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Governing decentralised States during the Covid-19 pandemic: challenges of intergovernmental coordination and cooperation in Chile, Italy, and the Netherlands

Szmulewicz Ramírez, E.

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Introduction

1. Research problem: the Covid-19 pandemic and the territorial organization of the State

Crises are “stress tests” for democracy’s health and the stability of institutions. Sometimes institutions collapse or undergo severe traumas under the emergency shock, whether it takes the form of a significant natural disaster, a national security crisis, or the international dissemination of a new and devastating virus. The COVID-19 pandemic, in this sense, represented a challenge for comparative constitutional studies, because countries were subjected to the virus and its effects on individual life and social life, as well as in public health and the general solidity of public institutions. It was a common and at least initially exogenous shock and a stress test to democracy and the rule of law worldwide. However, States did not respond to the pandemic in the same vein. Some governments adopted stricter measures, including declaring states of constitutional exception or states of emergency, which meant severely curtailing civil and political liberties, while others decreed only limited restrictions and focalized measures. More importantly for this research, some States adopted coordinated and nuanced policies, while others privileged subnational autonomy and decentralisation.

There are many important factors in explaining the pathways adopted by different States to manage the crisis. Now that the dust of the Covid-19 pandemic has settled¹, it seems that once again the survival of democracies from crises has been secured. This gives democracy stability and confidence, but at the same time presents a possible trap, since society can start forgetting about the critical moments and start believing in a certain “end of history” or inevitable result, which could ultimately lead to a crisis that proves too big to escape (Runciman 2015 318-26). It seems that the history of democracy, as the COVID-19 pandemic and the government’s response show, is full of small advances followed by profound, poly, and even so-called permanent or perma crises. Yet it is precisely the capacity to learn from its mistakes that situates democracy as superior to any alternative: it can own up to its mistakes and change course when required, as many countries did during the prolonged pandemic. Hence, it is critical to learn the right lessons to continue the never-ending process of renewing and strengthening constitutional democracy. This research advances that objective by examining the relationship between different levels of government during the management of the COVID-19 pandemic in selected jurisdictions.

More specifically, while many observers focused on the horizontal distribution of power, with or without a formal declaration of a state of constitutional exception or state of emergency (Bar-Siman-Tov 2020), initial reports also pointed to decentralisation and federalism as a significant institutional feature of the way countries dealt with the emergency (Coglianese 2020; Palermo 2020). In other words, the territorial distribution of power, particularly the type and level of decentralisation in the country, seemed to have influenced the way the State mobilized

¹ According to the World Health Organization (WHO), the Covid-19 pandemic officially ended on 5 May 2023 (WHO 2023). By that time, many States have already lifted the human rights restrictions and emergency regimes that were prevalent during the pandemic.

resources, coordinated (or not) efforts between different government levels, and the impact on the organization of the health system, among other key factors.

In this context, the central research question can be stated as follows:

In the context of decentralized States, how has the COVID-19 pandemic impacted intergovernmental relations and its effective and legitimate management?

Naturally, this guiding question can be divided into several sub-questions, which can be summarily stated as follows.

- a) Does the current state of the theoretical framework regarding decentralization and the territorial organization of the government and public administration yield insights into how to organize a country?
- b) In terms of public law, what are the main principles in order to adequately govern a crisis?
- c) If the previous question is defined fundamentally by the democratic principle, on the one hand, and the principle of an effective government on the other, how to craft a balance between democratic inclusiveness, both regarding individuals as well as organizations, and government effectiveness?
- d) Additionally, regarding how to organize the political system in terms of the relationships between the different government levels, how were decentralized political systems able to coordinate/cooperate with their diverse government tiers, and to what extent did intergovernmental coordination and cooperation undermine local and regional autonomy?
- e) How were tensions between central and subnational governments managed during these circumstances?
- f) In light of these developments, are centralized crisis management structures better for addressing the crises?

In order to properly address these questions, it is important to clarify the scope of the research project and certain crucial concepts. First of all, for the purpose of this research, it is understood that a certain institutional design, particularly the territorial structure or organization of the State, aims at balancing two distinctive but equally crucial values: effectiveness and democratic legitimacy. Effectiveness can be conceptualized as the institutional design capacity, at least in theory, to achieve certain goals or outcomes. What those outcomes are is contested, but typically, regarding the territorial structuring of the State, they encompass economic development, social well-being, and polity and policy stability (De Vries 2000). For instance, in the case of the COVID-19 pandemic a large portion of the research has been focused on the effectiveness of the responses in terms of public health and epidemiological indicators (Cameron 2022, 262), but naturally there were other public sector concerns, such as the performance of the economy, the delivery of education and other key public services, the state of social security and welfare benefits, among many others. Additionally, there is the question of measurement of those outcomes and how to connect them to the institutional design, for which there are mixed results in the literature regarding decentralization and effectiveness,

although recent empirical studies have demonstrated a clear relationship between local autonomy and well-being (Ladner et al. 2019).

In turn, democratic legitimacy in the realm of the territorial structure of the State can be conceptualized as both increasing citizen participation by bringing government closer to the citizens, and also enhancing opportunities for accountability, because it provides easier access to information about local authorities (Treisman 2007, 12). Furthermore, the literature distinguishes two sources of legitimacy: input and output legitimacy. Input legitimacy consists of participation and consensus or government *by* the people, while output-orientated legitimization derives from the government's capacity to solve problems requiring collective action, or government *for* the people (Scharpf 1999, 6-21). In turn, the contemporary scholarship also considers a third dimension, labelled *throughput* legitimacy, which is dependent upon the quality of the policymaking processes, the black box of governance that absorbs the input and generates the output, where accountability, transparency and inclusiveness are critical (Schmidt 2020, 31-5)². This latter dimension will be the main concern of the research.

The centrality of these goals relates to a richer understanding of constitutionalism, not only encompassing the limits, the checks and balances but also approaching a certain “positive” understanding of the State. In other words, an understanding of constitutionalism that recognizes the crucial role of the State in advancing the well-being of the people (Barber 2018, 6-19). If so understood, effectiveness and legitimacy can be mutually reinforcing. To put it simply, legitimacy, understood as widespread consent, is essential for the effective function of the state and can provide a “reservoir of support” for institutions and authorities, particularly valuable during crises (Tyler 2006, 280-1).

The thesis starts with the hypothesis that COVID-19 affected intergovernmental relations and intergovernmental coordination in the three cases, challenging the effective and legitimate management of the emergency. Moreover, the thesis will test the assumption that certain factors and conditions are critical in order to adequately fulfil the competing public law principles of effectiveness and democratic legitimacy in the context of governing decentralized States during crises.

The methodological approach to confront the research questions and the hypothesis is to examine the territorial structuring and the law-in-action of the institutional design in three jurisdictions, that is Chile, Italy, and the Netherlands. These countries were critically affected by the COVID-19 pandemic, have somehow different types and levels of decentralization, and organized their territorial dynamics and relations differently, with somewhat different performances. The in-depth and comparative analysis of these three cases reveals the centrality of the vertical structuring of the State.

Before moving to the theoretical framework, a brief overview of the initial dilemmas faced by the three countries can be useful to contextualize the research problems that motivated this

² A similar methodology, in a relatively similar policy context, was introduced by Gendzwil and Lackowska (2018) in their analysis of inter-municipal entities from the prism of the three concepts of legitimacy.

project. First, in Chile's initial responses to the pandemic, there was great miscoordination between the President of the Republic and some local administrations. For instance, by March 17th, when only a very limited number of COVID-19 cases had been reported, several Mayors in Santiago, Chile's capital, decreed a local state of sanitary emergency, on a very dubious and vague legal basis. The proliferation of these unorganized and dispersed measures, and the increase in cases, led the President of the Republic to declare a state of constitutional exception on March 18th and also to challenge the local governments' measures, which were later declared unlawful on the basis of their contradiction with the coordination principle. In Italy, on the other hand, at the beginning of the pandemic, there was also significant confusion among national, regional, and local authorities. For instance, on March 8th the President of the Council of Ministers issued a decree, requiring the lockdown of the Lombardy region (and 14 provinces from other regions). Yet a draft version was published before the actual issuing of the decree, by one of Italy's most prestigious newspapers, leading to thousands of people leaving Milan, thus contributing to the spreading of the virus to the rest of the country. It needs to be stressed that Italy and Spain were the first countries to experience uncontrolled transmission of the virus in Europe, which posed tremendous challenges for the health sector³. Given that scenario of lack of coordination with regional authorities, on March 9th a new central government decree extended the lockdown to the entire Italian territory and imposed nationally homogeneous measures. Later on, decentralized measures on policies such as more or less lockdowns as well as school closures were adopted considering the regional death ratio and its relation to the national one (Buthe et al. 2020), while the administration of the vaccines displayed significant centralization even recurring to the armed forces in some instances. Finally, in The Netherlands, during the peak of the pandemic, the central government applied the exceptional institutional framework provided by the Safety Regions Act. The country's response was organized around 25 Safety Regions, which coordinated their actions and also with the central government, through the working of the Safety Council. Even though many observers questioned the constitutionality of the restrictions imposed by the emergency regulations enacted by the Safety Regions and the high degree of uncertainty that derives from a regulatory blend of soft and hard law, there were few open conflicts between national and subnational authorities.

