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Lea Brilmayer
Yale Law School

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The Moral Significance of Nationalism

Lea Brilmayer*

Given the current world situation, it is certainly no surprise that philosophers and political theorists are paying increasing attention to the topic of nationalism. It is not an easy subject to study, in part because the word means such different things to different people. There are many areas of disagreement. What counts as a “nation”? Is a nation defined by its language? by its culture? by ethnicity? What is the relationship between nationalism and the state? What are the historical origins of nationalism?

One of the puzzling things about nationalism is that it sometimes seems to be a force for good, and sometimes a force for very great evil. At this particular time, we are more likely to think in terms of the evil nationalism brings about; this association is the legacy of the war in the former Yugoslavia, the killings in Rwanda, the ongoing fighting in Chechnya, and many other examples that all too easily come to mind. Nationalism now tends to be associated with barbarism: with genocide, ethnic cleansing, rape and wanton murder. But nationalism can also be a force for great good. When Armenians living in America contribute from their own limited resources to help Armenian earthquake victims, when Eritreans sacrifice their lives to liberate their country from a colonial power, or when Rigoberta Menchu commits herself to a life of personal hardship and danger to advance the human rights of Central American native peoples, it is hard to deny that national sentiment can play a noble role in world events.

The hypothesis I want to investigate here is that nationalism, itself, is morally transparent, and that this fact accounts for its ability to coexist equally well with good and evil. The argument is that the overwhelmingly relevant normative feature of today’s nationalism is the justice (or lack of justice) of the claim nationalists advance on behalf of their nation. The single most important normative feature—indeed, perhaps, the only important normative feature—is the right of the nation to the thing that nationalists assert on its behalf, and this right is not itself a consequence of nationalism but a consequence of other underlying moral claims. What matters from a moral point of view is whether the claims of one’s nation and conationalists are worthy, and whether they are pursued by morally ac-

* Benjamin F. Butler Professor, New York University School of Law.
ceptable means. Resistance to colonialism, human rights abuses, and dictatorship is just, at least so long as morally defensible means are used, and ethnic cleansing, rape, and genocide are morally wrong; this is not so because of any reasons involving nationalism, but because of other moral features of the situation. Nationalism means simply that one identifies with the claims of one’s nations and one’s conationals, and takes them as one’s own. Nationalists act as agents of their nation, and when agents act what matters is the rights of the principal (that is, the nation) rather than the agents’ motivations (that is, their nationalism).

I will refer to the claim that nationalism is itself not important to the evaluation of nationalistic actions as the irrelevance hypothesis; the most uncompromising version of this hypothesis holds that nationalism never matters. The irrelevance hypothesis is grounded on the assumption that the entity status of the national group—its national unity along linguistic, religious, ethnic, or cultural lines—neither adds to nor detracts from the moral legitimacy of the actions that a nationalist movement undertakes. The alternative to treating the status of the national entity as central is a focus on what I will call the underlying independent moral claim. A moral claim is independent (in the sense that I intend here) if its moral force does not depend on the sort of entity that is asserting it, and in particular on whether it is asserted by a certifiably national entity that is homogeneous according to some “national” criteria.

In the final analysis, this article will not stake out a position of complete irrelevance; Part III considers ways that national entity status could reasonably be considered morally significant. But even if the argument for complete irrelevance is incorrect, an important corrective to much contemporary discussion needs to be observed. The justice of the independent underlying national claim needs to be put squarely on the agenda, even if it is not the only factor that matters. It is quite striking that philosophical discussions of nationalism have paid virtually no attention to the justice of the independent underlying claims that nationalists make on behalf of their nations.

The only claim of moral justification that is considered in most philosophical accounts of nationalism is that a nation might be entitled to something simply because granting that entitlement would promote national flourishing. Philosophers interpret the claims that nationalists make as arguments that “we are entitled to thus-and-such because we are a nation.” This is an argument based on national entity status. But that is not what nationalistic claims are generally about. Instead, nationalist claims typically take the form “we are entitled to thus-and-such because it was taken from us wrongly,” or “because we have suffered injury for which this is the only suitable reparations,” or “because God intended us to have it,” or something of that sort. That is why nationalists do not feel any inconsistency in fighting to seize resources from other nations; if their claim were simply that a group deserves something because it is a nation, then one would expect them to better appreciate the competing claims of their adversaries, who are typically also behaving nationalistically.
This is not to say that nationalists never rely on nationalistic arguments; nationhood, they recognize, is what draws them together in their fight. But the function of national identification is generally to provide an explanation for why they are fighting, not for whether their cause is just. Nationalist claims are seriously misserved by the way that philosophical discussions of the topic are usually conducted. The reduction of nationalist claims to a claim that “we deserve such-and-such because we are a nation” lumps all forms of nationalism together, implicitly encouraging the assumption that either nationalism is good, or nationalism is bad. The philosophers’ typical depiction of what nationalist claims are all about leads to treating nationalistic fighting as prima facie illogical, because those who are involved should understand (but don’t) the similarity of the two competing claims. The standard philosophical interpretation of nationalism envisions a greater symmetry of rights and wrongs than typically exists.

I. Two Interpretations of Nationalism

The standard philosophical account of nationalism has fairly consistently reflected assumptions about nationhood and its value arising out of debates originating in the period following the First World War. The principles of national self-determination developed during that period are commonly associated with Woodrow Wilson, who advocated a right of a nation or people to its own state, and who urged recognition of such a right when borders were being redrawn in Europe at the war’s close. This is not to say that nationalism was itself a new phenomenon at that time. While there has been much debate over the intellectual origins of nationalism, and in particular over whether it is an ancient or a modern form of political mobilization, it was clearly a potent force before the time that world leaders started explicitly to take it into account. It was during the interwar period, however, that the current philosophical debate took its present shape, and the assumptions underlying that debate were then incorporated into the legal norms of the right of self-determination of peoples.

The basic assumption underlying the Wilsonian position, the existing legal norms, and the contemporary philosophical debate is that there are entities known as “nations” that claim certain sorts of rights. Whether they actually have such rights is a matter of controversy—that, essentially, is what the contemporary philosophical debate is all about—but there seems to be substantial agreement that to the extent that these rights exist, they

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1 For a brief discussion of some of the key ideas about national self-determination, and citations to the vast literature, see Lea Brilmayer, Secession and Self-Determination: A Territorial Interpretation, 16 Yale J. Int’l L. 177 (1991).


inhere in nationhood. There is also controversy about what exactly the defining characteristic of a nation is. A nation is an entity that is fairly homogeneous with respect to some particular variable—it is a community that shares some attribute—but it is difficult to say precisely which attribute that should be. The usual candidates are language, religion, ethnicity, culture, and race; but for every potential defining characteristic, counterexamples can be found. It is for this reason that various authors have despaired of formulating an adequate criterion: "[I]t seems to be impossible to produce an independent definition of the nation which can be correlated in any reliable way with the existence or the intensity of nationalism."

Contemporary philosophical accounts tend to employ culture as the defining characteristic of a nation. The question that they pose is whether, and if so why, the fact that a group constitutes a nation entitles it to certain resources. The most important resource that is commonly claimed is a state of one's own, but of course nationalist claims are not necessarily so limited; a nation might also lay a claim to material resources or to a greater degree of political autonomy within an existing state. The answers that these philosophical accounts give tend to focus on the value that certain sorts of communities provide to individuals. Communities cannot provide these benefits, it is argued, unless they have a certain amount of political autonomy and material security; the right to national self-determination therefore arguably encompasses a good claim against the world community for political and material control of one's national destiny.

Yael Tamir's analysis provides a thoughtful application of this approach. She identifies six assumptions underlying the cultural interpretation of the right to national self-determination. These are that membership in a cultural group is an essential human interest, that this interest is profound and intense, that cultural and national identity requires ability to express it both publicly and privately, that public space to enjoy this identity is essential, that the ability to conceive of a community as expressing one's national identity is at the heart of the claim to self-determination, and that a right to national self-determination requires a certain degree of political autonomy. Tamir's approach is basically consistent with the analysis of Avishai Margalit and Joseph Raz, although they focus on somewhat different features of the problem. They speak in terms of "encompassing groups" which have the following features: common character and pervasive culture, an ability to transmit that culture to new members, membership by informal acknowledgement of belonging.

