DFG Forschungsgruppe 2757

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8

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Autonomy Reconsidered: Conceptualising a Phenomenon on the Verges of Self-Government and Self-Governance

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Am Hubland
97074 Würzburg
Tel.: +49 931 - 31-85906
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https://opus.bibliothek.uni-wuerzburg.de

ISSN: 2698-2684

Zitiervorschlag:

Hans Stanka: Autonomy Reconsidered: Conceptualising a Phenomenon on the Verges of Self-Government and Self-Governance, LoSAM Working Papers, Nr. 8 (2023). DOI 10.25972/OPUS-32077

Autonomy Reconsidered:

Conceptualising a Phenomenon on the Verges of Self-Government and Self-Governance

Hans Stanka

Abstract

For decades autonomy has been utilised as a concept in various social sciences, like sociology, political science, law and philosophy. Certain concepts of autonomy have always reflected the needs of the respective disciplines that made use of the term, but also ever infringed on the interpretation of autonomy in other disciplines. Most notably, conceptualisations of international and constitutional law have found their way into bordering sciences, like political science. The result: a legal positivist view prevailing in the conceptualisations of autonomy within political and administrative sciences. As this working paper points out, this perspective does not do justice to the complex phenomenon autonomy is or may be in social and political reality. Hence, the paper argues for a differentiated concept of autonomy, splitting it into autonomy claims, actors, process, rights and powers, regimes, and their institutions. The empirical world suggests a salience of formally and informally lived types of autonomy, especially in Latin America, due to the region's indigenous population often living outside of, or within the limited reach of the state. Therefore, the paper aims to incorporate the dimension of informality – lacking in previous legal positivist approaches. Autonomy regimes could be entrenched in international, constitutional, or secondary law, or they could be tolerated by the state or seized by autonomy claimants by force. From a theoretical or conceptual perspective, the dimension of (in)formality facilitates the incorporation of autonomy into the discussion on governance and government, mostly on the local or regional level. Thus, the paper establishes autonomy regimes as a concept located at the verges of (self-)government and (self-)governance.

Was ist Autonomie? Konzeptualisierung eines Phänomens zwischen Selbstregierung und Selbstregelung

Zusammenfassung

Seit Jahrzehnten wird der Begriff Autonomie in verschiedenen Sozialwissenschaften, wie Soziologie, Politikwissenschaft, Recht und Philosophie verwendet. Die jeweiligen Verständnisse von Autonomie spiegelten stets die Bedürfnisse dieser Disziplinen wider. Dabei beeinflussen etablierte Konzepte zu Autonomie häufig angrenzende Disziplinen. Vor allem Autonomieverständnisse aus dem Völker- und Verfassungsrecht haben ihren Weg in andere Wissenschaften gefunden. Dementsprechend herrschen auch in der Politik- und Verwaltungswissenschaft rechtspositivistische Sichtweisen zu Autonomie vor. Wie dieses Working Paper zeigt, wird diese Perspektive dem komplexen Phänomen, das Autonomie in der sozialen und politischen Realität ist oder sein kann, nicht gerecht. Das Paper plädiert daher für einen differenzierten Autonomiebegriff, der Autonomieansprüche, -akteure, -prozesse, -rechte und -befugnisse, -regime und -institutionen unterscheidet. Die Empirie zeigt, dass formell und informell gelebte Formen der Autonomie von Bedeutung sind – vor allem in Lateinamerika, da Autonomiebestrebungen der indigenen Bevölkerung der Region häufig außerhalb staatlicher Reichweite oder im Kontext schwacher Staatlichkeit gestellt werden. Daher zielt das Paper darauf ab, die Dimension der (In)Formalität in das Konzept von Autonomie zu integrieren, die in früheren positivistischen Ansätzen fehlte. Autonomieregime können im internationalen Recht, in der Verfassung oder im Sekundärrecht verankert sein. Darüber hinaus können sie vom Staat geduldet oder von Akteuren, die Autonomie für sich beanspruchen, mit Gewalt durchgesetzt werden. Aus theoretischer oder konzeptioneller Sicht ermöglicht der Rückbezug auf die Informalität es, Autonomie in die Diskussion über *Governance* und *Government* einzubetten, vorwiegend auf lokaler oder regionaler Ebene. Autonomieregime werden hier deshalb als ein Konzept definiert, das an der Grenze zwischen (Selbst-)Regierung und (Selbst-)Regelung angesiedelt ist.

Online publiziert: 05.07.2023

Content

1 In Need of a Concept for Autonomy

Autonomy as an idea and concept has been salient in social sciences for decades. The concept has been utilised and discussed in international law, sociology, political science, and philosophy (cf. Ghai 2000; Habermas 1992; Hannum 1996; Lapidoth 1997; Schlottmann 1968; Suksi 1998a). Autonomy is a contested concept (Gallie 1955) like e.g., identity in sociology and political science, or self-determination in international law. The concept carries an air of vagueness that has been appreciated in political debate and consistently leads to confusion in politics and social sciences alike – arguably because of its close entanglement with contested or ill-defined concepts.

Prominent accounts have defined autonomy as a legalised entity within a state that is somehow independent, or in other words, autonomous, from said state (e.g., Hannum 1996; Lapidoth 1997; Suksi 1998a). Others have conceptualised such autonomous entities as a mechanism for a certain realisation of minority or indigenous rights (e.g., González et al. 2010; Malloy/Palermo 2015; Myntti 1998; Lennox/Short 2016) while, at the same time, it has also often been displayed as a means – of contested effectiveness – to mitigate conflict in multicultural societies (e.g., Ghai 2000; Lapidoth 1997; Nordquist 1998; Schulte 2020; Weller/Wolff 2004a). Especially authors from international law emphasise that autonomy has been conceptualised and utilised as a measure of conflict resolution multiple times in history, mostly when ethnically charged conflicts were concerned: After World War I, the Aland Islands and the Memel Territory became example cases of successful conflict resolution through the implementation of autonomy (Suksi 2011, 141). It was also used as a measure of conflict resolution when Yugoslavia disintegrated, it helped mitigate conflict in Spain concerning Basque and Catalonian demands, and France resorted to autonomy by granting special status to Corsica (Ghai 2000; Weller/Wolf 2004a). Especially after the end of the Cold War, when the collapse of the USSR left behind extensive power vacuums that called for filling within and at the verges of the former Soviet Union, autonomy was seen as a practical solution to accommodate the claims of political movements demanding secession, without endangering sovereignty and territorial integrity of the state (Weller/Wolff 2004b, 1–2).

