

Questions of Identity; The Dilemma of Self-Determination in International Law

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1. Introduction

Self-determination is a controversial norm of international law, described as “loaded with dynamite.” (Klabbers, 2006) It is a right recognised by international law, claimed by a ‘people’ to control their own destiny when they feel they have been unjustifiably excluded from the community of individuals recognised by international law. (Berman, 1988) The appeal of the right of self-determination to participate in the democratic process of governance and to influence one’s future, politically, socially, and culturally, draws peoples in, yet it is also what incites its instability. (Barker, 2015) Although viewed as an attractive beacon of hope for those oppressed within their nation, it becomes disruptive when viewed from differing perspectives, as self-determination often favours a breakup of States, posing a profound challenge to the integrity of the international legal community. (Klabbers, 2006) When a group of persons claim a right to self-determination, it creates the question that asks if the group constitutes a ‘people’, as it is obviously bigger than a minority, but the scope of the term a ‘people’ is not clear. It also raises a larger question, whether the group of persons identified as a people have the right to declare the right of self-determination and invoke their independence. (Suksi, 2005) There are continual media reports from around the world regarding the demand for the right of self-determination, it has been heard from Kurds, Palestinians, Tibetans, Kashmiri, East Timorese, Québécois, Puerto Ricans, Eritreans, Zulus, and the people of Hong Kong. (McCorquodale, 1994) Self-determination cannot exist without the presence of a shared group identity, it is this that then forms the question that my work aims to answer, querying why minority groups desire to identify outside the mother state. It is apparent that some groups desire sovereignty using the remedial right theory due to the persecution and other grave human rights abuses that groups, such as the Kosovo Albanians (Brown, 2005) and the Kurdish Turks have endured, (Çelik, 2005) but it is those who demand self-determination from an internal stance that I aim to analyse. Group identity is a fluid and travelling concept, yet there are some prevalent features within the notion that could contribute to the desire for self-determination that I will be examining, questioning if there is a salient feature of group identity, perhaps a linguistic or ethnic divide. The case examples of the Québécois, as well as the Welsh and Scottish Nationalists offer an interesting perspective that I will analyse, questioning if the resonance of nationalism or ethnic and cultural differences, for example, are what motivates groups to want independence.

1.1 Research Questions

1. What role does international legislation play in the recognition and protection of group identities?
2. What are the influencing reasons why groups desire self-determination?
3. What is the importance of group identity within self-determination?
4. What are the specified challenges international law faces when recognising and attempting to protect group identity?

2. Literature Review

The continual resurgence of the multifaceted self-determination is not a contemporary issue, its origin is traced back to the 18th century, as highlighted by Cassese. (1996) Cassese’s renowned work on the topic illuminates the origins and initial development of the principle, frequently overlooked with many academics choosing to begin their historical approach post-World War I. Although the beginning of the popularisation of self-determination was instigated by President Woodrow Wilson in the 1920s, self-determination has its roots in the American Declaration of Independence 1776 and the French Revolution 1789. The initial growth of self-determination focused on nationalism and territorial power, rather than its current protection of minority groups. During 18th century France, self-determination was first propounded as a standard concerning the transfer of territory, with the right not being uniformly

applied, as Revolutionary France's use of the principle flagged the way the 1791 annexation of Avignon and the 1793 annexation of Belgium and the Palatinate. A developing liberal perspective of self-determination was offered by Woodrow Wilson, who believed "peoples should be dominated and governed only by their own consent", describing the principle as "an imperative principle of action." (Cavandoli, 2016) Despite Wilson proposing an articulation of a League of Nations Covenant provision on self-determination which was considered and redrafted several times at the Paris Peace Conference, the term was discounted due to Wilson never defining the principle of self-determination. (Nawaz, 1965) Koskenniemi highlighted the two versions of self-determination that can be seen competing throughout history, there is a 'good' version of self-determination that appeals to one's democratic instincts and sense of fairness, and there is a less benign version which appeals to our nationalistic, exclusionary instincts, (Klabbers, 2006) but both simultaneously support and challenge statehood. (Koskenniemi, 1994)

