Power-sharing Options in Complex Societies – Possible Lessons from South Tyrol for Young Democracies on Ways to Protect Ethnic Minorities at a Regional Level

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Abstract

The institutional arrangements aimed at the protection of cultural and linguistic rights in South Tyrol are some of the most unexplored yet thought provoking examples of minority protection in the world. Several aspects of the South Tyrolean experience are notable for young democracies, namely: (a) the asymmetrical nature of the powers and functions of South Tyrol vis-à-vis other Italian regions; (b) the unique power-sharing arrangements between the respective communities; (c) the extensive autonomy that is granted to linguistic communities on a non-territorial basis; and (d) the unique way in which community/group association is determined. This article gives an in-depth analysis of the South Tyrolean institutional arrangements and identifies potential lessons for consideration by young and emerging democracies. South Tyrol demonstrates how regionally-based power-sharing and autonomy arrangements can be pursued without having to replicate similar institutions in other regions or in national institutions. Most importantly, South Tyrol shows how a balance can be struck between power-sharing and community autonomy, and how communities that live intermingled can exercise self-government over their culture, education and language.

Keywords: South Tyrol; asymmetry; protection of minorities; autonomy; non-territorial autonomy; power-sharing; language; cultural and religious rights; state/regional constitutions

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Young democracies with ethnically divided populations often experience the strain of simultaneous centrifugal and centripetal forces tugging at the fabric of society. The centrifugal force demands recognition of diversity, while the centripetal force requires national unity. Governments tend to respond as follows: on the one hand, centripetal policies are pursued, such as nation-building programmes, development of common identity, emphasis on integrative patriotism, and highlighting the importance of national unity; on the other hand, pragmatism often dictates that some policy allowance also be made for centrifugal forces by recognizing regional and local diversity, allowing for asymmetry between regions, pursuing various minority protection arrangements, and accommodating of ethnic diversity at local and regional levels.

In constitutional terms these dynamics can be harnessed by formal and informal power-sharing and autonomy institutions and processes. The experiences of democracies such as Switzerland, Belgium, India, Nigeria, Ethiopia, Malaysia, Indonesia, and South Africa are notable in this regard.

Finding a balance between these seemingly divergent forces is, however, not easy. Experience shows there is often an underlying fault line in ethnically divided societies between recognizing diversity and building national unity. Movements, stresses and fractures of the fault line can erupt and bring uncertainty and instability, sometimes quite unexpectedly. Well established democracies often "manage" rather than "solve" the interface between accommodating diversity.

It is particularly in the area of institutional development[1] at a subnational level in federations and decentralized unitary systems, and the way in which regional ethnic minorities are treated, that young democracies frequently struggle. The experiences of countries such as Ethiopia, South Sudan, Sudan, Nepal, Indonesia, Nigeria, Myanmar, Indonesia, Kenya and several states in the Middle East are notable in this respect. Since minorities frequently experience being disenfranchised, excluded and neglected particularly at a sub-national level, the risk of conflict within regional and local areas is often high. The potential of fault-line disruption is illustrated by the instability and violence that so often accompany the creation and demarcation of local and regional government and demands by local minorities to have their "own" local or regional government so as to look after their own community through institutions of government.[2]

In this article consideration is given particularly to the institutional arrangements that have been implemented in the Italian province of South Tyrol to accommodate the aspirations of the three main linguistic communities (German, Italian and Ladin) within provincial institutions. The South Tyrolean experience is potentially of relevance to other countries with deeply divided societies since South Tyrol shows how regionally-pursued power-sharing and autonomy arrangements can reduce and prevent underlying ethnic tension which, if not properly managed, could have threatened the stability of Italy.

The autonomy[3] and power-sharing arrangements in South Tyrol are particularly important since the settlement has been endorsed by the United Nations, the European institutions, Austria and Italy. The arrangements are credible and legitimate in international law, and the benefits of home-grown solutions based on the needs and circumstances of a particular country are highlighted by the stability that has followed years of unrest and dissatisfaction in South Tyrol.

The South Tyrolean arrangements have been described as the "envy" (Alcock, 2001) of other indigenous groups and ethnic minorities that seek a form of regional autonomy and power-sharing.

In this article, particular attention is focused on the institutional arrangements that have been developed in South Tyrol and an assessment is given of the merits of those from the perspective of comparative law. Leading into the discussion about institutional arrangements of South Tyrol, consideration will be given to various power-sharing techniques within the context of protecting minorities. The discourse between forced and voluntary coalition government and how the issue is approached in South Tyrol are highlighted. Finally, the power-sharing and autonomy institutions of South Tyrol are analysed and an attempt is made to distil lessons that may be of relevance to self-government and power-sharing at a regional level in young and emerging democracies.

1. Protecting minorities

International law recognizes various techniques to protect minorities (De Villiers, 2012: 89)[4] at national, regional and local levels.[5] Examples of widely used techniques are: decentralization to subnational governments; recognition of traditional authorities and customary law; drawing regional and local government boundaries consistent (as far as is practicable) with living patterns of ethnic communities; create administrative sub-regions for administrative and management purposes to coincide with ethnic community living patterns; special seats or

quotas for ethnic minorities in legislative assemblies; bicameral legislatures; human rights instruments that recognize individual and collective rights; and power-sharing arrangements in the executive. While constitutional negotiations in emerging democracies often focus on the composition of national institutions, South Tyrol demonstrates how regional and local institutions may also offer to minorities some form of localized autonomy and power-sharing opportunities.

South Tyrol has "asymmetrical" powers which have allowed the province to embark on a wide range of institutional, administrative and policy measures to devise an advanced system of group rights and minority protection to benefit the German, Italian and Ladin language communities in a manner that is not replicated in other regions of Italy. Asymmetry in South Tyrol presents itself in three facets: firstly, decentralization of expanded legislative and administrative powers and functions to the province on a scale that exceeds the autonomy of other regions and provinces in Italy;[6] secondly, establishment of unique political and institutional arrangements that regulate the relationship between South Tyrol and national authorities in Rome; and, thirdly and most relevant for purposes of this article, development of special institutional arrangements *within* the province that are aimed to accommodate and protect the population diversity of the province through power-sharing and community autonomy.

The essential institutional elements of the South Tyrolean power-sharing and autonomy arrangements for the purposes of this article are:

1)   special, asymmetrical autonomy of the province vis-à-vis the other regions and Rome;

2)   community (separate) representation for the German, Italian and Ladin communities in the legislative processes of the province;

3)   autonomy for the German, Italian and Ladin communities in regard to the management of their education, culture, language, traditions within the province;

4)   joint decision-making and power-sharing in government between the three communities in matters of common interest within the province; and

5)   language parity in governmental, judicial and public bodies.

The minority-accommodation arrangements in South Tyrol have been described as follows:

> The foundation upon which South Tyrol's institutionalised ethnic governance rests is power-sharing between its main linguistic groups and a set of sophisticated balances between contracting parties. The entire institutional design of the Autonomous Province of Bolzano/Bozen is based on separation and forced cooperation of the two main language groups. (Alber and Zwilling, 2014: 46)

Alcock shares this positive assessment of South Tyrolean institutional arrangements and comments that the balance obtained between self-determination and protection of language identities 'make the history of the South Tyrol Autonomy very illuminating in the search for solutions in other areas of Europe [and beyond] with culturally divided communities' (Alcock, 2001: 1).