Overall, the main objective of this research is to draw general conclusions for understanding crisis management in multilevel governance systems, by analysing the relations between central and subnational governments during the Covid-19 crisis. It distinguishes dynamics of conflict or competition, and dynamics of coordination or cooperation, as well as more hierarchical relationships. It aspires to contribute to the ongoing debate about which level of government should be given particular competences, and what are the relationships between the different levels, particularly during crises (Böckenförde 2011, Barber 2018). Once again, it aims to address the questions of what public law can learn from the pandemic, and to understand whether the institutional design was helping/enabling for an appropriate management of the pandemic.

³ It is believed that former United States President, Franklin D. Roosevelt, pronounced the following sentence, which helps reflect on the disadvantages of being "the first" on certain cases: "I think we consider too much the luck of the early bird and not enough the bad luck of the early worm."

For this purpose, the introduction first provides a brief overview of the state of the art regarding theories of decentralization and the territorial organization of the government and public administration, including the advantages and disadvantages of decentralization. This overview assists in terms of identifying spaces for further research development in order to articulate the theoretical framework that has orientated this research, which will be articulated later. Finally, the introduction highlights the main methodological considerations of this research.

2. Overview of theories about decentralization and the territorial organization of the State

2.1. Federalism, federations, and unitary States

First of all, a good starting point is to distinguish between federal States and unitary States, and to address the actual validity of this distinction when dealing with complex problems in modern societies. It has been argued that federalism or a federal political system refers to a broader idea of multiple centres of government across the territory of the State, each of which has certain organizational and jurisdictional autonomy (Halberstam 2012, 580). In turn, paraphrasing Watts (2008), a federation represents a particular species within the genus of federal political systems, in which neither the federal nor the constituent units are constitutionally subordinate to the other, being therefore empowered to deal directly with its citizens in the exercise of legislative, executive, and taxing powers by their own authorities.

Scholars nowadays tend to assume the distinction between a descriptive definition, unitary, federal, or regional State, and a more normative ideal of federalism, whereby two or more entities are part of a larger union, while at the same time enjoying autonomy (Elazar 1987, 5). In descriptive terms, federalism is characterized by the constitutional definition of the relationship and responsibilities of central and regional governments (Elazar, 1987: 34). Therefore, a confederation, a federal State and the so-called regional States can be considered as manifestations of the federalism principle (Palermo and Kössler, 2017, 35-64), yet there are important public law differences between federations and decentralized States.

Similarly, following Lijphart's classification, countries can be federal or unitary, according to structural and institutional characteristics, and centralised or decentralised, following more political variables (Lijphart 2012, 177-180). In other words, the language of federalism is about divided or shared sovereignty, with each tier of government having autonomy on some policy arenas as well as constitutional guarantees of their respective autonomy (Riker 1964). From a public law point of view, federal states guarantee lower levels of government a relatively higher level of autonomy than unitary states, particularly to the middle or meso level, which derives from the very origin of the State (coming together federalism).

On the other hand, a distinction has been made between dual forms of federalism, in which there are clearly defined areas of separate and autonomous competences for each level (national and subnational), and "cooperative federalism", which consists of a culture of multilevel bargaining and consensus-building (Börzel 2001) and "power sharing" between the centre and

the periphery⁴. Cooperative federalism has even received explicit constitutional recognition, for instance in Chapter 3 of the South African Constitution and articles 44 to 49 of the Swiss Constitution (particularly after the 2004 constitutional reform), and it is considered an unwritten principle of constitutional law in Austria and Germany⁵. In turn, the traditional conception of dual federalism originated on the original text and application of the United States Constitution, which during the second half of the 20th century gave way to a complex web of relationships between different levels of government, including not only states but also local governments. This movement prompted the emergence of the term intergovernmental relations in the US context (Sbragia 2006, 242-50).

Hence, both cooperative federalism and intergovernmental relations can be applied to non-federal States and have been connected to a more effective management of emergencies (Vese 2020; Moorkamp, Torenvlied, and Kramer 2020). Those power-sharing institutions tend to create a sense of routinized conversations between partners, be that government levels or interest groups, which provides long-term stability (Lijphart 2008). The Dutch political system has a long-established tradition of “coordination through consultation” (Andeweg et al. 2020, 244-5), being labelled sometimes as “sociological federalism” (Lijphart 2012). But these power sharing institutions can generate inefficiencies in terms of the allocations of resources and are time-consuming, requiring high levels of intergovernmental coordination. In other words, the hypothesis is that consensus democracy leads to effective policy-making if supported by adequate mechanisms and institutions of coordination.

2.2. Centralisation and decentralisation

As opposed to discussions about the territorial organization of the government and public administration, centralisation and decentralization can be seen as functional categories that can be measured and categorized in political, administrative, and fiscal, regarding the transfer of power, competences, or resources, respectively, from the centre to peripheral units (Bartole 2012; Triesman 2007; Ruano and Profiroi 2017; Lago 2021)⁶. These distinctions are often times dependent on language. For instance, in French *décentralization* is reserved to political decentralization, particularly to the local government, whereas *déconcentration* is what is normally referred to in English language as administrative decentralization, as when a ministry delegates the performance of some national service to an autonomous agency (Pollitt 2007, 376). In other words, deconcentrated entities follow the idea of a top-down reorganization of decision-making where representatives of the central administration appointed by it hold implementing powers delegated by the central public officials presiding over a certain position or service; whereas decentralized bodies constitute a separate legal personality allowing the

⁴ Later on, in the formulation of the hypothesis, the concept of “cooperative decentralization”, borrowing from Toonen and Steen (2007), will be introduced.

⁵ It is also connected with the idea of “framework legislation” where the national legislature creates the principles that are later detailed by the subnational entities, like in Spain or Italy (Venice Commission 1997, 41).

⁶ Administrative decentralization is also sometimes referred to as “policy” decentralization (Rodden 2004). Also, a more detailed elaboration of these three categories of decentralization and their implications for the general process of further transfer of power and competences to territorial entities, can be found in Falletti 2005.

local and/or regional level to govern/administer by themselves (Çiner 2018, 693-4). This distinction will be helpful when reflecting on the cases, especially in the case of Chile⁷.

These categories are mostly connected to the “self-rule” dimension of the vertical distribution of power, yet it is important to also consider the representation and participation of substate units at the national level, which Elazar (1987) termed as “shared rule”. Indeed, contemporary measures of centralization/decentralization try capture both elements. Prominent is the “regional authority index” (RAI) developed by Hooghe, Marks and Schakel (2010), although the classification and measurement are still contested by the literature (Mueller 2014). Still, incorporating shared rule as a central idea of the dynamic concept of decentralization is relevant to this research, since normally associated with intergovernmental relations have a close proximity to the idea of “shared rule”. Local governments might play an important in executing or administering national policies, which provides them with impact on national government policy making, as well as making the central government somehow dependent on local institutions in order to effectively implement policies (Toonen 2010, 36). Consequently, to understand the impact of decentralization or centralization in the dynamic relationships between government levels, it is critical to consider not only the authority of the individual governments (self-rule) but also the organization of interactions in order to address common problems (shared rule) (Guderjan 2023, 18).

In terms of the European Charter of Local Self-Government, decentralization is both a requirement of democracy as well as a condition of effective and good administration. Decentralization is connected with the principle of subsidiarity, according to which public services should be located at the lowest government level and as close as possible to the citizens, provided this can be done in an effective and efficient manner. Hence, political decentralization is connected to the values of revalidation of local cultures, the importance of local communities, civic engagement and devolving greater decision-making powers to local and/or regional entities (Loughlin 2007).

Decentralization is a more dynamic concept than federal systems or federations, because it encompasses different forms of authority shifting and different waves of advances and retrenchment according to several variables, while also allowing for significant variation in the relationship between central and subnational governments (Schakel 2021).

