

International Law in Theory and Practice

The Past and Future(s) of Self-Determination of Peoples

LAWS 5603

INAF 5505

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Semester: Winter 2016, D492

Date and time: Mondays, 8:35-11:25

Office hours: upon appointment

COURSE DESCRIPTION:

During the better part of the twentieth century, 'self-determination' in its different legal and political iterations, existed as a master-principle of international morality that structured the political imagination both of the defenders, as well as the challengers of the international territorial status quo. In the second part of the past century, it reached its apogee by authoritatively guiding the creation of new sovereign states. From its outset, however, self-determination has always been in a state of existential crisis. Especially since the end of the Cold War, scholars decried its logical inconsistency, inflammatory effects on nationalist politics, and have either prognosticated its demise, suggested paths to its reform, or simply suspended their judgment about its meaning.

This course will interrogate the principle of self-determination from different vantage points. First, we will explore the conceptual precursors/foundations of self-determination, such as the social contract and popular sovereignty. Second, we will trace the trajectory of the development of self-determination of peoples from the end of the First World War, throughout the Cold War (1945-1989), and finally in the post-1989 period. Third, we will discuss recent theorizing on self-determination, such as theories of secession, and democratic theories that focus on the 'all affected interests principle'. We will complete our theoretical reconsideration of self-determination by placing it into wider theoretical context, among recent theories of sovereignty, sovereign equality and global power politics.

EVALUATION:

Individual Participation – 10%

Your classroom participation is encouraged, appreciated and valorized. However, not all participation is valued equally. Your most valued contributions will be those that engage the readings directly. This means that you should strive to anchor both your general and specific remarks in relation to the assigned readings. In this way, you will not only respectfully engage with ongoing academic debate, but, more importantly, train yourself to make a pointed argument under certain rhetorical constraints; in this case, those of international law and political theory. This of course doesn't mean that you have to agree (or for that matter, disagree) with either the legal or theoretical arguments presented in the readings. What it does mean is that you should be able to

point at 'something' in the author's argument (assumptions, logic, implications, relevance, etc.) in formulating your own contribution.

Essay (3000 words) – 90% of the overall grade

The essay should critically engage theoretical readings covered in the course pack. A successful essay will be planned well in advance the submission date. I encourage you to approach me as soon as possible with potential essay topics, and the brief outline of your tentative argument. I encourage aligning the topics of your essays with your ongoing or emerging interests, but only if they fall within the thematic scope of this seminar.

COURSE OUTLINE:

Class 1: Introduction

Logistics. A bird's eye view of the themes covered in the course. Mapping the disciplinary terrain, doctrinal developments and contentious issues in the study of self-determination. A historical overview: intellectual precursors to the idea of self-determination, the historical trajectory of its invocation in political struggles.

Class 2: Self-determination of peoples: early political and legal 'career'

- Declaration of Independence [1776]
http://www.archives.gov/exhibits/charters/declaration_transcript.html
- Wilson, Woodrow, "Fourteen Points" [available on the internet],
http://avalon.law.yale.edu/20th_century/wilson14.asp
- Erez Manela, *Wilsonian Moment: Self-Determination and the International Origins of Anti-Colonial Nationalism* (Oxford University Press, 2007) [to be distributed in the class]
- Covenant of the League of Nations, http://avalon.law.yale.edu/20th_century/leagcov.asp (skim it!)
- Arnulf Becker-Lorca, "Petitioning the International: A 'Pre-history' of Self-determination" (2014) 25:2 *European Journal of International Law* 497.
- Montevideo Convention, 133 http://avalon.law.yale.edu/20th_century/intam03.asp Skim
- Aaland Islands case (1919), The League of Nations, "The Report of the Committee of Jurists" <https://www.ilsa.org/jessup/jessup10/basicmats/aaland1.pdf>
- Aaland Islands case (1920), The League of Nations, The Report of the Committee of Rapporteurs [to be distributed in class]
- Vladimir Ilyich Lenin, "The Right of Nations to Self-Determination" [to be distributed in the class]