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4 As should become clearer as the discussion progresses, nothing turns for my purposes on which of these defining attributes is employed. The identical arguments can be posed, and the same questions raised, regardless of the definition of nationality one employs.

5 BREUILLY, supra note 2, at 19; see also HOBSBAWM, supra note 2, at 5.

6 Three contemporary analyses will be taken as examples in much of the discussion below. By Yael Tamir, see both her second edition to LIBERAL NATIONALISM (forthcoming 1995) [hereinafter TAMIR, NATIONALISM] and THE RIGHT TO NATIONAL SELF-DETERMINATION, 58 SOC. RES. 565 (1991) [hereinafter Tamir, Self-Determination]; by Avishai Margalit & Joseph Raz, NATIONAL SELF-DETERMINATION, 87 J. PHIL. 499 (1990); and by Judith Lichtenberg, NATIONALISM, FOR AND (MAINLY) AGAINST (forthcoming 1995).

7 Tamir, Self-Determination, supra note 6, at 586-87.
membership that is central to self-identity, membership by belonging rather than achievement, and membership by shared characteristics rather than face-to-face acquaintance.\(^8\) Judith Lichtenberg, similarly, frames her analysis in terms of promoting the flourishing of national cultures.\(^9\)

While the analyses of these authors vary in some of their assumptions and conclusions, they share the following general pattern. Once it is decided what the sought-after value of a nation is, it is necessary to determine what sorts of groups qualify as providing this value, and from this it can be decided which groups (if any) are entitled to recognition and which sorts of rights then follow from that recognition. Thus, for example, Lichtenberg asks "what sort of entity we ought to promote if our goal is to foster the existence and flourishing of cultures."\(^10\) Margalit and Raz argue, similarly,

We have some understanding of the benefits self-government might bring. We need to rely on this in looking for the characteristics that make groups suitable recipients of those benefits. We want, in other words, to identify groups by those characteristics which are relevant to the justification of the right. If it turns out that those do not apply to peoples or nations, we shall have shown that the right to self-determination is misconceived and, as recognized in international law, unjustified. Alternatively, the groups identified may encompass peoples (or some peoples) as well as other groups. This will provide a powerful case for redrawing the boundaries of the right.\(^11\)

There is in all of these accounts the assumption that there must be a close analytical link between the particular right that is being asserted—a right to self-government, or to the resources necessary for cultural flourishing—and the type of entity that is asserting that right. One cannot appreciate nationalist goals, and their moral force, without understanding what it means to be a nation.\(^12\) The fact that an entity has the status of a nation, then, is treated as integral to the nationalist’s demands. It is “the touchstone of political claims.”\(^13\)

There is an alternative to this way of viewing the source of nationalist claims, however. Instead of depending on the status of the entity asserting the claim, this alternative focuses on the relationship that the entity has with other claimants to the particular resource in question. If we call the first interpretation of nationalist claims a national entity analysis, the second might be called an analysis of independent underlying moral claims. The moral claims are independent in the sense that the entity status of the claimant is not integral to the claim; the claims are independent of the status of the entity making them, in other words. They underlie the demand for resources made by nationalists by purporting to provide a justifi-

\(^{8}\) Margalit & Raz, supra note 6, at 443-47.
\(^{9}\) Lichtenberg, supra note 6.
\(^{10}\) Id. (manuscript at 17, on file with author).
\(^{11}\) Margalit & Raz, supra note 6, at 443.
\(^{12}\) “[I]t is impossible to know what nationalism is—what those who call themselves nationalists aim for—if we do not know what a nation is.” Lichtenberg, supra note 6 (manuscript at 3, on file with author).
\(^{13}\) Breuilly, supra note 2, at 4.
cation for taking those resources away from the group currently in possession. Whether that justification is a convincing one is, of course, another matter. The alternative interpretation of nationalist claims that is offered now asserts only that nationalists make and believe in such claims; not that they are valid claims that should be recognized by other potential claimants or the community as a whole.

An example will illustrate the difference between the two approaches. The Baltic states of the former Soviet Union had two potential ways to frame the arguments that eventually led to their independence. One was to stress their nationality: linguistic, ethnic, or religious homogeneity, coupled with a unique culture that was worthy of promotion and preservation. The other was to emphasize the wrongfulness of their initial annexation, and to make a claim for independence as corrective justice for that wrong. This sort of claim does not depend upon whether the states themselves were possessed of a unique culture or were homogenous in the appropriate ways. Many different sorts of groups might make such a corrective justice claim; there is no reason to think that such claims are limited to entities constituted as nations.

We should not automatically assume that the nature of the entity asserting a claim is integral to the merits of the claim. Most legal claims, and perhaps also most moral claims, can be made by entities of rather different sorts. The claim for independence made by the Baltic states can easily be made by multicultural, multireligious, and multilingual entities if it is framed in terms of the wrongfulness of annexation. (Indeed, such claims are often made by states, which are not necessarily also nations.) To say that a certain sort of claim has been made historically by national entities is not to show that national entity status plays a role in the argument. Common nationality may provide a definition of the group that owns or holds the claim, but this does not mean that it figures into the analysis of whether the claim is a valid one.

In fact, once it is kept in mind that our world is a world of scarce resources, and nationalist groups are competing for scarce resources against other claimants, it is not clear why it is a good argument against other claimants that the national group itself has certain internal characteristics, such as cultural or linguistic homogeneity. What is needed to defend one's claim against competing claimants is a justification for depriving those competing claimants of the resource in question; this is the function of the underlying independent moral claim.

II. The Independent Underlying Claim

If we were to state the hypothesis under consideration in its most uncompromising form, it might go as follows. Groups can have moral claims to resources, just as people can. There are various different kinds of groups, including family groups, professional associations, economic

14 We will return in Part III.C of this article to the question of whether certain sorts of nationalist claims actually are specific to nations. Here I am concerned mainly to argue that it is a mistake to take for granted the relevance of the status of the claiming entity.
classes, political parties, and religious groups. The nature of the group that holds the claim to a particular resource does not affect the validity of the claim. Whether a group has a valid claim depends not on its own composition, but on the strength of its argument relative to the strength of the argument of other claimants. The national objectives must be independently legitimate, and the means chosen must be independently acceptable.

In the case of groups defined by nationality, the fact that the group consists only of individuals with a common nationality does not strengthen (or weaken) its claim to a resource. The claim to a resource must rest on some good reason for depriving other groups or individuals of that resource, and it is not a good enough reason simply that bestowing the resource on some nationally defined entity would have desirable consequences for it (for instance, by promoting its cultural flourishing). The reasons that might be considered adequate vary from one case to another. Often, the independent underlying claim rests on an argument of corrective justice (e.g., this resource was wrongfully taken from us, and the offending group should have to return it; the offending group committed atrocities against us and this resource is the only adequate reparations). But it might equally rest on other sorts of grounds, so long as those grounds can be made morally convincing.

A case that illustrates this notion of an independent underlying moral claim in particularly interesting ways is the Israeli/Palestinian dispute. Various different kinds of claims to the territories in question have been advanced. Some Jewish settlers of the occupied territories, for example, claim that the lands in question were given to the Jewish people by God. Others assert that earlier immigrants took apparently barren desert and turned it into productive farmland, and that this gives present-day Israelis a valid claim. Another theory is that the Jewish people were entitled to the land in question as reparations for their suffering during the Holocaust (and over previous centuries). Still another argument is that Israel is entitled to some of the areas in question (particularly the Golan Heights) by virtue of its legitimate security needs and the fact that Syria used the area in the past to stage attacks. The Palestinians, of course, make contrary arguments; most are based on corrective justice, claiming that there were originally Palestinians living in what is now Israel and that their land was wrongfully appropriated both during earlier periods of settlement and after various military engagements since the establishment of the Israeli state. The Palestinians also point to human rights abuses that they have suffered at the hands of the Israelis.

