

6-2008

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Recommended Citation

Tkacik, Michael. "Characteristics of Forms of Autonomy." *International Journal On Minority & Group Rights* 15, no. 2/3 (June 2008): 369-401.

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Characteristics of Forms of Autonomy

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Abstract

This article recasts our understanding of the forms autonomy may take. Rather than emphasizing a rigid set of definitions, the article argues that autonomy forms can be characterized by the aggregate number of issues controlled by the local community (scope), the level of local control over any given issue (depth) and the territorial insularity of the autonomous community. So characterized, autonomies run the gambit from personal to cultural to functional to administrative to legislative. Of course, there are grey areas between these types of autonomy and some agreements may fall somewhere in between. The article also further breaks legislative autonomy into strong and weak forms.

Keywords

Autonomy, minority, personal autonomy, cultural autonomy, functional autonomy, administrative autonomy, legislative autonomy

1. Introduction

This article examines the characteristics of various forms of autonomy. The forms of autonomy analyzed by this article include personal autonomy, cultural autonomy, functional and administrative autonomy and legislative autonomy.¹ The article argues that existing discussions of autonomy are too rigid in their application, leading to forced definitions or the exclusion from autonomy discussions of certain sorts of autonomy.

*) The author would like to thank the following for their valuable assistance in reviewing this manuscript: Farimah Daftary, Bryanna Gartner, Ted Robert Gurr, André Légaré and Markku Suksi. The author, of course, remains responsible for any errors contained herein. The author would also like to acknowledge the financial support of the Department of Law of Åbo Akademi University, the Foundation of Åbo Akademi University, the Carnegie Corporation of New York and Stephen F. Austin State University. Finally, the author would like to reserve special thanks for the financial and moral support of Gösta von Wendt.

¹) The article avoids the term “political autonomy”, though its use is widespread. Participants at the set of conferences culminating in this volume noted the vague and inconsistent use of this term. Similarly, “territorial autonomy” suffers from varied usages. It has the additional problem of excluding otherwise extremely developed forms of autonomy. The definitional distinction should include a territorial element, but should also include depth and scope of autonomy. Thus geospatial specificity is relevant, but not determinative.

The article begins with a short discussion of the existing definitions of, and distinctions among, forms of autonomy. The article goes on to assert a revised set of autonomy forms. The article then examines this new typology in some detail, arguing that forms of autonomy can be distinguished on three axes: the scope or aggregate number of issues controlled by the autonomous entity along one axis; the depth of control the entity is granted (or in some cases seizes) along the second axis; and the relationship of the autonomy to spatial or geographic notions along a third axis. An autonomy that includes a large number of aggregate issues (scope), along with a great deal of control held by the autonomous region (depth), and existing in a distinct and insular territory would be considered more extensive than one that did not. The article does not argue that previous understandings, which focused on competencies on the basis of devolved or legislative powers, and/or level of entrenchment, are irrelevant. Rather, the article argues that these pre-existing distinctions fit into, and are a part of, the revised understanding. So there are additional factors, including pre-existing factors, which ultimately help to clarify the form of autonomy at issue.²

2. Existing Understanding of Autonomy

Our existing understanding of forms of autonomy owes a great deal to groundbreaking scholars such as Hurst Hannum, Ruth Lapidoth, Markku Suksi and Yash Ghai.³ Hannum provides one of the first legalistic analyses of autonomy. Such scholars distinguished between at least four, and possibly more, types of autonomy. These include, *inter alia*, personal, cultural, administrative and territorial autonomy. Lapidoth collapses personal and cultural autonomy, defining this joint autonomy as one that “applies to all members of a certain linguistic or cultural community which are, however, not resident within a particular territory (for example, the Roma/Gypsies in Finland)”.⁴ More recently, however, others have viewed these two autonomies as distinct. Personal autonomy then is the

²) There are, of course, many alternative typologies for understanding forms of autonomy. For example, one might classify autonomies according to beneficiaries of autonomy, according to the purpose of the autonomy (e.g., conflict resolution, protecting a specific identity, transition to independence), whether autonomy was negotiated “top-down” or “bottom-up”. I am grateful to Farimah Daftary for this point. This article takes a legalistic approach.

³) See generally H. Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (University of Pennsylvania Press, Philadelphia, 1990); R. Lapidoth, *Autonomy: Flexible Solutions to Intrastate Conflict* (United States Institute of Peace, Washington, D.C., 1997); M. Suksi (ed.), *Autonomy: Applications and Implications* (Kluwer Law International, The Hague, 1998); and Y. Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims* (Cambridge University Press, Cambridge, 2000).

⁴) J. Loughlin and F. Daftary, *Insular Regions and European Integration: Corsica and the Aland Islands Compared*, *European Centre for Minority Issues* #5, November 1999, p. 26.

guarantee of certain basic rights to the individual, and not necessarily in the individual's capacity as a member of a distinct group. Such rights might include the American political notions of civil liberties and civil rights. For example, Suksi notes that personal autonomy "implies, first and foremost, the use of the freedom of association as a general civil right in the horizontal dimension between persons belonging to a minority group for carrying out different cultural and other activities that the minority might feel are important".⁵ The right, though it benefits minorities, benefits all groups and does not find its origin or end point in any particular minority group. A separate administrative structure is lacking, as well as a defined territory.

Cultural autonomy differs from personal autonomy in that *by design and in purpose* it extends rights to a particular cultural or linguistic group, such as the Sami in Norway, Sweden, Finland and Russia (only some of these countries grant cultural autonomy to the Samis). Typically, there is some regulatory power inherent here. Cultural autonomy is community-based in nature, rather than extending to all members of a society as individual or personal autonomy.⁶

Functional, administrative and political autonomy are all interchangeably used in the literature. One of the purposes of this set of articles is to help to clarify and better define autonomy, and thus distinctions and clarifications are important here. This article argues that all autonomies exist on a spectrum, each entailing greater institutional and perhaps even philosophical coherence. The article eliminates political autonomy and distinguishes between functional and administrative autonomy. Functional autonomy implies the decentralization of control over a single functional subject matter in a semi-distinct geographic space – such as allowing two sets of language-differentiated schools in a single school district. The geographic space for this functional autonomy is set within a school district, but within that school district the subjects of the autonomy may have little or no territorial continuity. In contrast, administrative autonomy implies a set of functional autonomies (such as schools, public services and courts with specialized adaptations to benefit a select group) all coexisting in the same geographic space, probably presupposing greater territorial distinctiveness, though not reaching the level one typically sees in legislative autonomy (see below).⁷ In administrative

⁵ M. Suksi, 'Functional Autonomy: The Case of Finland with Some Notes on the Basis of International Human Rights Law and Comparisons with Other Cases', in this issue, pp. 196 and 197, citing A. Eide, 'Cultural Autonomy: Concept, Content, History and Role in the World Order', in Suksi, *supra* note 3.

⁶ M. Suksi, 'Concluding Remarks', in Suksi, *supra* note 3, p. 360.

⁷ There are, of course, exceptions to this typology. One could imagine an autonomy with a large number of issues, great depth of control over those issues, but lacking territorial insularity and distinctiveness. Still, in most cases I argue that greater scope and depth of control will be accompanied by greater territorial insularity and distinctiveness (a clearly defined territory that benefits from autonomy but exists some distance from the central state).

autonomy the set of functional autonomies may be linked by some overarching purpose, even some unifying philosophical principle.

Administrative autonomy has typically been differentiated from legislative autonomy by the scope and depth of powers transferred. Administrative autonomy includes limited regulatory powers, but no legislative power. This article argues that functional and administrative autonomy also lack the distinctive geographic space present in most legislative arrangements, in addition to the greater scope and depth of legislative autonomy. In practice, there is some grey area between administrative and legislative autonomy (and all autonomies). Thus, in all distinctions drawn herein, we are discussing differences of degree at some point. This is noted in Figure 1 by the broken lines separating the autonomies. Corsica then might fall into a grey area between administrative and legislative autonomy, though most would argue it is more fully administrative than legislative in nature. So while Corsica has a regional assembly and the ability to consult on national laws, this ability is non-binding in nature. In the larger sense, we see all autonomies existing on a spectrum with ever increasing scope and depth of autonomy as we move from personal autonomy through to cultural, functional, administrative and legislative autonomy.

The final type of autonomy is called legislative autonomy. Scholars such as Hannum and Lapidoth insist that territorial autonomy includes a local legislature with constitutionally or otherwise deeply entrenched powers. For what Hannum

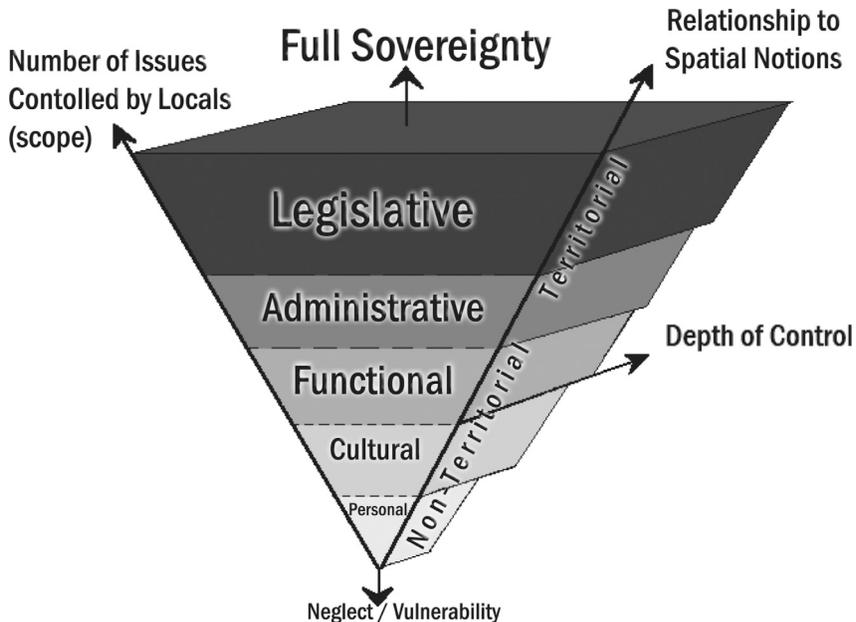


Figure 1. Forms of Autonomy.

dubs “full autonomy” (what this article refers to as legislative autonomy) he demands a “locally elected legislative body with some independent legislative authority”, “a locally selected chief executive” and “an independent local judiciary” focused on particular areas of local competence.⁸ This definition may be unnecessarily rigid especially given this article’s argument that autonomy is inherently flexible and should be defined in a similar fashion. So then the gap between administrative autonomy and legislative autonomy should really be a matter of slow transformation or degree. It is the scope and depth of local rights and powers that matter, and not whether a single attribute such as a locally elected chief executive exists. Though clearly a local legislature mitigates strongly in favour of defining an autonomy as territorial, this article argues that standing alone a local legislature really represents less than legislative autonomy. The right to pass local laws, implicit in legislative autonomy, also requires enforceability and a broad spectrum of local rights to truly rise to the level of legislative autonomy. A legislature may be argued to be a necessary condition, but not a sufficient condition for legislative autonomy to exist.

