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TABLE OF CONTENTS

ESSAYS

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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:

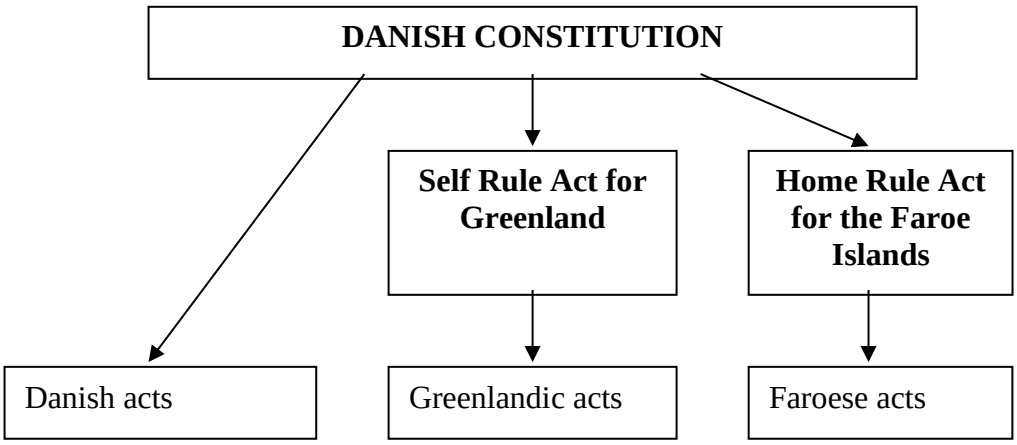

Table 1: 'constitutional block' in the Danish *Rigsfællesskab*.

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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Loyalty references in the Statutes of Autonomy in Spain: legal or symbolic value?

by

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Abstract

The federal loyalty in Spain is an unwritten constitutional principle that binds the State and the Autonomous Communities in their intergovernmental relations, as well as in the exercise of their competencies. The jurisprudence of the Constitutional Court and the scholars acknowledge its implicit existence, linking it to other foundational principles of the territorial system such as solidarity, collaboration, and its specific manifestations (cooperation, coordination, and mutual aid).

This paper examines the various manifestations of this principle in the Statutes of Autonomy, many of which have included references to loyalty since the reforms introduced at the beginning of this century. The aim of this study is to demonstrate whether these references have a legal value or, on the contrary, they remain merely symbolic.

Keywords

Spain; Statutes of Autonomy; Federal Loyalty; Autonomous Loyalty; Intergovernmental Relations

Introduction

Federal (or territorial) loyalty is an essential principle of federal, quasi-federal, or regional countries that regulates how relations between the State and its constituent units should be conducted. This principle was first developed among scholars in Germany in the late 19th and early 20th centuries and was fully recognized by the Federal Constitutional Court (*Bundesverfassungsgericht*), shortly after it began ruling. Over time, many decentralized countries have implicitly or explicitly recognized its constitutional dimension.

In Spain, 'autonomous loyalty' (as lately known by Spanish scholars) is a key aspect of the constitutional system, serving as an unwritten principle dispersed throughout the jurisprudence of the Constitutional Court and various national regulations comprising the constitutional framework. In addition to these references, many Statutes of Autonomy have explicitly recognized different kinds of loyalty, generally as a principle regulating relations between the State and other Autonomous Communities.

Since the approval of the 1978 Constitution, various studies have been published on territorial loyalty in Spain (sometimes recognising it as 'federal', sometimes as 'autonomous'). While initially many of them identified loyalty with solidarity (Jiménez Blanco, 1985: 245 and 247; Falcón y Tella, 1986: 307; Santamaría Pastor, 1991: 273; de Marcos Fernández, 1994: 275; Muñoz Machado, 2007: 217 or Cosculluela Montaner, 2019: 240), or even collaboration (Albertí Rovira, 1985: 136-137 or Menéndez Rexach, 1994: 22), in recent years its conceptual nature has been clarified as a self-contained term inherent to the autonomous State. There already exist works analysing what autonomous loyalty entails and how the Constitutional Court has delineated the obligations it imposes on both the State and the Autonomous Communities (Álvarez Álvarez, 2008; Moret Millás, 2016; Carranza, 2022a).

However, irrespective of general studies, no work has deeply analysed the subnational manifestations of loyalty[II]. This is remarkable, especially considering that many Statutes have incorporated this concept and have associated it to intergovernmental relations. Furthermore, it is striking why there is no independent study on this matter, especially when one of these specific manifestations was subject to constitutional review, as it will be seen. It is noteworthy that there are no academic studies on this type of expressions neither in Spain nor in the scientific literature of other decentralized States, at least according to the literature review carried out by the author of this paper.

The lack of research on loyalty expressions in Statutes (and in Subnational Constitutions in general), is a significant gap that demands attention in the literature on federal studies. Its study should strive to unravel the various forms in which loyalty is used, as not all of them necessarily refer to intergovernmental aspects.

There is no doubt about the legal nature of autonomous loyalty as an unwritten constitutional principle, the transgression of which may justify its use as a parameter for the constitutional review. However, it is mandatory to inquire about the implications of the references to loyalty contained in the Statutes. It is essential to study the scope of statutory references to determine if they can bind the State and other Communities and if they can define certain forms of behaviour, especially in bilateral relations. It is possible that these expressions have only a symbolic value and their presence in the Statutes serves merely as a reminder of how relationships within the autonomous State should be unfold.

This paper examines the legal significance of loyalty references in the Statutes of Autonomy. The study considers whether these references merely emphasize the relations between the State and a Community or if they could govern them. To address this issue, it is proposed, first, to review what the concept of federal loyalty entails and how it has been recognized in the autonomous State. Furthermore, this work offers a review of the construction of the territorial system in Spain. This will serve to understand the dynamism of the autonomous State for those who are not entirely familiar with it. In turn, the review proposed will help to understand how we arrived at the statutory reforms of the beginning of this century, in which these references to loyalty began to be incorporated. The main section of this paper presents and classifies the expressions of loyalty in the Statutes of Autonomy, to then unravel their character and thus, answer what has been questioned.

I. The Principle of Federal Loyalty in the Spanish Autonomous System

Unlike Germany, where the principle of federal loyalty (*Bundestreue*) was explicitly recognized by the Federal Constitutional Court[III] and received significant attention from scholars even before its formal recognition in case law (Smend, 1916; Bayer, 1961; Schmidt, 1966; Bauer, 1992; Wittreck, 2012, among others), Spain has not witnessed a similar scenario.

Bundestreue, derived from the 'Federal principle' (Wittreck, 2012: 498), governs legal and political relations between the *Bund* and the *Länder* through a relationship of mutual trust. The connection between the Federal State and its units is characterized by cooperation and reciprocal attention, aligning with the behaviour conducive to the federal model envisaged by the German Basic Law (*Grundgesetz*).

The general notion of *Bundestreue* has been widely recognized by various Constitutional or Supreme Courts of federal, quasi-federal, and regional countries to define a mode of conduct among territorial units, primarily as a principle to resort to when the conflict resolution concept has not been defined by law. This was the case of occurred, for instance, in Austria and initially in Switzerland[IV].

In addition to judicial recognition, different Constitutions of decentralized countries have explicitly incorporated the principle of 'federal loyalty'. This is the case of Switzerland (Article 44 of the Constitution of Switzerland), South Africa (Section 41 of the Constitution of South Africa[V]), Belgium (Article 143 of the Constitution of Belgium), and, with its own peculiarities, Italy (Article 120 of the Constitution of Italy). The widespread acceptance of this concept across various federal, quasi-federal, and regional systems helps to understand that federal (or territorial) loyalty is intrinsic to such States.

In contrast to those countries, defining territorial loyalty in Spain is rather complex for two reasons.

Firstly, the Spanish Constitution (SC) does not mention any form of loyalty. Concerning intergovernmental relations, the Constitution only refers to the principle of solidarity (in Article 2 -undoubtedly the most important in this regard- and in Articles 138, 156, and 158 SC), as well as to one of the techniques of the principle of collaboration: coordination between the State and the Autonomous Communities (Articles 103.1, 149.1.13, 15 and 16, and 156.1 SC).

Secondly, the Spanish Constitutional Court has never explicitly addressed the existence of a principle of 'autonomous loyalty'[VI] *per se.* Nevertheless, the Constitutional Court has alluded to a similar concept, using other terms that acquire different meanings depending on the specific case: 'constitutional'[VII] or 'institutional'[VIII] loyalty. Additionally, from the jurisprudence on the principle of collaboration and its various aspects (aid, cooperation, and

coordination), as well as from different decisions on the principle of solidarity, certain elements can be gleaned that bring us closer to something similar to the principle of loyalty between the State and the Autonomous Communities.

However, it cannot be asserted that Spain lacks a principle of territorial loyalty. There are at least three reasons for this. Firstly, as mentioned before, the principle of territorial loyalty is inherent to the form of power-sharing in federal, quasi-federal, and regional countries. Therefore, it is conceivable to consider this as a principle inherent to the nature of the autonomous system, since "no decentralised system could function in a fully effective manner if the parts that make it up did not adopt, in the exercise of their functions, a conduct aimed at reinforcing or at least safeguarding, the unitary functioning of the system" (Álvarez Álvarez, 2008: 500).

Secondly, although the Constitutional Court has not explicitly stated so, a general notion of the fair behaviour expected in relations between the State and the Autonomous Communities, as well as among themselves, can be inferred from the constitutional adjudications. The Constitutional Court has employed this notion as a guiding principle to resolve cases indirectly, through various principles concerning intergovernmental relations (constitutional loyalty, institutional loyalty, collaboration, aid, cooperation, coordination, and solidarity). In this regard, it has recently been argued that,

> Autonomous loyalty therefore constitutes a holistic concept within the Spanish territorial system. At the jurisprudential level, it is a notion that is regrettably scattered across the doctrine of the Spanish Constitutional Court, necessitating meticulous academic effort to construct and, conversely, deconstruct its essence and extent. Hence, it cannot be deemed an incomplete concept, but rather quite the opposite (Carranza, 2022a: 379).

The third reason is that various national laws incorporate aspects related to the content and limits of this type of loyalty. Two main examples are the following: Law 40/2015, of 1st October, on the Legal Regime of the Public Sector, which includes comprehensive regulations on the techniques comprising the principle of collaboration[IX]; as well as the Organic Law 2/2012, of 27th April, on Budgetary Stability and Financial Sustainability[X].

It is noteworthy that scholars have paid attention to this principle of autonomous loyalty, akin to the concept of *Bundestreue* in the Spanish autonomous system. Several authors have argued that this principle not only exists in Spain but it is necessary due to the complex legal

and political relations between the State and the Autonomous Communities, particularly those most closely associated with identity-based nationalism (Albertí Rovira, 1992: 235; Sosa Wagner, 2002: 86 and 2008: 28; Álvarez Álvarez, 2008: 501; Tajadura Tejada, 2013: 53; Aja, 2014: 229; Solozábal Echavarría, 2014: 51, 2018: 72, and 2022: 21; Moret Millás, 2016: 1, 9; Carrillo, 2017: 71-72; Cámara Villar, 2018: 418; Ridaura Martínez, 2020: 327 and Carranza, 2022a: 358-359).

However, it is necessary to elucidate the meaning of 'autonomous loyalty' in Spain. From the jurisprudence of the Constitutional Court, the quote that encapsulates and, simultaneously, closely approaches its legal essence[XI] is as follows: "It is an essential principle in relations between the different bodies of territorial power, which constitutes an essential support for the functioning of the Autonomous State and whose observance is mandatory" (STC 239/2002, of 11th December, Legal Ground 11).

In brief: a fundamental constitutional principle within the framework of intergovernmental relations.

Scholars have also endeavoured to define autonomous loyalty. For Álvarez Álvarez (2008: 505), for example, it constitutes a "rule that requires the State and the Autonomous Communities, in the exercise of their competencies, to guarantee the effectiveness of the autonomous principle, as a normative unit in which their respective legal systems are integrated".

Another recent definition could be derived from Carranza (2022a: 359), who posits that, "[autonomous loyalty] is an unwritten constitutional principle that regulates how relations between the State and the Autonomous Communities and the Autonomous Communities among themselves should be developed to ensure the effective functioning of the territorial system".

II. Autonomous State and Statutes of Autonomy

1. The complex construction of the Autonomous State: Autonomous Communities and Statutes of Autonomy

The current territorial system in Spain is the result of a long and complex construction process. The federal model of the II Republic and other European regional and federal systems were taken as a reference.