In turn, a subnational government is any form of government which is other than the national (or federal) government within the political system, in a territorially defined area, including regions, states, provinces, or local governments (Selvakkumaran 1998: 194). Hence, the subnational government is the political or administrative institutions with powers, competences and certain financial resources derived from the national legal framework, be it the constitution or the law, over a defined territorial jurisdiction, hence encompassing a reconfiguration of the State (Pasquier 2021).

⁷ Interestingly, Russo (2012) had already noted the centralizing effects of crises on the territorial organization of the State, regarding the effects of the 2008/09 economic crisis.

In addition, further devolution of power and competences to subnational governments can give rise to the so-called “decentralization paradox”: as tasks are transferred from the central to local/regional governments, managing complex coordination becomes a critical issue, hence demanding sophisticated skills at the centre, which in turn calls for a more effective and sometimes even bigger central government (Saito 2017, 488)⁸. Similarly, economic development, economies of scale, and a political weakness of subnational governments has led to an encroaching on the supposedly autonomous tasks of the decentralized authorities, a process that might be coined as “automatic” centralization (Thoening 2006, 286-8). In fact, the prolonged crisis mode of the Covid-19 pandemic, centralization included, can be mentioned as a case in point of this process. Consequently, some authors claim, therefore, that decentralization needs to be a deliberative process, whereby the society needs to organize a periodic review of the blueprint for the distribution of powers, competence, and resources, like France has undergone in recent decades, or the Netherlands, in order to avoid the sort of automatic centralization that is fueled by need to have quick and effective solutions to complex societal problems (Voermans 2023).

2.3. Advantages and disadvantages of decentralization

Concerning the advantages of a territorial distribution of powers, and resources, on at the level of constitutional law principles decentralization is connected with the idea of territorial subsidiarity: what can be done by local or regional governments should be left to them (Barber 2017; Voermans 2023⁹). Additionally, because citizens can be more directly involved in decision making, which is a benefit in itself from the point of view of grassroots democracy, there is a better chance that they will support those decisions, while at the same time spreading power vertically as to create checks and balance to the excessive concentration of power at the centre (Diamond 1999; Voermans 2023, 690-1)¹⁰. By application of the subsidiarity principle, conditioned by the institutional demands of democracy, decentralization creates multiple sites of democratically controlled power, yet in order to maximize the possibilities of achieving better results the institutional design also needs to encourage compromises between government levels (Barber 2018, 184-5, 187-218). Community engagement and the revalidation of “the local” area seen as connected to “political” decentralization, as opposed to attempts at administrative decentralization more focused on efficiency and administrative gains (Loughlin 2007, 393).

Hence, not only does democratic constitutional theory advance decentralisation, but also from the point of view of public administration decentralization is said to speed decision making,

⁸ This is somehow similar to the contradictory requirements of centralization of accountability in order to achieve effectiveness and decentralization of decision making to frontline managers of a crisis organization, which further emphasizes the need for coordination particularly through communication, trust and sustained interactions over time (Resodihardjo et al. 2018, 169-70), as will be explained in section 2.3.

⁹ Author’s own translations from the original Dutch version of the book.

¹⁰ Kelsen himself highlighted the importance of decentralization and local autonomy because the municipality would correspond to a “local, decentralised self-government”, with competence to issue general local norms within the framework established by the national legislature, and with a significant degree of historical legitimacy, due to its democratic origin even prior to the democratisation of the State (Kelsen 1983, pp. 231).

increase efficiency, and that pluriform structures are better than uniform structures because contingencies and contexts vary, encouraging local innovation (Pollitt 2007, 377-8), an argument that logically can be connected to managing crises and emergencies. This is also understood as the functional logic explaining the trend towards decentralization, since decentralized governments are seen as more effective and efficient in providing certain public goods than centralized government, considering inter-jurisdictional spillovers (externalities) and economies of scale and territorial heterogeneity of preferences across jurisdictions in providing public goods (Schakel 2021). Moreover, authors have highlighted that decentralized system are preferable, since they are more efficient at dealing with complex and uncertain information (Scott 1987, 151-3). Yet widening opportunities for citizens participation in local decision-making while at the same time improving public services delivery and responsiveness to the people are not always simultaneously achieved (Saito 2011, 486-90).

Subnational governments better grasp relevant local facts and help to manage risk (Halberstam 2012), potentially diminishing corruption, and enhancing efficiency and improving public service delivery (Hendriks and Tops 1999), leading to more effective, better informed and more legitimate and accountable governance institutions, all of which will be particularly useful in the midst of a crisis¹¹. Decentralisation may also increase public policy innovation, by the diversity of policy solutions and the learning processes between territories: decentralised structures may have advantages for solving difficult problems since they empower several subunits to search for policy solutions in parallel, and to share and coordinate the information discovered (Kollman, Miller and Page 2000; Vampa 2020). This latter process is normally referred to as “laboratory federalism” (Oates 1999), which leads to policy experimentalism particularly when uncertainty is high, and in the medium run can lead to policy learning (Sabel and Zeitlin 2012). Also, decentralization can promote administrative efficiency, stimulate administrative creativity, foster local competition for attracting various target groups, and socialize politicians and bureaucrats by being closer to citizens (Triesman 2007). In a version of this argument, decentralization and particularly local autonomy can lead to better results in terms of well-being indicators (Ladner et al. 2019).

On the other hand, theories critical of decentralisation point to the potential for duplicities and excessive bureaucracy at the public sector and the advantages of centralisation, such as economies of scales, large room for professionalism and public sector capital, among others (Prud’homme 1995). It will be easier for the central government to pull together greater volumes of resources and expertise (economy of scale argument), than if resources were disseminated and fragmented across different authorities throughout the country. Another line of criticisms relates to the proliferation of veto points, particularly in the case of federalism, and the limits and constrains this pose to democratic decision making at the national level (Stepan 1999). Segmented and localized decision-making processes could render both strategy formulation and coordination of implementation difficult to achieve (Pollitt 2007, 379), resulting on either a patchwork of different, inconsistent policies, or in less efficient and more

¹¹ For an overview of the literature on the positive relationship between decentralization and good governance, understood as upholding the rule of law, fiscal responsibility, and control of corruption, see Ruano and Profirioiu 2017, 480.

slowly adopted policies (Scharpf 1988). From a constitutional law standpoint, it can also create unequal treatments of citizens, companies, or institutions between different State units, sometimes with little justification.

2.3. Crisis management and public institutions

After introducing an overview of the core concepts of this research, when studying theories of the State and decentralization in the context of managing crises, it is important to recognize the need to balance out competing values in a society in order to assess a certain institutional design and the role of public institutions in crisis management. In public administration research, this has been framed in the context of the debate between “enabling” and “defining” institutions, or a combination of both. Defining institutions as somehow “enabling” means that they are understood as an integrated system of rules that structures social interactions, therefore causing certain dispositions for particular behavior (Hodgson 2006). On the other hand, understanding institutions as “defining” implies that these are the rules that “define” the way the game is played (North 1990). For the purpose of this research, it is understood that institutions mold behavior, but that interactions and relationships are shaped by political culture and path dependence, as will be shown by the empirical results of the project in the three cases under scrutiny.

On the contrary, thinking institutionally, says Hugh Heclo, means more than knowing the rules of the game: it means respecting the constitutional principles of the rule of law and a responsible administration, which includes the past traditions as well as reflecting on the overall constitutional scheme (Heclo 2006). Therefore, it implies incorporating the ideas of separation of powers, legitimacy, accountability, and control of administrative decisions (Lynn 2009, 810). Yet as the cases in this research show, the realities of intergovernmental relations often have shown a discrepancy between the actual governance of the Covid-19 pandemic and the constitutional design of political life (Rhodes 2000).

It needs to be remembered that part of the classical literature on crisis and crisis management disregarded or downplayed the role of the State in crisis management (Quarantelli 1978). However, more recent studies have highlighted the essential role that the governmental dimension plays, and particularly intergovernmental relations (Rosenthal, 't Hart, and Kouzmin 1991). At the same time, this line of thought still emphasizes the centrality of strong central level authorities, even in the context of official frameworks that highlight the role of local government (Rosenthal and Kouzmin 1997, 287-8). Still, this research will focus not on the literature on crisis management and crisis governance, but on the relationships between the territorial architecture of the State and the relationship between the different government levels in shaping an effective and democratic response to the crisis.

