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Prescriptive Rules in Legal Theory

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Abstract: Understanding prescriptive rules is important for understanding the law given that much of law is prescriptive. This work in legal philosophy aims to promote such understanding by offering an analysis of prescriptive rules. It does so by showing what these rules are and how they operate, distinguishing them from other rule types, and advancing a critical analysis of Joseph Raz's conception of prescriptive rules. The analysis offered helps to clarify not only the nature of prescriptive rules and their treatment within legal philosophy, but also legal norms that operate by prescribing conduct.

Keywords: prescriptive rules, Joseph Raz, content-independence, legal philosophy, pre-emptive reasons, rules

1. Introduction

Understanding prescriptive rules is important for understanding the law given that much of law is prescriptive. This work in legal philosophy aims to promote such understanding by offering an analysis of prescriptive rules. It does so by showing what these rules are and how they operate, distinguishing them from other rule types, and advancing a critical analysis of Joseph Raz's conception of prescriptive rules. To make things clearer at the outset, the working definition of prescriptive rules is the following: prescriptive rules are directives issued by a presumptive authority.

In order to clarify the nature of prescriptive rules, the first part of this essay distinguishes them from both regulative rules and instructions, with which they share many similarities. The second part addresses the matter of content-independent reasons. As claimed in this part, well-formulated prescriptive rules provide normative content-independent reasons for action for their subjects. The third part advances a critical analysis of prescriptive rules and their pre-emptive qualities. Here, Joseph Raz's conception will be in focus, and his account of prescriptive rules as pre-emptive or exclusionary reasons for action will be explicated and analysed. A short conclusion ends this work.

1.1. Contrasting rules

Prescriptive rules typically take the form of "Do X" or "If C do X". Rules of this type prescribe that a certain action should be, must be, or ought to be performed (Raz, 1975, p. 49).[1] This puts prescriptive rules in the larger class of regulative rules; however, they stand apart from regulative rules, which do not have a clear issuing source, and from other prescriptive rules such as instructions (Schauer, 1991, pp. 3–6).

There are questions about the appropriateness of distinguishing between regulative and prescriptive rule types. To clarify, this work takes prescriptive rules to be similar to regulative rules. Regulative rules are typically used to control, direct, change or guide the actions of agents with decision-making capacities (Schauer, 1991). The core difference between regulative and prescriptive rules is that the latter do not merely prescribe but are also prescribed. On the other hand, regulative rules need not be backed by an issuing authority. One might consider examples of regulative rules such as rules of etiquette or polite table behaviour. These rules do not have a clear source, and it would be a stretch to point to an issuing authority. Examples of prescriptive rules distinguish themselves by having an authoritative source (in addition to regulating roles): traffic rules, penal and civil codes, pharmaceutical directions for use, and so on.

Instructions provide an interesting contrast to prescriptive rules inasmuch as the two share similar traits: they claim that certain actions ought to be performed and they are typically issued by authorities. The core difference between the two rules is that instructions prove optional in a way that prescriptive rules are not (Schauer, 1991). Unlike instructions, prescriptive rules provide subjects with content-independent reasons for action (Hart, 1982). A reason for action is defined, at its most straightforward, as a consideration that counts in favour of or against performing an action (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). Content-independent reasons will be the focus of analysis in the second part of this work.

Instructions are rules that constitute directions for the accomplishment of a result. A primary way that instructions differ from prescriptive rules is that they are optional (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). This feature of optionality manifests itself in at least two ways. Not only do instructions apply or get put to use by agents with prior reasons for following them, but it also matters to agents if they lead to their desired result. As a consequence, instructions give rise to subjective content-dependent reasons for action. The subjectivity of instructions (or subjectivity of reasons provided by instructions) comes from the fact that they depend on an agent's prior subjective reasons for accomplishing the result that they are meant to help achieve. The content-dependence of reasons provided by instructions comes from the fact that their normative force is inextricably linked to their capacity to help achieve a desired result.

To help illustrate the above, consider the following instruction: "To turn the computer on, press the power button." This instruction prescribes that the power button

[1] For a dissenting position see Matthew Kramer (1999). He argues that the imperative 'must' is different from the 'ought' of legal rules in the sense that the 'must' kind of rules do not necessarily provide subjects with reasons for action nor do they presuppose reasons for action for them (Kramer, 1999).

ought to be pressed in order to turn on the computer, but it does not command that an agent press the power button. It expresses a conditional that depends on an agent's desire or reasons for wanting a result to be effectuated in action. It provides a (proper) course of action for accomplishing an outcome. It is in this sense that instructions give rise to subjective normative reasons. If an agent has prior reasons to turn on the computer, for example, then she will follow an instruction about how to turn it on. However, without such prior reasons she has no use for engaging the rule. In this way, instructions are optional in that their normativity arises only in conjunction with an agent's reasons that would motivate her to abide by them.

In order for instructions to be able to provide agents with reasons for action – what will be called their normative force – they need to lead, in fact, to the desired result. Thus, the normativity of instructions is constrained by whether performing the action that the rule prescribes actually leads to the outcome they would help to achieve (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). For example, if the way to turn on the computer was not by pushing the power button, but rather by banging it on the table a couple of times, then any addressee of the instruction would abandon the rule in order to proceed banging (Dancy, 2000; Parfit, 1984; Raz, 1975; Velleman, 2000). Notice that this adds another aspect of meaning to the optionality of instructions: abiding or ignoring them depends on whether they assist in the accomplishment of the result. What differentiates this sense of optionality from the one above is that the content of the rule as it is effectuated is the source of reasons for embracing or rejecting it. In essence, the agent has established that the instruction's aim is a reason for her, but the normative force of the rule only holds sway if its aim can be accomplished by following it.

Now, prescriptive rules can also appear to be optional. This is an appearance that should be dispelled. Take a sign stating "No parking on Mondays" posted in plain view above a certain section of a street. Barring a physical impediment to parking, an agent might disregard the rule and park her vehicle on Mondays. The rule is not strictly speaking inviolable, which makes it seem optional. The subject can choose to disobey the rule on the basis of her reasons. If the subject chooses to disobey the rule then she will most likely have to face some form of penalty. A noteworthy feature of prescriptive rules is that they attach sanctions to their contravention. This represents a key distinction between prescriptive rules and instructions.

Sanctions alone do not efface the trait of optionality that also seems to be a part of prescriptive rules. Sanctions may actually highlight the fact that an agent has a choice because the rule expressly accounts for the circumstance when the subject disobeys the rule. This makes the case for prescriptive rules as either/or propositions – "either obey the rule or suffer the penalty" – that apparently preserves the feature of optionality. Unlike instructions, however, prescriptive rules provide new reasons that attempt to override subjective normative ones. While the capacity of instructions to provide reasons for action was dependent on an agent's prior subjective reasons for engaging with the instruction, prescriptive rules provide agents with new reasons for action that are objective.

Prescriptive rules provide new reasons for action because their existence constitutes a fact counting in favour of performing the action required by that rule. An agent might have prior reasons for not parking on Mondays on a certain part of a street; nevertheless,

the rule "No parking on Mondays" still provides her with a new reason not to park. The rule can make a practical difference because an agent's prior reasons for not parking might not win out on the balance of reasons without the rule, or they might otherwise be inconclusive. Or, perhaps the reasons that an agent has for not parking are not the right ones (e.g. the agent might be under false beliefs), and the rule provides her with the right kind of reason. In the case when the agent has competing reasons that are in favour of parking, the agent will act in accordance with her balance of reasons.

Isolated instances when prescriptive rules are disobeyed do not make those rules any less prescriptive. However, there are cases when a rule will be disobeyed to such an extent that it will lose its normative force. There seems to be a critical point of disobedience that is reached when enough people disobey a rule (what counts as 'enough people' is basically impossible to generalise) which seems to render that rule powerless. As an example, consider that a 19th century law against Parisian women wearing trousers has only been completely overturned as of February 2013, although evidently the rule had lost any kind of effectiveness long before then. Absent this kind of level of mass or habitual disobedience, the fact that some subjects disobey a prescriptive rule does not affect its nature. This is because the rule's essential characteristics are not affected by isolated acts of disobedience.

Prescriptive rules give agents normative objective reasons to obey them. The objectivity of the reasons comes from the fact that their normativity is not conditional upon an agent's personal set of desires, beliefs, or reasons (Moore, 2004; Broome, 2000; Broome, 2004; Dancy, 2000). The normativity of the "No parking on Mondays" rule does not depend on whether or not a subject has any reasons not to park on Mondays. In contrast, the normative force of instructions depends entirely on the subjective reasons of the addressees. In this sense, instructions about how to make apple pies have normative force only to the extent that an agent wishes to make an apple pie.

The distinction between prescriptive rules and instructions has been drawn through a focus on the kinds of reasons that the rules respectively provide (i.e. the guiding or normative force of the rules). The kind of reasons that instructions provide are conditional on the reasons that an individual already has. The kind of reasons that prescriptive rules provide are in turn objective unconditional reasons that do not depend on the reasons of the agent to whom they apply. In this way, the feature of optionality present for instructions is absent for prescriptive rules. With the core distinction between instructions and prescriptive rules outlined, further analysis of the most relevant definitional features of prescriptive rules can proceed.

1.2. Content-independence

The idea of content-independent reasons or justifications was introduced by the legal philosopher H. L. A. Hart in his seminal work, *Essays on Bentham* (1982). There, Hart treats content-independence as it manifests in the case of commands issued by authorities (Hart, 1982, pp. 254–255). In accordance with his conception, an authority can issue different commands and the actions commanded may have nothing in common

with one another (Hart, 1982, pp. 254–255). However, in the case of all of them the authority intends her expression of intention to be taken as a reason for performing the actions commanded (Hart, 1982, pp. 254–255). Consequently, the commands issued by an authority function as reasons for action independently of the nature or character of the actions that are to be performed (Hart, 1982, pp. 254–255).

Hart claims that an authority "intends her expression of intention to be taken as a reason" for performing whatever it is that she commands (Hart, 1982, p. 254). Taking the expression of intention to be a prescriptive rule, the authority intends for this rule to be taken as a reason for action. Thus, the claim is that that which makes the rule a reason for action need not have anything to do with the content of the rule but with the fact that the authority has intended it.[2] The orthodox reading of Hart is that commands and rules, examples of 'expressions of intention', issued by an authority are content-independent reasons for action. This means that they are reasons not in virtue of their specific content, but because of their source (Green, 1988; Raz, 1986; Shapiro, 2002).[3] So, content-independence consists in the fact that the same reason (e.g. the source of the rule) is a reason for a host of actions that may have only their point of origin in common.

Hart's original depiction refers specifically to commands issued by authorities, but the concept applies to prescriptive rules as well. Although lacking the feature of generality, commands possess traits that are similar to rules (Raz, 1985). Most relevant among these: commands prescribe that certain actions ought to be performed; they are issued by authorities; and, they provide content-independent reasons for actions to their subjects (Raz, 1985). It should be noted that this latter feature is not restricted to commands and rules. Promises, agreements, decisions, but also credible threats and requests all provide content-independent reasons for action (Hart, 1982; Raz, 1986; Raz, 2002).

Hart juxtaposes content-independent reasons for action with standard ones. He claims that in the case of standard reasons there is a connection of content between action and reason (Hart, 1982, p. 254). For Hart, action is a means to some valued or desired consequence, which in turn counts as the reason for performing the action. As an illustration, take shutting a window to keep out the cold (Hart, 1982, p. 254). The reason for shutting the window is to keep the cold from entering (Hart, 1982, p. 254). The desired consequence counts as the reason for performing the action which is a means to it.

Standard reasons for action are directly linked to their goodness (Raz, 2009, p. 208). If something is good (or valuable) then the fact of its goodness is a reason for action (Raz, 1975; Raz, 2009). In spite of standard reasons being linked to the goodness of their actional outcome, which demarcates their *content-dependence,* some rules also possess a dependent feature. The preceding section highlighted instructions as examples of rules that provide standard reasons for action. Again, the normative force of instructions derives from the likelihood that they will help achieve some valued goal. This stands in contrast, then, to rules and reasons that derive their normative force from their source rather than their content.

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[2] The fact that many authorities are not individuals but rather collectives complicates matters as, at least according to some theories, the latter lack the capacity to form intentions. That being said, this doubt must be set aside as it is outside of our scope here.

[3] For a non-orthodox reading see Sciaraffa (2009).

Another way of framing standard reasons, distinguishable from the good they help to achieve, is by reference to the transitivity of their justification. Take an example of transitivity as it appears in standard reasons: If the fact that a movie is fresh is the reason to watch the movie and the reason why the movie is fresh is because of its cool special effects then the fact that a movie has cool special effects is a reason to watch the movie (Raz, 2009, pp. 209–211). The preceding follows the standard account of transitivity, which is described as "if P is a justification for Q which is a justification for R then P is a justification for R" (Raz, 2009, p. 210). This transitive relationship of elements P, Q and R underscores a direct connection between action and the reason's content. In other words, performance of an action provided by a standard reason follows from the content of the reason itself.

Whereas standard reasons are transitive, content-independent ones by contrast are not. This is a view articulated by Joseph Raz, who writes that the breakdown in transitivity for content-independent reasons, which are provided by prescriptive rules, constitutes their key trait. As he writes:

> The justification of a rule is not, in and of itself, a justification for performing the action which the rule requires. It justifies giving the makers of the rule power to make the rule, and not more. Of course, indirectly it justifies the action the rule requires, as being an action in accordance with a rule which is thus justified. But, unlike content-dependent justifications, it does not justify the action without these additional mediating premises (Raz, 2009, p. 210).

The absence of transitivity means that the reasons for the validity of a prescriptive rule are not in themselves reasons to perform the act that the rule requires (Raz, 2009, p. 210). Put it another way, the grounds for a rule justify the existence of that rule. So, a valid source provides the justification for a prescriptive rule. However, the performance of the actions required by the rule is not justified directly: "The justification of a rule is not, in and of itself, a justification for performing the action which the rule requires" (Raz, 2009, p. 210). The breakdown in transitivity for prescriptive rules is marked by an exception; namely, those cases when following a prescriptive rule are valuable in itself.

For Raz, indirect justification for prescriptive rules allows for a *normative gap* (Raz, 2009, p. 208). This is defined as a divide between what one ought to do, which is the normative force of a reason, and what is good about doing it, which is the value of an action. In the case of rules, the normative gap points to a difference between the normative force of the rule and the value of having the rule (Raz, 2009, p. 208). Nonetheless, for Raz normativity is ultimately based on evaluative considerations (Raz, 2009, p. 209). In the case of rules, agreements and promises there exists the potential for a normative gap that allows for the mediating role of authorities. This points to the shift in justification for why something counts as a normative reason for action –from content to source.

Raz's depiction of the breakdown in transitivity, which ultimately explains his conception of content-independence, can be clarified by an example. Having an authority that has the power to issue prescriptive rules is, let us assume, a good thing. The justification for having an authority is based then on evaluative considerations. The authority issues a prescriptive rule that stipulates X-ing. X-ing may be good or bad, but evaluative

considerations about X-ing do not bear on its justification. The fact that the authority has issued the rule to X is a reason to X because having the authority is good.[4] This is an indirect justification of the action required by the rule.

Establishing that an authority is 'good' amounts to being able to provide a case for the authority's legitimacy, even if an underdeveloped one. For Raz, evaluative considerations are the ultimate bearers of justification. It can be helpful to represent this in a slightly different, non-Razian formulation. If authorities are evaluated as being legitimate, then the fact of their legitimacy establishes a sort of *prima* rule.[5] A rule of this kind states, in essence, that all rules originating from a legitimate authority should be obeyed. This is a rule about rules. If valid, a *prima* rule justifies the act of following all rules that meet its conditions. In turn, the rules that meet the conditions will justifiably prescribe other actions. This barely hints at the sort of normative framework required to support Raz's conception. Even in an abbreviated depiction like this one, it can still provide some insight into the structure of rules and justifications that might underlie content-independent prescriptive rules.

With or without the inclusion of an explicit *prima* rule, the conception of content-independence centres on the source of the rule as the (normative justifying) reason for following it. Untethered from certain constraints of content, an agent responds to a (prescriptive) rule because it comes from an authority. This broadly describes the breakdown of transitivity. Not only does this look different from the already-contrasted example of instructions, but it also underscores a unique and more generalised identifier of prescriptive rules. It indicates the capacity of an authority to provide rules as reasons that ought to be abided by because they come from an authority. It requires further explication to address a long-standing problem of political theory; namely, whether rules issued by legitimate authorities that are flatly immoral should still be followed. The preceding analysis cannot in and of itself be taken as an endorsement of the view that legitimate source alone justifies abiding by (substantively) bad rules. However, the more immediate relationship between content-independence and prescriptive rules need not delve into that territory just yet. The core relationship is that of content-independent reasons as expressed by prescriptive rules, and such rules being used by (ostensibly legitimate) authorities and agents.

1.3. Pre-emptive reasons

The final part of the conception of prescriptive rules to be considered here is that of pre-emptive reasons for action. The relationship between such reasons and prescriptive rules, as well as the connection to content-independence, will be the primary focus of this section. In keeping with the general methodological approach, the following

[4] There seems to be a problem with this way of framing the content-independent justification of prescriptive rules in as much as it allows for the possibility of both contradictory rules and very bad rules. Raz is aware of this problem and his service conception of authority is a possible solution.

[5] This is similar to the master rule ("Let Lex decide") described by Alexander & Sherwin (2001, p. 53). However, the *prima* rule as identified here lacks their Hobbesian back-story.

presents a Razian account of pre-emption with emphasis placed on rule usage.[6] By way of preliminary definition, pre-emptive reasons for action can be taken to be reasons which displace other reasons (Raz, 1986, p. 42). Expanding upon this and outlining the practical boundaries and relations of pre-emptive reasons will not simply provide an abbreviated if substantial picture of Raz's account, but perhaps more importantly it will further delimit the role that prescriptive rules can play in the balance of reasons.

If a prescriptive rule is a content-independent consideration which counts in favour of an action, then how does that rule measure up to other considerations or normative reasons against or in favour of that action? This question is manifold as an answer to it needs to address reasons for and against the issuance of the rule, reasons for and against the action prescribed by the rule (from the authority's standpoint), as well as subjective reasons for and against the rule and the action prescribed by the rule (from the agent's standpoint). The following will not attempt to provide answers to all of these questions. Rather, these are the starting points for consideration of answers provided by Raz to some of these matters.

An authority issues a prescriptive rule when reasons in favour of issuing the rule defeat reasons which go against it. Underlying prescriptive rules are reasons that have counted in favour of issuing the rule, reasons in favour of the action prescribed by the rule, as well as reasons that were defeated in the process. An authority will balance the pros and cons of a particular action, but also the pros and cons of regulation (e.g. of behaviour) in the first place. The crowning jewel of these considerations will be a prescriptive rule (e.g. All Ss should X in C).

The above captures very roughly the process of issuing prescriptive rules from the point of view of a presumptive authority. The next step is to take the agent's perspective. The issue to be considered regards the role of prescriptive rules in the balance of reasons of an agent. Taking a presumptive subject S of a prescriptive rule R, which prescribes an action X in circumstances C, the challenge is to comprehend the way in which S ought to reason with R. A case has been made for regarding R as a content-independent reason for X-ing in C, but the question pertains to the position or strength of R relative to other reasons for or against X-ing.[7]

In *The Morality of Freedom* Raz writes: "When considering the weight or strength of the reasons for an action, the reasons for the rule cannot be added to the rule itself as additional reasons. We must count one or the other but not both. [...] To do otherwise is to be guilty of double counting" (Raz, 1986, p. 60). The urge is then to think of a prescriptive rule before its issuance by an authority. Ideally, an authority will assess a particular situation by weighing the reasons for and against issuing a rule. An authority will take into account all relevant considerations and issue a verdict in the form of a rule. The rule is meant to replace those reasons that were considered by the authority prior to the rule's

[6] The focus here is on pre-emptive reasons for action as they are essential to any complete analysis of prescriptive rules. Furthermore, pre-emptive reasons for action are the bedrock of Raz's service conception of authority onto which such concepts as exclusionary and later (in his work) protected reasons for action are erected.

[7] Reasons for regulating take a subject perspective too. The Razian answer is the Independence Thesis. Basically, S has a reason to follow R when the independence condition is met; in other words when it is not more important that S decides for herself rather than follow the directives of an authority.

issuance. Without this pre-emptive or exclusionary quality the rule would fail to meet its purpose (Raz, 1975, p. 62).

The reasons underlying a prescriptive rule are those reasons which provide the justification for the rule. They are content-dependent first-order reasons in favour of the rule and the action prescribed. A prescriptive rule does not add to the first-order reasons in its favour, instead it replaces those reasons. Thus, the rule, if it is to function properly, will pre-empt agents from recounting those reasons that have already been counted by the authority.[8] It will not, however, exclude reasons that are in favour of the directive even though those may not have been counted by the authority (Raz, 2007, p. 1022). It will exclude those reasons which militate against it (Raz, 2007, p. 1022).

The picture of pre-emptive reasons painted above may appear to depict these as closer to Hartian pre-emptory reasons (i.e. reasons not to re-deliberate), rather than Razian pre-emptive or exclusionary reasons (i.e. second-order reasons not to act on some first-order reasons). Scott Shapiro criticises the Razian account of pre-emption on the grounds that Raz ignores a crucial aspect of deliberation – it is essential that deliberation is action-guiding – one who deliberates does so in order to form an intention to act on the results of deliberation (Shapiro, 2002, p. 407). Thus, to claim that an agent can deliberate, but is not to form an intention to act on the basis of her deliberation (when the agent faces an exclusionary reason), does not seem fully consistent (Shapiro, 2002, p. 407).

A way to reconcile Raz's and Shapiro's positions is by taking pre-emptive reasons to be reasons which exclude other reasons from deliberations undertaken with the intention to act. This will not exclude idle considerations. Deliberation appears intimately linked to action when one considers, like Shapiro, deliberations about how to act. However, deliberation does not necessarily concern action. One can deliberate or consider in a thorough manner all sorts of things without having the intention to act on such deliberation. One can deliberate about the appropriateness of a question without thereby withholding to answer it if the question is deemed inappropriate and one can deliberate about the appropriateness of the same question without being either its addressee or addressor, or one can deliberate about whether or not a cake is good. In all these cases the final aim of deliberation need not be action, but, for example, forming an opinion or understanding a certain matter. In this way, an agent can also deliberate about a rule's underlying justifications without making her actions conditional to the result of deliberation. Most likely, however, agents will find it fruitless or risky to engage in deliberation when they are barred from acting on it (Hurd, 1991, p. 1626). Contrastingly, from the authority's standpoint, it makes no difference whether agents deliberate or not as long as acting on the basis of their deliberation is limited (Hurd, 1991, p. 1626).

At this point, I want to draw a connection between the issue of content-independence and that of pre-emption. Content-independence pointed to the fact that a rule is a content-independent reason for action – a reason to do what the rule prescribes not because of the merits of the action prescribed, but rather in virtue of the fact that there is

[8] There is great debate and ambiguity in the literature with regard to whether or not pre-emptive or exclusionary reasons are to be understood as second-order reasons not to act on first-order reasons, second-order reasons not to act on and/or consider first-order reasons, as well as other aspects of pre-emption (Cf. Edmundson, 1993; Flathman, 1980; Hurd, 1991; Moore, 1989; Perry, 1989; Regan, 1989; Schauer, 1991, pp. 88–93).

a rule prescribing it. The merits of an action are on this account not the reasons for performing the action. They are, however, the justifying first-order reasons that an authority considers before issuing a rule. The rule replaces these reasons by incorporating them. As such, agents no longer have direct access to the first-order reasons which justify a rule and that were considered by the authority. Agents only have access to the rule. It is in this way that prescriptive rules are reasons for action *qua* rules.

The issue of why pre-emption is necessary to a proper understanding of prescriptive rules may still be unclear. For Raz, pre-emption can explain the way in which rules function. For rules to be the efficient error-eliminating, coordinating and time-saving devices that we normally take them to be, it makes sense that agents should follow them directly and not through recourse to the underlying reasons which justify them (Raz, 1975, p. 62). To do otherwise would be to double the work, re-deliberate, and count twice the same reasons which justify rules in the first place.

The justification of rules in terms of efficiency (saving both time and labour) and error elimination is the one preferred by Raz (Raz, 1975, p. 62). Generally speaking, this way of justifying rules is also the least controversial (Raz, 1975, p. 62). In light of these, the argument is the following: unless prescriptive rules are treated as giving rise to exclusionary reasons then the rules will not be serving their true purposes (Raz, 1975, p. 62). This way of arguing for the pre-emptiveness of prescriptive rules is in line with Raz's writings although not nearly as complex. Further, it has yet to say anything about the role of authorities. Only through a conception of legitimate authority can the concepts above be properly delimited and curtailed. I take it, however, as sufficient, given the aims of this paper, to have provided an outline of how pre-emption and prescriptive rules work.

To conclude, through the concepts of pre-emption and exclusion Raz changes the way we normally think about reasons for action. Reasons are typically weighed or balanced against one another with the weightier reasons prevailing over weaker ones (with the caveat that this kind of balancing is possible only for commensurable reasons). Raz assesses conflicting reasons, when one of those reasons is a prescriptive rule, in a different manner. Because of the rule's special standing it will not go through the same processes as standard or first-order reasons for action. Rather, the rule will incorporate the process of deliberation and adjudication already performed by an authority. Thus, the concept of pre-emption provides for an understanding of prescriptive rules by accounting for the special role they hold in the balance of reasons.

2. Conclusion

We might recall what this work has aimed to do; namely, to show what prescriptive rules are, how they operate, and what relationships they bear to other rule types and concepts. While instructions marked a contrastive example because of their optionality, they nevertheless were shown to share traits with prescriptive rules. In this respect, the positive and distinguishing characteristics of both kinds of rules contributed to a more complete depiction. Beyond the mere development of a conceptual framework, differentiation of prescriptive rules from instructions hit upon the central feature of

content-independence. Here, the rule's source was shown to be fundamental to its justification, and this in turn highlighted the way in which an agent's own reasons could be supplanted by the issuing authority's directive or rule. While content-independence was detailed by reference to its conceptual history starting with Hart, it was ultimately the conception advanced by Raz that served as this work's focus on the matter. The Razian account dovetailed into the final if brief reconstruction of pre-emptive reasons and their relationship to prescriptive rules. The core findings about content-independence (i.e. its meaning and functioning) undergirded the pre-emptive capacity of prescriptive rules. Throughout, this essay focused on rule usage as a part of agents' practical reasoning. Prescriptive rules have a strong guidance function for agents and can do so without the inclusion of agent-specific reasons. For prescriptive rules, issuing authorities become the decisive factor in determining the rules' standing in the balance of reasons, as well as their guiding force. This captures at least one sense of the significance of rules: the importance that different rule types have in guiding agents to act or not act in one way or another. Overall, the analysis offered helps to clarify the nature of prescriptive rules, which is a way of clarifying part of the law given that so much of it consists of legal norms that prescribe what it is that subjects ought to do and ought not to do.

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When Artificial Intelligence Fails

The Emerging Role of Incident Databases

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Abstract: Diverse initiatives promote the responsible development, deployment and use of Artificial Intelligence (AI). AI incident databases have emerged as a valuable and timely learning resource and tool in AI governance. This article assesses the value of such databases and outlines how this value can be enhanced. It reviews four databases: the *AI Incident Database,* the *AI, Algorithmic, and Automation Incidents and Controversies Repository,* the *AI Incident Tracker* and *Where in the World Is AI.* The article provides a descriptive analysis of these databases, examines their objectives, and locates them within the landscape of initiatives that advance responsible AI. It reflects on their primary objective, i.e. learning from mistakes to avoid them in the future, and explores how they might benefit diverse stakeholders. The article supports the broader uptake of these databases and recommends four key actions to enhance their value.

Keywords: Artificial Intelligence, incident databases, repositories, ethical AI, responsible technology, controversies

1. Introduction

Artificial Intelligence (AI) can enhance and support efficient decision-making, optimise resource allocations, reduce human error and risk, improve human safety and service personalisation. However, AI is also a technology with dual use and misuse potential. The potential harms include adverse impact on human rights, manipulative, exploitative, and social control practices and/or further entrenchment of socio-economic inequalities (Rodrigues et al., 2019; Jansen et al., 2020).

AI incident databases have emerged to identify and/or contribute to learning from and mitigate the risks and harms of AI. An AI incident database refers to any platform to gather information and/or collect source of cases or examples or incidents related to AI, including risks and harms, aimed at learning from, anticipating and addressing these.

This article reviews AI incident databases and responds to the following central questions: What is the primary value of AI incident databases, and how can this value be enhanced? The article looks at the primary value of these databases, i.e. learning from mistakes to avoid them in the future and explore their benefits for specific stakeholders. It identifies and analyses four databases: the *AI Incident Database* (AIID),[1] *The AI, Algorithmic, and Automation Incidents and Controversies Repository* (AIAAIC Repository),[2] *The AI Incident Tracker*[3] and the *Where in the World Is AI*.[4] These databases offer an interesting approach to help address potential harms of AI.

This article was developed in 2021–2022. We searched for relevant AI incident databases through desk-based research in April 2021 (with a review for updates in February–October 2022). In June–July 2021, we interviewed founders/creators/people associated with the databases.[5] We analysed the databases using a SWOT framework, i.e. a systematic identification of Strengths, Weaknesses, Opportunities and Threats (Pickton & Wright, 1998; Hofer & Schendel, 1978) in May–June 2021, which was updated between March–November 2022. This article was checked in January–February 2023 and finalised in November 2023 following journal review feedback. The databases changed since November 2022, and the article was updated in November 2023 to reflect changes (interviewees were contacted and feedback was requested by email). The *Where in the World Is AI* dataset is no longer available; therefore, this article reflects information from its past state.

The article is structured as follows: Section 2 presents information on the databases (what information is collected, its organisation, management and statistical information). Section 3 examines their objectives and how they fill gaps in the AI field and support AI developers and managers. Section 4 highlights how different stakeholders (such as policymakers and regulators, researchers, non-governmental organisations and civil society) can benefit from them. The article concludes with four recommendations to enhance their value and use.

[1] See https://incidentdatabase.ai

[2] See https://www.aiaaic.org/aiaaic-repository

[3] See https://bit.ly/3GgHo9t

[4] See https://map.ai-global.org

[5] Interviews were carried out with representatives of the four databases: Charlie Pownall (AIAAIC), Sean McGregor (AIID), Ashley Casovan and Kara Scully (from the Responsible AI Institute, for Where in the World Is AI) and J. Patrick Hall (AI Incident Tracker). The questions discussed with the interviewees included: Motivation behind the databases? What sustains the database/repository? Coverage of human rights: why limited? How could be broadened? What are the challenges you face/anticipate facing in the future? What support could the databases benefit from? And from whom? What are the plans for further development of the databases? For what would they like the databases to be used in particular? By whom? And how? Specific tailored questions were asked where deemed necessary.

2. The databases: What they collect, incident organisation, management and statistical information

Some terminological variations are evident in what each reviewed database collects. One collects 'incidents' (AI Incident Tracker); one collects 'incidents' and 'issues' (AIID), one collects incidents and/or controversies driven by and relating to artificial intelligence, algorithms and automation (AIAAIC Repository), and one collected 'helpful and harmful' AI use cases (Where in the World Is AI). Two databases explicitly include definitions of what they collect.

The *AIID* defines an incident as "an alleged harm or near harm event to people, property, or the environment where an AI system is implicated" (AIID, 2023) and 'issues' as "an alleged harm by an AI system that has yet to occur or be detected" (McGregor et al., 2022). The *AIAAIC Repository* currently classifies entries as 'system' (A technology programme, project, or product and its governance), 'incident' ("A sudden known or unknown event (or 'trigger') that becomes public and which takes the form of, or can lead to a disruption, loss, emergency, or crisis"), 'issue' ("Concerns publicly raised about the nature and/or potential impacts of a System, but without evidence of a public incident or recognised harms") or 'data' ("A public or proprietary dataset/database that has been shown to be inaccurate, unreliable, biased, overly intrusive, etc., and/or that results in issues or incident(s) directly or indirectly associated with the AI, algorithmic, or automation system(s) that draw(s) on it") (AIAAIC, 2023c).

The *AIAAIC Repository* interview clarified that its goal was to provide impartial data to allow people to draw their own conclusion; it did not take a view on what users do with the data, nor seeks to build trust. We note that the databases may reflect the biases of people adding data, but the intent seems to be to make them comprehensive, accurate, fair and balanced as possible and ensure good quality. The *AI Incident Tracker* does not define an incident. Speaking with the founder of this repository clarified that an incident refers to an "identifiable event or series of events", hence, this is not to be confused with a report on a general concern related to AI, such as bias or surveillance. *Where in the World Is AI* collected 'helpful and harmful' AI use cases, but neither was defined, though it elaborated that many of these cases might fall into the grey area of helpful or harmful and that different cultural perspectives, for example, might label cases differently (AI Global, 2020).

All databases organise entries differently. The *AIID* is searchable and features two taxonomies: an AI Harms Taxonomy (in its second edition) developed for the *AIID* by Georgetown University's Center for Security and Emerging Technology (CSET) and a Goals, Methods and Failures (GMF) taxonomy. The *AIAAIC Repository* (2023c) classifies entries as system, incident, issue, or data, by release, when it occurred, country, sector, operator, developer, system name, technology (type/application), purpose, media trigger, risks (e.g. accuracy/reliability, anthropomorphism, bias/discrimination, dual/multi-use, employment, environment, governance, human/civil rights, legal, mis/disinformation, privacy, safety, security, surveillance, transparency) and harms (actual negative impacts). *Where in the World Is AI* categorised by issue, year, domain, location, and whether helpful or harmful. The *AI Incident Tracker* organises entries by date of publication of the article mentioned.

All databases are open to submissions from the public via online forms, though the databases have different approaches to identify submitters. For the *AIAAIC Repository,* an email ID is required for submission. Premium membership (provides free access to hidden data in the Google sheet version of the AIAAIC Repository, including external and internal impacts and the ability to comment on and make minor editorial updates to repository entries) requires the provision of certain information. The *AI Incident Tracker* makes it possible to contribute by sending a pull request on GitHub or filing an issue (contacting the list manager) (AI Incident Tracker, 2023). The *AIID* is the only database that allows a submission to be made anonymously. *Where in the World Is AI* required a Google sign-in.

The databases indicate that submitted incidents are reviewed or verified before inclusion. The *AIID* developed an editor's guide on reviewing submitted incidents for inclusion in the database (AIID 2023). The *AI Incident Tracker* (2023) states that "a maintainer" may ask the contributor to edit his/her "Pull Request" before it is included, due to spelling error or non-compliance with the guidelines or Code of Conduct. *Where in the World Is AI* did not indicate any process for verifying incidents, but our interview revealed that this was done manually and instructions were to ensure that these came from a credible source (e.g. well-known publication) – this had to be approved by the Managing Editor. The *AIAAIC Repository* is edited and managed by the Managing Editor and contributors (https://www.aiaaic.org/aiaaic-repository/governance); incidents and controversies are also submitted by researchers, NGOs and others via social media or through the AIAAIC Repository incident report form. The *AIAAIC Repository* sets out a six-step process for consideration and processing of entries (detection, assessment, classification, summarisation, approval by the Managing Editor and publication) (2023d). Tools and techniques used to identify and collect incidents are Google Alerts, RSS and subscriptions to high quality newsletters and websites and the AIAAIC Repository incident report form. The incident/issue needs to have been covered by high-quality mainstream, trusted media sources (e.g. Reuters, Financial Times) not just the technical media and criteria for inclusion are fundamental. Where things are not clear/in assessment for inclusion, it is put on the *pending* page and after assessment added to main page.