Towards the end of the First World War, Wilson proposed a principle of self-determination as a foundation for international order, it was specified that the "settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship" is to be made "upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery." (Kapitan, 2006) The concept that was then enshrined within Article 1 of the United Nations Charter, which called upon member nations to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Its standing within international law was further developed by the 1966 Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, whose first articles state "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development." The desire for self-determination became the driving force of permanent changes. Before World War I, the Slavic people of the Habsburg Empire and the non-Turkish people of the Ottoman Empire pursued the journey for self-determination, and after World War II, this endeavour had reached those under colonial rule, allowing them to rally behind the principle. Even when the colonial self-determination process was arguably finalised, the popularisation of the topic did not cease, as in many cases, the changes established by the World Wars meant new injustices, new forms of domination and suppression, and new borders that don't correspond to the wishes of people. (Hilpold, 2017)

The Åland Islands dispute was the first case where the League of Nations had to consider an appeal to the principle of self-determination, this disputed tested the attitude of the League towards self-determination, questioning its standing in international law. (Musgrave, 1997) States seek legitimacy as a representative of the people it rules, the objective of a state is the creation of a nation, which involved cultural homogenisation of its citizens to establish links of solidarity amongst them. Asserting an identity is distinguishing and differentiating oneself or one's group in a certain way, it enables us to put names to ourselves and to others, for some idea of who we are and who others are, as well as ascertaining the place we occupy along others in the world. (Chu, 2000) Soviet writers routinely defined a people entitled to self-determination based on an ethnic criterion, asserting that such peoples had a right to secede their territory if they desired, whereas Levin declared a people to be those "possessing a common territory, and most often a common language, who are united by a community of aims in the struggle for liberation. Musgrave believes that the representative government definition of peoples, contained in the Helsinki Declaration 1975 fails to consider the enormous impact of linguistic, cultural, and religious factors on the way in which populations identify themselves. Populations generally do not consider themselves as one 'people' due to residing in certain established territorial limits, but rather through sharing common attributes such as language, culture, and religion. (Musgrave, 1997)

3. Aims and Objectives

My work aims to provide analysis on the reforms needed by international legislation regarding the right to self-determination, investigating the challenges faced by law makers, such as the importance of protecting identity in group self-determination claims. Another aim is to give recognition to the needs of minority groups regarding their desire for self-determination, acknowledging the reasons why they wish to identify outside their governing state, and if the international community can provide adequate protection to these groups. One of my research's objectives is that it will have beneficial impacts on the

legal community regarding minority rights and indigenous people's rights, as these groups benefit from research into the unclear legislation surrounding self-determination, creating a deeper understand of the topic and providing clarity of legislation needed by smaller ethno-national groups. I also hope that my research can add to Liverpool John Moores University's academic standing, as the project closely aligns with the University's ambition to expand international and civic engagement through globally recognised research through placing societal diversity and minority groups at the centre of the analysis.

4. Justification for Research

My project will offer a refreshing contribution to the current existing work in the self-determination field, by providing a focal point wholly concentrated on group identity protection and conservation throughout international law, and its direct relationship with self-determination. My work is also extremely relevant to domestic scenarios, such as post-Brexit United Kingdom, which has saw a continuing rise in the support for devolved independence in Scotland, Wales, and Northern Ireland, which will be discussed throughout my work as case studies, questioning if their people's national identity is a driving factor in the heightened support for their desired sovereignty. The research I am conducting, additionally aims to provide to the contribution of acknowledging marginalised minority groups and indigenous people's rights, offering a greater understanding of the needs of smaller communities and the protection of them. My work will advance the knowledge of socio-political and legal challenges that face those who desire self-determination, such as self-determination being enshrined in the United Nations Charter, yet States displaying clear reluctance to work in indigenous issues, illustrated by the slow development of the Draft Declaration on the Rights of Indigenous Peoples being approved by the General Assembly for adoption.

5. References

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