Regional-based power-sharing and autonomy arrangements are of course not unique to South Tyrol. In a world where the complexities of the composition of populations have necessitated creative solutions for democratic governance, several countries have implemented regional-based solutions in an effort to retain national unity and to prevent secession. Refer for example in this regard to: the special autonomy of Quebec in Canada; the accommodation of Sharia law in Aceh of Indonesia; the creation of half-cantons in Switzerland; the proposed institutional developments in Bangsomoro in the Philippines; the power-sharing and autonomy arrangements in Brussels; and the accommodation of traditional leaders in Malaysia and some of the South African provinces. These examples point to the potential benefits of pursuing tailor-made solutions at regional level, without necessarily enacting similar institutions at the national level.

2. Constitutional background of South Tyrol

South Tyrol ("Alto Adige" in Italian) is an autonomous province[7] in the north of Italy where it borders Austria and Switzerland. The capital city is Bolzano (Italian) or Bozen (German). The province combines with another province, Trentino, to make up the autonomous region called Trentino/Alto Adige South Tyrol. Constitutionally, the "region" is higher in the governmental hierarchy within Italy than the "province", but practically as a result of the autonomy arrangements, the scope of authority of the region has become reduced to very few areas of decision-making with the emphasis being on the autonomy of the two provinces of South Tyrol and Trentino.[8]

The population of South Tyrol is about 519,000, with the main population groups being German (69.41%), Italian (26.06%) and Ladin (4.53%), with the remainder speaking other languages as a result of mostly recent immigration.[9]

The German speaking community, which is a minority in Italy, is a majority in South Tyrol, while the Italian speaking community is a minority in South Tyrol although it forms part of the majority nationally (Alcock, 1970). According to the 2011 census, 103 of the province's municipalities have a majority German population (mainly rural), 8 are majority Ladin (mainly rural around the two Dolomite valleys), and 5 are a majority Italian (mainly urban).

South Tyrol used to be part of an historic area called the County of Tyrol under the Austro-Hungarian Empire, but during the First World War an administrative region was created over the area which today is referred to as South Tyrol. Italy annexed South Tyrol in 1919 pursuant to the Peace Treaty St Germain and by doing so separated it from the remainder of Tyrol, which ultimately became part of Austria.

In the lead up to the Second World War an agreement was reached between Hitler and Mussolini according to which a limited time was given for the German speaking South Tyrolese to relocate to Austria or Germany (and other parts of the Third Reich such as Ukraine), after when the remainder of the German community in South Tyrol would be left to the unhindered control and dominance of Mussolini. The process of relocation of Germans from South Tyrol was interrupted by the outbreak of the Second World War. This meant that the German community became entrapped in fascist Italy in 1922. Although the area of South Tyrol had a predominantly German speaking population, the rise of fascism in Italy saw the German language being outlawed in all but the private spheres, with an emphasis on the complete Italianization of the area and its people. The Italianization included all public spheres, such as education, official language, language of administration, signage of places, roads and towns, names of persons, and the media. Even the use of the name "South Tyrol" was declared an offence and German speaking media was prohibited. Mussolini also supported massive domestic migration programmes to encourage Italians from other parts of Italy to move in large numbers to South Tyrol to speed up the diminution of the German language and identity.

At the conclusion of the Second World War it was agreed by the Allies that South Tyrol would remain part of Italy, but a compromise was reached at the same time that South Tyrol would receive special autonomy. An Austrian-Italian agreement, the De Gasperi-Gruber Agreement, was entered into with the blessing of the United Nations, Italy and Austria.[10] The

Agreement was annexed to the Paris Treaty and hence received binding status in international law. Pursuant to the Paris Treaty, the special Region Trentino-Alto Adige was created in 1948 (the name "South Tyrol" was not used) pursuant to the Autonomy Statute (Caciagli and Zuckerman, 2001).

South Tyrol therefore found itself within the Italian-dominated Region of Trentino Alto Adige/South Tyrol in which Italian was the majority language. During the next 15 years, dissatisfaction with the state of affairs increased in the ranks of the German community due to their ongoing marginalization, lack of autonomy, absence of power-sharing, and continued Italianization of their culture. Eventually, the frustration with this first phase of autonomy boiled over with public protestations, violence, and even the planting of bombs. Most of the 1960s were spent with Austria as the kin-state of South Tyrol attempting to improve the constitutional status of the (German) South Tyrolese, the Italian government conceding that special autonomy for the province was meritorious but with a lack of agreement about the details of how to redress the situation, and the South Tyrolese German community hardening their stance to seek autonomy for the province, amalgamation with Austria, or as a last resort, secession and sovereignty (Magliani, 2000).

Although, with the benefit of hindsight, the first phase of the Autonomy Statute during the 1950s was an important milestone in the process of South Tyrol becoming an autonomous province, the first decade after the enactment of the Statute also saw frustration with the implementation thereof, concern about the lack of resources, and policies primarily directed to the benefit of the Italian community.

Austria, which acted as kin-state for the German community pursuant to the Paris Treaty, approached the United Nations in 1960 with its concern that the autonomy of South Tyrol was not being implemented as had been anticipated under the (first) Autonomy Statute. The United Nations responded with Resolution 1497 (XV)[11] entitled 'Status of the German-speaking element in the Province of Bolzano (Bozen)', in which all parties were encouraged to enter into negotiations to settle autonomy arrangements for the province. The negotiations lasted around 9 years and ultimately concluded with a revised (second) Autonomy Statute being enacted in the early 1970s (Bull and Pasquino, 2007).[12]

The revised Autonomy Statute, in effect, gave to the German community what they had been demanding since the end of the Second World War: autonomy for the province called "South Tyrol" and the right to implement unique power-sharing and self-government

arrangements of relevance to the communities of the province. As a result of the second Autonomy Statute, South Tyrol gained substantial autonomy over a wide range of range of legislative areas. German was restored with Italian as languages of government, education and administration, the province could enact power-sharing arrangements between the German, Italian and Ladin communities, and the province had a direct relationship with Rome in regard to implementing the Autonomy Statute and to raise any other issues of importance to the two governments (Alcock, 2000).

Four essential elements contributed to the creation of the autonomous province of South Tyrol: firstly, the Italian Constitution had already acknowledged the autonomy of the "special" regions of Italy and therefore the principle of asymmetry (see below) had a political and constitutional foundation in Italian constitutional law; secondly, the role of Austria, which derived from the Treaty, as kin-state meant that the German community of South Tyrol received valuable external assistance and support to develop their proposals for autonomy and to put pressure on Rome and the United Nations to reach an agreement; thirdly, the involvement of the United Nations, the European institutions and the International Court in The Hague meant that the autonomy arrangements received credibility and legitimacy in international law; and fourthly, the territorial integrity and sovereignty of Italy were acknowledged by all parties which meant that ultimately the South Tyrolean solution was a domestic matter for Italy and autonomy for the province did not pose a risk of secession.

3. Potential relevance of South Tyrol to young democracies

It is axiomatic that the institutional development of each country is unique and should be assessed within the context of the particular case study. Constitutional comparison nevertheless enables the discerning observer to assess the institutional arrangements of case studies and to distil potential lessons or principles that may bear relevance to other countries that face similar challenges.

