

Contents

1	Introduction	1
1.1	Identifying the Sub-State	1
1.2	Identifying Governance and Research Issues	6
1.3	Method and Materials	12
1.4	Previous Research	17
1.5	Description of the Sub-State Entities Included in the Study as Core Cases	28
2	The Autonomy of Memel	39
2.1	Link to Minority Rights	39
2.2	The Elements of Autonomy in Memel	48
2.2.1	Powers	48
2.2.2	Participation	56
2.2.3	The Executive	64
2.2.4	International Relations	74
2.3	Reflections	77
3	The Relationship between Federalism and Autonomy	81
3.1	Terminological Confusion	81
3.2	The Characteristics of Federalism v. Autonomy	85
3.2.1	Classical Understanding of Federalism	85
3.2.2	Expanding the Frames of Federalism	89
3.2.3	Institutional and Substantive Dimensions Distinguished	96
3.3	The Characteristics of Autonomy v. Federalism	101
3.3.1	Indications of a Separate Category of Autonomy	101
3.3.2	Autonomy as a Distinct Category	106
3.4	The Notions of Regional State, Devolution, and Regional Self-Government	109
3.4.1	Regionalization and Autonomization	109
3.4.2	Devolution of Powers	114
3.4.3	Regional Self-Government in Europe	123

3.5	Conclusions	125
3.5.1	Compiling the Building-Blocks of Autonomy	125
3.5.2	Constructing a Provisional Definition of Autonomy	130
3.5.3	Testing the Autonomy Definition	132
3.5.4	Formulating a Definition of Territorial Autonomy	138
4	Conflict Resolution in a Self-Determination Context	
	as a General Frame for Sub-state Arrangements	141
4.1	Conflict Resolution in Different Contexts of Time and Space	141
4.2	The Åland Islands: From Risk of Secession and War to Peaceful Conflict Resolution	142
4.2.1	Domestic Preliminaries in Anticipation of International Involvement?	142
4.2.2	Decision by the League of Nations	146
4.2.3	Domestic Implementation by a Special Act	152
4.2.4	Recognition in the Constitution	156
4.2.5	Involving the Åland Islands in the European Union	158
4.2.6	Regional Citizenship and Special Rights	161
4.2.7	Different Dimensions of the Jurisdiction and Its Funding	165
4.2.8	Joint Adjudication of Autonomy Issues	170
4.2.9	Application of Norms through State Courts	171
4.3	Puerto Rico: Conflict Over the Form of Self-Determination	172
4.3.1	Acquisition of Autonomous Territory by Conquest	172
4.3.2	Compact of Government?	176
4.3.3	The Ambiguous Position in Relation to the Federation	181
4.3.4	Through Self-Determination to International Politics	184
4.4	Zanzibar: Appeasing Internal Conflict by Uniting for Sub-state Status	188
4.4.1	A Treaty as the Fundament	188
4.4.2	Disputed Amendments to the Union Constitution	192
4.4.3	Zanzibar's Own Constitution within the Union	195
4.4.4	Zanzibar in the Union Constitution	198
4.4.5	The Distinctiveness of the Zanzibari Jurisdiction	203
4.4.6	The Unimplemented Constitutional Jurisdiction and Other Joint Bodies	207
4.4.7	Unclear Funding Arrangements	209
4.4.8	The Category of Zanzibari and the Special Rights	210
4.5	Hong Kong: Resolving a Colonial Conflict through Autonomy	214
4.5.1	Treaty-Based Decolonization	214
4.5.2	The Broad Constitutional Frames for Autonomy	217
4.5.3	The Basic Law as an Autonomy Statute	224
4.5.4	Guarantee of Capitalist Economy and Common Law to Residents	229