Therefore, coordination is crucial because of the several types of asymmetries that can emerge between and among levels of governments. In fact, during an emergency like a pandemic, three types of asymmetries are particularly relevant: information asymmetries, because central government must safeguard overall planning and cohesion; administrative asymmetries,

because of the solution to a certain problem transcends the strict boundaries of governments (event nationally as in the case of the Covid-19 pandemic); and policy asymmetries, because of the potential contradiction of the policies that would be implemented by distinct governments (Ruano and Profiroiu 2017, 481-2).

3. The Covid-19 pandemic and the territorial structure of the State

After the overview of the central concepts of this research, the introduction moves now to present a summary of the relevant literature concerning the COVID-19 pandemic from the point of view of the debates surrounding decentralization, the territorial organization of the government and public administration, and intergovernmental relations, as previously presented. Before that, it has to be remembered that an important avenue of research has been produced in comparative projects regarding how parliamentary institutions managed the crisis and the role of the legislatures during the Covid-19 pandemic (Bar-Siman-Tov 2020; Cormacain 2020; Cormacain and Bar-Siman-Tov 2020; Waismel-Manor et al. 2022). In the same vein, significant comparative scholarship has assessed issues of horizontal and vertical distribution of power, but not necessarily focusing on the territorial organization and functioning of the State (Ginsburg and Versteeg 2020; Bonavero Institute of Human Rights 2020; Golia et al. 2021).

More specifically, an important amount of research has focused on the Covid-19 pandemic in federal countries (Chattopadhyay et al. 2022; Molinari and Beylier 2022; Steytler 2022). In turn, research devoted to compare both federal and non-federal countries have also been abundant (Bergström et al. 2022; Nader and Fuchs 2021; Greer et al. 2021), while studies of decentralized non-federal states have been scarcer (Askim and Bergström 2022; Jüptner and Klimovský 2022). On the other hand, studies of both federal and non-federal countries with important degrees of decentralization, have highlighted the emergence of informal coordination mechanisms during the Covid-19 pandemic. These not only lacked the necessary democratic legitimacy and accountability that formal mechanisms might provide, but also were instrumental to significant misalignment between national politics and certain subnational governments (Nader, Fuchs, and Méndez 2021). In turn, these new forms of horizontal cooperation among subnational governments have been a permanent feature of the pandemic experience, resounding practices already observed during the aftermath of the 2007-2008 economic crisis (de Mello 2021) and reducing transaction costs in sharing resources and knowledge (Malandrino and Capano 2022).

Moreover, despite the tradition of strong central governments as well as weak intergovernmental relations in Latin America, countries in that region managed to organize subnational-local cooperation as well as horizontal collaboration between subnational governments as well as municipal associations, particularly in Colombia, Brazil, Mexico, and Chile (Ramírez, Grin, Sanabria-Pulido, Cravacuore and Orellana 2020).

From these comparative observations, studies have shown that the lack of a coordinating institution between different levels of government, comprised by directly elected authorities, can lead to political conflicts that are not channeled institutionally, but rather through informal

or extra-institutional channels, or to problems of coordination of public policies, and even to an excessive “judicialization” of political grievances at the constitutional or apex courts (Lecours et al. 2021). On the contrary, on studies that focused on countries where those institutions, arrangements and practices have existed for some time, they have proven crucial for effective vertical coordination of the pandemic responses (Schnabel and Hegele 2021).

This is particularly problematic in the Latin American context, where the lack of a political consensus culture, coupled with the personalistic incentives of presidential systems, and highly unequal societies, tend to move the political system away from cooperation towards a rather clientelist mode (Moscovich 2015). In fact, Dutch society and administrative structure is much less hierarchical and much more egalitarian (Zwaan 2017, 246-7) than Italian and Chilean societies and administrative structures (Rolla 2004; Ruiz-Tagle 2021). In the Netherlands case, this translated into a comparatively more dialogic multilevel practice during the pandemic, in spite of an administrative structure, particularly at the central government, that was often times pressing towards a more centralistic approach.

The experience during the Covid-19 pandemic in Spain and Italy, the two regional states with the longest history, precisely highlights the need for institutionalized multilevel coordination bodies (Saunders 2021, p. 387-9). Chapter 2 of this research analyzes the comparative evidence supporting this claim, exemplifying with States that did manage to coordinate territorially, like Germany (Farber 2021), and Switzerland (Belser 2021), but also Australia to a certain extent, as opposed to others that could not arranged their intergovernmental relations adequately. In this latter category, the more common examples are Mexico, Brazil, the United States of America, and Nigeria (Chattopadhyay, Knüpling, Chebenova, Whittington, and Gonzalez 2021).

Additionally, some studies have focused on the role of local governments in intergovernmental relations (henceforth, IGR), as well as IGR in formally non-federal countries (Bergström, Kuhlmann, Laffin and Wayenberg 2022), including less documented cases in studies of intergovernmental relations, such as France and the Netherlands. Overall, the existing research has reinforced the disagreements regarding whether centralized or decentralized systems are more effective and legitimate in managing crises, while at the same time unequivocally emphasizing that weak intergovernmental relations, especially in the context of a regional or territorial chamber at the national legislative level that is not fit for purpose, is a crucial concern (Alber et al. 2021, 30). This confirms the expectation that a comparative assessment of the three selected jurisdictions, with different degrees and types of decentralization, as well as different patterns of intergovernmental relations before and during the management of the Covid-19 pandemic can contribute to the ongoing debates about the territorial structure of the State, the relationships between government levels, and the proper balance between effectiveness and legitimacy in the context of a crisis management governance.

4. Theoretical framework: intergovernmental relations in decentralized States

4.1. Network governance and intergovernmental relations

From the above-mentioned state-of-the-art about decentralization and the territorial organization of the government and public administration, applied to the study of the Covid-19 pandemic, the theoretical framework of this research has been developed. First, it needs to be recognized that intergovernmental relations (IGR) represent a topical issue of contemporary constitutionalism, given the increasing number of functions performed by governments, the abundance of networks at almost all policy areas, and the requirements of coordination and cooperation of public sector actions.

Hence, networks are important since contemporary government is not about working in isolation, but also concerns attracting private parties and civil society. In the literature, governance networks are normally defined as “public policy-making, implementation and policy delivery through a web of relationships between autonomous yet interdependent government, businesses, and civil society actors” (Klijn and Koppenjan 2014, 11). The growing recourse to networks for governing complexities has stressed the limits of central command and control (Scharpf 1978), with strong ties to horizontal decentralization by way of relationships based on specialization and cooperation (Kickert, Klijn, and Koppenjan 1997). One of the features of governance networks is institutional complexity, including different government levels each having different institutional backgrounds (Klijn and Koppenjan 2014, 13). Although this research focuses on the dynamics of government levels, it cannot be forgotten that much of the management of the Covid-19 crisis was conducted through interactions between public institutions, civil society, and private parties (Mavrot and Malandrino 2022).

Network governance presents benefits in terms of effectiveness and efficiency, but also poses challenges in terms of democratic legitimation and accountability (Klijn and Koppenjan 2014, 207-39). It might be hard to say which is the competent authority, making the organizational chart of institutions very difficult to apprehend for citizens. Yet at the same time, network governance in the field of intergovernmental relations has not entirely replaced traditional forms of interactions, like hierarchy or financial relations, but these emerging activities and practices must be incorporated on the way the theory understands IGR, making it more complex, overlapped, and intricate (Agranoff 2010, 72-81). Also, network theory emphasizes the cluster of different actors, public, private, and civil society, that create governance around a certain issue by way of repeated interactions. Given the public law in action nature of this research as well as the type of measures adopted during the Covid-19 crisis, particularly during the year 2020, the literature on network theory is only of secondary orientation for addressing the questions under scrutiny. Still, it must be recognized that patterns of regularized interactions contributed to structuring the responses to the crisis, hence mimicking a sort of policy network in many countries (Mavrot and Malandrino 2022, 97). In fact, the Dutch Safety Regions have been considered as a formal and permanent emergency network (Resodihardjo, Van Genugten, and Ruiter 2018), even though the interplay between private and public actors is not the focus of this research.

4.2. Intergovernmental relations in decentralized States

Having established the connections between network governance and intergovernmental relations, the introduction moves now to discuss intergovernmental relations in the context of formally non-federal States, or decentralized States as will be understood through this research. First of all, the study of intergovernmental relations concerns institutions, processes and instruments that organize the interactions between government levels, activating the constitutional design. In fact, what is common practice in decentralized States is some form of joint decision-making because of the influence of local and regional governments in deciding and implementing public policies (Saito 2011, 491).

