

Course Outline

COURSE:	LAWS 5603F / INAF 5505F – International Law - Theory and Practice
TERM:	FALL 2018
PREREQUISITES:	N/A
CLASS:	Day & Time: Tuesday 8:35am – 11:25am Room: Please check with Carleton Central for current room location
INSTRUCTOR:	Zoran Oklopcic
CONTACT:	Office: D587 Loeb Building Office Hrs: By appointment only Email: zoran.oklopcic@carleton.ca

Academic Accommodations:

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: Please contact me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details, visit the Equity Services website: carleton.ca/equity/wp-content/uploads/Student-Guide-to-Academic-Accommodation.pdf

Academic Accommodations for Students with Disabilities: If you have a documented disability requiring academic accommodations in this course, please contact The Paul Menton Centre (PMC) at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me as soon as possible to ensure accommodation arrangements are made. Please consult the PMC Website for their deadline to request accommodations for the formally-scheduled exam (if applicable) www.carleton.ca/pmc

Plagiarism:

Plagiarism is presenting, whether intentional or not, the ideas, expression of ideas or work of others as one's own. Plagiarism includes reproducing or paraphrasing portions of someone else's published or unpublished material, regardless of the source, and presenting these as one's own without proper citation or reference to the original source. Examples of sources from which the ideas, expressions of ideas or works of others may be drawn from include but are not limited to: books, articles, papers, literary compositions and phrases, performance compositions, chemical compounds, art works, laboratory reports, research results, calculations and the results of calculations, diagrams, constructions, computer reports, computer code/software, and material on the Internet. Plagiarism is a serious offence.

More information on the University's **Academic Integrity Policy** can be found at:
<http://carleton.ca/studentaffairs/academic-integrity/>

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: carleton.ca/sexual-violence-support

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

For more information on academic accommodation, please contact the departmental administrator or visit: students.carleton.ca/course-outline

Department Policy

The Department of Law and Legal Studies operates in association with certain policies and procedures. Please review these documents to ensure that your practices meet our Department's expectations.

<http://carleton.ca/law/current-students/>

CALENDAR COURSE DESCRIPTION

Legal principles governing international relations; emphasis on different theoretical, historical and political perspectives, such as Natural Law, Positivism, Critical Legal Studies, TWAIL, Feminism, Marxism. Specific case studies or topics are examined to critically interrogate the foundations and practices of international law.

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

Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Individual Participation – 20% The success of this course depends on your critical engagement with the readings before each class, as well as on your active participation in the classroom discussions throughout the duration of the course. For that reason, your attendance is mandatory. Though I am aware of the challenges you face in negotiating your professional, personal, social, and academic commitments, your absence from the class will not, as a matter of principle, be accommodated – unless there is an overriding reason that justifies it, corroborated by the supporting evidence (e.g. a letter from your employer, a doctor's note etc). This means the following: first 2 unapproved absences will carry the penalty of 10% each, and the third will effectively disqualify you from the course. To achieve 20% in this component, however, you not only ought to attend every class and read the in advance material, but also show consistent effort to engage in the discussion thoughtfully and critically.

Essay (3000 words) – 80% 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.

SCHEDULE

Class 1: Introduction

Class 2: Self-determination of peoples: In the beginning ...

- US Declaration of Independence [1776]
http://www.archives.gov/exhibits/charters/declaration_transcript.html
- Wilson, Woodrow, 'Fourteen Points'
http://avalon.law.yale.edu/20th_century/wilson14.asp
- Covenant of the League of Nations
http://avalon.law.yale.edu/20th_century/leagcov.asp (skim)
- 1933 Montevideo Convention

http://avalon.law.yale.edu/20th_century/intam03.asp arts 1-4.

- Nathaniel Berman, "But the Alternative Is Despair": European Nationalism and the Modernist Renewal of International Law' (1993) 106[8] Harvard Law Review 1792-1834, 1859-1874, 1898-1903.

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.
- UN GA Resolutions 1514 and 1541 <http://www.un.org/documents/ga/res/15/ares15.htm>
- Friendly Relations Declaration (UN GA Resolution 2625) <http://www.un-documents.net/a25r2625.htm>
- Burkina Faso v Mali (Frontier Dispute Case) [excerpts] <http://www.icj-cij.org/docket/files/69/6447.pdf>, paras 19-26.

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

- Badinter Opinions (1991) <http://www.ejil.org/pdfs/3/1/1175.pdf>
- Reference re Secession of Quebec, [1998] 2 S.C.R. 217 [the sections that deal with international law, plus remarks on 'consent', 'sovereignty of the people'] <http://csc.lexum.umontreal.ca/en/1998/1998rcs2-217/1998rcs2-217.html>
- Clarity Act (2000) (S.C. 2000, c. 26) <http://laws-lois.justice.gc.ca/eng/acts/c-31.8/page-1.html>

Class 5: (Post-)self-determination in the (multinational) West

- The Edinburgh Agreement (2012) <http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence>
- Constitution of Spain (1978) [preamble, arts. 1-3, art 155] https://www.constituteproject.org/constitution/Spain_2011.pdf?lang=en
- 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
- Law 19/2017 of 6 September, on the Referendum on Self- determination [explanatory memorandum, and arts 1-4] http://exteriors.gencat.cat/web/.content/00_ACTUALITAT/notes_context/Law-19_2017-on-the-Referendum-on-Self-determination.pdf

Class 6: 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.
- Uriel Abulof, 'We the peoples? The strange demise of self-determination' (2015) *European Journal of International Relations* 16.

Class 7: Self-determination and territorial rights

- '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.

Class 8: Self-determination and democratic rights

- David Owen, 'Constituting the polity, constituting the demos: on the place of the all affected interests principle in democratic theory and in resolving the democratic boundary problem' (2012) 5[3] *Ethics & Global Politics* 129.
- Zephyr Teachout, 'Extraterritorial Electioneering and the Globalization of American Elections' (2009) 27 *Berkeley J. Int'l Law* 162.

Class 9: Constitutional imposition vs. popular self-determination?

- David Law, 'The Myth of the Imposed Constitution' in Denis Galligan and Mila Versteeg (eds), *The Social and Political Foundations of Constitutions* (Cambridge University Press 2013) 239.
- Zoran Oklopcic, '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 10: Internal self-determination and popular self-government

- Ralf Michaels, 'Does Brexit Spell the Death of Transnational Law?' (2016) 17 *German Law Journal* (Brexit Suppl.) 51.
- Steven L. Winter, 'When Self-Governance is a Game' (2001) 67 *Brook. L. Rev* 1171.
- Martin Gilens and Benjamin I Page, 'Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens' (2014) 12:3 *Perspectives on Politics* 564.

Class 11: Future(s) of self-determination – at home and abroad

- Noe Cornago, 'Beyond self-determination: norms contestation, constituent diplomacies and the co-production of sovereignty' (2017) 6[2] *Global Constitutionalism* 327.
- Wendy Brown, 'Sacrificial citizenship: Neoliberalism, human capital, and austerity politics' (2016) 23[1] *Constellations* 3.

Class 12: Closing discussion