

The Identity Argument for National Self-Determination*

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I. Introduction

A number of philosophers argue that the moral value of *national identity* is sufficient to justify at least a *prima facie* right of a national community to create its own independent, sovereign state.¹ In the literature, this argument is commonly referred to as *the identity argument*. In this paper, I consider whether the identity argument successfully proves that a national group is entitled to a state of its own. To do so, I first explain three important steps in the argument and then consider whether they lead to the desired conclusion. My examination reveals that the identity argument relies on the *Optimal Protection Principle*; however, this principle does not apply to the case of a national community. As a result, the identity argument fails to justify even a *prima facie* right of a national community to establish its own state.

II. Some Clarification

To avoid possible confusion, and to help readers better understand the significance and limits of the identity argument (as well as my critique of it), I should begin by explaining when and to which cases the identity argument applies. In this section, I will clarify the domain of the identity argument and then explain what a national group is.

In principle, a group may adopt two types of strategies to claim a right to create its own state—*nationalist* strategies and *non-nationalist* strategies. The former justify the right of the group to establish a state by emphasizing the group's status as a *nation*; the latter regards such status as either *irrelevant* or *insufficient* in deciding whether the group has the

right. The identity argument is *one, but not the only*, way to apply the nationalist strategy. It tries to justify the right of a group to establish an independent state by appealing to the moral significance of national identity. Other qualities that could possibly contribute to the nationalist strategy include certain instrumental values of national identity (Miller 1995, 81-99) and the disadvantages that these groups face (Kymlicka 1995, 107-15; Miller 1996, 261-82).

On the other hand, a non-nationalist strategy justifies the right of a group to establish a state *without* appealing to the group's status as a nation. In other words, this strategy regards qualities of a national group as irrelevant in determining whether it is entitled to self-rule. Examples of non-nationalist strategies include the *Just-Cause* and *Plebiscitary* theories. (Buchanan, 1997; Norman 1998)² The former holds that a group has the right to self-determination when it has a *just cause*, such as the resistance of a colonial government or the preservation of important basic rights. (Buchanan 1991) The latter holds that, *under certain circumstances*, a group may hold a referendum and decide whether it should become an independent state. (Beran 1977; Philpott 1995; Wellman 2005)

Therefore, the identity argument is only one of the arguments a group may use to justify its right to self-government. Refuting this particular argument does not entail that the group could never be justified in creating its own state, as it may appeal to some of the arguments involved in nationalist or non-nationalist strategies.

Because the identity argument, or any nationalist strategy in general, appeals to qualities possessed by a national group, this type of argument needs to explain what a national community is in order to highlight the moral significance of such a group.³ Very roughly, in any national group, we may observe the following features: (1) *Objective features*: A national community usually has an *encompassing* culture. This includes, but is not limited to, a shared language, history, certain traditions, customs, and practices. The shared

language and history are the means by which the national culture is transmitted and preserved. (2) *Subjective features*: Members of a national community usually identify themselves as such. They also value their national culture and historical heritage (Kymlicka 1995, 104).⁴ (3) *Historical homeland*: a national community has a homeland where, for generations, its members have resided and its culture developed. The homeland is also an important element for the development of both the subjective and objective features (Margalit and Raz 1990, 443-7; Miller 1995, 17-48; Tamir 1993,13-34; Nielsen 1998, 108-10; Moore 2001, 5-14) .

III. Three Steps of the Identity Argument

Several philosophers have tried to defend the right of a national community to self-determination by appealing to the importance of national identity. Although the details of their discussions vary, three steps are indispensable in the identity argument.

i. The First Step: Defending the Value of National Identity

The first step is to *defend the moral value of national identity*. Because members of a national community identify with their group culture, the standing of this culture has a profound impact on their well-being (Margalit and Raz 1990, 447-50; Miller 1995, 81-118; Tamir 1993, 73; Nielsen 1998, 110) There are, in the literature, two theories explaining why this is so—I will call them the autonomy theory and the identity theory respectively. (Moore, 2001)

The autonomy theory holds that a national culture is valuable because it provides its members the resources with which they may construct and shape their personal *autonomy* (Kymlicka 1995, 83). Individual autonomy requires not only that we have an adequate range of options, but also that we have the capacity to make *meaningful* decisions. A national

culture is important because it provides the *context* in which individuals can learn to make sense of different choices and ultimately make meaningful decisions. According to Kymlicka,