None of the databases outline an explicit detailed process to contest an incident entered in the database. The *AIAAIC Repository* states it "is committed to handling complaints in a fair and transparent manner". An email is provided. Complaints are assessed by the Managing Editor and decisions are published on the *AIAAIC* website (2023d). It appears that the *AI Incident Tracker* stopped adding references to the list of incidents in June 2021. *Where in the World Is AI* indicated it was updated weekly.

The number of incidents reported vary. The *AIAAIC Repository,* in November 2023, lists almost 1,200 entries from 8,100+ reports. The *AIID* has 2,872 reports pertaining to 583 incidents and 215 issues. *Where in the World Is AI* had 415 entries when checked in February–October 2022 and the *AI Incident Tracker* had 251 incidents listed. The types of incidents included in each database also vary. Categorisation of types varies from detailed (specific) to casual and/or uncategorised *(Where in the World Is AI).* The *AI Incident Tracker* included issues related to discrimination, privacy, security, social polarisation, organisational culture in technology companies, etc. The *AIID* taxonomies break

down incidents by sector of deployment, harm distribution and AI tool, among others. The *AIAAIC Repository* covered a wide variety of issues, including, e.g. accuracy, bias, confidentiality, dual use, ethics, fraud, governance, hype, intellectual property, privacy and transparency (2023f).

With regards to the number of types of incidents covered, the databases varied when analysed in 2022. The *AIAAIC Repository* had featured accuracy/reliability – 307 times, privacy – 361, bias/discrimination – 206, safety – 178 times when analysed. *Where in the World Is AI* had 323 Harmful cases and 97 helpful cases.[6] *The AI Incident Tracker* did not specify types. The *AIID* is no longer searchable by 'type' of incident.

All the databases studied are initiatives from the past six years. Where specified,[7] their dates of creation range from 2018 *(Where in the World Is AI*[8]*)* to 2019 *(AIAAIC Repository, AIID).* One database was created by a non-profit organisation *(Where in the World Is AI),* and one *(AIID)* by an individual as part of a project supported by the Partnership on AI (PAI), a non-profit partnership of academic, civil society, industry and media organisations (2023a). Two were created by individuals or groups of individuals (*AIAAIC Repository* and the *AI Incident Tracker*). The *AIAAIC Repository* was founded and is managed by a managing editor, Charlie Pownall and contributors (AIAAIC, 2023g). The *AI Incident Tracker* is curated by J. Patrick Hall. *Where in the World Is AI* was aggregated by AI Global. The *AIID,* which was created by an individual (Dr Sean McGregor) with funding from the PAI, is currently managed by the Responsible AI Collaborative (led by Scott Allen Cambo).

The formats of the databases vary. The *AIAAIC Repository* (2023e) has a web interface supported by a Google Sheets repository. It also has a search engine, and the full repository can also be downloaded with Premium membership. The *AIID* is a searchable website; the full database can be downloaded. The *AI Incident Tracker* is a bulleted list of links on GitHub, part of other resources dedicated to machine learning interpretability. *Where in the World Is AI* also used Google Sheets but is no longer accessible.

Regarding funding, the *AIAAIC Repository* is a privately funded, free database working with a non-profit model. Initial funding for the *AIID* came through the PAI until 2021; as of 2022, its funding came through the Responsible AI Collaborative, which was financed by grants. Two databases did not provide any information about funding sources on their websites (*AI Incident Tracker* and *Where in the World Is AI*). *Where in the World Is AI* did not seem to have dedicated funding but was resourced and managed ad hoc internally. It was done in partnership with an individual who ran a blog on AI and updated it on a weekly basis. They had a design partner and in interview had stated they were invested in keeping it going for the future, as they did not expect a shortage in use cases.

Two of the databases are maintained by people in the United States (*AI Incident Tracker* – Washington, D.C.); the AIID has paid personnel in California, Rhode Island, Massachusetts, Uruguay and Greece, and volunteers all over the world. One has team members in the United States and Canada *(Where in the World Is AI)* and one in the U.K.

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[6] As checked on 21 February 2022.

[7] We could not find it specified for the AI Incident Tracker.

[8] Has cases dating back to 2018.

(AIAAIC Repository). The databases are publicly available (except for *Where in the World Is AI* which is now offline), although some had access restrictions in terms of functionality.

3. Main objective: Learn from harms and raise awareness

3.1. Stated aims: Learning from harms

The AI incident databases studied share a common aim: *raising awareness of current AI harms to prevent future harm.* These databases also have a similar primary audience: developers and managers of AI systems.

The *AIAAIC Repository* was created in June 2019 "to better understand the reputational and other risks" of AI, algorithms and automation and "to get a better handle on how to design, develop, deploy, and regulate them" (AIAAIC, 2023a). It currently (November 2023) states that "by collecting, dissecting, and surfacing incidents and issues from a non-technical, 'outside-in' perspective in an objective and balanced manner, the Repository enables users to identify, examine, and understand the nature, risks, and impacts of AI, algorithms, and automation" (AIAIC, 2023a). The *AIAAIC Repository* is reportedly used by researchers, academics, advocates, journalists, lawyers, policymakers, industry experts at universities, business schools, NGOs, non-profits, think tanks, media organisations, industry associations and businesses globally (AIAAIC, 2023b).

The *AI Incident Tracker* aims to provide a "blueprint for a more human-centred, lower-risk machine learning" (The AI Incident Tracker, 2023). It does not specify its target user, but its founder, Patrick Hall, states the main motivation in building this database is for developers and data scientists to be able to learn from past mistakes. The *AIID* presents itself as a "repository of problems experienced in the real world as a result of AI" that "can help AI researchers and developers mitigate or avoid repeated bad outcomes in the future" (PAI, 2023b). Sean McGregor, the creator of the *AIID,* developed the database "to enable AI incident avoidance and mitigation", noting the present lack of "collective memory of failing" (McGregor, 2020). *Where in the World Is AI* intended to map out "interesting examples where AI has been harmful and where it's been helpful" (2020).

For AI developers, deployers and providers who are the most obvious and the primary targeted audience, AI incident databases are a valuable resource of real-world examples. This knowledge can help reflect on, anticipate problems in their own systems and explore how harms are/could be addressed and mitigated. Such databases can help developers, deployers and providers find concrete examples and insights of problematic and risky AI use, what is/might be harmful, how systems have caused harms and had consequences, types of harms and help address concerns early on. It might also help anticipate what mitigation measures are required to be embedded into the system, at development, deployment or use stages. This would improve the transparency, accountability, safety and reliability of AI systems. Such databases are good teaching and mutual learning resources, and their use should be encouraged in AI/AI ethics and STEM (Science, Technology, Engineering and Math) curricula.

In summary, the main objective of these AI incident databases is to learn from risks and harms to avoid these in the future. As such, they offer a valuable resource support for the design, development and promotion of safe, transparent and accountable AI systems.

3.2. Growing the field's maturity by supporting prudence

The 'move fast and break things' approach has often accompanied the growth of the digital economy (Taplin, 2017) including AI and big data technologies. Cassie Kozyrkov, Head of Decision Intelligence at Google, stated it thus, "go for it, see what happens. Get it wrong, because you're going to have to do it over and over again. You're going to fail, fall down over and over again. Pick yourself up. Try again until finally, it works" (Google Cloud Tech, 2019). In too many cases, it is after the harm is done, that action is taken to prevent it. As McGregor put it: "Technology companies are famous for their penchant to move quickly without evaluating all potential bad outcomes" (McGregor, 2020). The specific technical characteristics of AI as a technology that is based on the trial-and-error method might have further contributed to the lack of prudence in deploying potentially harmful AI systems. AI incident databases are useful tools to help grow the field's maturity in supporting prudent decision-making.

Policy makers share the responsibility for the fast deployment of AI without always sufficiently accounting for potentially harmful outcomes early-on (though of late there is a greater recognition of the need to regulate AI). Globally and in the European Union, there has been a strong push to fund, increase and hasten the deployment of AI. The European Commission's White Paper on Artificial Intelligence (2020) illustrated this push from the policy-making side, although it also acknowledged the need for trustworthy technology.

Aristotle considered prudence *(phronesis)* a key value and attitude of ethical behaviour. This value appears to be lacking in the AI field – this is concerning not just because there is much greater aversion to risk but also because there is much more work on, and awareness of the risks and harms that might result from the improper application or use of AI technologies. The imprudence that can be observed in the AI field reveals some degree of immaturity of the field and a certain hype and fascination with AI that lowers the threshold of caution. There seems not to have been too many lessons learnt from other risk-heavy domains such as pharmaceuticals and air transportation. AI incident databases, therefore, constitute a powerful tool to support prudent decision-making.

3.3. Fostering accountability

The public and visible nature of such databases can help develop accountability, i.e. require AI developers, deployers and users to be accountable for harms their systems might generate. By flagging a potential harm, the databases are a resource that could put pressure on a specific actor to act to prevent and mitigate harm. The "move fast and break things" approach of Silicon Valley is no longer acceptable (Taneja, 2019).

The more these databases are known, publicised and used, the greater this pressure will be. As AI technology matures, preventing potential harms to individuals and the society is critical. Furthermore, as the regulation of AI in the EU increasingly moves toward a risk-based approach as framed in the AI Act proposal, these databases constitute a useful resource to identify and assess these risks (European Commission, 2021).

The databases also present a means to encourage public accountability by raising public awareness of AI harms. The public often lacks awareness of the risks and harms of AI systems. Considering the complexity and opacity of AI systems, lay people may fail to recognise that an issue exists or might have originated there. This makes it difficult for the public to ask for accountability. As Charlie Pownall, Founder of the *AIAAIC Repository* put it, opacity "erodes confidence and trust". These databases can help further promote transparency,[9] although it might prove costly for the organisation developing, deploying, or using the AI that has led to an incident. By improving public awareness, the databases foster accountability. They make it possible to "share power" by sharing knowledge beyond the experts. As the databases refer to media sources that are for a non-technical audience, this further contributes to this.

4. How other stakeholders can benefit from the databases

In addition to AI developers and managers, a broad range of other stakeholders can benefit from accessing and using AI incident databases, including policymakers and regulators, researchers, non-governmental organisations and civil society.

For policymakers and regulators, AI incident databases provide examples of risks and harms within AI ecosystems, which can inform policy and decision-making related to the governance of AI. Policymakers and regulators working on AI policy need to better understand AI and be sensitised to the risks and harms of this technology (a view supported in the *AIAAIC* interview). In that sense, the databases could be a great tool to inform their work. Information could also be used for training and/or awareness-raising. Databases could become a legal requirement for the industry, incentivised, for example, as due diligence requirements. If required, funding support should be forthcoming from policymakers and regulators, helping address sustainability challenges and enabling the databases to be maintained.

For example, an AI incident database could support implementation of the proposed European AI Act, which may require certain AI providers to inform national competent authorities about serious incidents or malfunctioning that constitute a breach of fundamental rights (European Commission, 2021). AI incident databases would complement these formal efforts in a more non-formal and non-legalistic manner, especially in capturing a wider variety of instances that might not fall within the scope of the regulation and even occur beyond the European Union.

[9] Jobin et al. 2019 analysed 84 AI ethics guidelines and found that the principle of transparency is the one that occurs the most often: it is mentioned in 73 out of the 84 guidelines studied.

Policy makers and regulators also play a key role for the promotion of accountability of AI systems. As Naurin (2006) states: "Being held accountable involves 'paying the price' for one's actions. Accountability therefore involves something more than just having one's actions publicly exposed. In case of misconduct some kind of sanction should be imposed on the actor." We encourage the use of these databases by decision makers to ensure accountability for harms caused by AI.

Researchers on ethics, SSH (social sciences and humanities), and human rights can utilise the information collected in the databases to better understand the AI ecosystem and identify incidents (or incident profiles) for further studies. While soft law initiatives (e.g. ethics guidelines) have emerged since 2018 to respond to potential harms caused by AI (Ethical ML, 2023) there is increasing discontent with this form of response (Rességuier & Rodrigues, 2020; Wagner, 2018) and the growing recognition that human rights should play a role in addressing these harms (Siemaszko et al., 2020). These databases could further support the work of the human rights community by framing the incidents, where relevant, as human rights violations. Human rights provide well-established lenses to consider harms to individuals or communities. Framing of harms as human rights violations make them more directly relevant to the human rights community to address these harms. It could also be a useful lens for developers themselves to better understand the human rights risks of their systems to individuals, society and the environment.

While we encourage the human rights community to use these resources, we acknowledge it is not the primary audience of the databases. Our interviews flagged concerns that using the human rights lens might undermine the databases' use and may scare away the intended audience from supporting and proactively using them. We do not fully agree. As outlined in the UNESCO Recommendation on the Ethics of Artificial Intelligence (2021) respect for human rights is essential throughout the life cycle of AI systems and should be considered in the collation of data for these databases. AI is fundamentally multi-stakeholder – it relies on diverse stakeholders for its development, deployment and use and has a wide impact on individuals and society, including human rights. Therefore, the use of the human rights lens or the engagement of the human rights community with these databases would be highly valuable. The databases are a resource that could target the diversity of stakeholders in the development, deployment and use of AI.

Civil society organisations (CSOs) and non-governmental organisations (NGOs), including those that work in human rights, may also find AI incident databases valuable to identify incidents for further investigation and follow-up. As exemplified in the case of the *AIAAIC,* it has been endorsed by researchers, academics, advocates, journalists, policymakers, industry experts, NGOs and non-profits, think tanks, media organisations, industry associations and businesses (AIAAIC, 2023b). A privacy-focused CSO, for example, may find specific examples of AI-related privacy violations to support a campaign for policy reform or increased public awareness. CSOs working with specific demographic groups, including vulnerable groups, may use such databases to discover incidents with similar characteristics to help build a network of similar victims and leverage the strength of a larger collective to advocate for harm mitigation. A legal services organisation or law school legal clinic could also use an AI incident database to identify specific victims for individual or collective (i.e. class action) representation.

5. Conclusion

As AI is pervasive and cuts across sectors and disciplines, it requires oversight from people with a diversity of experience and expertise. An AI incident database can be an especially useful resource that is worth sharing and using across a diversity of communities. Such databases have a valuable role to play in helping AI design, development and use to learn from what's gone wrong. They complement other governance measures aimed at mitigating potential harms. To this effect, we support their broader uptake and recommend:

1. Ensuring funding and sustainability by linking the databases to other AI and sectoral initiatives and making them available for wider use (e.g. teaching, research and policy decision-making).
2. Enhancing/adopting measures for better vetting, incident reporting accuracy and improving discoverability of incidents. This would boost the reputational value of the databases and improve trust and accountability.
3. Analysing the types of incidents occurring and re-occurring over a period to help understand key AI risks and harms, whether these are being addressed, and the remaining challenges.
4. Ensuring accountability, by addressing understandability, accuracy, verifiability, comparability, timeliness, and completeness and resourcing issues (Ullah et al., 2021).

AI incident databases can be useful to raise awareness and provide a resource base for diverse stakeholders. It is important to make these databases more accessible to audiences non-familiar with harms of AI, especially those that are not given the opportunity to provide their inputs during the research and development phases. This will promote a civil society that can ask for redress in case of harm caused by AI and require accountability.

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Rights and Future Persons

The Promise of Arguments from Present People's Identity

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Abstract: This paper examines the ways the two fundamental problems regarding the rights of future persons/generations (the non-existence problem and the non-identity problem) are usually tackled in scholarship. It is argued that while rights cannot be properly attributed to future people, rights *in respect to* future generations can be based on present persons' identity.

Keywords: future generations, rights, interests, trans-generational self, community, identity

Today's discourse on future generations is permeated by different conceptions of identity. It seems that at least some of the problems related to the use of future persons' or generations' rights as a topic of arguments can be best described as problems of making, sharing, shaping and reflecting on identities. In what follows, I shall focus on what is at stake in terms of argumentation if one refers to future people on the one hand, and rights on the other. The first part of the paper focuses on the uncertainty of the identity of future persons, summarising the problems following from the fact that the members of future generations are envisaged as not-yet-existing people, and taking a look at some attempts at tackling these issues. The second part then turns to the question of how focusing on present people's rights can be helpful, if one wishes to keep the language of rights when discussing present actions' consequences for posterity.

1. Rights, existence and identity

In environmental ethics as well as legal and political decision-making, references to future generations' rights and interests occur with an increasing frequency. The rights of future people are generally opposed to those of present persons, in order to protect the former from the harmful consequences of the latter's imminent actions. The rhetorical function of such arguments resembles, one may say, that of Socrates's *daemonion,* which allegedly only dissuaded the philosopher from certain plans, never persuading him to

anything. Socrates may have known his *daemonion* very well: future persons are by definition unknown to us. Indeed, the very basis of the concept is the separation of future generations from the present one. This separation can be interpreted in various ways, according to our understanding of 'present' and 'future'.[1] As for the present generation, it can be conveniently defined as the sum of persons living at a certain point of time. It is the future that makes for the puzzle. Focusing on time, we may oppose to the present moment a series of future moments. In this sense, the major part of people living in the present is also going to be the major part of those living in the immediate future: a change of generations comes about gradually, according to the pace of human life cycle. If, however, it is the generation that we take as the starting point of our distinction, we have to take a look on the more remote future: at least as remote as the moment where no one of the currently living persons will be alive any more, but rather to the life time of the generation whose members will be all born after the death of all those persons living in the present, which means that their generation does not overlap with the present one. Our choice among the possible definition of future generations obviously has certain consequences in terms of the interpretation and justification of rights.

The language of rights undoubtedly has a strong persuasive function: it is meant to give weight to the interests one wishes to protect. Using the concept of rights, however, makes it necessary to be consistent with some theoretical constraints, or otherwise our usage becomes counterproductive, losing much of its credibility (cf. Tattay, 2016). There seem to be two such fundamental requirements: to be able to attribute a right to a subject, and to be able to define the content of that right.

Both of these requirements pose a challenge when it comes to the rights of future people. In terms of the subject, the problem is that of non-existence. The content of the rights, in turn, raises the issue of uncertainty. The two problems also seem to be intertwined. Generally speaking, the rights usually attributed to future generations or individuals belonging to these are not specifically tailored to future persons but are the same ones which currently living people are thought to have. The consequence of this is that the subjects of these rights cannot be defined in a positive way, by referring to a certain situation or characteristic,[2] only through their lack of present existence. Thus, the group of subjects is not simply too narrow or too broad: it is infinite and non-existent at the same time. The problem in this respect is not that subjects of rights would have to exist in the present. What is troubling here is that in this case we are speaking of those not-yet-existing persons and, furthermore, this is the only (negative) characteristic we know of them for sure.

Moreover, the identity of future persons seems to be contingent on present actions. In his celebrated work, Derek Parfit pointed out some cases where it is not possible to speak of harming people who are actually going to exist, either. His 'Non-Identity Problem' is due to the fact that

[1] See e.g. Gosseries (2004), Tremmel (2009), Caney (2018) for some conceptual distinctions concerning future generations.

[2] See, however, Herstein's (2009) suggestion to focus on types of future people, or Beyleveld et al. (2015) focusing on generic interests.

> the identities of people in the further future can be easily affected. [...] When we are choosing between two social or economic policies, of the kind I described [i.e. whether to deplete or conserve certain kinds of resources], it is *not true* that, in the further future, the same people will exist whatever we choose (Parfit, 1984, p. 363, emphasis in the original).

Yet even if we accept that not-yet-existing persons can have rights, we still have to face uncertainty in terms of the content of these rights and the obligations they determine. This is all the more problematic, as the rights of future generations are apparently meant to provide the grounds for obligations of present people. For it seems clear that such rights are not exerted in the present by their holders: there is no pleading of claims, as it would not be possible with non-existing subjects.[3] If we concentrate, in turn, on the (potential) future existence of future people, then their rights will be the rights of then existing persons, who exert their rights and base their claims on them in their lifetime – and not the rights of the then future generations. We reach the same conclusion, only on a shorter run, if we consider all persons who will live in any moment after the present one as members of the future generations: in exchange for certainty, we have to sacrifice the possibility of saying something about the rights of the ever future generations.

Perhaps the most straightforward way of tackling this problem is to abandon 'substantive' concepts of law, those that include an element of justification, for a 'conceptual' one, somewhat in the vein of Hohfeld. According to such a definition, "a person has a right if and only if a feature of that person is a *reason* for others to have an obligation or impossibility. A person has a right if and only if a feature of that person is the justification of the obligations or impossibilities of others" (Rainbolt, 2006, p. xiii). Rights as the basis of justified constraint can indeed be attributed to those already dead or belonging to (possible) future generations, but it seems that justification is at the very heart of our problem: we need to be able to explain why we need to attribute rights to non-existing people, even if we move that question from the field of conceptual legal theory to that of moral philosophy.

Most responses rely in this respect on probability. As Joel Feinberg put it, it seems safe to assume "that there will still be a world five hundred years from now and that it will contain human beings who are very much like us" (Feinberg, 1974, p. 42). And we do not even have to go as far as that in time: it suffices to assume that there will be at least one person to be conceived after the last member of our generation has died to have grounds to talk about the rights of future people. Moreover, the assumption extends to the content of rights insofar as that one person can be thought to have rather similar interests to ours (cf. Feinberg, 1974, pp. 65–66; Kavka, 1979, sect. III).

[3] Feinberg (1974, p. 65) claims that "[o]ur remote descendants are not yet present to claim a livable world as their right, but there are plenty of proxies to speak now in their behalf. These spokesmen, far from being mere custodians, are genuine representatives of future interests". It is difficult, however, to see how contingent future interests could have genuine representatives.

2. The past and future of present communities

Moving to the level of communities, the first thing to note is that here too, the identity of future generations is assumed and perceived as problematic at the same time. As for the uncertainty of future people's identity, it was pointed out by Martin P. Golding (1972), who discussed the possibility of grounding present obligations to future generations on the assumption of moral community. According to his reasoning, obligations to future people can be justified only if we assume some kind of a moral identity, i.e. that the present generation's values are accepted as such by future generations. He claims, however, that such assumptions become increasingly uncertain as we look at generations more remote in time. As their life circumstances may differ considerably from ours, we cannot be sure whether our conceptions of the good life hold for them. What follows from this is that arguments in favour of our obligations to prefer the interests of future generations to present ones are unconvincing: either their interests coincide with ours (or with the interests of those less remote in time), or we would be sacrificing more certain interests for less certain ones. Yet Golding makes it clear that as the life circumstances of future generations can be influenced by present actions, so can be their values. In his conclusion which seems to anticipate, albeit in a positive form, Parfit's Non-Identity Problem, he says that "[i]t actually appears that whether we have obligations to future generations in part depends on what we do for the present" (Golding, 1972, p. 99).

Bearing in mind the caveats of Golding, Avner de-Shalit (1995) examined how future generations can actually make part of a community together with the present one, focusing on the question of identity in the case of political communities. While he does not exclude the possibility of a chain-like continuity of a political community's identity, he emphasises that changes in commonly accepted values can lead to a downright breach between two given generations that do not have immediate links with each other. He brings several historical examples in order to support this view (cf. de-Shalit, 1995, pp. 40–42, 46–48). His conception of community is therefore limited in both space and time: the present members of a given community have rather limited relations to other people that might be evaluated using justice as a criterion. In terms of future generations, this means that justice is applicable only as long as the sense of community exists in the members of the present generation: shared understandings and common values fade away with time. As for the generations that follow after this temporal divide, the present generation has no more obligations than towards their own contemporaries who are outside the community.

De-Shalit affirms that it is possible to envisage a trans-generational community, even if one excludes common life in a physical sense. There are two more criteria which can prove the existence of such a community: cultural interaction and moral similarity. These are strongly interconnected. Cultural interaction means an ongoing dialogue between the members of the community. Thus, it is necessary to create new common understandings and common conceptions of the good life, but also to challenge and discuss old ones. In this way, it contributes to the establishment and the continuous rethinking of moral similarity, which is defined as "common and more or less accepted" "attitudes, values, and norms" (de-Shalit, 1995, p. 27). On the one hand, cultural interaction needs a common

background, which is, at least partially, provided by moral similarity. Now, it seems rather counter-intuitive to expand the notion of cultural interaction to a trans-generational context. On the other hand, it is clear that every generation reflects on, sometimes even answers to ideas that stem from their predecessors, yet intergenerational communication works in one direction only. De-Shalit solves this problem by emphasising the diachronic character of the dialogue, and says that "in fact this communication will continue with the response of yet further future generations to the future generations with whom we communicate" (de-Shalit, 1995, p. 44). Accordingly, moral similarity is in a state of endless development: attitudes, values and norms of previous generations are submitted to deliberation in every new generation. And this is exactly, de-Shalit argues, why the sense of community fades away: "When it comes about that the values of the members of the community change drastically, many members will find themselves in a state of growing alienation from the community of their ancestors" (de-Shalit, 1995, p. 46). He therefore concludes that the present generation may reasonably assume that persons in some generation in the future will not consider themselves members of our community. Hence, if it comes to a conflict between needs of the present generation, or of some in the proximity, and the needs of more distant generations, priority should be given to the former (de-Shalit, 1995, pp. 54–55).

It is interesting to see how de-Shalit distinguishes between an internal and an external point of view. He makes it clear with the example of a member of the English nation. From the perspective of a historian (an outsider), the community in both the 17th century and now may be properly described as 'English', while a member of today's English political community (an insider) will hardly share the values of the 17th-century English nation (see de-Shalit, 1995, p. 46).

According to de-Shalit's accounts of cultural interaction and moral similarity, these factors provide for the constitutive character of the community through the moral and political debate,[4] while, on the long run, it is the debate that causes common understandings to disappear. But where do they really disappear? It seems that de-Shalit is too mechanical in distinguishing between the insider's and the outsider's point of view. The assertion that the question of shared values should be viewed from the former is justified as far as it is the present members of the community whose decisions concerning future generations are in the focus of the theory. Yet the link between the fading away of moral similarity (i.e. a set of shared values) and the discontinuity of the sense of identity would definitely need some explanation.

The examples given by de-Shalit concentrate on "people who left their communities because they no more felt any sense of belonging" (de-Shalit, 1995, pp. 46–47). This, however, makes their relevance somewhat problematic. Leaving one's community does not necessarily mean that one does not have any values in common with past members of the community. Nor does it mean that one is not going to participate in the on-going discourse inherited from past generations. If there is a split among the present members of the community, it is something past members would have taken into account as some possible dysfunction rather than the end of the identity of the community. If, however, the common

[4] For the opposition of communities based on moral similarity and of 'instinctive' ones, see de-Shalit (1995, p. 42).

values of the community undergo a change which is due to the "new circumstances, a new social environment, new technology" or "openness to ideas from the outside", it may be reasonable to assume that past members of the community, if they were living in the present, would share the new values, or at least participate in the discussion concerning these values.

The argument of de-Shalit is based on the claim that "the concept of a community is only compatible with rational agents, because the members ought not to define themselves according to values on which they have never reflected" (de-Shalit, 1995, p. 45). Given that the present generation cannot foresee the outcome of any debate which expands to after their lifetime, the only thing present members of a community know for certain is their view of their own community, that is to say, their own identity. If one would ask the Englishman of the example whether he considers himself to be part of the community referred to as the English nation, his answer is likely to be an affirmative, as well as that of one of his 17th-century predecessors. And it does not seem very far-fetched that the same would be true if one would make the question refer to the membership of 17th-century and present-day persons, respectively. To put it otherwise: even if we tend to assume that at some moment our descendants are going to leave all of our values and norms, we can still talk about them (with more or less confidence) as future members of our community. In fact, de-Shalit himself does apply a 'mixed' perspective in that he speaks of the (future and objective) non-constitutiveness of a community on the basis of the alleged subjective views of the community's future members, and concludes to principles of justice that, again, should be adopted by the actual community. This is one of the reasons why I think that present identities provide a more firm basis for envisaging obligations than future ones.

Another way of solving the problem caused by the lack of reciprocity between generations is simply challenging this notion. Such an attempt was made by John O'Neill (1993), who builds his theory on the notion of the 'transgenerational self', that also de-Shalit makes use of, but, unlike de-Shalit, he does not limit its application to a psychological assumption. Contrary to the widely accepted opinion on the lack of reciprocity between generations, he affirms that there are real harms and benefits posterity can do to us.[5]

O'Neill mentions the example of narratives to demonstrate how one's self transcends the limits of one's life and how future generations can play a role "in determining the success or failure of the work of previous generations". As narratives about one's work may well exist and even change after one's death, we can hardly speak of separate generations without links to each other (see O'Neill, 1993, pp. 28–36). Moreover, there is a wide group of human projects which can be successful only in the long term: here, it is necessary that more generations contribute to the same project, sometimes without enjoying any of its results. These insights were generally acknowledged by every culture, until the emergence of market-based societies. The idea of the market that emphasises mobility against

[5] This assertion is linked with a general criticism on modernity: "The assumption that future generations cannot benefit or harm us highlights a peculiarly modern attitude to our relation with the past and future which is at the centre of our environmental problems. [...] It is tied to the modern loss of any sense of a community with generations outside of our own times – of any sense of reciprocal action or dialogue with them [...]" (O'Neill, 1993, pp. 27–28).

ties of place, profession and so on, contradicts to identity across time, and that leads to a "temporal myopia that infects modern society" (O'Neill, 1993, pp. 38–43).

As for future generations, then, it is the responsibility of the present generation towards its past, future, but also to itself

> to attempt, as far as it is possible, to ensure that future generations do belong to a community with ourselves – that they are capable, for example, of appreciating works of science and art, the goods of the non-human environment, and the worth of the embodiments of human skills, and are capable of contributing to these goods (O'Neill, 1993, p. 34).

It is important to note that O'Neill's image of the community is a rather dynamic one, as it takes the history of a community into account. He emphasises the importance of arguments "both within generations and between them". Thus, the most important obligation of the present generation is to provide for both the external and internal conditions of the ongoing discussion, i.e. conditions of the (physical) existence of future persons, as well as the (cultural) conditions of their meaningful participation in the arguments (see O'Neill, 1993, pp. 35–36).

The theory of O'Neill is a very attractive one, as it helps to overcome some problems that are often criticised in communitarian theories. He rightly mentions debate (as opposed to a constant set of values) as one of the most important features of a community, without describing it as something that menaces the identity of the community, as does de-Shalit. Furthermore, his account of communities allows for envisaging a global community that may be essential for dealing with global environmental problems properly.

But let us come back for a moment to the influence of future generations on the success or failure of one's work. This argument is put forward by O'Neill in the context of reciprocity, as opposed to the view that future generations cannot help or harm presently living persons. The good of a successful life (one that we can obtain only with the help of posterity) is then paired with the harms present persons can do to future generations. According to O'Neill, these are the following: "(1) We can fail to produce works or perform actions which are achievements. Future generations may not be able to bring our deeds to a successful fruition. (2) We can fail to produce generations capable of appreciating what is an achievement or contributing to its success" (O'Neill, 1993, p. 34).

One still wonders how these points provide for an intergenerational reciprocity, since the goods of each party that depend on the contribution of the other, are of quite different nature. But let us take a closer look on them. First, the possible failures of the present generation necessarily harm further generations but also the present generation, at least from the perspective of the present generation: indeed, it is a harm to future generations if they do not have anything to appreciate or contribute to, or if they are unable to do so, and it is likewise a harm to us if they do not. But these harms exist, at least partly, only from our point of view, since if future generations cannot do something, they do not necessarily realise their lack of that capacity. To that, O'Neill would answer that it is a common subjectivist mistake to think that "what you don't know can't hurt you" (O'Neill, 1993, pp. 36–37). But that does not answer the objection that in a final analysis it is us who harms us if we fail to provide for the conditions of our (future) success.

The next problem arises if we do our best for future generations, since (fortunately enough) this does not compel them to render our work a success. Of course, the fact that they exist and are able to appreciate or contribute to our ongoing projects is a success in itself (one that we accomplished ourselves!), but they will not have the slightest obligation not to let our stories continue or end as failures. It is fair to note that O'Neill does not seek to prove the existence of reciprocity in order to justify intergenerational obligations, but rather to show that single generations within a community are not isolated from one another (see O'Neill, 1993, pp. 27–28). Fortunately, then, it is not necessary to accept the possibility of harming past people to agree with him on the trans-generational nature of communities.

Moreover, it has to be emphasised that adopting a present perspective is a virtue, rather than a vice, when dealing with future generations. With the help of his account of the trans-generational self, O'Neill seeks to prove the existence of a trans-generational community, that is aimed at certain trans-generational goods. He further concludes that each generation is responsible for contributing to maintaining the community and accomplishing its goods. As O'Neill himself states, however, there is a constant debate on many aspects of the community and its goods. There I see some tension between this latter, discursive approach and the semi-objectivist views O'Neill develops elsewhere in his book.[6] He seems to be aware of the uncertainty of particular contributions to the common goals as he formulates his principle that "our primary responsibility is to *attempt*, as far as possible to ensure that future generations do belong to a community with ourselves" (O'Neill, 1993, p. 34, emphasis added). This seems to be a pragmatical recognition of the fact that human action is always bound to a certain perspective: the most one can – and may be expected to – do is to contribute to the debate (and its conditions) according to one's best knowledge. But here again, the question of success emerges. One can never be sure if his story is a success: but neither can be any of the future generations, at least not in a final, 'objective' sense. Of course, there are some concrete achievements that can be understood as fulfilling one's trans-generational intentions. Still, it is nothing else but possibility what remains for those initiating trans-generational projects. This is enough for keeping the concept of responsibility – even justice – to future generations (as part of our community), but it also shows that uncertainty, and therefore precaution too, also has to obtain a central place in the discussion of the problem of future generations, which should then focus on reasons available from a 'temporally local', yet not egoistic perspective.

A view rather similar to that of O'Neill is advocated by Janna Thompson (2009). Based on Burke's notion of "a partnership [...] between those who are living, those who are dead, and those who are to be born" (Burke, 1790, p. 144), her main claim is that "[t]he generations share responsibility for maintaining the institutions and practices that enable transgenerational demands to be satisfied and successors to receive their inheritance" (Thompson, 2009, p. 33). Like O'Neill, she argues that 'lifetime-transcending interests' can be used in order to justify obligations in respect to past generations and to

[6] A fully objectivist view, in this sense, would be one which attributes inherent positive or negative values to actions, independent of whether these are perceived by other people as success or failure. Cf. e.g. his discussion of achievement and reputation (O'Neill, 1993, pp. 36–37).

future people. It is, then, through fulfilling the transgenerational demands of past generations that we can impose a similar 'obligation' on our posterity in terms of our interests, while at the same time, the present generation benefits future ones by maintaining what it inherited from its predecessors, thus making its demands more plausible.

Apparently aware of the possible objections as to the notion of past people imposing burdens on present persons, she repeatedly emphasises that her "purpose [...] is simply to establish that the demands of predecessors have a moral weight' in a number of cases" (Thompson, 2009, p. 43, n. 17). How far this 'moral weight' can overweight other considerations, is a matter of deliberation in every particular case. She does not deny the right of presently living people to modify or add to what they ought to preserve for the future: "We are entitled to express our own tastes and values but not to the extent of destroying everything that was meant to have been a heritage for future generations" (Thompson, 2009, p. 42).

