

THE SOUTH TYROL AUTONOMY

A Short Introduction

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PART I

HISTORICAL INTRODUCTION

1. How South Tyrol came to be part of Italy.

Problems of cultural minorities in Europe have usually arisen either when, for whatever reasons, the dominant culture of a state seeks to destroy other cultures already resident on the territory of that state, or when, as a result of the verdicts of wars and peace conferences, states obtain territory containing significant numbers of persons of another culture. In this latter case the future will depend on the attitude of the state to the culture (or cultures) it has acquired. Will it follow a policy of reconciliation, allowing that culture to live and thrive as it would if it were still united with its kin? Or will it fear that a minority, resentful at separation from its kin, would never cease to agitate for reunification and thus threaten the integrity of the state, in turn leading to policies of domination, repression, assimilation or even expulsion? On the answer will depend the extent to which the minority comes to control the rate and direction of its economic, social and cultural development rather than having this done by the state and its dominant cultural majority.

The history of the Southern Tyrol in the twentieth century is about the struggle for the obtainance of an autonomy of originally some 225,000 (now 287,500) German-speakers and 10,000 (now 18,500) Ladin-speakers living compactly in a homeland which had been theirs for very many centuries, forming together today some 72 per cent of the local population (although only 0.5 per cent of the population of Italy). The demanded autonomy should allow the three linguistic groups in South Tyrol to live in harmony, promoting their own culture, being no threat either to each other or the Italian state, as well as one that could act as a bridge between the German-speaking, Ladin-speaking and Italian-speaking people of the European Union. That struggle sometimes took a violent course, but the lessons learned from it as regards issues of identity, language, territory and territorial stability and self-determination, make the history of the South Tyrol Autonomy very illuminating in the search for solutions to problems in other areas of Europe with culturally divided communities.

With the 1919 Treaty of St. Germain at the end of the First World War Italy acquired from Austria not only the overwhelmingly Italian Trento but also that part of the Austrian Crownland of Tyrol lying south of the Brenner Pass where 86 per cent of the population was German-speaking, 4 per cent Ladin, 3 per cent Italian and the rest either foreigners or speakers of another language. Italians, however, would claim that many of the foreigners were actually Italians.

Austrians and Tyrolese, north and south of the Brenner, considered that the transfer of South Tyrol to Italy was a great injustice. First of all the guiding principle of the 1919 Paris Peace Conference, under the influence of the President of the United States, Woodrow Wilson, had been that of self-determination. But before that, in his famous speech on 8 January 1918 containing Fourteen Points for a just peace, Wilson stated in Point IX that there should be a "readjustment of the frontiers of Italy along clearly recognisable lines of nationality." To Austrians and Tyrolese the border between overwhelmingly German-speaking South Tyrol and overwhelmingly Italian-speaking Trento was clear. It lay at the Salurn Gorge, in the south of Bozen/Bolzano.

However, at the Peace Conference the Italians declared that they did not consider themselves bound by the Fourteen Points. Furthermore, to overcome the problem of acquiring territory against the wishes of the vast majority of its inhabitants the Italians argued that South Tyrol and Trento were geographically one and since the Italian population of Trento was larger than the German population of South Tyrol the

area as a whole, *Venezia Tridentina*, had an Italian majority and therefore should be given to Italy.

But if acquisition of Trento was understandable, why should Italians want to gain South Tyrol? There were three answers given by Italy. First, on strategic grounds, the line of the Alps at the Brenner was considered to provide a far superior natural barrier to what could be found further south. The second reason combined politics with geography. It was said that Italy had natural frontiers and the line of the Brenner was part of these since it lay on the Alpine chain that provided the watershed between the Black Sea on the one hand and the Adriatic on the other. Third, there were the claims made by the Trento ethnographer Ettore Tolomei that the majority of the German-speaking peasantry of South Tyrol was not descended from Germans who had migrated into the area after the 5th century collapse of the Roman Empire but from pre-German elements that had been germanised over the centuries by the dominant German-speaking administration, clergy and school system. Therefore, the population needed to be liberated and returned to their rightful culture. Tolomei would also “discover” Italian names for places and natural features in South Tyrol, based on old church Latin.

During the first three years after the War questions as to how South Tyrol should be governed were discussed between the Italian Government and South Tyrolean political leaders. But before any decisions could be reached the debate concerning the terms upon which the South Tyrolese were to live in Italy came to an abrupt end. In October 1922 democratic government in Italy was replaced by Fascism, led by Benito Mussolini.

2. Fascist attempts to assimilate the South Tyrolean.

Fascist policy towards the South Tyrolean – and indeed all cultural minorities in Italy – was to assimilate them, and the man chosen to do this was Tolomei.

Insofar as the German language was concerned, Italian was to be the only official language in all public offices, state bodies, chambers of commerce and health and educational establishments. Those that did not speak or write it to the required standard were dismissed from their posts. Italian officials, teachers and persons from the professional classes were sent to replace them. All court cases had to be heard in Italian only. Only documents in Italian were valid. Those not understanding the language were not put on jury lists. The South Tyrolean could not use German, oral or written; their lawyers could not even address them in court in German but had to use interpreters paid for by their clients. All German private and official signs and inscriptions, and all South Tyrolean names of places and geographical features were Italianised. In particular the name *Südtirol* or even any references which included the word *Tirol* in them were suppressed. In primary schools the only teaching language was Italian, although religious instruction could be given in German. Not until 1934 could German be taught – but only as a foreign language. In the meantime the only way that South Tyrolean children could be taught in German was in secret “catacomb” schools. Since an indigenous free South Tyrolean German-language press was seen by the Fascists as a means of maintaining group solidarity, newspapers were closed down. They could reappear only if the Fascists controlled the contents. Only newspapers close to the Roman Catholic church had some latitude. Listening to Austrian or German radio broadcasts was strictly forbidden. South Tyrolean families

whose names derived from Italian or Latin had to readopt the original form. The decision as to whether the name did or did not have an Italian “substratum” belonged to Tolomei. As for given names, those that “offended Italian sentiment” were forbidden. German-speaking political parties were dissolved. Then in 1934, believing the pace of assimilation was too slow, Mussolini created an Industrial Zone on the outskirts of Bozen/Bolzano, the capital of South Tyrol. The result was a sudden strong inflow of Italians into South Tyrol so that by 1939 their number increased to 25 per cent of the population. South Tyrolese were systematically discouraged from obtaining jobs in the Zone, although as an overwhelmingly Alpine farming and commercial community with few industrial skills they had little desire to enter an Italian industrial environment.