Although many of these historical cases read like success stories, they do not tell the entire truth: As Yash Ghai (2000, 1) points out, autonomy soon became the most demanded but also most resisted measure of conflict resolution, simultaneously evolving into a reason for conflict. By now it is generally agreed upon that autonomy claims are often interpreted as a potential attack on the territorial integrity and national sovereignty by national governmental and political elites (e.g., González 2010, 37). Some commentators consequently criticise autonomy as a cause of ethnic conflicts that may lead to segregation, highlighting the impact of the performance of political bodies of the state on the functioning of autonomy as a mechanism of conflict resolution (Heintze 1998, 12). Therefore, the political process involving autonomy

claims has to be considered transformative, conflictive and contested (Assies 2004, 156). Accordingly, some accounts have also brought up the interrelations between claims for autonomy, secession and conflict (e.g., Heintze 1998; Hrbek et al. 2020). Then again, autonomy has also been used as a term to determine the independence of local forms of self-government and their institutional or legal armour against the central or federal state in the context of the multi-level systems of governance in Europe and the European Union, (e.g., Benz 2020; Bergström et al. 2021; Kuhlmann et al. 2021a; Kuhlmann et al. 2021b; Ladner et al. 2019).[1]

This working paper aims to bring together most of these ideas and concepts of autonomy, as the general concept of autonomy has not been conceptualised comprehensively before. Some authors have elaborated on definitions of autonomy that were useful for their project or academic subject alone. But as many of these have taken a legal point of view, their conceptualisations are understandably legalist or legal positivist. This is not limited to the field of international law, but also to commentators in political science (e.g., González 2010; Tkacik 2008). As understood here, Michael Tkacik (2008), Hurst Hannum (1996), Ruth Lapidoth (1997) and Hans-Joachim Heintze (1998) tried to grasp most of autonomy's aspects, but missed out on one arguably important dimension: informality. Especially cases from Latin America, but also from other regions of the world, suggest that informality is an aspect that needs to be considered when we talk about the political project that is autonomy.

This working paper thus argues that a legalist perspective does not do justice to the complexity of the concept. In fact, focusing on a legal positivist point of view obscures aspects of autonomy that are salient and important in empirical findings and consequently for the political reality. Though the distinction between informal and formal types and aspects of autonomy is meaningful and right in every way, it has not found representation in the conceptualisation of autonomy. Here I would like to build on Neubert et al. (2022, 1) by taking a locally centred bottom-up perspective rather than the top-down perspective by the state. This allows for a more nuanced conceptualisation of autonomy considering informality.

I will therefore distinguish between *actors* that are pursuing *autonomy rights* voicing *autonomy claims*, the *autonomy process* in which these are pursued and the *institutional arrangements* which are established within *autonomy regimes*[2], in which *autonomy powers* are exercised.

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[1] Though I do not disagree with these authors, I will term this relationship between several levels of government "independence", knowingly only shifting the terminological challenge away from the concept discussed *here* to someone else's realm of study. I do so to avoid confusion when this "internal" independence concurs with what I will call autonomy regimes.

[2] For example Miguel González (2010) and Ruth Lapidoth (1997) use the term autonomy regime in different ways. González (2010, 37–40) distinguishes between *indigenous territorial autonomy* (autonomía territorial indígena) and *autonomy regimes* (régimenes autonómicos) by their legal entrenchment and potential to alter the state. While indigenous territorial autonomy is based on secondary laws or agreements, autonomy regimes are codified within the constitution, challenging, and changing the very basic design of the state. But I will utilise the term

I will follow this task by initially distinguishing autonomy regimes from other types of sub-state entities. Thereafter, this working paper will focus on the autonomy process and its influence on the entrenchment of the resulting autonomy regimes. I will then differentiate and conceptualise the prominent types of autonomy incorporating their institutional design. The last chapter presents the concept of autonomy elaborated in this paper as being located somewhere between self-government and self-governance and will reconsider the implications of this adapted conceptualisation of autonomy for social sciences and empirical case studies.

2 Demarcation of the Concept

As it has been conceived by other authors before, autonomy regimes differ from decentralisation and federalism (cf. Lapidoth 1997; Nordquist 1998; Suksi 2011).[3] As Heintze (1998, 8) suggests, one can distinguish autonomy regimes from these types of sub-state entities by analysing the inclusion or exclusion of its functions. Following this logic, autonomy regimes differ from decentralisation and federalism by the modes of assignment of powers by the centre state to sub-state entities, the degree of participation of locally elected officials and by the extent of supervision by the centre.[4]

Decentralisation generally comprises a certain *delegation* of powers to a sub-state administration in which the local population only has limited influence, while in the case of autonomy regimes, powers are *transferred* to locally elected officials. As the delegation of powers in decentralisation is granted unilaterally by the centre and may be revoked at any time, autonomy regimes are characterised by permanently transferred rights with only very limited modes of interference by the central government (Lapidoth 1997, 51–52).

Federalism and autonomy regimes also differ in significant ways: Federalism counts on at least two or more sub-state regions that constitute the more or less symmetrical federal state. The division of the state and the allocation of powers between the centre and the regions is normally entrenched in the federal constitution. An attempt to amend this constitution is often bound to regional and federal parliamentary approval. Legislative powers are shared between the federal and the regional level. While the regions hold residual powers, the federal level is vested with enumerated powers, which are, above all, exercised in a shared manner between the two levels. This is

autonomy regime like Lapidoth (1997, 182–184) does, as referring to the mode of governance or government respectively, enabling a certain development of a genuine institutional setting.

[3] Anderson/Keil (2021) do not agree with this conception of autonomy, federalism and decentralisation: Instead, they argue for autonomy as a dimension of centre-regional relations e.g., in federalism, and decentralisation etc. Similar to e.g. Ghai (2000), the authors point to the limited promises of success of autonomy measures for conflict resolution in divided societies.

[4] I will henceforth refer to the nation state, or the national level of the state as "centre" as a juxtaposition of the local or region, representing sub-state entities of different kinds.

achieved by institutional representation of the regions within the legislative institutions at the federal level (Lapidoth 1997, 50–51; Suksi 2011, 139).[5]

Autonomy regimes, on the other hand, generally constitute a singular sub-state entity within a nation state, holding enumerated exclusive legislative powers. The sub-state entity is not represented on the federal level nor is the arrangement necessarily codified in the constitution. In some cases, local institutions need to consent to an attempted amendment of the autonomy arrangement by the centre (Suksi 2011, 81). Autonomy is distinguished by a special status and special rights compared to other sub-state entities if those are present (Nordquist 1998, 63–64). Though in the case of federalism there might be a pre-emptive doctrine determining the supremacy of federal law over regional law, not touching explicitly transferred rights on the sub-state level, the explicit absence of such a mechanism emphasises the exclusive character of legislative powers of the autonomous region if those are present at all (Suksi 2011, 139).