The South Tyrolean experience is particularly relevant to young and emerging democracies since the province demonstrates how ethnic diversity can be accommodated at a regional level *even* if similar minority protection-measures are not adopted at the national level. Although the Constitution of Italy recognizes as a general obligation the rights of minorities,[13] the type of institutional arrangements that have been enacted in South Tyrol do not have precedent at the national institutions or in other regional arrangements in Italy.

The experiences of South Tyrol may for three reasons in particular be relevant to young democracies:

Firstly, the special autonomy of South Tyrol is relatively recent in origin (post Second World War, but more particularly since the early 1970s) and has been facilitated by a combination of factors in international law, European efforts to protect minorities, and Italian political dynamics. The United Nations had a direct role to facilitate the minority-protection arrangements of South Tyrol through its encouragement of parties to compromise, and that involvement by the international community adds credibility and legitimacy to the power-sharing and autonomy arrangements of the province in a world where there is often reluctance to pursue formal power-sharing arrangements.

Secondly, the asymmetrical autonomy of South Tyrol bestows special and expanded powers and functions on the province. These special powers have had a twofold impact: firstly, it curtailed demands for secession by South Tyrol, and secondly, it cemented the position of South Tyrol as being part of Italy.[14] The recognition of the special place of South Tyrol *within* Italy has reduced rather than fuelled secessionist demands. The concern that is sometime expressed in literature that asymmetry may encourage secession has not materialized in South Tyrol, where the integrity of the Italian state has been secured as a result of the asymmetry that applies to South Tyrol.

Thirdly, unique constitutional, institutional and policy arrangements have been enacted *within* South Tyrol to provide a range of mechanisms for minority protection between the German, Italian and Ladin communities. Those arrangements (as discussed below) include power-sharing and autonomy measures.

The Tyrolean experience demonstrates that regional autonomy, asymmetry and regionalized power-sharing and cultural autonomy arrangements can potentially assist young democracies to devise institutional systems at the regional level that accommodate and foster local diversity while at the same time building national unity.

4. The dichotomy of "forced" power-sharing

Statutory required power-sharing and coalition arrangements, such as those enacted in South Tyrol, are not without controversy. Scholars in political science, constitutional law and conflict dynamics have long been at loggerheads about the merits and risks of statutory imposed coalition government, be it for the interim or as a permanent feature, in deeply divided societies.

There are, in general, two main schools of thought (with many sub-themes) in response to the question whether power-sharing should be mandated by law or whether power-sharing should rather arise spontaneously from informal coalition agreements (McCulloch, 2014).[15]

The one school of thought contends that in countries with deeply divided societies, a range of constitutional and other statutory guarantees should be considered to secure participation of minorities in decision-making, and in particular for minorities to be represented in the executive as part of a "forced" coalition government (Lijphart, 1977; Lijphart, 1999: 200-215; Lijphart, 2004: 96; Lijphart, 2007). This approach is often referred to as the "consociational" school. Proponents emphasize that in heterogeneous societies individuals are inclined to vote in accordance with ethnic affiliation and as a result, post-election guarantees for power-sharing between groups must be included in a constitution or other legal instrument since individuals are likely to vote for their "own" ethnic dominated party. South Tyrol regards itself as firmly within the category of the consociational school (Larin and Roggla, 2016)[16] since the power-sharing arrangements within the province are mandated by statute and those arrangements probably would not have come into being had it not been for the force of legal prescription.

The other school of thought, often referred to as the "integrative" school, contends that although power-sharing is important in deeply divided societies, the power-sharing arrangements should not be based on formal, statutory requirements since such formal arrangements may cause deadlock and discourage moderates from cooperating across ethnic lines prior to elections (Horowitz, 2007: 960; Horowitz, 2008: 1215). This school prefers that informal incentives should be built into the constitutional, political and electoral system to encourage coalitions and cooperation *prior* to an election without necessarily enforcing coalitions and/or vetoes by way of legal prescriptions after an election (Horowitz, 1991; Horowitz, 1993: 14). The electoral system, in particular, should according to this school be designed to encourage interethnic cooperation before and during elections rather than to reward interethnic competition, separation and conflict. According to the integrative school, the process of coalition forming already starts in the pre-election phase and rewards must be built into the system to benefit those parties who establish the most effective alliances by way of the electoral system, electoral alliances and the structure of political parties (Horowitz, 1985).

In essence, those who seek formal constitutional or legal guarantees to protect minority groups aim at post-electoral arrangements, whereby the respective groups are brought together *after* they had elected their own representatives, while those who support informal incentives

prefer to facilitate electoral compromise and coalition building *before* the election occurs so as to ensure that a "balanced ticket" is put up for election.

The aim of this article is not to participate in the theoretical discourse of this debate. Suffice to note that if one moves beyond the realm of constitutional law theory to constitutional and political practice, the truth about minority protection and power-sharing is probably nestled in a combination of the two approaches. Both schools of thought support power-sharing in deeply divided societies, albeit that they arrive through different pathways at power-sharing arrangements. Both schools also display shortcomings. Neither school has been able to develop a predictive model to establish in advance what the outcome of their theory would be in any given case study: The consociational-school runs the risk of "freezing ethnic identities" by way of forced arrangements, while on the other hand the "integrative" power-sharing school arguably places too much reliance on the "goodwill" of the majority, which offers little or no long term comfort or security to minorities in a hostile environment. Both schools use their hypotheses to explain in retrospect the reasons for the success or failure of arrangements in a particular country, but ultimately both schools have to concede that the question whether statutory obligated or voluntary power-sharing is applicable to any given society depends on the history, dynamics, political will and general circumstances of each case study.

South Tyrol has opted for a statutory imposed, "forced" coalition arrangement in the manner of the consociational school, whereby the Autonomy Statute of South Tyrol guarantees the autonomy of the respective communities and also sets up power-sharing mechanisms between the three communities. The success of South Tyrol in applying, generally speaking, the consociational principle has been described as follows:

> The main argument is that the "success" of the South Tyrolean model lies in a system of tolerance established by law in the sense of a 'mix' of legal instruments and institutions which preserve the different identities through autonomy, and, on the other hand, enable cooperation through representation and participation. (Pfostl, 2012: 1)

The three language communities, supported by the international community and under strong leadership from Rome, accepted that informal or voluntary arrangements would not provide the province with adequate security or stability and would expose the volatility and uncertainty of the (informal) arrangements.

