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The Unsettled Question of the Constitutional Framework and the Interpretative Authority in the Danish Rigsfællesskab

by

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Abstract

The wording of the Danish constitution (*Grundlov*) suggests that Denmark is a unitary state. However, both Greenland and the Faroe Islands have autonomy based on their home rule arrangements since 1948 and 1979, respectively. The constitutional entrenchment of these arrangements has been questioned by a significant sector of Danish scholarship.

This article contends that they are not in contradiction with the *Grundlov*. The latter remains silent about the home rule model, which has developed in parallel to the constitution but not in conflict with it. It is argued that these arrangements are part of a constitutional framework or "constitutional block" in the Kingdom of Denmark, ruling out the possibility of unilateral repeal by the Danish parliament. Additionally, any inquiry into their constitutionality must first consider how constitutional review is conducted. The article delves into the question of what the interpretative authority of the Danish constitution is, given the *Grundlov*'s silence on mechanisms for its interpretation.

In any case, the home rule model presents weak internal organization in its development and legal uncertainty, which may also manifest in cases of internal conflicts of laws. This contribution aims to stimulate reflection on the decentralized Danish *Rigsfællesskab*, which may also offer insights applicable to other decentralized constitutional frameworks worldwide.

Keywords

decentralization, Denmark, constitutional law, Faroe Islands, Greenland, autonomy

1. Introduction

If one reads the Danish constitution (*Grundlov*), approved in 1849 and last amended in 1953,[II] literally, one can easily come to the conclusion that Denmark is a unitary state. However, the reality is actually quite different. The Kingdom of Denmark or *Rigsfællesskab* comprises three distinct parts: Greenland, the Faroe Islands and what is often named continental Denmark or Denmark proper. Both Greenland and the Faroe Islands enjoy autonomy within the Realm and the laws in force often differ among the three territories. Since Faroese home rule became a reality in 1948, these differences have increased over time as Faroese and Greenlandic authorities assumed competences over new matters.

The constitutional entrenchment of the so-called 'home rule model' (Lyck 1996: 117-118)[III] has not been a peaceful matter among legal scholars. This article focuses on the constitutional framework of the Danish *Rigsfællesskab* as a decentralized state. Firstly, the arrangements currently in force in both the Faroe Islands and Greenland are examined. Secondly, an overview of the various positions on the constitutionality of the home rule model in Danish legal scholarship is presented, focusing on §3 and §1 of the *Grundlov*. By reflecting on these diverse perspectives, I suggest an approach which supports the absence of any contradiction between the home rule model and the *Grundlov*. Finally, I argue in favor of the constitutional character of the home rule arrangements and briefly address the question of the common legal principles for the Realm.

2. The Home Rule arrangements of the Faroe Islands and Greenland

The period after the Second World War, in which the Faroe Islands enjoyed de facto independence, can be characterized by the difficult political context in the islands. Some parties favored the status quo whilst others supported higher levels of autonomy or even independence (Rógvi 2004: 31 f). The outcome was the enactment of the Home Rule Act in 1948.[IV] The preamble of the Faroese Home Rule Act acknowledges the "special position of the Faroe Islands" from a "national, historical and geographical" perspective. It further establishes that the Faroes constitute a "self-governing community" within the Danish Realm.[V] The Faroese Act creates two lists of affairs that can be assumed by the Faroese authorities: matters on list A can be transferred at any time, whilst matters on list B can be transferred via prior negotiation with the Danish central authorities.[VI] Family law, inheritance

law or procedural law were not included in any list. These remained within the competence of the Danish central state. However, this does not mean that the laws in force in these areas have been the same in both Denmark proper and the Faroe Islands since the passage of the Faroese Act, as will be discussed later. The Faroese assembly (*Løgting*) and the executive (*Landsstýri*) hold the "legislative and administrative authority", respectively. The laws passed by the *Løgting* are named *løgtingslove* or laws of the *Løgting*.[VII]

In 2005, the Faroese Takeover Act[VIII] came to complement the Faroese Home Rule Act. It represents a clear step forward in strengthening the autonomy of the Faroe Islands. Thus, the Faroese authorities can assume competences in all fields but the constitution, the regulation of citizenship, the Supreme Court, foreign, security and defense policy and foreign exchange and monetary policy.[IX] Faroese and Danish central authorities are acknowledged as equal partners.[X] A number of fields enumerated on List I require prior negotiation with the Danish central authorities. Among these are: family and inheritance law as well as procedural law and the establishment of courts.[XI] The Takeover Act states that the Faroese authorities have the "legislative and executive power"[XII] as well as the judicial power in case of the establishment of Faroese own courts.[XIII]

It was not until 1978 that Greenland gained autonomy with the Home Rule Act for Greenland.[XIV] Like the Faroese Act, it acknowledged the "special position of Greenland in the Kingdom from a national, cultural and geographical perspective".[XV] It included only one list of matters which could be taken over. In any such case, the Greenlandic authorities held the "legislative and executive authority".[XVI] The Greenlandic government is called *Landstyre* in Danish or *Naalakkersuisut* in Greenlandic, whilst the name of the Greenlandic assembly is *Landsting* or *Inatsisartut* in Danish and Greenlandic languages, respectively. As was the case with the Faroese Act, family, inheritance and procedural law were not listed. The possibility of assuming competences over other fields via negotiation between Greenlandic and Danish central authorities was not ruled out.[XVII] In 2009, the Greenlandic Home Rule Act was replaced by the Greenlandic Self Rule Act.[XVIII] The Self Rule Act has deepened and broadened Greenlandic autonomy. It acknowledges the Greenlandic and the Danish central authorities as equal partners.[XIX] Unlike the Greenlandic Act of 1978, the Self Rule Act contains two lists of matters. Some can be transferred at any time (List I) and others after negotiation with the Danish central authorities (List II). As in the Greenlandic Act, the Self

Rule Act foresees that further matters may be included if Greenlandic and Danish central authorities so agree.[XX] The Self Rule Act establishes that the Greenlandic authorities hold legislative and executive power over the transferred matters and judicial power in the case of taking over procedural law and the establishment of courts.[XXI]

As a consequence of the silence of the *Grundlov* regarding the home rule model, no mechanism to resolve possible conflicts of competences is established. An ad hoc mechanism is created by the Faroese Act and replicated in the Greenlandic Home Rule Act.[XXII] It consists of a board composed of two members of the Danish government and two members of the home rule government, Faroese and Greenlandic, respectively. The board is completed with three judges appointed by the Supreme Court. It is interesting to note that the three judges will decide on the conflict of competences only if the other four members do not agree. It is also worth noting that the wording of this provision in the Faroese and Greenlandic Acts suggests control only over Faroese/Greenlandic laws and not Danish laws. It reads: "questions on doubts regarding Faroese competence in relation to the authorities of the Kingdom, are submitted to a Commission". Suksi describes this wording as "unusual" in comparative terms (Suksi, 2018: 53). Rasmussen interprets it as comprising both Faroese and Danish laws and considers that it is possibly inspired by a provision of the Icelandic-Danish Union Act of 1918, which in §17 stated that:

'Where a difference of opinion on the provisions of this Union Act is not settled by negotiations between the Governments, the question shall be referred to an arbitration board composed of four members, of which the highest court of each country shall choose half. The arbitration board decides the disagreement by majority. In the event of a tie, a supervisor appointed alternately by the Swedish and Norwegian governments, takes the decision'.[XXIII]

There are however differences between the two provisions. The one in the Union Act concerned disputes on its very interpretation. §6 of the Faroese Act focuses on discrepancies regarding Faroese competences and the laws enacted by the Faroese assembly. Moreover, the composition of both boards is quite different. The members of the board created by the Union Act were chosen by the courts, not by the governments. Finally, there is no role of foreign states in the Faroese and Greenlandic Acts. Following the passage of the Self Rule Greenlandic Act and on the basis of its *travaux préparatoires*, both Greenlandic authorities and Danish central ones are equally entitled to bring claims to this commission on invasion of

competences.[XXIV] The older version of the provision remains in the Faroese arrangement. This does not necessarily mean that the Faroese authorities would not be able to question laws enacted by the *Folketing* before this board but the wording is not crystal clear. In any event, this board lacks permanent character and, in fact, has never been used (Rasmussen, 2002: 380-381).Therefore, it is difficult to predict how it would function in reality.