Poirier, Saunders, and Kincaid (2015) define IGR as the interaction between orders of government, connecting it to a “dimension of the practice of federalism”, including cooperative institutions and processes (e.g., consultation, co-decision, and coordination) as well as more conflictual processes of tension, collusion, competition, control, and even coercion. Another way to conceptualize IGR is to consider it as “the wide range of institutional and procedural mechanisms that coordinate the work of the levels of government in federal systems and should therefore prevent conflicts” (Palermo 2021).

Moving beyond federalism studies, this research formulates that in any system of decentralized public power one needs to distinguish between the formal distribution of powers (intergovernmental constitution), the organizational relationships and linkages between government units (intergovernmental relations), and the problem-solving activities and procedures (intergovernmental management) (Toonen 2010, pp. 34-46)¹². Also, intergovernmental relations in the European Union nowadays extends to much more than traditional central-local relations, to incorporate the “meso” level in each State, as well as the European Union itself¹³.

Because of the fact that IGR is mostly conducted by governments, rather than legislatures or courts, authors have coined the term “executive federalism” to describe processes of intergovernmental negotiation that are dominated by the executives of the different governments (Watts 1989). Even though most of the research on IGR has been focused on fully federal countries, understanding IGR in contemporary constitutionalism requires to incorporate formally non-federal countries into the picture. Moreover, in States where a functional distribution of powers is prevalent, meaning that the central government retains the power to legislate in nearly all policies and subnational governments assume an implementing role of those policies with limited legislative functions, which will be the case of the Netherlands, permanent relations between government levels need to be carefully designed. On the other hand, where legislative power is divided among sectors, as it is to some degree the case in Italy and particularly regarding special regions, the same level of government that elaborates the legislation is responsible for its implementation. In Chile, on the other hand, the central

¹² A similar approach has been recently introduced by Guderjan (2023) in his interesting study of the United Kingdom intergovernmental relations.

¹³ While other regional or international bodies might influence national decision-making processes, no other regional or supranational organization has achieved the level of integration and influence that the European Union exerts over its member States (Toonen 2010).

government retains not only legislative powers in all policies, but also significant executive power, which is reflected in the low levels of both regional authority, reflected in the regional authority index, and local autonomy, reflected in the local autonomy index (Szmulewicz 2023). These three distinctive modalities of power distribution between government levels have had significant influence on the dynamics of intergovernmental relations in the management the Covid-19 crisis.

Examples of that growing body of literature on intergovernmental relations in non-federal States include the cases of Italy (Ceccherini 2021), the United Kingdom (McEwen, Kenny, Sheldon, and Brown Swan 2018; Anderson 2022), Colombia (Covilla and Sanabria-Pulido 2021), France (du Boys, Bertolucci, and Fouchet 2022). This research contributes to that scholarship not only by introducing less documented States, as it is particularly the case of Chile in comparative public law studies¹⁴, but especially by observing and analyzing common patterns among the three selected cases, as well as differences between them. One advantage of incorporating these countries is to emphasize the “in-flux” nature of intergovernmental relations and to consider its influence on the overall architecture and functioning of the State.

4.3. Challenges of IGR to public law principles

In terms of the challenges that intergovernmental relations presents to public law principles, a first aspect is that accountability can be hindered by shared or concurrent powers. At the same time, given that the governance structure of intergovernmental relations depends largely on the executives of the respective government levels, it only aspires to a form of indirect democratic legitimation and generally it operates in the absence of representative and deliberative bodies that could check and balance the IGR structure. Thus, this creates distortions in the chains of accountability both with regards to subnational representative institutions (local or regional councils, parliaments or assemblies), as well as to citizens themselves (Fossum and Laycock 2021, 72-4).

From a comprehensive perspective, intergovernmental relations can deepen constitutionalism, insofar as they offer a way of distributing and limiting power, provided they deepen the responsibility and accountability of democratic institutions. In order to actually achieve that, IGR needs to provide adequate channels of coordination and cooperation between the different government levels, in order to ensure the intervention of the general interest and the common good, above particularisms (Saunders 2020, p. 347-8).

In other words, multilevel democracy is about the management of interdependencies, particularly aiming to reconcile the principle of autonomy of self-governed constituent units and of accountability of the authorities to the electorate or parliaments in which decisions are made (Benz 2021, 11-19). A well-known and fruitful elaboration is to distinguish tightly coupled systems, more decoupled political system, and loosely coupled systems, depending on the intensity of the linkages between the units and subunits of the system. In the context of

¹⁴ A notable exception to this little mention to decentralization in comparative constitutional scholarship on Chile, is Lovera 2022.

loosely coupled IGR a variety of linkages between the government subunits allows for mutual influence and adjustment of policies, through voluntary intergovernmental agreements, or institutionalizing committees or intergovernmental councils, and interactions between parliaments (Benz 2021; Sonnicksen 2022). That same flexibility and adaptability can be a crucial asset in times of crisis: given the difficulties for harmonizing competing interests and tensions, and for overcoming uncertainty and complex government structures, flexibility and adaptability including hybrid arrangements combining hierarchy and networks, and intergovernmental relations based on cooperation, can be a way to better manage the situation (Christensen, Lægreid, and Rykkja 2016).

Within studies of IGR, and particularly when connecting them with formally non-federal countries, a major issue that has emerged is the critical role played by civil servants and bureaucrats, who are often involved in informal practices of intergovernmental management, therefore subjected to criticisms for lacking sufficient channels for accountability and democratic legitimacy (Unikowski 2018). Another line of criticism is connected to the relatively technocratic nature of IGR, which for some authors renders them incompatible with democracy (Smiley 1979) and gives room for political leadership and personality traits to be an important intervening variable shaping the concrete form the relations will take (Hueglin and Fenna 2015). At the same time, regular interactions between civil servants can help sustain trust across government and focus on problem-solving activities rather than political debates (Behnke 2019).

On the other hand, executive IGR might weaken the accountability of governments to their respective legislatures or councils and to the citizens, because of problems of blame allocation for voters and representative bodies (Greer 2006). Likewise, Peters and Pierre (2016) conclude that the operation of intergovernmental relations could drift from the constitutional design, showing a tendency towards collective action problems and a tragedy of the commons, principally due to difficulties to manage overlapping functions and difficulties for controlling the government. In other words, where executive-driven IGR are unstructured and constantly changing, the blurring of lines of responsibility represents a serious concern for constitutionalism (Saunders 2020).

The declining role of second chambers in effectively representing subnational entities¹⁵, and the already mentioned growing influence of executives in decision-making processes at all levels, has led nearly everywhere to the creation of institutions that bring together subnational and national executives. Intergovernmental institutions that include representatives of both (or all if more than one level, like in the Italian case) levels of government play an essential role in facilitating cooperative participation in decisions that affect the entire national territory and all its government levels (Palermo 2021). Hence, many countries have a peak intergovernmental

¹⁵ Chapter 1 discusses the example of the relationship between the Provinces and the States Generals during the Dutch republic, and how this logic has somehow pervaded in current institutions and political culture in the Netherlands. See also Bovend'Eert and Kortmann (2012), p. 47.

forum where heads of government meet regularly to discuss common issues and propose joint actions¹⁶.

4.4. Intergovernmental coordination and cooperation

Finally, drawing from these theories, this research adopts a different perspective on the arguments about decentralization and the territorial organization of the government and public administration. The point of departure for this approach is that the main question is not whether power, competences and resources are distributed/disperse, but rather how institutions promote coordination and convergence in the policy-making realm. According to Gerring and Thacker's centripetal governance theory (2008), good government results from reconciling broad-based inclusive institutions with authoritative decision-making, by way of mechanisms and institutions pulling toward the centre the diverse interests involved, offering incentives to participate and disincentives to defect. Decentralization is not contradictory with this model, but a distribution or a sharing of sovereign power between the centre and subnational governments, a federal system, is. Centripetal institutions are more successful in achieving party government, conflict mediation and policy coordination (Gerring and Tacker 2008, pp. 9-23). Non-hierarchical coordination is crucial given the interdependencies and spill-over effects across policy fields in most of contemporary challenges (Bolleyer 2018), can represent a way to compensate the centre for its loss of authority in the context of decentralization (Jensen et al. 2014), and can create opportunities to deal with problems that cross jurisdictional boundaries and government levels (Benz 2013), as the Covid-19 pandemic demonstrated¹⁷.