This was an important acknowledgement by the international community that in the absence of trust and adequate integrative factors in a deeply divided society such as South Tyrol, formal bridge building and coalition forming requirements may have to be established by law

as a temporary[17] or permanent feature of a constitutional settlement. The stability that has been brought by the statutory power-sharing and autonomy arrangements of South Tyrol has been described as follows:

> The overall success of South Tyrol in terms of the accommodation of minority rights, including linguistic rights, shows that law is actually the most effective instrument for guaranteeing peace and stability. Only clear legal guarantees and remedies can create mutual trust when such trust is lacking. (Alber and Palermo, 2012: 308)

5. South Tyrol in the context of Italian "asymmetrical federalization"

The 1948 Constitution of Italy laid a basis for asymmetry of a decentralized system whereby some regions were granted more expanded powers than others (Tarlton, 1965: 861; Watts, 2008: 130).[18] The constitution created 20 regions—15 "ordinary" regions and five "special" regions—of which Trentino-South Tyrol is one.[19] The special regions were, as a result of their unique historic circumstances,[20] given wider autonomy than the ordinary regions. Each of the special regions had a special autonomy statute which had the status of a constitutional instrument (Palermo, 2008: 157).[21] It was anticipated that over time the ordinary regions would catch up with the special regions whereby all regions would have a similar degree of autonomy (Hine, 1996).[22]

The concept of "asymmetry" is therefore not new to Italy and the country has been living with varying "speeds" of regional autonomy for some time, albeit within the framework of a unitary constitution.[23]

Since 1996 Italy has been in a gradual process of federalization[24] and although the country does not yet formally constitute a "federation",[25] it has substantially moved away from its Napoleonic centralized background, with the regions now being granted extensive autonomy (Keating and Wilson, 2010). The federalization process is evidenced in the way that the powers of the respective governments are guaranteed by the constitution. The legislative powers of the national government and the concurrent powers shared by the national and regional governments are defined in the constitution, with all residual powers belonging to the regions (and in effect the provinces of Bolzano and Trentino).[26] The constitutional court continues to play a major role in clarifying which competencies are within the sphere of which level of government.[27] In many respects the constitutional court, as a platform for conflict management, has given guidance in regard to the allocation of competencies since the constitution is so vague (Alber and Zwilling, 2014: 43).

Regions have not been equally enthusiastic about taking up the new competencies, albeit that South Tyrol has played a leading role to expand its powers. It has been observed that while some regions 'remained passive about asserting their new competences, others tried to test the new limits of their jurisdiction' (Palermo and Wilson, 2013: 16), while the autonomous powers of South Tyrol 'are quite outstanding…' (Alber and Zwilling, 2016: 15). Some of the most pertinent powers of South Tyrol are: provincial administration, bilingual language policy, town and country planning, environment and natural resource management, provincial transport, provincial economy, education, place names, provincial police, and public works.

The gradual expansion of autonomy of South Tyrol and the recognition that the province should be given the right to develop its own institutional arrangements to suit its population composition must therefore be seen firstly within the context of a federalizing Italy and secondly in the context of developments within the European region where substantial acknowledgement is given to the protection of minority languages and cultures.[28]

It is therefore notable that a variety of domestic, European and international factors contributed to the uniqueness of the South Tyrolean outcome.

6. The Autonomy Statute—a basic law for autonomy and power-sharing

The special Autonomy Statute for South Tyrol in its current form has been years in the making. Ultimately the Autonomy Statute 'gave the South Tyrolese much, if not all, of that they had always wanted', but it only came about after several decades (Alcock, 2001: 11). Although the original Paris Treaty anticipated autonomy of some sort for South Tyrol, the practical roll-out of the autonomy to its current scope took close to 50 years and it was only in 1992 that Austria and Italy declared that the conflict had been successfully resolved. This highlights, according to Alcock, how the protection of minorities is not a static occurrence, but how institutions and processes must be dynamic in order to allow for growth and adaptation (2001: 18).[29]

The Autonomy Statute has been described as the basis of 'institutionalized ethnic governance' which comprises 'power-sharing between the main linguistic groups and a set of sophisticated balances between contrasting principles' (Alber and Zwilling, 2016: 18). Alber and Palermo summarizes the South Tyrolean arrangements are follows:

> The whole institutional setting in South Tyrol is a power-sharing system based on strict separation and forced cooperation of the two main linguistic groups, German speakers and Italians. (2012: 293)

Three important psychological achievements were embodied in the Autonomy Statute: firstly that it signified a fundamental new approach by the Italian State towards accommodating linguistic minorities; secondly it accepted that the Province of South Tyrol is the primary institution for governance rather than the Region of Trentino-South Tyrol; and thirdly the laws of South Tyrol no longer require approval by Rome to become effective.

As far as the powers of the province are concerned the provincial parliament became the repository of all residual powers, meaning that whatever powers and functions do not fall within the scope of powers of the centre or within the concurrent powers are within the exclusive range of powers of the province. This included powers that are of importance to the economic, social and cultural identity of South Tyrol, such as tourism, agriculture, education, public health, public works, vocational training, sports and mining.

The role of the province in the administration of national legislation has also been enhanced, with the province becoming responsible to implement and administer national policies in regard to health, hospital care, and other central government capacities.

Importantly, from the perspective of this article, is the right of South Tyrol to determine its own institutional governmental arrangements, thereby giving the South Tyrolese the power to opt for an electoral system and a system of governance that best suits their needs.[30] An outcome of this autonomy to design institutional structures is a system that is based on 'separation and forced cooperation' which complies with a 'consociational democratic model' with the core principles being 'cultural autonomy, language parity and ethnic proportionality' (Alber and Zwilling, 2016: 18).

The Autonomy Statute has gone through various phases; originally the aim was to comply with the international obligations of Italy after the Second World War, but later the aim of the Statute was to build confidence and gain legitimacy with the people of South Tyrol. According to Palermo, the success of the Statute to build confidence amongst and between the communities in South Tyrol was 'enormous' (Palermo, 2008: 158). He contends that the Statute has contributed to substantial trust being developed between the respective communities, particularly since the Statute had to balance majority and minority aspirations. Palermo observes as follows about what he sees as the success of South Tyrol:

> The more secure the linguistic groups and self-government, the less important are procedures based on institutionalized suspicion; the more confidence between the groups, the more democratic cooperation gradually substitutes diplomatic elite-driven decision-making; the less tense the relationship between the groups, the more

the focus can shift from pure minority protection to the complex management of territorial self-government. (2008: 158-9)

7. Essential power-sharing and autonomy arrangements of South Tyrol

The essential power-sharing and autonomy arrangements in South Tyrol of relevance to this article are described below.

7.1 Mechanism to implement the Autonomy Statute

Two joint commissions are responsible to implement the Autonomy Statute.[31] The one commission deals with the entire decentralization process of the Region Trentino-Alto Adige/South Tyrol, while the other commission is responsible for the decentralization to the province of South Tyrol. The South Tyrolean Commission is based on parity between the national and South Tyrolean governments, and until 2014 parity between the three language communities of South Tyrol. Since 2014, one person from the Ladin community has also been appointed to the commission. The effect is that the state is represented by one person from each community, German, Italian and Ladin, while the province is represented by two Germans and one Italian. The commission functions on the basis of consensus, which means all major governments and communities must approve measures to be implemented. It has been said that these commissions have been the "operative" part of South Tyrolean autonomy and have been essential "trust building" mechanisms (Palermo and Marko (eds.), 2008). The recognition given in the commissions to the equality of the language communities has set the stage for the entire process of decentralization and self-government in South Tyrol. The commissions are, in effect, the engine room of the decentralization process and the equality of the German and Italian representatives underscores the consociational principle upon which the power-sharing arrangements are founded.

