: The Supreme Court's ruling or judgment on the case.
5. Central Gov. v. SNGs: Indicates whether the decision favoured the central government (Central Gov.), favoured the state or subnational governments (SNGs), or was neutral in its impact on the balance of power.
6. Range of Decision: Categorises the decision's scope, such as whether it has a nationwide impact, impacts a specific region, or only affects the parties involved.
7. Impact on Intergovernmental Relations: Describes how the decision affects the relationship between different levels of government, such as increasing state autonomy or strengthening federal oversight.
8. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
9. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

[139] Case 2 BvF 3/03. interpretation of Art. 107(2) third sentence of the Basic Law in conjunction with the principle of federalism

[140] Cases 2 BvF 2/98, 2 BvF 3/98, 2 BvF 1/99, 2 BvF 2/99.

[141] Cases 2 BvF 1/88, 2 BvF 2/88, 2 BvF 1/89, 2 BvF 1/90.

[142] Cases 2 BvF 1/83, 2 BvF 5/83, 2 BvF 6/83, 2 BvF 1/85, 2 BvF 2/85.

[143] Case 2 BvG 1/51.

213. These cases illustrate the balance between state autonomy, fiscal responsibility and national solidarity in Germany's federal framework. They also highlight the FCC's responsibility in defining the trajectory of German federalism. Over time, the Court´s views on federalism have changed, often in correspondence to amendments of the Basic Law. In the past, the FCC supported a co-operative federalism system, where the national government and the Länder worked closely together. More recently, the FCC has emphasised having a more precise division of responsibilities. Notably, its rulings on equality have led to countrywide policies (Kisker, 1989; Benz, 2017).

214. Additionally, the distribution of legislative authority between Germany's federation and the Länder has experienced notable shifts over time. For instance, the FCC's innovative interpretation of Article 72 paragraph (2) of the Basic Law leaned in favour of the Länder.[144] It posited that the federal parliament could only wield concurrent powers if there was a looming law fragmentation or if significant economic disparities between the Länder were imminent. Such interpretations not only curtailed the federal parliament's authority but also introduced ambiguity in the application of concurrent powers. To address this, the federal legislator amended the constitution, leading to a clearer demarcation of competence categories and a more explicit regulation of concurrent powers (Art. 72 of the Basic Law). In certain policy areas, the constitution was further modified to counteract FCC rulings. For instance, after the FCC questioned the constitutionality of federal and local administrative co-operation in the field of basic support for persons seeking employment, a new joint task (Art. 91e of the Basic Law) was introduced, mitigating concerns surrounding joint decision-making (Rau, 2003).

215. This complex relationship between constitutional law and politics in Germany underscores the FCC's capacity. While it shapes federalism's trajectory, it remains an impartial and non-political judge (Benz, 2017).

216. Several institutions and committees in Germany facilitate collaboration across tiers of government concerning fiscal disputes. The most prominent one is the Bundesrat (Federal Council) which allows for the representation of the Länder at the federal level, ensuring that regional interests are seamlessly integrated into federal decision-making. This institution not only wields significant legislative influence through its veto power over federal legislation but also fosters intergovernmental co-operation via regular dialogues. Such interactions bolster mutual trust and understanding. Moreover, the Bundesrat acts as a mediator, resolving disputes between governmental levels (Jeffery, 2007).

217. In the Bundesrat, Länder governments have a platform to address federal bills collaboratively. They can influence a broad spectrum of legislative matters. They can file objections and veto laws (using an absolute majority) that directly impact the Länder's competencies and necessitate explicit approval. Since more than half of all bills require such explicit Länder approval, negotiations between the federal and Land governments become crucial.[145] Additionally, Länder representatives coordinate to avoid unforeseen voting outcomes. While the nature of conflicts among them can differ based on the issues, party politics significantly sway the Länder governments' actions, even though they are expected to represent their respective constituencies. The structure of these negotiations acknowledges this political influence (Benz, 2009; Behnke, 2020).

218. Another relevant co-operation institution is the Vermittlungsausschuss,[146] a joint committee comprising representatives from both the Bundestag and the Bundesrat that stands as the central instance

[144] BVerfGE 106, 62 [144 seq.].

[145] However, statistically, the majority of laws passed are no longer dependent on the approval of the Bundesrat (62%). Available from: https://www.bundesrat.de/DE/dokumente/statistik/statistik-node.html.

[146] Website: https://www.vermittlungsausschuss.de/VA/DE/homepage/homepage-node.html. The Vermittlungsausschuss (Mediation Committee) is a joint body of the Bundestag and the Bundesrat, consisting of 16 members from each, appointed based on the strength of their parliamentary groups. Its primary role is to broker consensus between the Bundestag and the Bundesrat when the latter does not approve legislation passed by the

in fostering intergovernmental co-operation and mitigating potential conflicts between the federation and the Länder. Constituted under the Basic Law, it mediates legislative disputes, significantly when the two chambers diverge in their perspectives. Its primary responsibility is to deliberate on contentious legislative aspects and propose balanced amendments that respect federal and Länder interests. Beyond legislation, the Vermittlungsausschuss also oversees budgetary matters, ensuring fiscal policies are coherent across governance levels. Emblematic of Germany's commitment to co-operative federalism, the committee underscores the significance of consensus in the federal system, safeguarding state interests and reinforcing democratic governance through structured dialogue and negotiation (Axer, 2010).