As this example illustrates, the fact that a group makes an independent claim does not mean that others will find that claim convincing, or that it is a valid one. Typically there are claims on both sides, and they cannot both be right. Resolving such claims involves adjudicating their merits, and this is not an easy task. But the fact that it is not easy does not mean that it is not the right way to approach the problem. Indeed, it can be persuasively argued that any solution that turns its back on consideration of such
issues is likely to be bitterly resisted precisely because it ignores what the individuals involved see as the central issues of right and wrong.

In Part III of this article we will return to the question of what role is played by the national status of the claiming entity in the merits of such competing claims. Here, however, I want to continue my focus on the most uncompromising version of the argument that national status is irrelevant by investigating some reasons for preferring an interpretation based on the independent underlying claim. This interpretation is better, it can be argued, in two related ways: first, because it is more faithful to what nationalists actually argue (a descriptive claim) and, second, because it is more philosophically convincing (a normative claim). Or, to put it another way, the interpretation which focuses on the independent underlying claim is the better one because it is the most convincing way to understand what nationalists are actually arguing. The demands that nationalists make are ones that are not actually strengthened by the fact that their group has national status in the sense that philosophers or political theorists have in mind. To argue this point, we will first consider some claims that nationalists don’t make, then some claims that they actually do make, and finally some claims that they tend to ignore.

A. The Claims That Are Not Made

If the usual philosophical account of nationalism were correct, then one would expect that most nationalist demands would center on national homogeneity and the extent to which the resource demanded would promote national flourishing. Those looking at nationalist claims with a critical eye should be expected to assess those claims according to whether the group asserting them was truly a national one, for the fact of national homogeneity is a central element in the argument. Yet it would not count as an argument against most nationalist movements, either in the eyes of their adherents or in the eyes of the watching world, that their adherents come from distinct religious or ethnic groups.

Good examples of this point can be found in the decolonization period. Most (one is tempted to say, all, but this is probably going too far) of the newly emerging states contained individuals from very diverse racial, ethnic, religious, linguistic, and cultural backgrounds. We call such movements “nationalistic,” but surely this is not correct if “nationality” requires identity along ethnic, linguistic, or cultural lines.\footnote{Indeed, Breuilly suggests that such movements should not be called nationalistic. Compare Breuilly, supra note 2, at 7 (arguing that the independence movement during the American Revolutionary War did not advance “nationhood” because “the leaders of the independence movement did not refer to a cultural identity to justify their claims”) with id. at 9 (discussing the difficulty of fitting the decolonization movements into a cultural identity analysis).} Indeed, the fact that we call such movements nationalistic suggests that something other than homogeneity according to one of these criteria is what makes a movement a “national” one.

An obvious possibility is that national unity and identity are products of the underlying claim, rather than the other way around. It has fre-
quently been noted that nationalism is a cultural artefact. But one thing that it is an artefact of is a common sense of injustice that is produced by the shared grievance, with the grievance itself a product of something else (colonial occupation, for example). This, in fact, can be an important source of problems once the colonial period is over, for in some instances the only thing that held the "national" movement together in the first place was a common opposition to oppression, so that once the oppression was gone the unity disappeared as well. Does it make sense to say that movements of this sort are not really nationalistic? More to the point here, does the fact that the claimants are not culturally, ethnically, or linguistically homogeneous make the claims in question any less morally persuasive?

Perhaps it might be argued that whenever a common underlying claim exists, this necessarily gives rise to a common culture and thus the movement can be usefully treated as nationalistic despite the cleavages along other lines. It is not clear that this claim is descriptively accurate, because the supposed culture thus created may (as just mentioned) have little depth and precious little staying power. It is also not clear that such a "culture of grievance" is the sort of culture that philosophers have in mind when they speak about nationalism as the promotion of cultural flourishing. In particular, a culture is likely (all other things being equal) to be more worthy of recognition by its being longstanding, while with historical grievances the opposite is usually the case: a more recent conquest, for example, presents a stronger case for continued resistance.

More importantly, however, this attempt at saving the usual nationalism analysis hardly has the desired effect. If it is followed, the cultural identification of the group is entirely derivative of the underlying moral claim. If this is the case, it seems that the merits of the claim ought to figure centrally, for a group that is constituted by a valid moral claim seems more worthy of recognition than a group that forms itself around a morally invalid one. Furthermore, if the existence of a valid claim automatically gives rise to a properly constituted culture, then it seems that it is the independent claim that is itself doing all of the work. Nothing is added by pointing out that a shared moral right can influence cultural attitudes.

A second consideration that suggests the entity status is not the key element of the claim is the fact that scholars have been unable to identify a precise characteristic with respect to which a nation must be homogeneous. As noted earlier, writers have despaired of identifying the precise features that a nation must have—although frequently cited elements are common culture, language, ethnicity, religion, and race, counterexamples exist of national movements with cleavages along each of these lines. The

16 See, e.g., Hobsbawm, supra note 2, at 10; Anderson, supra note 2, at 9-36.
17 Compare Introduction to Tamir, Nationalism, supra note 6 (manuscript at 3, on file with author) ("the most troubling consequences of this approach is that it leads to the sanctification of suffering"). She is not talking precisely about how culture might arise out of a claim for corrective justice, but rather about how a claim to statehood might be grounded directly upon an experience of violence. Her point applies, however, to the notion of requiring a culture rooted in a corrective justice claim. We will return to Tamir's rejection of the reparations approach to nationalism. Supra text accompanying note 34.
explanation may be that there are any number of different reasons that individuals may choose to identify with a cause, and the fact that in one case common ethnicity is chosen, and in another common language, is not perceived as crucial. If national entity status is not itself integral to the moral merits of the dispute, then individuals should be able to align themselves with any cause with which they happen to identify; the precise reason for identification is a matter of motivational force only.

For all of these reasons, the fact that we do not typically inquire into the existence or nonexistence of homogeneity of a national group suggests that we do not really think that this factor matters to whether the nationalist claim is worthy. This is not what we look to in assessing nationalist claims. It is also not what nationalists primarily rely on when trying to convince the world to support them. Perhaps more telling than what nationalists do not argue is what nationalists actually do argue. The arguments that nationalists make tend to center on their possession of a valid claim to the resource they wish to appropriate.

B. The Arguments that Are Made

In saying that the arguments that are made support the claim based interpretation of nationalism, I do not merely mean that nationalists virtually always have some independent moral claim that they should be awarded the resource they demand—although that is surely the case. In addition, I mean that when one looks at what they demand and who they hope to get it from, the best way of making sense of their demands is by keeping one’s eye on the independent merits of their claim.

Note first that the claims that nationalists make are typically claims to specific assets, and typically claims against specific other groups. They are not claims against the world at large that they be supplied with some general sort of resource to make their aspirations possible. The best example is a typical nationalist goal: an independent homeland. Whether it is independence for European colonies in Africa, a homeland for the Kurds of Turkey, Syria, Iran, and Iraq, or regional autonomy for the Canadian Inuit, a nationalist group seeking a land of its own generally has a particular piece of land in mind. Because the land in question is likely to be occupied already by some other group, this means also that the claim is likely to be directed at some particular other entity.

In theory, the nationalists might direct their claim at the world at large. If the nationalist argument was simply that the nationalist group was

18 Of greater importance to nationalists than homogeneity within their own group is the differences between themselves and the group with which they compete for the resource in question. Thus, while anticolonial movements were not morally weakened by the fact that they were culturally or religiously divided, they were strengthened by the differences between themselves and the colonial occupiers in the following way. The fact that their lands were occupied by outsiders underscored the fact that the conquest was originally wrongful and continued to be wrongful.

19 A possible counterexample concerns the formation of Israel. Other sites, including the al-Arish project in British East Africa, were considered before it was decided by the great powers to encourage the formation of such a state within its present borders. See Howard M. Sachar, A History of Israel: From the Rise of Zionism to Our Time 59-64 (1991).
entitled to a land on which it could establish a community of its own, then the argument could be met by a grant of territory anywhere on the globe. And the land could be obtained by requiring all of the states of the world to contribute to a fund to compensate the state whose land was appropriated for this purpose. This is not to say that as a practical matter it would be easy to implement such a scheme, for surely it would not. But practicality cannot be the only explanation, for the demands that nationalists make are also often impractical or difficult to achieve. What matters here is that even at their most unrealistic, nationalists do not make claims that the world at large should contribute to the purchase of land for them, and would not agree that any land would do. They make claims that a particular piece of land should be theirs, and that it should be handed over by the state currently in possession.

