



IRAI

2017 ■ INTERNATIONAL
CONFERENCE

SELF-DETERMINATION IN THE 21ST CENTURY:
COMPARATIVE AND INTERNATIONAL PERSPECTIVES

2017 IRAI INTERNATIONAL CONFERENCE

NOVEMBER 10TH,

AUDITORIUM, GRANDE BIBLIOTHÈQUE (BANQ)

An academic conference that is open to the public

OPENING REMARKS BY THE PRESIDENT OF THE IRAI

8h45



DANIEL TURP

Université de Montréal, Québec

Biography

Daniel Turp is a graduate of the Université de Sherbrooke, the Université de Montréal and the University of Cambridge, and holds a doctorate from the Université de droit, d'économie et de sciences sociales de Paris (Paris II) (summa cum laude). He is a full professor at the Faculty of Law of the Université de Montréal. He has been teaching advanced constitutional law, public international law and international and constitutional human rights law since 1982. He has also been a visiting professor at several universities in Québec, Canada and Europe, as well as at the International Institute of Human Rights in Strasbourg, France. He is the author of many books and articles on international and constitutional law.

INTRODUCTORY LECTURE

9h15



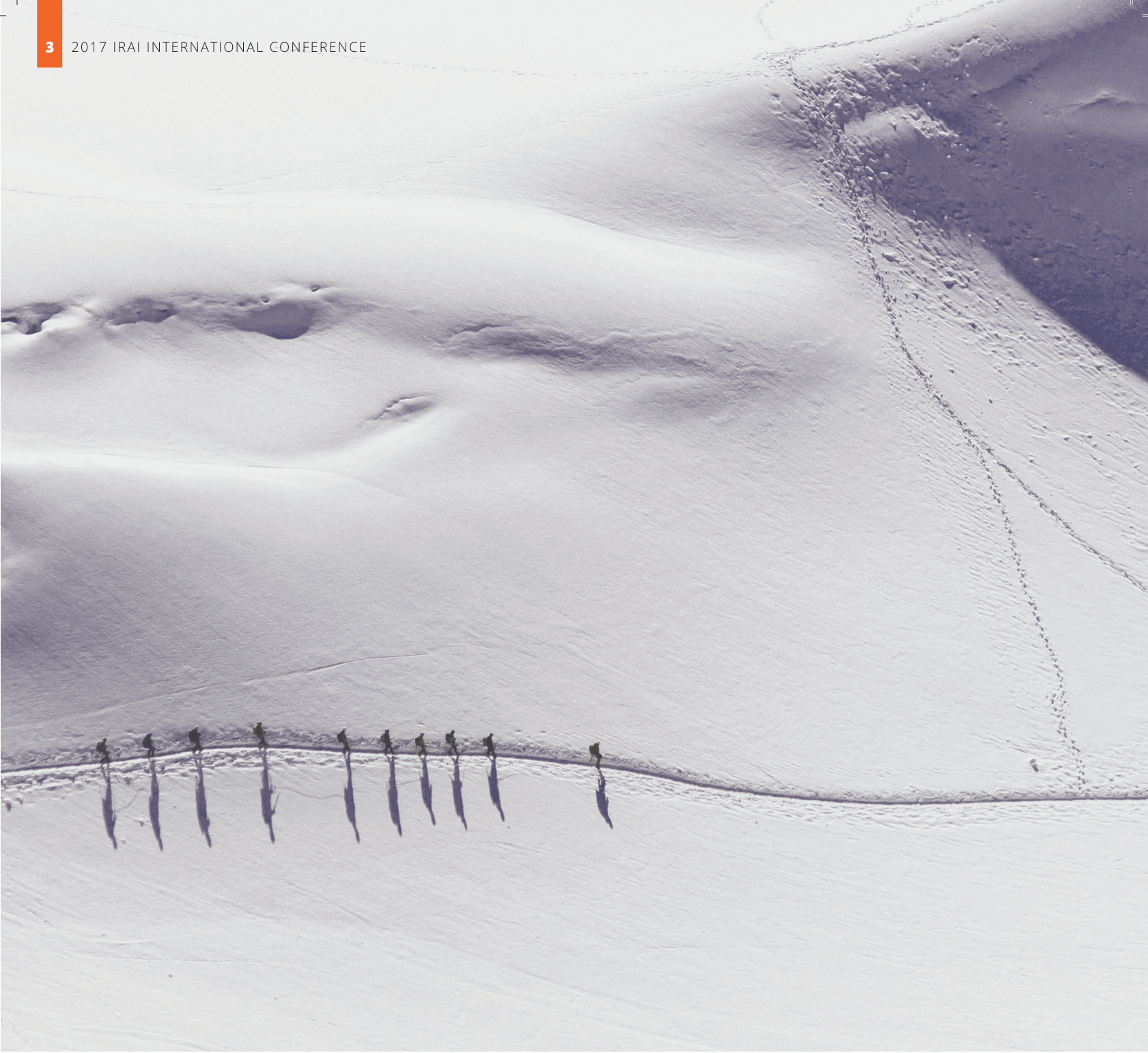
WOLFGANG F. DANSPECKGRUBER

Université Princeton, United States of America

Title: Self-Determination in Our Times / A Classic Concept Re-invigorated.

Biography

Wolfgang Danspeckgruber is the Founding Director of the Liechtenstein Institute on Self-Determination at Princeton University (LISD). He is also the founder and chair of the Liechtenstein Colloquium on European and International Affairs (LCM), a private international diplomacy forum. Danspeckgruber researches, teaches and writes on the theory and practice of international diplomacy, private diplomacy and crisis diplomacy; on the interactions between religion, values, and diplomacy; and on self-determination, security, and stabilization. Regions of interest and involvement, also in private diplomacy, comprise Europe, the wider Middle East and Central Asia.



SESSION 1

10:00 AM

Self-Determination: Philosophical and Political Perspectives

This session aims to analyze the concept of self-determination and the concept of a people. It will also present the different ways in which competing theories conceive of the self-determination of peoples.

From Rationalism to Pragmatism: A Real Transformation in Self-Determination Theory?**DAVID HALJAN**

Katholieke Universiteit Leuven, Flanders