7.2 Regional legislative institution

The parliaments of the two provinces, Trentino and South Tyrol, sit together to form the Parliament of the Region Trentino-South Tyrol. Provisions are therefore made for a single legislative institution for the Region of Trentino-South Tyrol and one legislative institution for each of the provinces. The regional parliament comprises the representatives of the two provincial parliaments joining in a single session. Thirty-five representatives are elected for each provincial parliament. Both provinces use proportional representation as the electoral system for electing their own parliament, which enhances the likelihood of minorities being

represented at provincial and regional parliaments. The two provinces are therefore equally represented in the regional parliament regardless of the size of the respective provincial populations. The regional parliament elects a president and two vice presidents. The presidency rotates between the German and Italian language communities, while the vice-presidency also includes the Ladin community.[32]

The regional parliament functions by way of standing and ad hoc committees. The committees must reflect the ethnic composition of parliament, and as far as is practical, also the political representation of the respective parties. In this way, the two dominant language communities of the two provinces, German and Italian, are equally represented within the regional parliament and its committees. If the representatives of one of the language communities are of the view that a bill before the regional or provincial parliament is to the prejudice of the community, it can call for separate voting in regard to the bill.[33] If a conflict arises about the question whether a bill may be prejudicial to the interests of a community, the question may be referred to the constitutional court for a determination.[34] Each community therefore in effect has a veto over legislation that it perceives as potentially being to its detriment.

7.3 The Provincial Council

The Provincial Council is the legislative institution for South Tyrol. The council elects the provincial president and minsters. The council comprises 35 members who are elected for 5 years by way of proportional representation. The Ladin community is guaranteed at least one seat in the council. A person must be resident within South Tyrol for at least 4 continuous years before they may cast a vote in provincial elections.[35] Although the provincial legislature votes by way of an ordinary majority, any of the communities may request a vote on a community basis if there is a concern that the matter upon which a vote is cast may affect the language or culture of a community.[36] This "alarm bell" procedure is similar to what is found in Brussels where similar power-sharing arrangements exist at a regional level between the Dutch and French speaking communities.

7.4 Provincial executive

The government (executive) of South Tyrol is required to reflect the language composition of the provincial parliament. Even if a single political party or a single language group forms the majority of the provincial parliament, a statutory prescribed coalition must be formed with the minority parties or language group. The executive must reflect the proportionally of the

communities that have been elected to the provincial legislature.[37] The same requirement applies to local governments.[38]

The provincial government is headed by the president.[39] The president and members of the executive are elected by the legislative council. The president is supported by two deputies, one from the German and Italian communities respectively, but a member of the Ladin community may also be elected. In this way, the voice of all three the language communities is heard within the provincial government. Although the executive must reflect the proportionality of the language groups in the legislature, the exception is that a representative of the Ladin community may be included in the executive and the council even if the proportionality of the community does not justify such an inclusion.

The president is ultimately responsible for the administration of policies in South Tyrol, assignment of ministers to specific departments, and is accountable in the final instance for the governance of the province. The executive functions on the basis of solidarity, which requires consensus between the members.

This arrangement is particularly important and closely associated with the "consociational" school of thought since it provides a statutory basis for a "grand coalition" whereby the language communities elect their own representatives to government where after those representatives are obligated by law to govern in coalition. According to Alber and Zwilling

> consociationalism in South Tyrol translates into four main elements: the participation of all language groups in the joint exercise of governmental power, a system of veto rights to defend each group's vital interests, the principle of cultural autonomy for groups and an ethnic quota system based on a linguistic declaration (or affiliation). (2016: 19)

7.5 Local government

Municipal executives must also reflect proportionally the language composition of the municipal legislatures (councils). In larger councils where there is a deputy mayor, the deputy must be from another language community as the mayor.

7.6 Identification with a language community

The election of community members by the respective language groups inevitably means that candidates for election must declare their language association prior to an election.

Self-identification with one of the language communities in South Tyrol is not limited to elections, but is also required for purposes in other areas, such as public housing and

employment in the civil service. Community membership therefore permeates the entire South Tyrolean population since it affects, for all practical purposes, all aspects of public life. The declaration of language in essence sets the basis for an 'ethnic [language based] quota system' (Alber and Zwilling, 2016: 19).

Language identification, which started formally in 1981, takes place at each census when every resident of South Tyrol is required to declare to which language group he/she belongs or associates. If a person fails to declare their community affiliation, such a person does not qualify for appointment in public positions, public housing and various other social contributions (Alber and Palermo, 2012: 292). The arrangements underwent a review in 2005, after which only an anonymous declaration is used for purposes of determining the size of a language group is attached to the census.

This principle of self-identification is not without controversy since not all South Tyrolese necessarily associate exclusively to one of the three language communities. Many persons originate from mixed families where more than one language identity is maintained, and some individuals do not wish to declare their language association at all.

Language identification has been the subject of considerable debate, with opponents of such self-identification saying the requirement violated section 3 of the Constitution of Italy, which guarantees equality of all individuals. In 1984, the Council of State ruled that the requirement of self-identification was unconstitutional, but at the same time the Council of State recognized the unique status and arrangements for South Tyrol, which require some form of community identification. Following the decision, an agreement was reached in South Tyrol between the parties whereby adults complete a form at each census in which they indicate to which of the language communities they (and their children) "prefer" to affiliate[40] and another form for statistical purposes where no group identity is declared. The "language" list is then submitted to the respective local authorities and used for purposes of calculating the size of the respective language communities without disclosing the identity of the individual who completed the form.

It is acknowledged, however, that since there may be individuals who cannot or do not wish to declare that they belong to one of the three communities, an additional category, namely "other", had to be introduced. This arrangement applied for the first time in the 1991 census. Only a very small percentage has so far opted for the "other" category since it became available, with 1.68% choosing it in the most recent census in 2011.

The mechanics of maintaining a system of group identification are, however, becoming increasingly complex in a society where: a growing portion of the population comes from new immigrant communities (Larin and Roggla, 2016);[41] substantial numbers of individuals from traditionally Italian and German communities are truly bilingual (more so in the German community than the Italian community); and many children are born in families with mixed language background. The "politicization" of ethnic preference is further enhanced by the social benefits that accompany the numerical size of the respective groups. In essence, government grants are paid to local municipalities in proportion to the language group in the area of the local government, which means there is a financial incentive for communities to increase their numerical size, particularly by the addition of foreign nationalities. At the same time, however, it is also arguable that the system encourages the three official language communities to make non-ethnic language speakers welcome, to assist newcomers to learn the local languages, and thereby to contribute to integration and nation-building (Katics, 2013).

It is notable that in Brussels, capital of Belgium, where a similar arrangement exists to that in South Tyrol for coalition government and autonomy of the French, Dutch and German communities, all individuals regardless of ethnic background are also required to identify for electoral purposes with one of the three language communities. The choice in Brussels is, however, not recorded by local authorities in a census as in the case of South Tyrol, an individual in Brussels may "change" identity from one election to another, and an individual may attend the services of another language group provided that the person accepts the language in which the service is offered. In South Tyrol, children of one community may also attend teaching offered by another community provided that the language of education is accepted. Similarly to South Tyrol, positions of civil service employment in Brussels are filled on a quota basis.

7.7 Administration

The ethnic composition of the provincial administration of South Tyrol had, after the Second World War, for historical reasons, been almost entirely Italian. German as language of administration and German speakers as civil servants had been actively eradicated from all parts of the administration.

One objective of the autonomy reform was to achieve a greater balance between the Italian and German communities in public administration. It also aimed to include the Ladin speakers into the bureaucracy and to improve in general the ability of all civil servants to

communicate in the two principal languages of the province (and three languages in the Ladin valleys).