While I think that Thompsons's image of intergenerational cooperation is a very convincing one, as it has the merit of avoiding the problem the lack of temporal coexistence causes for theories based on the idea of justice as reciprocity in the strict sense, I also think that what she wins in plausibility, she loses in the weight of moral reasons furnished by 'legitimate demands'. Let us consider one of the examples she gives for such demands:

> Suppose Aunt Mabel is a fundamentalist Christian and wants her body to be buried with proper Christian ceremony with all of its organs intact. I, her only surviving relative, am an atheist who believes that bodies should be cremated without ceremony after all their usable organs have been donated to save the lives of others. [...] it is reasonable to insist that lifetime-transcending demands of such importance to an individual should be fulfilled. [...] I do have an interest in how my body is disposed of [...] and think it reasonable to demand that my request be honoured by my successors. Even if I have no interest at all in the matter, I know that many people do. [...] So I have reason to support and act according to a transgenerational practice which requires survivors in most circumstances to dispose of the bodies of the dead according to the wishes that they expressed before death (Thompson, 2009, p. 40).

If we have a look at the actual reasons mentioned at the end, they may be of one of two kinds. If 'I do have an interest in how my body is disposed of', it is actually my interest that makes me observe the demand of the deceased. If, however, 'I have no interest at all in the matter', it really is the demand, which I consider legitimate, that becomes my reason – unless there is another, stronger one. Suppose Aunt Mabel was the atheist, wishing that her organs be donated and her body cremated, and I am the fundamentalist Christian. If I believe that the body of any person has to be buried intact and with certain ceremonies, then I may be justified to have her body buried, even if I think her wish was morally reasonable, in order to prevent the story of her life – as *I* read it – from coming to a bitter end. In this case, my reason still refers to her life and my interest in it rather than to my interest concerning my own body. But even if we take Thompson's example as it is, we can see that it is *me* who reconstructs the interests of past persons – and who takes interest in it.

From all that, two things follow. First, the obligations one can justify with the help of Thompson's reasoning are rather weak ones. They do not have greater weight than any morally reasonable demand from the part of our contemporaries, which we may accomplish or not, depending on our other reasons. And this is bad news exactly because intergenerational obligations, as I mentioned above, are referred to in order to counterbalance present interests. Second, the persuasive potential of her reasoning – as well as those of O'Neill and de-Shalit – can be improved by focusing on present identities rather than past or future ones: this is what I shall attempt to show in the last section of this paper.

3. Shaping *our* future

Thompson's opening statement, according to which "[a] political society is intergenerational" adequately summarises why communitarian theories can be helpful where individualist ones fail: having an identity as a member of a certain community (in this case, a polity) implies that one is interested in the past and the future of this community (cf. Thompson, 2009, p. 25). This may be the reason why John Rawls, too, starts to speak of families, these smallest of communities, when facing the problem of justice to future generations (see Rawls, 1971, p. 128). If, however, we envisage present persons as bearers of identities, then we also have to accept that these persons have interests in respect of both past and future generations. And present interests seem to be a much more adequate candidate for counterbalancing other present interests than (assumed) future or (reconstructed) past ones.

If the present members of a community have an interest in their past, it is this interest that can be referred to in order to protect the life stories (or narrative selves) of past members of the same community from malicious slander (cf. Thompson, 2009, pp. 39–40). Someone already deceased cannot continue her own story even if she had an interest in its good continuation while she was alive. Presently living persons, however, can do so and if they share the values of their predecessor, they will be interested in the adequate continuation, and consequently their interests will be harmed by any present action aimed at the contrary. The same applies to the interests present people have in the future of their community. If any action jeopardises the well-being of potential future members of a community, it necessarily harms the present members of the same community. Moreover, present interests in respect of a community's future include interests in being able to do something for posterity and to attempt – to use O'Neill's words again – "to ensure that future generations do belong to a community with ourselves", i.e. to maintain the values of one's community by way of passing them on to subsequent generations. It is these latter interests that form the basis of community rights, like e.g. the right of using minority languages.

That, however, does not solve the issue of 'generational selfishness'. With various generations within a community having conflicting interests, identity cannot be used as a solid ground of argumentation. The above considerations nevertheless provide some

insights relevant here. Firstly, the concerns of future generations, in contrast to those of the present, can only be brought up when there is a present disagreement. This may occur due to a part of the community disregarding the well-being of future generations while another part does not, or due to differing opinions on how best to serve posterity. Secondly, all community members invested in its future possess the right to engage in such discussions and decision-making, with their future-respecting interests being accepted as valid reasons. Thirdly, those within the community upholding its values and considering membership advantageous must actively contribute to preserving these values and, in line with O'Neill's notion, seek to ensure that their remote descendants remain part of this community. The fundamental doctrine of communitarianism suggests that being part of a community inherently involves sharing its future interests and values, considering membership as a personal good. Those completely neglecting the well-being of future members likely do so out of ignorance regarding the nature of their community. The most effective approach to persuade such persons, as well as others, is that of democratic deliberation.

4. Conclusion

In this paper I examined some of the problems related to the use of the concept of future generations in general and to speaking of the rights of future generations in particular. A brief overview of selected contributions has shown that the actual non-existence of (potential) future persons is an obstacle which cannot be removed easily. It seems therefore that communitarian approaches are more promising in that field, given that the concept of community helps to expand the individual self beyond the limits of the individual's lifetime. This does not mean, however, that we could speak of reciprocity between different generations in any sense of the word. I also argued that we cannot find sufficient basis for the concept of intergenerational obligations. Focusing on present identities, a concept that is already present in communitarian theories, can at least offer something in exchange. Instead of arguing with the rights *of* future generations, we can meaningfully speak of present interests and rights *in respect to* future generations. Certainly, such rights cannot be used to conceptualise intergenerational conflicts of interests. But as the concept of future generations is used in present debates about present decisions, this may not be an irrational price to pay.

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Local Government: A Social Ontology of Care

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Abstract: Setting out to determine what 'local government' is and how it can be understood, I conducted an analysis of the concept 'local government' by identifying its institutional, behavioural and territorial attributes. This analysis informed an ontological description of the nature of local government and the underlying assumptions about this reality. Ontological, local government, as a collection of 'Dasein' with an immanent tension between anxiety and care, may simultaneously be viewed as being a social collective of individuals, an institution consisting of individuals, and a social action or intervention performed by caring individuals. The description of the nature of local government provides a point of departure for describing and comparing this reality as situated in different contexts. It also serves as a proposed menu for the questioning and challenging of underlying assumptions about local government. The value of this social ontology of care lies in the description of the nature of the reality of local government situated in different contexts. Furthermore, it serves as an agenda for questioning and challenging the underlying assumptions about local government within different contexts.

Keywords: care, local government, social ontology, social ontology of care, concept analysis, local government functions, jurisdiction sphere, local government institutions, Dasein

1. Introduction

The day-to-day well-being of people worldwide is affected in dissimilar ways and intensity by local governments. In some countries, residents are barely aware of this sphere of government, while in other countries, they live through vivid experiences of good or bad local government. In response to 'bad' local government, governments conceptualise and implement interventions to address a diversity of local government challenges. Public Administration scholars continually ask questions about, amongst others, aspects of good or bad local government and remedies for the latter. The answers to these questions inform diverse and multiple studies resulting in abundant research publications. These research publications enlighten our scholarly understanding of the public administration reality and practitioners' decisions and interventions towards good local government. If all these studies and publications respond to quests for meaningful

knowledge about local government or a specific aspect of it, the vexing question is: What is 'local government', and how can it be understood?

At first, these questions may appear to be irrelevant, as everybody is supposed to know what 'local government' is. Nevertheless, questions like these are important considering that both the concept 'local government' and the reality to which it refers comprises human constructions within diverse contexts, with possible dissimilar characteristics. The relevance of these questions is evident from

- studies of the practice ontologies of local government (Dobson, 2020)
- the semantic representation of the local government strategic planning process (Zarić et al., 2023)
- Barnett and co-authors' contribution on the study of 'actually existing' practice (Barnett et al., 2020, p. 505)
- the social ontology of purpose (Martela, 2023; Morrison & Mota, 2023a)

As an ontology is expected to provide semantic descriptions of a specific phenomenon (such as local government), the conceptual study on which this article reports, aimed to develop a social ontology of local government.

The current study was directed by the following ontological questions:

- What is 'local government'?
- How does the reality to which the concept refers, present itself?
- How can it be described semantically?

This article departs from an exposition of the concept 'social ontology' and the theories-of-being relevant to the study of local government. This is followed by an analysis of the concept 'local government' by identifying some key attributes, antecedents, and implied outcomes through a systematised review of selected scholarly literature as well as official documents. Derived from this concept analysis and considering some empirical referents, a framework for a universal social ontology of local government is proposed. The notion of social ontology is discussed next.

2. The notion 'social ontology'

What makes an exposition of the notion 'social ontology' necessary for studying and understanding local government? While the word 'ontology' is used to refer to "the study of being" (see Illing, 2010, p. 284; Mouton & Marais, 1996, p. 11; Moyo, 2017, p. 288; Scruton, 2007, p. 492), the concept also refers to the study and questioning of – in the words of the English political philosopher Rodger Scruton – "the underlying assumptions about reality, especially social reality, that are made in some given outlook" (2007, p. 492). The implication is that, while there may be various views on and assumptions about a social reality, there is only one social reality (O'Keeffe, 2020, p. 25).

Several Public Administration scholars have explored ontology as theories of existence. Departing from the assumption that government is a human creation which can only

be fully understood through a social ontology, Raadschelders (2020, p. 47) postulates "a social ontology for understanding government in society" which entails an "interplay of human instinct and intent in relation to the material world in which people live" (Raadschelders, 2020, p. 59). Furthermore, Raadschelders (2020) argues for an "ontology of government that involves a discussion of what government is and could/should be" and for a cross-time perspective and a societal context awareness (Raadschelders, 2019, p. 100). For Stout and Staton (2011, p. 269), an ontology is "the broadest philosophical foundation for theory in that it describes understandings of reality and the nature of existence ... [and] frames presuppositions about all aspects of life, including the social and political".

Searle, one of the founding contributors to the discourse on social ontology, holds that social and political institutions, such as marriage, money, property and governments are all human constructed (Searle, 2006; Searle, 2010). There is therefore a need for a social ontology "to understand the nature of the social world" (Epstein, 2016, p. 149) and, by implication, government in society. This understanding is enhanced through a semantic description of government in society (Zarić et al., 2023, pp. 1, 3). The value of social ontologies of local government has been demonstrated by, amongst others, Dobson (2020) and Zarić et al. (2023). The latter contribution reports on ontology-driven simulation methods within the context of the local government strategic planning process (Zarić et al., 2023).

The implication of the human nature of local government as institution is its inherent indeterminacy. This characteristic entails the restrictions for the attainment of truth about this reality, with implications for the epistemic imperative and the ideals of rationality and objectivity (Mouton, 2014, p. 100). It is therefore expected that a social ontology could enhance our understanding of a social reality, such as local government, through a meticulous semantic description and framing of its socially constructed and interconnected characteristics, functions and behaviour (Searle, 2006; Wessels, 2023, p. 26). While the concept 'local government' may be embodied by its constituting institutions or organisations, groups or communities, individual representatives and officials, interventions, social actions or events and social artefacts, such as reports and publications (Wessels, 2021, p. 437), it can be observed (cross-time and contextual) through the characteristic dimensions of its state of being (static or dynamic), its orientation or expression, and its behaviour. Local government therefore necessitates a social ontology as foundation for an extended epistemology and comprehensive ways of knowing this reality.

In my search for an appropriate theoretical lens to understand the social ontology of local government, I have stumbled upon the English translation of the seminal work of the German Philosopher Martin Heidegger, *Sein und Zeit* (1927), namely *Being and Time* (Heidegger, 1962). While I first expected a social ontology to provide a semantic description of a given social reality (see Zarić et al., 2023, p. 1), Heidegger (1962, p. 31) made me aware of the imperative of clarifying "the meaning of Being" as the fundamental task of a social ontology. To obtain relative clarity on the meaning of the concept 'local government' referring to a specific reality, an analysis of the concept was done. The design for the concept analysis is discussed next.

3. Research design

As indicated in the introduction, the purpose of this study was to formulate a social ontology for understanding and describing local government. For this purpose, a concept analysis was selected as a research design for determining the key attributes, antecedents and consequences (outcomes) of the concept 'local government'. Wilson's (1963) seminal work, *Thinking with Concepts,* resulted in a widely used research design and applied method for concept analysis in a variety of disciplines (see Brons, 2005, p. 52). Walker and Avant's (2014, pp. 161–185) adaptation of Wilson's design and method became broadly used by scholars, especially in the Nursing Sciences, but also in other social and human sciences (Brons, 2005, p. 57; Cronin et al., 2010, p. 66). I used an adapted and shortened version of Walker and Avant's (2014) method for the current study.

As the concept 'local government' is used for referring to specific realities within the broad domains of the state, public administration and the study thereof, a review of both the relevant founding documents (such as the constitutions, statutes and policies) and scholarship is imperative for a comprehensive understanding of the concept. The benefit of starting with founding documents is that these documents contain the exact legal descriptions of the concept under discussion and its attributes.

The second part of the review focused on scholarship. The scholarship was identified by searching the Scopus database in the broad subject areas of social sciences and business studies. To limit the study to the most current scholarly applications of the concept, the search was narrowed to articles published in the last ten years, namely the period 2013–2023. Furthermore, it was confined to the title field of the respective records, using the search terms Local gov* OR municip*, AND servi* OR function*. The search resulted in 620 records. After scanning through the titles and abstracts of all the records, duplicates and not applicable records (records not about local government or municipalities) were removed, reducing the total number to 167. To ensure the inclusion of South African specific applications of the concept, a similar search was done in the database of the *Journal of Public Administration,* a South African (SA) journal not included in the Scopus database, resulting in an additional six records. A total of 173 records from 114 different journals were eventually analysed.

The qualitative content analysis of primarily the titles and abstracts of articles aimed to identify the various uses of the concept, as well as the empirical referents for the key attributes, antecedents and expected outcomes or consequences. Where the titles and abstracts provided insufficient information, the full texts were read. Despite the wide range of scholarly records and mostly SA-specific founding documents consulted for my study, the purpose of the study was not, in the words of Searle (2006, p. 26), to offer "a general empirical hypothesis" of local government, but to do a concept analysis for developing a conceptual framework for a social ontology of local government. In designing this concept analysis, I was guided by Searle's distinction between "empirical generalisations and conceptual analysis" (2006, p. 26). I therefore used the official documents and scholarly literature to inform my understanding of local government.

4. A concept analysis of 'local government'

For the sake of meaningful communication while using the concept 'local government', clarity about its meaning and the realities to which it refers is necessary. Following the research design outlined above, this section reports on the uses of the concept 'local government', its defining attributes, consequences or outcomes of the concept, and empirical referents of it. A visual representation of the components of the concept analysis is provided in Figure 1.

4.1. The uses of the concept 'local government'

The purpose of this subsection is to identify various applications of the concept as validation for my ultimate choices of key attributes of the concept. Local government as an emerging social construction and legacy of the Roman Empire (ad 110–112) developed over time in different contexts with an emphasis on the 'local' dimension of the economy, realities, problems, communities as parts of larger and shifting groups, regions named to approximate localities, laws and customs, elites, rulers, magistrates and autonomy (see Bispham et al., 2006). While the local dimension of life and government was an integral part of the development of the Roman Empire, the autonomy of local government was initially limited (Bispham et al., 2006). More recent evidence of the existence of local government can be found in the proceedings of a British Parliamentary debate in 1834. In a debate on the Poor Laws Amendment Bill, the advantages of the uniformity of centralised power versus localised powers, the Whig economist,[1] Colonel Robert Torrens, referred to "a good system of local government [...] looked upon to be the perfection of all government" (House of Commons, 1834, p. 1340). He argued, "the local authorities of the country should have their powers as little infringed upon as possible" (House of Commons, 1834, p. 1340). The emergence of the concept 'local government' within the context of the state was found to be characterised by the differing dimensions of localness of communities, and the autonomy or jurisdiction of authorities.

How can one define 'local government'? Let us start with general dictionary definitions. According to the *Shorter Oxford English Dictionary* (2007), 'local government' is "the administration of the affairs of a town, county, etc., by the elected representatives of those who live in it, as [opposed] to administration by the Government". In a related formulation, the *Palgrave Macmillan Dictionary of Political Thought* defines the concept as referring to "[a] public organization authorized to decide and administer a limited range of public policies pertaining to a circumscribed territory within a larger and sovereign jurisdiction" (Scruton, 2007, p. 402).

[1] The Whigs "were a faction of Protestant noblemen, united in opposition to Toryism, as it then was. However, because of their parliamentarian leanings, they gradually became identified with the more liberal movements in English politics and, during the course of the eighteenth century, brought about the realignment of parliamentary forces which permitted the emergence of the UK Liberal Party" (Scruton, 2007, p. 735).

It is noteworthy that purposeful definitions of the concept are rare in the scholarship analysed for this study. Within the context of Nepal, 'local government' is understood through its actions of "delivering [...] services at the local level as closest unit of the citizens" (Acharya & Scott, 2022, p. 64). In the case of the United States of America, 'local government' refers to, in the words of Shi (2018, p. 531), "general-purpose governments, such as counties and municipalities". In Germany, 'local government' means "de facto the third layer of government [with] a high political and functional status" (Guderjan, 2015, p. 939–940). The above applications of the concept seem to emphasise the actions, institution types, and authorised sphere of jurisdiction of a local government.

While the Australian version of local government does not have constitutional recognition (Ollerenshaw et al., 2017, p. 295), the SA version is quite the opposite. Local government as social construct within the SA context is grounded in the Constitution of the Republic of South Africa [RSA] of 1996 (RSA, 1996) while a variety of acts (RSA, 1998a, 1998b, 1998c, 2000, 2003) provide detailed specifications for the particular reality. The SA Constitution refers to the "local sphere of government" consisting of "municipalities, which must be established for the whole of the territory of the Republic", as well as to the authority and rights of Municipal Councils (RSA, 1996, section 151) – thus, the dimensions of territorial, institutional and authorised functions are all articulated. Considering the uses of the concept as discussed above, the concept was defined in the current study as a representative and administrative government institution, authorised to perform a limited range of legislative and executive state functions in a circumscribed territory within a larger and sovereign jurisdiction.

How does the concept 'local government' differ from the concept 'municipality'? The *Shorter Oxford English Dictionary* (2007) provides two definitions of 'municipality', namely "[a] town, city, or district having local self-government" and "[t]he governing body of a town, city, or district having local self-government". These two definitions differ from and overlap each other as the first one refers to a territory (town, city or district), while the second one refers to a public institution (governing body of a town city, or district). Both definitions refer to "local" (thus, lowest sphere of government) and "self-government", most probably implying performing certain state functions. Villat's (2004, p. 1271) definition of 'municipality' refers to similar attributes, namely "city [...] county, town, public authority, [or] public corporation" and "a corporate body, capable of performing the same proprietary functions as any private corporation and liable for its torts in the same manner and to the same extent as private corporations" (Villat, 2004, p. 1261). Brunet-Jailly and Martin (2010, p. 15) provide a more comprehensive definition of a 'municipality', namely "a multifunctional or multipurpose local government [...] elected bodies that have a wide number of functions". While the phrases 'local government' and 'municipality' apparently have the same meaning within the context of the state, I use the phrase 'local government' mostly in this article.

4.2. Key attributes of local government

According to Walker and Avant (2014, p. 168), identifying the defining attributes of a concept is "the heart of concept analysis" as it shows "the cluster of attributes most frequently associated with the concept". Informed by the various overlapping uses of the concept 'local government', three broad categories of attributes of 'local government' were identified, namely institutional, behavioural and territorial (see Figure 1). These attributes do not present themselves in a consistent way in the scholarly literature but are nevertheless distinctly articulated in their founding documents.

4.2.1. Institutional: Representative council and professional administration

The first key attribute of the concept 'local government' is the institutional nature of this social phenomenon to which it refers (Lawson, 2016, p. 362). This institutional attribute is not empirically visible as it is a construction of the human mind. In essence, institutions consist of individuals in a specific relationship to each other. Institutions are a way in which individual human beings are organised to ensure the realisation of their shared legitimate purposes. Institutions are characterised by authentic and inauthentic individuals being-in-the-world or being-with-others, who either care (authentic) or do not care (inauthentic) for others (Heidegger, 1962, pp. 225–229). Stiegler (2013, p. 133) refers to these two categories of individuals as affected and disaffected individuals. Institutions are therefore generally linked to the realisation of legitimate purposes through associations, communities and organisation structures (Scruton & Finnis, 1989, p. 274). One may assume that the realisation of legitimate purpose would not have been possible without affected, caring individuals. This type of construction within the sphere of the state is usually formalised by founding decisions documented in e.g. a constitution and other legislation. It therefore makes sense that a contextual exploration of the institutional or structural attribute of 'local government' departs from such founding documents.

Considering my situatedness within the SA context, my exploration of the organisation or structure of 'local government' departs from founding documents, such as the SA Constitution, legislation and policy documents (see Table 1), which outline the institutional or structural dimension of local government in South Africa. The institutional attribute of local government seems to unfold in two components, namely a representative and an administrative structure. These two institutional components consist of individual human beings, related to each other according to the specific roles and tasks assigned to them in the world of local government. As 'Daseins', these individuals are simultaneously being-in-the-world of local government institutions, but also being-with-others (residents, councillors or officials) in an either authentic or inauthentic manner (see Heidegger, 1962, pp. 185, 220). Furthermore, the literature confirms that Heidegger's notion of *Dasein* is not restricted to individual beings but includes collective beings (Göpffarth, 2020, p. 258; Schmid, 2004, p. 133; Stroh, 2015, p. 246). Applied to the world of local government

within which individual *Daseins* are situated, the notion *Dasein* also comprises collectives such as local government councils, administrations and communities.

The two-fold institutional attribute of local government is confirmed by the scholarly literature reporting on studies of these institutions. Empirical referents of this attribute are provided in Table 1. A logical implication of the institutional or structural attribute of the social construct 'local government' is its behavioural attribute disclosed by its performance of a limited range of associated functions, which are discussed next.

4.2.2. Behavioural: Performance of a limited range of state functions

The second key attribute of the concept 'local government' is of a behavioural nature, namely its performance of a limited range of state functions. These functions are assigned to be performed by individuals within a specific relationship to other individuals while being-with-others (see Heidegger, 1962, p. 220). The performance of these limited range of state functions is in terms of Heidegger's philosophy of *Dasein,* an act of care for the world and "the others" in this world (Heidegger, 1962, p. 227). This attribute also serves to distinguish the local government sphere from other spheres of governments, such as national or provincial governments. These functions include the making of laws (usually called 'by-laws'), and the enforcing and administering of these laws and functions, which are statutory assigned to them (Ontario, 2001; RSA, 1996). The review of statutory documents and scholarly literature confirms that local government is characterised by a specific limited range of state functions. The empirical referents of these functions are listed in Table 1.

It is nevertheless evident that the functions performed by local governments in diverse contexts may be similar but not necessarily the same. This is confirmed by an observation by Burnet-Jailly and Martin (2010, pp. 181–182) that municipalities "in Australia have never offered the same range of functions as municipalities in other Anglo-based nations". Although different permutations of functions are to be performed by local governments within different contexts, the "family resemblance" (Wittgenstein, 1958, p. 32) of its functional permutation makes it possible to recognise a local government as such. The permutations of local government functions within a specific context are constantly influenced by other attributes, such as its institutional structure and sphere of territorial jurisdiction (see Alam, 2015, p. 34; Caldas et al., 2019, p. 513; Elston & Dixon, 2020, p. 113; Sancton, 2000a, p. 7; Wolman, 2008, p. 99).

4.2.3. Territorial: Jurisdiction within larger jurisdiction spheres

The third key attribute of the concept 'local government' is its sphere of territorial jurisdiction within larger jurisdiction spheres of the state or province. This attribute has specific implications for councillors and officials as *Daseins,* as it provides a territorial demarcation for them to be caring and concernful while being-in-the-world and being-with-others (see Heidegger, 1962). Furthermore, this attribute links the concept 'local

government' directly to the concept 'state', as the jurisdiction of a local government is confined to "a particular territory" within a state (Scruton, 2007, p. 663). Limited spheres of territorial jurisdiction relate to the concept 'subsidiarity', which means "the absolute right of local communities to take decisions for themselves, including the decision to surrender the matter to a larger forum" (Scruton, 2007, p. 671). In the context of the state and local government, this concept implies that there is no valid reason for a higher sphere of government to perform functions that could be performed satisfactorily on a lower sphere of government (Drew & Grant, 2017, p. 522; Loxton, 1993, p. 80; Robson, 2006, p. 54). Drawing from the work of Heidegger, Richardson (2003, p. 586) refers to "the dwelling", which one can interpret in the context of this study as the territory within which the residents can be themselves and feel at home. With this in mind, the territorial attribute has direct implications for both the institutional and behavioural attributes of local government.

As indicated earlier in terms of use of the concept 'local government', the attribute 'territory' has different references and names, such as town, city, region or district, and is constantly evolving. A study on municipalities in the Ontario province of Canada (see Sancton, 2000b, p. 7) confirmed territorial size not only as a distinct characteristic of local government, but also as a factor influencing the other attributes, such as institution and functions, as well as the level of involvement of residents "in the issues affecting them" (Nurse, 2015, p. 69). The geographical boundaries of the territorial jurisdiction spheres of a local government are thus not fixed but change continuously.

4.3. Key antecedents of local government

The concept 'antecedent' refers to "those events or incidents that must occur or be in place prior to the occurrence of a concept" (Walker & Avant, 2014, p. 173). An antecedent is thus similar to a necessary condition for the existence of a concept and the reality to which it refers. It is therefore assumed that, without the presence of certain antecedents, local governments will not be able to exist.

What are the antecedents for 'local government'? To identify and describe the antecedents for the concept 'local government', it makes sense to start with the founding documents and then expand the process to the scholarly literature.

4.3.1. Constitutional and statutory provisions

As indicated earlier in this article, a constitution as antecedent of local government is not applicable to local government in all countries. However, a constitution may articulate the purpose of a local government within the jurisdiction sphere of a specific country. Within the SA context, the 1996 Constitution provides, amongst others, for the status, objects, developmental duties, powers and functions, and the establishment of municipalities, while government policy and subordinate enabling legislation provide for the detailed implementation of these provisions. In addition to the constitutional

and legislative provisions, the policies of the national and provincial governments – as well as a multiplicity of enabling legislation – make the existence of local government possible.

At conceptual level, one can argue that a wide variety of constitutional, statutory and policy measures serve as preconditions for the existence of the concept 'local government' and the reality to which it refers.

4.3.2. Residents

'Residents' – as antecedent of 'local government' – is not static but change continuously. Within the SA context, the concept 'residents' refers to "visitors and other people residing outside the municipality who, because of their presence in the municipality, make use of services or facilities provided by the municipality" as well as "the poor and other disadvantaged sections of such body of persons" (RSA, 2000, section 1). Residents are individuals constituting societies and, in some cases, communities who live within the territory of a local government. Individual residents form the core of a local government. De Beer, a South African philosopher, articulates the importance of individuals within society as follows (De Beer, 2015, p. 633):

> Individuals are in possession of immense capacity potential [...]. The capacity to think, to affect, to love, to live, to share is required for the invention of communities. The more thoroughly individuated singular individuals there are the more possible it would become to invent community on a grand scale which may have a definite therapeutic effect and impact on society as well. The engagement of individuals in their full singularity in as many critical areas of society as possible, namely economics, education, health care, culture, knowledge, politics, ethics are urgently required for healthy communities to emerge with immense therapeutic implications not only for themselves, but for the whole of society

A local government is thus situated within these societies or even communities of residents, however unstructured they may be. Residents have evolving characteristics, needs, expectations, anxieties and freedoms. Residents are thus not only recipients of public services, but also individual human beings with the possibility of care (Heidegger, 1962, p. 424). In addition to the residents, local government is preceded by its distinct natural and physical setting, which is discussed next.

4.3.3. Natural and physical setting

The unique nature of the natural and physical setting of a local government as an antecedent is a key consideration in the demarcation of the territorial jurisdiction sphere of a local government. As this antecedent is fixed to a specific geographical territory, its

effect on a local government will vary amongst local governments. The natural and physical settings of a local government comprises elements such as water, the sun, soil, minerals, as well as topographical features, such as mountains, rivers, deserts and natural forests. These elements comprising the natural and physical settings of a local government are usually taken into account during the demarcation of its territory (RSA, 1998a, section 25).

A study of development in sub-Saharan Africa shows that this antecedent has specific implications for the policies and functions of a local government regarding agricultural cultivation, irrigation, transportation and energy (Ukwandu, 2015, p. 18). Examples of other policy and functional implications are the need for a low-carbon economy (DPME, 2020, p. 146), sustainable land use and agrarian transformation (Waterberg District Municipality, 2021, p. 39), the protection of natural habitat such as wetlands, floodplains and water resources (Waterberg District Municipality, 2021, p. 127). The natural and physical settings of a local government also have specific implications for its economic development and growth, natural infrastructure (ecosystems), climate and geospatial issues, geographical inequalities, low-carbon slow tourism and water (Chattaraj et al., 2021; Jiang et al., 2023; Merlo et al., 2019; Touchant, 2022; Yu et al., 2021).

4.3.4. The world of diverse governments

The definition by the *Palgrave Macmillan Dictionary of Political Thought* of the concept 'local government' explicitly refers to the presence of other layers of government, namely "a larger and sovereign jurisdiction" (Scruton, 2007, p. 402). The implication of this definition is that a local government is determined by its situatedness within these larger jurisdiction spheres, such as the jurisdictions of a provincial and a national government. Drawing from Heidegger's philosophy of *Dasein,* the idea of being-in-the world of a diversity of sometimes overlapping government jurisdiction spheres implies for local government an anxiety about its "potentiality-for-Being-in-the-world" (Heidegger, 1962, p. 235) and being itself as local government. Within the SA context, the Constitution (RSA, 1996, section 154) articulates this 'being-in-the-world' as "municipalities in co-operative government". This world of governments is also present in other countries, such as Spain "via the use of European Union Structural funds" (Castán Broto & Dewberry, 2016, p. 3026), Canada with regional co-operation (Sancton, 2000b, p. 11), the United States as intergovernmental responses to emergencies (McDonald et al., 2020, p. 187), and Peru as 'cogovernance' (De La Riva Agüero, 2022).

In addition to its cooperation with other layers of government, the territorial characteristic implies shared boundaries with other local governments. These shared boundaries as well as shared sphere of government entail the need for co-operation with other local governments on matters of mutual interest and contractual co-operative relationships with private service providers (Bromberg & Henderson, 2015; Henderson & Bromberg, 2016).

4.3.5. Capability

While most of the sources consulted refer to 'capacity', I have decided to use the term 'capability' for this antecedent. The dictionary definitions of 'capability' include "the power or ability to do something" (Oxford Dictionary of English, 2016), "the quality of being capable" (Merriam-Webster, 2023), and "the ability or qualities that are necessary to do [something]" (Collins, 2023). The dictionary definitions of 'capacity' reveal similar meanings, such as "the ability or power to do or understand something" (Oxford Dictionary of English, 2016), "legal competency or fitness", "an individual's mental or physical ability" (Merriam-Webster, 2023) and "ability to do [something]" (Collins, 2023).

The antecedent 'capability' closely relates to what Heidegger refers to as the *Dasein*'s "Being-free for one's potentiality-for-Being" (Heidegger, 1962, p. 236). This freedom implies for a local government the ability to be a 'local government' by performing its functions. This antecedent seems to include a diversity of abilities or qualities required by a local government to achieve its objectives (Oates, 1999, p. 1122). For Acharya and Scott (2022, p. 64), these abilities and qualities consist of, amongst others, "strong technical, administrative and fiscal capabilities". Considering the dictionary definitions, the legal definition as well as some scholarly definitions of the related concepts 'capacity' and 'capability', the antecedent 'capability' refers to a local government having sufficient funding, capable council members and officials, and ethical leadership for performing its functions. Convinced by the rich and inclusive scholarly tradition on social justice (see Nussbaum 1997; Nussbaum, 1999; Nussbaum, 2000; Nussbaum, 2002; Nussbaum, 2006; Nussbaum, 2010; Uyan-Semerci, 2007; Villani, 2012), I have decided to use the concept 'capability' for referring to the comprehensive material and human abilities necessary for local government to exist and perform. The first of these capabilities is that of sufficient funding, which is discussed next.

Sufficient funding: While a local government needs sufficient funding to perform its functions, it is also expected that the fiscal and financial affairs of a municipality would be managed in a sound and sustainable manner. A comprehensive collection of scholarly literature on, amongst others, local government finance, budgeting and cost confirms the validity of capability related to securing and managing sufficient funding as antecedent for a local government to perform its functions efficiently (Alam, 2015; Arcelus et al., 2015; Cabannes, 2015; Hanabe et al., 2017; Miller & Hokenstad, 2014).

Capable councillors and officials: With this antecedent, I assume that a local government with adequate funding can hardly exist as entity without capable councillors and officials. Drawing on Heidegger's work *Being and Time* (1962), care is the consequence of individual local government councillors' and officials' anxiety (Heidegger, 1962, p. 233 also refers to "uncanniness") and subsequent efforts to understand, attune and being-with-others by being-they-self. This implies that these individuals being-within-local-government are capable of taking care of their own potentiality-for-Being, of taking care of things *(Fürsorge),* and of being concerned *(besorgen)* about others (Heidegger, 1962, p. 237). Considering that municipal councillors and officials sometimes have to perform highly technical functions in dealing with complex and wicked challenges, they need to be

capable to perform these functions. Capability as an antecedent is rooted in the work of Nussbaum (1999, p. 327) who distinguishes between three categories of capabilities, namely basic, internal and combined capabilities. Among others, these capabilities include the intrinsic equipment of individuals and person-specific conditions for performing the requisite functions. Public administration-specific capabilities may include:

- reflexivity (the ability to question and reframe own position on an issue)
- resilience (an adaptive capability to deal with unpredictable challenges)
- responsiveness (continuous awareness of societal expectations)
- reciprocity (interconnectedness with stakeholders)
- revitalising (response to stagnations, power plays or deadlocks)
- rescaling (addressing mismatches between the scale of a problem and the scale of the intervening response) (Termeer et al., 2016, pp. 13–15; Wessels, 2022, pp. 4–7)

One can thus expect that capable councillors and officials are authentic *Daseins* capable of caring. Closely related to the capability of councillors and officials to perform their functions is the capability of ethical leadership, which is discussed next.

Ethical leadership: In a recent study on effective local government council leadership in Michigan (USA), Dzordzormenyoh (2022, p. 229) articulates leadership as "the act of either influencing or transforming members of a group or organization to achieve a specific goal or objective". While leadership may also be a necessary condition for a crime syndicate, in this context, this capability refers to a specific type of leadership, namely ethical leadership. This capability is a necessary condition, not only for an organisational ethical climate, ethical conduct, ethical governance, compliance and accountability, but also for local government to perform its functions towards accomplishing its goals (AGSA, 2021, p. 65; Dzordzormenyoh, 2022, p. 230; Erakovich & Kolthoff, 2016, pp. 872–873).