219. Other institution that works collaboratively to foster a harmonious fiscal relationship between the federal government and the Länder in Germany is the Stabilitätsrat, a stability council tasked with overseeing the budgetary policies of the Federation and the Länder. It upholds fiscal discipline and offers recommendations concerning the financial stability of individual states (Korioth, 2016).

India

220. India functions as a parliamentary-federal democratic republic, consisting of twenty-eight states and seven union territories (UTs).[147] The country adopted a federal structure under the 1935 Government of India Act, which separated provinces and Indian states. The Indian government operates at three levels: the union (central) government, state governments and local governments.

221. At the top, the union government administers national affairs. The President, serving as the head of state and the Prime Minister, as the head of government, lead this tier. The President is chosen by an electoral college comprising members of both the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). The Prime Minister, appointed by the President, is usually the leader of the majority party in the Lok Sabha. The union government's responsibilities include developing and implementing national policies, creating and applying federal laws and managing national institutions.

222. At the state level, governments are headed by a Governor, who is the President's representative and a Chief Minister, who is the head of the state government. The Governor is appointed by the President, while the Chief Minister is appointed by the Governor and is typically from the majority party in the state legislative assembly. State governments are responsible for creating and implementing policies specific to their states, establishing and enforcing state laws and managing state-level institutions.

223. Local governments encompass district and municipal administrations, headed by democratically elected mayors and municipal councils. Their primary role is to provide essential services to their communities, including water supply, sanitation, education and healthcare.

224. India's governance system also includes concurrent powers, shared between the central and state governments. These powers cover areas such as trade, commerce and criminal law. In cases of legislative disagreements on concurrent subjects, the central government's law prevails over state laws.

Bundestag. If the Mediation Committee's decisions differ from the Bundestag's, a new decision by the Bundestag is necessary. Additionally, if a law requires the Bundesrat's approval, either the Bundestag or the Federal Government can request that the Mediation Committee convene to facilitate agreement. Further information available at: https://www.bundestag.de/en/committees/mediation.

[147] Since 1947, India's federation has undergone numerous changes, primarily due to Article 3 of the Constitution, which grants Parliament the authority to form new states. Although this power might appear to excessively empower the central government, it has been crucial in maintaining India's unity. This is because it enables the federation to adapt, react, and transform in response to the desires and aspirations of its subnational entities.

225. The 1935 Government of India Act established a three-tier legislative framework, categorising powers into Federal, Provincial and Concurrent Lists. This Act distinguished the financial responsibilities and income sources of provincial governments from those of the federal government. It also specified the federal government's authority to collect and retain taxes, as well as the procedures for distributing financial resources and subsidies to provinces. The Act mandated that certain amounts[148] be allocated from the federation's revenues. This legislation laid the foundation for India's fiscal federalism, a structure that continues today.

226. Fiscal federalism in India has evolved to maintain stability in its processes. The budgetary procedures of the central and state governments are independent activities, requiring approval from either the Parliament or the respective state legislatures. The Finance Commission, established in 1951 and operating under Article 280 of the Indian Constitution,[149] defines the financial relationships between the central and state governments. The Commission assesses the union's gross tax revenues, deducting cesses, surcharges and non-tax revenues to compute the net divisible pool (NDP).[150] In determining the allocation of the NDP, the Commission consults with subnational governments, incorporating their inputs along with those of the union government.[151] For example, the Fifteenth Finance Commission allocated 41% of the NDP to subnational governments as tax devolution.[152] The Commission also provides a revenue deficit grant under Article 275 and allocates funds for disaster management and state-specific grants (Singh, 2021).

227. India's legal system is rooted in the British common law tradition. Its Constitution, noted for being the world's lengthiest written constitution, establishes a three-tier judiciary comprising the Supreme Court, High Courts and District Courts. The Supreme Court, located in New Delhi, is the apex court, with jurisdiction over appeals from High Courts and District Courts. Each of India's 28 states and seven union territories houses a High Court, which hears appeals from District Courts and significant state-level cases. District Courts, at the base of the judicial hierarchy, handle local cases (Tewari & Saxena, 2017).

228. The Supreme Court and High Courts are recognised as constitutional courts, uniquely empowered to adjudicate matters with constitutional implications. The President appoints Supreme Court justices following consultations with Supreme Court and High Court justices[153] (Article 124). Similarly, the President appoints High Court judges in consultation with the Chief Justice of India, the state's Governor and the Chief Justice of the respective state High Court (Article 217).

