

Work for Distinction Final Project

***Debating Rights of National Self-Determination: A  
Combined Theory on Independence & Viability for  
Nations & the International Community***

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## **I. Introduction: The Concept of National Self-Determination**

### **An Opening Statement: Why Study Self-Determination?**

At what point should the international community support independence movements? When can a nation be considered viable and ready for independence? Does every nation have a right to determine its own government?

Complex questions like these, coupled with recent high-profile events in Kosovo and Tibet and on-going struggles in Quebec, the Basque region of Spain, Scotland and elsewhere, have prompted a renewed interest in the political theory and international policy of independence. Within this broad topic, activists, scholars and commentators routinely bandy about one specific slogan: National self-determination. Given the local and global implications of this abstract three-letter-phrase, paired with an often urgent need for resolution, national self-determination is both a fascinating and frustrating subfield of independence scholarship that deserves a thorough examination. But what does this term represent and how should it relate to issues of independence?

More often than not the principle of “national self-determination” is cross-applied to nearly every independence movement with little concern for its concrete meaning and nuances. The pundits, wonks and demagogues of independence also present and argue several policy solutions grounded in self-determination rhetoric, with some more radical than others. Their goal is, in the extreme, to solve crises of independence that plague the globe vis-à-vis a “right” to self-determination. However, these solutions are often geared towards one particular case study and remain afflicted with situational and emotional bias. The multitudinous possibilities for resolution to “independence” and “self-determination” questions can have real-world consequences and, therefore, must be deliberated with resolve, objectivity and a genuine

understanding of the issue. With such a great deal of discord both in and out of the scholarly realm, there remains a vast space for clarification and original scholarship.

The broad goal of this thesis, therefore, is two-fold: 1) Offer a solid definition of national self-determination, its history, theory, challenges and reality and 2) Create an overarching prescriptive and theoretical outline, based on a right to self-determination, which can be used by the international community to mediate/adjudicate questions of independence. Neither of these goals is accomplished quickly or easily, but in the end a measure of clarity should arise from the typical opacity of independence debates.

### **The Roadmap: A Theoretical Sketch regarding the Application & Evaluation of the Principle of Self-Determination**

The central philosophical hypothesis of this study is that all nations have an inalienable, inherent and “absolute” right to total self-determination (i.e. independence). While harmonious and stable multiethnic/multinational states (e.g. America) can be desirable, often distinct groups of people or communities wish to determine their own status and government, and this goal should never be ultimately denied. This statement will be evaluated and justified in a later section as having great benefits morally, politically and legally such as contributing to greater “friendly” international relations, a mitigation of politically-based violence, and overall global stability. However, this idealist declaration must be qualified: Nations have an “absolute” right to self-determination only once it is proven that they can pass a multivariate test of post-independence viability administered by stable, democratic members of the international community (see footnote for definition).<sup>Note</sup>

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<sup>Note</sup> For the purposes of this paper, the international community will be defined as follows: Either the decision-making calculations of an individual state, a group of states, IGOs (e.g. U.N. or E.U.) or NGOs. Furthermore, the international community, for this study, must be primarily considered to consist of democratic states/organizations, since democracies are principally the only ones who recognize a “right” to self-determination—China, for example, certainly does not acknowledge self-determination on any level (see section on democratic roots of self-determination).

It is true that a qualified yet absolute right may be perceived as a contradiction in terms or even oxymoronic. Furthermore, several scholars reject the notion that absolute rights can exist in any form, least of all for self-determination.<sup>1</sup> While this is not intended to devolve into a metaphysical debate, the contention here is that rights can be considered “qualified absolute” at the point at which they exist as a continuous theoretical basis for all subsequent derivatives of that right—qualifications can be added as long as they continue the spirit of the original right.

A point of clarification can be drawn from America’s Founding Documents: The First and Second Amendments of the United States Constitution say that “Congress shall make no law...abridging the freedom of speech...” and that “...the right of the people to keep and bears arms shall not be infringed.” Additionally, the American Declaration of Independence cites a variety of natural rights, among them the right to “life,” which is now considered universal and inalienable. Some claim that the right to self-determination, much like the right to life, is also a natural right of humankind.<sup>2</sup> Given the language of these documents, the rights they propose could all be considered “absolute” by the standard definition (i.e. that they are inviolable). However, if these rights are “absolute,” then why are there laws against inciting violent action through speech or selling weapons to convicted felons? And why can the universal, natural right to life be taken away (e.g. the death penalty)?

The answer is that even so-called “absolute” rights, whether American or international, can be abrogated or mitigated when that right has a significant influence or impact on others—in this examination’s case the international community and the citizens of the nation and central state are affected. Obviously these rights are no longer absolute by normal criteria. So how can

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<sup>1</sup> Dr. Michael C. van Walt van Praag and Onno Serroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

<sup>2</sup> Ibid

they be defined if they are both absolute and restricted? Here is where a “qualified absolute” right becomes necessary. For example, the absolute right to free speech will always exist as the philosophical underpinning of America’s “free speech” law, yet certain interpretative qualifications have been placed upon it in furtherance or clarification of the original right. Therefore, the right to free speech is forever theoretically present, but not without some interpretation or qualification.

The principle of self-determination, now understood as a universal right (see Historical Section) also falls into this category. This paper contends that the international community should always recognize all nations’ inherent rights to self-determination and attempt to work towards the actualization of that right in maximum terms (i.e. full independence)—even if the nation may not be considered “viable/fit” for many years. <sup>Note</sup> However, this “right” is qualified by the viability/fitness test mentioned earlier. Therefore, since the right to self-determination will always be a present and continuous theoretical goal restricted by a test of viability it becomes a “qualified absolute” right (Note: From this point “qualified absolute” will be shortened to “absolute” for conciseness).

This is slightly different from the American case, where the government does have some “qualified absolute” rights (see above), but will rarely work for implementation of other certain “inherent” rights in their “maximum” form (e.g. the 2<sup>nd</sup> Amendment right of individuals to possess weapons of mass destruction). Additionally, as with most states, America can remove rights altogether (e.g. a convicted felon’s right to vote), which the international community should not consider regarding the right to self-determination.

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<sup>Note</sup> Some might call this a “conditional” or partial right. However, this is insufficient since a conditional right implies that that right only applies to a certain set of individuals, or in our case nations). The qualified absolute right given here is universal to all nations, but has certain qualifications. Perhaps a bit of sophistry, but important nonetheless.

There is another question that needs to be answered from which we can draw wisdom from the American system: Why should the international community have any justifiable ability to regulate the right to self-determination?

The American system shows that governmental oversight of all rights is necessary and in place for the good of the people and promotion of the common ideals set forth in the Constitution. The international community must also serve in this similar “oversight” role regarding self-determination—though some may argue that this is unfair since the international community is unelected—to ensure that international order and norms are maintained. This theory may also be viewed as overly paternalistic, but the counter is that self-determination is a right that requires a degree of paternal administration. Due to the global impacts and potentially catastrophic consequences, it is more than appropriate for the global “success stories” and regional partners to help ensure the post-independence future of nations with little or no autonomous track records—both for the benefit of the new nation and international stability. Additionally, from a legal perspective, the formal definition of a new “state,” as outlined in subsequent sections, is reliant upon the recognition of already duly constituted states/organizations, further warranting their consultative powers. In essence, the sovereignty of any state is defined by the recognition of that sovereignty by other sovereign states—an obvious parallel to the American system where the sovereignty of the government is derived from recognition of that sovereignty by the people.

From these examples it becomes clear that it is simply responsible theory<sup>Note</sup> to caveat the “absolute” right to self-determination with a test of “viability” and place the administration of this test within the scope of the international body politic.

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<sup>Note</sup> The term theory is appropriate here since there is an element of falsifiability. That is, over time, the empirical test can be shown to either work or not work—constant application of the test to new cases of self-determination and the resultant “correctness” of the prediction is the

Moving away from philosophical justifications, some further clarification over the viability/fitness test is necessary. From a somewhat scientific perspective, the goal of this test is to evaluate pending cases of national self-determination and gauge their potential for future success based on a wide-spread breakdown of previous self-determination successes/failures. In essence, what can past practices tell us about the post-independence potential of a nation that declares its desire for a form of self-determination? And should the United States, United Nations, European Union, and other states/organizations support this declaration in any capacity (i.e. militarily, financially or politically)?

Currently, individual states/organizations have no overarching theory to use and can apply their own criteria with limited success for accurate prediction. Additionally, a patchwork system of evaluation leaves some claims of national self-determination supported by half the globe and excoriated by the other. This problem is eliminated by a more universal and objective test employed by the majority of the international community. Essentially, this is an SAT for global national self-determination issues—standardized and simplified. Clearly, each state/organization has its own set of political influences and national interests that can alter their decision-making calculus; however, this argument is made under a *ceteris paribus* assumption of “ideal” circumstances—i.e. a normative scenario in which a state/organization can make an objective evaluation.

A series of standardized and proto-scientific (since some subjectivity is involved) evaluations ranging from economics to organizational structure of the civil service will be taken into account. Application of this “viability” test to two primary case studies (Scotland and East Timor) will further ensure acquisition of methodological proof and efficacy.

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vetting methodology. In turn, this will help further justify the philosophical theory, namely the claim to an “absolute” theoretical right of self-determination with viability qualifications. As noted, these two components are contingent upon one another.

There is also a functional addendum that further elucidates the “absolute right” philosophy and the viability/fitness test: While granting the right to self-determination must always be the international community’s priority, it must be understood that many prospective nation-states will not pass the viability/fitness test initially. Therefore, the international community should maintain the nation’s “right” to eventual independence, but offer incremental alternatives (e.g. limited autonomy) as a step-wise and temporary solution until such time as the nation can fully engage with this “right.” This is similar to laws that regulate voting age—the right to vote always exists, but may not come into practice until a sufficient “age of majority” is reached. Basically, the state holds the right to vote in a form of civic escrow until an individual is able to make a rational choice—the international community will hold similar power over potential nation-states.

Under this proposal, the nation will be put into an international “trusteeship” regulated by governing third parties. Unlike the “viability/fitness” test and the theory of “absolute” rights to self-determination that can apply to individual states, this policy would require administration by a consortium of states or international bodies (all of which still require the acquiescence of individual states, leaving no one out of the decision-making process). The “trusteeship” system would provide advice, facilitation and resources if necessary, but would be a far-cry from the colonial or imperial forces of earlier decades.

While it is not the goal of this paper to create a swath of policy initiatives, a division of the United Nations (or African Union or E.U.), or an assembly of regional state actors, would have to implement and oversee this step-wise procedure lest it be called pseudo-imperialism. This functional proposal can be viewed as a more beneficent form of the League of Nation’s (later United Nations) post-WWI Mandate System or the post-Imperial British trusteeship.

Given the interdependent nature of the world today, and the horrors of former unregulated self-determination movements, it is important that the international community consider alternatives and apply a “fitness” test to restrain the potential catastrophic impetuosity of national “absolutists.”

While the paradigm created from this tiered assessment calculus is intended as a predictive tool for estimating the potential success of imminent cases of self-determination, it can also be used as a retrospective measurement to further investigate past instances of national self-determination. The main weakness of the “predictive” model, however, is that it cannot use or evaluate examples outside the post-WWI epoch.<sup>Note</sup> This is due to the fact that global political, moral and economic orders were so drastically different pre-1914 from what is considered the contemporary norm. Therefore, it would be an act in futility to attempt to analyze truly historical instances of self-determination or utilize them as predictors under the presented design’s terms.

This does not mean, however, that the historical development of the right to self-determination is irrelevant. An analogous scenario plays out in the study of human evolution: It is “bad scholarship” in this field to disregard *Homo neanderthalis* or other pre-modern humans in a study of *Homo sapiens* on the grounds that there is no direct lineage—to understand the whole picture all avenues and offshoots must be explored.

It is imperative also to understand that severing the empirical “viability” test from a philosophical framework that promotes “absolute rights” would leave a very large gap in the study of self-determination. The two are linked and must be examined as contingent and associated units. However, this contention about the necessary weaving of self-determination

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<sup>Note</sup> The post-WWI era is a somewhat arbitrary marker, but this decision was made based on some educated calculations. The main one being that the end of WWI signaled the end of dynastic Europe and the beginning of decolonization. Additionally, the WWI era is the first modern recognition of the term “self-determination” as coined by US President Woodrow Wilson. Therefore, it is also the first time that nations use the specific guidelines now recognized as self-determination to assert their independence rights.

theory, philosophy and quantitative evaluations requires some further explanation and distinction.

Utilizing both hard data and political theory to form an overarching self-determination philosophy becomes the balancing act of this thesis. As stated in the earlier parts of this section, the arguments presented here are both normative and functional and only work when paired in harmony. A purely scientific and mathematical evaluation is not only too cold for a humanistic issue such as self-determination, but also lacks *raison d'être* without any philosophical context underlying the “right” to self-determination. Conversely, a solely philosophical plan would be anarchic, allowing any group to proclaim their absolute right to independence at any time, with horrific results for international stability. Hence, the dependent necessity exists to employ both empirical and theoretical assessments.

In addition to the original theory listed here, there is also a plurality of respected and peer-reviewed opinion regarding the international community’s responsibility pertaining to independence and self-determination quarrels. In order to navigate this sea of scholarly thought, and to further bolster the validity of the claims made in this paper, a thorough investigation of some of the main proposals is merited. Each of these proposals will be examined in a later section on one of the same four levels in the philosophical proof: 1) ethical 2) Legal 3) Political and/or 4) Viability/fitness. Nearly every extant theory about self-determination can be relegated to one of these four categories and, therein, the inherent weaknesses will be exposed. Following this examination, it will become apparent that none of the proposals in the *corpus academia* are sufficient to handle/predict many of the outstanding self-determination cases and/or future cases.

In the end, this critical analysis of scholarly literature, coupled with the original theoretical sketch, will exhibit that self-determination is an inalienable and “absolute” right, which should be supported by the defined international community, under the guide of a

“viability” test that is both practical and desirable. This combination of ethical, political and legal philosophies, combined with the “viability/fitness” model, is a definitive new pathway for national self-determination studies. Given its complex nature and originality, some further definitions and clarifications are required.

### **An Acceptable and Multi-layered Definition of Self-Determination**

Before proceeding with the case studies and a more thorough outline of the theoretical model, it is important to sketch the definitional issues surrounding self-determination. It is also important to understand some of the basic reasons why the push for self-determination exists in certain areas of the world. Once this is accomplished, the theme of this work will be more apparent, accessible and meaningful.

The literature on national self-determination is vast and frequently nebulous, encompassing a variety of themes and subtopics. However, there is a natural starting point: Finding a frame of reference that will concretely define self-determination.

National self-determination is the most popular modern principle through which a nation can claim rights to total or partial independence (*cf.* medieval independence movements, which concentrated primarily on dynastic rights or instances of decolonization which lacked a declaration of self-determination). It can be invoked as either a moral, legal or political concept, or a *mélange* of all three. For example, people who have been harassed and harmed by an ethnically different majority or iron-handed dictatorship would most certainly define self-determination on a moral level—a right granted to them to remedy the harm of an external force. People with no specific grievance but with a sense of differentiation may define themselves through the political concept of self-determination, derived from a right to sovereignty. International organizations and jurists often take the legal approach, carving out post-colonial

states from nations via juridical processes. In short, national self-determination can mean different things to different people.

The actors that study, implement or desire self-determination, however, are only one component of the theory. The other half is the so-called metropole or mother country that is losing a region of its territory. This side of the argument often defines self-determination with stricter terms of validity. For them, national self-determination is regularly viewed as a euphemism for secessionist movements trying to tear apart a country on the basis of false nationalistic principles. Neither side is usually entirely right or wrong, though value judgments can be placed on instances when universal human rights or international legal norms are involved.

Typically, debates on self-determination are viewed through one of three lenses: The international community, the central government or the “self-determinationists” (read nationalists)—while several sources and first-hand accounts take a weighted perspective, every effort has been made to maintain third party objectivity. This is best accomplished, when discussing the concept in general, by relying on the classic and accepted definition of self-determination: Self-determination is the right/desire of distinct ethnic or cultural peoples/communities to attain independence on either an internal or external level from the governing body currently in power.

However, a more cultivated and specific definition of self-determination is required to achieve the higher goals of this work. Most theorists break down self-determination into two main camps: internal and external. The latter is defined as “the right of people to choose the sovereignty under which they will live,” most often divested from their former central

government.<sup>3</sup> The former, external self-determination, can be seen as full independence of a region, nation, people, etc. from the metropole with little or no strings attached. From the thesis sketch it is clear that external self-determination is the ultimate goal, but internal self-determination can be part of the solution.

Poland, following the Solidarity movement of the 1980s and 1990s, is a good example of a nation that eventually gained “external” self-determination from the controlling government (i.e. the USSR). Typically, this form of self-determination is philosophically aligned with nationalists/separatists who view self-determination as an absolute right.<sup>4</sup> The nationalist-centric spin of external self-determination is evidenced by the mechanisms through which it is achieved: 1) decolonization—mostly from a unilateral declaration of independence (e.g. Zimbabwe from U.K. in 1980), 2) violent uprisings—colonial or non-colonial (e.g. Algeria and the Algerian War of Independence against France from 1954-62), 3) constitutional/legal separation (e.g. the “Velvet Divorce” of the Czech Republic and Slovakia in 1993), 4) international intervention (e.g. East Timor—now Timor-Leste—in 2002), 5) dissolution of the central government (e.g. Serbia following the collapse of Yugoslavia), or 6) a formal plebiscite (Very rare. The most recent example is the island nation of Tokelau, which was given the right to vote for its independence. However, it opted against enacting its right to self-determination in 2006 & 2007, and remains a territory of New Zealand in 2006 and 2007. See UN Referendum<sup>5</sup>). There are many variations on each of the above themes, though this list cites the primary examples.

The “internal” method is the alternative technique by which self-determination is defined. Internal self-determination is the right of people to “select their own form of government,”

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<sup>3</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa (Boulder, Colo.: Lynne Rienner, Inc., 1986) 6.

<sup>4</sup> *Ibid* 11.

<sup>5</sup> United Nations. Department of Public Information, United Nation to Observe Referendum on Self-Determination in Non-Self-Governing Territory of Tokelau, 16 Oct. 2007. 1 Dec. 2007 <<http://www.un.org/News/Press/docs/2007/gacol3164.doc.htm>>.

however; this is done within a greater state context.<sup>6</sup> The internal self-determination stance is often reserved for governing states that have had their hands forced into granting some form of independence. This definition allows them to define independence as the point at which people have a right to choose their own particular form of government without violating a states territoriality.<sup>7</sup>

There are two main mechanisms through which internal self-determination can be achieved: 1) Devolution or Regional Autonomy— i.e. the release of certain powers to a specifically defined internal government or peoples. (e.g. Scotland and the Basque region) 2) Federalism—i.e. a grouping of independent states granting power to a central authority while maintaining certain powers of their own (e.g. The United States and European Union). There are varying degrees of power that can be given under each of these designs and they differ from state to state.

There is also a very subtle distinction between devolution/regional autonomy and federalism that deserves discussion. Certainly no one would ever say Rhode Island is devolved, nor would they say that Northern Ireland is a federal state, but it may be hard to distinguish why. The simplest way to describe the difference is that devolution/autonomy is defined statutorily, whereas federal states are defined constitutionally.<sup>8</sup> This means that a unified state's central government can grant devolved powers to an internal government, but reserves the right to change them by legislative or executive order at any time—in effect keeping the state a *de facto* single unit. In federalism, by contrast, a constitution or other central document mandates that the

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<sup>6</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa (Boulder, Colo.: Lynne Rienner, Inc., 1986) 6.

<sup>7</sup> *Ibid* 12.

<sup>8</sup> Neil Colman McCabe ed. Comparative Federalism in the Devolution Era, (Lanham, Md.: Lexington Books, 2002) Google Books. 1 Dec. 2007 <<http://books.google.com/books?id=xwF09ITM-V0C&pg=PA301&lpg=PA301&dq=devolution+regional+autonomy+and+federalism&source=web&ots=qOO353Vt fW&sig=cQ4m5AfcMHFkVaSKL3IWBqWGI18&hl=en#PPP15,M1>>, 301.

ultimate power be given permanently to the central government while states or provinces maintain their own sets of rules and procedures. In essence, the distinction revolves around who is granting the power: Are the states giving it to a central authority (i.e. federalism)? Or is the central authority granting it to some smaller unit (i.e. devolution/autonomy)?<sup>9</sup> Therein lays the important distinction.

Some political scientists also draw distinctions between regional autonomy and devolution, the former involving a ruling “authority” with limited lawmaking powers and the latter being granted greater legislative independence. All three terms are often, incorrectly, used interchangeably. Truly, it is the situation and participants who remain the best arbiters over the terminology. But decisions over the semantics of independence are significant and should not be taken lightly. The international community must repeatedly make these distinctions when the shades of gray are indecipherable and the consequences great. Unfortunately, these quasi-legal decisions often appear to be done in a fashion similar to Justice Potter Stewart’s famous “I’ll know it when I see it” obscenity test—leaving some states internally marred by on-going arguments about “formal status.”

Understanding these two basic forms of internal self-determination is critical to any study, but brief mention should be given to some other internal forms for the sake of comprehensiveness: 1) Transnational autonomy—recognition by all or part of the international community as independent, but without a state or defined population center (e.g. Taiwan) 2) Consociationalism, first synthesized by famous Dutch-American political scientist Arend

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<sup>9</sup> Neil Colman McCabe ed. Comparative Federalism in the Devolution Era, (Lanham, Md.: Lexington Books, 2002) Google Books. 1 Dec. 2007 <<http://books.google.com/books?id=xwF09ITM-V0C&pg=PA301&lpg=PA301&dq=devolution+regional+autonomy+and+federalism&source=web&ots=qOO353Vt fW&sig=cQ4m5AfcMHFkVaSKL3IWBqWGI18&hl=en#PPP15,M1>>, 301.

Lijphart<sup>10</sup> — equates to guaranteed representation of certain groups in the central government, an abstruse form of federalism (e.g. the Flemish and Walloons in Belgium) 3) Free association with another state (e.g. the relationship between America and the Federated States of Micronesia) 4) Indigenous self-determination (e.g. Native Americans in the United States) and 5) Non-self-governing territory status—dependent foreign territories ruled by governments overseas (e.g. Bermuda). States in this final category are specially defined regions that play an important role in debates on self-determination within the United Nations.

There is a final category of self-determination entitled “irredentism” that is neither truly internal nor external. The irredentist label applies at the point at which a nation desires or chooses to become part of an ethnically or nationally similar state, giving up their right to pursue independent statehood (e.g. Somalis in northern Kenya hope to become part of a pan-Somaliland). The term irredentism comes from the Italian *irredenta* (tr. “unredeemed territories”) and developed during the German and Italian unification movements of the 19<sup>th</sup> century.<sup>11</sup> A political principle rather than an established right, classic irredentism involves the “annexation” of certain territories from one state to another on the basis of common ethnicity, language, history, etc.

The Igbo (or Ibo) people, once concentrated mostly in the southern part of Nigeria, are an oft-cited example. Following colonialism and several civil wars, the Igbos were spread across various states, including Nigeria, Cameroon and Equatorial Guinea. Recently, an irredentist movement has begun to reclaim what was once the pre-WWII “Igboland,” even though it would

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<sup>10</sup> Arend Lijphart, "Consociational Democracy." *World Politics* 21 (1969): 207-225. JSTOR. Boston University Libraries, Boston. 1 Dec. 2007 <<http://links.jstor.org/sici?sici=0043-8871%28196901%2921%3A2%3C207%3ACD%3E2.0.CO%3B2-E>>.

<sup>11</sup> Aristotle A Kallis, *Fascist Ideology Territory and Expansionism in Italy and Germany, 1922-1945*. (London: Routledge, 2000) 16.

mean border violations of several independent states.<sup>12</sup> The situation in the Turkish Republic of Northern Cyprus is another example of irredentism, made even more difficult due to the nation's island geography. Not surprisingly, the international community has historically drawn serious distinctions between the legitimacy of irredentist movements in contiguous (legitimate) versus non-contiguous (illegitimate) nations/states.

The Kurds, despite some transnational recognition, could also be considered an irredentist movement since an independent Kurdistan would likely include parts of Iraq, Iran and Turkey.

The term "*irredenta*" is now used to define the people of multi-state nations, and can cause massive problems for the creation of nation-states and the central government.<sup>13</sup> From the nation-state perspective, binding the *irredenta* into a newly defined state inherently involves the violation of their current state's territorial integrity (see later discussion). This violation naturally hinders the chance of international recognition. Additionally, central governments must always be on the watch for irredentist movements that can greatly disrupt the compatibility and control of their state. Without proper action, irredentism can result in internal ethnic strife and a great deal of political violence from both sides of the argument.

Irredentism typically results after the collapse of an empire (e.g. the Italian states of Austro-Hungary) or following decolonization (e.g. much of West Africa). The international treaties that govern irredentist movements were initially intended for "stranded minorities." However, the language of many treaties also involved the right of states to "territorial integrity," which has created some blowback: Multiethnic states (e.g. Argentina) now claim their nation will not be whole unless it is joined by the full breadth of their territory (e.g. the *Islas Malvinas*

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<sup>12</sup> John Hutchinson and Anthony D. Smith, Nationalism: Critical Concepts in Political Science. (London: Routledge, 2002) 1792.

<sup>13</sup> Thomas D Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 11

or Falkland Islands).<sup>14</sup> These assertions, however, are often a ploy to gain more land or raise nationalist ardor rather than true ethnic or national irredentist movements—in the Argentine case, the Falkland Islanders are in fact ethnically British.<sup>15</sup>

Irredentism must also be considered a lesser form of self-determination since there is no application for self-rule and the identity of the nation is assumed by the larger nation-state. Additionally, the manufactured irredentist claims cheapen the entire value of the principle since true irredentism is mostly banned under international law.

Now that the basic foundation is laid out for understanding the broad and precise definition of self-determination a new question arises: Why do nations desire self-determination at all?

### **Nationalism: Understanding the Impetus behind Self-Determination**

One of the most fundamental inquiries to make when studying national self-determination is why nations develop a “passion” for independence. Some claim it is the basic desire of all humans to be unfettered and make their own choices. However, the simple answer is usually a sense of heightened nationalism—i.e. distinctness from the central government or majority peoples—has developed within a specific geographic region or within a specific ethno-cultural population. Nationalism is a major part of the identity politics of self-determination and while it need not always coincide with a drive for total independence (e.g. Wales), it does play a significant role. Why is it that nationalism, in modern terms, is often concomitant with self-determination and why does nationalism develop? While this is a question that would take a thesis unto itself to answer, a brief discussion is warranted.

