

# International Law in Theory and Practice: Self-Determination of Peoples

LAWS 5603  
INAF 5505

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**Semester:** Fall 2010, Loeb 492  
Date and time: Monday, 6:05-8:55pm

## Course description:

Apart from being a puzzling notion and a source of academic irritation, the idea of 'the people' is probably the most impactful concept in contemporary international law and politics. While 'freedom', 'justice' and 'equality' remain inevitable battle-cries in every political struggle, it is only when conjoined with the idea of 'self-determination' that they reach their most powerful – and sometimes devastating – political potential.

This course will deal with self-determination from two vantage points. On the one hand, we will explore the theory that provides conceptual foundations for self-determination, together with contemporary accounts of theories of secession. On the other, we will focus on canonical cases in the more recent legal history of self-determination.

## Evaluation:

### Research Memo (3000 words) – 40 % of the overall grade

This is a great time to study self-determination. In July, the International Court of Justice rendered the Advisory Opinion on "Accordance with international law of the Unilateral Declaration of Independence in respect of Kosovo". This historic decision provoked immense academic interest, both in Canada and around the world. We will cover this decision in detail in one of our classes. In preparation for this class you are expected to focus on one of the questions (see below) as it appears in the factums of the intervening states. Your job is to comb over the various written opinions and oral statements, and to classify the arguments made as they relate to your research question. You may choose to do this research memo alone or in groups of up to five people.

### *Research Memo topics for class 7:*

- In which ways did the written opinions and oral arguments use the Canadian Secession Reference?
- Which countries, and in which way(s), used the Badinter Opinions?
- Analyze the invocation of 'remedial self-determination' in the written statements and oral arguments.
- Why does United Nations Security Council Resolution 1244 permit the UDI of Kosovo?

## **Essay (3000 words) – 60% of the overall grade**

The essay should critically engage theoretical readings covered in the course pack, or, involve a case study that analyzes the discourse of popular sovereignty in a particular political and/or legal context. You are encouraged to come up with a topic of your essay yourselves. For those who are not inspired, I have provided a list of questions at the end of the syllabus that can be used as topics for your essay.

*Some possible topics for your essay:*

- What is the use of social contract theories today, in the context of self-determination?
- Can you critique Fichte's argument in favour of nationalism, and still be in favour of national self-determination?
- Should federations, as a matter of principle, be dissoluble?
- If so, when they dissolve, should they dissolve along provincial boundary-lines?
- What should be the role of external actors in state-building?
- Should the ICJ have delved into the issue of self-determination, instead of narrowly reading the question asked by the General Assembly? In your view, how should it have interpreted the norm of self-determination?

## **Participation**

In addition to the existing evaluation components, I will value your class attendance with 0.3 percentage points, excluding the first and last class.

### **Course outline:**

All readings will be posted on WebCT.\*

### **Class 1: Introduction**

Logistics. Overview of the course. Mapping the terrain. Where does the idea of self-determination come from? Historical trajectory of its use. Present-day controversies. Why study self-determination?

### **Class 2: (Cracked?) theoretical foundations of self-determination**

Discussing state formation in early modern political theory: Hobbes, Rousseau, Kant, Fichte. Exploring the links between the 'outside', 'unanimity', 'state of nature' and 'the people'. Exploring the contrast between Kant's social contract and that of Hobbes and Rousseau.

- Hobbes, Thomas, *Leviathan* [excerpts]
- Rousseau, Jean-Jacques, *The Social Contract and Discourses* [excerpts]
- Locke, John, *The Second Treatise of Civil Government* [excerpts]
- Kant, Immanuel, *Metaphysics of Morals* [excerpts]
- Fichte, Johann Gottlieb, "Addresses to the German Nation" in Omar Dahbour and Micheline Ishay, *Nationalism: Reader* (Humanity Books, 1995) [excerpts]

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\* Assigned readings are subject to changes.