4.6 Scotland: Avoiding Even a Remote Possibility of Conflict by Granting Autonomy	234
4.6.1 Deepening the Pre-existing Treaty-Based Autonomy	234
4.6.2 Devolution by Referendum	236
4.6.3 A Constitutional Convention as the Safeguard	240
4.6.4 Parliamentary Sovereignty and Constitutional Review	242
4.7 Aceh: Resolution of Internal Conflict by Internal Agreement	244
4.7.1 Particular Form of Decentralisation	244
4.7.2 A Special Solution for a Special Place	250
4.7.3 A Multi-layered Jurisdiction	256
4.7.4 Islamic Characteristics of the Jurisdiction	262
4.7.5 Rights of Persons, Residents and Citizens	265
4.8 Reflections	269
5 The Distribution of Powers	277
5.1 From Enumeration through Residual Powers to Open Arrangements	277
5.2 Hong Kong: Enumeration (or Delegation under the Plenary Powers of the National Legislature?)	279
5.2.1 High Degree of Autonomy	279
5.2.2 Complete Legal Powers by Enumeration in Almost All Areas	282
5.2.3 Possibility to Expand National Powers and to Return Hong Kong Legislation	286
5.2.4 Interpreting the Basic Law: $1 + 1 = 1?$	291
5.3 The Åland Islands: Two Enumerations	295
5.3.1 From Residual to Enumerated Powers	295
5.3.2 Competence of Åland Mainly in Public Law	298
5.3.3 Acts of Mixed Nature and Acts of Reference	304
5.3.4 Bipolar Competence Control	306
5.3.5 Making Ålandic Norms and Consent Decrees: Some Peculiarities of Norm Hierarchy	311
5.4 Scotland: Lawmaking Against the Background of Parliamentary Sovereignty	314
5.4.1 The Pledge of the Sewel Convention	314
5.4.2 The Area of Residual Powers Dotted with UK Competence	316
5.4.3 Multiple Competence Control of the Scottish Powers	322
5.4.4 Consenting to Lawmaking by the UK Parliament within Scottish Powers	333
5.4.5 Joint Discussions as a Mechanism for Resolving Competence Issues in Advance	337
5.5 Zanzibar: Clear Residuality but Unclear Implementation	343
5.5.1 Federal-Type Residual Competences	343
5.5.2 The Principle of Duality	345

5.5.3 Problems in Implementing Competences	349
5.5.4 Weak Forms of Consultation and Consent	351
5.5.5 Two Lawmakers with a Joint Pool of Sovereignty	352
5.6 Aceh: Unclear Implementation of the Settlement	355
5.6.1 Residual Powers as the Starting Point?	355
5.6.2 Large Amount of Overlap to Be Negotiated	359
5.6.3 'Consultation and Consent' or 'Consultation and Consideration'?	363
5.6.4 Bylaws Issued under National Law and National Standards as the Normative Tool	366
5.7 Puerto Rico: Residual Powers under Pressure of the Plenary Powers of Congress	370
5.7.1 Matters Not Locally Inapplicable: Vast Area of Concurring Powers	370
5.7.2 Treated as a State in the Federation	374
5.7.3 Attenuated Power to Make Constitution and Laws	380
5.8 Reflections	385
5.8.1 Construction of Separate Legal Orders	385
5.8.2 Accommodation of Different Legal Systems through Sub-state Jurisdictions	392
6 Participation in Decision-Making	395
6.1 Elections, and Some Referendums	395
6.2 The Åland Islands: Legitimacy from Regional Citizenship	396
6.2.1 Two Levels of Participation and Different Constituencies ...	396
6.2.2 Proportional Elections with Political Groupings	398
6.2.3 The Use of the Referendum in the EU Context	401
6.2.4 Presidential and Parliamentary Elections	403
6.2.5 Initiatives to the National Parliament	405
6.2.6 Expanding Participation in Local Government	408
6.3 Aceh: Creating a Regional Polity	410
6.3.1 Participation at the Core of the Peace Agreement	410
6.3.2 Local Political Parties	411
6.3.3 Elections Administered within the National Frame	416
6.3.4 Post-conflict Elections of the Governor	417
6.3.5 Post-conflict Representation through an Elected Body	422
6.3.6 Local Government and National Elections	427
6.3.7 Other Forms of Public Bodies	430
6.4 Scotland: The British Electoral Tradition Modernized	431
6.4.1 Elections, Referendums and Consultations	431
6.4.2 Combining Majoritarian and Proportional Elections Under UK Law	433
6.4.3 National Parties	437
6.4.4 Counting Votes in the Additional Member System	439

