

MATHIAS SCHMOECKEL

An international right of self-determination in the 14th century?

The chance of an international legal order in the Middle
Ages, the Declaration of Arbroath 1320 and the
independence of peoples

I. Introduction – II. The Chances of a Medieval International law:
1. International legal order from *ius gentium* to international law; 2. Superiority
of Pope and Emperor?: a. The Pope; b. Emperor; c. *Populus sequendus est*; 3. A
society of kings: a. New Kingdoms in the Latin West; b. Position of kings in *Ius
commune*; c. An international legal order – III. Prefigurations of an international
right of self-determination: 1. Dominion contracts and the opportunity of liberty;
2. Scotland and the Declaration of Arbroath 1320: a. The re-establishment of the
Scottish kingdom under Robert the Bruce; b. The Declaration of Arbroath;
c. Result; 3. Modern ideas on self-determination – IV. Conclusion.

Zusammenfassung: Das Selbstbestimmungsrecht der Völker, als Element
des Völkerrechts nachgewiesen seit dem späten 19. Jahrhundert, scheint die
Eigenständigkeit des internationalen Rechts zu beweisen; umgekehrt konnte
ohne die Völker bzw. unabhängige Nationen oder Staaten keine rechtlich
begründete Gemeinschaft entstehen, schon wegen der Vormacht von Papst und
Kaiser. Doch die Entstehung einer Fülle europäischer Königreiche um 1000
ermöglichte eine europäische Gemeinschaft, in der viele grenzübergreifende
Fragen wie Kriege und Verträge juristisch geklärt wurden. Insoweit gab es ein
internationales Recht vor dem modernen Völkerrecht, das jedoch in vielen
Grundfragen ganz anders dachte. Dies wird besonders dabb deutlich, wenn von
Freiheit gehandelt wurde. Erst die Entstehung des modernen Naturrechts führte
in diesem Kontext zu einer subjektiven Anspruchsdenken auf Unabhängigkeit.
Das zeigt sich auch im Vergleich mehrerer ähnlicher Vorläufer.

Summary: The right of peoples to self-determination, proven as an element
of international law since the late 19th century, seems to prove the independence
of international law. Conversely, no legally founded community could arise
without the peoples or independent nations or states, simply because of the
supremacy of the Pope and Emperor. But the emergence of a wealth of European
kingdoms around 1000 made possible a European community in which many
cross-border issues such as wars and treaties were legally resolved. In this

* Ordentlicher Professor für Deutsche und Rheinische Rechtsgeschichte –
Rheinische Friedrich-Wilhelms-Universität, Bonn.

respect, there was international law before modern international law, but it thought very differently on many fundamental issues. This becomes particularly clear when freedom is discussed. Only the emergence of modern natural law led to a subjective sense of entitlement to independence in this context. This can also be seen when comparing several similar predecessors.

Sommario: Il diritto dei popoli all'autodeterminazione, che si rivela come elemento del diritto internazionale sin dalla fine del XIX secolo, sembra mostrare l'autonomia del diritto internazionale. Al contrario, nessuna comunità giuridicamente fondata potrebbe sorgere senza i popoli o le nazioni o gli Stati indipendenti, semplicemente in forza della supremazia del Papa e dell'Imperatore. Ma l'emergere di un gran numero di regni europei intorno all'anno 1000 rese possibile una comunità europea in cui molte questioni transfrontaliere, come guerre e trattati, furono risolte giuridicamente. In questo senso, c'era un diritto internazionale prima del diritto internazionale moderno, ma con prospettive di pensiero molto diverse su molte questioni fondamentali. Ciò diventa particolarmente chiaro quando si parla di libertà. Solo l'emergere del diritto naturale moderno ha portato a configurare un senso soggettivo di diritto all'indipendenza in questo contesto. Ciò si nota anche attraverso il confronto con esperienze precedenti.

Keywords: declaration of Arbroath, Magdeburg confession; right of self-determination; right to resist, *ius Gentium*; international law.

Schlüsselwörter: Erklärung von Arbroath; Magdeburger Konfession; Selbstbestimmungsrecht der Völker; Widerstandsrecht; *ius Gentium*; Völkerrecht.