PROLEGOMENON

MAX VAN DER STOEL: ‘...AUTONOMY HOLDS TREMENDOUS PROMISE AS AN INSTRUMENT OF POLITICAL ORGANISATION AND STRUCTURE, ESPECIALLY IN MULTI-ETHNIC STATES...’

Autonomy is among the least well-understood concepts in politics. Perhaps for this reason, it does not appear sufficiently well employed if one is to compare the number of situations where forms of autonomy might be usefully considered with the number of situations in which autonomy in fact exists. In my view, well-chosen and designed autonomy arrangements, woven into the structure of the State, have an integrationist potential which can contribute stability to situations where the population comprises significant social or regional diversity. This is because forms of autonomy allow the accommodation of diverse needs, interests and aspirations, and so can create interests and stakes for various groups within the same State, thereby inspiring common loyalty and investment. At the same time, such regimes of autonomy can reduce the appeal of extremist demands and solutions.

No matter whether applied to the individual, or seized as a political concept, autonomy is a short-hand notion for a broader idea. In life, neither the individual nor groups are literally free to act as they please; we are all subject to various constraints, including that of law. Autonomy, therefore, implies some degree of independence, but not independence itself. There are a variety of forms and ways this can be manifested. Most often, politicians think of autonomy in territorial terms (within which political power is commonly distributed), but the non-territorial or personal forms are equally important. Indeed, the non-territorial forms are perhaps the more interesting insofar as they offer many more alternatives for accommodation of diversity along the lines of issues (e.g. education) which transcend and do not require territorial divisions. Aside from the division in forms of autonomy, there also exists a division in its basic types whether including legislative, executive, or administrative powers, or all three. In addition to varying forms and types of autonomy, their application can be quite flexible, whether symmetrical or asymmetrical. This flexibility is important in every State since each has its own unique mix of people and territory. Moreover, autonomy can be applied symmetrically across territory and people through simple processes of decentralisation.

In my experience, both governmental authorities and the representatives of minority and other communities would do well to become better informed about the idea of autonomy and its potential instrumental value. With this in mind, I instigated

an OSCE wide inter-governmental conference held in Locarno, Switzerland, in October 1998, under the title ‘Governance and Participation: Integrating Diversity’. This conference gave rise to a process of consultations with a number of independent experts who adopted in September 1999 a set of general recommendations entitled the ‘Lund Recommendations on the Effective Participation of National Minorities in Public Life’. While neither the Locarno conference nor the Lund Recommendations were organised around or employ expressly the notion or term ‘autonomy’, they were largely influenced by it. The success of the conference and recommendations also demonstrate the interest States and the wider international community have in the subject.

In my view, autonomy holds tremendous promise as an instrument of political organisation and structure, especially in multi-ethnic States and, more generally, in States composed of a diversity of populations and regions – as are most States. Indeed, in order to build an integrated and stable, yet open and dynamic, State it is imperative to maximise the utility offered by forms and types of autonomy appropriately applied. This seems increasingly a global challenge.

This compilation brings together leading scholars sharing a variety of perspectives from different intellectual disciplines and regions of the world. It is an important contribution to the surprisingly modest literature, and should be read widely by policy and law-makers, public administrators and scholars.

The Hague, July 2003

GUDMUNDUR ALFREDSSON2: ‘THE MOST EFFECTIVE WAY TO PROTECT GROUP DIGNITY . . . IS TO ALLOW THEM TO CONTROL LOCAL AFFAIRS . . .’

In recent years, with the spread of violent national, ethnic and religious conflicts, minority issues have become regular features on human rights and peace agendas of international and regional organisations. Patterns of political as well as social and economic discrimination, combined with indignities and threats to identities and cultures, continue to cause such conflicts. With better knowledge of their human rights and standing under international law and before international organizations, minorities are increasingly presenting claims to and expecting action from governments and the international community.

Much of the new attention to minority rights is security oriented, not least because internal conflicts often spill across borders. Respect for human rights is one method of conflict prevention, and preventative action is certainly less costly than reaction after the eruption of violence. Democracy is good for human rights, but

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minority rights must be enshrined in constitutional and legislative guarantees with available and accessible remedies, consistent with international standards, because majority rule is not necessarily friendly to or understanding of the needs of a minority.