6.4.5	The Scottish Parliament in Relation to the UK Parliament: The West Lothian Question	442
6.4.6	Elections at Other Levels: UK, Europe, and Local Government	444
6.5	Puerto Rico: Participation Confined to the Territory	446
6.5.1	No Representation at the Federal Level	446
6.5.2	Bicameral Representation through Voting in a Mixed System	448
6.5.3	Party Constellations According to the Status Issue	452
6.5.4	Referendums on the Status Issue, Constitutional Amendments and Other Matters	457
6.6	Zanzibar: Troubled Forms and Practices of Participation	465
6.6.1	From One Party to Two Parties and Beyond (or Back?)	465
6.6.2	The Right to Vote in Divisive Elections	468
6.6.3	Electing the Powerful Executive	473
6.6.4	Over-Representation at the National Level	475
6.6.5	Two Different Election Commissions	477
6.7	Hong Kong: Participation Contained	479
6.7.1	Towards Universal Suffrage	479
6.7.2	Elections through Geographical and Functional Constituencies	481
6.7.3	Indirect Election of the Chief Executive	489
6.7.4	Elections in Local Government and within the Indigenous Community	492
6.7.5	Selection of Delegates to the NPC and to the NPCSC	494
6.8	Reflections	497
7	The Executive Power	507
7.1	Both Parliamentary and Presidential Governance	507
7.2	The Åland Islands: Normal Parliamentarism with a Slight Modification	508
7.2.1	Implementing Three Legal Orders	508
7.2.2	Political Accountability	510
7.2.3	The Implementing Organs of the Government	512
7.2.4	Contacts with the National Government	514
7.2.5	The Role of the Language	518
7.3	Scotland: Traditional Parliamentary Environment	522
7.3.1	Horizontal Political Accountability	522
7.3.2	Integration with the National Government	526
7.3.3	Implementation of Devolved Competence	529
7.4	Zanzibar: Presidential Governance in a Power-Sharing Context	533
7.4.1	Presidentialism with the Opposition Involved or Revolutionary One-Man Government?	533
7.4.2	Impeachment and Accountability	535
7.4.3	Particular Governmental Structures	538
7.4.4	Regional and Local Government	541

7.5 Aceh: Regional Authority and National Presence through the Governor	543
7.5.1 Broad Powers of the Governor	543
7.5.2 Link to National Government	545
7.5.3 Complicated Impeachment and Weak Forms of Accountability	547
7.5.4 The Upward Connection of Governmental Departments	549
7.6 Puerto Rico: The Model of the National Executive Duplicated	551
7.6.1 Executive Powers Detailed in the Constitution	551
7.6.2 Impeachment in Its Original Form	552
7.6.3 General and Special Inter-governmental Contacts	553
7.7 Hong Kong: National Interest in the Executive	554
7.7.1 Little Horizontal Accountability	554
7.7.2 Impeachment in the Hands of the National Government	557
7.7.3 The Chief Executive as the Focal Point in the Executive Council	559
7.7.4 Hierarchically Led Administrative Structures	561
7.7.5 Reciprocal Administrative Presence of the Central Government and the HKSAR	564
7.8 Reflections	567
8 International Relations	575
8.1 From Exclusion to Inclusion	575
8.2 Puerto Rico: No Involvement in Foreign Powers	577
8.3 Zanzibar: Clearly a Union Matter	579
8.4 Aceh: Low-Level Activity Permitted	583
8.5 Scotland: Some Involvement	585
8.6 The Åland Islands: Involvement with Some Problems	590
8.6.1 Conclusion and Implementation of Treaties	590
8.6.2 The Åland Islands in the European Union	593
8.6.3 Breaches of EU Law	599
8.6.4 Pecuniary Liability for Breaches of Treaty Law	603
8.6.5 Bringing in Autonomous Territories in Nordic Cooperation ..	606
8.7 Hong Kong: Competence Granted	611
8.7.1 Broad Competence in International Relations	611
8.7.2 Distribution of Powers in the Conclusion and Implementation of Treaties	613
8.7.3 Relations with States, Inter-governmental Organizations and Non-governmental Organizations	615
8.8 Reflections	618
9 Concluding Remarks	623
9.1 Confirming the Definition of Territorial Autonomy	623
9.2 Applying the Elements of Autonomy	626

9.3 Conflict-Resolution and Self-Determination	634
9.4 Various Autonomy Positions	636
9.5 Specific Reflections Concerning the Sub-state Entities	639
9.5.1 Particular Issues in Particular Places	639
9.5.2 Zanzibar	640
9.5.3 The Åland Islands	643
9.5.4 Hong Kong	647
9.5.5 Scotland	649
9.5.6 Puerto Rico	652
9.5.7 Aceh	654
9.6 General Trends of Sub-state Organization	656
Appendix	661
References	663
Index	677

Sub-State Governance through Territorial Autonomy
A Comparative Study in Constitutional Law of Powers,
Procedures and Institutions

Suksi, M.

2011, XXXIII, 685 p., Hardcover

ISBN: 978-3-642-20047-2