

Markku Suksi

Sub-State Governance through Territorial Autonomy

A Comparative Study
in Constitutional Law of Powers,
Procedures and Institutions

 Springer

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of Powers, Procedures and Institutions

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“Sovereignty, like the atom, can be split.”
(Trías Monge 1997, p. 170)

“In modern times, sovereignty is divisible.”
(S.M.Z. v. Machano Khamis Ali & 17 Others,
Court of Appeal of Tanzania, 2000)

Foreword

Territorial autonomy is an important constitutional phenomenon, but because the sub-state entities that can be identified as territorial autonomies are relatively small, the phenomenon is often overlooked in systematic presentations of constitutional law. This is not to say that treatises of national constitutional law would completely lack information about territorial autonomies, but the internal functioning of sub-state entities, in particular, is not known to a wider audience. Yet at the same time, each sub-state entity operates on the basis of its own constitutional law in the broad sense of the term, whatever the normative nature of that constitutional law might be. Therefore, the inner normative lives of territorial autonomies deserve to be opened up for a systematic review, which is comprehensive and comparative in nature so as to point out similarities and differences between the various sub-state existences.

The similarities may be fewer than the differences, but what is striking in this context is that each of the autonomies included in this inquiry are by and large constructed along common elements, those of the distribution of powers, participation, the executive power, and foreign relations. Incidentally, these elements seem to hold the answer to what it means to be autonomous, that is, what it means not to be an independent state and not a symmetrical part of the governmental structure of the state, but autonomous. Although territorial autonomy may be unknown to the regular constitutional scholar or practitioner, I am convinced that the information contained in this inquiry will be useful for anybody interested in this constitutional phenomenon. At the same time, the inquiry will be interesting and useful for those who deal with sub-state issues, such as law-makers, politicians and civil servants of sub-state entities and of such states in which they exist, because the detailed information and analysis contained in this inquiry may function as a point of reference when, for instance, the development of an existing sub-state entity is planned or when the creation of a new territorial autonomy is on the drawing board. A further purpose of this inquiry is to simply recognize this particular institutional mode of organization.

Autonomy has been on my research agenda since the mid-1990s, and after a number of articles and books about specific issues related to the concept of

autonomy, the time was ripe for collecting some of the research strands into a more comprehensive volume. The opportunity to do so was provided by the Academy of Finland, which granted me funding as a so-called Senior Researcher. Obviously, I am very grateful for the grant, which was placed at the Fletcher School of Law and Diplomacy of Tufts University in Massachusetts, USA. At the same time, I am very grateful to my own university, Åbo Akademi University, for the leave of absence during the academic year of 2008–2009, and to Fletcher School for receiving me as a Senior Researcher/Research Professor during that year.

At Fletcher, I wish to thank Professor Hurst Hannum for his kind and collegial support, and Dean Peter Uvin and his academic staff for hosting me in the most pleasant environment. In addition, the Fletcher staff with Celia C., Celia M., Ben, Sandi, Fran and John at the administration and Jeff, Ellen, Miriam, Mariesmith, and Paula at the Library, as well as Giuliana and Linda at the cafeteria and Jane and Lois at the International Centre, deserve warm thanks for all the help and attention, as well as Mr. Risto Vilkkö of the Academy of Finland. I also benefited tremendously from the co-operation between Fletcher and the Law School of Harvard University, which gave me access to the excellent collections of Harvard Law Library. I also wish to thank Professor Yash Ghai for his empowering autonomy research and his inspiring example.

During my research, I had the benefit of discussing autonomy-related issues with a great number of persons, around 70 individuals in Puerto Rico, Aceh, Hong Kong, Scotland, Zanzibar and the Åland Islands. They helped me with materials, they functioned as interlocutors concerning particular issues, and they assisted me in all possible ways during my research. It is not possible to mention all of them or to explain what each of them did for my project, but I trust that they will understand how crucial their role was when they see the final product.

In addition, I had the benefit of discussing the various autonomy arrangements with a number of persons and receiving their learned comments, namely Mr. Albeniz Couret-Fuentes, LL.M. (Fletcher), for Puerto Rico, Professor Chris Himsworth for Scotland, Professor Mawardi Ismail for Aceh, Assistant Professor Kelley Loper for Hong Kong, and Mr. Mohamed Hamad, LL.M. (Oslo), for Zanzibar. It should be understood that none of these persons are responsible for any of the faults or omissions that may be attributed to my text, and none of them is responsible for any formulations in the text. However, I am sure that my research would have gone in the wrong direction if it were not for the critical comments of these persons. Obviously, I am solely responsible for what I have written in this inquiry and for how I have analyzed the different sub-state entities, but at the same time, I am deeply grateful to these persons.

