The political and legal prerequisites for autonomies in Europe

A comparative study

by Bjarne Lindström

Coppieters foundation

OLOF M JANSSONS STIFTELSE SINCE 1961

Preface

In late autumn of 2018, the board of the Olof M. Jansson Foundation decided, with the undersigned as the main principal, to start a research project focusing on the development of the Åland Autonomy's constitutional status and political and legal room for action during the now almost one hundred years which have passed since its introduction in the early 1920s. The theme fits well with the Foundation's purpose and focuses on research into various aspects of the development that has led to today's Åland. It is also the Foundation's opinion that in-depth historical knowledge of the constitutional and political prerequisites of the Autonomy is essential for developing the self-determination of Åland in today's legally complicated and increasingly politically cumbersome Finnish and European context.

The Foundation has, particularly after a decade-long failed attempt to reform the current Autonomy Act, noted the need for a concerted effort aimed at a comprehensive assessment of how the Finnish Supreme Court's control of Åland's legislation has decided the boundaries of the Autonomy. Here, purely legal technical stylisations or state prerogative considerations tend to prevail. The original purpose of the Autonomy (guaranteed by Finland in order to secure its sovereignty over the Åland territory) – to preserve the archipelago's Swedish nationality – has been downplayed and rarely used as a source of interpretation in the event of conflicting or unclear definitions in the catalogues of legislative competences.

For this reason, the project's first report entitled "Att sätta självstyrelsens gränser" (*Setting the Boundaries of Self-government*) focused on the control of the Autonomy's legislation by the Supreme Court and its significance for the interpretation of the legal (and in reality thus also the political) boundaries of the Åland Autonomy. The report (1/2020), written by PhD student Ida Jansson, has been published (in Swedish) on the Foundation's website (www.olofmjanssonsstiftelse.ax). It is also printed in a limited number of copies.

However, the OMJ Foundation also considers it important to shed light on the political and legal arrangements (incl. the connection to the EU) which characterise comparable European and Nordic autonomies, and how these arrangements have affected the development of their home rule. This is what our research project's second publication, this report, focuses on. The report (2/2020, also available for free download on the Foundation's website) is written by B. Sc., Ph. Lic. Bjarne Lindström who has extensive research experience in Nordic and international regional research; as a lecturer in regional planning at Sweden's Royal Institute of Technology (KTH), head of the Nordic Institute for Regional Policy Research (NordREFO/Nordregio) and as director of Statistics and Research Åland (ÅSUB).

Along with extensive fact-gathering and relevant background literature, the research is also informed by semi-structured telephone interviews with researchers and expert officials within the examined autonomies (see the presentation in the list of source references at the end of the report). The Foundation would like to express its gratitude to these experts, without whose assistance this report could not have been written.

Finally, it may be noted that the initial intention was that the study would include one further Spanish, possibly an additional British, autonomy, and the small German-speaking "autonomous language community" in Belgium. Unfortunately, however, lack of time in combination with the communication issues caused by the COVID pandemic, meant that these had to be excluded from the final basis for the report.

Mariehamn, June 2020
Göran Lindholm, Chairman
Olof M. Jansson's Foundation for the promotion of Åland historical research

Author's preface to the English-language edition of the report

It is now three years since my study of six European autonomies was published as part of a research project initiated by the Olof M. Jansson Foundation on the development and future prospects of Åland's autonomy. It should be noted that the information about the autonomies in the report, which has now been translated into English, applies to the situation when the report was originally written (spring 2020), something that is noticeable in the chapters on the British autonomies, where the gender of the Head of State has changed. To my knowledge, no more fundamental changes in the legal status and development conditions of the studied autonomies have taken place since the report was written. In some places, however, I have marked the time difference between the original text and the English version with newly inserted brackets with the text "at the time of writing".

The OMJ Foundation's research project on the Åland Autonomy is now being completed with a volume (forthcoming, Brill 2024) edited by the Foundation's chairman Göran Lindholm, and professor of international law, Gudmundur Alfredsson. The working title is *The Autonomy of The Åland Islands – Constitutional and International Law Issues*. Among the authors are several prominent scholars on territorial autonomies, minority rights and international law.

Since 2020, the project has produced a final report (3/2021) with an overall evaluation of the Åland self-government's legal and political development prerequisites. The report is also translated into English: *The Future Conditions for the The* Åland *Autonomy. A Study of the legal and political development of* Åland's *self-determination*. The authors are the undersigned and Göran Lindholm. Both language versions of the report (3/2023 and 4/2023) are available for download on the Foundation's website.

In addition to the upcoming volume edited by Alfredsson and Lindholm, the project has so far resulted in two further external publications. The first is a contribution to a book on Åland democracy edited by Dr. Sia Spiliopoulou Åkermark (Cavannus 2021). Unfortunately, the book is only available in Swedish. The OMJ project's contribution, with the title (in English translation) *In the borderland between law and politics: The Supreme Court and the* Åland *legislative process*, is written by myself and human rights PhD student, Ida Jansson.

The second external publication is an article entitled *State Integration vs. Minority Protection through Regional Self-Determination: The* Åland *Case*. The text, written by myself, is published in the International Journal on Minority and Group Rights, (Vol 30, 2023, pp. 110-131).

Finally, last but not least, on behalf of myself and the Foundation, I would like to thank the Coppieters Foundation, who initiated and financed the translation into English of my 2020 report.

Mariehamn, August 2023
Bjarne Lindström

1. Summary

This study identifies two main types of territorially decentralized state structures: (i) federations (e.g. Germany, USA, etc.) and (ii) the territorial "special cases" where a limited part of a state territory has some form of political autonomy, i.e., regional autonomies (such as the Faroe Islands, Åland Islands, South Tyrol and others). The latter territorial solution becomes relevant when, within the same state, in addition to a relatively homogeneous majority population, there is one (or more) historically and territorially well-established minority with deviating language, ethnicity and/or culture.

The focus of this report is on the territorial autonomies and, more specifically, the kind of autonomous regions that exist in Europe.

The focus of this report is on the territorial autonomies and, more specifically, the kind of autonomous regions that exist in Europe. The report presents and analyses six examples of self-governed (home-ruled) regions chosen to cover the sort of legal and political arrangements that usually characterise this type of territorial autonomy. The territories examined in more detail are the Faroe Islands, the Basque Country, the Isle of Man, South Tyrol, Gibraltar and Flanders.

The review highlights these autonomies' wide scope of room for manoeuvre in the light of similarities and differences in their legal and political status. Differences in their geo-political position, international presence, background history and language are also included in the analysis. In all six case studies, however, the main emphasis is on how the legal arrangements and the political partnership with the metropolitan states have affected the regions' *de facto* autonomy and room for manoeuvre.

The comparative analysis of the autonomies dealt with in this report suggests that the following factors in their *legal position* have been, and continue to be, important for their long-term developments:

- The constitutional safeguard of the autonomy
- The rules for changing the legislative competence of the autonomy
- The rules for the implementation of the existing autonomy law
- Control and monitoring of the autonomy's legislation
- Exclusive vs. mixed/overlapping legislative powers
- The validity of the metropolitan state's legislation within the territory of the autonomy
- EU relations and international competence
- Financing arrangements and taxation privileges
- Bilateral vs. unilateral partnership

The experiences of the European autonomies show that the concrete outcome (in terms of self-government) of the above-mentioned legal factors is strongly influenced, in many cases essentially decided, by the *political relationship* between the autonomy and metropolitan state. The "home-rule outcome" of the same/similar legal autonomy arrangements varies considerably depending on the political conditions.

The overall conclusion in the light of the experiences of the autonomous regions examined in this report is therefore that *the political relationship between the autonomy and the metropolitan state often tends to be even more important than the legal and constitutional conditions.*

However, this does not imply that the constitutional position and legal arrangements are unimportant, but rather that *their consequences for the actual autonomy development depend on the reciprocity and quality of the political partnership between the autonomy and the metropolitan state.*

If the political interaction is characterized by an open and confident dialogue between the two parties, the legal position is seldom an obstacle to a positive development of the autonomy's room for manoeuvre. In that case, even a comparatively weak legal position can be utilised as a tool to strengthen and enhance the homerule. If, on the other hand, the political partnership is negative and conflict-ridden, the legal position of the autonomy tends to be used by the dominant partner (the metropolitan government) to slow down, in some cases even erode, the development of the home-rule.

2. Introduction

In a Nordic region dominated by well-established and strong unitary states, the autonomies of Åland, the Faroe Islands and Greenland stand out as exceptional exemption arrangements. That the citizens in a geographically delimited part of the territory of a sovereign state have their own legislative parliament and thus, at least partially, are subject to a different legislative regime than the rest of the country's citizens appears to many in the Nordic region as a unique political arrangement.

This is, however, a deception based on a Nordic political tradition where the state power, by virtue of its legislation, taxation law and public regulations – valid throughout its territory – is perceived as the cornerstone of the modern welfare society. If you look out over Europe and the rest of the world, the issue is of a different character. You will find many examples of less state-centred political structures where various types of politically autonomous territories are responsible for their own internal affairs, including legislation and taxation.

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One of Canada's leading federation scholars, Ronald Watts (2000), has identified the existence of nine different types of federal "state constructions" and a large number of hybrid constitutional forms which are not possible to classify in a uniform manner. When it comes to the existence of self-governing regions of the type exemplified by the three Nordic autonomies, Maria Ackrén (2009) has identified a total of 65 such territories in a globally comprehensive survey, of which 22 are in Europe.

Territorial diversity – numerous causes

There are of course many reasons for this diversity in the territorial construction of the modern state. Above all, the linguistic, cultural, social and economic prerequisites vary greatly between and within different parts of Europe and the rest of the world. The underlying social conditions which enable a coherent (unitary) state do not always exist, which paves the way for alternative – territorially more decentralised – constitutional solutions and state structures.[1]

However, the globally varying socio-economic conditions are not sufficient as an explanation for the differences in the territorial distribution of political power. The country-specific political traditions and power relations together constitute an important – if not decisive – factor behind the final, more concrete, design of the individual state's territorial power structure.

Regional autonomy – what's that?

Unlike the strategy of federal state-building, where in principle the same type of delegation of powers applies to all regions included in the federal state's territory, regional autonomy is characterised by the fact that a delimited part of the state in question is given some form of political autonomy.[2] The prerequisites for this sort of special solution occur when, within a sovereign state with a relatively homogenous majority population, there is also a historically and territorially well-rooted minority with a deviant language,[3] ethnicity and/or culture.

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[1] *For an analysis of the consequences of territorial diversity and the various types of separate political solutions this has generated in a world dominated by (national) states, see Lindström (2019) and Weitz (2019).*
[2] *Various definitions of what constitutes a regional (or territorial) autonomy are discussed in Ackrén (2009, p. 19-21)*
[3] *Regional self-determination also occurs in some cases where the population does not deviate from the metropolitan state in terms of language, cf. for example, the British autonomies in this report (Chapters 6 and 7).*

The development of an autonomy's constitutional position and degree of self-determination is however also dependent on a significantly broader spectrum of geopolitical and socio-economic background factors in combination with the specific political power relations and legal traditions that dominate the states and autonomies concerned.

Formal versus real autonomy

An autonomy's legal[4] (*de jure*) position is not always reflected in its factual (*de facto*) allotted room for political and legal action. An almost equivalent constitutional position may therefore result in different levels of political responsibility and room for manoeuvre. In Europe, there are a number of examples of autonomies where a relatively weak constitutional position is combined with extensive political scope for action – and vice versa.

The main reason for this divergence between the legal prerequisites and the political reality can be found in the differences between how the responsible states tend to interpret the legal status of their autonomies. This means that the boundaries for the home rule's real room for action can vary quite significantly between different autonomies, even in cases where their constitutional positions are relatively equivalent.

A central, in many cases decisive, factor behind the development of autonomy is, therefore, the quality and reciprocity of the relationship between the autonomy and the metropolitan state, that is, what in this report goes under the designation "the (legal and political) partnership". The term suggests an essentially positive relationship between the autonomy and the state, where the interaction between the two partners is characterised by mutual respect and willingness to collaborate with common goals.

An autonomy's formal legal position is often highly interpretable and guided by political deliberations and considerations.

However, this does not always correspond to reality. The partnership between the autonomy and the stakeholders at the central government level is often distinguished by legal interpretation disputes and political tensions, of which there are many examples in this report. Therefore, an evaluation of an autonomy's position of strength and room for manoeuver cannot be limited solely to an analysis of its constitutional and legal status. An autonomy's formal legal position is often highly interpretable and guided by political deliberations and considerations. A qualified assessment thus needs to include an analysis of the dominant features of the metropolitan state's way of interpreting the content and boundaries of the autonomous region's actual political discretion. In other words, it is important – in true Weberian spirit – to avoid equating the formal construction of an autonomy with its actual strength and scope.[5]

This report

In this report the results of a comparative analysis of six Nordic and European autonomies are presented with regard to their constitutional status, factual room for manoeuver and long-term development trends. The report is based on the insight that the scope and quality of self-government is not only dependent on its constitutional and legal position, but also on how the responsible central state – together with the representatives of the autonomy in question – interprets the content and limits of the political discretion that the autonomy's formal status allows.

[4] *The term "legal" is used in this report as a collective heading for the various autonomy arrangements based on – or expressed in – a formal legislative process. It is thus not used as the opposite of the term "illegal".*

[5] *In a still often-referenced lecture in Munich in 1919, Max Weber, one of the pioneers of modern social science, laid the foundation for the scientific study of "politics" by pointing out that it should be analysed based on its actual (de facto) content rather than its external (de jure) forms (Weber 1919).*

Five of the reviewed autonomies are characterised by the fact that they, from a political and legal perspective, substantially deviate from other parts of their respective metropolitan state's territory. This applies to the British autonomies Gibraltar and the Isle of Man, the Danish autonomy of the Faroe Islands, and the Spanish and Italian autonomies, the Basque Country and South Tyrol. Together, these home-ruled regions cover some of the most important variations in the territorial autonomy models which exist in today's Europe: (1) the politically and legally strong but constitutionally weaker British and Danish autonomies, (2) the constitutionally entrenched but politically curtailed/blocked autonomies in Spain (Catalonia is in the same category) and (3) the Italian autonomy model with a mostly problem-free development within the frame of a relatively flexible constitutional framework.

The sixth region examined, Belgian Flanders, can be regarded as a mixed form of territorial autonomy and federal arrangement. Flanders' inclusion in the study is justified by its development from a relatively weak Flemish autonomy in a unitary state dominated by the French language to a strong political player in an increasingly "federalised" Belgian state.

The selection of autonomies in this report is not self-evident. A skewed or otherwise inappropriate selection can, in the worst case, lead to incorrect conclusions. As can be seen from the preface, the original intention was to include a few more autonomies and not least one of the UK's "internal" autonomies (e.g. Scotland). However, no sample is optimal in the sense that all observations and conclusions are applicable, or even relevant, to all territorial autonomies around the world.

The selected regions confirm the broad span in the actual discretion of the autonomies against the background of similarities and differences in their legal and political status. Important differences in their geo-political position, their international presence and visibility, and their history of origin and language are also included in the analysis. However, in all six case studies, the main emphasis is on an analysis of how the legal arrangements and the political partnership with respective central states has affected the regions' autonomy and scope for action.

The report concludes with a comparative analysis of important lessons learned. The focus is on the legal and political background factors that tend to promote, alternatively prevent, or put the brakes on, the development of self-government's legal and political scope for action.

3. The Faroe Islands: On the verge of an independent microstate

The Faroe Islands were populated during the Vikings Age from the Norwegian west coast and thus became subject to the then Norwegian crown ("norsk skatland").[6] The same political status also applied during the period of the Danish-Norwegian union until the beginning of the 19th century when the Norwegian-Swedish union was established, but where the Faroe Islands (together with Iceland and Greenland) remained in the Danish "commonwealth". During the second half of the 19th century, the Faroe Islands went from being an ordinary Danish County to obtaining some limited autonomy within the framework of the Danish kingdom.[7]

During the interwar period, Faroese self-determination gradually developed by incorporating parts of the Danish state's political and administrative commitments within the North Atlantic archipelago. During the Second World War, the Faroe Islands were occupied by the British and given extensive internal self-government. A return to the previous, more limited model of self-government, became a political impossibility after the end of the war. A referendum was carried out resulting in a narrow majority for an independent Faroe Islands. However, the result was rejected by Denmark (formally due to a narrow majority and low voter turnout), and instead a significantly expanded autonomy was offered in the form of the 1948 Faroese Self-Government Act.[8] In the post-war decades, Faroese home rule gradually grew in scope through a number of takeovers of former state responsibilities which were financed by full tax authority in combination with an addition of Danish state funds in the form of an annual lump sum (bloktilskud).

The international financial crisis in the early 1990s hit the Faroe Islands hard.

The international financial crisis in the early 1990s hit the Faroe Islands hard. The Danish measures arising from this crisis gave rise to a growing discontent and new demands for independence. After a long period of negotiations, an agreement was finally reached (2005) on a reform of the 1948 Self-Government Act. The renewal of the Act was a way to resolve the political crisis and – at a new level of autonomy – normalise the relationship between Denmark and the Faroe Islands. The new Autonomy Act can therefore be seen both as an internal Danish law and as a political agreement between two different nations and their parliaments. The combination of legislation (jurisprudence) and agreement (politics) implies that the Autonomy Act is difficult to place in a more conventionally designed hierarchy of laws.