After the dictatorship of Franco, it began the so-called 'Transition' to democracy. The response against the centralisation experienced during the dictatorship was to develop a new system related to federalism (but not a federation strictly speaking), by giving a wide degree of autonomy to the territories following the pattern of devolutionary systems.

The Autonomous State was established therefore in very complex and difficult circumstances, due to the political tensions behind the territorial idea. The Spanish Constitution intentionally does not provide a specific definition of the territorial distribution of powers, instead has left it to the discretion of the Autonomous Communities that were to be created[XII].

The seventeen Autonomous Communities that were finally created have a legal text that serves as a *de facto* subnational Constitution. However, it is not strictly speaking a Constitution. Instead, the Statutes of Autonomy are,

> post-constitutional instruments far from the idea of pre-constitutional sovereignty contained within the Constitutions of some number of states of a federal country. Such a clarification is necessary since the SNC [subnational Constitutions] does not *formally* exist in Spain because the SA [Statutes of Autonomy] strictly constitute Organic Laws of the State (Article 81.1 SC) (Carranza, 2022b: 242-243).

In other words, the Statutes of Autonomy are not the result of a constituent process. They are not an imposition by the State either. The Communities themselves promote the process for their approval and modification, which should finally be passed as an organic law of the State.

2. The Statute reform (or replacement) process

At the beginning of this century, several reforms of the Statutes took place. The reform of the Statute of Catalonia was undoubtedly the most complex and controversial of all of them in constitutional and political terms. For this reason, it was appealed for unconstitutionality before the Constitutional Court[XIII]. This reform was later taken as an impulse by most of the Autonomous Communities to reform their Statutes. It could be said that those reforms were an 'emulation' of what happened in Catalonia. On the contrary, Tudela Aranda (2016: 179) said that it was properly an 'emulation in terms of reform', but not in the determination of its substance. For this author, the Autonomous Communities, "far from conforming to the pattern of emulation and consequent equality, sought the pattern of difference by adapting their legal framework to their reality, without thinking about what the others had done".

Considering what would be said regarding the principle of loyalty, it is possible to agree with Tudela Aranda, because it was undoubtedly an emulation. At the same time, if we go deeper into his idea, what underlies it is the recognition of a general desire to construct some singularity, some specific framework in which the interactions between Autonomous Communities and the State or other Communities take place.

But what can initially be understood as a 'reform' of the Statutes was properly a 'replacement', since they were materially 'new Statutes approved through the reform procedure' (Montilla Martos, 2015: 59). The 'new' Statutes share common features resulting from the observed emulation. By way of example, the Preliminary Title or Titles on institutional organization, financing, inter-administrative or intergovernmental relations contain definitions of the interactions between different territorial entities, as it will be analysed.

III. Mentions of Loyalty in the new Statutes of Autonomy

As observed, references to loyalty in the territorial sense are scattered throughout the rulings of the Constitutional Court and national legislation, but not in the Constitution[XIV]. However, since the replacement of the Statutes, a constitutional significant development has occurred: some of them, although not all, have included mentions of loyalty, often denoting

this term as 'institutional'. This is a peculiarity of the autonomous system, especially when compared to the country that initially conceived the *Bundestreue*.

A review of the Constitutions of the German *Länder* helps to confirm that the references to loyalty have nothing to do with federal loyalty (*Bundestreue*). 'Loyalty' (in German, *'Treue'*) is used in other ways:

- The term 'constitutional loyalty' is used as a means by which one can enjoy freedom in general[XV].
- It is also used to make it clear that the freedom to teach does not exempt one from loyalty to the Constitution[XVI].
- It is used to refer to the duty of loyalty to people and to the Basic Law[XVII] or to the Constitution of the *Land*[XVIII].
- It is also used to discuss the oath taken by representatives: loyalty to Germany, to the German Basic Law, or to the Constitution of the *Land*[XIX].
- Finally, in relation to the public service, to consider the way in which tasks must be carried out within the framework of public law[XX].

As it could be seen, the Constitutions of the *Länder* do not consider loyalty in territorial terms, which is a significant matter that cannot be ignored. *Bundestreue* is an unwritten constitutional principle inherent to the principle of federalism and the Basic Law of Bonn. It is traditionally considered by the *Bundesverfassungsgericht* as such, rather than a principle that belongs to the second level of decentralization. The absence of any mention of federal loyalty in these Constitutions can be explained by the aforementioned.

Before analysing the references to loyalty scattered in the Statutes of Autonomy, it should be noted that nine out of seventeen Statutes (just over half) do not contain any reference to this term: Asturias, Cantabria, Castile-La Mancha, Galicia, La Rioja, Madrid, Murcia, Navarre, and the Basque Country[XXI]. This detail is significant as it indicates that references to loyalty are not a widespread issue in Spain. It is noteworthy that certain Communities, such as the Basque Country or Galicia, with a strong nationalistic identity, or those with a significant presence in the political-institutional scheme, such as Madrid, omit this type of reference.

1. Variety of expressions of loyalty

A. The principle governing the relations of the Autonomous Community with the State and/or other Autonomous Communities

Loyalty, as defined by various Statutes, has a similar meaning as at the constitutional level. It is a principle that regulates relations with the State and, in some cases, with other Autonomous Communities.

However, the focus of this conception of loyalty is not the State as a whole, but rather one of its territorial units. Loyalty in this context is driven from the bottom-up, with the pace of the relationship being primarily set by the Autonomous Community. This is clearly stated in the following Statutes:

- Catalonia[XXII].
- Andalusia[XXIII].
- Valencia[XXIV].
- Canary Islands[XXV].
- Extremadura[XXVI].
- Balearic Islands[XXVII].
- Castile and Leon[XXVIII].

The category could be divided into those Statutes that refer solely to the vertical bilateral relationship (Catalonia, Andalusia, and the Balearic Islands) and those that refer to both the vertical and horizontal bilateral ties (Valencia, Canary Islands, Extremadura, and Castile and Leon). It is worth noting that no Statute at all refers to loyalty only in terms of horizontality.

The term 'institutional loyalty' is used throughout. It may cause confusion as it could be interpreted as loyalty between administrative units rather than political ones. However, based on their content and context, it is reasonable to assume that these references denote territorial loyalty (in other words, autonomous loyalty).

Most Statutes, except for Catalonia, refer to loyalty alongside other principles that regulate interactions between political units. The loyalty being discussed is indeed related to intergovernmental relationships. It is, in few words, a foundation for relations that underscores a commitment to maintaining constructive and cooperative interactions based on mutual trust and respect for each other's institutional roles and competencies.

The Statutes place emphasis on loyalty, alongside recurring themes of solidarity and collaboration. Autonomous loyalty encompasses both principles, as stated by Carranza (2022a: 392-394 and 397-399). The emphasis on solidarity showcases a strong commitment to unity and support among different levels of government within Spain. Additionally, the accent on collaboration highlights the significance of joint efforts and cooperation in addressing common challenges and advancing shared objectives.

The Statutes of Valencia and Extremadura assert the significance of protecting regional interests while loyalty and collaboration remain with the State and other Communities. This acknowledgment of unique needs and priorities underscores the importance of adeptly representing and safeguarding their own interests in interactions with other entities.

Back to the loyalty references in the Statutes, it has been said that 'the provision in the new Statutes of that principle does not bring any novelty other than bringing a principle of jurisprudential construction to the Statutes' (García Morales, 2009: 364). Nevertheless, given its wording, the expressions employed may be scrutinized for their capacity to constrain the relationship between the State and a specific Autonomous Community. This is particularly significant as it may lead to bilateralism taking precedence over multilateral relations, thus enforcing a specific type of treatment[XXIX].

Before proceeding to the next category, it is important to highlight that Article 3.1 of the Statute of Autonomy of Catalonia was challenged before the Spanish Constitutional Court. However, in Legal Ground 13 of STC 31/2010, of 28th June, the Court unequivocally confirmed its validity: 'Article 3.1 merely provides that the *Generalitat's* relations with the State are based on a series of constitutionally unobjectionable principles'. The Constitutional Court did not mention any other aspect regarding loyalty: its attention was solely directed towards the contentious expression found in this provision stating that 'the *Generalitat* is State'.

B. The principle governing financial relations with the State

Six statutes incorporate references to loyalty as a principle pertaining to financial relations with the State:

- Catalonia[XXX].
- Andalusia[XXXI].
- Aragón[XXXII].

- Extremadura[XXXIII].
- Balearic Islands[XXXIV].
- Castile and Leon[XXXV].

The references to loyalty contained in these provisions are redundant. They simply duplicate the structural principle governing financial relations between the State and the Autonomous Communities, as stated in Article 9 of Organic Law 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability[XXXVI].

Beyond being redundant, these references emphasise an aspect of utmost importance for the Communities. Loyalty is associated to principles of equity and solidarity, ensuring fair and supportive financial interactions between the Autonomous Communities and the State. For example, the Statute of Aragon highlights the importance of balanced financial relations that uphold the interests of all the parties involved.

Statutory references to loyalty in this category underscore the need for cooperation and coordination between different levels of government in financial matters. Provisions such as those contained in the Statute of Catalonia and the Statute of Extremadura accent the exchange of information and mutual support to enhance the effectiveness of financial management and decision-making processes.

Loyalty provisions also aim to mitigate adverse effects that may arise from changes in fiscal policies or financial measures. By assessing the impact of general provisions on spending needs or fiscal capacity, as outlined in Statutes such as those of Andalusia and the Balearic Islands, mechanisms can be implemented to address any negative consequences and ensure the continued financial stability and development of the Autonomous Communities.

C. Infra-autonomic loyalty

Certain Statutes use the term 'loyalty' in a political-territorial context, particularly in the relationship between the Autonomous Community and its local entities. This is commonly referred to by scholars as 'municipal loyalty' (Sosa Wagner, 2008: 19) or 'infra-autonomic loyalty' (Carranza, 2022a: 361).

This category is made up of three Statutes:

- Andalusia[XXXVII].
- Extremadura[XXXVIII].

- Castile and Leon[XXXIX].

These provisions underscore the importance of collaboration, mutual respect, and cooperation in effectively addressing local needs and promoting good governance. They emphasize institutional loyalty, financial sufficiency, respect for local competencies, and inter-territorial solidarity as foundational elements guiding the interactions between regional and local authorities. Aim of these provisions is to ensure efficient service delivery and responsive governance throughout the region.

The State and other Autonomous Communities are not bound by this type of loyalty. As a result, these expressions are not considered to be within the concept of autonomous loyalty itself.

D. Principle strictly linked to inter-administrative ties

Three Statutes refer to loyalty strictly from an administrative perspective, viewing it as a 'principle of the legal sphere ensuring specific adherence to rules governing relations within and between different Administrations'. Consequently, it does not serve to 'ensure the effectiveness of the territorial system' (Carranza, 2022a: 360). This type of manifestation relates to 'institutional loyalty', which falls under the administrative law rather than the constitutional law.

The Statutes including such references are those of:

- Aragon[XL].
- Canary Islands[XLI].
- Valencia[XLII].

This category could be divided into two subcategories. The first refers to institutional loyalty that is limited to relations within the Autonomous Community itself, such as in the case of the Canary Islands. This expression could even fall under the previous category of infra-autonomous loyalty. The second pertains to institutional loyalty that extends to relations with other public Administrations, both national and regional, as well as relations within the Autonomous Community itself, as mentioned in the cases of Aragon and Valencia.

E. Other references to loyalty

A final category comprises two expressions of loyalty that extend beyond those previously mentioned.

Firstly, Article 74.1 of the Statute of the Balearic Islands refers to this principle as the foundation and overarching framework of the Autonomous Conference of Presidents[XLIII].

Secondly, Article 7.19 of the Statute of Extremadura alludes to 'loyalty' in relations between the Autonomous Community and the Government of Portugal, owing to their geographical proximity and historically close political ties[XLIV].

As observed, these references diverge from the concept of loyalty as discussed in this paper. Instead, the terminology employed by these Statutes serves to highlight various expected types of relationships or behaviours. While it could be argued that the first mention could fall under the notion of intra-autonomic loyalty, the second does not pertain to such a principle in any manner.

IV. Mentions of autonomous loyalty in the Statutes of Autonomy: legal or symbolic value?

Out of the five categories analysed, only two -A and B- are directly related to the sphere of autonomous loyalty. The remaining categories -C, D and E- are not governed by this principle, as they pertain to the internal political sphere of the Autonomous Community -C-; refer to administrative links -D-; or are simply emphatic mentions of the principle -E-.