Nevertheless, if by the outbreak of the Second World War in September 1939 the South Tyrolese were treated like foreigners in their own land, seventeen years of fascism had not succeeded in assimilating them. The German language, even if only dialect, was still spoken in the home and learnt in the secret “catacomb” schools. But a further blow was to come. Migration might succeed where assimilation had failed.

In October 1939 Hitler and Mussolini agreed that the German-speaking South Tyrolese (unlike the Ladins, who were considered Italians) should be given an option: either to leave their 1300-year old homeland and be resettled in the *Reich* or remain in their homeland and accept complete assimilation. Under ferocious pressure from both Fascist and Nazi organisations over 80 per cent of the group, some 200,000, voted to leave, but because of the course of the war only about 75,000 actually did so, and many returned, clandestinely.

PART II

SOUTH TYROL 1945 – 1957

1. South Tyrol in 1945

When the war ended in Europe on 7 May 1945 the cultural, economic and social position of the German-speaking South Tyrolese was disastrous.

Insofar as their language was concerned the break with Austria in 1919, the closure of German schools, the cessation of the use of the language in the public administration, the departure of Austrian officials and the difficulties in getting Austrian newspapers led to a break with Austrian *Hochsprache* and written tradition; only the oral tradition, *Dialekt*, survived in the home and in the valleys. The elimination of the South Tyrolese from the public administration and educational institutions had robbed their community of an administrative class and a generation of intellectual leaders, creating a vacuum that would need some time to fill. Economically and socially the group was unbalanced, overwhelmingly concentrated on its poor alpine farms, while the Italian administrative and industrial classes, concentrated in the big towns, had been better paid and better housed.

It was unsurprising, therefore, that immediately after the war the South Tyrolese demanded that the victorious Allies return their land to a restored Austria. The campaign was led by the Südtiroler Volkspartei (South Tyrolese People's Party) or SVP, founded a few days after the end of the war by prominent South Tyrolese who had voted to remain in South Tyrol at the time of the 1939 Hitler-Mussolini Options Agreement. In the years to come this party would represent massively the political views of the South Tyrolese people of all shades of opinion, left and right, employers and trade unions, professions and occupations, regularly obtaining some 85 per cent of the South Tyrolese and over 60 per cent of the Ladin vote. Indeed in the 1980s it would be estimated that over a third of the German-speaking minority able to vote were paid-up members of the party. For their part Italian nationalists demanded that all those who had voted to leave in October 1939 should be obliged to do so.

2. The De Gasperi-Gruber Agreement (Paris Treaty) on South Tyrol of 5 September 1946.

Neither South Tyrolese nor Italian nationalists got their wish. Already by the summer of 1946 the Allies were agreed that for political reasons Italy should retain South Tyrol. Nevertheless, there was considerable sympathy for the South Tyrolese, recognised as having been denied for a second time the right of self-determination as well as being the victims of Fascist assimilation policies. The proposal to have the South Tyrolese fulfil their votes of October 1939 was accordingly rejected, and at the peace conference held in Paris in 1946/47 the Allies insisted on an autonomy for South Tyrol, to be based on an initial agreement to be negotiated between Italy and Austria. Accordingly the Austrian Government was invited to the conference to submit its views on the peace treaty about to be negotiated with Italy. In turn the Austrian Government asked the SVP to send three representatives as advisers. The further aim of the Austrians and the SVP was to have any agreement reached guaranteed internationally.

The result of two weeks intensive negotiations was the De Gasperi-Gruber Agreement of 5 September 1946, named after the Italian Prime Minister De Gasperi and the Austrian Foreign Minister Gruber.

The full text was as follows:

1. German-speaking inhabitants of the Bolzano Province and of the neighbouring bilingual townships of the Trento Province will be assured a complete equality of rights with the Italian-speaking inhabitants within the framework of special provisions to safeguard the ethnical character and the cultural and economic development of the German-speaking element. In accordance with legislation already enacted or awaiting enactment the said German-speaking citizens will be granted in particular:

- (a) elementary and secondary teaching in the mother-tongue;
- (b) purification of the German and Italian languages in public offices and official documents, as well as in bilingual topographical naming;
- (c) the right to re-establish German family names which were italianised in recent years;
- (d) equality of rights as regards the entering upon public offices with a view to reaching a more appropriate proportion of employment between the two ethnical groups.

2. The populations of the above-mentioned zones will be granted the exercise of autonomous legislative and executive regional power. The frame within which the said provisions of autonomy will apply, will be drafted in consultation also with local representative German-speaking elements.

3. The Italian Government, with the aim of establishing good neighbourhood relations between Austria and Italy, pledges itself, in consultation with the Austrian Government, and within one year from the signing of the present Treaty:

- (a) to revise in a spirit of equity and broadmindedness the question of the options for citizenship resulting from the 1939 Hitler-Mussolini agreements;
- (b) to find an agreement for the mutual recognition of the validity of certain degrees and university diplomas;
- (c) to draw up a convention for the free passengers and goods transit between Northern and Eastern Tyrol both by rail, and to the greatest possible extent by road;
- (d) to reach special agreements aimed at facilitating enlarged frontier traffic and local exchanges of certain quantities of characteristic products and goods between Austria and Italy.

The Agreement was annexed the 1947 Italian Peace Treaty, so that the South Tyrol Question was thereby given international standing.