The general aim of South Tyrol is to achieve proportional representation in civil service positions,[42] and to also achieve proportional representation within government departments, thereby assuring that the German community is also represented in senior positions in government from which they had been previously excluded. This is a particularly important measure for three reasons: firstly, the administrative scope of the province had been radically increased as part of the Autonomy Statute; secondly, the bureaucrats that administer legislation can often make inputs in the policy process in regard to a review of the legislation; and thirdly, the practical and symbolic impact and importance of policies being administered in the language of the recipient population cannot be overestimated. If for some reason appropriate candidates from a particular language community are not available to fill a position, informal arrangements have been made so that, in order for proper administration to continue, a position may be temporarily filled by a candidate from another community.

Parity between the language communities in administration has to a large extent been achieved and nowadays strict compliance, particularly if suitable candidates cannot be found, is not enforced.

7.8 Language proficiency and employment

In addition to accommodating the German language within the institutions of government, German has also been elevated to an official language of the province, thereby putting it on equal footing with Italian. The entire civil service of the province is organized on the basis of bilingualism (and trilingualism in the Ladin valleys).[43] All public servants are required to be bilingual (and trilingual in the Lain valleys)[44] and higher standards of bilingualism are required from senior officials. Bilingualism is also expected from judges and court officials (Alber and Palermo, 2012: 297).[45] Public service positions are filled on the basis of proportionality of the two largest language communities based on the most recent census results.[46] The quota system does mean, however, that candidates cannot apply for any position but can only apply for those positions that are available to their language group.

These standards of proportionality not only apply to formal government departments, but also to public corporations and former state companies that provide a public service, such as postage and railways.[47] Similar arrangements are in place for the filling of positions at municipal levels. This means that in some local communities where the sole language spoken

might be Italian, German and Ladin, officials would still be required to comply with bilingual requirements (and trilingual for the Ladin valleys). If the bureaucracy commenced correspondence, they must attempt to do so in the language of the recipient.[48]

The requirements for language proficiency do not extend to the Ladin language for the entire province, but in the Ladin valleys proficiency in Ladin is a requirement as well as in other provincial offices where specifically Ladin issues are dealt with, for example Ladin schools in Bolzano. Provision is also made that the Ladin have the right to use their mother before justices of the peace with jurisdiction over Ladin valleys. In local areas where Ladin are in a majority their language is used for official purposes and in public signage.

This means that in administration there is a mix between territoriality and personal autonomy: in the case of Ladin the principle of territoriality is pursued since Ladin must be spoken within the local areas where the community resides, while in the case of the other two languages the individual who seeks a service can chose the language in which they want to be served.

7.9 Education and culture

The autonomy of the communities in regard to education, language and culture is set out in Article 2 of the Autonomy Statute. The jurisdiction of the autonomy arrangements is, in effect, non-territorial since the decisions are administered to individuals by way of the services and activities they attend, rather than to a specific geographic locality. This means that even where the communities live intermingled, aspects of education and culture are administrated by the respective individuals through the services they attend, such as schools and cultural events, rather than being limited to the area where they reside.

Each community has, in effect, developed services around the language identity of the respective communities, for example in all aspects of education (particularly kindergarten to secondary education), political formations, trade unions, libraries, cultural events, media, and churches.

The scope of autonomy includes the setting up and management of unilingual schools and cultural offices, which receive state funding. Although South Tyrol has a single education department, three autonomous school boards have been established for each of the three language communities—Italian, German and Ladin. The respective boards take full responsibility for the control and management of the schools within their jurisdiction.[49] Each school has a primary language in which it teaches, but the other language of the province must

also be taught as a subject. Ladin is not an obligatory second language. In Ladin schools, all subjects are taught in German or Italian, while Ladin is taught as a separate subject. The boards also have autonomy in regard to the recruiting and training of teachers.

Access to a school is determined by parents on behalf of their child, subject to the condition that the child must have sufficient knowledge of the language of the school in which he/she is enrolled. If a dispute arises about the legitimacy of a child's enrolment, the dispute is referred to a joint commission of the education boards. Although schools are classified in accordance with the primary language in which they function, all schools must be bilingual in the sense that the other non-teaching language is offered as a subject (Alber and Zwilling, 2014: 58).[50] Tertiary education is offered on the basis of trilingualism, which entails Italian, German and English.

The concept of separate educational facilities for the language communities has been criticized, on the one hand, as a form of language based *apartheid*, but, on the other hand, proponents of particularly the German speaking community have emphasized that without a language and culture based educational system, the German (and Ladin) identity would be subsumed by Italian (Alcock, 2007: 17).

The organizational structure of each community's education is that each community is responsible for the management and control of their educational system and schools from kindergarten to secondary levels. The language of teaching is monolingual, but the second language is taught as a subject for at least 6 hours per week (Alber and Zwilling, 2016: 29).[51] Teachers at community schools must speak the language of the school as a native (first language).[52] Each education system falls under a ministry for the community, which is responsible for the curriculum of the schools within its responsibility.

7.10 Finance and budget

During the initial three decades of the Autonomy Statute, South Tyrol was for all practical reasons totally dependent on grants from the national or regional government. This situation changed fundamentally with the reforms to the Autonomy Statute in 1972 (Palermo in Woelk, Palermo and Marko (eds.), 2008: 157).[53] The province now receives a fixed quote from taxes raised within the territory of South Tyrol and various other guarantees are in place to secure the funding basis of the province (Alber and Zwilling, 2016: 16).[54] Those budgetary guarantees cannot be altered without the consent of South Tyrol. Although the budget for the province is voted upon by the entire provincial parliament, any of the community groups can ask for the

entire budget or specific parts to be voted upon separately. If the measure is not approved by such separate voting, the matter is referred to a joint committee and if agreement is not reached in the joint committee the measure can be referred to the Regional Administrative Court for a final decision.

7.11 Place names

Following the years of fascism where German names had been replaced with Italian names, the autonomy arrangements entail that place names may be bilingual, that original place names can be restored, and that signage to places can be in one or more language. The naming of places remained one of the issues that took longest to resolve and it continues to be a sensitive matter.[55] A joint commission was established in 2012 to advise the legislature on matters regarding place names, consistency of terms and matter related thereto.

8. Lessons of the South Tyrolean power-sharing and autonomous institutions

The aim of the article was to give an overview of the institutional developments in South Tyrol in regard to power-sharing and autonomy for the respective language communities and to identify possible lessons for young and emerging democracies.

The following observations can be made to identify lessons from South Tyrol that may bear relevance to emerging and young democracies:

1) The South Tyrolean case study must be assessed within the historical background: arising out of the ashes of the Second World War; previous efforts by Mussolini to ethnically "cleanse" the area of the German identity; kin-state support rendered by Austria after the Second World War; ongoing commitment of the international community to encourage a stable and lasting settlement for the province; and a long history of German residence in the area.

2) The unique institutional development of South Tyrol, which is based on consociational principles of power-sharing, community autonomy and community identification, and commitment to bilingualism, illustrate how regardless of the scepticism that is often expressed in contemporary literature about statutory imposed power-sharing and non-territorial autonomy arrangements, there remains room for countries and regions within countries to negotiate and develop constitutional resolutions to their unique circumstances. The confidence building that has arisen from the obligatory nature of the autonomy

arrangements cannot be overestimated. Although these arrangements may be unique to South Tyrol, it shows how pragmatism can give rise to unique constitutional settlements.