There are many autonomies that are entrenched in the sense of traditions, customs and norms which may not meet the rigid standard set forth by Hannum and others (the Isle of Man, for example). This article later argues that there exists a weak and strong form of legislative autonomy, again at opposite ends of a spectrum. Though no legislative autonomy fits cleanly into a weak or strong classification (just as few autonomies can meet all of the requirements of Hannum’s more rigid definition), we can identify autonomies as tending toward weak or strong. So a legislative autonomy existing in a distinct and insular geographic space, deeply entrenched, with an independent legislature having a wide range of competencies, its own court system and the unfettered ability to tax and spend would be considered a relatively strong legislative autonomy. The Isle of Man and the Faroe Islands come closest to meeting these specifications among the cases reviewed here. An autonomy lacking some of these points, but still having a distinct insular territory and a legislature (and probably a few other non-tier one attributes) would be considered a relatively weak legislative autonomy.⁹ So then in contrast to strong autonomies, Nunavut and the Azore Islands represent weaker legislative autonomies.

It is important to remember that one of autonomy’s greatest strengths is its adaptability, and thus attempts at hard legal definitions are not only unlikely to succeed, but are also probably unwise inasmuch as such a definition could limit the applicability of autonomy. As Suksi reminds us, “the content of autonomy will vary according to the specific needs in each case”.¹⁰ Not only is autonomy

⁸) Hannum, *supra* note 3, pp. 458–466.

⁹) The distinction between “tiers” of territorial autonomy will be discussed herein below.

¹⁰) Suksi, *supra* note 6, p. 361.

adaptable in its applicability, it can also prove malleable over time in the event of changing circumstances. This characteristic too is reflective of a non-rigid approach to autonomy. The case studies examined by others in this volume demonstrate the value of flexibility in our understanding of autonomy.

This article next examines the various forms of autonomy in detail. Again, the key distinctions between and among autonomies are the scope or aggregate number of issues over which the local region has been granted control; the depth of control exerted by the locals; and the insularity and territorial distinctiveness of the geographic region at issue. When one multiplies the number of issues controlled by the depth of local control over each issue by the insularity/distinctiveness of territory, one finds a measure of the volume of autonomy.

$$\text{Scope} \times \text{Depth} \times \text{Territorial Distinctiveness} = \text{Volume of Autonomy}$$

The volume is least significant in personal autonomy. Indeed, if an individual does not have such basic human rights, we might even not be surprised to see abuse of the individual. As one moves toward a greater number of issues controlled, greater depth of control by the locals and greater territorial insularity/distinctiveness, the volume of local autonomy increases, culminating in what could be a great deal of local control such as in the Faroe Islands. If one pushes much beyond the Faroes' state of affairs, the situation begins to imply full sovereignty. This article next examines personal autonomy.

3. Personal Autonomy

Personal autonomy implies basic human rights in the areas of civil rights and civil liberties. Per Article 27 of the International Covenant on Civil and Political Rights, these include, *inter alia*, linguistic, religious, cultural and other rights. When combined, and when fully granted, these rights grant the individual the opportunity to engage society and other individuals within society in the manner of personal choice. Personal autonomy may also include the right to use one's language before state authorities. What is typically lacking, however, is a separate administrative structure.¹¹ In this regard, the United States is instructive. An individual who is accused of a crime by the police must be granted his "Miranda rights" in an understandable form. So there are times when an interpreter (including sign language) must be brought to the accused. Incriminating statements made by the individual before he or she could understand his or her rights are typically not admissible in criminal proceedings.¹²

¹¹ See generally Suksi, *supra* note 5.

¹² *Miranda v. Arizona*, 384 U.S. 436 (1966).

4. Cultural Autonomy

Cultural autonomy differs from personal autonomy in that rights are granted to individuals on the basis of their membership in a particular group. A greater number of defined rights are granted to the minority group, rather than simply a guarantee that the minority will be able to exercise rights the entire population has in personal autonomy. There is also typically some sort of minimalist legal structure to the set of rights granted. So it may be that some representative body exists, though without decision-making abilities, outside the group in question and with a limited set of areas in which it can make decisions or rules. Quoting Asbjørn Eide, Suksi understands cultural autonomy “as the ‘right to self-rule, by a culturally defined group, in regard to matters which affect the maintenance and reproduction of its culture’”.¹³ Here, the state chooses *not* to impose its authority over the minority group on a select set of issues. Cultural autonomies are “non-territorial in the sense that their jurisdiction concerning certain subject-matters covers the territory of the whole state”.¹⁴

Two cases, that of the Sami in Finland, and that of minorities in Estonia, are instructive. The Sami in Finland have certain cultural areas set aside for limited self-rule. Their language, culture and educational systems are all protected in lesser or greater degrees (though most clearly in a territorially delineated area in the northernmost part of Finland). Language rights are guaranteed by statute, and cultural rights are as well. Education may be received in the Sami language. These rights are important for the continued survival of the Sami culture, but in no way provide for the sort of administrative order found in the more extensive forms of autonomy.

Estonia also provides for cultural autonomy, though there are concerns about the rights of Russians in Estonia. Estonia passed a 1993 law, entitled the Act on Cultural Autonomy for National Minorities, which, when combined with certain constitutional provisions and the Estonian Language Act of 1995 (as amended in January 1999), creates a degree of cultural autonomy for minorities within Estonia. Estonian law appears to reject dual citizenship for Russians. This distinction arises out of the manner in which Estonia had its independence denied by the Soviet Union and the continuing view within Estonia that Russians present a threat to Estonia’s “ethnic character”.¹⁵ But for national minorities with Estonian citizenship only, Estonian law offers a range of cultural autonomy, “such as the right to preserve one’s ethnic identity”.¹⁶ “The aim of this arrangement is to make possible for national minorities to provide education in their own language, to use their freedom of expression in their own language, and to practice their own

¹³ Suksi, *supra* note 5, p. 196, quoting Eide, *supra* note 5, p. 252.

¹⁴ Suksi, *supra* note 6, p. 359.

¹⁵ M. Suksi, *On the Constitutional Features of Estonia* (Åbo Akademis tryckeri, Åbo, 1999) p. 43.

¹⁶ *Ibid.*, p. 47.

culture and traditions”.¹⁷ Language issues are especially pertinent for minority culture and rights. Estonia provides that, where the language spoken by most of an area’s population is not Estonian, “minority languages may also be used in dealings with the state and local government authorities”.¹⁸ This includes the use of a minority language in legal proceedings. Moreover, “educational institutions established for ethnic minorities shall choose their own language of instruction”.¹⁹ Most importantly, it appears that these language rights extend to the Russian population, whatever their other rights as a minority.²⁰

Like the rights of the Sami in Finland, most national minorities in Estonia, including Russians to at least some extent, enjoy protection of their language. Educational and other cultural rights are extended to other national minorities. But for both the Sami in Finland and for national minorities in Estonia a broader type of autonomy is not currently forthcoming. Some of these minorities, such as the Sami in Finland and Russians in Estonia, do occupy a comparatively distinct territory. But for different reasons neither has managed to acquire greater autonomy. The autonomies provided them lack the aggregate number of issues as well as the depth and scope of autonomous rights provided in the functional and administrative realms. For other minorities in Estonia, even were they to assert the full spectrum of autonomous possibilities, they would not acquire their own administrative structures or the other attributes of more the detailed autonomies. Still, *de jure* cultural rights that either have been acquired, or could be acquired, do begin to approach the grey area between cultural autonomy and functional autonomy as described below.

5. Functional and Administrative Autonomy

This article divides what many call administrative autonomy into two classes: functional and administrative. As indicated above, like the other types of autonomy herein, each of these types is viewed as more developed than the previous, and thus typically encompassing a greater volume of autonomy. This article first examines functional autonomy.

Functional autonomy is argued to extend only to one area of subject matter, or perhaps to a few areas that are otherwise unconnected. So one could imagine autonomy over the area of education, the church or perhaps language. But as the number of areas rises increasingly some overarching autonomy begins to take form, one this article identifies as administrative autonomy. The autonomy

¹⁷⁾ *Ibid.*, p. 48.

¹⁸⁾ *Ibid.*

¹⁹⁾ *Ibid.*, p. 49.

²⁰⁾ *Ibid.*

Finland provides its Swedish-speaking mainland minority would be functional were it limited to only a few areas. But as it exists this autonomy seems to merge into administrative autonomy. Still, it is useful to examine the areas of competence provided here.

The Swedes in Finland, while not in a territorially distinct area (except for Åland), do tend to concentrate in the south and west of the country. Greater geographic definition and insularity could move this autonomy toward a more extensive form, while lesser definition and insularity would imply a less extensive form.²¹ The example of the Swedish-speakers in Finland fits well somewhere on the functional/administrative spectrum. Similarly, the Swedish-speaking minority is large enough to make its demands felt politically (about six per cent of Finland's population).²²

The Constitution of Finland recognizes the right of its population to receive services in another tongue. It recognizes two national languages (Finnish and Swedish) and provides individuals the right to use their language in courts and before other authorities. The principal Act of Parliament implementing this constitutional pledge is the Language Act (423/2003). Both languages must be provided for in bilingual municipalities. In fact, the language regime extends to road signs, courts and other areas of state administration. The single area of language rights then extends into assorted areas of society, thereby evidencing both greater scope and depth than a single functional area might imply (such as the right to propagate one's culture). There is a national requirement that state bureaucrats know both languages when working in a bilingual jurisdiction. Still, even as deeply into the society as these rights extend, one might still be tempted to call this functional or perhaps personal autonomy only.²³ But the Finnish example goes further.