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<sup>14</sup> Martin Griffiths and Terry O’Callaghan, International Relations: The Key Concepts. (London: Routledge, 2002) 169-170

<sup>15</sup> *Ibid.*

Nationalism, much like self-determination, may be set in a variety of ways: solid or tenuous, manufactured or organic, ethnic or civic.<sup>Note</sup> While nationalism itself is an integral component of self-determination, the terms listed above in which it is couched can often be useful in predicting certain outcomes and gauging success. For example, a nation with a deep sense of organically derived nationalism (e.g. Scotland) would have a much greater chance at post-independence success. Contrast that with nations that have a manufactured national ideal—a purpose-driven nationalism only used as a means to an end—and the success rate goes down significantly (evidenced in the dissolution of Yugoslavia and during decolonization efforts post-WWII). Additionally, it is imperative that the international community understand from where the claim of self-determination is being created. If the idea of a free and independent Scotland is only being advocated by a few vocal elites with an international presence, this is not a claim of self-determination at all. Instead, a plebiscite, referendum or some other democratic mechanism must take place to ensure that the proletariat’s will and best interests are being registered.

The next important question under the “nationalism” masthead is another definitional challenge: How can a nation be precisely defined? This is another exceptionally difficult question to answer, and one which has led to much bloodshed throughout history. The Irish, for example, considered themselves a distinct nation (see Irish Free State); whereas the English-dominated United Kingdom saw them as part of a pan-Britannia identity and part of their vast empire.<sup>16</sup> Inevitably, this difference on the definition of a nation led to violent conflict (see Anglo-Irish War 1919-21).<sup>Note</sup> Ivor Jennings, a British lawyer, put it well when he said that, “On

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<sup>Note</sup>It is vital to recognize that “ethnicity” and “nationalism” do not necessarily have to coincide. This would explain the birth of “Iraqi nationalism” in what is a highly multi-ethnic state.

<sup>16</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa, (Boulder, Colo.: Lynne Rienner, Inc., 1986) 20.

<sup>Note</sup> Interestingly, the question of Irish “self-determination” became a significant debate during the 1920 American Presidential election. See bibliography for *N.Y. Times* story and the statements of Democratic Party nominee Gov. James M. Cox

the surface it [defining the ‘self’] seem[s] reasonable: Let the people decide. It [is] in fact ridiculous because the people cannot decide until somebody decides who are the people.”<sup>17</sup>

This idea of defining the “self” must be at least a peripheral part of any self-determination analysis. The “self” can be defined internally and refer to either a specific group of “peoples” based on demonstrated ethno-cultural characteristics (e.g. language or religion) or a “community” with valid claims to distinctiveness (e.g. a geographic identity or shared history). The “self” can also be defined externally: the self is “whoever is considered foreign,” if they are not us, they are “them.”<sup>18</sup> This can be either an external enemy or colonial actor or simply an ethnic group in close proximity grouped into the same state (e.g. the Croats, Bosnians and Serbs). Most likely, the “self” is formulated more along the terms of British nationalist scholar Benedict Anderson who famously claimed that the nation was “an imagined political community.”<sup>19</sup> This definition would seem to allow for the necessary flexibility in most interpretations of self-determination rights that hope to avoid being held back by rigid conceptions (e.g. Anthony D. Smith).

The final point that needs to be made in this discussion of nationalism centers on its key device: the nation-state. This is the goal of most nationalists, a country in which “geographic and ethnic boundaries,” for the most part, overlap.<sup>20</sup> There are only a handful of true “nation-states” (e.g. mainland Denmark) that meet this criterion, however, the terminology is often used to refer to any state that has a strong national identity—or a nationality that derives its identity from the

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<sup>17</sup> As quoted in: Lee C. Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 9

<sup>18</sup> Benjamin Neuberger, National Self-Determination in Postcolonial Africa, (Boulder, Colo.: Lynne Rienner, Inc., 1986) 20.

<sup>19</sup> Benedict R. O’G Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism, (London: Verso, 1991) 6.

<sup>20</sup> Thomas D. Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 9

stage (e.g. United States)—even if it remains multi-ethnic (e.g. France). In the highly complex, globalized and interdependent world, attaining a nation-state is increasingly more difficult to achieve as increased immigration and inter-ethnic marriage have made borders and national identity more flexible—yet the nation-state is still the political unit of choice for nationalists writ large.

In turn, the desire for an ethnically or culturally homogenous population has caused some of the most egregious episodes of political violence in modern history—the breakdown of Yugoslavia is the most oft cited example—and is frequently at the root of ethnic cleansing or genocide. Lord Acton, a British peer and historian, recognized this as early as 1862:

“By making the State and the nation commensurate with each other in theory, [nationalism] reduces practically to a subject condition all other nations that may be within the boundary...according, therefore, to the degree of humanity and civilization in that dominant body which claims all the rights of the community, the inferior races are exterminated, or reduced to servitude, or outlawed, or put in a condition of dependence.”<sup>21</sup>

Just one year earlier, in 1861, the great philosopher John Stuart Mill claimed the opposite: “Free institutions are next to impossible in a country made up of different nationalities. Among a people without fellow feeling...the united public opinion necessary to the working of a representative government cannot exist.”<sup>22</sup> Mills clearly favored the nation-state as the highest political unit, while Acton had portentous misgivings about its potential for harm. Throughout much of the 20<sup>th</sup> century, Mills’s philosophy was ignored, and the *realpolitik* of decolonization and the Cold War assured that states were built from many nations (see the patchwork in Africa). In the post-Cold War era, however, the nation-state has seen a resurgence.

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<sup>21</sup> Mark Mazower, *Dark Continent: Europe’s Twentieth Century.*, (New York: Alfred A. Knopf, 1999) 41

<sup>22</sup> As quoted in Benjamin Neuberger, *National Self-Determination in Postcolonial Africa.* (Boulder, Colo.: Lynne Rienner, Inc. 1986) 11.

There are those that claim the state system is breaking down and the new international order is anarchical and fully global.<sup>23</sup> Yet this opinion is tough to square when faced with the heightened fervor and mathematical increase of both nationalism and claims to the “right” of self-determination. Perhaps this new desire for nation-statehood is a response to a feeling of insecurity in a rearranged global system or waning national identity in the face of increased immigration, but whatever the cause it is clear that the true nation-state is a viable, if mostly theoretical, political unit and a major component in debates of self-determination.

Having defined both the concept of national self-determination and outlined a broad theoretical sketch it is important to create a functional timeline of self-determination’s history. Each twist and turn along the road of self-determination’s development as a concept, theory, principle or right plays an integral role in how the international community should interpret modern case studies—as they say, the past is prologue.

## **II. The Historical Legal-Political Development of Self-Determination**

As far as political concepts go, the idea of national self-determination is both very new and very old. The seeds were planted in medieval times and took root during the Enlightenment, but only in the last two centuries has self-determination moved from political theory to political right. It is critical that a thorough vetting of national self-determination’s history take place, since the subtleties and complexities of national self-determination are much clearer and obvious when placed in this coherent historical context—a view from the past makes it that much easier to understand the present.

### **Self-Determination as an Inherently Democratic Concept**

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<sup>23</sup> Lawrence T. Farley, Plebiscites and Sovereignty: the Crisis of Political Illegitimacy. (Boulder, Colo.: Westview Press, 1986) 7

Self-determination is often thought of as a natural extension of the democratic process, which grew out of a basic belief in the sovereignty of the people or that a ruler/state derived their sovereignty from the people. This is primarily an Enlightenment concept which shifted the power of the state away from the divine right of kings (Louis XIVth's "*L'État, c'est moi*" was dead) and in to the hands of the public. British historian E.H. Carr confirmed self-determination's democratic credentials:

“Self-determination might indeed be implicit in the idea of democracy; for if every man's right is recognized to be consulted about the affairs of the political unit to which he belongs, he may be assumed to have equal right to be consulted about the former and extent of the unit.”<sup>24</sup>

Political theory suggests that self-determination must be both implicit and explicit within democratic societies based on social contract theory. Prince Hans Adam II of Lichtenstein (founder of the Lichtenstein Institute on Self-Determination at Princeton University) saw democracy and self-determination as inexorably linked: “The state should offer services to its citizens and in turn the citizens should have the right to choose their state and citizenship freely.”<sup>25</sup> Essentially, if the state will provide services, and if the state derives its power from the people, the people, therefore, have the right to define the state. This syllogism has great value for developing a basic understanding of democratic theory and how it relates to self-determination.

So what does this mean with respect to debates on independence and national self-determination? In essence, this combination theory of self-determination and democracy spells out a political standard for all democratic organizations: An institution that supports democracy must inevitably support the right to self-determination or, logically, be deemed undemocratic.

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<sup>24</sup> As quoted in: Lawrence T Farley, Plebiscites and Sovereignty: the Crisis of Political Illegitimacy (Boulder, Colo.: Westview Press, 1986) 4

<sup>25</sup> Wolfgang Danspeckgruber, ed. The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 3

Indeed, it is scarce to find any state, federation or other international organization that does not support the right to self-determination—if often only in rhetoric rather than practice. For example, the European Union is a clear supporter of democratic principles (see its publication “Furthering Human Rights and Democracy across the Globe) and has also issued a strong statement on the “right of people to self-determination.”<sup>26</sup> Similar statements and characterizations are found in the U.N. and many founding documents of democratically-based states and organizations. It is important to understand that self-determination has developed as a purely democratic principle over time and that it is mostly found in, and supported by, democratic institutions. This helps color self-determination’s historical character and assists in framing the “international community” this paper will primarily associate with.

### **The Beginning: Self-Determination from Medieval Times to the Enlightenment**

The foundation of modern self-determination can be traced back to the 14<sup>th</sup> century when the Italian philosopher Marsilius of Padua began discussing the legitimacy of government as resting with the people.<sup>27</sup> This philosophy eventually found its way to France, where the 16<sup>th</sup> century King Franz I, claimed that he would not cede territory to Spain without the specific consent of the people living there.<sup>28</sup> The famous 17<sup>th</sup> century Dutch jurist Hugo Grotius also added to the self-determination groundwork, claiming that people had the right to secede under the burden of oppression (*ius resistant ac secessionist*).<sup>29</sup> These three ideas are the building blocks of modern self-determination: 1) The legitimacy of government is derived from the people, 2) The consent of the governed is required in order to make decision on their behalf and 3) The governed have a right to leave or overthrow an unjust government. These same arguments

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<sup>26</sup> Michiel Maertens, European Union. EU Presidency. EU Presidency Statement: The Right to Self-Determination. 31 Oct. 2001. 1 Dec. 2007. <[http://www.europa-eu-un.org/articles/en/article\\_338\\_en.htm](http://www.europa-eu-un.org/articles/en/article_338_en.htm)>.

<sup>27</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 3-4.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

are often invoked today in academic and political circles when discussing the proper response to self-determination claims.

In the Enlightenment, self-determination gained its greater beachhead and found its greatest champions. The English philosopher John Locke said in *Two Treatises of Government* that “political sovereignty ultimately resided in the nation, which was able to transfer it from one sovereign to another.” This is also reflected in Rousseau’s *Du Contra Social*.<sup>30</sup> This is one of the first mentions of the idea of the “nation” and political sovereignty as interconnected philosophically. The idea of the “nation” and the concept of the nation-state were also furthered with great rapidity during the latter half of the Enlightenment. The 18<sup>th</sup> century German philosopher Johann Gottfried von Herder developed the idea of *Volk* or people/nation in his famous work *Ideen zur Philosophie der Geschichte der Menschheit*. He argued that the “most natural state was a community with its own national character.”<sup>31</sup> Multinational states were “artificial contrivances, patched-up fragile contractions [...] devoid of inner life.”<sup>32</sup> Herder’s conceptualization of the nation-state would later influence German nationalism in the late 19<sup>th</sup> century as well as the ultra-nationalism of the 1940s, which took the form of fascism under Hitler.

Herder started what would become a great tradition of German nationalist thinkers—many of whom were subsumed by the national socialist movement.

Herder’s contemporary, Johann Gottlieb Fichte, also expanded the idea of the nation-state, claiming that the ethnic and geographic boundaries must match in order for a political state to survive.<sup>33</sup> For Fichte, language was the unifying “ethnic” characteristic that should determine

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<sup>30</sup> As quoted in Thomas D. Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 1-2

<sup>31</sup> As quoted in *Ibid.* 5.

<sup>32</sup> As quoted in *Ibid.*

<sup>33</sup> *Ibid.* 5-6.

state boundaries and he concluded that all “agents” had a right to independence of mind and action.<sup>34</sup>

One of Fichte’s greatest contributions to self-determination was the actual coining of the phrase. Etymologically speaking, the English term “self-determination” is thought to be derived from the Fichtean portmanteau *Selbstbestimmung* which first appeared in his works at the turn of the 19<sup>th</sup> century—though this concept is more related to individual rather than national choice.<sup>35</sup> Attribution for a derivation of the original term, *Selbstbestimmungsrecht* (tr. Right of self-determination), is sometimes given to the German socialist thinker August Bebel.<sup>36</sup> Self-determination’s first appearance in English-language works was not until 1911 when it is transliterated as “self-determination” from its German origins in an encyclopedia article.<sup>37</sup> Immediately after WWI, President Wilson helps “popularize” the neologism and it becomes a staple of modern political lexicon and theory (see Wilson discussion).

Fichte’s predecessor and inspiration, Immanuel Kant, also added his touch of unique German idealism that underscored the right to self-determination. Kant’s ideas about the “autonomous will of the individual,” part of his greater outline of the categorical imperative, gave many nationalists (e.g. Italy’s Giuseppe Mazzini) the philosophical rhetoric necessary to engage the “patriotic” zeal of their erstwhile “countrymen.”<sup>38</sup> These German scholar-philosophers were exceptionally integral parts of self-determination’s development in the Western world, but they were not the sole contributors.

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<sup>34</sup> Frederick C. Beiser, *German Idealism: The Struggle against Subjectivism, 1781-1801*, (Cambridge, Mass: Harvard University Press, 2002) 272-276

<sup>35</sup> John Ayto, *Movers and Shakers: A Chronology of Words That Shaped Our Age*. (Oxford: Oxford University Press, 2006) 51.

<sup>36</sup> Gilbert Murray, "Self-Determination of Nationalities." *Journal of the British Institute of International Affairs* 1 (1922): 6-13. [JSTOR](http://www.jstor.org/stable/view/3014717?seq=1). Boston University Libraries, Boston. 12 Dec. 2007 <<http://www.jstor.org/stable/view/3014717?seq=1>>.

<sup>37</sup> John Ayto, *Movers and Shakers: A Chronology of Words That Shaped Our Age*. (Oxford: Oxford University Press, 2006) 51.

<sup>38</sup> As quoted in Benjamin Neuberger, *National Self-Determination in Postcolonial Africa*. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 4

The 18<sup>th</sup> century saw a slate of political upheavals, most notably the American and French Revolutions. The American Revolution was first (c. 1775-1783) and gave the French Revolution (1789-1799) many of its central themes. The idea of government “for and by the people” as engraved in the American Constitution extended across the Atlantic to the French Assembly, which also granted its government legitimacy through the people.<sup>39</sup> The French and American Revolutionary government’s also believed in “natural rights, the rights of man, the sovereignty of the people, the social contract, government by consent of the governed, and the right of revolution against oppressive regimes”<sup>40</sup> The American philosopher-politician Thomas Jefferson was an ardent proponent of the last tenet regarding oppressive regimes: “When patience has begotten false estimates of its motives, when wrongs are pressed because it is believed they will be borne, resistance becomes morality.”<sup>41</sup>

As evidenced, these are concepts developed by early self-determination theorists, the American and French revolutionaries simply expanded. Due to its association with the American and French Revolutions, self-determination itself is thought of as a “revolutionary” concept—something many politicians still view as dangerous.

### **The Middle: WWI & the Inter-War Years – Self-Determination as a Principle**

As the gestation period for self-determination continued through the 19<sup>th</sup> and early 20<sup>th</sup> centuries, it was hindered by a world order dominated by empires and monarchies. The rights of the people were either not being recognized, or the people themselves were not organized enough to form coherent national identities (with notable exceptions in Germany and Italy).

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<sup>39</sup> Benjamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 1

<sup>40</sup> *Ibid.* 4

<sup>41</sup> As quoted in Thomas Jefferson, A.A. Lipscomb & A.E. Bergh (1903). *The Writings of Thomas Jefferson*. Washington, D.C.: Issued under the auspices of the Thomas Jefferson memorial Association of the United States. (Specifically Thomas Jefferson Letter to M. deStael, 1807. ME 11:282)

However, after the collapse of several empires (e.g. Hapsburg and Ottoman) following WWI, self-determination was seen as a remedy for “artificial” borders that bisected “natural” ethno-cultural regions.<sup>42</sup> The nation-state now moved into a place of primacy as nationalists galvanized their popular forces for a synchronization of ethnic and national boundaries. The term “national self-determination” also entered its current meaning at this time, giving leaders and the people a rallying point and language for their cause.

Any examination of national self-determination must include a discussion about the man who helped the term enter popular parlance: Woodrow Wilson. The 28<sup>th</sup> President of the United States, Wilson is perhaps best remembered for his “Fourteen Points,” which laid out a clear moral philosophy for America’s entrance into WWI along with post-war reconstruction plans. Contained within the “Fourteen Points” was Wilson’s outline for formal international recognition of a “right” to self-determination. Points X-XIV all address the idea of self-determination from one approach or another (see Appendix A), but never explicitly invoke the term. It is clear from this speech, however, that the Wilsonian form of national self-determination was influenced heavily by the principle’s revolutionary roots and pulled many tenets from thinkers like Rousseau, Locke and Jefferson.<sup>43</sup> Wilson relied heavily on the basic philosophical outlines of these thinkers while crafting his version of the “right” to self-determination.

In addition to the “Fourteen Points,” Wilson’s overall justification for entrance into the Great War was imbued with self-determination rhetoric (though, again, he never directly invoked the phrase) and borrowed heavily from the related just war theory (i.e. *jus ad bellum*). Wilson reassured America and Congress in an April 1917 address that their participation would make the

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<sup>42</sup> Benjamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 4

<sup>43</sup> *Ibid*

world “safe for democracy.”<sup>44</sup> From his perspective, this meant a world in which ethnic strife was limited or nonexistent—a goal accomplished through recognition of many self-determination claims—especially in the recently dissolved Austro-Hungarian and Ottoman Empires.<sup>45</sup>

Wilson’s political affection for self-determination was made clearer in a 1918 post-war address to a joint session of Congress in which he finally uses the terms publicly: “Self-determination is not a mere phrase. It is an imperative principle of action, which statesmen will henceforth ignore at their peril.”<sup>46</sup> Not only does this hint at Wilson’s advocacy for an absolute right to self-determination, but show’s, in fact, that the central thesis of this paper is grounded in a deep tradition of hard-line self-determination rhetoric.

However, it is exceptionally important to note that several of Wilson’s closest advisers had reservations about his advocacy of self-determination. Some, including Walter Lippmann, went so far as to say that for Wilson self-determination was Machiavellian—a means to a political end (i.e. the peaceable breakup of the Austro-Hungarian Empire). Wilson’s Secretary of State Robert Lansing viewed self-determination as “loaded with dynamite” since it would “raise hopes which can never be realized.”<sup>47</sup> For Lansing, self-determination meant more bloodshed and violence, not less. Still, most scholars accept that Wilson was, to some extent, a true believer in his own philosophy and rhetoric. No matter the debate of his intent, it is clear that Wilson’s impact on self-determination and its future course was enormous.

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<sup>44</sup> Derek Heater, National Self-Determination: Woodrow Wilson and His Legacy. (New York: St. Martin's Press, 1994)

<sup>45</sup> Thomas D. Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 23

<sup>46</sup> As quoted in *Ibid.*

<sup>47</sup> Benjamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 1

Outside the Atlantic sphere of influence, self-determination was taking hold in other parts of the world, including the Eurasian continent. The Russian revolutionary Vladimir I. Lenin put a Marxist spin on the concept in his book *The Right of Nations to Self-Determination*—Marx himself had continuously fluctuating views on self-determination, mostly he supported independence when there was a chance the state would fall into a worker’s revolution. Keeping with self-determination’s revolutionary beginnings, Lenin saw the rights of nations to political independence as one of the basic foundations of a new socialist world order.<sup>48</sup> Ironically, however, it was the collapse of the Soviet Union from 1989-1992 that truly established a “New World Order” in the post-Cold War era.

Following WWI and the Bolshevik Revolution, the principles associated with the new idea of “national self-determination” came under scrutiny. Many scholars then and now claim, that the right of nations to be independent inevitably led, or will lead, to the “balkanization” of the international state system.<sup>49</sup> The logic goes that after the collapse of empire, many smaller and weaker states existed and this helped precipitate the events of the Second World War (e.g. Alsace-Lorraine). It is also important to note that self-determination was regarded solely as a “principle” and not a “right” after WWI. The Great Powers, wanting to maintain their imperial control or international influence, rarely put this “principle” into practice.

However, the Great Powers were not the only states in existence after WWI, and several organizations, including the League of Nations, did have some measure of input over the application of self-determination. Unfortunately for proponents of self-determination, this input was dead set against any recognition of the right to self-determination.

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<sup>48</sup> Vladimir Ilich Lenin, *The Right of Nations to Self-Determination*. (New York: International Publishers, 1951)

<sup>49</sup> Benjamin Neuberger, *National Self-Determination in Postcolonial Africa*. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 96.

The League of Nations was unwilling to recognize self-determination as part of their “Covenant,” most likely due to the conspicuous absence of the United States. The league also subjected self-determination to a legal “test.” This test was conducted from 1919-21, when the majority Swedish-speaking residents of the Finnish-controlled Åland Islands petitioned the League for secession from Finland, invoking the right to national self-determination. With a high-degree of Swedish national sentiment and meeting the basic criteria for a defined nation, the Islanders felt they were well within their rights as outlined by Wilson. However, the Finnish refused to relinquish control claiming there was no legal precedent to force their hands (though they offered a degree of autonomy). The League’s International Commission of Jurists agreed, finding that self-determination was not a legal rule, but rather a “political concept.”<sup>50</sup> This “political concept” theory characterized the international community’s outlook on self-determination until at least WWII.

Not surprisingly, the League’s Great Powers (e.g. Britain), were unwilling to recognize the self-determination claims of their own colonial possessions. However, they did take steps to grant self-determination to the colonies of the collapsed empires of the defeated Axis powers.<sup>51</sup> In an attempt to secure an orderly transition of power from the dissolved empires, the League created a “mandate” control system. Design of the mandate system was placed in the hands of South African General Jan Smuts who prepared a pamphlet entitled *The League of Nations: A Practical Suggestion*. Gen. Smuts’s pamphlet outlined the basic idea of self-determination for the post-War colonies. However, it was concluded that most of the colonies were not ready for an absolute realization of their self-determination rights. The mandate system, established under Article 22 of the League’s Covenant (see Appendix B), put the colonies under the administration

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<sup>50</sup> Malcolm N. Shaw, *International Law*. 4th ed. (Cambridge, U.K.: Cambridge University Press, 1997) 177

<sup>51</sup> Thomas D. Musgrave, *Self Determination and National Minorities*. (Oxford, United Kingdom: Oxford University Press, 1997) 28-9

of certain League members (mostly the Great Powers such as France and Britain) until such time that the colonies were deemed fit for independent statehood.<sup>52</sup>

There were three classes of mandates (Class A, B or C) which categorized colonies based on their former metropole and level of development. The highest levels of development were deemed “Class A” and were primarily comprised of former Ottoman colonies (e.g. Iraq, which gained independence from its British mandate in 1932). Mostly German colonies made up the second-tier of development, Class B (e.g. Tanganyika, which gained full recognition as an independent republic in 1962). Finally, there was Class C, the least developed colonies, which came from a variety of empires (e.g. Nauru a former German colony, which did not gain its full independence until 1968).<sup>Note</sup>

It should be obvious to the reader that the “functional” part of the proposal set forth in this paper is very similar to the League’s mandate system in some respects. Certainly it is outmoded for any single state to be given control over the independence development of another, but the idea of an internationally regulated “step-wise” independence program has traction and precedent. The League’s (and eventually the U.N.’s) mandate system was flawed due to its racist thinking and geopolitical agenda. Perhaps this is why many of the states under the mandate system, when granted independence, became very troubled or failed states. Often, this can be attributed to an ardent “nationalistic” zeal that sprang up in colonial mandates, forcing their administrators to relinquish their control before optimal development. Arguments can be made that these countries had a right to break free of colonial oppression and that the mandate system stunted their organic growth, however, the fact remains that states such as Somalia

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<sup>52</sup> For further notes on the League’s mandate system see Musgrave [Self-Determination and National Minorities](#).

<sup>Note</sup> Mandated territories that did not gain independence during the interwar years would later become United Nations Trust Territories in 1945 under the International Trusteeship System. The “historic task” was completed in 1994 when the final Trust state Palau decided to enter into free association with the United States.

(independence in 1960) and Rwanda (independence 1962) would have benefited from a few more years of growth and institutional maturity. This problem is solved in the modern era since the formal “imperial” power game no longer exists. States placed under a new international mandate system would not be rushed to independence, nor would members of the international community be easily bullied into granting premature independence.

It would be naïve to think that some nations would not resent the mostly developed, Western world telling them how and when they can be free. However, given that the international system is dominated by developed democracies many would-be states will have little choice but to abide by the rules set out by larger powers. If they do not (e.g. by declaring independence without international agreement) then they will not be recognized as a “state” by the international community writ large and miss out on many of the associated privileges (recognize this in the case of the Palestinians). Nations, like independent states, are also in the habit of looking out for their best self-interest. If the evaluative criteria and step-wise program of autonomy is shown over time to help with the stability and prosperity of new states, then most rational actors will abide by this new international norm. Impetuosity and zealotry will not be tolerated in this system, and those rogue and irrational nationalists who want immediate self-determination, irrespective of their potential viability, will face severe international backlash.

This is the check in the system against radical declarations, though history has shown that truly unjustifiable secessionist or self-determination movements are rare. Essentially, this new mandate system is most successful at the point at which many members of the international community adopt it as part of their international relations—forcing nations to carefully evaluate their declarations of self-determination/independence.

Finally, unlike the mandate system of old, equitable treatment will be given to each claim of self-determination with the ultimate goal being an independent nation-state when the time is

right. The new international system is more benevolent than the old imperial order, and does not want to place the administration of nations in the hands of a few exploitative colonial powers who made little effort to prepare their “colonies” for independence (just note the difference in language between the U.N. Charter and the League’s Covenant regarding self-determination) With an international administration assisting the nation in its goal of independence, it would be illogical for the nation to harbor resentment against this new mandate system. The essential difference is that, unlike generations past, there is an independence light at the end of the tunnel—basic political theory tells us that a responsive system is less likely to breed antipathy or violence.

### **The End: Development of Self-Determination as a Legal Right after WWII**

This section is not truly about the end of self-determination’s development since the principle/right is exceptionally protean and continues to change constantly. However, after WWII self-determination did begin to take on the more familiar shape seen today. The Second World War and the collapse of the Soviet Union, to this point, have been the two major events that resulted in tectonic shifts relating to rights of self-determination. Since then, the changes to the core fundamentals (e.g. sovereignty derived from the people, recognition of self-determination as more than a “political concept,” etc.) have been milder, although heated debate continues about the overall conceptualization.