The constitutional and linguistic-cultural context

Denmark is a constitutional monarchy and, in its basic state, a unitary state (rigsfællesskab) with Danish as the national language. The Danish regions do not have any legislative power and are thus comparable to the administrative regions in, for example, Sweden and Norway. The Faroe Islands (and also Greenland) is a territorial exception[9] with far-reaching self-government, initially based on a delegation of authority from the Danish Parliament (the Folketing), but today (since the 2005 revision of the Autonomy Act) – at least by Faroese international law experts – is considered to be comparable to a binding international agreement between two independent parties.

The archipelago has its own national language, Faroese, which is a language with the same Nordic/Scandinavian roots as Danish. Faroese is the main language of the Faroe Islands, but official

[6] *However, the very first inhabitants were Irish monks who landed on the archipelago in the centuries before the Viking era.*
[7] *In conjunction with the Faroe Islands being separated from their previous connection to Norway in 1814 and becoming part of the Danish kingdom, the Faroese Legislative Assembly was abolished. It was re-established in 1853, but with severely limited powers.*
[8] *In Faroese "Heimastyri lóg". In Danish it also goes by the designation "hjemmestyreordning".*
[9] *A German minority in southern Denmark also enjoys some language protection.*

communication with Denmark is in Danish. Linguistic conflicts and more significant tensions between the two languages do not occur. Danish is the natural second language and the door to the rest of the Nordic region for the islanders.[10] The Faroese Islands are represented in the Danish parliament by two members.

The scope of autonomy

In the revised version of the Autonomy Act of 2005, Danish authority is limited to the most basic state sovereignty prerogatives (the State Constitution, the Supreme Court, citizenship, defence, currency policy[11] and foreign affairs). All other competences can be transferred to the Faroe Islands by decisions of the Faroese Parliament.

With the new legislation,[12] the Faroe Islands became one of the most extensive territorial autonomies in the world. The new possibilities for transfer of authority were concretised in a special law (*Lov om de færøske myndigheders overtagelse af sager og sagsområder*). With regard to foreign affairs, by virtue of another supplementary law (*Lov om Færøernes landstyres indgående af folkeretlige aftaler*) the archipelago was given the formal right to enter into its own international agreements regarding the areas over which it has jurisdiction.[13] Moreover, unlike Denmark, the Faroe Islands are not included in the European Economic Area (EEA) – unlike other non-EU members such as Norway and Iceland.

The Faroe Islands have full taxation rights (incl. indirect taxes and fees). Since the end of the 1940s, the Faroese have also had their own currency (Fkr/Føroysk króna) which is issued in cooperation with the National Bank of Denmark. The exchange rate of the Faroese króna to Danish krone is 1:1.[14]

The legal partnership

A revision of the Faroese Autonomy Act requires negotiations between the Faroese (the regional government) and the Danish Government. The revised Act must then be adopted by both the Faroese and Danish Parliaments (Lógtinget and Folketinget respectively).[15] The regulations that otherwise govern the interaction between the Faroe Islands and Denmark are relatively simple. The main principle is that the Faroe Islands and Denmark are two separate jurisdictions with as few overlapping areas as possible. In practice, this means that the Faroese Parliament, without interference from the Folketing or other Danish state authorities,[16] legislates, administers and finances[17] the areas in which it has authority.[18]

[10] *However, the Faroe Islands have a past history of language conflicts to assert the islands' own language against Danish. The tug-of-war between the two languages went on with varying strength from the end of the 19th century up to and including the 1940s. Since then, Faroese has been the dominant language in all official contexts (except in communication with Denmark).*
[11] *However, the Faroe Islands have their own currency (krona), see further below.*
[12] *The 2005 (revised) Autonomy Act is a package of three closely linked laws: a revised version of the 1948 law, a law regarding the possibility of freely taking over Danish areas of jurisdiction, and a law regarding the Faroe Islands' possibility of increased international visibility.*
[13] *However, not in cases where Denmark already has an agreement in force within the current area in question, which also covers the Faroe Islands.*
[14] *The Faroese króna was established during World War II with a fixed exchange rate relative to the British pound. It came under the Danish Folketing law in 1949 and since then has been the legal tender in the Faroe Islands. The currency is only valid within the Faroe Islands, not in metropolitan Denmark.*
[15] *The self-government laws are written in the Danish as well as in the Faroese languages. It can be noted that the Folketing only adopts the Danish version and the Lógtinget only the Faroese. According to Hans Andria Sølvará (interview 17/2 2020, see the list of IPs at the end of the report) the two versions differ marginally with regard to the opening section. The Danish language version suggests a somewhat more limited legal Faroese position than what is expressed in the Faroese version of the same text.*
[16] *This also applies to legal authorities/courts. The Faroe Islands have their own internal judicial system, however, excluding constitutional issues (the Supreme Court). Certain issues related to the judiciary (for example legal aid and the rules for legal practice) remain, however, under Danish jurisdiction for the time being.*
[17] *However, with some continued Danish financial support (annual bloktilskud).*
[18] *This does not prevent the Faroese laws from often based on, or at least influenced by, models from the corresponding Danish laws. Danish legislation is therefore to a certain extent normative for the Faroese legislation.*

However, this does not apply in the same manner to the Danish areas of jurisdiction which – if the legislation also affects the territory of the Faroe Islands – according to the current Autonomy Act are defined as "common affairs". For these, clear restrictions apply regarding the introduction of Danish legislation within Faroese territory. The Danish legislation cannot enter into force within the Faroe Islands without first being approved by the Faroese Parliament.[19]

There is no formal legal control to check that the Faroese legislation does not infringe on the remaining Danish areas of jurisdiction. No constitutional review is made, and neither is there any political review. The Danish state's representative ("Ombudsman") in the islands has no such official control function. His/her main role is to (i) represent the Danish state (ceremonial function) and (ii) report on developments in the Faroe Islands (information role).[20]

The Faroese Autonomy Act, however, contains a provision concerning the handling of cases where disagreement has come to the forefront regarding the distribution of competences. In such cases, a committee (consisting of politicians supplemented by independent legal experts[21]) is appointed by the Faroe Islands and Denmark with the mandate to decide the issue. However, such a committee has never been convened. In other words, competence conflicts have always been resolved through bilateral talks and political negotiations.

According to the renewed Autonomy Act, the Faroese Government can enter into international agreements with "foreign states and international organisations"[22] within the self-government's competence areas. The Faroe Islands had already previously established themselves as an independent party regarding agreements on taxation, fisheries and North Atlantic issues,[23] something which is now extended to several other policy areas and international contractual partners.[24] This also includes the right to membership in international bodies (IMO, FAO, UNESCO and similar) which are not explicitly reserved for sovereign states. The Faroe Islands have recently (at the time of writing, 2020) begun negotiations on membership in the WTO and WHO.

It can be mentioned here that the Faroe Islands constitute an independent health area with an external border to Denmark.

As a further example, it can be mentioned here that the Faroe Islands constitute an independent health area with an external border to Denmark, something that became clear during the COVID-19 pandemic crisis when travellers from Denmark were put in quarantine in the same way as other foreign travellers.

In areas where the autonomy has its own authority, Denmark and the Faroe Islands function in practice as two different states. In relation to the EU, the non-member Faroe Islands are an independent contracting party. Denmark has thus not participated in the negotiations on the various agreements that the Faroe Islands have concluded with the EU since the new 2005 Autonomy Act entered into force.[25]

Regarding multilateral agreements on security and defence policy (as well as international agreements concerning some other issues of a global nature), which include the entire Danish kingdom,

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[19] *In a strictly formal sense, this is about a form of political "referral rights". But since Denmark in practice never vetoes the Lógting's wishes, it is still to be regarded as a Faroese de facto right of veto. However, the Lógting cannot on its own amend/rewrite the law. It must be done in cooperation with the Danish legislators.*

[20] *However, the Danish ombudsmen have their seat in the parliament and have the opportunity to bring up (but not prevent) legislation which they believe may be in conflict with Danish competence. It is extremely unusual for the Ombudsman to request the floor in the legislative assembly. Apart from a number of minor administrative obligations, the Ombudsman does not have any formal authority in the Faroe Islands. The Ombudsman is appointed by the Danish Government and is a government-paid official.*

[21] *The possibility to call in independent lawyers means that Suksi (2015, p. 35) called the procedure "semi-judicial".*

[22] *Formally on behalf of the Kingdom of Denmark.*

[23] *Before 2005, however, it was assumed that there would be a representative of the Danish Ministry of Foreign Affairs represented at the negotiating table.*

[24] *At the time of writing, the Faroe Islands have separate agreements on fisheries with the EU, Russia, Norway, Iceland and Greenland. It has its own trade agreements with the EU, Norway, Iceland, Switzerland and Turkey. Negotiations on new trade agreements with several other countries (among others post-Brexit UK) are ongoing. The Faroe Islands are also an independent tax and customs area with their own tax agreements with a number of different countries, incl. all Nordic states.*

[25] *Denmark's role has been further limited by the fact that the areas of agreement concerning trade and fisheries (which are so important to the Faroe Islands) are under EU competence.*

it is the Danish Government that negotiates. However, representatives of the Faroe Islands have the opportunity to be part of the Danish negotiating delegations, and the Danish agreements are valid within the Faroese territory only after they have been put into force according to the same procedure that applies to the aforementioned legal matters designated as "common affairs".

The political partnership

The Faroese Autonomy Act works – regardless of its formal status – in practice as a political agreement between Denmark and the Faroe Islands, something that clearly emerges in the interaction between the Danish state and the representatives of the Faroese autonomy. The Autonomy Act's character of international agreement becomes particularly clear in the political partnership between the Danish and Faroese governments. Although the Danish kingdom formally includes the archipelago in the Atlantic, the Faroe Islands act – with Danish political approval – as an independent nation within policy areas under its jurisdiction.

This interpretation of the autonomy's scope for action has made the Faroe Islands in many ways comparable to the political territory of a sovereign state.

This interpretation of the autonomy's scope for action has made the Faroe Islands in many ways comparable to the political territory of a sovereign state. A case in point is the above-mentioned interpretation of the current Autonomy Act's provisions regarding the validity of national (state) laws in the Faroe Islands within Danish areas of jurisdiction. Although, in this case, the Act in the strict sense only gives the Faroese Parliament the right to give an opinion on the law before it enters into force in the islands, the prevailing practice is that Folketing laws which have not been approved in advance by the Lógting will not come into force within the Faroese territory.[26] The jurisdiction of the Faroe Islands within its own territory thus not only covers its own areas of competence, but it also intervenes in the implementation of the areas of law which, according to the Autonomy Act, are Danish competence.

The same broad interpretation of the autonomy's authority also applies within one of the most central areas of Danish state sovereignty, namely international agreements, intergovernmental relations, and various types of cross-border activities. Under the 1948 law, with its formally limited opportunities for the Faroe Islands in the foreign policy arena, the Faroe Islands nonetheless entered many international agreements of their own in the areas of fisheries and taxation. The enhancement of the Faroe Islands' capability to enter into international agreements on their own, which the 2005 autonomy reform provided, has also been given a very broad interpretation. Active cooperation with Denmark has therefore rarely occurred in connection with the many international agreements that the Faroe Islands have negotiated in recent years. In practice, Denmark and the Faroe Islands act as two separate treaty partners in the international arena, at least in the areas where the Faroe Islands have entered agreements into of their own.[27]

Regarding some other sensitive areas from a national sovereignty point of view, such as nationality/passport and the conditions for crossing borders, the prevailing interpretation of the Faroese room for manoeuvre tends to stretch the limits of the autonomy's authority. A telling example is the flexible interpretation of the islands' international status, where a person resident in the Faroe Islands can choose either a Danish (EU) passport or a Faroese (non-EU) passport for international travels.[28] Another example is that the Faroe Islands function as an asylum country separated from

[26] *Moreover, Danish parliamentary laws do not apply to the Faroe Islands if they have only been published in the official Danish gazette (Lovtidende; www.retsinformation.dk). To apply in the Faroe Islands, they must be published separately in the Faroese gazette where all legislative acts and regulations are officially announced (www.kunngerdaportalur.fo).*

[27] *At the time of writing, the Faroese Ministry of Foreign Affairs appoints diplomatic "ambassadors" at its representative offices in six of the world's capitals: Reykjavík, Copenhagen, London, Moscow, Beijing and Brussels (EU). An office will be established in Tel Aviv at the end of 2020 and there are also plans to open a Faroese representation in Washington.*

[28] *In both cases issued by a competent Danish passport authority.*

Denmark. People who receive asylum or a residence permit in Denmark are not allowed to move to the Faroe Islands. The Faroe Islands and Denmark have different legislation in the area – despite the fact that this is still formally a Danish jurisdiction which has not yet (2020) been taken over by the Faroe Islands.

Political acceptance – not restrictiveness and obstacles

The above review of the Faroe Islands' legal and political room for manoeuvre clarifies two central features of the Danish-Faroese partnership arrangement. Both of these have, individually and collectively, played a decisive role in the expansion and deepening of the self-determination of the Faroe Islands in recent decades.

The political partnership has a tendency to be more important and play a greater role in the development of autonomy than the legal partnership.

The first feature of the relationship between Denmark and the Faroe Islands is that the political partnership has a tendency to be more important and play a greater role in the development of autonomy than the legal partnership. The development of the extent of autonomy and its scope for action, especially in the period after the 2005 autonomy reform, has thus essentially taken place through a politically controlled process where the formal legal prerequisites often take a back seat to politically endorsed agreements.

The other important feature of the partnership is the Danish representatives' acceptance of the autonomy's needs and wishes – even in cases where these are on the border of (or even exceed) what the Autonomy Act in a strict, legal sense allows. In the international arena, Danish politics has vacillated between passivity and non-interference on the one hand, and active support for the Faroese wishes on the other. The low Danish profile is also noticeable regarding the more "domestic" areas of the Faroese legislation, something that is underlined by the fact that the two-party committee, which should be used in the event of legal conflicts of competence, has never convened.

In other words, Denmark's role in the legal and political development of the Faroese autonomy has essentially been characterised by an attitude of political acceptance rather than one of restrictiveness and hindrance. A more restrictive Danish policy had – everything else being equal – most likely led to a significantly slower, or even to a stagnating, Faroese autonomy development.[29]

Conclusions

As is made clear above, the development and current status of the Faroese autonomy is the result of a long-established legal and political interaction between Denmark and the Faroe Islands. The main characteristic of the partnership is that it is essentially based on reciprocity where both parties are seen as players independent of each other. The relationship is thus unbound and bilateral, rather than one-sided and unequal.

This applies to both legal and political cooperation. In legal terms, the Faroe Islands constitute an essentially independent jurisdiction from Denmark. The basic principle is that Danish law applies in Denmark and Faroese law in the Faroe Islands, something that is made particularly clear by the fact that Danish laws within the remaining Danish areas of jurisdiction do not apply in the Faroe Islands without the approval of the Lógting.

[29] *Alternatively, a strengthening of the Faroese independence movement, something that the generally permissive Danish policy towards the Faroese autonomy has most likely aimed to avoid.*

Although the political interaction between Denmark and the Faroe Islands must thus be seen as a comparatively equal relationship, Denmark's economic and political strength, in practice makes the Danish state the dominant participant in the partnership. However, as seen above, the Danish representatives have, as a rule, refrained from using their position of strength in their interaction with the Faroese, not least in the field of foreign and international trade where the policy about the Faroe Islands has vacillated between passive acceptance and/or active support.

The principally equal legal partnership, in combination with the flexible and permissive Danish policy concerning the ambitions of the Autonomy,[30] is the most important factor behind the Faroe Islands' expanding scope for legal and political action in recent decades. But there are also some other Danish-Faroese characteristics and specific circumstances that have contributed to this development. Two such underlying circumstances are worth mentioning here – one linked to the constitutional background, and the other to the deeper historical and political context.

Unlike many other similar autonomies, the Faroese system of home rule is not clearly linked to, and thus limited by, the national Danish Constitution.

The rapid expansion of the Faroe Islands' autonomy, especially in areas where a stricter legal interpretation would have slowed/stopped the development, has probably benefited from the unclear relationship between the Autonomy Act and the Danish Constitution.[31] Unlike many other similar autonomies, the Faroese system of home rule is not clearly linked to, and thus limited by, the national Danish Constitution. On the other hand, at least in principle, the Danish Constitution applies to the entire realm, thus including the Faroe Islands (and Greenland). However, there is no clear writing in the Constitution regarding the status of the Faroese autonomy, something that has been interpreted as a lack of formal protection.

This lack of formal/constitutional protection could be perceived as a weakness in the Danish-Faroese autonomy model. However, this is a premature conclusion. The unclear connection to the Danish Constitution has thus opened up the possibilities for a legal expansion of the home rule which a stricter – in relation to the Autonomy Act – Danish Constitution would have made more difficult. The unclear constitutional status of the Act has in practice freed the development of autonomy from any constitutional restrictions, something that has contributed to an expansion of the Faroe Islands' legal authority. Thus, according to Ole Spiermann (2011, p. 5), the laws of the autonomy "have a life of their own, not by the Constitution, but by virtue of exemption from the Constitution."