Nationalists' claims to particular pieces of land cannot be adequately explained by the fact that nationalists see the particular resource in question as uniquely suited to promoting their national flourishing. That fact might explain the specificity of the demand for the resource in some circumstances, but it would not explain why it should not be necessary to compensate the previous owner; it does not, in other words, tell who should bear the cost of providing that resource. In domestic arguments about politics and justice we would differentiate between claims that "I very badly need such-and-such; it should therefore be provided to me" (which is a claim against the society at large) and "I am entitled to that resource which you currently wrongfully hold" (which is a claim against a specific individual). The former are generally satisfied through some system of public taxation; they are social benefits. The latter are satisfied by taking the resource in question away from the individual who currently holds it and bestowing it upon its rightful owner.

The fact that nationalists make specific claims against specific other entities, and do not think the current owner entitled to demand compensation for relinquishing the resource in question, suggests that there must be more at stake than simply the belief that "we are entitled to support for our national flourishing because we constitute a homogeneous nation." Nationalists always have some way of focusing their claims such that it seems reasonable that they demand satisfaction from their opponents as opposed to from someone else or from the world at large. The reasons that they give for demanding satisfaction from the particular entity that they do form the basis of their underlying independent claim.

Their opponents seem to agree; or rather, they seem to agree about what it would take to make a valid argument. The opponents of nationalist movements do not argue that "the resource you demand would not actually contribute to your cultural flourishing" but "the resource you demand is not something that you are entitled to." Thus, for example, the People's Republic of China insists that Tibet was historically part of China and not an independent political entity; the Baltic states, it was alleged by the Soviets, joined the Soviet Union of their own free will. While there is tremendous disagreement between nationalists and their opponents on the merits of the independent claim, there seems to be general agreement on the
form that the argument must take. It must deal with competing claims to a single resource. Nationalists and their opponents cannot agree, but they can join issue.

One of the reasons that nationalists do not present their claims in terms of national flourishing may be precisely because either their present or their future rival claimants are national groups as well. And this brings us to the question of the claims that nationalists ignore.

C. The Claims that Are Ignored

Nationalists tend to discount competing nationalistic claims. The fact that some resource would promote their national flourishing does not suggest that it would not also promote the national flourishing of some other group; indeed, often resources that would be valuable in the hands of one group would be equally valuable in the hands of another. The fact that nationalists discount the nationalist claims of other competing groups might perhaps be explainable in terms of the fact that they feel that the other group is not truly a nation. For example, the Kurds of Turkey might perhaps feel that the Turkish claim to the territory on which they live is not compelling because Turkey is multinational; indeed, the fact that the Kurds feel a distinct national identity seems to demonstrate their belief that Turkey encompasses more than one national group. However, as already pointed out, national groups themselves do not seem bothered by cleavages within their own communities. So the question remains, why the asymmetry? How can nationalists be so convinced of the merits of their own claims without recognizing the validity of others, similarly situated?

The answer lies in the fact that, according to the nationalists' own view of the world, other claimants are in fact not similarly situated; the reason, moreover, has to do with the centrality of the underlying merits of the independent claim. If claims were based on the entity status of the contending claimants, then it would be entirely possible that competing claims would be symmetrical. National group A and national group B may both want the same thing and if all that matters is that they are nations and the resource in question would promote their flourishing, their claims would be equally good. But this is far less likely when A and B each have arguments about why one is more entitled to the resource than the other. We can illustrate this point by reference to the well-known tendency of newly independent states to discount the autonomy arguments of their own national subgroups.

After achieving independence, many of the newly decolonized states of Africa and Asia were faced with movements by smaller groups within the state demanding political independence of their own. In some cases, civil wars were actually fought over such issues; the Biafran and Katangan independence movements were examples. India split from Pakistan, and Pakistan itself was thereafter further divided between the eastern and western sections of the country. The governments of the newly independent states did not receive such movements with good grace; and they have been accused of hypocrisy for failing to recognize the validity of claims that are
essentially analogous to the ones that they themselves made only a short while earlier.\textsuperscript{20}

The supposed intellectual inconsistency has been phrased in terms of whether nationalist claims are generalizable or particular. It is thought to be logically indefensible that nationalists recognize the particular merits of their own claims without generalizing to the claims of other groups as well. Along these lines, Breuilly asserts that the "core doctrine" of nationalism does not include "propositions involving explicit generalizations beyond the particular nation to which the nationalist appeals."\textsuperscript{21} A movement based on generalized principles would not be nationalistic, under this view. For example, a movement would be nationalistic if it promoted the interests of the Kurdish people, but not if it promoted the interests of all peoples, wherever situated, who were wrongfully denied a state of their own. Lichtenberg makes a similar distinction:

Here are two different ways members of a culture might view themselves in relation to outsiders. (1) "We're better than others. The world would be a better place if we dominated over others. Others don't matter, only we matter." (2) "We're us, and we're partial to our own. But we realize that we're not any better than anybody else, and we expect members of other cultures to be partial to their own too."\textsuperscript{22}

The latter is obviously generalized in a way that the former is not.

One might, accordingly, explain the reluctance to accord recognition to national groups with which one competes for resources in terms of the tendency of nationalists to adopt a more particularized, less generalized, form of the nationalist argument. "Our self-determination and national flourishing matters," one can imagine nationalists saying, "but not the self-determination or national flourishing of anyone else." To the individual who sees things in such terms, neither the claims of current adversaries nor the anticipated claims of future subgroups presents an obstacle, for there is no need to consider national claims by anyone else. This seems patently unfair (especially to philosophers, who are probably at least as prone to generalize as any professional group in existence). But, as Breuilly puts it, with a certain degree of understatement, "nationalists do not necessarily behave logically or fairly."\textsuperscript{23}

Truly they don't, any more than anyone else committed to a cause; for Breuilly then immediately adds that "one cannot apply logical standards to political ideologies."\textsuperscript{24} But it may be wrong to locate the unfairness or illogic of nationalists in the fact that they elevate the claims of their own group over the claims of other competing groups—even other competing national groups. It is perfectly logical and eminently fair to do so if one interprets nationalist claims in terms of the independent underlying merits of their dispute with competing claimants. For there is no reason to assume that the competing claims will be equally good; indeed, there is rea-

\textsuperscript{20} On this point, see generally Brilmayer, \textit{supra} note 1.
\textsuperscript{21} Breuilly, \textit{supra} note 2, at 3.
\textsuperscript{22} Lichtenberg, \textit{supra} note 6 (manuscript at 24, on file with author).
\textsuperscript{23} Breuilly, \textit{supra} note 2, at 3.
\textsuperscript{24} \textit{Id.} at 5-4.
son to expect that they will not be. If the arguments were based on entity status, nationalists would be irrational in not recognizing that the claims of other national groups often rest on as sound a moral footing as their own. Because their claims are really based on something else, the accusation does not stick.

The claims that nationalist groups make are both general and particular at the same time. They are particular in that they are arguments that some particular nation (their own) is entitled to some particular resource. They are general in that they rest on the assumption that any group that has a good moral claim to a particular resource is entitled to fight for it, and should be given it. It does not offend the principle of generalizability when nationalists deny that their opponents have good claims. The general principle that groups with good claims should fight for them and prevail simply has no bearing (in the eyes of the nationalist) on the claims that his or her opponents, present or anticipated, are making.

Nationalists are, indeed, sometimes unfair and illogical, with some being more unfair and illogical than others. But their unfairness and illogic is more likely to reside elsewhere than in their supposed inability to understand that other groups also possess national status. The unfairness that some nationalists exhibit resides, instead, in the inability to bring clear-sighted judgments to the merits of their own underlying claim, and to assess the moral validity of the competing claims made by other groups. Like most other people, nationalists tend to focus on the version of the facts that supports their positions while conveniently disregarding the version of the facts that supports competing claims. As Hobsbawm put it, “Nationalism requires too much belief in what is patently not so.”