Another area of functional autonomy provided by Finland to Swedish-speakers is in the area of education. Educational autonomy has been characterized as both vertical and horizontal, evidencing greater scope and depth than might otherwise be the case in other functional autonomies. Here, horizontal autonomy exists across Swedish-speaking and bilingual school districts. Vertical autonomy is present because autonomy ranges from the day care and pre-kindergarten up to and

²¹) It should be noted that phrases such as "a more extensive form" of autonomy or a "less extensive form of autonomy" are not intended as a normative judgment. Rather, less extensive forms of autonomy grant a reduced "volume of autonomy" (as noted on page 374 herein) while a more extensive form of autonomy simply refers to one that has a greater volume of autonomy.

²²) This is not to imply that six per cent is a magic number. Rather, when combined with Finland's relatively liberal political system and tolerant population, six per cent allows the Swedish-speakers to make themselves felt politically. I am indebted to Farimah Daftary for pointing out that far larger minorities are often denied autonomy in less accommodating states.

²³) Suksi views this as personal rather than functional. It is my view that given the related administrative structure this is functional autonomy.

including the university level. Relevant law and regulations include the Basic Education Act (628/1998), the High School Act (629/1998), the University Act (645/1997) and the Decree on Competence Requirements for Personnel in the Field of Education (986/1998). This last law has its equivalent in the Act on the Knowledge of Languages Required of Personnel in Public Bodies (424/2003).²⁴ This extensive regulatory framework seems to augur in favour of some overarching autonomous scheme. This is especially the case because not only is there great depth in the number of laws covering education, but also wide scope in that both government personnel and educational personnel are regulated in a similar fashion. The language laws, taken together, mean “that the public schools, run by the municipalities, are either unilingual Finnish-speaking or unilingual Swedish-speaking not only in unilingual municipalities but also in bilingual municipalities”.²⁵ In fact, Swedish-language education, paid for by the government, is available from day care through to the university level. Separate schools exist in bilingual municipalities. Typically, in bilingual districts this means separate administration for each language school or school boards divided into two sections. This language division is maintained all the way up to the National Board of Education. Of course, these administrative bodies have increasing rule-making authority as one moves toward the national level. This decision-making power, when combined with multiple functional areas of autonomy, seems to in total create something more than the sum of its parts. Moreover, like language, education permeates society, thus tending toward evidence of more than simple functional autonomy. The commitment to provide language in a minority’s tongue arguably evidences a broader commitment than simple functional autonomy. Thus this functional autonomy arguably nears administrative autonomy. Beyond language and education, functional autonomy is also provided in other areas.

The Finnish judicial system provides imperfect yet significant autonomy for Swedish-speakers. The majority of courts, of course, are Finnish-speaking, but both individual Swedish-speaking courts exist as do bilingual courts. In fact, a party to legal proceedings in Finland has a right in any civil or criminal matter to avail himself of either the Swedish or Finnish language. Beyond the judicial area, healthcare is to be offered in both Finnish and Swedish. In both of these last areas, difficulties have been encountered, but the commitment to providing services to the Swedish minority is demonstrated across a wide swath of issue areas, both horizontally and vertically.²⁶ It should also be noted that in the area of the administration of private forests, a Swedish forest centre has been provided for. The scope and depth of autonomy when taken as a whole seems significant. Yet, there are still additional areas of ‘functional’ autonomy provided in Finland.

²⁴ Suksi, *supra* note 5, pp. 201–203.

²⁵ *Ibid.*, pp. 202 and 203 (footnote omitted).

²⁶ On problems, *see ibid.*, pp. 213–215.

Although the idea of a democracy with a state-sponsored church is difficult for the average American to comprehend, Finland, in fact, has just such an arrangement (along with many other European countries). Consequently, administration of the Evangelic-Lutheran Church must take language and other population differences into account. The Evangelic-Lutheran Church therefore maintains separate language churches at the local level but adheres to the Language Act nationally. But territorial jurisdiction in this case is not exclusive, therefore demonstrating a key difference with more extensive forms of autonomy.²⁷

In and of themselves each of these areas provides evidence of functional autonomy. Each is more or less inclusive in its area, but alone would not extend beyond functional autonomy. However, when one views the number of aggregate issues over which autonomy is provided, and when one examines the scope and depth of autonomy in those areas, one begins to wonder whether this is not something more than functional autonomy. Additionally, when one combines these areas one sees an overarching commitment on behalf of the Finnish government, backed by laws, regulations and institutions across the board, that together indicate a broad commitment to autonomy that implies more than simply functional autonomy. This then appears to be administrative autonomy. One criticism of this view is that what we are really witnessing here is linguistic autonomy in many different variants. If this is the case, then one might argue that this is simply functional (or, in Suksi's view, personal) linguistic autonomy. But it seems that because language carries over into so many areas that it is not a single functional issue. Rather, language itself is one of the unifying themes that links various functional autonomies and helps them become administrative in nature.

The autonomy granted by Finland has application at the local, district and national level. In the Finnish case, the state provides not just *de jure* rights but *de facto* rights as well. This arguably provides greater depth to these rights (as does their international character), which mitigates in favour of recognizing this autonomy as administrative rather than simply functional. As Suksi discusses on this issue, Finland's decisions regarding its Swedish-speakers help bring Finland within the purview (as well as philosophical spirit) of the UN Covenant on Civil and Political Rights, the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education and various European norms and conventions as well. One might go further and argue that the underlying philosophical spirit of Finland's actions demonstrates a coherence to this administrative autonomy not necessarily found in functional autonomy.

Functional autonomy then typically covers only a few 'functional' or applied issue areas (schools as opposed to symbols). It is characterized by a limited

²⁷⁾ See generally Suksi, *supra* note 5.

aggregate number of issues (limited scope), by limited depth within these issues and exists in a geographic space that is less distinct and insular than in the more extensive autonomies.

Whether one characterizes the rights of Swedish-speakers in Finland as highly developed functional autonomy or immature administrative autonomy, it seems this is a form of autonomy that exists in the grey areas between the types of autonomy set forth herein. Corsica's autonomy, however, falls clearly into the administrative type. Corsica provides more local control across a spectrum of issues than does the autonomy provided for Swedish-speakers on mainland Finland. First, Corsica is both territorially more distinct and more insular than the regions inhabited by the Swedish-speakers (except for Åland, of course). Second, the Corsicans have control over a greater aggregate number of issues than do the Swedish-speakers. Third, in those issue areas, the Corsicans typically have greater depth of control. For example, although the mainland Swedish-speakers have decision-making powers through school boards and perhaps in a few other areas, the decision-making powers devolved to Corsica are greater. Moreover, Corsica has an elected regional assembly with limited regulatory powers.

This Regional Assembly of Corsica has the power to make certain decisions and regulations. Its powers are derived first from the 1991 Special Statute (as modified by the law of January 2002).²⁸ These powers were reaffirmed in Article 72 of the French Constitution and include a limited right to dissent from the central French Parliament (though this right has not been invoked). These Article 72 powers are, of course, available to all mainland French regions. The Assembly may “derogate on an experimental basis for limited purposes and duration from provisions laid down by statute or regulation governing the exercise of their powers”.²⁹ The Assembly was earlier granted the power to adapt national decrees on the basis of the 1991 Statute and reaffirmed in 2002 by statute.³⁰ This power has been exercised regularly. Furthermore, pursuant to Article 72-1 added in 2003, non-binding local referenda can be organized in Corsica, as in other French regions. Since 1991 “the (non-binding) opinion of the Corsican Assembly must be sought on proposed changes to the island's status”.³¹ This is a lesser power than

²⁸ For the 1991 Special Statute, see Act no. 91-428 of 13 May 1991, on the Statute of the Territorial Unit of Corsica (*Loi no. 91-428 du 13 mai 1991 portant statut de la collectivité territoriale de Corse*), in *Journal Officiel*, 14 May 1991, available at <www.legifrance.gouv.fr/WAspad/Visu?cid=13568764&indice=1&table=LEGI&ligneDeb=1>, visited on 13 July 2007; for the January 2002 law, see Act no. 2002-92 of 22 January 2002 on Corsica (*Loi no. 2002-92 du 22 janvier 2002 relative à la Corse*), in *Journal Officiel*, 23 January 2002, <www.assemblee-nationale.fr/11/dossiers/corse2001.asp>, visited on 13 July 2007.

²⁹ The Constitution of France (1958) as amended in 2003, Article 72.

³⁰ F. Daftary, ‘Experimenting with Territorial Administrative Autonomy in Corsica: Exception or Pilot Region?’, in this issue.

³¹ *Ibid.*, p. 307.

the right to organize a referendum, which is quite radical in the French context. Additionally, pursuant to the 1991 Special Statute, the centre must consult with the Corsican Assembly if “draft laws or decrees” will affect Corsica. The Assembly is elected by the people of Corsica (universal suffrage) to six-year terms in a two-round, proportional election with a five per cent minimum threshold in the second round of elections. In comparison to the Swedish-speakers’ decision-making capacity on mainland Finland, it is clear that Corsica has been granted greater authority, though the non-binding character of most of the Assembly’s activities would appear to make this less than legislative autonomy.³² The question is whether it has such a large aggregate number of powers, with such scope and depth, that one should consider it legislative rather than administrative autonomy. Had the reforms proposed in 2000 been fully implemented, granting the Corsican Assembly a more significant right to derogate from national laws without the need to request prior permission from the French Parliament, then arguably Corsica might have crossed the blurry line separating administrative from legislative autonomy.³³

Corsica also has a local Executive Council created by the 1991 Statute. The Council has six councillors (selected from the Assembly) and a president that implements Assembly policies. The local Executive Council, of course, has no more power than the Assembly with which it works. There is also a representative of the central government present in Corsica. The Prefect is “a political/administrative instrument to ensure respect of public order and to facilitate dialogue with the centre”.³⁴ Given the inability of the Assembly to impose its will on the centre, the real question about the depth of powers granted is what competencies have been transferred to Corsica.

The Corsican Assembly has no legislative power, but instead “regulatory powers to implement national laws and decrees as well as to define and implement policies within expanded spheres of competence (education, media, training, culture, the environment, regional planning, agriculture, tourism, fiscal matters, housing, transportation, energy, etc.)”.³⁵ The competencies transferred are not insignificant. They represent a large aggregate number, across a scope of issues, and presumably allow for regulation in some depth on these issues. It is true that Corsica is not going to implement policies directly at odds with French national policy, but it is also true that Corsica appears to have some latitude in the implementation of policy. In keeping with the French view of ‘the indivisibility of the Republic

³² The exception here is that Finland’s Swedish-speakers retain greater authority in using their language in education, as compared with the rights of Corsicans to use their native tongue in education.

³³ This paragraph’s references to Corsica rely generally on Daftary, *supra* note 30.