As a matter of clarification, the expression "Danish central authorities" or "Danish State authorities" is used in this article as a translation of the Danish term *rigsmyndigheder*, which literally means "the authorities of the Realm", but they are not different from the Danish authorities, i.e., the Danish government and the Danish parliament (*Folketing*). Thus, the *Folketing* legislates for issues specifically concerning e.g., the Copenhagen region and for the common affairs of the Realm.

In the field of theories of federalism, Tarlton, back in the 1960s, distinguished between symmetry and asymmetry. Symmetry denotes the situation wherein the correspondence between the distinct component units and the federal authorities remains fundamentally identical, while in an asymmetrical model, there are differences among component units in their relationship and interactions with the central authorities (Tarlton, 1965: 868-869). In Tarlton's words, "a federal system can be more or less federal throughout its parts" (Tarlton, 1965: 867).

Watts further classifies asymmetry into de jure asymmetry, in which differences between component units are established in the legal framework, and de facto asymmetry, a notion that refers to differences based on sociocultural and economic circumstances between the component units (Watts, 2005). Asymmetric features, as Palermo points out, are not exceptional in constitutional settings, as these have become more common in federal, regional, or devolved states (Palermo, 2009). Asymmetric models generally appear as both a result and a response to accommodate national, cultural, social, economic, and linguistic diversity. Thus, asymmetric solutions are common in multinational systems, and their impact on the principle of equality has also been addressed (Sahadžić, 2021).

Without delving into the intricacies of the terms federal, regional, autonomous, or devolved, the Danish *Rigsfællesskab* is a decentralized state (Lorenzo Villaverde, 2023a). From

what has been explained thus far in this article on the Faroese and Greenlandic arrangements, the framework is asymmetric. I will return to this later in section five.

Asymmetry has often been discussed by scholarship on theory of federalism from a constitutional perspective, that is, if the constitution of a given state creates asymmetries among the component units vis-à-vis the central authorities.

In this sense, it is pertinent to conduct a constitutional analysis of the decentralized Kingdom of Denmark. As previously emphasized, one encounters a scenario in which the *Grundlov* is completely silent on the home rule model. According to its "bare bones", it lends itself to the reading that the Kingdom of Denmark is a unitary state. Suksi mentions that, from a formal perspective, the "weak entrenchment" of the Faroese and Greenlandic arrangements leaves them in a sort of limbo (Suksi, 2009: 515). However, Suksi seems to associate the idea of "weak entrenchment" with the lack of reference in the *Grundlov*. As I will argue below, this may be nuanced.

3. A hide and seek game? An overview of the discussion on the home rule arrangement and the *Grundlov*

The topic of the alignment of the home rule arrangement and the *Grundlov* has been discussed among Danish constitutional scholars since the enactment of the Faroese Act in 1948. These discussions have mainly focused on §1 and §3 of the *Grundlov*. These provisions read as follows:

'§1. This Constitutional Act shall apply to all parts of the Kingdom of Denmark.'

'§3. Legislative authority shall be vested in the King and the Folketing conjointly. Executive authority shall be vested in the King. Judicial authority shall be vested in the courts of justice.'

In the subsequent paragraphs, I will summarize these various opinions, grouping them as follows: 1) first, those who have held that the home rule arrangements are unconstitutional 2) those who consider that the home rule arrangements are based on delegate powers and are revokable and / or consider that acts enacted by the Faroese and Greenlandic assemblies are not acts in a constitutional sense 3) those who consider that the home rule model is not unilaterally revokable. Finally, I will address the opinions that consider §1 of the *Grundlov* as

a limitation to the transference of competences. These questions are indeed central to an understanding of the stability of the system.

Meyer, in the 1950s, claimed that the home rule arrangement of the Faroe Islands, the only one in force back then, was in contradiction with the Constitution since the moment it was introduced (Meyer, 1950: 200-202). Pursuant to Meyer´s interpretation, the introduction of the Faroese home rule would have required an amendment of the *Grundlov*. More recently, a nuanced position is found in the work of Spiermann. He considers that Faroese home rule was contrary to the *Grundlov* since its enactment, as §3 of the *Grundlov* involves a general ban on legislative delegation and the Faroese and Greenlandic home rule arrangements have gone beyond it. Nonetheless, he concludes that the home rule model has become constitutional based on customary constitutional law (Spiermann, 2007: 10, 69; Spiermann, 2008: 5).

The so-called theory of delegation of powers have surrounded the discussion on the constitutionality of the home rule model. This theory, based on §3 of the *Grundlov*, presupposes that the powers of the home rule authorities are based on delegation from the *Folketing*, which entails limitations on its scope and also the possibility of their unilateral revocation. In this vein, some Danish scholars have regarded the home rule model as constitutional but limited to the above-mentioned theory.

For Ross the Faroe Islands are just like any other Danish municipality (Ross, 1946: 174). Ross interprets that §3 of the *Grundlov* only allows for the home rule arrangements to be based on delegated powers. The legislation enacted by the *Løgting* would not be laws equal to those passed by the *Folketing*, but rather rules of administrative character. He explains that this is precisely why the Faroese Act uses the terminology *løgtingslove* or laws of the *Løgting* instead of just laws (Ross, 1983: 496).[XXV] From an opposite standpoint and perhaps as a political strategy, the Faroese political minority in 1948 opposed the Faroese Home Rule Act as an insufficient framework precisely because, it opined, the legislative power remained in the *Folketing*.[XXVI]

Another consequence of the theory of delegation is that the Danish central authorities may unilaterally revoke the transferred matters and even Faroese home rule itself if they so decide (Andersen, 1954: 86). This possibility is, however, not mentioned in any way in the

travaux préparatoires to the Faroese Act. They only point out that the political intention of both Danish and Faroese sides was to give stability to the home rule framework.[XXVII]

When the Constitution was last amended in 1953, Faroese home rule had already existed for five years. Despite this, the amendment did not include any provision on the home rule model. During the preparatory works to the *Grundlov* of 1953, scholars Ross and Andersen were asked to give their opinion on the constitutional position of Greenland and the Faroe Islands. Ross held that an amendment to the Constitution was unnecessary, as Faroese home rule was already supposed to be "in accordance with the current Constitution".[XXVIII] In a similar vein, Andersen considered that the inclusion of a constitutional provision on Faroese home rule would be "inappropriate", arguing that an article on a possible home rule for Greenland could lead to "unfortunate consequences".[XXIX] What he meant by "inappropriate" or "unfortunate consequences", he did not explain. Nonetheless, Ross and Andersen's perspective prevailed and no provision on the home rule model exists in the *Grundlov*.

The argument that rests behind this theory is that §3, "correctly interpreted" (Ross, 1983: 495), simply allows for a limited delegation (Ross, 1983: 496), and the home rule assembly cannot enact acts at the level of those passed by the *Folketing*. Home Rule would be no more than a "special qualified form for self-administration" (Foighel, 1979: 91).