The negotiations to follow on the autonomy now had a legally and internationally established basis. As a signatory, the South Tyrolean state, Austria, would have the right in its role as the “minority’s protecting power” to intervene to see that the clauses of the Paris Agreement were fulfilled, thus avoiding the situation that had existed under Fascism when protests about the treatment of the South Tyrolean had been contemptuously ignored.

However, there were two problems about the Paris Agreement and, taken together, the result would seriously jeopardise inter-community relations and reconciliation after twenty-five years of ethnic hostility and bitterness in South Tyrol.

First of all, the wording in many key areas was vague. Did Article 2's promise of an autonomy apply only to South Tyrol or to the entire populations of the two provinces? Was the word "regional" to be interpreted in a geographic or an administrative sense? Did the phrase "parification of the German and Italian languages" in Article 1 (b) mean that German would be a local official language? Did Article 1 (d) imply that there should be precise ethnic proportions in public offices, and if so, what was the definition of "public offices"? In any case, to what extent would the engineering of appropriate proportions be compatible with the "equality of rights" referred to earlier in the Article? There were other questions as well. If in Article 1 (a) the South Tyrolese would be taught in primary and secondary schools in their mother-tongue, would schools be merely Italian schools with everything translated into German and integrated, or would there be a separate autonomous German school system? If German-speaking pupils would be obliged to learn Italian, the official language, would local Italian-speaking pupils be obliged to learn German?

Much would depend upon whether the Italian Government would adopt a generous or a restrictive attitude to these questions. The second problem with the Agreement was that it did not contain the one thing that Italians wanted from it, namely Austrian renunciation of South Tyrol. Even worse, the shock and anger in Austria and Tyrol, North and South, at the failure for the second time in less than thirty years to obtain self-determination for the South Tyrolese led the Austrian government to take the line that the Agreement was the best possible under the circumstances, but that did not mean Austria had renounced South Tyrol. The implication was that the Agreement was only a temporary one, and for the Italians this meant that the territorial stability of an area where their kin was in the minority would be continually in question. The result was an Autonomy Statute restrictively interpretive of the Paris Agreement, and restrictively applied.

3. The 1948 Autonomy Statute.

To begin with the Italian Government joined the two Provinces of Bozen/Bolzano (South Tyrol) and Trento to form the Region Trentino-Alto Adige. The name "South Tyrol" did not appear in the German versions of either the Province or the Region. In terms of population since the Province of Trento was larger than Bozen and was 99 per cent Italian (whereas Bozen was only two-thirds German), the Region had a two-thirds Italian majority. This was significant because in regard to legislative and administrative powers the Regional Parliament, composed of the membership of the two Provincial Parliaments, possessed primary legislative powers in relation to key sectors of the economy – agriculture and forestry, health and hospital services, tourism and the hotel trade, communications and transport of regional interest, the development of co-operatives, conservation of Alpine lands and parks, and mining, as well as secondary legislative powers relating to industrial production and commercial activity, the use of publicly owned water, and direct control of public utility services. The Provinces enjoyed primary legislative power in relation to a less extensive and less important range of sectors – town planning, cultural institutions, regulation of provincial offices and personnel, crafts and handicrafts, place names (but it was made clear that bilingual toponomy would have

to continue) and housing. Furthermore, the Region was not obliged to delegate its administrative powers to the Provinces (which would have created jobs). Since Italy was not a federal but a regional state, all regional and provincial laws required approval by the central government in Rome. Quite apart from the cumbersome, often lengthy and bureaucratic nature of the procedure, the fact that “national interests” and “the fundamental rules governing the social and economic reforms of the republic” were not defined gave government and the central bureaucracy ample opportunity to delay or play politics with regional or provincial legislation. Regional and provincial laws could be contested by the state before the Constitutional Court but the Province could not contest state laws unless the Region, which had such a right, agreed.

As for the operation of the autonomy, in a precedent-setting form of government, the 1948 Autonomy Statute provided for institutional power-sharing. This required that the distribution of portfolios in the Regional and Bozen/Bolzano Provincial Governments had to reflect the ethnic composition of the two parliaments which, to the extent that there was no cross-ethnic voting, meant that two-thirds of the deputies were Italian in the Regional Parliament and two-thirds were German in the Bozen/Bolzano Parliament. The aim was that the programme of the government in both bodies had to have the support of both linguistic communities.

But quite apart from the constitutional framework the other features of the autonomy, particularly those relating to culture and finance, were deeply disappointing for the South Tyrolese.

The Autonomy Statute stated that Italian was the official language of the Region but that the South Tyrolese could use their language in public life, particularly in relations with the public administration in the Region and in meetings of the various levels of political bodies. For the South Tyrolese this was very far from the “parification” promised in the Paris Agreement. But when the South Tyrolese claimed that German should be an official language in South Tyrol, this was rejected in 1952 by the Council of State (this was before the Constitutional Court had been set up) on the grounds that if the negotiators of the Agreement had wished German to be official they would have said so explicitly in the text. German texts and translations were admissible, but in any situation in which documents were drawn up in both languages it was the Italian that was the authentic version.

With regard to ethnic proportions in public employment, the Italians were happy to accept the principle in regard to the provincial and regional administrations but rejected it for all state and semi-state bodies.

With regard to education, the Autonomy Statute provided that although there were separate administrative divisions for the schools of the three linguistic groups, each with their own Head, the teaching and administrative staff were an integral part of the Italian national educational system. However, teaching would be in the mother tongue and the second language had to be taught by teachers whose mother tongue that was. On the other hand, if it was obligatory for the German schools to teach Italian, the official language, it was not obligatory for the Italian schools to teach German. And relatively few Italians were taught it or bothered to learn it. In their own land they felt no need to learn German; it was not an official language. The result was that whereas the South Tyrolese wanted all public officials to be bilingual, there were very few German-speaking Italian officials. Legislation adopted in 1951 provided merely that offices had to be bilingual so that South Tyrolese could communicate with them in German. True that legislation provided administrations with the option of including German in the examinations for recruitment or even reserving a number of places for candidates successful in German. But not until 1959 did a provincial law

provide for bilingualism for new recruits and that only to the provincial administration. In 1961 a further provincial law provided for bonuses to be paid to Italian officials in state organisations who learned German.