[u]nderstanding these cultural narratives is a precondition of making intelligent judgments about how to lead our lives. In this sense, our culture not only provides options, it also [citing Dworkin] ‘provides the spectacles through which we identify experiences as valuable. (Kymlicka 1995, 83)

Thus, a person needs a national culture to shape his autonomy. Without such a culture, there would be no constraints on his behavior and personal autonomy would be empty (Taylor 1979, 157; Kymlicka 1989, 47).⁵

The identity theory, on the other hand, holds that the self-understanding or self-respect of individual members is intimately linked to the status of their national community. Because a nation’s cultural narratives help shape its members conceptions of the good or meaningful life, were the culture in decline, its members would begin to question the tenability of these narratives; this, in turn, would cause them to doubt the worth of their pursuits. Nielsen suggests that members of a nation would “experience anomie and alienation” were their national culture in decay. (Nielsen 1998, 110) Similarly, Tamir suggests that

[t]he ability of individuals to lead a satisfying life and to attain the respect of others is contingent on, although not assured by, their ability to view themselves as active members of a worthy community. A safe, dignified, and flourishing national existence thus significantly contributes to their well-being. (Tamir 1993, 73)

Moreover, Margalit and Raz point out that one’s national membership greatly affects her opportunities and capacity to pursuit a good life—“if the culture is decaying, or if it is persecuted or discriminated against, the options and opportunities open to its members will shrink.” (Margalit and Raz, 1990, 449)

Because a complete justification of the value of national identity requires a more detailed discussion than is possible here, I will assume that the nationalists are right about

the value of a national identity. Clearly, if national identity were not as valuable as they suggest, then one could not justify a nation's right by appealing to the value of national identity. The question I will consider, then, is this: assuming that national identity is indeed an important part of personal identity, *does this justify the right of a national community to create its own state?*

ii. *The Second Step: Explaining Why the Interest in National Identity Requires Institutional Protection*

The second step of the identity argument begins to connect the importance of national identity with its *institutional protection*. Here, the main task is to explain why a shared forum or a political institution is necessary to protect these interests. Since national identity is intimately linked to the self-definition and esteem of its members, people need to be able to express their national identity not just in private, but also *in public*. They must be able to openly speak their own language, practice their culture, and follow their traditions and customs. In addition, people should not be subject to discrimination or intolerance as a result of openly engaging in these activities. Moreover, they also need a *shared forum* where they can collectively make decisions concerning their group affairs and work together to protect their interests. (Tamir 1993, 73) These cannot be achieved by individual, private efforts but require the protection of some public or political institution. According to Miller, the preservation of a national culture involves a coordination problem —a national culture can decay even when no one intends this to happen (Miller 1995, 87).⁶ Similarly, Nielsen suggests that

the very existence of such a culture requires social structures and a complex cluster of interdependent institutions. Without this being in place in the lives of human beings, there can be no secure and stable sense of who they are and without that there will be little in the way of human flourishing. ... These encompassing cultures—these nations—will have a fragile and insecure existence. (Nielsen 1998, 110)

Consequently, institutional arrangements should be in place so that members can cooperate with each other and protect their community and culture.

iii. *The Third Step: Explaining Why a the Right to Form a State is Necessary*

If the first two steps are both successful, then any political institution that can contribute substantively to the protection of a group's national identity would at least be *prima facie* justified. As a result, the last step in the argument is to point out that, *because a state is a political institution that can provide a national community the resources and authority necessary to protect its national culture, a national community has a prima facie right to establish an independent state*. Achieving statehood endows a national community with the most complete autonomy and the highest political authority to preserve its culture. It is a political institution with which a national community can express and protect its culture.

So far the argument seems plausible. If national identity is intimately connected to the well-being of persons, and if its preservation requires *institutional protection*, then it naturally follows that a national community is justified in pursuing the status of a state, as it is one of the institutions that can help protect relevant interests. However, there are many political institutions that can serve the same purpose. Why not stop there and conclude that any institution that can perform this function is *prima facie* justified? Why, then, do nationalists focus on *sovereign states*?