They recite atrocities committed against their own members while discounting atrocities committed by their own in turn. They condemn the “terrorism” of their opponents while commemorating the “heroism” of their own struggle.

In particular, in assessing national claims, nationalists tend to take as the baseline—the point against which claims should be justly measured—their own historical apogee, the point of their own greatest power. Thus the Serbs in the former Yugoslavia measure the status quo against the point in time when they possessed control over the greatest amount of territory; the Chinese start the clock running at the point in time when (according to their view of the facts) China exercised dominion over Tibet; and Palestinians prefer the status quo of the beginning of this century rather than two millennia previous, when (according to their rival claimants) the land was a Jewish community. The inability to view the merits dispassionately and fairly is a failing; but this is not a logical failing of the same sort as an inability to recognize that one’s opponent possesses the identical claim on a resource as you do. From the nationalist point of view, the competing claims are not identical at all; and nationalists ask only that the competing

claims be assessed on the merits, secure in their confident belief that if the claims are viewed objectively any reasonable person would agree with them.

D. Reluctance to Address the Merits

While nationalists may be convinced that anyone who views the merits will see things their way, the world community as a whole is typically not interested in close examination of the merits of such disputes, and the philosophical community has been equally disinclined to treat such claims as central. The attitude of the world community is perhaps predictable, although superficial and troubling, but as to the philosophical community we have to take a closer look.

The attitude of the world community is doubtless based on two factors: a sense that it is impossible to sort out the merits of such competing claims, and fatalism about one's practical inability to implement a just solution even if one could decide what it would be. It is impossible to sort out the merits of the claims because there is no way to decide the accuracy of factual claims relating to events occurring long ago, and because the moral questions involved in making assessments are exceedingly complex. The institutional mechanisms, moreover, for collecting and sifting facts and for making and considering arguments are not as fully developed in the international as in the domestic context, there being no fully adequate international legal system.

Fatalism about the likelihood of implementing a solution is equally important, however. Like the inability to properly adjudicate the merits, fatalism is due to the absence of adequate institutional mechanisms. It is difficult for the world community to commit to making the effort to sort things out when the morally correct resolution will not be put into practice. How much easier simply to say, "there go those crazy Yugoslavs (or Palestinians, or Chechnyans) again" and treat all residents of the Balkans, or wherever, as individually and collectively irrational. This mentality is all too common in the Western public at large.

The attitude of professional philosophers is more interesting and complex. The most common response is to recognize in passing that claims of this sort are possible, but to assert that they are different from nationalistic ones and to discount their importance. For example, in their article on national self-determination, Margalit and Raz recognize the moral significance of the "just interests of other countries" and acknowledge briefly that restitutionary principles may apply in cases where self-determination claims are made. They also discuss the possibility that self-determination

26 I have left out a third possibility; members of the world community may simply prefer to side with the claimant most closely aligned with their own national interest, and therefore may not care about who is right and who is wrong. I do not leave this possibility out because I think that it is unlikely (it isn't) but because I am considering only plausibly principled reasons for community attitudes. As noted in the text below, other reasons that have no plausibly principled basis are laziness and the tendency to treat people from other cultures, far away places, and different ethnic groups simply as irrational primitives.

27 Margalit & Raz, supra note 6, at 457; see also id. at 454 (recognizing the claims of nonmembers to the resource in question).

28 Id. at 459.
might be a remedy for wrongful occupation, although they choose not to treat this possibility as central:

[C]laims of self-determination are invariably raised whenever one state invades and occupies another, or a territory belonging to another. Yet it is important to distinguish between the wrongness of military invasion or occupation, and the rights available against it, and the right (whatever it may turn [out] to be) to self-determination. In a word, the latter is a source of title, whereas the former is a possessory right based largely on public-order considerations. Any legal system, international law not excluded, recognizes certain ways as legitimate ways of solving disputes, and outlaws others. Subject to the exceptions of legitimate self-defense and self-help, the use of violence is forbidden. Violation of that prohibition gives rise to a right to have the status quo ante restored, before the deeper sources of the dispute between the parties are examined; that is, regardless of the soundness of one's title to a territory, one may not use force to occupy it.29

Their argument seems to be roughly as follows. A group that makes a claim based on its status as a national group with a legitimate interest in national flourishing is making a claim of title, a claim which if recognized would give it a genuine entitlement to the land in question. A group that claims that its land has been wrongly invaded and occupied is merely making a possessory claim, a claim that the occupying force was not entitled to use force to settle disputes. The claim that this latter sort of group is making merely has to do with the remedies appropriately available to settle disputes. If that group is correct the proper outcome is to award possession to that group temporarily, pending thorough adjudication of the merits of the dispute. Or, to put it another way, the underlying dispute is really over national flourishing, because such disputes are the ones that grant genuine title; disputes about invasion and occupation are merely over remedies.

The discussion earlier in this section sets out the basic reasons why, in my view, this analysis does not capture the essence of the claims that nationalists are actually making. Philosophers may believe that the essence of the dispute is one of national flourishing and that invasion and occupation pose basically remedial questions; but nationalists themselves seem to have a different view of what the central issues are. They attach a far greater importance to the fact that they once possessed the land which has now been taken from them. Margalit and Raz do not address the question of why they think such matters are less central than the question of national identity and flourishing, and so it is perhaps unfair to take their remarks out of context. Two other philosophers—Judith Lichtenberg and Yael Tamir—also touch on the topic briefly, although once again it is not an important focus of their attention.

Because neither of these writers really addresses the precise question here, we run once more the risk of taking their arguments out of context.

29 Id. at 442.
But both address similar problems, and so their remarks are illuminating. Lichtenberg addresses what she calls the "reparations argument."

When a culture has been conquered or colonized by outsiders, when it has lost land or its members have been displaced, it will assert its right to be free of the yoke of oppression. But as part of determining its own destiny, it may insist on the return of "that land of our forefathers," harking back to a Golden Age before the group was dispossessed of its rightful territory. For nationalists in quest of a state, this sense of historical grievance and the urgent need to right old wrongs is never far from the surface.30

While recognizing the importance, in this way, that the argument has for nationalists, however, Lichtenberg discounts its moral significance.

Even were we to agree that in some way the nation got its history right, we might dispute the claim to reparations on the ground that too many events had intervened that extinguish or counteract it. How are we to adjudicate the myriad claims of groups to have been wronged years ago?31

She also adds that such claims are not an argument for nationalism, because they presuppose the existence of a nation to which something is owed.32

To the extent that Lichtenberg seems simply to be throwing up her hands in the face of the difficulties of determining right and wrong, it is not philosophically convincing. This is not the only sort of philosophical problem that is difficult to adjudicate; indeed, one is hard put to think of philosophical principles that would be easy to apply. Neither the age of some claims nor the difficulty of providing a remedy automatically closes the book on claims generally. Genocide does not cease to be wrong because it happened long ago and the facts are difficult to ascertain; desperate poverty and wildly skewed distribution of wealth are not philosophically acceptable on the grounds that we don't currently have institutional mechanisms in place for dealing with them effectively.

But this does not seem to be the main point that she is making. If the argument, instead, is that a claim that was once valid may have ceased to be valid because of intervening events, then she is not disputing the importance of the underlying claim but rather addressing it. Of course it is possible that a group may have lost its claim because of things that happened since the point at which they were wronged. This is as true for groups as for individuals; the statute of limitations (so to speak) may have run, or the claimant may have acted wrongfully and therefore forfeited his or her rights. Whether the right has been waived or forfeited is itself an important part of determining the underlying independent claim. But it cannot simply be assumed that because in some cases the rights may have been lost, it is never necessary to determine what rights exist. Examination of

30 Lichtenberg, supra note 6 (manuscript at 15-16, on file with author).
31 Id. at 16.
32 Id.
the competing arguments is the only way to determine fairly, on a case by case basis, whether the underlying claim on the merits is a valid one.