At the same time, however, it is clear that under less favourable political circumstances, the lack of constitutional entrenchment could become an obstacle to the development of the autonomy. Here we touch on the other important contributing factor behind the development of Faroese autonomy, namely the Danish Government's political acceptance of the far-reaching expansion of the autonomy.

Two possible, and to a certain extent connected, partial explanations for this permissive Danish policy can be given. The first has its background in the relatively strong independence movement in the Faroe Islands which, in combination with the Danish memory of the corresponding Icelandic movement in the first half of the 20th century, has probably contributed to the fact that Danish politicians want to avoid conflicts with the Faroese, which in the long run could strengthen the archipelago's independence movement.[32]

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[30] *Including political acceptance for independence if a majority of residents living in the Faroe Islands (through a referendum) choose such a path, something that has been confirmed on numerous occasions, e.g., by the Danish Prime Minister who, in connection with the negotiations on the future political status of the Faroe Islands in the autumn of 2000, stated that "like previous [Danish] governments have said that the Faroese people can at any time decide to withdraw from the realm" (Fyri Landstyrið 2000, p. 21).*

[31] *The reasoning and conclusions about the relationship between the constitution and the Autonomy Act are based on Sørensen & Danielsen (2011), Spiermann (2008) and Larsen (2005, 2011).*

[32] *Note here that both the 1948 and the 2005 autonomy arrangements were introduced as a Danish response to increased demands for independence within the Faroe Islands.*

A second partial explanation for the flexible and permissive Danish attitude may be the country's past as a colonial power in the North Atlantic where the "countries" included in the kingdom (Iceland, the Faroe Islands and Greenland) have traditionally been seen as separate political entities from mainland Denmark, a form of territorial exception from the otherwise unitary Danish state.[33]

In summary, it can be concluded that the rapid expansion and deepening of the Faroe Islands' political and legal autonomy in recent decades has resulted in such extensive self-determination that the archipelago must be considered to be on the threshold of what corresponds to a formally sovereign (micro-)state.

[33] *In this regard, the Danish autonomies have certain similarities with the British autonomies of the Isle of Man, the Channel Islands and Gibraltar, which through their position as "crown dependencies" (IoM, CI) and "overseas territories" (Gib) are subordinate to the British Crown (i.e., the King/the Queen), and not the British Parliament and in a strictly formal sense not even the British Government. See further chapters 6 and 7 below.*

4. South Tyrol: Autonomy development despite a difficult starting position

South Tyrol is located on the southern slopes of the Alps in northern Italy. As part of the current Austrian Tyrol, South Tyrol became a Habsburg possession at the end of the 14th century. South Tyrol belonged to Austria (within the framework of Austria-Hungary) from 1867 until 1918. In the peace negotiations after the First World War, Italy was given South Tyrol by the victorious powers. The then almost entirely German-speaking population ended up on the "wrong side" of a new international border and became politically and economically separated from their centuries-old connections to the northern parts of the Tyrol region.

During the interwar period, and especially under Mussolini's fascist regime, South Tyrol was subjected to a systematic campaign from Italy, including state-sponsored immigration of Italian-speaking population and forced Italianisation of German toponyms and family names. Together with the migration to the Austrian Tyrol of native South Tyroleans, this led to a significant reduction in both the number and the proportion of the German-speaking population in the region.

After the end of the Second World War an agreement, influenced by growing demands within South Tyrol for reunification with Austria, was reached between Italy and Austria on internal self-government for South Tyrol.[34] The agreement was annexed to the peace treaty at the end of the war and the pledged South Tyrolean autonomy thus gained a dimension of international law.

The pledged home rule was a disappointment.

The autonomy law adopted by the Italian Parliament in 1948 offered a relatively comprehensive autonomy in conjunction with strong protection of the language for the region's (after Italianization) two large language groups, Italian and German. In addition, there is a minority of speakers of Ladin.[35]

The pledged home rule was a disappointment. In the early 1950s, the Italian state returned to the policy of Italianization pursued during the interwar period, not least through state-supported immigration of Italian-speaking labour. In addition, the 1948 autonomy law covered a much larger territory than South Tyrol, which led to the German-speaking population becoming a minority in the enlarged region's (Trentino-Alto Adige) decision-making body. All in all, this meant that the implementation of the law was very slow – or completely absent. The result was growing discontent, including an increasingly strong political movement for reunification with Austria. During the 1950s and 1960s, dissatisfaction with the blocked autonomy development was expressed in several bombings. However, these were mainly aimed at state infrastructure and Italian symbols – and thus with few personal injuries as a result.

The problems with the realisation of the autonomy agreed upon by Italy and Austria after the end of the war led to Austria taking up the matter in the UN in the autumn of 1959. This eventually led, after long and difficult negotiations, to a new Self-Government Law in 1972,[36] a law still in force. One of the most important differences compared to the 1948 law was that the greater region of Trentino-Alto Adige was broken down into two provinces, Bozen/Bolzano (South Tyrol with a German-speaking majority) and Trento/Trient (Italian-speaking majority), with virtually all self-government being transferred to their respective provincial parliaments. Of the 70 members of the Trento-Alto Adige regional parliament, which has been deprived of most of its legislative authority, half are legislators in the South Tyrol/Bolzano parliament, with the other half coming from the corresponding provincial parliament in the sister province of Trento/Trient.

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[34] The so-called De Gaspieri-Gruber Agreement (named after the Italian and Austrian prime ministers who negotiated the agreement) from 1946.
[35] Ladin is a Rhaeto-Romance language derived from the form of Latin spoken language in parts of the Alpine region during the Roman period. The language has official status in South Tyrol, where nearly 5 percent of the population has it as their registered native tongue.
[36] The official English designation is "Statute of Autonomy".

The constitutional context

Italy is a parliamentary republic where the Legislative Assembly consists of two chambers, a lower (Chamber of Deputies) and an upper (Senate). The constitution essentially dates back to 1948, but it underwent a minor renewal in 2001. The renewal resulted in a constitutional strengthening of the current Statute of Autonomy for South Tyrol.

The legal system is based on Roman law and modified by later legislation. After the Second World War, Italy created a Constitutional Court (Corte Constituzionale) which, if deemed necessary, examines whether laws – including those passed by South Tyrol (see further below) – are compatible with the constitution.

In territorial and administrative terms, Italy is a mixture of unitary and federal statehood. Of the 20 Italian regions defined in the Italian Constitution, there are five so-called Special Regions with varying degrees of territorial autonomy. One of these is the region of Trentino-Alto Adige/Südtirol where – as stated above – the autonomous province of South Tyrol is included.

South Tyrol currently (at the time of writing, 2020) has three members in the upper house of parliament and five debuted in its lower house. Italy is an EU member state and South Tyrol is thus part of the Union as one of the Italian regions. South Tyrol also has a seat (MEP) in the European Parliament.

The scope of autonomy

The 1972 Statute of Autonomy enables self-government in virtually all policy areas that can be considered "internal",[37] that affects conditions within the province (e.g., health and medical care, education, infrastructure and transport, business and tourism, local police, planning and environment, and the like). On the other hand, all policy areas which can be considered "external", i.e. those which concern the whole of Italy (comprehensive interregional infrastructure, national standards etc.) as well as foreign and security issues, are the reserve of the Italian state. The autonomy's finances are secured through a system where 90 percent of all government income from South Tyrol is returned to the province in the form of a lump sum.

The South Tyrol autonomy law is technically at a constitutional level and is therefore generally regarded as a form of constitution for South Tyrolean autonomy. The constitutional protection implies – not least given the complicated Italian parliamentary (bicameral) system – that an extensive and politically quite unmanageable process is required when revising the Statute of Autonomy. This has most likely contributed to the fact that the law (with some important adjustments in connection with the Italian constitutional reform in 2001[38]) has remained in force today.

This does not, however, imply that South Tyrol's autonomy has been limited to its original extent since the law came into force almost 50 years ago. On the contrary, there has been a continuous expansion of the authority of autonomy within the various policy areas where the law enables a takeover of competence.[39] The general opinion within South Tyrol is thus, that full "internal" autonomy has largely been achieved. Among the few remaining areas that are considered still lacking, the most important is financial authority, i.e. control over taxation which forms the basis for the self-government's financing.[40]

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[37] *However, the degree of autonomy varies within different parts of the jurisdiction, see further about the legal partnership below.*
[38] *The renewed Italian constitution opened up for South Tyrol as a more independent player in the cross-border EU cooperation, something that Rome had so far limited. Otherwise, most of the adjustments have been formal ex-post confirmations of the de facto expansion of autonomy which had already taken place in the post-1972 period.*
[39] *The latest was a takeover of responsibility for the judiciary within South Tyrol.*
[40] *This has been an important issue in the extensive and intense political discussions about the scope of the autonomy after the turn of the millennium. The dissatisfaction with and criticism of the current system for (state) financing of the autonomy's expenses has been summarised by Alcock (2001, p.15) in the following manner: "Having plenty of money does not amount to having financial autonomy".*

The previous demands on "external" self-determination, that is to be able to choose for themselves between remaining as an autonomous part of Italy or reuniting with Austria,[41] have gradually receded into the background and are now no longer politically viable. On the other hand, in recent years there has been a growing concern within South Tyrol regarding some of the centralising tendencies in Italian politics, which are a concern from the point of view of autonomy. This, together with the issue of the lack of authority over taxation, has led to growing demands for a renewal of the 1972 Law in order to ensure the continued development of the autonomy.[42]

The legal partnership

The regulations and practices governing the legal partnership between the South Tyrolean autonomy and the Italian state are relatively complex. Adding to the complexity is the fact that South Tyrol's autonomy law contains two types of legislative competences; those where South Tyrol has exclusive (primary) legislative rights, and those where the autonomy has the right to enact its own, locally adapted laws within the framework of the corresponding national legislation (secondary legislative rights).

The 50-year-old Statute of Autonomy has so far not undergone any such major revision.

The collaboration between state and autonomy that South Tyrol's special status demands takes place in three different legal contexts, namely (i) in the event of major amendments to the prevailing Statute of Autonomy, (ii) in connection with the current law's implementation in the form of more concrete framework legislation, and (iii) in the forming of South Tyrolean legislation in areas where the autonomy's competence is limited to local adaptation of national state legislation.

(i) Initiating a revision of the constitutionally protected 1972 Statute of Autonomy requires an initiative from the regional parliament of Trentino-Alto Adige/Südtirol. This, in turn, requires initiatives from and consultations with the two provincial parliaments in the region. Only after an agreement between them can revision proposals be sent for consideration by the Italian bicameral parliament according to the same cumbersome rules (including constitutional review) that apply to a revision of the Italian Constitution. As has been stated above, the 50-year-old Statute of Autonomy has so far not undergone any such major revision.

(ii) Regarding the implementation of the legislative competence laid down in the 1972 Statute of Autonomy, a special arrangement has been created in the shape of a sort of constitutional regulations (Ger./Ita. Durchführungsbestimmung/Norma di attuazione; Eng. Enactment Decrees, ED). These work as a way to interpret and continuously concretise, i.e. in practice implement, South Tyrol's legal competences and political room for manoeuvre within the framework of the current autonomy charter.

The most decisive body for the development of self-government is thus the player who initiates and produces these EDs. The player in question is a commission, jointly composed by the state and the autonomy, where half of the six members are appointed by each party in accordance with a requirement for equality (parity) between the state and the autonomy established in the Statute of Autonomy.[43] The commission internally appoints a chairman, who does not have the deciding vote, and therefore no special position in the commission's decision making.

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[41] Within South Tyrol, there has never been a widespread opinion in favour of secessionism, that is, to establish a South Tyrolean state. The opinion-based and political movements have rather tended to be about irredentism, that is, a desire for reunification with Austria.

[42] During the years 2016 and 2017, the South Tyrolean government arranged an extensive public "discussion round" (Autonomy Convention) about the need for a new Statute of Autonomy. Internal political contradictions regarding the result have led to the fact that no petition with proposals for renewal of the law has yet (2020) been received. For a detailed description of the process and its results, see Röggla (2019).

[43] The appointment of members of the commission must take into account the balance between the three languages, German, Italian and Ladin. A corresponding commission with jurisdiction over the larger region of Trentino-Alto Adige/Südtirol also exists. In this case, too, the members are appointed on an equal basis (and with regard to the language balance) by the state and the region respectively. With virtually all legislative power, according to the current autonomy law, residing in the two provinces that form the greater region, this commission has limited importance.

After formal ratification (signature of the Italian President)[44] the EDs agreed by the commission are immediately transformed into valid legislation (Ger./Ita. Gesetzesdecret/Decreto legislativo; Eng. Legislative Decree, LD). This type of comprehensive "framework legislation" lies hierarchically between ordinary laws and the level of constitutional legislation. The Italian Parliament is not involved in the ED/LD-driven legislative process. Any continuous formal *ex-post* or *ex-ante* review of the LD laws does not either take place. However, it is possible for state and regional authorities, as well as representatives of the three language groups concerned, to – if there are substantiated complaints – demand an *ex-post* review in the Constitutional Court. Such a review primarily concerns the control that a (adopted for review) framework law is not in conflict with the Italian Constitution. This type of constitutional review occurs now and then but is not very common. Any more marked tendency in court rulings regarding the area of legislation or outcome does not seem to exist either.

(iii) Regarding legislation in areas where South Tyrol has secondary authority, and where the legislation of the autonomy, therefore, takes on the character of a local adaptation of the national legislation, the legal partnership becomes more practically oriented in nature. Competent Italian authorities here have a significant role in how legislation is designed (i.e. adapted to Italian legislation prevailing in the area). Even in this case, there is an opportunity for review in retrospect, something that is significantly more common than in the areas where South Tyrol has exclusive legislative rights.

In regard of legislation in areas where the ED/LD-process has established and concretised the exclusive competence of the autonomy, the South Tyrolean Parliament is essentially free from state interference. The laws passed take effect immediately without any prior constitutional review or formal state ratification. On the other hand, it is possible for the relevant authorities and stakeholders to review the South Tyrolean laws retrospectively in the same way as with regard to the LD (framework) legislation. In this case, the review primarily concerns the relationship of the legislation in question to the Statute of Autonomy, not in relation to the Constitution.

The political partnership

The common thread throughout the current Statute of Autonomy is the bilateral partnership between state power and autonomy, a partnership assumed to be equal.[45] The main rule of bilateral equality applies in principle to all legislation and administrative activities where some form of partnership between the state and the region is assumed.

More concretely, this implies that implementation of the current Statute of Autonomy must take place in a collaboration between the state and the autonomy where the composition of the competent bodies is equal, and neither of the two parties therefore has a special position of strength (e.g. through a majority and/or chairman with a deciding vote). This applies not least to the critically important commission which, through its ED decisions, leads the implementation of the autonomy's legislative competences.

The political interaction between the representatives of the Italian state and the autonomy thus becomes decisive for the implementation and long-term development of the process of self-determination laid down in the Statute of Autonomy. The members of the commission have to agree on those EDs[46] which, after formal ratification, turn into valid (framework) legislation.

[44] *It is, however, a formality. There has never been a known case of the president stopping an ED from becoming a law.*
[45] *This is also confirmed in the 2001 Italian constitutional reform.*
[46] *Since the 1972 law is often quite general and can be interpreted in different ways, the ED/LD process has in some cases also implied an expansion of the powers of autonomy, which the subsequent amendments in the 2001 constitutional reform confirm.*

Given the turbulent political historical background, and the repressive attitude demonstrated by the Italian state in previous periods, an obvious conclusion is that discontent between the two parties could have led to a similar blockage of the autonomy's development that took place during the 1950s and 1960s. This, however, has not been the case. The political partnership between autonomy and state has generally worked well since the introduction of the 1972 Statute of Autonomy, something that the positive development of the autonomy's scope for action bears witness to.[47] Although difficult negotiations often occur, and where language considerations also play a role, as a rule, in the end, it has been possible to agree on the framework legislation required for the development and deepening of South Tyrol's legislative autonomy and political room for action.

Any attempts to act more independently in the international arena are thus not accepted.

The principle of equality in the interaction between state and autonomy also prevails in the more mundane cooperation. The bilateral principle thus also applies, at least in principle, regarding cooperation in the adaptation of the local legislation to the prevailing national legislation, i.e. in legislative areas where South Tyrol's rights are secondary. As already pointed out, in this case, the competent state representatives tend to have an advantage since they represent the national legislation to which the South Tyrolean laws must be adapted. There is also a state-appointed representative (a form of governor/county governor), with relatively few powers, who, if necessary, can act as a contact link between the bodies of the autonomy and the state authorities operating within the South Tyrolean territory.

It should be noted that the main principle of the equal partnership only prevails in connection with policy areas which, according to the current Statute of Autonomy, belong to South Tyrol, i.e. so-called "internal" matters. Regarding the "external" areas, which primarily concern foreign policy, international cooperation and various types of inter- and supranational agreements, the otherwise important bilateral principle is replaced by sovereign state responsibility.