The second category -B- is disregarded as it refers to a specific content of autonomous loyalty that is already regulated by the national legislation. Then, for the purposes of this analysis, this work shall be focused focus on the higher and more general sphere of legal-political interactions between the Autonomous Community and the State, as well as with other Communities.

The exclusive focus on the first category -A- underscores the importance of assessing the inclusion of these references in the Statutes. They may signify more than mere symbolic mentions and could potentially restrict the relationship between the State and the Community.

Based on the premise that 'the regulation contained in [the Statute] cannot determine the general order of the State or other autonomous orders' (Montilla Martos, 2015: 61), or that

'Statutory regulation is limited because there are aspects that must be dealt with in a general way for all the Autonomous Communities and in a multilateral way by the Constitution or State legislation' (Castellà Andreu, 2004: 149), it can be concluded that a mention of loyalty in a specific Statute does not impose constraints or dictate the relations that the State or another second-level entity should maintain with a particular Community. To suggest otherwise would imply granting one specific region the legal authority to restrict or establish the general rules of conduct for the State or another entity at the same level.

Additionally, it is crucial to acknowledge that the regulations outlined in the Statutes always differ from the principles and requirements of the constitutional order[XLV]. This is so because:

> The Statutes of Autonomy, as rules subordinated to the Constitution, are not 'constitutional laws' that are inserted between the Fundamental Law and the rest of the legal system, and therefore neither do they represent a valid element to alter or reinterpret the constitutional system of distribution of competences or to condition in their forms, competences and procedures the legislative power of the State (López Benítez, 2008: 1186-1187).

Therefore, the content of the unwritten constitutional principle of autonomous loyalty would have the capacity to correct any deviation from its essence contained within the Statute. It is a constitutional principle that is located above any statutory one. The hierarchy and competence relationship always lean in favour of the unwritten principle that is part of the content of the Constitution. This is consistent with the interpretation adopted in the so-called 'Catalonian case', wherein the Constitutional Court asserted that:

> Starting from the assumption that the Statute of Autonomy, as the basic institutional rule of the *Generalitat* of Catalonia approved through an Organic Law, is not an inadequate regulatory body for the proclamation of the principles which must inspire the regime of that relationship between the State and the institutions of the Catalan Autonomous Community, it must nevertheless be affirmed that, beyond these principles, the specific normative articulation of this regime must respond to structural requirements of a constitutional order which, like the principle of co-operation of each Autonomous Community with the State and all of them with each other, can only be deduced from the Constitution itself and, consequently, from the jurisdiction which interprets it, that is, from this Constitutional Court (Legal Basis 13 of STC 31/2010, of 28th June).

In other words, the principles recognised in the Statute must correspond to the constitutional level and they cannot in any way limit the constitutional ones. In short, as Montilla Martos (2015: 121) pointed out,

> The framework of relations envisioned in the Statute must align with the overarching framework applicable to the entire State. Consequently, there must exist a shared framework of collaboration between the State and the Autonomous Communities, wherein each naturally plays a role, and which cannot be fully regulated within the Statute of Autonomy. This is because the Statute represents a legislative source agreed upon between the State and a particular Autonomous Community, possessing limited territorial jurisdiction.

Furthermore, if it were presumed that these references hold full legal value, this fact would suggest a dichotomy within the Autonomous State: one comprising Communities that engage with the State via statutory principles, and the other consisting of Communities whose Statutes lack any mention of loyalty, thus remaining outside its purview.

However, it is important to remember that autonomous loyalty is a fundamental principle inherent in the constitutional system. As the Constitutional Court has pointed out, this principle is legally binding on both the State and all the Autonomous Communities, regardless of whether their Statutes contain provisions on loyalty or not.

If these expressions were to be attributed with a strictly legal character, the Autonomous Communities could potentially argue violations of the distribution of powers system based on them. This is where the legal character of the principle becomes more relevant. However, upon reviewing the case law of the Constitutional Court, it becomes evident that when the Communities invoke loyalty as a principle of relations between the State and themselves, they never rely on the Statute as the basis for their arguments. Instead, they refer to 'autonomous loyalty' as a constitutional principle rather than a statutory one[XLVI].

These provisions have a purely symbolic value, aside from their legal significance. Including them in the Statute can be justified in several ways.

Multilateralism is the most widespread form of intergovernmental relations in Spain (García Morales, 2009: 365; Aja and Colino, 2014: 457). Nonetheless, this does not preclude Autonomous Communities from maintaining a bilateral relationship with the State, as both multilateral and bilateral relationships are valid expressions of collaboration. The issue arises when bilateralism is upheld as the sole form of relationship with the State, disregarding or undervaluing other actors in the composite system.

References to loyalty within the Autonomy Statutes as an expected form of behaviour between the State or a second level entity[XLVII] and a particular Community cannot limit the constitutional principle. It is worth noting that loyalty operates both vertically, ascending and descending, as well as horizontally. Loyalty applies to the State when relating to one, several, or all Communities, and vice versa.

The inclusion of such references in the Statutes may be due to a desire for preferential treatment from the State, as many Communities are aware that they can benefit more from a direct relationship than from its participation in multilateral bodies (Sectoral Conferences or the Conference of Presidents). In this type of body, the Autonomous Community cannot impose its agenda, but it can in its relationship with the State, especially because of the influence of the party system and political loyalties. This behaviour has become common in recent Legislatures in Spain, particularly in the relationship between the State and certain nationalist-leaning Communities, to form or to maintain coalition Governments.

It is important to note that loyalty is not the sole governing principle in relations between territorial entities. While Autonomous Communities do affirm loyalty, they also incorporate other symbolic references, in some way diluting its impact. Therefore, loyalty remains an emphasized concept, representing a relationship form to which the Autonomous Communities are accustomed. Otherwise, it is unclear why these statutory principles are not invoked in the legal order to defend the autonomous interests before the Constitutional Court.

References to loyalty in the Statutes are, in few words, merely symbolic and emphatic, serving as a reminder or reminiscent of the early years of development of the autonomous State when bilateralism was more widespread than multilateralism (Cámara Villar, 2004: 225).

Concluding remarks

The use of the term 'loyalty' in the Statutes is polysemic. It is not always linked to intergovernmental relations. Loyalty can refer to financial relations, to the internal relations of the Autonomous Community with local entities, to inter-administrative relations, and it may be even used in the arena of international relations. However, it has been noted that some Statutes use the term in a similar way to the unwritten constitutional principle of

territorial loyalty, referring to the type of relationship or general behaviour that should exist between the entities comprising the autonomous State.

Autonomous loyalty is a principle that legally binds the State and the Autonomous Communities (and among themselves) in their interaction. It is an unwritten constitutional principle with full validity and with a series of consequences in the event of non-compliance, as indicated by the Constitutional Court on a case-by-case basis. Its inclusion in some Statutes does not imply that a particular Community should be treated favourably by the State or another Community. Nor does it mean that other Communities which do not have this reference should not be treated equally.

At the outset of this century, certain statutes were reformed to corset the dynamics of intergovernmental relations, incorporating references to loyalty as a behaviour expected from the State or another Autonomous Community. These references, which have no legal value, nevertheless have a symbolic one, as an attempt to put in writing the kind of relations imposed by bilateralism. Their usefulness, in short, is emphatic, to intonate or emphasise the importance of relations between two territorial entities, focusing on certain Communities.

Bilateral relations are important and necessary, but they cannot be the only existing loyalty link, especially considering that the Autonomous State is a decentralised system composed of different entities at the same level as the one that seeks to limit the bond. Bilateralism cannot in any way replace multilateralism. And loyalty, which projects its effects on cooperation, cannot favour one type of relationship over another.

Such statutory provisions, in the way they have been drafted, are nothing more than an example of a misunderstanding of bilateralism. They show how excesses in this area lead the Autonomous Communities to seek to corset relations within the State from a particular perspective.

The inclusion of references to loyalty in the Statute, as a manifestation of the subnational constitution in Spain, is a rarity among decentralised countries. Loyalty persists in the system without needing to be explicitly mentioned, especially when the wording of the concept is intended to limit its effects. This peculiarity makes the autonomous system a paradigmatic case of interest for comparative federalism and for those who study federal loyalty in theory and practice.

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[II] It is worth noting that García Morales (2009: 364-365) addressed this issue, but only as an specific section within her paper on collaboration in the new generation of Statutes.

[III] Thus, for example, BVerfGE 3, 52; BVerfGE 4, 115; BVerfGE 6, 309; BVerfGE 8, 122; BVerfGE 12, 205; BVerfGE 13, 54; BVerfGE 14, 197; BVerfGE 43, 291; BVerfGE 60, 319; BVerfGE 81, 310; BVerfGE 92, 203; BVerfGE 103, 81; BVerfGE 104, 238; BVerfGE 104, 249; BVerfGE 133, 241.

[IV] In this case, that happened before the Constitutional Reform of 1999.

[V] This Section belongs to the Chapter 3 ('Co-operative government') and specifically recognizes the 'Principles of co-operative government and intergovernmental relations'. This principle embodies federal loyalty in South African constitutionalism (Tomkins, 2018: 97).

[VI] This would be 'autonomous' and not 'federal' loyalty since the form of territorial decentralization of power in Spain is not strictly federal, but quasi-federal. Its name, according to the jurisprudence of the Constitutional Court and doctrine, is 'Autonomous State' and, consequently, it is known as an 'autonomous system'. It should be noted that the Constitution does not give this State any kind of name (e.g., federal, quasi-federal, regional, autonomous).

[VII] Among others, STC 152/1988, of 20th July; STC 181/1988, of 13th October; STC 209/1990, of 20th December; 109/2011, of 22nd June or STC 217/206, of 15th December.

[VIII] Among others, STC 164/2001, of 11th July; 47/2005, of 3rd March; 44/2007, of 1st March; or STC 102/2015, of 26th May.

[IX] For example, Article 140 regulates the 'general principles of inter-administrative relations'; Article 141, the duty of collaboration between Public Administrations; Article 142, the collaboration techniques; Article 143, the techniques of cooperation between Public Administrations (and which is further developed in Article 144); and Article 145 and followings Articles, which regulates the organic dimension of cooperation.

[X] Article 9 regulates the so-called 'institutional loyalty'. Its content refers, however, to many of the obligations inherent to the duty of collaboration set out in Law 40/2015, of 1 October, on the Legal Regime of the Public Sector.

[XI] Which does not strictly refer to 'autonomous loyalty' but rather to 'constitutional loyalty'.

[XII] This is known, in Spain, as the 'dispositive principle'.

[XIII] Which declared that most of the contested precepts were constitutional, using the technique of conforming interpretation (STC 31/2010, of 28th June). For further information on the process of approval of the Statute of Autonomy of Catalonia, please see Blanco Valdés (2014: 294-418).

[XIV] In this regard, it is interesting to note what López Benítez (2007, 44) pointed out:

> "These principles are so elementary that the legal systems of some neighbouring countries do not even expressly formulate them, because they understand them to be implicit values that do not need to be formulated explicitly. In Spain, however, it is not only that the Statutes now proclaim them, but it is practically difficult to find a Law or a mere Regulation that does not refer to them, probably making the aphorism 'tell me what you boast, and I will tell you what you lack' a reality".

[XV] Article 117.1 of the Constitution of Bavaria.

[XVI] Article 21 of the Constitution of Berlin; Article 31.3 of the Constitution of Brandenburg; Article 7 of the Constitution of Mecklenburg-Western Pomerania; Article 9.2 of the Constitution of Rhineland-Palatinate; Article 21.2 of the Constitution of Saxony; Article 10.3 of the Constitution of Saxony-Anhalt; or Article 27.1 of the Constitution of Thuringia.

[XVII] Article 9 of the Constitution of Bremen.

[XVIII] Article 83 of the Constitution of Bremen.

[XIX] Article 38 of the Constitution of Hamburg; Article 126.1 of the Constitution of Rhineland-Palatinate.

[XX] Article 77.1 of the Constitution of Baden-Württemberg; Article 71.4 of the Constitution of Mecklenburg-Western Pomerania; Article 60.1 of the Constitution of Lower Saxony; Article 91.1 of the Constitution of Saxony.

[XXI] The same occurs in the Constitutions of these German *Länder*: Hessen, Nordrhein-Westfalen, Saarland, and Schleswig-Holstein.

[XXII] Article 3.1 of the Statute of Catalonia:

> "The relations of the *Generalitat* with the State are based on the principle of mutual institutional loyalty and are governed by the general principle according to which the *Generalitat* is a State, by the principle

of autonomy, by the principle of bilateralism and also by the principle of multilateralism".