One possible answer is that an independent state is what members of a national community really want. As Tamir points out, “[t]he ability to conceive of certain social and political institutions as *representing a particular culture* and as *carriers of the national identity* [italics added] is at the heart of the yearning for national self-determination.” (Tamir 1993, 74) Most nationalist movements aspire to establish states of their own—members of the same national community often desire to build a state which recognizes their language

as the official language, teaches their history in schools, and protects their national culture with governmental institutions. The wish to build their *own state* is the driving force behind nationalist movements. Thus, the recognition of national identity requires that we recognize this aspiration as well.

Although this response truthfully characterizes the aspiration of national communities, it cannot satisfactorily explain why nationalists are *justified* in establishing a state. There still is the question, “What it is that makes people want to build a state?”, and most importantly, “What is their *justification*?” Even if it is true that national identity is important, and its protection requires some sort of shared forum—does this entail that the group has the right to establish an independent state? There are other alternative institutional arrangements that can perform these functions adequately. For instance, rights to special representation and cultural preservation may together provide the shared forum necessary for the protection of national identity. They both allow members of a national group to manage their group affairs. Thus, even if national identity must be protected by social institutions, it is not the case that this can be achieved *only* by building a state. The shared public space can come in many different, less disruptive, forms.⁷ Is there any reason why the shared public space *must be* an independent state? Can it not be replaced by the right to a sub-state, autonomous government?

Indeed, there are many alternative institutional arrangements that can serve to protect a national community and its culture. Nonetheless, it seems that there are certain functions that can be performed only by an independent, sovereign state. After reading closely the relevant literature, I identify four such functions.

First, a state is an institution that can provide a national community the *fullest political autonomy* and the *highest political authority*. To protect its culture, a national community needs as much political autonomy and as little external interference as possible. It needs the utmost authority over its own affairs so that its members can have as much control of their

own destiny as possible. Otherwise, the group may be vulnerable to the intrusion of non-members. Full political autonomy is achieved only when a group is recognized as having the highest political authority, which, given the structure of today's international society, can only be provided by a sovereign state. Thus, Tamir suggests that

The right to national self-determination can be fully realized only if ...this recognition is followed by political arrangements enabling members of the nation to develop their national life with as little external interference as possible.... this requires granting members of the widest possible degree of autonomy, namely the right to establish their own sovereign nation-state. (Tamir 1993, 74)

Only a state government is endowed with the fullest political autonomy and the highest political authority; other political institutions are not.

Second, as a result of the first function, a sovereign state is *the best* possible institution to protect a national community. According to Nielsen, from the point of view of *ensuring the prosperity of a national culture*, an independent, sovereign state is the *best* institutional arrangement. Other alternatives, such as special representation or a sub-state, autonomous government, are merely *second best*. (Nielsen 1998, 120) The right to establish an independent state offers a national group's members the most substantive control over their own affairs and the highest authority against external interference. Thus, to safeguard a national culture, no institution is better than an independent state.

Still, one might wonder whether any multination state may provide equivalent protection—if there is no protection that a nation state can offer but a multination state cannot. In what sense is a nation state *better*?

This challenge can be answered by the third function unique to a state. According to Caney, a nation state has both *symbolic* and *expressive* value. (Caney 1997, 363) An independent state constitutes a form of recognition. It means that the group is recognized as an active member of the international community having an international personality, and that it constitutes an autonomous political unit whose domestic affairs cannot be interfered

with by others. The state is a symbol of the national community, representing its members in international society. In such a state, the language, culture, and history of the group will be recognized in governmental institutions. On the contrary, in a multination state, the culture, language, and history of a group cannot be recognized as uniquely representing the state. Thus, even though a multination state may provide equivalent protections, it cannot provide the sort of *recognition* a nation state can.

Lastly, as Margalit, Nilesen, Raz, and Tamir point out, the self-respect and identity of individuals are highly affected by the status of their national culture (Tamir 1993, 73). If the culture were in decline, or if the group were not recognized by others, then the self-respect of individual members would decline with it. In contrast, if the national community were recognized by the international society as an autonomous political entity, then its members would have a secure sense of self-respect and identity. If a national community does not have its own state, then members may be subject to the political authority and interference of other non-members, rendering them vulnerable to the power of outsiders. Thus, a state provides members of the national community a secure sense of self-respect and identity that other forms of institutions cannot offer.