4.4. Expected key consequences of 'local government'

Walker and Avant (2014, p. 173) describe the consequences of a concept as "those events or incidents that occur as a result of the occurrence of the concept – in other words, the outcomes of the concept". This section sets out to identify those consequences or outcomes of 'local government'. The ultimate consequence of local government is society's experience of being-cared-for and feeling at home. For De Beer (2015, p. 633), it may be "something like community [...] in the sense of people being together, living together and sharing matters intimately". In his work *Uncontrollable Societies of Disaffected Individuals,* the French philosopher, Bernard Stiegler (2013, p. 132), articulates a dream that may also be applicable to consequence of local government, namely "the care taken of objects and subjects of individual and collective desire". While the SA Constitution apparently does not envisage or describe the consequence of this concept, its preamble refers, inter alia, to the improvement of "the quality of life of all citizens and free the potential of each person" (RSA, 1996, Preamble). Improved quality of life of the residents of a municipality seems to be a valid consequence of 'local government'.

Furthermore, section 152 refers to the "objects of local government" with reference to democratic and accountable government, sustainable service provision, social and economic development, a safe and healthy environment, and community involvement in matters of local government (RSA, 1996, section 152). Comparing the dictionary definitions of the words 'consequence' and 'object' with each other, it seems that both words refer to the result or end of a specific effort or action. A vexing question is as follows: Can the envisaged 'objects' of 'local government' set by the SA Constitution, also serve as conceptual consequences for 'local government' in other contexts, such as Canada, Rwanda and the Russian Federation? The proposed consequences of 'local government' are briefly discussed below.

4.4.1. Quality of life

It is noteworthy that several scholarly studies on quality of life use items, such as services, employment, housing, education, roads, health care, old-age provision, crime prevention and recreation facilities, as indicators for measuring improved quality of life (Castán Broto & Dewberry, 2016; Møller, 2007, p. 399; Møller & Roberts, 2019; Møller & Saris, 2001, p. 109; Schlemmer & Møller, 1997, p. 45; Van Ryzin, 2015, pp. 426, 429, 438). Quality of life, whatever it means for distinct individuals or communities, is undoubtedly a key consequence of local government. Quality of life may mean being at home within an affected and caring society becoming community.

4.4.2. Democracy and accountability

A second key consequence of local government is that of communities experiencing democracy and accountability. The SA Constitution refers to this as the object of "democratic and accountable government for local communities" [RSA, 1996, section 152(1)(a)]. This consequence resonates with how the Municipal Corporations Act 1835 of the United Kingdom describes local government, namely as being responsible to "the inhabitants of the district" (Scruton, 2007, p. 403). This responsibility articulates the envisaged local government consequence of a democratically elected council who is accountable to the electorate. This consequence is directly aligned to Goal 16 of the 2030 Agenda for Sustainable Development (United Nations, 2015, p. 14) with reference to "effective, accountable and inclusive institutions at all levels". Furthermore, within the context of the United States, Rivera and Uttaro (2021, p. 97) emphasise the goal of the New Public Service (NPS) Principles, namely the pursuance of democratic values through democratic interactions. This consequence implies that the outcome of local government is a democracy consisting of inclusive participatory processes (Hanabe et al., 2017, p. 406). The implication of *Dasein* as both an individual and collective being (Göpffarth, 2020, pp. 255–256; Stroh, 2015, p. 246) is *Dasein*'s concurrent presence in distinct and overlapping worlds, such as the state, local government, society, culture and family. Hence, the consequence of democracy and accountability is rooted

in the presence of affected, autonomous, singular and caring individual members of society, able to take care of themselves and others and being-accountable-in-the-world (see De Beer, 2015, p. 633). Democracy and accountability as consequences are thus in their essence consequences of authentic *Daseins*' being-in-the-world and being-with-others.

4.4.3. Sustainable municipal services

Considering that the limited range of state functions performed by local government include the distribution of energy (e.g. electricity) and the provision of water and sanitation services, the sustainability of these services as a third consequence of local government seems to be imperative. This consequence is closely aligned to Goals 6, 7, 11, 12 and 15 of the 2030 Agenda for Sustainable Development (United Nations, 2015), and constitutes the core of local government consequences.

4.4.4. Social and economic development

The literature (see Basson et al., 2018; Brunet-Jailly & Martin, 2010, p. 3; Hanabe et al., 2017, p. 393; Hanley, 2013, p. 514; Koma, 2010; Lam & Conway, 2018, p. 643) seems to be fairly in agreement on social and economic development as a key consequence or "mission" (Abels, 2012, p. 39S) of local government. The observation that "municipalities want to be able to steer local economic development" (Ploegmakers et al., 2013, p. 336) implies the performing of planning and regulatory functions resulting in local economic development. An example of municipalities pursuing the outcome of economic development includes the consideration of, in the United States, city council consolidations (Hall et al., 2018a, p. 256) and in Canada, the setting of "setting development charges, standards on public utilities, building codes, investment priorities and local economic development" (Turvey, 2017, p. 287). Bearing in mind the various other role players involved in social and economic development, a reasonable conclusion may be that the consequence of local government is at least a climate conducive to social and economic development.

4.4.5. Safe and healthy environment

This consequence is about the state of being a resident of or community in a local government or municipality: being safe and healthy. Møller (2005, p. 290) refers to "the possible importance of the personal safety factor as a mediator of life satisfaction". Her study indicates that the notion of personal safety includes that of neighbourhood safety (Møller, 2005, p. 263) – thus a state of being without fear for crime (Møller, 2013, p. 920). Within the context of local government, this may imply residents experiencing properly designed "parks that are safe and are perceived to be safe" (Ellis & Schwartz,

2016, p. 4) for children to play. This consequence also includes environmental health elements, such as quality of air, lighting (streets and houses), noise pollution, as well as access to clean water and sanitation services (Murray & Pauw, 2022, p. 103). Residents' experience of a state of being within a safe and healthy environment seems to be a key consequence to expect from local government.

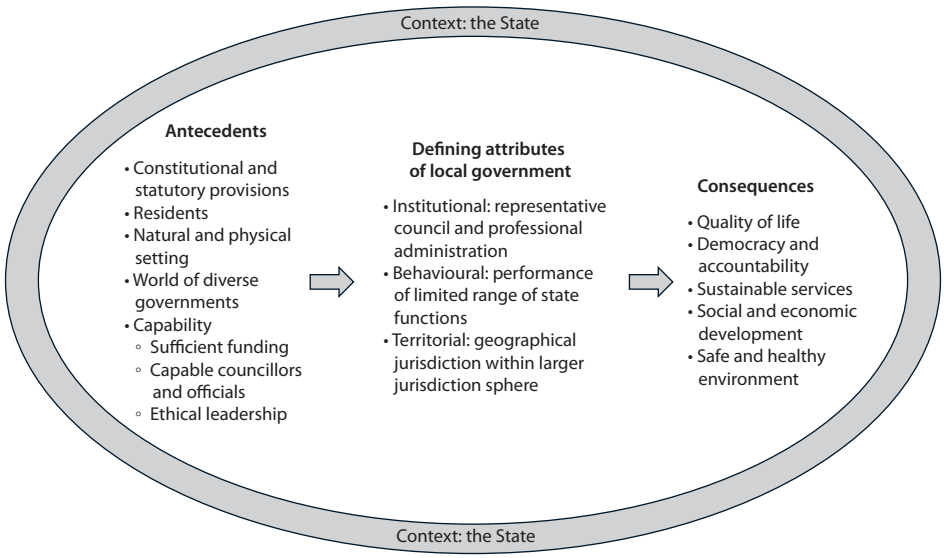

Figure 1.
A concept analysis of 'local government'

4.5. Empirical referents of the concept

Considering that the concept 'local government' is a social construction, it is thus not so easy to recognise the concept by observing the phenomenon to which it refers. Walker and Avant (2014, p. 174) propose the use of empirical referents as the "classes or categories of actual phenomena that by their existence or presence demonstrate the occurrence of the concept itself". As concepts are recognised by their defining attributes, empirical referents provide evidence of the existence of these attributes of a concept.

This section lists some empirical referents for the attributes 'political and administrative structures', 'limited range of state functions' and 'territorial jurisdiction' of a local government. These referents – presented in Table 2 – are derived from the literature review conducted for this study, as well as from a review of constitutional and statutory documents. While these referents may be a confirmation of the occurrence of this concept, the presentation in Table 2 is not sufficiently structured for identifying the underlying assumptions about the nature of the phenomenon to which the concept refers.

Attributes and empirical referents	Citation
Institutional: representative council and professional administration	
Representative council	
Legislative and executive authority (representative council)	Constitution of the Republic of South Africa (RSA, 1996); Local Government: Municipal Structures Act 117 (RSA, 1998c); Local Government: Municipal Systems Act 32 (RSA, 2000)
Municipal council; council size; majority coalitions	Barnett, 2011; Barnett, 2020; Barnett et al., 2020; Hanley, 2013; Lewis, 2019; Lewis & Hendrawan, 2019; Meloche & Kilfoil, 2017
Relations between councils and chief administrative officer (CAO)	Sancton, 2000b; Siegel, 2015; Meloche & Kilfoil, 2017
Role of politics; politically motivated changes; political interest	Gore, 2021; King, 2014; Neumann et al., 2014; Resnick, 2014; Warner et al., 2021
Professional administration	
Bureaucracy	Sørensen & Bentzen, 2020, p. 139
Organisation and management	Das Gupta et al., 2020
Careers in local government	Rose, 2015
Common service centres	Sharma et al., 2021
Contact centres	Nam & Pardo, 2014
Hybrid organisations	Tun et al., 2021
Municipal departments	Cabannes, 2015; Levin & Sefati, 2018
Municipal employees; municipal employees' service motivation; employment cuts	French & Emerson, 2014; Haider et al., 2019; Leisink & Bach, 2014
Relationships between councils and CAOs	Sancton, 2000b; Siegel, 2015
Restructuring; reduced cost of administration; institutional system	Abels, 2012; Cobban, 2019; Hurl, 2018
Behavioural: performance of limited range of state functions	
Making of laws (by-laws)	Ontario, 2001; RSA, 1996
Range of functions	Brunet-Jailly & Martin, 2010, pp. 181–182
Administration; purchasing	Elston & Dixon, 2020; Glock & Broens, 2013
Broadband services	Mersereau, 2021
Communication; municipal television news	Avelé, 2013; Lindgren, 2016
E-services	Andersson et al., 2022; Chen & Kim, 2019; Gao & Lee, 2017; Hung et al., 2020; Li & Feeney, 2014; Prendiville, 2018; Wirtz & Kurtz, 2016

Ecosystem services; forest services	Brink et al., 2018; Lam & Conway, 2018; Meléndez-Ackerman et al., 2022
Educational services; schools	Archibong et al., 2015; Farooqi & Forbes, 2020; Kaehne, 2013
Emergency services	Henderson & Bromberg, 2016; Karabanow et al., 2023
Energy efficiency services	Polzin et al., 2016
Health care services	Agbodzakey & Taylor, 2019; Bromberg & Henderson, 2015; Das Gupta et al., 2020; Peckham et al., 2017
Infrastructure services	Shlomo, 2017; Wiesel et al., 2018
Law enforcement	Barnett-Ryan, 2022; Sahdan et al., 2020
Library services	Jones, 2020; McCahill et al., 2020
Municipal service transformation; service quality	Hughes & Peterson, 2018; Nguyen et al., 2017
National service scheme	Arthur et al., 2016
Non-emergency services	Xu et al., 2017
Public transport and mobility services	Schaefer et al., 2022
Serviced building land provision	Ploegmakers et al., 2013
Services and guidelines for food, water and energy in African cities	Sesan et al., 2022; Tempelhoff, 2011; Zaganjor et al., 2019
Social services	Celebi, 2022; Da Veiga & Bronzo, 2014; Miller & Hokenstad, 2014; Thunberg et al., 2016; Torpey-Saboe, 2015; Wollmann, 2018
Sport services	King, 2014
Taxation; property tax	Hall et al., 2018b; Lewis, 2019
Urban planning and development	Consciência Silvestre et al., 2019; Meléndez-Ackerman et al., 2022
Waste services; food waste recycling	Caldas et al., 2019; De la Riva Agüero, 2021; Fogarty et al., 2021; Morgan-Sagastume et al., 2016
Water and sanitation	Cook et al., 2020; Hajiseyedjavadi et al., 2022; Holstead et al., 2023; Pahl-Wostl et al., 2023; Pierce et al., 2022
Territorial: geographical jurisdiction within larger jurisdiction sphere	
Demarcated land area	Bispham et al., 2006, p. 146–157; DPLG, 2008; RSA, 1998c, sections 2–6; Roy, 2006
Municipal jurisdictions	Cobban, 2019; Lewis, 2017; Koma, 2010; Meloche & Kilfoil, 2017; Alam, 2015; Elston & Dixon, 2020; Caldas et al., 2019, p. 531; Sancton, 2000a, p. 7; Wolman, 2008, p. 99

5. A social ontology of local government

Our search for a social ontology of local government departs from a definition of the concept 'local government' as being simultaneously a representative and administrative government institution, authorised to perform a limited range of legislative and executive state functions in a circumscribed territory within a larger, sovereign jurisdiction. Three key attributes of the concept were identified, namely institutional, behavioural and territorial attributes (see Table 1). In an attempt to understand local government, two ontological questions about the social reality to which this concept refers, have emerged:

- What is the nature of 'local government'?
- What are the underlying assumptions about this reality?

5.1. The nature of local government

While the concept analysis identified three attributes which could assist us to recognise the reality to which the concept 'local government' refers, a social ontology of local government entails observing, describing and understanding local government with indeterminate human characteristics, orientations and behaviour, as a "unitary phenomenon" (see Heidegger, 1962, p. 53) situated within an interconnected human, spiritual and natural world (see Heidegger, 1962, p. 54). The concept 'world' is used by Heidegger (1962, p. 65) for "the totality of those entities which can be present-at-hand in the world". This implies that local government as a human construct and social collective can be recognised, described and understood as a result of the unity of its institutional, behavioural and territorial attributes, as situated within the multi-layered and interconnected world.

Ontological, local government – as a collective *Dasein* with an immanent tension between anxiety and care (see Heidegger, 1962) – may simultaneously be viewed as being a social collective of individuals, an institution consisting of individuals, and a social action or intervention performed by individuals. Local government is thus not a machine, but in essence both a social construction of individual *Daseins* and a collective *Dasein* within a specific time and space. Such an approach to this social reality is however informed by underlying assumptions about this reality in its world, which is discussed next.

5.2. Underlying assumptions about local government

The second ontological question pertains to the underlying assumptions about the antecedents (conditions), consequences (purposes), institutional (political and administrative), behavioural (functions) and territorial attributes of local government. Should local government be viewed as a social organisation, Morrison and Mota's (2023a, p. 203) theory of the corporate mind comes to the fore. Their theory holds that "the purpose of any organization is to sustain a corporate mind" (Morrison & Mota, 2023a,

p. 203), which they describe as "a set of beliefs, desires, and intentions that is attached to an organizational form". For the individual *Daseins,* this means the "attunement of a state-of-mind" (Heidegger, 1962, p. 176). Subsequently, corporate minds "enable people with any set of values to achieve things together that they would find it very hard to accomplish individually" (Morrison & Mota, 2023a, p. 204). A corporate mind thus "drives actions" (Morrison & Mota, 2023b, p. 366), as it contains "intentional states that cause the organization to act so as to change the world in line with some imagined state of affairs" (Morrison & Mota, 2023a, p. 206). In the case of local government, this imagined state of affairs (see also Heidegger's reference to "potentiality-for-being" [1962, 233]) serves as the purpose of such a social collective and is usually recorded in founding documents, such as a constitution or legislation. For this reason, Martela's (2023, p. 363) notion of a social ontology of purpose may be used either simultaneously or as an alternative for an ontology of the corporate mind.

The consequence of the concept 'local government', as identified earlier, is thus similar to the purpose of local government towards which its functions and actions are coordinated and directed (Martela, 2023, p. 365). This purpose encapsulates the reason for the existence of an institution which, for local government, might most probably be found in the maximising of care and concern for society resulting in accountability, quality of life, democracy, sustained municipal services, social and economic development, and a safe and healthy environment for its residents. Ontologies of the corporate mind and purpose should however constantly question the sufficiency of these reasons for existence of local governments within an evolving, complex and multi-layered world.

It seems, however, that a social ontology of care – as informed by Heidegger's *Dasein* – provides the most appropriate theoretical lens for understanding local government. This ontology needs to question the assumptions underlying the institutional, functional, and territorial attributes of local government with a specific focus on the individual within this reality.

5.2.1. Assumption 1

The representative institutions of local government consist of individuals elected to represent the values and interests of residents and to provide direction to the administrative institutions for performing their allocated functions accordingly. Considering Heidegger's reference to the "potentiality-for-being" (1962, p. 233) of *Dasein,* a vexing question is the following: To what extent are both the representative institutions and their constituent individual councillors' state-of-mind attuned to the relevant local community of residents' envisioned "potentiality-for-being" (see Heidegger, 1962, p. 233)?

5.2.2. Assumption 2

The administrative institutions of local government consist of officials capable of performing their allocated functions under the direction of the political structure. A vexing question is the following: To what extent are both the administrative institutions and their constituent individual local government officials capable of performing their functions with care?

5.2.3. Assumption 3

The functions of local government as allocated by constitutional and legislative provisions and performed by the representative and administrative institutions within a dedicated territory, fulfil the needs of its residents. A vexing question is the following: What is necessary for local government functions to bring about "care taken of objects and subjects of individual and collective desire" (Stiegler, 2013, p. 132) within society?

5.2.4. Assumption 4

The territorial attribute of local government provides a geographical demarcation for local government *Daseins* to be caring and concernful while being-in-the-world and being-with-others. A vexing question is the following: What is necessary for residents within a demarcated territory to feel cared for and at home within a society or community?

To conclude section 5: While local government as human construct can be recognised through the concurrent presence of its institutional, behavioural and territorial attributes, it has shown to be essentially a human and humane construct with a caring individual and collective *Dasein* to its core. The underlying assumptions postulate distinct inter-relationships of care amongst various categories of individual and collective *Daseins,* such as resident, community, councillor, representative institution, administrative institution and local government official. Furthermore, these assumptions postulate a caring quality for the behaviour and functions of the collective *Dasein* within and across their territorial jurisdiction sphere. Lastly, this social ontology of care envisaged local government society and communities being affected, caring and at home in their dwelling (see Richardson, 2003, p. 586).

6. Conclusion

In response to the ontological question "What is 'local government', and how can it be understood?" my aim with this conceptual study was to describe a social ontology of local government. I therefore firstly reported on an analysis of the concept 'local

government' by defining the concept as a representative and administrative government institution, authorised to perform a limited range of legislative and executive state functions in a circumscribed territory within a larger and sovereign jurisdiction. I proceeded to identify and describe its key attributes, antecedents and consequences (as summarised in Table 1). The empirical referents that informed my analysis of the concept were provided in Table 2. Informed by the concept analysis, I continued to provide an ontological description of the nature of local government and the underlying assumptions about this reality. This social ontology holds that local government is in its core a *Dasein* and a collection of *Daseins* with immanent tensions between anxiety and care.

What does this social ontology of care mean for the study of local government? Firstly, the proposed social ontology of local government care is submitted as an agenda item for consideration, deliberation and improvement. It provides a point of departure for describing and comparing instances of this reality as situated in different contexts. Secondly, this social ontology serves as a proposed menu for questioning and challenging the underlying assumptions about a caring local government, specifically within different contexts. Whereas the current contribution has drawn its empirical insights mainly from South African statutory sources, and its conceptual insights from the systematised literature review, follow-up studies are imperative for validating the proposed social ontology of care within different local government contexts. As part of my continuous search for meaningful knowledge, I will proceed to validate empirically this ontology in local government realities within different contexts by providing rich, ontic descriptions of the selected diverse local government realities.

While the day-to-day well-being of people worldwide is indeed affected in dissimilar ways and intensity by local governments, Public Administration scholars continually ask questions about, amongst others, aspects of good or bad local government and remedies for the latter. With this study, I contribute a social ontology of care to the ongoing discourse and attempts to describe and understand the social realities of public administration – and specifically of local government – and for identifying and questioning the underlying assumptions about them.

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Evolution of Lithuania's Approach towards Writing of Personal Names in the Official Documents: On the Verge of Liberalisation?

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Abstract: On 18 January 2022, the parliament of Lithuania adopted the law on writing personal names in the official documents. Having substantially liberalised the existing practice, the law, however, offered only a partial solution because it did not sanction the use of non-Lithuanian diacritical characters. Based on the relevant legal, linguistic and historical contexts, relevant Lithuanian legislation and case law, this study analyses the evolution of Lithuania's approach towards the writing of its citizens' personal names in official documents. The text shows that the significant changes that took place in Lithuanian society during the last 30 years have resulted in a partial liberalisation of these practices. The recent case law suggests that the state is on the verge of accepting full liberalisation, particularly if relevant interwar legislation and a broader understanding of historical traditions of the Lithuanian language will be taken into account. However, the Constitutional Court plays a key role in determining the contents and directions of this process.

Keywords: Lithuania, national minorities, equality, language rights, constitutional doctrine

1. Introduction

On 18 January 2022, the Lithuanian Seimas[1] adopted Law No. XIV-903 on writing personal names and surnames in the documents.[2] This law became effective on 1 May 2022, and jointly with Government Resolution No. 424 on approval of the rules for writing a person's name and surname in personal IDs and other documents (adopted pursuant to this law on 27 April 2022)[3] established new rules for writing the personal names of Lithuania's citizens.

This law offered a solution for nearly three decades of debate in Lithuania on writing non-Lithuanian personal names. This issue was particularly relevant for the country's

[1] Seimas is the name of Lithuania's parliament.

[2] Register of Legal Acts (Lithuanian: *Teisės aktų registras,* hereinafter: TAR) No. 2022-01142 (https://bit.ly/45Fu5Lf).

[3] TAR No. 2022-08744 (https://bit.ly/3IV65Ky).

autochthonous Polish minority because it opened the path for many Lithuanian citizens of Polish ethnicity to return to the spelling of their personal names in the original form. This situation has also affected many Lithuanian citizens with foreign spouses. In the previous two sentences, the word "many" is particularly important. The new law provided Lithuanian citizens with the opportunity to use letters q, x and w, which are absent in the Lithuanian alphabet. However, it did not legalise non-Lithuanian diacritical characters. The scale of the problem was confirmed using data from Lithuania's Population Register. When the law was adopted, it contained 447 persons whose personal names contained Latin letters q, w, x (EFHR, 2022a). Before the law became effective, the personal names of Lithuania's citizens were modified on a case-by-case basis in courts.

On 1 June 2022, the District Court of Vilnius City (Lithuanian: *Vilniaus miesto apylinkės teismas*) delivered its judgment no. e2YT-13948-1125/2022 that obliged the Civil Registry Department of the Vilnius District Municipality to inscribe the complainant's personal names with the diacritical letter ł.[4] The complainant was Jarosław Wołkonowski, Lithuanian citizen of Polish ethnicity. Apart from this case context, his name and surname is an example of the limited scope of the new law. In the text of the judgment he appears as Jaroslav Volkonovski, i.e. as it should be by default according to the pre-2022 law rules for writing personal names of Lithuania's citizens. Yet, the new law allowed him to write his name and surname as Jaroslaw Wolkonowski, i.e. without diacritical characters typical for the Polish language and, therefore, not identical to the original form.

The above ruling in Wołkonowski's case led to further reactions. Nida Grunskienė, Prosecutor General of Lithuania, requested the District Court of Vilnius City to reopen the proceedings in this case (Prosecutor General's Office, 2022). The Prosecutor General justified her motion by avoiding the legal consequences of this possibly wrongful judgment and protecting the public interest. Having resumed the case, the District Court of Vilnius City filed a petition on 14 November 2022 to the Constitutional Court (Constitutional Court of the Republic of Lithuania, 2022a). In this petition, the Constitutional Court was asked to examine compliance of the rules established by Law No. XIV-903 and Government Resolution No. 424 with the rule of law principle and Article 29 of Lithuania's Constitution, which ensures equality before law. A few weeks earlier, a group of MPs filed a similar petition before the Constitutional Court (Constitutional Court of the Republic of Lithuania, 2022b). Their logic was based on the fact that the new rules affected the state (i.e. official) language and scope of its public use. Before that, in September 2022, two MPs representing the Electoral Action of Poles in Lithuania – Christian Families Alliance, an ethnic party that claims to represent Lithuania's Polish and other national minorities (Kascian, 2021), submitted a proposal with amendments to Law No. XIV-903.[5] They proposed using characters based on Latin letters (Lithuanian: *lotyniško pagrindo rašmenys*) at the request of Lithuania's citizens to write their names in official documents. This formulation was meant to legalise the use of non-Lithuanian diacritical characters in the names of Lithuanian citizens. These motions

[4] Civil case No. e2YT-13948-1125/2022 (the complete judgment in Lithuanian is available at https://bit.ly/3OTrMyq).
[5] Registration No. XIVP-1952 (https://bit.ly/43lggA0).

demonstrate opposing approaches towards the regulation of writing the personal name of Lithuania's citizens, which could roughly be described as a clash of linguistic liberals and conservatives.

This article aims to examine the evolution of Lithuania's legislation on writing personal names with particular focus on its balance with the principle of equality and interpretation of public interest. As the above text suggests, the analysis involves various Lithuanian domestic contexts in which history, linguistics and politics intersect and affect the contents of the law. Thus, the study is arranged as follows. After the explanation of various relevant contexts, the article analyses the evolution of approaches of the Lithuanian authorities and courts towards writing citizens' personal names in the official documents, and discusses the current *status quo* vis-à-vis the principle of equality and public interest. It is followed by the conclusion, where possible future scenarios regarding Lithuania's approach towards the writing of the personal names of its citizens in the official documents are presented.

2. Lithuanian domestic contexts as a cornerstone for the debate

On the one hand, the new law deals with the extremely diverse and dynamic sphere of relations (Kūris, 2022, p. 136) affecting different segments of Lithuanian society. On the other hand, it is centred around the language issue, which in many Central and Eastern European societies has been consistently perceived "as the innermost sanctum of ethnicity" (Schöpflin, 2000, p. 116). Any legal novelisation implies that there had been substantial public demand for these changes, and legislators were able to reach the necessary consensus to prepare and make them effective. This logic can be confirmed by the fact that the new law was not the first attempt to find a solution to this sensitive issue. Yet, all previous attempts failed colliding with the lack of political will among Lithuanian decision-makers (Račkauskaitė, 2011, pp. 380–381). There are four contextual lines that should be explained for a reader unfamiliar with Lithuanian realities before going further into the legal details.

The first is purely linguistic and clarifies why the use of specific letters in personal documents has become a long-debated issue in Lithuanian society. Pursuant to Article 14 of the Constitution, Lithuanian shall be the state (i.e. official) language (Lithuanian: *valstybinė kalba*) in Lithuania. The contemporary Lithuanian alphabet consists of 32 letters, including 12 vowels and 20 consonants. The following diacritic characters are used: ą, č, ę, ė, į, š, ų, ū and ž. Compared with the standard English alphabet, the Lithuanian alphabet lacks the letters q, x and w. Yet, these three letters are considered non-Lithuanian characters and, like other Latin letters with non-Lithuanian diacritical characters, may appear throughout Lithuanian texts (Vladarskienė & Zemlevičiūtė, 2022, pp. 7–9). At the turn of the 19th and 20th centuries, as some legal scholars remind, letters q, w, x and even ł were quite common for the texts written in Lithuanian (Danėlienė, 2022). However, the legal framework that existed before the adoption of a new law entitled Lithuanian citizens to use just the above 32 letters of the Lithuanian alphabet, and the only option to change this on a case-by-case basis was the court.

The second contextual line is social, and explains who is affected by the state of things described in the previous paragraph. As of the 2021 population census in Lithuania, ethnic Lithuanians comprise 84.61 percent of the country's population, followed by Poles (6.53 percent), Russians (5.02 percent) and Belarusians (1.00 percent) (Statistics Lithuania, s. a.). Thus, the issue of writing personal names potentially concerns a significant part of Lithuania's population, including the members of the country's largest national minority. It also concerns ethnic Lithuanians, because the increasing number of international marriages is one of the implicit results of globalisation and Lithuania's European integration. Yet, as *Runevič-Vardyn and Wardyn* (2011)[6] case exemplified, these two categories can intersect with each other.

The third line is attributed to legal norms that had to be changed. These norms were introduced by the country's Parliament Resolution No. I-1031 on writing names and family names in the passports of citizens of the Republic of Lithuania,[7] as adopted on 31 January 1991. The text of this document indicates that the MPs considered the proposals of the formal predecessor of today's State Commission of the Lithuanian Language (Lithuanian: *Valstybinės lietuvių kalbos komisija,* hereinafter: VLKK), an institution responsible for the regulation, standardisation and codification of the Lithuanian language. The Resolution established two ways of regulating the writing of Lithuania's citizens' personal names. The *lex generalis* implied that personal names should be written in Lithuanian characters. The *lex specialis* was conditioned upon citizens' ethnic belonging other than Lithuanian. It embraced the approach of *lex generalis* that required that the name should be written in Lithuanian characters. Yet, based on the ethnic criterion, it established that each individual had a possibility to choose whether his or her name shall be written with or without Lithuanian endings (for instance, either as Jaroslavas Volkonovskis, or as Jaroslav Volkonovski) (for details see State Commission of the Lithuanian Language 1991). For people belonging to national minorities, the practical outcome of the rules established by the Resolution was very much personalised and determined by each individual's name, surname and ethnicity. In some cases, it was sufficient for an individual to request not to add Lithuanian endings to achieve official spelling consistent with his or her native language. In other cases, people simply accepted the freedom to decide whether their name should contain Lithuanian endings provided by law. However, some tried to achieve changes in the norms that precluded them from writing their names in the original form of their native language. The corpus of relevant Lithuanian legislation also applied the practice of writing Lithuanian citizens' personal names in Lithuanian characters. In the case of international marriages, the names of Lithuanian citizens and their children were subject to the *lex generalis* procedure, which required personal names to be written in Lithuanian characters. In many situations, like the one addressed in the *Runevič-Vardyn and Wardyn* case, these "Lithuanised" names differed from their foreign originals. Taking into account the growing number of

[6] *Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilniaus miesto savivaldybės administracija and Others* (12 May 2011). ECLI:EU:C:2011:291 (https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62009CJ0391).

[7] Registration No. 0911010NUTA00I-1031 (https://www.e-tar.lt/portal/lt/legalAct/TAR.A0DD1190CAE9).

international marriages, this situation also started increasingly affecting a growing number of Lithuanian citizens irrespective of their ethnicity, although it was also very much personalised depending on an individual's name, surname and connection to a specific foreign country and its language. On the one hand, the unresolved domestic minority context combined with the increase in the international component confirms the diversity and dynamics of the issues regulated by law on writing personal names. On the other hand, it illustrates that the norms adopted in the early 1990s should be adjusted to better meet contemporary challenges.

The fourth dimension is the minority-related international context. The Advisory Committee on the Framework Convention for the Protection of National Minorities has repeatedly addressed the issue of writing personal names in its opinions on Lithuania for the first to fourth cycles (Council of Europe, s. a.). For instance, in its Fourth Opinion, adopted on 30 May 2018, the Advisory Committee recommended Lithuania to "[b]ring the legislative framework [...] pertaining to the spelling of surnames and first names in official documents in line with Articles 10 and 11 of the Framework Convention".[8] In the context of Lithuania's Polish minority, it is also worth mentioning the provisions of the bilateral treaty on friendly relations and good neighbourly cooperation signed on 26 April 1994.[9] In Article 14, the parties agreed that persons belonging to the Polish minority in Lithuania and the Lithuanian minority in Poland have the right to use their personal names in the form it appears in the language of the respective minority. The same article stipulates that detailed regulations on writing personal names should be specified in a separate agreement. This separate agreement has never been concluded. At the same time, on 6 January 2006, Poland adopted the Law on national and ethnic minorities and on the regional languages.[10] Its Article 7 guarantees that persons belonging to national and ethnic minorities[11] in Poland have the right to use and write their personal names in the form conforming to the rules of the respective language, *inter alia,* in the official register and identity documents. This implies two things in the context of bilateral Lithuanian–Polish relations. First, it can be interpreted as a unilateral implementation by Poland of the minority-related commitments specified in the bilateral treaty on friendly relations and good neighbourly cooperation. Second, Poland's domestic law ensured a higher standard for the protection of the linguistic rights of its minorities than did Lithuania. During meetings with their Lithuanian counterparts, Polish top-ranking officials frequently addressed the issue of writing personal names in the official documents of members of Lithuania's Polish minority (Official Website of the President of the Republic of Poland, 2003; 2018).

[8] Fourth Opinion on Lithuania – adopted on 30 May 2018: ACFC/OP/IV(2018)004. Advisory Committee on the Framework Convention for the Protection of National Minorities (https://bit.ly/3qeQvCQ).

[9] Dz.U. 1995 nr 15 poz. 71 (https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19950150071).

[10] Dz.U. 2005 nr 17 poz. 141 (https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=wdu20050170141).

[11] Poland's law on national and ethnic minorities and on the regional languages distinguishes between national and ethnic minorities based on the kin-state factor. National minorities have their own kin-states, whereas ethnic minorities lack them. Lithuanians are one of Poland's nine national minorities (see Article 2).

3. Evolution of the reaction of Lithuanian authorities

The main challenge for Lithuania's authorities with regard to writing the personal names of the country's citizens was to reconcile the state status of the Lithuanian language with issues related to its citizens' identity and civil status. Article 29 of the Lithuanian Constitution guarantees the equality of all persons before the law, court, as well as other state institutions and officials. Moreover, it establishes that an individual's rights may not be restricted or enhanced, *inter alia,* on the grounds of ethnicity, language, origin and social status. As Dainius Žalimas noted, "[t]he Constitution is an anti-majoritarian act" because "it protects the individual, regardless of the attitudes or stereotypes prevailing in a certain period of time among the majority of members of society" (Keturakienė et al., 2021, p. 8). In other words, the state should have established coherent and tangible criteria that justify different approaches towards the same domain of legal relations and adjust them to the challenges triggered by minority-related and foreign-driven contexts.

This need can be traced to the arguments used by the Lithuanian Government in its official documents, such as Resolution No. 589 on the proposal to the State Commission of the Lithuanian Language, adopted on 26 June 2013.[12] The government recalled that the norms for writing personal names in official documents were adopted in 1991, based on the recommendations issued by the Commission's formal predecessor in November 1990. However, it admitted that globalisation and European integration, accompanied by emigration and immigration, changed the situation significantly from that in 1990. The increasing number of people with spellings different from that introduced in the early 1990s is a consequence of these processes. The government acknowledged that these norms no longer offered adequate solutions. However, the text of this Resolution demonstrated the dominance of foreign-driven contexts that reasoned the need for change in the norms in question.

Lithuania's Constitutional Court addressed the issue of writing personal names on three occasions. In its ruling of 21 October 1999,[13] the Court acknowledged the Lithuanian language as a constitutional value. This implies the compulsory status of the Lithuanian language in all spheres of public life in Lithuania. Among other symbolic and practical things, the Lithuanian language ensures the effective functioning of state bodies of different levels, integrates the country's civil nation, and guarantees the equality of Lithuania's citizens irrespective of their ethnicity. Specifically, by virtue of its status as a state language, it provides all citizens of Lithuania with equal conditions for

[12] Registration No. 1131100NUTA00000589 (https://e-tar.lt/portal/en/legalAct/TAR.98DADB5B10B8). See also Resolution of the Seimas adopted on 11 June 2009 No. XI-289 "On the request to the Constitutional Court of the Republic of Lithuania with a petition to clarify the provisions of ruling of the Constitutional Court of the Republic of Lithuania of 21 October 1999 on the compliance of the Resolution of the Supreme Council of the Republic of Lithuania "On Writing Names and Family Names in Passports of Citizens of the Republic of Lithuania" of 31 January 1991 with the Constitution of the Republic of Lithuania", Registration No. 1091010NUTA00XI-289 (https://e-tar.lt/portal/lt/legalAct/TAR.8809FFF38088).

