



FACULTY OF LAW

LUND UNIVERSITY

Chenyang Wang

Nationalist Narratives in Authoritarian Legal Context: Instrumentalized Symbols and Impaired Human Rights

JAMM07 Master Thesis

International Human Rights Law

30 higher education credits

Supervisor: Valentin Jeutner

Term of graduation: Spring 2024

Table of contents

Summary	4
Preface.....	5
Abbreviations	6
1 Introduction.....	7
1.1 Background.....	7
1.2 Aims and Research Questions	9
1.3 Methodology, Methods, and Materials.....	9
1.4 Delimitations	10
1.5 Outline	11
2 Nationalist Narratives in Authoritarian Legal Context(s)	13
2.1 Introduction	13
2.2 Nationalist Narratives in General	13
2.3 Utilization of Nationalist Narratives in Authoritarian States.....	17
2.3.1 China	17
2.3.1.1 The Statute Law.....	18
2.3.1.2 The Law in Practice.....	20
2.3.2 Russia	22
2.3.2.1 The Statute Law.....	23
2.3.2.2 The Law in Practice.....	26
2.3.3 Similarities and Differences.....	28
2.4 Conclusion.....	29
3 Instrumentalized Symbols, Identity, and Legitimacy	30
3.1 Introduction	30
3.2 Shared Identity Imagination	30
3.3 Legitimacy of Authoritarian Tendencies.....	34
3.4 Instrumentalizations in Authoritarian States	38
3.4.1 China	38
3.4.1.1 Origin.....	38
3.4.1.2 Identity Mechanism	40
3.4.1.3 Legitimacy Mechanism	41
3.4.2 Russia	43
3.4.2.1 Origin.....	43
3.4.2.2 Identity Mechanism	44
3.4.2.3 Legitimacy Mechanism	45
3.4.3 Similarities and Differences.....	46
3.5 Conclusion.....	47

4	Conflict Between Narratives and Human Rights.....	49
4.1	Introduction	49
4.2	Deconstructed Individuals	49
4.3	Marginalized Minorities	52
4.3.1	Freedom of Expression	55
4.3.2	Minority Rights	59
4.4	Conclusion.....	62
5	Conclusion	64
	Bibliography.....	66

Summary

The thesis focuses on the existence and consequence of nationalist narratives in the authoritarian legal context. The nationalist narrative refers to the legal expression of the intentional construction of a shared nationalist identity by the authority through narratives. The thesis aims to understand the essence of nationalist narratives, their function within the authoritarian legal framework, and their consequences for human rights.

These narratives, which strengthen nationalist identities, can justify human rights violations by authoritarian regimes. For example, on August 10, 2022, a woman in Suzhou, China, was challenged by police for “*inciting national hatred*” and taken away on suspicion of picking quarrels and provoking trouble because she was wearing a kimono as a costume for a photo shoot. Therefore, in an era marked by the rise of authoritarian tendencies and challenges to democratic values, examining nationalist narratives within authoritarian legal frameworks becomes imperative.

To better understand the essence and function of nationalist narratives, the thesis focuses on legal texts but also draws on constructive nationalism to comprehend the existence of nationalist narratives and the mechanisms when they are instrumentalized. Based on these mechanisms, the thesis then evaluates the human rights consequences. The thesis also uses empirical cases from China and Russia to validate the understanding of nationalist narratives.

The thesis first locates the existence of nationalist narratives in the legal framework with their concepts and noteworthy natures. The narratives can manifest themselves in all aspects of the legal framework, accompanied by grander narrative content and punitive provisions. The thesis then argues in the instrumentalization of nationalist narratives that the narratives are used by the state to construct a shared identity imagination and are further included in the regime’s legitimacy claims. Finally, the thesis finds that nationalist narratives have conflicts with human rights that result in deconstructed individuals and marginalized minorities.

Preface

Finally, I have brought this master's thesis here.

This thesis was written out of my interest. I am passionate about researching human rights law in authoritarian states, especially China. The initial idea for this thesis surfaced when I noticed China's draft Amendment 2023 to the Public Security Administration Punishment Law last autumn. I'm satisfied to have the honor to finish it.

As a research thesis on law, identity, and human rights, it has inspired me to think about my identity. Who am I? This question has been so philosophical that bothering me for a long time and I couldn't even tell the answer at this moment. Although my experiences and performances construct my identity, it cannot end with a concise and sincere narrative. Perhaps the effort to answer is Sisyphean and can only be generalized by profiling identity imagination.

The two years I spent at Lund University shall contribute as memories to my identity imagination. I immersed myself in human rights law, worked, lived, and explored my possibilities. And as summer approaches, I will end the journey with this thesis but also carry the imagination from now on.

In closing, I would like to say that your support made this thesis possible. Thanks to Xiaoqing, my mom, who always supports me in pursuing my dreams. Thanks to Yubin, my partner, who lights up my life. Thanks to Dongchen, who patiently helped me proofread the draft. Thanks to Valentin Jeutner, my supervisor, who provided advice and guidance for the thesis. And Awu, my family member and the best kitten ever.

To human rights. Cheers.

Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CCP	Chinese Communist Party
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all forms of Racial Discrimination
PRC	People's Republic of China
SPC	Supreme People's Court of China
SPP	Supreme People's Procuratorate of China
UDHR	Universal Declaration of Human Rights
USSR	Union of Soviet Socialist Republics

1 Introduction

1.1 Background

Across various jurisdictions, we can observe an interesting phenomenon. It offers insights into the intentional use of legal frameworks to construct and reinforce nationalist identities. This thesis refers to this phenomenon as “*nationalist narratives*” in the legal framework. Although the term is not limited to authoritarian legal contexts, it plays a significant role in shaping legislation and defining the ideological landscape of certain regimes. Notable examples include the term “*National Sentiment*” in Article 34 of draft Amendment 2023 to the Public Security Administration Punishment Law of the People’s Republic of China (PRC) and the historical use of the similar concept of “*Gesundes Volksempfinden*”¹ in the Amendment to Nazi-Germany’s Criminal Code of June 28, 1935, Section 2. Both provisions illustrate deliberate attempts to intertwine legal language with nationalist ideologies. Similarly, paragraphs concerning collective memories related to national narratives can be identified in Article 67.1 of the 2020 Amendment to the Constitution of the Russian Federation, showcasing the general nature of nationalist themes from the perspective of memory law.

Indeed, these narratives are not confined to authoritarian contexts. Examples abound of the inclusion of expressions of nationalist identity in constitutions: Israel, for example, which is considered by some scholars to be a fragile democracy,² enacted the Basic Law: Israel as the Nation-State of the Jewish People in 2018. This law also provides examples of the intentional use of legal language to bolster nationalist identity and consolidate state authority.

This diversity of examples, spanning different historical epochs and regions, emphasizes the pervasive nature of nationalist narratives. They are not isolated occurrences but rather recurring themes.

A shared community, which nationalist narratives want to construct and reinforce, can transcend individual abilities in scenarios such as war.³ However, it is inevitably accompanied by potential threats to the rights of individuals or those who are excluded from the community through imposing identity or neglecting vulnerable others. For example, Article 4 of the Basic Law, en-

¹ In German. It literally means “healthy public sentiment” in English.

² Samy Cohen, *Israel, a fragile democracy (Israël, une démocratie fragile)* (Fayard), accessed February 22, 2024, <https://www.fayard.fr/livre/israel-une-democratie-fragile-9782213716725/>.

³ Andrew Wilson, “Ukraine at War: Baseline Identity and Social Construction,” *Nations and Nationalism* 30, no. 1 (2024): 8–17, <https://doi.org/10.1111/nana.12986>.

acted in the name of Israel as the Nation-State of the Jewish People, downgrades the Arabic language.⁴ Such a provision marginalizes Arabs at the constitutional level and undermines their rights as a local minority.

Potential threats are also worrisome when the narratives are placed in an authoritarian legal context. In China, hurting national sentiment is about to be included in the scope of administrative penalties. However, the exact meaning has still not been clarified by law, and the authorities are likely to use it to resort to morals in order to abuse their power. This reflects the ability of nationalist narratives to control the ideology and justify human rights violations in the absence of democracy and the rule of law.

However, the existing scholarly landscape lacks an understanding of this complex interdisciplinary intersection involving nationalist narratives, authoritarian regimes, and human rights. Influenced by the disciplinary differences, current academic endeavors either assess the impact of nationalist narratives on authoritarian regimes alone,⁵ or analyze human rights circumstances in the context of nationalism or authoritarianism in isolation.⁶ This means that scholars often omit to examine, from the perspective of human rights law or legal frameworks, how authoritarianism utilizes nationalism and its human rights consequences. The limited relevant legal research that exists focuses on the perspective of memory laws and raises concerns about the impact of collective memory on human rights, especially freedoms.⁷ However, there is still a difference between collective memory and a shared nationalist identity, which makes the collective memory not fully represent the nationalist narrative. And it tends to focus only on Europe, ignoring the situation of other authoritarian regimes, such as China. This limited scope neglects the nuanced interplay between these elements, requiring a more holistic perspective to illuminate their intricate connections.

In an era marked by the rise of authoritarian tendencies and challenges to democratic values, examining nationalist narratives within legal frameworks, especially authoritarian ones, becomes imperative. Nationalist narratives are

⁴ Alon Harel, “Basic Law: Israel as the Nation State of the Jewish People,” *Nationalities Papers* 49, no. 2 (March 2021): 262–69, <https://doi.org/10.1017/nps.2019.127>.

⁵ Dejan Jović, “‘Official Memories’ in Post-authoritarianism: An Analytical Framework,” *Journal of Southern Europe and the Balkans* 6, no. 2 (August 1, 2004): 97–108, <https://doi.org/10.1080/1461319042000242001>; Maya Tudor and Dan Slater, “Nationalism, Authoritarianism, and Democracy: Historical Lessons from South and Southeast Asia,” *Perspectives on Politics* 19, no. 3 (September 2021): 706–22, <https://doi.org/10.1017/S153759272000078X>.

⁶ Robert Weatherley, “Defending the Nation: The Role of Nationalism in Chinese Thinking on Human Rights,” *Democratization* 15, no. 2 (April 1, 2008): 342–62, <https://doi.org/10.1080/13510340701846418>; Eva Pils, *Human Rights in China: A Social Practice in the Shadows of Authoritarianism* (John Wiley & Sons, 2017).

⁷ Eva-Clarita Pettai, “Protecting Memory or Criminalizing Dissent: Memory Laws in Lithuania and Latvia,” in *Memory Laws and Historical Justice: The Politics of Criminalizing the Past*, ed. Elazar Barkan and Ariella Lang (Cham: Springer International Publishing, 2022), 167–93, https://doi.org/10.1007/978-3-030-94914-3_7.

not only combined with authoritarian states but are even present in the authoritarian tendencies of democracies, posing a threat to human rights, which makes it all the more important that we need to examine nationalist narratives in an authoritarian legal context. The thesis sheds light not only on the profound impact on human rights and authoritarianism in contemporary society but also prompts further exploration and understanding of this phenomenon's multifaceted and intricate nature.

1.2 Aims and Research Questions

This thesis is driven by the overarching aim of providing an understanding of the intricate interplay between authoritarian regimes, nationalist legal instruments, and human rights law. With this aim in mind, the main objective of the thesis is to understand the reasons for the appearance of nationalist narratives in authoritarian legal frameworks and their consequences for human rights. The thesis encompasses three specific objectives to address this main objective, each aligning with pertinent research questions.

The first objective is to describe the nationalist narratives, including but not limited to memory laws. This objective seeks to unravel the essence of these narratives, probing into the fundamental question of what comprises nationalist narratives in general and then placing it in an authoritarian legal context. Specifically, the research question driving this objective is: What are nationalist narratives (within authoritarian legal frameworks)?

The second objective endeavors to critically analyze the function of nationalist narratives within authoritarian legal frameworks. This exploration aims to shed light on the mechanisms through which nationalist narratives operate as legal instruments, particularly in constructing a shared nationalist identity and legitimization intention. The research question is: How do nationalist narratives function within authoritarian legal frameworks?

Finally, the third objective is to evaluate the impact of nationalist narratives on human rights within the legal systems of authoritarian regimes. This involves a revelation and examination of the intricate conflicts between nationalist narratives and human rights in the authoritarian legal context. The research question guiding this objective is: What are the consequences of nationalist narratives for human rights within authoritarian legal frameworks?

1.3 Methodology, Methods, and Materials

The thesis uses a descriptive, critical, and evaluative methodology. Specifically, normative legal analysis and comparative legal analysis are applied as methods.

Firstly, to understand the presence and impact of nationalist narratives in authoritarian law from an interdisciplinary perspective, the thesis uses normative legal analysis to describe and critique nationalist narratives. Constructed nationalism, as conceptualized by scholars such as Benedict Anderson, John Breuilly, and Paul R. Brass, serves as an external normativity for evaluating the laws of authoritarian states.⁸ Constructed nationalism emphasizes the ability of elites to purposefully manipulate nationalist identity using symbols, often to enhance the legitimacy of the existing political order. It helps the thesis to understand the mechanisms through which nationalist narratives function as authoritarian legal instruments. Therefore, with the help of constructed nationalism, the thesis meticulously examines legal texts, including memory laws, to discern and describe the presence of nationalist narratives, then critically analyses how the narratives within legal frameworks are used to contribute to the intentional construction of nationalist identities and the legitimacy of authoritarian order.

Then, the thesis uses comparative legal analysis to analyze and compare the application and regime basis of nationalist narratives in the legislation and practices of different states. China and Russia have been chosen as samples due to their numerous contemporary instances of nationalist narratives within legal frameworks – such as China’s recent draft Amendment and Russia’s constitutional revisions, which offer valuable insights into the intentional use of nationalist narratives to authoritarian intentions. The comparative legal analysis of the research is descriptive and evaluative by involving a detailed comparison of the contemporary application and its root of nationalist narratives to reveal the approaches taken and the differences in each state. In addition, based on these mechanisms, the thesis then evaluated the human rights consequences, which a constructed shared nationalist identity can impact.

1.4 Delimitations

In framing the scope of this thesis, it is imperative to acknowledge certain limitations that delimit the boundaries. These delimitations, considered to maintain precision and focus, revolve around the size of selected instances, language accessibility, and the certain human rights under examination.

Firstly, the thesis chooses only China and Russia for comparative analysis and draws generalizable conclusions through an in-depth analysis of both states. However, it is recognized that authoritarianism exhibits diverse manifestations across different states. Considering this, the thesis does not comprehensively apply to or represent the application of nationalist narratives in authoritarian regimes, although it hopes to do so. It is foreseeable that this

⁸ Benedict R. O’G Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Revised edition (London: Verso, 2016); John Breuilly, *Nationalism and the State*, 2. ed (Manchester: Manchester University Press, 1993); Paul R. Brass, *Ethnicity and Nationalism: Theory and Comparison* (New Delhi: Sage, 1991).

research will be challenged by subsequent research incorporating a broader sample of authoritarian states with the narratives.

Secondly, good knowledge of the local language is an absolute requirement when using the comparative analysis method. Although the author, as a native Chinese speaker fluent in English, can use English and Chinese materials well, the Russian content is still an expected challenge. This is because although AI can provide support, such as Google Translate, there are still potential limitations, especially in capturing the nuances of interpretation inherent in the original language of legal texts.

Finally, to keep the thesis focused, the thesis concentrates on two aspects of human rights influenced by nationalist narratives: deconstructed individuals and marginalized minorities⁹. Other specific human rights, such as the right to education, are not comprehensively explored within the scope of this research. This decision is made to recognize the impact of nationalist narratives on human rights in a more direct and conflicting picture, and to enhance the examination within the limited space available.

1.5 Outline

The thesis comprises five chapters. Following the Introduction (Chapter 1), Chapter 2 begins with a description of memory laws partially overlapping with nationalist narratives, then draws out the general concept and nature of nationalist narratives and turns to the authoritarian context. Specific instances in China and Russia are presented in the authoritarian legal context, including how nationalist narratives are embodied in statute law and their application in the cases.

Chapter 3 discusses the instrumentalization of nationalist narratives, examining their function to address the reasons for their presence in the law. Specifically, it first explores their mechanism for constructing a shared nationalist identity. Then, it extends to how these narratives contribute to legitimizing authoritarian regimes. It also includes instances and comparisons of instrumentalization in China and Russia.

Chapter 4 returns to the theme of human rights law, describing and evaluating the human rights consequences. It aims to identify the possibility of conflict between nationalist narratives and human rights. The analysis of the conflict focuses on deconstructed individuals and marginalized minorities as jurisprudential discourses, but the latter also contains freedom of expression and minority rights as specific human rights. China and Russia are contributed as empirical cases.

⁹ For the marginalized minorities, two specific human rights are discussed: freedom of expression, and minority rights.

The fifth and final chapter summarizes the key findings based on the research content. It provides concluding comments on the concept, instrumentalization, and human rights consequences of nationalist narratives within authoritarian legal frameworks.

2 Nationalist Narratives in Authoritarian Legal Context(s)

2.1 Introduction

Nationalist narratives are legal expressions that appear in legal texts and influence the construction of nationalist identities in judicial practice. This thesis hopes to understand the reasons for the appearance of nationalist narratives in authoritarian legal frameworks and their consequences for human rights. Still, the first step is to recognize its existence and describe it in the law in general to provide the necessary background and theoretical foundation for the subsequent chapters.

Therefore, Chapter 2 begins by defining and clarifying the nationalist narrative. It begins with memory laws to introduce the existence of nationalist narratives in law. It draws on constructed nationalism to normatively describe the concept of nationalist narratives. It also clarifies some of the natures of the nationalist narrative when applied to legal frameworks.

Chapter 2 then presents a comparative analysis of the Chinese and Russian examples in the authoritarian legal context. It verifies the existence of nationalist narratives in statute law and practice and compares their similarities and differences in different states.

2.2 Nationalist Narratives in General

The term “*nationalist narrative*” is a legal expression not limited to a specific branch of law, such as constitutional or criminal law, but exists in broad provisions of laws.

The search for the existence of nationalist narratives in legal provisions first turns its attention to memory laws. Memory laws are a type of legal provision used to bear state-sanctioned interpretations of significant historical events.¹⁰ As legislations that regulate memory, they ensure the correctness of historical events by giving them an official interpretation and, in some states, guaranteeing it with punitive provisions.¹¹ Memory laws, however, are not only about the recording of historical events but also, more importantly, about shaping collective consciousness. Specifically, these provisions attempt to construct a collective historical identity at the national level by interpreting

¹⁰ Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias, “Introduction: Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice,” in *Law and Memory: Towards Legal Governance of History*, ed. Aleksandra Gliszczynska-Grabias and Uladzislau Belavusau (Cambridge: Cambridge University Press, 2017), 1–26, <https://doi.org/10.1017/9781316986172.001>.

¹¹ Punitive provisions, such as Article 6.1, Federal Law of July 1, 2021, N 278-FZ “On Amending the Federal Law ‘On Commemorating the Victory of the Soviet People in the Great Patriotic War of 1941-1945’”.

historical events and emphasizing the memory of particular events. This makes the existence of nationalist narratives in memory laws possible, as a nationalist identity can be constructed along this path.