Although one may be convinced that a sovereign state is the institution that can uniquely perform those four functions mentioned above, she may still wonder whether the protection of national identity requires a state the boundaries of which coincide with those of the nation. This, however, is a separate issue. The right of a national community to form a state is not equivalent to the right to establish *a state whose boundaries coincide with those of the national community*. A national community may have the right to the former but not the latter. Thus, the problem involved in boundary drawing would not necessarily undermine the soundness of the identity argument. How the boundaries should be drawn is a different issue.

To sum up, supporters of the identity argument advocate a modest, *prima facie* right of a national community to establish an independent state. They do not claim that this right is absolute or that a national community can always exercise this right regardless of any other considerations. Actual implementation will depend on an evaluation of all of the relevant factors. Establishing an independent state is not always *necessary* for the sake of protecting a national culture and identity. Depending on the actual circumstances a group is in, some communities might be better off staying with the current multination state. Nonetheless, given the importance of national culture in the identity of persons, we have a very strong reason to give people the right to protect their interest(s) in national identity, and since a sovereign state is the best way to secure the prosperity of a national culture, a national community has a *prima facie* right to establish an independent state.

IV. Reflections on the Identity Argument

Does the identity argument justify the right of a national community to establish an independent state?

The identity argument does a good job explaining why national identity is important and warrants institutional protection. Indeed, given the intimate relationship between national identity and individual well-being, institutional arrangements must be set up to protect these interests. Thus, I am convinced that a national community has a right to some kind of shared public space where members can collectively express their voices in society and manage their group affairs. Nonetheless, I am not sure whether this would entail that a national group also has a *prima facie* right to create its own state. My question is, even if one acknowledges that interests in national identity warrant institutional protection, does this mean that a national group also has *the right to create any specific institution*? That is, does the right to a shared public forum also entail the right to build an independent state?

I believe that it does not. The last step in the identity argument is rather questionable. Even if national identity is intrinsically valuable and its protection requires the establishment of certain political institution(s), this does not immediately justify the group's right to create a state. The main reason is that *the intrinsic value of national identity does not automatically justify a prima facie right to its best or optimal protection*. In the following paragraphs, I will explain in detail why this is so. Moreover, I will support this thesis with a short discussion of what having a right to create a state means—without an evaluation of the impacts of an institution, any claim about *a right to establish the institution* (in this case, an independent state) is hollow.

i. A Misleading Assumption-- The Optimal Protection Principle

First, let us examine carefully how the identity argument justifies a national community's right to build a state. The first two steps of the identity argument establish that, to protect its interest in national identity, a national community has the right to some sort of institutional protection. This has yet to explain why a national community also has the right to build a *state*. To do so, supporters come up with reasons explaining why certain functions can be served only by an independent state but not by other institutions. Essentially, those four reasons accounts for the *uniqueness* of an independent state. They explain how a state is not replaceable by other types of institutions that may protect people's interest in national identity. The uniqueness of a state depends on the assumption that it provides *the best or the optimal protection* for people's interest in national identity as it provides the widest possible autonomy and authority.

The soundness of the identity argument depends on this assumption. Unless this assumption justifies the right of a national community to form a state—that is, *unless the importance of national identity justifies the right to the best or the optimal protection*, the conclusion that a national community has this right does not follow. This assumption is

based on a hidden premise which holds that an interest justifies at least a *prima facie* right to its best or optimal protection.⁸ I will call this premise *The Optimal Protection Principle*.

To determine if the identity argument is sound, we need to see if the Optimal Protection Principle is applicable when it comes to the protection of national identity. While the intrinsic value of an important interest may justify at least an *adequate* level of protection, it is not clear yet if it also justifies the *best or the optimal* protection. In the case of national identity, its intrinsic value justifies, at the minimum, the right to a shared public forum or special representation. However, it is not clear how it also warrants the best protection, namely, an independent state. If some sort of paternalistic, iron-fisted policy could most effectively protect a national culture, does this mean that the national community has a *prima facie* right to that policy, too? I would assume that most of us do not think so.