³⁴ *Ibid.*, p. 285 (footnote 64).

³⁵ F. Daftary, ‘Corsica’s Experiences with Autonomy: Lessons Learned’, unpublished manuscript from October 2006, p. 12.

and the equality of all citizens before the law', Corsica has generally not been allowed to develop 'asymmetric solutions'. Nor have 'collective rights' been granted to a particular segment of the French population; hence there are no rights to unique symbols such as flags in Corsica.³⁶ That said, the Assembly has been granted the right to adopt programmes for teaching the Corsican language and culture.³⁷

Still, the centre retains powers enough to make clear that Corsica has not been granted any sort of legislative autonomy, notwithstanding its distinct culture and insular geography. The centre remains "responsible for national interests, administrative supervision, and the observance of the law".³⁸ It retains control over the local government through a comprehensive and overlapping administrative regime. The centre controls internal security, the judicial system, foreign relations, social policy and most other issues.³⁹ Nevertheless, there are areas in which the periphery has managed to wrest limited control from the centre.

Corsica has an increased control over fiscal affairs since the beginning of the autonomy process in the 1980s. These rights have their origin both in the 1991 Special Statute and additional provisions from the 2002 law. Article 72-2 was later added to the Constitution (2003) to reaffirm some of these rights for all French regions. Constitutionally, laws may be passed by which tax revenues are provided to the periphery. Moreover, to the extent duties are delegated to the region, so too should the corresponding revenues.⁴⁰ By statute, local tobacco and alcohol revenues now go directly to Corsica, as do certain transportation taxes. But no other local taxes may be levied. Still, the Regional Assembly does adopt a budget. There are additional fiscal benefits for the island. Corsica is a tax free zone for employment taxes. Fiscally then Corsica is a mixed bag. It does not have the sort of fiscal independence one expects in legislative autonomy. But it does have more fiscal authority than less extensive forms of cultural and functional autonomy.⁴¹

Another example of greater local powers, one that actually hints at legislative autonomy, is local representation at the centre. Corsica is guaranteed four deputies at the National Assembly. It also elects two senators. Typically no such power can be granted unless there is at least some territorial distinctiveness to a region (*i.e.*, a territorially defined election district). The Swedish-speakers in Finland (excluding Åland) do not have such a guarantee, but Corsica does, indicating that Corsica has a more developed degree of autonomy.

The question of entrenchment is also a mixed bag in Corsica. On the one hand, its rights derive from Article 72 of the French Constitution. On the other

³⁶ See generally Daftary, *supra* note 30, pp. 274 and 275. On symbols, see Daftary, *ibid.*, p. 12.

³⁷ Daftary, *supra* note 30.

³⁸ Daftary, *supra* note 35, pp. 11–12.

³⁹ Daftary, *supra* note 30.

⁴⁰ French Constitution, *supra* note 29, Article 72-2.

⁴¹ On fiscal affairs, see generally Daftary, *supra* note 30.

hand, the 1991 Statute and the 2002 law amending it are ordinary laws subject to revision or even rejection by a simple majority vote at the National Assembly.⁴² On entrenchment then the autonomy seems on par with that of Swedish-speakers in Finland.

Taken as a whole it appears that Corsica has a more developed autonomy regime than that of the Swedish-speakers in mainland Finland. It is true that the depth of autonomy for Swedish-speakers seems greater in the area of education and language. But when one examines the overall scope of autonomy, Corsica has a far broader regime than the Swedish-speakers. In particular, the Swedish-speakers do not have an especially geographically defined or insular home area (except for the Ålanders); they have no representative assembly with decision-making powers;⁴³ and they have no independent access to revenues nor any ability to spend such revenues even if they were available. It thus appears that Corsica has a more extensive form of administrative autonomy than the Swedish-speakers in mainland Finland.⁴⁴ Of course, administrative autonomy is far less developed than even the most basic legislative autonomy.

6. Legislative Autonomy

6.1. *General*

The cases analyzed in this volume include many more cases of legislative autonomy than any other autonomy. Consequently, this section will depart from the format of the previous sections as follows: This section will discuss groups of agreements according to issue area. The article will examine four tiers of autonomy issues, the first being the most important for quasi-independent legislative autonomy, and each successive area being less important than the last. Thus, in addition to aggregate issue areas, and in addition to the depth of autonomy, the higher tiers are more important to autonomy and therefore where present add more to the overall volume of autonomy in any given case.⁴⁵ The complete absence of tier one issues probably precludes characterizing an autonomy as legislative.

⁴² *Ibid.*

⁴³ However, there exists a Swedish Assembly of Finland (<www.folktinget.fi/en/index.html>) which is basing its activities on the Act on the Swedish Assembly of Finland (1331/2003). According to Section 1(3) of the Act, the Assembly fulfils its tasks by presenting proposals, submitting opinions and by providing information.

⁴⁴ Some might argue that the Swedish-speakers actually have functional autonomy and not administrative autonomy, clarifying the distinctions with Corsica.

⁴⁵ My decisions regarding placement of issues in tiers is somewhat subjective, of course. The actual allocation of issues among tiers will vary according to the particular case. Farimah Daftary notes in some cases, such as Albanians in Macedonia, and Hungarians in both Romania and Slovakia, that education may be a tier one issue rather than a tier two issue. Symbols can also be tier one issues in some cases.

6.2. *Tier One Issues*

Tier one issues are central to legislative autonomy, including such fundamental questions as the character of the territory in question, the local legislature, the local executive, central participation in local affairs, the local judicial system, language issues, local consultation on local participation in the central legislature, entrenchment and dispute settlement. Each of these issues can be arrayed on a scale ranging from less local control to greater local control. So not only do more of these issues indicate a greater level of autonomy, but greater local control (greater depth) also indicates greater autonomy. The highest levels of legislative autonomy will include the greatest aggregate number of these issues as well as the greatest depth among these issues.

The first set of tier one issues examines how distinct the territory at issue is and how insular it is from the centre's territory. Among the cases of legislative autonomy examined in this volume, one typically sees especially distinct and insular territories, especially when compared to non-legislative cases. The Faroe Islands, the Isle of Man, the Azore Islands and the Åland Islands are, of course, all islands and therefore by definition particularly distinct and insular. But even the other case of territorial autonomy, Nunavut, is also quite distinct and insular. Though not an island region, it is in the north of Canada, geographically well defined and insular because of the region's inhospitable weather, geographic isolation and remoteness from the central markets of southern Canada. Our examples of non-legislative autonomy often also display territorial distinctiveness and insularity in comparison to most regions of the world, yet sometimes do not reach the level of distinctiveness/insularity present among the legislative examples. So, while Corsica is an island region, it is less insular than perhaps the Azores, the Faroes and the Isle of Man. Similarly, while the Swedish-speakers on the Finnish mainland, the Sami and Russians in Estonia live in more territorially distinct areas than most people, these areas are not as insular as many of our legislative autonomy examples. Of course, this is only one variable in determining legislative autonomy.

A key variable in determining the existence of legislative autonomy and emphasized by most scholars is the level of independence of the local legislature. Note that the level of independence of a local legislature is different from the areas over which it has competence (these will be discussed below). There is a great deal of diversity regarding the local legislatures' independence among our legislative autonomy cases. Even before the acts of 2005, the Faroes' government held "legislative ... powers over fields of responsibility within its purview",⁴⁶ but the acts of 2005 granted the Faroese authorities full control over all areas not

⁴⁶ Act no. 11 of 31 March 1948 on the Home Government of the Faroes, Section 4.

explicitly retained by Danish authorities, who in fact retained very little control.⁴⁷ Similarly, the Isle of Man's legislature, the Court of Tynwald, has a great deal of control over local matters. It is true that laws passed by the Court of Tynwald must seek Royal Assent or United Kingdom approval, but such approval is seldom withheld. And because of the lack of a written constitution in the United Kingdom, the norms, conventions and practices built up over the years imply that a constitutional expectation has arisen of protecting the Isle of Man's legislation. That said, if the Court of Tynwald were to go too far and attempt to deny human rights or some similar fundamental right, most believe Royal Assent would be withheld.⁴⁸ And again, similarly, the Åland Islands' parliament, while technically subject to dissolution by Finland's president, is unlikely to be dissolved. And in the unlikely case that Åland's parliament was dissolved, elections are then legally mandated by the 1993 Act. The president of Finland does retain the right to veto legislation if Åland exceeds its legislative mandate, but this basic example of separation of powers is to be expected.⁴⁹ So the Faroes, the Isle of Man and Åland all retain extensive local control over the local legislature.

The Azores has perhaps less developed local control, but still maintains a healthy degree of independence for its local legislature. In the case of the Azores, a local Legislative Assembly is provided for that may draft administrative and political statutes, subject to approval from the Assembly of the Republic (the centre).⁵⁰ Other legislation may be passed by the local Legislative Assembly if it covers an area delegated by the centre.⁵¹ This legislation over delegated areas is not subject to approval by the Assembly of the Republic, though such legislation is subject to veto. The Legislative Assembly may override this veto by "an absolute majority of all its members in full exercise of their office".⁵² Dissolution of the Legislative Assembly is a possibility, to be followed by elections.⁵³ The Legislative Assembly also has the right to "initiate laws with respect to the autonomous" region.⁵⁴

⁴⁷ Act no. 79 of 12 May 2005 on the Assumption of Matters and Fields of Responsibility by the Faroese Authorities, Section 3.

⁴⁸ On the autonomy of the Isle of Man generally, see the Department for Constitutional Affairs, *Background Briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man*, June 2006, especially Part 3, <www.dca.gov.uk/constitution/crown/bg-info-crown-dependencies.pdf>, visited on 13 July 2007. For arguments concerning the constitutional position of Isle of Man legislation and the effect of Royal Assent, see T. W. Cain, *Address to Young Lawyers Association*, 23 September 2003, pp. 5–6; and St. J. Bates, *Offshore Finance: How Safe is the Constitutional Safety Net*, Institute of Island Studies, September 2001, <www.upei.ca/~iis/art_sjb_1.htm>, visited on 13 July 2007.

⁴⁹ On the existence of the Åland Parliament, see the Act on the Autonomy of Åland (1993), Section 3, English version available at <www.lagtinget.aland/fi/eng/act.html>, visited on 13 July 2007. On dissolution by the President of Finland, see Act on the Autonomy of Åland, Section 15. On President's veto power, see Act on the Autonomy of Åland, Section 19.

⁵⁰ Constitution of the Portuguese Republic (2005), Article 226.