Still a third suggestion implicit in Lichtenberg's remarks is that the appeal for reparations depends on the validity of nationalism because "it already presupposes the existence of a nation to which something is owed. Only when a group of the requisite sort exists or is believed to exist does the claim of reparations to it make sense." There is a sense in which this argument resembles a position of Yael Tamir's, to whom we will turn momentarily, forTamir also claims that a theory that turns on reparations is not really about nationalism. But before proceeding to this point we must take issue with Lichtenberg's assertion that a reparations claim presupposes the existence of a nation. My point has been, precisely, that the sorts of claims that are made by nationalists on behalf of nations can be made by other sorts of groups as well: by multicultural entities bound by some other factor, or by states, economic classes, or labor unions (to simply give some illustrations). Even someone who believes that the identifying criterion for nations is cultural (as the philosophers we are examining tend to do) should recognize that a group constituted by religion, language, or ethnicity can hold a valid claim to reparations.

Or to put it another way, the precise characteristic that these philosophers identify as giving the greatest strength to the "national flourishing" argument is the one that they choose to employ in their definition of nationhood. But even if they are correct about the philosophical significance of national flourishing, there is no need to limit reparations arguments to groups that would qualify under the criterion thus identified. The question of a nation's flourishing (and whether the world at large has a duty to support it) is simply not the same as the question of a group's right to reparations. There is no reason to limit reparations to groups that qualify as "nations."33

Finally, Yael Tamir addresses briefly the reparations argument in the introduction to her second edition of Liberal Nationalism. Again, she is not mainly addressing the sort of argument I have been making and so it is not clear whether her remarks are really apposite. She writes as follows:

By providing a remedial justification one might indeed pursue a worthy cause, and bring about desirable results. Yet one cannot cast a theory of nationalism . . . in these terms, as remedial justifications must rest on the contingent features of particular cases rather than on some universal justification. This is why remedial arguments, effective as they may be, occupy no role in my theory.34

There is a sense in which this point is exactly right. By casting the problem in terms of the underlying moral claim, one seems to be abandoning the search for a moral theory of nationalism as an important phenomenon in and of itself.

33 I have not addressed the complicated question of how to identify which groups are sufficiently coherent to be able to hold valid claims, other than to say that they need not be nations in the sense that philosophers have in mind. That would be an article—or a book—in its own right.
34 Introduction to Tamir, Nationalism, supra note 6 (manuscript at 2-3, on file with author).
But is that necessarily a weakness? Might it not be argued that by insisting on divorcing nationalism from the underlying merits, philosophers have achieved analytical purity at the expense of relevance? The whole thrust of the argument so far has been exactly that philosophers need no more have a theory of the rights of nations than a theory of the rights of blond people or the rights of people whose first names start with the letter G. The hypothesis under consideration is precisely that the sort of claims that nations make are not any different than the sorts of claims that are made by other groups, and the fact that a claim is made by a nation neither adds nor detracts from its moral force. Maybe we don’t need the sort of theory of nationalism that Tamir anticipates, a theory purged of considerations that are not per se a consequence of national status.

But there is something here that should give us pause. For one of the arguments underlying our analysis has been that nationalists themselves understand their rights in terms of the underlying independent moral merits and not in terms of their nationhood. To have a theory of nationalism, in other words, we must take seriously what it is that nationalists themselves purport to be claiming. We must try to interpret what nationalists understand their claims to be in the most convincing possible light; if we build a philosophical foundation for something that nationalists do not actually claim, we may have a philosophical theory of something, but not of nationalism. If this is correct, however, we ought to be concerned that we ourselves have fallen into a similar error. Clearly, everyone studying nationalism (or engaged in nationalist political activity) believes that nationhood is important in some respect or another. If we have made nationalism and nationhood truly irrelevant, then perhaps we have ceased providing an analysis of nationalism at all.

Part III of this article will return to the question of why and how nationalism makes a difference. There are two issues to address. First, we will acknowledge some ways that nationalism matters that do not essentially undercut the arguments that we have made about the independence of the underlying moral claims. More importantly, however, we must secondly consider the ways that the most uncompromising version of the irrelevance hypothesis may be incorrect. We need to consider the ways that the entity status of the claiming nation can be important after all.

III. THE MORAL SIGNIFICANCE OF NATIONALISM

Some of the reasons that nationalism matters have little to do with the rightness or wrongness of the actions that nationalists undertake. First, nationalism is important as both a historical and a psychological phenomenon. Historians have been interested in nationalism because of the role that it has played in shaping world political processes, including the redefinition of European borders after World War I, the decolonization movement in the middle of this century, and the current strife as Europe’s borders are once more being reconfigured. Historians have examined the social and intellectual antecedents of nationalism and will undoubtedly continue to do so for years to come.
Nationalism is psychologically complex as well. What causes people to identify themselves with some groups rather than with others? Why is the nationalist tie one that matters to people? Is nationalism parallel to identification with the family unit, which seems to be a basically healthy form of psychological attachment? Or is nationalism somehow darker and more atavistic? Is nationalism a positive identification with members of one’s own group, or a negative emotion characterized chiefly by the desire to exclude members of other groups? All of these questions matter regardless of whether nationalism adds anything to the process of moral evaluation of the action that is taken for nationalistic reasons.

Other issues that continue to be important include economic ones, such as the relation between economic class interests and the development of nationalist movements, and sociological ones, such as which groups in society are the most likely to be moved by nationalist considerations. Even if the most uncompromising version of the irrelevance thesis is correct, then, it has nothing to say about the usefulness of studying nationalism in historical, economic, psychological, or sociological terms. Debates over the defining characteristics of nationalism and the ways that nationalist movements arise are far from sterile. A better understanding of nationalism would be worthwhile if only because it would shed light on problems having little to do with normative evaluation of what nationalist movements do.

The issue here, of course, is not whether nationalism is significant historically or economically but what moral relevance it might have. To explore this question further, however, we need to say something more about what nationalism is and how it operates. Unfortunately, it is only possible to suggest what some of the remaining moral issues are, not to adequately address or resolve them. At least, however, we can acknowledge what some of them might be. The first important characteristic of nationalism for present purposes is that it is a motivation for doing something; the second is that it creates something resembling an agency relationship.

A. Nationalism as a Motivation

As a practical matter, nationalism is important because of its strength as a motivating force. Nationalism is not the only motivation that drives individuals to extremes of self-sacrifice and brutality; devotion to state or to family can also have that effect, as can religious devotion. Nationalist movements seem to present a unique challenge to the state, matched perhaps only by religious fundamentalism. Or, perhaps better put, they present a unique challenge to existing states, for nationalist movements attempt to capture the mechanisms of the state, either by gaining control of an existing state or by reconfiguring the state borders that currently exist.

Some of the confusion about the moral role of nationalism probably stems from the apparent similarities between two rather different questions. If a nationalist were asked for an explanation of why he or she carried out certain nationalistic acts, two different sorts of answers might be appropriate. She might say either that she was doing it because she cared
about the well-being of her nation, or because her nation was entitled to
the resource that she was trying to procure for it. The second response is
offered as a justification for what she has done; the first supplies a moti­
vation for it. In a sense, they are both explanations for her actions, and the
relevance of the latter for moral evaluation seems clear in light of what has
been argued so far. What remains to be seen is whether the former has any
moral relevance, or whether moral analysis is exhausted by consideration
of the underlying moral claim.

There are at least two ways in which the nationalist motive might fig­
ure into moral analysis. The first is that one might believe that motivation
is always relevant to moral analysis, and that moral evaluation of national­
isim is no exception. It is not possible here to consider the merits of that
claim; the question of the moral importance of motivation is a very large
topic and unlikely to be settled by anything that could be contributed in
the present context. For this reason, we will have to be content merely to
say that if motive is morally relevant, then nationalism will be morally rele­
vant as well. If it is, then it becomes necessary to ask whether nationalist
motives are good ones or bad, and how the morality of motive combines
with other elements of the moral equation.

A second way that nationalist motives might be relevant concerns the
distributional consequences of making decisions on nationalist grounds. Even
if we assumed that the only nationalist actions undertaken were ones
that were fully justified by underlying moral analysis (actions where the
objective was legitimate and the means were morally acceptable), one
might still be troubled by the fact that certain nationalistic goals were force­
fully pursued and not others. Out of the universe of justified nationalist
actions, the only ones that would be undertaken would be those which had
powerful constituencies. In other words, even if all of the actions under­
taken are justified, we might be troubled by the ones that were not under­
taken but which were equally justified.