Philosophical, theoretical attention to self-determination has moved on from normative, positivistic justifications for its existence. Self-determination finds itself to be principally a cornerstone (sometimes unexpressed) supporting the now-active, prominent discussions on democracy, pluralism, sovereignty, constituent power, populism, and the like. Debate here is more likely to prescind from high principles of self-determination and liberalism in searching for answers—at least until some crisis or other draws renewed attention to first principles. This current accent on applied philosophy rather than on ontological foundations in self-determination studies can reflect a capitalizing on achieved gains. But, considering that shift and a more conservative (or illiberal) countermovement, I intend to argue that it likely signals a wider change in mindset and focus, one that is starting (at long last) to reconsider the fundamentals of political, associative relations—fundamentals which self-determination itself had taken for granted.

***Biography***

David Haljan is Visiting Professor of Law and State with University of Hasselt and Research Fellow in Public Law with the University of Leuven. Educated in Canada (BA, LLB), London (LLM) and Leuven (PhD), he practised law in Canada before pursuing an academic career. Spanning legal philosophy and comparative public law (constitutional, administrative and international law), his research examines the sources and structures of social power articulated through law and politics, and the creation and dissolution of legal and political authority. His current work focusses on the areas of constituent power, deliberative democracy and the boundary between the public and the private. He has published a number of articles, books and notes.

What is a people?**ALAIN DIECKHOFF**

Sciences-Po Paris, France

The right of a people to self-determination is a principle that, despite its apparent simplicity, raises significant difficulties, the most notable of which is a result of the inherent plasticity of that notion of “a people.” Even though there are certain characteristics, like language, history, and religion, that can serve as ties that bind a group of people together, there are no strictly objective criteria by which to define “a people.” Indeed, it is a purely subjective notion, in the sense that a people exists only insofar as a significant number of individuals, together, recognize themselves in it and feel themselves belonging to it. It is in the name of such a shared identity that nationalism claims the right to self-determination, which, although legally grounded, remains in the end a political question.