[xxiii] Article 219.1 of the Statute of Andalusia:

'Within the framework of the principle of solidarity, the relations of the Autonomous Community of Andalusia with the State are based on collaboration, cooperation, institutional loyalty and mutual aid'.

[xxiv] Article 59.3 of the Statute of Valencia:

"The relations of the *Comunitat Valenciana* with the State and the other autonomous communities shall be based on the principles of institutional loyalty and solidarity. The State shall ensure that the territorial imbalances that are detrimental to the *Comunitat Valenciana* are alleviated.

The public administrations of the *Comunitat Valenciana* shall be governed in their actions and their relations with State institutions and local entities by the principles of loyalty, coordination, cooperation, and collaboration".

[xxv] Article 191.1 of the Statute of the Canary Islands:

"By the principles of institutional loyalty, solidarity, defense of the general interest and respect for their respective competencies, the Autonomous Community of the Canary Islands shall establish relations of collaboration and cooperation with the State and the other Autonomous Communities".

[xxvi] Article 61.1 of the Statute of Extremadura:

"The Autonomous Community of Extremadura may establish relations with the State, with other Autonomous Communities and with foreign or supranational entities in the exercise of its powers and defense of its interests under the principles of institutional loyalty, solidarity, collaboration, cooperation and mutual aid".

[xxvii] Article 116 of the Statute of the Balearic Islands:

"Within the framework of constitutional principles, relations between the Autonomous Community of the Balearic Islands and the State are based on the principles of collaboration, cooperation, solidarity and institutional loyalty".

[xxviii] Article 57 of the Statute of Castile and Leon:

"The relations of the Community of Castile and Leon with the State and with the other Autonomous Communities shall be based on the principles of solidarity, institutional loyalty and cooperation".

[xxix] For a more comprehensive understanding of the phenomenon of bilateralism and its potential impacts:

"Bilateralism establishes a direct relationship between territorial entities, specifically the higher and intermediate levels. The intermediate level demands a specific and individualized treatment on certain matters, which differs from the treatment of other territorial levels by the State. Bilateralism offers personalized treatment, paying particular attention to the Autonomous Community and creating a specific context for *ad hoc* negotiations. However, it also has significant drawbacks, including generating comparative grievances with other territorial entities that do not receive the same specific treatment from the State and preventing joint participation in the management of common affairs, which may have different visions or points of view" (Carranza, 2022a: 168).

Regardless of bilateralism, which evidently benefits only one Autonomous Community, the use of multilateralism has become widespread in Spain. For certain authors, multilateral relations dominate the scene of intergovernmental relations, while bilateralism is mainly used to resolve conflicts:

"Spanish IGR arrangements have experienced increased institutionalization and have reflected a typical coexistence between multilateralism and bilateralism at the political level, but the predominance of multilateralism at the policy-making and executive level. Despite some stereotypes disseminated by Spanish and foreign scholars on the prevalence of modes of bilateral cooperation and interaction in the Spanish territorial model, a detailed study of intergovernmental meetings indicates that bilateral cooperation bodies have not been widely used and, in any case, have been much less used than multilateral ones" (Aja and Colino, 2014: 457).

[xxx] Article 201.2 of the Statute of Catalonia:

"The financing of the *Generalitat* is governed by the principles of financial autonomy, coordination, solidarity and transparency in fiscal and financial relations between public administrations, as well as by the principles of the sufficiency of resources, fiscal responsibility, equity and institutional loyalty between the aforementioned administrations".

Article 209 of the Statute of Catalonia:

"1. By the principle of institutional loyalty, the financial impact, positive or negative, that the general

provisions approved by the State have on the *Generalitat* or those approved by the *Generalitat* have on the State, in each period, in the form of a variation in spending needs or fiscal capacity, shall be assessed to establish the necessary adjustment mechanisms.

2. Both Administrations shall provide each other with access to the statistical and management information necessary for the better exercise of their respective powers, within a framework of cooperation and transparency".

[xxxi] Article 175.2.e) of the Statute of Andalusia:

"2. The Autonomous Community of Andalusia shall have the necessary resources to attend stably and permanently to the development and execution of its competencies so that the principle of equality in access to and provision of public services and goods throughout the Spanish territory is guaranteed. All this following the principles: (...) e) Institutional loyalty, coordination, and collaboration with the State Treasury and with the other public treasuries".

Article 183.1 of the Statute of Andalusia:

"The financial relations of the Autonomous Community with the State shall be governed by the principles of transparency, institutional loyalty and participation in the decisions that affect them".

[xxxii] Article 103.1 of the Statute of Aragon:

"The Autonomous Community of Aragon, by the financial autonomy, recognized and guaranteed to it by the Spanish Constitution, has its own Treasury for the financing, execution and development of its powers, by the principles of the sufficiency of resources, equity, solidarity, coordination, financial balance and institutional loyalty, and within the framework of the provisions of the Constitution, this Statute of Autonomy and the Organic Law on Financing of the Autonomous Communities".

Article 107.4 of the Statute of Aragon:

"In any case, any action by the State in tax matters that entails a variation in revenue, or the adoption by the State of measures that may cause the Autonomous Community of Aragon to incur a variation in its expenditure needs not foreseen on the date of approval of the financing system in force, or the signing of the Agreement provided for in the following article, shall determine the adoption of the appropriate compensation measures.

By the principle of institutional loyalty referred to in Article 103, the assessment of the variations shall refer to a specific period and shall consider the positive and negative effects of the general provisions issued by the State and the effects that the provisions issued by the Autonomous Community have on the State".

[xxxiii] Article 86.1 of the Statute of Extremadura:

"Relations between the Public Treasury of the Autonomous Community of Extremadura and that of the State shall be informed by the principles of solidarity, coordination, collaboration, transparency and institutional loyalty, and shall be governed by the Constitution, this Statute and, where appropriate, the Organic Law provided for in the third paragraph of Article 157 of the Constitution".

[xxxiv] Article 120.2.b) of the Statute of the Balearic Islands:

"2. The financing of the Autonomous Community of the Balearic Islands is based on the following principles: (...) b) Institutional loyalty".

Article 122 of the Statute of the Balearic Islands:

"1. By the principle of institutional loyalty, the financial impact, positive or negative, that the general provisions approved by the State have on the Balearic Islands or those approved by the Balearic Islands have on the State, in each period, in the form of a variation in spending needs or fiscal capacity, shall be assessed, establishing the necessary adjustment mechanisms.

2. In the event of reform or modification of the Spanish tax system that entails the elimination of taxes or a variation in the revenue of the Balearic Islands, which depends on State taxes, the Autonomous Community of the Balearic Islands is entitled to have the State adopt the appropriate measures of compensation so that it does not see its possibilities of developing its powers or its future growth reduced or diminished.

3. Both Administrations shall mutually facilitate access to the statistical and management information necessary for the better exercise of their respective competencies, within a framework of cooperation and transparency".

[xxxv] Article 83.5 of the Statute of Castile and Leon:

"By the principle of institutional loyalty, the financial impact, positive or negative, that the general provisions and measures adopted by the State have on the Community of Castile and Leon or those adopted by the Autonomous Community have on the State, in a given period, in the form of a variation in spending needs or fiscal capacity, shall be assessed to establish the necessary adjustment mechanisms to avoid any kind of damage to the financial sufficiency of the Community, to the development of its competencies or its economic growth.

Both administrations shall provide each other with access to the statistical and management information necessary for the better exercise of their respective competencies, within a framework of co-operation and transparency".

[XXXVI] Article 9 of the Organic Law 2/2012, of 27 April, on Budgetary Stability and Financial Sustainability:

"Public administrations shall act following the principle of institutional loyalty. Each Administration shall:

a) Assess the impact that its actions, on the matters, referred to in this Act, may have on the other Public Administrations.

b) Respect the legitimate exercise of the competencies attributed to each Public Administration.

c) To consider, in the exercise of their competencies, all the public interests involved and, specifically, those whose management is entrusted to other Public Administrations.

d) To provide the other Public Administrations with the information they require on the activity they carry out in the exercise of their powers and that which is derived from compliance with the obligations to provide information and transparency within the framework of this Act and other national and Community provisions.

e) To provide, within their sphere, the active cooperation and assistance that the other Public Administrations may require for the effective exercise of their competencies".

[XXXVII] Article 90 of the Statute of Andalusia:

"The territorial organization of Andalusia shall be governed by the principles of autonomy, responsibility, cooperation, de concentration, decentralization, subsidiarity, coordination, financial sufficiency and institutional loyalty".

[XXXVIII] Article 59.1 of the Statute of Extremadura:

"The Autonomous Community and the local entities shall adjust their reciprocal relations to the principles of institutional and financial loyalty, respect for their respective spheres of competence, coordination, cooperation, mutual information, subsidiarity and inter-territorial solidarity".

[XXXIX] Article 48 of the Statute of Castile and Leon:

"The Community of Castilla and Leon shall promote local autonomy. The Community and the local entities shall adjust their reciprocal relations to the principles of institutional loyalty, respect for the respective spheres of competence, coordination, cooperation, mutual information, subsidiarity, inter-territorial solidarity and weighing of the public interests affected, whichever Administration oversees them".

[XL] Article 62.2 of the Statute of Aragon (referring to the 'Principles of organisation and functioning of the Administration'): 'In its actions, it shall respect the principles of good faith and legitimate trust and shall relate to the rest of the Spanish Public Administrations following the principle of institutional loyalty'.

[XLI] Article 194.1 of the Statute of the Canary Islands (referring to 'Relations with other Canary Islands public administrations'): 'The Canary Islands public administrations are governed in their relations by the principles of institutional loyalty, coordination, cooperation and collaboration'.

[XLII] Article 59.3 of the Statute of Valencia:

"The relations of the *Comunitat Valenciana* with the State and the other autonomous communities shall be based on the principles of institutional loyalty and solidarity. The State shall ensure that the territorial imbalances that are detrimental to the *Comunitat Valenciana* are alleviated.

The public administrations of the *Comunitat Valenciana* shall be governed in their actions and their relations with State institutions and local entities by the principles of loyalty, coordination, cooperation, and collaboration".

[XLIII] This entity replicates the Conference of Presidents at the state level (Article 146 of Law 40/2015) and fulfils the role of a general and permanent framework for relations, deliberation, participation, formulation of proposals, agreement, and exchange of information between all the islands that make up the archipelago. It is made up of the Presidency of the Balearic Islands and the Island Councils of Mallorca, Menorca, Ibiza, and

Formentera.

[XLIV] Article 17.9 of the Statute of Extremadura:

> "Promote all types of relations with Portugal, both of Extremadura's institutions and society, under the principles of loyalty, respect for each other's identity, mutual benefit and solidarity. Likewise, they shall foster relations of any kind with the peoples and institutions of the Ibero-American community of nations".

[XLV] Also, as Castellà Andreu (2004, 149) pointed out, 'In general terms, the statutes are limited to generic proclamations (...), so that subsequent legislative regulation is essential to complete their regulation'.

[XLVI] For example, STC 96/2002, of 25th April; 236/2012, of 13th December; 240/2012, of 13th December; 76/2014, of 8th May; or 102/2015, of 26th May.

[XLVII] The Statutes of Valencia, the Canary Islands, Extremadura, and Castile and Leon all recognise horizontal relationships after vertical ones.

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How multilevel governance structures and crisis mitigating measures impact political trust: a systematic literature review

by

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Abstract

The COVID-19 pandemic has shown that political actors and were willing to take or endorse drastic measures to mitigate the spread of the virus. At the same time, the political systems responding to the pandemic have become increasingly interconnected into multilevel governance structures. Also, studies have shown that political trust is seen as an important precondition for the functioning of a political system, especially in times of crisis, while the drivers of political trust are less often studied. The concept of political trust is also relevant from an MLG perspective, as different tiers of government (in)directly influence citizens' trust and as citizens can express trust in different levels simultaneously. However, the effect of both contexts on political trust is rarely studied. This paper therefore examines how crises mitigating measures and multilevel governance contexts impact political trust. We study this question by means of a systematic literature review of 48 papers searched for in political science or legal research. The goal of this research is to systematize and integrate knowledge of distinct strands of research, searching for overlaps, in order to get more insight in the phenomenon of political trust.