After WWII, many conventions, treaties and other codified laws made self-determination less of an ideal and more a recognized legal right. Today, a preponderance of international scholars and jurists view national self-determination as cemented in international law as both *jus cogens* (i.e. a peremptory and widely accepted norm) and *erga omnes* (i.e. a right granted

towards all).<sup>53</sup> One of the primary reasons for conferring the “*jus cogens*” and “*erga omnes*” status relates to the work of the United Nations and its subsidiary organizations (e.g. ICJ case on East Timor).

The U.N. Charter (as well as the incorporated Atlantic Charter and Dumbarton Oaks proposal), as drafted and signed in 1945, mentions the “principle of equal rights and of self-determination of people,” a clause which has been as hotly contested as certain parts of America’s Constitution.<sup>54</sup> There are two other mentions of “self-determination” in the U.N.’s founding document: 1) Chapter I, Article 1, Section 2 states that the goal of the U.N. is: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;”<sup>55</sup> 2) Chapter IX, Article 55 says that: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...” a variety of economic and social “co-operations.”<sup>56</sup> However, the rhetoric of the Charter did little to actively and directly codify self-determination as an international law, rather is served as a guiding hand for later U.N. legislation. Codification has mostly been the result of several General Assembly and Security Council Resolutions amongst other binding/non-binding agreements. Therefore, while self-determination is a variable right, it is still based on statutory grounds rather than a purely interpretive or common law standard.

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<sup>53</sup> Jorri Duursma, Fragmentation and the International Relations of Micro-States. (Cambridge, U.K.: Cambridge University Press, 1996) 423

<sup>54</sup> United Nations, Charter of the United Nations, 24 Oct. 1945. 1 Dec. 2007  
<<http://www.un.org/aboutun/charter/>>.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

Some prime examples of this “statutory” claim include the “International Covenant on Human Rights,” “The International Covenant on Civil and Political Rights” and the “International Covenant on Economic, Social and Cultural Rights.” These were all drafted in 1966 by members of the United Nations and ratified in 1976 based on the 1948 “Universal Declaration of Human Rights.”<sup>57</sup> The opening article of these three Covenants is common in that it states, “All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>58</sup> Additionally, UNGA Resolution 1514, also known as the “Declaration on the Granting of Independence to Colonial Countries and Peoples,” (1960) contains similar sentiments regarding the “right” of self-determination.<sup>59</sup>

The 1970 U.N.-supported “Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States,” the 1975 Conference on Security and Co-operation in Europe’s (CSCE) Helsinki Final Act, and the 1981 African Charter of Human and Peoples' Rights, have all reaffirmed the right to self-determination time and again.<sup>60</sup> These are just a few of several hundred examples that have refined the concept/principle of self-

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<sup>57</sup> Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

<sup>58</sup> As quoted in *Ibid.*

<sup>59</sup> United Nations, Office of the High Commissioner on Human Rights. General Assembly. Declaration on the Granting of Independence to Colonial Countries and Peoples. 14 Dec. 1960. 1 Dec. 2007 <[http://www.unhchr.ch/html/menu3/b/c\\_coloni.htm](http://www.unhchr.ch/html/menu3/b/c_coloni.htm)>.

<sup>60</sup> *Ibid.* and United Nations. General Assembly. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. 24 Oct. 1970. 1 Dec. 2007 <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>.

determination over the last sixty years to a “hard right” of international law as well as an integral part of universal human rights.<sup>61</sup>

The International Court of Justice has also handed down several decisions that have helped promote self-determination as a codified right (e.g. Western Sahara). The case of East Timor (*Portugal v. Australia*) saw the court rule unequivocally that self-determination was “one of the essential principles of contemporary international law.”<sup>62</sup> Essentially, the Court held that the people of East Timor had a right to self-determination (see more in East Timor case study section) and that this right should register globally.

The U.N. Committee on Human Rights and other groups such as the Unrepresented Peoples and Nations Organization (UNPO) continue to study the right of self-determination. Their goal is to further expand and clarify the right as a universally accepted law that is equally applied to all.

It is important to note, however, that in this tangled mess of U.N. resolutions and ICJ verdicts there is one salient consistency: The U.N. maintains that political, economic, social or educational unpreparedness should not delay independence. As long as national unity or international security is not disrupted, self-determination, the U.N. feels, should be freely granted.<sup>63</sup> While this may seem to fly in the face of the thesis presented here based on a “viability/fitness test,” it actually lends a helping hand. There has almost never been an instance of self-determination since 1945 that did not involve questions of “national unity” or

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<sup>61</sup> Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

<sup>62</sup> East Timor (Port. V. Aust.). No. 1995 ICJ Rep. 90. International Court of Justice. 30 June 1995. 1 Dec. 2007 <<http://links.jstor.org/sici?sici=0002-9300%28199601%2990%3A1%3C94%3AET%28VA%3E2.0.CO%3B2-E>>. and Malcolm N. Shaw, *International Law*. 4th ed. (Cambridge, U.K.: Cambridge University Press, 1997) 180

<sup>63</sup> Malcolm N. Shaw, *International Law*. 4th ed. (Cambridge, U.K.: Cambridge University Press, 1997) 178

“international security.” What this means is that the U.N. is in fact more restrictive on rights of self-determination, despite its liberal/idealist claims to the contrary, leaving the door open for a mechanism of self-determination actualization that is quicker and more effective.

Aside from the creation of the United Nations, there was another drastic self-determination-related episode post-WWII: Decolonization. In the post-WWII era, the colonial/imperial jewels of Europe in Africa and Asia began to use the West’s own language against them. Nationalists in these dependent entities saw self-determination as the best means to swiftly end colonial/imperial rule. For example, Article II of the 1962 Organization of African States Charter specifically refers to self-determination as a means to “eradicate all forms of ‘Colonialism’” once and for all.<sup>64</sup>

International decolonization was a long process that some say began as far back as the American Revolution. However, the period of the most massive decolonization took place between 1945 and 1965—the so-called rush out of Africa and push “East of Aden”. During this period, the “nation” was defined in one of two ways: 1) either an ethno-cultural nation with inherent rights to separate territory, or 2) a former colony trying to become a state with the same defined geographic borders. Primarily, the imperialists saw their territories as one “national” bloc and grouped them as such during decolonization. Conversely, the territories themselves rarely attempted to become an independent state based on colonial boundaries and often hoped to either regroup (e.g. British and Italian Somaliland) or separate along tribal lines (e.g. the former Belgian Congo). In the end, the imperialists often got their way and this resulted in many conflicts—although there are several examples of states that were kept as cohesive units by their new nationalist-heavy native rulers for their own material gain.

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<sup>64</sup> Thomas D. Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 91-92.

The introductory section of this paper stated that nationalism was often one of the primary causes of self-determination movements. The decolonization of nations in Asia and Africa are the models that help form that rule. Nationalism was indeed one of the primary reasons that self-determination in post-colonial Africa and Asia became such a prominent movement. Charismatic leaders manufactured national identities based on artificially drawn boundaries (of their own or imperialist design) and majority tribal rule. In the newly formed state of Rwanda, for example, the nationalistic impetus created from a common fight against an external enemy soon died down. Ethnic conflict and power struggles were the result, as groups with great enmity towards each other (i.e. the Tutsis and Hutus) were forced to coexist in a multinational state.

Within the context of self-determination it must always be understood that after independence, or the fall of a puppet regime, there will be a power vacuum and a race to the top of the hierarchy. Yet this type of political violence can be avoided through well-defined and well-developed government structures (e.g. post-independence India—though it did face ethnic difficulties, these were greatly mitigated by an excellent civil service and developed governmental procedures) that take time and patience to cultivate.<sup>65</sup>

As mentioned in a previous section, centuries of colonialism/imperialism may have been the main problem regarding these ethnic concerns of self-determination. The racially-driven “isms” redrew ethnic borders based on political and strategic concerns and when the empires based on these ideologies collapsed ethnic and political violence erupted. However, irrespective of the complicity of the imperial/colonial West in these cases, the situation must be understood as it sits at present. Playing a sins-of-the-father-style blame game is counterproductive. This is

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<sup>65</sup> William Roger Louis and Alaine Low, eds., The Oxford History of the British Empire: Historiography. Vol. 5. (Oxford: Oxford UP, 1999) (*op. cit.*: Neil St. Clair, “Finding a Role: Britain’s Formal Decolonization and the Transfer of Informal Empire in the post-War era,” Oxford University, 2007)

not meant to be construed in any way as apologist for colonialism/imperialism, rather it is a device to help move the debate forward.

As decolonization progressed through the 1960s a, a new definition of dependent regions emerged labeled non-self-governing territories (NSGTs)—a status that still exists today. These entities were reclassified in 1960 under UNGA 1514 (XV) and, while slightly obscure, merit some discussion and background.<sup>Note</sup> No longer considered “colonies,” “trusts” or “mandates,” NSGTs are defined as geographically distinct overseas territories that remain under the control of a foreign central government (e.g. Bermuda and Western Sahara). This reclassification was/is mostly euphemistic, but also included a controversial set of criteria for defining NSGTs and their international rights (e.g. No territory that is directly attached or within the sovereign territory of another state can achieve NSGT status). This set of defined rights included an absolute right to self-determination—notably Tibet and Taiwan were left off this list as the U.N. recognizes China’s territorial claims.

UNGA Resolution 1541 states that territories are considered non-self-governing under Chapter XI of the U.N. Charter only if they are ethnically and geographically separate.<sup>66</sup> Due to this “legal” classification, some anti-secession scholars believe that only non-self-governing territories have the ability to claim a “right” to self-determination in the modern era, since they are still technically being decolonized.<sup>67</sup> There is much ambiguity surrounding NSGTs and their international status, and many remain in decolonization purgatory. However, some choose to

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<sup>Note</sup> NSGTs are also important because they show that the United Nations is willing to support self-determination as an absolute right. However, as we will see later, the U.N. supports self-determination for “geographically distinct” territories, but hesitates to give self-determination rights to nations who independence will violate an existing states’ territorial integrity.

<sup>66</sup> United Nations, Office of the High Commissioner on Human Rights, General Assembly, International Covenant on Economic, Social and Cultural Rights. 16 Dec. 1966. 1 Dec. 2007 <[http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)>.

<sup>67</sup> Thomas D.Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 178

remain “dependent” and in association with a central government of their own volition (e.g. the recent case in Tokelau).

Today, only sixteen territories are still considered NSGTs (see Appendix C), but over eighty territories have been on the list since 1945—most have either had their status changed or gained full independence. The remaining sixteen are defined by the U.N. Special Committee on Decolonization (aka the Special Committee of 24)—a group tasked with ensuring that NSGTs are granted their “inalienable right to self-determination,” or at least the right to a plebiscite/referendum.<sup>68</sup> There is sometimes pressure for access to this “right” even when an NSGT does not make a formal application for self-determination (see the interesting case of Puerto Rico, a former NSGT whose status is “unresolved”).<sup>69</sup>

Aside from decolonization, no other event so impressively altered the history of self-determination like the collapse of the Soviet Union in the late 1980s and early 1990s. During the Cold War the norm of the bipolar order (i.e. the U.S. v. USSR) with regard to self-determination was non-intervention at all costs.<sup>70</sup> This norm has obviously manifested quite differently in the post-Cold War epoch, but at the time self-determination was viewed as a dangerous right that could tip the balance of the Cold War’s international power game.

According to American self-determination scholars Morton Halperin and David Scheffer, the collapse of the Soviet Union (including Yugoslavia), and the resultant creation of several new states, with little political consideration from the international community, may have

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<sup>68</sup> "Declaration on the Granting of Independence." The United Nations and Decolonization. 1962. The U.N. Special Committee on Decolonization. 11 Jan. 2008 <<http://www.un.org/Depts/dpi/decolonization/declaration.htm>>.

<sup>69</sup> Department Of Public Info. United Nations. Special Committee on Decolonization. Special Committee on Decolonization Calls on the United States to Expedite Puerto Rico's Self-Determination Process. 14 June 2007. 2 Dec. 2007 <<http://www.un.org/News/Press/docs/2007/gacol3160.doc.htm>>.

<sup>70</sup> Lee C Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 218

emboldened more claims of self-determination.<sup>71</sup> They believe this was especially true within the recently created post-Soviet entities, where ethnic strife had been brought to the surface *sans* the restraint of Soviet control.<sup>72</sup> Cases in point, the secessionist movements in Azerbaijan (Nagorno-Karabakh) and the resistance to Ukrainian rule in ethnically-Russian Crimea.

Indeed, the Halperin-Scheffer Cold War thesis can be extended to today, where scholars note that the recent unilateral independence declaration of Kosovo may precipitate several similar claims of self-determination. Essentially, immediately removing institutional controls of a long-standing central government without effective international oversight can not only create one unstable new state, but can also force a cascade of unstable new states. The post-Cold War era taught the world the validity of this theory with many struggling, dictator-heavy nations gaining independence.

Some Wilsonian idealists believed, perhaps naively, that after the Cold War, the new shape of the unipolar world would help realize all self-determination claims throughout the globe, putting an end to ethnic strife in general.<sup>73</sup> However, ongoing self-determination struggles in places like the aforementioned Nagorno-Karabakh (disputed between Azerbaijan and Armenia) and the violent breakup of Yugoslavia undermined this theory of the world. The Wilsonians needed to recognize that the Soviet domination of much of Eastern Europe and Central Asia simply put a patch over much of the internal ethnic hostility that had existed well before WWII. Several generations on, these old animosities still persisted and rode to the surface upon independence from the Soviets. The post-Cold War redrawing of state lines, as with decolonization, did not take into account these ethnic differences and created many uneven multinational states.

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<sup>71</sup> Morton H. Halperin and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992)

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.* 5

The post-Cold War world era also saw a numeric rise in global self-determination claims (from about 50, both in and out of the Soviet Union, in 1998 to over 100 today) and a variety of reactions from central governments.<sup>74</sup> The creation of an American hegemon after the Cold War, (many U.S. client states/nations sought self-determination accommodation) coupled with an individual sense of national reordering, led to this sometimes violent increase.<sup>75</sup> Some governments responded to self-determination with oppression while others capitulated to nationalist demands.<sup>76</sup> The reaction of the central government and local ruling elites, especially in the Third World, often resulted in American intervention, which helped determine the success/failure ratio of many national self-determination battles.

Given the increasing demands of national self-determination-ists following the collapse of the Soviet Union, a great burden was placed squarely on American shoulders. As the new power in a unipolar world, America was often asked to intervene or mediate self-determination debates, a task that was unthinkable in the Cold War. Some scholars, including Halperin and Scheffer, contend that in the modern era, the U.S. must continue to take the lead on self-determination and alter world opinion given its “new range of interests.”<sup>77</sup> Their central theory is that the United States must become the sole arbiter (or at least the dominant arbiter) over all claims of self-determination since U.S. strategic interest and power are so vast—they do not give an outright disavowal of international community’s role, but believe that the U.S. need not give

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<sup>74</sup> Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

<sup>75</sup> Valpy Fitzgerald, Frances Stewart, and Rajesh Venugopal, eds. Globalization, Violent Conflict and Self-Determination. (New York: Palgrave Macmillan, 2006) 1

<sup>76</sup> Wolfgang Danspeckgruber, ed. The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 6

<sup>77</sup> Morton H Halperin and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992)

its opinion great weight.<sup>78</sup> In this position, Halperin and Scheffer contend, the U.S. must develop a “common approach” to self-determination: 1) Require nations to seek “accommodation” within their current borders. 2) If no remedy can be found, the nation must make a commitment to human and minority rights as well as constitutional democracy before America will step in.<sup>79</sup>

While Halperin and Scheffer’s test for American support of self-determination is valid, and in fact part of the requirements of the “test” are supported in this thesis, it is also vastly underdeveloped. Time and again nations have tried to reach “accommodation” within their own borders only to be flatly rejected. Additionally, many nations refuse to seek accommodation viewing self-determination as their “inalienable right.” To them, accommodation is a continued form of subjugation or repression. The step-wise program outlined earlier solves the “accommodation” problem by ensuring nations that independence is the ultimate goal, not continued existence as an “autonomous” region of some faulty patchwork state.

Additionally, Halperin and Scheffer fail to realize that all arguments over national self-determination cannot be handled by the U.S. alone. Acting in a multilateral capacity, as America did with East Timor, not only gives greater legitimacy to the secessionist movement (the more states giving validity to the self-determination claim, the easier it is for the rest of the international community to recognize it), but also helps ensure that a less violent remedy will be put into place.<sup>80</sup> America should be warned, however, that it cannot act unilaterally too often or it will become overstretched and weak—the collapse of the Roman and British Empires serving as cautionary tales.

This type of singular action is often perceived as a form of “American imperialism,” and, given the current status of American political capital, could potentially undermine valid self-

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<sup>78</sup> Morton H Halperin and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992).

<sup>79</sup> *Ibid.* 6.

<sup>80</sup> *Ibid.* 10.

determination arguments.<sup>81</sup> While many Third World countries hope to avoid “American Imperialism,” other Western countries have been highly critical of the U.S. for failing to fulfill what Conservative British peer Lord Beloff called the *Pax Britannica*.<sup>82</sup> This argument claims that when America assumed its role as a major world power after-WWII, and especially after the Cold War, many nations were allowed to become independent states without enough scrutiny, allowing them to fall into the type of ethnic violence that British imperialism had prevented. Essentially, America, for better or worse, has failed to uphold the old colonial mandate/trustee system. It appears that America simply cannot win as the sole actor with respect to self-determination.

However, the non-American international community has also failed to develop a new and mutable method for dealing with modern claims of self-determination. Much of their self-determination logic and rhetoric is still based on decolonization or Cold War practices and has become anachronistic in the 21<sup>st</sup> century.

So what problems do America and the international community need to adjust to in the new millennium? Many are still the same issues of the post-WWII 20<sup>th</sup> century, but still no mechanism or philosophy has been developed (until this thesis that is) that can effectively deal with them all.

### **III. Self-Determination in the 21<sup>st</sup> Century: A Matter of Interpretation**

#### **Major Issues in Present-day Debates of Self-Determination**

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<sup>81</sup> Morton H Halperin and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992) 81.

<sup>82</sup> William Roger Louis, "American Anti-Colonialism and the Dissolution of the British Empire." International Affairs (Royal Institute of International Affairs 1944-) 61 (1985): 395-420. JSTOR. Oxford University Library System, Oxford. 27 Mar. 2007 <<http://links.jstor.org/sici?sici=0020-5850%28198522%2961%3A3%3C395%3AAAATDO%3E2.0.CO%3B2-L>>.

Some of the main issues surrounding self-determination have already been discussed at length in earlier sections. However, there are still several that require deeper analysis. Many of these will serve as heuristic devices in understanding the theoretical model and interpretation of the two case studies.

### **Major Issues in Present-day Debates of Self-Determination: Revisiting Nationalism & the Nation-State**

The most basic challenge of self-determination in the 21<sup>st</sup> century is one that was briefly discussed in the section on nationalism: The definition of a “nation.” However, rather than trying to understand this in terms of political science or sociology, the nation must now be examined as a legal entity. This definition of the nation is the basic ground-up unit from which all claims of self-determination must be built.

Today, “there are no established, objective criteria for establishing the identity of a people, and ascertaining the national will,” said Israeli-American scholar Benyamin Neuberger, an expert on nationalism.<sup>83</sup> It is true, that there is no agreement on what exactly the “self” in self-determination, and by extension the nation, actually means. While acceptance of some form of the “right” to self-determination has gained ground in the international community (though certainly not in “absolute” terms) there is little agreement on how to interpret it.<sup>84</sup> This has been one of the main sticking points that has held up the progress of law surrounding self-determination and its rights.

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<sup>83</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 71

<sup>84</sup>Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

At a basic level, there is a distinction to be made between “peoples” and “communities.” The term “peoples” is particularly divisive, because it opens up the interpretative framework of self-determination to any definition: civic, ethnic, religious, geographic, linguistic, etc. The eminent Harvard political scientist Rupert Emerson correctly pointed out that the idea of rationalizing the world based on “people” had never attained “any generally accepted meaning which can be applied to the diverse world of political and social reality.”<sup>85</sup> The alternative definitional framework has been provided by Prince Hans Adam II who claimed that self-determination should be given to the smallest “community” since this is easier to define than “people.”<sup>86</sup> He cites this example as proof that community definitions are best in today’s multi-ethnic *mélange*: A resident of Sarajevo with a Serb mother, Muslim father and Croat spouse cannot define herself as any of those “peoples” or ethnicities, but can define herself as a unique resident of Sarajevo. Therefore, if Sarajevo was to work towards self-determination it should be as a community (i.e. a city-state) rather than as a certain “peoples.”<sup>87</sup> The fallacy in this argument is that in some areas there is no distinct “community” definition, but one that is drawn purely along ethnic lines (e.g. the Serb-ethnic Albanian split in Kosovo). The majority of residents in any community may define themselves by ethnic ties and not by their shared history of communal existence. As with the Kosovar Serbs, this group has defined itself as a separate community within Kosovo and as a partner with its ethnic kith and kin in Serbia. At least in this instance, identity linkages are more likely to be formed via ethnicity, not community, though there is the possibility of the latter. Given the seemingly irreducible complexity of this problem, it makes most legal definitions inadequate and nigh impossible.

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<sup>85</sup> Rupert Emerson, Self-Determination Revisited in the Era of Decolonization. (Cambridge, Mass.: Center for International Affairs (Harvard University), 1964)

<sup>86</sup> Wolfgang Danspeckgruber ed., The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) xii-xiii

<sup>87</sup> Ibid.

That is not to say that they have not been attempted by legal scholars and jurists throughout the world. The Permanent Court of International Justice defined “community” in a case about the Greco-Bulgarian people ruling that “A group of persons living in a given country or locality, having a race, religion, language and tradition as their own and united by the identity of such race, religion, language and traditions in a sentiment of solidarity,” could be considered a “community.”<sup>88</sup> However, this is an unreasonable and overly broad test since any court would have to assure that all of these elements were present in a single group. There is also difficulty in the opposite extreme, and using only one aspect “of national” definition at the exclusion of others. This logic was used at the Paris Peace Conference as claims of self-determination were couched in purely historical terms and did not account for other distinctive factors.<sup>89</sup> Therefore, a test that gives a “reasonable showing of distinctness” needs to be created.<sup>90</sup> As noted in the later theoretical chapter, this “reasonable showing” can have either very liberal or conservative interpretations based on the underlying philosophy of the theory.

Another self-determination problem of the 20<sup>th</sup> century relates to the prior discussion on nationalism and the nation-state. Herder and Mazzini as well as Wilson and others saw the nation-state as the true way to peace—eliminating political borders and giving nations free reign over their own condition. This was a pipe dream, however, since ethnic boundaries almost never coincided with actual borders. Though, to the credit of these liberal self-determination-ists, states that do have a mostly homogenous population have had a significantly reduced amount of internal political violence and upheaval (e.g. Iceland). In many places, however, arguments in favor of a nation-state have historically led to, or coincided with, increased nationalist zeal and violence or antagonism towards ethnic minorities. As mentioned, ethnic cleansing and genocide

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<sup>88</sup> Lee C. Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 229

<sup>89</sup> *Ibid*

<sup>90</sup> *Ibid*

can often be the result of nation-state goals as the cry for self-determination can be co-opted by louder calls for racial purity (e.g. Nazi Germany). The Germans have a long history of trying to create a singular ethnic state, having attempted to “Germanize” the Poles living within their territory in 1886 and again in 1939. This principle of the homogenous nation-state has also been applied to the Muslim minorities in the French state. Minorities in newly designed or historic ethno-national states have often met this assimilationist doctrine with violent backlash, which is eventually counter-productive to the actual assimilation goals. In turn, a greater sense of “otherness” and nationhood was often developed, resulting in greater claims for self-determination from peoples who previously would not have defined themselves as a coherent nation.<sup>91</sup> The best success story of nation-state creation in the 20<sup>th</sup> century is the dissolution of Czechoslovakia in 1993. Known as the “Velvet Divorce,” the Czechs and Slovaks separated into two distinct states, each containing about 90 percent of their own ethnic background.<sup>92</sup> This has led to “amicable” relations thus far and greater overall prosperity, again showing that Wilson and his like-minded theorists may not have been totally off the mark in their self-determination + nation-state = -violence calculations.

The nation-state, therefore, works as a double-edged sword in the national self-determination theory playbook: On the one hand it helps nationalists create a vision of the perfect ethno-national state and can create harmonious relations, while on the other it ostracizes minority groups within the state and lessens overall stability. However, it is difficult to ignore the fact that the idea of the nation-state has led to some degree of violence. In the end, as Peter Calvert said, nationalism and principles of nation-state-ism result in a tradeoff: “The old nationalism and the new nationalism have given millions a chance of greater dignity in the collective enjoyment of

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<sup>91</sup> Thomas D. Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 10

<sup>92</sup> Hurst Hannum and Eileen F. Babbitt, eds., Negotiating Self-Determination. (New York: Lexington Books, 2006) 68

the territories in which they live...these benefits are [not] completely outweighed by the sad stories of wars, massacres, atrocities and torture.”<sup>93</sup> This is a less than uplifting bit of advocacy for a positive cost-benefit analysis of nationalism and the nation-state.

### **Major Issues in Present-day Debates of Self-Determination: Minority Rights**

Inherent within this modern question of the conceptual nation-state, and thereby within all questions of self-determination, is the notion of minority rights. Arend Lijphart observed, one could say almost caustically, that “majority rule works well when opinions are distributed unimodally...when there is considerable consensus and majority and minority are not far apart.”<sup>94</sup> This seems an almost intuitive proposition: Government functions better when people agree more. But as obvious as it may seem, it does not happen nearly as often in the political realm. Minorities can become quickly disillusioned when the majority continually condemns them to exclusion in the process of creating the state or directing its course. Precedent tells us that political inputs from the must be reacted upon with responsive outputs by the government. Simply, if minorities are feeling left out of the decision-making processes then what point do they have remaining static and meek? When a nascent self-determined nation is either not a nation-state, or a nation-state has a small minority population, the majority is often less willing to account for opinions that run counter to their ethnic majority (e.g. Muslims in India)

Prior to WWII, there were codified laws that outlined the treatment of ethnic minorities in multinational states. However, after WWII, the specific enumeration of minority rights was replaced, following the failure of the League of Nation’s Minority Rights Treaties. Again the problem boiled down to an issue of national definition, and so the idea of “minority rights” was replaced by doctrines of universal human rights. After the Cold War ended, however, the

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<sup>93</sup> As quoted in: Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 3.

<sup>94</sup> *Ibid.* 34.

international community recognized that minority rights needed to be further protected. In 1995, several members of the European Council ratified the “Framework Convention for the Protection of National Minorities,” which outlined both a definition for minority groups and setup a variety of rights and protections (e.g. use of minority language).<sup>95</sup> This was a significant step, at least in Europe, of the recognition and need for minority rights within greater state systems. It is unclear, however, how this Convention would apply to minorities in potentially new nation-states such as Scotland, Cornwall or Flemish Belgium. In the last few decades, there have been several other attempts, mostly in Europe, to codify and substantiate minority rights: 1) U.N. Commission on the Prevention of Discrimination and Protection of Minorities' Declaration of Minority Rights, 2) The Conference on Security and Cooperation in Europe's Copenhagen Document (CSCE 1990) 3) The Universal Declaration of Human Rights (United Nations, amended 1998) and 4) The Helsinki Accords (CSCE, 1975).