Finally, the Provinces had very little financial means of their own, mainly nine-tenths of the income, property and building taxes collected within their territories. This meant that for any programmes of economic and social development, South Tyrol depended on the State.

4. Crisis in the South Tyrol 1950 - 1957

The crisis in the South Tyrol autonomy was started by a phenomenon common throughout Europe in the early 1950s – the so-called “flight from the land”. The South Tyrolese desperately needed to create a better social balance, transforming a predominantly agriculturally based people into one with an appropriate proportion of persons in the administration, the professions and commerce, jobs that would have to be found in the towns. Failure to achieve this risked South Tyrolese leaving their homeland to seek work in Austria or Germany, thus weakening the group numerically. The key sectors were public employment as a source of jobs and housing to accommodate those moving into the towns. But the inability of the Provincial Government to act was soon revealed. Requests for changes in the Autonomy Statute in order to meet the situation were rebuffed, and the Province had no funds of its own to undertake the appropriate building programmes.

The crisis changed from an economic and social one to a political one in 1956 when, for the first time, bombs were thrown by South Tyrolese activists seeking to draw international attention to South Tyrol.

Then in 1957 the Italian Government announced a public building programme to construct a new quarter in Bozen/Bolzano. The South Tyrolese feared that the intention was to encourage Italians to come to the Province (and three years later would be outraged that despite having primary legislative powers in regard to housing the Constitutional Court ruled that this did not mean that the State’s right “to proceed ... with its own means in order to satisfy lasting national interests ... should be considered diminished”). The result was a massive demonstration at Sigmundskron outside Bozen/Bolzano which called for separation of South Tyrol from Trento and withdrawal of the South Tyrolese from the Regional Government coalition. Violence also escalated. And it was no secret that amongst those engaged in violence the objective was not separation from Trento but separation from Italy.

5. SVP and Austrian efforts to bring about an improved autonomy by peaceful means 1957 - 1969

If South Tyrolese protests at the way the autonomy was being implemented went unheeded, neither could Austria, under Four-Power occupation, do much to help. But in May 1955 the occupation ended and with the State Treaty Austria became fully independent. Vitality, the State Treaty laid down the frontiers of Austria as those

of 1 January 1938 and these were guaranteed by the Powers. This made it absolutely certain that unless there were very dramatic changes of circumstances, South Tyrol would remain for the foreseeable future with Italy.

In 1958 the SVP deputies submitted to the national parliament in Rome a draft autonomy statute for a Region South Tyrol. But the draft was condemned by almost all Italian political parties as creating a state within a state, an area whose *italianità* would be endangered. Likewise, when in 1959 the Austrian Government sought to support the South Tyrolese, particularly in regard to an autonomy for the Province alone, to equality between the German and Italian languages and to ethnic proportions in all public offices, it was rebuffed on the grounds that the application of the Paris Agreement was a matter for Italy alone.

In view of the attitude of the Italian Government the only alternative was to bring the South Tyrol Question before international forums. Accordingly, in 1960 Austria referred the dispute with Italy over South Tyrol to the United Nations. Resolution 1497 (XV) urged the two parties concerned to resume negotiations with a view to finding a solution for *all* differences relating to the implementation of the Paris Agreement and thus ended the idea that the autonomy was solely an internal Italian affair.

As a result intensive negotiations took place over the next nine years. These involved not only representatives of Austria and Italy but also of the SVP which, since the first Regional elections in 1948, had continually obtained an outright majority of seats in the Bozen/Bolzano Parliament. Eventually in the late summer of 1969 the Italian and Austrian Governments agreed a so-called "Package" of some 137 measures most of them designed to revise the 1948 Autonomy Statute to the benefit of the South Tyrolese and Ladins, as well as an 18-stage Operational Calendar for the Package's implementation. The intention was that after the Package had been implemented, Austria would formally declare that the dispute over fulfilment of the Paris Agreement was closed. However, the Package also required the support of the SVP. This was obtained in a Congress Extraordinary of the Party, held in Meran/Merano in November 1969.

PART III

THE PRESENT SOUTH TYROL AUTONOMY

[Based on the revised Autonomy Statutes of 1972 and 2001, and amendments to the 1972 Statute adopted in between.]

1. South Tyrol's new name and powers.

The Autonomy Statute as promulgated in 1972 gave the South Tyrolese much, if not all, of what they had always wanted. They did not obtain the break up of the Region and the elevation of the Province of Bozen/Bolzano into a Region in its own right. Nor did they obtain an end to the system by which provincial legislation required approval and co-ordination by Rome through Executive Measures. That would come later in 2001 with a further extension of constitutional reform that more or less amounted to a third Autonomy Statute.

But first of all, the South Tyrolese gained two things psychologically important. One indicated a significant change of attitude by the Italian state to its minorities. In the preamble of the article setting out the limits within which the Region and by inference the Provinces should exercise their primary legislative powers, i.e. respect for the Constitution and the legal principles of the State, international obligations and national interests, the latter were qualified by the addition of a phrase to the effect that protection of local linguistic minorities was also a national interest. The other was that after fifty years the name of their homeland could officially be called "South Tyrol".

Second, if the Region remained in being primary legislative power, the competences regarding almost all its most important economic and social factors were transferred to the Provinces – agriculture and forestry, tourism and the hotel trade, protection of the countryside, public health and welfare, communications and transport of provincial interest, mines, nursery schools, school buildings and school welfare, public works, employment exchanges, and vocational training.

The Provinces also obtained secondary legislative powers in regard to teaching in primary and secondary schools, trade and commerce, apprenticeships, promotion of industrial production, hygiene and healthcare, and sport and leisure. Moreover, the administrative offices relating to these new sectors were also transferred, and it was specifically stated that in those sectors where the Region and Provinces could legislate, the administrative powers which previously belonged to the state should be exercised by the Region and the Provinces. Interestingly, in relation to health and hospital care, the Province was enabled to make arrangements for South Tyrolese to receive treatment in Austrian clinics and hospitals, and for the recognition of nursing and medical qualifications obtained by South Tyrolese in German-speaking countries.