The theory of delegation left its footprint on the Greenlandic Home Rule Act of 1978. It expressly mentioned the term *landstingslove*[XXX] or laws of the Greenlandic assembly and its *travaux préparatoires*[XXXI] referred to the delegation of powers (Foighel, 1979: 92-93).[XXXII] The Danish government and the Ministry of Justice seem to follow this theory. Indeed, the position of the Danish government has evolved over time in relation to the scope of matters capable of being transferred. This evolution has led to a broadening of the competences of the home rule authorities. Fields once considered constitutionally reserved to the Danish central authorities (e.g., procedural law, law on persons, family and inheritance law) are now transferable. However, the rationale behind the position of the Danish government remains the same: the competences are based on delegated powers.[XXXIII]

Hartig Danielsen has discussed the scope of §3 of the *Grundlov* in the context of the evolution between the Greenlandic Home Rule Act of 1978 and the Greenlandic Self Rule Act of 2009. According to this author, §3 imposes a limitation on the fields that can be

transferred and they must relate to that part of the *Rigsfællesskab*, not to the Kingdom as a whole (Hartig Danielsen, 2011: 10-12). These constitutional limits, based on §3 of the *Grundlov*, would have not changed over time. According to this author, it is, instead, the political view towards the home rule model which has changed (Hartig Danielsen, 2011: 16-17).

Finally, there are some Danish scholars who, from various perspectives and diverse arguments, consider that the home rule model is constitutional and cannot be unilaterally revoked. In this vein, Sørensen opines that the delegation theory is contrary to the actual wording of the Faroese Act since it states that the *Løgting* holds the "legislative authority" over matters under its competence (Sørensen, 1973: 52). He argues against the consideration of the laws passed by the *Løgting* as "just a special category of orders which are in all respects subordinate to the laws" (Sørensen, 1973: 51). The wording of the Faroese Act and the political context surrounding its approval in 1948 lead to the conclusion, according to Sørensen, that Faroese home rule cannot be unilaterally revoked against Faroese will. He suggests that the Faroese Act involves a self-limitation of the Danish legislative power. Nonetheless, Sørensen still wonders whether such self-limitation requires a constitutional (*Grundlov*) amendment (Sørensen, 1973: 52-53).

In a reply to Spiermann's view, explained above, Palmer Olsen argues that §3 of the *Grundlov* contains a prohibition or limitation of delegation among powers (e.g., from the legislative to the executive power) but not from one parliament to another, such as the *Løgting* or the *Inatsisartut* (Palmer Olsen, 2007: 276). Palmer Olsen further adds that, in any case, the Faroese home rule was not considered contrary to the Grundlov in 1953, when the latest constitutional amendment occurred (Palmer Olsen, 2007: 277).

Larsen opposes the view held by Hartig Danielsen above addressed, and instead supports that there is no easy foundation in the *Grundlov* for a doctrine of the unitary state to shoe-horn the theory of delegation (Larsen, 2011). He underlines that the distribution of matters between the Home Rule and the Danish central authorities does not have a logic based on the *Grundlov* or its §3. Instead, it is a consequence of the actual concept of statehood, as a meaningful State comprising Denmark proper, the Faroe Islands and Greenland, which, arguably must entail certain basic common affairs involving a subjective choice (Larsen, 2011: 129).

Harhoff takes a similar view as Sørensen but supported by different arguments. He rejects the possibility of legislative self-limitation, which underlies much of Sørensen's approach. Harhoff suggests that, after various decades, the home rule arrangements "have acquired a constitutional special position which limits the legislature in a stable manner" (Harhoff, 1993: 214-215). By reviewing the different theoretical views among scholars, he finds the constitutional position of the home rule arrangement "unclear in Danish Constitutional Law" (Harhoff, 1993: 218). Harhoff argues that the constitutional understanding of home rule should incorporate political, moral, social and cultural angles to the notion of law (Harhoff, 1993: 242-243). His proposed alternative view submits that the home rule arrangements are above ordinary acts enacted by the *Folketing* and between these and the *Grundlov*. The legislative and executive powers on transferred matters are under the home rule authorities and the Danish central authorities cannot unilaterally revoke the home rule arrangements (Harhoff, 1993: 242; Harhoff, 1992: 208-209). Harhoff's theory provides an overview of the evolution of the home rule model over time. It is seen nowadays as a "politically autonomous structure" which resembles that of a state (Harhoff, 1993: 246-247). The nature of an agreement between parties (Danish and Faroese/Greenlandic) is also stressed by Harhoff, with the consequence that it can only be amended via a new agreement by the parties. (Harhoff, 1993: 258). In his opinion, the home rule model enjoys the "character of a constitutional appendix to the *Grundlov*" (Harhoff, 1993: 268; Harhoff, 1994: 251).

The consideration of political elements in the interpretation of the home rule model and its constitutionality is also present in Germer's approach. In this author's view, the legislative and executive powers are in the hands of the home rule authorities, taking into consideration the special historical, geographical and ethnic position of Greenland and the Faroes (Germer, 2012: 105). In a similar vein, Zahle considers that the delegation theory does not take into account the political implications surrounding the home rule model, which he sees as unilaterally irrevocable (Zahle, 2007: 118-119).

Besides §3, the possible violation of §1 of the *Grundlov* has also been at the center of academic and political discussions. This provision, first included in 1953, states that the *Grundlov* applies to all parts of the Kingdom. The notion of "unity of the Realm" (*rigsenheden*) has been inferred from this provision, although the Constitution does not use such an

expression. The term is vague and its actual content is barely defined. However, it is found in the Faroese Act and in the Greenlandic Self Rule Act as well as in the *travaux préparatoires* of the respective home rule arrangements. The Danish Government acknowledges that the term does not appear in the *Grundlov* but considers nonetheless that it imposes some limits to the competences of the home rule authorities. These must be geographically constrained to the Faroes or Greenland and §1 presupposes that some matters must remain under the Danish central authorities.[XXXIV]

Constitutional legal scholarship has been divided on the role of §1 *Grundlov*. Foighel argues that the unity of the Realm imposes limits on both the scope of transferable matters and the very nature of the home rule arrangements. These are established by a Danish law and not based on an agreement similar to an international one (Foighel, 1979: 91). The Greenlandic Home Rule Commission, he explains, preferred to use the term *rigsenhed* than *rigsfællesskab* as the latter (in the sense of community or commonwealth) is more commonly used among sovereign states, and this is not the case. Contrary to Foighel, §1 does not impose legal unity according to Sørensen. Therefore, different legislation may apply to different parts of the Kingdom (Sørensen, 1973: 53 f). In the same vein, Zahle considers that such unity does not mean a requirement for the very same laws for the whole Kingdom (Zahle, 2007: 110). §1 *Grundlov* made Greenland an integral part of the Realm in 1953 but did not refer to the constitutional position of Faroese home rule (Zahle, 1998: 56). Spiermann sees the evolution of the home rule model over time as having an impact on such unity (Spiermann, 2008: 15).

4. Some reflections on the (lack of) contradiction between the Home Rule model and the *Grundlov*

In the discussion on the constitutionality of the home- rule arrangements, the limits to the transference of competences and, in general, the stability of this decentralized system, there is, in my opinion, a missing point in both the *travaux préparatoires* and the legal scholarship. One should therefore raise this question: What institution, body or bodies is/are ultimately in charge of interpreting the Danish Constitution and shedding light on the alignment of the home- rule arrangements with the *Grundlov*?