⁵¹ *Ibid.*, Articles 228 and 231.

⁵² *Ibid.*, Article 233.

⁵³ *Ibid.*, Article 234.

⁵⁴ *Ibid.*, Article 167(1).

Nunavut has a local decision-making body with less local control than those above, though still not insignificant control. The Legislative Assembly for Nunavut is an elected assembly entitled to make laws in a number of prescribed areas.⁵⁵ But the representative of the centre, the Governor in Council, may “disallow any law made by the Legislature or any provision of any such law at any time within one year of its enactment”.⁵⁶ The Governor in Council has not asserted this right since 1978 in the Yukon. So by political convention, the Governor in Council (*i.e.*, the federal cabinet) hardly ever uses its veto power to strike down territorial laws.

Corsica probably has the least developed assembly of all the legislative autonomies reviewed here.⁵⁷ Indeed, Corsica lacks a local legislature and instead maintains a regional assembly. This Assembly has only limited regulatory powers. The central government is not required to consult the Local Assembly even on matters that will affect Corsica, though “it *may* be consulted by the French Prime Minister on draft laws or decrees which directly affect the Island”.⁵⁸ Hence, all the legislative autonomies examined have some form of regional assembly, though the “depth” of local control varies. The local executive is similar.

This article next distinguishes between the “local executive”, and the local government. For purposes of this article, the local executive refers to the individual executive official who acts as a local governor, key executive official or other individual in whom executive powers, either formal or ceremonial, vest. The “local government”, on the other hand, refers to the executive branch of government, that branch charged with executing local laws. Many agreements divide control over these two entities, with the local executive actually owing at least some degree of allegiance to the centre, while the local government owes allegiance to the local legislature.

The most developed local executive (or perhaps the weakest representative of the centre in an autonomous region) exists in the Faroes. As with its local legislature, the Faroes have seen an increase in the depth of local control over executive powers with the enactment of the 2005 laws. Prior to this, when the 1948 Home Act governed, the Faroes were granted local executive powers only over its areas of competence.⁵⁹ As noted above, more recent law grants the Faroes executive powers in all matters except those specifically retained by the centre.⁶⁰ This is significant because it means that the locals will control all areas not specifically

⁵⁵ Nunavut Act, 10 June 1993, c. 28, <lois.justice.gc.ca/en/showfulldoc/cs/N-28.6///en>, visited on 25 July 2007, Sections 12–22.

⁵⁶ *Ibid.*, Section 28(2).

⁵⁷ It has been argued that Corsica is an example of administrative autonomy. However, Corsica also bears some of the characteristics of legislative autonomy, and is thus discussed here when those characteristics arise.

⁵⁸ Loughlin and Daftary, *supra* note 4, p. 18 (my emphasis).

⁵⁹ Act no. 11 of 31 March 1948, *supra* note 46, Section 4.

⁶⁰ Act no. 79 of 12 May 2005, *supra* note 47, Section 3(1).

retained by the centre, instead of only those areas specifically granted to the locals. The Faroes are also subject to a High Commissioner, who acts with executive powers on behalf of Denmark. But this High Commissioner holds only *ex officio* powers on the Faroes.⁶¹ So the Faroes (along with the Azores and the Åland Islands) effectively have two “competing” executives present on the islands.⁶²

The Azores arguably have the next most “local-centric” executive. The Portuguese Constitution provides that the autonomous regions (including the Azores) will have the power to “exercise their own executive power”.⁶³ At the same time, in the Azores the executive “shall be a Representative of the Republic whom the President of the Republic shall appoint and discharge from office after first consulting the Government”.⁶⁴ It is unclear whether this means consulting with the regional government or the central government. Nor is it clear that consulting requires approval by those consulted. But it is clear that this individual represents the centre, and not local interests. The Azores then seem also to have taken a middle road where they effectively have two executive authorities, one with the duty to execute local law, and the other with the duty to represent the centre.

Åland has an individual executive who represents the centre (the Governor) and an executive branch (the government) that acts on behalf of the Legislative Assembly of the Åland Islands. As noted above, it is common to have the individual executive represent the national government, as opposed to acting as an agent of the local government. Yet even here Åland has more control than most territorial autonomies in that Åland is to be consulted in the selection of the Governor. Nevertheless, the “Governor shall represent the Government of Finland in Åland”⁶⁵ though the Governor is appointed in agreement with the Åland Parliament Speaker.⁶⁶

On the Isle of Man, the local executive is the Lieutenant Governor who represents the Queen (that is, the central United Kingdom government).⁶⁷ But as noted above, the norms and conventions that have developed around the Isle of Man imply that the Lieutenant Governor, while having great power over local legislation through the requirement of Royal Assent, is seldom in a position to exercise those powers. On the other hand, the Isle of Man has no input into the selection of the Lieutenant Governor, unlike the situation of the Åland Islands.

Finally, in Nunavut, a Commissioner represents the centre. The Commissioner of Nunavut is appointed by the Governor in Council.⁶⁸ The Commissioner acts on

⁶¹ Act no. 11 of 31 March 1948, *supra* note 46, Section 15.

⁶² *Ibid.*, Section 14.

⁶³ Constitution of the Portuguese Republic, *supra* note 50, Article 227(g).

⁶⁴ *Ibid.*, Article 230(1).

⁶⁵ Act on the Autonomy of Åland, *supra* note 49, Section 4.

⁶⁶ *Ibid.*, Section 52.

⁶⁷ *Background Briefing*, *supra* note 48, Section 4.

⁶⁸ Nunavut Act, *supra* note 55, Sections 5–6.

behalf of the Governor in Council, and therefore the centre.⁶⁹ The Commissioner appoints an Executive Council on the recommendation of the Legislative Assembly of Nunavut.⁷⁰ In the end though, the role of the Commissioner can be best comprehended as a ceremonial role. In Nunavut, the real power is held by the territorial Executive Council – the Cabinet. As such, the Commissioner’s role can best be compared to the Lieutenant Governor’s role in the Isle of Man.

Although the autonomous regions’ *chief executive official* is not always beholden to local interests, it may still be that the *local government*, the branch that executes law, does in fact primarily serve local interests. In Åland, the government “shall be appointed as provided by an Act of Åland”,⁷¹ thus an indication of local control. The government of Åland has a right to issue decrees “on matters within the powers of Åland”.⁷² The Isle of Man has a local government, though the Queen’s representative is present in the person of the Lieutenant Governor.⁷³ In the Faroe Islands, a Home Government is provided for.⁷⁴ The Azores have a right to a “Regional Government” as well as to a Legislative Assembly.⁷⁵ This Regional Government “shall be politically responsible to the Legislative Assembly” though “the Representative of the Republic shall appoint its president in light of the results of the regional elections”.⁷⁶ Moreover, the President of the Republic shall appoint the other “members of the Regional Government upon the proposal of its president”.⁷⁷ So once again it is not entirely clear where the government’s loyalties lie. This is not a problem when parties are in agreement of course, but it may be a problem when disputes arise.⁷⁸ Finally, in Nunavut, as noted above, an Executive Council is provided for.

In addition to a legislature and executive, self-rule would seem to imply control over the local judiciary.⁷⁹ Here, however, central authorities have been more reluctant to relinquish control. The reasons for this reluctance may be that the centre fears locally controlled courts may not enforce certain laws, or it may simply be that the judicial system is structurally less amenable to local control. The judiciary, after all, depends upon certain fundamental laws that do not vary over a state’s territory (even if some local law may vary). Alternatively, it may be that structurally it

⁶⁹ *Ibid.*, Section 9.

⁷⁰ *Ibid.*, Section 11.

⁷¹ Act on the Autonomy of Åland, *supra* note 49, Section 16.

⁷² *Ibid.*, Section 21.

⁷³ See generally *Background Briefing*, *supra* note 48, Sections 3–4.

⁷⁴ Act no. 11 of 31 March 1948, *supra* note 46, Section 4.

⁷⁵ Constitution of the Portuguese Republic, *supra* note 50, Article 231(1).

⁷⁶ *Ibid.*, Article 231(3).

⁷⁷ *Ibid.*, Article 231(4).

⁷⁸ For the interaction among the local executive, the local government and the national government, see generally *Interpretation of the Statute of the Memel Territory (Britain, France, Italy, Japan v. Lithuania)*, 11 August 1932, PCIJ, Ser. A./B., no. 49, 1932.

⁷⁹ Hannum finds such control essential.

is not possible to give judicial control to the periphery. For example, judges may be appointed throughout the country by a central authority, and to allow locals the power of appointment could raise constitutional and certainly significant political issues. Whatever the reasons, we see far less devolution of judicial powers. In many cases these powers are not mentioned, or where they are, the centre explicitly retains authority (Åland). Both the Faroes and the Isle of Man, however, are granted some judicial control. Faroese authorities are granted the right to establish courts with “jurisdiction over all matters and fields of responsibility in the Faroes”.⁸⁰ The Isle of Man “constitutes a separate legal jurisdiction, with its own laws”.⁸¹ Nunavut has a more limited ability to control the local judiciary. Its Assembly is empowered to make laws concerning “the administration of justice in Nunavut, including the constitution, maintenance and organization of territorial courts, both of civil and criminal jurisdiction, and the procedure in civil matters of those courts”.⁸² However, the centrally controlled Governor in Council appoints judges.⁸³ Beyond this, the autonomous regions are not given control over the judiciary.

Language can also be of vital importance to an autonomous region if its population speaks a different language from the centre. Language rights are provided to three of the legislative autonomies studied here: the Åland Islands, the Faroes and Nunavut. This recognition of language rights represents both a greater scope and depth to these autonomies. In Åland, the legal local language is Swedish, though the right to speak Finnish is guaranteed, and translations to Finnish are always made available before the handful of state authorities that have jurisdiction on the Åland Islands. Swedish is spoken in schools and before public authorities of the Åland government.⁸⁴ In the Faroes, “Faroese is recognized as the principal language, but Danish shall be taught well and carefully, and Danish may be used as well as Faroese in public affairs”.⁸⁵ This then is quite different from the treatment of Finnish in Åland. Translations shall also be made available in the Faroes. In the Nunavut Territory, language is perhaps slightly less controlled by the locals. According to the Canadian Constitution English and French are official languages in the territories and cannot be diminished. However, in addition to English and French, territorial language laws have also given Inuktitut (the local language) official status to be preserved, promoted and used.⁸⁶ In other autonomous regions, either the central government will not extend official status to the local language (Corsica) or there is no local language that needs preserving (Azores).