To put it differently, in terms of law-in-action, the binary distinction between unitary and federal countries is not so clear cut, since it is not uncommon to encounter regional governments in unitary States that have certain policy autonomy and self-rule, and also vice versa, that is, constituent units in federal States that can be overruled in certain matters by the central government (Arretche 2022, 472-3). This pragmatic approach would explain why in most countries two or three levels of government are involved in the different stages of the policy process, and also allow for variation within both federal forms of States as well as among unitary traditions (Toonen 2010, 36; Arretche 2022, 474-5), rendering the concept of decentralization a key variable even more relevant in terms of "real world" forms of State that the unitary-federal divide. In fact, some authors see a direct link between decentralization and intergovernmental relations, considering that decentralization is a process of internal organization of the State, defined by the relationships between the central government and the regional and local institutions (Savy et al. 2017, 2-3), and that once competences are transferred to subnational levels this generates a multilevel relationship of interdependence and interaction that affects both public services delivery and the overall legitimacy of the political system (Ruano and Profiroiu 2017, 478).

¹⁶ In Australia, for example, the peak IGR body is the Council of Australian Governments (COAG) (Hueglin and Fenna 2015), often connected to meetings of ministers responsible for particular policy areas, which deal with matters delegated from COAG as well as with issues generated by their own ministers (Phillimore 2013).

¹⁷ Chapter 5 explores the Dutch Security Regions through this prism.

Yet as will be discussed throughout the case studies, even though coordination is always a challenge whenever there is division of roles between levels of government, the way to manage intergovernmental relations differs. Hierarchical structures tend to rely on command and control, as the Chilean central State did during the pandemic particularly by way of recurring to a prolonged state of constitutional exception further centralizing powers at the Presidency, whereas non-hierarchical structures can recur to more consultative approaches to achieve coordination, much like the relationships among the Safety Regions and with regards to the central government in the Dutch case. The Italian case, on the other hand, proved the need to recur to centralization at the acute moment of the crisis, while also taking advantage of *ad hoc*, informal consultation mechanisms between the central government and the regions. Although the second and third wave of the Covid-19 pandemic offered more autonomy for regional governments, still the coordination problems were not predominantly managed consulting the system of conferences, which is proof of the need for further institutionalization of intergovernmental relations in the Italian regionalized regime.

The centrality of coordination and cooperation in the context of multilevel governance systems has been highlighted. In this sense, a distinction can be made between top-down coordination, characterized by a dominant role of the central state, and horizontal cooperation, in which there is equality of all levels of government involved (Ceccherini 2021, 69). In turn, cooperation can be vertical, for instance in the case of voluntary agreements between central and subnational governments, or between provinces and municipalities. The rise of horizontal cooperation can have implications for the power balance: if subnational governments can solve collective actions problems by themselves, they will tend to rely increasingly less on central governmental involvement, which may also facilitate a better negotiating position for subnational authorities when dealing with central government (Hueglin and Fenna 2015).

Furthermore, coordination can adopt three different methods (Schnabel and Hegele 2021, 3-5). First, it can refer to an outcome, for instance a vertically coordinated outcome is achieved if policies by the two levels of government are consistent and coherent. Second, coordination can refer to a process, whereby different government levels use strategies and instruments to coordinate organizations or programs. Finally, coordination can refer to policy outputs that are the “direct results of the decision-making process”, like a joint declaration, resolution, agreement, or statement which is made public (in writing or at press conferences). This research is mostly concerned with process coordination, although outcome and output coordination will be mentioned in both the Dutch and the Italian case¹⁸.

Hence, the challenges of a vertical distribution of power and a territorial allocation of competences and resources are not exclusive of federations (Behnke 2018). The blurring of boundaries between federal and non-federal States is particularly clear regarding intergovernmental relations and will be elaborated later on the topic of multilevel constitutionalism, particularly on chapter 3. However, there is still much to contribute to intergovernmental relations in non-federal States, and this research builds on the previous

¹⁸ Chapter 5 elaborates on the role on the opportunities and challenges for the Dutch provinces to fulfil the coordinating role they are supposed to have.

knowledge in the academic literature as will be presented in the next section. In the end, multilevel governance arrangements can deepen constitutional democracy, insofar as they offer a form of power distribution and limitation and allow for greater institutional responsibility and accountability. However, they can also undermine equality before the law and the coherence of public policies. In order for constitutionalism and multilevel government to complement each other, it is necessary to provide adequate channels of coordination and cooperation between the different levels, as well as to ensure areas of intervention of the general interest and the common good, above particularisms, and also the respect for the rule of law (Saunders 2020, p. 347-8).

5. Methodological considerations of the research

In terms of the research methods, the study approaches the questions by confronting the juridical and institutional frameworks of the selected cases, accounting for the fact that they are all decentralized States. Given that a comparison between federal and unitary States would have to control for a significant number of divergent factors and variables (Dogan and Kazancigil 1994), this qualitative approach approximates the idea that certain key institutional variables remain relatively constant, therefore attempting to reduce the influence other variables might have on the relations and connections to be established. On the contrary, comparing countries with different degrees of decentralization, although not fully-fledged federal, such as Chile, Italy, and The Netherlands, serves to keep structural variables relatively similar to address variation or similarity in terms of the dynamics between the national and subnational governments, that is the intergovernmental relations (Ragin 2013, 13-4). Hence, focusing on a small-N case-oriented comparison allows us to analyse in detail variation in the way to manage intergovernmental relations across the three countries, observing the processes in detail, while still conserving similarities in other aspects (Della Porta and Keating 2008). From a legal scholarly perspective, the objective is not to test causality or correlation between variables but to analyse how a certain institution functions across the cases, and what factors impact/affect its effective and legitimate functioning, aiming to produce an in-depth understanding of the selected cases particularly when it comes to the concept and functioning of intergovernmental relations in decentralized States¹⁹.

In terms of the case profiles, Italy has been defined as a regional State (Arban, Martinico, and Palermo 2021), while the Netherlands is a unitary State with significant degrees of decentralization, particularly autonomy at the municipal (*Geemente*) level, which is explained by the fact that municipalities preceded the formation of the State and hence are entitled to self-government (van Haaren-Dresens 2012; Voermans and Waling 2018). In turn, Chile is also a unitary State, but with lesser degrees of local and especially regional authority, and a less developed decentralization framework (Ferrada 2001). An illustration of these aspects is shown in the Appendix to this introduction.

¹⁹ This concept formation through multiple descriptions of selected cases is something that is part of the canon of comparative constitutional law or comparative constitutional studies, this later when complemented with an empirical observation of the actual functioning of a certain formal institution (Hirschl 2019, 17-18).

The COVID-19 pandemic represented a unique opportunity to rethink decentralization and the territorial organization of the government and public administration, from a comparative constitutional studies perspective, because almost every country in the world was affected by the pandemic, during basically the same timeframe. However, countries did not respond in the same manner, particularly regarding their territorial governance. Some of them adopted coordinated and nuanced nationwide policies, while others privileged subnational governments' autonomy. The cases were selected based on their differences in dealing with the pandemic, as well as considering their common legal culture, particularly in the field of public law. Additionally, even though the three countries share many aspects of the continental law tradition and represent consolidated democratic institutions and rule of law practices, as well as constitutional democracies with multiparty systems, they also differ in many respects, such as geographical location, language, socioeconomic development, political culture, political history, among several crucial factors. Hence, this study assumes the logic of "the most different or diverse cases" in comparative constitutional studies, which means selecting countries that present a great number of differences but seem to have a similar institution or variable of interest (Hirschl 2014, 245-3). This method is employed fundamentally in order to test the analytical framework of intergovernmental relations as generated in federalism studies, into three cases that belong to the family of "decentralized States", hence critically assessing the validity of this framework, particularly in the context of an emergency or crisis, and the way this institution works in practice (Hirschl 2019, 24-25).

Consequently, the project compares the operation and functioning of the territorial distribution of power and the uses of power and competence during the Covid-19 crisis in Chile, Italy, and the Netherlands, three "decentralised States", not fully-fledged federal entities, representing different types and degrees of "decentralized territorial organization" (Ferrari 2006). The three cases exemplify different types and degrees of decentralisation (political, administrative, and fiscal). Italy can be considered the more decentralised country of the three, with municipalities, provinces, and regions constitutionally recognized as territorial entities, and with regions with legislative powers in certain domains, while still preserving critical key differences in comparison with federal States (Rolla 2008). Chile can be characterized as a politically centralized country, with a long-standing tradition dating back to the 1833 Constitution and with limited reforms during the 19th and 20th centuries, reinforced by presidentialism at the national level (Ruiz-Tagle 2021). In the Netherlands provinces and especially municipalities enjoy important degrees of autonomy, in line with the idea of administrative decentralisation at the local level but are also subjected to significant oversight by central government bodies as well as financial constraints (Besselink 2023; Toonen 1990). An additional point in the Chilean case is the fact that the country experienced not only one but two constitution-making processes during the years 2020 and 2023, in which decentralisation, the territorial organization of the government and public administration, and intergovernmental relations were major topics under deliberation. The selection of cases also has the advantage of bringing less well-documented cases, such as Chile, as well as presenting in a comparative framework the actual functioning of a similar institution (intergovernmental relations) across three cases that have not previously been presented in this manner.