Even with these documents in place, there are some important questions regarding minority rights that will continue to arise after self-determination is granted. There is, of course, the internal questions of how to deal with the minorities living within the new state (e.g. assimilation), as well as the minority of people who did not vote for independence (will they become outsiders?). There is also the question of external citizenship, how do we define those members of the “nation” living outside the borders. This is a prominent issue in Scotland where many self-identified Scots live in England. One point of distinction must be offered on this issue: Immigrant minorities with no historic claims to a certain territory do not have the right to external self-determination. This is merely a caveat against the potential migration of people from one state to another in hopes of gaining self-determination under the rules of the new

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<sup>95</sup> , Thomas D Musgrave, Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 46.

system. Over time if this minority group does not assimilate and has developed an historic claim to a particular territory (i.e. through statutory right, devolution, etc.) then self-determination may be considered by the central government or international community.

There is one final minority rights issue that several states and nations have had to deal with, especially recently: Indigenous populations. These populations have been recognized in the last few decades as materially distinct (e.g. *Lovelace v. Canada*) and have been given their own special protections.<sup>96</sup> In the United States and Australia especially, native populations are given certain sovereign legal and territorial rights that not only recognize them as a distinct “nation,” but also give them pseudo-statehood. In several pending cases of national self-determination there would have to be serious conversations about the rights of indigenous populations contained within the environs of the new society (e.g. Tatars and Krymchaks of the Crimean Peninsula, an area in Southern Ukraine comprised of mostly ethnic Russians with a possible self-determination claim. See also Taiwanese aborigines).

While these are mostly peripheral issues, especially in stable, democratic nations, all aspects of independence need to be considered by the international community before a decision of support can be rendered.

### **Major Issues in Present-day Debates of Self-Determination: The Legality of Secession**

One of the central issues affecting international support of self-determination claims is the legitimacy of the movement with respect to international law. In most cases of self-determination these legal questions center on the legitimacy of secession movements. Not all claims of self-determination are secessionist (e.g. non-self-governing territories), but so many

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<sup>96</sup> Thomas D. Musgrave, *Self Determination and National Minorities*. (Oxford, United Kingdom: Oxford University Press, 1997) 172.

take this route that an exceptionally broad area of scholarship has been dedicated to this particular issue.

Lee C. Buchheit, who wrote one of the most cited texts on the law of secession says: “Secessionist activity is an irrepressible feature of the contemporary world scene...Many of these movements seek legal justification in the international doctrine of self-determination and there is no international consensus regarding the nature of a legitimate secessionist movement.”<sup>97</sup> Historically, Thomas Jefferson and Abraham Lincoln were opposed to self-determination by separation/secession—despite Jefferson’s penning of the Declaration of Independence.<sup>98</sup> Wilson was of a similar mind and later backed down from his fiery support of external self-determination once he saw that it was leading to an increase of secessionist movements. He later stated his goal was to merely “democratize international states” (read internal self-determination) and to prevent “territorial change without popular consent.”<sup>99</sup>

For the most part, “maximalist” self-determination is opposed by supporters of the international order, because it is disruptive to the *status quo* and international norms.<sup>100</sup> However, there is very little in international law that expressly forbids secessionism and there is unlikely to be retaliation against a seceding state from an outside actor.<sup>101</sup> The only balance is that often secession movements are not inherently strong enough to directly oppose the central government. There is some legal precedent for the “right” to secede, which cannot be removed from a right to self-determination: Secession is allowed under UNGA Resolution 2625 (XXV) Paragraph 7, which gives legal remedy to secessionist groups under certain circumstances, such

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<sup>97</sup> Lee C. Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 216

<sup>98</sup> Benjamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc.) 70

<sup>99</sup> *Ibid.*

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

as an oppressive or non-representative government. However, secession is discouraged on the grounds that it intentionally disrupts the doctrine of territorial integrity. Therefore, the “internal theory,” of self-determination (e.g. regional autonomy) is promoted since it allows territorial integrity to remain intact.<sup>102</sup>

What is this doctrine of territorial integrity and why do states and the international community vow to uphold it? Territorial integrity is a doctrine of international law that claims that the borders of any sovereign state are inviolable and cannot be disrupted by other states, nations or internal groups. This is an integral part of autonomy and recognition as a sovereign state in the international community. The 1970 U.N. “Declaration on the Relation of Friendly States” states that “States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State...”<sup>103</sup> This and other legal definitions have been used time and again by central governments and/or anti-self-determination regimes to delegitimize both secessionist and self-determination movements. The principle of territorial integrity is especially helpful in combating self-determination and secessionism since the two movements are often one in the same. Non-self-governing territories, by virtue of being overseas, can never violate territorial integrity, which is why many theorists believe they have the best legitimate claim for self-determination. Therefore, nations that are geographically linked with their metropole have an already decreased chance of gaining self-determination. This inequitable treatment based on the principle of propinquity is egregious and must be rectified by the proposal set forth in this analysis.

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<sup>102</sup> Thomas D Musgrave. Self Determination and National Minorities. (Oxford, United Kingdom: Oxford University Press, 1997) 209

<sup>103</sup> United Nations, General Assembly. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. 24 Oct. 1970. 1 Dec. 2007 <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>.

There are many other nuances within the body of self-determination law that intertwine directly with rights of self-determination. Turning back to our previous discussion on minority rights, it becomes obvious that secession may leave minorities trapped within the newly defined nation-state. This can be particularly dangerous and lead to diaspora or continued ethnic strife—again, the best example being Kosovo’s Serbs.

The goal of all secessionist movements is to be taken as legitimate both by the central government they oppose and the external international community. Very rarely can a secession movement exist without the support of well-established foreign actors (e.g. even America had the support of the French). The history of legitimacy tells us that external actors favorably evaluate secession movements that encompass two characteristics: 1) A distinguishable self and 2) Limited disruption to international norms and world order.<sup>104</sup> Additionally, a hint of democracy must usually be present as a requisite condition of “stability,” undemocratic regimes are often, by their nature, unstable. If these tests are met, legitimacy may be given to the secessionist movement, though this does not necessarily mean outright intervention on behalf of the secessionists. Clearly this evaluation of secession’s legitimacy cross-applies to the nature of all self-determination movements discussed in this paper.

Supporters of secession caveat that a line in the sand must be demarcated between the rights of oppressed minorities to secede and the right to self-determination. They do not believe that self-determination should be granted to all peoples for any reason, and that a distinction should be made between giving rights to “sixty or 20 million.”<sup>105</sup> There must be a “compelling reason” for the right to self-determination, as in the instances of the Poles, Irish and Finns after

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<sup>104</sup> Lee C. Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 228

<sup>105</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 71

WWI.<sup>106</sup> As the theoretical sketch outlines, the crux of this thesis is that self-determination should go farther, and extend to any identifiable group that has the popular will and a distinct chance of viable success. There will be counters that this type of secessionist movement can become “contagious,” as one nation gains independence it will become a global pandemic of secession and self-determination. One of Wilson’s main foreign policy advisors, Colonel Edward M. House said in 1918 that “no tribal entity was too small to have ambition for self-determination.”<sup>107</sup> He greatly feared this “ambition,” because one claim of self-determination would create a snowball effect, galvanizing the nationalist forces of every minute and distinct group. However, this claim must be taken with a grain of salt: Those who oppose self-determination at this “tribal” level are often the leaders of the international power game who benefit greatly from the *status quo*—an international system designed to be controlled from the top down.

### **Major Issues in Present-day Debates of Self-Determination: The Question of Size**

The main arguments of anti-self-determinationists such as Col. House were often peppered with matters of “viability.” The thrust of our self-determination “recognition” assessment also rests heavily on a viability argument, but does not see viability as an eternally disqualifying factor—merely a hurdle that must be overcome. The viability test will be laid out much more clearly in the next section, but some basic points of history and theory are helpful here.

Political theorists since Plato have debated the optimal size for a state both in terms of viability and administration. Mazzini (unifier of the Italian state), Marx and Hitler were of the

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<sup>106</sup>Benjamin Neuberger. National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 71

<sup>107</sup> *Ibid.* 84

mind that only large states could have “a distinct political mission.”<sup>108</sup> Conversely, philosophers such as Kant and Rousseau believed that only small states could actualize liberty and democracy to the highest extent. Rousseau noted this form of actualization as the *volonte general* (or general will).<sup>109</sup> Nations, therefore, have been plagued by a constant philosophical tug-of-war in the international community regarding their size and viability. Opponents of small states claim that indefinite self-determination would lead to thousands of independent and non-viable mini-states with “insufficient political standing to make independence meaningful.”<sup>110</sup> This, they assert, will result in a modern-day pre-Westphalia state system which is inherently unstable and bellicose.

There has been, in particular, a great deal of disdain levied towards micronations and microstates, a subset of the state-size viability debate. These tiny entities have a variety of definitions, but typically have very small amounts of territory and usually less than 1 million people (or by some definitions 100,000) within that territory. Hitler, speaking of what he considered the Austrian microstate, declared in 1938:

“What can words like ‘independence’ or ‘sovereignty’ mean for a state of only six million [...] today it is only under quite peculiar presuppositions that such small state formation can have a possibility of life [...] Even the German Reich is too small; it needs a complement of colonies: how should a state which was but the size of a single province succeed?”<sup>111</sup>

Certainly it is fallacious to take notes on political theory from one of history’s greatest monsters, but Hitler encapsulated the sentiments of many in the pre- and post-WWII power game regarding small states and nations—that is, they do not have a right to exist. Hitler’s rhetoric is echoed by other German and Italian scholars who knew first-hand that fragmentation and small statehood

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<sup>108</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 93

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.* 94

<sup>111</sup> Lawrence T. Farley Plebiscites and Sovereignty: the Crisis of Political Illegitimacy. (Boulder, Colo.: Westview Press, 1986) 134

could lead to political and international inefficacy. Essentially, the small states' voice was not loud enough to be heard above the clamor of imperial and colonial powers such as France or Britain. Today, in the era of international organizations, interdependence and decolonization, this type of marginalization argument no longer applies.

A more mainstream proof about the viability of small states is given from the negative assertion of British historian Alfred Cobban. Cobban's 1944 work "National Self-determination" helped create the scholarly foundations of modern self-determination theory. However, Cobban argued in his chapter on small states that both Iceland and Malta would not make viable nation-states at any time.<sup>112</sup> This has proven to be wildly inaccurate and shows that the logic of the WWII generation was falsely slanted against the small state and nation. The more enlightened political theorist of today must, therefore, recognize that given time and opportunity small states and nations can be successful. In essence, it is impossible to determine a maximum or minimum unit of stability and viability based purely on size.

The other main arguments against small states are that they would lack the economies of scale to gain wealth and are unable to defend their territory against external aggressors. Opponents claim that the former would lead to a breakdown of the international monetary system, while the latter would result in a new colonial grab-bag—larger states gobbling up their weaker neighbors.

The economies of scale argument is valid to some extent since there will always be significantly larger states. However, if this logic is taken to the extreme, then only a few leviathan-like states would have the right to exist. Additionally, small and prosperous states such as Singapore, Luxembourg and Bahrain, along with large and indigent states such as Zimbabwe,

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<sup>112</sup> Alfred Cobban, National Self-Determination. (Chicago: The University of Chicago Press, 1944)

help undermine the view that small necessarily equates to poverty.<sup>113</sup> The economies of scale argument is further washed away in light of economic specialization (e.g. Monaco is a tax haven) and the paternalistic welfare state (i.e. many small states do not want national wealth, but rather per capita wealth—see Luxembourg).

In the age of terrorism and political violence security must always be considered paramount. However, the idea that a nation should not exist simply because it does not have a massive standing military is outrageously flawed and nearly medieval. Driven by Cold War sentiments, this argument has been eviscerated by the regionalization of many areas (e.g. European Union) and the growing prominence of collective security (e.g. NATO or African Union Force). If regionalization and collective security can be applied on a more global level, no longer would nation-states such as Kosovo or Cabinda (fought separatist war with Angola in early 2000s) be weak and unable to defend themselves from attack. This is evidenced through the success of small European states such as Denmark and Lichtenstein, which have played the pan-European game in relative harmony since WWII. Additionally, the modern moral order helps assure that territorial-claiming wars are vestiges of bygone eras.

There is another scholarly group known as the “small is beautiful” school, which claims that there is more potential for responsive and participatory democracy and less of a chance for sclerotic bureaucracy in smaller states.<sup>Note</sup> This theory is supported by an extensive 1973 study from political scientists Robert A. Dahl and Edward R. Tufte entitled “Size and Democracy (The Politics of the Smaller European Democracies).” The pair concluded that there is no meaningful correlation between size, democracy and economic viability and that “no single type or size of

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<sup>113</sup> Wolfgang Danspeckgruber, ed. The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 337

<sup>Note</sup> Taken from the 1973 book by noted economist E.F. Schumacher “Small is Beautiful.” This work outlines economic and political theories about the place of small states and economies.

unit is optimal for achieving the twin goals of citizen effectiveness and citizen capacity.”<sup>114</sup> The conclusions of the Dahl and Tufte analysis, while imperfect, will also help with certain logical leaps in the later theoretical section.

In essence, size should never be a factor as long as the nation can prove that it will be self-sustaining to an extent acceptable by the people of that nation once it is an independent state. This is an important distinction since, for example, the people of Tokelau or Pitcairn Island do not aspire to the same level of wealth as many other nations. Still, the international community must set a certain boundary line for support of self-determination claims related to viability, but size alone is an erroneous analytical tool. Isolated cases of micronations may be outliers in the grand scheme of self-determination studies, but it is valuable to recognize the theory and data behind their existence.

If size should not be taken into account by the international community when analyzing claims of self-determination then what objective criteria can be utilized? Many of the same evaluations and criticisms pertaining to microstates/nations are still relevant in overall debates of self-determination irrespective of the size of the nation. The main areas of concern for most members of the international community are 1) Economic viability 2) Governmental/Political Viability 3) Security/Stability Viability and 4) National Viability. This is by no means an exhaustive list, but helps funnel the arguments of self-determination into a more narrow conscription. Again, the theoretical model will more broadly define the criteria that states need to apply in the “viability/fitness” test. Many of the issues below will cross-apply to the viability test, but are also relevant to current debates of self-determination outside this thesis’s viability theory.

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<sup>114</sup> Robert Alan Dahl, and Edward R. Tufte, Size and Democracy (The Politics of the Smaller European Democracies) (Stanford, Calif: Stanford University Press, 1973) 138

One of the most important capabilities of any sized nation is economic. Under the current system of self-determination evaluation (i.e. states/organizations analyzing based on their own criteria) If Maslow’s hierarchy of needs were to be applied to governments, the ability to provide fiscal stability is supreme. If this stability does not exist, then the infrastructure of the state will collapse. If the economies of scale argument is set aside, then the nation-state must have either an economic specialization (e.g. Bermuda’s insurance industry), a highly definable service industry (e.g. tourism or Switzerland’s banking industry), or a glut of exploitable natural resources (e.g. Scotland’s North Sea Oil). These must be well-established before the nation can attempt to claim any rights to self-determination.

The pending state must also show some form of governmental structure, fair and open elections—democracy is typically a prerequisite for independence with international recognition, i.e. most states won’t recognize a terrorist or dictator-led nation—and an integrated civil service. The state should also be able to conduct international affairs with some degree of legitimacy either through diplomacy or representation at international organization.

As mentioned in the previous section, the state must be able to provide for its own defense either through a standing military, regional security agreement, or the protection of a larger friendly nation (e.g. Micronesia and the United States).

Beyond these basic forms of viability, however, there needs to be some sort of forward-looking standard to assess future “cohesiveness.” This is the form of national viability. Scholars worry that once an external “oppressor” is removed or a power vacuum exists, the cohesion of a new nation-state may lapse, leading to “continuous and indefinite divisibility” of the state.<sup>115</sup>

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<sup>115</sup> Lee C Buchheit, Secession: the Legitimacy of Self-Determination. (New Haven, Conn.: Yale University Press, 1978) 230

These are the requisite components currently in place for most states/organizations regarding the assessment of national self-determination. While the criteria are similar to the viability/fitness test outlined in the theoretical sketch it is not nearly as comprehensive, objective or universal. Currently, states can make any subjective application of these attributes and make their decision to support or not support a nation with greater weight (or no weight) placed on particular area. Additionally, the current test is only a means of understanding the nation as it will be rather than a comprehensively designed matrix that can be used to predict future success.

**Major Issues in Present-day Debates of Self-Determination: Defining and Recognizing a New State**

Under the current system, assuming that a coherent and acceptable definition of the “self” or the “nation” is recognized, and all of the viability criteria met, there is still one more hurdle to overcome. Once a nation is established as an independent entity from the central government there are several formal and informal processes required that eventually leads to what international law describes as “recognition.” This recognition can happen overnight (e.g. Former Soviet Republics), over many years (e.g. People’s Republic of China) or not at all (e.g. Palestine).

Historically, the state system that dominated after the Treaty of Westphalia broke down international recognition into four component parts. A state had to possess 1) Territory 2) Population 3) Order over its people and 4) Recognition by states already possessing sovereignty.

<sup>116</sup> If these characteristics were met, then a new state was recognized and accorded all the provisions of other sovereign entities. Article I of the 1933 Montevideo Convention on the Rights and Duties of States sets down another historically accepted view of statehood. The

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<sup>116</sup> Lawrence T Farley, Plebiscites and Sovereignty: the Crisis of Political Illegitimacy. (Boulder, Colo.: Westview Press, 1986) 7.

Convention's criteria included: 1) a permanent population 2) A defined territory 3) A government and 4) A capacity to enter into relations with other states.<sup>117</sup>

The American Law Institute provides a more narrative and contemporary definition: "An entity that has a defined territory and a permanent population, under the control of its own government, and that engages, or has the capacity to engage in, formal relations with other such entities [is considered a state]."<sup>118</sup> The ALI adds that "Recognition of the ruling government and the state as a member in international organizations" is also necessary for formal international recognition.<sup>119</sup>

The European Community (now the EU) defined states in its 1991 "Guidelines on Recognition of New States in Eastern Europe and the Soviet Union." Within this was outlined a common position for recognition of new states. This has since been replaced by EU criteria on accession (see Scotland), but serves as another helpful guideline.<sup>120</sup>

The short answer is that states are recognized at the point at which they are recognized by other states and international organizations—this is usually either *de facto* or *de jure* diplomatic recognition.<sup>121</sup> While there is no set number of states or organizations that need to recognize a state in order for it to gain formal international status the main world powers (i.e. the U.N. Security Council) and the United Nations are usually prerequisites. For example, Israel is not recognized by over thirty states, but it is still considered an independent member of the international community due to its support from key actors.

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<sup>117</sup> Malcolm N. Shaw, *International Law*. 4th ed. (Cambridge, U.K.: Cambridge University Press, 1997) 140

<sup>118</sup> Morton H. Halperin, and David J. Scheffer, *Self-Determination in the New World Order*. (Washington, D.C.: Carnegie Endowment for International Peace, 1992) 66.

<sup>119</sup> Ibid

<sup>120</sup> "Accession Process." European Union. 1 Dec. 2007  
<[http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/index_en.htm)>.

<sup>121</sup> Malcolm N. Shaw, *International Law*. 4th ed. Cambridge, (U.K.: Cambridge University Press, 1997) 143

The case Nelson Mandela's birthplace, the Transkei Bantustan, in apartheid South Africa shows how imperative recognition by external entities is for validation of independence. In 1976, the Bantustan (i.e. a region of white South Africa designated for black South Africans) called Transkei was given independence from Pretoria, but the international community and the OAU claimed the independence was "invalid," since Transkei failed to meet tests of validity as well as the definition of a state.<sup>122</sup> Furthermore, Transkei was a racial entity that was still in the *de facto* possession of white South Africa.

Recognition, therefore, is grounded in the idea of "independence," and, by extension, self-determination. If the "state is subject to no other sovereignty and is unaffected either by factual dependence upon other states or submission to the rules of international law," then that state is self-determined.<sup>123</sup> While this paper deals primarily with the rights of defined nations to be self-determined it should also be understood that multinational states also possess the ability to have self-determination if the various nationalities so agree.

There is one final point of theory that inexorably ties the laws governing recognition to the rules outlining the right of self-determination. As mentioned, sovereignty is "the defining characteristic of the modern state system and sets out the rules for governing interstate relations."<sup>124</sup> From the standpoint of the international community, this recognition in international law of "freedom of the [sovereign] state from interference by others" makes it difficult to intervene on behalf of many self-determination movements with secessionist leanings.<sup>125</sup> Indeed, since all independent states are recognized as equal under international law by dint of their status as "sovereign" entities, it is difficult for any external actor to offer support

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<sup>122</sup> Malcolm N. Shaw, *International Law*. 4th ed. (Cambridge, U.K.: Cambridge University Press, 1997) 143

<sup>123</sup> *Ibid.*

<sup>124</sup> Lawrence T. Farley, *Plebiscites and Sovereignty: the Crisis of Political Illegitimacy*. (Boulder, Colo.: Westview Press, 1986) 8

<sup>125</sup> *Ibid.* 7.

for any form of self-determination without risking the violation of another state's sovereignty.<sup>126</sup> Logically, if a state recognizes the right of a nation to self-determination, that recognition can be interpreted as a violation of the central state's sovereignty. If the sovereignty of the central state is being violated does that state even exist as a sovereign nation and, therefore, as a recognized member of the international community? This is a pivotal question in all arguments of self-determination and one of the philosophically footholds of many states and theorists that view self-determination as creating inherent contradictions in international law.

This difficult issue seemed to be overcome, however, with the overnight recognition of new states, which is a relatively new phenomenon. After the collapse of the Soviet Union in the early 1990s, there were certain changes in formal recognition of states. No longer having to compete with Russia meant that the new world power, the U.S., could establish its own criteria for recognition. The new international norm created by the United States allowed for quick and easy recognition of some states that could immediately stand on their own (e.g. America recognized Kazakhstan less than ten days after it declared independence in 1991), but also established a greater evaluation system for other states hoping to become independent. As Halperin and Scheffer said, in the post-Soviet era, the U.S. moved past "mere diplomatic recognition."<sup>127</sup> The United States is the polar north of the self-determination world, a place where all nations point their compass in the hopes of obtaining independence. As the sole superpower, the U.S. has been given a wide prerogative in determining which states have a right to self-determination and which do not. As the world becomes more globalized and interdependent, this unique status is changing, but at the moment the U.S. can both deign a nation fit for self-determination (e.g. Kosovo) and still maintain diplomatic recognition of the

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<sup>126</sup> Ingrid Delupis, International Law and the Independent State. (New York: Crane, Russak & Company, Inc., 1974) 4

<sup>127</sup> Morton H Halperin, and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992) 65

sovereign central state (e.g. Serbia). At least for the moment, the problem is solved through the American domination of world power and opinion—as the dictum goes, he who has the gold makes the rules.

### **Major Issues in Present-day Debates of Self-Determination: Globalization, Terrorism & Political Violence**

The 21<sup>st</sup> century has brought new challenges and a slight waning of U.S. global dominance. Many scholars claim that this attrition is a result of globalization, which is succinctly defined as “The process by which a single market system spreads across the world and integrates all societies into a single system of production and exchange.”<sup>128</sup>

According to the authors of “Globalization, Violent Conflict and Self-determination,” this process has been under way for centuries and was furthered during the colonial and imperial era.<sup>129</sup> They claim that globalization stopped from approximately 1914-1989 due to the two world wars and the Cold War, which made the world “hostile” to the idea of a “global framework.”<sup>130</sup>

The restarting of the globalization process has, so far, been greatly dominated by the developed victors of WWII (i.e. the West). This has created a backlash against the spread of primarily Western systems, with many states resorting to more traditional or religious values (e.g. Iran). As the “foreigner” crept in, nationalism was heightened and claims of cultural self-determination were made stronger in some states—if only as a reactionary movement against the West.<sup>131</sup> So far, however, globalization has not had a great impact on non-cultural (i.e. national) claims of self-determination since the encroachment of the West was the initial impetus behind

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<sup>128</sup> Valpy Fitzgerald, Frances Stewart, and Rajesh Venugopal, eds. Globalization, Violent Conflict and Self-Determination. (New York: Palgrave Macmillan, 2006) 6

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.* 8

the decolonization movement of the 1950s and 60s. The impact of globalization on claims of self-determination has mostly come in the form of political osmosis: The Western ideas of self-determination disseminated to the political elites of Asia, Africa, South America and the Middle East. Some blame modern technology and mass communication due since both facilitate the spread self-determination agendas “outside a concentrated area.”<sup>132</sup>

With self-determination theories being communicated throughout the globe, terrorism and political violence were often the result of what nationalist elites viewed as “illegitimate sovereignty.”<sup>133</sup> They saw that when secessionist, irredentist or other national movements could not achieve the right to self-determination by politics, they often resorted to a remedy by other means. This violent legitimization of claim is why some in the West have come down against the right to self-determination, especially in the globalized climate. In fact, however, this violent interpretation of the “right” to self-determination is often a misinterpretation of the original Wilsonian ideal rather than a casual relationship. Violence can also be a result of irrationality or a corruption of the self-determination ideology by political elites who hope to use the population *en masse* as a means to an end.<sup>134</sup>

The biggest impact of globalization on debates of self-determination is the increase of demographic and economic migration, which has blurred cultural and national lines. Under the tidal pull of globalization, well-defined “nations” are becoming distorted.<sup>135</sup> This is especially true in Europe, where globalization has sparked many right-wing political movements as a response to the perceived “threat” of cultural destruction. Many Europeans are retreating to

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<sup>132</sup> Valpy Fitzgerald, Frances Stewart, and Rajesh Venugopal, eds. Globalization, Violent Conflict and Self-Determination. (New York: Palgrave Macmillan, 2006)

<sup>133</sup> Lawrence T. Farley, Plebiscites and Sovereignty: the Crisis of Political Illegitimacy. (Boulder, Colo.: Westview Press, 1986) 14

<sup>134</sup> Valpy Fitzgerald, Frances Stewart, and Rajesh Venugopal, eds. Globalization, Violent Conflict and Self-Determination. (New York: Palgrave Macmillan, 2006) 10

<sup>135</sup> *Ibid.*

xenophobic politics and defining themselves in a deeper ethnic and national sense, which means that self-determination claims in the developed part of the world are likely to become more abundant (e.g. the Flemish in Belgium).

### **Major Issues in Present-day Debates of Self-Determination**

This exhaustive historical, legal, political and philosophical appraisal of the right to self-determination is a critical part of fully understanding the theory behind evaluating self-determination claims. In the next section, many of these components will come together to form a vast theoretical matrix that could not be easily understood without a thorough background investigation of this complex right.