Keywords

Political trust, multilevel governance, crisis governance, Covid-19, multi-tiered systems systematic literature review

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Introduction

The COVID-19 pandemic that emerged in 2020 as a health crisis, and which later became an economic, social and even political crisis (Boin et al. 2020), has shown that political actors like governments, leaders and courts were willing to take or endorse drastic measures to mitigate the spread of the virus. So-called lockdowns and other social restrictions were imposed on citizens without much public participation (Bol et al. 2021). Measures to counter the economic crisis that followed the health crisis were taken as a reaction to increasing demands of the public, though, sometimes, without parliamentary approval (e.g., Bursens et al. 2021). During the sovereign debt crisis as well, the EU imposed austerity policies on various countries without much public debate (Hartveld et al. 2013). At the same time, political systems are increasingly interconnected, forming a multilevel governance (MLG) structure. This means that local, regional, national and supranational levels of government each have their separate spheres of authority, but these levels also need to cooperate, hence the interconnectedness, and therefore become increasingly complex (Behnke et al. 2019; Biela et al. 2013). This interconnectedness of various levels is well expressed in times of crisis. Within the European Union (EU), for example, different levels of government were, in one way or another, involved in the mitigation of the pandemic (Lynggaard et al. 2022).

The absence of public participation in the mitigation of crises and the increasing complexity of political systems raise questions on citizens' perceptions of their governments such as, among others, their political trust. Indeed, political trust is seen as an important precondition for the functioning of a political system, especially in times of crisis (for COVID-19 see Devine et al. 2024). Research shows, for example, that political trust influences citizens' willingness to vaccinate (Wynen et al. 2022) or to comply with laws (Marien & Hooghe 2011). The concept of political trust, which is related to concepts of legitimacy of a political system, is even more relevant in complex MLG contexts, where different tiers of government directly or indirectly influence citizens' and where citizens can express trust in several levels simultaneously.

Political trust can thus be considered as important in both crisis and MLG contexts, and especially in times of crisis in a MLG system. That is why this paper examines the following question: How do crises mitigating measures and multilevel governance contexts impact political trust? Political trust being defined as a "person's belief that political institutions will

act consistently with their expectations of positive behaviour" (Algan 2018). We study this question by means of a systematic literature review based on the PRISMA guidelines of 52 papers on crisis mitigating measures and/or MLG systems, and political trust. Contrary to most literature (e.g., Devine et al. 2024), political trust is the dependent variable. The goal of this research is to systematize and integrate knowledge of these distinct strands of research, searching for overlaps, in order to get more insight in the phenomenon of political trust. This review thus aims to bridge the gap between two different strands of research by searching for communalities in the way crisis mitigating measures and MLG contexts affect political trust.

This is even more relevant given the global scope of many contemporary crises, such as the COVID-19 pandemic and climate change, and the increasing pertinence of MLG structures. Both themes are extensively studied, but rarely in combination with political trust or in combination with each other (see for example Boin et al. 2020 for crisis governance, or Behnke et al. 2019 for MLG). The growing complexity and 'trans boundedness' of crises (Boin and Lodge 2016), however, require a stronger focus on the relationship between crises and MLG, as well as how they together affect political trust. Furthermore, while the literature shows that political trust influences, among others, compliance with crisis-mitigating measures and with vaccination intention (Devine et al. 2024), no reviews compiling research on the determinants of political trust have been done (with exception from a short section in Devine et al. 2021). This is surprising given the increase of literature stressing the importance of political trust, especially in times of crisis.

This review shows that there are some overlaps between the different strands of research, both in use of data and methods as in conceptions of and explanations for trust. There are, however, some gaps in the literature, especially with regards to the levels of government that are commonly studied. Research on the effect of crisis governance on trust focuses on the national level as the most important level, neglecting the MLG structure of most political systems. Additionally, the research on trust in MLG contexts focuses mostly on national and supranational levels of government. Literature on lower levels of government, especially the regional level, remains scarce. Furthermore, literature on crisis governance focuses on the policies themselves and on how the implementation of a policy affects political trust. This literature neglects the possible impact of the way in which measures were decided on political trust, for example whether the fact that decisions on measures were taken after

intergovernmental consultations or through legal and transparent procedures affects political trust.

The paper consists of six parts and is structured as follows: the first part elaborates on the research strategy of the paper, namely how the systematic literature review is performed. The second part discusses the findings with regards to the dependent variable, political trust, while the third and fourth part assess the impact of respectively crisis governance and MLG structures on political trust. In a fifth part, the impact of crisis governance on political trust in a multilevel system is discussed by means of four articles dealing with the sovereign debt crisis, and related austerity policies, in the EU. The paper concludes with a discussion of similarities between the two kinds of research and of the gaps in the literature, finally also providing avenues for further research.

1. Research strategy: a systematic literature review

To establish the state of the art in the literature on crisis governance and/or MLG and political trust, a systematic literature review was performed following the Preferred Reporting Items for Systematic Meta-Analysis (PRISMA) scheme. This method was initially developed for research related to health care, and later evolved into the PRISMA statement which is increasingly used by researchers of various research fields (Page et al. 2021). The statement consists of a checklist of 27 items and a flow diagram which guides the search and review process with attention for transparent analysis and reporting (Page et al. 2021). In the following, we elaborate on the search and review strategy used for this paper following the guidelines of the PRISMA statement.

Literature search

We conducted the search in October and November 2022, and again in July 2023 and May 2024, so articles published after June 2024 are not considered in this review. I searched for literature on crisis governance or on multilevel systems, and their effects on political trust in three well-known databases: Web of Science, Scopus and Proquest. More specifically, we searched for literature on trust (not on political trust), crisis OR multilevel governance.[II] We included trust as one of the search terms and not political trust, as many articles use terms like institutional trust or trust in government, which can be forms of political trust and thus

relevant for the study. To identify as much literature covering different levels of government as possible, we included a whole range of indicators of MLG structures instead of only using 'multilevel governance'.[1] We also decided to look for 'crisis' instead of 'crisis governance' for the same reason. We found a total of 7591 publications in the three mentioned databases. In order to identify publications that were missed in the other databases, we also ran a search of Google Scholar. This double check yielded twelve additional relevant results, so 7603. The entire search was finished on the twenty-second of May 2024.

Because of the high number of publications found (n = 7603), we chose not to include additional databases like JSTOR and/or look for more publications in specific journals. The downside of this approach is that we might have missed interesting articles highly relevant for this study. A check of JSTOR based on our search terms did not yield additional results. Also, to control whether we actually studied separate strands of literature, we performed an additional search in the three databases by using the search terms 'trust', 'crisis' AND 'multilevel', and its derivatives, AND governance. This resulted in a total of 190 publications, of which, after further analysis of the results as explained below, only four were eligible for the study. This might indicate that the strands of research are treated separately in the literature.

Eligibility criteria

Articles from databases were included in the screening process if they complied with the following criteria:

- Search terms/key words: publications need to deal with trust and multilevel governance or crisis governance, so we searched for 'trust', 'crisis' and 'multilevel governance' (and derivates). As mentioned before, an article should be about political trust, and crisis or multilevel governance.
- Research domain: the paper needs to be published in a journal that is related to political science, public administration, or legal research.
- Year of publication: publications of the last sixteen years are included (2008-2024). That way publications on the financial crisis that erupted in 2008 are also included and the literature on trust and crisis is not limited to the COVID-19 pandemic.

- Publication type: both articles and book chapters are included, if they are published in peer-reviewed journals or in academic books.
- Language: only articles in English were considered for the study.

Screening and selection of literature

Of the initial 7603 publications, 52 were considered for this study. In the following, we will go deeper into the selection and screening process. This is also presented in figure 1. First, using the tools of the databases themselves, we checked for research domain, year of publication, publication type and language. As Scopus and Proquest do not allow for detailed searches based on the research domain, I searched for publications in the fields of social sciences and law. For Web of Science, we were able to search for publications in the fields of political science and law.

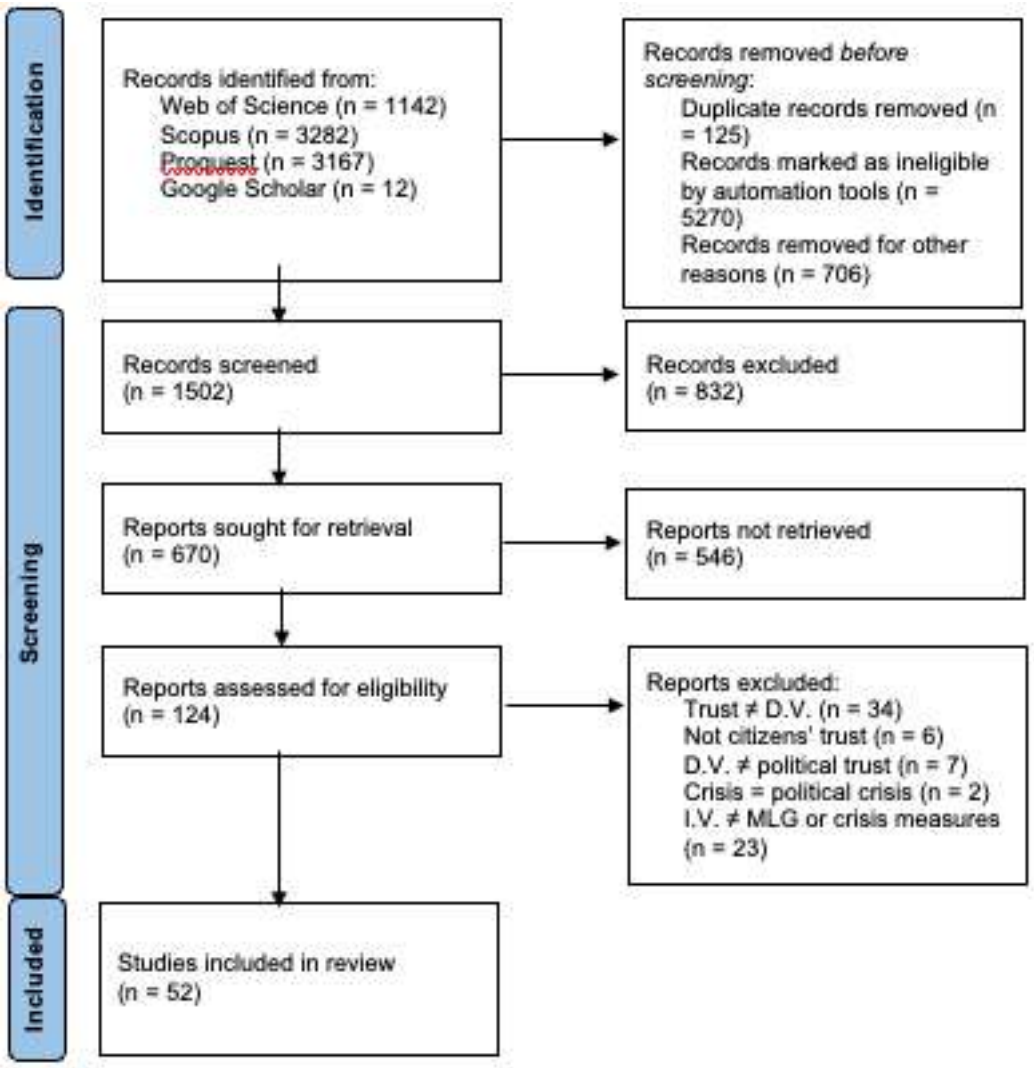

Figure 1. Identification of literature through databases

The number of publications was narrowed down by applying the eligibility criteria (n = 4835), by controlling for the keywords as explained in the eligibility criteria (n = 706), and by removing duplicate records (n = 125). This was done by (search) tools available on the websites of the databases and resulted in 1502 publications. We narrowed these down by using additional tools filtering for, among others, geographic region (we only study trust in democracies). After this second step, we ended up with 652 publications, which were screened based on their title. For this purpose, an additional set of criteria was used. Publications need to deal with political trust, which included trust in political institutions or trust in governments, and political trust needs to be the dependent variable. Publications

about, for example, interpersonal, interorganisational or social trust were excluded, as well as publications on political trust as independent variable. Also, the focus needed to be on citizens' trust and not on politicians' or governmental trust. Finally, publications with MLG or crisis as dependent variable were excluded, as well as articles about political crises and disasters, as the latter are one-time events with a more short-term impact while crises often affect different areas and lead to policy changes (Boin and Lodge 2016). Articles about the effect of crisis in general and not the crisis mitigating measures were also excluded. When the title could not rule out a publication based on these criteria, we included it to be further examined based on the abstract. We ended up with 124 publications which were screened based on their abstract.