In May 1999, a series of expert meetings concluded in Lund with the adoption of the Lund Recommendations on the Effective Participation of National Minorities in Public Life. The meetings were convened by the Foundation on Inter-Ethnic Relations in The Hague and the Raoul Wallenberg Institute for Human Rights and Humanitarian Law in Lund, under the auspices of the OSCE High Commissioner on National Minorities. The Recommendations deal with the political rights of minorities at both national and local levels. One of the focal areas has to do with the administrative arrangements and the functions of non-territorial and territorial self-governments.

As a matter of international human rights law, persons belonging to minorities are entitled to the equal enjoyment of all human rights, as well as non-discrimination in that enjoyment. In response to the wisdom pronounced by the General Assembly in its resolution on the fate of minorities, minority-specific provisions in a number of subsequent human rights instruments provide for special measures or preferential treatment with the aim of achieving equal rights for all, both in law and in fact. Thus, States are obliged to ensure the equal enjoyment of all human rights by minorities living within their borders, and they must prohibit and eliminate discrimination against them.

The minority-specific standards in international and regional instruments and the corresponding monitoring methods are not perfect. With increased awareness of

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3 The Foundation on Inter-Ethnic Relations published the Lund Recommendations with informative Explanatory Notes in summer 1999. The text is also available on the websites of the OSCE and the Raoul Wallenberg Institute at <www.osce.org> and <www.rwi.lu.se>, respectively.


6 In 1948 the General Assembly decided that the United Nations could not remain indifferent to the ‘fate of minorities’. This was the title of part C of General Assembly resolution 217 (III) of 10 December 1948. The Universal Declaration of Human Rights was adopted by the same resolution, in part A.

the deficiencies, important initiatives have emerged. A strong emphasis on autonomy, as a special measure for the realization of the equal enjoyment of political rights, is one important part of these new developments, which are reflected not only in the Lund Recommendations but also increasingly in the practice of many States.

This book, and the conference at the then Danish Centre for Human Rights (now the Danish Institute for Human Rights) which preceded it, are part of the evidence.

In the face of historical and continued discrimination against minority groups, the rules in the international human rights instruments about equal enjoyment and non-discrimination have been complemented by what the UN instruments usually call special measures, as autonomy is referred to above. Special measures are needed to realize the equal enjoyment of human rights and to place the groups, as well as their members, in a position comparable with the majority population.

The special measures do not constitute privileges. Like non-discrimination, these measures are rooted in the rule of equal rights. Respect for political rights is an essential aspect of minority rights, and with widespread discrimination there is an obvious need for special measures. A group and its members cannot be really equal to the majority population unless and until equal conditions prevail; even then the group may continue to be disadvantaged because of the majority’s dominance in national life.

States have a choice between a variety of measures, but the aim and result must be equal enjoyment of political rights. The measures may include the granting of power to groups and their members, which is disproportionate to their size, in order to ensure fair influence and consultation on political issues. Such special measures should include the establishment of self-governments, but the measures can also involve the requirement that governments obtain consent from or engage in meaningful consultations with groups about matters affecting them; constitutional or legislative recognition of minority laws and customs and their application by the group; and the appointment of officials chosen by the group to either specific positions or to a fixed percentage of general posts at the national level.

The Lund Recommendations draw on paragraph 35 of Part IV of the Document from the 1990 Copenhagen Meeting of the OSCE Conference on the Human Dimension. In paragraph 35, it says that the participating States must give persons belonging to minorities sufficient opportunity to participate in public affairs and to protect and promote their identity. Furthermore, in the same paragraph, States

‘note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities in accordance with the policies of the State concerned.’
Self-government or autonomy can come under different names, but the label does not matter as long as the central government agrees to share power and leave local matters in the hands of group representatives. The most effective way to protect group dignity, identity and diverse customs and thus to place groups on an equal footing with other parts of society is to allow them to control local affairs. Autonomy should be seen as one of the best guarantees minorities can wish for and it has been successfully implemented in many countries, although other governments have resisted the trend.