2. The Organs of Government in South Tyrol.

(a) The Parliament.

The election of the South Tyrol Parliament is an integral part of the election of the Parliament of the Region Trentino-South Tyrol. For the election of the Regional Parliament the Region is divided into the two provincial constituencies of Trento and South Tyrol, and the deputies elected in each province automatically become members of the Provincial Parliament. The number of deputies in the Regional Parliament is seventy, composed, since 1983, of thirty-five each from Trento and South Tyrol.

The deputies are elected by proportional representation through a secret ballot. In order to enjoy their active and passive voting rights voters must be eighteen years of age, and have been resident in the Region for an unbroken period of four years.

The period of the legislature is five years, with no earlier dissolution. Deputies have to take an oath of loyalty to the Italian Republic and swear to work for the undivided good of the state and the province. The Parliament can be dissolved if it acts against the Constitution, seriously oversteps its powers, endangers national security, or is unable to fulfil its functions.

The four standing Legislative Committees, Committees of Enquiry and any special parliamentary committees must be composed in such a way as to reflect the ethnic composition of the parliament and, where possible, parliamentary parties.

Both the Italian and the German language can be used in the Parliament.

(b) The Government.

As before 1972, the South Tyrolese Government must be composed in such a way as to reflect the ethnic proportions of the Parliament. This means that a majority in the parliament is not sufficient to create a government if that majority comes from only one linguistic group, and the obligation, therefore, is to seek a coalition.

The Government enacts provincial legislation, oversees the administration in those areas of provincial competence, administers the province's patrimony, and supervises the administration of the 116 provincial municipalities as well as the other bodies and organisations. It also makes proposals in regard to the budget.

(c) The President (*Landeshauptmann*)

The President unites in his office the roles of head of the Government and President of the Province. He is the legal and political representative of the Province. He is responsible for recording laws and promulgating provincial decrees. He chooses the ministers in charge of the various departments. At present he has two deputy Vice-Presidents, one from each of the two major language groups. Either one, according to his choice, replaces him in his absence. But following constitutional revisions (see below, d (iii)) this will change to accommodate all three language groups.

(d) The Constitutional Revisions of 2001.

(i) Recognition of the internationally guaranteed nature of the South Tyrol autonomy.

The internationally guaranteed nature of the South Tyrol autonomy is explicitly recognised in Article 2 of the revised constitutional law. This means that South Tyrol's Autonomy cannot be diminished or brought into question.

(ii) Liberation of provincial legislation and increased powers.

Laws adopted by the South Tyrol Parliament no longer need the approval of Rome in order to come into effect. Both provinces of Trento and Bozen/Bolzano will in future be able to decide their own form of government and future voting system.

(iii) Measures in favour of the Ladin population.

Since the Ladins formed only four per cent of the population of South Tyrol, under the system of ethnic proportions the group would find it practically impossible to fill the highest political posts. Under the revised arrangements a Ladiner can now become Speaker or a Vice-President of the South Tyrol Parliament. In addition, the intention is for further reform to enable the Ladins to be represented in the government of South Tyrol and to have their own constituency in the province of Trento.

3. Measures in favour of the linguistic minorities.

First, the South Tyrolese at last gained that ethnic proportions would have to be applied in all public bodies – state and semi-state as well as provincial – operating in the Province, with the exception of the Ministry of Defence and the various Police Forces, i.e. nearly 90 per cent of all public employment. This would have to be achieved by the year 2002 and was applicable to every grade of employment in the organisation concerned. The time span of 30 years was necessary if the very high proportion of Italians in public employment was to be reduced without involving dismissals. This was of enormous significance since because of the massive transfer of administrative powers to the Province to accompany its newly acquired legislative powers the number of persons employed in the public administration in South Tyrol jumped seven-fold, from some 5,000 under the 1948 Autonomy Statute to nearly 35,000 under the Package.

Furthermore, every person employed in the public administration had to be bilingual, with language examinations leading to the award of a certificate required for recruitment into the service, for promotion or for transfer to another organisation in the province, at every grade from chauffeur or caretaker through to director or head of department, with the higher the grade the harder the examination. The system was extended in 1994 to provide that other institutions carrying out public services, for example banks, could demand certified bilingualism as a requirement for employment. Since 1999 the bilingual examination is held in a new modus, the innovations concern its organisation and content.

Second, with regard to the status of the German language itself, the revised Autonomy Statute reverted to the wording of the Paris Agreement, namely that in the Region the German language was parified with the Italian language, which was the official language of the State. This implied that German was henceforward to be considered a local official language although, as before, where there was a bilingual text the Italian would be the authentic version.

However, only in May 1989 was language parity achieved with regard to police and court proceedings, and even then another four years were provided for the new situation to come into effect. Under the 1948 Autonomy Statute German speaking South Tyrolese and Ladins could certainly use their language before the courts but the proceedings were basically in Italian, with interpreters present. Under Executive Measures introduced in 1988, proceedings could now be held in one language or two, depending on the parties to the dispute. But since judges, lawyers and policemen could not become bilingual overnight (in the early 1980s only 6 per cent of the police were South Tyrolese and only 15 per cent of Italian policemen had sufficient knowledge of German) time was needed to set up a corps of professional

interpreters for the courts, and for the police to take on more German-speakers and take courses so as to obtain the certificate of bilingualism. Now, professional and lay judges have to be bilingual and members of a jury have to have the bilingual certificate. Except in cases involving paramilitary police forces where only Italian is used, the arrest and questioning of suspects in criminal cases is carried out in the mother tongue of the accused, and if he or she refuses to state what that mother tongue is, then it is done in the presumed mother tongue. Witnesses speak in their mother tongue and questions and answers are translated if necessary. In bilingual proceedings the public prosecutor must give his opening address in both languages, and the judge renders his verdict in both. In civil cases German-speaking South Tyrolese can speak German in proceedings held outside the Region Trentino/South Tyrol. Ladins can use their language, oral or written, before the courts or can decide for either German or Italian in both criminal and civil cases. The police, however, are not obliged to know Ladin, even if stationed in Ladin areas. On the other hand, in all cases involving the third-level Supreme Court in Rome or the Council of State only the Italian language may be used. Interestingly, following a ruling by the European Court of Justice, Germans and Austrians on trial in South Tyrol can be tried in German.