The same criteria used to examine the publications based on their title were used to screen the abstracts, after which 72 more publications were excluded from the analysis. Publications were mainly excluded in this final stage because political trust was not used as a dependent variable (n = 34), MLG or crisis measures were used as dependent variables (n = 23), or the dependent variable was not trust in a political institution (n = 7). In total, we ended up with 52 eligible publications. Sixteen of the publications deal with MLG and political trust, thirty-two with crisis governance and political trust, while only four deal with the combination of MLG and crisis governance. All but three publications are journal articles, the other three being published book chapters. The articles were published between 2011 and 2024 in a variety of journals, but all related to political science or public administration. The set contains two papers based on a literature review, and 48 empirical papers using quantitative analyses of survey and panel data. The quantitative studies employ quantitative cross-sectional (n = 31) or quantitative longitudinal analyses (n = 18), of which twelve are based on cross-sectional longitudinal analyses. Most of these quantitative papers are based on (existing) surveys or panel surveys, though three articles rely on survey experiments – split ballot and different treatments experiments.

Furthermore, three of the papers compare the effects of crisis governance on political trust in two or three different states. Differences between states are based on a wide variety of variables, ranging from the nature of the political system in Austria and France – consensual vs. majoritarian – (Kritzinger et al. 2021), to different public health policies to mitigate the pandemic in Sweden and Denmark (Nielsen and Lindvall 2021) and different

democratic development (Coromina and Kustec 2020). Similarities are found in the timing and kinds of crisis mitigating measures (Kritzinger et al. 2021), the institutional and psychological level (Nielsen and Lindvall 2021) and the kind of crisis that affects the countries. All other papers, both on MLG and crisis measures, are either based on quantitative studies in one country (n = 24) or on quantitative studies in multiple countries such as all EU member states or a set of countries around the world (n = 25). In the case of the latter, comparisons are sometimes made between sets of countries based on different characteristics, such as degree of press freedom (Gozgor 2022), number of COVID-19 related deaths (Rieger and Wang 2021) or debtor vs. credit countries (Armingeon and Ceka 2014). Interestingly, the type of political system – federal, unitary, regionalized etc. – is never considered in comparisons.

Because it is possible that we missed some interesting articles following the strict eligibility criteria and search terms, we checked the three databases based on publication date and using broader search terms. Firstly, extending the period in which the articles were published to twenty years does not significantly alter the number of publications eligible for this study. Going back in time even further did not seem useful for a study focusing on the state of the art on a certain topic, but some publications will be mentioned nevertheless because of their value for more recent research. We did not, however, include them in the review. Extending the search terms to include references of 'legitimacy' or 'support', both sometimes used interchangeably with trust or trust being used as an operationalization of these concepts, does not lead to extra publications eligible for this research when applying the same criteria for this literature review or when comparing the definitions of legitimacy and support that are used.

2. Political trust, the dependent variable

Before going into detail about the ways political trust is operationalized in the studied literature, it is important to know what it is or how it is defined in the literature, and why it is important or relevant for researchers. One of the most cited definitions of political trust is based on Easton's (1975) work on political support. He defines political trust as the belief of members of a political system "that their own interests would be attended to even if the

authorities were exposed to little supervision or scrutiny" (Easton 1975). In similar veins, OECD guidelines define trust as a "person's belief that political institutions will act consistently with their expectations of positive behaviour" (Algan 2018), and Norris (2017) defines it as the reflection of "a rational or affective belief in the benevolent motivation and performance capacity" of a political institution. Political trust is thus characterized by a specific set of objects or trustees, namely political institutions, individual political actors or political systems (van der Meer and Zmerli 2017). Furthermore, following the abovementioned definitions, political trust is relational, in the sense that it entails a subject/trustor that trusts and an object/trustee that is trusted, and situational, meaning that it is characterized by a "certain degree of uncertainty about the object's future actions" (van der Meer and Zmerli 2017; Newton 1999; van der Meer 2016). Indeed, political trust is dependent on the actions by the object or the contexts in which the trust relation exists. As Hardin (2000) puts it, "A trusts B to do X".

In much of the (theoretical) literature on political trust as well as in literature reviewed in this paper, political trust is related to concepts of political support and, less often, political legitimacy. In some instances, political trust is seen as a source of political support (Thomassen et al. 2017). Easton (1975) for example treats political trust as a source of diffuse political support, which can be defined as more abstract feelings towards the nation-state and its agencies. This diffuse support is opposed to specific support which relates to incumbent political actors responsible for decision-making. Other authors see political trust as a component or indicator of political support (Dalton 2004; Norris 2017; Thomassen et al. 2017). Diffuse support is then measured by trust in various political institutions, while specific support is measured by trust in political authorities and actors (Thomassen et al. 2017). The latter approach is most common in the reviewed literature dealing with political support. Armingeon and Ceka (2014) and Ares et al. (2017) for example study trust in political systems and in various political institutions within these systems to make claims about diffuse support for these systems. Other authors see political trust as somewhat in the middle between specific and diffuse support and treat it as an indicator of both depending on how political trust is measured. Harteveld et al. (2013) and Torcal (2014), for example, follow that approach as they measure trust in various political institutions ranging from incumbent leaders or representatives (= specific) to governments or political systems (= diffuse).

Despite the close interrelation between trust and support, they are distinct, though not always treated as such in the literature (Schraff 2020; Erhardt et al. 2022). Van der Meer and Zmerli (2017) argue that the uncertainty aspect of political trust, i.e., subjects do not know or at least face some degree of uncertainty about the object's future behaviour, sets it apart from more diffuse attitudes of political support like patriotism or national pride, which are more affective (Armingeon and Ceka 2014). Political trust, on the other hand, has also some kind of utilitarian or specific aspect as it also depends on performance by political institutions or actors (van der Meer and Zmerli 2017).

The same counts for the distinction between political legitimacy and political trust, which are sometimes equated in the literature as well (O'Sullivan et al. 2014). Other authors study trust as an aspect of legitimacy (Grimes 2006). Easton (1975), however, made a distinction between political trust and political legitimacy by treating them as different kinds of political support. Legitimacy refers to a normative judgment of political systems, related to norms and values, while trust implies an instrumental judgment on the regime's performance (Easton 1975; Thomassen et al. 2017). Most of the literature investigated in this review, however, studies political trust on its own, not in relation to the concepts of political support or legitimacy.

When discussing the motivations for research on political trust, much of the literature refers to its importance for the functioning of a political system. Indeed, there is a "widespread conviction that a reservoir of political trust helps preserve fundamental democratic achievements" (van der Meer and Zmerli 2017), especially in times of economic, social and political crises as it is seen as a prerequisite of a successful government response to crises (Schraff 2020). It is believed that political trust helps in maintaining stability, viability and legitimacy of the political system, and it is seen as a necessary precondition for democratic rule (e.g., Easton 1975; Norris 1999; Dalton 2004). However, scholars started investigating these assumptions only recently and research remains rather scarce (van der Meer and Zmerli 2017). Marien and Hooghe (2011), for example, argue that political trust determines citizens' law-abiding and rule-complying behaviour, while Dalton (2004) found that low political trust generates support for democratic reform. Political trust is also believed to influence voter turnout, vote choice, public participation and policy preferences (e.g., Dalton 2004; Norris 2011). Devine (2022), on the other hand, argues that the effect of political trust on the abovementioned features is only weak or moderate, and thus that the

effect of political trust on such features is smaller than is often assumed in the literature. However, research on the recent COVID-19 pandemic found that political trust positively influenced vaccination intention and compliance with restriction measures (Wynen et al. 2022; Jennings et al. 2022; Devine et al. 2024).

Despite the common dependent variable in all the articles under review, political trust, authors use different terms to refer to it. We already mentioned authors who write about (diffuse) political support (n = 9) like Armingeon and Ceka (2014), Bol et al. (2021) and Schraff (2020) when studying, among others, political trust. It stands out that only six authors explicitly mention that they study political trust (e.g., Muñoz 2017; Davies et al. 2021). A total of twenty authors, among others Dominioni et al. (2020) or Baekgaard et al. (2020), mention trust in (political) institutions as their dependent variable, while another sixteen refer to trust in government (e.g., Wolak 2020; Kritzinger et al. 2021). Of course, this is only how the authors refer to political trust in their writings, and not how they operationalize it. However, it already shows that there are different aspects about political trust, and that there is no uniform way in the literature to refer to it.

The specific object of political trust, namely political actors and institutions, which distinguishes it from other kinds of trust (like social trust), can be – and is – operationalised in various ways. Most articles measure trust in government (n = 36). However, this measure is not unambiguous, as Bol et al. (2021) rightfully point out. It can refer to both the institution of the government and to the incumbent government, depending on how citizens understand it. This is especially important in studies linking trust in government to notions of support, as it can be interpreted as respectively diffuse and specific support (Bol et al. 2021; see also Easton 1975). The same holds for trust in parliament, which is used in 22 articles as operationalisation of trust. Trust in the legal system is studied in only six articles, despite being an important, though understudied, aspect of political trust. Also, the nine articles about (diffuse) political support measure different aspects of political trust as indicators of such support, ranging from trust in parliament and government to trust in political systems (n = 2). This indicates that the measurement of political support is still not straightforward and that it depends on how diffuse support is defined, which makes comparison difficult.

Few studies in this review study more specific forms of trust. Only eight measure trust in politicians, five measure trust in political parties and two mention trust in political

leadership. Political trust thus seems to be associated with more abstract notions of political institutions than with specific political actors. Note that the total (n = 81) is larger than the number of articles under review as some authors measure trust in more than one institution.

The question then is if different authors who study political trust by measuring trust in different political institutions are actually studying the same thing. Indeed, Schneider (2017), for example, found that political trust differs depending on the institutions that are evaluated. She found four clusters of political trust: trust in central political institutions like the national parliament, political parties or national government; trust in local and regional institutions like subnational parliament or governments; trust in protective institutions like the armed forces and police; and, finally, trust in order institutions like courts (Schneider 2017). Especially the finding that trust in subnational political institutions differs from trust in more central, national political institutions will be of interest in the following part(s). The findings of Coromina and Kustec (2020) are in line with the argument of Schneider (2017). They distinguish three clusters and argue that trust in order institutions like the police or courts is most often the highest, while trust in central institutions is generally the lowest (Coromina and Kustec 2020).

Despite the differences between the various studies, there are also some similarities. We discuss two. A first similarity concerns the data that are used to measure the variables that affect political trust, but also to operationalise political trust as it often stems from the same source (e.g., survey questions). Almost all articles are based on survey or interview data (n = 50). The other two are literature reviews. Furthermore, many authors use Eurobarometer (n = 12) or European Social Survey (n = 5) data, which are large n studies conducted on a regular basis and which contain a lot of different variables. Secondly, and to some extent related to the use of survey data, is the fact that all but two reviewed research focus on political trust, and not on related but distinct concepts like political mistrust (= the absence of trust) or political distrust (= the opposite of trust). Indeed, indicating that one does not trust a particular institution, does not necessarily mean that they distrust that institution (Cook and Gronke 2005). This distinction is often not made in surveys and thus not in the (empirical) literature (van der Meer and Zmerli 2017). However, investigating concepts like mistrust and distrust could provide a different understanding of political trust and how it is maintained or how it evolves.

As a conclusion, the review so far indicates that there are many ways to conceptualise, as well as to use – on itself or as component of political support/legitimacy – and operationalise political trust. This makes it difficult to make one-on-one comparison between various studies, despite the presence of similar results and similar explanations (see further) for the absence or presence of political trust. There are for example large differences between trust in government and trust in legal systems, the latter being more resilient, and within measures of trust in government itself, i.e., whether it is treated as trust in the institution of government or as trust in the incumbent government. It is difficult to assess how citizens view these concepts and whether they differentiate between types of political institutions at all (see Hooghe 2011).

3. Political trust in a multilevel governance structure

Multilevel governance systems are characterized by interdependent and interconnected governing institutions located at different levels of authority, both vertically and horizontally. The EU is a prime example of such a system. It is a complex environment with multiple institutions (governments, parliaments, councils etc.) at multiple levels (local, regional, national, supranational), and with multiple connections between the levels and the institutions. The EU is also a system in which citizens can participate in various ways, the best example being elections for various levels of government, and in which they are affected in various ways. MLG systems, like the EU, erupted mostly because of the disintegration of the national level, whose powers are increasingly eroded through processes of decentralisation and globalisation (Muñoz 2017). Indeed, some competences are decentralised to local and/or subnational levels (devolution), while others are integrated in supranational or international institutions (globalisation), sometimes both at the same time, which leads to a MLG structure in which various levels have different powers.

