

New England Journal of Public Policy

Volume 31
Issue 2 *Special Issue: ICO*

Article 2

11-20-2019

Editor's Note

Padraig O'Malley
University of Massachusetts Boston, padraig.omalley@umb.edu

Follow this and additional works at: <https://scholarworks.umb.edu/nejpp>



Part of the [Human Rights Law Commons](#), [International Law Commons](#), and the [Public Policy Commons](#)

Recommended Citation

O'Malley, Padraig (2019) "Editor's Note," *New England Journal of Public Policy*. Vol. 31: Iss. 2, Article 2.
Available at: <https://scholarworks.umb.edu/nejpp/vol31/iss2/2>

This Editor's Notes is brought to you for free and open access by ScholarWorks at UMass Boston. It has been accepted for inclusion in *New England Journal of Public Policy* by an authorized editor of ScholarWorks at UMass Boston. For more information, please contact scholarworks@umb.edu.

Editor's Note

Padraig O'Malley

University of Massachusetts Boston

When the President talks of “self-determination,” what unit has he in mind? Does he mean a race, a territorial area, or a community? Without a definite unit which is practical, application of this principle is dangerous to peace and stability. . . . The phrase is simply loaded with dynamite. It will raise hopes which can never be realized. It will . . . cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist who failed to realize the dangers until too late to check those who attempt to put the principle in force. What calamity that the phrase was ever uttered!”

—Robert Lansing, “Self-Determination,” *Saturday Evening Post*, April 9, 1921

Articulations of self-determination were present in the Greek city state and *demos kratos*, in the writings of the fourteenth-century Italian scholar Marsilius of Padua, in the writings of the seventeenth-century English philosopher John Locke and the Glorious Revolution when the divine right of kings was removed and sovereignty placed in the Westminster Parliament, in the eighteenth-century Prussian German philosopher Immanuel Kant, in the American Revolution and the declaration of unalienable rights, in the French Revolution vesting sovereignty in the nation, and in the early twentieth-century writings of the Russian revolutionary Vladimir Lenin and the U.S. president Woodrow Wilson.

Robert Lansing was Wilson’s secretary of state. His statement refers to the absence of clarity in Wilson’s enunciation of his doctrine of national self-determination.¹ Wilson first spelled out the doctrine in his Fourteen Points address to Congress January 8, 1918, outlining his ideas for peace after the carnage of World War I. The points were embedded in the 1919 Versailles Treaty, which created a new world order, and were made a foundational principle of the League of Nations, the rules-based supranational organization established to oversee the new order.

Almost a hundred years on, the principle of self-determination is still evolving, still a progressive force that challenges the status quo. Though numerous covenants and declarations have brought clarity to many of the ambiguities embedded in the concept, numerous still remain.

Article 1(1) of the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), self-determination refers to “the right of all people to freely determine their political status and freely pursue their economic, social and cultural development.” But there is no accepted definition of the rights holders, who the people in “peoples” are. One interpretation argues that peoples should have “a common group identity” and that “‘psychological perceptions and not tangible attributes’ should form the primary basis of peoplehood.”²

On the question of self-determinations for a people within a self-governing state, the UN Charter is explicit: there is no unilateral right of secession. This is hardly surprising since, on one hand, for the signatories to the charter the territorial integrity of their states is paramount. On the

other hand, paragraph 1 of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (1970) states that self-determination is a right applicable to “all peoples.” Paragraph 4 stipulates that a people can pursue external self-determination of a “sovereign and independent State, the free association or association with an independent State or the emergence into any other political status freely determined by a people.” Paragraph 7, however, guarantees only the integrity of states conducting themselves “in compliance with the principle of equal rights and self-determination of peoples . . . and thus possessed of a government representing the whole of the population belonging to the territory without distinction as to race, creed or colour.” In other words, discrimination of a “people” on any of these grounds would appear to open the political pathway to secession. “The people” in question, however, may be dispersed throughout the population, in which case secession is a nonstarter, or they may represent a cohesive group, which satisfies the intent of the 1970 charter. In either case definitions befuddle.