Consider the case of religious beliefs. People have important interests in adhering to their religious beliefs. In addition, establishing a state church, or better yet, a religious state, is one of the best ways to protect these interests. Does this mean that the interest in adhering to one's religious beliefs justifies the right to establish a state church or a religious state? Does it mean that a religious group has a *prima facie* right to create a state church or a religious state? Most of us would not think that people's interest in their religious beliefs justifies a *prima facie* right to a state church, not to mention a religious state. It is not that people have a *prima facie* right to a theocracy based on religious interests, but the right would then be overruled by the same interest of believers of other religions. *There simply is no such right.*

Likewise, even though people have an important interest in preserving their national identity, this fact cannot by itself justify even a *prima facie* right of a national community to establish an independent state. To put it differently, even if a national community were justified in establishing a state, it would *not merely be because* building a nation state is the

best way to protect its interest in national identity. Moreover, this is not because its right to do so can be overruled by the same right of another national group or somehow restricted by some more fundamental rights. The community does not have this right.

ii. A Possible Response—Interests in Autonomy Warrant Optimal Protection

Supporters of the identity argument may argue that this critique misses their point. They would agree with my analysis regarding the interest in religious belief, but deny that it entails that the interest in national identity does not justify the right to its best protection. They would argue that *the interest in autonomy, or self-determination, is different*. Unlike other types of interests, the interest in autonomy does justify a *prima facie* right to its optimal protection.

Consider the case of personal or individual autonomy. Liberals agree that personal autonomy is intrinsically valuable and that this interest justifies the right of a person to do whatever she wants, so long as her actions do not interfere with another's autonomy, or if they do not inflict harm upon another. That is, interests in autonomy warrant the best protection and the widest possible autonomy; thus, *the burden of proof is on those who want to restrict personal autonomy*. The interest in autonomy justifies a *prima facie* right to the best or the optimal protection; any restriction requires further justification.

Likewise, the autonomy of a national community, or national self-determination, warrants its optimal protection. The burden of proof is on those who want to limit the right of a national community to its optimal protection. The right to national self-determination, just like the right to personal self-determination, justifies the *prima facie* right to its optimal protection; therefore, it also justifies the right to build a state. Similar limitations apply—the right to national self-determination is limited by the same right of another national community to self-determination, and it can be exercised only if doing so would not cause

harm. In short, the Optimal Protection Principle applies to cases of autonomy, both individual and collective.

iii. Why is the Optimal Protection Principle Not Applicable?

1. The Problem with the Principle Itself

Moore challenges the validity of this reasoning. She tries to undermine the case of *collective* autonomy by attacking its basis, i.e., *individual* autonomy. She does so by questioning the distinction between *self-* and *others-regarding* affairs (Moore 2001, 61). According to Moore, the interest in autonomy justifies its optimal protection only in cases of *self-regarding* affairs. That is, when an affair does not affect anyone else, an agent has complete autonomy over this affair. When an affair is others-regarding, i.e., when it would also affect others, the agent does not have complete autonomy over this affair. Notice that, unless we can make a clear distinction between self- and others-regarding affairs—that is, unless we can draw a line between affairs that affect only the agent and those that also affect other people—we can hardly apply the Optimal Protection Principle.

However, not many behaviors of an individual are completely self-regarding. Our actions and behaviors almost always have some impact on others. How do we draw a line between self- and others-regarding behavior?

Likewise, if we cannot draw a line between self- and others-regarding behaviors in the case of individual behavior, then we should expect it to be even more difficult to do so in the case of a national community. Who would the *self* be? Is it defined by national membership or territorial boundaries? Who would be the right-holder, the individual members or the group as a whole? What would be self-regarding behaviors of the community? What would be others-regarding? The fact is that in most parts of the world, people of different national memberships live intermingled with one another. As a result, no matter how we conceive of the right to national self-determination, exercising this right necessarily affects non-

members unless there are none in the defined territory. In addition, even if there were no non-members in the defined territory, there would still be the problem of dividing up resources and properties with the remaining part of the original state, which also concerns non-members. Exercising collective autonomy can hardly be a self-regarding matter.