⁸⁰ Act no. 79 of 12 May 2005, *supra* note 47, Section 4. However, this has not yet taken place.

⁸¹ Cain, *supra* note 48, p. 2. See also *Background Briefing*, *supra* note 48, p. 2.

⁸² Nunavut Act, *supra* note 55, Section 23(1)(e).

⁸³ *Ibid.*, Section 31(2).

⁸⁴ See Act on the Autonomy of Åland, *supra* note 49, Sections 36–43.

⁸⁵ Act no. 11 of 31 March 1948, *supra* note 46, Section 11.

⁸⁶ Nunavut Act, *supra* note 55, Section 23(1)(n).

Another tier one issue central to determining first whether legislative autonomy is present, and second whether it is of the strong or weak sort, is the level of local participation in central affairs. One way for a local region to protect its interests is through involvement in central affairs. The easiest way to achieve local involvement is by granting the locals input into central legislation that will affect the local region. While the Isle of Man does not have a right to involve itself in UK affairs per se, through the course of norms, customs, and conventions, there has developed a “practice not to legislate for the Islands without their consent on matters which are of purely domestic concern to them”.⁸⁷ In Åland, the centre must seek local opinion on matters affecting Åland.⁸⁸ On the one hand, the requirement of this opinion is explicit, though it is not binding, and thus the depth of this right may actually be less than the depth of the Isle of Man right. On the other hand, Åland has the right to submit initiatives for consideration by Finland’s Parliament.⁸⁹ Moreover, the Åland delegation, charged with deciding certain joint fiscal questions, has both Ålandic and mainland-Finnish membership.⁹⁰ Similarly, the Azores are guaranteed a right of non-binding consultation as well as the right to initiate such discussions.⁹¹ In the Faroe Islands, non-binding consultations are also required.⁹²

Another way to ensure that a local voice is heard in the centre is to grant the locals representation in the central parliament. In this regard, the Faroes are guaranteed two members in the Danish lower house and one member in the upper house.⁹³ One seat is reserved for the Ålanders in Finland’s Parliament pursuant to Finland’s Constitution.⁹⁴ Registered Corsican voters elect four deputies and two senators to the French Parliament. In the Canadian House of Commons (lower house), Nunavut voters elect one representative (member of parliament). Nunavut is also entitled to have one seat in the Senate (upper house). The Governor in Council nominates senators for life. These powers are more easily granted in the situation of a distinctive and insular territory.

The final tier one issue area is that of entrenchment. Entrenchment refers to the level of ease or difficulty with which the centre can change the autonomous arrangements. This notion is easily translated into the concept of lesser or greater local control as used by this article. The greater the level of entrenchment, the greater the depth of the autonomy. Although in other aspects the Nunavut

⁸⁷ Cain, *supra* note 48, p. 8.

⁸⁸ Act on the Autonomy of Åland, *supra* note 49, Section 33.

⁸⁹ *Ibid.*, Section 22.

⁹⁰ *Ibid.*, Sections 55–57.

⁹¹ Constitution of the Portuguese Republic, *supra* note 50, Articles 227(v) and 229(2).

⁹² Act no. 11 of 31 March 1948, *supra* note 46, Section 7.

⁹³ *Ibid.*, Section 14.

⁹⁴ Constitution of Finland (2000), Chapter 3, Section 25.

autonomy sometimes provides less local control than other legislative autonomies, it could be argued that through Article 4 of the Nunavut Land Claims Agreement (NLCA) its autonomy is entrenched at the constitutional level. The NLCA (of 1993) is entrenched and protected under Section 35 of the Canadian Constitution.⁹⁵ Therefore, any changes to the provisions of the NLCA, which include Article 4, require both Nunavut Tunngavik Inc. and Canadian central government approval.⁹⁶ In contrast, the Nunavut Agreement of 1993 is statutory in nature.⁹⁷ Although the 1993 Act on the Autonomy of Åland is not formally a constitutional act, it requires a two-thirds vote of both the local and central legislatures, effectively giving it the same or even better durability as a constitutional provision.⁹⁸ Moreover, the Constitution of Finland refers to Åland's autonomy in at least two different places.⁹⁹ The Isle of Man again presents an interesting issue because of the lack of a written constitution for the United Kingdom. But on the basis of well-recognized norms, conventions and customs, it can be argued that the autonomy of the Isle of Man is as firmly entrenched as any of the above autonomies. The level of entrenchment in the Azores is covered by Article 288 of the Portuguese Constitution. "This section deals with 'limits to the revision on the substance' by elevating a number of fundamental principles, such as the political and administrative autonomy of the archipelagos of the Azores and Madeira, to a level which laws revising the Constitution must safeguard".¹⁰⁰ Thus a semi-constitutional protection exists for some principles of the autonomous region. The legislative initiative in certain areas is also placed in the hands of the autonomous region, not the centre, thus providing another layer of protection. The protection does not, however, rise to the level it might. As Suksi notes, the "Portuguese Constitution does not, however, entrench the autonomy of the Azores and Madeira by way of requiring the consent of their respective legislative assemblies before constitutional amendments take place".¹⁰¹ Other areas, such as the Faroes and Corsica, have little or no entrenchment. It has been noted that the autonomous positions of both of these areas are regulated only "in legislation enacted in

⁹⁵ A. Légaré, 'The Process Leading to a Land Claims Agreement and Its Implementation: The Case of the Nunavut Land Claims Settlement', 15:1 *The Canadian Journal of Native Studies* (1996) pp. 139–163.

⁹⁶ Nunavut Land Claims Agreement (NLCA) (1993), Section 2.13.1, <www.ainc-inac.gc.ca/pr/agr/pdf/nunav_e.pdf>, visited on 22 July 2007. I am thankful to André Légaré for clarifying the constitutional structure and interaction of these laws.

⁹⁷ A. Légaré, 'An Assessment of Recent Political Development in Nunavut: The Challenges and Dilemmas of Inuit Self-Government', 18:2 *The Canadian Journal of Native Studies* (1998) pp. 271–299.

⁹⁸ Act on the Autonomy of Åland, *supra* note 49, Section 69.

⁹⁹ Constitution of Finland, *supra* note 93, Chapter 6, Section 75, and Chapter 11, Section 122.

¹⁰⁰ M. Suksi, 'On the Entrenchment of Autonomy', in Suksi, *supra* note 3, p. 158.

¹⁰¹ *Ibid.*, p. 159.

the manner prescribed for ordinary law”.¹⁰² These autonomies can be changed or even abrogated by ordinary law.¹⁰³

Suksi argues that in the end true autonomy should find its origin on the constitutional plane so as to protect the arrangement from central legislators.¹⁰⁴ However, one might consider the possibility that a long history of norms and customs respecting autonomy may evolve into effectively, if not explicitly, “near constitutional” protection. For example, both the Isle of Man and the Faroe Islands have such a long history of autonomy that it is difficult to imagine this autonomy being swept away, except perhaps in the face of profound incompetence on the part of local authorities (by legislating in violation of the European Convention on Human Rights, for example). Suksi contrasts constitutional means of entrenchment with entrenchment on the international legal plane. Here, once such rights to self-determination are granted to a minority, the “state is under an obligation not to worsen or abolish them”.¹⁰⁵ If it is the case, as many commentators argue, that international law is increasingly relevant to our world of globalization and permeable sovereignty, then we should expect the international legal protections to become increasingly pertinent in the 21st century (see tier three issues below).¹⁰⁶

The final tier one issue is dispute settlement. The agreements reviewed reveal dispute settlement mechanisms in the cases of the Azores, the Faroes, the Åland Islands and the Isle of Man. The Azores have the most local control over dispute settlement. As noted earlier, a veto by the Representative of the Republic can be overridden by an absolute majority of all members of the (local) Legislative Assembly.¹⁰⁷ Of course, ultimately, the President of the Republic has the ultimate power of dissolving the Legislative Assembly and the Regional Government in the Azores.¹⁰⁸ Regarding the Faroes, the final arbiter of disputes is a panel made up of “two members appointed by the Danish Government and two appointed by the Faroese Government and three Supreme Court Judges appointed by the president of the Supreme Court”.¹⁰⁹ The Supreme Court judges do not vote if all

¹⁰² *Ibid.*, p. 162.

¹⁰³ André Légaré and I have a running debate regarding whether the Azores or Nunavut has a more extensive form of autonomy. Légaré argues Nunavut has more extensive autonomy in part because it is more deeply entrenched than that of the Azores. I argue entrenchment is only one of many tier one issues and that taken as a whole the Azores have a more extensive autonomy. Légaré may, however, be correct. In such a case, the reader can reorder the autonomies. In either event, this debate shows how the scheme proposed by this article has utility because it provides a framework within which the autonomies can be characterized.

¹⁰⁴ See Suksi, *supra* note 99, p. 152.

¹⁰⁵ *Ibid.*, p. 164.

¹⁰⁶ For an argument on the increasing relevance of international law, see C. Ryan, ‘Sovereignty, Intervention, & Law: A Tenuous Relationship of Competing Principles’, 26:1 *Millennium: The London School of Economics Journal of Law & International Affairs* (1997) pp. 77–100.

¹⁰⁷ Constitution of the Portuguese Republic, *supra* note 50, Articles 233(2) and 233(3).

¹⁰⁸ *Ibid.*, Article 234.

¹⁰⁹ Act no. 11 of 31 March 1948, *supra* note 46, Section 6.

four of the other members agree on the dispute resolution. If, however, there is disagreement among the four, the Supreme Court judges alone decide the matter. In the Åland Islands the national Supreme Court is the final legal authority advising the President on the exercise of the veto.¹¹⁰ As for the Isle of Man, dispute settlement clearly rests with the courts of the United Kingdom's Judicial Committee of the Privy Council.¹¹¹

These tier one issues are important for determining the scope (aggregate number of issues), significance (by definition, tier one issues are among the most important), and depth of an autonomy. An autonomy with multiple tier one areas and relatively greater local control implies a strong legislative autonomy. An autonomy with fewer tier one issues with less local control implies a weaker legislative autonomy or even a non-legislative form of autonomy. This approach is less rigid than that offered by other scholars. Its flexibility, while a strength inasmuch as it allows us to more easily deal with a greater range of autonomous solutions, is also an analytical weakness in that it allows greater subjectivity among observers.¹¹² By way of example, many of the area's top scholars have certain non-negotiable defining points for "real" autonomy. For example, as noted elsewhere, Hannum demands, *inter alia*, a "locally elected legislative body with some independent legislative authority", not subject to veto in its areas of competence, a locally selected executive and "an independent local judiciary".¹¹³ It is not clear how many, if any, autonomies truly meet this standard. While certainly these points are well taken and completely defensible from a legal form of analysis, it is also clear to observers that rigid standards exclude much of what we call autonomy, both in the territorial sense and otherwise. In this regard, American Supreme Court Justice Potter Stewart's admonition regarding the definition of obscenity is telling: "I'll know it when I see it." We know autonomous arrangements when we see them, and we would rather not exclude them because they fail to meet some rigid definitional standard or other. The approach to forms of autonomy taken in this article is thus more inclusive, less rigid and, yes, admittedly less analytically objective.