International collaboration (including military and security) is also a policy area which, in light of the history of the origin and early development of the autonomy, remains a sensitive issue in Rome. Any attempts to act more independently in the international arena are thus not accepted. South Tyrol is not involved in the preparation and negotiations that precede international treaties to which Italy is a party. There is no provision in the current autonomy law which requires the Italian state to submit international agreements affecting the legislative areas of the autonomy for approval in the South Tyrolean Parliament. The historical connection with Austria, including the treaties between Italy and Austria from which the autonomy originated, however, implies that the bilateral interaction between Italy and Austria in some cases presupposes the involvement of South Tyrolean representatives.

The only significant exception is EU cooperation where South Tyrol, since the 2001 constitutional reform,[48] is very active. This applies not least within the cross-border cooperation (EUREGIO, European region Tyrol). South Tyrol is also represented in the EU's Committee of the Regions (CoR) and is the region that opened the first regionally-run representative office in Brussels, however, without diplomatic functions.

[47] *Unlike the Spanish policy in relation to Catalonia and the Basque Country (see next chapter). A major cause for the nevertheless quite long implementation period after 1972 was the parliamentary instability in Rome, with recurring government reshuffles and the uncertainties and delays in the decision-making process which this entailed.*

[48] *Already in 1995, South Tyrol opened a joint representative office in Brussels with the Austrian Tyrol. The office was closed by Rome on the grounds that it dealt with "foreign policy" and thus was the state's responsibility. According to the view of the Italian Government, the establishment of the office was a "seditious and anti-Italian move" (Lang 2012, p. 130). This led to discontent and protests on both sides of the border which, together with the generally increasing EU integration, led to this type of EU cooperation being attributed to the competence of regional autonomy in the 2001 Italian constitution.*

Conclusions

According to many reviewers, including external ones,[49] under the Statute of Autonomy in force since the beginning of the 1970s (including the 2001 adjustments), South Tyrol has undergone a development which means that today, with a few exceptions, it can be considered to have achieved full internal self-determination. The question to ponder then is which background factors to, and characteristics of, the 1972 law contributed to this positive development? The answer probably involves certain key ingredients in the political background process which ultimately forced the adoption of the 1972 Statute of Autonomy, but also includes the design and implementation of the new autonomy law.

With regard to the political background factors, there are several different – but closely related – ingredients in the post-war development which not only enabled but in practice also forced the adoption of the 1972 model of autonomy. An important factor was that the promised self-government of the 1948 law was never realised, something that created widespread discontent within South Tyrol's German-speaking population. This in turn led to a boost of the old demands for reunification with Austria, a political movement reinforced by the renewed attempts at cultural and linguistic Italianization of the region. Instead of a pacification of South Tyrol's indigenous German population, the Italian measures brought increased political unrest and, in the end, armed resistance. The result was increased international attention, not least from Austria. As a result of Austria having brought the South Tyrolean conflict to the UN General Assembly (1959-1960), political pressure on Italy to resolve the situation by offering South Tyrol a functioning autonomy increased.

The new autonomy law can be considered a form of political tripartite between Italy, Austria and South Tyrol.

Another important factor was that the new autonomy law, which the political and diplomatic process finally produced, can be considered a form of political tripartite agreement between Italy, Austria and South Tyrol. The 1972 Statute of Autonomy thus functioned as a political compromise where all three parties involved could feel like winners. For South Tyrol, the gain was that, through the new, constitutionally guaranteed autonomy law, a far-reaching self-determination was achieved. The international connection (Austria/UN) and the principle of bilateral equality with the state in the implementation of the law were also of great importance to South Tyrol. Austria, for its part, was able to settle a politically troublesome border conflict while at the same time gaining a role as a guarantor regarding the implementation of home rule in South Tyrol according to the intentions of the negotiated autonomy law.[50] For Italy, the gain was that, through recognition of South Tyrol's right to full "internal" autonomy, the state could secure its "external" sovereignty over South Tyrol – and put a stop to the reunification efforts with Austria. Moreover, through the partnership in concretising the areas of legal competences specified in the autonomy law, the state could also ensure that the development of the regional self-determination did not threaten Italy's territorial cohesion.

But also, the more concrete design of the new Statute of Autonomy and, not least, the way in which it is implemented, contributed to its success. The relatively extensive South Tyrolean legal and political powers and the well-functioning ED/LD-process have thus contributed to the successful implementation of the Statute of Autonomy. Here, the law's requirement for an equal partnership between the state and the autonomy (bilateral commission with full ED decision-making rights without interference from the rest of the Italian political system) has been decisive. This has contributed to a growing trust in the interaction between the two parties, something that the successful implementation of the law indicates.

[49] *See e.g., Alcock (2001), Roslin (2006), Lang (2012), Alber & Zwilling (2016) and Larin & Röggla (2019).*
[50] *In 1992, i.e. 20 years after the introduction of the 1972 law, Austria announced that it considered that South Tyrol's internal self-determination had reached such a point that Italy's commitments towards Austria on this issue could be considered completed.*

The 1972 Statute of Autonomy, which was quite generous from the start in terms of the scope of the autonomy's (internal) responsibilities and room for manoeuvre, has also – together with the well-functioning implementation arrangement – made it possible for South Tyrol's autonomy to continue and deepen without the politically and constitutionally demanding process that a revision of the law would otherwise have required. The expansion of the autonomy's legal powers, which the 2001 constitutional reform allowed, was thus mainly due to the fact that corresponding transfers of legislative and political authority had, in practice, already been carried out within the framework of the joint implementation mechanism.

5. The Basque Country: Blocked autonomy development

The Basque Country (Basq. Euskadi), is one of Spain's "autonomous communities" (Basq. Euskal Autonomia Erkidegoa; Eng. The Basque Autonomous Community), an area in present-day north-western Spain comprising three provinces; Alava/Araba, Biscay/Bizkaia and Gipuzkoa. Historically, the Basque Country roughly included today's Spanish-French border area between the Bay of Biscay and the western foothills of the Pyrenees. The Basques speak a language (Basque) with an unclear linguistic and historical background, a language that has almost completely disappeared north of the Spanish-French border, but which is still – alongside Spanish – in active use within today's Spanish Basque Country. During the Habsburg Empire and the rise of the two centralised powers of Spain and France, a progressively stricter state border was established through the Pyrenees, which thus came to divide the historical Basque Country into two parts. The majority of the Basque population ended up on the Spanish side of the border in the three aforementioned provinces, as well as in Navarre.

The historical roots of today's Basque Country can be found in the Middle Ages when the current Spanish part of the region came under the Castilian monarchy in Madrid, but with great internal independence and the retention of its own laws, language and customs. Today's autonomy has its political roots in a growing Basque national mobilisation during the 19th and 20th centuries, which resulted in the first modern law of autonomy for the Basque Country in 1936 ("the Statute of Gernika").[51] After the end of the Spanish Civil War, in connection with the establishment of the Franco regime, the autonomy legislation of 1936 was abolished and replaced with a centralising and highly repressive Spanish policy, including banning the use of the Basque language and state-encouraged immigration of Spanish-speaking labour – the latter facilitated by an expanding Basque industry.[52]

The Spanish repression during the 1950s and 1960s led to a growing Basque nationalism. In 1961, the organisation ETA (Euskadi Ta Askatasuna) was founded with the goal of establishing an independent Basque state through armed struggle. In addition to its political branch, ETA conducted a campaign of violence, which primarily targeted the representatives and institutions of the Spanish state, but also affected many civilians. The ETA activists were met with powerful military and police countermeasures from the Spanish Government, something that continued even after the Franco period. In the autumn of 2011, ETA ceased all military violence and, in 2018, on its own initiative, the organisation and its operations were shut down.

In 1983 Navarre, also received corresponding autonomy legislation.

Today's Basque autonomy stems from the years after Franco's death (1975) and the establishment of the subsequent Spanish democracy with a new constitution (1978). The Basque Statute of Autonomy, which was adopted the following year (October 1979), essentially still applies. A few years later (1983), Navarre, the fourth province belonging to the historical Basque Country (south of the French border), also received corresponding autonomy legislation.

[51] *A law on territorial autonomy for the Spanish Basque Country was drawn up as early as 1931, but it fell apart when the fourth region in Spain with strong Basque elements, Navarre, withdrew from the project. The background seems to be the off and on flaring up of an internal tug-of-war for power in the Basque Country, where Navarre has often gone its own way since the Middle Ages. Navarre is not part of today's Basque territory/autonomy, but can, according to the current law of autonomy, join as the fourth province included in the Basque Autonomy.*

[52] *The Spanish policy during the Franco era meant that Basque became a minority language even in those parts of the Basque area where it previously had been a majority language. Even today, those who have Basque as their native tongue and those who master the language constitute a minority (30-35 %) of the population of the autonomous Basque Country.*

The context of national and constitutional powers

Spain is a constitutional monarchy. According to the constitution from 1978, the Spanish territory is "indivisible", which gives the country the character of a cohesive unitary state. However, the linguistic structure and internal territorial and political organisation are more reminiscent of a form of asymmetric federation.[53]

Spain has four official languages; Castilian, Basque, Catalan and Galician, of which Castilian (Spanish) is the dominant language. The state territory is further divided into 17 autonomous regions (with their underlying provinces)[54] with varying degrees of political and administrative autonomy. Among the autonomous regions, the Basque Country (The Basque Autonomous Community) has the most extensive self-government, but Navarre and the economically, and in terms of population, important Catalonia also have an autonomy which in many respects is at the same level as the Basque.

The federal features also include that the Spanish Parliament (Cortes Generales) is divided into two chambers: the Senate (the upper house, the upper chamber) and the Chamber of Deputies (the lower ditto). This also includes the existence of a constitutional court with significant power in terms of the interpretation of the various powers of the central government and the autonomous regions respectively. The Basque Country has 18 seats (of 350) in the Deputies and 15 seats (of 266) in the Senate.

Spain is one of the EU member states. The Basque Country is thus included in the EU territory as one of the Spanish regions. The Basque Country is represented in the European Parliament and the European Committee of the Regions (CoR).

The scope of autonomy

The Basque autonomy comprises, as mentioned above, three territories/provinces, which makes it a form of internal federation where the members of the joint Basque Parliament are appointed by the provinces. The parliament consists of 25 members each from the three provinces included in the Basque region, i.e. the same type of arrangement for parliamentary representation as in South Tyrol. The parliament, composed of the electorate of the three provinces, in turn appoints the Basque Government.

The Basque powers specified in the currently valid Statute of Autonomy from 1979 are relatively extensive.

The Basque powers specified in the currently valid Statute of Autonomy from 1979 are relatively extensive. They largely cover all legislation which can be considered the region's "internal" affairs, such as education, healthcare and health systems, physical and economic planning, trade and business, agriculture, domestic banking, transport, infrastructure, tourism, local policing and the like. On the other hand, nationally comprehensive policy areas (e.g., international air and ship traffic to/from the Basque Country, competition and price regulation, currency, national security and terrorism) are essentially reserved for the authority of the Spanish state. This also applies, not least, to everything that can be attributed to the foreign policy field (international cooperation and representation, international agreements, military defence etc.).[55]

[53] *According to Errasti-Lopez (2019, p. 4) the Spanish state thus has "all features of being plurinational de facto while proving incapable of reflecting its plurinational character de jure." See also Lopez & Ibarra (2006) for a well-informed analysis of the conflicts between the Spanish constitutional set-up and the Basque autonomy.*

[54] *The Spanish territory also includes two so-called autonomous cities, namely the two Spanish possessions on the North African coast (Ceuta and Melilla).*

[55] *With the exception of those parts of EU cooperation which, after review and decision in the Constitutional Court, have been defined as a "domestic matter".*

Unlike the other (non-Basque) autonomous regions[56] in Spain, the Basque self-government includes the right to taxation.[57] The autonomous taxing rights apply to all income taxes levied in the region. With the exception of tariffs on goods imported from countries other than the EU, the authority also covers indirect taxes, which are, however, in all essentials harmonised with corresponding Spanish taxation and EU rules in the tax area (primarily VAT). The Basque Country sends a small part of its tax revenue to Spain to cover the state's costs for those areas of society which, according to the Autonomy Statute, cannot be transferred, or have not yet been transferred, to the Basque Parliament.[58]

Growing need for law review

The current Statute of Autonomy is now over 40 years old. It is therefore not very well adapted to today's conditions, either in the Basque Country or in Spain. The armed struggle for independence (ETA) has come to an end, and the powers of autonomy would be in need of an update and clarification, the possibilities to implement the Statute improved, etc. In recent decades, the Basques have also experienced a growing pressure of centralisation from Madrid,[59] which they want to counteract through a legally and politically enhanced home rule. In addition, they are also looking for the opportunity to hold legal referendums on the future of the Basque Country's relationship with Spain.

Since the turn of the millennium, the representatives of Basque autonomy have taken several different initiatives to address the problems through a renewal of the 1979 Statute, but so far without success. A few years into the new millennium (2003-2005), the Basque Government launched a proposal for a comprehensive renewal of the Autonomy Statute[60] where the federal features of the Basque Country's relationship with Spain would be enhanced and the scope of legal and political self-determination expanded. The proposal was stopped by a large majority in the Spanish Parliament.[61]

The latest initiative (at the time of writing) is that the Basque Government appointed a commission consisting of five expert members with the task of working out a (new) proposal for a renewal of the autonomy law. The ambition is then, on the basis of the commission's proposal, to present a proposal anchored in the Basque Parliament for the renewal of the Autonomy Statute to the Spanish Government. However, it has so far been difficult to produce a unanimous proposal from the commission. The issue where the discord within the commission has been greatest is the proposal to enable a referendum on the future political status of the Basque Country.

The legal partnership

The 1979 Statute of Autonomy is a so-called "organic law", which, in the legal hierarchy, is at the level between an ordinary law and a constitutional law. Any changes to the Statute must therefore be approved by the Spanish Upper House (the Senate) by a qualified majority. Requests to amend the law can come from the Basque or Spanish parliaments. Only after agreement between the two

[56] *The region of Navarre, with a background as part of the geographically more extensive historical Basque Country, has enjoyed a similar autonomy with taxation rights since the early 1980s. The fiscal autonomy of the Basque Country and Navarre is regulated in a special Spanish law (Communidades Forales). For a detailed review of the arrangement of the fiscal jurisdiction and financial autonomy of the Basque Country and Navarre, see Moré (2008).*

[57] *However, the Basque fiscal autonomy (like the corresponding right for Navarre) is not a product of the current autonomy. It is instead based on the background history of the territory as an independent entity under the Spanish crown where the right to tax the Basques from the end of the 19th century until the establishment of the Franco regime in the late 1930s was repeatedly confirmed by the Spanish state in the form of special "Basque Economic Accord", the last one in 1937. See e.g., The Regional Tax System in the Basque Country (https://www.bizkaiatalent.eus/en/pais-vasco-te-espera/apuesta- de-futuro/sistema-fiscal-propio/).*

[58] *According to Gomez & Etxebarria (2000) on average just over 6 % of the total Basque tax revenues.*

[59] *Something that has become increasingly apparent during the ongoing Spanish-Catalan crisis.*

[60] *The so-called Ibarretxe Plan, named after Juan José Ibarretxe who was the first minister in the Basque Government that launched the proposal.*

[61] *"The [Ibarretxe-]plan failed when the Spanish Parliament gave it short shrift" (Keating 2018, p. 3).*

parties can a proposal to revise the Autonomy Statute be forwarded to the Senate for approval. After a positive Senate decision, approval from a Basque referendum is also required prior to the new/amended autonomy law being able to enter into force. The politically tricky and legally cumbersome process that this requires is most likely one of the main reasons why the over 40-year-old Autonomy Statute is still in force.

As stated above, the Basque Statute of Autonomy confers quite a large number of "internal" areas to the autonomy's legislative authority. However, a transfer of these from Spanish to Basque jurisdiction (i.e., the implementation of the provisions of the Autonomy Statute) presupposes agreement on the more concrete content of, and the administrative and financial forms for, the transfer of jurisdiction. This has proven difficult in many cases, which is why significant elements of the powers granted by the Statute are still not implemented.

A contributing factor to the implementation difficulties is the way in which the various areas of authority are defined.

A contributing factor to the implementation difficulties is the way in which the various areas of authority are defined. Within the legislative areas relevant to Basque takeover, the authority is divided into legislation, developmental/normative and operational responsibility. In some cases, responsibility for all of these rests with the Basque Parliament, in others the Statute is interpreted to limit autonomy to just one or two of the three different – but closely related, often overlapping – parts of the legislative and political authority. This presupposes a close partnership between state and autonomy where, in practice, the distribution of authority and operational responsibility is not always very clear; something that has resulted in many conflicts, which in turn have brought about significant delays, or even total blocking, of the authority transfers that the Autonomy Statute allows.

In cases where agreement has been reached, and a transfer of authority has been implemented, the responsibility for legislation within the area of authority in question rests fully with the Basque Parliament. There is no formal *ex-post* or *ex-ante* review. The law enters into force immediately after it has been approved by a majority in the Basque Parliament. However, the Spanish Government, a political party, and even individuals/companies (Spanish/Basque) can subsequently file complaints with respect to the law's "legality" in relation to the Basque Statute of Autonomy and/or the Spanish Constitution. This is relatively common and often, though not always, leads to negative results from the Basque point of view.[62]

A possible – but according to the law voluntary – procedure is then for the parties (i.e., the Basque Government and those filing the complaint) to meet and negotiate a solution to the conflict. If agreement is reached, the law is revised in accordance with the agreement and then forwarded for decision in the Spanish Constitutional Court. In these cases, the court normally gives its formal approval. In the absence of negotiations, or where agreement is unable to be reached, the conflict is then passed to the Constitutional Court, which often tends to give a negative outcome from the Basque perspective. The possibility of retrospectively questioning and testing the Basque legislation in this way has led to the suspension of a significant number of Basque laws, especially in recent decades.