The *Grundlov* neither creates a specific body (such as a constitutional court) nor assigns constitutional review of legislation to an existing body (government, parliament or supreme

court). By delving into the *travaux préparatoires* of the home rule arrangements, one can perceive a dominant position of the Danish government when interpreting the possible limits the *Grundlov* imposes to the competences of the home- rule authorities. It is frequent to find expressions such as "in the understanding of the Danish government" the *Grundlov* shall be interpreted in this or that way in relation to the home rule arrangement.[XXXV] One example is the consideration of §1 of the *Grundlov* as a synonym of the very vague term *rigsenheden* and its interpretation in a given way to limit the competences of the Faroese/Greenlandic home rule authorities. However, there is no provision in the *Grundlov* that suggests that the Danish government or its Ministry of Justice's views on the Constitution shall prevail over the interpretation carried out by any other bodies. The key role of the Danish government in the evolution of the home rule model and its constitutional interpretation is evident. However, the *Grundlov* does not entitle the Danish government to take a leading role when interpreting the Constitution. This key role is explained politically. It is a consequence of the political position of the Danish government and the political imbalance in the context of the *Rigsfællesskab*.

The various commissions set up to prepare the home rule arrangements have also framed the constitutional boundaries of the competences of the home rule authorities.[XXXVI] Again, constitutional interpretation developed this way can better be explained in political terms. It is the result of the context in which the negotiations on the elaboration of the home rule framework took place, but it has no legal basis in the *Grundlov*.

Traditionally, important weight has been given to the opinion of Danish legal scholars. Scholarship's opinion is generally requested as part of the *travaux préparatoires* and often quoted.[XXXVII] The importance of academic literature in constitutional interpretation, in particular when there is a lack of an established mechanism for the interpretation of the *Grundlov*, is not to be diminished as an authoritative source. Rógvi points out the "relative strength of textbooks and preparatory works as meta-sources" in Scandinavia (Rógvi, 2013: 60). Once again, this traditionally strong influence has no basis in the *Grundlov*. Scholars' views are a valuable expert source, but they are not democratically accountable and, per se, can hardly be a decisive source in a democratic system. Petersen quotes the words of a former Greenlandic prime minister who declared: "we shall not wait for the answers from 117 legal experts. We shall govern Greenland with the mistakes we do, we must not let others make

the mistakes for us" (Petersen, 1997: 19). Petersen refers to these words as evidence of the ambiguity of a "legally pluralistic society" where everyone, including "the most prominent politicians", can have a view on how to interpret the law (Petersen, 1997: 22). Whilst this might be true, the words of the Greenlandic prime minister evidence something else: the relevance of Danish academics in legal/constitutional interpretation in Denmark and, in this particular case, in relation to framing the Greenlandic home rule model.

What about constitutional judicial review? This is common in most European countries, many of which also have a constitutional court whose task is to control the constitutionality of the laws. As in the other Nordic countries, a constitutional court is not part of the Danish constitutional tradition. It could be argued that the lack of political instability can be an explanatory factor and, in consequence, the need for establishing such a body has not been felt (Hautamäki, 2007: 153-154). The has been a traditional understanding that the legislature is the best positioned to interpret the constitutional boundaries of its own acts. This also implies a self-constraint in light of constitutional limits (Rønsholdt, 1999: 344). However, agreeing with Larsen and Rógvi, who provide some examples, this sounds far from realistic in the Danish context and in the Danish Realm as a whole. The *Folketing* seems to have shown little interest in constitutional matters, and, in the end, the dichotomy is not between the legislature and constitutional judicial review but between the latter and the executive power (Larsen, 2015: 423-424; Rógvi, 2013: 327 f).[XXXVIII]

In the absence of a constitutional court, what role do the Danish courts, especially the Supreme Court, play in constitutional review? Danish courts have generally been very cautious. Since the enactment of the *Grundlov* in 1849, constitutional judicial review was regarded with skepticism (Christensen and Hansen Jensen, 1999: 227-228; Rógvi, 2013. 187 f). The predominant view was the belief that courts should not limit the work of the legislative and executive powers by being subject to judicial review (Rógvi, 2013: 196; Melchior, 2002:111).[XXXIX] This low profile also applies to the Supreme Court, whose role in constitutional interpretation has been modest at best, even if the possibility of constitutional review by the Supreme Court has been acknowledged since about a century ago.[XL] Rógvi thoroughly analyses Supreme Court judgments linked to constitutional review, evidencing this modest role, the relevance given to academic literature and an "informal deference to the lawgiver" (Rógvi, 2013: 61, 207 f). He argues, however, that constitutional review has

increased due to the external influence of the European Court of Human Rights and the Court of Justice of the European Union. It was not until 1999 that the Supreme Court declared an act unconstitutional in the so-called *Tvind* case.[XLI] This decision, which was received as "surprising" (Rønsholdt, 1999: 333; Christensen and Jensen, 1999: 227), only set aside the application of a provision in that specific case. Thus, its practical impact was quite limited. No other act has been considered contrary to the *Grundlov* by the Supreme Court since then.

On this basis, constitutional review in Denmark and, by extension, in the Danish Realm, can be defined as weak (it is seldom carried out), unclear and dispersed (various actors participate in the interpretation of a constitution which says nothing about its own interpretation). 'Faith' in the Danish legislature (and, in practice, in the executive power) does not explain what happens in the event that constitutional limits as overstepped by the executive and legislative powers and how they may be subject to scrutiny in light of the *Grundlov*. It resembles, in my opinion, a narrow understanding which weakens the division of powers in Denmark.

The various interpretations discussed by legal scholarship are often quoted in the *travaux préparatoires* do, in fact, cancel each other. These academic opinions, as much weight as they may have in the Scandinavian legal tradition, can hardly lead to a clear and final conclusion on the constitutionality of the home rule arrangements, in the absence of a specific body to direct constitutional review. Nevertheless, they have had an incontestable influence on the political evolution of the home rule model and, in particular, on the position of the Danish government.

In my understanding, the home rule model can hardly be considered contrary to the *Grundlov,* and I base my position on various reasons. First, the Constitution simply ignores this model, even if the Faroese Act was already passed when the latest version of the *Grundlov* came into force in 1953. If the *Grundlov* does not frame the home rule arrangements, it neither imposes their creation nor opposes them. They are born outside the *Grundlov*, in parallel, but not in contradiction to it. Any claim arguing a discrepancy between the Constitution and the home rule model involves a restrictive interpretation of the former regarding an area the *Grundlov* is silent about. Such a restrictive interpretation should be thoroughly justified.

Second, the provisions traditionally used by Danish scholarship to justify limits to the home rule arrangements, namely §1, §3 and §19 of the *Grundlov,* have, in my view, little to do with the home rule model. §3 of the *Grundlov* has been the main pillar of the so-called theory of delegation. According to this, §3 either opposes the creation of home rule or, at best, its competences are based on delegation of powers. The two main consequences are: a) the laws enacted by the Faroese/Greenlandic assemblies are not acts in the *Grundlov* sense of the term and b) the home rule arrangements can be unilaterally revoked by the Danish parliament. However, agreeing with Palmer Olsen on this point, §3 is merely a traditional provision on division of powers (Palmer Olsen, 2007: 276). Home rule does not involve delegation from the *Folketing* to the executive or the judiciary. It creates a parallel legislature, constructed in terms of competences and geographical limits. Its basis is a decentralized structure in the Kingdom of Denmark not mentioned in the *Grundlov*. Therefore, the division of powers is kept between the *Løgting* and the *Landsstýri* or the *Inatsisartut* and the *Naalakkersuisut*.