229. In the context of Indian federalism, the Supreme Court has played an essential role in shaping the nation's fiscal and economic landscape, particularly in matters concerning the balance of power between the union and state governments.[154] A notable area of impact is the imposition of Goods and Services Tax (GST) by states and its alignment with the Indian Constitution's provisions on free trade, leading to landmark judicial decisions. The Indian Constitution empowers states to levy taxes on goods, but this power is circumscribed by the Constitution's commitment to free trade. Article 304(a) specifically prohibits states from imposing discriminatory taxes on goods originating from other states, safeguarding against

[148] As decided by His Majesty in Council.

[149] Available from: https://www.constitutionofindia.net/articles/article-280-finance-commission/.

[150] A constitutional amendment in 2000 expanded the NDP to include all union taxes, not just income tax and excise duty.

[151] In resource distribution among subnational governments, the Commission uses parameters like population, income distance, geographic area, and fiscal compliance, each with assigned weightings. These parameters and weights are influenced by historical precedents, but each Commission faces unique challenges in this determination.

[152] https://prsindia.org/policy/report-summaries/report-15th-finance-commission-2021-26.

[153] The Supreme Court is composed of a Chief Justice and 25 other judges.

[154] Where the legal assurance of progressively expanding the fiscal capabilities of states must be ensured without diminishing the financial allocation to the Central government (Bose, 2023).

practices that could obstruct free trade. Additionally, Article 304(b) mandates that any legislative bill altering the free trade regime among states must receive prior presidential approval, ensuring that interstate trade remains unhampered by unilateral state actions.[155]

230. Several Supreme Court cases have explored the tension between states' taxation rights and constitutional free trade provisions.[156] Notable cases include India Cement v. State of Andhra Pradesh (1988)[157] and Kalyani Stores v. State of Orissa (1966),[158] where the Court upheld the principle that states can impose taxes on goods as long as they are non-discriminatory and do not excessively burden interstate commerce.[159]

231. Additionally, in State of West Bengal v. Kesoram Industries (2004),[160] the Court clarified that while the Union government holds regulatory authority over certain commodities like coal and minor minerals, this does not strip states of their power to tax these goods. However, such taxation must not conflict with the Union's regulatory powers.

232. In the case of Belsund Sugar Co. Ltd. v. State of Bihar (1999),[161] the Supreme Court invalidated a Bihar state law that levied market fees on sugar products. The Court found that this law overstepped the legislative authority of the state legislature as defined under entry 28 of the state list. The law pertained to the supply and distribution of sugar products, as well as related trade and commerce, which are covered under entry 33 of the concurrent list. In matters listed under the concurrent list, Union law takes precedence. Therefore, while the Court acknowledged some aspects of the state law, it ultimately deemed it invalid where it conflicted with Union law (Tewari & Saxena, 2017).

233. In the more recent case of Jindal Stainless Ltd. v. State of Haryana (2016),[162] the Supreme Court of India made a significant ruling on the constitutional legitimacy of entry taxes implemented by various Indian states. This case emerged when Jindal Stainless Ltd., a stainless-steel manufacturer based in Haryana, contested the Haryana Entry Tax Act. This legislation mandated a tax on goods entering Haryana, affecting raw materials for industries such as Jindal Stainless. The company contended that this entry tax contravened the free trade and commerce principles established in Article 301 of the Indian Constitution. The Supreme Court, however, affirmed the constitutionality of entry taxes, albeit with stringent restrictions on their application. The Court emphasised that entry taxes should not function as tools for revenue generation or disrupt the smooth flow of trade. Instead, their primary function should be to reimburse states for the expenses incurred in enabling trade and commerce within their territories.

234. Another significant ruling was the case of Union of India v. Mohit Minerals Pvt. Ltd. (2018).[163] Mohit Minerals Pvt. Ltd., a company importing coal internationally, contested a notification by the Central Board of Indirect Taxes and Customs (CBIC). This notification stipulated the inclusion of ocean freight costs in the taxable value of imported goods. Mohit Minerals argued that since ocean freight does not constitute a supply of goods or services within India, it should not be subject to GST taxation. The Supreme Court affirmed the validity of the CBIC's notification, ruling that the cost of ocean freight forms an integral

[155] The Constitution of India: https://legislative.gov.in/constitution-of-india/.

[156] This study mainly concentrated on conflicts related to fiscal federalism, although there are other relevant conflict areas such as legislative federalism, administrative federalism, and more recently, ecological federalism.

[157] Available from: https://indiankanoon.org/doc/1647721/.

[158] Available from: https://indiankanoon.org/doc/854341/.

[159] Refer to Shriparkash (2023) for further insights regarding why the Court has gained more influence than most other judiciaries.

[160] Available from: https://indiankanoon.org/doc/879535/.

[161] Available from: https://indiankanoon.org/doc/1058443/.

[162] Available from: https://indiankanoon.org/doc/141946357/.

[163] Available from: https://indiankanoon.org/doc/98511521/.

component of the total price paid by the importer. This cost is considered a crucial element of the supply chain for imported goods. Consequently, it was determined that ocean freight should be factored into the taxable value of these goods.