***Biography***

Alain Dieckhoff is the Director of Research at the Centre National de la Recherche Scientifique (CNRS) and the Director of the Centre de Recherches Internationales at Sciences Po, in Paris. An expert on the Middle East, his work has focused on Israeli society and the Arab-Israeli conflict. He has also worked, from a comparative perspective, on the transformations of contemporary nationalism. His recent publications include *L'enjeu mondial : Religion et politique* (ed.) (Paris: Presses de Sciences Po, 2017); *Le conflit israélo-palestinien* (Malakoff: Armand Colin, 2017); and *La nation dans tous ses États : Les identités nationales en mouvement* (Paris: Flammarion, 2012). He has served as visiting professor in a great number of universities internationally, in Jerusalem and Tel Aviv, at The Graduate Institute of Geneva, at UQÀM, and at the London School of Economics. He is a member of the scientific council at the Princeton Institute for International and Regional Studies.

SESSION 2

11:15 AM

Self-Determination: The Emergence of a New Right?

This session aims to answer the following question: to what extent does the right to decide imply (or not imply) the emergence of a new right to self-determination? Thus, we are asked to reflect on the issues surrounding the right of peoples to determine themselves and on the status of this right in international law, as well as in comparative constitutional law.

The Procedural Renewal of the International Right to Self-Determination

EMANUEL CASTELLARIN

University of Strasbourg, France

In general terms, international law regarding a people's right to self-determination has not been subject to any major changes since decolonization. Nevertheless, recent practice presents us with something new in the procedural sense—namely, the rise of the referendum on independence, which is to say, a vote by which the population of a given territory belonging to a particular state speaks directly to the possibility of constituting a state of its own. Such referendums seem to have become unavoidable, regardless of whether they appear hopeless (as in the cases of Venice or Hong Kong) or whether they are organized with the consent of the central power (as in Québec, Montenegro, South Sudan or Scotland), without such consent (as in Catalonia) or even with the support of a neighboring state (as in South Ossetia, Crimea, Donetsk or Luhansk).

Such a phenomenon brings about an evolution in international law on the self-determination of peoples, without, however, fostering external self-determination. In international law, a free and fair referendum on independence seems to have become a necessary condition of external self-determination. It is not, however, a sufficient condition, for positive international law does not refer to any such general obligation to hold a referendum on independence. Thus, the procedural realm of self-determination may have real, substantive effects. Paradoxically, the referendum on independence seems to be useful mostly in the context of internal self-determination.



Biography

Emanuel Castellarin has been a professor of public law at the University of Strasbourg since 2016. Between 2010 and 2016, he was student-researcher at the Sorbonne School of Law (Université Paris I), where he authored a thesis called *"The European Union's Role in International Economic Institutions"* (published by Pedone, 2017). He has also published several articles about general international law and in international economic law.

The constitutional status of the right to decide**MARTHE FATIN-ROUGE STEFANINI**

Aix-Marseille University, France

Granting the “right to decide” to one part of a state’s population is not explicitly enshrined in constitutions. Although some notions come close to it, as in the right to self-determination sometimes provided for certain populations, claims to the right to decide are increasingly made on a wholly separate basis in order to get around different international and constitutional obstacles blocking the right to unilaterally secede. Even where the exact limits of such a right remain ambiguous, its constitutional status is beginning to define itself, particularly through constitutional jurisprudence of the Spanish Constitution Tribunal, which may have rejected the most extreme version of this claim (unilateral secession), but at the very least admitted its existence in a 2014 decision. Thus, while it may be perfectly logical for states to contest such rights from a strictly constitutional point of view, it is clear that claiming such rights is proof of a political will. Indeed, the political dimension of the conflict opposing the state itself and whatever entities claiming a right to decide no doubt marks the limits of a strictly constitutional understanding of the question. Still, constitutional law has a primary role to play in the definition of the democratic guarantees that would frame the exercising of such rights. What exactly remains, then, is to define who decides, how and about what. Moreover, if exercising the right to decide must pass through the voting booth, constitutional guarantees must exist in order to ensure the full sincerity of the will expressed.

***Biography***

Marthe Fatin-Rouge Stefanini is the Research Director of the CNRS, and Codirector of the UMR 7318 DICE Center for Comparative European and International Law at Aix-Marseille University. An expert on questions surrounding the control of referendums by constitutional courts, she has also worked a great deal on the issue of norms and constitutional disputes, as well as on electoral rights and referendums.