Although as a rule administrative regulations or documents were drawn up in either German or Italian, depending on the recipient, in some cases they had to be bilingual: when addressed to the general public (i.e. announcement of competitions), or when, although involving the individual only, they were for public use (i.e. identity cards). In the printing of these acts the Italian and German texts had to be the same size.

Third, with regard to schools, three autonomous school boards were established under the control of the Province, each competent for the administration of the schools of its linguistic group. Thus if the teaching staff remained state employees they were now administered by the Province and the Province gained control of non-teaching and nursery school staff. Special arrangements were introduced for Ladin schools. In nursery schools the learning is in Ladin but at primary and secondary level teaching is based on the principle of “teaching parity”, with the same number of hours being given in German and Italian, Ladin generally used as an assistant language. However, in 1988 Ladin became the language of instruction for geography in lower secondary schools.

Fourth, while the 1948 Autonomy Statute merely provided that Provincial laws could be referred back by the national government on the grounds that they exceeded the competence of the Province or that they conflicted with the national interests of the Region or the other Province, in the revised Statute, if a bill was considered prejudicial to the equality of rights between citizens of the different linguistic communities and their ethnic and cultural characteristics, the majority of the councillors of one language group in the parliament could call for separate voting. If that request was denied, or if the bill was approved despite a vote against by two-thirds of that language group, the majority of that group could refer the law to the Constitutional Court. However, the law would remain in force until the Court decided otherwise. In this way democratic decision-making was upheld, in contrast, for example, to situations elsewhere where the negative vote by a majority of one linguistic group would have the same effect as an automatic veto.

Fifth, with relation to the Regional and Provincial budgets, in the 1948 Autonomy Statute, if their adoption required approval by a majority of the deputies of both main linguistic groups and this was not forthcoming, approval would be given by

the Minister of the Interior. Under the 1972 Statute a majority of a linguistic group could ask for the individual chapters of the budget to be voted on separately by the main linguistic groups. Those chapters not receiving a majority in both groups would be referred to a joint committee with equal representation whose decision by simple majority would be binding. If no majority could be found in that committee the draft budget would be referred to the Bozen/Bolzano section of the Regional Administrative Court for final decision.

Sixth, laws of the State could now be directly contested by the Province without having to proceed via the Region.

Seventh, citizens resident in the Province for at least two years should have precedence in public employment within the territory of the Province.

4. Finance

Having plenty of money does not amount to having financial autonomy. Financial autonomy means having the ability to decide how freely funds should be spent.

Under the old Autonomy Statute South Tyrol was almost entirely dependent on funding from the State or the Region, apart from 9/10 of the revenue from income tax and land and building taxes collected within its territory. Nor could the Province raise its own taxes.

Under the new Autonomy Statute and later budgetary reforms things changed radically for the better.

First, South Tyrol benefits from a fixed quota of resources which provides some 85 per cent of the Province's running costs. These resources are 9/10 of the revenue from direct state taxes, including local income tax, collected on the territory of the Province (with the exception of certain taxes, such as mortgage taxes, reserved to the Region). Included is the entire tax on electricity consumption, register and stamp duties, taxes for state licences, and road and tobacco taxes. In addition the Province benefits from 7/10 of VAT on goods produced in its territory plus a percentage of VAT raised on imported goods.

Second, the remaining 15 per cent – the so-called variable quota – also to be obtained from state taxes, must be negotiated yearly between the Prime Minister of South Tyrol and the Italian Government. The Provincial Government is free to spend revenue from the fixed and the variable quota as it wishes. Under a 1996 law it was further agreed that any revenue from new taxes or a rise in the level of existing taxes should only go automatically to the state in cases of new specific expenditure, including expenditure in relation to natural disasters.

Apart from revenue from taxes the Province receives funds from the State's sectoral expenditure.

Thus, third, the Province receives state funds for industry support and funds for exercising any powers delegated to it by the state. Also included in the variable quota source of revenue is some 1.61 per cent of general state expenditure in sectors for which the Province has competence (calculated on the Province's population and area percentage of the Italian state, 0.76 and 2.46 respectively, divided by 2). Furthermore the Province is entitled automatically to a share of special funds set up to maintain minimum standards throughout the state in regard to the health service. And the Province is also entitled to a share of state funds for special projects where such

funds are allocated to the Regions. However, these funds are not automatic but must be applied for.

5. Controversies arising from the working of the Autonomy.

(i) The obligation to give a Declaration as to linguistic origin.

In order to make effective the system of ethnic proportions in – now, almost – all public employment, everyone resident in the Province had to give an anonymous declaration as to their ethnic group at the time of the decennial census, with the parents giving the declaration on behalf of their children up to the age of fourteen. The declaration could not be changed before the next census. But the declaration had an import far beyond that of public employment. It governed to what schools children could be sent. It concerned those standing for political office since it affected institutionalised political power-sharing. It governed the distribution of public housing. On the one hand there were those who argued that giving the Declaration at all violated Article 3 of the Italian Constitution which provided for equality of rights for all citizens without distinction as to sex, race, language, religion or political belief. In 1984 the Council of State declared the law requiring the Declaration illegal because it did not provide for citizens to declare themselves as “other language” or “mixed language”. Negotiations took place with a view to resolving the problem before the 1991 census. The solution adopted was that the document containing the Declaration should have three copies – one for the maintenance of the system of ethnic proportions, the second one for the declarer’s personal file and the third for statistical purposes. Anyone not a member of South Tyrol’s three language groups could, on the top two copies, tick a box to that effect but would also have to tick the box indicating to which group the declarer *preferred* to belong. The top copy was held by the local court and this preserved the individual’s rights under the system. The bottom copy contained boxes referring only to the three language groups and was sent to the province’s statistical office.