235. The table below provides a summary of the aforementioned judicial decisions:

Table 6. Indian Supreme Court decisions impacting federalism and intergovernmental relations

Case Name	Year	Issue	Decision	Central Gov. v. SNGs	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
Union of India v. Mohit Minerals Pvt. Ltd.	2018	Whether the inclusion of ocean freight in the taxable value of imported goods for GST purposes was constitutionally valid.	The Court upheld the CBIC's notification. The value of ocean freight, being a part of the cost incurred to bring the goods to India, is an integral component of the supply chain and should be included in the taxable value for GST.	Central Gov.	Mineral concession rules	Nationwide	It favoured the Central Board of Indirect Taxes and Customs (CBIC), strengthening the central government regulation.	Expenditure implications for importers and the broader taxation policy	Clarified the scope of taxable value under the GST regime, particularly in the context of imported goods.
Jindal Stainless Ltd. v. State of Haryana	2016	Whether the imposition of entry tax by the State of Haryana was constitutionally valid	The Supreme Court upheld the constitutional validity of entry taxes imposed by states. However, the Court imposed strict conditions on the imposition of such taxes.	SNGs	The federal division of taxing powers	Specific region	Favoured the rights of states to impose taxes for revenue generation	Revenue implications for Haryana	Clarified the boundaries of state powers in taxation.
State of Jharkhand v. State of Bihar and Others	2015	The division of financial resources and liabilities between the newly formed State of Jharkhand and the existing State of Bihar.	The Supreme Court adjudicated on how the revenue from coal mining and other natural resources should be divided between Jharkhand and Bihar.	Neutral	Creation of the new state	Specific region	Division of resources and liabilities for both states	Resources and liabilities distributions for both states	Clarified how financial resources and liabilities are shared when a new state is carved out of an existing one
State of West Bengal v. Kesoram Industries	2004	Whether the state government had the authority to impose a cess on the extraction of minerals.	The imposition of the cess by the State of West Bengal was constitutionally valid. While the Union had the authority to regulate mines under the Union List, the state government also had the power to levy taxes on mineral rights under the State List.	SNGs	Article 226 Jurisdiction of High Courts	Nationwide	Balanced the powers between the Union and the states. Affirmed that states have the right to levy taxes or fees on certain activities, even if the Union has overarching regulatory powers in that area.	Delineated the financial autonomy between the central and state governments	Delineated the boundaries of legislative powers and financial rights of the states vis-à-vis the Union
Belsund Sugar Co. Ltd v. State of Bihar	1999	Whether the imposition of market fees by the State of Bihar on sugar and sugarcane was constitutionally valid.	The Court held that the state law imposing market fees was beyond the legislative competence of the Bihar state legislature.	Central Gov.	Sugar price control order	Specific region	Delimitation of state legislative powers in taxation and market fees	Revenue and price control impacts for Bihar sugar industry	Balanced the power between state and central governments in matters of economic regulation and taxation.
India Cement v. State of Andhra Pradesh	1988	The extent of a state's power to levy taxes and how these powers interact with the constitutional provisions governing interstate commerce.	States can impose taxes on goods as long as they are non-discriminatory and do not excessively burden interstate commerce	Neutral	Freedom of interstate trade	Nationwide	Strengthened the state's autonomy to levy taxes. Increased central government´s role in regulating commerce.	Impacted interstate cement trade	Enhanced State fiscal autonomy. Impacted interstate cement trade.
Kalyani Stores v. State of Orissa	1966	The extent of a state's power to levy taxes and how these powers interact with the constitutional provisions governing interstate commerce.	States can impose taxes on goods as long as they are non-discriminatory and do not excessively burden interstate commerce	Neutral	State legislative compet-ence	Specific region	Strengthened the state's autonomy to levy taxes. Increased central government´s role in regulating commerce.	State-imposed taxes affect trade and commerce between states. Amplified revenue for Odisha	Enhanced State fiscal autonomy.

Category definitions:

1. Case Name: The official title of the legal case, typically formatted as "Plaintiff v. Defendant".
2. Year: The year the Constitutional/Supreme Court decided on the case.
3. Issue: A brief description of the primary legal or policy issue that the case addressed.
4. Decision: The Supreme Court's ruling or judgment on the case.
5. Central Gov. vs. SNGs: Indicates whether the decision favoured the central government (Central Gov.), favoured the state or subnational governments (SNGs), or was neutral in its impact on the balance of power.
6. Legal Principle Invoked: The primary legal or constitutional principle or doctrine central to the case's decision.
7. Range of Decision: Categorises the decision's scope, such as whether it has a nationwide impact, impacts a specific region, or only affects the parties involved.
8. Impact on Intergovernmental Relations: Describes how the decision affects the relationship between different levels of government, such as increasing state autonomy or strengthening federal oversight.
9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

236. The historical and constitutional evolution of India, coupled with the jurisprudence outlined earlier, illustrates that there is no clear consensus either in legal doctrine or in the Supreme Court's rulings regarding the extent of federalist influence in judicial decisions. Historically, the Supreme Court's interpretation of "Indian Federalism" has predominantly favoured centralisation (Gupta, 2021). However, since the 1990s, there has been a noticeable shift towards a more federalist orientation (Saxena, 2013; Popelier, 2017). While the courts have traditionally upheld centralist principles, recent years have seen an increasing inclination to uphold state rights, particularly in cases concerning the Union government's encroachment on state administrative powers (Tewari & Saxena, 2017; Swenden, & Saxena, 2021).