The political partnership

A functioning political partnership between the Basque autonomy and the Spanish state is a prerequisite for a positive development of home rule. Based on the 1979 Autonomy Statute and the Spanish Constitution, the political relationship between state and autonomy is put to the test primarily within three different contexts: (i) in the case of amendments to the prevailing Autonomy

[62] *The complaints often come from one of the so-called unionist parties, i.e., the parties in the Basque Parliament which (to varying degrees) are opposed to extended autonomy and, not least, independence from Spain. The opportunity to test autonomy legislation in this way also exists in Catalonia, and the unionist parties there have been especially active in exploiting this opportunity, something that has contributed to today's contaminated political relations between Catalonia and the Spanish state.*

Statute, (ii) in the implementation of the Basque authority that the law enables, and (iii) in the co-ordination of the practical application of the respective powers of the state and of the autonomy.

(i) As stated above, all attempts so far to reform/renew the current Basque autonomy law in a more fundamental way have failed – either as a result of internal contradictions in the Basque Parliament or due to a lack of political support in the Spanish Parliament. A functioning partnership with respect to the development of autonomy is thus lacking, to the extent that, if it exists at all, it is also a markedly unequal relationship where the Spanish state in practice tends to have the final word.

(ii) Even when it comes to the implementation of the current Statute of Autonomy, the political partnership falters. The work of the bilateral Spanish-Basque Commission, that was created in order to implement the current Autonomy Statute, is slow. In addition to the above-mentioned problem with the complex definition of the legal competences, the implementation is hampered by far-reaching administrative and financial demands of the Spanish Government on its Basque counterpart in order to approve the transfers of legal and political rights that the Autonomy Statute makes possible. Because of this, the joint commission has often functioned as a political stumbling block to the implementation of the autonomy law; in practice, a partnership largely dominated by the political priorities of the Spanish state.

(iii) The relationship between state and autonomy regarding the handling of each party's various areas of jurisdiction assumes different expressions depending on whether the need for coordination concerns internal conditions (within the Basque territory) or relates to the Basque territory's intra-state, cross-border (in some cases also international) conditions.

Internal coordination usually involves everyday cooperation of an administrative and operational nature, where the representative of the Spanish state ("governor") in the Basque Country in some cases has a coordinating role.[63] In areas under Spanish jurisdiction, cooperation between the state operators and relevant Basque authorities and bodies is ongoing, e.g., regarding international air traffic. As regards the Basque internal policy areas that fall fully within Basque jurisdiction, legislation and administration are as a rule relatively independent from corresponding Spanish legislation and government involvement.[64]

The coordination of the actions of the state and autonomy within external policy areas of wider national interest takes place through "theme conferences" where the state invites all autonomous regions to discuss the needs of coordination. With the exception of EU issues, where the autonomies have some competence of their own, this cooperation only applies to the "domestic" need for coordination within various sectors and policy areas. All other types of international cooperation are thus handled by the state without any cooperation with, or involvement of, the autonomies, including the Basque Country.

Conclusions

The development of the Basque autonomy has since the end of the last millennium been held back, and during the last decade stopped completely. A not insignificant part of the legislative areas which, according to the more than 40-year-old Statute of Autonomy, are Basque competence, have not been transferred to the autonomy. The main reason behind the weak development of home rule seems to be a combination of the way the Basque legal and political competences are defined and implemented and, above all, the absence of a trusting and well-functioning political

[63] *However, as a rule, the cooperation takes place more directly between the competent authorities.*
[64] *Basque legislation within its own areas of jurisdiction is also, as a rule, free from laws copied directly from the equivalent Spanish legislation.*

partnership between the state and the autonomy. The fact that the realisation of the Statute requires negotiation and agreement between the state and the autonomy, implies that the poor political partnership has essentially come to outflank the legal partnership.

The transfers of authorities (according to the 1979 Autonomy Statute) which in recent decades nevertheless have been implemented, are often dependent on the political instability in the Spanish Parliament which in turn enabled the Basque parliamentary members to obtain the necessary support for the transfers through "political horse-trading". The development of Basque autonomy can thus be characterised as a tug-of-war between two, in practice, fairly unequal parties. According to one of Europe's leading experts on regional autonomies, this has led to a blockage of Basque development, the main cause of which is not legal/technical problems "to which professors of constitutional law have an answer" but rather a "deeply political division on the nature of the [Spanish] state [and the Basque autonomy]" (Keating 2018, p. 3).

The Spanish Parliament passed a new law limiting, if not completely abolishing, the autonomy's room for manoeuvre in the EU cooperation.

The underlying causes of the Basque situation cannot be solely attributed to the region's different historical and political background from the rest of Spain – including the Spanish counter-reactions to ETA's (now ended) armed struggle. The conflict between the Spanish self-image as a well-coherent nation-state with an indivisible state territory, and the linguistic and cultural diversity of which Basque autonomy is an expression, also contributes to the blockage. One more complicating factor in this context is the internal contradictions in the Basque Parliament between the parties representing the Basque-speaking indigenous population and the parties which primarily draw votes from the Castilian-speaking (majority) population.

The cumulative effect of these strongly limiting factors on the scope of autonomy becomes especially clear with regard to the Basque Country's scope of action and visibility on the international stage. Spain closed the first Basque EU office in Brussels. The office could only be reopened after a long political process and a favourable decision for the Basques by the Spanish Constitutional Court. Despite this, as recently as 2016/2017, the Spanish Parliament passed a new law limiting, if not completely abolishing, the autonomy's room for manoeuvre in the EU cooperation.

The international activities of the Basque Country are a sensitive issue in Madrid. The Basques are strictly limited to business contacts and general information about the Basque Country. All forms of foreign activities must be reported to Madrid and may not in any way conflict with official Spanish policy. The Spanish state's control over the Basque Country's foreign activities has always been rigid but has become even more tangible in recent years, likely as a result of the political crisis in Catalonia. Nor does the Basque Country have any opportunity to – as do e.g., the Danish and British autonomies – become a member of some international body, such as WTO, IMO and the like.

6. Isle of Man: Comprehensive autonomy – growing international visibility

The Isle of Man (IoM) is a home-ruled British Crown Dependency in the Irish Sea between northern England and Northern Ireland. The island belonged to the Celtic part of the British Isles. The now almost extinct native language (Manx) is a variant of the Gaelic spoken in Ireland and Scotland. The IoM was invaded in the early 9th century by Norwegian Vikings and remained a Norwegian "skatland" (similar to the Faroe Islands) until the middle of the 13th century. At the end of the 10th century, the Vikings established a legislature on the island, Tynwald, which is considered the world's oldest continuously functioning parliament. The power over the island then alternated between Scotland and England until the beginning of the 15th century when the English crown established its supremacy over the island.

The IoM was never formally integrated into the Kingdom of England.

However, the IoM was never formally integrated into the Kingdom of England, nor is it part of today's United Kingdom (UK). The island was, and still is, subject to the British Crown (the King/Queen personally) but is otherwise formally outside the UK. The IoM is not part of the EU,[65] nor is it a member of the European Economic Community (EEA).[66]

Ever since Tynwald was founded, the IoM has in practice handled its internal affairs, albeit formally subordinated to one of the Norwegian, Scottish, or English/British Crowns. During the 18th century, the island's status as a British Crown Dependency was established; i.e. dependent on the Head of State/the Crown, but not the British parliament and government. During the 19th century, the predecessor of today's autonomy gradually emerged. Tynwald developed at the end of the 19th century into a democratically elected bicameral parliament (House of Keys/upper house; Legislative Council/lower house).[67]

The IoM is formally a country with a separate currency (Manx pound). The island has a currency union with the UK where the Manx pound is always at parity 1:1 with the British pound. Both currencies are legal tender on the IoM.[68]

Constitutional status and UK context

The legislation in the UK, including all UK autonomies, deviates from the Roman Civil Law tradition dominant in the rest of Europe. A Characteristic of the Roman legal tradition is that the ordinary legislation is based on some form of more fundamental law/constitution. However, this does not apply to the British Common Law tradition[69] where the development of legislation, somewhat simplified, is determined on the basis of previous judgments or other legal practice ("customary law").[70] States basing their legislation on this legal tradition often lack a written constitution, something that applies to the UK. As a result, the British autonomies usually lack anchoring in a constitutionally protected autonomy Law.[71] The legal position as a "Crown possession" combined with the British common law tradition thus means that the IoM has no written constitution, or – similar to many

[65] *However, by means of a protocol attached to the British Accession Treaty in 1972, the IoM is a de facto part of the EU's customs union. Brexit fundamentally changes the IoM's relationship with the EU. A preparatory group with representatives of the London government and the IoM with the task of coordinating the negotiations with the EU was appointed at the beginning of 2020.*

[66] *The IoM, on the other hand, is an active participant in the British Commonwealth of Nations.*

[67] *It can be noted that Tynwald was the first parliament in the world that opened up for women's suffrage in general elections (1881).*

[68] *The Manx pound is not generally valid within the UK.*

[69] *The British legal tradition goes back to William the Conqueror's amalgamation of the many regionally and locally varying, legal traditions in 11th-century England into a common legal system for the entire Norman kingdom, hence the name "Common Law".*

[70] *"Broadly speaking, a common law system is based on the concept of judicial precedent. Judges take an active role in shaping the law here, since the decisions a court makes are then used as a precedent for future cases. Whilst common law systems have laws that are created by legislators, it is up to judges to rely on precedents set by previous courts to interpret those laws and apply them to individual cases." (Cromwell 2019, p. 1)*

[71] *This does not fully apply to the British autonomies, which go under the designation "Overseas Territories". Gibraltar thus has an autonomy law (Autonomy Statute) which is perceived as a constitution. See also the Chapter on Gibraltar.*

other European autonomies – Autonomy Act/Statute. And, of course, there is therefore no statutory procedure for the amendment/revision of such a law (or constitution).

Tynwald's legislative power is formally delegated from the British Crown (not from the UK Parliament), and can thus in principle also be revoked. According to current conditions and legal traditions, this can only occur if the IoM Parliament in its legislation violates the hard-to-define rule of "good government", something that ultimately is the responsibility of the Crown. However, this has never happened, and in 2013, a committee within the UK Parliament stated in an overview of the development of political and legal relations between the UK and its Crown Dependencies that the political threshold for such intervention is very high and should so be.[72]

The Crown/Head of State (the Queen)[73] exercises its constitutional power over Tynwald through a special council (Privy Council) where the UK Government is represented. Within the London government, it is primarily the Ministry of Justice that is responsible for the British Crown's possessions, and the Minister of Justice is as a rule the government's representative in the Queen's "Privy Council". The Crown's representative in the IoM is one of the royally appointed (on the advice of the Privy Council) Royal Governors (Lieutenant Governor).[74] The Governor used to be an important person on the island but has mainly representative duties today.

The scope of autonomy

The IoM has exclusive legislative authority and the political, administrative and operational responsibility for all domestic affairs, including the judiciary (excluding constitutional issues), finance and taxation. The areas which the UK controls are foreign relations, defence, citizenship, succession and extradition. As already mentioned above, the Crown has the ultimate responsibility that the IoM in its legislation does not act in a way which contradicts "good government".

Tynwald does not have authority in matters of foreign policy and security. The IoM cannot, as a sovereign state, enter into international agreements without British participation. On the other hand, it is possible for the UK in specific cases to delegate the right to the IoM to enter into international agreements on its own, something that has also happened – not least in the area of taxation where the IoM currently holds its own agreements with 28 different countries. In practice, the IoM thus has a form of limited treaty competence of its own.

Representatives of the IoM Government are also often included in the working groups which prepare the UK's position in negotiations on international agreements. An international agreement signed by the UK does not apply to the IoM until it has been approved by Tynwald.[75] Regarding international organisations of importance to the IoM (e.g. the WTO), there are joint (bilateral) IoM/UK preparatory groups with the task of securing the IoM's interests.
There is today a long-term aspiration – accepted by the UK – to raise the IoM's profile and role within international cooperation. As part of this endeavour, an agreement was concluded between the IoM and the UK in 2007 which states that the UK is not permitted to act internationally on behalf of the IoM without prior consultations.[76] The agreement further states that the UK and the IoM may in some cases have opposing interests.[77]

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[72] *House of Commons (2013, p. 3). As has been stated above, the IoM is not subject to the London parliament, which therefore has nothing to do with the legislation in the IoM. However, the UK Parliament has the opportunity to submit more general political views on the relations between the UK and the various Crown Dependencies, of which the cited report is an example.*
[73] *The Queen, in the capacity as Head of State, is referred to in relation to the IoM as "Lord of Mann".*
[74] *In a formal sense, the Queen's representative is appointed without interference from Tynwald. The IoM does have good opportunities to (informally) submit its own proposals and views on the election of a governor.*
[75] *The procedure for this is described in two (undated) PMs from the UK Ministry of Justice: "How to Note on Dealing with Requests from the Crown Dependencies to Extend the UK's Ratification of International Instruments" and "How to Note on the Extension of International Instruments to the Crown Dependencies".*
[76] *The agreement, entitled "Framework for developing the international identity of the Isle of Man", was signed by the IoM's Chief Minister and the UK's Secretary of State in May 2007.*
[77] *A possible such conflict of interest could arise, for example, in the negotiations on the upcoming (2020) agreement with the EU after Brexit. In that case, it is unclear what would happen, but the political ambition would likely be to try to find a solution acceptable to both parties.*

The legal partnership

In a formal sense, all IoM laws must be signed by the Queen (royal assent) or the Governor (if this role has been delegated to him/her by the Queen) before they come into force. However, no systematic preview of the content of the laws occurs which, after the Queen's signature, immediately come into force. In modern times there has never been an IoM bill of law blocked by the Queen (in practice by the Privy Council).

UK legislation in the areas outside the autonomy's authority does not apply to the IoM unless first approved by Tynwald. However, the IoM can, if it so wishes, through an agreed procedure make a UK law also enter into force in the IoM.[78] Should the UK exceed its authority by introducing legislation in the IoM without the approval of Tynwald, it can be brought to recourse in the Supreme Court (Supreme Court/UK) – but even in this case, it is the Queen who formally has the final decision in his/her hand.

The IoM essentially manages its own legislation in all the areas over which it has full authority. This also applies – as previously mentioned – to the area of taxation, including indirect taxes and tariffs.[79] Because the free flow of trade between the UK and the IoM in practice requires harmonised VAT rates, in this case, coordination takes place where the level of UK VAT is prevailing. In other respects, the IoM legislation is not in any significant way shaped by, or adapted to, the corresponding UK laws. The highly divergent political and administrative conditions of the IoM limit the possibilities for copying British legislation.

The political partnership

The British Parliament has no role of its own in the interaction between the UK and the IoM. Principally, this also applies to the British Government. In a strictly formal sense, the partnership on the British side is limited to the Queen and her personal advisory body (Privy Council). In practice, however, the London government, which is also represented in the Queen's advisory body, is the IoM's most important external partner. The partnership applies partly to a comprehensive political cooperation regarding the long-term development of home rule and relations with the outside world (including the UK and the EU), and partly to an agreement-based, more operationally and administratively oriented, collaboration within the policy areas where this is beneficial for both parties.

As the prevailing UK policy is to refrain as far as possible from infringing on Tynwald legislation and the IoM's internal affairs, the political partnership's focus is on the IoM's need for support and assistance in developing its international presence, as well as monitoring its economic and contractual interests in the outside world. The cooperation mainly takes place in the form of mutual information and joint preparation groups for international negotiations, which affect important policy areas for the IoM. In addition, the British Government has in recent decades increasingly delegated the right to the IoM to, within relevant policy areas, negotiate and conclude its international agreements.[80]

[78] *The legal procedure for this appears in the Ministry of Justice's (undated) PM "How To Note: Extension of UK primary legislation to the Crown Dependencies".*
[79] *In the order of magnitude, approx. one percent of IoM's tax revenue and annual budget goes to the London government as compensation for UK services, mainly in foreign administration and defence.*
[80] *As an example, an agreement signed by the UK Government's Secretary of State in November 2009 can be cited, where the UK "hereby entrusts the Isle of Man Government to negotiate and conclude agreements" in the area of finance, economy and taxation with the following states: Ireland, Germany, Estonia, Belgium, France, Australia, New Zealand and Malta.*

Conclusions

The bilateral partnership between the UK and the IoM must, in the light of the above review, be regarded as good. An active and well-functioning collaboration exists at the political as well as at the administrative and operational levels. There is a will in London to support the development of home rule based on the IoM's wishes and needs, which is obvious from the above-cited report from the UK Parliament's Legal Committee.[81] The partnership between the British state and Tynwald also seems to be characterised by greater intimacy and political consensus than that which applies to the corresponding, a bit more distant, partnership between the Danish state and the (with regard to the degree of self-determination comparable) Faroe Islands.