Nationalism creates a certain pattern of results. Causes with large
numbers of influential sponsors will receive more attention than equally
worthy causes with few adherents, or with adherents of limited means. The
partiality of nationalism is troubling, in other words, because each group is
looking out only for itself. Even if the things that a group gets for itself are
things that it was in some sense entitled to, a system which leaves the pow­
nerless to fend for themselves is hardly ideal from the moral standpoint.

While this possibility is troubling, it does not seem to reach the core of
what is truly morally repellent about nationalist abuses, and why national­
isim captures newspaper headlines and the public imagination. To under­
stand the special moral importance we attach to contemporary
nationalism, then, we must continue our investigation. If one important
feature of nationalism is that it supplies a motivation, a second is that the
relationship that it establishes is something resembling agency.

B. Nationalism as an Agency Relationship

A nationalist acts as the agent of his or her nation and conational in
furtherance of their interests. This is not to say that the nationalist will
never derive any personal gain from the triumph of the national cause; it is often the case that the nationalist will also receive a benefit. But similarly it is not uncommon for agents of other sorts to derive some benefit from the advancement of the interests of their principals. The analogy is appropriate because in agency relationships the interests of the principals are foremost, and the success of the agents' actions is judged in terms of how well the actions further those interests.

Employing the concept of agency, one might say that what matters from the moral point of view is the rights of the different principals with respect to one another. National group A has a certain set of claims, and so does national group B. A's members are agents that act on its behalf, as are B's. If the irrelevance hypothesis is correct, the agent is not entitled to pursue interests that the principal itself would not be entitled to pursue; nor is the agent entitled to use means that would be forbidden to the principal. Furthermore, it does not matter that the agency relationship is established by national ties—the fact that the individual is bound to his or her group by the fact of common nationality—rather than in some other way, such as by ideological agreement or commitment to the cause in question or even by purely mercenary motives.

It follows directly from this hypothesis that it is morally impermissible to pursue nationalist goals that are not independently valid (or to pursue even a valid goal by impermissible means). Whether the converse follows, however—whether it is morally permissible not to pursue them—is an interesting question on which the irrelevance thesis seems to have no bearing. The agency analogy suggests that some sort of duty to further the principal's interests may exist. If the goals are valid, and if the means are permissible, does this mean that nationals are obligated to come to the nation's assistance? The reason that the irrelevance hypothesis has bearing on the first question but not the second is that the first affects third party interests while the second does not.

The arguments made so far on behalf of the irrelevance hypothesis apply only to certain sorts of claims, those that we might call third party claims. Third party claims might be differentiated from what can be called first party claims in the following way. There are relationships internal to the national group, and there are relationships which carry over and effect the interests of third parties. An individual's relationship with his or her conational, and all of their interactions with the group as a whole, are different from attempts by nationalists to capture resources from nonmembers. If we were to restate the irrelevance hypothesis as so far argued, it would be that the fact that a group and its members are united by nationality as opposed to some other common characteristic does not affect the group's right as against nonmembers of the group. Nationalism, in other words, is irrelevant to third party claims.

But it does not follow from this that there are no significant moral issues internal to the agency relationship itself. Legitimate interests of third parties are not compromised when either those third parties are in the wrong or when there is simply no practical effect on their interests. The former could occur when one's nation has a legitimate claim against

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outsiders; in such cases, the existence or nonexistence of an obligation to support the national effort would present a moral issue. The latter would occur when the issue was simply the sharing of one’s own resources with other group members, as when members of a diaspora send remittances to co-nationals left at home. Regarding arguments concerning alleged obligations which are purely internal to the agency relationship, the validity of third party claims cannot exhaust moral discussion.

For such questions, the fact that the group is constituted by reference to national characteristics might be morally significant. If the question is, to whom (if anyone) does one owe an obligation of support?, then certainly one possible answer is that one owes an obligation to individuals that are part of one’s own community, but to no one else. If this is the response, then it makes sense to concentrate philosophical attention on the questions of what are the precise characteristics that unite a particular community, and in what ways those characteristics contribute to the obligation. National entity status, in other words, is of genuine concern regarding first party claims.

But we still have not returned to the hardest question: whether national entity status can ever affect third party claims. For the irrelevance hypothesis deals precisely with the respective rights of the nation and outsiders. We will conclude our discussion with some remarks about how the irrelevance hypothesis is possibly stated too strongly.

C. Reconsidering the Irrelevance Hypothesis

Note, first and most importantly, that the irrelevance hypothesis is not put forward as a logically necessary one, derivable from unalterable moral first principles. This is so in several respects. First, it is a hypothesis about the claims that nationalists actually make; it is a hypothesis about the moral significance of what we happen to mean by “nationalism.” If nationalists came to understand their claims in different terms, then what I have been calling the independent moral claim might cease to matter, and what might come to matter more could be the factors that constitute the group. This is not merely an abstract possibility. Some of the international legal norms that deal with related concepts, such as the self-determination rights of peoples, do not speak in terms of the independent merits of a group’s claim. Instead they seem to recognize certain sorts of entities—peoples—as having certain sorts of rights intrinsically.™ The formulation of these norms was strongly influenced by the Wilsonian view of self-determination and rights of peoples that did indeed reflect the very philosophical outlook that we have been so skeptical about. Over time, the existence of such norms has influenced the rhetoric employed by groups addressing their claims to the world community, and it should be expected that the rhetoric chosen will shape people’s understanding of what rights they have.

There are some nationalist claims that seem already to place a greater reliance on the nature of the entity asserting the claim than on some independent merits. An interesting example is the independence movement

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35 See supra note 3.
in Quebec. It is true that Quebec has a history that lends itself to claims based on corrective justice, for it is possible to argue that its incorporation into the rest of Canada was illegitimate and it should now be entitled to secede. But one must realistically interpret the secessionist claims as also based on the sort of argument from cultural and linguistic homogeneity that the most uncompromising version of the irrelevance hypothesis discounts. While it is true that the decolonization movement in Africa would not have been substantially impeded by assertions that the emerging "nations" were not culturally or linguistically homogeneous, the claim to independence by Quebec does seem to have cultural and linguistic homogeneity as a central, and probably necessary, element.

There is a second way in which the irrelevance hypothesis is contingent which goes deeper into the matter. It is suggested by the comparison between the autonomy rights of individuals and peoples on which the international norms mentioned above rely. When we think of the rights of individual human beings, clearly, we are influenced by the nature of the rights holders. Human beings do not have the same rights as rocks, or oysters, or automobiles. There are rights that humans have precisely because of the sort of creatures that they are; these rights inhere in an individual's humanity. Such rights do not necessarily automatically override the interests of third parties, particularly when those third party interests themselves reflect basic human rights; depending on the circumstances, certain human rights may merely be one element of the overall moral analysis. But they certainly figure into moral calculations. They are far from morally irrelevant.

In a similar vein, there is nothing wrong with distinguishing the rights that corporations hold from the rights that partnerships or sole proprietorships hold, or distinguishing the rights that any of these economic entities hold from the economic rights of individuals. We might treat the contract claims of individuals differently from the contract claims made by large corporations; or we might treat constitutional privacy or Fifth Amendment claims differently depending on whether they are asserted by individuals or organizations. Clearly, entity status can matter.

It is not implausible that nations qua nations have rights that, similarly, must be introduced into the moral analysis, along with any other moral claims that are independent of national entity status. It might be believed that nationhood prima facie entitles a group to certain basic rights, such as the right to a degree of political sovereignty. Thus while philosophers are mistaken if they are assuming that the rights that nations have must be rights

36 There are, of course, many who would dispute the specialness of humanity. Animal rights activists would argue that we err in drawing the line so as to include human animals and exclude nonhuman animals. Note, however, that this does not mean that they would disagree with the proposition that the nature of the claim holder can influence the content of the right. For animal rights activists would not extend a comparable set of rights to automobiles or even to plants.