237. India's fiscal federalism currently confronts a series of intricate challenges, primarily arising from the evolving dynamics of the Seventh Schedule of the Indian Constitution and the implementation of the GST. The Seventh Schedule, which delineates legislative and financial powers between the Union and the states, has been subject to significant alterations. Particularly noteworthy is the expansion of the Concurrent List, where central laws prevail over state laws in cases of conflict. This expansion has increasingly brought traditionally state-managed domains under concurrent or central jurisdiction, notably in sectors such as education and forestry.[164] This shift has significant implications for the autonomy and fiscal responsibilities of subnational governments (Singh, 2021).

238. Moreover, the fiscal landscape has been further complicated by the central government's growing reliance on Article 282 of the Constitution. This Article, originally intended for exceptional use, has become a cornerstone for the proliferation of centrally sponsored schemes. These proposals, despite being in the traditional domain of states, have seen substantial allocations from the central budget, imposing additional financial burdens on state governments.[165] This trend toward centralisation of fiscal powers raises questions about the balance of fiscal autonomy and responsibility within India's federal structure.

239. The introduction of the GST in 2017 marked a significant change in India's fiscal federalism, consolidating most indirect taxes into a single tax framework. However, the establishment of the GST system has reduced the individual states' control over setting tax rates for various subjects. This reduction in fiscal autonomy has led to a greater dependence of states on the central government for financial resources, which could impact their ability to formulate fiscal policies that address specific local requirements and priorities.

240. This shift in fiscal dynamics underscores the importance of a balanced approach in managing the interplay between centralisation and decentralisation within India's fiscal framework. Key to this balance are various institutions and committees that facilitate intergovernmental collaboration in financial, economic and policy areas. The GST Council,[166] a statutory authority chaired by the Union Finance Minister and including State Finance Ministers and representatives from Union Territories with legislatures, is central to this process. The Council's decisions are mandatory for both central and state governments. A significant decision of the Council is the adoption of a dual GST model, where the central government imposes the Central GST and the states implement the State GST.[167] Additionally, the Council has designated several vital goods and services, such as food, medicine and education, as tax-exempt, reflecting its role in determining tax policies[168] (Poddar & Ahmad, 2009).

[164] As exemplified by the 42nd Amendment.

[165] The substantial budget allocation for these schemes, approximately INR 3.32 trillion in 2019-20, underscores their fiscal significance. However, states often find these schemes misaligned with their specific needs and burdensome financially, yet they remain reluctant to forego them (Singh, 2021).

[166] Available from: https://gstcouncil.gov.in/.

[167] Available from: https://cleartax.in/s/dual-gst-model.

[168] Available from: https://pib.gov.in/Pressreleaseshare.aspx?PRID=1838020.

241. Also significant in India's federal structure are institutions like the National Development Council and the Inter-State Council. The National Development Council, established in 1952, oversees the Planning Commission,[169] a central body responsible for formulating and executing India's five-year development plans. The Council's role is to review and approve these plans. The Inter-State Council[170] facilitates coordination between the central and subnational governments. These institutions have evolved to reflect changes in India's economic policies and governance structures.

242. In the realm of research, the National Council for Applied Economic Research[171,172] is a distinguished non-profit institute, well-regarded for its in-depth research on economic and social development, offering vital insights to both the government and the public.[173] Complementing it, the National Institute of Public Finance and Policy (NIPFP) specialises in public economics and policy.[174] The NIPFP's 2023 paper[175] highlights the dramatic rise in direct tax litigation cases in India, growing from approximately 2.6 million in 2012 to over 4.7 million by 2017, leading to judicial backlogs. The institute advocates for enhanced alternative dispute resolution (ADR) methods, like arbitration and mediation, to efficiently resolve these tax disputes and reduce the strain on the judicial system (De, 2023).

The United States

243. The United States is characterised by a sophisticated federal system, encompassing the federal government, fifty state governments that possess equal legal stature under the Constitution and six associated territories. The District of Columbia, which houses the nation's capital, Washington, DC, remains a unique entity under the direct purview of the federal government. Furthermore, the system integrates over 89,000 local governmental bodies, including counties, municipalities and cities.

244. Historically, the U.S. federal structure was anchored in the principle of Dual Federalism, denoting clear boundaries of power and authority between the federal and state governments. The U.S. Constitution, particularly Article I, Section 8, explicitly enumerates the competencies of the federal government. These encompass domains such as taxation, war declaration, foreign policy formulation, interstate commerce regulation and currency minting. Within the Dual Federalism paradigm, the federal government's ambit was strictly circumscribed by the Constitution, bequeathing many "reserved" powers to the states. This model was predominant from 1787 until roughly 1937.