Certainly, nationalist narratives cannot be directly equated with memory laws. To understand this requires a distinction between nationalist identity and national identity. Regarding nationalist identity, this means a strong identification with one's own identity and the exclusion of others, which refers to exclusive national identity. It is more emotional and often closely linked to the nation's history, culture, and traditions. National identity is a broader term that can also be universal and inclusive and does not necessarily require the exclusion of other peoples or groups. Therefore, the relationship between memory laws and nationalist narratives partially overlaps. Only those memory laws that shape nationalist identity in their expression should be considered to exist as nationalist narratives.¹² This is not the case for those memory laws that focus on the victims to shape national identity.¹³ Such as memory laws of the Holocaust in Western Europe, which shape the national identity of the shared history by reinforcing the respect and protection of fundamental human rights through prohibitive or non-prohibitive provisions.¹⁴

There is a more obvious existence of nationalist narratives beyond the memory laws. A type of legal provision that imagines exemplary identity, which in this research is referred to as moral laws, should also be considered to have the existence of nationalist narratives. This type of legal provision specifically refers to those legislations that oppose or punish specific behaviors by constructing and protecting a collective moral value, such as national sentiment.¹⁵ Moral values are attached to a collective in the legislative imagination of moral law. They are used to maintain a nationalist identity, thus indicating the obvious existence of nationalist narratives in this provision.

Identity laws are more directly related to nationalist narratives. This type of legal provision directly shapes and regulates a nationalist identity through national affiliation or language.¹⁶ Rather than nationalist narratives existing in such provisions, these provisions are the nationalist narratives themselves.

¹² E.g., Article 67.1 of the 2020 Amendment to the Constitution of Russia connects the *historical truth* and the *significance of the people's heroism in defending the Fatherland*.

¹³ Ilya Nuzov, "Legislating Propaganda: Russia's Memory Laws Justify Aggression Against Ukraine," *Journal of International Criminal Justice* 20, no. 4 (September 1, 2022): 805–18, <https://doi.org/10.1093/jicj/mqac052>.

¹⁴ E.g., the Gayssot Act, which criminalizes the questioning of crimes against humanity as defined in the London Charter of 1945 in France.

¹⁵ E.g., Article 34 of draft amendment 2023 to the Public Security Administration Punishment Law of the People's Republic of China, which punishes acts that undermine the national spirit and hurt the national sentiments of the Chinese people.

¹⁶ E.g., Article 1(b) of Basic Law: Israel as the Nation-State of the Jewish People, which states that *the State of Israel is the national home of the Jewish people*.

The traces of nationalist narratives have so far been found, at least from memory laws, moral laws, and identity laws. However, there is still a lack of criteria to describe them immediately. Hence, a looming question arises: What is a nationalist narrative conceptually?

“*Narrative*” has two meanings in the dictionary:¹⁷

- (1) a spoken or written account of connected events; a story, and
- (2) a particular way of explaining or understanding events.

In discussing nationalist narratives in the legal framework, “*narrative*” is used in the second meaning. This is because nationalist narratives in the legal framework are not simply descriptions of historic or nation-related events. Still, by enshrining identities in law, they shape particular ways of explaining the identities and thus influence how they are understood and recognized. Considering that the meaning emphasizes the shaping function of these legal expressions on nationalist identity, the theory of constructed nationalism provides a powerful framework when conceptualizing what nationalist narratives in legal contexts are. Constructivism argues that the modern nation is constructed, or created, by nationalism.¹⁸ Therefore, the nation as a social and historical construct can likewise be constructed in the performance of law, including legislation and practice.

First, Anderson argues that states and national communities are identities constructed by language.¹⁹ This means there is no pre-existing entity but rather a shared sentiment constructed through language. The “*constructed*” refers to the non-original nature of the process. In the legal context, this means that legislation or practice, acting as language, participates in the nation’s construction. Indeed, through the writing and implementation of the law, constructed identities are also reinforced by the reiteration of the legal language, which means each reference to identities in law confirms their existence.

Anderson also argues that nationalism constructs a shared identity in society by creating a shared sentiment of identity with others to form a single community.²⁰ Nationalist identity points to this shared sentiment by constructing a shared nationalist identity in law to enhance the people’s sense of belonging to a single and cohesive community. It is certainly possible that the nationalist identity here could be entirely an imagination of a shared identity. In China, the imagination is narrated in the Chinese nation (Zhōnghuá mínzú).²¹ In this imagination, a Uyghur from Xinjiang and a Han Chinese from Henan would

¹⁷ Cambridge Dictionary. “Narrative,” February 21, 2024, <https://dictionary.cambridge.org/dictionary/english/narrative>.

¹⁸ Anthony D. Smith, *Nationalism: Theory, Ideology, History* (Polity, 2010).

¹⁹ Benedict R. O’G Anderson, *Imagined Communities*.

²⁰ Benedict R. O’G Anderson.

²¹ E.g., *the great rejuvenation of the Chinese nation*, which is enshrined in the Preamble to the Constitution of the PRC.

be given a sense of belonging to a shared community within the nationalist narrative of the Chinese nation in the legal framework.²² This reveals that nationalist narratives foster a shared sentiment among people, even strangers from different communities, to achieve unity across communities.

Moreover, Breuilly argues that nationalism is exclusively an instrument to achieve certain political objectives, such as being used by elites to mobilize people and to seize and maintain power in the modern state.²³ This means that nationalist narratives in law are legal expressions intentionally shaped by the authority for certain political objectives. It also emphasizes that they are not accidental or spontaneous expressions but instruments the authority uses. The nationalist narrative is thus an intentional instrument in the law.²⁴

Overall, when nationalist narratives are examined with constructed nationalism as an external norm, it is recognized that these phenomena are legal expressions of constructing a nationalist identity. More precisely, the concept of nationalist narratives in the legal framework refers to the legal expression of the intentional construction of a shared nationalist identity by the authority through narratives.

Having normatively described the concepts of nationalist narratives with constructed nationalism, the thesis will examine the noteworthy nature of these narratives within the legal framework.

It is worth pointing out that the constitutions of many states, especially their preambles, contain the expression of *people of a certain state*, from Japan to Namibia. Although related to identity, these simple constitutional definitions do not align with the concept of the intentional and direct shaping of nationalist identity as belonging to the identity law mentioned earlier. They are more related to national identity as a simple imagination without much emotion. In constitutional law, it is universal because regardless of the constructivist view of nation formation, states, nations, and peoples worldwide are closely linked.²⁵

However, the existence of nationalist narratives is not limited to the constitutional expression of nationalist identity, as noted at the beginning of the section. These narratives may permeate the entire legal framework and be incorporated into more specific laws, such as the patriotic education law, a moral law that can be designed to protect shared sentiments through education, in

²² Obviously, it has human rights consequences, such as inadequate protection of minority rights, which will be discussed in Chapter 4.

²³ John Breuilly, *Nationalism and the State*.

²⁴ As to how nationalist narratives function as instruments, this will be discussed in Chapter 3.

²⁵ E. J. Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality*, 2nd ed., Canto (Cambridge: Cambridge University Press, 1992), <https://doi.org/10.1017/CCOL0521439612>.

order further to consolidate the state's construction of the nationalist identity and to regulate people's understanding and acceptance of that identity.²⁶

Also, nationalist narratives may be accompanied by punitive provisions. The state might explicitly provide penalties for “*hurting national sentiments*” through legal means to protect the shared nationalist identity.²⁷

In addition, nationalist narratives may also be accompanied in law by a grander imagination of nationalist identity.²⁸ This is not simply to construct a nationalist identity within a national and constitutional context but to enhance and consolidate the authority of nationalist identity by imagining the nation as a group with unique qualities.

This general perspective emphasizes that nationalist narratives are not limited to the expression of nationalist identity in constitutional law. They can manifest themselves in all aspects of the legal framework, accompanied by grander narrative content and punitive provisions. These natures of nationalist narratives are particularly alarming in an era of rising authoritarianism. This is because nationalist narratives in the legal framework can be misused as an instrument to consolidate authoritarian rule and restrict individual rights with these natures.

2.3 Utilization of Nationalist Narratives in Authoritarian States

Concerned about the existence of nationalist narratives in authoritarian legal frameworks, the thesis focuses on two specific authoritarian states and describes the nationalist narratives in their legal frameworks.

2.3.1 China

The People's Republic of China, as a non-democratic state since its establishment in 1949, was considered a totalitarian state until the death of Mao Zedong in 1976. After that, with the reform and opening up in 1978, it is considered an authoritarian state until today.²⁹ China's authoritarian framework is also evident in its legal system, where the law is used as an instrument

²⁶ E.g., Patriotic Education Law of the PRC.

²⁷ E.g., Article 34 of draft amendment 2023 to the Public Security Administration Punishment Law of the PRC.

²⁸ E.g., Article 67.1, paragraph 2, of the Russian Constitution, with *united by a millennium history, preserving the memory of ancestors....*

²⁹ Jean-Pierre Cabestan, “Is China Moving Towards ‘Enlightened’ But Plutocratic Authoritarianism?,” *China Perspectives* 2004, no. 5 (October 1, 2004), <https://doi.org/10.4000/chinaperspectives.412>.

of authoritarian governance.³⁰ Law, both statute law and practice, can intentionally preserve nationalist identity to reinforce state authority within an authoritarian legal framework.

2.3.1.1 *The Statute Law*

The discussion of statute law begins with the Constitution, which is the foundation of the legal framework. China's current constitution has undergone five amendments. In its 2018 and most recent Amendment, the preamble added, "*The Chinese people will...realize the great rejuvenation of the Chinese nation.*" In this legal expression, the Chinese nation is, first and foremost, an independent national narrative, which also exists in laws such as the Education Law and the Anti-Secession Law,³¹ through which a shared identity about the Chinese nation as a community is constructed. Then, the great rejuvenation of the Chinese nation, as a grand construction based on the Chinese nation, enhances its unique qualities by shaping its history and the mission of rejuvenation, which makes it a typical nationalist narrative.

Then, "*realize the great rejuvenation of the Chinese nation*" was written as a legislative aim in Article 1 of the 2015 National Security Law. Looking at the timeline, this even precedes the Constitution, being the first time that the narrative of the great rejuvenation of the Chinese nation has been formally enshrined in law.

Naturally, since it was enshrined in the Constitution, the rejuvenation of the nation has spread throughout the legal framework as an imagination grander than the Chinese nation itself.

In the same year that the great rejuvenation of the Chinese nation was enshrined in the Constitution, the Protection of Heroes and Martyrs Law was enacted and put into effect "*in order to stimulate strong spiritual forces for the realization of the Chinese dream of the great rejuvenation of the Chinese nation*".³² It provides that:³³

The deeds and spirit of heroes and martyrs are an important manifestation of the shared historical memory of the Chinese nation and the core ideology of socialism.

³⁰ Tamir Moustafa, "Law and Courts in Authoritarian Regimes," *Annual Review of Law and Social Science* 10, no. 1 (2014): 281–99, <https://doi.org/10.1146/annurev-lawsocsci-110413-030532>.

³¹ Article 7 of the Education Law of the PRC, and Article 1 of the Anti-Secession Law of the PRC.

³² Article 1 of the Protection of Heroes and Martyrs Law of the PRC.

³³ *Ibid.*, Article 3.

Heroes and martyrs are also guaranteed a series of punitive provisions to enhance their status in China:³⁴

Anyone who insults, defames, or otherwise infringes on the names, likenesses, reputations, or honors of heroes and martyrs, to the detriment of the public interests of society, shall be held civilly liable in accordance with the law; if the act constitutes a violation of public security administration, the public security authorities shall impose public security administration punishment in accordance with the law; and if the act constitutes a crime, criminal liability shall be pursued in accordance with the law.

Such a design and expression of statute law entirely constructs and protects heroes and martyrs with history and morals within the Chinese legal framework. This has made heroes and martyrs a nationalist narrative linked to the great rejuvenation of the Chinese nation, which exists in the combination of memory law and moral law and is guaranteed by punitive provisions.

The great rejuvenation of the Chinese nation is also found in the Patriotic Education Law, which has been in effect since January 1, 2024, and regulates the content and strategies of patriotic education. One of the aims of the legislation is “*to comprehensively promote the majestic power of the great rejuvenation of the Chinese nation*”.³⁵ It also provides that:

The State ... cultivates and promotes sentiments towards the Chinese nation and the Great Motherland ...;³⁶

Patriotic education...takes the realization of the great rejuvenation of the Chinese nation as its distinctive theme;³⁷

The State carries out education to forge a firm sense of community among the Chinese nation....³⁸

It integrates the great rejuvenation of the Chinese nation into education under the moral law, reflecting the intentional shaping of nationalist identity in the educational dimension.

Finally, nationalist narratives can also be found in the Public Security Administration Punishment Law. China’s current Public Security Administration Punishment Law has been in effect since 2006 and was amended once in 2012. It regulates behavior that violates the management of public security but is

³⁴ Ibid., Article 26. For specific punishments, see Article 185 of the Civil Code of the PRC; Article 34(1), (4), and (5) of the draft amendment 2023 to the Public Security Administration Punishment Law of the PRC; Crime against Honor and Reputation of Heroes and Martyrs, Article 299(1) of the Criminal Law of the PRC.

³⁵ Article 1 of the Patriotic Education Law of the PRC.

³⁶ Ibid., Article 2.

³⁷ Ibid., Article 3.

³⁸ Ibid., Article 7.

not yet sufficiently punishable by criminal penalties.³⁹ In 2023, it went out for public consultation on a second draft revision. In the draft revision, Article 34 is an addition, and paragraphs 2 and 3 provide:

Those who commit any of the following acts are to be detained for between 5 and 10 days or be fined between 1,000 and 3,000 CNY; and where the circumstances are more serious, they are to be detained for between 10 and 15 days and may be concurrently fined up to 5,000 CNY:

(2) Wearing clothing or bearing symbols in public places that are detrimental to the Chinese national spirit and hurt the Chinese national sentiment, or forcing others to do so;

(3) Producing, transmitting, promoting, or disseminating items or speech that is detrimental to the Chinese national spirit and hurt the Chinese national sentiment.

These two paragraphs enshrine the national spirit and national sentiment in law. The national spirit and national sentiment are expressions made with the Chinese nation as the main subject, imagining the exemplary identity of the Chinese nation as a community. As the expression of the moral law, national spirit and national sentiment are also guaranteed by punitive provisions here.

2.3.1.2 *The Law in Practice*

When it comes to the law in practice, considering that the Chinese nation and its great rejuvenation are mainly used as legislative aims and that the national spirit and national sentiments are still at the stage of the draft revision of the Public Security Administration Punishment Law, the nationalist narrative mainly exists in cases of crime against honor and reputation of heroes and martyrs.

The crime against honor and reputation of heroes and martyrs is the implementation of Article 26 of the Protection of Heroes and Martyrs Law, added to Article 299(1) of the Criminal Law through Amendment XI of the Criminal Law, which came into effect in 2021. The most notable case of this crime is the first case since its addition, the Qiu Ziming case.⁴⁰ At least four Chinese soldiers died in the June 2020 India-China border clashes.⁴¹ Qiu Ziming

³⁹ Article 2 of the Public Security Administration Punishment Law of the PRC.

⁴⁰ Affected by the insufficient judicial transparency in China to access the original version of the judgment, the thesis can only analyze the case based on the typical and guiding cases published by the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP). See SPC's Ten Typical Cases on the Protection of Rights and Interests of Martyrs, No. 3, <https://web.archive.org/web/20230217133633/https://www.court.gov.cn/zixun-xiangqing-382301.html>; and SPP's 34th Batch of Guiding Cases, Procuratorate Case No.136, http://www.spp.gov.cn/spp/xwfbh/wsfbh/202202/t20220221_545102.shtml.

⁴¹ "India-China Dispute: The Border Row Explained in 400 Words," *BBC News*, June 16, 2020, sec. Asia, <https://www.bbc.com/news/world-asia-53062484>.

posted on Sina Weibo, a local Chinese social media platform, satirizing Chinese commanders in the clash and questioning China's official announcement of the number of dead and wounded Chinese troops. His comments, which totaled more than 200,000 reads before his deletion, drew the attention of local police. He was subsequently arrested by the police and prosecuted by the local people's procuratorate, which argued that he should be held criminally liable for the crime against honor and reputation of heroes and martyrs. The local court held that Qiu Ziming had infringed on the reputation and honor of heroes and martyrs by making inappropriate comments and blaspheming the deeds and spirit of heroes and martyrs. Ultimately, the court sentenced Qiu Ziming to eight months imprisonment for the crime and required him to apologize publicly through major web portals and national media.

The nationalist narrative runs throughout the case, from the prosecution to the judgment. The SPP believes this type of case can achieve special protection for the honor and reputation of heroes and martyrs in practice. It highlighted and reinforced the status of heroes and martyrs as a nationalist narrative. The SPC, on the other hand, believes that the case has helped to promote a broad public consensus on safeguarding the honor and reputation of heroes and martyrs and severely punishing blasphemy and denigration of heroes and martyrs. Its judgment illustrates that any act threatening the honor and reputation of heroes and martyrs will be severely sanctioned. As an intentional construction in practice, such a judgment helps strengthen the public's identity with heroes and martyrs as a nationalist narrative.

Furthermore, although national spirit and national sentiment are not currently formally protected by law, they can still be practiced as nationalist narratives in China's most notorious pocket crime of the moment, picking quarrels and provoking trouble.⁴²

On February 19, 2018, two men were held in administrative detention for 15 days for serious blasphemy against national sentiment, found by police to constitute picking quarrels and provoking trouble by Article 26 of the Public Security Administration Punishment Law for taking photos of themselves wearing Japanese military uniforms of World War II in front of a war memorial site in Nanjing, China and spreading them on social media.⁴³

The police considered their acts "*challenged the dignity of the State and the nation*". Although this is necessarily based on the Japanese war crimes during the Second Sino-Japanese War, the police only stated in their report that their behavior was hurtful to national sentiments and did not explicitly state that

⁴² Article 293 of the Criminal Law of the PRC. Acts that are not sufficiently punishable by criminal penalties are punished by Article 26 of the Public Security Administration Punishment Law of the PRC.

⁴³ China National Radio, "Two Men Wearing Japanese Military Uniforms to Take Photos at Zijinshan Anti-Japanese War Site Were Detained for 15 Days," accessed March 2, 2024, https://news.cnr.cn/native/gd/20180223/t20180223_524141827.shtml.

their behavior was symbolic of Japanese militarism. This also shows the penetration of national sentiment as an alternative narrative in policing practice.

However, there is a tendency for the application of national sentiments in practice to be abused. On August 10, 2022, a woman in Suzhou, China, was challenged by police for “*inciting national hatred*” and taken away on suspicion of picking quarrels and provoking trouble because she was wearing a kimono as a costume for a photo shoot. She was forced to delete the photos and confiscate her costume before release.⁴⁴

The charge against the woman, which involved incitement to national hatred, is similar to the previous case. In both cases, the aim is to censor specific cultures and dresses in order to protect national sentiments. The difference is that one is the Japanese military uniforms of World War II, which are symbolic of militarism, and the other is the kimono, which is representative of Japanese culture. Considering that police often pick quarrels and provoke trouble to enforce the law and arrest arbitrarily, national sentiment is actually the narrative that is being abused in this charge.⁴⁵ When the Amendment to the Public Security Administration Punishment Law comes into effect, the prospect of nationalist narratives being abused by the authority remains worrying, as there is still no specific definition of what constitutes “*hurting the national sentiments*” or “*being detrimental to the national spirit*”.