(ii) Failure to fill a linguistic group’s quota in the public administration.

A second problem concerned what would happen if the quota reserved for a group in a public body failed to be filled, for whatever reason. Rather than leave posts vacant to the detriment of the service Executive Measures issued in 1997 provided that eligible persons in other linguistic groups could be taken on according to order of precedence and within the limits of the total number of posts reserved for those groups. In the case of pressing service requirements these limits could be exceeded for up to 30 per cent of the unfilled posts.

(iii) Privatisation.

In the 1980s many public bodies, particularly the state railways and the postal service were privatised. Would the system of ethnic proportions and the linguistic requirements attached to it be allowed to continue? Executive Measures issued in 1997 ensured that they would. However, in regard to these privatised bodies in the

case of pressing service requirements the limits could be exceeded for up to 50 per cent of the unfilled posts.

(iv) The Linguistic Examinations for access to public employment.

The operation of the system of bilingualism in public employment required that a certificate to that effect to be issued exclusively by the Provincial authorities to candidates for employment or promotion. The certificate was obtained on the basis of an examination, held four times per year with a mandatory delay of thirty days between the written and oral stages, all held at a single examination centre in the Province. These arrangements were challenged before the European Court of Justice in 1998 on the grounds that in regard to the principle of freedom of movement they discriminated against European Union citizens desirous of obtaining a job in South Tyrol in an institution which required bilingualism since it might be difficult and expensive to get away from their present occupations and travel twice in order to take the examinations and, furthermore, that it was unreasonable to accept as evidence of linguistic competence exclusively the one particular certificate issued by the Provincial authorities. The challenge was upheld, and to date the system has been altered to allow examinations to be taken over a whole year rather than just one month.

(v) Separation of the linguistic groups in education.

Quite apart from the requirement to make a Declaration as to linguistic origin at the time of the decennial census and the system of ethnic proportions in public employment, the whole idea and process of a separate school system came to be denounced as a form of *apartheid*, leading to the separate development of the three linguistic groups. The results were calls for integrated schools with teaching in both languages. But this was firmly rejected by the South Tyrolese. To them language was the key to their identity – indeed their existence. It was absolutely essential, therefore, that children should be educated from nursery to secondary level in their mother tongue. From the pedagogical point of view learning in two languages merely hampered mastering either tongue so that the pupils fell between two stools. On the other hand, integration risked contamination of a language needing to re-assert – even rediscover – itself after the ravages of Fascism, leading to weakening of group identity and thus reopening the way for assimilation. The South Tyrolese did not want – or need – a mish-mash society, “half spaghetti – half knödel”.

Under the Autonomy parents had the right to enter their children into the schools of their choice and, following the international precedent of the 1922 Germano-Polish Convention on Upper Silesia, such inscriptions could not be verified or contested by the authorities. However, to prevent the situation arising in which children of one language group were entered for schools of the other language group (which could cause pedagogical disruption) Executive Measures issued in 1988 provided that when a child deemed to have insufficient knowledge of the teaching language of the school it was inscribed, the matter could be submitted to a joint commission with equal representation of the main linguistic groups. Decisions would be taken by majority. Should no such majority be forthcoming, the Chairman of the Commission (a German for entry into a German school, an Italian for entry into an

Italian school) would have the casting vote. In the case of entry into a nursery school decisions on admission or exclusion would depend on the School Board.

(vi) Ability of the State to institute its own housing programme in the Province.

Although the Province enjoys primary legislative power in regard to public housing, can control the distribution of units among applicants, and can receive funds from the State in relation to its own building programme, according to a 1988 ruling of the Constitutional Court the State could still carry out its own housing programme in South Tyrol with its own means and without the need for Provincial legislation if this was considered to be in the “national interest” (for example, building military barracks).

(vii) Continuation of bilingualism in place names.

To the South Tyrolese the obligation to maintain bilingualism in place names merely perpetuated the “discoveries” of Ettore Tolomei. The South Tyrolese argued that since the Province has primary legislative competence for place names it should be able to approve the German, Italian and Ladin version of names that were part of the historical and ethnic patrimony of the land, but that the some 8,000 Italian names decreed by the Fascists should not receive blanket approval. Efforts to change the situation, which requires government assent, have not yet succeeded.

6. The fulfilment of the De Gasperi-Gruber Agreement and the concept of the “Dynamic Autonomy”.

Despite the expectation that the contents of the Package Agreement would be completed quickly, the complexity of the issues as well as their controversial nature ensured that it was not until 1992 that the SVP was able to inform the Austrian Government that the Package had been implemented to its satisfaction. The latter was able to declare that the dispute with Italy over fulfilment of the Paris Agreement was over only 46 years after its signature. Perhaps the most interesting significant aspect of the negotiations over implementation of the revised autonomy was increasing recognition, that the protection of minorities is a continual process against a background of changing times, changing values and technological progress, and that the autonomy should therefore not be legalistically rigid and static, like that of 1948, but dynamic, capable of responding to changing economic and social situations. Thus there was need for a mechanism by which Rome and Bozen/Bolzano should maintain a dialogue, even after the declaration by the Austrian Government that the dispute was over. Accordingly in 1992 a Standing Committee of four South Tyrolese, two Italians and one Ladin was set up with access to the Italian Council of Ministers in order to examine problems affecting the protection of the three language groups and their cultural, economic and social development. The Committee could make proposals which, if not binding, were deemed necessary in case of changes to the Autonomy Statute.