Thus, the framework does not fall in contradiction with §3, a provision intended for other purposes. The arguments of some Danish scholars concerning the theory of delegation have been embedded in a rather literal and narrow interpretation of the *Grundlov*. Surprisingly enough, the wording of §3 literally says that legislative power is vested in the *Folketing* and the King. This has obviously not been the case for long. In conclusion, the Faroese and Greenlandic authorities hold executive and legislative power over the transferred matters and this can hardly be deemed contrary to §3 *Grundlov*.

The notion of unity of the Realm (*rigsenhed*) has been linked by some to §1 *Grundlov* and used as a further argument to draw the boundaries of the home rule model. As discussed, the *Grundlov* does not make specific mention of this expression. Such *rigsenhed*, Sørensen and Zahle point out, does not necessarily mean legal unity (Sørensen, 1973: 53 f; Zahle, 2007: 110). In any case, it must be underlined that the original purpose of §1 was a different one: changing the status of Greenland from a colony to an integral part of the Danish Kingdom.[XLII] In this sense, §1 only reads that the *Grundlov* applies to the whole Realm. Its wording, per se, does not exclude the configuration of a decentralized or even federal state as long as the *Grundlov* binds all parts of the Kingdom. No specific limits, beyond the content of the *Grundlov*, can be deduced from §1 in relation to the transference of competences to the home rule authorities. As an example, in the *travaux préparatoires* of the Greenlandic Act

of 1978, the Commission of Home Rule for Greenland considered that family and inheritance law were part of that *rigsenhed* and in the hands of the Danish central authorities (Foighel, 1979, 92).[XLIII] The exclusion of family and inheritance law has no basis in the *Grundlov*, either if one reads §1 alone or systematically with other constitutional provisions. Excluding family and inheritance law was merely a result of political negotiations in 1978. The Commission tried to justify this limit in legal and constitutional terms but its explanation is, once again, political. This is evidenced by the fact that family and inheritance law are now part of the areas the Greenlandic home rule authorities can assume on the basis of the Self Rule Act. The Faroe Islands have already taken the field, after negotiations with the Danish government.[XLIV] Such take over is not absent of problems and legal uncertainty (Lorenzo Villaverde, 2023b).

§19 of the *Grundlov* has also been at the center of the constitutional debate. It has been relevant concerning the takeover of matters and regarding any possible desire for independence in Greenland and in the Faroe Islands. What do these provisions say? §19 simply lays down that the King (meaning, the Danish government) shall not take any action that reduces or increases the Kingdom without the consent of the *Folketing*. The Faroese scholars Larsen and Joensen, in a detailed article, argue that §19, contrary to traditional Danish reading, has no relevance in the case of a unilateral declaration of independence by the Faroe Islands (Larsen and Joensen, 2020: 254 f). This opinion is consistent with the fact that §19 is a provision on international affairs. § 19 is about the actions the Danish government may conduct in international affairs without the consent of the parliament. The provision thus presupposes an action on the part of the Danish government, while a unilateral secession is going beyond such context and presupposes an action taken by some other actor within the Realm. The extension or reduction of the Kingdom as mentioned in § 19 is intended for an international context (such as a war) but is silent on internal affairs. All in all, § 19 is far from dealing with the question of unilateral secession.

Some Danish scholars, supportive of the theory of delegation, have stressed that the home rule arrangements do not have the nature of an international agreement but are simply internal *Rigsfællesskab* arrangements (Andersen, 1954: 86; Foighel, 1979: 91). It is contradictory to support such a view whilst, at the same time, applying a provision as §19 on

international relations to the legal position of the Faroe Islands and Greenland in the *Rigsfællesskab*, with the purpose of limiting the scope of action of the Home Rule authorities.

A third reason on which I base my argument is the way in which constitutional review is canalized. On the one hand, there is a lack of a procedure in the *Grundlov* to control the constitutionality of the laws. If such a procedure does not exist, what body is entitled to determine that an act, such as the home rule arrangements, violates the *Grundlov*? On the other hand, even if not enshrined in the Constitution, it is recognized that the Supreme Court may review the constitutionality of legislation. Indeed, it is probably the best-positioned body in the Danish *Rigsfællesskab* to interpret the Constitution, not least because it is common to the whole Realm. Being this the case, the Supreme Court has traditionally had a very cautious approach to constitutional review, as mentioned before. A principle of *in dubio pro legislatoris* is present. It seems quite unlikely that the Supreme Court would declare the home rule arrangements contrary to the *Grundlov*. This low profile of the Supreme Court may be criticized on grounds of potentially undermining the accountability of the legislative power but is coherent with the traditional faith in the legislature (and executive) in Denmark. Nonetheless, in this case there are two legislators: the *Folketing* for common affairs of the Realm and the Faroese/Greenlandic assemblies for those special affairs falling under their competences. Furthermore, no lawsuit has been filed against the constitutionality of the Home Rule Acts. The Supreme Court and the other courts have dealt with cases related to the home rule model (e.g. inter-territorial private law cases) and no issue on its constitutionality has been raised. In this sense, the various views held by Danish scholarship on the possible violation of the *Grundlov* are intellectually relevant but remain an intellectual exercise, with limited practical significance.

In addition, courts have not questioned that the legislation passed by the Faroese/Greenlandic assemblies are acts like those enacted by the *Folketing*.[XLV] In the judgment U.2002 2591 Ø, the Eastern High Court clearly states: "regulations of the [Greenlandic] assembly are not administrative provisions but must be regarded as legislation". If we follow the theory supported by scholars such as Ross (1983: 496), acts enacted by the home rule assemblies would be mere administrative rules. This is contrary to the wording of the Faroese Takeover Act and the Greenlandic Self Rule Act, which lay down that the Home Rule authorities hold legislative power over transferred affairs. As I have

argued earlier in this article, §3 of the *Grundlov* has little to do with the home rule model. If *Løgting* and *Inatsisartut*'s legislation were not actual acts, it would not only be an issue of competence between authorities in a decentralized system, but a matter of normative hierarchy. This would be problematic in inter-territorial law cases in which courts have to determine whether to apply Faroese/Greenlandic or Danish law.

Finally, the board foreseen in §6.2 HRFI and §19 SRGR is an *ad hoc* body created to solve conflicts of competences between the home rule authorities and Danish central authorities. Its purpose is not to address matters concerning possible violations of the *Grundlov*. Therefore, constitutional review is not among its tasks. The fact that it has never been used reinforces the role of politics and extrajudicial negotiations in framing the evolution of the home rule arrangements.

5. The Home Rule Acts as constitution for the Faroe Islands, Greenland and also Denmark proper.

As explained, Harhoff considers that the home rule arrangements "have acquired a constitutional special position" over time (Harhoff, 1993: 214-215), becoming a kind of de facto "appendix to the *Grundlov*" (Harhoff, 1993: 268; Harhoff, 1994: 251). Harhoff's alternative scheme would be as follows:

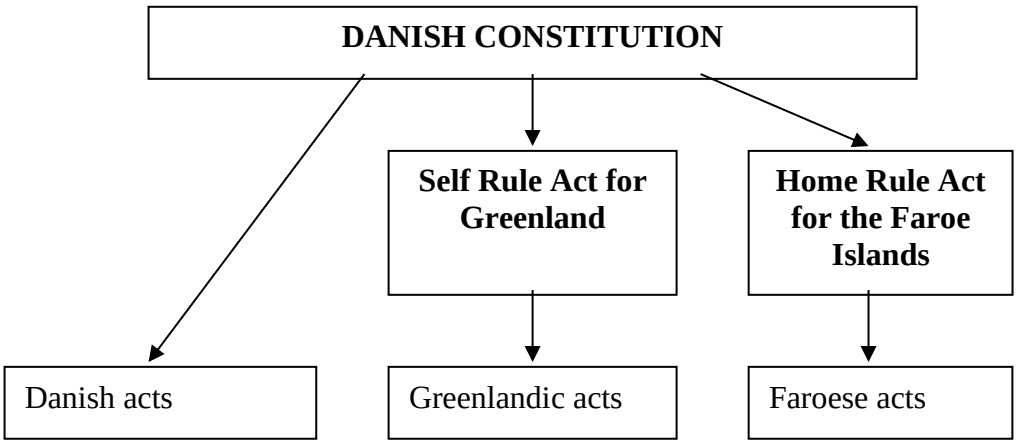

Table 1: 'constitutional block' in the Danish *Rigsfællesskab*.