2. *The Problem with its Applicable Domain*

This is not a conclusive objection against applying the Optimal Protection Principle to the case of autonomy. Although it points out a problem in its implementation, it does not *refute* the principle itself. Here, I do not intend to challenge its application to cases of *individual* autonomy. I do believe that the intrinsic value of personal autonomy justifies the *prima facie* right to its optimal protection and the burden of proof is on those who wish to limit it. Nevertheless, I believe that the same assumption should *not* be adopted in the case of a national community. The comparison of individual and collective autonomy is misguided. Although individual autonomy justifies the *prima facie* right of an individual to the widest possible freedom, collective autonomy does not. First, it is not clear if the autonomy of a national community is also *intrinsically* valuable. Second, even if it were,⁹ this would not mean that group autonomy is intrinsically valuable *in the same way* as individual autonomy. At least this is what most liberals appear to believe—we value the autonomy of a national community because we value its contribution to individual autonomy, not because we see it as an invaluable source of value in itself, regardless of its contribution to individual well-being (Tamir 2003, 194).¹⁰

In addition, part of the reason why individual autonomy justifies the right to its optimal protection is that cases of individual autonomy are cases *where it is more important for a person to decide for herself than to decide correctly*. (Marmor 2007, 218) Waldron points out that having a right implies having *the right to do wrong* as well. According to Marmor, such a right “pertains to cases in which one of the main interests grounding the right in question

is that of personal *choice*. By this [he refers] to those cases where we think that it is more important for the agent to choose for herself than to choose correctly.” Is this true of a national community? *Do we think that it is more important for a national community to make the decision for itself than to make the right decision?*

It seems to me that the answer is *no*. To begin with, some philosophers believe that, as a policy, granting this right to national communities would be dangerous. Depending on the *character* of its culture, a national community may still maintain certain practices or traditions that may undermine the equality or personal autonomy of its members. In addition, according to Tamir, such policies would give the majority the *de facto* right to define and interpret their culture. (Tamir 2003, 184) This may in substance suppress the view of the dissenting minority and impede cultural reformation.

These may just be problems in actual implementation, but they do not explain why we should not give a national community the *prima facie* right to full autonomy. Many individual persons are of problematic personality or character, but even in their cases full personal autonomy is granted. They can still do whatever they want, as long as they do not harm the autonomy of others. Similarly, even if a national community has a problematic cultural character, it should still be given full autonomy, so long as doing so does not violate the relevant constraints.¹¹

However, the problem with giving a national community full autonomy is not only *empirical* but also *conceptual*. In any society, there are various types of public affairs that need to be taken care of. Some affairs concern the well-being of the national culture, but not every public affair is like that. Granting a national community the right to build a state bestows on it not only authority over its *cultural* affairs, but also authority over other *non-cultural, political affairs*. While a national group should be given authority over its cultural affairs, it is not clear on what basis it should also be given authority over the other affairs. Granting a national community the right to build a state gives it not just authority over its

cultural affairs, but also over other affairs which are not culturally related—e.g. the building of a bridge, the location of the financial district, or the formation of an important economic policy. These affairs concern not just members of the national community, but also other non-members. Granting full autonomy in this case would allow the national group to encroach upon the rights of non-members. Accordingly, a national community should be granted full autonomy over its cultural affairs, but not other public affairs.

3. Which Theory of Rights Provides the Best Explanation?

How persuasive this argument is depends, perhaps, on the theory of rights one subscribes to. Currently, there is in the literature two different theories regarding the *limits* of rights—the *Newtonian conception* and the *Interest theory*. (Marmor 2007, 215-31) The former holds that the limits of a right are *other rights*. That is, one may exercise her right as long as her doing so would not violate an equally important or more basic right of another. In other words, the limit of a right is *external*. On the other hand, the Interest theory holds that the limit of a right is not merely extrinsic but also inherent—a right is also constrained by *the interests that it purports to protect*. These two theories lead to different arbitrations concerning the *scope* of the right to self-determination.

If a person believed in the Newtonian theory, then she would also believe that an interest justifies a right-holder's widest possible autonomy, *unless her exercise of this right conflicts with another right*. That is, she would subscribe to the Optimal Protection Principle and believe that the protection of an interest warrants its widest possible protection. Accordingly, she would believe that the interest in national identity justifies its optimal protection. Consequently, she would believe that a national group has at least a *prima facie* right to create an independent state, and that it could do so unless its doing so would violate the rights of another group.