[13] Ruling on the compliance of the Resolution of the Supreme Council of the Republic of Lithuania "On Writing Names and Family Names in Passports of Citizens of the Republic of Lithuania" of 31 January 1991 with the Constitution of the Republic of Lithuania (21 October 1999). Constitutional Court of the Republic of Lithuania, case No. 14/98 (https://lrkt.lt/en/court-acts/search/170/ta1147/content).

communication with state bodies of different levels. However, this status does not encompass domains that go beyond public life, where citizens are free to use any language they feel comfortable with. The way personal names were written in the passports of Lithuania's citizens was interpreted in the ruling as a legal connection between an individual and the state. The logic for this approach is based on the fact that issues related to citizenship are attributed to public life, whereas official documents certify the integral connection between citizens and the state. Thus, in the Constitutional Court's view, the use of non-Lithuanian characters in the official documents of Lithuanian citizens would defeat the constitutional concept of the state language and principle, defy the functioning of state bodies, and infringe on the principles of citizens' rights, legitimate interests and equality before the law. This means that the writing of personal names of Lithuania's citizens solely with the letters of the Lithuanian alphabet, as stipulated by Resolution No. I-1031, does not contradict the Constitution of Lithuania. It is particularly interesting that sticking exclusively to letters of the Lithuanian alphabet was interpreted as an advantage for citizens in exercising their rights.

In its decision of 6 November 2009,[14] the Constitutional Court returned to its ruling described in the previous paragraph to clarify items four and seven of its reasoning part. The Court largely repeated its stance from the 1999 ruling. Inter alia, it designated the provision on compulsory writing of individuals' names in the state language as imperative. However, it acknowledged the right of individuals to write their names in non-Lithuanian characters in sections of their passports other than the one that contains entries confirming their identities. However, this entry in non-Lithuanian characters should not be equated to the entry made in the state language. When sanctioning entries with non-Lithuanian writing of personal names in other sections of the passport, the legislator should consider that "the basis of the characters of the Lithuanian language, as the state language of Lithuania, as well as of an absolute majority of the state (official) languages of European countries, is Latin characters".

The Constitutional Court's decision of 27 February 2014[15] provided further clarifications of the 1999 ruling. It confirmed that the protection of the Lithuanian language is a constitutional imperative. Thus, a legislator or authorised state institution must consider this fact when defining the rules for writing the personal names of Lithuania's citizens. Thus, four aspects need to be addressed in the context of this decision. First, the Constitutional Court underlined that legal relations covering the scope and implementation of issues related to human rights and fundamental freedoms should be enshrined only in a law (Lithuanian: *įstatymas*). At the moment of this decision, this legal relationship was regulated by a parliamentary resolution (Lithuanian: *nutarimas*), which suggested a motion for the preparation of a new law on writing personal names in official documents. Second, the Constitutional Court referred to the regulation on the writing of personal

[14] Decision on the Construction of the Provisions of Items 4 and 7 of the Reasoning Part of the Ruling of the Constitutional Court of the Republic of Lithuania of 21 October 1999 (6 November 2009). Constitutional Court of the Republic of Lithuania, case No. 14/98 (https://lrkt.lt/en/court-acts/search/170/ta1292/content).

[15] Decision on the Construction of Certain Provisions of the Ruling of the Constitutional Court of the Republic of Lithuania of 21 October 1999 (27 February 2014). Constitutional Court of the Republic of Lithuania, case No. 14/98 (https://lrkt.lt/en/court-acts/search/170/ta1093/content).

names in interwar Lithuania. The 1938 Constitution designated Lithuanian as the country's state language. At the same time, the Court recalled the Law on Family Names adopted by the Seimas on 6 December 1938. This law established that individuals of non-Lithuanian ethnicity were entitled to request that their names be written in their native language, provided that Latin is the alphabet of this language. In other words, in interwar Lithuania, the authorities permitted its citizens belonging to national minorities to use non-Lithuanian Latin-based characters to write their personal names in official documents, and this was not conditioned by any foreign-driven context. Third, the Court provided a construction of the formulations "in the state language" and "in Lithuanian characters" within the context of writing personal names. It emphasised the possibility in certain cases to go beyond the letters of the Lithuanian alphabet and use other "exclusively Latin-based characters". However, their possible use was conditioned by consistency with the tradition of the Lithuanian language and the non-violation of its distinctiveness. Among other things, this interpretation also excludes the extension of this approach to Cyrillic, Jewish, or any other non-Latin writing scripts. Fourth, the development of relevant legal provisions on writing personal names should involve experts, specifically the VLKK as an institution authorised by the state to be in charge of regulation, standardisation and codification of the Lithuanian language. The Court emphasised that "[w]hen deciding on how the name and family name of a person must be written in the passport of a citizen of the Republic of Lithuania, the legislature may not disregard the received official conclusions, including the official conclusion of the VLKK and its position".

As this section of the paper demonstrates, Lithuanian authorities demonstrated a considerable degree of awareness that the norms for writing the personal names of Lithuania's citizens established by the 1991 Resolution No. I-1031 no longer offered adequate solutions in contemporary reality. The constitutional doctrine on this issue, developed by the Constitutional Court, resulted in an increase in the status of the relevant regulatory instrument from resolution to law. It also emphasised the crucial significance of the VLKK's role in this domain (see Kūris, 2022, pp. 125–126). A comparison of the 1999 ruling and the 2009 and 2014 decisions demonstrates the liberalisation of Lithuania's constitutional doctrine in this domain. Equally important is the reference to the relevant regulations that existed in interwar Lithuania and the possibility in certain cases to use "exclusively Latin-based" non-Lithuanian characters. Thus, as Ingrida Danėlienė (2022) emphasises, both supporters and opponents of Law No. XIV-903 relied on the position of the Constitutional Court expressed on these three occasions.

4. Lithuanian case law: Can non-Lithuanian diacritics be used in personal identification documents?

The Lithuanian domestic case law pertinent to the right to use letters q, x and w, as well as some other combinations of letters (e.g. nn, cz, rz, sz, or tt) that are not typical for the Lithuanian language in official documents is quite numerous (EFHR, 2021a). Based on these developments, on 8 September 2021, Lithuania's Ministry of Justice issued

recommendations for Civil Registry Offices (EFHR, 2021b). If the court allowed a parent to write her or his name with letters q, x and w in the official documents, this approach should be extended to their children. Among other things, this motion was justified by the need to optimise court work and ensure a more efficient enjoyment of citizens' rights. At the same time, there are at least three domestic precedents when Lithuanian courts sanctioned the use of non-Lithuanian diacritic characters in official documents of the country's citizens. One of them is mentioned in the judgment of the District Court of Vilnius City in Wołkonowski's case. On 6 October 2021, the Supreme Court of Lithuania delivered a judgment in an appeal on cassation in case No. e3K-3-122-1075/2021 (Supreme Court of Lithuania, 2021). The case dealt with the foreign-driven component when a Lithuanian citizen married a Slovenian and opted to choose his name that contained a letter ć. The Civil Registry Office in Panevėžys refused to make an entry with this diacritical character arguing that it was technically impossible. The court of the first instance backed the applicant claims and the court of appeal kept them unchanged. The Supreme Court found that Lithuanian bylaws did not prohibit the writing of personal names with Latin-based diacritical characters. It claimed that the Lithuanian legislation does not specify how the surname of Lithuania's citizen should be written if she decided to adopt her foreign husband's name. Specifically, the lack of diacritical characters in the Lithuanian alphabet should not be interpreted as a technical impossibility. In its argument, the Supreme Court also relied on the relevant practice of the Court of Justice of the European Union.

Another two examples have a similar context and deal with the letters ń and ö respectively. On 27 January 2022, the District Court of Vilnius City delivered a judgment in a case involving a Lithuanian married to a Polish citizen and residing with him in Poland (EFHR, 2022b). The court compelled the Civil Registry Office in Vilnius to change the applicant's name from Mulerskaitė-Vaczynska to Mulerskaitė-Waczyńska. In other words, the court ordered to bring the second part of her surname in conformity with the Polish original. In its arguments, the court, *inter alia,* found that the discrepancy in writing the names of the family members could produce disadvantages in the administrative and personal sphere and restrict the scope of rights guaranteed by Article 21 of the TFEU. More importantly, the available information informs that the VLKK delivered a favourable opinion on the issue designating the case as an exception justified by the needs of society and applicable towards Lithuania's citizens who opted to adopt the names of their surnames. On 14 April 2022, the Civil Registry Office in Vilnius, by virtue of a court decision, was obliged to register a marriage of a Lithuanian with a Hungarian citizen and inscribe the wife's name with the letter ö because she opted to choose her husband's surname Györffy (EFHR, 2022c).

These three recent cases confirm that the use of non-Lithuanian diacritical characters in official documents of Lithuania's citizens is possible. However, it currently exists as a justifiable exception backed by the VLKK, and is applicable to an identifiable group of Lithuanian citizens with foreign spouses. Therefore, this again confirms the dominance of foreign-driven contexts that triggered the change in Lithuanian domestic case law on writing citizens' personal names.

5. Debate on citizen's equality and public interests

The above analysis of Lithuania's constitutional doctrine raises two issues that need to be addressed. First, it has a clear historical dimension relevant to linguistic and legal contexts. In linguistic terms, VLKK is duly authorised to perform the tasks of regulation, standardisation and codification of the Lithuanian language. In other words, this institution has the discretion to define the composition of the Lithuanian alphabet, the use of non-Lithuanian characters throughout Lithuanian texts, and to designate and justify relevant exceptions. The 2014 decision of the Constitutional Court named compliance with the tradition of the Lithuanian language and the non-violation of its distinctiveness among the criteria to sanction the use in certain cases of non-Lithuanian characters in the official documents of Lithuanian citizens. The notion of tradition of language can be broadly interpreted. However, it obviously includes historical developments. As mentioned above, the letter ł was quite commonly used in Lithuanian texts at the turn of the 19th and 20th centuries. Thus, a logical question arises whether this and, eventually, some other diacritical signs should be broadly understood as part of the tradition of the Lithuanian language.

Second, the same 2014 decision of the Constitutional Court recalled the reference to interwar Lithuania's legislation on writing personal names that gave persons belonging to national minorities the right to write their names in their native language with letters of the Latin alphabet. While analysing Wołkonowski's case, Egidijus Kūris (2022, p. 135) recalls the personality of Mykolas Römeris (1880–1945),[16] one of the founders of Lithuanian constitutional law. Kūris ironically discusses a hypothetical VLKK's decision to include the letter ö in the Lithuanian alphabet. He writes that it could potentially require the Mykolas Romeris University (Lithuanian: *Mykolo Romerio universitetas*) to change its official name because it does not use the form of how Römeris wrote his name in Lithuanian (i.e. with the letter ö) but "the way some purist of the Lithuanian alphabet wrote it" (Kūris, 2022, p. 135) (i.e. with the letter o). This retrospective view of the case of one of the most prominent lawyers from Lithuania suggests that interwar legislation in this domain could offer quite a simple solution for both persons belonging to Lithuania's national minorities and Lithuanian citizens with foreign spouses. If Lithuania's authorities choose this path, it would signify a triumph of a minority-friendly liberal approach in the sphere of the Lithuanian language justified by domestic historical legal practices.

In fact, the wording of the 1938 Law, the 1991 Resolution and the 2022 Law provides each citizen with the option to choose. However, neither the 1991 Resolution nor the 2022 Law offers a universal solution to the issue with the personal names of Lithuania's citizens. On the one hand, the *lex generalis* in both cases implies that personal names should be written in Lithuanian characters. This means that all citizens are placed in equal conditions by the possibility of using the same letters to write their personal names in official documents. However, the *lex specialis* is very much individualised and dependent on each individual's name, surname and ethnicity. To put it succinctly, Law No. XIV-903 divides all potentially affected persons into at least three groups. Owing to numerous

[16] For more information about him, see Maksimaitis, s. a.

possible reasons, the first group was simply not interested in changing their names in official documents. The second group was composed of those who wished to change the official writing of their names. Thus, they either did so or plan to do so in the near future. The third group includes those such as Wołkonowski, who want to change their names but cannot do so because their names in their native language contain non-Lithuanian diacritical characters. Those attributed to groups two and three have two things in common. First, they are entitled to use the mechanism prescribed by the *lex specialis*. Second, they both expressed the wish to change the official writing of their names. Being equal by law, they still have one substantial difference that derives from the rules of writing their names in their native language. Some of them have non-Lithuanian Latin-based diacritical characters in their names, while others lack them. This issue is individualised and may even differ among close relatives. An illustration of this situation could be the imaginary case of two brothers of Polish ethnicity with Lithuanian citizenship and the same surname written in the original Polish version without diacritics. In their native Polish language, the name of one is written without diacritics, whereas the name of the other requires diacritical characters. If both express the will to change the writing of their names in official documents, the available mechanism will bring them to two different outcomes. One of them can use the mechanism foreseen by Law No. XIV-903 to fully restore the original writing of his name and surname in the official documents issued by Lithuania. Another one will obtain a version that resembles the original Polish form but is not identical to it. An example of this deficit is Wołkonowski's first name. The original Polish form is Jarosław. Before Law No. XIV-903 became valid, his name without Lithuanian endings was written in the official documents as Jaroslav. The new law offered him a possibility to change it to Jaroslaw. It resembles the original form but still differs from it because it lacks the letter ł. Thus, the question regarding compliance of Law No. XIV-903 and Government Resolution No. 424 with the principles of equality and the rule of law is quite logical and reasonable. However, this assessment should be made in conjunction with the obvious fact that the new law has contributed to significant progress in solving the long domestic debate about the rules of writing personal names in official documents. In symbolic terms, it embodies Lithuania's openness towards its loyal citizens belonging to national minorities and demonstrates the state's commitment to creating a more inclusive society. Viktorija Čmilytė-Nielsen, speaker of the Lithuanian Seimas, emphasised shortly before the vote on Law No. XIV-90 that its adoption signified an important step in terms of human rights, human dignity and the country's security policy (TVP Wilno, 2022). Therefore, a return to the rules that existed before the adoption of this law would mean an abridgment of the scope of rights of individuals affected by these positive changes.

This highlights the need to address the issue of the public interest. The motion of the Prosecutor General of Lithuania aimed to ensure the consistency and stability of the country's legal system by avoiding the probability of an unlawful court ruling and restoring the status quo that had existed before it was pronounced. In this particular case, the approach of the Prosecutor General's Office was well justified. First, Law No. XIV-903 does not legalise the use of the non-Lithuanian Latin-based diacritical characters in the names of Lithuania's citizens. Second, references to the case law made by the court in its

ruling in Wołkonowski's case produce much room for possible interpretation. Contrary to the three cases mentioned in the previous section of this text, Wołkonowski's case lacks any foreign-driven context. In other words, he does not belong to the identifiable group of Lithuanian citizens with foreign spouses for whom writing of their personal names exclusively with the letters of the Lithuanian alphabet might cause significant inconveniences in the labour, administrative and personal domains. Considering the stance of Lithuanian authorities and courts, one can imagine that should Jarosław Wołkonowski be the full name of a child from an international marriage involving a Lithuanian citizen, the court would likely sanction the entry of his name into the Population Register according to the rules of the Polish language, that is, with non-Lithuanian diacritical character ł. This again returns the entire debate back to the analysis of the principles of equality and the rule of law. However, some lawyers from Lithuania, such as Aleksander Radczenko, argue that it is rather Wołkonowski who protects the public interest by striving to return the original writing of his name in personal identification documents (Knutovič, 2022). Radczenko further explains his position by the ineffective allocation of limited resources by the prosecutor's office. In his view, the prosecutor's office frequently claims a lack of sufficient capacities to process serious cases and instead focuses on cases with very limited impact on the actual public interest.

Conclusion

At the time of this article's production, the ruling of the Lithuanian Constitutional Court was not delivered. Once published, it will become an important legal piece for analysis, particularly in terms of the balance between the state status of the Lithuanian language and issues related to the individual. Another point of interest might be a possible extension of the reference to the historical legislation on this matter that existed in interwar Lithuania compared to the 2014 aforementioned decision.

Overall, Lithuania provides an interesting example of the evolution of the approach towards writing the names of the country's citizens in official documents. Since the restoration of Lithuania's independence after the Soviet occupation, Lithuania has consistently applied the combination of *lex generalis* and *lex specialis* with regard to writing its citizens' names in official documents. Both Resolution No. I-1031 and Law No. XIV-903 ensured a free choice for persons belonging to national minorities regarding whether *lex specialis* should apply to their situations. However, neither of these legal acts offered a universal solution to this long-debated issue. While substantially extending the number of Lithuania's citizens belonging to national minorities and entitled to return the original writing of their names in official documents, Law XIV-903 still cannot accommodate the needs of all citizens because it does not envisage the possibility of using non-Lithuanian diacritics. However, the return to norms identical to those enlisted in Resolution No. I-1031 would mean significant drawbacks.

At the same time, the example of Lithuania provides an illustration of a transition from a conservative language-centric approach towards the accommodation of the country's ethnolinguistic diversity and the impacts of globalisation on its society. This

liberalisation is embodied in Law No. XIV-903 and can be interpreted as a tangible measurement of the maturity of Lithuania's political elites to commit itself to the development of a more inclusive society. As mentioned above, the long debate on writing personal names in Lithuania was predetermined by different domestic contexts linked to historical and identity-related issues. Paradoxically, Lithuania's past offers justification for the full liberalisation of the sphere of writing of personal names, as it derives from the country's historical legislation and a broad interpretation of the traditions of the Lithuanian language. The role of the Constitutional Court in this process is to ensure the consistency and stability of Lithuania's legal system in matters that potentially affect a significant part of the society. Therefore, the involvement of the Constitutional Court in this matter is essential for avoiding doubt in interpretations.

Finally, Lithuania can also serve as a positive example for its northern neighbour, Latvia, which applies an even more conservative approach (Dimitrovs, 2012, pp. 18–19) than that established by Resolution No. I-1031 of the Lithuanian Seimas.

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Knowledge and Implications of Cemetery Policies among Workers of Baguio City Public Cemetery, Philippines

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Abstract: Cemeteries in the Philippines are usually under the jurisdiction of local government units (LGUs). Among their jurisdiction is managing cemetery workers. The cemetery workers being part of the informal sector are a concern for LGUs since activities within the sector are unknowledgeable to government policies and prone of noncompliance to it. Thus, the study is anchored on determining if cemetery workers of Baguio know the policies governing cemeteries. The study employed both a quantitative and qualitative design, particularly through survey-questionnaires and interviews. The data shows that the respondents are moderately knowledgeable on the identified cemetery policies. This is because attached offices of Baguio LGU have a constant practice of communicating and orienting the workers on the cemetery policies. Although workers are moderately knowledgeable and the LGU exerts effort and initiatives in communicating with the cemetery workers, some problems still persist due to misinterpretation and stubbornness among the workers.

Keywords: cemetery workers, cemetery policies, local government

1. Introduction

In every organisation, policies must be set for the workers to act by what is expected of them by the organisation. Tyler (2005) stated that securing workers' knowledge of organisation policies and workplace rules is one key antecedent of successful organisational coordination and functioning. Thus, organisations need to be able to reach and inform policies and enforce effective rule-following behaviour among their workers or members.

Imparting and enriching knowledge to workers of an organisation is a usual topic in organisational studies, specifically in public administration. Knowledge typically refers to understanding information related to job duties and organisational objectives (Ng & Feldman, 2009). Noe (2010) elaborates on knowledge as learned facts, principles, concepts and other pieces of information that are considered necessary in the nature of an organisation. Studies found that knowledge is among the best predictors of performance and

organisational achievements (Palumbo et al., 2005; Schmidt, 1998). Ng and Feldman (2009) argued that individuals with higher levels of knowledge are more capable of doing their job, thus attaining the objectives of an organisation. Furthermore, Seibert et al. (2001) posit that knowledge of an organisation's policies is substantially related to the overall organisational performance.

The stated principles are thoughtfully applied in government organisations. Government needs to impose and let policies be known to their workers since government organisations operate on a larger scale compared to private organisations, suits to satisfy multiple stakeholders, and are subjected to a higher degree of scrutiny and accountability (Rashman et al., 2009; Hartley & Skelcher, 2008).

Providentially, many studies have portrayed and examined how public organisations assess their workers' knowledge of policies governing sectors such as health, education, agriculture, security, etc. However, there are also sectors which are deprived of academic attention. An example of this sector is the cemetery. The author of this paper argues that there is a total absence of literature on the cemetery as a public organisation and its members. Kjøller (2011) shares the sentiment that the cemetery, as a focal subject in the public sector, has been given less attention and interest in scholarly works. Although cemeteries are usual topics in different disciplines (Santime, 2019), Zavattaro (2021) argues that cemeteries are usually an unexplored area of public administration. Hussein and Rugg (2003) claimed that the gaps are prevalent because cemetery management is typically placed locally, outshined by higher-level priorities, and frequently marginalised by other public sectors.

1.1. Cemeteries and their policies

Although cemeteries are an unexplored area in public administration, they are worth discussing since they serve as a governmental instrumentality in delivering public needs. As a public need, the primary purpose of a cemetery in a society is to serve as a resting place for the dead (Rugg, 2000). For public health reasons, cemeteries avoid spreading diseases (Sallay et al., 2023). Aside from health and sanitation purposes, cemeteries also have several functions in the society. They primarily uphold a psychological and spiritual role for families (Francis et al., 2005), social and cultural space (Barretto-Tesoro, 2016), and a valuable source of history (Mytum, 2007). The government plays a crucial role in preserving and sustaining cemeteries being relevant in society. Cemeteries require regulation to maintain order, uphold public health standards and ensure respectful practices.

To achieve the above, cemeteries need appropriate management. Management of cemeteries differs across the world (Rugg, 2006). Cemeteries in the United States are more privatised, while municipal governments in many European countries own and manage cemeteries (Rae, 2021; Walter, 2005; Rugg, 2000). In the Philippines, identical to the European counterparts, cemetery regulations are usually under the jurisdiction of municipalities and cities, generally local government units (LGUs). Republic Act (RA) No. 7160, also known as the Local Government Code of 1991, transferred the responsibility for

delivering basic services to LGUs, such as health, sanitation, environment, etc.[1] Furthermore, RA 7160 devolves to LGUs the responsibility of enforcing certain regulatory powers, such as reclassifying agricultural lands, enforcing national building codes and managing cemeteries (Brilliantes, 2002).

Specifically, Section 17 (2-x) of RA 7160 grants city and municipal LGUs the power and responsibility of managing public cemeteries. Largo (2020) and Tapales (1995) argued that cemeteries manifest local governments' governmental and patrimonial functions. Tapales (1995) defines that governmental power involves promoting the public welfare of its residents while patrimonial power is exercised to attain their (residents') collective needs. Cemeteries manifest governmental functions since LGUs ensure public health and sanitation by enforcing proper disposal of the dead. Cemeteries display patrimonial functions because they serve as local governments' revenue sources.

In the Philippines, the nature of operating cemeteries is also interesting since it is governed by various policies encompassing sanitation, health and construction. Generally, the Sanitation Code of the Philippines (PD No. 856), specifically its Chapter XXI and its Implementing Rules and Regulations (IRR), governs the roles and procedures of cemeteries in the Philippines.[2]

Chapter XXI of the Sanitation Code is supplemented with the National Building Code and Housing and Land Use Regulatory Board (HLURB) resolutions. The stated policies specifically prescribe the structural guidelines and requirements within the cemeteries. The IRR of the National Building Code under Division J – Group 3 provides the proper guidelines for building structures within cemeteries. In Division J – Group 3, the IRR has vested powers to the HLURB to provide the latest or additional guidelines regarding cemeteries. HLURB Board Res. No. 681 of 2000 and No.797 of 2007 have prescribed some guidelines on projects in the cemetery.[3]

Since RA 7160 devolved powers to the LGUs of regulating cemeteries, the LGUs are given the authority to enforce the stated policies (Section 17 [2-x]). Moreover, LGUs can craft policies through ordinances and administrative orders, supplementing and enhancing the governance and management of cemeteries.

Based on the statements above, Philippine cemeteries are subjected to various policies. Aside from prescribing and imposing the operations of cemeteries, these policies also govern the people within them. Regarding managerial aspects, workers of the cemeteries are expected to be knowledgeable about these policies. But, with all aforementioned policies that will aid in governing and managing cemeteries, the question remains: Do all policies reach out and inform their workers? Are they knowledgeable about the policies?

Although public cemeteries are owned and managed by LGUs, the nature of a public cemetery in the Philippines is complicated since cemeteries are not typically like other formal organisations. Most cemetery workers in various localities of the Philippines are comprised of independent and self-employed workers. Hence, they are considered part of

[1] Republic Act No. 7160 (https://bit.ly/45GhOVI).
[2] Implementing Rules and Regulations of Chapter XXI of PD 856 (https://bit.ly/45Cbnmo).
[3] HLURB Resolutions No. 681 of 2000 and No.797 of 2007 (https://bit.ly/3M7ZwWC).

the informal sector from the stated characteristics. According to Gavilan (2017), cemetery workers are among the Philippines' 15.6 million informal sector members.

1.2. Informal sector

The informal sector is a concept of the International Labour Organization (ILO) (2004) that "consists of independent, self-employed small-scale producers and distributors of goods and services". Cemetery workers are considered to be in the informal sector because, based on the working definition of the ILO, cemetery workers experience low and irregular incomes and precarious and seasonal employment. Their jobs are based on Filipino labour systems of *kontrata, labor* and *arawan,* which are common in other informal sectors such as construction workers and street vendors (Estrella, 2014). In addition, they are own-account workers. Since they do not have a formal employer–employee relationship environment, cemetery workers are not employees of the LGUs nor members of formal organisations (International Labour Organization, 2004).

The cemetery workers being part of the informal sector is a concern for LGUs since activities within this sector escape the attention of regulatory and monitoring agencies (Tolentino et al., 2001). Moreover, the sector is characterised by an absence of legal recognition, titles and regulatory supervision (Miller, 2007).

The International Labour Organization (ILO) confirms that the informal sector is troublesome. Even though the informal sector makes up a significant portion of the economies in developing countries, the sector is known to be unaware in government policies (Padmavathi & Aruna, 2022). To an extent, the informal sector has a routine of not complying with laws (Hummel, 2017). The sector's lack of knowledge and awareness of policies is attributed to their low levels of education, income, social and human capital, absence of access to financial institutions and limited organisational capacities (International Labour Organization, 2018; International Labour Organization, 1991; International Labour Organization, s. a.). Loewenson (2002) expounded that these challenges are primarily attributed to the presence of poor work organisation, community environment and social infrastructures.

These sentiments cause alarm to government agencies since informal sector workers are prone to disregarding policies and having a higher risk of possible work-related accidents. For instance, the case of construction workers in Nepal and Bangladesh. Even though the building codes exist in both countries, awareness and compliance with the codes are generally absent among workers (Ahmed et al., 2019). In Kelantan, Malaysia, small-scale construction firms or cliques have the lowest awareness (2.9%) on construction and Occupational Health and Safety (OSH) regulations compared to medium to large construction firms (Kamar et al., 2014).

Another part of the sector is farmers. In the study of Jallow et al. (2017) of small-scale farmers in Kuwait, it was concluded that knowledge of statutes governing pesticide procedures and safety is insufficient. Regarding street vendors, Hummel (2017) confirmed that Bolivian and Brazilian vendors are constantly not subjecting themselves to policies.

In the Philippines, street vendors are apprehended due to violating local ordinances. When asked, the vendors are unaware of such laws (Cabrera, 2020).

Although there is an absence of studies on cemetery workers' knowledge of policies, some literature indicates some issues surrounding the workers in the Philippines. The City Government of Cebu, Philippines, warned cemetery workers to stop unscrupulous transactions of racking up the prices of burial lots with bereaved families (Letigio, 2021). In Mandaue City, authorities found that constructing a mausoleum in Guizo Cemetery violated the sanitation and building codes (Lao, 2017). In Bogo City, Philippines, cemetery workers are cautioned not to break the Inter-Agency Task Force (IATF) resolution on cemeteries' closure during the Covid pandemic's peak (Gom-os, 2021).

1.3. Research problem

Hence, the study is anchored on determining if cemetery workers of Baguio know the policies governing cemeteries. Specifically, from the discussion beforehand, the study aims to identify the following. First, what is the level of knowledge of Baguio City Cemetery Workers in terms of the following policies that govern cemetery: a) IRR of Chapter XXI of the Sanitation Code of the Philippines (Section 4–5); b) HLURB Board Resolutions No. 681 s. 2000 and No. 797 s. 2007; and c) Baguio City Administrative Order No. 111 s. 2012 and No. 156 s. 2015? Second, based on the first problem, what are the implications of the practices and problems encountered by cemetery workers in implementing the identified cemetery policies?

2. Methodology

2.1. Locale and population

The study was conducted during the first quarter of 2021 on one of the largest cemeteries in the Cordillera Region. Baguio City Cemetery is a 94,800-square-meter cemetery in Baguio City, Philippines, along Naguilian Road (Palangchao, 2011). Aside from being the largest public cemetery (owned and managed by the City) in the region, the city cemetery was chosen as it reflects the state of the informal sector. Baguio City is the second oldest chartered City in the Philippines, next to its capital, Manila. Baguio also belongs to the only 33 highly urbanised cities in the Philippines and the only one in the Cordillera Administrative Region and Northern Luzon.

With the urban standing of Baguio, Baguio demonstrates the state of modernisation and urbanisation in the region. As an epitome of modernisation and urbanisation, Baguio manifests the informal sector's expansion. Yuki (2007) and the OECD (2002) argued that the rise of urbanisation, industrialisation and modernisation in low and middle-income countries paved the way for the informal sector's increases. As a major urban centre in the Northern Philippines, Baguio City and its only public cemetery has been chosen as the study's locale.

Thus, the respondents were Baguio cemetery workers. To formally access the respondents, a communication letter was sent to the City Government of Baguio and the City Environment and Parks Management Office (CEPMO), requesting to conduct data gathering activities in the vicinity of the cemetery. After the approval, the researcher coordinated with the City Cemetery Caretaker. Afterward, the researcher personally approached the respondents and assisted them in answering the questionnaire around March 2021. The researcher explained why the research is being conducted. Afterwards, the researcher assisted and guided them in answering the questionnaires by speaking the local dialects, which are *Ilocano* and *Tagalog*.

Since the present and actual number of cemetery workers are unknown and unavailable, non-random sampling, particularly purposive and snowball techniques were used in selecting the study's respondents. Purposive because cemetery workers are located within the cemetery and are distinguishable since they are waiting for clients in front of the Baguio Cemetery Office and on the main road inside. Snowball since the respondents were also identified based on the referrals of other workers that the researcher interacted with. During the data gathering, 57 respondents were able to take part in and finish the survey.

2.2. Methods and data analysis

The study employed both a quantitative and qualitative design. For the first problem, a descriptive survey through questionnaires was used in gathering data. The questionnaire indicators include specific provisions of the IRR of Chapter XXI of the Sanitation Code of the Philippines (Sections 4–5), HLURB Res. No. 681 s. of 2000 and 797 s. of 2007, Baguio A.O 111 s 2012 and A.O. 156 s 2015. The selected provisions pertain to the conduct of work of the cemetery workers. To measure the indicators, a 4-point Likert Scale was employed.

To determine the reliability of the questionnaire, it was pre-tested on 15 cemetery workers of the Municipality of La Trinidad. The reliability of the test was computed using Cronbach's Alpha. With 15 respondents, the Cronbach's Alpha result yielded a coefficient of 0.8122, which indicates acceptable reliability.

A qualitative design was used for the second problem. Mainly personal interviews with cemetery workers and CEPMO officials. Aside from the cemetery workers, six officials of the CEPMO were purposively chosen since they are the officials directly in charge of the cemetery.

For data analysis, the following treatments were employed in analysing and interpreting the data. For the first problem, the weighted mean of the provisions of each policy was determined. This statistical tool was used in computing the level of knowledge of Baguio cemetery workers in terms of the following policies that govern cemetery works. The levels of knowledge were then interpreted using the scale through a 4-point statistical arbitrary range.

Table 1.
Scale of the Level of Knowledge

Numerical rating	Weighted mean	Percentage	Descriptive equivalent
4	3.25–4.00	81.25–100	High Knowledge (HK)
3	2.50–3.24	62.5–81.24	Moderate Knowledge (MK)
2	1.75–2.49	43.75–62.49	Partial Knowledge (PK)
1	1.00–1.74	0.01–43.74	No Knowledge (NK)

Source: Compiled by the author.

Furthermore, the qualitative findings of the second problem were used to corroborate, support and validate the quantitative data and to have an in-depth analysis of the data gathered in the first problem. The responses of the key informants were studied, and themes and codes were deduced. The qualitative data were organised under the policies they fall under and the implications of the practices and problems of each policy.

3. Results and discussion

This section presents each policy, and for each policy, the discussion is laid down on the level of knowledge and implications of the practices and policies of Baguio cemetery workers regarding cemetery policies.

3.1. Sanitation Code of the Philippines Chapter XXI, Sections 4–5

The findings on the level of knowledge of Baguio cemetery workers regarding the IRR of Chapter XXI, Sections 4–5 of the Sanitation Code of the Philippines are presented in Table 2.

When it comes to Section 4 of the IRR of Chapter XXI of the Sanitation Code, the respondents are moderately knowledgeable on death certificates with a weighted mean of 3.18, moderately knowledgeable on grave requirements with a weighted mean of 3.07, moderately knowledgeable on unembalmed dead bodies with a weighted mean of 3.04 and moderately knowledgeable of death due to dangerous communicable disease with a weighted mean of 3.05. For Section 4, the cemetery worker respondents are moderately knowledgeable with a weighted mean of 3.06. For Section 5, the respondents are moderately knowledgeable to the requirements for the disinterment or exhumation of remains of persons who died of non-dangerous communicable diseases and dangerous communicable diseases, both and the weighted mean of Section 5 having a weighted mean of 3.00. Overall, the respondents are moderately knowledgeable in the Sanitation Code, Chapter XXI, Sections 4–5 with an overall mean of 3.06.

Table 2.
Level of knowledge of Baguio cemetery workers in terms of the Sanitation Code of the Philippines Chapter XXI, Sec. 4–5

Sanitation Code of the Philippines Chapter XXI, Sections 4–5	Weighted mean	Descriptive equivalent	Rank
Section 4. Burial requirements			
4.1.1. Death certificate	3.18	MK	1
4.3.1. Grave requirements	3.07	MK	2
4.6.5. Unembalmed dead body	3.04	MK	3
4.7.2. Death due to dangerous communicable diseases	3.05	MK	4
Weighted mean for burial requirements	3.08	MK	
Section 5. Disinterment or exhumation requirements			
5.1.1. Requirements for the exhumation of remains of persons who died of non-dangerous communicable diseases	3.00	MK	1.5
5.1.2. Requirements for the exhumation of remains of persons who died of dangerous communicable diseases	3.00	MK	1.5
Weighted mean for exhumation requirement	3.00	MK	
Overall mean for Sections 4 and 5 of Chapter XXI of the Sanitation Code (IRR)	3.06	MK	

Legend

Numerical rating	Weighted mean	Percentage	Descriptive equivalent
4	3.25–4.00	81.25–100	High knowledge (HK)
3	2.50–3.24	62.5–81.24	Moderate knowledge (MK)
2	1.75–2.49	43.75–62.49	Partial knowledge (PK)
1	1.00–1.74	0.01–43.74	No knowledge (NK)

Source: Compiled by the author.