Harhoff's perspective, I believe, goes in the right direction. However, and consistent with my approach to the home rule arrangements *vis-à-vis* the *Grundlov*, this special constitutional status of the home rule arrangements has not been acquired over time. They enjoyed such status from their first enactment. This status has just been consolidated over time as the political context evolved and the home rule authorities broadened their scopes of competences.

If we look into comparative law, we find the well-established concept of "block of constitutionality" or "constitutional block" (*bloque de constitucionalidad*) in Spanish constitutional law. The Spanish constitutional framework is certainly different from that of the Danish Realm. First, the current Spanish Constitution of 1978 foresees and regulates a decentralized state for Spain. Second, Title VIII of the CE, devoted to the territorial organization of the state, contains two detailed lists: one with the exclusive competences of the state and another one with matters the so-called autonomous communities can assume in their respective statutes of autonomy.[XLVI] Third, the Spanish Constitution, nonetheless, does not name or establish how many autonomous communities may be created. It simply establishes the procedures by which a province or a number of provinces may constitute themselves an autonomous community.[XLVII]

The concept of "block of constitutionality" used by Spanish literature does not have a precise meaning (Rubio Llorente, 1995:817; De Cabo de la Vega, 1994: 58). Following Rubio Llorente, it involves a set of norms that distribute the power territorially between the central authorities and the other territorial authorities, as the Spanish Constitution does not completely establish the delimitation of competences (Rubio Llorente, 1995:819). These norms may be regarded as materially constitutional norms, complementing the Constitution (Ruiz-Huerta Carbonell, 1995: 161; Rubio Llorente, 1995: 818). The Constitution remains hierarchically superior. However, it is not the principle of hierarchy but the principle of competence that is relevant when assessing the constitutionality of the laws (Pinella Sorli, 1994: 49-50). At the top of the 'block of constitutionality' we find the Constitution and the so-called statutes of autonomy for each autonomous community. The latter would be a second degree of the 'block'.[XLVIII]

In spite of the different constitutional frameworks in Spain and the Kingdom of Denmark, the expression 'block of constitutionality' appears suitable for the *Rigsfællesskab*.

This 'block' comprises the *Grundlov* and the home rule arrangements of Faroe Islands and Greenland which would be the equivalent, *mutatis mutandis*, to the statutes of autonomy of Galicia, Andalucía, Catalonia, Canary Islands, etc.

The special position of the Home Rule Acts also derives from an agreement between the Faroese/Greenlandic authorities and the Danish central authorities as 'equal parties' (whether or not they are equal in reality is another question).[XLIX] Their preambles establish that the aim of the Acts is to deal with the Faroese and Greenlandic 'constitutional position in the Kingdom'. These instruments were not only approved in the *Folketing*, but also in the respective Faroese/Greenlandic assemblies. Additionally, in the case of Greenland, referenda were held. Arguments in favor of their irrevocability are strong, as also is the consideration of the home rule arrangements as part of a 'block of constitutionality' together with the *Grundlov*. This implies that the home rule acts have status as 'constitution' for the Faroe Islands and Greenland, but not only for these. They also have this status for the Danish central authorities and Denmark proper, insofar as they form part of the constitutional setting of the Realm, of which Denmark proper is a part. Danish authorities must respect the home rule authorities when exercising their powers.

In the 1950's, the Faroese jurist Mitens mentioned that the *Grundlov* remains common "as long as its rules are not modified by the Faroese Home Rule Act" (Mitens, 1950: 91). This approach can hardly be sustained if it entails an interpretation *contra legem*, since the *Grundlov* remains above the home rule arrangements. However, if we support the constitutional character of the home rule Acts, Mitens' perspective works if there are various possible interpretations of a *Grundlov* provision. The one that is consistent with the home rule arrangement should be favored. In this sense, whilst the Faroese/Greenlandic home rule instruments cannot contradict the *Grundlov*, they can be a magnet that attracts the interpretation of the *Grundlov* in a given direction.

Considering the home rule arrangements as part of a constitutional block may entail a more restrictive interpretation in certain areas than if only the *Grundlov* were taken into account. As mentioned before, Larsen and Joensen support that §19 of the *Grundlov* does not prohibit a unilateral declaration of independence of the Faroe Islands or Greenland without the consent of the *Folketing*, since §19 does not deal with this matter. However, §21 of the Self Rule Act requires the authorization of the *Folketing* in the event of a Greenlandic

desire for independence. Therefore, a unilateral independence without such consent would be unconstitutional, not because §19 of the *Grundlov* says so, but because §21 of the Self Rule Act interprets §19 *Grundlov* in such a way. Interestingly enough, this restrictive understanding would not apply to the Faroe Islands as there is no similar provision in the Faroese Act or Takeover Act. Therefore, Larsen and Joensen's interpretation remains valid for the Faroese case.

Revisiting the theories of federalism and asymmetric frameworks outlined in section two of this article, it becomes evident that the territorial organization created by the home rule model is asymmetric. Firstly, there is no home rule instrument for Denmark proper. In theory, an autonomous framework for Denmark proper could be possible, but it does not currently exist. Thus, the Danish central authorities for the Realm and those for Denmark proper, namely the government and the *Folketing*, are the same. It seems problematic that the same authorities are responsible for both the common affairs (i.e., non-transferred ones) for the entire Realm and all matters regarding Denmark proper, as this could lead to potential conflicts of interest. Additionally, one should note the absence of a senate or second chamber to accommodate the representation of the three parts of the Realm.

Asymmetry is also evident in the fact that, although to a large extent they resemble each other, the Faroese and Greenlandic home rule arrangements appear to have evolved in two distinct ways. Suksi, who distinguishes between federation and autonomy, suggests that the Faroese arrangement has moved closer to a typical federation setup (Suksi, 2018: 1-4,7). Since the enactment of the Faroese Takeover Act, apart from some core matters, residual powers seem to lie with the Faroese authorities. This differs from Greenland, where even though the Self Rule Act represents a significant step forward in broadening the scope of matters under Greenlandic authority, it maintains two lists, leaving residual powers, in principle, with the Danish central authorities. Moreover, the listed matters are not equally framed, and the fields of competences actually transferred and assumed by each home rule are not identical. Additionally, as explained previously, the differing approaches to attaining independence also distinguish between the two arrangements. As a result, the relationship of each home rule with the central authorities is not exactly the same.

6. Common principles for the Rigsfællesskab

The Home Rule model permeates the functioning of the multi-legal system within the Kingdom of Denmark. I support that there has never been a contradiction between the Home Rule Acts and the *Grundlov*, and they are part of a "block of constitutionality". However, a question remains.