This does not preclude the virtual co-existence or amalgamation of the three concepts: Spain, for example, is an often-discussed case. Since the Spanish regions hold various degrees of special rights but cover the whole territory, there are commentators who describe it as a state of autonomy regimes, federalism or something in between (Lapidoth 1997, 50-51; Nordquist 1998, 63–64; Suksi 2011, 81, 83). Accordingly, autonomy is a status that is somewhat similar to decentralisation and federalism, which counts on deeper entrenched rights as the former and less participation in centre affairs than the latter.

3 Autonomy – Rights, Powers, and Institutions

The debate on autonomy rights is intricately connected to the discussion on minority, especially ethnic or indigenous rights. Though autonomy claims are often connected to ethnic, indigenous or minority claims, autonomy movements are not necessarily driven by ethnic claims, as the example of a more economy-driven call for autonomy by conservative elites in Bolivia's lowlands shows (Eaton 2006). Nonetheless, communitarians and liberal multiculturalists have been the most outspoken advocates for autonomy. Many have argued for decades to implement special minority rights into liberal frameworks of democracy (e.g., Fraser/Honneth 2003; Kymlicka 1996; Taylor 1994; Young 1990). For example, Will Kymlicka (1996, 2015) has supported a right to self-government and territorial rights but also more generally special rights for minorities and indigenous groups due to their precarious situation of representation and

[5] Other attributes of federalism may be a tribunal to settle disagreements between sub-state entities and the centre, or a pre-emptive doctrine determining the supremacy of federal law over regional law. Both are neither necessary nor sufficient conditions for the typologisation of federalism (Lapidoth 1997, 50-51; Suski 2011, 139). For a more recent account on decentralisation, federalism and federations see e.g., Mohamad-Klotzbach (2021); Schakel (2019) or Gagnon and Keil (2015).

recognition. While the philosophical debate on autonomy rights will not be dealt with any further here – nor will this paper delve into the discussion on international law – it is still worth mentioning that one crucial point of disagreement between liberal and communitarian thinkers is the application of collective versus individual rights. This disagreement stems from the individualist perspective in liberal philosophy and law alike. But as Heintze (1998, 15) emphasises, autonomy rights always target a group. Accordingly, liberal rights aiming at each individual citizen of a state, like civil rights and liberties touching linguistic, religious, and cultural affairs are *not* considered part of the autonomy spectrum.

The central dimensions of autonomy rights are scope and depth. Scope of autonomy is determined by the number of subjects in which autonomy rights are exercised while depth stands for the virtually exercised powers within these subjects (Tkacik 2008, 374). It is the entanglement of scope, depth and (institutional) practice of autonomy rights and powers that characterise an autonomy regime. It should be part of the analysis of autonomy regimes if these powers are fully transferred to the autonomous entity, which powers are reserved for central authorities, who holds residual powers, do parallel powers of the centre and the local entity exist, or if certain powers could only be exercised jointly (Lapidoth 1997, 34). While the classical subject of minority or indigenous rights is in the cultural realm, for example, cultural traditions, protection of the language and the like, all subjects could fall into the powers of autonomy regimes: security, economic and financial matters, infrastructure like water, energy, communication and transportation, the protection of the environment, social matters, the legal and political system, control of the territory or foreign affairs etc. (Assies 2004, 170–171; Lapidoth 1997, 184–193). Consequently, the extent of rights and obligations of autonomy regimes may differ widely (Suksi 2011, 106).

Though it may seem logical, we need to emphasise that, to be able to speak of autonomy regimes, certain powers need to be exercised de facto. Technically, there cannot be autonomy without practice. This understanding might seem trivial, but in fact it is not: Since researchers have often focused on a legal positivist point of view, more often than not the implementation gap in political reality has been neglected. Accordingly, powers and rights need to be embedded in the institutions of autonomy regimes. I suggest that these could be characterised along the functionality of the powers of democratic systems: legislature, administration, and judiciary (cf. Lapidoth 1997, 35, 182-184). In the following, I will elaborate a typology of autonomy regimes, which relate to the scope of rights and powers they hold. The most prominent types in the literature are: personal, cultural, administrative, territorial, non-territorial, functional, political, and effective autonomy (cf. Assies 2004; Suksi 2015; Tkacik 2008). However, inspired by Tkacik (2008), I will argue for a typology only encompassing what I call personal, functional, administrative, legislative and judicial autonomy. These types of autonomy regimes systematically incorporate the types suggested by other authors, including the dimension of territoriality, and conceptually solving terminological issues of earlier attempts.

Personal autonomy

Personal autonomy refers to an autonomy regime institutionalised as and administered by a social association representing the minority, fostering minority issues typically in cooperation with the state (Lapidoth 1997, 39). It constitutes a legal person under private law, hence its denomination. This body, legitimised by most of its members, aims at the maintenance of the identity of the group by transferring rights to the individual. The association holds competencies to govern specific minority issues with binding decisions (Heintze 1998, 22–23; Suksi 2015, 88). Consequently, group members benefit from a greater number of rights than other citizens (Tkacik 2008, 375).

Since the decisions of the association technically affect only members of the association itself, i.e. only benefit its own members, the *modalities of membership* need to be clarified (Heintze 1998, 22–23). Membership to the group and hence to the association is up to the choice of the individual and legitimised by either self-identification or other more specific criteria. It is mostly tied to citizenship and residency with the respective country as prerequisites (Lapidoth 1997, 38; Suksi 2015, 104-110). As Suksi (2015, 110) points out, the practices of granting or refusing membership may result in problematic rules and mechanism of in- and exclusion. The association is financed by contributions of its members or its own taxes and financial support of the state (Heintze 1998, 23; Lapidoth 1997, 38). Personal autonomy is criticised for often being vested with very restricted powers in limited subjects only, like culture, language, or education. Therefore, it has been associated with a just symbolic recognition of a minority (Suksi 2015, 93, 114; Tkacik 2008, 375).[6] Institutions bearing only symbolic recognition of minorities would and could not be considered autonomy regimes, practice of powers being paramount.

Functional autonomy

Functional autonomy is understood as an establishment of different lines of administration within one state or a certain territory. The majority and minority lines of administration differ regarding the powers transferred to the newly created institutional entities, developing institutions parallel to the state for and by the minority group (Heintze 1998, 23–24; Suksi 2015, 89). As Suksi (2015, 89) shows, this could be a parallel administration in a minority language. However, parallel legal or administrative structures based on traditions are also imaginable. The institutions executing functional autonomy could be based on private or public law, consequently, they could be part of the governmental structure, or they could privately administer transferred rights. Bodies of functional autonomy could thus either count on governmental budgeting or on their own funding through genuine taxes or contributions. Generally, in empirical findings functional autonomy does not hold legislative powers but rests on

[6] Heintze (1998, 21-22) already refers to cultural autonomy as a certain form of personal autonomy. Accordingly, I have conceptualised cultural autonomy as the most salient form of personal autonomy.

regulatory powers only (Heintze 1998, 23–24; Tkacik 2008, 376–383). I argue, however, that theoretically functional autonomy regimes could also comprise powers embedded in the realm of legislature or judiciary.

