

Self-Determination: comparative analysis

UGRA_016606

Departments	Department of International, European Union and Comparative Law
Teaching Languages	English
ECTS	6
Teacher responsible	Lorne Nolan Richards - lorne.walker@esade.edu

Course Goals

The student will be capable of:

- 1) Understanding the evolution of the concept self-determination;
- 2) Familiarising themselves with the use of comparative law techniques in the constitutional law sector;
- 3) Analysing from a legal-constitutional point a range of self-determination processes.

Previous knowledge

A knowledge of global politics and the various self determination movements is not required but strongly suggested.

Prerequisites

Public International Law, Constitutional Law and European Union Law not required, but strongly suggested

Teaching methodology

This course will involve lecturers, case studies, class discussions and individual presentations.

Description

Course contribution to program

This course will familiarise students with the various aspects of the phenomenon of self determination.

This course explores the evolution of the concept of self-determination from the nineteenth century to the present. The focus is on changing legal norms, including interpretation of the principle of self determination by the League of Nations and the United Nations. The seminar adopts a case-study methodology combined with lectures. Specifically, this course contributes to students' development in three ways:

- a) Furthering their knowledge of Constitutional Law. The comparative method allows students to improve their understanding of their own system's foundations and traits;
- b) Giving a greater understanding of the self-determination processes in the last century.
- c) Furthering knowledge of the parametres of minority rights

Bibliography

Joshua Keating, *Invisible Countries: Journeys to the Edge of Nationhood*, Yale University Press (Book)

Lorne Walker-Nolan, *Secession Referendums: A Comparative Study*, *International Journal on Minority and Group Rights* (Article)

Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Book)

James Crawford, *The Creation of States in International Law*, Oxford University Press (Book)

Antonio Cassese, *Self-determination of peoples*, Cambridge University Press 1999) (Book)

Christian Walter, Antje von Ungern-Sternberg and Kavus Abushov (ed), *S, Self-determination and Secession in International Law*, Oxford University Press 2014 (Book)

Marcelo G Cohen, *Secession. International Law Perspectives*, Cambridge University Press 2006 (Book)

Hurst Hannum, *Autonomy, Sovereignty, and Self-determination. The accommodation of conflicting rights*, (University of Pennsylvania Press 1996) (Book)

Activities

Written and/or oral exams

Readings

Presentations

Case study analyses

Content

#	Topic
1	Today being a small state (or simply a state) is easier than before. This is basically due to two reasons: i) changes in the security environment for states and ii) growth of economic interdependence. Has the legal evolution of the concept self-determination also contributed to the feasibility of small states? This is one of the questions that will be addressed in the course.
2	These sessions will explain the origins of the principle of self determination underlining the importance of the historical context (WWI and 14 Points of US President Woodrow Wilson). They will address the inconsistent application of the principle when reordering the European map after WW1. Case study: Aland Islands Readings: - President Woodrow Wilson's Fourteen Points: http://avalon.law.yale.edu/20th_century/wilson14.as
3	These sessions will explain how (UN Charter, 1514 UNGA Res., 2625 UNGA Res.) and why (decolonization period) the principle of self-determination evolved into the right to self-

#	Topic
3	<p>determination under the UN era. They will also highlight that the right to self-determination does not imply necessarily a right to secede. Case studies: Western Sahara, Hong Kong Readings: - 1960 UN General Assembly Declaration on the Granting of Independence to Colonial Countries and Peoples (G.A. Res. 1514): http://www.un.org/en/decolonization/declaration.shtml 1970 UN General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (G.A. Res. 2625): http://www.un documents.net/a25r2625.htm</p>
4	<p>These sessions will explain the process of the Soviet Union fall and the impact it had on the notion of self-determination. The particularly relevant case study will be Kosovo's unilateral independence from Serbia in 2008. We will also explore the so-called "remedial secession" theory. Case studies: Baltic States, Czechoslovakia, Yugoslavia and Kosovo. Case studies: delayed colonialism: East Timor and South Sudan Readings: ICJ Advisory opinion, 'Accordance with International law of the Unilateral Declaration of Independence in respect of Kosovo' (22 July 2010): http://www.icj-cij.org/docket/files/141/15987.pdf (From page 27 to page 54) - Marc Weller, 'Negotiating the final status for Kosovo', Chaillot Paper 114, 31 December 2008: http://www.iss.europa.eu/publications/detail/article/negotiating-the-final-status-of-kosovo</p>
5	<p>These sessions will address the ongoing discussion about the compatibility between constitutional law and secession. Should liberal Constitutions include a right to secede? Case study: Quebec Readings: - Supreme Court of Canada Reference re Secession of Quebec (20 August 1998): http://scc.csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do - Canadian Clarity Act (29 June 2000): http://laws.justice.gc.ca/eng/acts/C-31.8/FullText.html</p>
6	<p>These sessions will review Spanish and British constitutionalism in order to respond to the following question: why was it possible from a legal point of view to organize a referendum on independence in Scotland while it has not been possible in Catalonia? We will also examine the impact on the EU of the hypothetical independences of a sub-national entity of a current EU Member State. Case studies: Catalonia, Scotland, Northern Ireland Readings: - Agreement between the United Kingdom Government and the Scottish Government on a referendum on independence for Scotland: http://www.scotland.gov.uk/About/Government/concordats/Referendum-on-independence - Boyle, Alan and Crawford, James, Annex A Opinion: Referendum on the Independence of Scotland - International Law Aspects, 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/794 (only Part V) - Christopher Connolly, 'Independence in Europe: Secession, Sovereignty, and the European Union' 2013: http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1396&context=djcil</p>
7	<p>Lastly, the course will take a look at the EU and will explore whether it has a unique position towards secession. Although there is no explicit provision covering the issue, some scholars have found implicit responses within EU values.</p>

Assessment

Tool	Assessment tool	Category	Weight %
Written and/or oral exams	Final exam	Ordinary round	60.00%
Individual or team	Presention	Ordinary round	30.00%

Tool	Assessment tool	Category	Weight %
exercises			
In-class analysis and discussion of issues	Class Participation	Ordinary round	10.00%

PROGRAMS

113-Law Exchange Program (Undergraduates: Law)
113 Year 1 (Optative)

DD05-Double Degree Program (exchange) (Undergraduates: Law)
DD05 Year 1 (Optative)