245. The onset of the 1930s heralded a paradigmatic shift towards Co-operative Federalism, mainly in response to the difficulties of the Great Depression. This model fostered collaborative endeavours between federal and state governments to address mutual challenges. The presidency of President Franklin D. Roosevelt[176] was emblematic of this shift, with the federal government introducing comprehensive social safety nets and employment programs (Finesurrey & Greaves, 2021).

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[169] Available from: https://niti.gov.in/.

[170] The Inter-State Council was created following a Constitutional Amendment in 1990, based on the Sarkaria Commission Report's recommendations. Available from: https://interstatecouncil.gov.in/.

[171] Available from: https://www.oecd.org/economy/growth/35077577.pdf.

[172] Available from: https://www.ncaer.org/.

[173] In 2021, NCAER made a significant contribution by publishing a report that projected India's economic growth over the coming years. Available from: https://www.ncaer.org/news/where-will-indias-economic-growth-settle-in-the-next-2-3-years.

[174] Available from: https://www.nipfp.org.in/our-work/research/intergovernmental-fiscal-relations/.

[175] Available from: https://www.nipfp.org.in/media/medialibrary/2023/04/WP__394_2023.pdf.

[176] From 1933 to 1945.

246. The genius of U.S. federalism lies in its design to protect individual freedoms while preventing an undue concentration of power within any singular governmental tier. Over the span of two centuries, this system has conferred upon the U.S. a strong resilience, adaptability and capability to cater to its diverse citizenry.[177] However, it has also been a focal point for judicial disputes between federal and state entities.

247. The American federal judiciary system operates on a tripartite structure: district courts (trial courts), circuit courts (appellate courts) and the Supreme Court (final appellate court). Federal district courts primarily adjudicate cases emanating from federal statutes, the Constitution, or international treaties. Moreover, cases rooted in state law can be ushered into the federal ambit through the doctrine of "diversity jurisdiction." Federal courts derive their jurisdiction either from the U.S. Constitution or congressional statutes, typically addressing cases that either raise a “federal question” or involve “diversity of citizenship”. Federal judges, nominated by the president and ratified by the Senate, enjoy life tenure. The judicial hierarchy culminates with the nine-justice Supreme Court. Distinct from some nations, the U.S. does not possess a separate constitutional court. Most seminal judgments are articulated through public, written opinions authored by the presiding judge. Since the early 19th century, the federal judiciary, especially the Supreme Court, has played an instrumental role in delineating the contours of state powers and those of the federal branch (Somin, 2017).

248. Intergovernmental disputes, especially those bearing constitutional implications, have gained prominence over time. The federal government’s power vis-à-vis the states has been amplified, shaping both economic and social policies while fortifying individual rights (Somin, 2017). States recurrently contest federal executive orders and statutes, advocating for their annulment on constitutional grounds. Conversely, the federal government frequently challenges state statutes on analogous constitutional premises (Shelfer, 2018).

249. In aggregate, states retain the prerogative to legislate on several issues concurrently with the federal government, provided no discord arises with federal statutes. Despite the federal power surge post-1930s, states still exercise expansive legislative discretion. Nonetheless, state policies are increasingly vulnerable to federal legislation overrides or amendments (Somin, 2017).

250. The contemporary era has seen a crescendo in judicial confrontations between federal and state governments, especially in fiscal domains. The U.S. comprises 50 distinct fiscal architectures, bestowing considerable fiscal autonomy upon subnational entities, particularly in tax imposition. This autonomy enables them to mirror their constituents’ preferences (Laubach, 2005; Garcia-Milà et al., 2018). Several landmark judgments underscore the evolving dynamics of federal-state fiscal relations. The ensuing table juxtaposes some of the seminal disputes of recent years.

[177] Available from: https://crsreports.congress.gov/product/pdf/R/R46827.

Table 7. Key U.S. Supreme Court decisions impacting federalism and intergovernmental relations