Administrative autonomy

In delineation of functional autonomy, administrative autonomy is considered here a form of self-administration that encompasses a set of administrative duties within a certain territory. Administrative autonomy is not vested with legislative or judicial powers but could count on local fiscal competencies (cf. Tkacik 2008, 376–383). The autonomous administration, locally elected potentially according to local or (neo-)traditional rules, thus exercises executive independence with limited interference of the centre (Suksi 2011, 130–131; Weller/Wolff 2004b, 12). Because of the powers being reduced to regulatory areas, the scope of action of administrative autonomy is severely restricted. Administrative autonomy is similar in form and function to functional autonomy, but it is limited to the certain territory where it exists without parallel governmental executive or administrative structures (Suksi 2011, 130–131).

Legislative Autonomy

As already pointed out in its denomination, legislative autonomy is based on a local legislature, which is independent of the centre to the extent permitted by respective arrangements. In legislative autonomy, the functional equivalent of an executive branch is also embedded within the institutional setting (Weller/Wolff 2004b, 12–13). Both legislative and executive bodies are elected by the population of the autonomous entity, yet this does not interfere with the right of the local population to participate in central elections. The local legislative holds enumerated power, while residual powers and general legislative rights rest with the centre (Suksi 2011, 130–131). As part of the state structure, legislative autonomy is at least co-financed by central authorities, but local fiscal competencies may apply (Weller/Wolff 2004b, 13). Local legislation typically needs to be in line with human rights or the central constitution, but might – according to the agreements between autonomy claimants and the government – also be designed in another way (Tomaselli 2016, 97). Legislative autonomy is, like administrative autonomy, bound to a certain territorial entity within the state, where autonomous legislature is effective for everyone (Weller/Wolff 2004b, 12).

Judicial autonomy

What other authors have called “full autonomy” (Hannum 1996), “legislative autonomy” (Tkacik 2008), or “territorial autonomy” (Heintze 1998), is introduced here as *judicial autonomy*. As empirical findings suggest, it is the least-commonly transferred right to a local autonomous judiciary system (Lapidoth 1997, 35). While in personal,

functional, administrative and legislative autonomy regimes one has to turn to judicial institutions of the centre, in judicial autonomy, the judiciary of the state structure is locally designed and in the responsibility of the autonomy regime (Weller/Wolff 2004b, 12). From an institutionalist perspective, it is the existence of a local judicial branch that makes an autonomy regime a fully developed one. That means that a judicial autonomy holds legislative, executive, and judicial powers to the extent negotiated with the centre. For the analysis of judicial autonomy regimes, it is important to observe the relation between the central and local judiciary (Tomaselli 2016, 97). As legislative and administrative autonomy regimes, judicial autonomy relies on its own fiscal powers and often on financial re-distribution by the centre (Hannum 1996, 463; Suksi 2011, 3–4). A judicial autonomy is also characterized by territorial distinctiveness, leading to the application of local law and justice to all residents of the entity (Myntti 1998, 278; Tkacik 2008, 383).

Territoriality in autonomy regimes

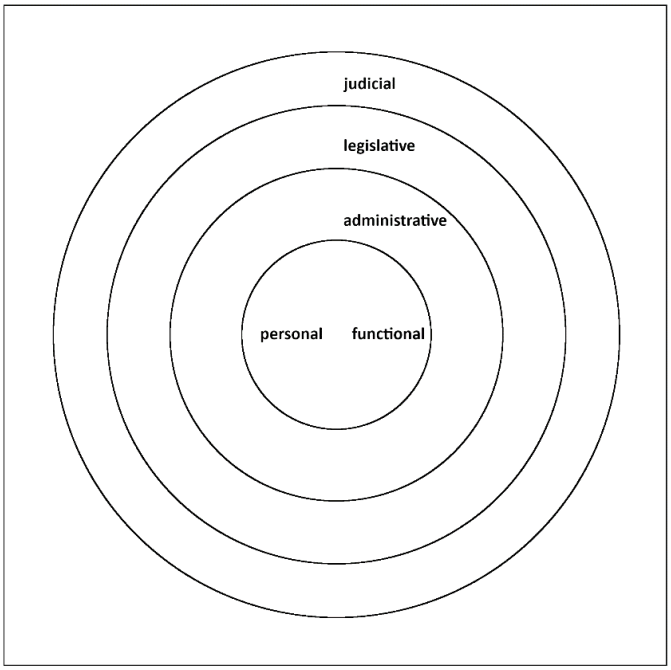
While several authors have emphasised the importance of territoriality and territorial rights for ethnic, minority and indigenous groups (e.g., Assies 2004; González 2010; Lapidoth 1997; Suksi 2011; Tkacik 2008), they have also pointed to the continuous loss of importance of territorial forms of autonomy due to urbanisation of indigenous groups and contemporary colonization of once rather homogeneously settled territories, and to the salience of territoriality in all forms of autonomy regimes. For the sake of comprehension of territoriality within this working paper, we state that the distinction between non-territorial and territorial autonomy (NTA and TA) is only important in two respects:

First, any type of autonomy regime considered territorial in the literature, here administrative, legislative and judicial autonomy, is linked to a certain space in which the actions of the representatives of the autonomy regime are binding for and affect all residents of the area (Assies 2004, 159–161; Myntti 1998, 278). This may create new and typically reversed minority-majority constellations, since in cases of territorial forms of autonomy regimes, autonomy rights are claimed and later executed within a sub-state entity that is primarily inhabited by a national minority (Lapidoth 1997, 37–40). But these constellations may also be erratic, since movement within the national territory could quickly alter the local demographic structure – even possibly promoted by the centre – if the autonomy regime is not vested with local citizenship, residency or limits to settlement (Lapidoth 1997, 39, 40; Myntti 1998, 279; Tkacik 2008, 394). The territorial quality of so-called non-territorial autonomy regimes, here namely personal and functional autonomy, is also bound to territorial entities: the national territory or certain local entities within a state, e.g., a region where ethnic or indigenous minorities are a majority (Heintze 1998, 22; Tkacik 2008, 375; Tomaselli 2016, 84). However, the crucial distinction is that personal and functional autonomy powers and rights only directly affect group members of the minority.