### **Class 3: Ideological application of self-determination & its politico-legal development after the first World War.**

- Wilson, Woodrow, “Fourteen Points” [http://avalon.law.yale.edu/20th\\_century/wilson14.asp](http://avalon.law.yale.edu/20th_century/wilson14.asp)
- Luxemburg, Rosa, “The National Question and Autonomy” in Dahbour, Nationalism: Reader
- Lenin, “The Right of Nations to Self-determination” in Dahbour, Nationalism: Reader
- Covenant of the League of Nations, [http://avalon.law.yale.edu/20th\\_century/leagcov.asp](http://avalon.law.yale.edu/20th_century/leagcov.asp) (skim it!)
- Aaland Islands case [excerpts]
- Montevideo Convention, 133 [http://avalon.law.yale.edu/20th\\_century/intam03.asp](http://avalon.law.yale.edu/20th_century/intam03.asp) Skim

#### **Additional Reading:**

- Whelan, Anthony, “Wilsonian Self-Determination and the Versailles Settlement”, (1994) 43:1 ICLQ
- Manela, Erez, Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism (Oxford University Press, 2007) [excerpt]

### **Class 4: 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)
- Burkina Faso v Mali (Frontier Dispute Case) [excerpts]

#### **Additional Reading:**

- Makau wa Mutua, “Why Redraw the Map of Africa: Moral and Legal Inquiry”, 16 Mich. J. Int’l L. 1113 1994-1995

### **Class 5: Self-determination after the fall of Communism: the case of Yugoslavia (and Quebec)**

- Badinter Opinions [excerpts]
- Five Expert Opinion [excerpts]

### **Class 6: (The Absence of) Self-determination: UDI of Quebec, the Secession Reference and the aftermath**

- Bill 1
- Sovereign Injustice, [http://www.uni.ca/library/si\\_index.html](http://www.uni.ca/library/si_index.html) [selected passages]
- Reference re Secession of Quebec, [1998] 2 S.C.R. 217 <http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html> (selected paragraphs)
- 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”)
- Bill 99, “An Act respecting the exercise of the fundamental rights and prerogatives of the Québec people and the Québec State” (2000. C 46.)

### **Class 7: From self-determination to a ‘unique combination of factors’: ICJ Advisory Opinion on the legality of Kosovo’s UDI**

- International Court of Justice, Accordance with international law of the Unilateral Declaration of Independence in respect of Kosovo, (July 22 2010). [material available here: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=21&case=141&code=kos&p3=4>]
- [your presentations] on various aspects of the written statements and oral arguments of the interested states before the ICJ]

### **Class 8: Back to theory I: Self-determination and theories of secession**

- Buchanan, Allen, *Justice, Legitimacy and Self-Determination* (Oxford University Press, 2004),
- Moore, Moore “Self-Determination, Rights to Territory and the Politics of Respect” in *Ethics of Nationalism* (Oxford and New York: Oxford University Press, 2001)
- Altman Andrew and Wellman, Christopher, “Secession” in *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2009, 43-69.

### **Class 9: Back to theory II: ‘Territorial rights’ as a second layer of theories of secession**

Stilz, Anna, “Why do states have territorial rights?”, (2009) *International Theory* 183

Nine, Cara, “A Lockean Theory of Territory”, (2008) 56: *Political Studies*, 148

Steiner, Hillel, “May Lockean Doughnuts Have Holes? The Geometry of Territorial Jurisdiction: A Response to Nine” (2008) 56: *Political Studies*, 949

Miller, David, *National Responsibility and Global Justice* (Oxford and New York: Oxford University Press, 2007) [electronic resource, CU Library] 214—221.

### **Class 10: Back to theory III: The institutional aspect of self-determination theory**

- Buchanan, Allen, “Introduction: The Idea of A Moral Theory of International Law” in *Justice, Legitimacy and Self-Determination* (Oxford University Press, 2004), 14—73

### **Class 11: TBA**

### **Class 12: Recap and discussion of essay projects.**