3) An aspect of the South Tyrolean experience that arguably offers the most insight into constitutional design is how asymmetry could be used to enable a region to develop institutional structures and policy processes that suit local needs. Although Italy has traditionally been regarded as a unitary system, the South Tyrolean experience has had a federal character for many years as a result of the scope of autonomy in legislative powers and the right to regional constitutional design. Although the principle of asymmetry has given rise to complexity, it has also created the basis for flexibility, stability and enhancement of national integrity.

4) The time it took for the South Tyrolean power-sharing and autonomy arrangements to come to fruition emphasizes the importance of constitutional growth, development and adaptation. In the case of South Tyrol, the ultimate objective took nearly half a century to materialize, but the general direction was set through the Paris Treaty and the subsequent UN resolutions. It takes time to negotiate and time to implement complex constitutional arrangements and the South Tyrolean arrangements continue to adapt to changes in circumstances. Currently, as mentioned above, the province is involved in discussions about how to respond to challenges brought about by the integration of immigrants and dealing with those persons who do not wish to identify with any of the language communities. This highlights what has been observed earlier in this article, namely that democracies often "manage" rather than "solve" the interface between accommodating diversity and facilitating power-sharing.

5) The power-sharing and autonomy arrangements of South Tyrol have been facilitated by the European context where high level recognition is given to the rights of minorities (Benedikter, 2006). The specific arrangements of South Tyrol are not found elsewhere in Europe, but the foundation of power-sharing and autonomy is viewed as credible and legitimate within the European context. Supra-national, regional cooperation agreements within the African, Asian and Middle Eastern contexts may in future be inclusive of supra-national standards for the protection of minorities and thereby establish a basis for more appropriate country-specific solutions to the challenges that are brought by ethnic diversity.

6) The process in South Tyrol of developing an integrative identity within the context of an institutional system that is based on ethnic separation is ongoing. The stability that has been

brought by the institutional arrangements has served South Tyrol well, but at a societal level the *de facto* separation and monolingualism remains relatively high. This in itself does not indicate failure of institutional arrangements, since social integration is challenging in most if not all ethnically divided societies. In terms of European institutional development, the South Tyrolean institutions are in their infancy. Critics of the South Tyrolean consociational approach may say that ethnic "freezing" has occurred as a result of the model of community identification, while proponents would say that had it not been for the power-sharing and autonomy arrangements, the fault line of separation, secession and disunity would have torn the province apart.

7) The South Tyrolese have established that their political institutions, administration and governance are based on the notion of equality of communities (consociational), rather than simple majoritarian arrangements.[56] The judiciary has accepted that special arrangements are required in the area due to the special make-up of South Tyrol. As a result, a balance is sought to be struck between individual rights and collective, community rights. While the South Tyrolean example may not be applicable to many other societies, the principle that is notable is the right of a polity to devise institutional structures that best suit their needs. The outcome may be unconventional, but the key question if whether the needs of a particular society are addressed through the institutional mechanisms.

8) The language based institutions of South Tyrol leave little room, if any, for integrative political institutions at the local level. The genus of institutions and political mobilization is language-affiliation, which limits opportunities for cross-cutting loyalties to develop at the local level. It is therefore not surprising that social integration has been relatively slow, particular outside of the main urban areas. An option to consider for South Tyrol in the future may be to devise a bicameral legislature whereby one house comprises the language communities and a second house is elected by way of popular vote. This may also be a way to deal with unfinished business, such as accommodation of immigrants and responding to those individuals who prefer not to associate exclusively with one of the three language communities.

9) Non-territorial autonomy and power-sharing along consociational principles are not suited for each of the ethnic minority groupings in the world. It is a unique system that can only cater for unique circumstances and conditions. Generally speaking, non-territorial and consociational arrangements are often frowned upon by constitutional theorists, but, as South Tyrol shows, the practice of institutional development sometimes demands that

constitutional theorists who oppose non-territorial autonomy and power-sharing adjust to accommodate the realities of contemporary society.

Conclusion

This article has shown how regional-based design of governmental institutions may strike a balance between the centrifugal and centripetal forces that often threaten the stability of young and emerging democracies. The institutional arrangements of South Tyrol are unique, but those institutions have been developed over many decades and have received the blessing of the international community.

South Tyrol demonstrates how regionally-based power-sharing and autonomy arrangements can be pursued without having to replicate similar institutions in other regions or in national institutions. Most importantly, South Tyrol shows how a balance can be struck between power-sharing and community autonomy, and how communities that live intermingled can exercise self-government over their culture, education and language.

Notes

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[1] By "institutional development" reference is made to institutions of governance, namely legislative, executive and judicial organs of state.

[2] Refer for example in this regard to the violence that accompanied efforts in South Africa to adjust provincial boundaries, the growing demand by language minorities for more states to be created in India, and the inflationary growth of states in Nigeria from 3 to 36 with demands for at least 10 more states to be created. See De Villiers, 2012. See also the demands in Ethiopia for additional states to be created to accommodate nationalities who do not have an "own" state (Megersa, 2016).

[3] Generally speaking, autonomy can be territorial, whereby powers and functions are decentralized to jurisdictions, such as local governments which have territorial functions, or autonomy can be non-territorial, where powers and functions are decentralized to legal persona created by communities with jurisdictions over the language, culture, and customs of a community. See De Villiers (2016) and De Villiers (2014).

[4] For the purposes of this article, the author used the following definition for "minority": A minority group is regarded as a group of individuals that shares ethnic, religious, language and/or cultural characteristics, is generally a numerical minority in the entire state or in a region of the state, is in a non-dominant position via-a-vis the rest of the population, and is recognized objectively to be a minority and of which the members demand subjectively that they constitute a minority.

[5] Refer, for example, to United Nations. *Minority Rights: International Standards and Guidance for Implementation*. Geneva: United Nations Geneva, 2010.

[6] The province of Trento (Trentino) has similar powers.

[7] Although South Tyrol is constitutionally a "province", which in Italy is of a lower order government than a "region", the South Tyrolese refer to the province as a "*land*", which is similar to the federal-state governments in the Austrian and German federations where the constituent units of the federations are called "*land*" (singular) or "*laender*" (plural). South Tyrol, arguably, has more extensive autonomy that its *laender* counterparts in the Austrian federation.

[8] See Art. 116 of the Constitution of Italy.

[9] In 2014, about 42,500 persons of foreign citizenship resided in South Tyrol. 'Statisti*sches Jahrbuch für Südtirol 2014/*Annuario statistico della Provincia di Bolzano 2014', Table 3.18, 118. For updated information refer to ASTAT at http://en.istat.it/.

[10] http://www.worldlibrary.org/articles/gruber-de_gasperi_agreement. The Agreement provided in short that bilingualism would be accommodated in the region, that mother-tongue education may be offered in German, that place names may be in German, and that the two languages would be equally treated in public affairs and public office. Importantly, as far as political rights were concerned, the Agreement provided that autonomous legislative and executive regional powers would be exercised by the region.

[11] https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/71/IMG/NR015271.pdf?OpenElement.