2.3.2 Russia

After the dissolution of the Union of Soviet Socialist Republics (USSR), or the Soviet Union, Russia has not been a democracy for a long time, and some scholars have even argued that the democratic transition never really took place.⁴⁶ With certainty, since the current Constitution of the Russian Federation established a *crown-presidentialism* with strong powers in 1993, the country has gone further down the path of authoritarianism.⁴⁷ Similarly to China, Russia has exhibited nationalist narratives within its authoritarian legal framework, which are constructed and enhanced from the legislature to the judiciary.

⁴⁴ Zijie Liang, “Wearing Kimono ‘picking quarrels and provoking trouble’ was torn clothes and arrested? Woman apologizes for hurting national sentiment by wearing Japanese clothes in Suzhou (in Chinese),” HK01, August 15, 2022, <https://www.hk01.com/即時中國/804176/穿和服-尋釁滋事-遭撕衣逮捕-蘇州女道歉-穿日服傷害民族情感>.

⁴⁵ “Picking Quarrels: The One Essential Charge in China,” U.S.-Asia Law Institute, November 5, 2023, <https://usali.org/usali-perspectives-blog/picking-quarrels-the-one-essential-charge-in-china>.

⁴⁶ Maria Snegovaya, “Why Russia’s Democracy Never Began,” *Journal of Democracy*, accessed March 3, 2024, <https://www.journalofdemocracy.org/articles/why-russias-democracy-never-began/>.

⁴⁷ William Partlett, “Crown-Presidentialism,” *International Journal of Constitutional Law* 20, no. 1 (January 1, 2022): 204–36, <https://doi.org/10.1093/icon/moac006>.

2.3.2.1 *The Statute Law*

Nationalist narratives in Russian statute law are primarily centered around the Soviet Union's role during World War II, as reflected in memory laws. However, the narratives are also embodied in language provision and grander historical memory.

First, there is a memory law in the Constitution about historical truths and heroic deeds of the people during World War II:⁴⁸

The Russian Federation honours the memory of the defenders of the Fatherland, ensures protection of historical truth. Diminution of the heroic deed of the people defending the Fatherland is precluded.

The expression of this article implies that it is a state-centered narrative, which, given that Russia's World War II narrative openly protects the memory of oppressive regimes, should be considered an intentional construction of history by the state.⁴⁹

In fact, this constitutional article is the constitutionalization of Article 354.1 of the Criminal Code of the Russian Federation. Since 2014, which is a thought-provoking moment as Russia's invasion of Ukraine, historical truth and the heroic deeds of the people have been protected by the Criminal Code.⁵⁰ The Criminal Code provides that the following acts will be punishable by a fine, compulsory labor, or deprivation of liberty:⁵¹

1. Denial of the facts established by the verdict of the International Military Tribunal for the trial and punishment of the main war criminals of the European Axis countries, approval of the crimes established by the said verdict, as well as dissemination of knowingly false information about the activities of the USSR during the Second World War, about veterans of the Great Patriotic War, committed in public, -...

3 Dissemination of information expressing obvious disrespect to society about the days of military glory and memorable dates of Russia related to the defense of the Fatherland, as well as desecration of symbols of military glory of Russia, insult to the memory of the defenders of the Fatherland or humiliation of the

⁴⁸ Article 67.3 of the Constitution of the Russian Federation, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

⁴⁹ Nikolay Koposov, "Memory Laws: Historical Evidence in Support of the 'Slippery Slope' Argument," *Verfassungsblog*, January 8, 2018, <https://verfassungsblog.de/memory-laws-historical-evidence-in-support-of-the-slippery-slope-argument/>.

⁵⁰ Ekaterina Mishina, "How the U.S. and Russian constitutions were changed," Institute of Modern Russia, July 8, 2021, <https://imrussia.org/en/analysis/3312-how-the-u-s-and-russian-constitutions-were-changed>.

⁵¹ Article 354.1 of the Criminal Code of the Russian Federation.

honor and dignity of a veteran of the Great Patriotic War, committed in public, -...

With the participation of the Criminal Code, this legal framework protects historical truth and the heroic deeds of the people by penalizing those who deny or diminish the role of the Soviet Union in World War II. The incrimination reflects an intentional effort to enforce a specific history to reinforce a collective memory that can shape a shared nationalist identity.

In April 2022, a new article was added to the Code of the Russian Federation on Administrative Offenses. The amendment complements and enhances the narrative of the Soviet Union's role during World War II through administrative fines, administrative arrests, disqualifications, or administrative suspensions, depending on the subject:⁵²

Violation of the prohibition established by federal law of the prohibition in public speech, publicly displayed work, mass media, or when posting information using information and telecommunications networks, including the Internet, of identifying the goals, decisions, and actions of the leadership of the USSR, the command and service members of the USSR with the goals, decisions and actions of the leadership of Nazi Germany, the command and servicemen of Nazi Germany and the European Axis countries established by the verdict of the International Military Tribunal for the Former USSR, -...

As the latest development in the state's efforts to control the historical discourse, the punitive provision focuses on prohibiting comparisons between the behavior of the Soviet Union and Nazi Germany during World War II.⁵³ And in doing so, it restates and reinforces the nationalist narratives of the historical truth and the heroic deeds of the people.

Then, beyond the Soviet Union's role during World War II, the nationalist narrative also exists in the language provisions of the Constitution. As the official language of Russia, Russian is constitutionally guaranteed as follows:⁵⁴

The Russian language shall be a state language on the whole territory of the Russian Federation.

⁵² Article 13.48 of the Code of the Russian Federation on Administrative Offenses.

⁵³ Andrii Nekoliak and Elizaveta Klochkova, "Weaponizing Russia's Memory Law: On Russia's Mnemonic Dissidents," *Verfassungsblog*, July 11, 2023, <https://verfassungsblog.de/weaponizing-russias-memory-law/>.

⁵⁴ Article 68.1 of the Constitution of Russia (as of July 3, 2020), translation references <http://www.constitution.ru/en/10003000-04.htm>.

However, the 2020 Amendment turned the description of the status of the Russian language into the following nationalist narrative:

The State language of the Russian Federation in all of its territory shall be [the] Russian language, as a language of the state-constituting nation a member of the multinational union of equal nations of the Russian Federation.⁵⁵

Unlike the official language, the Russian language is now constitutionally bound to “*the state-constituting nation*”. Anyone whose mother tongue is Russian and who has grown up in Russian culture can be regarded as Russian.⁵⁶ This narrative goes beyond the traditional understanding of the official language and evolves into a mechanism of cultural and nationalist identity. By linking the Russian language to nationalist identity, the Constitution suggests that adherence to culture and language is a key factor in defining one’s Russianness and thus serves as a nationalist narrative that constructs a Russian Russia in culture and language.

Finally, the grander nationalist history also exists in the memory laws as a nationalist narrative. The Constitution, as amended in 2020, provides:⁵⁷

The Russian Federation, united by the millennium history, preserving the memory of the ancestors who conveyed to us ideals and belief in God, as well as the continuity of development of the Russian state, recognizes the unanimity of the State that was established historically.

The constitutional recognition of a millennium history, the memory of ancestors, the continuity and unanimity of the State is undoubtedly grand. It is a myth about the origins of the nation.⁵⁸ In the narrative of history and ancestors, historical ideals, beliefs, and the development of the Russian state are intertwined, creating a nationalist identity rooted in a shared grand historical narrative.

⁵⁵ Article 68.1 of the Constitution of the Russian Federation, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

⁵⁶ Dmitry Shlapentokh, “New Russian Identity Makes Way into the Constitution,” Institute of Modern Russia, June 26, 2020, <https://imrussia.org/en/analysis/3126-new-russian-identity-makes-way-into-the-constitution>.

⁵⁷ Article 67.2 of the Constitution of the Russian Federation, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

⁵⁸ Carna Pistan, “HOW MEMORY POLITICS TURNED THE RUSSIAN CONSTITUTION INTO A WAR WEAPON” PONARS EURASIA POLICY MEMO NO. 798 (September 26, 2022), <https://www.ponarseurasia.org/alarmed-alterations-how-memory-politics-turned-the-russian-constitution-into-a-war-weapon/>.

2.3.2.2 *The Law in Practice*

The law in practice restates the punitive provisions of the statute law. This means Article 354.1 of the Criminal Code 和 13.48 of the Code of Administrative Offenses shall be discussed.

Article 354.1, entitled “*Rehabilitation of Nazism*”, appears at first glance to criticize and contain Nazism.⁵⁹ In practice, however, it is a platform for reinforcing historical truths and heroic deeds.

On September 17, 2021, the Russian Ministry of Foreign Affairs commemorated the anniversary of the crossing of the Polish border by Soviet troops in 1939 on social media, describing it as a “*liberation movement*”.⁶⁰ Two days later, Andrei Kolesnikov reposted content about the Soviet Union and Nazi Germany jointly partitioning Poland during World War II on social media. He was then prosecuted by the local Investigative Committee on May 22, 2023, for allegedly constituting the intentional dissemination of false information on the Internet about the activities of the Soviet Union during World War II.⁶¹

The charge was based on the content of his reposts involving intentional disinformation about the partition of Poland between the Soviet Union and Nazi Germany, which is contrary to the heroic deeds that the official efforts were trying to construct. The heroic deeds are emphasized by identifying negative interpretations of the Soviet Union’s role during World War II as the dissemination of disinformation. Through the criminal charges, a practice of nationalist narratives is formed aimed at defending state-recognized shared historical memory and constructing a nationalist identity based on it.

In addition, considering that Article 354.1 was introduced in 2014, the article had a special meaning during the Russo-Ukrainian War. According to OVD-Info’s monitoring, at least 41 people have been prosecuted in connection with Article 354.1, which was consciously used for the criminal repression of anti-war stances.⁶²

Igor Orlovsky compared the policies of Hitler and Stalin before World War II on social media. He posted a comment: “Stalin was as much an aggressor as Hitler. And what could the Soviet Union be proud of?” As a result of this

⁵⁹ Реабилитация нацизма, original in Russian.

⁶⁰ “Foreign Ministry Calls Soviet Operation in Poland in 1939 a ‘Liberation Campaign’ (МИД Назвал «освободительным Походом» Операцию СССР в Польше в 1939 Году) — РБК,” accessed March 6, 2024, <https://amp.rbc.ru/rbcnews/politics/17/09/2021/61446e499a7947feb46c4df0>.

⁶¹ SOVA, “Orenburg region: case under Art. 354.1 of the Criminal Code (Оренбургская область: дело по ст. 354.1 УК) / СОБА,” accessed March 6, 2024, <https://www.sova-center.ru/misuse/news/persecution/2023/05/d48148/>.

⁶² OVD-Info. “Which Articles of the Criminal Code? · Anti-War Criminal Cases,” accessed March 6, 2024, <https://repression.info/en/articles/>.

comment, he was charged with publicly justifying terrorism and calling for extremism, and on March 24, 2023, he was sentenced to three years' imprisonment under Article 354.1. He also criticized Russian military atrocities in Ukraine on the same platform, which led to his case being merged with the first part of Article 207.3 of the Criminal Code, which is the dissemination of deliberately false information about the armed forces, government agencies, or mercenaries, and was sentenced to a total of seven years and six months imprisonment.⁶³

The Orlovsky case shows that Article 354.1 is used to defend the memory of World War II. Still, it is also used to pressure those who may oppose “*special military operations*” and “*denazification*”, and it is merged in practice with other provisions persecuting anti-war speech. The role of Russian troops in Ukraine is also gradually being shaped as a heroic deed that is becoming a historical truth in such a legal practice today.⁶⁴ This reflects a more intentional application of the national narrative in Article 354.1 in the context of the Russo-Ukrainian War by defending the old and shaping the new historical truth as a nationalist narrative to serve its political objectives.

Within administrative penalties, Article 13.48 of the Code of Administrative Offenses is also practiced to protect historical truth and the heroic deeds of the people.

Vadim Kiselev advised his neighbors to read the memoirs of the Great Patriotic War veteran Nikolai Nikulin and discussed the actions of Soviet soldiers against the civilian population of Germany in the message. On July 20, 2022, the local court fined him 1,000 RUB for this message under the first part of Article 13.48.⁶⁵ Similar to the Criminal Code, Kiselev's acts were seen as comparing the Soviet Union to Nazi Germany, an attack on the Soviet Union's role in World War II shaped by Russia.

These practices indicate that Article 354.1 of the Criminal Code and 13.48 of the Code of Administrative Offenses are concrete expressions of the state's intent to shape a particular historical memory and protect its nationalist identity. Particularly during the Russo-Ukrainian War, nationalist narratives are strategically applied to legitimize Russian behavior and identity by defending historical truths and attacking inconsistent memories.

⁶³ OVD-Info. “Part 2, Article 354.1 of the Criminal Code · Anti-War Criminal Cases,” accessed March 6, 2024, <https://repression.info/en/persons/igor-orlovsky>.

⁶⁴ “Repressions in Russia in 2022,” ОВД-Инфо, accessed March 6, 2024, <https://en.ovdinfo.org/en/repressions-russia-2022>.

⁶⁵ SOVA, “The court fined a Krasnodar man on the article about identifying the actions of the USSR and Nazi Germany (Суд оштрафовал краснодарца по статье об отождествле...) / СОБА,” accessed March 6, 2024, https://www.sova-center.ru/misuse/news/persecution/2022/07/d46660/?sphrase_id=4647.

2.3.3 Similarities and Differences

The legal frameworks of China and Russia maintain authoritarian regimes and reflect deeply nationalist narratives. Comparing the statute laws and practices of the two states reveals numerous similarities in the existence of nationalist narratives, yet there are apparent differences.

First, nationalist narratives are present coincidentally in both States and reflect the notable natures mentioned earlier: they extend to multiple aspects of the legal framework, such as memory, morals, and language; they have been expressed through grand narratives, whether of a millennium history or a great rejuvenation; and they are guaranteed by a system of punitive provisions, ranging from criminal to administrative penalties.

Also, what is national sentiment? And what is historical truth? There is some ambiguity in the exact definition and application of nationalist narratives in both States. Such narratives imply their arbitrariness, allowing the authorities to panoply them in practice, concerned with conflicts between Russia and Ukraine or China and Japan, to meet their political objectives better.

Despite these ambiguities, similarities can be seen in the objects of protection of nationalist narratives in the punitive provisions. National sentiments, similar historical truths, and heroic deeds of the people in practice point to protecting the identity of states and nations in memory and morals.⁶⁶ While heroes and martyrs are also used to imagine and construct the nationalist identity, they can be considered individuals in China, as part 3 of Article 354.1 of the Criminal Code.⁶⁷ From this perspective, nationalist narratives have similar objects of protection in China and Russia.

Based on similarities, Russian and Chinese nationalist narratives have the same concepts and natures as nationalist narratives in general. But they also accompany authoritarian characteristics. Their ambiguous practices especially reflect that Russia and China draw on nationalist narratives to demonstrate strong control over speech, culture, and historical interpretation in the legal framework. This control is used to suppress dissenting voices, particularly those criticizing the government, questioning historical interpretations, or contesting nationalist identity, helping maintain authority.

However, the existence of nationalist narratives has followed a different track in the two States. From memory to moral law, nationalist narratives have gone

⁶⁶ China National Radio, “Two Men Wearing Japanese Military Uniforms to Take Photos at Zijinshan Anti-Japanese War Site Were Detained for 15 Days”; “Part 2, Article 354.1 of the Criminal Code · Anti-War Criminal Cases.”

⁶⁷ SPC’s Ten Typical Cases on the Protection of Rights and Interests of Martyrs, <https://web.archive.org/web/20230217133633/https://www.court.gov.cn/zixun-xiangqing-382301.html>.

further in China. Nationalist narratives have a deeper and broader combination in the legal framework. China is trying to integrate nationalist identity and history with national values, attempting to integrate national sentiment into society's ethical framework. Conversely, Russia still focuses on memory laws to control historical interpretation and nationalist identity.

2.4 Conclusion

The Chapter introduced the nationalist narrative by discussing its connection to various branches of law, such as memory, moral, and identity laws. It distinguished between national and nationalist identities in the discussion of memory laws. It then approached the conceptualization of nationalist narratives through the lens of the theory of constructed nationalism, emphasized their intentional nature as legal expressions shaped by authorities for political objectives.

The discussion addressed the notable natures of nationalist narratives within legal frameworks, which include extending beyond constitutional expressions to broader provisions, having grander expressions, and being guaranteed by punitive provisions.

As the focus narrowed down to specific states, the existence of nationalist narratives became clearer. The comparative analysis of China and Russia validated the presence of these narratives in their authoritarian legal frameworks.

In China, the legal expressions of nationalist narratives, such as those emphasizing the great rejuvenation and reinforcing the status of heroes and martyrs, are noted. Additionally, the infusion of national sentiment into law was observed. In Russia, the emphasis is placed on memory laws related to the Soviet Union's role in World War II, the constitutional emphasis on a millennium history and historical truths, and the status of the Russian language.

The practical enforcement of these laws was explored and, revealed how punitive provisions are employed to construct and develop nationalist narratives by suppressing dissenting voices, particularly those critical of the government or questioning historical interpretations. This indicated a conscious effort by both states to control speech, culture, and historical interpretation through nationalist narratives to consolidate nationalist identity, which validated its concept.

The analysis ended by highlighting the similarities and differences in the existence of nationalist narratives in China and Russia. Nationalist narratives exist coincidentally in both authoritarian states, although differences emerge in statute laws and practices.

3 Instrumentalized Symbols, Identity, and Legitimacy

3.1 Introduction

The existence of nationalist narratives has been explored in general and authoritarian contexts, but why do they occur there? What function do they play in the legal framework? This implies that an understanding of the mechanism of nationalist narratives as legal instruments is still lacking before discussing their human rights consequences.

Chapter 3 begins by discussing how nationalist narratives become instrumentalized symbols related to identity in law. It explores the origins of nationalist narratives in the shared identity imagination. It explains the mechanism by which nationalist narratives construct identities in a legal context by their natures and legal provisions.

Furthermore, Chapter 3 analyzes how nationalist narratives contribute to the legitimacy objective of authoritarian regimes since they are “*intentional*”. It introduces the legitimacy needs of authoritarian regimes. It investigates how authoritarian states derive legitimacy from applying nationalist narratives.

Chapter 3 still provides a comparative analysis of China and Russia. It verifies the understanding of nationalist narratives as legal instruments by placing the mechanism in the field.

3.2 Shared Identity Imagination

The origins of nationalist narratives may be surprising. If its origins are considered only in those narratives’ expressions, a seemingly obvious conclusion is that nationalist narratives originate in historical memories, moral values, or directly in the identity.

However, this assumption is unrealistic because it ignores that historical memory, moral values, and identity are nothing more than a nationalist imagination. National identity is an imagined community, and nations are produced in the imagination when a group thinks of belonging to or acting like a nation.⁶⁸ Nationalist identity follows a similar path to the national identity and is also created in the imagination. Similarly, moral values are not inherent but

⁶⁸ Benedict R. O’G Anderson, *Imagined Communities*; Jan Marschelke, “National Identity,” in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer Netherlands, 2020), 1–8, https://doi.org/10.1007/978-94-007-6730-0_324-1; Hugh Seton-Watson, *Nations and States: An Enquiry Into the Origins of Nations and the Politics of Nationalism* (Methuen, 1977).

socially and culturally constructed, an imaginary shaped by social norms, values, and beliefs.⁶⁹ Even historical memory, once transformed from an event that took place to a memory that is recorded and passed on, becomes an imagination in its essence, carrying the intentions of both the recorder and the inheritor, shaping and reshaping the narrative in the flow of time.⁷⁰ This almost negates the objectivity of memory, morals, and identity if anyone thinks they have that nature.