6.3. *Tier Two Issues*

Tier two issues are not as inherently essential to legislative autonomy, and thus their absence is less damning to the conclusion that legislative autonomy exists. That said their presence adds further scope (aggregate numbers of issues covered) and may offer greater depth, depending on the analysis of the particular case.

¹¹⁰ Act on the Autonomy of Åland, *supra* note 49, Section 60.

¹¹¹ Bates, *supra* note 48, p. 3.

¹¹² See for example my disagreement with Légaré, *supra* note 102.

¹¹³ Hannum, *supra* note 2, p. 467.

The presence of multiple tier two issues and significant local control over these issues implies a relatively stronger form of legislative autonomy, as contrasted to fewer tier two issues and/or less local control which implies a weaker form of legislative autonomy. This section examines the following tier two issues: education; local citizenship or domicile; symbols; who funds local government; whether or not local institutions can borrow money; local taxation; freedom from central taxation; management of revenue; the right to collect duties; internal security; local election rules; and who controls undefined issues (the “catch all”).

The first set of tier two issues is the question of education. Somewhat surprisingly, fewer legislative autonomy arrangements provide rules for education than one might expect. Of the cases presented here, only the Åland Islands, the Faroes and the Nunavut have education rights. In the Åland Islands, local education will be in Swedish. Presumably, local Swedish culture will also be part of this education.¹¹⁴ What is most impressive, however, is that Swedish-language education is available from day-care all the way up to the university. Of course, one must attend a mainland university either in Finland, Sweden or some other country. The Faroes have no university-level education available, but do have educational control from elementary school up through a teachers college.¹¹⁵ In Nunavut, public schools are controlled and funded by the Nunavut government. Inuktitut, the language of the Inuit majority, is taught until grade four only. Nunavut also has college-level education and some university programmes (e.g., nursing and Northern Teacher Diploma). Additionally, private religious schools may be provided for, with attendees contributing only to funding the private schools, and not public schools.¹¹⁶

The next tier two issue is local “citizenship” or domicile, and how much it empowers the autonomy.¹¹⁷ Only the Isle of Man, the Åland Islands and the Faroes have such citizenship. The Isle of Man and the Åland Islands both have significant local control concerning local citizenship, with real benefits to the residents of each autonomous territory. In each locality, domicile or citizenship brings the right to vote and the right to practice one’s trade to the general exclusion of non-domiciles. In the Åland Islands, there is the additional right to own real property which is limited to non-domiciles.¹¹⁸ For the Faroes, mere residency

¹¹⁴ Act on the Autonomy of Åland, *supra* note 49, Section 40.

¹¹⁵ Act no. 11 of 31 March 1948, *supra* note 46, List A, 9.

¹¹⁶ Nunavut Act, *supra* note 55, Section 23(1)(m).

¹¹⁷ The term citizenship here means some sort of recognition of unique rights to local inhabitants. Citizenship and domicile will be used interchangeably. Citizenship as used here is not synonymous with national citizenship. But, as one will see, the benefits of having such local “residency” can be significant.

¹¹⁸ For Åland, see Act on the Autonomy of Åland, *supra* note 49, Sections 6–12; for the Isle of Man, see Isle of Man Government, *New Residents*, <www.gov.im/isleofman/residency.xml>, visited 22 July 2007.

instead of local or regional citizenship simply allows eligibility for political office, allows one to vote in local elections and allows for a special notation on one's passport.¹¹⁹ The Åland Islands retains the greatest local power followed by the Isle of Man. Residency in the Faroes provides no unique benefit. No other case of legislative autonomy examined here provides for special benefits for domiciles, other than voting and office holding rights.

The next tier two right concerns the right of the local region to have its own symbols, such as flags or holidays. Here, the Faroes, the Isle of Man and the Åland Islands again are the only legislative autonomies with such local control. The Faroes, the Åland Islands and the Isle of Man all have a specific right to fly their own flags.¹²⁰ No other legislative autonomy of the cases studied here has such a right. Great scope and depth is demonstrated for the cases allowing local symbols, implying a "stronger" form of legislative autonomy.

The next tier two issue is who must fund the local budget. The Isle of Man, while it must pay for its own administration and services, contributes almost no funds to the United Kingdom, with the exception of a contribution to defence funding.¹²¹ The Azores control their own regional budget.¹²² Each of these examples demonstrates significant depth of local control. The Åland Islands have nearly as much depth of control over their budget (and, as we see below, greater control in some areas). The Åland Islands are provided funds from the centre each year depending on an agreed upon formula (the equalization amount). Extraordinary grants can also be provided for non-recurring expenditures within Åland's competence,¹²³ and, in addition, there is a local tax competence, which, however, has not been used with the exception of the local government tax. The depth of the Faroes and Nunavut budget control is less than that of the previous examples. In the case of the Faroes, the islands are responsible for paying for whatever competencies they are granted.¹²⁴ While they have no responsibility for other expenditures, they also do not have the benefit of controlling such expenditures. In general, their budgetary competence is (and has been due to economic difficulties in the 1990s) more restricted than the previous examples. For Nunavut, the Commissioner (representing the centre) must recommend and approve spending.¹²⁵ Further, if the centre does grant funds, those funds can only be spent for

¹¹⁹⁾ Act no. 11 of 31 March 1948, *supra* note 46, Section 10.

¹²⁰⁾ Act on the Autonomy of Åland, *supra* note 49, Section 18(3); Act no. 11 of 31 March 1948, *supra* note 46, Section 12.

¹²¹⁾ *Background Briefing*, *supra* note 48, Section 7.

¹²²⁾ Constitution of the Portuguese Republic, *supra* note 50, Articles 227(1)(p) and 232(1).

¹²³⁾ Act on the Autonomy of Åland, *supra* note 49, Sections 45 and 48, respectively.

¹²⁴⁾ *See generally* Act no. 11 of 31 March 1948, *supra* note 46, Section 2 and List A, Section 7; *see also* Act no. 79 of 12 May 2005, *supra* note 47, Section 3(2).

¹²⁵⁾ Nunavut Act, *supra* note 55, Section 40.

the designated purpose.¹²⁶ Clearly Nunavut has less fiscal control than other legislative autonomies, though still more control than non-legislative autonomies.

Management of revenues is also subject to varying degrees of local control. The Isle of Man seems to have the greatest degree of control over its funds in that the Court of Tynwald passes its own budget without UK input. The Azores also have control over the expenditure of locally raised revenues as well as revenues provided by the central state.¹²⁷ The Faroes, in contrast, have control only over locally generated funds.¹²⁸ Åland has great local control over expenditures and is not subject to state audits. Nunavut can spend money for local purposes, but the Governor in Council apparently must recommend such spending.¹²⁹ The other legislative autonomies make no mention of local control over the budget.

With regard to borrowing money, only the Åland Islands and Nunavut have such a right. However, Åland has far more local control over the issue than does Nunavut. In the Åland Islands, bond loans are allowed by local decision.¹³⁰ Conversely, in Nunavut, approval of the Governor in Council is required, thus giving the centre control over whether or not Nunavut borrows money.¹³¹ The accumulated debt must not exceed CAD 200 million. In comparison, however, no other legislative autonomy or non-legislative autonomy reviewed here may borrow money.

Taxation, of course, is related to fiscal control. The Isle of Man, Nunavut, Åland, the Azores and the Faroes all have some right *to* local taxation. Moreover, the Isle of Man and the Åland have differing degrees of freedom *from* central taxation. The Isle of Man raises its “own public revenue and” does “not receive subsidies from or pay contributions to the UK”.¹³² Nunavut has the right to direct taxation within the autonomous territory.¹³³ But because of its limited population (about 30,000) and underdeveloped economy, it is heavily dependent on funding from the central Canadian government. Åland has the right to local taxes, and also receives contributions from the centre.¹³⁴ The Azores may tax as approved by the centre.¹³⁵ The Faroes have a right to local taxes, but not a local income tax.¹³⁶ Hence, the autonomies appear to maximize local control on the Isle of Man, in Nunavut and in Åland. The Azores and perhaps also the Faroes seem to have

¹²⁶ *Ibid.*, Section 41.

¹²⁷ Constitution of the Portuguese Republic, *supra* note 50, Article 227(1)(j).

¹²⁸ Act no. 11 of 31 March 1948, *supra* note 46, List A, Section 7.

¹²⁹ See generally Nunavut Act, *supra* note 55, Sections 23(1)(u) and 40.

¹³⁰ Act on the Autonomy of Åland, *supra* note 49, Section 50.

¹³¹ Nunavut Act, *supra* note 55, Section 27.

¹³² *Background Briefing*, *supra* note 48, Section 7.

¹³³ Nunavut Act, *supra* note 55, Section 23(1)(j).

¹³⁴ Act on the Autonomy of Åland, *supra* note 49, Section 18(5).

¹³⁵ Constitution of the Portuguese Republic, *supra* note 50, Article 227(1)(i).

¹³⁶ Act no. 11 of 31 March 1948, *supra* note 46, List A, Section 7.

relatively less control. Add to this the Isle of Man's freedom from central taxes, and we see it having the greatest local control. Åland has slightly less local control because it pays central taxes, though a tax retribution (return) is automatic and a surplus added to that is possible if Åland pays more than 0.5 per cent over the average of the entire country's tax (Finland).¹³⁷

One final way of raising money is by local duties. Nunavut has the right to certain licensing, including marriage, and such licensing presumably includes fees.¹³⁸ Åland has the power to legislate on the basis of the dues levied for Åland.¹³⁹ The Faroes have the right to collect harbour duties.¹⁴⁰

The next tier two issue concerns local security. This can be a key issue where extreme distrust exists between the minority and the centre. But many of the cases at hand are not characterized by such levels of distrust, and therefore management of internal security is often a more minor issue. The Åland Islands probably have the most local control over internal security issues. There, with certain exceptions for central prerogatives and authority, the locals control internal security.¹⁴¹ In the Faroes, too, given that the centre has not explicitly retained control over internal security, it would appear that the acts of 2005 now grant control to the Faroes.¹⁴² No other autonomy arrangements reviewed here make provision for local control over internal security.