[12] The second phase of the Autonomy Statute took effect on January 20, 1972. See Constitutional Law No. 1 of 10 November 1971 and the Presidential Decree No. 670 of 31 August 1972.

[13] See sec. 6 of the Constitution of Italy and Law No. 482 of 1999, which affords protection of the different languages at the regional level.

[14] The preferential position of South Tyrol in Italy is described by Alber and Palermo (2012: 294) as 'the top of the inverted pyramid', since the autonomy of the province is so far reaching.

[15] McCulloch observes that '[u]nder conditions of insecurity, groups and their representatives are unlikely to settle for anything other than a strong guarantee of their share in power, regardless of electoral prospects. That is, negotiated transitions from war to democracy, or from majority control to shared power, are more likely to produce corporate consociational pacts.'

[16] Larin and Roggla refer to the South Tyrolean arrangements as 'one of the most successful cases of consociational conflict regulation in the world'.

[17] The use of short term power-sharing arrangements as part of a transition is not uncommon. See for example the transitional arrangements under the 1993 Interim Constitution of South Africa whereby power-sharing arrangements with a sunset-clause were built into the constitution for purposes of the composition of the presidency and cabinet.

[18] In his seminal work on symmetry and asymmetry, Tarlton referred to "political" asymmetry and "constitutional" asymmetry. Watts observes that the unique circumstances of some regions has meant that the 'only way to accommodate the varying pressures for regional government has been to incorporate asymmetry in the constitutional distribution of powers'.

[19] See Art. 116 and Art. 131 of the Constitution of Italy. The other special regions are Val d'Aosta, Fruili-Venezia Giulia, Sicily and Sardinia.

[20] Two of the special regions are islands, and three are unique in regard to their linguistic composition.

[21] Since Italy remained a highly centralized unitary system under the 1948 constitution, the special regions did not have their own "constitutions" as is often found in federations. The practical effect of the special autonomy statutes were, however, very similar to the constitutional instruments of federal states. The relationship between South Tyrol and Rome has been described as on "equal footing".

[22] The concept of gradual expansion of autonomy was followed by Spain after 1978 when it created historic and ordinary regions with different powers, but with the ideal that in due course there would be symmetry between all regions.

[23] The unitary nature of the 1948 constitution was also reflected in the absence of a second house wherein the regions were represented as is found in federations. The constitution therefore created autonomous regional entities without providing for those entities to be represented in a bicameral parliament. See Ziblatt (2006).

[24] The process of federalization comprised two main elements: statutory instruments and interpretations of the constitution by the constitutional court. In many respects the constitutional court became the main initiating forum for decentralization since it had to interpret the constitution and as a result of ambiguities the court could fill out the details. For a general discussion, see Palermo in Burgess and Tarr (eds.), (2012).

[25] One area where a classical federal approach has not yet been adopted is in the composition and functions of the senate, as second house of the national legislature. The second house does not function as a house of the states/regions and does not represent or reflect the interest of the sub-national units. The senate is in essence a house to "slow down" the legislative process through checks and balances, but without representing the interests of the regions, provinces or municipalities. Efforts to reform the senate in 2016 failed after a referendum was unsuccessful.

[26] See Art. 117 of the Constitution of Italy, as amended in 2001.

[27] Refer for example to the landmark decisions of the constitutional court in Judgement 282/2002, Judgement 303/2003, and Judgement 2/2004. In the latter, the court handed down a decision about the discretion of the regions to develop their own institutional structures, in this case the election and powers of the regional president. This decision established the basis for other regional basic laws (constitutions) to be enacted.

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[28] For an overview of minority protection instruments in Europe refer to http://sznt.sic.hu/en/index.php?option=com_content&view=article&id=194:legal-instruments-of-minority-protection-in-europe-an-overview&catid=18:cikkek-tanulmanyok&Itemid=24 and http://pjp-eu.coe.int/en/web/minority-rights/documents.

[29] South Tyrol is, at the time of research in 2016/7, involved in a public consultation process to further review the autonomy arrangements.

[30] Refer, for example, to the Autonomy Convention that was launched in 2016 to revisit the Autonomy Statute and to explore ways to improve and enhance participation by citizens in the policy process. For a brief overview refer to Larin and Roggla (2016) and J Woelk (2016).

[31] See Art. 107 of the Autonomy Statute.

[32] Art. 30 of the Autonomy Statute.

[33] Art. 92 of the Autonomy Statute.

[34] Art. 56 of the Autonomy Statute.

[35] Art. 25(2) of the Autonomy Statute. This arrangement, in effect, restricts the political rights of citizens of Italy who relocate to South Tyrol, but it has been upheld by the constitutional court since it has as its objective the protection of minorities. See Constitutional Court Judgement 240/1975.

[36] Art. 56 of the Autonomy Statute.

[37] Art. 50 of the Autonomy Statute.

[38] Arts. 61-62 of the Autonomy Statute.

[39] Art. 52 of the Autonomy Statute.

[40] It is important to note that "preference to affiliate" does not equate to actual "belonging" to a specific language group.

[41] The number of immigrants who reside in South Tyrol is estimated to be at least double the number of Ladin speakers. It is estimated that approximately 9% of population of South Tyrol is foreign born. This change of population composition has caused Larin and Roggla (2016) to propose that the "others" category also be included in the proportions for forming government.

[42] Art. 89 of the Autonomy Statute.

[43] Refer to the equality clause of the Autonomy Statute, Arts. 99-100.

[44] A certificate of language proficiency is required to be appointed into any position in the public service.

[45] Since the legal system of Italy differs from other German speaking countries, a Joint Terminology Commission has been established for South Tyrol to develop and clarify legal terminology to be used by the civil service and courts.

[46] Art. 89(3) of the Autonomy Statute. The origin of this arrangement can be traced back to the Gruber-De Gasperi Agreement of 1946. Although it was foreshadowed in 1976 that the proportionality arrangement in the civil service would expire after thirty years, the ethnic quota basis is now ongoing albeit that basic parity of language groups was reached in the 1980s. See the discussion by Gudauner (2013: 191).

[47] Presidential Decree No. 574 of 1988.

[48] Art. 100(3) of the Autonomy Statute.

[49] Art. 19 of the Autonomy Act.

[50] Regardless of the formal requirement for bilingual teaching, at a societal level there remains a "rather limited proficiency" of the second language.

[51] A surprisingly large percentage of persons remain essentially monolingual, particularly in regard to immigrant communities.

[52] If access to a school is refused on the basis of language proficiency, the decision can be reviewed. Art. 19 of the Autonomy Statute.

[53] The reforms of 1972 have been described as the "Magna Carta of special autonomy".

[54] Around 90% of all taxes collection within South Tyrol are retained by the province.

[55] The current situation, in short, is that although legally speaking place names must be bilingual (or trilingual in the Ladin valleys), currently the only official place names are Italian because agreement has not been possible within the provincial parliament about enacting a law to deal with place names.

[56] South Tyrolese have learnt that 'the preservation of culture is a collective enterprise; that the individual flourishes better, is better able to preserve his culture and identity within the framework of a group; that rigid law is no answer to economic, social or cultural development; and that a living multicultural society requires techniques that induce on-going cooperation rather than confrontation'. (Alcock, 2001: 22)

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