Secondly, territorial rights could be crucial for autonomy claimants (cf. Tomaselli 2016, 96): The cultural, religious or social relation of ancestral, traditional land including its resources and a local population anchors territorial claims within their identity. These claims for land potentially clash with material interests of the nation state (Heintze 1998, 11; Weller/Wolff 2004b, 4–5). Accordingly, Suksi (2011, 6) calls forms of autonomy incorporating territorial claims the "heaviest mode of organization", referring to the rights encompassed in territoriality (e.g., to sub-soil resources, land-use etc.) and the expected resistance of the centre. But since territorial claims are no prerequisite for the struggle for autonomy regimes, territoriality should be part of the analysis of the scope and depth of autonomy. Therefore, it is not a dimension that is central to the conceptualization of autonomy.

Figure 1. below shows how, depicted on a target, autonomy powers are distributed. As mentioned above, empirical findings suggest that the personal and functional types of autonomy regimes are the ones with the least scope and depth of rights/powers. The "volume" of autonomy rights and powers grows towards the edges of the target.

Fig. 1.: The volume of rights and powers of different types of autonomy regimes



Source: own illustration

4 The "Making" of Autonomy

Autonomy regimes of any kind do not simply appear. They mostly develop out of autonomy claims voiced by specific actors that are processed within political contexts. After having discussed institutional arrangements of autonomy regimes, this chapter will debate the processes in which autonomy is negotiated.

Autonomy rights are only rarely offered as a means to conflict resolution without resistance by the state (Ghai 2000, 1), i.e. political processes concerning autonomy claims are conflictive in nature. In the literature on autonomy, the relationship between autonomy claims, governmental actors and those who are fostering autonomy claims is often assumed, sometimes implied, and only seldom explicitly stated. A fact that needs reconsideration.

Autonomy claims

As autonomy regimes cannot evolve out of a void, a preliminary condition is the existence of a more or less institutionalized body that is able to voice autonomy claims – often a representative organ of a minority, a protest movement or a (non-)governmental organization. Though some authors rightfully claim that the subject of autonomy (claims and granting of rights) is always a group, I disagree with the statement that representative groups generally need recognition by the state (e.g., Heintze 1998, 16–17). This is only the case if autonomy claims are being processed peacefully, meaning autonomy rights that have the chance to be or are being *granted*.

A tension between the vision of the state and of the actors claiming autonomy is inherent to the challenge of autonomy claims, since these are often based on different and in many times competing notions of political or social order, even though many autonomy regimes have been developed from within the state, utilizing legal procedures to establish and fortify autonomy institutions (González 2010, 39–40; Neubert et al. 2022, 18–21). Since autonomy claims are considered an attempt to realize an understanding of the "common good" distinct to that of the state, they potentially challenge the state itself (Neubert et al. 2022, 1–2). This fact explains why government actors offer broader autonomy rights only reluctantly, if at all, to solve domestic minority conflicts. Amongst others, the fear of secession is an often voiced argumentation against the granting of autonomy rights (Lapidoth 1997, 203). Besides the potentials as a conflict resolution measure against secession claims, granting autonomy rights itself bears the risk of being a first step on a slippery slope towards secession (Heintze 1998; Lapidoth 1997; Weller/Wolff 2004a).

The question of the secession of territorial entities of a state are often linked with the debate on sovereignty and the right to self-determination.[7] It is generally agreed upon that there is no legal basis for autonomy rights in international law (e.g., Ghai 2000, 1–3). Consequently, Heintze (1998, 7–9) argues that sovereignty should be the limit to demarcate autonomy. Hence, granting autonomy regimes as a means to accommodate minority rights and re-organize the state should not be confused with a right to self-determination. But, as Markku Suksi (2011, 1–3) points out, at least in Europe it is fairly common for sub-state entities to be under the jurisdiction of more than one government, reflecting growing constrains on the very idea of state sovereignty. These views are based on a juridical approach. But we will see that the legal debate on self-determination, sovereignty and minority rights obscures the fact that autonomy arrangements can be exercised informally in addition to official state authorisation (Ospina Peralta 2010, 205–206).

Autonomy claims are voiced vis-à-vis the state or, if not voiced facing the state, are actually infringing on state functions, resulting in an inevitable reciprocity between the claimants and governmental actors. Autonomy claimants do not only seek to establish a different political and social order within the territory of a state, but they do so by taking over state or government functions. It is this reciprocity that marks the relation between the state and actors claiming or exercising autonomy that differs from other state-to-non-state-actor-relationships. But the mode of relation between the state and an autonomy regime or claimants of autonomy respectively, is determined by their actions in the political process. Different strategies will lead to different outcomes in terms of autonomy process and autonomy regime.

Autonomy process, entrenchment, and informality

Autonomy process, entrenchment of autonomy rights and powers and the type of resulting autonomy regime are closely entangled. Therefore, I will refer to these three aspects jointly. As Araceli Burguete (2008, 27) has pointed out, indigenous actors have pursued three different strategies to gain autonomy powers: within the state, against the state and beyond the state. Inspired by Nordquist (1998, 64), I argue that according to the three strategies, there are three types of successful autonomy regimes: a tolerated autonomy, a granted autonomy and a seized autonomy.[8] This would imply that there are also three analogue types of entrenchment of autonomy. Entrenchment is here understood as the degree of alterability of autonomy. Though Suksi (1998b, 152)

[7] While the discussion on both concepts may fill books (cf. Lapidoth 1997), I will not go into detail on both notions here, though they logically play a role when it comes to legitimising autonomy claims.

[8] Nordquist (1998, 64) utilises the terms "historical autonomy", "organic autonomy" and "seized autonomy". I do not completely concur with his description of the single types: Tolerated autonomy as understood here would not need a historical trajectory of development. Granted autonomy is not limited to the constitution as a legal basis, but could also comprise international or secondary law, while seized autonomy is fought for and does not necessarily result in an agreement between the state and its challengers, but rather in de facto control over a certain territory of the claimants of autonomy.

defines entrenchment as a "method of fixing a given autonomy regulation in the legal order of a country", I broaden the idea of entrenchment beyond legal terms: An autonomy regime could e.g., be entrenched through victory in armed conflict, i.e. simply through military power, or more loosely established by being tolerated by the state.

The relationship between the process and the actual autonomy regime remains uncertain, though there would probably be some kind of path dependence between means utilised in the process and result (cf. Greener 2005; Kay 2005; Mahoney/Schensul 2009; Thelen 1999). Autonomy claimants strive for solutions that are as stable as possible. Since especially on the local level stability cannot be taken for granted as some kind of given local institutional or political arrangement – above all in the context of limited statehood (Risse et al. 2018) – local governmental and non-governmental actors need to reach stability through a tolerated, granted or fought for local order (Neubert et al. 2022, 3).