The nationalist imagination implies a subjective construction. Moral values rooted in the society and culture of the nation make what one nation considers moral, while another nation may see things differently. If wearing a kimono is seen as hurting its national sentiment, how can the Yamato people accept the national sentiments of the Chinese nation? For historical memory, recording and passing on is not objective but merely a construction of awareness. Not to mention that nationalist identity is constructed in the participation of moral values and historical memory as nationalist imaginations. Also, the individual of a nation cannot witness that nation's history entirely or practice every moral code before identifying with it but can only imagine it outside of experience. Memory and morals, as subjective imaginations, perform the awareness of identity. Together with identity itself, they constitute devices of nationalist narrative.

However, the origins of the nationalist narrative are not as simple as stripping its devices of their disguise to designate them as an imagination of identity. A single imagination of identity does not exist. On the contrary, it is shared.

Shared imaginations exist between individuals. Such sharing does not simply refer to homogeneity among individuals but emphasizes that imaginations are collectively shaped by shared history, culture, and values. Despite the differences in each individual's awareness of memory, morals, and identity, they constructed shared frameworks in imagining a nationalist community, where each individual was interconnected and had many shared things in common to imagine.⁷¹ This means that individuals share the imagination of a nationalist identity by sharing memories and values.⁷² And individuals are thus united with the shared imagination ground.

⁶⁹ Fanli Jia and Tobias Krettenauer, "Recognizing Moral Identity as a Cultural Construct," *Frontiers in Psychology* 8 (March 21, 2017): 412, <https://doi.org/10.3389/fpsyg.2017.00412>.

⁷⁰ Pascal Boyer and James V. Wertsch, *Memory in Mind and Culture* (Cambridge University Press, 2009).

⁷¹ Ernest Renan, "What Is a Nation (Qu'est-Ce Qu'une Nation)?," accessed March 16, 2024, <https://mjp.univ-perp.fr/textes/renan1882.htm>.

⁷² It backs up what was mentioned, "when a group thinks of belonging to or acting like a nation".

More importantly, this imagination is shared between the state and the individual. The state is an important manipulator of nationalist ideology, especially when it utilizes nationalist narratives. The state conveys specific historical memories, moral values, and nationalist identities to individuals through various means, such as education, propaganda, or just the law. This official act with authority makes it inevitable that the state's imagination of nationalist identity is shared between the individual and the state.

Therefore, memory, morals, and identity as devices of nationalist narrative are not origins of the narratives but merely imagined vehicles of subjective intent. The nationalist narrative, woven by memory, morals, and identity, is born from the imagination of a shared identity. Nationalist narratives originate from the imagination of a shared identity in such a way that, on the one hand, nationalist identities are written in the subjective imagination; on the other hand, the imagination is shared by the nation and the individuals.

When it comes to “*shared*”, the sharing of identity imagination between the state and individual in the legal context is realized through nationalist narratives. However, when nationalist narratives originating in the shared identity imagination are performed in law, they feed back into the imagination as an instrumentalized symbol, which their natures and legal provisions can prove.

First, when the nationalist narrative permeates the legal framework comprehensively, it takes on the character of an instrumentalized symbol. It is not merely a legal expression that is occasionally invoked but an essential part of the overall legal framework. This means that instead of being an instrument of legal expression with a single purpose, such as honoring heroes, it has become a symbol that systematically shapes the legal landscape, like the great rejuvenation of the Chinese nation throughout the legal framework. The existence of nationalist narratives is also a retelling of shared identity imaginations in different legal fields as symbols. Through the repetition of nationalist narratives in various forms in different legal fields, the shared identity imaginaries are constantly reinforced.

As for the grander imagination in nationalist narratives, “*grander*” stands for a glorious vision of nationalist identity. It is not confined to a specific spatial and temporal context but rather paints nationalist narratives into symbols in an atmosphere of glory, highlighting historical figures, key events, and myths of origin, which embody the nation's unique qualities, to consistently emphasize specific historical memories, values, or nationalist identities. And when these grander imaginations are incorporated into legal frameworks, they enhance the impact of identity imaginations with more attractive expressions on individuals to promote the individual's engagement in reimagining identity.

Then, as the nationalist narrative emerges in the punitive provisions, it becomes an effective symbol. By penalizing violations of the nationalist narrative, the punitive provisions discourage any challenge or dissent to the shared identity imagination. This makes the nationalist narrative not just performative but also has a tangible impact. It ensures the effective performance of the nationalist narrative as a symbol in the legal framework for constructing shared identity imaginations.

Regarding specific legal provisions, memory law can use memory to affect the shared identity imagination with the participation of nationalist narratives. As a legal provision, memory law embeds nationalist narratives within the legal framework by protecting specific historical memories. Memory law is often concerned with historical memories of specific periods that have been officially recognized, which contain nationalist identity imaginations, such as the founding of a state or the triumphs of war. These historical memories are formalized in legal texts through memory laws and become a powerful instrument. Memory law influences how individuals recognize and imagine history, considering that remembering history can construct current and future identities,⁷³ it can thus affect the shared identity imagination.

Moral law offers another path for the instrumentalization of nationalist narratives. Moral values in moral law reflect society's common recognition and identity, arising from a shared identity imagination. These moral values are usually closely related to the state's history, culture, and traditions. For example, national spirit and national sentiment are incorporated into moral law in China.⁷⁴ The state can convey specific moral values to society through the performance of moral laws, guiding individuals to establish a code of conduct and identity consistent with them. This reflects the instrumentalization of nationalist narratives in moral law, which the state uses to regulate individual codes of conduct and values and thus participate in shaping a shared identity imagination.

Lastly, identity law is not only a legal provision but also a clear expression of identity. Through identity law, the state fixes the shared imagination of identity into individual identifiers and symbols of identity, such as national affiliation, language, etc. Identity law, in turn, leads individuals to perform and reinforce their recognition of identity while complying with the law, thus contributing to the construction of a shared identity imagination.

⁷³ Karina Korostelina, "Shaping Unpredictable Past: National Identity and History Education in Ukraine," *National Identities* 13, no. 1 (March 1, 2011): 1–16, <https://doi.org/10.1080/14608944.2010.508817>.

⁷⁴ Article 34 of draft amendment 2023 to the Public Security Administration Punishment Law of the PRC.

All legal rules and legal concepts are merely instruments used to achieve objectives.⁷⁵ The nationalist narratives framed in law are the instruments the state uses for identity sharing to realize the benefits that a shared nationalist identity imagination can bring. Whether it is memory law, moral law, or identity law, these legal provisions carry nationalist narratives that originate in the shared identity imagination. Nationalist narratives, in turn, serve as instrumentalized symbols that participate in constructing shared identity imagination in law. This is a spiral identity mechanism that continually reinforces itself as it operates.

3.3 Legitimacy of Authoritarian Tendencies

Why do states share nationalist narratives to construct nationalist identity imaginations? Beyond understanding the mechanism by which nationalist narratives construct identities in a legal context, there remains a lack of understanding of the state's motivation for doing so. To explain the motivation behind the application of nationalist narratives by the state, the concept of legitimacy in political science will be brought in here.

According to Seymour Lipset, legitimacy can be defined as “*the capacity of a political system to engender and maintain the belief that existing political institutions are the most appropriate or proper ones for the society*”.⁷⁶ Therefore, legitimacy serves as a foundational pillar in governance, influencing state behavior and the strategies employed to maintain authority.

In John Locke's view, “*the government is not legitimate unless it is carried on with the consent of the governed*”.⁷⁷ Despite the academic debate over implied or express consent on Locke's doctrine of consent,⁷⁸ at the very least, the consensus is obtaining consent from the governed is a decisive condition for the legitimacy of the regime. Being granted consent means that the regime is authorized by the people's will. As enshrined in Article 21 of the Universal Declaration of Human Rights (UDHR), “*The will of the people shall be the basis of the authority of government*”.

Having legitimacy thus represents the people recognizing the regime as having the legitimate authority to govern on their behalf. This recognition is based on the premise that the people support and grant consent to the regime only if they consider its governance appropriate or proper, combined with

⁷⁵ Robert S. Summers, *Instrumentalism and American Legal Theory* (Cornell University Press, 1982).

⁷⁶ Seymour Martin Lipset, “Some Social Requisites of Democracy: Economic Development and Political Legitimacy,” *American Political Science Review* 53, no. 1 (March 1959): 69–105, <https://doi.org/10.2307/1951731>.

⁷⁷ Richard Ashcraft, *John Locke: Critical Assessments* (Routledge, 1991), 524.

⁷⁸ Ruth W. Grant, *John Locke's Liberalism* (Chicago, IL: University of Chicago Press, 1991), <https://press.uchicago.edu/ucp/books/book/chicago/J/bo3628614.html>; John Dunn, “Consent in the Political Theory of John Locke,” *The Historical Journal* 10, no. 2 (1967): 153–82.

Lipset's definition. This shows that regimes that enjoy a high degree of legitimacy are proportionate to a more likely chance of gaining the obedience and support of the people, thus contributing to social cohesion and political stability. Conversely, regimes perceived as lacking legitimacy may face dissent and challenges to their authority, thereby undermining the stability and effectiveness of governance.⁷⁹ Therefore, legitimacy is important in states' stability, and states are motivated to obtain consent.

The need for consent thus arises. A state needs to obtain the consent of its governed people. Such consent is essential to ensure the legitimacy of the regime, as it implies the people's recognition and acceptance of the state's authority. The state needs to convince the governed people that the state's exercise of power and governance decisions are in the best interests of the society.

To address the need for consent, the state applies regime legitimacy strategies aimed at obtaining people's support and acceptance. Even authoritarian regimes characterized by centralization of power and restriction of freedoms still need to construct convincing claims of legitimacy to maintain the stability of their rule.⁸⁰ The strategies in authoritarian regimes can be categorized as "*ideology, foundational myth, personalism, international engagement, procedural mechanisms and performance (i.e., for the claim to be successful in producing political, social or economic outcomes)*".⁸¹ Without at least the appearance of consent, authoritarian regimes may fail to adapt to the widespread dissent and resistance they face - they tend to impose stricter controls rather than adapt⁸² - and thus lead to their collapse.

The legitimacy strategies of authoritarian regimes are various. For example, economic development as a performance can increase the durability of ideocracies and personalist autocracies.⁸³ Electoral authoritarian regimes, instead, will rely on the design of the electoral process to obtain the consent of the governed people.⁸⁴ Closed authoritarian regimes, on the other hand, rely pri-

⁷⁹ Bert Useem and Michael Useem, "Government Legitimacy and Political Stability*," *Social Forces* 57, no. 3 (March 1, 1979): 840–52, <https://doi.org/10.1093/sf/57.3.840>.

⁸⁰ Christian von Soest and Julia Grauvogel, "Identity, Procedures and Performance: How Authoritarian Regimes Legitimize Their Rule," *Contemporary Politics* 23 (March 16, 2017): 1–19, <https://doi.org/10.1080/13569775.2017.1304319>.

⁸¹ Julia Grauvogel and Christian von Soest, "Claims to Legitimacy Count: Why Sanctions Fail to Instigate Democratisation in Authoritarian Regimes," *European Journal of Political Research* 53, no. 4 (2014): 635–53, <https://doi.org/10.1111/1475-6765.12065>; Christian von Soest and Julia Grauvogel, "Identity, Procedures and Performance."

⁸² Theodore M. Vestal, *Ethiopia: A Post-Cold War African State* (Praeger, 1999): 17.

⁸³ Daniel Stockemer and Steffen Kailitz, "Economic Development: How Does It Influence the Survival of Different Types of Autocracy?," *International Political Science Review* 41, no. 5 (November 1, 2020): 711–27, <https://doi.org/10.1177/0192512120915902>.

⁸⁴ Andreas Schedler, ed., *Electoral Authoritarianism: The Dynamics of Unfree Competition* (Lynne Rienner, 2006), https://www.rienner.com/title/Electoral_Authoritarianism_The_Dynamics_of_Unfree_Competition.

marily on identity-based legitimacy claims, such as foundation myths, ideologies, and personalism.⁸⁵ Certainly, there is no single strategy, and they are often used overlappingly by different types of authoritarian states.⁸⁶ With this in mind, identity-based legitimacy claims are present and contribute to the strategies of all authoritarian states.⁸⁷

There have been more closed autocracies than liberal democracies in the world since 2023.⁸⁸ Even in democracies, authoritarian tendencies have emerged.⁸⁹ This is an era in which authoritarianism is so on the rise that identity-based legitimacy claims are particularly concerning in discussions of consent and legitimacy.

The nationalist narrative, as an identity-based claim to legitimacy, is a combination of ideology and foundational myths. Nationalist narratives are, first and foremost, deeply rooted in foundational myths that seek to resort legitimacy to grand imaginations of historical memory, morals, and identity. It also serves as an ideology to promote the legitimacy of regimes.⁹⁰

On the one hand, nationalist narratives construct a shared identity imagination. Nationalist narratives enable individuals to see themselves as part of a larger shared identity imagination, thereby encouraging the individuals to identify with the goals and values of this nationalist identity. This unites the interests of the individuals with the interests of the state in a shared identity imagination through the state's intentional narrative, and thus deliberately reinforces the representation of the state for the imagination.

On the other hand, the nationalist narrative contributes to legitimacy also because it can create an external threat. The imagination of identity is limited by boundaries.⁹¹ In the process of constructing a shared identity imagination, the nationalist narrative draws its boundaries as a line, which inevitably constructs the identity imagination of *the other* at the same time on the opposite side. Borrowing from Carl Schmitt's dichotomy of friend and enemy in politics, by distinguishing between a shared identity imagination and *the other*,

⁸⁵ Christian von Soest and Julia Grauvogel, "Identity, Procedures and Performance."

⁸⁶ Marcus Tannenberg et al., "Claiming the Right to Rule: Regime Legitimation Strategies from 1900 to 2019," *European Political Science Review* 13, no. 1 (February 2021): 77–94, <https://doi.org/10.1017/S1755773920000363>.

⁸⁷ Christian von Soest and Julia Grauvogel, "Identity, Procedures and Performance."

⁸⁸ V-Dem, "Democracy Report 2023 - Defiance in the Face of Autocratization" (University of Gothenburg), March 2023, https://v-dem.net/documents/29/V-dem_democracyreport2023_lowres.pdf.

⁸⁹ Jerzy J. Wiatr, ed., *New Authoritarianism: Challenges to Democracy in the 21st Century*, 1st ed. (Verlag Barbara Budrich, 2019), <https://doi.org/10.2307/j.ctvdf08xx>.

⁹⁰ Ben Wellings and Ben Power, "Euro-Myth: Nationalism, War and the Legitimacy of the European Union," *National Identities* 18, no. 2 (April 2, 2016): 157–77, <https://doi.org/10.1080/14608944.2015.1011110>.

⁹¹ Benedict R. O'G Anderson, *Imagined Communities*.

authoritarian regimes can create an identity imagination of the enemy.⁹² In the face of external threats from the enemy, nationalist narratives can generate internal cohesion to unite people.⁹³

Nationalist narratives allow individuals to believe that the state can represent them, and they face external threats, even though these may all be imagined. People perceive it as being in the best interests of society, and authoritarian regimes are thus able to obtain people's support and acceptance, i.e., consent.

Therefore, the relevant mechanism by which the nationalist narrative takes effect in the legal framework is such that authoritarian regimes use nationalist narratives as instrumentalized symbols in legal frameworks to satisfy their needs for consent and thus promote legitimacy. As Breuilly writes, nationalist narratives "*appeared as both a rationalization of certain forms of political action and as an instrument of such action*".⁹⁴

Within the legal framework, authoritarian regimes intentionally utilize nationalist narratives to reinforce the representation of individuals. This is obvious considering that the existence of nationalist narratives in legal frameworks is rooted in and reinforces a shared identity imagination. Even in this sense, the identity mechanism is partly the basis of the legitimacy mechanism. By enshrining nationalist narratives in legal frameworks, authoritarian regimes share identity imagination with individuals in provisions such as memory law, moral law, and identity law, and present themselves as representatives of identity imagination to cultivate individuals' identification and consent.

The construction of identity is accompanied by an underlying hostility to external groups.⁹⁵ Thus, nationalist narratives within the legal framework constantly attempt to construct external threats alongside constructing identity imaginations. By resorting to historical grudges and national sentiments in the law, authoritarian regimes portray other states or nations as threats to their identity imaginations to cultivate individuals' hostility to the external and their loyalty to the nationalist identity.

Then, internal dissent is also portrayed by nationalist narratives as an external threat within the state. Dissenting voices, including those that challenge the

⁹² Charles E. Frye, "Carl Schmitt's Concept of the Political," *The Journal of Politics* 28, no. 4 (1966): 818–30, <https://doi.org/10.2307/2127676>.

⁹³ Sven Oliver Müller, "Who Is the Enemy? The Nationalist Dilemma of Inclusion and Exclusion in Britain During the First World War," *European Review of History: Revue Européenne d'histoire* 9, no. 1 (January 2002): 63–83, <https://doi.org/10.1080/13507480120116209>.

⁹⁴ Breuilly, *Nationalism and the State*, 337.

⁹⁵ Karl Wolfgang Deutsch, *Nationalism and Its Alternatives* (Knopf, [distributed by Random House, 1969]).

official narrative in memory laws, are difficult to tolerate in the eyes of authoritarian regimes.⁹⁶ With the application of punitive provisions, internal dissent is labeled as an enemy of the shared identity imagination. In other words, dissent is transformed into hostile behavior through punitive provisions.⁹⁷ This “excludes” internal dissent and thus transforms it into an external threat. This mechanism ensures the internal unity of the identity imagination while borrowing the path of the external threat.

In addition, nationalist narratives have adaptability in the authoritarian regime’s picture of promoting legitimacy. As the internal and external circumstances of the authoritarian regime change, the definition of nationalist narratives may be modified, or there may be new scenarios of application to adapt to the rising needs of the regime. This adaptability is particularly exploitable given the ambiguities in the exact definition and application of some nationalist narratives in the law.⁹⁸

Nationalist narratives are firmly linked to legitimacy in the intention of authoritarian regimes, revealing the state’s motivation for utilizing nationalist narratives. The nationalist narrative, through the state’s representation of the individuals, the construction of external threats, and its adaptations, promotes the individuals’ identification with the nationalist identity in the legal framework, which then obtains consent from the individuals. This is the legitimacy mechanism of the nationalist narrative as an instrumentalized symbol, which resorts to the legitimacy’s need for consent as an intention.

3.4 Instrumentalizations in Authoritarian States

The identity and legitimacy mechanisms are the mechanisms that the thesis deduces for the nationalist narrative as a legal instrument. Based on it, followed by the description of the existence of nationalist narratives in the legal frameworks of China and Russia, the thesis places the two mechanisms in the field to analyze how the narratives function there.

3.4.1 China

3.4.1.1 *Origin*

In China, nationalist narratives in the legal framework include the great rejuvenation of the Chinese nation, heroes and martyrs, national sentiment, and

⁹⁶ Xi Chen and Dana M. Moss, “Authoritarian Regimes and Social Movements,” in *The Wiley Blackwell Companion to Social Movements* (John Wiley & Sons, Ltd, 2018), 666–81, <https://doi.org/10.1002/9781119168577.ch38>.