Among competing groups are national minorities, ethnic minorities, majority/minority dichotomies, Indigenous peoples (First Nation peoples), local governments, “workers” organizations, refugees, the stateless, and women’s groups. What precisely the holders of the right to self-determination have the right to remains a much-chewed-on bone of legal and moral contention. Human rights advocates, argue, for example, that peoples subjected to deliberate, sustained human rights abuses (ethnic cleansing, mass killings, or genocide) have a right to unilateral noncolonial self-determination. Lansing’s statement was prophetic.

The right to self-determination has a powerful pull and has been the source of many violent conflicts. In the postcolonial era, conflicts in the name of self-determination include some of the bloodiest—the Balkans, where six new states and a disputed seventh came into being, and Abkhazia, Chechnya, South Ossetia, Nagorno Karabakh, Sri Lanka, West Sahara, Aceh, West Papua, East Timor, and Southern Thailand. Among the long-standing unresolved are the Israel/Palestinian “two-state solution” question and Cyprus. The Kurds, national minorities in Turkey, Iran, Iraq, and Syria, were promised a homeland at the Treaty of Sevres (1923).

In Northern Ireland, the Good Friday/Belfast Agreement provides a long-term solution to the issue of self-determination, the unification of Ireland the basis of concurrent consent for in both jurisdictions. Brexit (external self-determination) may lead to the breakup of the United Kingdom if Scotland opts for independence (internal self-determination) and the subsequent political dynamics lead to a border poll on Irish unity in Northern Ireland.

Moreover, Brexit has resulted in a clash between Parliament, with which sovereignty lies, and the will of the people, as expressed in the June 2016 referendum on exiting the European Union, a constitutional conundrum that demands attention, especially if “the will of the people” is a harbinger of the breakup of the Union of Great Britain and Northern Ireland. Recently, hundreds of thousands took to the streets in Barcelona after Catalan independence leaders were jailed for lengthy periods. Cameroon, divided by the French and English languages, hovers on the brink of civil war as the Anglophone region seeks self-determination through either a federation with the Francophone region or outright independence for the country it calls Ambazonia.

Recently, too, tens of thousands of demonstrators took to the streets in Beirut, Lebanon, Baghdad, Iraq, Santiago, Chile, and Hong Kong and before that, in countries as disparate as Egypt, Saudi Arabia, Sudan, Russia, the Czech Republic, and Kazakhstan. In each case the initial “cause” was some policy decision by the government adversely affecting “the people,” and

though governments quickly reversed themselves, these decisions did nothing to quell the anger of the “people,” demanding systemic change, redirecting the sources of sovereignty.

The articles in this issue of the *New England Journal of Public Policy* have their origins in presentations at a Chatham House conference titled “Rethinking Self-Determination,” February 2019, hosted by the International Communities Organization and the journal.

Among the many aspects of self-determination they address: the elasticity of the concept as a human right in the context of “peoples” (Freeman); individual rights versus collective self-determination (Summers); Biafra as an early case of internal self-determination—the territorial integrity of the state and the right of secession when “the right of a people to participate in the decision-making processes of a country is breached”³ (Brucker); European integration versus self-determination (Ushkovska); language as an instrument of self-determination for Indigenous peoples (Higgins and Maguire); issues relating to equal rights for Indigenous women (Redolfi et al.); communicative justice and reconciliation in Canada (Neeson); the application of self-determination theory to forcibly displaced peoples’ adaptation process (Turan); self-determination for forcibly displaced children and in states that have not ratified the UN Convention on Refugees and the UN Conventions on Statelessness (Herring), and interpreting “peoples” to refer to the global population and climate change as a human right (Donlan).

What emerges is a multitude of perspectives arguing for self-determination as an expansive concept. But, also, as Michael Freeman concludes, “in part illusory and potentially dangerous” and hence the need to “rethink [it] because our collective thinking [about it] has been very confused and . . . [has cost] many lives.” Robert Lansing would approve.

Notes

¹ Lansing’s words are quoted in Michla Pomerance, “The United States and Self-Determination: Perspectives on the Wilsonian Conception,” *American Journal of International Law* 70 (1976): 10.

² Glen Anderson, “A Post-Millennial Inquiry into the United Nations Law of Self-Determination: A Right to Unilateral Non-Colonial Secession?,” *Vanderbilt Journal of International Law* 49, no. 5 (November 2016): 1204n82.

³ David Raiç, *Statehood and the Law of Self-Determination* (The Hague: Kluwer Law International, 2002).