Autonomy can be both territorial and personal. With concentration in one area, a group administration can be territorial. If the group’s members, however, are spread over a larger area and/or intermixed with other population groups as is often the case, personal autonomy, meaning membership of and participation in the group’s activities regardless of residence, is a legitimate and workable solution. Personal or non-territorial autonomy also does not result in the drawing of internal borders, undoubtedly an advantage in the eyes of many governments.

Autonomy is by its very nature a group right, while the members of the group are the ultimate beneficiaries. The collective entity claims the right, enjoys it and through its membership determines the form and structures of administration. In exercising its powers, the group regime must respect democratic principles and other universally recognized human rights. For example, the group must protect the rights of its own members as well as individuals of other population groups, and it must guarantee representative leadership and equality of the sexes. Group rights must also be exercised in a manner consistent with other principles of international law relating to, for example, the sovereignty, territorial integrity and national unity of States and the maintenance of international peace and security.

This indication of issues associated with minority autonomies only begins to list the many difficult and complex questions, which have arisen and will come up in the drafting of legislation and in the practical application of such laws. This book, with theoretical presentations as well as thoughtful examples from real-life situations, is therefore a welcome addition to the growing literature on the subject.

Lund, June 2003

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MORTEN KJÆRUM⁹: ‘THE ESSENCE OF HUMAN RIGHTS IS NOTHING BUT THE SAFEGUARD OF INDIVIDUAL AND GROUP AUTONOMY AGAINST THE ARBITRARY USE OF STATE POWER . . .’.

The editor of this volume, Zelim Skurbaty, approached me to write a preface. Initially I had two reservations about doing it. First, I held an introductory speech at the opening of the joint UN Working Group on Minorities – the Danish Center for Human Rights¹⁰ conference, the offshoot of which is this book, and I felt somewhat awkward to quote myself to the audience, which had heard it viva voce. Second, among the authors of this *Prolegomenon*, prominent figures such as Max van der Stoel, former OSCE High Commissioner on National Minorities and Gudmundur Alfredsson, the director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, have been featured – both are well-known specialists in the specific field of minority rights and autonomy. After some considerations, however, I decided to do some homework on autonomy and, by reworking my speech, to present something fitting to the present academic work.

Thus, I hope these few notes will convey the feeling of importance that we at the Danish Institute for Human Rights attach to the issue of autonomy. This is both in terms of the research work conducted on issues related to this topic, and attending to practical aspects of autonomy, such as writing notes to the Government, teaching minority and indigenous rights, conducting seminars and workshops on the topic. By way of generalization, it can be said that autonomy is at the very heart of the human rights discourse, because the essence of human rights is nothing but the safeguard of individual and group autonomy against the arbitrary use of State power. When governments crack down on the rights of refugees and immigrants, close down the educational establishments of minorities, deny – either overtly or covertly – representation and power sharing at the local and federal levels, it is not only a refugee or a minority problem *per se*, but a problem closely related to autonomy in general, personal autonomy in particular. Supporting autonomy under such conditions amounts to the support of human rights of individuals and groups, and we should always keep in mind this vital linkage between the two.

The Danish Center for Human Rights hosted the *International Seminar on Autonomist and Integrationist Approaches to Minority Protection* in April 2002. It was organized in cooperation with the United Nations Working Group on Minorities and brought together, under the roof of our Center, some leading professionals in the field of autonomy arrangements and minority rights, representing different schools of thought. They had a chance to discuss various aspects of the problems surrounding autonomy – an issue that makes headlines on a daily basis. There is a compelling reason behind the overwhelming interest of this issue by academics, politicians and media. Across the globe – from Spain and Denmark to Sri Lanka,

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¹⁰ From 1 January 2003 The Danish Centre for Human Rights has been renamed The Danish Institute for Human Rights.
Northern Ireland to Northern Iraq, Chechnya to Bosnia – minority groups are asserting their distinctive ethnic, religious, or national identity and demanding greater control over the expression of that identity, not only in cultural and social matters but in political and economic areas as well. Here are some snapshots that caught my eye during a casual perusal of recent press: ‘The European Court of Human Rights talks of a “democratic restructuring” without destroying the territorial integrity of Turkey with respect to Kurdish population’; “How will the Faeroes plan of a referendum on independence from Denmark fare in 2014?”; ‘Establishing Nunavut but refusing Quebec secession in Canada’; ‘France has set in motion a process that can accord Corsica limited autonomous powers’; ‘Palestinian Autonomy or Palestinian State: That’s the Question’, etc., etc.