⁹⁷ Luísa Acabado, “Crime or Dissent? Notes on the Criminalization of Protest in Brazil and Spain,” in *As Sociedades Contemporâneas e os Direitos Humanos*, ed. Bruno Sena Martins, Ana Cristina Santos, and Saskya Lopes (SciELO - Editus - Editora da UESC, 2018).

⁹⁸ For example, *national sentiment* in China, and *historical truth* in Russia.

national spirit. These nationalist narratives have their origins in the shared identity imagination of the Chinese nation.

The Chinese nation was first proposed by Liang Qichao in 1902:

In ancient times, the only state of the Chinese nation that had the idea of sea power was Qi. Therefore, two concepts emerged from it, one is the national outlook, and the other is the world outlook.⁹⁹

In his early use of the term Chinese nation, although having begun to construct imagination with history, he sometimes referred to the Han Chinese and sometimes to all the nations of China, so the meaning was not clear enough in 1902. It was not until 1905 that he confirmed in *Observations of Chinese Nations in History* that the Chinese nation refers to all the ethnic groups within China in a pluralistic mixture.¹⁰⁰ This is the earliest identity imagination in the name of the Chinese nation, however, it is only an individual's identity imagination at that moment.

The national identity imagination of the Chinese nation has accomplished its sharing among individuals in response to China's national crisis in the modern period.¹⁰¹ According to Fei Xiaotong, the Chinese nation as a self-conscious national entity emerged from the confrontation between China and the West in almost a hundred years.¹⁰² But Han Chinese dissatisfaction with the Manchu government should also be considered. This crisis affecting the identity imagination can be also traced as far back as around the 1911 Revolution - the revolt of the revolutionaries against the feudal system of the Qing Dynasty.¹⁰³ Considering that war can be an explanatory point of reference for the collective consciousness,¹⁰⁴ through a series of wars such as the 1911 Revolution and the Second Sino-Japanese War, the individuals were equipped with a shared imagination base. To be precise, the dynamic relationship between China and its history, as well as other nations in the modern period, has

⁹⁹ Liang Qichao and Xia Xiaohong, "On the Great Trend of Changes in Chinese Academic Thought," 论中国学术思想变迁之大势 (Shanghai Ancient Books Publishing House, 上海古籍出版社, 2001).

¹⁰⁰ Li Xisuo, "Liang Qichao Was the First Person to Propose the Title of 'Chinese Nation'. 梁啟超是提出"中華民族"稱謂的第一人," October 13, 2009, <https://web.archive.org/web/20091013184320/http://theory.people.com.cn/BIG5/49157/49163/4089792.html>.

¹⁰¹ The modern period in China is considered by Beijing to have lasted from the First Opium War in 1840 to the founding of the People's Republic of China in 1949, see https://www.gov.cn/guoqing/2021-04/09/content_5555766.htm.

¹⁰² Xiaotong Fei, "Plurality and Unity in the Configuration of the Chinese People," accessed March 29, 2024, https://tannerlectures.utah.edu/_resources/documents/a-to-z/f/fei90.pdf.

¹⁰³ Dahua Zheng, "Modern Chinese Nationalism and the Awakening of Self-Consciousness of the Chinese Nation," *International Journal of Anthropology and Ethnology* 3, no. 1 (December 30, 2019): 11, <https://doi.org/10.1186/s41257-019-0026-6>.

¹⁰⁴ John Hutchinson, "Warfare and the Sacralisation of Nations: The Meanings, Rituals and Politics of National Remembrance," *Millennium* 38, no. 2 (December 1, 2009): 401–17, <https://doi.org/10.1177/0305829809347538>.

shaped the identity imagination of the Chinese nation, and thus it became clearer among individuals.¹⁰⁵

Then, this shared national identity imagination of the Chinese nation was gradually derived into a contemporary nationalist imagination in the practice of the Chinese Communist Party (CCP). In 2002, the CCP formally linked the Chinese nation to great rejuvenation in *the Report on the 16th National Congress of the CCP*, combining the trauma of the national crisis with the glory of thousands of years and opening the imagination's grander way. In the China of Xi Jinping era, he has articulated the great rejuvenation of the Chinese nation as the Chinese dream, which has made the imagination become an important theoretical origin in China's master narrative.¹⁰⁶ Thus, through the official emphasis on the great rejuvenation of the Chinese nation, the imagination imbued within the portrayal of the national crisis since the modern period became progressively grander in its combination of thousands of years of glorious historical imagination. It reinforced the sharing between the state and the individual, and finally gave birth to the nationalist narratives.

3.4.1.2 Identity Mechanism

The great rejuvenation of the Chinese nation is the core narrative of China's nationalist identity imagination. It is referred to repeatedly in statute law, which makes it an intersectional narrative of identity, moral, and memory laws.¹⁰⁷ It envisions restoring China's strength and increasing its global influence, echoing its status as a great civilization. This narrative builds on the imagination of China's modern national crisis and thousands of years of glory. It encourages a shared imagination of an identity that overcomes the traumas of the past and rebuilds its rightful place in the world. Heroes and martyrs, as well as the national spirit and national sentiment, originate from extensions of this shared nationalist identity imagination.

Heroes and martyrs, as nationalist narratives, promote cult and commemoration within the legal framework.¹⁰⁸ The cult of fallen soldiers, with regular “national” commemorations, helps generate a sense of national community.¹⁰⁹ To be a hero or a martyr means to achieve symbolic immortality in the shared identity imagination.¹¹⁰ This means that their deeds are forever

¹⁰⁵ Peter Hays Gries, *China's New Nationalism: Pride, Politics, and Diplomacy* (University of California Press, 2004), 19.

¹⁰⁶ Tuvia Gering, “A Xinderella Story: Turning the Chinese Dream Into China's Master Narrative,” *China Report* 59, no. 3 (August 1, 2023): 243–58, <https://doi.org/10.1177/00094455231188351>.

¹⁰⁷ Mainly in the legislative aims, such as Article 1 of the Protection of Heroes and Martyrs Law of the PRC, etc.

¹⁰⁸ See Protection of Heroes and Martyrs Law of the PRC, Patriotic Education Law of the PRC, etc.

¹⁰⁹ John Hutchinson, “Warfare and the Sacralisation of Nations.”

¹¹⁰ Daniel Koehler, “Dying for the Cause? The Logic and Function of Ideologically Motivated Suicide, Martyrdom, and Self-Sacrifice within the Contemporary Extreme Right,”

stored in the shared identity imagination of the Chinese nation, worshipped as a mapping of the imagination. The cult is organized around “*national*” commemorations, which can construct a moral community with a shared imagination between the state and individuals.¹¹¹ And then it contributes to the shared identity imagination since heroes and martyrs are thus able to provide memory and moral support in the legal framework.

As for national spirit and national sentiment, they originate in a purely moral imagination of nationalist identity. The national spirit has no fixed meaning in law. In the official narrative, it is considered to be “unity and solidarity, love of peace, diligence and courage, and self-improvement, with patriotism at its core”,¹¹² or “the great spirit of creation, the great spirit of struggle, the great spirit of solidarity and the great spirit of dreaming”.¹¹³ National sentiment, which is even more lacking in explanatory narratives, can only be linked to the individuals’ imagined sentiments towards a shared identity. They are not clear enough, but they cram all of the moral expectations of a shared identity imagination into two terms for the moral construction of individuals in the law. Their application in the legal framework reinforces the shared imagination. This is because the national spirit and national sentiment in practice inevitably give official annotations to the moral imagination of the shared identity, e.g., wearing the Japanese military uniforms of World War II or kimonos can harm the moral imagination, which in turn affects the individual’s imagination of the morals.

3.4.1.3 *Legitimacy Mechanism*

In the totalitarian China of the Mao Zedong era, the personal cult of the leader was an important support for legitimacy.¹¹⁴ But with Mao’s death and the reform and opening up of China, Beijing’s legitimacy strategy has come to rely more on the twin pillars of nationalism and economic prosperity.¹¹⁵ Considering that China’s economy has slowed down in recent years with many hidden dangers such as government debt and real estate bubbles, nationalism has become even more important.¹¹⁶ These nationalist narratives, which originate

Behavioral Sciences of Terrorism and Political Aggression 14, no. 2 (April 3, 2022): 120–41, <https://doi.org/10.1080/19434472.2020.1822426>.

¹¹¹ John Hutchinson, “Warfare and the Sacralisation of Nations.”

¹¹² See Jiang Zemin’s report at the 16th National Congress of the CCP , https://www.gov.cn/test/2008-08/01/content_1061490_7.htm.

¹¹³ See Xi Jinping’s speech at the first meeting of the 13th National People’s Congress, http://www.xinhuanet.com/politics/2018lh/2018-03/20/c_1122566452.htm.

¹¹⁴ Parks M. Coble, “China’s ‘New Remembering’ of the Anti-Japanese War of Resistance, 1937-1945,” *The China Quarterly*, no. 190 (2007): 394–410.

¹¹⁵ James Reilly, “China’s History Activists and the War of Resistance Against Japan: History in the Making,” *Asian Survey - ASIAN SURV* 44 (April 1, 2004): 276–94, <https://doi.org/10.1525/as.2004.44.2.276>.

¹¹⁶ Chenchao Lian and Jianing Wang, “Embrace or Repress? Explaining China’s Responses to Nationalism in International Incidents,” *The Pacific Review* 0, no. 0 (2023): 1–31, <https://doi.org/10.1080/09512748.2023.2226352>.

and reinforce the shared identity imagination, also support Beijing's legitimacy strategy.

First, the identity imagination of the Chinese nation is shared by Beijing and individuals through nationalist narratives in legal frameworks, mainly the great rejuvenation of the Chinese nation, but also the other narratives like deeds and spirit of heroes and martyrs as "*the shared historical memory of the Chinese nation*".¹¹⁷ In China, noteworthy, patriotic education is a very important method of realizing sharing. The national spirit embodied by heroes and martyrs is used as the main content of patriotic education.¹¹⁸ In addition, the great rejuvenation of the Chinese nation has been used as a theme for patriotic education.¹¹⁹ Identity imagination becomes more solid in sharing, allowing individuals to become more deeply integrated into the imagination, giving more consent to Beijing which tries to represent the imagination in the process.

Then, nationalist narratives within the legal framework of these laws constantly construct external threats including internal dissent. The trauma sense hidden by the great rejuvenation, the cult of heroes and martyrs, is a constant legal reminder of the existence of threats to the identity imagination, mainly from Japan and the United States.¹²⁰ And any impairment to heroes and martyrs, national spirit and national sentiment will be prosecuted by punitive clauses.¹²¹ Such punishment, and even criminalization, treats the impairment as an external threat to the imagination of the Chinese nation. Nationalist narratives alert individuals and also mark and confront threats to protect the imagination of the Chinese nation, in which individuals are immersed and mobilized.

As for adaptability, national spirit and national sentiment, as relatively abstract and ambiguous narratives, have a wide space for manipulation in concrete practice. This allows the state to use the nationalist narrative as a flexible tool of legitimacy when facing different domestic and diplomatic situations. For example, the narrative can be applied radically in times of tension in Sino-Japanese relations, which means wearing a kimono in Suzhou is also an impairment.¹²²

¹¹⁷ Article 3 of the Protection of Heroes and Martyrs Law of the PRC.

¹¹⁸ Article 6(8) of the Patriotic Education Law of the PRC.

¹¹⁹ Ibid., Article 3.

¹²⁰ Simon Shen and Shaun Breslin, *Online Chinese Nationalism and China's Bilateral Relations* (Lexington Books, 2010).

¹²¹ Article 185 of the Civil Code of the PRC; Article 34 of the draft amendment 2023 to the Public Security Administration Punishment Law of the PRC; Crime against Honor and Reputation of Heroes and Martyrs, Article 299(1) of the Criminal Law of the PRC.

¹²² Zijie Liang, "Wearing Kimono 'picking quarrels and provoking trouble' was torn clothes and arrested? Woman apologizes for hurting national sentiment by wearing Japanese clothes in Suzhou (in Chinese)."

3.4.2 Russia

3.4.2.1 Origin

The shared identity of the Russian nation is imagined by interconnected messianic consciousness and Eurasianism.

Since 988 A.D., when Archduke Vladimir I of Rus formally established Orthodoxy as the state religion of Russia, Orthodoxy has played an irreplaceable role in the identity imagination of the Russian nation. In Russia, the Messiah, the core doctrine of the Orthodox, emphasizes the savior identity of the Russian nation after its suffering.¹²³ This religious consciousness has deeply influenced and shared the nationalist imagination of Russians for a thousand years, believing that Russia is God's chosen nation with a special mission. This imagination is evident in a letter to Vasili III, Grand Prince of Moscow, in the 16th century:

Two Romes have fallen. The third stands. And there will be no fourth. No one shall replace your Christian Tsardom!¹²⁴

Even in the USSR, messianic consciousness was influencing the Russian identity imagination. Despite the suppression of Orthodoxy during the Soviet time, Messianic consciousness has been able to exist apart from religion. The experimentation of Bolshevism in Russia, and the personal worship of Stalin, all these were considered to be reflections of messianic consciousness.¹²⁵

With the return of Orthodoxy after the collapse of the USSR, in today's Russia, messianic consciousness has replaced communist ideology as well as become an alternative backbone to liberal democracy, which gives Russian nationalism a savior tone and anti-Western sentiment, emphasizing Russia's status as a great and unique state.¹²⁶

Great and unique, in this sense the emergence of Eurasianism was inevitable for the development of messianic consciousness. Eurasianism sees Russia as belonging neither to Europe nor to Asia but as an independent Russian civilization based on Eurasia.¹²⁷

¹²³ Peter J. S. Duncan, *Russian Messianism: Third Rome, Revolution, Communism and After* (Routledge, 2002).

¹²⁴ Donald Ostrowski, *Muscovy and the Mongols: Cross-Cultural Influences on the Steppe Frontier, 1304-1589* (Cambridge University Press, 2002).

¹²⁵ Ana Siljak, "Nikolai Berdiaev and the Origin of Russian Messianism," *The Journal of Modern History* 88, no. 4 (2016): 737–63.

¹²⁶ Ostap Kushnir, "Messianic Narrations in Contemporary Russian Statecraft and Foreign Policy," *Central European Journal of International and Security Studies* 13 (March 21, 2019): 37–60, <https://doi.org/10.51870/CEJISS.A130108>.

¹²⁷ Кривописов Владимир Викторович, "Civilizational Identities of West and East: The Place and Role of the 'Russian World', Цивилизационные Идентичности Запада и

As a representative of neo-Eurasianism, Aleksandr Dugin argues that the entire history of Russia is a history of empire-building. Russia will either become an empire or not exist at all.¹²⁸ Eurasianism as an ideology influences not only geopolitics but also the identity imagination of the Russian nation. Accordingly, the Russian nation must be great, which as a shared nationalist identity imagination bred its nationalist narratives.

Russia's nationalist narrative focuses on preserving the imagination of unity and strength it presents on the international stage, which is complemented by its foreign policy.¹²⁹ In 2023, Eurasianism officially became part of Putin's foreign policy, competing with the West for discourse through constructing a Eurasian civilization.¹³⁰ Having Eurasianism as the official main narrative provides policy support for identity imagination based on messianic consciousness, while also contributing to the sharing between the state and individuals.

3.4.2.2 *Identity Mechanism*

In Russia, nationalist narratives in legal frameworks include the Soviet Union's role in World War II, language provision, and grander historical memory. These narratives reinforce the imagination of Russian nationalist identity in the light of the messianic consciousness.

The Soviet Union's role in protecting human beings from the absolute evil of Nazism during World War II, which was invoked in the law as "*historical truth and the heroic deeds of the people*",¹³¹ is nowadays interpreted as a version of secular state messianism.¹³² The achievement of victory in World War II after the suffering of the war and the Soviet Union's post-war role as a powerful state seemed to validate the authenticity of the messianic consciousness, which implied that the Russian nation could indeed act as a savior and become a uniquely influential world power after the suffering it had endured. The Soviet Union's role in World War II, as a messianic victory, through the

Востока: Место и Роль «Русского Мира»,» *Гуманитарий Юга России* 20, no. 4 (2016): 224–35.

¹²⁸ "Imperial march through Moscow, Имперский марш прошел по Москве," ВЗГЛЯД.РУ, accessed April 2, 2024, <https://vz.ru/politics/2007/4/8/76422.html>.

¹²⁹ Ostap Kushnir, "Messianic Narrations in Contemporary Russian Statecraft and Foreign Policy."

¹³⁰ Permanent Mission of the Russian Federation to the European Union. "The Concept of the Foreign Policy of the Russian Federation | Russian Mission," April 10, 2023, <https://web.archive.org/web/20230410161817/https://russiaeu.ru/en/news/concept-foreign-policy-russian-federation>.

¹³¹ Article 67.3 of the Constitution of Russia, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

¹³² Maria Engström, "Contemporary Russian Messianism and New Russian Foreign Policy," *Contemporary Security Policy* 35, no. 3 (September 2, 2014): 356–79, <https://doi.org/10.1080/13523260.2014.965888>.

intentional reinforcement of punitive provisions,¹³³ contributed greatly to the shared identity imagination of the Russian nation.

Russia's attention to language policy has been going on since the beginning of the 21st century and is aimed at reconstructing a strong identity.¹³⁴ This attention has evolved to bind the Russian language to "*the state-constituting nation*" in the language provision of the Constitution,¹³⁵ fostering an individual's nationalist identity imagination. Individuals who speak Russian as their mother tongue and live in Russian culture can be "accepted" into the identity imagination through the provision, and then practice the imagination in language and cultural performance.

What is reflected in the millennial history of the Constitution is an echo of the messianic consciousness. Millennium history has been in the Constitution since 2020, symbolizing the pride and recognition of the Russian nation of its historical mission and unique status.¹³⁶ In particular, the provision includes "*the memory of the ancestors who conveyed to us ideals and belief in God*", again implying a messianic consciousness originating in the Orthodox. The "*continuity*" and "*unanimity*" in the provision also further enhance the narrative as an ipso facto inheritance of the millennial identity imagination. This narrative mythologizes the identity imagination and convinces the Russian people that their state is destined to play a special role on the stage as the savior.

3.4.2.3 *Legitimacy Mechanism*

In Russia, the contribution of nationalist narratives to the legitimacy of the regime in the legal framework lies first and foremost in the sharing of identity imaginations. Moscow's sharing of imagination between the state and the individuals is primarily through the role of the Soviet Union during World War II and the millennium history in which memories serve as carriers of the official and intentional annotation of history.¹³⁷ Through the honoring of history, the individuals, as part of an imagined community of inheritors, are linked to a shared historical messianic heritage, which is expressed in historical truths, the heroic deeds of the people, and the myth about the origins of the nation. This nationalist narrative fosters a shared sentiment, allowing individuals to

¹³³ Article 354.1 of the Criminal Code of the Russian Federation, and Article 13.48 of the Code of the Russian Federation on Administrative Offenses.

¹³⁴ Lara Ryazanova-Clarke, "'The State Turning to Language': Power and Identity in Russian Language Policy Today," *Russian Language Journal / Русский Язык* 56 (2006): 37–55.

¹³⁵ Article 68.1 of the Constitution of Russia, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

¹³⁶ Article 67.2 of the Constitution of Russia, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

¹³⁷ Article 67.3 and 67.2 of the Constitution of Russia, translation references <https://rm.coe.int/constitution-of-the-russian-federation-en/1680a1a237>.

see themselves as part of a Russian nation with a shared history and destiny imagination.