At my home base, the Department of Law of Åbo Akademi University in Finland, I wish to thank everybody from this community, and in particular Professor Elina Pirjatanniemi and Ms. Kati Frostell, Lic.Pol.Sc., for their support. I am also grateful to Mrs. Jody Merelle, Mr. Henno Parks and Ms. Darcy Hurford for linguistic editing. Finally, I wish to thank Springer Verlag for accepting my inquiry for publication and Kluwer Law International for giving the permission to use portions of my article on 'Sub-national issues: Local government reform,

re-districting, and the Åland Islands in the European Union', published originally in European Public Law 13, pp. 390–404.

The information in the text is good for Puerto Rico as of June 2009, for Hong Kong as of August 2009, for Aceh as of October 2009, for Scotland as of April 2010, for Zanzibar as of October 2010, and for the Åland Islands as of November 2010. Some additions of fact, such as election results, may have taken place after these points of time. The structure of the book is such that it is possible to acquire an overview over the topic of territorial autonomy by means of reading the sections at the end of the different chapters entitled "Reflections" and the concluding chapter. These overviews are based on the more detailed interpretations of the thematic sections. The reader who is interested in a particular autonomy of those included in this study is requested to follow the structure of the book through the various thematic chapters, where each of the six sub-state entities are featured.

I dedicate this book to my family.

In Åbo, Finland, on a beautiful day during the Christmas week of 2010.

Markku Suksi

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List of Abbreviations

AMM	Aceh Monitoring Mission
AMS	Additional Member System
APBA	Aceh income and expenditure budget
APBK	Income and expenditure budget of a <i>Kapupaten</i> (district) in Aceh
APEC	Asia-Pacific Economic Community
ASEAN	Association of Southeast Asian Nations
ASP	Afro-Shirazi Party
CALRE	Conférence des assemblées législatives régionales
CCM	Chama Cha Mapinduzi
CCPR	Covenant on Civil and Political Rights
CE	Chief Executive of Hong Kong
CEDAW	Covenant on the Elimination of Discrimination against Women
CFA	Court of Final Appeal of Hong Kong
CMI	Crisis Management Initiative
CPG	Central People's Government
CSIF	Constituent States in Federations
CUF	Civil United Front
DPD	Regional Representative Council of Indonesia
DPP	Director of Public Prosecution of Zanzibar
DPR	House of Representatives of Indonesia
DPRA	House of Representatives of Aceh
DPRD	Representative bodies of lower administrative levels in Aceh
DPRK	House of representatives of <i>Kapupaten</i> (district) in Aceh
EAEC	European Atomic Energy Community
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
ECT	European Community Treaty
ECtHR	European Court of Human Rights

EEA	European Economic Area
EEZ	Exclusive Economic Zone
EU	European Union
ExCo	Executive Council of Hong Kong
FC	Functional Constituency in Hong Kong
FPTP	First-Past-The-Post Election
GAM	Gerakan Aceh Merdeka
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
HDu	Opinion of the Supreme Court of Finland
HKSAR	Hong Kong Special Administrative Region
ICJ	International Court of Justice
IMO	International Maritime Organisation
IOM	International Organization for Migration
JKU	Economic development force of Zanzibar
JMC	Joint Ministerial Committee
KIP	Aceh election committee
KMKM	Special force for the prevention of smuggling in Zanzibar
KPU	National Elections Commission of Indonesia
LCM	Legislative Consent Motion
LegCo	Legislative Council of Hong Kong
LoGA	Law on the Governing of Aceh
MEP	Member of European Parliament
MMP	Mixed Majority-Proportional Election
MoU	Memorandum of Understanding
MP	Member of Parliament
MPR	People's Consultative Assembly in Indonesia
MPU	Clerics' Deliberation Council
MSP	Member of Scottish Parliament
NAD	Nanggroe Aceh Darussalam
NGO	Non-Governmental Organization
NPC	National People's Congress of China
NPCSC	Standing Committee of the National People's Congress of China
NPP	New Progressive Party
OIC	Organisation of Islamic Conference
PA	Partai Aceh
PCIJ	Permanent Court of International Justice
PDP	Popular Democratic Party
PIP	Puerto Rican Independence Party
PRC	People's Republic of China
RGZ	Revolutionary Government of Zanzibar
SAC	Supreme Administrative Court of Finland
SAR	Special Administrative Region
SMZ	Serikali ya Mapinduzi Zanzibar (Revolutionary Government of Zanzibar)

SNP	Scottish National Party
SNTV	Single Non-Transferable Vote
SoÅ	Statutes of the Åland Islands
SoF	Statutes of Finland
STV	Single Transferable Vote
TANU	Tanganyika African National Union
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
USA	United States of America
VAT	Value Added Tax
WTO	World Trade Organization
ZEC	Zanzibar Electoral Commission
ZNP	Zanzibar Nationalist Party
ZPPP	Zanzibar and Pemba People's Party

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