

Self-Determination and the Democratic State in Transition

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Self-determination: Origins and Themes

- Origins of Self-Determination
 - External
 - Internal
- Themes in development of Self-Determination
 - Juridification (international law)
 - Tension and inter-connectedness: external v. internal
 - Hybridity: international/national, law/politics; internal/external
 - The specific challenge to the democratic state

Stages in Internal and External Self-Determination

Drivers in the recognition and juridification of self-determination have come from dealing with the reality of conflict

1. Post-First World War
2. Post-Second World War
3. Contemporary

1. Post WW1

- Self-D as political right (seen as external but limited)
- Minority rights treaties - cast as law.

2. Post WW 2

- De-colonisation
- Early view by west: political not legal.
- Narcissism 1: West portrays self-determination as right to democracy (in their image) (internal)
- Narcissism 2. Central & Eastern European States portray self-determination as ending class struggle + de-colonisation
- UN charter and ICCPR & ICSECR
- UNGA RES. 2625 (XXV) 'FRIENDLY RELATIONS' Becomes legal right. Internal and external dimensions explicitly mixed

3. Contemporary

- Recent conflicts: element of self-determination (denial) in causes of conflict, and in matrix offered to fix conflicts
- Hybridization: multi-layered
- Emergence of right to personal self-determination (legal right?)

Elements of Internal Self-determination

- 1. Pouvoir constitutive. Right to constitute political system (legally binding)
- 2. Right of people to amend constitution (legally binding)
- 3. Right to elections and referenda (not legally binding?)

Northern Ireland & Good Friday Agreement

Characteristics of self-determination in NI

- Covers external and internal
- Novelty in allowing change in sovereignty premised on democratic will of sub-state
- Hybrid, domestic and international law, and law and politics
- Necessary link between internal and external - tradeoffs and bargaining involved
- Personal self-determination (multiple)

External-Internal NI Dynamic

- External (referenda re GFA & sovereignty switch - treaty based) (now UK)
- Internal (legally entrenched?)
 - Pouvoir constitutive. Created liberal consociational Assembly & Executive, devolution of key governmental functions
 - Change constitution (entrenched)
 - Governance/elections. PRSTV
- Personal
 - British, Irish or both nationalities
- How entrenched is internal self-determination?

If sovereignty were to change?

- External (referenda under GFA: sovereignty switch - treaty based) (switch to RoI)
- Internal (legally entrenched?)
 - Pouvoir constitutive. Created Liberal consociational Assembly & Executive, devolution of key governmental functions
 - Change constitution (entrenched)
 - Governance/elections. PRSTV
- Personal
 - British, Irish or both nationalities
- Devolution under Dublin is default option; federation with Ireland permissible with required consents; confederation required a treaty-change

Conclusions

- Relationship between internal and external self-determination characterised by tensions. Chosen by states for instrumental reasons.
- Specific tensions and challenges for democratic state
- Progressive juridification and hybridisation of right to self-determination
- NI: Multiple reasons legal, political cultural, why both states would choose internal-external hybridity
- Unclear yet whether NI sui-generis or marker for new trend.