The « Right to Decide » : a Constitutional Right in the Democratic State**MERCÈ BARCELÓ I SERRAMALERA**

University Autonomous of Barcelona, Catalonia

Since 2010, millions of Catalans have taken to the streets to claim for themselves the “right to decide” their own futures. The now-famous slogan of these popular movements has evolved into a legal concept, and so, into an object of study across different academic arenas in Europe. The “right to decide,” thus, has carved out a place for itself within legal studies on the right to self-determination and the rights of minorities. While the “right to decide” shares a number of characteristics with these other rights, it bears certain unique traits that identify it as a right unto itself. Specifically, it is a right that guarantees a democratically organized community’s will to redefine its political status and, so, to establish itself as an independent state. This presentation will describe the genealogy of this right to decide and then analyze its basis and implications.

***Biography***

Mercè Barceló i Serramalera completed her doctoral studies at the Max Planck Institute in Heidelberg, Germany, where she defended a thesis called *“The German Federal Constitutional Court: Case-Law Criteria in the Resolution of Conflicts between the Bund and Länder”* (1988). She focusses especially on composite states, such as the Spanish autonomous state and the German federal state. She is a professor at the Autonomous University of Barcelona (UAB), where she has held the Chair in Constitutional Rights since 2006. She is Director of the Groupe de Recherche d’Études Fédérales et Autonomiques (GREFA) and the coordinator of the Praga Collective in Defense of the Catalanian Citizens’ Right To Decide.

SESSION 3

2:00 PM

Self-Determination, Democracy and Citizenship

This session aims to examine external self-determination from the point of view of the principle of democracy. First, we will look at the recourse to referendums through a historical and comparative lens. Particular attention will be paid to referendums on self-determination in Catalonia, Scotland, Iraqi Kurdistan, South Sudan and East Timor. Finally, the roles of the citizen and of civil society in the process of external self-determination will be examined.

What's Law Got to Do With It? Independence Referendums and IR Realism**MATT QVORTRUP**

Coventry University, England

When are independence referendums successful? Some independence referendums have been successful; others have been ignored. Drawing on international relations theory, the paper presents an overview of the factors conducive to successful implementation of votes on independence and statehood. The paper will, in particular, focus on the cases of Timor-Leste and South Sudan—though more recent cases like Catalonia and Kurdistan will also be considered.

***Biographie***

Matt Qvortrup is Professor of Applied Political Science and International Relations at Coventry University. An expert on comparative constitutional engineering and European politics, Professor Qvortrup is the author of the book *Angela Merkel: Europe's Most Influential Leader*, which was described by Kirkus Reviews as "necessary reading for anyone who wants to broaden his or her perspective on the world today." Professor Qvortrup earned his doctorate in politics at Brasenose College, University of Oxford, in 2000. Also a qualified lawyer, he holds a diploma from the College of Law, London.

Les processus constitutants participatifs et le droit de décider**JAUME LÓPEZ HERNANDEZ**

University Pompeu Fabra, Catalonia

Democratic innovation in the 21st century should not only aim to improve public policymaking or the electoral process, but should also address more fundamental issues: the possibility for citizens to participate in the foundational underpinnings of their political community through participatory constituent processes. In Thomas Jefferson's words: "Every generation should have to renew its Constitution."

How to develop, then, a constitutional text that takes into account the citizens' deliberation under the best possible conditions? From the analysis of the experience of five recent cases of constitutional reform with participation (Iceland, Ireland, Bolivia, Ecuador and Chile), some positive and negative lessons will be drawn in order to respond to this question.

Secondly, the focus will move to Catalonia, a unique case on the international scene, where the demand made by civil society and some political parties to exercise the collective right to decide has been closely linked to the demand to engage in a constitution-making process in the terms described above.

Finally, the connection between the right to decide and the citizen-based participatory constituent processes as expressions of the same phenomenon will be analysed: the continuous development of the democratic principle and the extension of the citizens' power on which it is based (whether in the creation of new independent states, or in the drafting of the constitution).