In legal terms, the levels of entrenchment mirror the ability of current national lawmakers to arbitrarily alter autonomy arrangements: constitutional arrangements, secondary law and singular agreements (Suksi 1998b, 152; González 2010, 39; Heintze 1998, 17). When talking about the *granting* of autonomy, two aspects are reflected in the analysis of autonomy by Donna Lee Van Cott (2001): Indigenous actors have utilised constitutional reforms that were triggered by deep social and political crises of legitimacy and governability to achieve the codification of autonomy rights in national primary law from the inside of state institutions, e.g., the Indigenous Peasant Native Autonomies (AIOC) in Bolivia and the Autonomous Indigenous Circumscriptions (CTI) in Ecuador.

Then, in armed conflicts between indigenous actors and the state, the former have succeeded in establishing peace accords incorporating autonomy regimes, e.g., the Atlantic Coast (RAAS and RAAN) in Nicaragua, the *comarcas* in Panama, the Chittagong Hill Tracts in Bangladesh and Papua and Aceh in Indonesia.[9] Since Van Cott adhered to a legalist approach focusing on constitutional law, it is logical that she neither considered indigenous strategies beyond the state or developments in secondary law (cf. Assies 2004, 161; Tomaselli 2016, 89–90) nor the virtual political reality on the local level.

Besides constitutional and secondary law, autonomy rights could be entrenched in international legal documents (Heintze 1998, 17; Nordquist 1998, 62).[10] The 1989 Convention 169 of the International Labour Organisation on indigenous and tribal

[9] Van Cott (2001, 32–33) defines regime bargains as necessary but not sufficient conditions for the success of indigenous autonomy. The additional possibility of participation in decision-making processes holding reasonable decision-making power and influential allies within those processes are the necessary and sufficient conditions for autonomy success, according to her study.

[10] For a more detailed account on international law and constitutional developments of indigenous autonomy rights in Latin America see Rachel Sieder (2016).

peoples is often mentioned as the most important mechanism in international law securing indigenous rights. In Latin America it is considered a key element in framing indigenous demands. By the ratification of the convention, the inscribed rights acquire the status of domestic law, and thus autonomy claims often involve the implementation of these rights. Though the term "peoples" in the convention is not utilised as it is in international law, precluding the possibility to base claims for self-determination and independence on the ratification, the convention covers extensive areas of rights concerning indigenous peoples: legal pluralism, right to customs and culture and rights to traditional lands (Assies 2004, 158–159). It is important to mention, though, that legal and virtual reality in Latin America differ widely. For example, the Ecuadorian CTIs, codified in the 2008 constitutional reform, have not been implemented despite indigenous attempts to do so ("Ecuador No Tiene Circunscripciones Territoriales Indígenas Definidas," 2019).

Besides being codified and in some cases exercised according to written law, autonomy is exercised and *tolerated* informally beyond the state or held up against the *resistance* of the state by force (Burguete 2008, 31). These forms of self-governance involve informal political structures that manage the internal resources of communities and the practise of communitarian justice while ignoring or bypassing formal legislation (Tomaselli 2016, 89–92). One prominent example are the territories under Zapatist control in Chiapas, Mexico. From a legalist point of view, the negotiations between the EZLN (Zapatist Army of National Liberation) failed and so did the codification and legalisation of indigenous autonomy in Mexico at that time (Van Cott 2001).[11] But the territories the EZLN seized in the conflict still largely remain under their control, and now exist as a de facto autonomy regime (Dinerstein 2013; Mora 2015). One could argue that the entrenchment of the seized autonomy regime in Chiapas is based on the military stalemate between the state and the EZLN. Consequently, seized autonomy regimes could be entrenched in military power. In the case of tolerated autonomy regimes entrenchment is manifold: The existence of an informal autonomy regime could be tolerated by the state due to the inability of governmental actors to impede it, due to an ongoing cooperation between the state and the autonomy regime, due to the indifference of the state vis-à-vis the claimants or because the state does not know that the informal autonomy regime exists. As informal institutions are difficult to observe, these forms of autonomy may be the hardest to detect (Lauth 2000, 2015). The Territorial Autonomous Government of the Wampís Nation (GTANW for its Spanish acronym) in the North-West of Peru could constitute a case of tolerated autonomy due to mutual acceptance. Situated along the rivers Santiago and Morona in the Amazon basin, the autonomy regime is a self-declared entity crossing departmental boarders in a region with limited statehood. While the scope of the

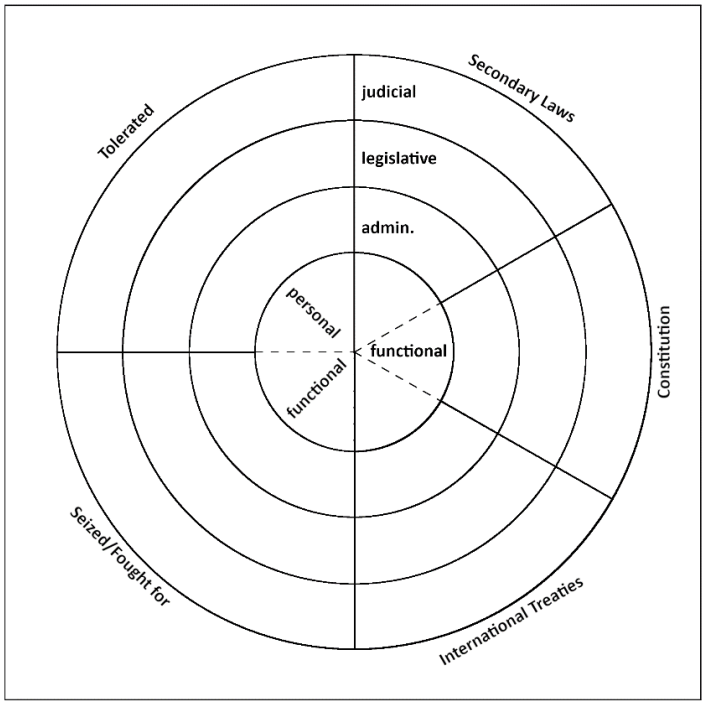
[11] There are by now, nevertheless, different forms of indigenous autonomy regimes in Mexico. For these cases see e.g., Anaya Muñoz (2007) or Aparicio Wilhelmi (2009).

virtually exercised powers of the GTANW is hard to asses from a distance, it did prevail for approximately eight years without major state interference (Gómez 2018).