When it comes to Section 4 of the IRR of Chapter XXI of the Sanitation Code pertaining to burial requirements, the cemetery worker respondents are moderately knowledgeable, with a mean of 3.08. For Section 5 pertaining to disinterment or exhumation requirements, the respondents are moderately knowledgeable having a mean of 3.00. Generally, the respondents are moderately knowledgeable in the Sanitation Code of the Philippines Chapter XXI, Sections 4–5, with an overall mean of 3.06.

The findings imply that the selected cemetery workers are knowledgeable about the burial, disinterment and exhumation requirements. This can be attributed to several factors. Usually, when a client or representative of the deceased's family asks for burial

services, the contractor who obtained the work will refer the client to the cemetery office managed by the CEPMO.

The cemetery caretaker is in charge of the cemetery's management and operations. The cemetery caretaker will talk to the client instructing the requirements before burying the dead in the premise of the cemetery and signing a Waiver and Agreement with the City Government of Baguio. The primary requirement is a death certificate. That is why the indicator on the death certificate ranks first (3.18) among the following indicators since it is the primary document needed in the main work at the cemetery, which is the creation of burial structures. Further, as stated in Section 4, the attending physician must issue the death certificate. If there are no attending physicians, the death certificate is then issued by the city health officer, the mayor, the secretary of the municipal board, or a city/municipal councillor (Ocampo, 2021; Killip, 2021).

As stated by Ocampo (2021) and various cemetery respondents, after the cemetery caretaker's and the client's settlement, the client and the contractor will discuss the plan for the burial structure. Through experience, the contractor and workers are knowledgeable about the appropriate structure and design for burial structures. Their knowledge regarding graves ranked second in the sub-provisions under Section 4 since the knowledge has been passed through older workers in the cemetery, and the burial structures only require basic masonry skills.

Section 4.6 also states that when a corpse is suspected of dying due to violence or crime, the deceased shall not be buried immediately until permission is obtained from the city prosecutor. Commonly, corpses who die due to violence are not embalmed. These are widely known by the workers as "salvage" or "Mr. X". Also, usually, the unembalmed bodies are unclaimed bodies at funerals which the funerals need to dispose of since keeping them is costly. Since burying unembalmed bodies happen, if not often or rarely, usually once every two months, they are ranked third regarding the knowledge of sub-provisions under Section 4. Moreover, handling corpses who died due to dangerous communicable diseases was recently visible due to the Covid pandemic. That is why it ranks fourth in terms of Section 4.

Aside from the death certificate, a burial permit fee is required for the client as stated in Baguio City A.O. No. 111, Series of 2012. The permit fee is suitable only for 5 years tenancy, after which the City Government has the right to any action it may deem necessary, proper, and fitting after the lapse of the tenancy period as stipulated in the Waiver and Agreement.

As postulated in Section 5, the primary process is similar to the burial requirements in exhuming and disinterment requirements. The contractor who obtained the work will refer the client to the caretaker. The caretaker as well will discuss the instructions on the procedure on how to acquire an exhumation permit. The only difference is that an exhumation or disinterment permit is released by the City Health Service Office (CHSO).

The CHSO is also involved in governing the cemetery. Gas-ib (2021) and Killip (2021) narrated that CHSO usually looks into the lapse of years since the burial period. Section 5.1.1 grants a body of a person who died from a non-communicable disease and has been buried for more than 3 years, while Section 5.1.2 may grant a body of a person who died from a communicable disease and has been buried for more than 5 years. Section

5.1.2 also provides protective measures, ensuring that the exhumed body shall be disinfected and placed in a hermetically sealed container, adequately identified as to the deceased's name, date and cause of death, and place of origin. When the exhumation and disinterment permit is approved and released, the CEPMO City Cemetery personnel will supervise its conduct as stated in Baguio City A.O. No. 111, Series of 2012. After which, the workers and contractors must report all conducted exhumations to the caretaker.

During the discussion of the requirements and other instructions regarding the burial of the dead and exhumation, the contractor who obtained and talked to the client is usually inside the office. In this way, the contractor also noted all the discussions and instructions stated by the caretaker. Also, the caretaker instructs the contractor regarding the enforcement of the Sanitation Code or if there are other things or issues regarding the work.

To add, about the Waiver and Agreement, the parties or signatories involved are the CEPMO official (cemetery caretaker), the client (relative or representative of the dead) and a third party. The usual practice is that the contractor who obtains the work will sign as the third party signifying his presence between the agreement of CEPMO and the client (Ocampo, 2021; Gas-ib, 2021). With the number of clients and the discussions with the caretaker, the respondents argued that it has been a daily routine. Thus, this makes the respondents moderately knowledgeable about the sections of the Sanitation Code.

3.2. HLURB Resolution No. 681 Series of 2000 and 797 Series of 2007

The findings on the level of knowledge of Baguio cemetery workers regarding the HLURB Resolution No. 681 of 2000 and 797 of 2007 are presented in Table 3.

Table 3.

Level of knowledge of Baguio cemetery workers in terms of the HLURB Board Resolution No. 681 of 2000 and 797 of 2007

HLURB Board Resolutions governing Cemeteries	Weighted mean	Descriptive equivalent	Rank
HLURB Board Resolution No. 681 Series of 2000, Rule III, Section 9			
A.1. Ground interment	2.89	MK	2
A.2.1. Tomb	2.92	MK	1
A.2.2. Mausoleum	2.82	MK	3
A.2.3. Columbarium/Ossuary	2.80	MK	4
HLURB Board Resolution No. 797 S. of 2007 Rule II – Section 4.B -1			
4.B.1. Materials and construction requirements	2.86	MK	
Overall mean for the HLURB Board Resolutions	2.86	MK	

Legend

Numerical rating	Weighted mean	Percentage	Descriptive equivalent
4	3.25-4.00	81.25-100	High knowledge (HK)
3	2.50-3.24	62.5-81.24	Moderate knowledge (MK)
2	1.75-2.49	43.75-62.49	Partial knowledge (PK)
1	1.00-1.74	0.01-43.74	No knowledge (NK)

Source: Compiled by the author.

The HLURB Board Res. No. 681 S. of 2000 and Res. No. 797 of 2007 has prescribed the following guidelines with some improvements from the IRR of the National Building Code under Division J – Group 3. Overall, the respondents are moderately knowledgeable in both HLURB resolutions with an overall mean of 2.86.

The findings imply that the cemetery workers are moderately knowledgeable of the stated HLURB provisions. In terms of the structures within the cemetery, the typical structures built by the cemetery workers are tombs and ground interments. This is also why the tomb got the highest rank and ground interments second compared with the other structure indicators. Mausoleums come in third since they are rarely accepted as a project in the cemetery and due to the moratorium imposed by the City Government as stipulated in A.O. No. 111 of 2012. Columbariums or ossuaries are ranked last since Filipino people, based on religious and spiritual reasons, would prefer their loved ones to rest in coffins rather than to be put in urns (Albert, 2017).

However, the respondents have not attained a "highly knowledgeable" score. This is due to the technicalities of the HLURB guidelines, particularly on the measurements or dimensions of the following structures in the cemetery.

A common practice is that workers visit the funeral site and measure the dimensions of the deceased's coffin. The gathered measurements will be the basis of the tomb or interment. An allowance is provided in the measurement (usually the length) to provide space if the coffin does not fit in or relatives will put other things, including some possessions of the deceased (Killip, 2021). In this scenario alone, the minimum measurements provided in the HLURB provisions are not followed. It is due to practical reasons, especially for small structures. In case of tombs, one of the respondents argued, "*Bakit naming susundan yung dimension? Madaming materyales at space ang masasayang* [Why will we follow the dimensions? There are a lot of materials and space wasted]". This argument can be exemplified in case of a deceased child or short individual wherein if one followed the minimum guideline of 1.6 metres by 3.00 metres for a tomb, there is a wastage of materials and space.

In addition, some respondents argued that the HLURB guideline on the dimension for burial structures did not recognise the size difference between corpses and coffins. The guideline also mentioned the term "minimum". It is unsure if the minimum captures the average size of corpses or coffins. Thus, even if the majority of the respondents are moderately aware of the HLURB provisions, they question the dimensions prescribed.

In addition, cemetery workers, who are also involved in the construction industry, usually utilise cement hollow blocks (CHB) with a 4-inch thickness. This has been the standard size thickness for non-bearing walls as provided by numerous provisions in

the National Building Code (Global Shelter Cluster, 2014; Busto, 2014). Busto (2014), in particular, stated that a 4-inch CHB is highly fire resistant, can be reinforced to increase lateral resistance against earthquakes and typhoons, and has a 20+ years lifespan. Thus, HLURB Board Resolution No. 797 S. of 2007, Rule II – Section 4. B -1, using a 4-inch CHB is compliant with the required structural framework for niches, vaults, or tombs.

3.3. City A.O. No. 111 Series of 2012

A.O. No. 111 series of 2012 governs the Baguio City Cemetery. The findings on the level of knowledge of Baguio cemetery workers regarding City A.O. No. 111 series of 2012 are presented in Table 4.

Table 4.
Level of knowledge of Baguio cemetery workers in terms of the City A.O. No. 111 series of 2012

A.O. No. 111 Series of 2012	Weighted mean	Descriptive equivalent	Rank
a) In terms of tenancy, the City Government reserves the right to any action it may deem necessary after the lapse of 5 years tenancy period as stipulated in the Waiver and Agreement signed by the relatives of the deceased before burial.	3.05	MK	5.33
b) New structures such as mausoleums are strictly prohibited.	3.07	MK	4.33
c) Tombs and burial niches shall conform to the Sanitation Code of the Philippines.	3.07	MK	4.33
d) Only the CEPMO personnel assigned at the City Cemetery have the authority to allocate burial lots and tombs.	3.08	MK	3
f) All lots where bodies are exhumed will be automatically reverted to the city, to be allocated for use for other deceased.	3.03	MK	7
h) Stockpiling of construction materials inside the City Cemetery is prohibited.	3.05	MK	5.33
i) Ambulant vendors are not allowed inside the cemetery.	3.12	MK	1.5
j) No parking of any vehicles within the access roads and open spaces of the City except during funeral activities.	3.05	MK	5.33

k) Alleys, pathways and access points shall not be allocated as burial lots.	3.12	MK	1.5
l) No person shall be allowed to establish domicile within the City Cemetery.	3.04	MK	6
Overall mean for City A.O. No. 111 series of 2012	3.07	MK	

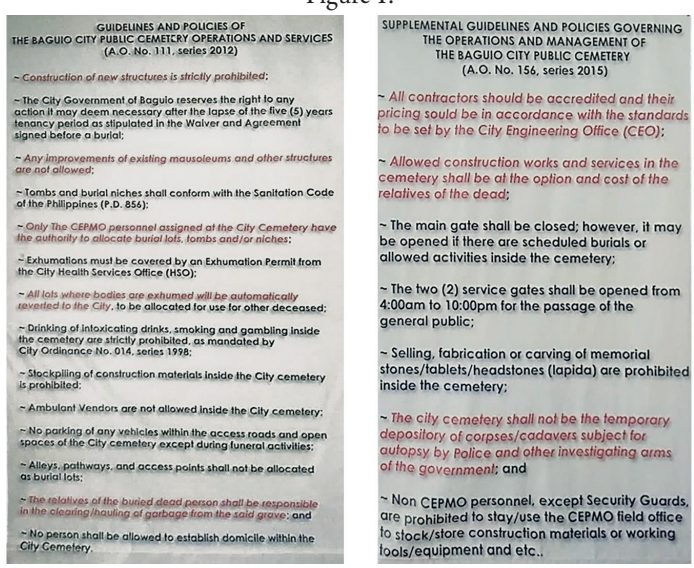
Legend

Numerical rating	Weighted mean	Percentage	Descriptive equivalent
4	3.25–4.00	81.25–100	High knowledge (HK)
3	2.50–3.24	62.5–81.24	Moderate knowledge (MK)
2	1.75–2.49	43.75–62.49	Partial knowledge (PK)
1	1.00–1.74	0.01–43.74	No knowledge (NK)

Source: Compiled by the author.

In terms of City A.O. No. 111 series of 2012, the cemetery workers are moderately knowledgeable, with an overall mean of 3.07. According to Ocampo (2021) and Gas-ib (2021), way back on the publication of the ordinance, the contractors and workers are given a copy of the ordinance. cemetery caretaker, an orientation was conducted to each group regarding the said ordinances Furthermore, City A.O. No. 111 series of 2012 and City A.O. No. 156 series of 2015 are posted inside the cemetery office (Figure 1). This aided why the cemetery workers are knowledgeable on the 2012 ordinance.

Figure 1.


GUIDELINES AND POLICIES OF
THE BAGUIO CITY PUBLIC CEMETERY OPERATIONS AND SERVICES
(A.O. No. 111, series 2012)

~ Construction of new structures is strictly prohibited;

~ The City Government of Baguio reserves the right to any action it may deem necessary after the lapse of the five (5) years tenancy period as stipulated in the Waiver and Agreement signed before a burial;

~ Any improvements of existing mausoleums and other structures are not allowed;

~ Tombs and burial niches shall conform with the Sanitation Code of the Philippines (P.D. 856);

~ Only The CEPMO personnel assigned at the City Cemetery have the authority to allocate burial lots, tombs and/or niches;

~ Exhumations must be covered by an Exhumation Permit from the City Health Services Office (HSO);

~ All lots where bodies are exhumed will be automatically reverted to the City, to be allocated for use for other deceased;

~ Drinking of intoxicating drinks, smoking and gambling inside the cemetery are strictly prohibited, as mandated by City Ordinance No. 014, series 1998;

~ Stockpiling of construction materials inside the City cemetery is prohibited;

~ Ambulant Vendors are not allowed inside the City cemetery;

~ No parking of any vehicles within the access roads and open spaces of the City cemetery except during funeral activities;

~ Alleys, pathways, and access points shall not be allocated as burial lots;

~ The relatives of the buried dead person shall be responsible in the clearing/hauling of garbage from the said grave; and

~ No person shall be allowed to establish domicile within the City Cemetery.

SUPPLEMENTAL GUIDELINES AND POLICIES GOVERNING
THE OPERATIONS AND MANAGEMENT OF
THE BAGUIO CITY PUBLIC CEMETERY
(A.O. No. 156, series 2015)

~ All contractors should be accredited and their pricing sould be in accordance with the standards to be set by the City Engineering Office (CEO);

~ Allowed construction works and services in the cemetery shall be at the option and cost of the relatives of the dead;

~ The main gate shall be closed; however, it may be opened if there are scheduled burials or allowed activities inside the cemetery;

~ The two (2) service gates shall be opened from 4:00am to 10:00pm for the passage of the general public;

~ Selling, fabrication or carving of memorial stones/tablets/headstones (lapida) are prohibited inside the cemetery;

~ The city cemetery shall not be the temporary depository of corpses/cadavers subject for autopsy by Police and other investigating arms of the government; and

~ Non CEPMO personnel, except Security Guards, are prohibited to stay/use the CEPMO field office to stock/store construction materials or working tools/equipment and etc..

City ordinances inside the City Cemetery Office

Source: Picture taken by the author.

Even though the ordinances have been instructed, discussed and visually presented by the cemetery caretaker to the workers, some respondents stated that some are not being followed and are violated (Ocampo, 2021). This is one reason why the city ordinance only achieved an average of moderate knowledge instead of high knowledge. This discrepancy between ordinance communication and actual compliance has been the focus of various studies in the field of public policy and local governance. Quy and Ha (2018) emphasised the importance of clear and unambiguous communication when implementing local ordinances. Their research found that when ordinances are not communicated effectively or when there is room for misinterpretation, compliance can be compromised.

Hence, the researcher noted the following identified issues stated by some respondents. Based on Guideline No. 1, the first issue is that some relatives and clients complain about the 5-year tenancy period. In terms of tenancy, Guideline No. 2 of A.O. No. 111 of 2012 provides that the City Government reserves the right to any action it may deem necessary after the lapse of the 5-year tenancy period as stipulated in the Waiver and Agreement signed by the families or relatives of the deceased before burial.

Despite the Waiver and Agreement, some families complain that another burial structure has occupied or overlapped their lots. This complaint is for those still within the 5-year tenancy and those who lapsed on the period. In some instances, relatives visit their loved ones beyond the 5-year tenancy period and find out that the burial structure has disappeared or a new design has appeared on the spot. This instigated complaints from parties affected, and the blame and burden are either on the cemetery workers or the CEPMO cemetery personnel in charge (Ocampo, 2021; Killip, 2021).

Cemetery workers are involved since they are usually given a chance by the CEPMO to find spaces open for burial structures (Diwas, 2021). Usually, they will improve the free or open space and just ask for payment for their improvement or services (cleaning, cropping, flatting, riprap, or "kabite" in case, etc.). However, the cemetery staff of the CEPMO is perceived to be most liable since they have the final say or approval if the lot is open for burial structures. Guideline No. 6 of the ordinance also states: "Only the CEPMO personnel assigned at the City Cemetery have the authority to allocate burial lots, tombs, and/or niches."

The cemetery workers have some preventive measures to avoid or minimise such conflicts. Respondents described that in finding burial lots, the space to be allotted could be a blank/free lot, an empty burial lot, or a vacant one. Even with a structure, it is unattended and encompasses the five-year tenancy period. Cemetery workers are keen on checking available lots. It is in the respondents' practice that if they see some structures in the possible lots, they know if the place is still visited, whether it is being cleaned or dumped by garbage. Also, they will check the date of death in the burial structure's *lapida* (grave marker) and usually consider structures built during the 1990s or earlier to ensure that the five-year tenancy has been met in case the lot has been unattended.

The second issue, Guideline No. 4 states that "construction of new and/or improvements of existing mausoleums and other structures shall not be allowed". The structure in the guideline would also specifically refer to roof sheds. Diwas (2021) and Killip (2021) stated that the guideline is to conserve the space of the cemetery, which is already

considered crowded. If the cemetery allows the construction of a new structure, this will encourage other tenants/families to construct more structures. This will hasten up the problem regarding space. Yet, with the rationale behind the guideline, the guideline has become a problem for two reasons.

First, it is claimed by the workers that some relatives wanted to improve the burial lots of their loved ones by constructing mausoleums or installing some roof sheds. For obvious reasons, relatives want to ensure that their lots and loved ones' burial structures are protected from weather erosion and have a convenient and comfortable place when visiting their loved ones. However, due to the 2012 ordinance, many families could not install roof sheds or improve their lots into mausoleums. This brought some disfavour to the ordinances. Furthermore, some respondents expressed that some influential individuals or families could construct mausoleums despite an ordinance. Based on their narratives, some prominent families were mentioned during the respondents' interviews; however, the family names would be withheld due to the privacy and safety reasons of the respondents. Nonetheless, this conveyed that the ordinance is unfair to them and only favours those families or clients who are influential and wealthy.

Second, the ordinance also reduced the job and income opportunities of the cemetery workers. The respondents, in particular, stated that many clients wished and planned to improve their loved ones' lots by either constructing a mausoleum or installing a roof shed. However, the plans of the clients were not pursued due to the ordinance. This supposedly provided additional projects and a source of income for the cemetery workers.

The third issue is in terms of exhuming requirements. Specifically, Guideline No. 5 provides that the CEPMO personnel will supervise the conduct of exhumation and disinterment when the exhumation and disinterment permit is approved and released. As postulated in Section 5 of the Sanitation Code, the primary process is that the contractor who obtained the work regarding exhumation will refer the client to the city cemetery caretaker (Diwas, 2021; Ocampo, 2021). The caretaker will discuss the instructions on the procedure on how to acquire an exhumation permit. The only difference is that an exhumation or disinterment permit is released by the City Health Service Office (CHSO).

The CHSO usually will look into the lapse of year since the burial period. The basis will be the Sanitation Code, Chapter XXI Sections 5.1.1 and 5.1.2. The identified problem is the proper measures for conducting exhumation and disinterment. Although this has not been precisely mentioned by the respondents, one cue was on handling a corpse confirmed to die due to a contagious disease – in this case, Covid. As cited by the ICLS (2003), one negative feature of the informal sector is that it operates outside the law framework and is less likely to be regulated and monitored by government authorities. Adding to that is their negative attitude of ignoring safety and hygiene protocols such as wearing gloves or PPE during exhumation. This heightens the risk of them acquiring contagious diseases.

The fourth identified issue is grounded on Guideline No. 9, which prohibits drinking liquor and other intoxicating drinks, smoking and gambling within the cemetery premises. Some respondents and CEPMO officials confirmed that these prohibited activities are still happening within the cemetery's premises committed by some workers, visitors and loiterers *(tambay).* Although the case is rare and the issue is quite tolerable for some

workers, this is still a problem since cemeteries are public spaces wherein families or friends visit their loved ones, practice spiritual or religious rituals, and demonstrate solemn emotions. The presence of alcohol and intoxicated behaviour would cause possible disturbance to the families visiting burial sites. Moreover, the issue leaves trash and leads to vandalism in the cemetery.

3.4. City A.O. No. 156 Series of 2015

A.O. No. 156 series of 2015 governs the Baguio City Cemetery. The findings on the level of knowledge of Baguio cemetery workers regarding City A.O. No. 156 series of 2015 are presented in Table 5.

Table 5.
Level of knowledge of Baguio cemetery workers in terms of the City A.O. No. 156 series of 2015

A.O. No. 111 series of 2015	Weighted mean	Descriptive equivalent	Rank
a) All contractors should be accredited and their pricing should be in accordance with the standards set by the City Engineering Office (CEO).	3.09	MK	1
b) Allowed construction works and services in the cemetery shall be at the option and cost of the relative of the dead.	3.07	MK	3
c) The two service gates shall be opened from 4:00 a.m. to 10:00 p.m. for the passage of the general public.	3.05	MK	4
d) Selling, fabrication or carving of memorial stones (lapida) are prohibited inside the cemetery.	3.08	MK	2
f) Non-CEPMO personnel are prohibited to stay/use the CEPMO field office to stock or store construction materials or working tools/equipment, etc.	3.07	MK	3
Overall mean for City A.O. No. 156 series of 2015	3.08	MK	

Legend

Numerical rating	Weighted mean	Percentage	Descriptive equivalent
4	3.25–4.00	81.25–100	High knowledge (HK)
3	2.50–3.24	62.5–81.24	Moderate knowledge (MK)
2	1.75–2.49	43.75–62.49	Partial knowledge (PK)
1	1.00–1.74	0.01–43.74	No knowledge (NK)

Source: Compiled by the author.

The findings imply that the cemetery workers are moderately knowledgeable with an overall mean of 3.08 on the 2015 city ordinance. Like the 2012 ordinance, the workers were given a copy and oriented about the 2015 ordinance. Furthermore, as shown in Figure 1, the ordinance is posted inside the cemetery office.

Similar to the argument on A.O. No. 111 of 2012, the 2015 city ordinance only achieved moderate knowledge instead of high knowledge because some guidelines were violated. The researcher noted the following identified issues narrated by some respondents.

The first issue is regarding the pricing and sub-standard of work. The pricing guideline of cemetery contractors and workers is provided under Guideline No. 1 of the 2015 ordinance. As reiterated, the contractors' pricing should be by the standard set by the City Engineering Office (CEO) for an individual burial interment that should not exceed P21,000 (Diwas, 2021). The P21,000 standard is only based on improving lots and construction of the internment. If the bereaved family or relative wishes for additional work, such as adding tiles, putting a washout pebble design in the niche, or wielding, the contractor may set another price. The CEPMO will not intervene during the price negotiations (Ocampo, 2021; Gas-ib, 2021). Interventions will only occur if there are complaints about the price or problem/s in the work of the cemetery workers. As reported and narrated by the respondents, only minimal complaints have been reached at the level of CEPMO or the City Government level. Such complaints would include overpricing, in which the client would just later look for and soon find another group to work on the client's desired projects.

Another common complaint about price would be some cemetery workers' inferior or sub-standard work. Clients would complain to the CEPMO office or the City Hall about the burial structure of their loved ones collapsing, allege that some workers enforced sub-standard materials in the burial structure, or plundered some funds supposedly allotted for materials (Diwas, 2021). As one respondent shared:

> May mga iba nga dyan, tinitipid yung semento kahit okay naman yung presyo. Tapos para mas makatipid sa kontrata, tinitipid yung bakal. O mas malala noon, kaysa bakal yung gagamitin, minsan marapait o kawayan lalo na kapag tangkeng lubog, kasi hindi halata [There are even some, who cut the amount of cement even though the pricing in the project is fair. Then to save more in the project, they lessen the amount of steel. In a worse case before, instead of steel being used, sometimes they use the stem of the sunflower or bamboos as structural reinforcement especially on ground interments because it cannot be seen with the naked eye].

In some cases wherein the client complains to the CEPMO office, the city cemetery caretaker usually attempts to reconcile the client and the involved workers. In the case of the sub-standard or inferiority of the works, it is difficult to conclude whether the workers have intentionally or accidentally caused it. However, to resolve the issue and avoid further escalation of the problem, the involved workers are usually asked or voluntarily fix the sub-standard or mistakes in their work.

The second identified issue revolves around prohibiting selling, fabricating and carving headstones and marbles. Guideline No. 5 prohibits selling, fabricating, and carving headstones and marbles inside the cemetery. Guideline No. 11 of A.O. No. 111 of 2012 also prohibits ambulant vendors within the cemetery compound since cemeteries are generally public spaces where any commercial activity is prohibited except activities related to the construction of burial structures and maintenance of it.

Usually, this guideline is strictly implemented during the *Undas* season, the last 2 weeks of October and the 1st week of November. Commonly, during the 2 weeks of October, CEPMO personnel will diplomatically ask the workers, especially those who specialise in engraving marbles, not to display their samples and not to engrave visibly to the public since the majority are working beside the main road and alleys inside the cemetery (Diwas, 2021; Gas-ib, 2021; Ocampo, 2021). However, some cemetery workers who engrave and sell *lapidas* would still argue and insist that they are being deprived of the opportunity to earn additional income since the last 2 weeks of October and the 1st week of November is the peak season of the selling headstones. Nevertheless, the workers obey to avoid any escalation and confrontation by other city law enforcers, such as the City's Public Order and Safety Division (POSD).

4. Conclusions and recommendations

Overall, the data show that the cemetery workers are moderately knowledgeable on policies that govern cemetery works. The findings for each policy can be attributed to the practices of the attached offices of the LGU of Baguio City, such as CEPMO and CHSO, in orienting the cemetery workers on following the policies.

Although the CEPMO exerts effort and initiatives in communicating with the cemetery workers, some problems persist and still need to be solved. The identified problems faced by the cemetery workers in implementing cemetery policies are based on the delays of death certificates and burial permits, processing and sanitation concerns on exhumation and disinterment, questions on the structural requirements for burial structures, prohibition of new structures, issues on lot tenancy, prohibition of selling and fabrication of headstones and marbles, and issues on pricing and sub-standard of works.

For recommendations, the LGU of Baguio and CEPMO must sustain the level of knowledge of cemetery workers regarding cemetery policies by the continuous orientation of workers. This can be done through seminar workshops and by creating Information Education and Communication (IEC) materials. For the problems, the CEPMO should enforce the following. For exhumation, train the workers on proper techniques and

provide them with the necessary equipment to ensure safe and sanitary practices. Regarding burial structures, the CEPMO must engage with architects, engineers and relevant experts to develop standardised guidelines for constructing, maintaining and renovating burial structures. Also, conduct regular inspections to verify compliance with structural requirements and take necessary actions to rectify any issues. In addressing tenancy, the CEPMO must develop a comprehensive database or record-keeping system to track lot ownership, transfers and tenancy agreements. In terms of overpricing, develop a pricing framework that ensures fair and transparent pricing for cemetery services, preventing exploitation and ensuring affordability for the community. And in ensuring the quality of work, the CEPMO should implement mechanisms for evaluating and monitoring the quality of work provided by cemetery workers, including regular assessments, feedback mechanisms and performance reviews.

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Collaborative Leadership in Waste Management: A Case Study of Watampone City, Indonesia

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Abstract: The concept and practice of leadership is continuously evolving. In public administration literature, collaborative leadership is a serious discussion and collaborative leadership is encouraged to be applied at all levels of leadership including the leadership of the Regional Head. Waste management as a very serious public problem is a challenge to modern civilisation and Indonesia is one of the countries with the largest populations in the world, producing more than 19 million tons of waste in 2022, while Watampone is one of the cities in Indonesia that certainly contributes to the waste pile. As a developing city, preventive measures must be taken before following in the footsteps of big cities that are dealing with waste problems because there is no inherent prevention. Therefore, its leadership model can be a key factor. In these terms, it is important to study waste management policy using a collaborative leadership approach. This study aims to look at the characteristics of collaborative leadership in waste management. This research uses descriptive qualitative methods and data collection techniques in interviews with relevant stakeholder leaders as informants combined with documentation studies. The results show that the collaborative leadership model in waste management has a positive impact; this is because the involvement of multiple parties helps manage waste problems and share roles. The characteristics of collaborative leadership expressed by Wilson as a reference in this study show that waste management must involve many parties with the characteristics of awareness of functions, division of authority, cooperation for a common vision, and mutual trust by all operators involved. As a suggestion, waste management using a collaborative leadership approach should be conducted by clearly mapping the roles of all stakeholders involved. Another aspect that supports and strengthens waste management collaboration in Watampone City is the

culture of *gotong royong* (mutual aid) that has been rooted in the lives of the people of Watampone City.

Keywords: collaborative leadership, waste management, Indonesia, gotong royong

1. Introduction

All human activities generate solid waste, or what is commonly referred to as garbage (Hapsah, 2022). Human activities are increasing day by day, and the waste generated is also increasing (Halid et al., 2022). If the number of landfills continues to grow without proper waste management efforts, it will have an impact on environmental problems such as unpleasant odours, unpleasant scenery and even irregular waste disposal. Flooding can occur in waterways or rivers. The increasing population growth rate is one of the causes of high waste generation. The activities of people in a city will increase along with the rapid flow of urbanisation in the city (Amelinda & Kriswibowo, 2021).

As one of the districts in South Sulawesi, Watampone City is not immune to the issue of waste, particularly in the three sub-districts of the capital city, Watampone City. In an area of 126.35 square kilometres and a population of 145,394, the Environment Agency only has 267-member cleaning staff, which is clearly inadequate. The data shows that one janitor serves around 396 residents, with waste production of around 69 tons, while only around 55 tons are transported to landfills (BPS Kabupaten Bone, 2023).

This research locus is interesting as Watampone City is not one of the largest cities in Indonesia, but it is important as Watampone City is a developing city that has the potential to become a major city in the future, thus requiring preventive steps in waste management before the waste problem becomes a disaster as the city becomes more developed.

Another interesting aspect is that the tradition of collaboration has been an integral part of the life of the Watampone community long before the concept of collaboration became a part of global discourse. The Watampone community is closely related to the culture of gotong royong (mutual aid) where daily life is embellished with gotong royong (mutual aid) activities. This can be seen from the community's habit of helping each other (Ridha, 2022).

The amount of waste managed will increase along with population growth, which in turn will increase the quantity of waste that requires sorting to facilitate the processing process, both based on the type of waste such as organic and inorganic waste and its benefits for recycling, composting, etc. (Surjandari et al., 2009).

Therefore, in overcoming the waste problem in Watampone City, the local government created the Bone Bersih Sampah (BBS) program, which is a collaborative waste management program that involves many stakeholders to address the waste problem.

Today's leaders are working in a new landscape that requires them to collaborate. By collaborating, we mean the process of facilitating and operating in multi-organisational settings to solve problems that cannot be solved or easily solved by a single organisation. Collaborating means working together to achieve a common goal, often working across

boundaries and in multi-sector and multi-actor relationships. Collaboration is usually based on the value of reciprocity and can involve public needs (O'Leary et al., 2010).

Collaborative leaders have a different focus, encouraging and securing the process of cooperation. They rely on the group to work on the content and substance of the problem. Leaders are typically seen as individuals who articulate a vision, inspire people to action and focus on concrete problems and outcomes. Collaborative leadership requires a different type of leader who can maintain the process, facilitate action and patiently navigate high levels of frustration. It can be concluded that all instances of successful collaborative leadership involves strong leadership, and the belief that problems can be solved by working together with relevant stakeholders (Ryan, 2001).

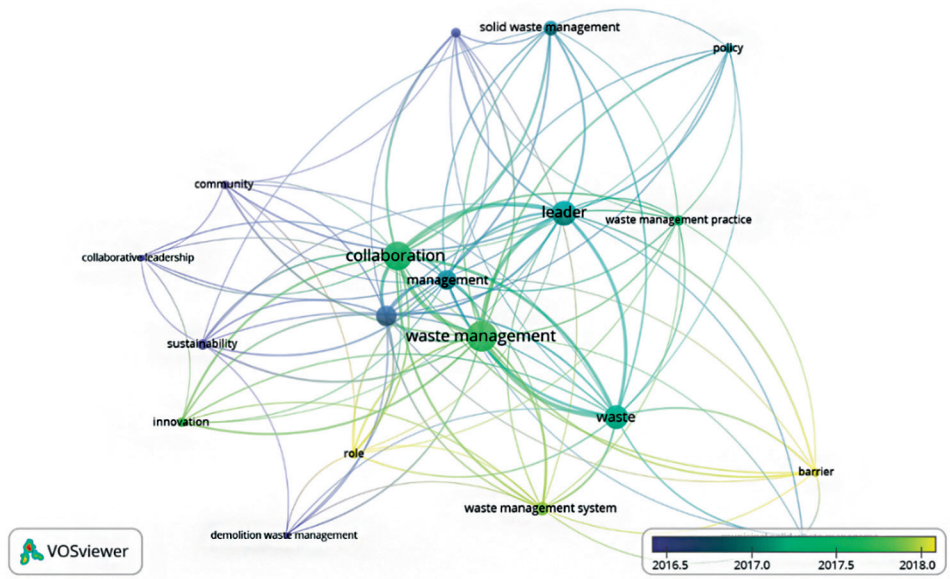

Figure 1.
Mapping of studies on collaborative leadership in waste management

Source: Compiled by the authors based on VOSviewer.

Watampone City is a growing cultural city, and collaborative leadership is needed to effectively manage the area to achieve the set goals, including how to handle solid waste issues. Keeping abreast of leadership concepts includes collaborative leadership. As previous research has shown, leadership plays an important role in creating a sustainable environment with a collaborative approach (Calvert, 2018). Other research also shows that collaborative leadership encourages the emergence of ideas among various stakeholders for the achievement of desired goals (VanVactor, 2012). Studies on waste management using collaborative leadership are still quite limited; therefore, this research

will try to test the effectiveness of this collaborative leadership model if used in waste management.