37 E.g., G. M. Leasing Corp. v. United States, 429 U.S. 338 (1977) (corporations have Fourth Amendment rights to freedom from unreasonable searches); Hale v. Henkel, 201 U.S. 43 (1906) (corporations do not have Fifth Amendment rights to freedom from self-incrimination); see also First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) (corporations have First Amendment rights to express their views on issues of public importance).
that they hold by virtue of their national status, this does not mean that there cannot be rights that they hold on those grounds. It is simply not true as a general logical matter that the type of entity asserting the claim can have no bearing on the claim's validity. It all depends on the precise nature of the right asserted, and whether it is one on which the question of entity status makes a difference. This is the second sense in which the irrelevance hypothesis is contingent; it is dependent on, and relative to, the nature of the asserted claim.

While the hypothesis is for this reason contingent, it is not for this reason necessarily false. The fact remains that the claims that nationalists typically make are centered more on the moral merits of their interactions with others and less on a presumed entitlement arising from the fact of nationhood. The irrelevance hypothesis may be a correct interpretation of existing claims even if it is not compelled as a matter of moral truth. Before concluding, however, I want to consider two ways in which entity status might interact with the sorts of claims that nationalists do make. Both ways are challenges to the irrelevance hypothesis as an interpretation of existing nationalist claims.

Return once more to the comparison between the rights of individuals and the rights of nations. Some rights of individuals are described as "inalienable," in particular, the right of an individual to certain freedoms. Even if an individual chooses to tie him or herself to a particular job, or to pledge loyalty to a particular government, he or she cannot sell one's self into slavery of either an economic or a political kind. Most important for present purposes, inalienability is thought to follow somehow from the notion of human rights; some rights cannot be irrevocably waived or forfeited because of our basic status as human beings.

It is possible to interpret certain nationalist claims as resting on something akin to inalienability, and possibly therefore on the fact that it is a nation that holds that right. Secessionist movements may be employing a variation on this sort of argument. Consider two nations, A and B, that decide to come together to form a political union. At some later point, A decides that it would prefer to go its separate way. There are various different approaches that might be taken in determining whether to permit this. One might simply look at the original understanding between A and B about whether the consent to join should later be revocable. Or one might employ a presumption in favor of irrevocability in case the nations did not specify their intentions. In the alternative, one might treat the right to national independence as inalienable. Regardless of the validity of the consent when it was originally given, in other words, a nation is always entitled to change its mind and assert its original right to independence.

If inalienability is the right answer, it would seem that it would probably have to be right because of something about the special status of nations and their special rights to independence. It does not seem plausible to claim that no group can ever permanently relinquish any of its rights. This means, however, that whenever a secessionist group is met with the argument that it effectively waived its independence during some former

\[38\] Some might describe the American Civil War in such terms.
period, it will be relevant whether such waivers can be effectively and per­
manently made. And if the analogy to inalienability of the rights of individ­
uals is instructive, this will require an examination of whether nations are
special in some similar sense.

There is a second sort of way in which the national status of a claimant
may figure into contemporary nationalist claims. It goes back to Judith
Lichtenberg’s remarks about the difficulties of determining the historical
force of competing nationalist claims, which we mentioned briefly at an
earlier point. Nationalists mainly seem to think that the justice of their
cause is evident, or at least that it would be evident to anyone who viewed
the matter dispassionately and fairly. Certainly they are unlikely to con­
cede that their claims are invalid, while continuing to press them nonethe­
less. But it is possible that some may be relying on national status to bolster
their claims by casting national entity rights in the form of a presumption
or a burden shifting device. The argument, in other words, would be that
in cases where the merits are unclear (either because the moral arguments
are difficult or because the historical facts are uncertain) doubts should be
resolved in favor of the group claiming national entity status.

Such a strategy allows the nationalist to maintain the historical and
moral validity of his or her claim while simultaneously attempting to take
advantage of whatever sympathy and support may follow from a claim to
nationhood. Such a philosophical interpretation of the relevance of na­
tionalism, therefore, is consistent with the forms of arguments that nation­
alists typically chose to employ. It acknowledges the centrality of the
nationalist’s belief in the justice of his or her cause, while explaining the
importance that nationhood might have in the eyes of an international
community that is frankly unclear about the true merits of the dispute.
Together with the inalienability argument, it offers some plausible support
for the current philosophical efforts to assess nationalism’s moral status.

IV. CONCLUSION

Perhaps this sort of relevance is too limited in the eyes of those who
have chosen to make national entity status their central philosophical fo­
cus. But nationalists are rarely content to put all of their argumentative
reliance on the mere fact of nationhood. Almost always present to a
greater or lesser degree—and, I would argue, usually a greater degree—is
some independent argument about the merits of their case, arguments
which address directly the nature of the relationship between the national­
alists themselves and the competing claimants to the resource in question.

I claimed at the outset that the usual view of nationalism does not do it
justice; that it did not adequately distinguish between nationalism directed
at legitimate ends, using legitimate means, and nationalism with illegiti­
mate objectives. A focus on the underlying independent merits makes
some nationalistic movements appear worse than they would otherwise
seem, while making others appear better. The ones that come out looking
worse are the ones for which the underlying claim cannot be sustained.

39 See supra text accompanying notes 30-32.
The ones that come out looking better, of course, are the ones who can point to genuine injustice and a valid claim for redress.

But there is also a sense in which a focus on the underlying merits is more respectful to all nationalist movements, whether based on valid claims or not. The reason is that such a focus takes nationalist movements seriously. It confronts nationalists' arguments on the grounds that they intend. Treating nationalism as nothing but a primitive preference for one's own group over others is not correct. Popular depictions of nationalist movements are particularly prone to such unfairness. Often they are nothing more than lazy cop outs, evidence of unwillingness to invest effort in learning about complex problems in far-off areas of the world. They are often also condescending, founded on the implicit assumption that nationalists are irrational primitives acting out of savage group mentality. It does not help matters that casting the actors as nationalists emphasizes their ethnic, cultural, or racial distinctiveness not only from their adversaries but from "us," the developed countries of the West.

Nationalist movements that are inadequately grounded are wrong, and they should be treated as such; but they are wrong for a particular sort of reason which amounts to more than simple barbarism. We are not bound to agree with the claims that nationalists make on behalf of their conationals and nations. We are bound, however, to do justice to the way that they mean their claims to be understood, and to consider the claims that they actually make.
Lea Brilmayer obtained her J.D. from Boalt Hall School of Law in 1976, and an L.L.M. from the Columbia University School of Law in 1978. Professor Brilmayer is the Benjamin F. Butler Professor at the New York University School of Law, and has also taught at Columbia University, the University of Texas, the University of Chicago, Harvard Law School, and Yale Law School. Professor Brilmayer specializes in conflicts of laws, jurisdiction, and international law.

Professor Brilmayer is the founder and convenor of the International Jurisprudence Colloquium that meets at the New York University Law School, and the cofounder and codirector of the New York University International Development Clinic, which supervises students writing legal research reports for the government of Eritrea in northeast Africa. Royalties and honoraria from her speaking engagements and publications on topics relating to international law are donated to nonprofit organizations engaged in educational work in Eritrea.

Professor Brilmayer is a member of the State Department’s Advisory Committee on Private International Law. She is also a member of the American Law Institute and serves on the Advisory Committee for the Second Restatement of Conflicts of Laws.
WRITINGS OF LEA BRILMAYER

Books


JUSTIFYING INTERNATIONAL ACTS (1989).

LEA BRILMAYER ET AL., AN INTRODUCTION TO JURISDICTION IN THE AMERICAN FEDERAL SYSTEM (1986).

Articles and Published Speeches


Do We Really All Believe That Judges Should Be Influenced by Political Pressure?, 61 U. Colo. L. Rev. 703 (1990).


*Wobble, or the Death of Error*, 59 S. Cal. L. Rev. 363 (1986).


*Credit Due Judgments and Credit Due Laws: The Respective Roles of Due Process and Full Faith and Credit in the Interstate Context*, 70 Iowa L. Rev. 95 (1984).


*A Reply*, 93 Harv. L. Rev. 1727 (1980).


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