Moving beyond exclusively doctrinal or jurisprudential analyses, the research aims to connect constitutional institutions with their actual implementation. Therefore, the fact that the vertical balance of power designed by the constitution is executed and implemented by political practices and processes, calls for an interdisciplinary approach. Regarding disciplinary perspectives, two methodological considerations are crucial. First, the importance of bringing together approaches from different disciplinary lenses, including constitutional law, administrative law, political science, and public administration. Second, the fact that intergovernmental relations are more like a movie than a static photograph, a concept in motion, allowing to account for and analyze trends and patterns, continuity, and change in the traditions of the observed jurisdictions. Hence, understanding intergovernmental relations means adopting a law-in-action approach, which is consistent with the case study method selected in the comparative setting (Jackson 2012, 64). The interaction between these two aspects, constitutional law, and political (and public policy) considerations, is one of the distinctive features of IGR, creating a domain in which constitutionalism governs the policy realm, yet at the same time, its implementation represents an adaptation and interpretation of the constitutional framework itself. This explains that, for instance, legal traditions might be influential in the workings of IGR and the behaviour of intergovernmental actors (Poirier, Saunders, and Kincaid 2015), as will be elaborated in Chapter 1.

In terms of research techniques and given that the research is interested in a “law in action” approach, the actual functioning of the legal rules would also need to be accounted for. For that purpose, accounts of the countries dealing with the crisis will be comprised of several sources (electronic journals, blogs, newsletters, and so on). Also, it looks at secondary sources while also conducting interviews with selected policymakers and researchers. Semi-structured online and in-person interviews were conducted by the author during 2021 and also during a research scholarship stay in Chile between December 2021 and February 2022, and in Italy between late February and March 2022. The interviews were directed towards experts on the topics and country of references, as well as with decision-makers that were involved in the decision-making processes in the selected jurisdictions, covering 2020 and early 2021 and, because of confidentiality, the names of the interviewees are omitted²⁰. An anonymized list of interviews is provided in Appendix E of the thesis. This method allows us to triangulate information from different primary sources, as well as the secondary literature (Vromen 2018).

When selecting the secondary sources as well as when constructing the questions for the semi-structured interviews, the following dimensions were especially considered: 1) the type and degree of decentralisation of the State in the context of the pandemic; 2) the relevance of imposing a state of constitutional exception or other emergency legislation for the centralisation/decentralisation of the State during the pandemic; 3) the relationship between subnational and national/central authorities during the pandemic, and the dynamics of that relationship; 4) the presence or not of mechanisms for coordination/cooperation between

²⁰ Examples of the questions formulated in interviews are incorporated to this PhD, as appendices A, B, and C, for each country. Appendix D reconstructs the process for arranging the details of the interviews.

subnational and national authorities; and 5) the actual operation of the coordination/cooperation mechanisms during the pandemic.

Notwithstanding the strengths of the methodological approach, the justification for selecting the cases, and the research techniques adopted, a couple of limitations need to be recognized. First of all, almost all the interviews were conducted through online platforms, which has the advantage of being the only available channel considering the epidemiological situation at that time but also meant that certain characteristics of this data-gathering technique were missing, including the capacity to more readily perceive attitudes and dispositions of the interviewees and also a more dynamic interaction during the encounter. Moreover, time constraints and limited resources, particularly considering the context of the research project, required that the number of interviews and on-the-ground observations was more limited than initially planned, hence augmenting the reliance on the researcher's interpretation of the available data (Hopkin 2010, 300). Second, and more importantly, while privileging detailed information about the cases and tracing processes in the explored institutions, the small number of cases reduces the validity of extrapolating more general statements from the empirical results (Jackson 2012, 65). This implies that the case studies might be unrepresentative and the findings specific to those particular cases (Hopkin 2010, 300). Still, as will be explored in the conclusions, the research perspective adopted, the variation across the selected cases, and the applied empirical techniques, while presenting these caveats, allow us to address the initial research questions and test the initial assumptions, hence internally validating the conclusions. Also, potential improvements of this research design are offered in the conclusions.

6. Overview of the chapters and context of the cases

In order to conclude this introduction, a brief overview of the chapters and a general perspective on the three selected cases will be presented as way of an outline of the thesis. At the outset, it needs to be clarified that this thesis is formed by a collection of articles or papers, each one already published or in the process of being published in prestigious journals or publications, in all cases subject to a rigorous peer review process²¹. The introduction and the conclusions of the thesis were written at the final stage of the research project. For this reason, the format, referencing style, and formal presentation of the substantive chapters varies among them²², and in relation with the introduction and the conclusions, which were both written in the same style. Hence, although they might present small formal differences, for the purposes of academic integrity and to safeguard the already approved peer-reviewed process each published or submitted paper has been transcribed in its entirety into a corresponding chapter, minus certain unnecessary parts, as will be explained in each chapter.

First, chapter one (1) presents the theoretical framework of decentralization and intergovernmental relations, defining the key concepts as well as explaining the main

²¹ The papers that comprise chapters 4 and 5 are undergoing the process of peer review at two selected journals. Precise citation is provided at the beginning of each paper, in a footnote, for each already published paper.

²² The list of references for the introduction and the conclusion, as well as for each of the substantive chapters, is provided at the end of each chapter.

institutions and mechanisms through which IGR is manifested. Additionally, it explores the main types and modes of IGR in comparative perspective, as well as pointing towards the challenges for public law principles and values that executive IGR poses. Finally, it introduces the idea of IGR in non-federal countries or decentralized States, as the theoretical construction that will guide this research.

Second, chapter two (2) elaborates the Chilean governance structure for managing the Covid-19 pandemic, by first analysing the public law foundations of the territorial architecture of the State, from the point of view of the intergovernmental coordination principle. Through this theoretical prism, and regarding the pandemic management, the research shows that, although subnational authorities deployed significant activities to face the effects of the pandemic in their territories, this was not accompanied by institutional modifications that would incorporate the subnational level in the decision-making process. This issue, particularly complex in crisis situations, shows a lack of coordination of the measures taken by the different levels of government, which eventually led to frequent political tensions between central and local authorities.

Third, chapter three (3) situates the more general debates about the territorial organization of public power, decentralization, and intergovernmental relations within the context of the proposal of a new Constitution for Chile debated during 2021 and 2022. Despite its failure in the 2022 constitutional referendum, both the constitution-making process and the content of the proposed new Constitution of 2022 have been praised for certain innovations. One of the most important was the proposed change in the territorial organization of the State: the formulation of an integral decentralized organization through a so-called “regional State”. This ambitious design of a new structure of the State in the territory, and also the proposed reorganization of the national legislature by the introduction of a “Chamber of the Regions” instead of the existing Senate, is analyzed in the chapter by comparing the advantages as well as the challenges it might face in light of comparative constitutional studies.

While not dealing directly with the impacts of the COVID-19 pandemic, this chapter fits within the research design for two reasons. First, the elected body tasked with drafting a proposed Constitution for Chile closely considered both Italy and The Netherlands as relevant comparative cases for the institutional design of intergovernmental relations and the decentralized structure of the State. Hence, the interviews conducted with members of the Convention who were directly involved in drafting those constitutional articles not only produced information about the Chilean case itself, but also comparative reflections on the other two selected countries, and even on the similarities and differences among them. For instance, during the deliberations, permanent references to the Dutch municipal system as well as to the Italian regional system, including intergovernmental relations, were made. Second, in terms of the content of the discussions surrounding decentralization and the territorial organization of the government and public administration, similar normative and empirical arguments about the advantages and disadvantages of different models of decentralization and intergovernmental relations were deliberated. All of this was debated in the context of the COVID-19 pandemic

and even in motion²³, which meant that the preliminary lessons and learnings regarding crisis governance and the centrality of intergovernmental coordination to it were closely considered by the constitution-makers, all of which were clearly stated in the interviews conducted for the Chilean case. For instance, the preliminary lessons from the Italian experience with managing the COVID-19 pandemic were closely followed by the constitution makers. Still, it has to be recognized that given that this proposal failed to be approved, this already published paper serves as a historical context to the discussions in Chile and in terms of engaging with contemporary debates about constitution-making and decentralization.