The legitimacy mechanism will be further verified from an empirical perspective. Since the Russian military intervention in Ukraine in 2014, Russia has become increasingly dependent on the support of Russian nationalism.¹³⁸ Nationalist narratives in legal contexts adaptively participate in it with the construction of “*other*” and shared imagination.

There is the contribution of the language provision to the sharing of cultural identity imagination. Russia’s justification for invading Donbass is “*forced to defend the Russian-speaking population in Donbass*”.¹³⁹ Although the Constitution had not yet been upgraded at the time, it was already visible that Moscow was intentionally applying the language narratives to claim legitimacy. Then the 2020 Amendment to the Constitution solidifies Russia’s cultural justification for invading Donbass and facilitates a more tangible belonging to the state and the Russian identity imagination for individuals through the performance of the language, even for those separatists in Donbass of Ukraine.

And since Russia’s total invasion of Ukraine in 2022, with the emergence of anti-war voices, the punitive provisions of the Soviet Union’s role and *the Rehabilitation of Nazism* have more dynamics. Considering that the de-Nazification of Ukraine is also an official pretext, in Russia’s accusations, different voices with an anti-war stance in the state have been imagined to be associated with the *Nazis* because they compare Russia to Nazi Germany or insult the historical and current *anti-Nazi* image of the soldiers.¹⁴⁰ This is aimed at constructing a *Nazi-other* in legal practice, legitimizing the invasion, and punishing anti-war sentiment, which helps to consolidate the consent and increase the legitimacy of the regime to wage war.

3.4.3 Similarities and Differences

Although they both reinforce their respective shared nationalist identity imaginations, the origins of Chinese and Russian nationalist narratives clearly have different time spans. Russian identity imagination can trace the seeds of messianic consciousness planted by religion a thousand years ago. And it seems that the Chinese identity imagination was not awakened before the modern period. Even though the imagination contains thousands of years of glory, it would be more apt to call the imagination of the rise and fall of those

¹³⁸ Marcel H. Van Herpen, *Putin’s Wars: The Rise of Russia’s New Imperialism* (Rowman & Littlefield, 2014).

¹³⁹ BFM.ru, “Putin: we ‘did not impose’ on France (Путин: мы Франции «не навязывались»),” BFM.ru - деловой портал, accessed April 6, 2024, <https://www.bfm.ru/news/335947>.

¹⁴⁰ “Russian Actions Aim to Save People, Demilitarize, Denazify Ukraine — Lavrov,” TASS, accessed April 6, 2024, <https://tass.com/politics/1414061>; “Part 2, Article 354.1 of the Criminal Code · Anti-War Criminal Cases.”

dynasties diverted by the national crisis due to its needs. This means that historical memory is a subjective material in the production of the identity imagination. It's not about whether the identity imagination has actually traveled all that time, but whether the history is valuable enough to be an imagination.

However, suffering and rejuvenation are surprisingly common themes in the nationalist identity imaginations of both states. The rejuvenation of the Chinese nation after a century of national crisis coincides with the messianic consciousness of becoming a savior after suffering, narrating the resilience and grand destiny of the identity imagination in the imagination of the past, the present, and the future. It's a myth that is attractive enough and works well for nationalist narratives as an instrument. This theme, which unites individuals in the identity imagination, enhances the dynamics of these states in the face of internal and external crises.

Regarding the use of nationalist narratives for legitimacy in law, the two states are much the same. Both have resorted to reinforcing common identity imagination and constructing threats from the “*other*”. Russia has more practice with nationalist narratives in legitimacy strategies because it is at war with Ukraine as the “*other*”. Similar to Moscow's attempts to legitimize its territorial and population claims to Ukraine with nationalist narratives, China has been using “*Taiwan compatriots*”¹⁴¹ in its laws in an attempt to construct an identity imagination of unity to bolster the legitimacy of its claims to Taiwan.¹⁴² Although *the great rejuvenation of the Chinese nation* and other nationalist narratives have not been linked to Taiwan in the legal framework for the moment, the first signs of this have already appeared in the policy documents.¹⁴³ It is notable to observe what further applications in the legal picture nationalist narratives will have in the Taiwan issue.

3.5 Conclusion

The Chapter began by describing a spiral mechanism by which nationalist narratives interact with identity to illustrate how nationalist narratives can be an instrument in a legal framework. It took the shared identity imagination as the origin of the nationalist narrative and emphasized its subjective and shared nature. The Chapter then analyzed the logic of nationalist narratives as instrumentalized symbols participating in the construction of identity imagination in the legal framework by the nature and provisions of nationalist narratives.

¹⁴¹ Although this term is rich in emotion in the Chinese daily context, it places more emphasis on citizenship and is therefore considered to be a national narrative in the process of transforming into a nationalist narrative.

¹⁴² Paragraph 9 of the preamble to the Constitution of the PRC; Anti-Secession Law of the PRC; Article 11 of the National Security Law of the PRC.

¹⁴³ Xinhua. “The Taiwan Question and China's Reunification in the New Era,” accessed April 8, 2024, <https://www.china-daily.com.cn/a/202208/10/WS62f314b6a310fd2b29e71619.html>.

The legitimacy mechanism of the nationalist narrative was then introduced to explain the intention of the State to use the instrument. Legitimacy, as a fundamental pillar of governance, needs to be acquired even by the authoritarian. For authoritarian states, identity-based legitimacy claims have a place that cannot be ignored. As such a claim, nationalist narratives contribute to the state's legitimacy intentions by being able to obtain the consent of individuals by representing them in the legal framework, constructing external threats, and their adaptability.

These two mechanisms were placed in the empirical contexts of China and Russia. Despite differences in origins and socio-cultural backgrounds, both China and Russia utilize nationalist narratives with suffering and revival as a common theme to enhance legitimacy.

In China, the consciousness of the national crisis has awakened nationalist narratives. After a century of suffering in the modern period, nationalist narratives have been used in the legal framework by Beijing to reinforce an identity imagination of rejuvenation. They are increasingly becoming an effective pillar of legitimacy as part of nationalism in today's China.

While in Russia, messianic consciousness is at the origin and core of the nationalist narrative. The savior tone profoundly influences the expression of the nationalist narrative in the legal framework and contributes to Moscow's legitimacy, especially for the Russo-Ukrainian War since 2014.

4 Conflict Between Narratives and Human Rights

4.1 Introduction

Having understood the mechanisms by which nationalist narratives are used as legal instruments, the Chapter attempts to describe and evaluate the possible human rights consequences of nationalist narratives through the identity and legitimacy mechanisms respectively.

Chapter 4 begins with the deconstruction of individuals by nationalist narratives in the identity mechanism. It describes how the deconstruction of individuals in law by nationalist narratives can impair the individuality that contributes to the essence of individual rights.

Chapter 4 then discusses the marginalization of minorities by nationalist narratives in the legitimacy mechanism. It describes the potential for human rights to be impaired for those minorities who do not consent. This conflict is evaluated more specifically in the freedom of expression and minority rights.

As the reference states for the thesis, China and Russia contribute their empirical experiences in the Chapter.

4.2 Deconstructed Individuals

As discussed in the identity mechanism of the nationalist narrative, the nationalist narratives construct and reinforce a shared identity imagination within the legal framework. But this has eventually led to deconstructed individuals.

The subjective construction of the nationalist identity imagination is actually an awakening of a collective identity consciousness. In constructing and reinforcing the identity imagination, nationalist narratives emphasize historical memory, moral values, and identity as they are shared among the state and individuals. It reflects sharing as commonality among members of a collective, allowing identity imagination to be projected as a collective identity consciousness.

Whether it is the Chinese people who think about the great rejuvenation of the Chinese nation after the national crisis, or the Russian nation that pursues the messianic consciousness in the millennium history, they are all projected by the identity imagination into the collective identity consciousness of a nation. Heroes and martyrs, historical truths, when these memories or moral values are claimed by law, a collective identity consciousness becomes more solid for individuals. Through nationalist narratives resorting to those means of carrying the shared identity imagination in the legal framework of the states,

the collective identity consciousness is intentionally made institutionalized to be mainstreamed, becoming a whisper behind the legal text, going strong in the chanting of the imagination.

Under the identity mechanism, a collective identity consciousness is gradually strengthened, and accordingly, the individual identity consciousness is gradually weakened.

Admittedly, the individual cannot exist apart from collectivity. If one lives in a contemporary society, one is certainly colored by the collective. For example, it has been argued that thoughts, beliefs, attitudes, etc. of individuals are the expression of an inherently shared collective consciousness.¹⁴⁴ However, the space of the narratives is limited when the one consciousness is strengthened to be mainstreamed, thus the weakening of the individual identity consciousness is predictable.

The individual identity consciousness is diffused and then dissolved in the discourse of nationalist narratives, which makes the individuals gradually abstracted in the narratives as units performing the collective identity consciousness under the shared identity imagination. While constructing the shared identity imagination, nationalist narratives also deconstruct the individuals. Through the legal framework, it can be seen that Chinese individuals become worshippers and memorializers of the heroes and martyrs, and Russian individuals become speakers of the Russian language, which is the language of the state-constituting nation. Thus, in a legal framework influenced by nationalist narratives, the individuals are abstracted into patterns that fit the collective identity consciousness, leading to the deconstruction of the individual in the legal framework.

Due to this, the nationalist narratives through the identity mechanism inevitably deconstruct the individuals by weakening the individual identity consciousness. However, considering how closely human rights are related to the individuals in the legal framework, it seems to herald the first conflict between nationalist narratives and human rights.

Individuals are pivotal in the legal framework of human rights. In the International Covenant on Civil and Political Rights, the individual is the subject of the rights enshrined therein:¹⁴⁵

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant,

¹⁴⁴ Kay Mathiesen, "Collective Consciousness," in *Phenomenology and Philosophy of Mind*, ed. David Woodruff Smith and Amie L. Thomasson (Oxford University Press, 2005), 0, <https://doi.org/10.1093/acprof:oso/9780199272457.003.0012>.

¹⁴⁵ Article 2 of the International Covenant on Civil and Political Rights.

without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Even in the libertarian view, only individuals are the holders of rights, although this argument is continually challenged by collective rights.¹⁴⁶ However, there is no doubt that human rights are the inherent rights of individuals as human beings. “*All human beings are born free and equal in dignity and rights.*”¹⁴⁷

Individual rights may be limited by the political, economic, and cultural realities of each community, and thus vary in the extent to which they are recognized and realized.¹⁴⁸ However, human rights are also universal. Individuals from different communities should enjoy human rights equally. So much so that human rights are an essential part of the integrity and dignity of the individual as a human being.¹⁴⁹

Individual rights, as inherent and universal, center around individuals as their holders. It is important to recognize that individuality is a prerequisite for individuals to hold human rights as such. Individuality implies that a human being exists as an individual within the human rights narrative of the legal framework, and also that the individuals possess their own independent identity as human beings performing individual rights. Therefore, the performance of human rights by individuals, as holders of individual rights, should be based on their individuality as human beings, which contributes to the essence of individual rights.

However, the individuality is being threatened by the nationalist narratives. To be precise, the nationalist narratives deconstruct the individuals in the legal framework by weakening their identity consciousness through the identity mechanism, undermining the individuality that contributes to individual rights.

First, as individuals become more and more immersed in collective identity consciousness fostered by nationalist narratives, their awareness of their inherent and universal individual rights gradually diminishes. Particularly in authoritarian States, if individuals gradually become numb to the crisis of their rights, how can they effectively claim them or resist potential violations? Individuals may fail to recognize the erosion of their rights or may view any

¹⁴⁶ Tom Axworthy and Pierre Elliott Trudeau, *Towards a Just Society: The Trudeau Years* (Penguin Books, 2000), 357-404.

¹⁴⁷ Article 1 of the UDHR.

¹⁴⁸ Douglas Lee Donoho, *Relativism versus Universalism in Human Rights: The Search for Meaningful Standards* (Stanford, Calif.: Stanford University, School of Law, 1991), 345.

¹⁴⁹ Rosalyn Higgins, “6 Responding to Individual Needs: Human Rights,” in *Problems and Process: International Law and How We Use It* (Oxford University Press, 1994), 96, <https://opil.ouplaw.com/display/10.1093/law/9780198764106.001.0001/law-9780198764106-chapter-6>.

erosion as necessary for the greater good of shared identity imagination. This gradual loss of awareness leaves individuals vulnerable to manipulation by the regime and thus makes them unconsciously accept the measures in the name of the shared identity imagination, such as national(ist) security.

Then, considering that legislation and its practice often reflect the mainstream ideology and values of a society, when the collective identity consciousness becomes mainstream, the legislation and its practice tend to disrespect individual rights. Where collective identity consciousness takes precedence over the individual, laws may be enacted and enforced in a way that disregards or even undermines individual rights. Since individuality is lost, there is no guarantee of individual rights if the law does not see them. As such legislation and its practices become increasingly aligned with nationalist narratives, the space for the individual identity consciousness within the legal framework shrinks further, exacerbating the undermining of individuality. This cycle of legislation and its practice that disrespects individual rights is particularly worrying in authoritarian states. When the law consistently prioritizes the benefits of the shared identity imagination over individual rights, authoritarianism acquires an environment to normalize itself that erodes democracy and the rule of law.

To address this conflict, it involves implementing measures to counteract the deconstruction of individuals by nationalist narratives. It is necessary to reaffirm individuality and ensure individual identity consciousness within the legal framework. One approach is through education and awareness-raising campaigns that emphasize the importance of individual rights and identity consciousness. This will enable individuals to become more aware of inherent and universal human rights. In addition, legislation and its practice should focus on the protection of individual rights, even in the face of nationalist pressures. This can involve strengthening legal mechanisms for the realization of individual rights and providing effective remedies for potential violations of the rights. Considering the situation of authoritarian states, international interaction and involvement are also essential for accountability for violations of individual rights by authoritarian states and the promotion of universal human rights standards.

4.3 Marginalized Minorities

As for the legitimacy mechanism, the conflict between nationalist narratives and human rights is reflected in marginalized minorities.

In international law, minorities are referred to based on national or ethnic, cultural, religious, and linguistic identity.¹⁵⁰ Different nationalities, ethnicities, cultures, religions, and languages carry different identity imaginations.

¹⁵⁰ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 1(1).

Thus, minorities in nationalist narratives are first and foremost those who identify with other identity imaginations within a state. They do not consent to the regime's identity-based legitimacy claims because they do not identify with the shared identity imagination.

In addition, considering that although there is no internationally agreed definition of which groups constitute minorities, there is a consensus that inequality, discrimination, and exclusion are the root causes of the conflicts faced by minorities.¹⁵¹ Minority can thus also be derived as a group in a situation of inequality of numbers or power, facing discrimination or exclusion. As an expansive interpretation, the minority in the nationalist narrative further broadly includes all those who are so situated by not giving consent.¹⁵²

The marginalization of minorities is first because nationalist narratives use the legitimacy mechanism to reinforce the representation of individuals. Minorities are a non-consenting group. Their dissent is to the shared identity imagination but also to the regime. However, the dissent comes at a price. While in a good democratic society, minorities are not completely excluded from the process of democratic deliberation and decision-making by enjoying a particular right to effective participation in decisions that affect them, the fragile rule of law in authoritarian societies challenges this.¹⁵³ Memory, morals, and identity carry the shared identity imagination and represent the majority that shares the goals and values of the imagination. However, the will of the minorities is not presented by the shared identity imagination and the basis of the authority in authoritarian states. Thus, the representation of the minority through the mechanism is inadequate or lost. This means that in authoritarian societies, the group lacks sufficient political power or representation to influence the regime in cases where they are minorities. Minorities thus have become marginalized in politics and law.

Then, another reason is that minorities are constructed as external threats by the legitimacy mechanism. The function of nationalist narratives in the legitimacy mechanism also includes the cohesion of the people through constructing external threats. As for those minorities who don't consent, they are turned into the material for the construction through punitive provisions. This is because punitive provisions protect a shared identity imagination, which is undermined by the dissent of minorities. By punitive provisions, the state

¹⁵¹ OHCHR, "Minority Rights: International Standards and Guidance for Implementation, HR/PUB/10/3," Refworld, accessed April 24, 2024, <https://www.refworld.org/reference/themreport/ohchr/2010/en/79004>.

¹⁵² Considering consent as a political participation, this can be also argued from its dictionary meaning of *any small group in society that is different from the rest because of their [...] political beliefs, or a person who belongs to such a group*, see <https://dictionary.cambridge.org/dictionary/english/minority>.

¹⁵³ Steven Wheatley, *Democracy, Minorities and International Law*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2005), <https://doi.org/10.1017/CBO9780511584336>.

marks minorities as enemies of the shared identity imagination and pushes them out of the community. This also helps to silence dissent with punishment, thereby solidifying marginalization. Minorities are thus marginalized far beyond the margins, constructed as external threats.

The second conflict between nationalist narratives and human rights caused by marginalization first points to the principle of universality and inalienability of human rights. Human rights are inherently universal and inalienable, meaning they apply to all individuals and groups regardless of their nationality, ethnic origin, religion, or consent to the shared identity imagination or not. However, when minorities are politically and legally marginalized or even constructed as external threats, it means that they are systematically excluded, thereby undermining this principle. For example, punitive provisions may be used to silence dissent from minorities, as Russia is now doing with opponents of the Russo-Ukrainian War, violating their freedom of expression. This further contributes to their marginalization and deprives them of the full enjoyment of their human rights.

Furthermore, marginalization increases the vulnerability of minorities. Through marginalization, nationalist narratives create conditions that make minorities more vulnerable to exploitation, discrimination, and violence. For example, marginalized minorities may face higher levels of social exclusion, making them easy targets for discrimination and abuse by radical nationalists. Nationalist speech may even incite violence against marginalized minorities, leading to physical attacks, forced displacement, and other human rights violations.

Addressing the marginalization of minorities within a legal framework requires improving democracy and promoting pluralism. Good democracy ensures that even minorities who do not consent to the shared identity imagination are protected. They will not have their rights ignored or be seen as an external threat by the government simply because of their dissent. Pluralism then requires respect for the diverse identity imaginations of minorities when they refuse to consent to a shared identity imagination because of their distinct national or ethnic, cultural, religious, and linguistic backgrounds. By improving democracy and promoting pluralism, societies can create more inclusive legal frameworks that respect the rights and dignity of all minorities, regardless of their different views or identity imaginations, and thus contribute to the resolution of the second conflict.

The conflict caused by marginalization will be further illustrated by two specific rights.

4.3.1 Freedom of Expression

Freedom of expression is essential for any society and is the foundation stone of every free and democratic society.¹⁵⁴ As a fundamental right, freedom of expression is first and foremost protected by the UDHR.¹⁵⁵

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In the more than seventy years since the advent of the UDHR, the protection of freedom of expression within the framework of human rights law has become increasingly comprehensive.¹⁵⁶ Within the framework of international human rights law, it is currently protected by the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁵⁷ Freedom of expression can also be found in regional human rights protection mechanisms such as the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights.¹⁵⁸ The protection framework is so well developed that it has been recognized as a norm of customary international law.¹⁵⁹

Freedom of expression includes a wide range of forms, as enshrined by the ICCPR in Article 19(2):

[...] this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The Human Rights Committee (HRC) explained the wide range of forms further in its general comment:¹⁶⁰

Paragraph 2 [of Article 19] protects all forms of expression and the means of their dissemination. Such forms include spoken,

¹⁵⁴ Human Rights Committee, CCPR/C/GC/34, para.2.