Case Name	Year	Issue	Decision	Central Gov v. SNGs	Legal Principle Invoked	Range of Decision	Impact on Intergovernmental Relations	Economic Impact	Relevancy to the Nation
United States v. Washington	2022	State tax on federal contractors	Law was unconstitutional	Central Gov.	Supremacy Clause	State-specific	Strengthened federal protection against state taxation	Potential litigation costs	Highlighted tensions between state taxation and federal operations
West Virginia v. EPA	2022	Carbon dioxide emissions regulations	EPA exceeded authority	SNGs	Clean Air Act	Nation-wide	Reduced federal oversight in environmental regulation	Economic implications for the energy sector	Addressed balance of power in environmental regulation, affecting climate policy
GEO Group, Inc. v. Newsom	2022	Private detention facility contracts	Law was unconstitutional	Central Gov.	Supremacy Clause	State-specific	Strengthened federal authority in detention operations	Economic implications for private detention	Highlighted tensions between state policies and federal detention operations.
New Jersey v. United States	2021	Taxing federal employees	States can tax federal employees	SNGs	Supremacy Clause	Nation-wide	Increased state autonomy in taxation	Potential increase in state revenue	Challenged principles of federal immunity from state taxation, affecting federal employees.
Texas v. California	2020	ACA's individual mandate after tax penalty removal	Plaintiffs lacked standing	Neutral	Commerce Clause	Nation-wide	Clarified the scope of ACA's individual mandate	None	Revisited the constitutionality of the ACA's individual mandate.
Trump v. New York	2020	Excluding undocumented immigrants from the census	Case not ripe for review	Neutral	Enumeration Clause	Nation-wide	Addressed representation in the House of Representatives	None	Addressed the representation of undocumented immigrants in the Census.
Virginia House of Delegates v. Bethune-Hill	2019	Racially gerrymandered districts	House of Delegates lacked standing	Neutral	Equal Protection Clause	State-specific	Clarified standing in redistricting cases	None	Addressed racial gerrymandering and standing in redistricting cases.
Department of Commerce v. New York	2019	Citizenship question on Census	Prevented inclusion of the question	Neutral	Administrative Procedure Act	Nation-wide	Affirmed oversight of federal decision-making	None	Addressed the integrity and accuracy of the U.S. Census.
South Dakota v. Wayfair, Inc.	2018	Online sales tax	States can require tax collection	SNGs	Commerce Clause	Nation-wide	Increased state autonomy in tax collection	Potential increase in state revenue	Redefined e-commerce taxation, affecting online businesses and consumers.
Murphy v. NCAA	2018	Sports betting	Struck down federal law	SNGs	Anti-commandeering Doctrine	Nation-wide	Increased state autonomy in sports betting	Potential increase in state revenue	Allowed states to legalise and regulate sports betting, impacting sports and gambling industries
National Federation of Independent Business v. Sebelius	2012 and 2015	ACA's individual mandate and ACA´s expansion	Upheld individual mandate but limited HHS Secretary´s enforcement authority	Neutral	Commerce Clause	Nation-wide	Clarified ad balanced federal oversight in healthcare	Expanded healthcare coverage for individuals and let the Medicaid expansion intact in the law	Affirmed ACA's constitutionality, affecting healthcare access for millions and prevented the Secretary's long-standing authority to withhold all or a portion of a state's federal Medicaid funds for non-compliance with existing federal program rules.
Texas v. United States	2015	Expansion of DACA	Blocked federal expansion	SNGs	Executive Authority	Nation-wide	Increased state autonomy in immigration policies	Implications for immigration policy and affected individuals	Highlighted tensions between state and federal immigration policies.
Massachusetts v. EPA	2007	Greenhouse gas emissions regulation	EPA has authority	Central Gov.	Clean Air Act	Nation-wide	Strengthened federal oversight in environmental regulation	Environmental and industrial implications	Addressed federal responsibility in climate change mitigation.
South Dakota v. Dole	1989	Drinking age for federal highway funding	Upheld federal requirement	Central Gov.	Spending Clause	Nation-wide	Strengthened federal oversight in state policies	Potential increase in state highway funding	Set a precedent for federal conditions on state funding.

Category definitions:

1. Case Name: The official title of the legal case, typically formatted as "Plaintiff v. Defendant".
2. Year: The year the Constitutional/Supreme Court decided on the case.
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9. Economic Impact: Provides a brief overview of the decision's potential economic consequences or implications.
10. Relevancy to the Nation: Offers context on how each case affects the broader public, industries, or national policies, highlighting its significance or implications for the country.

251. In recent discourse on fiscal federalism, the landmark judgment in South Dakota v. Wayfair, Inc. in 2018 stands out as one of the most consequential and transformative judgments. The case revolved around the authority of states to obligate out-of-state online retailers to collect sales taxes on sales made to their residents, without any regard for the retailer's physical presence in the state. This verdict overruled the precedent set by Quill Corp. v. North Dakota (1992), which upheld the physical presence criterion. The Wayfair ruling illuminated the transforming topography of commerce in the digital era, emphasising the urgency for states to align with the nuances of present-day e-commerce. Although many championed this as a necessary adjustment of judicious evolution, critics expressed concerns regarding the potential entanglements for emerging online businesses navigating a mosaic of U.S. tax regulations (Gamage et al., 2018; Nuttall, 2019).

252. Furthermore, recent judgments have clarified the balance of power between the federal government and states in the healthcare financing and policy domain. The case of the National Federation of Independent Business v. Sebelius (2012) has two important decisions. First, the Court upheld the constitutionality of the Affordable Care Act's (ACA) minimum essential coverage provision, known as the individual mandate, which requires most people to maintain a minimum level of health insurance coverage.[178] The second and most complex part of the Court's decision was the ACA's Medicaid expansion. Most of the Court found the expansion unconstitutionally coercive because states did not have adequate notice to voluntarily consent and risked losing all existing federal Medicaid funds for non-compliance. However, another majority of the Court resolved this by limiting the Health and Human Services (HHS) Secretary's enforcement authority, keeping the Medicaid expansion and all other ACA provisions intact. As a result, the practical effect of the decision is that the ACA's Medicaid expansion is now optional for states; if states choose not to implement the expansion, they only lose the additional ACA Medicaid expansion funds, not their existing federal Medicaid funds.