On the other hand, if one believed in the Interest theory, then she would believe that a right warrants the protection of the interest that it is intended to protect *only, and no more than that*. She would not believe that the protection of this interest warrants its optimal protection. Thus, she would believe that the interest in national identity sets its own limit—this interest justifies a group’s authority over affairs regarding its national culture only, and no more than that. It does not justify the group’s authority over other affairs that have nothing to do with its culture.

Indeed, the theory of rights one subscribes to would determine her view on whether a national group has the right to the widest possible political autonomy. Here, I cannot settle the dispute between the Newtonian and the Interest theories of rights. Nonetheless, I would like to take a brief detour to compare the *explanatory forces* of these two theories. Consider again the interests people have in religious beliefs. Most of us in secular, liberal democracies would agree that people’s interest in religious beliefs should be protected. Most of us would also agree that, even though this interest is very important, it does not entail that a religious group has the right to create its own state. How should we explain why this is so?

According to the Newtonian theory, the protection of an interest warrants its optimal protection. Thus, this theory would entail that a religious group has a *prima facie* right to build a religious state. If a Newtonian theorist were to explain why a religious group should not create its own state, she would have to suggest that the exercise of this right would unavoidably violate the rights of other individuals or religious groups. However, no matter what reason she provides to reject a religious group’s demand to create a state, *she could not deny that a religious group has a prima facie right to do so*.

On the other hand, the Interest theory would not have such an implication. According to this theory, the interest a right is meant to protect works also as the constraint of this right. This entails, then, that the interest in religious belief warrants protection over religious

affairs only, and *no more than that*. Accordingly, the interest in religious beliefs would not entail that the group has even a *prima facie* right to secede.

Unless one is willing to accept the unwarranted claim that a religious group has a *prima facie* right to create its own state, the Interest theory seems to provide the more plausible explanation why a religious group cannot create a religious state. Thus, we should favour the Interest theory. Accordingly, the interest in national identity does not justify its optimal protection. It justifies the right of a group to govern its cultural affairs only; it does not warrant a group's right to other non-cultural, political affairs. Consequently, the interest in national identity does not justify the right of a national group to establish a sovereign state.

4. The Right to an Institutional Arrangement?

I have explained why a national community does not have the right to build a state by arguing that not every important interest justifies the right to its optimal protection. Some may still not be convinced by this argument, as it seems rather intuitive that an important interest justifies at least a *prima facie* right to its best protection. In this section, I will try a different strategy to defend my position. I will do so by considering the idea involved in *the right to establish an independent state*.

Let us assume for the sake of argument that we could derive a *prima facie* right to an institution by demonstrating its contribution to the protection of some important interest. This would imply, for instance, that the interest in religious belief justifies a *prima facie* right to create a religious state, or the interest in health care justifies a *prima facie* right to the best health insurance program. Were this true, many different interests could possibly entail *prima facie* rights to different institutions. Furthermore, because establishing a sovereign state could conceivably be the best way to protect many different types of interests—e.g., the interest in national identity, the interest in religious belief, and the interest in the possession of natural resource—so long as one could prove that a state best protects that

interest, the Optimal Protection Principle would entail that that interest would justify a *prima facie* right to establish a state. Were these inferences valid, the resulting claims about a *prima facie* right to establish a state would be hollow, as many different interests could also justify exactly the same right, and different types of groups would have the rights to build their own states.

Thus, I agree with Tamir when she says “Rights language should delineate basic liberties, powers, and immunities; it should not specify the *particular political arrangements* (italics added) that must be installed in order to realize and protect these rights.” (Tamir 2003, 183)¹² The right to build a state is a right to establish an institution. Any institution is supposed to protect an array of interests, not just the one interest in national identity. To determine whether an institution should be established, we need to evaluate its impact on all the relevant rights and interests, especially those that are more fundamental or basic. The protection of national identity, though important, is but one concern. One cannot justify the right to a state by merely pointing to one particular interest that the state protects (in this case, the interest in national identity). Thus, even if one can prove that national identity has intrinsic value and that a nation state best protects this interest, it is not enough to justify the right to build a state.