Class 3: Decolonization: Self-determination as a legal principle 1945-1989

- UN Charter, <http://www.un.org/en/documents/charter/index.shtml>, arts. 1,2, 73, 74.
- Resolutions 1514; 1541 available at <http://www.un.org/documents/ga/res/15/ares15.htm>
- Friendly Relations Declaration (Resolution 2625), <http://www.un-documents.net/a25r2625.htm> ; focus on the section dealing with self-determination

- Burkina Faso v Mali (Frontier Dispute Case) [excerpts]<http://www.icj-cij.org/docket/files/69/6447.pdf>, paras 19-26.
- Makau wa Mutua, “Why Redraw the Map of Africa: Moral and Legal Inquiry”, 16 Mich. J. Int’l L. 1113 1994-1995

Class 4: Self-determination after the end of the cold war

- Thomas Franck, “The Emerging Right to Democratic Governance” (1992) 86:1 American Journal of International Law 46.
- Badinter Opinions [excerpts] <http://www.ejil.org/pdfs/3/1/1175.pdf>
- Bill 1 <http://www.sfu.ca/~aheard/bill1.html#text>
- Sovereign Injustice, http://www.uni.ca/library/si_index.html [read the summary]
- Reference re Secession of Quebec, [1998] 2 S.C.R. 217 <http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html> [only the sections that deal with international law]
- Clarity Act, (“An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference”) [available on the internet]
- Bill 99, “An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State” (2000. C 46.) [available on the internet]

Class 5: (Post-)Self-Determination in the multinational West

- The Edinburgh Agreement (2012) <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>
- Declaration on the Sovereignty and right to decide of the people of Catalonia (2013) http://www10.gencat.cat/gencat/binaris/declaration_of_sovereignty_tcm34-239795.pdf
- Bill c-470, An Act respecting democratic constitutional change <http://parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=5945541>

Class 6: TBA

Class 7: Secession, self-determination and territorial rights: normative political theory

- “Secession” in *Stanford Encyclopaedia of Philosophy*, <http://plato.stanford.edu/entries/secession/>
- Anna Stilz, ‘Nations, States, and Territory’, (2011) 121:3 Ethics 572
- David Miller, “Territorial Rights: Concept and Justification”, 60: 2 Political Studies (2012) 252.
- Government of Sudan / The Sudan People's Liberation Movement/Army (Abyei Arbitration) [excerpts]

Class 8: The identity of ‘the people’ revisited: democratic theory and its implications

- Robert Goodin, “Enfranchising All Affected Interests, and its Alternatives” (2007) 35: 1 Philosophy and Public Affairs 40
- Hans Agne, “Why Democracy must be Global: Self-Founding And Democratic Intervention,” (2010) 2: 3 International Theory 381.

Class 9: The nature of self-determination revisited: international legal theory and its implications

- Brad Roth, “The virtues of bright lines: The Virtues of Bright Lines: Self-Determination, Secession, and External Intervention” (2015) 16:3 German Law Journal 384.
- Anne Peters, “Humanity as the A and Ω of Sovereignty” (2009) 20:3 European Journal of International Law 513.
- Nehal Bhuta, “Nehal Bhuta, ‘New Modes and Orders: The Difficulties of a *Jus Post Bellum* of Constitutional Transformation’ (2010) 60 University of Toronto Law Journal 799.

Class 10: External Intervention: Self-determination, revolutions and post-conflict constitution-making

- Andrew Arato, “Post-Sovereign Constitution-Making and Its Pathology in Iraq” (2006) 51 New York Law School Law Review 536
- Allen Buchanan, “Self-Determination, Revolution, and Intervention” (2016) 126: 2 Ethics 447.
- Zoran Oklopčić, “The Idea of Early-Conflict Constitution Making: The crisis in Ukraine Beyond Territorial Rights and the Paradox of Constitutionalism” (2015) German Law Journal 658.

Class 11: The future of self-determination

- Uriel Abulof, ‘We the peoples? The strange demise of self-determination’ (2015) European Journal of International Relations 16.

Class 12: Discussion of your projects