## **IV. Creating a Theoretical Framework for Assessing the Legitimacy of Self-Determination**

### **An “Absolute” Right to Self-Determination**

Now that the fundamentals of national self-determination have been discussed it is time to expand on the theoretical sketch outlined in the introductory section. The summary of the sketch is that the entire international community should, at all times, support an “inalienable, inherent and absolute right to external national self-determination” (the “qualified absolute” right will be examined in the viability/fitness section), since it will benefit international community. Wolfgang Danspeckgruber, co-founder of Princeton University’s Lichtenstein Institute on Self-determination realized this same philosophy saying that “offering communities as much say as possible in the political and legal-administrative decision-making process, even the

maximization of their ideal of independence, will turn out to be more advantageous [for the international community] than restricting or denying it.”<sup>136</sup>

But should this just be done on the authority of some invisible actor or scholar? While several justifications were created to emphasize the theoretical linkages of this theory, a hard case needs to be developed—i.e. the moral, legal and political justifications as to why this “absolute” right needs to exist and be implemented by the international community. Many of these justifications are based on original theories that reorganize the logic of the current system or fill voids where no logic existed. The finally tally should clearly demonstrate that an “absolute” right is preferential to the *status quo* for both nations seeking self-determination and the international community evaluating these claims.

### **An “Absolute” Right to Self-Determination: A Moral Philosophy**

This section will be entering some uncharted territory in the theory of international relations. As Alan Buchanan said in his work Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law, “[A]t present, there is no coherent set of normative principles—no moral theory of the rule of law in international relations—capable of providing guidance for improvement of international law....<sup>137</sup> Buchanan claims that this is mostly due to a reliance on “Realism” and “legal positivism” as the applied philosophies of international relations.<sup>138</sup> But perhaps it is because of this realist and positivist understanding of international relations that it seems to move forward with very little moral compass. One need look no farther than the various justifications for non-intervention in human rights crises to understand that morality and international relations are not synonymous. Perhaps then the question of outlining a

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<sup>136</sup> Wolfgang Danspeckgruber, ed. The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 351

<sup>137</sup> Allen E. Buchanan, Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law. Oxford political theory. (Oxford: Oxford University Press, 2004) 20-21

<sup>138</sup> *Ibid.* 20

“naturalist” philosophical framework (i.e. a theory that looks at the law “for what it should be rather than what it is”<sup>139</sup>) for the right to self-determination is a moral imperative and not just an argumentative mechanism.

The assertions here are qualitative and subjective and could be disproved in a similar fashion to most moral frameworks. However, if there can be such a thing as empiricism in philosophy, anecdotal evidence suggests that self-determination is a process that more often than not leads to the happiness and benefits for individuals and nations. Even with the weight of horrific atrocities counterbalancing, the overall cost-benefit must remain positive and moralistic.

Additionally, in a state of nature, humans are political animals that need to actualize, justify and frame their existence through a group dynamic.<sup>140</sup> Withholding or limiting the ability to do this is both unnatural and disruptive to humans and to the political communities they desire.<sup>141</sup>

Self-determination is also a self-analyzing moral principle: Since it is a goal that many have and continue to aspire to, therefore, it must be a noble and righteous goal or it would have been washed away by the evolving human consciousness (e.g. the abolition of human slavery). Since the start of human civilization people have yearned for a right to exist as they please and take pleasure in creating their own future. If this was in any way ignoble or incorrect it would have, long ago, been altered.

Therefore, the contention here, in the strongest possible terms, is that every nation has a right to self-determination and the international community has a moral responsibility to facilitate the implementation of this right. Given that this claim is upheld as both a universal

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<sup>139</sup> Allen E. Buchanan, Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law. Oxford political theory. (Oxford: Oxford University Press, 2004) 20-21

<sup>140</sup> Avishai Margalit and Joseph Raz, "National Self-Determination." The Journal of Philosophy 9th ser. 87 (1990): 439-461. JSTOR. Boston University, Boston. 2 Apr. 2008 <<http://www.jstor.org/stable/2026968>>.

<sup>141</sup> *Ibid.*

human right and one of international law, this theory of an “absolute” right will hold that self-determination has self-evident moral justifications; therefore, a nation’s claim to self-determination is assumed moral unless a preponderance of evidence proves alternatively. This does not mean, however, that the international community cannot place certain qualifications on the right, it only evinces the truth of the moral claim.

Self-determination is a positive and basic right that has been usurped or corrupted throughout history yet it remains inalienable and inherent much like the right to life. At the fundamental core of humanity, liberty should remain a black and white tenet—there can be no justifiable rationalization about the subjugation of one person to another. A shades-of-gray mentality in this arena is what allowed slavery to occur without any moral culpability.

The right to freedom is justified by the *a priori* notion that every individual is born unbound by any external force—therefore, freedom is a natural state of existence. The U.N.’s “Universal Declaration on Human Rights” proclaims this loudly in its opening line: “Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world... the General Assembly proclaims this...as a common standard of achievement for all peoples and all nations...”<sup>142</sup> This natural state of freedom is corrupted invariably throughout human existence but still remains the goal towards which all humans strive. If this goal is natural on an individual level, then it should also exist organically at the point at which a group of individuals collectivize their efforts as free beings (i.e. a nation). If this assumption is taken to its logical conclusion, the right of free beings to exist in a collective state of independence is also a natural right. When this right is infringed upon, the natural state (or at least that ideal) ceases to be and an unnatural,

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<sup>142</sup> United Nations. General Assembly. Universal Declaration of Human Rights. 10 Dec. 1948. 1 Dec. 2007 <<http://www.un.org/Overview/rights.html>>.

discordant collective state is the result. The remedy is a return to the natural state—a remedy that is discovered only through the actualization of the right to self-determination. Some would argue (e.g. Anthony D. Smith) that self-determination cannot apply to a larger group until the nation is clearly defined.<sup>143</sup> The moral framework set forth here will not require a strenuous definition of the “self” by any rigid formula, but rather take an open interpretation of the “nation,” which allows the moral argument to proceed unencumbered by an unnecessary theory of definition.

Furthering this argument, freedom and self-determination are two inherently linked values. Borrowing from the Aristotelian logic of ethics and virtue, it becomes clear that humans are meant to be free creatures—if they are not free then they can hardly claim to be human. If self-determination provides a nation or peoples with the ability to further engage in their humanity it must be virtuous and affable. Therefore, any institution, state or group that provides this laudable and virtuous act must itself be laudable and virtuous. In short, intervention on behalf of a self-determination claim need not be qualified by oppression or some other high moral cause—the international community should act simply because self-determination is a moral and universal right without exception.

At its base, self-determination is about the freedom of choice: The choice to pick a government, a choice to influence the direction of a country, a choice to dictate the terms of an individual future. These are all goals that, when they do not inherently infringe upon the freedom and rights of others, become essential qualities of human happiness and enjoyment. From this perspective, at least in a theoretical vacuum, self-determination takes on what would seem to be very positive moral values. In the real world, self-determination is given even greater moral

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<sup>143</sup> Dan Smith, "Ethical Uncertainties of Nationalism." *Journal of Peace Research* 4th ser. 37 (2000): 489-502. [JSTOR](http://www.jstor.org/stable/424643). Boston University, Boston. 1 Apr. 2008 <<http://www.jstor.org/stable/424643>>.

credentials when it can help overcome the oppression, subjugation or destruction of certain peoples or nations (e.g. suppression of genocide).

Finally, at the point at which it can be proven that self-determination is a positive right that exists for the benefit for humanity it is irresponsible and amoral to discourage its existence. The benefits of self-determination in its purest form can potentially include the ability of people to receive a responsive form of self-government (assumes the inherent value of democracy), the mitigation of political violence and the furtherance of a stable political order. These claims are all contentious, but if they do exist as positive externalities as a result of self-determination, then it is unclear how an argument could be made against this moral set. Similarly, the members of the international community must absorb this argument and implement it if they are to be considered moral. Certainly it is their prerogative to not be considered moral members, but it would seem in their best interest to promote some form of moral justification.

There is no obvious, clear-cut, or correct answer as to why the right of self-determination should exist on a moral level, but the framework developed here attempts to give a rational basis as to why nations and the international community should engage with this right whenever possible. This moral framework should have also exhibited why an “absolute” interpretation of the right to self-determination is best.

### **An “Absolute” Right to Self-Determination: A Legal Philosophy**

The legal aspects of an “absolute” right to self-determination are more clearly defined as indicated in previous sections, yet this does not void them of contradiction, complexity and debate. The main area of contention is how to reconcile the right to self-determination with other rights of international law such as territorial integrity. As with the moral philosophy of self-determination, the legal philosophy is subjective and there are few prescriptive norms that help

solve discrepancies—fortunately there are concrete textual resources from which some illumination is forthcoming. An additional note: The concept of a “right” to self-determination in international law (i.e. *jus cogens* and *erga omnes*) has already been well-established earlier and need not be borne out again here.

Most scholars agree that the right to self-determination universally applies to all non-self-governing territories as a means to complete the task of decolonization. However, there is vast disagreement over the legal right to secession since this violates the norms of the international system, namely the inviolability of sovereign states. For example, the U.N.’s “Declaration on Friendly Relations” does support a right to self-determination, but also says that this right “shall not be construed as authorizing or encouraging any action which would dismember or impair...the territorial integrity or political unity of sovereign and independent states.”<sup>144</sup> Typically, scholars have placed a value judgment in the balancing of the right of nations to self-determination against the right of sovereign states to territorial integrity: At the point at which a sovereign state “oppresses, destroys or unduly exploits” its citizens, the right to sovereignty and territorial integrity no longer applies.<sup>145</sup> Therefore, in cases of genocide, economic exploitation, etc. a nation (however defined) has the right to secede from the central government. Most nationalists recognize that they need this form of legal justification before embarking on a claim of self-determination and conjure up some perceived injustice, but there are several instances where no interventionist imperative exists for the international community.

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<sup>144</sup> United Nations. General Assembly. Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations. 24 Oct. 1970. 1 Dec. 2007 <<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/348/90/IMG/NR034890.pdf?OpenElement>>

<sup>145</sup> Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

In the case of Scotland or Quebec, for example, there is no urgent reason for the international community to take any interest or action. However, this paper contends that at the point at which a right to self-determination exists in international law and international morality, there can be no justifiable denial of that right. The argument here is that nations need not look for an internal remedy within their own borders nor seek moral authority from the international community before making a claim of secessionist self-determination. Essentially, the doctrine of territorial integrity with respect to self-determination in international law is invalid and undemocratic since it inherently limits the rights and freedoms of people to choose their own government—territorial integrity, however, still serves a purpose regarding intra-state relations.

The international legal theory of self-determination set forth here, therefore, is self-executing and allows all nations to make claims of self-determination in any format (e.g. secessionist) on the grounds that it is morally appropriate and functionally beneficial. This philosophy verifies the need for an “absolute” right to self-determination, and also inherently includes all of the various forms of external self-determination in addition to secessionism.

To reiterate, this thesis only recognizes internal self-determination (i.e. self-government) as a step-wise and procedural mechanism towards attainment of external self-determination (i.e. independence). Within the purview of the encompassing legal outline, all formats for internal self-determination, by virtue of the fact that they lead to external self-determination, would also be justified.

After a thorough examination of the scholarly literature, there does not seem to exist a justification of territorial integrity (with respect to self-determination) that is as subjectively moral or beneficial. Territorial integrity does not defend a high principle such as “freedom,” nor does it offer benefits such as greater international stability (see political section).

With this in mind, the international community should recognize that in the current system, the “sovereign” rights of nations incorrectly supersede the right to “liberty” of nations seeking self-determination. Time and again, the international community fails to act on self-determination for one reason: They are fettered by the bonds of independent states’ rights and, therefore cannot proactively assist in the creation of new states based on secession (the same is true of humanitarian intervention). If the extreme measurement was taken that dissolved the right of territorial integrity, members of the international community could freely pursue a support of self-determination claims. As it stands, many states offer rhetoric that seemingly sustains international self-determination, but rarely put their words into practice.

This paper holds, therefore, that all members of the international community should aid in the creation and implementation of a new concept of international law that legitimizes secessionist and other forms of self-determination that are based on non-violent action. In essence, giving members of the international community a chance to take the self-determination-sponsoring actions they claim to support. This will result in an erosion of sovereignty on some level, but this is outweighed by the fact that the right to self-determination will be upheld and political violence reduced—a just and beneficial compromise.<sup>Note</sup> Additionally, the notion that states are truly sovereign ceases to exist in an international system where unilateral action by world powers goes unchecked (e.g. the United States in Iraq).

Clearly a new design of international law that can incorporate both the desire of nations for self-determination and the rights of states to sovereignty and territorial integrity is ideal. However, given the lack of a reasonable solution, the extreme measure of drafting a law heavily

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<sup>Note</sup> This new development of international law will also ensure that trapped minorities and indigenous peoples have a right to self-determination once the new state is created. However, if these minorities choose not to investigate their right to self-determination, a certain degree of national assimilation would have to be expected to ensure a cohesive nation-state.

weighted in favor of national self-determination has a higher moral balance and opens the path for an “absolute” interpretation of the right of self-determination.

### **An “Absolute” Right to Self-Determination: A Political Philosophy**

A political philosophy of the “absolute” right to self-determination is a broad, catch-all phrase encompassing the final elements of justification and other positive benefits associated with this right. Again, this is an area that will involve some redefining and gap filling with respect to the traditional assumption surrounding self-determination.

One of the fundamental assertions of this “political philosophy” is that multiethnic/multinational states are fine, but often insufficient. Too often nations cannot or will not be accommodated within their current state and want nothing short of external self-determination (i.e. independence). There is no onus to uphold the current multiethnic/multinational state system simply because it is what exists, so why not extend the right of self-determination? While there are claims that anarchy in the international system will result if national self-determination is given to any group, this is often the “preservation dialogue” of large states and elites who benefit from the current system<sup>146</sup>

The general political theory here behind an “absolute” right is that the creation of a multiplicity of nation-states through realization of external self-determination (either as an immediate or internal step-wise procedure) claims will lead to political stability. This is unequivocally correct due to several factors: 1) It will reduce inherent ethnic tensions and political violence which have massive destabilizing effects. These tensions are a result of redrawing borders amongst people of dissimilar background. This kith and kin argument is supported by the fact that both civil and interstate wars are often fought between distinct groups

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<sup>146</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 71

rather than amongst them. National identities within nation-states, therefore, tend to be less violent and hence more stable. The more these nation-states exist the less likely there is to be external conflict and hence greater stability (this argument is especially true at the point at which nearly all stand-alone cases of self-determination are actualized. It is less true if only a handful are realized). 2) The economies of depressed multinational states may have the potential to fare better as independent entities (e.g. Santa Cruz in Bolivia). Additionally, smaller nations have a tendency towards greater innovation and individual wealth. In the case of Scotland, for example, the claim of the SNP is that the provision of North Sea oil would prove an economic boom for what is already a steady economy. As goes the stability of the economy, so goes the stability of the population and the region. Rarely has a wealthy state gone to war or devolved into violence. 3) The final contention is that political participation within a non-alien government not only increases contentedness, but also serves as an outlet for potential conflict. By mitigating visceral ethnic strife and opening the political realm to the marketplace of ideas a great degree of stability should ensue. People are naturally more inclined to abide by laws set by some of familiar background that they themselves have elected—the rule of law being a fundamental condition for any stable state. Additionally, smaller states have a tendency to be more responsive and civically minded than larger bureaucratic states and this will also create outlets for minorities and indigenous people to realize their right to self-determination.

While all of the above factors contribute greatly to political stability, this stability in turn contributes to greater “friendly” relations of the states and redefines political norms along the moral ground of an interpretive right to self-determination. This is why it is in the international community’s benefit to promote the idea of national self-determination. Many states may have to realize some relinquishing of territory, but this territory is typically hostile and disruptive to the central state (e.g. the Basques in Spain). There will be counterarguments made that this will

lessen the power or economy of the central state, but can this be inherently bad to create a state system that is based on a more equitable division of power and money rather than large clumps of blocs? Certainly the populations of all nations would not make claims for self-determination if they feel they have benefited from the relationship (e.g. Hawaii). Therefore, it is unlikely that a pandemic of self-determination claims would exist that would uproot the stability of benevolent, democratic states. There seems to be little alternative for the international community to support an “absolute” right to self-determination unless endless political struggles (e.g. Nagorno-Karabakh) are a desired state of existence. Additionally, it is believed that these newly created nation-states will subscribe to the tenets of basic democracy (in fact this is one of the preconditions for support of self-determination claims making it more likely). If the majority of these new states are in fact democratically-inclined, then Kant’s “Democratic Peace Theory” will apply: No two democratic states have ever gone to war in the contemporary world since democracy tends to find diplomatic resolutions rather than wartime solutions. A drop in the bellicose nature of international relations is also an exceptionally stabilizing factor.

There is a final political contention that must be made clear before proceeding to the “fitness/viability” test: The distinct political identity of a group should be determined as a matter of course for self-determination claims, but ought not be scrutinized by a test of strict scrutiny. Essentially, if a reasonable identity, real or imagined, can be proven, even with a liberal interpretation that includes “peoples” and “communities,” then that should be acceptable for justifying that “nation” as a group with a right to self-determination. A more conservative definition would leave too many national groups without recourse or claim to the “absolute” right of self-determination.

### **An “Absolute” Right to Self-Determination**

In summary, the three justifications of an “inherent, inalienable and absolute” right of all nations to self-determination is given as follows: 1) Service of a high moral cause 2) Forces a redefinition of international law which is beneficial to this moral cause and clarifies inherent contradictions that exist in current international law and 3) A growing benefit of international stability and by extension “friendly” international relations. All of these justifications are realized through implementation of an “absolute” right to external self-determination by the international community on a global scale. In the final calculation the idea of an “absolute” right to self-determination gives clear benefits to both members of the international community and, of course, the nations who can now realize their self-determination claim. This is not to say that this examination falls on the side of anarchy, but rather an orderly prescriptive implementation based on a “fitness/viability” test discussed in detail in the following section.

### **A “Qualified Absolute” Right: An Assessment Model for Self-Determination**

This section will deal primarily with the evaluative model that was outlined briefly in the original thesis sketch. This paradigmatic design is an attempt to standardize the objective criteria used by the international community when assessing whether or not to support claims of international self-determination. In 1991, Halpern and Scheffer penned a similar notion, though they offered little in support: “The international community must respond to this great complexity of self-determination claims not by simply resisting self-determination, but by adopting a framework for distinguishing amongst them and assessing their legitimacy.”<sup>147</sup> So how exactly should this framework be developed?

At present, the system heavily favors the central state and allows states/international organizations to create their own model for evaluation, which leaves many claims of self-

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<sup>147</sup> Morton H., Halperin and David J. Scheffer, Self-Determination in the New World Order. (Washington, D.C.: Carnegie Endowment for International Peace, 1992) 48

determination unfilled. Based on the justifications of an “absolute” right to self-determination given in the previous section the *status quo* is deemed unfit and ripe for change.

The conclusions of the model will be formatted primarily on a predictive matrix based on past instances of self-determination failures/successes from WWI to the present, with much more emphasis placed on post-Cold War scenarios since they tend to be aligned with contemporary political and international norms. Ranging on a numeric scale, the overall “viability/fitness” assessment is based on a variety of criteria that will give an optimal time for a state to achieve self-determination. Some will already be at a high-level of the scale and ready for self-determination, while others will need to work, over a period of time, to achieve an acceptable score.

While the multivariate assessment criteria (see below) are objective, the analysis will be inherently subjective and differ from evaluator to evaluator. This may seem to contradict the idea that this test somehow offers greater standardization over the current form. However, because most democratic members of the international community can be considered rational actors, the assumption is made that their empirical evaluations will be relative. That is, that a calculation of GDP or good governance will be based on relative and comparative scenarios rather than an absolute standard. A relative analysis is naturally confined by the independent variables (i.e. the previous cases of self-determination) and, therefore, could not differ by more than a few basis points. Additionally, this test assumes an equal weight for a much larger set of criteria rather than the present model, which allows the international community to pick and choose which criteria they will take under consideration.

In many ways, the model is self-regulating: As new nations become fully independent over time, the predictive powers of the rubric will become substantiated. Keep in mind that this model is based on the assumption that the international community will constantly be working

towards realization of all self-determination claims in theory, hence the “qualified absolute” description given in the introduction, and will work cohesively under the guide of this model.

As a result, members of the international community should be able to definitively answer the omnipresent dilemma of self-determination: Should we support this claim of self-determination and will this new state be successful after it gains independence? There will be three levels of answers: 1) Yes, ready for immediate self-determination and independence 2) Yes, but needs to be placed in the step-wise trusteeship system for greater maturity and 3) No, this nation will never be ready for independence nor recognized as a legitimate claim of self-determination. The final category is only reserved for outrageous claims such as the “Principality of Sealand” or false claims such as the former Bantustans of South Africa.

Again, this test is conducted in a theoretical vacuum. The author recognizes that, for example, the United States may not be able to support the self-determination of Chechnya because it will anger Russia. The contention here is that these self-interested calculations should be tossed aside, but, if they cannot, then a theoretical calculation should be made through a veil of ignorance.<sup>Note</sup>

There are a few preconditions that must be in place before a nation can be evaluated in this assessment model by the international community: 1) The proclamation of the right to self-determination must be performed in a democratic method (i.e. representation of the will of the people, not just the elites)—a vote or other mechanism for determining the political will must be utilized 2) The claim for self-determination must be made without violence, force or coercion (i.e. voter intimidation or *coup d’etat*) on any level. 3) A declaration of minority and human rights must be present in the new state to avoid infinite post-independence ethnic tensions and 4)

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<sup>Note</sup> These first three preconditions are set in place to make it more difficult to justify the recognition of nations in the hands of corrosive powers such as Cambodia’s Khmer (which was recognized and supported by many players on the world stage such as the United States).

An historic, legal or political claim to a region as granted by the central government (i.e. through legislation or recognition of limited autonomy) or international community must exist in order for a nation to work towards self-determination. This is to prevent nomadic or immigrant minorities from entering a sovereign nation and wantonly proclaiming a right to self-determination. Taking advantage of a system intended to help truly identifiable groups, even under a liberal interpretation, cheapens the value of that system.

The Israeli state was granted legal rights to its territory in Palestine, the Scots are an historic nation in the United Kingdom, and the Québécois are recognized as a separate legal entity by the government of Canada. These are all historic or legally recognized minority groups that have claims to self-determination. The Muslims of Great Britain or the Mexican population in the United States, to this point, do not have a right to self-determination until they are recognized as an entity by Great Britain/United States or the international community with specifically definable rights. This is further clarified by the fact that nations with self-determination rights must have a defined territory and population and be recognized by other sovereign states—this is unlikely with these types of groups.

As mentioned, this theory takes a very liberal interpretation as to what exactly defines a “nation,” and a strenuous proof will not be required as in the *status quo*—though *some* binding factor will need to be represented along with an historical claim. Therefore, economically prosperous regions (e.g. the Shaba Province in Zaire or the Santa Cruz de la Sierra department in Bolivia) could secede for no reason other than their own common self-interest and shared history, irrespective of any ethnic or linguistic ties. However, the criteria listed below may make this impossible if secession would lead to international or regional instability or political violence.

**A “Qualified Absolute” Right: An Assessment Model for Self-Determination – The Criteria**

Utilization of the viability/fitness model is the most important tool in the international community for analyzing a potential nation-state. A pure “absolute” right without this model would create an anarchical system and a swath of beggar states (see the result of East Timor) would be the unfortunate result. An overly restrictive interpretation (e.g. only decolonization justifies self-determination) creates unnecessary ethnic tension and political violence. Therefore, the following general criteria will be applied to ensure a solid middle ground between anarchy and reactionary violence as well as an optimal time for a nation to achieve independence: 1) Economics 2) Internal Government and 3) International/External Relations.

This is an original model, but it is not the first time that a “scientific” assessment of national or state legitimacy has been attempted. A 1954 study by Stuart C. Dodd attempted to prove over 350 ways to measure post-independence viability. These are rather complicated statistical analyses that are a bit outdated, but worth noting for their thoroughness.<sup>148</sup> Several other works were produced as a result of Dodd’s original outline in the 1950s (e.g. Lyle Shannon’s “A Re-examination of the Concept ‘Capacity for Self-Government’”), but the scholarship seemed to fade off after that decade. The League of Nations Mandate system also applied a test of viability very similar to the one examined here.

Outlined below are the more specific criteria of the “viability/fitness” model that the international community ought use to evaluate claims of self-determination broken down by the general topics above. This triumvirate of viability criterion will be evaluated on a scale of 1 to 10 (some based on qualitative observation others on quantitative data with 1-3.5 being the lowest level of development; 3.5 to 7 being the middle level of development and 7-10 being the highest. This scale is evaluated as a basic mean average against other countries of comparable

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<sup>148</sup> Stuart C. Dodd, "The Scientific Measurement of Fitness for Self-Government." *The Scientific Monthly* 78 (1954): 94-99. JSTOR. Boston University Libraries, B. 1 Dec. 2007 <<http://links.jstor.org/sici?sici=0096-3771%28195402%2978%3A2%3C94%3ATSMOFF%3E2.0.CO%3B2-%2>

composition and against a nation's own subjective abilities. The scores for each individual criterion are based on subjective (e.g. a well-defined civil service) and relative evaluations (e.g. GDP per capita). The point ranges were derived from a cross-comparison of the criteria created here with states rated by the U.N.'s Human Development Index and other resources. After looking at several case studies, the statistics evidenced that highly developed nations would average scores of approximately 7-10 and so on down the line. For example, a nation with comparable characteristics to Norway would receive a mark of about 9.5. Norway is ranked as a highly developed country on the HDI (.96) and the correlation is established for each numeric data set. The nations up for evaluation will then be placed on a matrix where a statistical regression line is established under which the nation falls as "yes," "yes with need for improvement," or "no" in terms of its current fitness for self-government.

Noting some mathematical and computational deficiencies of the author not every criteria will be able to be cross-applied in the later case studies, though this does not diminish their relevance. Additionally, the "ability for self-government" criteria could serve as a fixed variable and be tested against various other criteria such as degree or time of self-government prior to independence—allowing for the creation of a larger self-government matrix. Finally, a vast statistical computation could show more direct correlation between certain criteria and their accuracy as a predictor of self-determination success (e.g. over time to what degree of confidence does pre-independence GDP measure success post-independence). Again, this is beyond the mathematical skills of the author, but does offer some exciting possibilities.

This list is intended to be broad, but is certainly not exhaustive. Each criterion is given equal weight, though not all need to be met in order for a nation to be deemed viable. Additionally, if a nation does not currently possess one of the attributes below is there a

reasonable assumption that it will attain that attribute at some point in the near future? If the answer is “yes,” then the criterion has been met.