Research shows that citizens, when evaluating political institutions and expressing political trust, differentiate between different actors and institutions (Proszowska et al. 2023; Angelucci and Vittori 2023; Wolak 2020; Fitzgerald and Wolak 2016, though some suggest that this is not necessarily the case, see e.g., Hooghe 2011). The increasing relevance of MLG systems then logically leads to the question whether citizens distinguish between various levels of government and if so, what explains the differentiation and which mechanisms lie

behind it? That is the question that underlies much of the literature on trust in MLG systems and which is answered by two strands of research. One of them studies trust in separate levels, and the other studies trust in nested levels, which considers the interconnectedness of the multiple levels. We will shortly discuss the findings in literature on separate levels first and then turn to the findings with regards to trust in nested levels.

When looking at every level separately, it stands out that the local (and regional) levels are generally trusted more than any other level (Wolak 2020; Muñoz 2017; Fitzgerald and Wolak 2016), though Stoker et al. (2023) show that this is not a global phenomenon (see for example China, Wu and Wilkes 2018). This higher local trust is often explained by referring to the typically small size of lower government levels (Muñoz 2017). This would enhance responsiveness of political institutions and actors, as well as foster direct contact with representatives. Furthermore, the small size of lower levels of governance means they are more open to public participation. Additionally, the lower levels have competences that influence citizens in the most direct way. In sum, the proximity of these levels plays a role (Stoker et al. 2023). With regards to the highest levels of governance, like supranational governance, scholars argue that these are not necessarily less trusted than national governance levels. The large size of higher levels of governance is associated with more capacity and more policy output, relating trust to performance evaluations (Muñoz 2017). However, research on trust in nested governance levels shows that trust in supranational institutions is often determined by trust in national institutions (e.g., Armingeon and Ceka 2014; Dominioni et al. 2020).

Within the literature on trust in interconnected MLG systems, the main debates are about whether citizens, when making trust judgments, take the other levels into account, if that influences their trust in each governance level and which mechanisms then explain trust. In other words, whether they make independent or dependent judgments when expressing trust in a particular level (Muñoz 2017). Firstly, the literature that stresses independent evaluations argues that trust is level specific. Citizens judge political institutions 'on their own turf', without taking cues from other levels (Proszowska et al. 2023; Angelucci and Vittori 2023). This is often explained by mechanisms of subjective rationality such as responsiveness and performance evaluations (Proszowska et al. 2023; Wolak 2020; Fitzgerald and Wolak 2016). Citizens, especially but not only those with higher political sophistication, evaluate a government level by assessing its responsiveness, whether the political institutions react to

certain events in an appropriate way, and by assessing its (economic) performance (Hegewald 2024; Proszowska et al. 2021; Harteveld et al. 2013). This means that trust in each level is based on citizens' perceptions of responsiveness and performance, and not on objective indicators, hence the term 'subjective' rationality (Armingeon and Ceka; Proszowska et al. 2023). This subjective rationality thesis is found both in a European (Proszowska et al. 2021, 2023; Wolak 2020) and in an American (Fitzgerald and Wolak 2016) context, in three levels of government.

Other mechanisms that might explain the level-specificity of trust are identity or cognitive minimalism, i.e., not or randomly making trust judgments (Zaller 1992). Proszowska et al. (2021), studying trust in the Netherlands in three levels of governance (local, national and supranational), show that identity or cognitive minimalism have no effect. By contrast, Harteveld et al. (2013), who based their study on survey data in 28 European countries but only on trust in the national and supranational level, argue that emotional attachment partly overrules rational arguments. Hobolt (2012) for the EU, Talving and Vasilopoulo (2021) for the national level and Hegewald (2024) for the local level found a relationship between one's identity, EU, national or local, and trust in the corresponding governance level. They also found no evidence for the cognitive minimalism thesis. Citizens do not randomly express trust in different governance levels.

However, literature on the level-specificity of trust does not ignore the influence of cue-taking from other levels and related trust spillovers (e.g., Dominioni et al. 2020; Ares et al. 2017; Muñoz 2017). Citizens express trust in a governance level dependent on their trust judgments of (an)other level(s), which requires less knowledge about all different levels (Muñoz 2017). Indeed, because of the complexity of MLG systems, citizens tend to take cues from other levels they are more familiar with to evaluate other, less familiar, levels (Brosius et al. 2020; Angelucci and Vittori 2023). This cue-taking has two possible outcomes: either trust in different levels is the same (trust spillovers), or it is different (compensation). The former is explained in the literature by three potential mechanisms. Following the logic of extrapolation, trust is the same in all governance levels because both governance and trust are compound, i.e., resulting from the same trust attitude (Harteveld et al. 2013). Another explanation for trust spillovers originates in research on lower levels of government. The logic of cognitive proximity states that trust in higher levels of government is based on trust in the closest, local level (Wolak 2020; Proszowska et al. 2023). Finally, trust spillovers can

be explained by the mechanism of institutional saliency. Trust attitudes for all levels are based on trust in the most salient, i.e., the national, level (Ares et al. 2017; Armingeon and Ceka 2014).

The compensation mechanism, trust in different levels differs, is most often found in studies on the national and the supranational (i.e. the EU) levels. The underlying logic is that because governance levels are incompatible, so is trust. Following the compensation hypothesis, one level is used as a benchmark to which all other levels are assessed (Dominioni et al. 2020). For example, Muñoz et al. (2011) argue that on a country level, citizens compensate their lack of trust in the national institutions, based on the perceived performance of these institutions, by putting more trust in the EU level. They found that in countries in which citizens perceive the national level as corrupt, trust in the EU is higher than trust in the national level (Muñoz et al. 2011). Dominioni et al. (2020), who also work on the EU MLG system, add to the literature on trust spillovers and compensation that these mechanisms work in two ways. Not only is trust in higher levels dependent on trust in lower levels of government, as is often assumed in the literature, but it is also the other way around (Dominioni et a. 2020). Trust attitudes with regards to the EU might also impact trust in the national level institutions. This bidirectionality of trust spillovers is not yet studied for lower governance levels or outside the EU system.

The review indicates that trust in a MLG system is dependent, namely that citizens take cues from more familiar levels to express trust in other levels, mostly through trust spillovers. Besides, citizens in a MLG system, especially those with more political knowledge, can and do differentiate between various levels of governance when expressing trust, indicating that trust is to some extent also level specific. Indeed, trust can be explained by citizens' performance evaluations of a governance level. There are, however, some limitations to the generalizability of these results. First, the reviewed literature mostly stems from EU studies (n = 8). Secondly, because of that, much of the literature limits its focus on trust in two levels of governance, most notably the national and the supranational/EU level, while studies on the lower levels remains scarce (n = 6). Thirdly, the regional level is, apart from one study on the United States (Fitzgerald and Wolak 2016), completely overlooked in the literature on trust in MLG systems, despite the increasing relevance of such levels and of federal systems in general (Schakel et al. 2015). Finally, only few studies mention the existence of both low-high and high-low dynamics of trust spillovers (Dominioni et al. 2020; Proszowska et al.

2023; 2021). As the EU becomes more salient, this reversed directionality of trust spillovers, from higher levels to lower levels, might become more apparent and thus worth investigating in more detail.

4. Trust in times of crisis: the effect of crisis mitigating measures

The literature on the effect of crisis governance on trust focuses on two types of crises: economic and health. Political crises, which can be the consequence of other crises (health, economic…) or their management, are often discussed as well but articles about these types of crises were not included in the review as they do not consider the effect of measures to mitigate the crisis on trust, but rather the effect of the crisis itself (e.g., Karlsson et al. 2021; Close et al. 2023). Also, such political crises cannot be considered what Boin and Lodge (2016) call trans-boundary crises, the focus of this literature review. In total, six papers deal with measures taken in the context of an economic crisis, in case the sovereign debt crisis in the EU after 2008. Most papers deal with – what is at its roots – a health crisis (n = 27), which should not come as a surprise given the global scope and profoundness of the COVID-19 pandemic, but there is also one paper on the initial stage of the H1N1 epidemic in the US. We will discuss the two types of crises and the effects of the related crisis mitigating measures separately before drawing conclusions on the effect of crisis measures on trust by comparing the two strands of research.

Six of the reviewed articles about trust in times of crisis deal with the sovereign debt crisis in the EU and the related austerity policies that were implemented by the EU from 2009 onwards (Armingeon and Ceka 2014). This strand of research focuses mostly on two levels of governance, which were deemed the most salient during the crisis, the national and the supranational EU-level, which are studied separately. In general, this literature found that the austerity policies led to a decline in trust in all levels of government, especially in the so-called bailout countries like Ireland, Portugal and Greece that needed to implement these policies (Proszowska 2021; Armingeon and Ceka 2014).

The literature broadly discusses three explanations for the differences in trust as an effect of austerity policies. First, citizens' performance evaluations with regards to the economy and democracy are an important mechanism behind trust formation, especially on the national level (Haugsgjerd 2017; Torcal 2014). Generally, the better the performance of the

national level is perceived the more the national political institutions are trusted. Haugsgjerd (2017), for example, found that citizens who perceived welfare state efforts as sufficient, and thus that the national political institutions performed better to mitigate the crisis, trusted these institutions more. Secondly, citizens base their trust judgments on mechanisms of responsibility attribution (Armingeon and Guthmann 2014). Biten et al. (2022), who studied the effect of the austerity measures on trust in the EU, found that people who believed the EU was responsible for the implementation of such measures trusted the EU less. Finally, personal experience and to a lesser extent ideological distance to the incumbent government also play a role (Armingeon and Ceka 2014). Citizens who were personally affected (Haugsgjerd 2017) or who live in regions which were affected by crisis mitigating measures (Lipps and Schraff 2021) tend to put less trust in respectively the national and the supranational level.

The COVID-19 pandemic has given rise to many studies on the effect of health-related crisis governance on trust all over the world and in different contexts, e.g., in more and less affected countries or in countries with less or more strict measures, but always focused on the national level. Previously, such research mostly focused on the H1N1 epidemic in 2009 in the US (Freitmuth et al. 2014). In general, all authors, writing about different countries with different infection rates or lockdown measures, found an increase in trust at the onset of the pandemic, which lasted for approximately three to six months depending on the study, after which trust levels decreased to pre-pandemic levels (e.g., Weinberg 2022; Esaiasson et al. 2021; Davies et al. 2021; Kritzinger et al. 2021). This temporary increase is most often attributed to a rally around the flag effect (e.g., Schraff 2020; Weinberg 2022), though there is no agreement about whether this rally effect is a consequence of crisis mitigating measures like lockdowns and other social restrictions (e.g., Bol et al. 2021) or of the crisis itself (e.g., van der Meer et al. 2023; Rump and Zwiener-Collins 2021; Schraff 2020). The rally effect is, nevertheless, thought to be a valuable explanation for the increase in trust, regardless of the specific cause, and is believed to extend to political institutions that were not directly involved in the management of the crisis (Hegewald and Schraff 2022; Esaiasson et al. 2021).

The literature discusses three possible mechanisms underlying the rally effect, of which only one proved to have a significant effect. Authors found less impact of a patriotism mechanism, which posits that in-group loyalty and cohesion increase when the in-group is under threat, and of the opinion leadership explanation, which suggests that, in times of

acute crisis, focus on the political elites in power increases through, among others, media attention while at the same time there is less opposition or critique (Erhardt et al. 2022). Instead, most authors argue that the rally effect is driven by an emotional response, especially by anxiety, which leads citizens to pursue psychological safety behind political institutions they believe can act against the threat (Zwiener-Collins 2021; Baekgaard et al. 2020). Van der Meer et al. (2023) and Delhey et al. (2023) refined these findings by arguing that health related fears caused the rally effect, rather than socio-economic concerns. If that is the case, it would mean that the usual cognitive processes of political trust formation lost relevance because of the uncertainty, especially in the first wave, regarding the pandemic (Schraff 2020). Later, a common argument goes, when the pandemic was seen as less threatening, trust returned to pre-pandemic levels because citizens, the media and the opposition started to criticize the measures and the overall handling of the pandemic, while also being confronted with its persistent nature (Weinberg 2022; Davies et al. 2021; Esaiasson et al. 2021).

Other research, however, argues that performance evaluation factors and not the emotional-related factors explain the temporal increase in trust. Belchior and Teixeira (2023), studying trust in Spain after the COVID-19 outbreak, argue for example that the cognitive assessment of political institutions was not suspended after the outbreak of the pandemic. Citizens considered far-reaching crisis mitigating measures as necessary, often comparing to the situations in other countries like Italy. The measures were therefore considered as responsive behavior of governments, which led to the increase in trust (Rieger and Wang 2022; Goldfinch et al. 2021; Groeniger et al. 2021). Rieger and Wang (2022), who based their study on 57 countries, even argue that the perception of an insufficient reaction towards COVID-19 is the most important factor for low trust levels at the onset of the pandemic. Finally, ideological distance towards the incumbent government and personal experience with COVID-19, at least after some time when the rally effect faded away, also played a role in assessing a political institution's trustworthiness (Belchior and Teixeira 2023; Baekgaard 2021; Goldfinch et al. 2020). The rally effect thus generated a short period of high trust in political institutions around the world, regardless of one's personal experience, ideology, employment status, general lower levels of trust, support for populist parties (for a counterargument about the latter, see Colloca et al. 2024) etc., but these factors did resurface after a while and trust started to decrease to pre-pandemic levels (Hegewald and Schraff 2022).