¹⁵⁵ Article 19 of the UDHR.

¹⁵⁶ Emily Howie, "Protecting the Human Right to Freedom of Expression in International Law," *International Journal of Speech-Language Pathology*, January 2, 2018, <https://www.tandfonline.com/doi/abs/10.1080/17549507.2018.1392612>.

¹⁵⁷ Article 5 of the ICERD; Article 19 of the ICCPR; Article 12 of the CRC; Article 21 of the CRPD.

¹⁵⁸ Article 10 of the ECHR; Article 13 of the ACHR; Article 9 of the ACHPR.

¹⁵⁹ Gillian D Triggs, *International Law: Contemporary Principles and Practices*, 2nd ed. (Chatswood, NSW: LexisNexis, 2010).

¹⁶⁰ HRC, CCPR/C/GC/34, para.12.

written and sign language and such non-verbal expression as images and objects of art. Means of expression include books, newspapers, pamphlets, posters, banners, dress and legal submissions. They include all forms of audio-visual as well as electronic and internet-based modes of expression.

Freedom of expression is essential to the functioning of the human rights system.¹⁶¹ With regard to civil and political rights, the right to participate in public affairs is supported by ensuring freedom of expression. It is also an essential condition for the effective exercise of the right to vote.¹⁶² Freedom of expression also ensures the right of everyone to take part in cultural life by contributing to the realization of participation.¹⁶³ Ultimately, freedom of expression ensures the flourishing of democratic values and diverse perspectives.

However, it is perhaps even axiomatic that freedom of expression, as a fundamental human right, is one of the most violated.¹⁶⁴ This is precisely the case for those who have become minorities in the legitimacy mechanism of the nationalist narrative because they do not consent to the identity-based legitimacy claims.

The reason why freedom of expression has become an impaired human right in the marginalization of minorities by nationalist narratives is that the right is not absolute and is subject to certain restrictions, although the restrictions are also restricted.¹⁶⁵ In ICCPR, for instance:¹⁶⁶

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Nationalist narratives treat minorities' dissent as an expression that should be so restricted. In nationalist narratives, notions of national security, public or-

¹⁶¹ Michael O'Flaherty, "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34," *Human Rights Law Review* 12, no. 4 (December 1, 2012): 627–54, <https://doi.org/10.1093/hrlr/ngs030>; Dominic McGoldrick, "Thought, Expression, Association, and Assembly," in *International Human Rights Law*, ed. Daniel Moeckli et al. (Oxford University Press), 209–34, accessed April 30, 2024, <https://www.oxfordlawtrove.com/display/10.1093/he/9780198860112.001.0001/he-9780198860112-chapter-11>.

¹⁶² HRC, CCPR/C/21/Rev.1/Add.7, paras. 8 and 12.

¹⁶³ Committee on Economic, Social and Cultural Rights, E/C.12/GC/21, para. 49.

¹⁶⁴ Michael O'Flaherty, "Freedom of Expression."

¹⁶⁵ Mordechai Kremnitzer and Khaled Ghanayim, "Incitement, Not Sedition," in *Freedom of Speech and Incitement against Democracy* (Brill Nijhoff, 2001), 147–211, https://doi.org/10.1163/9789004482654_011.

¹⁶⁶ Article 19.3(b) of the ICCPR.

der, or public morals tend to be associated with the shared identity imagination. Nationalist narratives view the dissent of minorities as an expression of disidentification with the shared identity imagination and restrict it out of a need to protect that imagination.

However, what is worrying is the substantive link between restrictions based on nationalistic narratives and national or public interests is not sufficiently close. The reason that justifies the restrictions on freedom of expression imposed by nationalist narratives is an abuse created by the narratives themselves for consent, ignoring the test of necessity or proportionality of the restriction.¹⁶⁷

In Russia, Igor Orlovsky's case is a practice of nationalist narratives that the freedom of expression has been restricted.¹⁶⁸ He was noticed by the authorities only for comparing the policies of Hitler and Stalin before World War II on social media. He was sentenced to three years of imprisonment for that expression. The authorities saw his expression should be restricted because it threatened Russia's historical memory that carries the nationalist identity imagination.

Stalin's policies are the material for constructing the shared identity imagination of Russia and further contributing to the legitimacy of the regime. The authorities saw Igor Orlovsky's expression as a subversion of this path. The expression thus triggered the restriction based on publicly justifying terrorism and calling for extremism.

However, when restrictions on freedom of expression are imposed for national and public reasons, it is important to consider whether the restriction is truly motivated by that reason, rather than by an abuse of the protection of a shared identity imagination. In the case of national security, for example, the restriction must be genuinely motivated by the legitimate aim of protecting national security.¹⁶⁹ If the restriction is merely claimed to be for the protection of national security but is aimed at silencing criticism of the regime, then the restriction fails to serve its legitimate aim.¹⁷⁰

Russia's restriction on Igor Orlovsky's freedom of expression is thus unreasonable and constitutes an abuse. As a critique of historical memory, his ex-

¹⁶⁷ HRC, CCPR/C/GC/34, paras.33-34.

¹⁶⁸ See 2.3.2.2.

¹⁶⁹ "Freedom of Expression and National Security: A Summary," ARTICLE 19, December 7, 2020, <https://www.article19.org/resources/foe-and-national-security-a-summary/>; Article 19, "Johannesburg Principles on National Security, Freedom of Expression and Access to Information," Police and Human Rights Resources, April 17, 1996, <https://policehuman-rightsresources.org/johannesburg-principles-on-national-security-freedom-of-expression-and-access-to-information>.

¹⁷⁰ Ahmet Hüsrev Altan v. Turkey, No. 13252/17 (ECtHR April 13, 2021).

pression constituted an attack on the identity imagination but there was a distinct distance from causing substantial damage to current national or public interests. The aim of the restriction was Russia's attempt to make nationalist narratives better serve its legitimacy, especially during the Russo-Ukrainian War. The abuse of this restriction has led him to be constructed as a dissenting minority and has resulted in the violation of the freedom of expression.

When Igor Orloysky's case shows nationalist narratives undermining the principle of universality and inalienability through the abuse of the restriction on freedom of expression, what happened in China also shows the increased vulnerability.

The kimono case in Suzhou, China, reflects the conflict between the freedom of dress and nationalist narratives.¹⁷¹ The charge of incitement to national hatred by the police, saw the dressing in kimono as a provocation to the trauma of the national crisis, more precisely the Sino-Japanese national conflict. As HRC has explained, dress as a means of expression is included in freedom of expression. Although it means that freedom of dress is restricted within the legal framework, it still constitutes abuse when unable to see the substantial link between kimono and the national or public interest.

Furthermore, the case has generated public opinion on social media in China. While some people supported the woman in the case and questioned the police's actions, there were still radical nationalists who took the opportunity to show their anger and question the motives of the woman in the case.¹⁷² These public opinions reflect the increased vulnerability of the marginalized woman in the case, who faces discrimination and exclusion from radical nationalists who are hostile to Japanese culture.

The Russian and Chinese cases indicate the marginalization of minorities in freedom of expression by nationalist narratives. The problem is that those restrictions on challenges to nationalist narratives are insufficient to pass the test of necessity or proportionality. If restrictions on freedom of expression are motivated by the regime's need to protect a shared identity imagination for its legitimacy, this would seem to detract from the original purpose of freedom of expression as a fundamental right and lead to a human rights conflict.

¹⁷¹ See 2.3.1.2.

¹⁷² Jiawen Ji, Lin Wu, and Congrong Zhang, "Suzhou Girl in Kimono: Police Confiscated My Clothes, Shoes and Socks, Saying They Were Tools of the Trade (in Chinese)," *Beijing Youth Daily*, August 18, 2022, <https://web.archive.org/web/20220818125324/https://news.ifeng.com/c/8IaL5AtIKYM>; Helen Davidson, "Chinese Woman 'Detained for Wearing Japanese Kimono,'" *The Guardian*, August 16, 2022, sec. World news, <https://www.theguardian.com/world/2022/aug/16/chinese-woman-detained-for-wearing-japanese-kimono>.

4.3.2 Minority Rights¹⁷³

Fernand de Varennes, the Special Rapporteur on minority issues, highlighted in his 2018 consultation that:¹⁷⁴

[...] in many countries, minorities were among the world's most vulnerable segments of society and were currently confronted with an increasing number of human rights challenges and threats, ranging from discrimination linked to their languages, religion or ethnicity to violence and hate speech.

The disturbing current situation of minorities requires concern for and protection of minority rights. In international human rights law, the universal value of minority rights is attached to religious, cultural, and linguistic affiliation.¹⁷⁵ As the protection of minority rights is enshrined in the Article 27 of the ICCPR:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Moreover, Article 30 of the CRC emphasizes the equal enjoyment of minority rights for minority children. Normative standards on minority rights also include the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which provides guidance to States on how to adopt appropriate legislative and other measures to ensure minority rights, and particularly enshrines the principles of non-discrimination and equality:¹⁷⁶

Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.

The principles of non-discrimination and equality are at the core of minority rights. It ensures that all individuals, regardless of their minority status, are treated fairly and equally under the law and reduces the disadvantages of minorities. By respecting the principles of non-discrimination and equality, it

¹⁷³ The discussion of minority rights in this section is limited to the second paragraph of 4.3, i.e. the minorities concerned in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

¹⁷⁴ HRC, A/HRC/37/66, para.13.

¹⁷⁵ Patrick Macklem, "Minority Rights in International Law," *International Journal of Constitutional Law* 6, no. 3–4 (July 1, 2008): 531–52, <https://doi.org/10.1093/icon/mon019>.

¹⁷⁶ Article 2(1) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

guarantees the enjoyment by minorities of their religious, cultural, and linguistic rights and other rights, such as the right to participation.

However, the principles of non-discrimination and equality are undermined by nationalist narratives within the legitimacy mechanism. Nationalist narratives, with their shared identity imagination constructed through the identity mechanism, are used by the legitimacy mechanism as an instrument to obtain consent. The means of identity-based legitimacy claims contributed by nationalist narratives is to reinforce the representation of individuals with shared identity imagination, which is a common strategy in authoritarian states, but which also carries serious unfairness for minorities.¹⁷⁷ If they are represented, it means that minorities lose their status as minorities in the shared imagination that claims equality. If they are not represented, since they identify with other identity imaginations based on their religion, culture, and language, minorities are excluded from the agenda by the regime's intention to obtain consent through nationalist narratives. In any case, minorities face a crisis of discrimination and inequality in the legitimacy mechanism of nationalist narratives because of their status. As the Special Rapporteur on freedom of religion or belief has mentioned in the 2012 report when discussing the motives for violations of the freedom of religion or belief of persons belonging to religious minorities, "*existing stereotypes and prejudices against minorities are sometimes connected with historical traumas and national mythologies*".¹⁷⁸ Nationalist narratives are hardly not to blame.

The heterogeneity of states in the contemporary world runs counter to the theory of the nation-state as it developed in the nineteenth century.¹⁷⁹ The shared nationalist imagination obscures the heterogeneous ethnic and cultural links in the State. When states resort to identity-based legitimacy claims, it inevitably leads to the marginalization of minorities in rights.

In China, the shared imagination of identity in pursuit of the great rejuvenation of the Chinese nation involves not only the elimination of barriers posed by minority cultures and identities, but also requires minorities to voluntarily relinquish their identities and rights in order to identify with the Chinese nation.¹⁸⁰ Examples are widely found in minority regions, but the most well-known marginalization took place in Xinjiang. The existence of vocational education, training centers, or "re-education" camps provides the Uyghurs with the assimilation of a shared identity imagination in the name of counter-

¹⁷⁷ Christian von Soest and Julia Grauvogel, "Identity, Procedures and Performance."

¹⁷⁸ HRC, A/HRC/22/51, para.36.

¹⁷⁹ Hurst Hannum, "The Concept and Definition of Minorities," in *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, ed. Marc Weller, accessed April 24, 2024, <https://opil.ouplaw.com/display/10.1093/law/9780199208517.001.0001/law-9780199208517-chapter-3?prd=OPIL>.

¹⁸⁰ Uradyn E. Bulag, "The Wheel of History and Minorities' 'Self-Sacrifice' for the Chinese Nation," *Comparative Education* 60, no. 1 (January 2, 2024): 96–117, <https://doi.org/10.1080/03050068.2023.2271781>.

terrorism, which severely restricts the rights concerned the minority, including freedom of religion.¹⁸¹ This was seen as an attempt to deal with the dissent from the Uyghurs as a minority by controlling their religious and cultural practices.¹⁸²

Moreover, education is a notable means of marginalizing minorities in the great rejuvenation of the Chinese nation. In 2020, Inner Mongolia began implementing a new bilingual policy in local schools, using Mandarin as the language of instruction, while Mongolian became only a sub-theme of instruction.¹⁸³ In Tibet, meanwhile, the rapid growth of the boarding school network is slowly and irreversibly erasing aspects of Tibetan culture and fundamentally altering the identity of Tibetans.¹⁸⁴ These policies, which are based on the great rejuvenation of the Chinese nation as a nationalistic narrative, impair the linguistic and cultural rights of minorities, in particular minority children.

In Russia, as a practice of identity-based legitimacy claims, official discourse, the education system, and the media emphasize national unity and Russian patriotism, which has been also reflected in the increasing attrition of minority rights from language and land rights to freedom of expression and security.¹⁸⁵ The examination of Russia's case should pay specific attention to the context of the Russo-Ukrainian war, considering Russia's need for legitimacy there. Since Russia's occupation in 2014, the Russian authorities have been marginalizing the Crimean Tatars in order to suppress their dissent completely.¹⁸⁶ Educational programs there portray Crimea as a historically Russian region, obscuring the history of the Crimean Tatars.¹⁸⁷ The attempt to

¹⁸¹ "OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China," OHCHR, 31 August 2022, <https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>.

¹⁸² Ciara Finnegan, "The Uyghur Minority in China: A Case Study of Cultural Genocide, Minority Rights and the Insufficiency of the International Legal Framework in Preventing State-Imposed Extinction," *Laws* 9, no. 1 (March 2020): 1, <https://doi.org/10.3390/laws9010001>; Michael Clarke, "China and the Uyghurs: The 'Palestinization' of Xinjiang?," *Middle East Policy* 22 (September 1, 2015), <https://doi.org/10.1111/mepo.12148>.

¹⁸³ Christopher P. Atwood, "Bilingual Education in Inner Mongolia: An Explainer," *Made in China Journal* (blog), August 30, 2020, <https://madeinchinajournal.com/2020/08/30/bilingual-education-in-inner-mongolia-an-explainer/>.

¹⁸⁴ James Leibold and Tenzin Dorjee, "Learning to Be Chinese: Colonial-Style Boarding Schools on the Tibetan Plateau," *Comparative Education* 60, no. 1 (January 2, 2024): 118–37, <https://doi.org/10.1080/03050068.2023.2250969>.

¹⁸⁵ Minority Rights Group, "Russian Federation - Current Issues," November 2, 2023, <https://minorityrights.org/country/russian-federation/>.

¹⁸⁶ Human Rights Watch, "Crimea: Persecution of Crimean Tatars Intensifies," November 14, 2017, <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.

¹⁸⁷ Council of Europe, "Crimean Tatars' Struggle for Human Rights," April 18, 2023, <https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aueb4b>.

inculcate in children a shared Russian identity imagination marginalizes their Tatar identity. The marginalization also happened when the Russian authorities searched mosques and religious schools by police which let the Tatars face serious violations of their freedom of religion.¹⁸⁸

Minority rights are impaired by the use of nationalist narratives to gain legitimacy in China and Russia. This impairment is realized by undermining the principles of non-discrimination and equality through the performance of nationalist narratives. The regimes' intention in using nationalist narratives to represent minorities is to use assimilation to obtain consent. But for minorities, marginalization is the only result in the dilemma of consenting or dissenting to be represented by a shared identity imagination.

4.4 Conclusion

The Chapter began by describing and evaluating the deconstructed individuals as a consequence in the identity mechanism. It noted the deconstruction of the individual by the nationalist narrative through weakening the individual identity consciousness makes the individuality that contributes to the essence of individual rights gradually fade out, leading to the conflict with individual rights. The conflict with human rights in the identity mechanism is expressed in the weakening of the awareness of individual rights and the lack of respect for individual rights in legislation and its practice. The response to the deconstruction of individuals by nationalist narratives raises the demand for the protection of individuality.

The Chapter then introduced the marginalization of minorities by nationalist narratives in the legitimacy mechanism. After interpreting minorities broadly, the Chapter identified the discrimination and exclusion of minorities along the path of the legitimacy mechanism's function, including the reinforcement of the representation of individuals and the construction of external threats. The marginalization of minorities by nationalist narratives harms the principles of universality and inalienability of human rights and increases the vulnerability of minorities. Improving democracy and promoting pluralism are appropriate responses to marginalized minorities within a legal framework.

The Chapter discussed marginalized minorities further with reference to two specific rights.

Out of the necessity to protect the shared identity imagination, regimes use restrictions on freedom of expression to marginalize minorities. However, the Chapter questioned this logic and argued that the challenge of minorities to

¹⁸⁸ Nils Muižnieks, "Report by Commissioner Nils Muižnieks," 27 October 2024, [https://rm.coe.int/ref/CommDH\(2014\)19](https://rm.coe.int/ref/CommDH(2014)19).

nationalist narratives is insufficient to justify restrictions, which makes the regime's restrictions on freedom of expression an abuse.

As for individuals belonging to national or ethnic, religious, and linguistic minorities, they face assimilation into the shared identity imagination. As the performance of nationalist narratives undermines the principles of anti-discrimination and equality, freedom of religion, linguistic, and cultural rights are violated in the state's resort to identity-based legitimacy claims, meanwhile, their minority status is inevitably marginalized.

5 Conclusion

Nationalist narratives are pervasive in the laws of different historical epochs and regions, which has drawn the attention of the thesis. When constructed nationalism was used to understand the existence of nationalist narratives, it was found that nationalist narratives are legal expressions of the intentional construction of a shared nationalist identity by the authority through narratives. The nationalist narratives exist in the state's memory, morality, and identity laws, and they permeate the entire legal framework, accompanied by grander narrative content and punitive provisions.

Nationalist narratives were then understood as symbols instrumentalized by the state in a legal framework, and their identity and legitimacy mechanisms were discussed. Nationalist narratives were first argued to originate from an identity imagination shared by the state and the individuals, while the imagination is reinforced through the performance of narratives in the legal framework. Based on this, nationalist narratives, as a combination of ideology and foundational myths, allow individuals to believe that the state can represent them and that they face external threats, thus logically contributing to the identity-based legitimacy claims of the state. For states, especially authoritarian ones, as a legal instrument, nationalist narratives are applied within a legal framework by the authorities to control speech, culture, and historical interpretations in order to reinforce shared identity imaginations and silence dissenting voices, thereby enhancing legitimacy. This is worrying and raises human rights concerns.

Along the mechanisms of the nationalist narrative, it was found that the conflict between the nationalist narrative and human rights resulted in deconstructed individuals and marginalized minorities. On the one hand, the nationalist narrative's construction of the collective identity consciousness comes at the cost of a weakened individual identity consciousness, making the individuality that contributes to the essence of individual rights gradually fade out. Individuals may fail to recognize the erosion of their rights or may view any erosion as necessary for the greater good of the shared identity imagination. States may also fail to respect individual rights in their legislation and practice. On the other hand, in convincing individuals that the state can represent them and that they face external threats, nationalist narratives have discriminated against and excluded those who do not consent, and constructed them as marginalized minorities. Marginalization means that minorities are unable to enjoy their human rights fully, and also increases their vulnerability.