The home rule model involves the creation of three legal systems within the *Rigsfællesskab*. Laws among the three parts of the Realm differ at least in some areas and to a greater or lesser extent. The *travaux préparatoires* to the Home/Self Rule Acts refer to common fundamental or basic legal principles in the Realm.[L] Their content and scope are not clarified. This is relevant when two laws from different parts of the Realm and with different content interact, for example, in an inter-territorial private law case. It raises the question of whether there is a common *ordre public* for the whole *Rigsfællesskab* (Lorenzo Villaverde, 2023a: 297, 302-303). If not, a decision from one part of the Realm may potentially face difficulties in being recognized in another part on grounds of opposing some possible values enshrined in the laws of the latter.

As an example from comparative law, this situation differs from that of the Kingdom of the Netherlands, where the Statute for the Kingdom of the Netherlands establishes the relations between Aruba, Curaçao, Sint Maarten, and the Netherlands. Article 40 of the Statute sets the framework for the enforcement of judgments and orders issued by the court of one of the countries of the Kingdom in another. One finds nothing similar in the Kingdom of Denmark with regards to its two home rule arrangements.

Furthermore, as mentioned, §1 of the *Grundlov* does not require legal uniformity in the Realm. It is relevant to reflect upon whether coordination among the various legal systems in the Danish Realm is necessary/desirable and, in that case, how this should take place. The *travaux préparatoires* to the Home/Self Rule acts talk about "solidarity among the various parts of the Kingdom"[LI] but it is not clear how this will take place. This leaves a broad margin for political negotiation, which provides flexibility in terms of legal policy but legal uncertainty for citizens (Lorenzo Villaverde, 2023a: 305).

7. Conclusions

The constitutionality of the home rule model has been discussed in scholarship as it has evolved over time. This article supports the position that the Home Rule Acts have never been in contradiction with the *Grundlov*. First, the *Grundlov* is silent on the home rule model. Any restrictive interpretation needs a solid basis. Second, the *Grundlov* does not establish a specific mechanism for its interpretation and for constitutional review of laws. The Danish government has played a major role in this interpretation. This is a consequence of its political position in the negotiations. However, the *Grundlov* does not entitle the Danish Government or any other body of the state to take a leading role in constitutional interpretation. Furthermore, constitutional review by the courts is extremely rare. It is unlikely that the Supreme Court would declare the home rule instruments unconstitutional. Third, §3 *Grundlov* refers to the traditional division of powers between the legislative, executive and judicial powers. The theory of delegation, which suggests that acts enacted by the home rule assemblies are not at the same level as those passed by the *Folketing*, has no basis as both the *Folketing* and the home rule assemblies are legislative powers. Fourth, §1 of the *Grundlov* only lays down that the Constitution applies across the Kingdom but does not preclude different laws in diverse parts of the *Rigsfællesskab*. The theory considering that the Home Rule acts have become constitutional over time ignores the fact that they were already in line with the Constitution *ab initio* since the *Grundlov* does not oppose the model.

The home rule arrangements are based on an agreement between the relevant home rule authorities and the Danish central authorities. This article argues that they are part of a "block of constitutionality", similar to the notion used in Spanish constitutional law, below the *Grundlov* and above ordinary *Folketing*'s acts. Consequently, the home rule instruments are unilaterally irrevocable, as any change requires the participation of the authorities involved. The arrangements are part of the material, if not formal, constitution, not only for the Faroe Islands and Greenland, but also for Denmark in general. Unlike Suksi, one can say that the result is not a constitutional limbo, if one considers the home rule arrangements as constitution for the Whole Realm. Instead, one could talk about a constitutional disorganization of the decentralized state in the Kingdom of Denmark. The decentralized state has been developed via various political negotiations and bilateral agreements over time without an overarching strategy and framework for its functioning. This disorganization in a

multi-legal state may potentially have negative consequences for citizens, in particular, in inter-territorial private law cases. The traditionally low profile of the judiciary in relation to constitutional review is regrettable from many perspectives, not least in terms of the unclear accountability of the Danish government, the *Folketing* and the home-rule governments and assemblies.

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[II] Danish Constitution, Act 169 of 5 June 1953. <https://www.thedanishparliament.dk/-/media/pdf/publikationer/english/my_constitutional_act_with_explanations.ashx> (last consulted September 2023)
[III] The Greenlandic arrangement currently in force is named Self Rule (Act n. 473 of 12 June 2009, on the Greenlandic Self-Government). For the sake of simplicity, both are referred to as home rule model or home rule arrangements in this article.
[IV] Act n. 137 of 23 March 1948, on the Home Rule for the Faroe Islands. < https://w0.dk/~chlor/www.retsinformation.dk/lov/l45897.html > (last consulted September 2023)
[V] *Ibid.* §1.
[VI] *Ibid.* Appendix.
[VII] *Ibid.* §4.
[VIII] Act n. 578 of 24 June 2005, relating to the takeover of affairs and fields of affairs by the Faroe Islands public authorities. < https://www.retsinformation.dk/eli/lta/2005/578 > (last consulted September 2023).
[IX] *Ibid.* §1.2.
[X] *Ibid.* Preamble.
[XI] *Ibid.* Appendix, List I.
[XII] *Ibid.* §3
[XIII] *Ibid.* §4
[XIV] Act n. 577 of 29 November 1978 on the Home Rule for Greenland. < https://www.retsinformation.dk/eli/lta/1978/577 > (last consulted September 2023).
[XV] *Ibid.* Preamble.
[XVI] *Ibid.* §4.2
[XVII] *Ibid.*§7
[XVIII] Act n. 473 of 12 June 2009, on Self Rule for Greenland. < https://www.retsinformation.dk/eli/lta/2009/473 > (last consulted September 2023).
[XIX] *Ibid.* Preamble.
[XX] *Ibid.* 3.1 and 3.2
[XXI] *Ibid.* §1.
[XXII] Faroese Home Rule Act, §6; Greenlandic Home Rule Act, §18; Self Rule Greenlandic Act, §19.
[XXIII] Act n. 619 of 30 November 1918 on the Icelandic-Danish Union Act. https://danmarkshistorien.dk/fileadmin/filer/Billeder/Scanninger_af_kilder/Islandske_kilder/Dansk-Islandsk_Forbundslov_1918.pdf (Last consulted September 2023).
[XXIV] Proposal 128 of 2009 on the self rule for Greenland, Comments to §19. <https://www.retsinformation.dk/eli/ft/200812L00128> (Last consulted September 2023).
[XXV] See also §4 of the Faroese Home Rule Act.
[XXVI] Proposal 119 of 1948 for the Act on Faroese Home Rule, Appendix II, Report of the Minority and Appendix III, Thorstein Petersen to the Danish Government and the Parties of the Parliament, Copenhagen.
[XXVII] Proposal 119 of 1948 for the Act on Faroese Home Rule, General Comments to the Proposal for the Act.
[XXVIII] Report by the Constitutional Commission of 1946, Appendix 2, Responsum by professors Alf Ross and

Poul Andersen in relation to the constitutional position of Greenland and the Faroe Islands, p. 87. <https://www.elov.dk/media/betaenkninger/Betaenkning_afgivet_af_Forfatningskommissionen_af_1946.pdf > (Last consulted September 2023).

[xxix] *Ibid.*

[xxx] §4.4 of the Greenlandic Home Rule Act.

[xxxi] The term *travaux préparatoires* is used in this article in a broad sense, to embrace the work of the commissions established for the Home/Self Rule acts as well as the comments (*bemærkninger*) on the law proposals.

[xxxii] See Proposal 18 of 1978 for the Act on Greenlandic Home Rule, comments on §§4, 5 and 7; Report 837/1978 by the Commission on the Home Rule for Greenland, Collection I, p. 18. <https://www.elov.dk/media/betaenkninger/Hjemmestyre_i_Groenland.pdf> (Last consulted September 2023).