The main focus in London is to help and support, rather than to control and limit.

The main focus in London is to help and support, rather than to control and limit – something that has resulted in an increasingly extensive legal and political autonomy for the Crown possession in the Irish Sea. Thus, the IoM today has a significantly higher degree of self-determination than it had 20-30 years ago. The British policy is characterised by two main ingredients: (i) non-interference in the autonomy's legislation and internal affairs, and (ii) support and assistance in securing the IoM's ambitions and economic interests in the international arena. The legal partnership and cooperation therefore becomes more limited and routine than the significantly more important political partnership. Several interacting factors and historical circumstances have promoted the British IoM policy, something which essentially also applies to the UK's other Crown Dependencies and Overseas Territories.

The first important factor behind today's generally problem-free relationship between London and Tynwald is the fact that the IoM was never an integrated part of England, historically, or the current UK. The island's historical background as a separate political entity from the English/British territory is often emphasised as a starting point for the partnership, which is also evident in a report from the UK Parliament's Legal Affairs Committee which confirms that the relationship with the IoM (and other Crown Dependencies) is based on and characterised by the island's "essential independence from the UK".[82] A second important background factor is the legal status of Manx autonomy combined with the tradition of British common law. The fact that the IoM is not subordinate to the UK Parliament (and the Government) but to the British Crown has most likely contributed to a British acceptance of greater legal and political scope for action than had been the case if the IoM had been more directly linked to the UK's state institutions. In addition, the British legal tradition's dependence on previously established legal conditions significantly complicates, if not blocks, all possible efforts by the UK to subsequently limit the IoM's legal and political room for action.

A third important ingredient in the good political climate of cooperation between the IoM and the UK is probably that the interests of both parties in the international arena have often tended to coincide. The IoM's development into a major, international financial centre within the sterling area has thus hardly been seen as a disadvantage in London, something indicated by the fact that the UK has so far (2020) blocked all attempts to include the IoM in the EU's list of so-called "tax havens".[83]

A further possible contribution to the well-functioning partnership could be the common language and the essentially common cultural background in general. This is of course difficult, to say almost impossible, to prove. But the fact that the British autonomies – with English as their (main) language – generally tend to have a closer and better political relationship with their "mother country" than European autonomies characterised by deviating language and culture, nevertheless indicates that such a relationship may exist.[84]

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[81] *See footnote 72 above.*
[82] *House of Commons Library (2019, p. 2).*
[83] *See Garside (2017).*
[84] *It can be noted here that the IoM, unlike many other similar European autonomies, lacks an active political independence movement. None of the parties in Tynwald have independence on their program. On the other hand, there is an extra-parliamentary grouping (Mec Vannin) which conducts opinion-forming activities in support of a future independent IoM.*

7. Gibraltar: Constitutional autonomy in a troublesome international border zone

Gibraltar is a so-called British Overseas Territory on the southern tip of the Iberian Peninsula. It was conquered by the British in 1704 and received formal British suzerainty under the Treaty of Utrecht in 1713. British sovereignty was confirmed in two more peace treaties during the 18th century.[85]

Spain has never fully accepted the status of Gibraltar as a British territory, something that in many ways has characterised – and continues to do so – Gibraltar's constitutional and political position. Spanish demands to regain Gibraltar have been overwhelmingly repudiated by the people of Gibraltar in two general referendums (1967 and 2002).[86] The population identifies themselves as British Gibraltarians and their language is English. No independence movement exists, and an overwhelming majority supports continued, full internal autonomy within the framework of the current connection to the UK.

The official British position regarding Gibraltar is that a transfer of statehood to Spain is not on the table as long as there is no support for this within the population of Gibraltar. On numerous occasions during the last few decades (most recently in connection with the Brexit negotiations), the British Government has confirmed that it will not accept any amendments to Gibraltar's legal status "without the agreement of the Government of Gibraltar and their people".[87]

Gibraltar is one of the many (14) small island territories which form the remnants of the former British Empire. The term "Overseas Territory" was introduced in the early 2000s, replacing the former designation "British Dependent Territory". Gibraltar is the only British Overseas Territory that, until Brexit, was a member of the EEC/EU.[88] According to the British accession agreement from 1972, Gibraltar was a "special membership territory". Gibraltar stood outside the EU's tax and customs territory and was not affected by the common agricultural policy.[89]

Since 1929, Gibraltar, unlike the UK, has had right-hand traffic. Gibraltar also issues its currency (Gibraltar Pound) which is pegged to the British pound in parity, 1:1.[90]

Constitutional status

Gibraltar, unlike the Isle of Man (IoM), is not a Crown Dependency with its roots in medieval English history, but a remnant of the dismantled British Empire – hence the designation Overseas Territory.[91] This means that Gibraltar's constitutional status and connection to the UK deviates to a certain degree from the IoM. Unlike the IoM, the most important political and administrative contacts do not go to the Ministry of Justice but to the Foreign and Commonwealth Office, which also is responsible for the Commonwealth contacts. However, in the same way as for the IoM, Gibraltar's home rule is subordinate to the Crown (the Queen as Head of State) but not to the British Parliament. The representative of the Crown in Gibraltar is a governor appointed by the Queen but

[85] *Sevilla 1729 and Paris 1783.*
[86] *The 2002 referendum was carried out as a result of negotiations between the UK and Spain leading to a proposal for shared Spanish-British sovereignty over Gibraltar. In the referendum, a whopping 99 % voted against the proposal, which is why the proposal for shared sovereignty was not implemented. The UK was not prepared to oppose such a large majority of the population of Gibraltar.*
[87] *The quote, which was also repeated in similar fashion at the UN in 2015, is taken from the House of Commons (2013).*
[88] *In 2016, Gibraltar voted together with the UK on its membership of the EU. In contrast to the result in the UK, a majority (96 %) of those eligible to vote in Gibraltar voted for an unchanged EU status.*
[89] *Gibraltar did not have its own representation in the European Parliament but was part of a constituency in the south of England.*
[90] *Gibraltar's currency is not generally tradable within the UK.*
[91] *Until the early 1980s, these remnants of British colonial rule were also accordingly referred to as "Crown Colonies".*

in practice appointed by the London government. Against the background of the British military presence in Gibraltar[92] and the underlying sovereignty conflict with Spain, the Governor has a significantly more important role to play than his/her colleague in the Isle of Man.[93]

The slightly deviating constitutional status in relation to the British Crown Dependencies is also shown in the fact that Gibraltar, despite being part of the British Common Law system, has its own written constitution. In the first Constitution from 1967, Gibraltar's status as a British territory with extensive internal political autonomy was established.[94] In the current constitution from 2006, Gibraltar's independent position and right to full internal self-determination is further highlighted, in practice a constitutionally secured post facto confirmation of the increasingly extensive home rule that Gibraltar developed under the 1967 Constitution.

The constitution was drawn up in close collaboration with the government and parliament of Gibraltar.

The current constitution came to fruition at the initiative of the UK Government in connection with updating its relationship with its various overseas territories. The constitution was drawn up in close collaboration with the government and parliament of Gibraltar. The final proposal for a new constitution went to a referendum in Gibraltar and was then sent (after approval in the referendum) for final approval to "the Crown" (i.e., in practice the UK Government). The UK Parliament in London had no formal role in the negotiation process, nor in the ratification of the final draft of the new constitution.

The scope of autonomy

Apart from the formal status as a British Overseas Territory, and the existence of its constitution, Gibraltar's legal and political autonomy is essentially the same in scope and focus as that of the Isle of Man. Gibraltar's parliament, consisting of 17 members, has full authority regarding all domestic matters. Furthermore, the autonomy includes all EU cooperation and EU regulations which concern Gibraltar's jurisdiction.[95] This also applies after the UK's EUexit.

The Crown's, i.e. the UK Government's (but not the UK Parliament's) responsibilities and authority are essentially limited to defence and security, foreign relations (excluding the above-mentioned exception for the EU) and – in the same way as all British autonomies – "good governance". In regard to foreign affairs, there is extensive collaboration between the government in London and Gibraltar, not least concerning the politically and constitutionally sensitive relationship with Spain. The partnership is well-developed and intimate.

The UK also supports Gibraltar when it comes to other international agreements affecting Gibraltar's political status and economy. International treaties entered into by the UK do not normally apply to Gibraltar, but may, at the request of Gibraltar, be extended to include the autonomous territory. In the area of finance and taxation, Gibraltar has its own agreements on cooperation and information exchange with a total of 79 different countries, including all EU member states.[96]

[92] *The military presence (officially "British Forces Gibraltar") is maintained by all three services; the army, navy and air force.*
[93] *The governor is formally the commander-in-chief for the British forces stationed in Gibraltar.*
[94] *The adoption of its own constitution, in which Gibraltar's right to self-determination was established, led Spain to close the border with Gibraltar in protest.*
[95] *Which is clear from the Gibraltar Constitution Section 47, subsection 2a, where the following is stipulated: "[…] matters which under this constitution are the responsibility of Ministers [of Gibraltar] shall not cease to be so even though they arise in the context of the European Union."*
[96] *As an example of Gibraltar's strong position regarding foreign affairs which affect its own territory, the Iranian ship which was forced into the port of Gibraltar a few years ago due to EU sanctions can be mentioned. Although one might think this was about foreign policy, it was within the autonomy's legal competence and political responsibility to monitor the ship and ensure that its crew were cared for and guarded during the time the ship was within Gibraltar's territory – not the UK's.*

The legal partnership

No amendments to Gibraltar's autonomy (the Constitution) can take place without the approval of its government and parliament. In order for a new version of the Constitution to enter into force, approval in a general referendum is also required, as stated above. The initiative for a changed/new constitution can come from the UK (Foreign Office) or the government/parliament in Gibraltar. In that case, bilateral negotiations must then take place until both parties agree on the content and the Constitution/Autonomy Act can be brought to a final decision in a referendum.

All laws adopted in Gibraltar must have "royal assent" before they enter into force. This is done by the Governor, in his/her capacity as the Queen's representative, when signing the laws. No more systematic constitutional review of Gibraltar's legislation takes place. However, if the governor deems the law problematic, he/she can send it for review to "Her Majesty", in practice the UK's Secretary of State. The only possible grounds for such a decision are that the Governor believes that the law in question is inconsistent with Gibraltar's constitution or that it is "in any way repugnant to good government". However, it has never happened in modern times that a Gibraltar law has been sent to London for such a review.

As mentioned above, the Governor is appointed by the Queen, in practice by the Foreign Office. Formally speaking, the government and parliament of Gibraltar have no say in the election of the Governor, but unofficial discussions in which Gibraltar participates always take place where the aim is to ensure that whoever is appointed can be accepted by Gibraltar. In the governor's official mission statement, it is also stated that the main task is to maintain good cooperation between the UK and the home rule as well as to "promote Gibraltar's interests".

Gibraltar's own legislation, which covers all of the domestic area (plus the EU issues, see above), was previously quite strongly influenced by corresponding UK legislation, which often became norm-setting. Gibraltar is part of the same common law tradition as the UK. In recent decades, however, Gibraltar's legislation has become increasingly independent in its content and design. It has distanced itself from the previous British precedents, and the legislation today is often more influenced by the EU, above all in the areas that (before Brexit) were affected by the Union's regulations.[97]

When it comes to the development of legislation within Gibraltar's own areas of competence, there is rather limited cooperation. With regard to the UK areas of jurisdiction, essentially only those relating to foreign policy and security, there is, on the other hand, a close and continuous cooperation, above all in relation to Spain.

The political partnership

The most important London connection for Gibraltar undoubtedly concerns the political, rather than the legal, partnership. In the same way as previously reported for the Isle of Man, the UK Government has a low profile regarding Gibraltar's internal affairs and legislation. Hence, under the current Constitution, not a single one of the laws adopted by the Gibraltar Parliament has been rejected by the British, i.e. refused ratification by the Governor/the Queen.

[97] *"Since the application of EU treaties in Gibraltar, and as Gibraltar's constitutional relationship with the UK has developed, laws enacted in Gibraltar are more influenced by EU legislation (in areas where EU law applies) or are more firmly based on policy decisions taken by the Gibraltar Government depending on local factors linked to the Gibraltar economy and factors which may be unique to Gibraltar as a jurisdiction." Quote taken from an email conversation (25/3 2020) with Daniel D'Amato, the head of Gibraltar's representative office in Brussels.*

The partnership between Gibraltar and the British Government is thus above all a question of securing Gibraltar's constitutional status and right to self-determination in relation to the recurring demands from Spain to regain the sovereignty over Gibraltar that was lost more than 300 years ago. The political interaction with the UK is well-functioning and generally problem-free, also regarding other international conditions which affect Gibraltar.

Despite the different results of the Brexit referendum,[98] the political partnership around the management of EU relations remains important and well-developed. Prior to the negotiations on the British withdrawal agreement, a joint ministerial council was appointed at the highest political level whose mission was to promote a smooth transitional solution and ensure that Gibraltar's special contractual needs and future relationship with the EU and Spain were taken into account.

Conclusions

Most of what has been said earlier in this report about the Isle of Man's legal and political partnership with the UK also applies to Gibraltar. In other words, self-determination is extensive and the relationship to, and cooperation with, the UK works well.

However, there is a slight difference compared to the IoM regarding the content of Gibraltar's partnership with the UK. In the case of the IoM, there is a quite active operational collaboration with UK authorities also within some of the autonomy's own areas of legal competence, which is less common in the case of Gibraltar. One of the reasons for this is Gibraltar's (before Brexit) significantly closer relationship with the EU (the IoM has never been part of the EU territory), something that has meant that EU legislation and EU regulations have become more important, even within significant parts of Gibraltar's own legislation and internal administration.

Self-determination is extensive and the relationship to, and cooperation with, the UK works well.

Another difference is the partnership's strong focus on the more comprehensive (geo-) political issues bearing on Gibraltar's long-term development and autonomous status. The reason is the background history and Gibraltar's sensitive political and geographical position in relation to Spain. This is also the main explanation why Gibraltar, unlike the IoM (same common law tradition notwithstanding), has had its own law of autonomy – a special form of Constitution – since the end of the 1960s. Gibraltar's two constitutions to date have filled a growing need to politically and legally undermine Spanish demands for "decolonisation" and reunification with Spain. This is also likely to be the background to the Constitution's clear distancing of Gibraltar from UK territory in combination with the constitutionally anchored marking of the right to autonomy and self-determination – also regarding the future state affiliation.

The negative Spanish reactions to the two constitutions to date (1967 and 2006) show how important they have been for marking Gibraltar's autonomous status and right to self-determination, but at the same time also for asserting the prevailing connection to the UK. It is therefore hardly surprising that Gibraltar does not perceive the UK as a limiting factor in the development of its autonomy, but rather as a support and guarantee for continued self-determination (and independence from Spain).

Gibraltar is not dependent on international financial services to the same extent as the IoM.[99] The London-based part of the international financial market therefore does not have the same

[98] *See footnote 88.*

[99] *Gibraltar's economy is mainly dependent on internet-based gambling, shipping and tax-free sales to visiting tourists. In a compilation of the financial off-shore centres that, through their legislation, contribute the most to the avoidance of state corporate taxes, Gibraltar is thus far down the list, where several other British autonomies (including the IoM) are among the top ten. At the top of the list, high above Gibraltar are, amongst others the UK (London), the Netherlands, Luxembourg and Switzerland. See Chapman (2019).*

positive interest in Gibraltar's autonomy as it has in the IoM (and some other British autonomies). To the extent that British special interests have contributed to UK support for the past decades' development and constitutional safeguarding of Gibraltar's home rule, this must thus be sought elsewhere – namely in the long-established British geopolitical and military interests in the eastern parts of the Atlantic and in the Mediterranean region. Here, the British state's need for a military and diplomatic presence in Gibraltar has often coincided with Gibraltar's need for support and political assurance in relation to Spanish claims of sovereignty. Against this background, the active London support for Gibraltar's home rule and right to self-determination is not surprising.

Finally, it can be noted that the strongly British-oriented and English-speaking majority population in Gibraltar, in the same way as for the Isle of Man and some other UK autonomies, most likely contributes to the good relations between the home-ruled territory and the metropolitan British state.

8. Flanders: Federal position of strength and far-reaching autonomy

The autonomous region/federal state of Flanders occupies almost half of today's Belgian territory. The language (Flemish/Dutch) is the same as in the neighbouring Netherlands. During the Middle Ages and onward until the 18th century (in competition with Northern Italy), Flanders assumed a leading role in Europe's economy, trade and cultural life. During the first decades of the 19th century, it was included as the southern part of the United Kingdom of the Netherlands. When the present-day state of Belgium was established (1830), Flanders at first refused to submit to the new rulers in Brussels, but after the intervention of the French military power, it accepted its new political status and has since been incorporated into the Kingdom of Belgium.[100]

In the new state of Belgium, the Flemish ended up in a politically subordinate position in relation to the French-speaking Walloons. In the Walloon part of the new state, the majority of the industrial and economic development took place, something which caused Flanders to fall behind in relation to the French-speaking part of Belgium. Most of the investments took place in Wallonia, which resulted in the large-scale migration of Flemish labour to the expanding Walloon industry.

Today, Flanders has regained its former place as one of Europe's most developed regions.