## 1) Economics<sup>149</sup>

### a. Quantifiable Criteria

- i. GDP/GNP (growth rate)
  1. Annual GDP/GNP must have increased at a consistent pace over the past decade relative to countries of similar size and the global economy
  2. What is the percentage of public debt to GDP?
- ii. GDP/GNP (PPP and per capita)
  1. Same as above.
- iii. Labor Force
  1. Available labor force must be sufficient to assist with countries development
- iv. Is there a continuous source of income?
  1. Either specialization of services or ability to independently exploit natural resources.
  2. Is this source of income based on a single industry or product or is it diversified?
- v. Is there a valid currency, accepted exchange rate of that currency?
  1. If the currency is recognized with an acceptable exchange rate this is often a minimum for acceptance of that state’s economy.
- vi. Is there a central economic organization that can monitor fiscal and monetary policy?
  1. This could include a central or national bank
- vii. Amount of foreign aid reliance
  1. Could the economy be self-sufficient if foreign aid was removed?
- viii. Unemployment rate
  1. Does the unemployment rate match with other countries of similar size?
- ix. Percentage of population below the poverty line
  1. Same as above
  2. Also what is the distribution of the country’s wealth? Is it concentrated at the top?
- x. Inflation rate
  1. Does the inflation rate match with other countries of similar size
  2. What is the consumer-price inflation rate?
- xi. Does the nation have established trading partners? If so, who are they?
  1. These should be other stable states with established international trading records

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<sup>149</sup> The criteria for the “Economic” section was derived from an examination of the World Bank, IMF, the European Union’s Copenhagen Agreement (1993). The CIA Worldfactbook and other studies of scientific “fitness for self-government” were also considered.

- xii. Does the country have a council of economic ministers and/or a body that can decide economic policy?
  1. Can this group create a workable budget for each fiscal year?
  2. Is this group capable of regulating the entire economic health of the government? This is mostly done through a recognition of economic legislation, upholding of contracts and lack of corruption
  3. Can this economic council be trusted in the economic data it is providing and its accounting procedures?
- xiii. Is there a system for assessing taxes and raising internal revenue?
  1. This is typically the first goal of any new nation or else it cannot perform any other function
- xiv. Are imports and exports balanced on an annual basis
  1. This is similar to a trade deficit, but cannot fluctuate too greatly
  2. What is the balance of payments

**b. Qualitative Criteria**

- i. Is there a viable economy of scale?
  1. Can the government compete with other international players of its size and/or live up to its own design of wealth
- ii. Is there a market economy in place that can keep pace with global or regional market forces or an alternative system?
  1. Essentially, can the new nation navigate the economic marketplace without becoming a beggar state
  2. Also does this market economy balance between private and public sector goals?
    - a. Essentially, is the economy decentralized
  3. Is the country open to investment and offer opportunity for economic growth of foreign and domestic industries?
- iii. Would the nation meet the basic criteria for international or regional economic organizations (e.g. the IMF, World Bank or European Union)?
- iv. Can the nation manage bilateral or multilateral trade?
  1. This includes the ability to pay off all foreign debts and manage a trade deficit
  2. The nation must also possess the ability to enter into trade agreements with other countries (typically a condition of sovereignty)
  3. Can the nation sustain international investments and ensure government bonds?
- v. Can the nation assist in the development of other countries through foreign aid
  1. This is a general measure of wealth and prosperity
- vi. Does the nation exist in a stable economic environment and on friendly terms with its neighbors?
- vii. Does the country meet the basic definition for sustainable development
  1. Financially, environmentally, with respect to energy resources, etc.

There are several other macro and micro economic indicators on the quantitative level that may be considered although their bearing on overall economic health is not immediately clear.

Additionally, many of the attributes listed above are self-evident if another attribute is proven to exist (e.g. if the nation has bilateral trade it consequently has trading partners). Finally, economics is by far the broadest category mostly because it is the most nuanced and difficult to assess, but the fitness model should not be considered “economy heavy.”

## 2) Internal Government<sup>150</sup>

### a. Quantitative Criteria

- i. The government must maintain control over a certain area of territory (no specific size) and must have a stable and permanent population
- ii. Support for self-determination must be established by a 50 percent majority when over a 75 percent turnout has occurred. This support must be conceived through either a plebiscite, referendum or other democratic mechanism
- iii. Health and Environment
  1. Must have solid environmental and health records within international norms
    - a. Infant mortality rates
    - b. Pollution
    - c. Sanitation
    - d. Hospitals and Doctors with accessibility to health care
- iv. Education
  1. A fair and public educational system that is open to all
  2. Meets relative standard of literacy and other competencies
  3. Is there a system of higher education available?
- v. Communication & Access to Information
  1. Telephone lines
  2. Televisions
  3. Internet
  4. Postal Service
  5. Are these accessible to the general public?
- vi. Transportation
  1. Airports
  2. Highways/roads
  3. Seaports (if applicable)
  4. Railways
- vii. Population

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<sup>150</sup> The criteria for the “Government” section was derived from an examination of the European Union’s Copenhagen Agreement (1993), The CIA Worldfactbook, the U.N.’s Human Development Index (HDI) and Dodd’s “The Scientific Measurement of Self-Government” among other resources.

1. Is the population greater than one (remember no discrimination against microstates)
  2. What percentage of the population is rural v. urban?
  3. Are growth and birth rates in line with international norms?
  4. Life expectancy
- viii. Military and Security
1. Is there a standing military? How does this register in terms of number per capita and in absolute terms
  2. What is the prevalence of illicit crime as defined by the laws of the land?
- b. Qualitative Criteria
- i. Governmental Structure
    1. Some form of representative government (e.g. direct or indirect democracy) with universal suffrage granted at a defined “age of majority”
    2. Is there political choice offered to the citizenry (e.g. political parties) or is it a unitary system?
    3. Is the government recognized as legitimate and sovereign by the people of the nation?
    4. Elections must be deemed accurate, fair, free and complete by international observers.
    5. Has a stable governmental infrastructure as established under either semi-autonomous or previous self-government
    6. The government must be a civilian-based administration with a clearly established, representative hierarchy that has peaceably changed at least once in the past 5 years (or whatever the term limit) after an election.
    7. Does the citizenry actively participate in the creation of the government (e.g. elections) or is it run by a few elites?
  - ii. Civil Service
    1. Equal access to employment by civil service
    2. A well-defined civil service structure that covers several basic areas of government needs
    3. Stability of civil service should be defined under previous acts of self-government
  - iii. Human and other Rights
    1. There must be a clear and codified design on human and minority rights as well as other inalienable rights of the citizenry as matching the components of democratic theory or another form of government that supports these rights (e.g. the rights to liberty, property, freedom of religion, etc.). These need not necessarily be created in a constitution or other codified document but must have some recognized legal standing. Equal rights and the rule of law are other requisite components (e.g. no discrimination based on ethnicity, race, etc.)

2. Will the new state recognize the right to self-determination of minorities, indigenous people or other regions within its own borders?
  3. Is there a history of violence that may be doomed to repeat itself if national unity were to breakdown at some point? To that end, while no prescription is put on national cohesiveness, are the ties of nationalism strong enough to create a government of similar ideology?
- iv. Judiciary
    1. A fair and impartial judicial system to adjudicate criminal, civil and other internal disputes
  - v. Legislative & Executive Branches
    1. These need not each exist or be mutually exclusive (i.e. separation of powers), but there must be a semblance of regulatory order from some higher body that derives its sovereignty directly from the people.

### 3) International/External Relations<sup>151</sup>

#### a. Quantitative Criteria

- i. Nation must have the ability to conduct basic bilateral diplomatic agreements with other countries and a desire to enter into “friendly” relations.
- ii. Must be recognized by other countries as an independent and sovereign entity and must in turn recognize their sovereignty to the extent defined in this paper
- iii. Must have the desire to join, and the ability to be accepted by, international organizations such as the United Nations, WTO, ICJ, etc. As well as regional organization such as the E.U., ASEAN, OAU, etc.
- iv. Must agree to subscribe to the basic tenets, covenants and charters of codified international law as well as the various norms of the international system. This helps avoid the potential for “rogue” or “pariah” states.
- v. See also the “Military” section under “Internal Government”
- vi. Does the state have the ability to regulate immigration, issue passports and other materials necessary for its recognition as a member of the international community?

#### b. Qualitative Criteria

- i. Regional Stability
  1. To what extent can the nation defend itself or rely on regional or bilateral security pacts for defense?
  2. Must make an honest effort towards the elimination of state-sponsored crimes. Must prosecute war criminals and be willing to enter into international agreements regulating war crimes and criminal activity.

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<sup>151</sup> The criteria for the “International Relations” section was derived from an examination of the European Union’s Copenhagen Agreement (1993), The CIA Worldfactbook, the ALI’s definition of “state recognition” and Dodd’s “The Scientific Measurement of Self-Government” among other resources.

3. Is the region itself stable and are there any ongoing conflicts or disputes that need to be resolved aside from the issue of self-determination?
  4. Will the state contribute to regional stability as a result of its self-determination (i.e. will it reduce political violence)?
  5. Is the state willing to tolerate other cultures, ethnicities and other states within its region or does it want regional domination?
- ii. The International Disruption Factor
1. While it is recognized that the breakaway of any nation may involve “state shattering,” it must be determined if this will completely undermine or dissolve the central state from which the new state is coming.
  2. Will the creation of the new nation in any way throw off the international system, create violent conflict between states or disrupt regional harmony?

The criteria listed above also apply in extreme scenarios (e.g. genocide). It would be exceptionally brazen to remedy even great world atrocities through capricious grants of self-determination. If a country is being greatly oppressed, the solution is international humanitarian intervention, not avoidance of a thorough and contemplative examination of viability criteria (lest the international community be weighted with another East Timor). No matter the situation, if a country desires independence but lacks the initial “fitness” for self-government a step-wise “internal” self-determination alternative (e.g. limited autonomy) will be implemented. It is an ignorant disillusionment to claim that any form of limited “self-governance” or “internal” self-determination should be a terminal solution—independence of nation-states is always the final goal and limited autonomy will only perpetuate demands for full independence.

Since this paper intends to offer a theoretical model of self-determination evaluation that can apply globally it would be inappropriate and inefficacious to offer over two hundred separate policy recommendations regarding internal mechanisms of implementation and analysis. Suffice it to say, that each individual country or organization should create/designate a division of their administration that can effectively analyze each claim of self-determination based on the criteria presented here. Though the idea is posited, it would take many more pages to develop the

prospectus for various and effective self-determination bodies, therefore, it is left purposefully vague.

If the international community applies this “viability/fitness” test on a global scale when analyzing the right to self-determination it will create a uniform system that can accurately predict and ensure stability and success. In turn, the stability proffered by this model will further the right of self-determination, which will no longer be seen as a “necessary evil,” but rather a functional opportunity to create political harmony.

### **A “Qualified Absolute” Right: An Assessment Model for Self-Determination – The Functional Caveat**

Thomas Jefferson once said in 1802 that, “Some preparation seems necessary to qualify the body of a nation for self-government.”<sup>152</sup> This seems to fit nicely with the “functional” and “step-wise” program discussed in the introductory section. As noted, there may be times when a nation is not immediately deemed “fit” for self-government and needs some institutional maturation. This is especially true of those nations that fall between 0 and 6.9 on the viability scale provided earlier. The philosophical justification for this “New Trusteeship” system is given under a benevolent form of internationalism: Namely, that the international community should pursue external self-determination of all nations over time and that all nations have a right to external self-determination.

The various forms of internal self-determination should only come first if that is what will make the nation most fit or viable—the exact model of the internal self-determination (i.e. devolution, regional autonomy, etc) will be decided by the international trust comprised of regional powers or international institutions. As with the internal self-determination analytic

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<sup>152</sup> As quoted in Thomas, Jefferson, and John P. Foley, The Jeffersonian Cyclopedic: A Comprehensive Collection of the Views of Thomas Jefferson (New York: Funk & Wagnalls Company, 1900) 29

bodies of states/organizations, it would be inappropriate to delve too deeply into the mechanism upon which step-wise self-determination will be implemented internationally. Again, this is left purposely vague with the understanding that later policy can dictate exactly what and how that body should be developed. There has been an unattributed theory about an international “Economic and Social Security Council,” but specific policy prescriptions are few and far between.

A quick note on the global development of federalism: While the notion of European or African federalism has not reached its full capacity (essentially an issue of breaking down national identities that have existed for centuries) this may be effectual as an alternative to self-determination. As with the post-independence United States it took many generations for New Yorkers, Marylanders and others to lose their specific state identities and conform to a national American identity. Federalism breaks down identity and nationalistic barriers, and while birthing pangs are inevitable, it may help lessen some of the violent self-determination conflicts. This is only true, however, if states were willing to give up their power to a central authority. This is not to say that this is in any way an inevitability (e.g. the Flemish Belgians would never agree to true European federalism), but if it becomes the will of the people there is no need to fight it as an alternative “self-determination” theory.

In general, “subsidiarity” and/or regionalization can be an effective breeding ground for total independence rather than an alternative to self-determination—a minor leagues for states, so to speak.<sup>153</sup> As with all forms of internal self-determination, federalism should primarily hold as an incremental solution, meant to facilitate the international community’s responsibility and the global national right to external self-determination.

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<sup>153</sup> Wolfgang Danspeckgruber, ed., The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 351

## **Creating a Theoretical Framework for Assessing the Legitimacy of Self-Determination: A Brief Critique of the Available Scholarly Theories**<sup>Note</sup>

While the main thrust of this thesis is to create an original theory by which self-determination as a right can be interpreted, evaluated and implemented, there is a need to quickly examine some of the other extant theories. Each alternative viewpoint is broken down along approximately corresponding tracts with the arguments presented earlier in this section. The responses are typically brief since many of these alternative theories have already been fully addressed in earlier sections. However, through this evaluation, the inherent shortcomings of each theory, most of which are singular and unimodal, become more readily apparent.

### **Moral & Philosophical Theories**

The first scholar holds that a cost-benefit analysis must be performed by the would-be nation-state so that they understand that “the costs of achieving independence as well as the costs of maintaining an independent state typically outweigh the benefits.”<sup>154</sup> The proposition is correct that a cost-benefit analysis must take place (in the international community more so than the would-be state), but the notion that the “costs” outweigh the “benefits” is ludicrous. This position should be held up for scrutiny because it does not factor in the moral and ethical aspect that self-determination allows. It is essentially international justice, and often, the remedy against oppression, real or imagined. This position is highly arithmetical and is contradicted by several of the state and small state viability theories stated in previous sections. There can be no true alternative to eventual external self-determination even if it is a difficult road to travel.

The next theory is the so-called “just-cause” theory of self-determination, similar in sentiment to the just-war theory; it claims that self-determination by way of secession is never an

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<sup>Note</sup> This is by no means an exhaustive list of all scholarly theories, but rather a representative cross-section of the major ideas and some rebuttals to effectively demonstrate the greater efficacy of the theories we will put forward as part of our self-determination ideology.

<sup>154</sup> Wolfgang Danspeckgruber ed., The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 351

inalienable right.<sup>155</sup> The onus is placed on the secessionist, and the only instance where secession is legitimated can be in times of great “oppression.” Borrowing from the theory of Locke, just-cause theorists, like Jefferson, claim that revolutionary action (i.e. secession) can only be an attempt to “remedy” horrible injustice.<sup>156</sup> Anything else is simply an inadequate justification.

This theory must be attacked straightforwardly on two grounds: 1) Most secessionist movements begin as a result of ethno-cultural nationalism birthed from political alienation rather than violence or oppression and 2) This theory also promotes the continued discordant fusion of ethnic boundaries. If this idea is taken literally, it would seem that “minor amounts” of ethnic violence or political alienation would not serve as a point of justification under this author’s view. Not only is this morally incorrect, but politically untenable.

### **Legal Theories**

The only truly legal alternative legal argument against traditional self-determination (without getting into the minutiae of international law) is that nations do not have a right to disrupt territorial integrity (and by extension state sovereignty).<sup>157</sup> This problem has already been dealt with earlier in this section where a new paradigm of international law was presented that undermined the basic concept of the territorial integrity doctrine.

The other quasi-legal argument regarding self-determination is that it is, in fact, not a “right” at all, but merely an abhorrent principle. Anglo-Austrian philosopher Karl Popper said in 1994 that:

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<sup>155</sup> Margaret Moore, ed. National Self-Determination and Secession. (Oxford, United Kingdom: Oxford University Press, 1998) 5 and Allen Buchanan, Justice, Legitimacy and Self-Determination: Moral Foundations for International Law. (Oxford, United Kingdom: Oxford University Press, 2004)

<sup>156</sup> *Ibid*

<sup>157</sup> Lee C. Buchheit Secession: the Legitimacy of Self-Determination. New Haven, Conn.: Yale University Press, 1978.

“I think that all lovers of peace and a civilized life should work to enlighten the world about the impracticability and inhumanity of that famous – or shall I say notorious? – Principle of National Self-Determination, which now has degenerated into that ultimate horror, ethnic terrorism.”<sup>158</sup>

Popper, however, is isolated in his sentiments. As the earlier section on self-determination in international law evidences, the “right” to self-determination is well-enshrined. The *jus cogens* and *erga omnes* character of the right is disputable, both inter-textually and in hard fact, and national self-determination is now an established right of international law despite its theoretical shortcomings.

### **Political Theories**

Another argument proffered by many authors is that multiple identities must be accepted, borders must soften and, in turn, “militant nationalism will wane” as something less than full independence becomes the accepted norm.<sup>159</sup> This can be described as the “global” federalist view.

This theory underestimates, however, the fierce nationalism (manufactured or spontaneous/organic) that exists in both Third World regions and the developed world. Most Scots, for example, claim they are more Scottish than British and refuse to have what they perceive as imperialistic “Britishness” thrust upon them. Nationalism, and the right to express that nationalism freely in an independent state, will never cease to exist despite idealist claims to the contrary. Additionally, this paper contends that multinational states need not be accepted under the proposed system. Cultural or ethnic minorities will now have a right to actualize their own self-determination, but as long as they remain a member of a larger pan-national state they are under a burden to assimilate, to an extent, to that cultural identity.

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<sup>158</sup> Karl Popper, "Prague Lecture." Charles University. Charles University, Prague, Czech Republic. 25 May 1994. 2 Apr. 2008 <<http://se2.isn.ch/serviceengine/FileContent?serviceID=23&fileid=98789965-3B06-F6B6-BE3D-C9858AED448F&lng=en>>.

<sup>159</sup> Wolfgang Danspeckgruber ed., The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 356

For example, if Scotland were to become an independent state, the Muslim population should adopt this new Scottish identity. Internal tensions arise if there is resistance in nation-states to a newly created identity as realized in Serbia. While the immigrant minorities who have no historical claim to the newly created homeland cannot engage with self-determination in that immediate area, there is always the opportunity to assimilate or repatriate to their cultural homeland. Resistance by immigrants with little historical claims to an area can undermine and confuse self-determination movements and also grays even the most liberal definition of the “self.” Majority opinion will obviously overwhelm in most instances and immigrant identities will likely dissolve over time. This is not to propose an amelioration of cultural identity, but rather a promotion and acceptance of a national identity. America, for example, has thrived from acceptance of multiple cultural identities within a pan-American national identity. As stated earlier, historical claims over a specific territory can only be granted by the central government or international community before an immigrant population can become self-determined.

Another primarily political argument in the scholarly literature is that the creation of so many nation-states will lead to a “balkanized” and “fractured” international system, similar to the 17<sup>th</sup> and 18<sup>th</sup> century Europe.<sup>160</sup> The constant conflict between small nations scrambling for supremacy and survival will be anarchic and have a destabilizing effect, least of all on international organizations.<sup>161</sup>

While it is difficult to contest this theory without some empirical modeling, the basic rebuttal is that in nearly every instance where states have been able to separate into their component ethnic parts has led to a peaceable accord with diminished ethnic tensions. Is it

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<sup>160</sup> Benyamin Neuberger, National Self-Determination in Postcolonial Africa. (Boulder, Colo.: Lynne Rienner, Inc., 1986) 96

<sup>161</sup> *Ibid.*

possible that Rwanda's 1994 genocide could have been avoided with two separate states for the Hutus and Tutsis? It is not outside the realm of certainty.

### **Self-Government Theories**

Another contention is that terminal "self-governance," defined as a limited internal form of self-determination (i.e. devolution, regional autonomy, etc.), is preferential to full independence in all circumstances. As the author states: "Self-governance is a more positive, extensive, humane and future-oriented concept than classical self-determination; it also avoids secession and is less loaded with less historical and legal-political baggage."<sup>162</sup>

This position must be dealt with *prima facie* on the grounds that it does not allow for actualization of most self-determination goals and will leave many communities/nations feeling isolated and out of the power structure of the state. As noted in the later Scottish case study, self-government is never a terminal scenario and typically increases the push for total independence. It is the "if-you-give-them-an-inch-they'll-take-a-mile" argument: Once people see what is like to have a little independence they recognize how unfortunate it is not to have total independence. The same is true of the Basque region, which has a regional government and autonomy, yet still has violent pushes for independence. The eventual goal of total independence needs to be a stated reality in the international community or political violence as a result of self-determination will continue.

### **Viability/Fitness Theories**

Very few scholars actually lay out viability criteria since they believe this turns self-determination into a game of pure calculations based on nothing more than GDP.

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<sup>162</sup> Wolfgang Danspeckgruber ed., The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World. (Boulder, Colo.: Lynne Rienner, 2002) 352

Oddly, one of the arguments in this category is that viability criteria should not be taken into account when considering self-determination claims. Essentially, some ultra-liberal (sometimes socialists) political scientists put forth that the right of self-determination is so fundamental that it is better to offer political remedies than deny self-determination on the basis of flimsy economics.<sup>163</sup>

However, it is through a combination of viability criteria along with a well-defined theoretical argument of absolute independence that gives the best result. If a truly absolutist view of self-determination was created, without a proper viability evaluation, an anarchic system would erupt (see earlier in Theoretical Section).

There are also some theorists that still resort to Alfred Cobban's classic texts on nationalism and self-determination regarding the theory of small states. Simply put, they contend that a proliferation of mini-states will produce more international beggars than economic dynamos. They believe that the European microstates are an anomaly supported by past private wealth funds with histories of sovereignty at their back.<sup>164</sup>

Microstates, both European and non-European have shown over time that they can in fact be viable. Furthermore, the criteria outlined earlier sets a clear framework that would put off self-determination claims of micro-nations that could not stand on their own. One of the best non-European examples, from an organizational and economic standpoint, is the city-state of Singapore, which has proven that even small nations with limited resources can become economic powerhouses with the right government and infrastructure.

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<sup>163</sup> Allen Buchanan, *Justice, Legitimacy and Self-Determination: Moral Foundations for International Law*. (Oxford, United Kingdom: Oxford University Press, 2004)

<sup>164</sup> Alfred Cobban, *National Self-Determination*. (Chicago: The University of Chicago Press, 1944). and Jorri Duursma, *Fragmentation and the International Relations of Micro-States*. (Cambridge, U.K.: Cambridge University Press, 1996)

A final alternative theory regarding the international community's assessment of self-determination claims comes from a 2004 working paper by political scientist Anne-Marie Gardner. She argues that "in the case of self-determination claims...states measure a claimant group's potential for legitimate self-governance in terms of human rights and democratic norms."<sup>165</sup>

While here theory is well-conceived it is not mutually exclusive from the outline presented in this paper. In fact, many of Gardner's assumptions are subsidiary components of the larger theoretical criteria on "Internal Governance." Gardner concludes from several case studies that human rights and democratic norms are the only reasons states legitimize claims of self-determination. This is true, but if she had also included other criteria, such as economic factors or international stability, her results would have been nearly the same. Therefore, her answer is only a partial conclusion since it did not draw on enough legitimacy-assessing components.

### **Creating a Theoretical Framework for Assessing the Legitimacy of Self-Determination: Conclusion**

This lengthy analysis has hopefully simplified the theoretical sketch outlined in the introductory section. Now the reader should understand four things: 1) The moral, political and legal justifications of an "absolute" right to self-determination; 2) The specific and critical application of a "viability/fitness" test that creates a "qualified absolute" right to self-determination 3) The holding pattern of an international trusteeship for states not yet ready for full-blown independence and 4) A brief critique of several other theories of self-determination. With this in hand, it is possible to finally discover the real-world applications of this theoretical tangle with two case studies.

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<sup>165</sup> Gardner, Anne-Marie. "Judging Self-determination Claims: Legitimate Governance and International Response" *Paper presented at the annual meeting of The Midwest Political Science Association, Palmer House Hilton, Chicago, Illinois, Apr 15, 2004 Online* <.PDF>. 2008-04-12  
<[http://www.allacademic.com/meta/p84498\\_index.html](http://www.allacademic.com/meta/p84498_index.html)>

## V. **Case Studies: Assessing Self-Determination in East Timor & Scotland**

This section will apply the self-determination test for viability to two nation-states as a means of proving its veracity and effectiveness. These case studies are being used with the express understanding that the nations involved have an inherent and inalienable right to self-determination that has already been well-established. Now it is simply a matter of proving that a “qualification” to this absolute right is appropriate and justifiable by means of the “viability/fitness” test and the functional, step-wise caveat. There are some hypothetical leaps of faith that need be made in this section, but nothing that is outside the realm of rational thought.

It may seem odd to pair Scotland and East Timor (now Timor-Leste) in this case study section. These geographically, culturally and economically diametric nations/states do not even have the same type of self-determination. But it is through this disparate view that a methodology of extremes is created. The case studies are neither purely inductive nor deductive in their logic and do not offer a solution, but rather help define the scale of the “viability/fitness” test.

East Timor, on the one hand, shows how the implementation of the viability test mechanism would have ensured that it remained in the “trustee system” for several years before gaining full rights to independence. In simpler terms, East Timor has been recognized as one of the biggest mistakes of the self-determination principle. Therefore, it can be deduced, that nations in similar standing to East Timor are not ready for independence.

Scotland, on the other, is a forward-looking hypothetical. However, given its rather long leash of current devolution, the estimations and predictions for its success have a higher degree of certainty than simple educated guesses. Therefore, it can be assumed, that cases with similar standing to Scotland are ready for independence. Actualization of self-determination has

happened so rarely in the post-Cold War era (and even rarer as a success) that Scotland proved to be the best illustrative example.

As mentioned, the post-Cold War instances of self-determination are best since they most accurately reflect the norms of the current international system. True, the dissolution of Czechoslovakia or the Former Soviet or Yugoslav Republics could have filled in, but none of them have been rousing successes, nor did their citizens make claims for self-determination—rather it was given to them as a result of the central government's collapse. The Scottish case will show itself much clearer in years to come when full independence is attained, but for the present circumstances it is an acceptable alternative.

The goal of these case studies, therefore, is to help define the extreme parameters of recent self-determination cases in real-world terms. They do not purport to be proofs or absolutes, but do help capitalize on the notion that some nations are ready and some not for engaging their right to self-determination. With East Timor at the low end of the viability/fitness scale and Scotland at the high a subjective and objective treatment of other pending self-determination cases is more readily defined.

While both of these case studies are fascinating analytical tools, several other less-developed and purely numeric analyses of other post-Cold War self-determined states will enhance the accuracy of the viability test and its predictive powers by filling in the gaps left by the East Timor and Scotland extremes.

### **The Historical Case of East Timor (Timor-Leste)**

The newest recognized member of the international community is East Timor (now officially called the Republic of Timor-Leste), which falls to the low end of the viability meter after a rocky post-independence history.