To conclude, it seems that different kinds of crisis and related measures generate different effects on trust. The austerity policies following the sovereign debt crisis led to lower levels of trust in national and supranational level institutions, while the far-reaching social restriction measures at the onset of the COVID-19 pandemic created a short upsurge of political trust, also in (national) political institutions that were not involved in the management of the crisis. However, there are some overlaps between the mechanisms used to explain the effect of measures on trust in political institutions. The reviewed literature indicates that performance evaluations is an important factor in explaining trust, regardless of the crisis context, and thus that citizens rely on cognitive mechanisms to assess trust. It also seems that responsibility attribution and responsiveness play a role, especially when confronted with sudden, external events. The mechanism of responsibility attribution hints at possible differences in trust between governance levels, as citizens seem able to distinguish between political institutions. Ideological distance and personal experience also have an effect, while a rally effect is only found in the context of the pandemic (or terrorist attacks, see for example Dinesen and Jaeger 2013). Scholars still debate whether the latter is a strictly emotional response or whether it is also fueled by cognitive mechanisms. Limitations or gaps in this strand of research relate to the governance levels that are studied, i.e., only the national level or only the supranational level but never lower levels of government or more levels in the same study (or, if so, not studied with attention for the different levels, see e.g., Aassve et al. 2024; Colloca et al. 2024); the focus on the EU or EU countries in studies on the effects of economic crisis measures; and the effect of how measures came into being – through intergovernmental dialogues, following ordinary parliamentary procedures etc. – on political trust. Herati et al. (2024) do point out that decision-making procedures might affect political trust but they do not provide evidence for this claim and mostly focus on how the implementation of measures affects political trust. We therefore argue that studies of the effect of decision-making procedures on political trust is absent in the literature.

5. Discussion: political trust in the EU MLG system in times of economic crisis

Before we reach the conclusion, we discuss four papers that studied trust in a MLG system in times of crisis to illustrate the common explanations and mechanisms behind

political trust in both contexts, which may inspire future research as we will demonstrate in the final, concluding part. The studies are all based on the sovereign debt crisis in the EU. Only Proszowska (2021) included the local level in her study, besides the national and supranational levels which are studied in all articles. The articles nevertheless show the added value of an MLG view on trust in times of crisis by combining explanations and mechanisms for trust formation in order to come to a more complete understanding of political trust in times of crisis.

In general, political trust in the national and supranational governance levels decreased because of the austerity policies imposed by the EU (Torcal and Christmann 2019). However, based on the one article of Proszowska (2021) that measures trust in the regional/local level (the levels are taken together), it seems that trust in lower levels of government increased or stayed the same. What then explains the variations in political trust between the different levels of governance? Combining the explanations in the reviewed literature leaves us with possible mechanisms that were already discussed in the parts about the MLG context and the crisis governance separately.

First, citizens seem to be able to distinguish between different levels of government, also in times of crisis. Proszowska (2021) argues that citizens are able to assign responsibilities to various levels of government and that they evaluate trust accordingly. This means that, in the context of the EU sovereign debt crisis, citizens who attributed the responsibility for the austerity measures to the national or supranational level trusted that level of governance less. This might also (partly) explain the increased or equal level of political trust in lower governance levels as citizens did not assign responsibility for the measures to political institutions at these levels and therefore did not change their trust attitudes towards them. Secondly, citizens (to some extent) based their trust judgments on their evaluations of (economic) performance of the national level (Armingeon and Ceka 2014) or of the supranational level (Torcal and Christmann 2019), which are often fueled by personal experience (Lipps and Schraff 2021). However, there is no consensus in the literature about this effect of performance evaluations. Talving and Vasilopoulo (2021), for example, argue that economic evaluations have a limited impact on trust in the EU. They argue, and there is more consensus about this, that trust in the national government is the most important determinant of trust in the supranational level and that this linkage strengthens in times of crisis so that trust in the national political institutions becomes an even better predictor for

political trust in the supranational level (Talving and Vasilipoulo 2021; Armingeon and Ceka 2014; Torcal and Christmann 2019).

The spillover effect found in much of the literature on trust in the EU MLG system is thus also, and even more, important in times of crisis, especially because citizens' evaluations of the EU political institutions and their performance play a less prominent role in times of crisis (Torcal and Christmann 2019). Talving and Vasilopoulo (2021) argue that this might be the case because citizens become more aware of the interconnectedness of the different levels in times of crisis. Armingeon and Ceka (2014) reason that the severe effects of the austerity policies on the national economy make citizens rely more on the evaluation of the national economic performance to assess their trust in the supranational level. They even argue, contra Proszowska (2021), that trust in the EU is unrelated to what the EU does, despite its involvement in the governance of the crisis (Armingeon and Ceka 2014). Besides the spillovers, Torcal and Christmann (2019) found compensation mechanisms whereby the national level is used as a benchmark against which the supranational level is evaluated. This mechanism is also used to explain the increasing or equal levels of trust in lower levels of government in contrast to the declining trust in higher governance levels (Proszowksa 2021).

Identity also plays a role. Citizens with a national identity, and especially those with an exclusive national identity, tend to trust the national level more and the EU level less (Talving and Vasilopoulo 2021). This is even more pronounced in relation to the austerity policies, and especially among those who attributed the responsibility for these measures to the supranational level (Talving and Vasilopoulo 2021). Finally, the ideological distance between a citizen and the incumbent government also explains trust in a certain level. Interestingly, one's ideology per se, whether one tends to the left or the right of the political spectrum, does not play a significant role in trust judgments (Armingeon and Ceka 2014).

So, to conclude, the accounts of the effects of crisis governance in a MLG system show that there are a lot of relations between the mechanisms used to explain trust in times of crisis and trust in MLG context. For example, responsibility attributions fuel trust evaluations with regards to one level, which then might spillover to or be compensated in another level. At the same time, personal experience with the austerity policies affects one's perceived performance of a given governance level, which also might affect trust in other levels. In sum, citizens' trust judgments in complex MLG and crisis contexts seem to be influenced by both subjective, rational evaluations (responsibility attribution, performance evaluation) and

less rational factors (ideological distance, identity, personal experience), which inform citizen's cue-taking (congruence, compensation). The question is of course to what extent these findings can be generalized to other (types of) crises (governance) or different MLG systems.

6. Conclusion: gaps in the literature and avenues for further research

The literature review is based on 52 articles, found in three databases, about political trust as a dependent variable in two distinct contexts that are increasingly relevant: multilevel governance systems and crisis governance contexts. Respectively sixteen and thirty-two articles dealt with citizens' political trust in one of these circumstances, four dealt with both. As only three databases were searched and the criteria to include literature were quite strict, it is possible that some useful articles missed the final cut. We are, however, confident that the picture of the literature that is sketched in this paper reflects the present state of the art in both strands of literature. The fact that we did not find many articles might also suggest that this research domain is still developing and underexplored, because, as we will demonstrate, much more can be studied.

The articles share some similarities with regards to their dependent variable (political trust, never dis- or mistrust), their analyses (quantitative cross-sectional), the data that are used (panel and single survey data) as well as the research domain (political science/public adminstration). The articles, however, do not share the same notion of political trust and identified different mechanisms underlying political trust formation. As mentioned, different authors employ different notions and different operationalizations of political trust. Some tie it to concepts of support, disagreeing on whether it is about diffuse or specific support, or legitimacy, while others use it as an isolated concept. The authors also operationalize it differently: from trust in parliaments to trust in governments or in the legal system. Common between these articles is that they all refer to trust in political institutions and that they all identified similar control variables that influence political trust. Indeed, all studies that included age, education and gender as control variables found that they influence trust, and that the effect is the same, both in times of crisis and/or in MLG structures. Women and older people are generally more trusting, as well as people with a higher level of education (e.g., Talving and Vasilopoulo 2021; Rump and Zwiener-Collins 2021). Political

sophistication also has a positive effect in the sense that people with more knowledge about the political system tend to have more political trust (e.g., Proszowska et al. 2021; Harteveld et al. 2013).

The main findings about trust in political institutions in MLG and crisis contexts can be summarized in four points. First, there is no evidence for cognitive minimalism. Citizens do differentiate between governance levels when assessing their trust. In other words, they do not randomly attribute trust to political institutions. Secondly, political trust depends on citizens' evaluations and not on facts. Examples of this subjective rationality are the importance of perceived performance of the economy or of democratic institutions in citizens' trust judgments, as well as of perceived responsiveness and responsibility attribution. Thirdly, there is a strong emotional or non-rational component to trust, especially in times of crisis. A fitting example is the rally effect, mostly driven by anxiety, that many authors observed at the onset of the COVID-19 pandemic. Relatedly, identity and ideological distance to the incumbent government play a role in trust formation processes as well. The effect of personal experience on trust is debated, but often used as an explanation for varying trust levels. Finally, in MLG systems, bi-directional trust spillovers from one level to another are a common explanation for similar (congruence) or opposite (compensation) trust levels between governance levels. These are explained by the abovementioned mechanisms, and by cue-taking from lower levels of government (cognitive proximity) or from the most salient levels of government (institutional saliency). Research, however, also shows that political institutions at various levels of government are judged on their own domain, hinting at the level-specificity of political trust.

What, then, are the gaps in the literature that emerged from the literature review? We discuss four. First, studies on political trust and crisis governance often neglect the subnational and supranational levels. Research however shows that, especially during the pandemic, crisis mitigating measures were taken at all levels of government, from the local to the supranational level (Lynggaard et al. 2022). Secondly, subnational (especially regional) levels are rarely included in studies on governance and trust in MLG contexts, despite the growing importance and relevance of these levels in MLG systems. This is probably partly due to the absence of questions on the regional level in often-used datasets like Eurobarometer or the ESS. Thirdly and related, studies on the impact of crisis governance on trust in MLG systems neglect the effect of crisis governance in MLG contexts with

regards to crises other than the sovereign debt crisis. Finally, research on political trust in times of crisis neglects the actual policies and the policymaking process. This process of policymaking in times of crisis, i.e., how crisis mitigating measures came into being, are never considered even though, in severe crisis situations, the proper procedures are not always followed (Popelier 2020).

These so-called gaps inform the avenues for further research. Given the increasing relevance and powers of subnational levels of government, this level deserves more attention, both in literature on political trust and crisis governance and on political trust and MLG. Secondly, and related to the discussion part, the effect of crisis governance on political trust in MLG systems deserves more attention. National or supranational level political institutions are not always the only ones taking crisis mitigating measures, but also lower levels of government can have an impact, directly or indirectly through intergovernmental discussion, as the reaction to the COVID-19 pandemic shows (Hegele and Schnabel 2021; Bursens et al. 2021). As this literature is only concerned with the sovereign debt crisis in the EU, which was a strictly economic crisis that mostly affected some bailout countries in the EU, more research is needed. Especially because crises are becoming increasingly complex, being different types of crises (health, economic, disasters, social…) at the same time. Furthermore, they need to be dealt with by more and more levels of government – local, subnational, national, supranational, international, global – as crises are increasingly transboundary (Boin et al. 2020; Boin and Lodge 2016). One only needs to think about recent (COVID-19) or ongoing (climate change, energy) crises to observe the disruptive, interconnected and complex nature of present-day crises.

Finally, research could delve into the question on if and how trust depends on the way in which crisis mitigating measures are formed and adopted. Not only the nature of the decision-making might have an effect (transparency, legality…), but also, taking the MLG context into account, the level at which a measure is taken, or if measures are taken through intergovernmental deliberations or not. One could expand this even further by studying whether the type of political system, i.e., the way in which the system is organized – unitary, (con)federation, cooperative vs. conflicting federalism, strong local levels… – matters for citizens' political trust, especially in times of crisis when systems might change or adapt themselves (e.g., Popelier 2021). The latter avenues for further research might benefit from

insights from (comparative) legal studies, thereby moving the contemporary literature on political trust beyond political science.

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[II] The full search string is: "trust AND (crisis OR crises) OR ((multilevel OR multi-level OR decentral* OR subnational OR supranational OR intergovernmental OR federal*) AND govern*)"

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