It is safe to say that a formalised, legally entrenched autonomy regime does not only bring advantages to both sides within the conflicting process: While the state could have an interest in legally controlling autonomy processes and the resulting institutional arrangement, thereby also enhancing governability and national inclusion of divergent regions, it also legitimises autonomy claims and relinquishes significant powers to the self-governing entity and its population. Then again, autonomy claimants have an interest in legally entrenched autonomy rights, in order to gain recognition, stability and security, while they open up the institutional design and the scope of exercised powers to the influence of a possibly overly powerful state, restricting genuine empowerment (Assies 2004, 161; González 2010, 35).

As shown in Fig. 2, the types of autonomy regimes have been supplemented by the dimensions of entrenchment: the granted forms codified in secondary law, the constitution, and international treaties, and tolerated, and seized/fought for autonomy regimes, respectively. While the added dimensions also represent the informal dimension, seized/fought for, and tolerated autonomy regimes are only partially selective categories, as a once fought for autonomy regime could evolve into a tolerated one at a later point, depending on the stance of the state.

Fig. 2. Autonomy regimes, informality, and entrenchment



Source: own illustration

5 Autonomy Regimes as Self-Governance and/or Self-Government

Authors like Lapidoth (1997, 53–54) or Weller/Wolff (2004b, 3) have connected the idea of autonomy to the terms self-government and self-governance. Lapidoth (1997, 53) argues that self-government could be conceptualised as "full autonomy", including legislative, executive and judiciary institutions exercising corresponding powers on a demarcated territory within a state. But she concludes that this would not do justice to the flexible and broad concept autonomy is supposed to be. On the other hand, Weller/Wolff (2004b, 3) speak of autonomy as "enhanced self-governance", localising the concept within the governance debate while assigning it some special status. I agree with both accounts.

Government and governance are distinct concepts (cf. Bröchler/Lauth 2014; Rhodes 1996, 652). Government is defined quite clearly as part of the formal state structure and the process in which government decisions are executed. This encompasses governmental actors, levels of government and governmental institutions. Consequently, "the government" likewise "the state" cannot be identified as a monolithic actor, but rather as a label for a variety of actors within the government structure that could follow different interests and that could be internally divided in different interest groups. The idea of "governance with/out government" provides autonomy with context, taking into account the relationship between state and autonomy regime (Börzel 2010). Governance without government is possible due to the existence of informal institutions that function without having to fall back on a *formal* hierarchy (Rhodes 1996, 658).[12] Governance with government on the other hand is only possible as long as governmental actors desist from utilising hierarchy as a mode of governance (Börzel 2010, 8–9).

Governance comprises a broader array of formal and informal actors that may or may not encompass governmental actors. Consequently, governmental actors are just actors amongst others (Rhodes 1996, 656–658). The distinction between governmental and non-governmental actors is still meaningful for the governance/government debate because governmental actors rely on the legitimate use of coercive force to execute their decisions. As Börzel (2010, 6–7) points out, non-governmental actors could also *claim* this monopoly on the use of force, but its legitimacy *actually* lies with the state. Börzel's comment indicates the potentially problematic relationship between governmental and non-governmental actors within the debate. In more recent approaches, governance actors also include foreign actors, neo-traditional elites or armed actors, widening possible actor constellation from administration-oriented line-ups to the totality of political actors available – including groups opposed to occidental ideas of law, order or government (Neubert et al. 2022, 2). Governance in its

[12] Börzel (2010) argues that hierarchy needs to be absent in governance without government. However I suggest, based on Rhodes (1996, 658), that it is the absence of hierarchy exercised by governmental actors that marks the difference.

classical understanding is focused on the production of a "common good". But as Neubert et al. (2022) argue, it is far from clear what is understood as "common good", the idea of what is conceived as *common* and *good* depends on the interests of actors or their notions of political and social order (cf. Schmidt 2022, 8, 13).

Governance is, like government, conceptualised as structure and process (Börzel 2010, 6). Actors in governance adopt and implement collectively binding decisions by means of institutionalised interaction (cf. Mayntz 2010; Mayntz/Scharpf 1995; Scharpf 2000). The modes of interaction are institutionally grounded in markets, networks, hierarchy, negotiations, patronage, demarcation, and independence (Benz 1994, 118–127; Neubert et al. 2022, 15).[13] Markets rely on (price) competition, networks on trust and cooperation, hierarchy on administrative orders, negotiations on cooperation only, while patronage relies on cooperation and trust, and social, spatial or functional demarcation and independence rely on mutual acceptance or violence (Neubert et al. 2022, 14–18). Actors in governance are significantly independent from each other (including from state actors), and count on relevant resources to engage with other players, like personnel, information, expertise, money, etc. Nevertheless, actors may count on and utilise the opportunity to influence others according to their resources and the mode of interaction embedded within the institutional setting (Börzel 2010, 15; Rhodes 1996, 660).

As previously mentioned, the allocation of autonomy regimes within the realms of government and governance depends on their relations with the state and their formalisation. When talking about *granted* autonomy rights and powers, autonomy regimes may be manifested in institutional settings that are to a defined extent part of the government structure. In this regard, autonomy regimes are forms of self-government. If autonomy powers are *tolerated* or *seized*, autonomy regimes play out as forms of governance with/out government manifesting in modes of governance depending on the specific case. Börzel (2010, 14) argues regarding limited statehood and governance: "The weaker the government and the more limited statehood are, the greater the demand for governance with/out government, which, however, is less likely to emerge and to be effective and legitimate."

But according to the logic of autonomy processes, this would not apply to autonomy claims. As autonomy claimants are willing to take over governmental functions, the absence of the state could lead to a tolerated or seized form of autonomy regime. Hence, autonomy regimes as self-governance could have a substitutive, subsidiary, complementary or contrary character in regard to the state, arguably depending of the ability and willingness of the state to uphold state powers and fulfil state duties (Pfeilschifter et al. 2020, 15-16). It is generally agreed upon that informal institutions

[13] Neubert et al. (2022, 15) actually use the term "autonomy" referring to the relational aspect of a certain degree of separation or independence between (institutional) actors that is also utilised e.g., by Kuhlmann, Proeller, et al. (2021) or Ladner et al. (2019). I have altered the term, not because I disagree with the authors on the meaning but to prevent further confusion *within this tex*t only, perfectly aware that, especially in the legal disciplines, these concepts are not easily interchangeable.

may challenge the democratic character of governance through the involvement of non-state actors. Governance is thus often considered clientelist, non-transparent, exclusive or lacking accountability (Börzel 2010, 11; Rhodes 1996, 666). This may also apply to informal autonomy regimes, depending on internal structures and institutions.