While much of that assertion is based on the right to self-determination of peoples, what is less heard and often neglected is a plea for accommodation and self-restraint. The reason for this is that such pleas for self-restraint come typically from governments trying to support their embattled status and aiming – often - to repress dissent. This one-sided commentary to the autonomy issue is rarely productive, because disdain for give-and-take and accommodation can spawn inter-group antagonism and lead to inter-group strife and even bloodshed. This could be one of the reasons why international law, while according a right to self-determination to people, does not promulgate any express right to autonomy within States. Even the word ‘minority’ in legal texts is supplanted by a non-committal term, ‘persons belonging to minorities’, with an apparent implication that States owe a much weaker obligation towards them, namely – the right to enjoy their culture in community with other members of the group.

Seen from the big picture of the world politics of the last century, the concept of autonomy harbours a two-pronged hazard. On the one hand, those minorities that show no flexibility and insist upon seceding from the States within which they find themselves, almost always fail in their ambitions, unable either to overcome the opposition of the State or to sustain themselves as an independent entity. On the other hand, those States that dismiss the notion of compromise must usually reckon with prolonged and violent opposition from the disaffected minority. And it is the concept of autonomy that can go beyond the erroneous equation of the right to self-determination and the right of secession and serve to promote the process of accommodation between States and minority groups. Autonomy, from this perspective, is a mode – and a creative mode at that – of integration, which should be distinguished from assimilation. While assimilation is aiming, one way or another, at elimination of identity and cultural distinctiveness, integration involves recognition of the identity and culture of the minority communities as well as their effective participation in all aspects of the political, economic and cultural structures of the country in which they live.

This is the reason why the International Seminar on Autonomist and Integrationist Approaches to Minority Protection, which our Center hosted, dealt with the questions of the interplay between these two notions, emphasizing flexible, integrationist solutions to State-sub-State modus vivendi. Autonomy should be
considered as a tool, and like any tool, it must be used in accordance with the special circumstances of each case. Autonomy cannot create the wish for compromise between States and minority groups, but if the parties are earnestly looking for one, autonomy can provide a viable framework for flexible and creative solutions to virtually any problem arising from attempts to achieve homogeneity by imposing assimilation. In essence, and this notion is repeatedly stressed in the introduction to the present volume, autonomy is nothing but ongoing and sustained efforts of the State or international community to accommodate heterogeneity by the diffusion of powers.

By virtue of history and the fact that Denmark has two home-rule regimes, one in Greenland and one in Faeroe Islands, we are all too aware of the importance of accommodation of diversity, of compromise, of showing restraint in the well-founded hope that the other side – whichever that might be – will also reciprocate in the same spirit.

In our dealings with the local governments in Greenland and the Faeroe Islands we should proceed from the flexible notion of ‘autonomy’ whose details must be ironed out in the negotiating process; and as Isi Foighel underlines in his article on Greenland Home Rule, more emphasis could focus on better accommodation and integration of the home rule regime into the overall State framework, on the optimization and streamlining of the processes of the diffusion of powers and allocation of competences between the central and local authorities.

The articles that constitute the present volume, deal with a rich assortment of issues undergirding the concept of autonomy: from economic sustainability of autonomy arrangements to conceptual and philosophical aspects of autonomy, to autonomy as a participatory right, to autonomy and conflict resolution, to autonomy in the countries in transition, to legal safeguards of autonomy, etc., etc. The geographical span of the countries and groups under academic scrutiny is also impressive, stretching from India to Canada, Europe to Africa, Asia and America. The reader will surely be impressed by the scope and ambition of this publication, and also – will get new insights and perspectives that will enable him or her to turn ‘autonomy’ into a tool and concept that will be part of the solution, not part of the problem, to ethnically-based conflicts – the root of the political malaise of the 21 century.

Copenhagen, June 2003