Consider an analogous case with private property. Sen suggest that, even if we acknowledge that people have an important interest in private property, this fact by itself does not automatically justify the institution of private property. (Sen, 1998, 57-68) The fact that people have an important interest in private property cannot *by itself* tell us *how* we should distribute this interest, how we should protect this interest, or what kind of institution should be in place for its protection. (Sen 1998, 57-68; Gans 2003, 41-2)¹³ Whether an institution that protects private property ownership is acceptable depends also on an evaluation of the *consequences* of its implementation. For instance, we must consider whether the system would give rise to serious problems such as poverty or hunger. In other

words, no matter how important an interest is, by itself it is not enough to justify the right to an institution.

VI. Conclusion

Therefore, even if we acknowledge that people have an important interest in national identity, this fact cannot *by itself* justify the right of a national community to establish an independent state. The fact that a state may offer the *best* or *optimal* protection for a national culture proves only that it is *rational* for a national community to pursue that status. However, it does not justify any *duty* on the part of the international community to recognize this interest. A right that does not justify any duty is hollow.

From the discussion above, it is safe to conclude that either (1) the identity argument does not justify the right of a national community to establish an independent state; or (2) it justifies the right, but this right is hollow, as there are other types of interests that would equally justify the same right.

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¹ See, for instance, Margalit and Raz, 1990, Tamir, 1993, Miller, 1995, Nielsen 1998, Moore, 2001.

² *The nationalist strategy* is also known in the literature as the *Ascriptive* theory (the label used by Buchanan). The just-cause theory is also known as the Remedial Right Only theory, and the Plebiscitary theory as the Primary Right theory or the Choice theory.

³ Philosophers who adopt the nationalist strategy seem to agree that it may not be possible to offer a set of defining criteria for a national community. Nonetheless, they believe that

this would not prevent us from identifying one when we see it. Margalit and Raz 1990, 447-8; Tamir 1993, 68.

⁴ Notice that the *characteristics* of a national culture may change with time while the culture remains. Kymlicka points out that there is a distinction between the existence of a national culture and its characteristics. For instance, during the Quiet Revolution, Quebec has transformed from a rural and religious society to an urban and secular one.

⁵ It would be empty in the sense that it would be meaningless. For an action to be meaningful, it has to conform to certain norms or standards. Taylor suggests that, without constraints of the relevant kind, “complete freedom would be a void in which nothing would be worth doing, nothing would deserve to count for anything.”

⁶ This is especially so in the case of a national minority in a multination state. The minority culture may not be able to compete with the majority culture, or it may not have enough resources to protect its own culture.

⁷ It is disruptive in the sense that it disrupts the current institutional arrangement.

⁸ This principle may not be applied to all sorts of interests, but supporters of the identity argument must assume that it applies to the case of the interest in national identity.

⁹ Some philosophers argue that a national community is intrinsically valuable. An example would be Hurka’s theory, 1997, 139-57.

¹⁰ Tamir makes a similar comment in discussing whether the collective can be a right-holder. She argues that, “[t]he existence of collectives may indeed be of value and their preservation could impose certain duties, but unless one is ready to claim that collectives are the kind of agents whose existence is of ultimate value, the Razian definition collapses.” Tamir 2003, 194.

¹¹ The limit of individual autonomy is, most liberals would agree, the harm principle. It is more controversial what the limit of collective autonomy is.

¹² For a discussion of why it is inappropriate to talk about *the right to a state*, see also Baubock, 1999, pp.137-8.

¹³ Sen suggests, “But even if we do accept that property rights may have some intrinsic value, this does not in any way amount to an overall justification of property rights, since property rights may have consequences which themselves will require assessment. Indeed, the causation of hunger as well as its prevention may materially depend on how property rights are structured. If a set of property rights leads, say, to starvation, as it well might, then the moral approval of these rights would certainly be compromised severely. In general, the need for consequential analysis of property rights is inescapable whether or not such rights are seen as having any intrinsic value.” Gans suggests that “The resolution of these issues is not inherent in the freedom-based right to private property. Rather, they must be sought in other standards that are external to freedom.”

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