[xxxiii] This is clear in Proposal 169 of 2005 on the Faroese takeover of matters and fields of matters, Appendix I of which includes a Note by the Danish Government on the limits for the transference of matters and fields of matters to the Faroese authorities, in consideration of the unity of the Realm and concrete provisions in the Constitution. In this Note it is stated that "it is firmly understood that the legislature can transfer (delegate) its competence. However, it is understood that provision §3.1 of the Constitution is an obstacle to an objectively unlimited delegation to the administration. Furthermore, it is interpreted in the constitutional literature on the delegation of legislative competence [of the *Folketing*] that it is not possible to delegate to an extent that is limited to, but exhaustively covers, a specific matter." Similarly, in Appendix II to Proposal 128 of 2009 on Self Rule for Greenland, a Note by the Ministry of Justice of 3 November 2004 addresses the possibility of transferring further powers to the Greenlandic authorities. In this Note, the Ministry says: "it is firmly understood that the legislature may transfer (delegate) its competence. The provision in §3.1 is considered to be an obstacle for an unlimited delegation to the administration. Furthermore, the provision implies that the legislative competence [of the *Folketing*] cannot be delegated to an extent that is limited to, but comprehensively covers, a specific area."

[xxxiv] Proposal 169 of 2005 on the Faroese takeover of matters and fields of matters, Appendix I, Note by the Danish Government on the limits for the transference of matters and fields of matters to the Faroese authorities in consideration of the unity of the Realm and concrete provisions in the Constitution, sections 3.2 and 3.3. In relation to the Greenlandic Home Rule arrangement, see the Report 837/1978 by the Commission on Home Rule for Greenland, Collection I, p. 14, 17-18, 33 and 95 <https://www.elov.dk/media/betaenkninger/Hjemmestyre_i_Groenland.pdf> (Last consulted September 2023). The Commission stated that the Home Rule Act is enacted with the understanding of preserving the unity of the Kingdom. This means, among other things, 1) that sovereignty remains in the Danish State, 2) that only some matters can be transferred and only those concerning Greenland, 3) that a federal state is ruled out, 4) that some common legal principles are shared in the Realm, 5) that it involves solidarity among the three parts of the Kingdom. See also the most recent Proposal 128 of 2009 on Self Rule for Greenland, sections 4.2, 4.5 and Appendix II, Note by the Ministry of Justice of 3 November 2004 on the possibility of transferring further powers to the Greenlandic authorities.

[xxxv] See for example: Proposal 169 of 2005 on the Faroese takeover of matters and fields of matters, Appendix I, Note by the Danish Government on the limits for the transference of matters and fields of matters to the Faroese authorities in consideration of the unity of the Realm and concrete provisions in the Constitution; Proposal 128 of 2009 on Self Rule for Greenland, sections 2, 4.2, 4.5 and Appendix II, Note by the Ministry of Justice of 3 November 2004 on the possibility of transferring further powers to the Greenlandic authorities. In relation to the constitutional interpretation of the Government in relation to the competences that must remain under the Danish central authorities, it is, however, stated that not necessarily all members of the Self Rule Commission agreed with such understanding. See section 4.5 of the general comments to Proposal 128 of 2009.

[xxxvi] See e.g. the Report of the Greenlandic-Danish Self Rule Commission on Self Rule in Greenland, April 2008, p. 20 f. <https://naalakkersuisut.gl/~/media/Nanoq/Files/Attached%20Files/Naalakkersuisut/DK/Selvstyre/Gr%C3%B8nlandsk-Dansk%20Selvstyrekommissionens%20bet%C3%A6nkning.pdf > (Last consulted September 2023).

In this report, one of the presuppositions on which the proposal for a Self Rule Act is built is the transference of further competences, "where this is constitutionally possible".

[xxxvii] See e.g. Proposal 128 of 2009 on Self Rule for Greenland, Appendix II, Note by the Ministry of Justice of 3 November 2004 on the possibility of transferring further powers to the Greenlandic authorities; Report 837/1978 by the Commission on Home Rule for Greenland, Collection II, Appendix 6 and 7,

<https://www.elov.dk/media/betaenkninger/Hjemmestyre_i_Groenland_2.pdf > (Last consulted September 2023); Report of April 2008 by the Greenlandic-Danish Commission on Self Rule in Greenland, Appendix 5, 6, 14.<https://naalakkersuisut.gl/~/media/Nanoq/Files/Attached%20Files/Naalakkersuisut/DK/Selvstyre/Gr%C3%B8nlandsk-Dansk%20Selvstyrekommissionens%20bet%C3%A6nkning.pdf > (Last consulted September 2023).

[XXXVIII] Rógvi on p. 327 mentions: "Among the great errors of constitutional law for a long while has been the proposition that Parliament is ´the supreme Authority in Constitution-Interpretation-Questions´. At best, this is aspirational (…) In reality, Parliament does little business in pondering constitutional issues".

[XXXIX] The control may be carried out by ordinary courts in the course of proceedings; however, this is rare, apart from particular cases dealing with property and economic intervention, see Melchior (2002: 111).

[XL] Thus, in U.1921.148H and U.1921.143H, the Supreme Court overruled the decision of the Eastern High Court and declared the challenged legislation in accordance with the Constitution.

[XLI] UfR 1999: 841 H.

[XLII] Report of 1946 of the Constitutional Commission, comments to the proposal, comment to §1, p. 28. <https://www.elov.dk/media/betaenkninger/Betaenkning_afgivet_af_Forfatningskommissionen_af_1946.pdf > (Last consulted September 2023).

[XLIII] See also Report 837/1978 of the Commission of Home Rule for Greenland, Collection I, Chapter IV, Section A.1, p. 23. https://www.elov.dk/media/betaenkninger/Hjemmestyre_i_Groenland.pdf , (Last consulted September 2023).

[XLIV] Report on the Faroese takeover of the fields of family law, inheritance law and the law of persons of December 2016. <https://sm.dk/media/8140/rapport-om-faeroeernes-overtagelse-af-person-familie-og-arveretten.pdf>, (Last consulted September 2023).

[XLV] For example, U.2006 330H or U.2002 2591 Ø. In U.2018.2177H, a taxation case, in none of the instances (Court of the Faroe Islands, Eastern High Court and Supreme Court) was it questioned that the Faroese legislature enacts legislation in the *Grundlov* sense.

[XLVI] Arts. 148 and 149 CE, respectively.

[XLVII] Arts. 143, 144 y 151 CE.

[XLVIII] The "block of constitutionality" is not necessarily limited to the CE and the Statutes of Autonomy, as it could include, for example, legislation on harmonisation of competences, see Ruiz-Huerta Carbonell (1995: 169 f). For the purposes of this article, the concept is used to refer to the Constitution and the Statutes of Autonomy.

[XLIX] As stated in the preambles of the Faroese Takeover Act and the Self Rule Greenlandic Act, these acts are based on an agreement between, on one side, the Faroese *Landsstýri*/the Greenlandic *Naalakkersuisut* and, on the other , the Danish Government, as equal parties (*ligeværdige parter*).

[L] See Proposal 18 of 1978 for the Act on Greenlandic Home Rule, Comments to §1. In Proposal 169 of 2005 on the Faroese takeover of matters and fields of matters, General Comments, section 2 and in Proposal 128 of 2009 on Self Rule for Greenland, General Comments, section 4.2, it is stated that the agreement between the Greenlandic and Danish central authorities is built on the understanding that "in the Kingdom there is a shared respect for basic core values and principles which are expressed in the legal tradition."

[LI] Proposal 18 of 1978 for the Act on Greenlandic Home Rule, Comments to §1.

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