<sup>Note</sup>After the fall of Portugal's dictatorship in the "Carnation Revolution" of 1974, a worldwide decolonization process began. East Timor, a Portuguese colony for over 400 years was relinquished and almost immediately invaded and occupied by neighboring Indonesia. Over 200,000 East Timorese are thought to have lost their lives as the U.N. and an international coalition attempted to remove Indonesia from the small half-island nation.

Finally, in 1999, under the more liberal Indonesian government of B.J. Habibie, a United Nations-backed referendum on independence took place. Not surprisingly, East Timor voted overwhelmingly for independence in August of that year. Shortly after the independence vote Indonesian forces began a genocidal carnage in East Timor that was only quelled with the assistance of an international, Australian-led force, INTERFET. After order was restored, many states began recognizing the East Timorese declaration of independence during the summer of 2002. Later that year, East Timor joined the United Nations and became recognized as an independent state.

The country was also lesser-developed, but appeared to be in working order politically for around four years. In 2006, riots broke out in the capital of Dili after the firing of over 1,000 Timorese soldiers. Over 500 people were killed and tens of thousands displaced. Political upheaval ensued and Australia and a multinational coalition were forced to intervene, prompting then-Australian Prime Minister John Howard to remark that perhaps East Timor had been given its independence too soon.<sup>167</sup>

In February of 2008, newly elected President Jose Ramos-Horta and Prime Minister Xanana Gusmão were both victims of a failed assassination attempt and coup by a rebel military

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<sup>Notes</sup> The historical background of the East Timor case compiled from Nevins, Joseph. *A Not-So-Distant Horror : Mass Violence in East Timor*. Ithaca, New York: Cornell University Press, 2005 and Martin, Ian. *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention*. Boulder, Colo.: Lynne Rienner, 2001.

<sup>167</sup> Joseph Nevins, *A Not-So-Distant Horror: Mass Violence in East Timor*. (Ithaca, New York: Cornell University Press, 2005) and Ian Martin, *Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention*. (Boulder, Colo.: Lynne Rienner, 2001)

faction.<sup>168</sup> Australia once again sent troops to help quell that violence that Timorese forces could not or would not handle internally. Many states now view East Timor as a “beggar state,” exactly the type of situation that the international community feared would result from haphazard application of self-determination.<sup>169</sup> After the 2008 coup attempt one Timorese citizen remarked, “East Timor is like a child... We are not ready for choice, we are not ready for democracy.”<sup>170</sup> Perhaps it was a case of “unreasonable expectations,” that has changed Timor-Leste from the U.N.’s self-determination poster-child to a disastrous failed state, but the salient reality is that this country should never have been independent in the first place.<sup>171</sup>

Using the viability criteria established in the previous section will offer a clear-cut and retrospective demonstration: East Timor was not ready for independence in 2002. A point-by-point cross-application of all viability criteria is burdensome in this narrative work, so a few of the more telling points have been highlighted. However, the overall “viability score” for East Timor accounts for all positions of the test. (Note: economic figures are mostly from 2006 since figures for 2002 did not exist).

### **Pre-Conditions**

The first question surrounds the pre-conditions of self-determination claims: Was East Timor a distinct and historical ethno-cultural entity with the support of the people for self-determination? And was there a declaration of representative government and human/minority rights?

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<sup>168</sup> "Shot East Timor Leader 'Critical'" BBC News 11 Feb. 2008. 1 Apr. 2008 <<http://news.bbc.co.uk/2/hi/asia-pacific/7238142.stm>>.

<sup>169</sup> Joseph Nevins, A Not-So-Distant Horror: Mass Violence in East Timor. (Ithaca, New York: Cornell University Press, 2005) and Ian Martin, Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. (Boulder, Colo.: Lynne Rienner, 2001)

<sup>170</sup> Jonathan Head, "East Timor's Struggle to Build a Nation." BBC News 15 Feb. 2008. 1 Apr. 2008 <<http://news.bbc.co.uk/2/hi/asia-pacific/7246109.stm>>.

<sup>171</sup> Joseph Nevins, A Not-So-Distant Horror: Mass Violence in East Timor. (Ithaca, New York: Cornell University Press, 2005) and Ian Martin, Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. (Boulder, Colo.: Lynne Rienner, 2001)

Yes, East Timor held a democratically conducted referendum on independence to confirm popular support for self-determination. Additionally, the people of East Timor are also distinct geographically from Indonesia, speak a different language (Tetum and Portugese), have a different religion (Roman Catholic) and a different shared history (Portugese colony). While there was no declaration of human/minority rights *per se*, under the guiding hand of the U.N. this was implicitly accepted. The meeting of these initial criteria allows us to proceed further with the viability examination.

### **Economics**<sup>172</sup>

East Timor's basic economy has been in shambles ever since its declaration of independence in 1999. According to nearly every World Bank and IMF estimate, both before and after East Timorese independence, the economy is one of the worst in the world and needs a massive restructuring.

- Real, non-oil-related growth has been negative every year since independence and the violence of 2006 and 2008 greatly disrupted many parts of functioning economic activity. (Score: 1)
- GDP per capita in 2005, the typical indication of a nation's wealth, was \$800, 7<sup>th</sup> lowest in the entire world. (Score: 1)

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<sup>172</sup> Note: All Economic Data is from "Timor-Leste." CIA World Factbook, 13 Dec. 2007. Central Intelligence Agency. 13 Dec. 2007 <<https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>>. and World Bank. Country Brief: Timor-Leste, Oct. 2007. 1 Dec. 2007 <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/TIMORLESTEEXTN/0,,contentMDK:20174826~menuPK:294027~pagePK:1497618~piPK:217854~theSitePK:294022,00.html>>. and the 2002 HDI Report [http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor\\_2002\\_en.pdf](http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor_2002_en.pdf)

- There is a continuous source of potential income from natural gas and oil in the Timor Sea, but Timor-Leste has no means of exploiting it for production, and currently relies on Australia to maintain production. (Score: 3)
- The unemployment rate is at 50 percent (4<sup>th</sup> highest in the world) with youth unemployment at almost 70 percent. (Score: 1)
- 42 percent of Timorese live below the poverty line, one of the highest poverty rate in the world. (Score: 1)
- East Timor currently relies on billions of dollars in foreign aid from the U.S., Japan and Australia. This accounts for much of its GDP. (Score: 1)
- East Timor has no way of paying back these foreign loans and cannot pay back most of its debt (Score: 1)
- Bilateral trade agreements do exist, mostly for the Timorese oil, but are often dominated by the more experienced and established party. (Score: 3)
- Inflation (consumer price) stood at 5.40% 130<sup>th</sup> of 240 ranked states (Score: 5)
- Is there a system for assessing and raising revenue through taxes? Yes, the East Timor Minister for Finance and Revenue Services can collect taxes. There is no available data on how much revenue is collected through tax and how much tax is outstanding. U.N. assessments, however, indicate that taxes are regularly collected from businesses but not citizens in rural areas. (Score: 5)

Given these highlights (or lowlights as it were), along with the other quantitative and qualitative economic viability criteria taken in an off-page account, the “Economic Viability Score” of East Timor averages to a 2.45.

**Government**<sup>173</sup>

While many unfortunate occurrences have befallen East Timor in recent years, there were some reasons to be more sanguine about independence in 2002. This assessment will only look at the year surrounding the 2002 recognition of independence, but will draw inferences from later events. Additionally, the major U.N. presence must be discounted in the calculation of Timor's "Governmental" viability.

- Governmental Infrastructure & Confidence in Self-Rule: At the time of independence in 2002, a U.N.-supported government had been in place for over two years. However, the U.N. was asked to stay past their 2002 mandate before independence was given. (Score: 4)
- The civil service of East Timor in 2002 mostly consisted of United Nations, Indonesian and Portuguese officials, and there was a lack of experience in bureaucratic management of the state. (Score: 1)
- There was a stable population in 2002, but there was always a question about whether the government had control or if it was simply propped up by the UNAMET forces. The events of 2006 & 2008 showed the latter to be true. (Score: 2)

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<sup>173</sup> Note: All Government Data is from "Timor-Leste." CIA World Factbook. 13 Dec. 2007. Central Intelligence Agency. 13 Dec. 2007 <<https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>>. and World Bank. Country Brief: Timor-Leste. Oct. 2007. 1 Dec. 2007 <<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/TIMORLESTEXTN/0,,contentMDK:20174826~menuPK:294027~pagePK:1497618~piPK:217854~theSitePK:294022,00.html>>.and Martin, Ian. Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. Boulder, Colo.: Lynne Rienner, 2001.and Nevins, Joseph. A Not-So-Distant Horror : Mass Violence in East Timor. Ithaca, New York: Cornell University Press, 2005. and United Nations Department of Public Information, comp. The United Nations and East Timor: Self-Determination through Popular Consultation. New York: United Nations Department of Public Information, 2000. And the 2002 HDI Report [http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor\\_2002\\_en.pdf](http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor_2002_en.pdf)

- There are still several hundred thousand internally displaced persons as a result of the Indonesian atrocities in 1999. The 2006 uprisings have only heightened and added to the refugee status (Score: 1)
- There is a Supreme Court of Justice and several other administrative judicial districts. As of 2002 these had no significant complaints, but were a bit understaffed and backlogged (Score: 7)
- Timor's infant mortality rate is 65<sup>th</sup> highest in the world at around 45 deaths/1000 births, though general health conditions appear no worse off than those of other small island nations. (Score: 3)
- The literacy rate is only 58.6 percent, well below the international average. Many educators at the secondary and primary level left after the violence of 1999 and 2006. (Score: 2)
- Risk of major disease is high (including bacterial and protozoal diarrhea, hepatitis A, and typhoid fever)—the basic hospital structure that existed in 2002 was destroyed in 2006. (Score: 2)
- Timor-Leste ranked 149<sup>th</sup> in the world out of 219 with 6,040 km of total roads in 2005 (Score: 4)
- Ranked 223<sup>rd</sup> of 229 states in 2006 with only 2500 phone lines in use. The general communication infrastructure is also very “rudimentary.” (Score: 1)

Given these figures, along with other off-page analysis, the viability score of East Timor's “Government” in 2002 was 2.6.

**International/External Relations,<sup>174</sup> Regional Stability and Security<sup>175</sup> & The International Disruption Factor<sup>176</sup>**

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<sup>174</sup> Note: All International/External Data is from "Timor-Leste." CIA World Factbook, 13 Dec. 2007. Central Intelligence Agency. 13 Dec. 2007 <<https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>>. and World Bank. Country Brief: Timor-Leste. Oct. 2007. 1 Dec. 2007

The assessment of all international/external relations is placed under the same caveats as the governmental analysis. However, it is more difficult to estimate the ability of a nation to conduct foreign relations if it has never been given any regional autonomy, therefore, there are less select criteria.

- East Timor did have the ability to conduct bilateral relations in 2002. However, this would have been done from an extremely weak position since the country was often backed by Australia or other Western powers. (Score: 5)
- Timor is recognized by other sovereign powers and has entered several world organizations, including the U.N. (Score: 10)
- Establishment of extensive permanent diplomatic offices abroad was a goal of the young nation-state in 2002 and continues to today. (Score: 3)

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<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/TIMORLESTEEXTN/0,,contentMDK:20174826~menuPK:294027~pagePK:1497618~piPK:217854~theSitePK:294022,00.html>>.and Martin, Ian. Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. Boulder, Colo.: Lynne Rienner, 2001.and Nevins, Joseph. A Not-So-Distant Horror : Mass Violence in East Timor. Ithaca, New York: Cornell University Press, 2005. and United Nations Department of Public Information, comp. The United Nations and East Timor: Self-Determination through Popular Consultation. New York: United Nations Department of Public Information, 2000 and the 2002 HDI Report: [http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor\\_2002\\_en.pdf](http://hdr.undp.org/en/reports/nationalreports/asiathepacific/timorleste/east%20timor_2002_en.pdf)

<sup>175</sup> Note: All Regional/Stability Data is from "Timor-Leste." CIA World Factbook. 13 Dec. 2007. Central Intelligence Agency. 13 Dec. 2007 <<https://www.cia.gov/library/publications/the-world-factbook/geos/tt.html>>. and World Bank. Country Brief: Timor-Leste. Oct. 2007. 1 Dec. 2007

<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/TIMORLESTEEXTN/0,,contentMDK:20174826~menuPK:294027~pagePK:1497618~piPK:217854~theSitePK:294022,00.html>>.and Martin, Ian. Self-Determination in East Timor: The United Nations, the Ballot, and International Intervention. Boulder, Colo.: Lynne Rienner, 2001.and Nevins, Joseph. A Not-So-Distant Horror : Mass Violence in East Timor. Ithaca, New York: Cornell University Press, 2005. and United Nations Department of Public Information, comp. The United Nations and East Timor: Self-Determination through Popular Consultation. New York: United Nations Department of Public Information, 2000.

<sup>176</sup> Antonio M. Manaytay, "The Anatomy of Timor Leste's Crisis: Growing Pains or a Question of Justice?" 11 June 2006. Initiative for International Dialogue. 1 Dec. 2007

<[http://www.iidnet.org/index.php?option=com\\_content&task=view&id=147&Itemid=83](http://www.iidnet.org/index.php?option=com_content&task=view&id=147&Itemid=83)>.

- Much of Timor's military forces in 2002 were provided by UNAMET and Australia and recent events have shown that government does not have control over the military. As a result, East Timor could not stand alone its own defense. (Score: 2)
- The Southeast Asian region surrounding East Timor includes a hostile neighbor in Indonesia, but tensions have since cooled after UN and international intervention. The independence of East Timor did cause some disruption, but international stability and that stability of the central government (i.e. Indonesia) were not massively affected (Score: 5)

In 2002, East Timor's ability to conduct international/external relations seemed to be one of its main positive points. While not a major international player, and due its size and location it never would be, its relative success secured a score of 5.3. This has lessened over the past two years with the reentrance of a multinational force.

### **Final Assessment**

The average score of East Timor during its pre-independence period in 2002 equates to a 3.45 on the scale used here, making it on the cusp of the lowest tier of development. In essence, if the viability/fitness test presented in this thesis had been utilized by the international community in 2002, then East Timor would still be under the wing of the United Nations or other multi-state force. When compared with the results of the U.N.'s Human Development Index (an inaccurate if entertaining statistical translation), Timor-Leste is ranked as the 150<sup>th</sup> of 177 studied countries (on par with Zimbabwe and Djibouti) placing it as one of the "least developed" countries in the world.<sup>177</sup> The World Bank Development Indicator analyses further support this assessment. The international community made a terrific mistake in 2002 by supporting the right

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<sup>177</sup> United Nations. UNDP. Human Development Index. 2007. 1 Dec. 2007  
<<http://hdr.undp.org/en/statistics/>>. And World Bank. Country Brief: Timor-Leste. Oct. 2007. 1 Dec. 2007  
<<http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/TIMORLESTEXTN/0,,contentMDK:20174826~menuPK:294027~pagePK:1497618~piPK:217854~theSitePK:294022,00.html>>.

of East Timor to self-determination. The better scenario when have been an extended incubation period under the enlightened trusteeship system. The predictive model also gives some exceptionally strong indicators that East Timor would devolve into the collapsed status it exists in today.

### **The Historical Case of Scotland**<sup>178</sup>

Scotland presents a more interesting challenge: Assessing the potential growth of a new state without any way to determine the accuracy of the numerical assertions. While there is much less in terms of standalone data, the “functional” independence of Scotland allows for an overall fair assessment based on the viability/fitness criteria.

Scotland entered into a union of crowns and parliaments and by 1707 was a sub-state of the greater United Kingdom. During the post-war years, a new nationalist movement developed in Scotland led by a political group known as the Scottish National Party (SNP). This movement gained greater prominence in the 1970s after discovery of North Sea Oil turned the Scots’ attention towards the viability of an independent Scotland. The 1978 Scotland Act brought an independence referendum to the table in 1979, and while a majority of voting Scots voted in favor of independence, less than 75 percent of the population turned out to participate, invalidating the results. The issue was tabled until 1997 when Scotland won a limited form of autonomy known as devolution. In 1999, the Scotland Act created an independent Scottish Parliament (Holyrood), which had all of the powers of Westminster minus certain provisions controlling national and external relations. In 2007, Alex Salmond and the SNP won a majority of seats in the Scottish Parliament and said they plan to bring the independence issue to a vote in 2010 or 2011.

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<sup>178</sup> Jo E. Murkens, Scottish Independence: A Practical Guide. (Edinburgh, Scotland: Edinburgh University Press, 2002) and Michael Keating The Government of Scotland: Public Policy Making After Devolution. (Edinburgh: Edinburgh P Ltd., 2005)

There is a rather long and complicated proof that I have addressed in a previous essay examining how devolution will lead to Scottish independence (“Ending the Three-Hundred Year Lease: Scottish Devolution and the Disassembly of the United Kingdom,” unpublished essay, Oxford University 2007), but suffice it for the moment that Scottish devolution will indeed prove a “slippery slope” towards an independent Scotland if the SNP can maintain nationalistic zeal and confidence in its leadership abilities.

### **Pre-Conditions**

Is Scotland recognizable as a distinct ethno-cultural entity with the support of the people for self-determination? And was there a declaration of representative government and human/minority rights? Yes, Scotland is a distinct ethno-cultural identity according to the recent Moreno Survey of national identity, which assesses certain region’s beliefs in national identification. The 2006 study showed that a majority of Scots have a higher propensity towards “Scottishness” rather than “Britishness.”<sup>179</sup> Beyond that, however, there is a distinct Scottish culture bred from years of war and contempt for the English as well as a distinct, though little used, Gaelic dialect known as “Scots.”

Additionally, a number of opinion polls have shown that a majority of Scots (around 50-60 percent according to ICM and YouGov) favor independence.<sup>180</sup> This has waned in recent months, but a democratic referendum would ensure the presence of popular support.

Finally, Scotland would have a minority and human rights declaration implicit in its desire to join the European Union and from a long history of tolerance and Western human rights

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<sup>179</sup> Alan Trench ed., The Dynamics of Devolution: the State of the Nations, ( Exeter, U.K.: Imprint Academic, 2005) 117-134

<sup>180</sup> "New Poll Calls for Independence." BBC News 10 Sept. 2006. 13 Feb. 2007 <<http://news.bbc.co.uk/1/hi/scotland/5331992.stm>>. and Various. Scottish Polls: Union Anniversary. London: ICM, 2007. 13 Feb. 2007 <<http://www.icmresearch.co.uk/reviews/latest-polls.asp>>.

values evidenced in the Westminster Parliament. Having met the meeting of these initial criteria allows us to proceed further with a more detailed viability examination

### **Economy**<sup>181</sup>

The Scottish economy has show itself to be one of the most dynamic and resilient financial entities on a national level. There is a long history of finance and banking in Scotland that has helped develop a broad sense of fiscal responsibility.

- In 2006, the Scottish GVA domestic product was estimated at around \$170 billion, which would place it at around 54<sup>th</sup> in the world in raw terms. This GDP estimate is comparable to Finland and Denmark, both of which have nearly the same total population as Scotland (Scotland has approximately 5.4 million permanent inhabitants) (Score: 7)
- Scotland's GDP growth, however, has been slightly slower than the rest of the U.K. and other countries of comparable size at 1.7 percent over the last decade. Interestingly, however, GDP has increased to around 2.1 percent since the full implementation of devolution and the Scottish parliament in 1999. This is an argument the SNP relies on for an economically viable Scottish state. (Score: 5)
- The most recent survey of GDP per capita, the best estimate of a country's wealth, puts it at around \$29,000 per head, which would land Scotland at 34<sup>th</sup> in the world, tied with the European Union average. (Score: 8)
- As with East Timor, there is a potential for a continuous form of revenue from North Sea Oil profits, though Scotland's claim to this post-independence would be tenuous. However, unlike East Timor, Scotland has the ability to exploit this resource. (Score: 7)

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<sup>181</sup> Dr. Andrew Goudie, Scotland. Scottish Executive National Statistics. Scottish Economic Statistics 2007. 18 July 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/07/18083820/0>>.

- Scotland also has several other industries, including banking, manufacturing, heavy industry, chemicals and agricultural/fishing that account for majority of its exports.  
(Score: 9)
- The current unemployment rate is 4.6 percent, which would rank Scotland around 55<sup>th</sup> in the world, tied with the United States (Score: 7)
- Scotland is not in any urgent need of foreign aid and already has well-established trading routes/agreements with the USA, Germany, France, Spain and the Netherlands (the top five export destinations). (Score: 9)
- There is a recognized currency (The Scottish Sterling Pound) that has a fixed exchange rate tied to a sound monetary policy (Score: 10)
- Most initial assessments based on the Copenhagen diagram suggest that Scotland would be able to achieve ascension into the European Union and other international economic organizations (Score: 9)
- International investment in Scotland has increased over the last ten years, and direct investment in the country is allowed under its current devolved status. This would help insure a fair balance-of-payments (Score: 10)

Based on this fiscal analysis, and other off-page works, Scotland scores an 8.1 on the subjective scale of economic fitness criteria.

### **Government**<sup>182</sup>

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<sup>182</sup> First Minister Alex Salmond, Scotland. Scottish Executive. Choosing Scotland's Future: a National Conversation: Independence and Responsibility in the Modern World. 14 Aug. 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/08/13103747/12>>. And Murkens, Jo E. Scottish Independence: A Practical Guide. Edinburgh, Scotland: Edinburgh University Press, 2002. and Goudie, Dr. Andrew. Scotland. Scottish Executive National Statistics. Scottish Economic Statistics 2007. 18 July 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/07/18083820/0>>. And Scotland. General Register Office for Scotland. Population Demographics & Statistics. 2006. 1 Dec. 2007 <<http://www.gro-scotland.gov.uk/census/index>>

If Scotland were to achieve independence today, its government structure would be well intact. There has been an independent “home rule” authority in place for nearly a decade as well as a thriving civil service. The transition to a completely independent state, at least on a governmental level, would only involve the further establishment of diplomatic relations.

- There is a stable population in Scotland, and the government is able to control this population with great efficacy. There are some migratory and immigration issues, however, that will need to be dealt with. (Score: 8)
- Scottish elections have been exceptionally democratic since they began in 1999, and the Scottish people have been used to a democratic system of government for several centuries as part of the United Kingdom (Score: 10)
- The Scottish Court Service (including the Court of Session and Court of the Justiciary) currently has control over many legal issues, though there would need to be a better specified judicial review process for an independent Scotland if it were to be based on a constitution (Score: 8)
- The British National Health Service has consistently ranked in the top 20 according to the World Health Organization charts for several decades. There is little reason to believe that an independent Scotland would allow healthcare standards to fall, although spending might become more difficult as the Barnett Formula cash flow ceased (Score: 8)
- Infant mortality in Scotland matches that of the greater U.K. at around 5.0 death/1000 births. This is around 25<sup>th</sup> lowest in the world (Score: 9)
- The current literacy rate in Scotland is 99.9 percent, which more than meets the global average (Score: 10)

- There is a well-defined set of primary and secondary schools. Scotland is also home to several well-respected institutions of higher education (e.g. University of Edinburgh).  
(Score: 9)
- As of 2000, around 1.6 percent of people in Scotland were ethnic minorities, mostly from former British colonies. These minorities were typically well adjusted and acculturated and do not pose a significant threat to Scottish stability. A representative Scottish government assures that these minorities will feel every bit a part of the political process.  
(Score: 9)
- The Scottish civil service is well-established both in Edinburgh and Westminster and controls a number of daily functions from the postal service to educational administration. A post-independent Scotland would already be well on its way to a highly-developed civil infrastructure. (Score: 9)
- Scottish First Minister Alex Salmond has been a long-time advocate of the right to self-determination and he, or his successor, would most likely continue in this capacity as Prime Minister of Scotland. This is especially true given the history of Scottish oppression. (Score: 10)

Scotland already has a highly developed governmental infrastructure and, given its years of participation in governance, seems fit for immediate self-determination. The analysis presented here along with other data inputs gives Scotland a 9.2 score in the “Government” viability criteria. The significant drop in public funding from the Barnett Formula may take some time to restructure, but overall Scotland appears in good form.

**International/External Relations,<sup>183</sup> International Disruption Factor<sup>184</sup> & Regional Stability<sup>185</sup>**

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<sup>183</sup> First Minister Alex Salmond, Scotland. Scottish Executive. Choosing Scotland's Future: a National Conversation: Independence and Responsibility in the Modern World. 14 Aug. 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/08/13103747/12>>. And Murkens, Jo E. Scottish Independence: A

Scotland is prohibited from engaging in formal diplomatic relations under the terms of devolution and would seemingly appear unprepared in this field. However, experience as members of British diplomatic teams and some initial forays into the international arena belie that assumption.

- The Scottish Executive currently engages in several ministerial trips abroad, mostly to Europe and the United States, and has begun development of international relations on an economic and political level with several non-Western countries such as China. Scotland is obviously constrained by its position as a subordinate entity to conduct foreign relations, but there is little reason to believe that an independent Scotland would not excel at foreign policy. Nearly every developed nation also has a consular office in Scotland, which increases intergovernmental interaction. (Score: 10)
- An independent Scotland meets the established criteria for recognition of independent statehood, and there is little indication to the contrary that any state would refuse to recognize an independent Scottish entity. (Score: 10)

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Practical Guide. Edinburgh, Scotland: Edinburgh University Press, 2002. and Goudie, Dr. Andrew. Scotland. Scottish Executive National Statistics. Scottish Economic Statistics 2007. 18 July 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/07/18083820/0>>. And Scotland. General Register Office for Scotland. Population Demographics & Statistics. 2006. 1 Dec. 2007 <<http://www.gro-scotland.gov.uk/census/index>>

<sup>184</sup> "Home Truths About Home Rule." The Economist 18 May 2006. 7 Feb. 2007 <[http://www.economist.com/world/displaystory.cfm?story\\_id=E1\\_GJQTSJR](http://www.economist.com/world/displaystory.cfm?story_id=E1_GJQTSJR)>.