Collaborative leadership essentially requires a leader to work together rather than work individually. Leaders should function as catalysts or facilitators, building relationships rather than acting in an authoritarian manner (Wargadinata, 2016). Leadership does not refer to just one person, the leader, but rather the process of getting all members to interact in new ways that capitalise on their strengths (Mandell et al., 2017). Collaborative leadership is a team leadership model that positions leadership as a key factor in the effectiveness of a team that must function well (Isnawati et al., 2021).

2. Method

This research uses descriptive analysis with a qualitative approach. A series of in-depth interviews were conducted with stakeholder leaders involved in waste management through the Bone Bersih Sampah program. A total of six people were interviewed, determined by purposive sampling who are considered relevant in waste management collaboration, namely the government, community, business actors, academics and mass media.

Asking questions related to the characteristics of collaborative leadership in waste management in Watampone City with four main question criteria. Firstly, whether in collaborative leadership-based waste management the task is carried out because of the position held or there is an awareness of the joint function in the problem. Secondly, whether in the management of waste in Watampone City there is a division of tasks for relevant stakeholders. Third, whether collaborative leadership-based waste management has a shared vision. Fourth, whether the stakeholders involved trust each other. All of these questions were asked with the aim of understanding what the characteristics of collaborative leadership are in waste management in Watampone City.

Literature reading using Publish or Perish from google scholar with the keywords "collaborative leadership waste management" and issue mapping with VOSviewer, in addition to being confirmed by conducting observations and documentation studies on how waste management in Watampone City focuses on collaborative leadership.

The results of the interviews and literature review from Publish or Perish were then coded using Nvivo 12 software. The results of this data analysis are used by the researchers to explain the characteristics of collaborative leadership in waste management in Watampone City.

3. Results

Collaborative leadership can create an environment that serves as a platform for successful policy implementation (Edwards & Smit, 2008). Collaborative leadership involves the active participation and engagement of various stakeholders, including leaders, team members and other stakeholders. By involving all relevant parties, collaborative

leadership enables the creation of an inclusive, transparent and supportive climate (Jacklin-Jarvis & Potter, 2020).

Collaborative leadership involves team collaboration and active participation of all members in addressing problems, making decisions collectively and running open processes. One of the characteristics of collaborative leadership is the presence of constructive discussion or constructive disagreement. That is, through open and vigorous discussion, including criticism and mild conflict over the leader's ideas, within a framework of cooperative interdependence, creativity and innovation in problem solving can be fostered (Ardoin et al., 2015).

In this study, to export how the characteristics of Collaborative Leadership are embodied in waste management in Watampone City through the Bone Bersih Sampah program, Edwards and Smit's (2008) categorisation of the characteristics of Collaborative Leadership are used, namely the importance of function rather than position, the need for division of tasks, cooperation for a shared vision and mutual trust. All of this was accomplished by using both primary and secondary data to describe the results of the study.

3.1. Collaborative Leadership is prioritising functions over positions

Collaborative leadership is a leadership approach in which leadership functions are carried out by several individuals or work groups collectively (Arnun, 2023). This is in contrast to the traditional approach, where one person is considered the sole leader responsible for decision-making and direction.

In collaborative leadership, responsibility and power are shared among the team or work group members (Anfara & Angelle, 2007). Each member contributes equally to decision-making, planning, execution of tasks and achievement of common goals. This means that each stakeholder involved in the "Bone Bersih Sampah" program prioritises their function as a responsible part of waste management without emphasising structural positions.

The result of the interview with Mr AF (Department of Environment) was "there is a fairly good awareness in all stakeholders that the waste problem is not only the task of the government". The results of the interview show that the problem of waste is a shared task, not only of the government, but all parties have a shared duty in waste management. Meanwhile, in an interview, Mr AM (Secretary of Bone Bersih Sampah Program) said the following: "We have been actively campaigning for zero waste for a long time, including sending a letter to the Regent (Regent is the head of the regency-level government, under the President and Governor) to instruct local government officials to participate in the waste eradication campaign, we are aware that the government cannot do it alone."

Thus, the role of waste management in Watampone City in the Bone Bersih Sampah program can be understood if the stakeholders involved collaboratively realise that waste management is a collective task, regardless of their position or institution. In line with Mr AK's (Journalist) statement, "we often have the initiative to conduct creative campaigns through mass media on the importance of sustainable waste management".

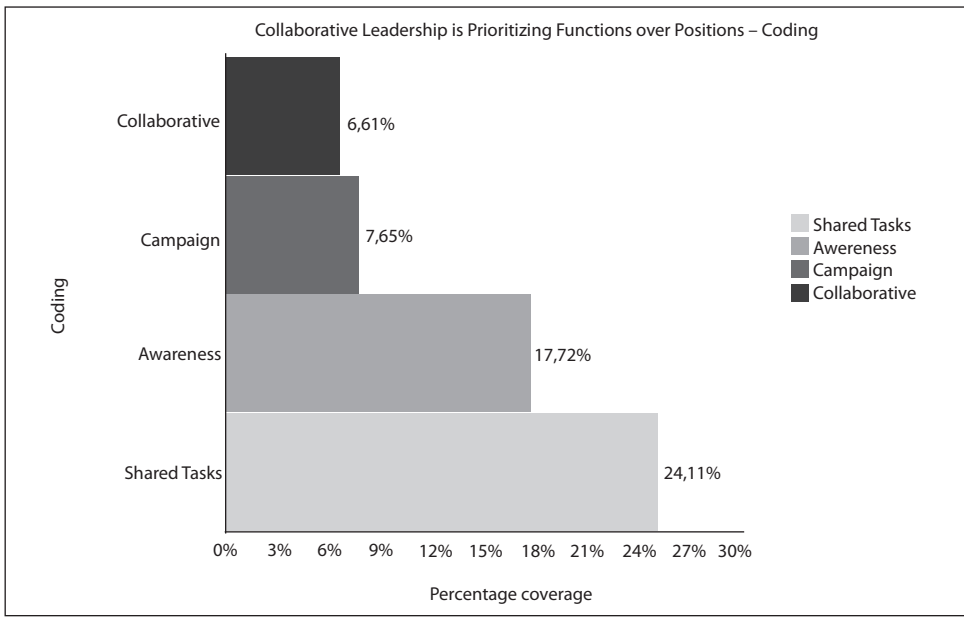

Figure 2.
Coding collaborative leadership is prioritising functions over positions

Source: Interview analysis with NVivo12.

The results of the interview analysis conducted using the NVivo application clearly show that the understanding of waste management is a shared task, followed by an awareness that waste management is a matter of function for all stakeholders.

Thus, the role of waste management in Watampone City in the Bone Bersih Sampah program can be understood if the stakeholders involved collaboratively realise that waste management is a collective task, regardless of the position or institution they are in. In case of waste management, it is crucial to develop multi-stakeholder cooperation involving NGOs and the private sector at both local and regional levels (Asteria & Heruman, 2016). Integration of waste management between the community, private sector and government brings various benefits (Ernawati et al., 2012). Waste management is not only the responsibility of the government, but one that must be borne jointly by waste generators, whether individuals, households, or corporations (Budi Setianingrum, 2018).

Even though the Watampone community is familiar with the collaboration approach with its gotong royong tradition, the modern governance aspect, particularly the waste management aspect, must still be socialised.

3.2. Collaborative Leadership is the sharing of authority

Collaborative leadership plays a critical role in facilitating effective multi-sector collaboration. Power sharing is one of the key mechanisms that enables leaders in formal partnerships to build a broad leadership foundation (Alexander et al., 2001). One of the

characteristics of Collaborative Leadership is power sharing. In terms of the waste management in Watampone City, it is important to ensure that management is not centralised to only one stakeholder. Instead, power sharing should be implemented to strengthen stakeholder participation.

With shared authority, collaborative leaders share responsibilities and utilise the diverse expertise and perspectives of partnership members (Saleh et al., 2001). This allows them to reach better agreements, it encourages active participation, and builds stronger trust and engagement among all parties involved. Bone Bersih Sampah, as a waste management program in Watampone City, is a collaborative program. In an interview, Mr AF (Department of Environment) stated that: "The waste management program that we implement involves many parties. We delegate waste management tasks to many parties."

Based on the interview with Mr AF, the government is well aware of the role of cross-sectoral cooperation and the involvement of related parties in addressing the waste problem. Therefore, solving the waste problem requires collaboration from all stakeholders, including the government, civil society organisations and the private sector. With effective and sustainable collaboration, waste management programs can be well implemented by sharing the authority.

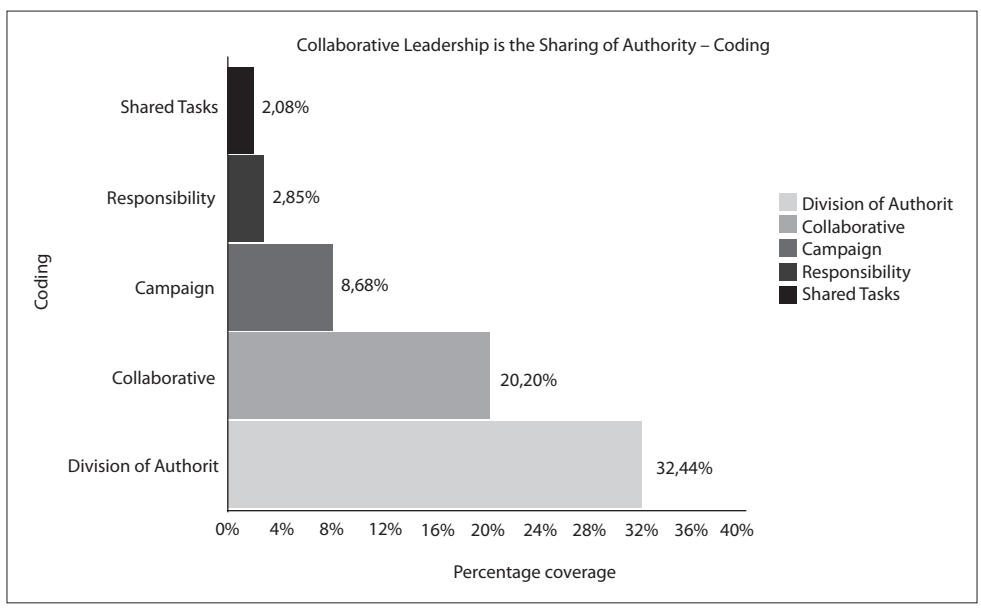

Figure 3.
Coding collaborative leadership is the sharing of authority

Source: Interview analysis with NVivo12.

Other statements from informants we interviewed further reinforced this. The following is an excerpt from an interview with Mr ASA (Head of Biru Village): "Through the Bone Bersih Sampah program, about 400 stakeholders are involved. Through the decree, stakeholders are authorized to develop various models of waste management policies in

Watampone City." This is in line with the submission of Mr ASM (Academician) according to which: "On several occasions the campus was asked to conduct studies on how waste is managed properly including involving many academics as a board on the waste management program."

The results of the analysis of interview data using the NVivo application 12 show that in the waste management program in Watampone City, the division of authority is dominant in the conversation, and this illustrates that the division of authority is quite good in the waste management program, thus fulfilling the criteria of collaborative leadership characteristics with the importance of sharing authority as a condition for the realisation of collaborative leadership.

Sharing power in collaboration requires careful consideration of the division of power and clear guidelines to overcome possible challenges. Effective communication is an important aspect in this context (Ran & Qi, 2018).

3.3. Collaborative Leadership is working for a shared vision

Collaborative leadership is a prerequisite for creating a collaborative culture. The main role played by collaborative leaders is to create an environment of shared vision (Edwards & Smit, 2008). Shared vision and common goals underpin successful collaboration (Williamson et al., 2010). The goal of collaborative leadership is to create a shared vision and collective strategy for issues that go beyond the scope of a particular party (Samriangjit et al., 2016).

The next aspect that characterises Collaborative Leadership is the existence of cooperation to achieve a shared vision, in the context of waste management in Watampone City through the Bone Bersih Sampah Program, based on the mapping of Collaborative Leadership characteristics by Edwards & Smit (2008). Through an interview with Mr AM (Secretary of Bone Bersih Sampah Program), it was stated: "We dialogued with the government to build a shared vision for waste management. At this stage, the results were quite good as the government agreed and was in line with what we proposed. Thus, the Bone Bersih Sampah Team was formed. However, in the next phase, collaboration was not fully achieved, and some stakeholders still worked individually, even though we had the same understanding."

Based on the results of these interviews, the common vision regarding waste management through the Bone Bersih Sampah Program has only reached the idea and conceptualisation stage, but has not yet reached the action stage. Researchers' observations at the Tanete Riattang Subdistrict Office and Biru Village Office confirmed the existence of several certificates and trophies related to waste management that are not integrated with the Bone Bersih Sampah Program. Furthermore, to find out more about the aspect of a common vision in waste management, the interview with Mr ESS (Secretary of Tanete Riattang Sub-district) showed that "everyone has the same vision and goals with the Bone Bersih Sampah Program. All stakeholders want a clean environment, with various targets to be achieved".

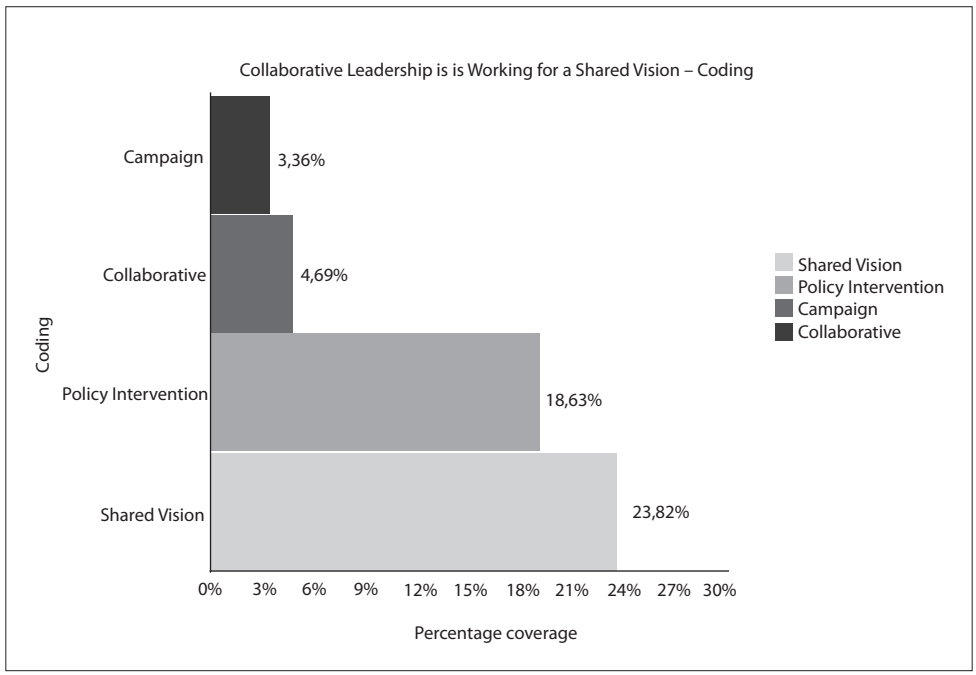

Figure 4.
Coding collaborative leadership is working for a shared vision

Source: Interview analysis with NVivo12.

The results of analysing interview data using NVivo12 show that in waste management in Watampone City with a collaborative leadership approach a shared vision or common vision is quite dominant, while the aspect of cooperation in action is still sub-optimal, so it can be said that at this stage, collaborative leadership in waste management remains limited to a common vision that has not been maximally manifested in action in the form of cooperation.

The interesting thing found is the emergence of the phrase "policy intervention" which can be interpreted in a way that in the aspect of waste management the shared vision can be realised in the form of cooperation and actions must be strengthened by policy intervention from the government. This is what will make stakeholders maximally involved in waste management in Watampone City, even though conceptually collaborative leadership prioritises awareness but in the findings of this study a policy intervention is encouraged that is progressive in order to have seriousness in carrying out the task of managing waste collaboratively and sustainably.

Therefore, based on the research findings, it can be said that the aspects of collaborative leadership characteristics in waste management in Watampone City have not been fully met regarding shared vision and cooperation. Ultimately, shared decision-making in collaborative relationships will result in coherence, which in turn will encourage action (Chrislip, 2002).

3.4. Collaborative Leadership is about trust

Collaborative leadership is a leadership approach in which a leader focuses on sharing power, building trust and creating knowledge to achieve a common goal (Jameson, 2007). Collaborative leadership focuses on building trust among team members or within the organisation. By building trust, leaders create an environment where people feel safe to share ideas, take risks and collaborate with others. The most important relationships of trust and collaboration are found within an organisation (Toseef et al., 2022).

Concerning waste management in Watampone City through the Bone Bersih Sampah program, the characteristics of collaborative leadership expressed by Edwards & Smit (2008) include mutual trust between stakeholders. Therefore, the findings related to this factor through an interview with Mr AF are as follows: "Of course we trust each other. It is impossible for the bupati to involve relevant stakeholders if there is no trust. This includes receiving many proposals from the community that became the basic idea for this program.

They are all involved because we believe that they can contribute, and they are given considerable authority because of that trust." The results of the interview can be understood to show that the government has trust in the stakeholders involved in waste management in Watampone City. This can be seen from the government's response in listening to the suggestions of community groups that led to the birth of the Bone Bersih Sampah program as a collaborative program.

Transparency has been considered an important attribute of leadership (Milton, 2009). Thus, leaders and stakeholders can work together to achieve zero waste in Watampone City given the findings that all stakeholders have trust in each other. Trust and communication are the two main pillars of collaborative leadership. Trust is key, and to engender trust in others, it must start with trusting them (Herrera-Pastor et al., 2020).

The results of an interview with Mr AM (Secretary of Bone Bersih Sampah program) show that: "The waste issue is not something that causes much debate. Everyone agrees that the waste problem must be handled and managed properly. Therefore, I believe that trust is not the main thing. That is, we all trust each other because we have the same vision." Based on the results of these interviews, it can be concluded that the trust factor as a characteristic in Collaborative Leadership in the Bone Bersih Sampah program is a manifest character. Mr ASM (Academician) explained: "Actually, the level of trust between the components involved in waste management up to the point that waste is a social problem is still very good; in this economic aspect, this cannot be ascertained." Of course there are still many things that must be considered to make the program successful, but as an initial basis for the formation of trust between stakeholders it can be a positive foothold in continuing tasks that have not yet been carried out.

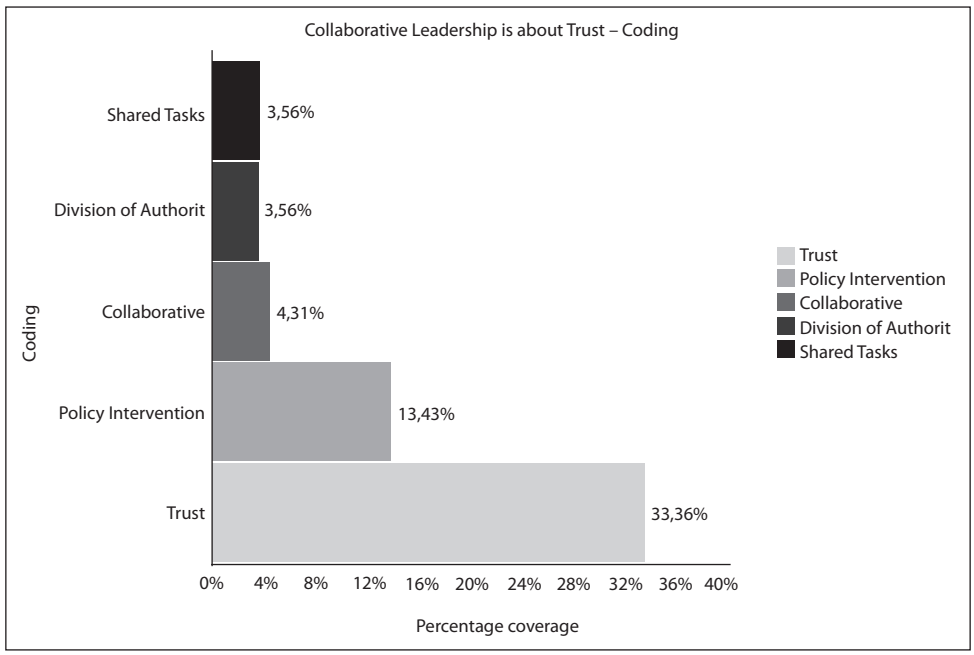

Figure 5.
Coding collaborative leadership is about trust

Source: Interview analysis with NVivo12.

The results of the analysis of interview data using the NVivo application 12 show that mutual trust between stakeholders in the program is very good. Building trust is one of the cornerstones of collaborative leadership. Strong trust among partners enables effective and productive collaboration (Archer & Cameron, 2009). Collaborative leadership is based on the belief that together we can be smarter, more creative and more competent than we are on our own, hence one of its focuses is on building trust (Wilson, 2013).

4. Discussion

Using the description of Edwards and Smit (2008) as a theoretical reference, in the description there are four traits that characterise collaborative leadership itself: first, collaborative leadership maximises function not just position, which means that in waste management, operators prioritise the functions performed rather than just the position they have. Second, collaborative leadership distributes authority, meaning that each stakeholder has the authority in waste management. Third, in collaborative leadership, individuals work together for the same vision, meaning that all stakeholders have the same vision in waste management. Fourth, collaborative leadership brings trust, meaning that all relevant stakeholders trust each other.

Collaborative leadership features characteristics with the indicator "functions performed rather than positions held by a person" (Marshall, 1995). The fact that collaborative leadership is a function that is carried out, not the position of the actor, is shown in the way operators involved in the waste management program have worked on and are involved in various aspects of waste management, such as counselling, encouraging integrated policies and developing a sustainable waste management system. Stakeholders do this because of the awareness that waste problems are not only the liabilities of the government but are rather a shared responsibility.

Many stakeholders can assume a role in waste management in Watampone City as it is said that in collaborative leadership, everyone has the potential to be a leader and a follower. Because different levels of expertise are required, different people can emerge as leaders at different times (Lawrence, 2017).

Collaborative leadership goes beyond traditional boundaries between parties and develops collaborative processes. Multiple parties interact and take the initiative to co-lead and create a dynamic learning environment (Burns & Mooney, 2018). The characteristics of collaborative leadership indicate that collaborative leadership is manifested in the presence of participation and power sharing, and collaborative leadership is contrary to individualist culture (Lawrence, 2017).

Based on the findings of the researchers in this aspect, participation was shown by relevant stakeholders by proposing a waste management program that was well-received by policy makers, and the Bone Bersih Sampah program became a collaborative program that gave considerable authority to other stakeholders based on the text of the objectives of the program, and there was a fairly good distribution of authority. Collaborative Leadership is a participatory and learning process that involves many people in different positions (Kezar, 2005).

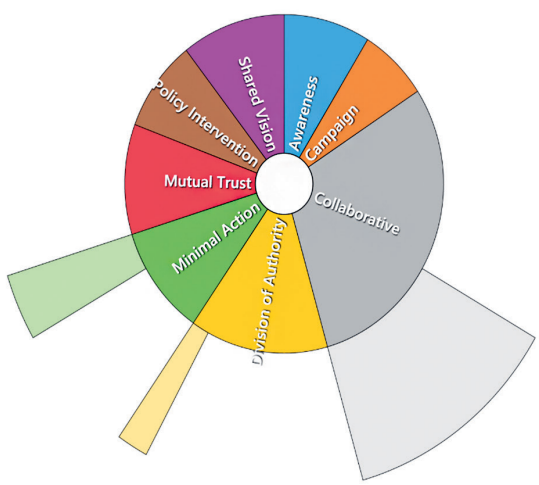

Figure 6.
Hierarchical diagram of interview results on collaborative leadership in waste management
Source: Interview analysis with NVivo12.

The characteristics of collaborative leadership indicate that collaborative leadership is cooperation for a shared vision. In this regard, the researchers found that all stakeholders at the stage of ideas and thoughts can be said to have the same vision: if waste is not handled properly, it can become an environmental and health disaster, so it needs serious and sustainable handling. However, this shared vision must be manifested in the form of action, and this has not gone well, and cross-stakeholder collaboration has not gone well in the Bone Bersih Sampah program.

Collaborative leadership is not just about working together and sharing resources. It is also about actively resisting dominant power structures and working to create a new culture that values collective learning and decision-making (Lawrence, 2017).

The characteristics of collaborative leadership indicate that collaborative leadership is a trusting relationship. In this regard, the researchers found that the trust between stakeholders in the Bone Bersih Sampah program is quite good, collaborative leadership offers additional insights, in this case focusing not so much on the differences between leaders, but on highlighting commonalities and common goals, well packaged by the idea of interdependence (Reynolds et al., 2017).

It is a firm argument that the waste issue is not a problem that has the potential to present conflict and suspicion between operators, and waste management is more about social and environmental aspects. This can be seen in the distribution of a great deal of authority to other stakeholders because there is trust, although the most important thing is the matter of implementation in the field, which still needs improvement.

In general, the characteristics of collaborative leadership in waste management in Watampone City, referring to the concepts of Edwards and Smit (2008), can be said to have not been maximised and integrated in the Bone Bersih Sampah program in terms of collaborative leadership as a means of two parties working across boundaries to achieve common goals. In their study, they described three stages of collaborative group formation, with the third stage consisting of openness, which emerges when leaders truly accept their interdependence and are open with each other about their hopes and fears for being together (Archer & Cameron, 2009).

Collaborative leadership is not easy to actualise in practice (Iachini et al., 2019). Some characteristics, such as a shared vision that manifests in action, have not been implemented, although characteristics such as participation and division of authority have been maximised, and there is good level of trust among relevant stakeholders.

The characteristics of collaborative leadership emerge fully, as collaborative leadership is based on the potential for conflict to exist, but there is something greater at stake for leaders to ensure that any conflict is resolved. Trust and working together towards a vision and being ready to share power are aspects that must also be reinforced (Reynolds et al., 2017).

The concepts of collaborative leadership and collaborative culture creation are presented as leadership approaches that are most likely to support and facilitate effective policy implementation. Collaborative leadership creates a climate that serves as a platform for successful policy implementation.

5. Conclusion and recommendation

The characteristics of collaborative leadership in waste management in Watampone City, through the Bone Bersih Sampah program, can be seen from the results of this study. Of the four characteristics of collaborative leadership, namely, prioritising functions over positions, distribution of authority, cooperation for a shared vision and mutual trust between stakeholders, the existence of trust between stakeholders is at a rather acceptable level due to the view that waste is not a sensitive issue that can trigger conflict due to the lack of trust between related stakeholders. The aspect of cooperation for a shared vision can be said to be at a very minimal level, considering that an important qualification in this aspect is in the form of action. Finally, the aspect of a shared vision in ideas in general functions rather well, and only the aspect of cooperative action to achieve the shared vision is still not running optimally, while the other two factors are quite good.

As a suggestion, the researcher encourages the establishment of a waste management pilot project, as a pilot project of the Bone Bersih Sampah program, with the participation of all stakeholders with their respective roles, to realise zero waste where no waste reaches the landfill based on the planned system, as a manifestation of the characteristics of collaborative leadership.

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Public Administration and Economic Analysis of the Region along Slovakia's Southern Border

Partial Comparison with Neighbouring Counties in Hungary

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Abstract: The paper analyses the economic situation of the districts located along the Southern border of Slovakia, which have sizeable Hungarian-speaking populations. Unemployment ratios, industrial pay levels and corporate profitability figures make up the backbone of the analysis. Our research reveals that, as a whole, the Southern districts fall short of the national average in terms of all economic and demographic indicators. In our research focusing on Slovakia, we have demonstrated the disadvantaged economic situation of the Southern part of the country, where its Hungarian population is concentrated, noting that this may further weaken its ability to retain their population. We used the same methodology for our analysis of the Northern Hungarian counties bordering on Slovakia. In both countries, there are discrepancies between Western and Eastern regions.

Keywords: Southern Slovakia, Northern Hungary, regional differences, unemployment, labour productivity

1. Introduction

This paper looks at the partial economic indicators of the Northern regions of the former Kingdom of Hungary, which were severed by the Treaty of Trianon of 1920 and now constitute a part of Slovakia, and therein focuses on the areas with sizeable Hungarian populations. The paper first examines the Southern administrative entities of Slovakia and then proceeds to consider the Hungarian counties bordering on Slovakia for comparison purposes.

The term Southern Slovakia is widely used colloquially. However, its precise geographical extent is not defined, nor has it ever constituted a single unit of public administration. There are two approaches to define its geographical area; one of these characterises them as districts along Slovakia's Southern border, or districts with a large Hungarian minority. Its geographical area is normally defined as the totality of certain districts. The number of districts analysed may vary in different research papers.

In general, the countries of East-Central Europe are characterised by significant regional divergences and a contrast between capital and countryside (Durech et al., 2014). Throughout the entirety of East-Central Europe, this is most problematic in Slovakia. This is partly attributable to objective reasons. Whereas the capital cities in other countries of the region are generally located within the central region of the country, Bratislava is positioned near the Southwestern border of Slovakia, which further widens the gaps within the country and intensifies the contrast between its Western and Eastern regions. Regional divergence is exacerbated by the preference of foreign investors towards the Western parts of the country (Drahokoupil, 2008).

Another issue is that, in its thirty years of independence, Slovakia has been unable to construct a motorway to link the Western and Eastern parts of the country, therefore citizens and businesses must seek out alternative solutions, such as using the expressway network in Hungary, which runs almost parallel to the border.

Regional disparities are manifest in the maturity levels of small and medium-size businesses (Lazíková et al., 2018), and are also reflected in the results of higher education institutions (Lešková & Šipikal, 2019). As a result of all of the above, areas in the periphery in Slovakia are in an even worse position than in the neighbouring countries and their convergence is slow; in fact, some are even falling further behind. With the exception of the Western (Bratislava) region, almost all (NUTS3) regions of Slovakia are at a 75% or lower development level of the European Union; this is particularly true in case of border regions, including several regions along Slovakia's Southern borders.

2. Literature review

Generally speaking, Southern Slovakia is an underdeveloped part of the country. The number of investments is small, unemployment is high, infrastructure is underdeveloped, the area receives less foreign capital than the Northern parts of the country and government subsidies to the Southern regions are insufficient. While these claims may have gradually become commonplace, they are true and verified by the regional economic data. We believe that, for a claim to be academically sound, it must be supported by in-depth investigations. However, the underdevelopment of border regions is not highly visible; this is due to the fact that Slovakia has not created any independent NUTS3 or LAU1 administrative entities and, as a result, the statistical indicators do not properly capture disadvantaged status.

The concept of Southern Slovakia has been a subject of study mainly since the early 2000s. Since then, numerous publications, books, papers and analyses have attempted to describe its real economic and social situation. Among the most important publications,

special mention must be made of a volume edited by Gyula Horváth and published in 2004, entitled *Southern Slovakia.* This work offers a comprehensive overview of all the geographical areas of the region. There are several sections on economic subjects, including the chapter on Slovakia's macro-regions (pp. 83–198), the Labour market section (pp. 259–268), the Agriculture and forestry chapter (pp. 301–322), the Industrial spaces and businesses chapter (pp. 326–347) and the Economic services chapter (pp. 353–380). Edited by József Fazekas and Péter Hunčík, a similar work was published in 2004 entitled *Hungarians in Slovakia (1989–2004). Summary Report. From Change of System to the European Union,* Vol. I. The book contains one chapter on economic subjects (The performance capacity of the Southern region, pp. 295–344). Another notable book published on the subject is *Regions and Economy* by Gábor Lelkes; the work was published as the fifth book in the Hungarians in Slovakia series in 2005. Similarly noteworthy are two publications of the EÖKIK Foundation, both edited by Tamás Réti and bearing the identical titles of *Converging Regions in the Carpathian Basin. The Economic Conversion of Southern Slovakia, Transylvania and Vojvodina.* In the first part, published in 2004, there are four chapters dealing with Southern Slovakia: The contribution of ethnic Hungarians to economic transformation in Slovakia (Ádám, 2004, pp. 267–302), Foreign venture capital and industrial parks in Southern Slovakia (Morvay, 2004, pp. 303–330), The economic transformation of the Eastern Slovakia region (Reiter et al., 2004, pp. 331–362), and a study of the shipyard at Komárno (Tuba, 2004, pp. 363–372). In the second part published in 2005, two papers concern themselves with Southern Slovakia: The Development of the Southern Slovakia Region in the Light of Local Initiatives and Cross-Border Cooperation (Ádám, 2005, pp. 21–58), and Agriculture and Agricultural Society in Southern Slovakia and the Dolna Nitra Region on the Cusp of the 3rd Millennium (Lelkes, 2005, pp. 59–98).

In addition to the books, there has been a relatively high number of papers focusing on the economic conditions prevailing in the region and analysing census data (Lelkes, 2008a; Horbulák, 2015; Horbulák, 2017; Horbulák, 2019a; Horbulák, 2019b); apart from examining political events, these also consider certain economic indicators.

It should be noted that Southern Slovakia and its economic and social situation first became a subject of discussion in the early 1970s. Géza Mihály wrote on the subject in 1975; recently, however, an entire monograph on what is referred to as the Husák Era (1969–1989) has recently been published (Horbulák, 2020).

Bánki (2021) is another important work amongst researches published in the 2010s and the 2020s. The author has shown that the areas of Slovakia inhabited by Hungarians are significantly disadvantaged compared to other regions of the country in terms of economic development and infrastructural characteristics. The paper pointed out the partial overlap between political representation and economic progress. The economic capacities and opportunities of small and medium-size businesses operating in Slovakia also vary considerably and are more favourable for entities operating in central regions (cf. Laziková et. al, 2018 for further details). Kollai (2019) emphasises that, given their economic maturity, the central regions are capable of diverting considerable resources from the less developed regions, intensifying any impoverishment effects. Similarly to

Hungary, Slovakia is a 'perfect example' of the inequalities between centre and hinterland, as well as city and countryside.

3. Defining the term Southern Slovakia

Before proceeding with the analysis, we must define what we consider Southern Slovakia and how this area can be demarcated. This question demands an answer as the region has never existed as an independent geographical unit and has never had its own public administration of any level (Mezei & Hardi, 2003).

In general public perception, Southern Slovakia is normally defined according to two viewpoints. The first, the geographical approach, defines it as the areas of Slovakia bordering on Hungary. The second, ethnicity-based approach defines Southern Slovakia as land populated by the Hungarian minority in large numbers. Both approaches have the weakness of not identifying a precise area. Let us consider what territories the sources described above used in their analyses.

The public administration divisions, as amended from time to time, serves as the point of departure of the first approach. Public administration in (Czech)Slovakia has always been three-tiered. Below the national level is the level of regions. Including the period of Czechoslovakia, the country has most frequently consisted of six units at this level of public administration, three of which were established in the socialist period and eight in 1996. The lower level of public administration is that of the districts. These have also existed throughout, and their total number has varied between 33 and 98. There are currently 72 districts, although this includes the four districts of Košice city and the further five districts of Bratislava. The lowest level of public administration is the municipality. Currently there are 2,927 units at this level in Slovakia, including 17 in the capital and 22 in Košice.

Practically all the papers base their discussion of the situation of Southern Slovakia on the administrative categories for identifying the geographical extent of Southern Slovakia. In 1996, at the time of its last administrative division of Slovakia, the country was divided into 8 regions and therein 79 districts. Although the districts have ceased to serve as administrative units, they have remained statistical units. Hungarian public opinion in Upper Hungary sees the following districts as Southern, or Hungarian districts: Senec, Dunajská Streda, Galanta, Šaľa, Komárno, Nové Zámky, Nitra, Levice, Veľký Krtíš, Lučenec, Rimavská Sobota, Revúca, Rožňava, Košice area, Trebišov and Michalovce and also, in certain instances, the cities of Bratislava and Košice.