Moving on to the European context, chapter four (4) introduces the Italian intergovernmental relations scheme, with emphasis on the healthcare sector and the implications of the COVID-19 pandemic. In this sense, the system of Conferences, by which intergovernmental relations were supposed to be conducted in Italy, has been subjected to tremendous pressures in recent years, particularly during and after the Covid-19 pandemic. In fact, the first days of the crisis witnessed long disputes between the central government and regions, which led to confusion and institutional miscoordination. After that, the central government seized power from the regions based on the state of emergency, but as the progression of the infection slowed down, many regions started to push for a differentiated solution, which once again moved the IGR into more tensions, now channeled through the Constitutional Court. Weak intergovernmental relations, unequal regional governments' capacities and a more personalistic political culture could explain not only the challenges of coordination and cooperation during the governance of the Covid-19 pandemic, but also the difficulties in finding a general consensus about the territorial model in Italy.

In turn, the Dutch case is elaborated in depth in chapter five (5). This research focuses on the role of municipalities, their relationships to the structure of Safety Regions which was the governance structure used to manage the Covid-19 pandemic in the Netherlands, and the democratic legitimacy and accountability questions it has raised. This governance system included subnational regulations elaborated in technical-legal terms by the 25 security regions, regulated by the Safety Regions Act (*Wet veiligheidsregio's*, SRA in English), yet following "binding instructions" issued by the Ministry of Public Health and the Ministry of Justice and Security. Despite the perceived effective performance of the governance structure, criticisms have been voiced from the point of view of public law principles and values, due to the extensive application of this exceptional regime, the large scope of the measures enacted, and the concentration of powers on the executives, both nationally and at the subnational level. Intergovernmental relations were particularly challenged, in light of the positioning of the so-called Safety Council as a new institution for intergovernmental cooperation and/or coordination, as well as questions regarding the role of the provinces and local council in governing crises.

Taking stock of the accumulated arguments and evidence, chapter six (6) proceeds to compare the Italian and Dutch approaches to governing the Covid-19 pandemic, from an

²³ As will be explained in Chapter 3, the Chilean Constitutional Convention that drafted the proposed Constitution deliberated between August 2021 and May 2022.

intergovernmental relations perspective. Comparatively speaking, the chapter argues that in Italy the management of the pandemic was characterized by larger differentiation and discoordination during the initial phase, which then led to top-down coordination. Conversely, the Dutch case has seen high levels of coordination throughout the crisis, coupled with criticisms for lacking sufficient accountability and democratic legitimacy. Italy only declared a state of emergency by law, while the Netherlands has resorted to emergency powers regulated in the Public Health and the Safety Regions Acts, and the Exceptional Powers Act. A schematic formulation of this general assessment of the cases is presented in Table 1, also including the case of Chile.

Finally, the concluding chapter summarizes the comparative observation of the pandemic responses in Chile, Italy, and the Netherlands, and connects the theoretical framework presented in the introduction and chapters 1 and 3, with the empirical evidence and country-based arguments presented in chapters 2, 4, 5 and 6, focused on the relationship between institutions for coordination and effective governance of the crisis. Centralised approaches in both Italy and the Netherlands were adopted which somehow altered the traditions of decentralized powers: the strong tradition of local democracy in the Netherlands and the significant federalizing trend in Italy in the last decades. In contrast, Chile confirmed its long history and tradition of centralization (Veliz 1980), despite the discussions aired throughout the 2021-2 constitution-making process and the challenges observed in the management of the pandemic. In terms of the intergovernmental dynamics, more “competitive” relations between national and regional authorities were predominant in Italy, especially during the first phase of the pandemic, whereas a more “consensual” or “cooperative” mode was observed in the Netherlands, although mediated by significant centralized coordination. In Chile, the existing hierarchical structures of territorial governance, despite local autonomy and the very recent introduction of direct election of regional Governors, were even further exacerbated by the prolonged imposition of a state of constitutional exception, granting even more powers to the national executive, while delaying the much-needed debate about intergovernmental coordination and cooperation.

Table 1: Preliminary comparative characterization of the three cases

Country Key variables	Chile	Italy	The Netherlands
Declaration of state of constitutional exception	State of catastrophe (since March 18 th)	State of emergency under ordinary law	No
Public law foundations	Regulations enacted by the Ministry of Health for the entire or differentiated parts of the territory, according to the Constitution and national legislation	Law decrees and national administrative acts, with room for regional and local regulations, according to the Constitution and centrally enacted norms	Guidelines by the Ministry of Health, with regulations issued by the Safety Regions according to national legislation
Decision-making dynamics	Conflict between Mayors and national government at the beginning. Later, centralization of powers.	Initial miscoordination followed by top-down coordination, and finally regional differentiation (2020), followed by centralizing wave in winter 2020-21.	Coordination between among Safety Regions and administrative decentralisation from central government, but democratic deficit in Safety Regions
Level of centralisation	Centralised, exacerbated by the state of constitutional exception	Top-down coordination, followed by political decentralization, followed by centralization (waves)	Decentralised in implementation, central coordination in decision-making.

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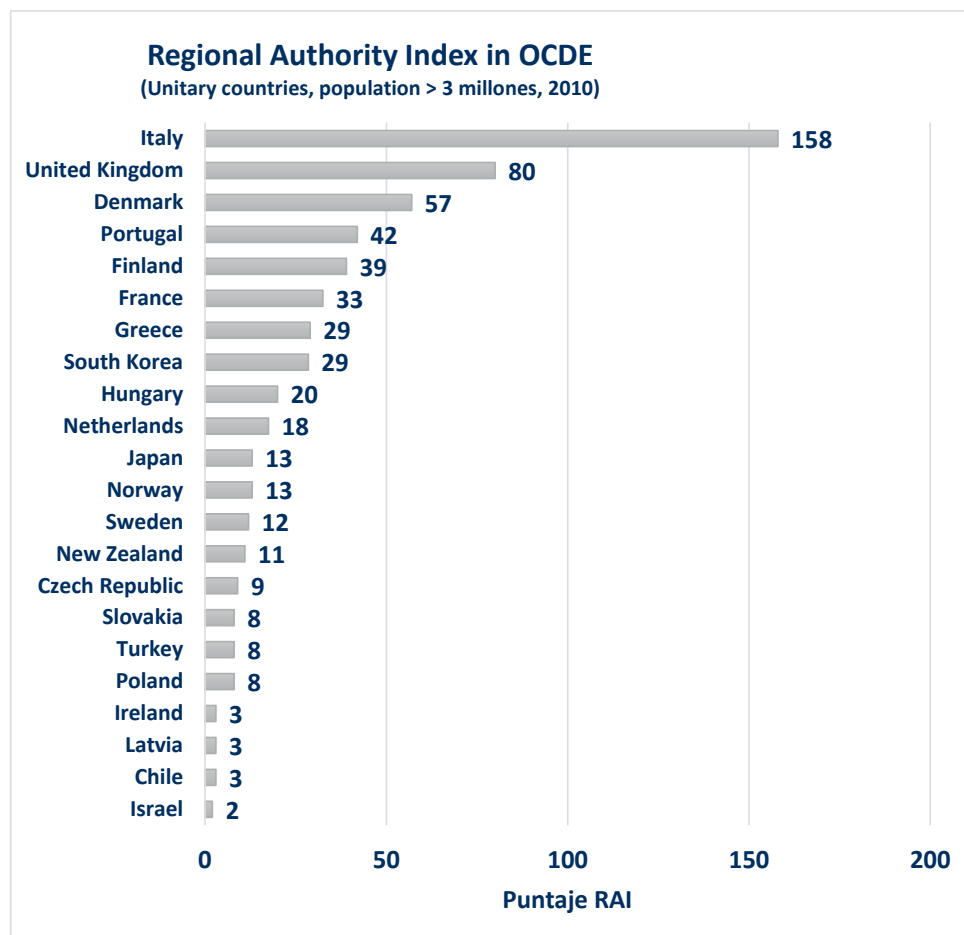
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Appendix: Regional Authority Index in selected countries



Source: Szmulewicz, Esteban and Saffirio, Ignacio (2017), “Propuestas para una descentralización coherente con la equidad territorial”, in Cifuentes, Pérez and Rivera (editors), *¿Qué políticas públicas para Chile? (What public policies for Chile?)*. Santiago, Centro de Estudios del Desarrollo. <http://www.ced.cl/cedcl/wp-content/uploads/2017/10/CED-2017-Qu%C3%A9-Pol%C3%ADticas-P%C3%BAblicas-para-Chile.pdf>, p. 113