PART IV
CONCLUSIONS

1. Restoration of the economic, social and cultural position of the South Tyrolese.

Before the Package the South Tyrolese were in a parlous position. The Province of Bozen/Bolzano was amongst the poorest of Italy's provinces. South Tyrolese economic and social problems were serious and not being addressed. Much had to be done to reclaim their German cultural identity. The Italians were unsympathetic to their problems and eager to cast the South Tyrolese as Nazis if only to cover their own deplorable past and treatment of their minorities. There was every inducement for the South Tyrolese to seek separation from an unheeding state.

Thirty years after the Package Agreement the situation has been greatly transformed. If the region continues to exist *de jure*, South Tyrol has become a region *de facto*. The South Tyrolese and Ladins have ceased to be strangers in their own land. The autonomy they enjoy is an object of envy by many other indigenous regional cultural minorities in Europe as well as throughout the world.

The South Tyrolese have become a balanced social group involved, with the exception of industry, in all aspects of economic, commercial and intellectual life. Based on agriculture and tourism the economy of South Tyrol is flourishing with amongst the lowest rates of unemployment in Europe, let alone Italy. No less flourishing is the Province's cultural life with the establishment of a Free University and a number of diploma or degree-awarding professional schools, colleges and academies. It has a free press with four daily papers (two German, two Italian) and a large number of local publications as well as those devoted to the arts, the professions and provincial cultural studies. German language programmes are broadcast on radio and television from the Italian state network in Bozen/Bolzano, to say nothing of private radio and television stations in both languages and the ability to have transmitted German and Ladin language radio and television programmes from Germany, Austria and Switzerland. The Province has its own Ombudsman and it has its own Statistical Office. It is unsurprising, therefore, that a 1994 survey revealed that over 80 per cent of South Tyrolese and 79.9 per cent of Ladins identified themselves with their homeland rather than the Region, Tyrol as a whole, Italy, or Austria, and even 17.7 per cent of Italians did so.

2. South Tyrol – an Autonomy for All.

The South Tyrolese may have believed that the Autonomy provided for by the Paris Agreement should have been for them alone. At the time this was perfectly understandable. But the Autonomy not only guarantees group and individual rights to members of the linguistic minorities. It is also a territorial autonomy designed to ensure that all citizens resident in the Province benefit from its provisions. After all, most Italians in the South Tyrol are third – even fourth – generation *atesini*, and therefore the Province can be said to be their homeland too. Under the concept of the “dynamic Autonomy” all three linguistic groups share in the government and administration of their land, they have priority in employment, their languages are maintained in a way that minimises adulteration but maximises their use in daily life. This inclusivity has ensured that the three groups have come closer in appreciating that the autonomy is for them all, and becoming aware of the contribution that each can make to life in the Province. The fact that approval by Rome is no longer needed for provincial legislation is an encouragement to greater political responsibility.

3. The European Dimension.

With their renewed confidence the South Tyrolese have been amongst the European Union's leaders in the promotion of cross-border co-operation and the movement towards having the regions of Europe play as important a part in the development of Europe as its states. South Tyrol was one of the founding members of Arge-Alp (*Arbeitsgemeinschaft Alp*), a body composed of cantons, provinces and regions in the alpine areas of Germany, Austria, Switzerland and Italy. Their autonomous legislative, administrative and financial powers are co-operating in regard to such issues as tourism, alpine agriculture and the environment. The Province's representatives are active members of the European Union's Committee of the Regions.

This brings one to recognise that political progress in Europe has played its part in the rising fortunes of South Tyrol. The process of European integration based, amongst many other things, on recognition of frontiers and involving the Common Agricultural Policy, the Structural Funds and Community programmes have contributed significantly to bringing political stability and economic prosperity to South Tyrol. In particular, power-sharing as a technique of government in areas with culturally divided communities has been helped by the Christian Democratic-Social Democratic ethos of the European Union. Power-sharing is not possible with two incompatible partners. As this author has written elsewhere in relation to Northern Ireland and Cyprus, one cannot have power-sharing when it is believed that the aim of one of the parties sharing power is to do away with the framework within which that power is shared.

4. Self-Determination.

But what about the right of self-determination often proclaimed by the South Tyrolese? It was written in the SVP statutes that the right of self-determination for the South Tyrolese people was inalienable, yet that Party recognised the Paris Agreement as the basis for the group's development within the Italian state. Was there not a contradiction between agreement to be part of the Italian state yet imply that the exercise of self-determination might lead to separation from that state? Traditionally the call for self-determination has indeed been associated with separation, particularly by national governments. But in order to get round the obvious political difficulties that would have resulted from such a move, as well as to get around the awkward question as to whether the principle of self-determination, which is accepted as applying to whole peoples, should also apply to ethnic minority groups, the right of self-determination was reinterpreted by some of those involved in the South Tyrol conflict to mean that such a group should have the right to decide freely what legislative and administrative powers it should have in the economic, social and cultural field in order to maintain its cultural characteristics and separate identity and flourish in its host state as it would have done if remaining part of its kin state, and demand those powers from the host state. Only if these legitimate demands were denied would separation then be legitimate. An acceptable autonomy should thus be recognised as a form of self-determination.

5. The South Tyrol Autonomy – A Model for other European Linguistic Minorities?

In its context the South Tyrol model of an autonomy is, of course, specific to South Tyrol. Where it can be a model for others is the way in which it was reached. Basically this depended on putting forward realistic demands and pursuing them energetically but always with peaceful means. Nevertheless three other things were essential. First, there was the internationalisation of the South Tyrol problem through the 1946 Paris Agreement, which enabled Austria as the kin state of the South Tyrolese to act as their protecting power. Second, there was the steadfast solidarity of the South Tyrolese people, maintained under the aegis of the collective party, the SVP. And third was the readiness of the Italian Government in the Constitution and the Package Agreement to guarantee the special status of the German and Ladin-speaking groups, to transfer those powers that the minorities felt essential for their survival and development, and to abstain from any measures of assimilation.

In the final analysis what is important about the history of the South Tyrolese Autonomy is that several lessons were (eventually!) learned: 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 and cultural development; and that a living multicultural society requires techniques that induce on-going co-operation rather than confrontation.

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