French became the official language of the new state and Flemish was banned in higher education. This led to a growing Flemish resistance and demands for reunification with the former northern parts of Flanders, i.e. the Netherlands. The protests and growing political unrest in the Flemish part of Belgium in the late 19th century forced an acceptance of Flemish as the first language in the region's schools and to be used in official contexts.[101]

In the decades after the Second World War, Belgium evolved from a unitary state with French as the main language (and Flemish as an official second language) in an ever more federal direction with growing cultural, political and economic autonomy for the country's various regions and (linguistic) communities. The three official languages are today French, Flemish and German. With the exception of bilingual Brussels (which is part of the territory of Flanders), the border between the two main languages, Flemish and French, essentially follows the border between the autonomous regions of Wallonia and Flanders. The autonomous German-speaking territory (just over 70,000 people) is located inside French-speaking Wallonia on the border with Luxembourg and Germany.

Today, Flanders has regained its former place as one of Europe's most developed regions. In terms of economy and population Flanders is the leading part of Belgium. In the order of 60-70 percent of the Belgian population is Flemish, and the export-oriented Flemish economy with an emphasis on high-tech products and services dominates the Belgian economy. During the last decades, Flemish, and thus also Belgian politics have undergone a significant change, where the parties advocating an independent Flanders have won increasingly greater voter support. Since the 2010 elections, the largest independence party (the centre-right party Nieuw-Vlaamse Alliantie, N-VA/ The New Alliance) is not only the dominant party in the Flemish Parliament, but also the largest party in Belgium. It also constitutes the largest party group in the Belgian representation in the European Parliament. The party's long-term goal is the establishment of an independent Flemish state. However, the combined support of the independence parties is still well below 50 percent of the Flemish electorate.[102]

[100] *Belgium's status as an independent state formation was confirmed in the Peace Treaty of London in 1839. In the same treaty, present-day Luxembourg (which had previously been part of Flanders) was separated from Belgium.*
[101] *However, it was as late as the 1930s before the first all-Flemish university opened, and first 1967 that the Belgian Constitution was officially translated into Flemish alongside the French-language version.*
[102] *Maddens (2016). See also Flanders (https://en.wikipedia.org/w/index.php?title=Flanders&oldid=961345901)*

The federal context

Belgium is a constitutional monarchy which, according to the current Constitution, is also a federal state formation. The political core of the federation is a bicameral parliament where the lower house (the House of Representatives) is elected in general elections[103] with constituencies based on language affiliation. The upper house (Senate) is appointed by the federal units, i.e. the autonomous regions and communities. Federal responsibility mainly concerns defence, foreign policy, monetary policy, the judiciary and the social security system. Internal security and citizenship are also federal jurisdictions.

With regard to foreign affairs (including the EU) and the social security system, competence is divided between the federal and the state/regional level. Also, with regard to the financial system and taxation, parts of the authority, in accordance with the constitutional state reforms of 2001 and 2011, have been transferred to the regional level.

Belgium was one of the original founders of the EU's predecessor, the European Coal and Steel Union, and today's EU headquarters are located in the Belgian capital, Brussels. None of Belgium's autonomous regions are outside the EU (such as the Faroe Islands and the Isle of Man) or have special exemptions from EU membership (such as Gibraltar). In constitutional and legal terms, Belgium is part of the Roman civil law tradition, more specifically of the French Code Napoléon vintage.

Belgium has a complicated constitutional and political structure, which reflects its development from the unitary state of the 19th century to today's federation – a federation which, according to some observers, has taken on an increasingly *con-federal* look in recent decades.[104] Formally speaking, Belgium only became a fully developed federation at the beginning of the 1990s. Since then, according to the current Constitution, Belgium is a federation consisting of regions and communities.[105]

The process towards an ever-more federal structure took off in earnest through two constitutional state reforms in the 1970s and 1980s, which in practice "regionalised" the political and administrative power based on language boundaries. During the 1970s, political organisations were also regionalised as the party system became increasingly linked to the various regions and language groups. After a further number of state reforms, today's structure of three self-governing economic regions (Flanders, Wallonia and Brussels) plus three cultural/linguistic communities (the Flemish, French and German language groups) has been, at least for the time being, established. With the exception of bilingual Brussels – with a distinctive autonomy arrangement of its own – the respective territories of the regions and language communities essentially coincide.

All six federal units (regions and communities) have extensive legislative powers. The autonomous communities' legislative areas primarily concern issues related to culture, language and education, while the regions' areas of competence primarily deal with the economy, infrastructure, business, technical and commercial development, trade and international collaboration.[106] The influence of the autonomous regions and linguistic communities at the federal level is significant. In addition to the fact that they appoint the majority of members of the upper house of the Federal Parliament, the regionally and linguistically strictly divided Belgian party system gives the self-governing units a decisive influence in the lower house of the parliament as well.[107]

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[103] *Unlike many European states, Belgium has compulsory electoral participation.*
[104] *The confederal features are expressed by the fact that the autonomous regions can effectively block decisions and legislation at the federal level. See Poirier (2015); Maddens (2016).*
[105] *"[Belgium is] a federal state composed of regions and communities." Quotation from the third article of the Belgian Constitution by Maddens (2016, p. 221).*
[106] *In recent decades, the rapid development of competences and transfers of federal competences to the autonomous regions and language communities have led to some ambiguities and overlapping competences between the two types of self-governing entities. The guiding principle in the distribution of authority has by Berhoumi (2016, p. 245) been formulated as that the regions' areas of competence deal with "matters linked to the soil", while the communities' powers apply to "matters linked to the person".*
[107] *Today, no nationwide, federal, parties exist in Belgium. In the federal parliament, there are only parties that have their territorial base in the autonomous regions (and language groups). The federal elections in Belgium are therefore in practice, first and foremost regional elections.*

The scope of autonomy

The Flemish autonomy is equivalent in scope and constitutional status to its Walloon (and German-speaking) counterpart. By bringing together the political and legislative leadership of the region and the language community in a single parliament with a common government, the Flemish autonomy has created a more prominent political position in the federation, most likely reinforced by the region's dominant economic and demographic position.

Flemish self-determination has grown in scope with each new constitutional overhaul since the 1990s – a total of seven, the most recent reform in 2014. The self-government includes in principle all policy areas which, according to the current Belgian Constitution (with the latest revision), are not federal jurisdiction. In principle, the authority of the autonomy includes all "internal affairs", including economy and employment, trade, business and agriculture, infrastructure and transport, finance and credit rules, as well as culture, education and research. The official language of Flanders is Flemish/Dutch, not French.

Flanders does not, however, have full tax authority in the same way as, for example, the Faroe Islands, the Basque Country and the British autonomies. Instead, there is a shared competence between the Federal Parliament and the Flemish legislatures.[108] In 2018, 58 percent of the autonomy's budget was financed by an income tax and VAT shared with the federal government, while the remaining 42 percent was financed by Flanders' own taxes and tariffs.[109]

Flanders has the right to representation in international bodies such as UNESCO, WHO,... .

Regarding cross-border cooperation and international agreements, Flanders has a form of limited treaty competence where it is possible to enter into agreements that concern its own areas of jurisdiction with foreign states. Flanders also has the right to representation in international bodies such as UNESCO, WHO, GATT/WTO and the like.[110] Within the EU's Council of Ministers, the concerned minister from the Flanders Government participates either individually or in combination with a minister from the federal government.[111]

The legal partnership

The legal partnership between Belgium's autonomous regions/communities and the federal level is mainly regulated by the current Constitution and a number of "special laws" where the division of powers set out in the Constitution is further concretised in various policy areas. Both the Constitution and the number of various special laws are federal competences, and must be presented and adopted by the Belgian Parliament. All amendments in the distribution of authority between the national and regional level thus require some form of constitutional reform and, if necessary, also revised special legislation.

A revision of the Belgian Constitution is a cumbersome political process, which requires both a two-thirds majority in the Federal Parliament and new elections. Even a revision of the special legislation/laws requires a cumbersome legal process, where a majority approval is required by the representa-

[108] *Belgium: Fiscal Powers. Overview of Fiscal Decentralisation (https://portal.cor.europa.eu/divisionpowers/Pages/Belgium-fiscal-Powers.aspx)*
[109] *Flemish Government (https://en.wikipedia.org/wiki/Flemish_Government#Budget)*
[110] *According to an agreement with the Federal Government, June 1994 ("Representation by the Kingdom of Belgium in International Organisations whose activities entail 'mixed competences'"), Flanders can represent the Kingdom of Belgium in 15 different international cooperation organizations, including the Council of Europe and several different UN bodies.*
[111] *The Belgian representation in the EU Council of Ministers is divided into six different categories depending on which policy area is decided upon. Regarding cases in category I, Belgium is represented by a federal minister: in categories II and III the minister of the Belgian Government is assisted by a minister of the Flemish Government, in categories IV, V and VI (which mainly cover the exclusive areas of competence of the autonomy), Belgium is represented only by the relevant Flemish minister. See Cooperation Agreement March 8, 1994: Representation of the Kingdom of Belgium in the European Council of Ministers (https://www.fdfa.be/en/representation-in-the-council-of-the-eu).*

tives of the various language groups in the upper and lower houses of the Federal Parliament. The political process required for a more comprehensive renewal of the autonomous regions' legal (and thus also political) room for manoeuvre is therefore, even by international standards, unusually demanding.

Often, but not always (cf. South Tyrol, Gibraltar), this type of constitutional dependence acts as a brake on the development of competences of the autonomies concerned. However, this does not apply in the Belgian case. The Constitution has thus undergone four different reforms since the start of the 1990s, where the authority at the regional level was broadened and deepened.[112] The background to the rapid constitutional development is the transformation of Belgium from a unitary state to a federation, in combination with Flanders' – compared to the other autonomies in this report – strong political position at the federal level.

The general rule that essentially decides the prerequisites for the legal interaction between Belgium's various political and administrative units is that the legislative competence of the regions is exclusive and constitutionally equated with the laws adopted by the Federal Parliament in Brussels. The federal legislators and authorities therefore cannot intervene in or "override" the legislation within Flanders' exclusive areas of competence – and vice versa.[113] As hierarchically equal laws, both federal and regional legislation undergo the same formal legal review. All Belgian laws, whether adopted by the Federal Parliament in Brussels or by one of the parliaments of the regional autonomies, must thus be reviewed by the country's highest administrative court (Raad van State/Council of State) with regard to the distribution of powers. The court's decision has a formal advisory role only, but in practice, it has great political weight.[114]

The fundamental principle of constitutional symmetry and exclusive competences implies that the Federal Parliament and its subordinate authorities are essentially excluded (with the exception of the above-mentioned law review) from the Flemish legislative process, as well as regarding the autonomy's internal administration and exercising of public authority in general.[115] However, the exclusive competences in many cases generate a need for cooperation across the "competence boundaries", which has led to a large number of cooperation agreements. This applies not only between the federal level and Flanders, but also between Flanders and the rest of Belgium's regions/communities. Even when it concerns the few areas with mixed federal and regional competence – mainly foreign relations and agreements, taxation and social insurance – the cooperation takes place in the form of binding agreements between the Belgian and the Flemish governments/parliaments.

The political partnership

The system of strongly emphasised material as well as territorial exclusivity between the legislation of the federal level, and of the autonomous regions/communities presupposes extensive political cooperation between the central federal state and the regions. The Belgian system can therefore be said to be characterised by a form of "cooperative federalism" where the cooperating political units are legally and politically equal partners.

The Belgian bicameral parliament is the most important arena for the overall political cooperation

[112] *During the 1970s and 1980s, three more constitutional reforms, or "state reforms" as they are called in Belgium, were carried out. See also State Reform in Belgium (https://en.wikipedia.org/w/index.php?title=State_reform_in_Belgium&oldid=953655138).*
[113] *The most recent Belgian state reform (2014) opened up the possibility for two or more regions/communities to agree on joint legislation in selected parts of their areas of competence, something which is not possible in relation to the federal legislation.*
[114] *The court's competence decision can be appealed by individual citizens as well as the political bodies concerned. The final and highest legal instance here is the Belgian Constitutional Court (Grondwettelijk Hof/Constitutional Court).*
[115] *Something that, paradoxically, does not apply in the same way to federal legislation and government power, where Flemish politicians and parties play an important role. Flemish parties thus occupied (2019) 67 of the seats in the federal lower house and 29 of the total 60 seats in the upper house. The largest Flemish party (N-VA) also featured in the Federal Government 2014-2018/2019. See Belgian Federal Parliament (https://en.wikipedia.org/w/index.php?title=Belgian_Federal_Parliament&oldid=958603345).*

between the various units of the federation, as well as the long-term development of the distribution of competences between them. As stated above, the Belgian parties are essentially representatives of the regional autonomies included in the federation, which is why the parliamentary situation is decisive to the development of the political partnership.

At the more operational level, the political cooperation between the Federal Government and the autonomous units is coordinated by a so-called Consultative Committee, which meets at regular intervals and draws up the guidelines for political cooperation between the federation's various political and administrative bodies. The committee also has several sub-committees and working groups linked to different subject and policy areas. The Consultative Committee is formally (as the name implies) advisory, but through its composition it has great political weight. The committee's chairman and convener is the Belgian Prime Minister. Of the other 12 committee members, five are members of the Belgian Government and seven are the prime ministers (i.e., first ministers) of the autonomous regions and language communities. The equality between the federal and regional levels is underlined by the composition of the committee, where a majority of members represent the regions (7 out of 13), but where the chairman is the first minister of the federation (the Belgian Prime Minister). The politically equal partnership is also marked by the fact that the committee's decisions require unanimity – in other words, the political units represented in the committee have veto rights.

Conclusions

The economically and demographically dominant position of Flanders, together with the highly decentralised Belgian federation, have given the Flemish self-government a – compared to the other territorial autonomies in this report – uniquely strong position in the national parliament. The other autonomies of the study play a significantly more subordinate (Basque) or completely marginal (Faroe Islands, South Tyrol) political role in, alternatively are completely absent from (Isle of Man, Gibraltar), the national parliaments. As stated above, this is also what has been, and continues to be, the dominant driving force behind the rapid development and deepening of Flemish autonomy.

Parallel to the development towards an increasingly decentralised federation and growing regional self-determination, there has also been a shift in the internal political agenda within Flanders. The leading Flemish party (N-VA, see above) has toned down its original objective of dissolving the Belgian federation and forming an independent Flanders.[116] After the deep political crisis in the years 2007 to 2011, when a dissolution of Belgium in all seriousness was discussed,[117] the party nowadays rather emphasises the need for the development of the Belgian federation into a confederation – that is, into a federal state where the constituent parts are politically sovereign and their mutual relations are regulated by a state treaty (rather than a constitution) which rests on a voluntary basis.[118]

Today, a majority of the Flemish electorate prefers continued development towards a looser Belgian state confederation rather than a dissolution of the federation and an independent Flanders.[119] At the same time, however, there are strong political currents in French-speaking Wallonia for the re-establishment of a clearer and more dynamic federal level. Many observers therefore perceive that the constitutionally complex and politically cumbersome Belgian state system is unsustainable in the long run, and that a new, more fundamental, constitutional reform is inevitable.[120]

[116] *Maddens (2016).*
[117] *Belgian political crisis 2007-2011 (https://en.wikipedia.org/w/index.php?title=2007%E2%80%932011_Belgian_political_crisis&oldid=954297148)*
[118] *The New Flemish Alliance (https://en.wikipedia.org/w/index.php?title=New_Flemish_Alliance&oldid=959823835)*
[119] *Flanders (https://en.wikipedia.org/w/index.php?title=Flanders&oldid=961345901)*
[120] *Maddens (2016,pp. 224-225).*

9. The overall picture

Common to the six territories examined in this report is that they have some form of political distinction within the sovereign states to which they belong. They constitute what usually are called self-governing areas or territorial autonomies. As stated above, however, their legal and political position, as well as the scope of their self-determination, varies considerably.

The origin of territorial autonomies

Despite the highly varying historical and political contexts, it is possible to trace certain frequently recurring historical, international and geopolitical background factors in the creation of the autonomies reviewed in this report – albeit to varying extent and strength. Four more prominent such background factors can be identified:

- Ethnicity/language deviating the from state-bearing majority
- Historically separate jurisdictions
- Geographical isolation, insular location
- Disputed international borders and/or nationality

The first of these – deviant ethnicity/language – is one of the most common underlying reasons for the political and legal arrangements that characterise the European autonomies. The linguistic factor is of central importance to four of the six autonomies studied, namely South Tyrol, the Basque Country, the Faroe Islands and Flanders. In all these cases, a language different from that of the majority population has been one of the most important driving forces behind the establishment of autonomy.

The second important factor behind several of the autonomies examined in this study is that they have a long history as separate jurisdictions with quasi-independent political status outside the core territory of their respective metropolitan states. This applies to the Faroe Islands, the Basque Country and the Isle of Man. Even Gibraltar, despite the fact that its colonial/military background deviates somewhat from the other home-ruled regions in the report, should be included in this group.

A language different from that of the majority population has been one of the most important driving forces behind the establishment of autonomy.

A third important background factor is the geographical isolation and/or insular location which often, but not always, characterises this type of regional autonomy. This factor is relevant for half of the autonomous territories in this report, namely the Faroe Islands, the Isle of Man and Gibraltar.