It is also important to determine which entity shall control newly arising issues and whether the centre can cede issues to the periphery in the future, if their disposition has not been determined in the agreement. The Isle of Man essentially governs all matters except defence policy and foreign policy. When new areas come up, the Isle of Man will typically govern those as well, unless they are a function of international affairs.¹⁴³ The Faroes, too, under the 2005 legislation, have full control over all issues unless explicitly retained by the centre, of which there are only a few issues such as foreign and defence policy. In Åland, transfer of additional matters from a limited list of issues is allowed if both sides agree.¹⁴⁴ In the Azores, the "Government of the Republic and the Regional Governments may agree [to] other forms of cooperation, particularly those involving acts of delegation of responsibilities".¹⁴⁵ With certain exceptions, Article 165 of the

¹³⁷) Act on the Autonomy of Åland, *supra* note 49, Section 49.

¹³⁸) Nunavut Act, *supra* note 55, Section 23(1)(k) and (o).

¹³⁹) Act on the Autonomy of Åland, *supra* note 49, Section 18(5).

¹⁴⁰) Act no. 11 of 31 March 1948, *supra* note 46, List A, Section 7.

¹⁴¹) Act on the Autonomy of Åland, *supra* note 49, Section 18(6).

¹⁴²) *See generally* Act no. 79 of 12 May 2005, *supra* note 47, Section 1(2).

¹⁴³) *See generally Background Briefing, supra* note 48. Of course, in an increasingly globalized world, the difference between international and domestic issues is more and more difficult to determine. "Inter-mestic" is a term that was popularized during former US President Bill Clinton's term in office.

¹⁴⁴) Act on the Autonomy of Åland, *supra* note 49, Section 32.

¹⁴⁵) Constitution of the Portuguese Republic, *supra* note 50, Article 229(4).

Portuguese Constitution sets forth those issues that may be delegated.¹⁴⁶ In Nunavut, the local government can take control of additional issues as the Governor in Council designates, or under the NLCA as Canada and Nunavut Tunngavik Inc. agree. In either case, this represents the least amount of local control over this issue.¹⁴⁷

The final tier two issue concerns whether central or local authorities will have control over those issues not explicitly assigned (the “catch all” provision). As to the Faroes, since the 2005 acts all issues not explicitly retained by the centre are for the Faroese to control.¹⁴⁸ The Nunavut Act has a sort of hybrid provision, holding that all matters that are local or private will be controlled by locals, while all other matters are retained by the centre.¹⁴⁹ Finally, for the Åland Islands, the catch all provision is added to the list of competences of both the Legislative Assembly of the Åland Islands and the Parliament of Finland, which is a neutral arrangement in respect of issues not explicitly dealt with in the two lists of competences.¹⁵⁰

Within the tier two issues there are two points to note. First, the autonomy arrangements of the Isle of Man, the Faroe Islands, the Åland Islands and Nunavut come up repeatedly. These are the legislative autonomies showing the greatest scope (or aggregate number of issues) covered. With regard to depth, the Isle of Man, the Faroe Islands and the Åland Islands seem to separate themselves from the other legislative autonomies. Again and again, the most extensive local control over tier two issues occurs in these autonomies. So while the tier one issues separated legislative autonomies from non-legislative autonomies, the tier two issues seem to distinguish between strong legislative autonomies and weak legislative autonomies.

6.4. *Tier Three Issues*

Tier three issues, the final tier to be examined herein in detail, typically revolve around international issues. Tier three issues include the ability to negotiate international agreements covering only local affairs; the right to have input on international agreements; and the right to participate in regional organizations (*e.g.*, the European Union (EU)).

Only one legislative autonomy among those reviewed here has the ability to negotiate international agreements that are concerned with affairs totally under local control. The Faroes are entitled under the 2005 acts to “negotiate and

¹⁴⁶ See *ibid.*, Article 165. Article 227(1)(b) seems to limit the ability of the centre to delegate all issues in Article 165, instead creating exceptions that may not be delegated.

¹⁴⁷ Nunavut Act, *supra* note 55, Section 23(1)(x), and NLCA, Section 2.10.2.

¹⁴⁸ Act no. 79 of 12 May 2005, *supra* note 47, Section 1.

¹⁴⁹ Nunavut Act, *supra* note 55, Section 23(1)(v).

¹⁵⁰ Act on the Autonomy of Åland, *supra* note 49, Section 27(41).

conclude agreements under international law with foreign states and international organizations ... which relate entirely to subject matters under the jurisdiction of the Authorities of the Faroes”.¹⁵¹ This ability does not extend to security agreements which apply to Denmark, nor does it apply to “agreements which are to apply to Denmark or which are negotiated within an international organization of which the Kingdom of Denmark is a member”.¹⁵² It should be noted that the Faroese are also entitled to appoint representatives to Danish diplomatic missions “to attend to subject matters under the jurisdiction of the Authorities of the Faroes”.¹⁵³ More autonomies have limited input into international treaties involving the centre.

The greatest amount of influence involves local representatives having input on international agreements to which the centre is a party. So, for example, post-1951 treaties entered into by the United Kingdom are not binding on the Isle of Man unless it assents to them.¹⁵⁴ Of less depth, the Åland Islands can propose international negotiations to the centre and has the right to be kept informed. It can also reject an agreement that affects a local area of competence as to that local area.¹⁵⁵

An example of slightly less local control occurs when the local government is allowed to send representatives to international negotiations with the centre’s delegation where the issue affects the periphery. For example, representatives of Åland are allowed to participate in international negotiations with the Finnish delegation “if there is a special reason for the same”.¹⁵⁶ Representatives of the Azores are entitled to “participate in the negotiation of international treaties and agreements that directly concern them”.¹⁵⁷ The rights above imply lesser rights as well, such as the right to provide non-mandatory consultations with the centre on issues affecting the periphery.

Many of the cases examined herein are geographically located in or around Europe. Certainly the centre states are European states. Consequently, the interaction of the autonomous areas with the EU is relevant. This interaction is also of interest because it may provide some precedent as to how other non-European autonomies might interact with regional and international organizations. Like many of the European autonomies, the Isle of Man has been granted a special relationship with the EU. The Isle of Man’s special relationship stems from Article 3 of

¹⁵¹) Act no. 80 of 14 May 2005 on the Concluding of Agreements Under International Law by the Government of the Faroes, Section 1(1).

¹⁵²) *Ibid.*, Section 1(4).

¹⁵³) *Ibid.*, Section 3.

¹⁵⁴) See the discussion in *Background Briefing*, *supra* note 48, Section 9, and especially the lack of ratification by the Crown Dependencies indicating a “different intention” pursuant to Article 29 of the Vienna Convention on the Law of Treaties.

¹⁵⁵) Act on the Autonomy of Åland, *supra* note 49, Sections 58 and 59, respectively.

¹⁵⁶) *Ibid.*, Section 58.

¹⁵⁷) Constitution of the Portuguese Republic, *supra* note 50, Article 227(1)(t).

the United Kingdom's Treaty of Accession to the European Community. This provides for the free movement of goods into and out of the Isle of Man, but not of people, services or capital.¹⁵⁸ Of course, this allows the Isle of Man to protect its small economy from certain forms of competition, yet reap the benefits of free trade. Given the generally small size of the economies of the autonomies, states have often been willing to make such exceptions, at least on a temporary basis. The Åland Islands can force Finland to reveal those policy positions of the Islands that differ from Finland's positions. The Åland Islands are also entitled to have contacts with the EU. But Åland may be held responsible for violations of EU obligations. Like the Isle of Man, the Åland Islands are not required to comply with EU rules on the free movement of people, thus providing some protection for the local workforce. The Åland Protocol governs the relationship between Åland and the EU. "The protocol is included in Finland's Treaty of Accession and is thus part of the EU's laws", meaning it "cannot be altered" by the EU unless all members (27 as of July 2007) agree.¹⁵⁹ Åland retains special rights such as domicile benefits and tax exceptions. Azores representatives are entitled to "give their opinion ... in matters that concern their specific interests, on the definition of the Portuguese state's positions within the ambit of the process of constructing the European Union".¹⁶⁰ This right includes "representation in European regional institutions and on delegations involved in European Union decision-making processes".¹⁶¹ These powers demonstrate greater scope and depth of the autonomies of these particular territories.

There exists a set of tier four issues that this article will identify but not analyze due to space constraints. Here we speak of the sorts of basic competencies that may be delegated to the local region. The issues include: municipal affairs; public works; health service; public welfare; public repositories; historical preservation; natural preservation; local transportation; agriculture; hunting and fishing; entertainment; intoxicant regulation; tourism; import/export controls; radio and television control; control of land; use of minerals; aboriginal claims; defence; international security agreements; and defence funding.

7. Conclusion

This article has argued that the autonomies examined in this volume's set of case studies can be arranged on a spectrum of personal, cultural, functional, administrative and legislative autonomy. There are three key variables on this spectrum:

¹⁵⁸) See *Background Briefing*, *supra* note 48, Section 8.

¹⁵⁹) For the quote, see Loughlin and Daftary, *supra* note 4, p. 73, and in general see pp. 33 and 73. See also Act on the Autonomy of Åland, *supra* note 49, Section 59.

¹⁶⁰) Constitution of the Portuguese Republic, *supra* note 50, Article 227(1)(v).

¹⁶¹) *Ibid.*, Article 227(1)(x).

scope of control (or aggregate number of issues controlled), depth of control (how great local control is) and distinctiveness of territory. When taken together, scope, depth and territory give us the total volume of autonomy. Legislative autonomy has greater volume than administrative autonomy, which has greater volume than functional autonomy, which has greater volume than cultural autonomy, which has greater volume than personal autonomy. Note that this says nothing about the normative value of any particular autonomy. Rather, this article has attempted to visualize how much autonomy has been granted and then to label types of autonomy based on the amount of autonomy granted. This approach differs from the more rigid approach taken by some scholars such as Hannum and Lapidoth. Given that Hannum and Lapidoth were among the first to systematically study the area, they have provided the initial definitions that govern our understanding of autonomy. But as time has passed, as new forms of autonomy have been tried, as we have come to acknowledge that autonomy's greatest value may be in its flexibility, it is apparent that a redefinition of our understanding of forms of autonomy is appropriate. This article attempts to give voice to that new understanding.