***Biography***

Jaume López is a professor of political science at the Universitat Pompeu Fabra (UPF) and at the Institut Barcelona d'Estudis Internacionals (IBEI). He holds a PhD in Political Science from the UPF and a Master in Philosophy of Social Sciences from the London School of Economics and Political Science. His fields of study are democratic innovation, collective action, the right to decide in connection with constitution-making processes and the epistemology of the social sciences. He has been the director of the programme on citizen-based constitution-making processes organized by the Catalan government (2017). He is coauthor of: *The Right to Decide: Theory and Practice of a New Right* [in Spanish] (2015), *New Statehoods and Processes of Sovereignty* [in Catalan] (2010) and *Analysis of Experiences of Direct Democracy in the International Sphere* (1995-2007) [in Spanish] (2009).

Between Two Unions: Scotland and the Politics of Independence

NICOLA MCEWEN

University of Edinburgh, Scotland

In September 2014, Scots voted, by a margin of 55-45, to remain in a political union with the rest of the United Kingdom. In June 2016, the UK electorate, by a margin of 52-48, voted to leave the European Union. Both were expressions of national self-determination. In the case of the latter, however, the UK electorate's determination to leave the EU was not shared by Scottish voters, some 62 percent of whom voted Remain. The Brexit context exposes the limitations on rights to self-determination when the boundaries of the demos are contested. It also opens up again the issue of Scottish independence, posing new challenges, potential barriers and opportunities. The process of Brexit may lead to a revisiting and potential weakening of the Scottish devolution settlement, which was itself the result of a referendum in Scotland in 1997 and regarded by its architects as "the settled will" of the Scottish people. Brexit has already provided a catalyst through which the SNP Government sought and secured a mandate for a new referendum on independence, although there is as yet little appetite to proceed with one. Even if another independence referendum is held, Brexit poses new challenges to the SNP's definition of independence, which was predicated on a strong partnership with the rest of the UK within the context of the European single market and the European Union. This contribution will discuss the dynamics of Scottish self-government within the context of the changing and uncertain constitutional environment that has been unfolding since the 2014 independence referendum, and will expose both the opportunities and the challenges it presents.



Biography

Nicola McEwen is Professor of Territorial Politics at the University of Edinburgh and Associate Director of the Centre on Constitutional Change. She is also a Research Leader under the UK in a Changing Europe, a programme set up by the Economic and Social Research Council to examine Brexit and its consequences. Nicola has published widely in the field of territorial politics, multilevel government and nationalism, and is actively involved in informing debate within the wider policy and political community, through media work, public engagement, parliamentary advice and consultancy. She was awarded an ESRC Senior Scotland Fellowship to examine the implications of Scottish independence for cross-border cooperation and intergovernmental relations, and her work within the Centre on Constitutional Change focuses on examining the evolution of UK devolution, intergovernmental relations and the implications of Brexit for UK territorial politics. Other recent research projects include work on elections and political behaviour, multilevel environmental and energy policy and the territorial politics of welfare. She is part of the project examining Brexit and the multilevel governance of energy, supported by the UK Energy Research Centre.

SESSION 4

3:45 PM

Self-Determination and Indigenous Peoples

This session aims to examine Indigenous peoples' right to self-determination by looking at the case of New Caledonia, the case of the Andean Community, and the case of the Maori people.

Indigenous Rights or National Independence?**The Paths towards Self-Determination in the Territories of French Oceania****NATACHA GAGNÉ**

Université Laval, Quebec

Although, historically, the “return of sovereignty” promised by the end of the colonial period did, generally speaking, correspond to the rise of independence—that is, to the fulsome sovereignty described by international law—this option seems less likely today. In New Caledonia, as in French Polynesia, the road to national independence remains clear, while the “Indigenous strategy,” born of a worldwide movement and of UN norms related to Indigenous rights, is also being explored. The latter is a relatively new road leading to the return to sovereignty. Political leaders and other coalitions began to explore the possibilities opened by such a strategy in the mid-1990s. While it remains a relatively marginal strategy within the political arena of these French territories, the situation is beginning to change, particularly in New Caledonia. So we ask Why? In what way is the demographic weight of Indigenous people playing a role in the choice of political strategies? What, in the colonial history of French Polynesia and New Caledonia, or in the context of the French Republic itself, sets the course towards self-determination? Citing local actions and voices, as well as the contexts that situate them, this presentation will explore the way in which different strategies of self-determination are understood and deployed. I will show how the frame of reference for Indigenous people of French Polynesia’s struggles for self-determination are radically different from those chosen by other Indigenous groups both locally and internationally.