"The Rose and the Thistle." The Economist 1 Feb. 2007. 7 Feb. 2007 <[http://www.economist.com/surveys/displaystory.cfm?story\\_id=E1\\_RVRNPS](http://www.economist.com/surveys/displaystory.cfm?story_id=E1_RVRNPS)>

<sup>185</sup> First Minister Alex Salmond, Scotland. Scottish Executive. Choosing Scotland's Future: a National Conversation: Independence and Responsibility in the Modern World. 14 Aug. 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/08/13103747/12>>. And Murkens, Jo E. Scottish Independence: A Practical Guide. Edinburgh, Scotland: Edinburgh University Press, 2002. and Goudie, Dr. Andrew. Scotland. Scottish Executive National Statistics. Scottish Economic Statistics 2007. 18 July 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/07/18083820/0>>. And Scotland. General Register Office for Scotland. Population Demographics & Statistics. 2006. 1 Dec. 2007 <<http://www.gro-scotland.gov.uk/census/index>> and Charlemagne. "Scotland's Eurodreams." The Economist 19 Apr. 2007. 1 Dec. 2007 <[http://www.economist.com/world/europe/displaystory.cfm?story\\_id=9038540](http://www.economist.com/world/europe/displaystory.cfm?story_id=9038540)>

- The SNP Scottish Executive has said time and again that an independent Scotland would hope to join the European Union. This provides a safety net against possible UK economic retaliation and also secures a greater place in the world for an independent Scottish nation. (Score: 9)
- The Scots point to Ireland and Denmark as examples of small European countries who thrived economically in the greater European context with a loud political voice (Score: 9)
- Scotland also has a positive outlook in terms of national defense. Not only are all-Scottish regiments some of the most decorated in the U.K. army, but an independent Scotland would have the ability to join NATO and other European security alliances. There is little debate that an independent Scotland could make its military presence (even as a small nation) felt, and this would only further extend to its stance as a legitimate and recognized player in the international community. (Score: 9)
- There are little regional disputes or hostile nations to cause Scotland any difficulty as an independent member of the international community (Score: 10)
- The assumption may be that the United Kingdom will be destroyed if Scotland leaves the Union. However, Northern Ireland, Wales and England still remain, and there have been rumblings that England may, in fact, dissolve the Union. This is due to something known as the “West Lothian” question, which essentially gives Scotland the ability to control policy in England (with Scottish MPs in Westminster), while the English have no control over internal affairs in Scotland (there are no English MSPs). This leads us to believe that there would not be a tectonic shift in the European power game or international norms if Scotland were to become independent. (Score: 8)

Scotland is already leaving its footprint on the international community as a devolved entity, and this influence would grow over time after independence. The overall calculation of the Scottish “International Relations” score equates to a 9.32, one of the highest on the charts.

### **The Final Calculation**

A recent SNP White Paper on Scottish independence pointed out three possibilities for the self-determination movement: 1) Maintenance of the status quo 2) An extension of devolved powers (which is *de facto* if not *de jure* independence) and 3) Total independence<sup>186</sup> This White Paper also clearly pointed, though in ambiguous terms, to some of the benefits of independence as listed above. The SNP and other scholarly assessments are accurate in that an independent Scotland would thrive.

Scotland, much like Quebec, has a high-degree of probable success as an independent state. Again, like Quebec, Scotland now only needs to use its democratic mechanisms to make independence a reality. The final score based on the three-fold examination presented previously is 8.87. The analysis coincides with the HDI score for the United Kingdom, which ranks 16<sup>th</sup> overall. Given the many shared characteristics of Scotland and the rest of the U.K., there is little reason to believe that an independent Scotland would score lower.

According to further calculations the top 34 nations on the HDI index should score between a 9 and 10 on the chart. As countries move down from 1 to 34 on the HDI rankings, their corresponding scores on the index should become increasingly closer to 9. Scotland, therefore, easily fits within the statistical parameters of the data and coincides with a rank of

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<sup>186</sup> First Minister Alex Salmond, Scotland. Scottish Executive. Choosing Scotland's Future: a National Conversation: Independence and Responsibility in the Modern World. 14 Aug. 2007. 1 Dec. 2007 <<http://www.scotland.gov.uk/Publications/2007/08/13103747/12>>.

“highly developed” on the HDI.<sup>187</sup> Based on these “fitness” criteria, Scotland deserves immediate independence and recognition from the international community if the people acquiesce to the possibility.

### **A Brief Analysis of Other Cases of Self-Determination**

It would take many more pages to develop an index for the several hundred claims of self-determination around the globe. However, given the two diametric examples above, it is not a far stretch to draw parallels between Quebec and Scotland or Nagorno-Karabakh and East Timor. While the specific details may vary greatly, if every instance of historical and contemporary self-determination in the post-1992 era was analyzed our model would create an excellent predictive paradigm for post-independence success. Through the evaluation of these two divergent entities, we can easily observe how the cross-application of our criteria could be used to assess both historical and contemporary debates of self-determination. Examples could include 1) Eritrea 2) Czechoslovakia 3) Kosovo 4) Nagorno-Karabakh 5) Quebec and 6) The Basques

A cursory assessment of the self-determination situations in Eritrea and Czechoslovakia yield approximate scores of 4 and 7.5 (the Czechs receive a score of 8.5 and the Slovaks 6.5), respectively based on the “fitness test” criteria at the time of their independence. Post-independence Eritrea fits the model since it fell into internal and external strife (mostly with Yemen and Ethiopia) within five years after its self-determination became reality. The country still faces economic difficulties and most likely should have resorted to internal autonomy (after the peace settlement with Ethiopia and the UN-organized UNOVER vote) under an international umbrella for a few more years. On the other side, the two component entities of the

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<sup>187</sup> United Nations, UNDP. Human Development Index. 2007. 1 Dec. 2007  
<<http://hdr.undp.org/en/statistics/>>.

Czechoslovakian “Divorce” are now ranked 32<sup>nd</sup> (Czechs) and 42<sup>nd</sup> (Slovaks) in the HDI. The criteria fit tightly with the Czech Republic scenario, but did underestimate the ability of an independent Slovakia. Still, in the context of 1993, the understanding of certain governmental and foreign relations situations were more obscure given the recent collapse of communism. However, in the more stable unipolar order of today, this is an acceptable anomaly for predictive purposes.<sup>188</sup> If these established examples, along with the Scots (8.82) and East Timor (3.45) (and some other precedent examples, e.g. Namibia) are used as base points a statistical matrix can easily be created. Then, pending cases of self-determination such as the Quebecois (8.75), Kosovo (3.46), Nagorno-Karabakh (4.12), and the Basques (7.37) (see Appendix D) can be placed within this matrix and quickly assessed for their readiness to enter independence based on the results of previous entities with similar scores. For example, Nagorno-Karabakh and Kosovo have similar scores to Timor-Leste, the logical conclusion, therefore, is that they will experience similar post-independence difficulties. As mentioned other independent and dependent variables can be test to more accurately predict post-independence success.

These basic examples offer some mathematical proof of the “fitness” index as a useful tool in international relations. This successful model, from which the international community can analyze debates of self-determination, should now enter into standard practice and help evaluate many cases of self-determination effectively and universally. Over time nations will have the ability to move up the chart, with clear and targeted improvement goals, and, hence the theoretical principle of an “absolute” and “qualified” right to self-determination is upheld.

## **VI. Conclusion: A Final Analysis of Self-Determination**

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<sup>188</sup> United Nations, UNDP. Human Development Index. 2007. 1 Dec. 2007  
<<http://hdr.undp.org/en/statistics/>>.

“No other concept is as powerful, visceral, emotional, unruly, as steep in creating aspirations and hopes as self-determination,” remarked Wolfgang Danspeckgruber at a 1998 U.N. Conference on self-determination.<sup>189</sup> The same could similarly be said about any theory that attempts to define and substantiate this right.

The complexity and circuitous nature of self-determination is what makes this subfield of independence so incredibly interesting. The very open questions, with no true set of answers, can become an endearing problem not unlike a Rubik’s Cube that, when untangled, displays a beautiful panoply of color and design.

The original two-fold goal of this thesis was to 1) Offer a solid definition of self-determination and its history and 2) Create a theoretical outline for the right to self-determination that could be used by the international community as an evaluative tool. As the mountain of evidence clearly shows, this goal was not accomplished “quickly or easily.” However, after a thorough analysis it should be stated, unambiguously, that these goals were realized.

The normative statement that focused the beginning of this thesis is that the international community should promote an “absolute, inherent and inalienable” right to self-determination. The benefits were described as political, moral and legal—extending into several realms of political theory and philosophical understanding with implied benefits. Beyond a mere assertion, however, the analysis attempted to systematically show that self-determination is a “qualified absolute” right, meaning that while always theoretically present it can be amended. This is not unlike the American right to free speech or the universal right to life. The mechanism that helped

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<sup>189</sup> Dr. Michael C. van Walt van Praag and Onno Seroo, eds., “The Implementation of the Right to Self-Determination as a Contribution to Conflict Prevention,” 21 Nov. 1998, UNESCO Division of Human Rights, Democracy and Peace, 10 Jan. 2008, <<http://www.unpo.org/downloads/THE%20IMPLEMENTATION%20OF%20THE%20RIGHT%20TO%20SELF.pdf>>.

“qualify” the “absolute” nature of self-determination was a varied and detailed test of “viability/fitness” that was later cross-applied to case studies East Timor and Scotland.

These case studies showed the statistical efficacy of the self-government model and explained why the international community would be wise to apply this test to Kosovo—the most pressing current self-determination issue. In short, it could be disastrous, as in East Timor, if the international community backed a dangerous and ineffective Kosovar nation-state for the sole purpose of realizing an unqualified “right” to self-determination. Only time will give the answer, but the numbers speak for themselves—impetuosity or overtly liberal models of self-determination are ineffective and dangerous.

This scientific test of self-government also firmly established a methodology and statistical matrix of proof that a quantitative analysis of the “right” to self-determination could and ought be utilized by the international community. In turn, this test had inherent benefits for nations aspiring to become self-determined—primarily that it ensured their eventual right to self-determination and established shortcomings that could be lead to potential post-independence disaster. A benevolent “trusteeship” was also established to help the international community facilitate the right of self-determination in lesser-developed nations.

Beyond a theoretical design, this thesis attempted to place self-determination in a thorough and complete context both historically and contemporaneously. This historical perspective, coupled with analysis on the main issues of self-determination that exist around the globe today, helped frame the later theoretical arguments and give them conceptuality, nuance and substance.

The uniqueness of this largely hypothetical work is the ability to combine a three-fold theoretical philosophy with an accurate and predictive model for assessing “fitness” of self-government. This, as mentioned, is a new step in the study of self-determination that deserves

more research, vetting and organization moving forward. In the end, hopefully this theory will galvanize the international community into creating concrete policy formulations that will implement strict change regarding national self-determination debates and concretize both the international law and moral theory behind it.

There are several hundred self-determination movements (see Appendix E), some prominent and some under the radar. Without the application of this model and philosophical theory, many of these nations will never see their dream of rightful independence realized. The U.N. and other states and organizations claim to recognize a “right” to self-determination, but allow it to conflict with other principles of international law and ethics. It is time to remove the gray and the opaque and inject a more lucid “qualified absolute” right to self-determination into the international conscious. Only then, can a truly beneficial environment be conceived in which the freedom and happiness of nations is balanced with the norms and procedures of the international community.

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## **Appendix A**

### **Full Text of President Woodrow Wilson’s “Fourteen Points”**

**Source:** BYU Library Website:

([http://wwi.lib.byu.edu/index.php/President\\_Wilson%27s\\_Fourteen\\_Points](http://wwi.lib.byu.edu/index.php/President_Wilson%27s_Fourteen_Points))

Delivered in Joint Session, January 8, 1918

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Gentlemen of the Congress:

Once more, as repeatedly before, the spokesmen of the Central Empires have indicated their desire to discuss the objects of the war and the possible basis of a general peace. Parleys have been in progress at Brest-Litovsk between Russian representatives and representatives of the Central Powers to which the attention of all the belligerents have been invited for the purpose of ascertaining whether it may be possible to extend these parleys into a general conference with regard to terms of peace and settlement.

The Russian representatives presented not only a perfectly definite statement of the principles upon which they would be willing to conclude peace but also an equally definite program of the concrete application of those principles. The representatives of the Central Powers, on their part, presented an outline of settlement which, if much less definite, seemed susceptible of liberal interpretation until their specific program of practical terms was added. That program proposed no concessions at all either to the sovereignty of Russia or to the preferences of the populations with whose fortunes it dealt, but meant, in a word, that the Central Empires were to keep every foot of territory their armed forces had occupied -- every province, every city, every point of vantage -- as a permanent addition to their territories and their power.

It is a reasonable conjecture that the general principles of settlement which they at first suggested originated with the more liberal statesmen of Germany and Austria, the men who have begun to feel the force of their own people's thought and purpose, while the concrete terms of actual settlement came from the military leaders who have no thought but to keep what they have got. The negotiations have been broken off. The Russian representatives were sincere and in earnest. They cannot entertain such proposals of conquest and domination.

The whole incident is full of significances. It is also full of perplexity. With whom are the Russian representatives dealing? For whom are the representatives of the Central Empires speaking? Are they speaking for the majorities of their respective parliaments or for the minority parties, that military and imperialistic minority which has so far dominated their whole policy and controlled the affairs of Turkey and of the Balkan states which have felt obliged to become their associates in this war?

The Russian representatives have insisted, very justly, very wisely, and in the true spirit of modern democracy, that the conferences they have been holding with the Teutonic and Turkish statesmen should be held within open, not closed, doors, and all the world has been audience, as was desired. To whom have we been listening, then? To those who speak the spirit and intention of the resolutions of the German Reichstag of the 9th of July last, the spirit and intention of the Liberal leaders and parties of Germany, or to those who resist and defy that spirit and intention and insist upon conquest and subjugation? Or are we listening, in fact, to both, unreconciled and in open and hopeless contradiction? These are very serious and pregnant questions. Upon the answer to them depends the peace of the world.

But, whatever the results of the parleys at Brest-Litovsk, whatever the confusions of counsel and of purpose in the utterances of the spokesmen of the Central Empires, they have again attempted to acquaint the world with their objects in the war and have again challenged their adversaries to say what their objects are and what sort of settlement they would deem just and satisfactory.

There is no good reason why that challenge should not be responded to, and responded to with the utmost candor. We did not wait for it. Not once, but again and again, we have laid our whole thought and purpose before the world, not in general terms only, but each time with sufficient definition to make it clear what sort of definite terms of settlement must necessarily spring out of

them. Within the last week Mr. Lloyd George has spoken with admirable candor and in admirable spirit for the people and Government of Great Britain.

There is no confusion of counsel among the adversaries of the Central Powers, no uncertainty of principle, no vagueness of detail. The only secrecy of counsel, the only lack of fearless frankness, the only failure to make definite statement of the objects of the war, lies with Germany and her allies. The issues of life and death hang upon these definitions. No statesman who has the least conception of his responsibility ought for a moment to permit himself to continue this tragical and appalling outpouring of blood and treasure unless he is sure beyond a peradventure that the objects of the vital sacrifice are part and parcel of the very life of Society and that the people for whom he speaks think them right and imperative as he does.

There is, moreover, a voice calling for these definitions of principle and of purpose which is, it seems to me, more thrilling and more compelling than any of the many moving voices with which the troubled air of the world is filled. It is the voice of the Russian people. They are prostrate and all but hopeless, it would seem, before the grim power of Germany, which has hitherto known no relenting and no pity. Their power, apparently, is shattered. And yet their soul is not subservient. They will not yield either in principle or in action. Their conception of what is right, of what is humane and honorable for them to accept, has been stated with a frankness, a largeness of view, a generosity of spirit, and a universal human sympathy which must challenge the admiration of every friend of mankind; and they have refused to compound their ideals or desert others that they themselves may be safe.

They call to us to say what it is that we desire, in what, if in anything, our purpose and our spirit differ from theirs; and I believe that the people of the United States would wish me to respond,

with utter simplicity and frankness. Whether their present leaders believe it or not, it is our heartfelt desire and hope that some way may be opened whereby we may be privileged to assist the people of Russia to attain their utmost hope of liberty and ordered peace.

It will be our wish and purpose that the processes of peace, when they are begun, shall be absolutely open and that they shall involve and permit henceforth no secret understandings of any kind. The day of conquest and aggrandizement is gone by; so is also the day of secret covenants entered into in the interest of particular governments and likely at some unlooked-for moment to upset the peace of the world. It is this happy fact, now clear to the view of every public man whose thoughts do not still linger in an age that is dead and gone, which makes it possible for every nation whose purposes are consistent with justice and the peace of the world to avow now or at any other time the objects it has in view.

We entered this war because violations of right had occurred which touched us to the quick and made the life of our own people impossible unless they were corrected and the world secure once for all against their recurrence. What we demand in this war, therefore, is nothing peculiar to ourselves. It is that the world be made fit and safe to live in; and particularly that it be made safe for every peace-loving nation which, like our own, wishes to live its own life, determine its own institutions, be assured of justice and fair dealing by the other peoples of the world as against force and selfish aggression. All the peoples of the world are in effect partners in this interest, and for our own part we see very clearly that unless justice be done to others it will not be done to us. The program of the world's peace, therefore, is our program; and that program, the only possible program, as we see it, is this:

I. Open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind but diplomacy shall proceed always frankly and in the public view.

II. Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants.

III. The removal, so far as possible, of all economic barriers and the establishment of an equality of trade conditions among all the nations consenting to the peace and associating themselves for its maintenance.

IV. Adequate guarantees given and taken that national armaments will be reduced to the lowest point consistent with domestic safety.

V. A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined.

VI. The evacuation of all Russian territory and such a settlement of all questions affecting Russia as will secure the best and freest cooperation of the other nations of the world in obtaining for her an unhampered and unembarrassed opportunity for the independent determination of her own political development and national policy and assure her of a sincere welcome into the society of free nations under institutions of her own choosing; and, more than a welcome, assistance also of every kind that she may need and may herself desire. The treatment accorded Russia by her sister nations in the months to come will be the acid test of their good will, of their comprehension of

her needs as distinguished from their own interests, and of their intelligent and unselfish sympathy.

VII. Belgium, the whole world will agree, must be evacuated and restored, without any attempt to limit the sovereignty which she enjoys in common with all other free nations. No other single act will serve as this will serve to restore confidence among the nations in the laws which they have themselves set and determined for the government of their relations with one another.

Without this healing act the whole structure and validity of international law is forever impaired.

VIII. All French territory should be freed and the invaded portions restored, and the wrong done to France by Prussia in 1871 in the matter of Alsace-Lorraine, which has unsettled the peace of the world for nearly fifty years, should be righted, in order that peace may once more be made secure in the interest of all.

IX. A readjustment of the frontiers of Italy should be effected along clearly recognizable lines of nationality.

X. The peoples of Austria-Hungary, whose place among the nations we wish to see safeguarded and assured, should be accorded the freest opportunity to autonomous development.

XI. Rumania, Serbia, and Montenegro should be evacuated; occupied territories restored; Serbia accorded free and secure access to the sea; and the relations of the several Balkan states to one another determined by friendly counsel along historically established lines of allegiance and nationality; and international guarantees of the political and economic independence and territorial integrity of the several Balkan states should be entered into.

XII. The Turkish portion of the present Ottoman Empire should be assured a secure sovereignty, but the other nationalities which are now under Turkish rule should be assured an undoubted security of life and an absolutely unmolested opportunity of autonomous development, and the Dardanelles should be permanently opened as a free passage to the ships and commerce of all nations under international guarantees.

XIII. An independent Polish state should be erected which should include the territories inhabited by indisputably Polish populations, which should be assured a free and secure access to the sea, and whose political and economic independence and territorial integrity should be guaranteed by international covenant.

XIV. A general association of nations must be formed under specific covenants for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small states alike.

In regard to these essential rectifications of wrong and assertions of right we feel ourselves to be intimate partners of all the governments and peoples associated together against the Imperialists. We cannot be separated in interest or divided in purpose. We stand together until the end. For such arrangements and covenants we are willing to fight and to continue to fight until they are achieved; but only because we wish the right to prevail and desire a just and stable peace such as can be secured only by removing the chief provocations to war, which this program does remove. We have no jealousy of German greatness, and there is nothing in this program that impairs it. We grudge her no achievement or distinction of learning or of pacific enterprise such as have made her record very bright and very enviable. We do not wish to injure her or to block in any way her legitimate influence or power. We do not wish to fight her either with arms or

with hostile arrangements of trade if she is willing to associate herself with us and the other peace-loving nations of the world in covenants of justice and law and fair dealing. We wish her only to accept a place of equality among the peoples of the world, -- the new world in which we now live, -- instead of a place of mastery.

Neither do we presume to suggest to her any alteration or modification of her institutions. But it is necessary, we must frankly say, and necessary as a preliminary to any intelligent dealings with her on our part, that we should know whom her spokesmen speak for when they speak to us, whether for the Reichstag majority or for the military party and the men whose creed is imperial domination.

We have spoken now, surely, in terms too concrete to admit of any further doubt or question. An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak.

Unless this principle be made its foundation no part of the structure of international justice can stand. The people of the United States could act upon no other principle; and to the vindication of this principle they are ready to devote their lives, their honor, and everything they possess.

The moral climax of this the culminating and final war for human liberty has come, and they are ready to put their own strength, their own highest purpose, their own integrity and devotion to the test.

## **Appendix B**

### **Article 22 of the Covenant of the League of Nations, 28 June 1919**

**Source:** Yale University's "Avalon Project"

(<http://www.yale.edu/lawweb/avalon/leagcov.htm#art22>)

Article 22. To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the formance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population.

In every case of Mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

### Appendix C

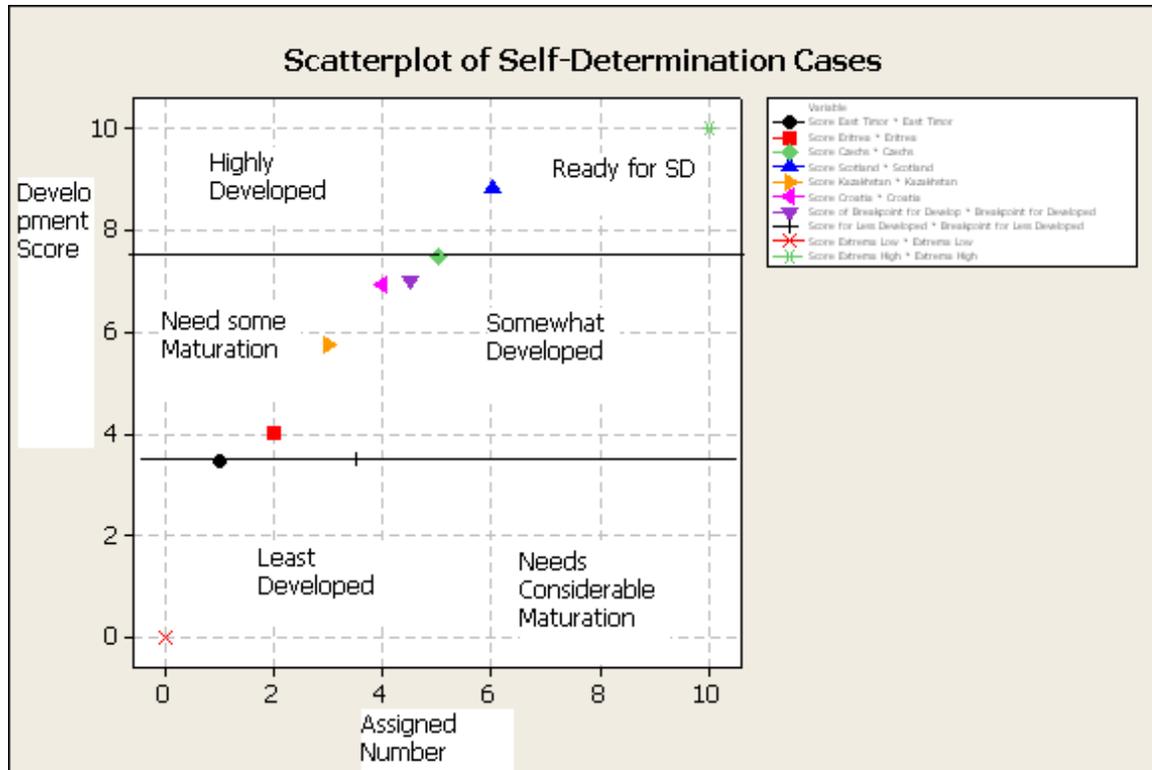
Source: U.N. Special Committee on Decolonization  
(<http://www.un.org/Depts/dpi/decolonization/trust3.htm>)

#### NON-SELF-GOVERNING TERRITORIES LISTED BY GENERAL ASSEMBLY IN 2002

Territory	Administration	Area (sq.km.)	Population <sup>1</sup>
<b>AFRICA</b>			
Western Sahara	<sup>2</sup>	266,000	<sup>3</sup>
<b>ATLANTIC AND CARIBBEAN</b>			
Anguilla	United Kingdom	96	11,960
Bermuda	United Kingdom	53	6,997
British Virgin Islands	United Kingdom	153	23,000
Cayman Islands	United Kingdom	260	39,410
Falkland Islands (Malvinas)	United Kingdom	11,961	2,391
Montserrat	United Kingdom	98	5,000
St. Helena	United Kingdom	122	6,000
Turks and Caicos Islands	United Kingdom	430	24,000
United States Virgin Islands	United States	340	108,612
<b>EUROPE</b>			
Gibraltar	United Kingdom	6	26,703
<b>PACIFIC AND INDIAN OCEANS</b>			
American Samoa	United States	197	57,291
Guam	United States	549	154,805
New Caledonia <sup>4</sup>	France	35,853	215,904
Pitcairn	United Kingdom	5	46
Tokelau	New Zealand	10	1,518

### Appendix D

A basic breakdown of the defined areas corresponding to development and self-determination.



## Appendix E

### A Table of 70 non-violent movements of self-determination as represented by the UNPO

**Source: Unrepresented Nations and Peoples Organization (UNPO)**

Note: Wikipedia maintains what appears to be the only “comprehensive” list of self-determination movements, but this is not a credible resource for scholarly discussion.

<u>Abkhazia</u>	<u>Hungarian Minority in Romania</u>	<u>Ogoni</u>
<u>Aboriginals of Australia</u>	<u>Ingushetia</u>	<u>Oromo</u>
<u>Acheh</u>	<u>Inkeri</u>	<u>Rehoboth Basters</u>
<u>Ahwazi</u>	<u>Inner Mongolia</u>	<u>Rusyn</u>
<u>Albanians in Macedonia</u>	<u>Iranian Kurdistan</u>	<u>Sanjak</u>
<u>Assyria</u>	<u>Iraqi Kurdistan</u>	<u>Scania</u>
<u>Balochistan</u>	<u>Iraqi Turkmen</u>	<u>Shan</u>
<u>Bashkortostan</u>	<u>Kalahui Hawaii</u>	<u>Sindh</u>
<u>Batwa</u>	<u>Karenni State</u>	<u>Somaliland</u>
<u>Bougainville</u>	<u>Khmer Krom</u>	<u>South Moluccas</u>
<u>Buffalo River Dene Nation</u>	<u>Komi</u>	<u>Southern Azerbaijan</u>
<u>Buryatia</u>	<u>Kosova</u>	<u>Southern Cameroons</u>

Cabinda  
Chechen Republic of Ichkeria  
Chin  
Chittagong Hill Tracts  
Chuvash  
Circassia  
Cordillera  
Crimean Tatars  
East Turkestan  
Gagauzia  
Greek Minority in Albania  
Hmong

Kumyk  
Lakota Nation  
Maasai  
Maohi  
Mapuche  
Mari  
Mon  
Montagnards  
Nagalim  
Nahua Del Alto Balsas  
Nuxalk

Taiwan  
Talysh  
Tatarstan  
Tibet  
Tsimshian  
Tuva  
Udmurt  
Vhavenda  
West Balochistan  
West Papua  
Zanzibar

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