253. Subnational insolvency has also been a crucible for intergovernmental conflicts. In 2013, Detroit, Michigan, sustained the most considerable municipal bankruptcy filing in U.S. history. A confluence of systemic determinants[179] led to this financial crisis, characterised by an astounding debt of roughly USD 18 billion. The city filed for insolvency under Chapter 9 bankruptcy protection in July 2013, embarking on an intricate journey of restructuring and legal deliberations over creditor precedence. After 16 months, the city ratified the debt restructuring blueprint.[180] The entire episode and Detroit's eventual resurgence from bankruptcy have since become seminal case studies in the realm of municipal bankruptcy (Herold, 2020).

254. Within the American judicial architecture, multiple court-aligned mediation and alternative dispute resolution (ADR) avenues exist, serving as instrumental tools to address disputes without resorting to full-blown trials. These methodologies frequently come into play in intergovernmental fiscal conflicts. For instance, the Federal Mediation and Conciliation Service (FMCS)[181] extends mediation support for labour-management disputes encompassing federal entities and state or local governments.[182] Also, based on

[178] Available from: https://www.kff.org/wp-content/uploads/2013/01/8347.pdf.

[179] Central to Detroit's fiscal challenges were declining tax revenues, exacerbated by a shrinking population and a significant reduction in the city's industrial base, particularly within the automotive sector. Concurrently, city employees' pension and health benefit costs swelled, constraining the municipal budget further.

[180] In November 2014, the court approved the debt restructuring plan negotiated with bondholders and pensioners. According to the plan, liabilities would be reduced by USD 7 billion. Creditors experienced a haircut of 80% on their claims, while pensions were cut only slightly. Fees to lawyers, consultants, and financial advisors related to bankruptcy resulted in no more than USD 150 million.

[181] Source: https://www.fmcs.gov/.

[182] The FMCS determines which disputes to mediate based on factors such as the potential impact of the dispute on the public, the willingness of the parties to participate in mediation, and the availability of FMCS resources. Source: https://www.supremecourt.gov/opinions/21pdf/21-328_m6ho.pdf.

data from the U.S. Government Accountability Office, the Internal Revenue Service (IRS) has offered six ADR initiatives to facilitate mediation and expedite tax conflict resolutions in the preceding half-decade. These endeavours aim to avoid protracted traditional appeals and litigation, offering impartial and fair outcomes for taxpayers.[183] However, the utilisation of these platforms plummeted by 65% from 2013 to 2022,[184] side-lining opportunities to enhance taxpayer engagement with ADR and optimise program benefits.

255. Several institutions promote collaboration across tiers of government concerning fiscal disputes. Prominent among these are the Intergovernmental Fiscal Relations Committee (IGFR), a standing committee of the National Academy of Public Administration (NAPA), which fosters dialogue among regional government officials, scholars and professionals;[185] the National Association of State Budget Officers (NASBO),[186] a professional organisation that represents state budget officers and provides a platform for sharing best practices in financial management; and the National Governors Association (NGA),[187] a bipartisan organisation which boasts specialised committees, such as the Center on Budget and Policy Priorities and the Federal-State Budget Initiative, enabling governors to disseminate best practices, advocate on behalf of their constituencies and constructively engage with the federal establishment.[188]

256. While fundamental, the spirit of intergovernmental collaboration can yield significant outcomes, mitigating conflicts. The COVID-19 pandemic illuminated this perspective, compelling governments to pool their resources and strategies for health-related exigencies. In the United States, a noticeable surge in coordinated endeavours emerged among state and local administrations.[189] Many states demonstrated readiness to grant enhanced flexibility to local governments in executing emergency policies. Conversely, relations between the national government and states deteriorated, punctuated with high levels of tension and discord (Benton, 2020). Additionally, while federal grants-in-aid were disbursed to state and local governments, constraints prevented states from accumulating extensive deficits. The national response, including aid strategies, was sculpted by a complex tapestry of political determinants that facilitated discretionary manoeuvres (López-Santana & Rocco, 2021).

[183] Available from: https://www.irs.gov/newsroom/irs-invites-public-input-on-ways-to-improve-dispute-resolution-programs-suggestions-wanted.

[184] Available from: https://www.gao.gov/products/gao-23-105552.

[185] Available from: https://napawash.org/.

[186] Available from: https://www.nasbo.org/home.

[187] Available from: https://www.nga.org/.

[188] For example, the NGA worked on proposals to ensure that the federal funding formulas and rules are fair and sustainable for states and the federal government regarding Medicaid.
Source: https://www.nga.org/publications/understanding-effects-medicaid-innovation/.

[189] Regarding interstate and interlocal relations.

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