***Biography***

Natacha Gagné is a full professor in the department of anthropology at Université Laval. Her research focusses on the process of decolonization and the redefinition of sovereignty, on coexistence in pluralist states and on identity politics in French Polynesia, New Caledonia and New Zealand. She has published several works, including *Indigeneities: Seen from France and Quebec*, with M. Thibault and M. Salaün (Presses de l'Université Laval, 2009), *The Faces of Sovereignty in Oceania*, with M. Salaün (L'Harmattan, 2010) and *Being Māori in the City* (University of Toronto Press, 2013).

Three Main Challenges of the Free Determination of Indigenous Peoples in Latin America**RAQUEL YRIGOYEN FAJARDO**

Pontifical Catholic University of Peru

In Latin America, three main challenges of the free determination of Indigenous peoples are related to the identification of Indigenous peoples and to the control of natural resources and their own institutions. The main problem is that national regulation, captured by private interests, impedes the enforcement of international and more progressive laws related to Indigenous peoples' rights, resulting in the denial of self-identification—the right of Indigenous peoples to define their own priorities of development or “good living,” and to exercise Indigenous self-government and jurisdiction without colonial restrictions.

***Biography***

Raquel Yrigoyen Fajardo is a Peruvian lawyer, with a master's and a PhD in law, specializing in anthropology and Indigenous customary law. She has worked in the UN in several countries of Latin America and Asia on issues such as access to justice, legal pluralism and Indigenous peoples' rights. Now she is Professor of the Pontifical Catholic University of Peru and a founding member of the International Institute on Law and Society / Instituto Internacional de derecho y Sociedad-IIDS.

Maori Self-Determination and the Politics of Contemporary Sovereignty

DOMINIC O'SULLIVAN

Charles Sturt University, Australia

Since its signing in 1840, New Zealand Governments have maintained that the Treaty of Waitangi was a Maori secession of sovereignty to the British Crown. In 2015 the Waitangi Tribunal held that this was not, in fact, the Maori intent. Nor is it a legitimate contemporary interpretation. The Government contests the finding, which raises important questions about the nature, location and distribution of political authority—questions of how sovereign authority might be exercised in the liberal democratic state. Do Maori and Crown sovereignty conflict, or does liberal democracy provide scope for differentiated authority? Can liberal democracy rationalize a Maori citizenship that exists simultaneously within the state and beyond it through an extant authority belonging to tribal nations? Could that citizenship reflect sovereign authority?

From its consideration of these questions, the paper argues that the Tribunal finding has given momentum to a reconfiguration of New Zealand public sovereignty to make it a political authority not held exclusively by Maori or by the Crown. The paper explains the complexities of contemporary public sovereignty and what these mean for a contemporary Maori politics of self-determination.



Biography

Dominic O'Sullivan is an associate professor of political science at Charles Sturt University, Australia. He has over 50 publications in comparative Indigenous politics and policy, including six books. Dominic is from the Te Rarawa and Ngati Kahu iwi of New Zealand. His most recent book, *Indigeneity: A Politics of Potential—Australia, New Zealand and Fiji* was published by Policy Press in 2017. A short blog piece introducing the book can be found on the Policy Press website at <https://policypress.wordpress.com/?s=dominic>.

Founded in the spring of 2016, the Research Institute on Self-Determination of Peoples and National Independence (IRAI) is a non-partisan, non-profit organization. Its mission is to carry out, disseminate and make available research on the self-determination of peoples and national independence, with the aim of contributing to the scientific knowledge of this field, to educate the general public and to stimulate a peaceful, open and constructive citizen dialogue.

Fondé au printemps 2016, l'Institut de recherche sur l'autodétermination des peuples et les indépendances nationales (IRAI) est une organisation non partisane à but non lucratif. La mission de l'IRAI consiste à réaliser, diffuser et rendre accessibles des recherches sur l'autodétermination des peuples et les indépendances nationales afin de contribuer à l'avancement des connaissances scientifiques, d'éduquer le grand public et de favoriser un dialogue citoyen à la fois serein, ouvert et constructif

ABOUT IRAI



IRAI

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