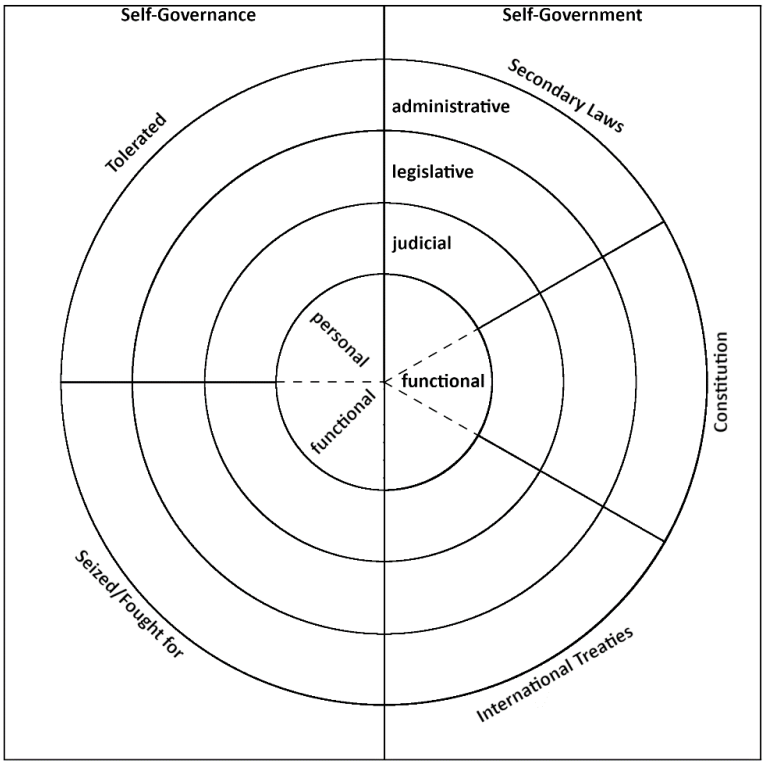
The autonomy process manifests in interaction between governmental and non-governmental actors with certain resources, interests, and notions of order. If the relationship between these actors remains peaceful, modes of interaction are competition, cooperation, trust, or even mutual acceptance. If the process escalates into armed conflict, the mode of interaction and with it the importance of applicable resources changes and this will ultimately decide if an autonomy regime can be seized, or governmental actors could manage to enforce state authority violently. The same accounts for stabilized autonomy regimes: Tolerated autonomy regimes engage with the state in competition, cooperation, trust, acceptance or under the shadow of hierarchy, while seized autonomy regimes are upheld by violence or (localized) hierarchy.

Conclusion: Conceptualizing Autonomy

By now the paper has elaborated on the question of what types of autonomy there are and how the autonomy process influences its outcomes. The paper has also considered what autonomy is *not*: decentralization and federalism. Moreover, the seemingly monolithic concept *autonomy* has been split up into more explicit terms, illuminating several dimensions: *actors*, *claims*, *process*, *rights* and *powers*, *institutions*, and *regime*. The paper has also emphasised the reciprocal relationship between the state and autonomy claimants within the autonomy process and has so far concluded with formally and informally entrenched and practised autonomy as self-government or self-governance. Therefore, the following can be concluded regarding the types of autonomy regimes:

As Fig. 3 shows, autonomy regimes can be described as special forms of self-governance and self-government. Both are subdivided by the type of entrenchment and/or relationship to the state: Self-governance in “tolerated” and “seized/fought for” subtypes and self-government in categories of entrenchment by secondary law, constitution and international treaties. The rings of the target depict ever growing competencies from the “bull’s eye” to the outer spheres. This description corresponds with empirical findings: The centre comprising of rights and powers that are easily granted or tolerated with growing resistance towards the outside of the target. For the single types of autonomy regimes this means the following:

Fig. 3. Autonomy as Self-Governance and Self-Government



Source: own illustration

Personal autonomy cannot constitute a form of self-government, since it is based on private law, resulting in a voluntary association of minority members. Nonetheless, personal autonomy could still be formal or informal: As the association of minority is vested with formal rights, it could be acting as part of a governance process practising hierarchy, amongst other modes of governance. While the division into government and governance largely corresponds to a division in formal and informal subtypes of autonomy regimes, this is only partially correct for some manifestations. Certain types of personal or functional autonomy regimes, for example, might be formally vested with powers that functionally fulfil the functions of the state, and thus are able to resort to hierarchy as a mode of governance in their interaction with other non-state actors. Personal autonomy institutions could also function informally, with informal institutions structuring actions between the association, its members, and the state. For example this could encompass an institutionalized market of violence with competing actors offering security (Elwert 1997; Neubert et al. 2022; Tkacik 2008).

Functional autonomy could form part of the formal government structure, as parallel institutions may be established and operated as part of the state constituting self-government. They could also be arranged and administered by a private minority association (personal autonomy) vested with rights to execute state functions, like education, reflecting a hierarchic relationship between the autonomy regime and the state. If it exists informally, functional autonomy could exercise powers beyond the

state and against the state, with effects on the state-autonomy-relations that need to be explored in each specific case (cf. Benda-Beckmann 1994; Rhodes 1996; Suksi 2015)

Also *administrative, legislative, and judicial autonomy* could appear formally as self-government or as a governance constellation, possibly informally challenging the state. As we have linked administrative, legislative, and judicial autonomy regimes to a certain territory, an informal executive, legislature and/or judiciary could exist as, or authorized by a non-state actor, de facto exercising respective powers in a certain territory. This kind of self-governance could be tolerated by the state based on competition, cooperation, trust, or mutual acceptance or be fought for and seized through violence, reflecting the modes of governance (Myntti 1998; Neubert et al. 2022).

Autonomy is a contested concept. This working paper wants to contribute to the debate by delving deeper into the different dimensions of autonomy. The concept of autonomy regimes as forms of self-governance or self-government needs to be considered in the context of these dimensions of autonomy that have been discussed within this paper: claims, claimants, process, reciprocity, rights and powers, regimes, and institutions. It deepens the discussion by the often implicitly, only seldom explicitly stated importance of informality that has a strong impact on the array of possible, especially local and regional governance constellations. For empirical case studies, the concept elaborated above calls for a close, historically informed examination of local political realities, moving away from legalist analysis towards the analysis of power relations on the ground.

Acknowledgements

This working paper was inspired by reading studies by the DFG research unit LoSAM and by further discussions with members of LoSAM. I would like to thank Hans-Joachim Lauth and Christoph Mohamad-Klotzbach (both members of LoSAM) as well as Theresa Stawski, Milan Banse and Linda Koch (all members of the Institute of Political Science and Sociology at the University of Würzburg) for their helpful comments. In addition, I would also like to thank the research unit for the opportunity to publish the manuscript as part of this working paper series, Jansen Harris for the language editing and Marie Fenzl for the formal editing.

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