A fourth often-contributing factor to the establishment of some form of political autonomy is that the territory in question is affected by internationally disputed borders and/or is/has been the subject of conflicting territorial claims. Typical examples among the report's six autonomies are Gibraltar and South Tyrol, but also with regard to Flanders there is a history of problematic border demarcations and territorial claims.

As stated above, the majority of these four background factors are present, albeit to varying degrees and in differing combinations, in all of the European/Nordic autonomies examined in more detail here. Hence, a conclusion close at hand is that they constitute fundamental driving forces behind the establishment of the type of territorial autonomies that the report's case studies represent.

There are of course also a number of other circumstances and conditions which to varying degrees contribute to the establishment of different forms of regional home rule. Thus, politically established secessionist and/or irredentist movements have preceded the current autonomy arrangement in four of the six territories covered in this report (Faroe Islands, South Tyrol, the Basque Country and Flanders).

Factors influencing the development of autonomies

An important, and for the purpose of this report's most central, question is what lies behind the fact that the reviewed territories – despite their relatively similar autonomous status – vary so much with regard to their legal and political strengths. The question can be specified more specifically: What legal factors and political circumstances have tended to promote, or slow down/hinder, the long-term development of their respective home rule?

The metropolitan state's legal traditions and the autonomy's political position in relation to "its" state are obviously of great importance for self-government's developmental possibilities. But it is important to realise that there is no watertight barrier between the legal and the political conditions for autonomy development. As the constitutional position is based on political processes, and the legal interpretation of the scope of the autonomy is not always free from political considerations, it is often difficult to cut a clear distinction between the legal and political momentum behind the development of the autonomy. It is, however, possible to analyse the most important legal factors separately in order to highlight how the political conditions intervene with, and leave their mark on, the development of the home-ruled regions.

The importance of the legal structure

The six case studies in the report offer a useful basis for interesting reflections and conclusions regarding the impacts of the legal positions of these autonomies. The comparative analysis indicates that the following factors (in no particular order) in the legal systems of the studied autonomies have had great, albeit often different, significance for the scope and long-term development of their various forms of self-government:

- The constitutional provisions
- Rules for amendment of competence
- Legislative control
- The implementation of the current Autonomy Act
- Competence exclusivity versus mixed eligibilities
- The validity of the national legislation within the autonomy's territory
- EU relationship and international competence
- Financing and taxation
- Bilateral versus unilateral partnership

In the following, the effects of these factors on the development conditions of the reviewed autonomies are briefly summarized and discussed.

The constitutional provisions

A Constitution or Self-government Law (Autonomy Act) which is hierarchically superior to ordinary legislation is a crucial legal factor and thus also seen by several of the autonomies in this study as a safeguard against central government infringement into the autonomies of legal and political competence.

This applies not least to South Tyrol and Flanders. On the other hand, a similar constitutional arrangement has not provided the same degree of security for the Basque Country. The absence of this form of constitutional protection for the British and Danish autonomies has not hindered their rapid development either. In other words, the constitutional anchoring, while not unimportant, is not necessarily decisive, for the autonomies' room for action and long-term development.

The rules for a revision of the current Autonomy Act

A more fundamental amendment in the distribution of legal competence through expansion/limitation of self-government usually requires a revision of the current Autonomy Act (or equivalent laws). The Isle of Man is a special case as it lacks an Autonomy Act. Instead, the British crown (not the parliament) could theoretically withdraw all or parts of the island's legislative rights, something which has never happened in modern times. Otherwise, the island's autonomy is (with a few exceptions) free from central government involvement. Here, the absence of an Autonomy Act has not hindered the development of self-determination.

Flanders has undergone a series of major updates to its political authority and legal competences in recent decades.

In all the other reviewed cases, some kind of political and legal process is assumed, the result of which requires the approval of both parties (the autonomy and the state), and in some cases also a referendum (Basque Country, Gibraltar). This implies that an update of the autonomy's areas of competence often tends to be so politically complex that law revisions are very few (Faroe Islands, Gibraltar), or, alternatively, that the originally introduced autonomy law still applies in all essentials (Basque Country, South Tyrol). The exception is Flanders, which, despite the complicated federal process that a law revision requires, has undergone a series of major updates to its political authority and legal competences in recent decades.

In other words, the regulations for a revision/update of the laws, which determine the home rule's areas of competence, greatly influence its long-term development. The experiences of the reviewed autonomies do not, however, give any clear indication of the more concrete effects of this influence. Some of them have undergone a positive development of their home rule despite extensive and politically difficult demands for a more thorough revision of the Autonomy Act. This has been made possible by a gradual expansion of the jurisdiction, sometimes more far-reaching than what is stipulated in the current Autonomy Act or Constitution – which has led to retrospective revisions (Faroe Islands, Gibraltar, South Tyrol), alternatively a large number of frequently recurring revisions of the Act (Flanders).

However, the case of the Basque Country shows that the same type of complexity in the regulatory framework of the revision of the Autonomy Act can also act as an obstacle to a necessary update of the region's home rule.

Legislative control

A constitutionally required prior control (by Constitutional Court, Supreme Court or equivalent) of the laws adopted by the parliaments of the autonomies, does not apply to the majority of the autonomies examined. However, formal ratification by the head of state is required prior to the UK autonomies' legislation coming into force, but this is more of a routine formality than a fundamental constitutional control.

Regarding the Faroe Islands, South Tyrol and the Basque Country, there is no prior review of the laws adopted by their parliaments. The federative features of the Belgian state mean that Flanders deviates in this respect. Here, in regard to the state/federal level and to Flemish legislation, a constitutional preview is required, something which does not seem to have had any more noticeable limiting effects on the development of the Flemish autonomy.

As a rule, however, some form of retrospective review of the autonomies' legislation is possible, but only after a competent party reports dissatisfaction with the law in question. Such a retrospective review can result in the law being invalidated. However, the consequences of this ex-post possibility vary widely. For the British and Danish autonomies, it is mostly to be regarded as a theoretical possibility, which in practice is never (or very rarely) used. Regarding South Tyrol, this is something that occurs, albeit quite rarely, and then with varying results. The Basque Country, on the other hand, stands out with a situation where notifications and subsequent law reviews are not only commonplace, but also often lead to rejected autonomy laws and obstructed autonomy development.

Implementation of the Autonomy Act

The rules for how the Autonomy Act will be implemented also play a role in the prerequisites for the long-term development of the autonomies. The main rule is that the responsibility lies with the respective autonomy, whose parliament, without the interference of the metropolitan state, takes the initiative and passes the laws it wishes within the framework of its competence.

Regarding South Tyrol and the Basque Country, a commission appointed jointly by the self-governing region and the state determines the framework for the legislation which (according to the current Self-Government Act) belongs to the autonomy. However, as we have seen above, a similar setup with a two-party commission has led to completely different prerequisites for the implementation of the Basque Country's respective South Tyrolean home rule.

Hence, also in this case, the conclusion is that the rules for the political realisation of the Autonomy Act are important, but that the same (or similar) legal conditions can nevertheless lead to completely different development conditions for the autonomies concerned.

Exclusivity versus mixed legislative powers

Another factor in the legal setting affecting the development of self-government is the degree of exclusivity between the various legislative and policy areas of the autonomous region and the central state. Regarding several of the reviewed autonomies, the legislative competence is clearly divided and exclusive. Principally, no overlap between the two legislative powers is permitted. The boundaries between the respective parties' areas of legislation are designed so that overlaps and

interpretation disputes are avoided – or at least minimized. This applies not least to Flanders, with an extremely strict division between the federal and the regional areas of competence.

The British and Danish models provide greater scope for a flexible development of the respective autonomy's legislation.

As a rule, the Danish and British autonomies also presuppose a clear exclusivity of competence. However, this does not fully apply to external (international) issues where there are often overlapping interests and competencies, and therefore also, various forms of bilateral cooperation between the autonomy and the state. South Tyrol and the Basque Country deviate with their more complicated allocation of competence and legislation implementations.

The general picture is that the British and Danish models provide greater scope for a flexible development of the respective autonomy's legislation. The complex mix of different forms of competencies in the Italian and Spanish models is more restrictive. However, the picture is not clear cut. Despite similarly complicated competence arrangements, the development in South Tyrol differs positively from the situation in the Basque Country.

Validity of national legislation within the autonomy's territory

An issue related to the distribution of legislative powers is the use and validity of state legislation in policy areas where the autonomy is not the competent lawmaker.

Here, there is a clear dividing line between the Danish and British autonomies and Flanders on the one hand, and South Tyrol and the Basque Country on the other. Regarding the Faroe Islands, the Isle of Man and Gibraltar, the Danish and UK state legislation in areas outside the jurisdiction of the autonomy will not apply in their territory without approval/ratification by the parliament of the autonomy. No corresponding prior approval of national legislation in Flanders, the Basque Country and South Tyrol is needed. The national state's legislation immediately enters into force within the territory of these autonomies. The positive effect of this arrangement on the development of the aforementioned three autonomies compared to the last three can hardly be overrated.

EU relationship and international competence and visibility

Three of the reviewed autonomies are parts of the European Union (Basque Country, South Tyrol and Flanders). Gibraltar – which left the EU through Brexit[121] – was also part of the Union, however with significant exceptions, including taxation and agricultural products. The Faroe Islands and the Isle of Man are outside the Union having their own agreements with the EU in policy areas important to them.

The autonomies which are part of the Union have varying degrees of authority within the EU cooperation. Gibraltar had full discretion over all EU matters relevant to them. This applied regardless of whether they belonged to the areas of Gibraltar's competence or not – something that has not been changed by the UK withdrawal from the Union. The other three EU member autonomies have considerably more limited authority in EU matters. Flanders, however, has a stronger position and a higher degree of EU participation than South Tyrol and the Basque Country.

121 In practice, however, only after a one-year transition period 2020.

The autonomies' scope for action in EU matters is of course largely governed by their membership status, but this is not a complete explanation for their observable differences in their room for manoeuver. As stated above, the Basque Country and South Tyrol have much less autonomy in EU matters than Flanders, despite all three having the same EU membership status. During its EU membership period (albeit with significant exceptions), Gibraltar managed its own EU relations largely independently of the UK.

An important factor behind an autonomy's EU position is probably its general authority in the international arena. It is thus hardly a coincidence that among this report's EU members, it is Gibraltar, with its extensive international competence, which has had the greatest leeway in relation to the EU. The three autonomies that stand outside the EU, and essentially function as independent negotiating partners in relation to the Union, are not surprisingly the ones that also otherwise have the greatest room for manoeuver and visibility in the international arena.

Funding and taxation

Full control over one's own income and finances is considered, by all the reviewed autonomies, to be of great importance for their scope of action and long-term development. With the exception of South Tyrol, financial control is secured through varying degrees of taxation rights. The Italian autonomy lacks its own taxation rights, but instead receives approximately 90 percent of the taxes borne by the central state from the region. The Danish and British autonomies in this report have full taxation rights (including indirect taxes), which also applies to the Basque Country. Regarding Flanders, there is a statutory division of the tax authority. Approximately 40 percent of the autonomy's financing is covered by its own taxation and the rest is covered by transfers from federal tax revenues.

The control over taxation is not only about securing public financing of the autonomies' expenses. In that case, the type of transfer system that South Tyrol has would be sufficient. Taxation rights also allow for an autonomous fiscal policy (within limits set by international and other tax treaties) with the aim of promoting the home-ruled region's competitiveness and economic development – something that has been used to varying degrees by all the tax-authorized autonomies in this report.[122]

A side effect of the autonomous tax jurisdiction is that it also tends to create increased scope for action (and thus also visibility) at the international level, something which is made particularly clear by the British and Danish autonomies' extensive bilateral treaty activities within the fiscal area. The taxation rights constitute therefore an important ingredient in the extensive autonomy and international presence which some of the study's autonomies possess.

Bilateral versus asymmetric partnership

The partnership between state and autonomy regulated in Customary Law, Constitution or an Autonomy Act/Law is of crucial importance for the scope and development of self-government. In fact, it affects in different ways and to varying degrees the long-term "autonomy outcome" for several of the other legal arrangements discussed above.

For the British and Danish autonomies, the relationship with the state power is seen as a bilateral interaction between two independent parties who may very well have conflicting political posi-

[122] *Even the Faroe Islands, which are otherwise part of the Nordic "high tax zone", have used their independent tax status from Denmark for economic policy purposes. So have they e.g., established a fiscally advantageous international ship register (FAS, Faroe Island National & International Ship Register).*

tions and negotiation goals. The partnership is therefore contractual and often has the character of international cooperation. This also applies to South Tyrol and Flanders, where the state/federation and the autonomous region are seen as independent players whose cooperation is assumed to take place on equal terms. An important difference when compared with the Faroe Islands and the UK autonomies is, however, that the partnership is perceived as internal ("intra-state"), and that consensus and joint solutions therefore are assumed – if not achieved by the two parties – by decision of the country's Constitutional Court. South Tyrol, however, through its weak international authority, has a more limited bilateral state partnership than Flanders and the above-mentioned Danish and British autonomies.

South Tyrol has a more limited bilateral state partnership than Flanders and the Danish and British autonomies.

The Spanish-Basque partnership in international issues deviates from the other autonomies examined in this report. Here, too, the partnership is basically bilateral. However, as shown in the chapter on the Basque Country, the relationship is essentially dominated by the Spanish state. And, like South Tyrol, the Autonomy Act does not enable an autonomous Basque participation in the international arena.

A conclusion close at hand is thus that legal status as an autonomous political player creates better conditions for successful autonomy development than an arrangement where the autonomy's discretion within the partnership is more restricted. An Autonomy Act which severely limits, or even makes a presence in the international arena impossible, tends to reinforce an otherwise asymmetrical partnership between state and autonomy.

The political partnership – a decisive factor

The importance of politics for the outcome of the process which leads to the original establishment of a territorial autonomy is a generally accepted fact. The type of constitutional anchoring, the extent of the regional authority and home rule, is governed by political negotiations and decisions. Moreover, the geo-political context is often a decisive factor behind the establishment of a regional autonomy, as well as the strength of the territory's internal political mobilization.

What is, however, less obvious, and perhaps therefore less understood, is the fact that these types of *political background conditions* to such a high degree *affect the long-term outcome of a given autonomy arrangement*. This is something that emerges with great clarity in the comparative autonomy analyses above. In practice, the outcome (in terms of actual self-governance and room for manoeuver) of all the legal background factors discussed above has been strongly influenced, in many cases practically decided, by the political process between the autonomy and the state.

As a particularly telling example, it can be mentioned that even such a basic legal factor as the constitutional status of home rule does not seem to be decisive for the actual development of the autonomies. The three territories with the weakest constitutional protection (Faroe Islands, Isle of Man and Gibraltar) are thus the ones that in practice have been granted the greatest legal and political freedom of action.

Conclusion

The autonomies examined in this report represent – albeit in different ways and with different background histories – the special territorial solutions needed when the unitary state model is unable to handle a region whose population is "too divergent" from the state's majority population.

The prerequisites for the long-term development of these kinds of political and territorial arrangements, generally called territorial autonomies or self-governing regions, are essentially determined by their legal status in combination with their political interaction with their respective metropolitan states.

The overall conclusion based on the experiences of the self-governing territories reviewed in this report is that *the political factor often tends to overshadow the legal one when it relates to the more fundamental prerequisites for the autonomy's freedom of action and long-term development*. This does not mean, however, that the constitutional position and legal arrangements are unimportant, but rather that their consequences for the development of autonomy depend on the reciprocity and quality of the political partnership between the autonomy and the state.

If the political interaction is characterized by an open and trusting dialogue between the two parties, the legal issues are rarely an obstacle to a positive development of regional self-determination. Even a comparatively weak legal position can be used as a flexible tool to strengthen and develop home rule. If the political partnership, on the other hand, is negative and conflict-ridden, the legal arrangements are often used by the dominant partner (in practice, the state) to slow down, in some cases even block, the autonomy's development.

Expert participation, supporting documentation and references

Expert Interviews

Semi-structured interviews (telephone interviews prepared with written questions, and supplementary follow-up questions) with constitutional and political experts on the autonomies covered in the report. Written compilation of the interview responses reviewed and approved by the interviewees. The interviews took place during the period February-May 2020.

Elisabeth Bonne
Official administrator in legal and constitutional matters at the Flemish government.

Daniel D'Amato
Government adviser and head of Gibraltar's representation in Brussels (Gibraltar House).

Bárður Larsen
University lecturer at the University of the Faroe Islands. Specialized in state law matters.

Marc Röggla
Researcher and director of the Centre for Autonomy Experience at the Institute for Minority Rights at the European Academy (EURAC), Bozen/Bolzano.

Marta Marin Sanchez
The head of the Basque delegation in Brussels.

Herluf Sigvaldsson
International director and chief negotiator at the Faroese Ministry of Fisheries.

Hans Andrias Sølvará
History professor at the University of the Faroe Islands. Specialized in the development and history of the Faroese self-government movement.

Jamie Trinidad
Director of Studies in Law, Wolfson College. Fellow of the Lauterpacht Centre for International Law. Expert on Gibraltar's (and the Isle of Man's) legal and political position in relation to the UK and the EU.

Michael Vercnocke
The head of the Isle of Man representative office in Brussels

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