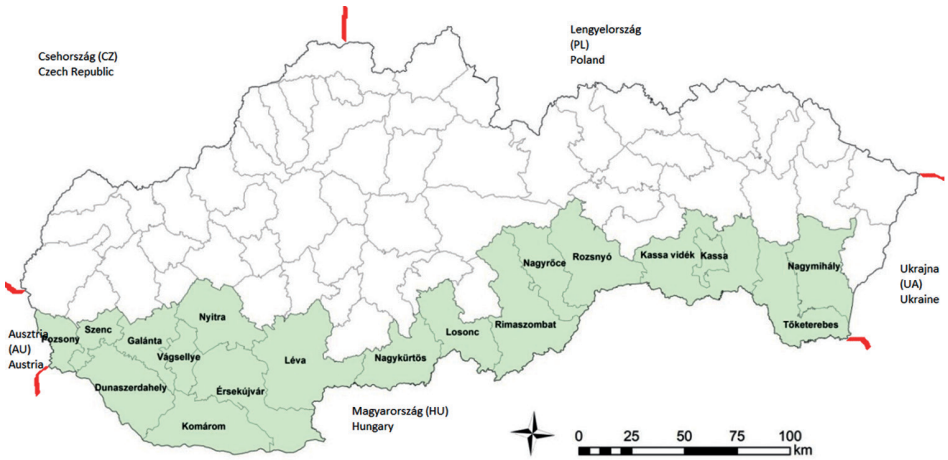

Figure 1.
Districts of Southern Slovakia after 1996

Source: Compiled by the authors.

There were some, infrequent, analyses of Southern Slovakia and the districts of Slovakia even prior to the change of regime. The public administration structure created in 1960 included three regions and 33 districts. A minor modification in 1969 meant that Bratislava became an independent region and four regions were created by further division. The works published in this period (Mihály, 1975) also adopt the district level as their point of departure, even though the number of districts may vary; Mihály (1975, p. 254) bases his analysis on the Dunajská Streda, Galanta, Komárno, Levice, Nové Zámky, Veľký Krtíš, Lučenec, Rožňava, Košice area and Trebišov districts. Zsolt Horbulák (2020) adds to these the Bratislava area and Nitra districts.

Figure 2.
Districts of Southern Slovakia between 1969 and 1995

Source: Compiled by the authors.

Other approaches beyond those above may also be used for defining Southern Slovakia. One of these is an examination of historical regions. From west to east, these include the following: Žitný ostrov, Matúšova zem, Podzoborie, the now barely known Törzsökerdő, the land between the Žitava and Hron Rivers, Poiplie or Nógrád, Gömör and Medzibodrožie. The advantage of this categorisation is that everyone is familiar with it, the names of these territories are present in public discourse, it is partly built on the traditional system of counties of the Kingdom of Hungary, which looks back on a history of hundreds of years, and in an ideal political environment, it could serve as the foundation for public administration entities based on natural foundations. Again, it has the disadvantage that any analysis would demand intense investigation and the collection of municipality-level data.

A third option could be to use the border drawn by the First Vienna Award in the autumn of 1938. This has the advantage of clearly demarcating an area that is indeed predominantly one of Hungarian majority populations, as well as the disadvantage of similarly demanding the use and processing of municipality-level data.

A further approach would be based on ethnic criteria: Southern Slovakia is where large numbers of Hungarians live. It would consider municipalities with a significant proportion of Hungarians, with rates of 15, 20 or perhaps 50%. It has the disadvantage that collecting the data would be rather difficult, as they vary from census to census. The 1991 census recorded an absolute majority of Hungarians in 432 municipalities (Gyurgyík, 1994, p. 88), while the 2001 census only identified 410 such municipalities (Gyurgyík, 2006, p. 119). At the 2021 census, Slovakia had 2,927 independent and annexed municipalities. In 155 of these, Hungarians represented more than 75% and they were the absolute majority (above 50%) in 336 settlements, while Hungarians accounted for at least 15% in 478 municipalities (cf. https://www.scitanie.sk/).

A further solution that may be worthy of mentioning would be to define a territory along the border by selecting a fixed distance (of 10, 30 or 50 km, etc.) from the border to draw the area of the analysis. This methodology disregards the location of the municipalities and makes both data collection and data processing cumbersome.

Let us examine Southern Slovakia from a nationality perspective as well. Table 1 shows the number of ethnic Hungarians living in the Southern districts of Slovakia. The table clearly shows that the absolute number and proportion of Hungarians has been steadily decreasing since the change of regime. Naturally, the fact that ethnic relations were not considered at all when the districts were established is an additional contributing factor.

Table 1.
Total Hungarian population and ratios at the time of the last two censuses in districts 'considered Hungarian'

	Area size (km²)	1991		2021	
		Absolute	%	Absolute	%
Bratislava	367.7	20,312	4.6	11,297	2.38
Senec	359.9	12,214	24.5	8,715	9.01
Dunajská Streda	1,074.6	95,310	87.2	85,586	68.65
Galanta	641.7	38,295	41.3	29,582	31.10
Komárno	1,100.1	78,859	72.2	62,166	61.58
Nové Zámky	1,347.1	63,747	41.5	44,066	31.89
Nitra	870.7	13,113	8.2	7,798	4.13
Šaľa	355.9	21,754	40.2	14,385	27.94
Levice	1,551.1	38,169	31.6	23,372	21.16
Veľký Krtíš	848.2	14,384	30.7	9,004	21.44
Lučenec	825.6	22,513	30.9	16,580	23.54
Rimavská Sobota	1,471.1	36,404	44.9	31,891	39.53
Revúca	730.3	10,256	25.5	7,355	19.02
Rožňava	1,173.3	21,434	35.3	13,559	22.85
Košice	237.1	10,760	4.6	5,636	2.46
Košice District	1,541.3	16,240	16.4	10,397	8.10
Trebišov	1,073.5	33,191	33.0	25,034	24.14
Michalovce	1,019.3	13,754	13.1	11,471	10.44
Total	16,588.5	560,709	26.3	417,894	21.09

Source: Gyurgyík, 2001, p. 46; 1991 census figures are provided based on the public administration status as of 1996; www.statistics.sk

Figures 1 and 2 clearly show that the district boundaries are highly disadvantageous for the Hungarian population. Southern districts are often long-stretching administrative units oriented in a north–south direction, as a result of which Hungarians are in an absolute majority in only two districts, namely Dunajská Streda and Komárno. This is true for both public administration divisions in force before 1996 and after 1996. In the other districts, the proportion of Hungarians varies widely, but in the capital and Košice, it is negligible in relative terms although still high in absolute numbers. Therefore, overall, the Hungarians of Upper Hungary are distinctly in the minority in the surveyed 13 districts (1969–1995) and 16 districts (1996 to the present) and the two cities. Each of these districts forms a single statistical unit even though each has an absolute Hungarian majority in the south and an absolute Slovak majority in the north.

The following numbers summarise the districts of Southern Slovakia based on the current public administration divisions:

Slovakia has a total area of 49,034 km^2, while its Southern districts, including the cities of Bratislava and Košice, cover an area of 16,588.5 km^2, equal to 33.83% of the territory of the country. More than 98% of Hungarians in Slovakia live in this area.

As regards the size of these districts, the average size of a district (not including the cities in the 16 districts) is 998.46 km^2, whereas the size of an average district in Slovakia is 681.06 km^2; accordingly, the average Southern district is approximately one-and-a-half times larger in size. Including Bratislava and Košice in the Southern districts results in an average size of 921.58 km^2 for these districts, which is still higher than the national average.

4. Economic analysis of Southern Slovakia

This paper assumes that Southern Slovakia is constituted of 16 districts and, on several occasions, we have also included the cities of Bratislava and Košice. In certain instances these cities were omitted as they would have caused distortion. Geographically, these two cities are part of the Southern region, but their economic strength gives them national significance. To obtain genuinely accurate data, we must omit these two cities from our analysis. It should be noted, however, that these cities have a fundamental impact on the socio-economic situation in the region as they greatly contribute to employment, with tens of thousands of people living in Southern Slovakia finding work there.

Given that the territory as a whole has never constituted a single administrative unit, there is no statistical unit to use for analysing this territory in its entirety. A complex analysis of its situation is further complicated by the fact that its borders are not delimited; various analyses examine different sizes of territory and consider different districts as constituent parts of Southern Slovakia, even though there are no major differences between them. The analysis is further complicated by the frequent administrative changes in Czechoslovakia and, since 1993, in Slovakia.

In the last two decades, an increasing number of analyses have examined the economic and social situation in the region (Lelkes, 2008a; Horbulák, 2015; Horbulák, 2017; Horbulák, 2019). These surveys have covered many subjects, including changes in the number of welfare benefit recipients, the length of motorways and Class I roads and their comparison to the national figures, the registered offices of large corporations in the Southern part of the country, the number and proportion of primary school leavers, the number and proportion of graduates, the number and proportion of persons with word processing skills, the number and proportion of world wide web users and, of course, many demographic indicators, etc. All of these papers highlight the fact that the area as a whole and the inhabitants living there are, generally speaking, more disadvantaged than the national average.

4.1. Employment in Southern Slovakia

Unemployment ratio is one of the main macroeconomic indicators. It is monitored not only by experts but also by practically all members of society. Following the change of regime, there were hardly any families whose members were not affected by unemployment for longer or shorter periods. An examination of the employment situation can reveal key social and socio-political problems. The Statistical Office of Slovakia measures these figures at the district level as well, with data available for analysis going back to 1997. Measuring them at the district level greatly contributes to the ability to assess regional disparities by examining the data. The figures below show the employment situation in the districts on the Southern border, starting from the west and moving towards the east.

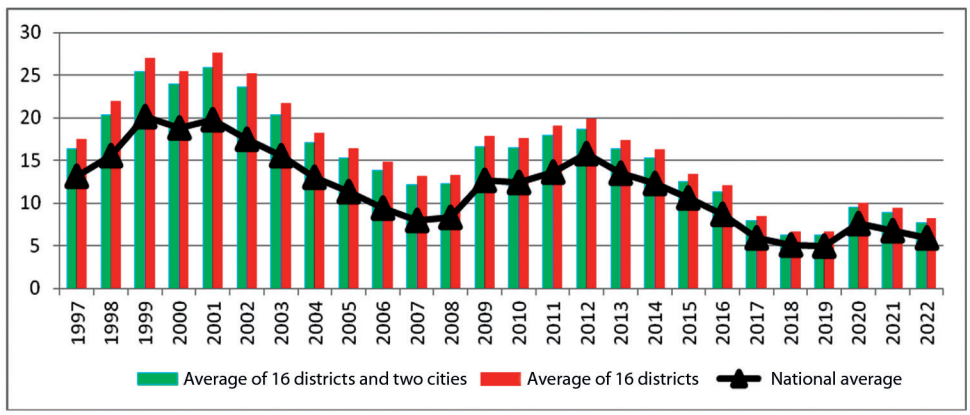

Figure 3.
Aggregate unemployment ratio in Southern Slovakia (%)
Source: www.upsvar.sk, Slovakia's Central Office of Labour, Social Affairs and Family

The red column in the diagram shows the aggregate figures for the 16 districts listed in Table 1, while in the green column, Bratislava and Košice have been added to the districts. The available time series, which now goes back approximately a quarter of a century, shows that Southern Slovakia as a whole has always had much worse employment indicators than the national average. To complicate the picture, this is true not only when considering the average across the 16 districts but also when the much better figures of Bratislava and Košice are included (16 + 2) in the average of the Southern districts. While the average of the Southern districts changes in sync with the national average, the unemployment ratio is consistently 5–3% higher in this region. This applies to boom periods as well, but the divergence increases in periods of crisis. The true depth of the problem is revealed by the fact that unemployment in Slovakia has been high in regional comparison for a very long time, far exceeding the unemployment ratios of all its neighbours. Today, the employment situation is much improved; in fact, the new phenomenon of labour shortage has emerged in recent years. In spite of such

improvements, the Southern districts continue to lag behind. While the absolute figures indicate an improvement, aggregate unemployment in the south is nearly one-and-a-half times the national average. The districts in the worst situation (the Gömör area, Rimavská Sobota and Revúca districts) still face an immense gap, as their unemployment rates are three times higher than the national average. This is demonstrated in Figure 4.

An in-depth examination of the problem reveals, however, that there are also huge regional disparities within Southern Slovakia itself. Southern Slovakia can be divided into four different sub-regions, each of which are comprised of four districts. These are the following:

- since the Senec, Dunajská Streda, Galanta and Šaľa districts are impacted by the effects of the capital city, we refer to them as metropolitan area districts; thousands commute to Bratislava every day from these districts, whose employment situation is predominantly shaped by their proximity to the capital; in terms of Slovakian public administration, this area is the Southern part of Trnava county
- we have allocated to the set of Western districts the Komárno, Nové Zámky, Nitra and Levice districts; this may be the least homogenous group as many Komárno and Nové Zámky citizens commute to Bratislava, Nitra is gradually becoming a major regional industrial centre, while the Levice district is showing many of the same signs as Gömör; in terms of Slovakian public administration, this area is the Southern part of Nitra county
- in the case of the Central Slovakian region, we have given it the well-known historical name of Nógrád–Gömör districts; these include the Veľký Krtíš, Lučenec, Rimavská Sobota and Rimavská Sobota districts and, in terms of Slovakian public administration, the area mostly covers the Southern part of Banská Bystrica county
- in the Eastern districts, we have included the Rožňava, Košice area, Michalovce and Trebišov districts; in terms of Slovakian public administration, this area covers more or less the Southern part of Košice county

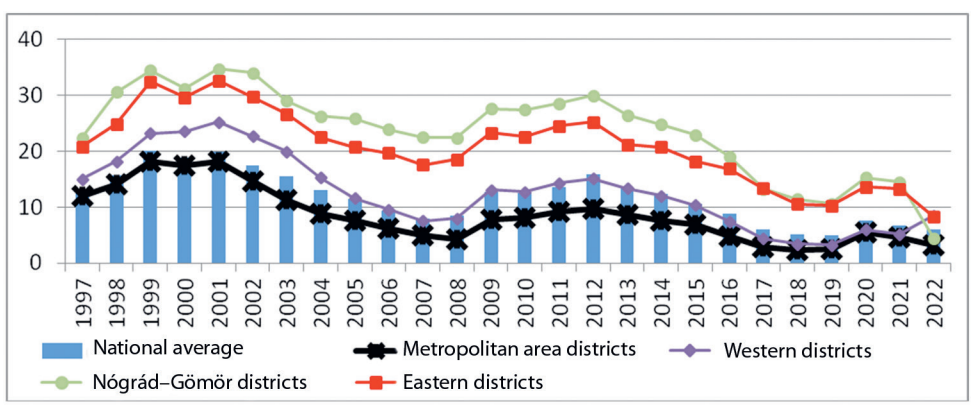

Figure 4.
Regional unemployment ratios in Southern Slovakia (%)
Source: www.upsvar.sk, Slovakia's Central Office of Labour, Social Affairs and Family

Figure 4 shows unemployment in various parts of Southern Slovakia over the course of a quarter of a century. Positive trends to highlight include the significant improvement in the employment situation compared to 25 years ago, the greater homogeneity of the area and the fall of unemployment in all sub-regions.

Fluctuating around the national average in the 1990s, the unemployment ratio of the metropolitan area began improving around the Millennium; it is now below the national unemployment ratio and is not significantly impeded even during crises.

The true winner across the entire area is the region between the Hron and Garam rivers. This area was one of the most backward regions for about fifteen years after the change of regime. Its situation began improving during the economic expansion achieved in the first decade of the 2000s, when its unemployment ratio levelled with the national average. After ten years, the trend continued, and since 2016 these districts have had unemployment ratios that are lower than the national rates.

The generally poor situation of the Nógrád–Gömör area has become entrenched. Although unemployment is falling in absolute terms, a general lagging behind is one of the key features of the region, at rates that are abnormally high even in nationwide comparison. In Slovakian academic jargon, this area is referred to as the 'valley of hunger'.

Unemployment in the Southeastern districts of Slovakia may be high but they still rank better than the Nógrád–Gömör region.

4.2. Pay levels in Southern Slovakia

The area as a whole shows weaker indicators in several other respects as well, due to its lower development status. Wage levels are closely correlated with unemployment, as employers here are under less pressure. A further hindrance to an increase in wages is the fact that there are 3% more citizens with primary qualifications and 2.2% fewer graduates (Horbulák, 2017). The following figure shows pay levels in the different districts and the two cities at the start of the pandemic.

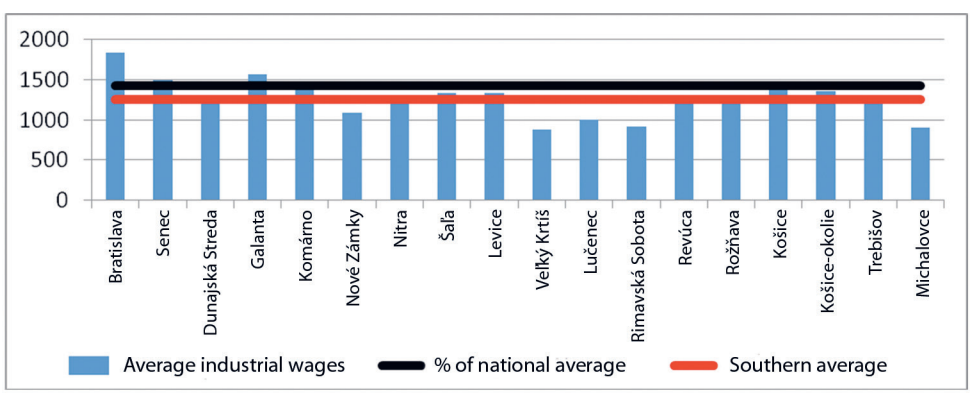

Figure 5.
Industrial pay in Southern districts in 2021 (€)

Source: Ročenka priemyslu SR 2022

An analysis of industrial wages also shows that Southern Slovakia is significantly lagging behind. It also clearly demonstrates that regional disparities are high. The geographical divisions used in employment surveys (metropolitan area, west, Nógrád–Gömör, east) are an appropriate starting point here, as proximity to the capital does not have an impact on local wage levels, which are determined instead by the companies operating in the district.

It is clear that Bratislava is the centre of Slovakia, not only politically but also economically. The city is home to a large number of companies, and not only head offices and service provider firms, but manufacturing companies as well.

In the Southern region, the capital city is followed by the Galanta district. This is due to the fact that electronics manufacturer Samsung is located in Galanta; in terms of sales revenue, this company ranked as the 13th largest firm in Slovakia in 2021. Šaľa is the location of the registered office of chemicals company Duslo (39th in rankings). Nitra was capable of exceeding the Southern Slovakian average due to its position as regional seat. Amongst others, electronics manufacturer Foxconn (18th place), wholesaler Med–Art (62th) and car manufacturer Jaguar Landrover (83th) are based in the city. Košice, the second most populous city of the country, plays a prominent role in the Eastern region of the country. The most important company to be mentioned here is US Steel (4th place). The Košice area district owes its above-average position to the Kechnec industrial park, where, for example, car parts manufacturer Magna PT (99th place) is situated.

Wages are lowest where unemployment rates are the highest, i.e. in the Nógrád–Gömör region.

A look at longer-term trends may show some encouraging signs. Figure 6 shows that, in nearly a decade, wages in the Gömör region have converged to a certain extent; it is also true, however, that Matúšova zem (Galanta district) stood out more. There was a faint improvement between 2013 and 2021, with the aggregate increase in wages in the 16 districts and two cities exceeding the national wage increase dynamic by 5%.

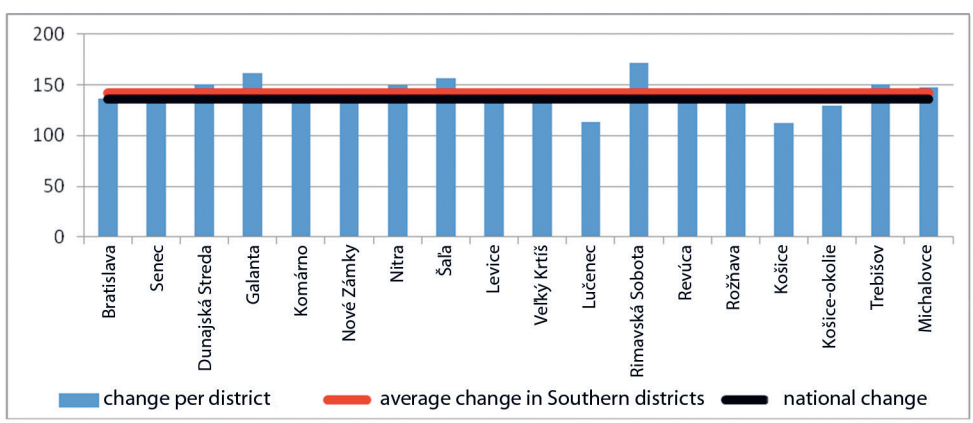

Figure 6.

Changes in average wages in the industrial sector between 2013 and 2021 (%)

Source: Ročenka priemyslu SR 2013, Ročenka priemyslu SR 2022, self-performed calculations

The third selected indicator also concerns the economy: per capita labour productivity. This indicator is one of the measures of corporate productivity. This has been analysed on the level of districts. The indicator highlights disparities between districts and regions even more clearly. Apart from reflecting the relative number of companies or employees, it also refers to the quality of these companies. The results are shown in Figure 7. The huge advantage of the capital is clear: companies located in Bratislava are twice as productive as an average company in Slovakia; in terms of Southern Slovakia, the ratio is 1 to 2.7.

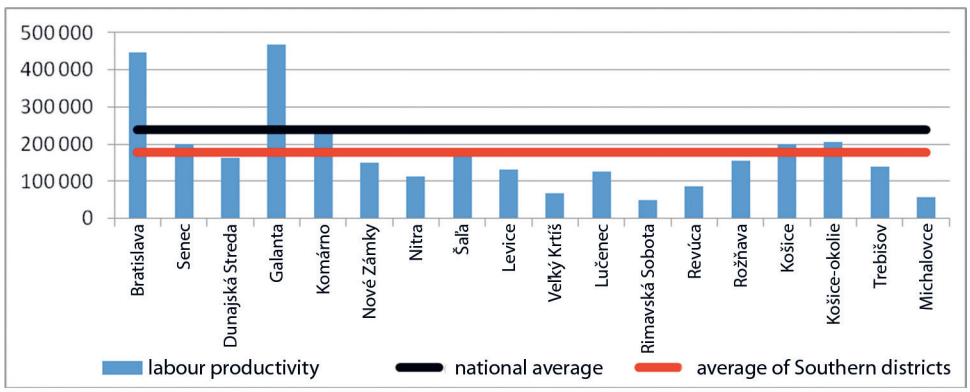

Figure 7.
Labour productivity in the Southern districts in 2021 (€)

Source: Ročenka priemyslu SR 2022

Beyond our comparison of the capital and the countryside, let us take a look at conditions within Southern Slovakia. The Galanta district performs particularly well within Southern Slovakia; fundamentally, this is also due to the fact that the company Samsung operates in this area. The productivity indicator is 3.8 times higher in the district than in Nové Zámky, which is also a developed district, while its productivity advantage over the Rimavská Sobota district is at a factor of 5.85. Interestingly, the Košice area district performs better in terms of this indicator than Košice city itself. Admittedly, there are disparities by a factor of over three within Košice. The district most probably owes these good indicators to the Kechnec industrial park mentioned in the previous section.

It is also true that there are large variations within this indicator as well. A company of national significance is also characterised by particularly high productivity. This explains the huge disparities between the five districts of Bratislava. Volkswagen, which is located in District II, is the reason why labour productivity reached EUR 693,081 in 2021, whereas the figure was only EUR 188,285 in the suburban District III. Discrepancies of this nature are common across other districts of Slovakia as well. The disparities presented above apply here as well (Ročenka priemyslu SR 2022).

5. Comparative analysis: An economic analysis of Hungarian counties along the border with Slovakia

Due to the differences between the data sources, it was impossible to directly compare the conditions in Slovakia and Hungary. One issue is that Hungary does not collect district-level data in this manner for all the variables examined and, for this reason, we selected for our comparison county-level data for the Hungarian counties bordering Slovakia.[1] We used the following data in an attempt to compare Southern Slovakia with the Hungarian border regions:

- GDP versus national average (2000–2021)
- per capita county GDP at purchasing power parity (2021)
- gross average earnings of those in full-time employment (2019–2023 Q2)
- quarterly changes in wage dynamics (2019–2023 Q2)
- unemployment ratio (2013–2022)

We analyse the counties following the logic presented in the sections on Southern Slovakia; we focused on the border counties. Counties examined:

- Győr-Moson-Sopron County
- Komárom-Esztergom County
- Pest County
- Nógrád County
- Borsod-Abaúj-Zemplén County

Although Heves County does not border directly on Slovakia, we have included it in our survey due to the significance of their economic links.

Figure 8 shows that only one county, namely Győr-Moson-Sopron exceeds the national GDP per capita figure in all years in the time series examined. Komárom-Esztergom County shows a level of development approximating the national average, although it remained below the average throughout most of the time series. Surrounding the capital Budapest, Pest County shows a level of development that is well below the counties in the west and shows a declining trend, despite the major population relocation from Budapest to the county, particularly in the metropolitan area. This gap has been continuously present since the global economic crisis of 2008. This is attributable to the fact that Pest County previously constituted the Central Hungary region together with Budapest, which had a development level in excess of 75% of the EU average measured in GDP per capital and, as a result, it was considered a convergent region and received less in subsidies. The only winner identifiable in the 20-year data series is Borsod-Abaúj-Zemplén County, although its growth has not been linear, with significant increase in county GDP only materialising as early as in 2013. Conversely, Nógrád County has been on a downward trend since the early 2000s and the region is consistently falling behind.

[1] Beyond the differences in geographical demarcation, an additional obstacle to comparison is the fact that the countries under review use different statistical methodologies, making it impossible for us to select wholly consistent indicators for our analysis. By professional consensus, we selected the Hungarian indicators that best approximate the Slovakian figures. The authors therefore acknowledge this fact as a limitation on their research.

This is particularly surprising as the county is located in close proximity to the capital and yet it is the poorest region of the country. This is due to the brain-drain effect of the capital, as is the case in Pest County. Heves County has been unable to realise substantive economic development gains.

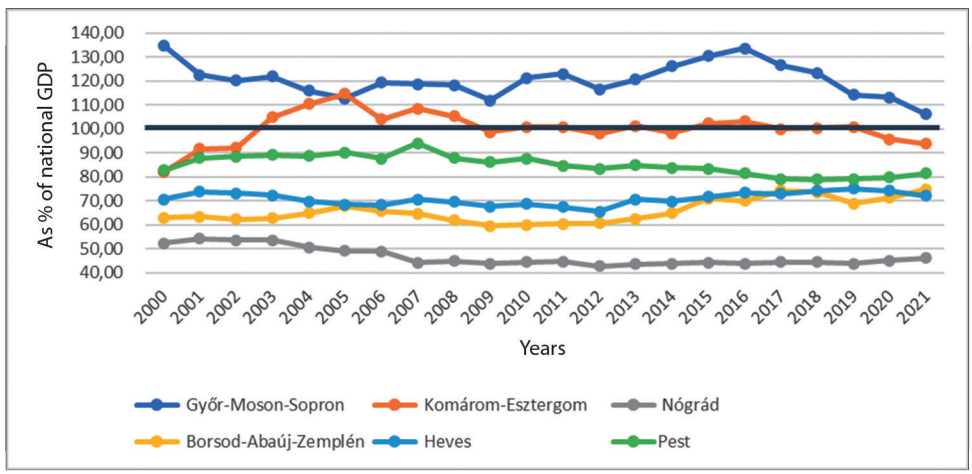

Figure 8.

Relative development of counties under review, as a percentage of national per capita GDP in 2000–2021 (%)

Source: Central Statistical Office 2023

We now proceed to compare the levels of development in Southern Slovakian and Hungarian regions in terms of purchasing power parity using 2021 data. Slovakia is presented at the NUTS2 level and Hungary at NUTS3.

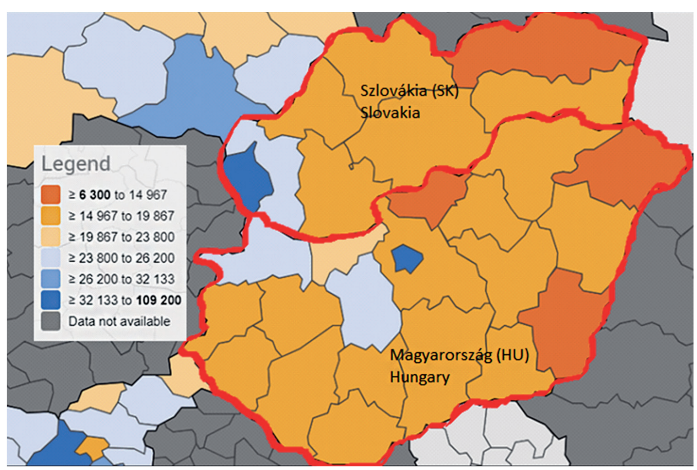

Figure 9.

GDP per capita in Hungary's and Slovakia's NUT3 regions in 2023 (GDP per capita)

Source: Eurostat 2023

Figure 9 shows that the Southern Slovakian and Northern Hungarian regions included in the comparison have similar development features in that both show a west–east orientation, with development levels that are higher in the West in both countries. In Hungary, the factor determining the level of development is the proximity to Austria. Considering automotive industry investments, the level of development is comparable to the neighbouring Slovakian districts on the Northern banks of the Danube River. Komárom-Esztergom County surpasses its Southern Slovakian neighbour also due to automotive industry investments. Pest County and Borsod-Abaúj-Zemplén County boast development levels similar to their immediate neighbour regions, with only Nógrád County falling considerably behind. As in Slovakia, the most highly-developed region in Hungary is the capital city and its immediate environs.

Table 2.
Average earnings of full-time employees, 2019–2022 (in HUF and EUR)

Gross average earnings of full-time employees (HUF per person per month)	Győr-Moson-Sopron	Komárom-Esztergom	Pest	Nógrád	Borsod-Abaúj-Zemplén	Heves	National average
2019	376,559	355,026	325,816	268,194	282,741	*328,075*	367,800
2020	406,309	388,965	359,497	292,959	306,170	*354,831*	403,600
2021	449,352	423,676	388,874	322,396	340,115	*388,368*	438,800
2022	520,389	494,160	449,488	388,030	400,595	*457,453*	515,766
Gross average earnings of full-time employees (EUR per person per month)	Győr-Moson-Sopron	Komárom-Esztergom	Pest	Nógrád	Borsod-Abaúj-Zemplén	Heves	National average
2019	1,139	1,074	986	811	855	*993*	1,113
2020	1,113	1,065	985	802	839	*972*	1,105
2021	1,218	1,148	1,054	874	922	*1,052*	1,189
2022	1,300	1,235	1,123	969	1,001	*1,143*	1,289

Source: Central Statistical Office 2023

This region is also characterised by a dynamic increase in wages, as is the case in Southern Slovakia. Measured in terms of a base ratio, wages increased by an average of 40% between 2019 and 2022. Pay increased most steeply in Nógrád and least steeply in Győr-Moson-Sopron (due to an already high base), and also in Pest County. Pay data

also provides good evidence that Nógrád is underdeveloped; this data also shows that only Győr-Moson-Sopron County exceeds the national average. The higher rate of wage increases is a sign of attrition at even higher rates in the particular region; this in turn drives pay levels upwards in an attempt to stop workforce attrition.

We have converted the HUF figures into EUR at the official exchange rate quoted by the Hungarian Central Bank; we note, however, that the figures are not directly comparable, as the Hungarian data are sector-neutral, whereas the Slovakian figures capture the pay data of employees in industry. Expressed in euros, wages rose by 16% nationally; this is due to the significant weakening of the forint by 2022.[2]

Table 3.
Unemployment ratio between 2013 and 2022 (%)

%	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Győr-Moson-Sopron	3.79	2.66	3.24	1.34	2.40	1.24	1.13	1.41	1.57	2.47
Komárom-Esztergom	5.57	5.18	5.63	2.35	2.50	1.65	1.09	1.41	1.20	1.44
Pest	7.88	6.37	4.24	2.34	2.15	2.20	1.74	3.36	2.46	2.65
Nógrád	11.01	6.89	8.59	8.74	7.77	5.14	5.96	8.63	8.63	7.95
Borsod-Abaúj-Zemplén	9.96	10.45	7.04	6.35	5.46	5.16	3.52	5.04	7.09	7.31
Heves	*11.47*	*8.25*	*5.87*	*4.38*	*3.85*	*2.51*	*2.76*	*3.30*	*3.67*	*3.78*
Country total	8.84	6.95	6.01	4.32	3.68	3.47	3.19	4.05	3.70	3.86

Source: Central Statistical Office 2023

The data reveal that unemployment has been falling consistently since 2013 in all Hungarian counties, although an increase can be observed in 2022 in some of the counties; there is only one exception, Nógrád. The fall in unemployment is connected to the overall business cycle trends between 2013 and 2019, which were halted by the pandemic and the subsequent energy crisis and effects of the war in 2022.

Summary

Although Southern Slovakia does not constitute a single public administration entity, nor has it done so at any point in its past, its area is habitually demarcated by combining certain districts. An analysis of the aggregate figures of this area shows that its development level is below the national average of Slovakia. Its unemployment ratio is higher and its industrial wages are lower. It also lags behind in terms of corporate productivity. The economy of the Southern region is not uniform, but rather characterised by

[2] The EUR/HUF exchange rate, which was at 330 in 2019, stood at 400 in 2022.

significant differences from west to the east. Underdevelopment and deprivation is evidenced by all partial indicators of the Eastern areas of the Southern Slovakian districts under review. The most deprived part of the region has long been the Gömör area. The weak economic results of Southern Slovakia and its Southeastern area may further weaken its ability to retain its population, which may have a deleterious effect on Hungarian-speaking populations living in the Southern and Southeastern districts. In our earlier studies of this subject, we have demonstrated that the willingness to have children is lower in Southern Slovakian areas with concentrated Hungarian populations (cf. e.g. Lentner & Horbulák, 2022), which is attributable to weaker economic characteristics, including population-sustaining power.

When combining the examination of Southern Slovakian districts with research into the (neighbouring) Hungarian counties across the border, we find a region with heterogeneous development showing divergences along a west-to-east orientation. In Southern Slovakia, the Western region is more highly developed due to the fact that it is where the capital is located, it is industrialised and has favourable conditions; in Hungary, the capital is located in the central part of the country, and its counties in the West are more developed due to foreign capital inflow. The central area, which in Hungary may be identified as Nógrád County, is the least developed region; this is also clearly visible in, and carried over into the Southern Slovakian area (districts) bordering on the Hungarian Nógrád County. This shows that underdevelopment reaches across borders. There is a correlation in the fact that the areas on both sides of the border lag behind their national averages in terms of development; after all, the border areas (Nógrád County and the Gömör region) have similar economic characteristics on both sides.[3]

Acknowledgments

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[3] An additional underdeveloped area of Southern Slovakia is located on the border with Ukraine; however, we are unable to compare its data with figures from Borsod County due to the current lack of statistical data. This subject will be the basis for our further research in the future.

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