There is no doubt that nationalist narratives are attractive enough to individuals when they often paint a picture of greatness for a state or nation. But for those living there, especially within authoritarian states, the greatness feels more like an artificial carnival. Individuals, even the state, may get drunk in

it, but what the carnival left after the spectacle of fireworks and ribbons is just a disorienting and unignorable haze.

In light of these findings, it is important to critically examine the role of nationalist narratives in the legal framework. While they unite individuals and the state in a shared identity imagination and serve as an identity-based legitimacy claim of the state, they can also conflict with human rights. The empirical cases referenced in the thesis demonstrate that these conflicts are not merely theoretical, but also affect the experience of individuals.

Therefore, states need to be vigilant regarding nationalist narratives and take action to address negative human rights consequences. Potential actions include ensuring individual identity consciousness in the legal framework and respect for individual rights; improving democracy and promoting pluralism to respect dissent and the diverse identity imaginations of minorities.

Bibliography

I. Academic literature

i. Books

- Andreas Schedler, ed. *Electoral Authoritarianism: The Dynamics of Unfree Competition*. Lynne Rienner, 2006. https://www.rienner.com/title/Electoral_Authoritarianism_The_Dynamics_of_Unfree_Competition.
- Anthony D. Smith. *Nationalism: Theory, Ideology, History*. Polity, 2010.
- Benedict R. O'G Anderson. *Imagined Communities: Reflections on the Origin and Spread of Nationalism*. Revised edition. London: Verso, 2016.
- Deutsch, Karl Wolfgang. *Nationalism and Its Alternatives*. Knopf, [distributed by Random House, 1969].
- Donald Ostrowski. *Muscovy and the Mongols: Cross-Cultural Influences on the Steppe Frontier, 1304-1589*. Cambridge University Press, 2002.
- Douglas Lee Donoho. *Relativism versus Universalism in Human Rights: The Search for Meaningful Standards*. Stanford, Calif.: Stanford University, School of Law, 1991.
- E. J. Hobsbawm. *Nations and Nationalism since 1780: Programme, Myth, Reality*. 2nd ed. Canto. Cambridge: Cambridge University Press, 1992. <https://doi.org/10.1017/CCOL0521439612>.
- Eva Pils. *Human Rights in China: A Social Practice in the Shadows of Authoritarianism*. John Wiley & Sons, 2017.
- Gillian D Triggs. *International Law: Contemporary Principles and Practices*. 2nd ed. Chatswood, NSW: LexisNexis, 2010.
- Hugh Seton-Watson. *Nations and States: An Enquiry Into the Origins of Nations and the Politics of Nationalism*. Methuen, 1977.
- Jerzy J. Wiatr, ed. *New Authoritarianism: Challenges to Democracy in the 21st Century*. 1st ed. Verlag Barbara Budrich, 2019. <https://doi.org/10.2307/j.ctvdf08xx>.
- John Breuilly. *Nationalism and the State*. 2. ed. Manchester: Manchester University Press, 1993.
- Liang Qichao and Xia Xiaohong. "On the Great Trend of Changes in Chinese Academic Thought," 论中国学术思想变迁之大势. Shanghai Ancient Books Publishing House, 上海古籍出版社, 2001.
- Marcel H. Van Herpen. *Putin's Wars: The Rise of Russia's New Imperialism*. Rowman & Littlefield, 2014.
- Pascal Boyer and James V. Wertsch. *Memory in Mind and Culture*. Cambridge University Press, 2009.
- Paul R. Brass. *Ethnicity and Nationalism: Theory and Comparison*. New Delhi: Sage, 1991.
- Peter Hays Gries. *China's New Nationalism: Pride, Politics, and Diplomacy*. University of California Press, 2004.
- Peter J. S. Duncan. *Russian Messianism: Third Rome, Revolution, Communism and After*. Routledge, 2002.
- Richard Ashcraft. *John Locke: Critical Assessments*. Routledge, 1991.
- Robert S. Summers. *Instrumentalism and American Legal Theory*. Cornell University Press, 1982.
- Ruth W. Grant. *John Locke's Liberalism*. Chicago, IL: University of Chicago Press, 1991. <https://press.uchicago.edu/ucp/books/book/chicago/J/bo3628614.html>.
- Samy Cohen. *Israel, a fragile democracy (Israël, une démocratie fragile)*. Fayard. Accessed February 22, 2024. <https://www.fayard.fr/livre/israel-une-democratie-fragile-9782213716725/>.
- Simon Shen and Shaun Breslin. *Online Chinese Nationalism and China's Bilateral Relations*. Lexington Books, 2010.

- Steven Wheatley. *Democracy, Minorities and International Law*. Cambridge Studies in International and Comparative Law. Cambridge: Cambridge University Press, 2005. <https://doi.org/10.1017/CBO9780511584336>.
- Theodore M. Vestal. *Ethiopia: A Post-Cold War African State*. Praeger, 1999.
- Tom Axworthy and Pierre Elliott Trudeau. *Towards a Just Society: The Trudeau Years*. Penguin Books, 2000.

ii. Book chapters

- Dominic McGoldrick. “Thought, Expression, Association, and Assembly.” In *International Human Rights Law*, edited by Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran, and David Harris, 209–34. Oxford University Press. Accessed April 30, 2024. <https://www.oxfordlawtrove.com/display/10.1093/he/9780198860112.001.0001/he-9780198860112-chapter-11>.
- Eva-Clarita Pettai. “Protecting Memory or Criminalizing Dissent: Memory Laws in Lithuania and Latvia.” In *Memory Laws and Historical Justice: The Politics of Criminalizing the Past*, edited by Elazar Barkan and Ariella Lang, 167–93. Cham: Springer International Publishing, 2022. https://doi.org/10.1007/978-3-030-94914-3_7.
- Hurst Hannum. “The Concept and Definition of Minorities.” In *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, edited by Marc Weller. Accessed April 24, 2024. <https://opil.ouplaw.com/display/10.1093/law/9780199208517.001.0001/law-9780199208517-chapter-3?prd=OPII>.
- Jan Marschelke, “National Identity,” in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer Netherlands, 2020), 1–8, https://doi.org/10.1007/978-94-007-6730-0_324-1.
- Kay Mathiesen. “Collective Consciousness.” In *Phenomenology and Philosophy of Mind*, edited by David Woodruff Smith and Amie L. Thomasson, 0. Oxford University Press, 2005. <https://doi.org/10.1093/acprof:oso/9780199272457.003.0012>.
- Luísa Acabado. “Crime or Dissent? Notes on the Criminalization of Protest in Brazil and Spain.” In *As Sociedades Contemporâneas e os Direitos Humanos*, edited by Bruno Sena Martins, Ana Cristina Santos, and Saskya Lopes. SciELO - Editus - Editora da UESC, 2018.
- Mordechai Kremnitzer and Khaled Ghanayim. “Incitement, Not Sedition.” In *Freedom of Speech and Incitement against Democracy*, 147–211. Brill Nijhoff, 2001. https://doi.org/10.1163/9789004482654_011.
- Rosalyn Higgins. “6 Responding to Individual Needs: Human Rights.” In *Problems and Process: International Law and How We Use It*, 96. Oxford University Press, 1994. <https://opil.ouplaw.com/display/10.1093/law/9780198764106.001.0001/law-9780198764106-chapter-6>.
- Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias. “Introduction: Memory Laws: Mapping a New Subject in Comparative Law and Transitional Justice.” In *Law and Memory: Towards Legal Governance of History*, edited by Aleksandra Gliszczyńska-Grabias and Uladzislau Belavusau, 1–26. Cambridge: Cambridge University Press, 2017. <https://doi.org/10.1017/9781316986172.001>.
- Xi Chen and Dana M. Moss. “Authoritarian Regimes and Social Movements.” In *The Wiley Blackwell Companion to Social Movements*, 666–81. John Wiley & Sons, Ltd, 2018. <https://doi.org/10.1002/9781119168577.ch38>.

iii. Journal articles

- Alon Harel. "Basic Law: Israel as the Nation State of the Jewish People." *Nationalities Papers* 49, no. 2 (March 2021): 262–69. <https://doi.org/10.1017/nps.2019.127>.
- Ana Siljak. "Nikolai Berdiaev and the Origin of Russian Messianism." *The Journal of Modern History* 88, no. 4 (2016): 737–63.
- Andrew Wilson. "Ukraine at War: Baseline Identity and Social Construction." *Nations and Nationalism* 30, no. 1 (2024): 8–17. <https://doi.org/10.1111/nana.12986>.
- Ben Wellings and Ben Power. "Euro-Myth: Nationalism, War and the Legitimacy of the European Union." *National Identities* 18, no. 2 (April 2, 2016): 157–77. <https://doi.org/10.1080/14608944.2015.1011110>.
- Bert Useem and Michael Useem. "Government Legitimacy and Political Stability*." *Social Forces* 57, no. 3 (March 1, 1979): 840–52. <https://doi.org/10.1093/sf/57.3.840>.
- Charles E. Frye. "Carl Schmitt's Concept of the Political." *The Journal of Politics* 28, no. 4 (1966): 818–30. <https://doi.org/10.2307/2127676>.
- Chenchao Lian and Jianing Wang. "Embrace or Repress? Explaining China's Responses to Nationalism in International Incidents." *The Pacific Review* 0, no. 0 (2023): 1–31. <https://doi.org/10.1080/09512748.2023.2226352>.
- Christian von Soest and Julia Grauvogel. "Identity, Procedures and Performance: How Authoritarian Regimes Legitimize Their Rule." *Contemporary Politics* 23 (March 16, 2017): 1–19. <https://doi.org/10.1080/13569775.2017.1304319>.
- Ciara Finnegan. "The Uyghur Minority in China: A Case Study of Cultural Genocide, Minority Rights and the Insufficiency of the International Legal Framework in Preventing State-Imposed Extinction." *Laws* 9, no. 1 (March 2020): 1. <https://doi.org/10.3390/laws9010001>.
- Dahua Zheng. "Modern Chinese Nationalism and the Awakening of Self-Consciousness of the Chinese Nation." *International Journal of Anthropology and Ethnology* 3, no. 1 (December 30, 2019): 11. <https://doi.org/10.1186/s41257-019-0026-6>.
- Daniel Koehler. "Dying for the Cause? The Logic and Function of Ideologically Motivated Suicide, Martyrdom, and Self-Sacrifice within the Contemporary Extreme Right." *Behavioral Sciences of Terrorism and Political Aggression* 14, no. 2 (April 3, 2022): 120–41. <https://doi.org/10.1080/19434472.2020.1822426>.
- Daniel Stockemer and Steffen Kailitz. "Economic Development: How Does It Influence the Survival of Different Types of Autocracy?" *International Political Science Review* 41, no. 5 (November 1, 2020): 711–27. <https://doi.org/10.1177/0192512120915902>.
- Dejan Jović. "'Official Memories' in Post-authoritarianism: An Analytical Framework." *Journal of Southern Europe and the Balkans* 6, no. 2 (August 1, 2004): 97–108. <https://doi.org/10.1080/1461319042000242001>.
- Ekaterina Mishina. "How the U.S. and Russian constitutions were changed." Institute of Modern Russia, July 8, 2021. <https://imrussia.org/en/analysis/3312-how-the-u-s-and-russian-constitutions-were-changed>.
- Emily Howie. "Protecting the Human Right to Freedom of Expression in International Law." *International Journal of Speech-Language Pathology*, January 2, 2018. <https://www.tandfonline.com/doi/abs/10.1080/17549507.2018.1392612>.
- Fanli Jia and Tobias Krettenauer. "Recognizing Moral Identity as a Cultural Construct." *Frontiers in Psychology* 8 (March 21, 2017): 412. <https://doi.org/10.3389/fpsyg.2017.00412>.
- Ilya Nuzov. "Legislating Propaganda: Russia's Memory Laws Justify Aggression Against Ukraine." *Journal of International Criminal Justice* 20, no. 4 (September 1, 2022): 805–18. <https://doi.org/10.1093/jicj/mqac052>.

- James Leibold and Tenzin Dorjee. "Learning to Be Chinese: Colonial-Style Boarding Schools on the Tibetan Plateau." *Comparative Education* 60, no. 1 (January 2, 2024): 118–37. <https://doi.org/10.1080/03050068.2023.2250969>.
- James Reilly. "China's History Activists and the War of Resistance Against Japan: History in the Making." *Asian Survey - ASIAN SURV* 44 (April 1, 2004): 276–94. <https://doi.org/10.1525/as.2004.44.2.276>.
- Jean-Pierre Cabestan. "Is China Moving Towards 'Enlightened' But Plutocratic Authoritarianism?" *China Perspectives* 2004, no. 5 (October 1, 2004). <https://doi.org/10.4000/chinaperspectives.412>.
- John Dunn. "Consent in the Political Theory of John Locke." *The Historical Journal* 10, no. 2 (1967): 153–82.
- John Hutchinson. "Warfare and the Sacralisation of Nations: The Meanings, Rituals and Politics of National Remembrance." *Millennium* 38, no. 2 (December 1, 2009): 401–17. <https://doi.org/10.1177/0305829809347538>.
- Julia Grauvogel and Christian von Soest. "Claims to Legitimacy Count: Why Sanctions Fail to Instigate Democratisation in Authoritarian Regimes." *European Journal of Political Research* 53, no. 4 (2014): 635–53. <https://doi.org/10.1111/1475-6765.12065>.
- Karina Korostelina. "Shaping Unpredictable Past: National Identity and History Education in Ukraine." *National Identities* 13, no. 1 (March 1, 2011): 1–16. <https://doi.org/10.1080/14608944.2010.508817>.
- Lara Ryazanova-Clarke. "'The State Turning to Language': Power and Identity in Russian Language Policy Today." *Russian Language Journal / Русский Язык* 56 (2006): 37–55.
- Marcus Tannenberg, Michael Bernhard, Johannes Gerschewski, Anna Lührmann, and Christian Von Soest. "Claiming the Right to Rule: Regime Legitimation Strategies from 1900 to 2019." *European Political Science Review* 13, no. 1 (February 2021): 77–94. <https://doi.org/10.1017/S1755773920000363>.
- Maria Engström. "Contemporary Russian Messianism and New Russian Foreign Policy." *Contemporary Security Policy* 35, no. 3 (September 2, 2014): 356–79. <https://doi.org/10.1080/13523260.2014.965888>.
- Maria Snegovaya. "Why Russia's Democracy Never Began." *Journal of Democracy*. Accessed March 3, 2024. <https://www.journalofdemocracy.org/articles/why-russias-democracy-never-began/>.
- Maya Tudor and Dan Slater. "Nationalism, Authoritarianism, and Democracy: Historical Lessons from South and Southeast Asia." *Perspectives on Politics* 19, no. 3 (September 2021): 706–22. <https://doi.org/10.1017/S153759272000078X>.
- Michael Clarke. "China and the Uyghurs: The 'Palestinization' of Xinjiang?" *Middle East Policy* 22 (September 1, 2015). <https://doi.org/10.1111/mepo.12148>.
- Michael O'Flaherty. "Freedom of Expression: Article 19 of the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 34." *Human Rights Law Review* 12, no. 4 (December 1, 2012): 627–54. <https://doi.org/10.1093/hrlr/ngs030>.
- Ostap Kushnir. "Messianic Narrations in Contemporary Russian Statecraft and Foreign Policy." *Central European Journal of International and Security Studies* 13 (March 21, 2019): 37–60. <https://doi.org/10.51870/CEJISS.A130108>.
- Parks M. Coble. "China's 'New Remembering' of the Anti-Japanese War of Resistance, 1937-1945." *The China Quarterly*, no. 190 (2007): 394–410.
- Partlett, William. "Crown-Presidentialism." *International Journal of Constitutional Law* 20, no. 1 (January 1, 2022): 204–36. <https://doi.org/10.1093/icon/moac006>.
- Patrick Macklem. "Minority Rights in International Law." *International Journal of Constitutional Law* 6, no. 3–4 (July 1, 2008): 531–52. <https://doi.org/10.1093/icon/mon019>.
- Robert Weatherley. "Defending the Nation: The Role of Nationalism in Chinese Thinking on Human Rights." *Democratization* 15, no. 2 (April 1, 2008): 342–62. <https://doi.org/10.1080/13510340701846418>.

- Seymour Martin Lipset. "Some Social Requisites of Democracy: Economic Development and Political Legitimacy." *American Political Science Review* 53, no. 1 (March 1959): 69–105. <https://doi.org/10.2307/1951731>.
- Sven Oliver Müller. "Who Is the Enemy? The Nationalist Dilemma of Inclusion and Exclusion in Britain During the First World War." *European Review of History: Revue Européenne d'histoire* 9, no. 1 (January 2002): 63–83. <https://doi.org/10.1080/13507480120116209>.
- Tamir Moustafa. "Law and Courts in Authoritarian Regimes." *Annual Review of Law and Social Science* 10, no. 1 (2014): 281–99. <https://doi.org/10.1146/annurev-lawsocsci-110413-030532>.
- Tuvia Gering. "A Xinderella Story: Turning the Chinese Dream Into China's Master Narrative." *China Report* 59, no. 3 (August 1, 2023): 243–58. <https://doi.org/10.1177/00094455231188351>.
- Uradyn E. Bulag. "The Wheel of History and Minorities' 'Self-Sacrifice' for the Chinese Nation." *Comparative Education* 60, no. 1 (January 2, 2024): 96–117. <https://doi.org/10.1080/03050068.2023.2271781>.
- Кривоупсков Владимир Викторович. "Civilizational Identities of West and East: The Place and Role of the 'Russian World', Цивилизационные Идентичности Запада и Востока: Место и Роль «Русского Мира»." *Гуманитарий Юга России* 20, no. 4 (2016): 224–35.

II. Legal instruments (international and domestic)

i. International instruments

- Universal Declaration of Human Rights (10 December 1948)
- International Convention on the Elimination of All Forms of Racial Discrimination (21 December 1965)
- International Covenant on Civil and Political Rights (16 December 1966)
- Convention on the Rights of the Child (20 November 1989)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December 1992)
- Convention on the Rights of Persons with Disabilities (12 December 2006)

ii. Domestic instruments

- Amendment to Nazi-Germany's Criminal Code of June 28, 1935
- Gayssot Act of the French Republic (13 July 1990)
- Anti-Secession Law of the PRC. (14 March 2005)
- Article 354.1 of the Criminal Code of the Russian Federation (5 May 2014)
- National Security Law of the PRC (1 July 2015)
- Constitution of the PRC (amended on 11 March 2018)
- Protection of Heroes and Martyrs Law of the PRC (1 May 2018)
- Basic Law: Israel as the Nation-State of the Jewish People (19 July 2018)
- Constitution of the Russian Federation (amended on 4 July 2020)
- Civil Code of the PRC (1 January 2021)
- Education Law of the PRC (amended on 29 April 2021)
- Article 13.48 of the Code of the Russian Federation on Administrative Offenses (16 April 2022)
- Draft Amendment 2023 to the Public Security Administration Punishment Law of the PRC
- Criminal Law of the PRC (amended on 29 December 2023)
- Patriotic Education Law of the PRC (1 January 2024)

III. Case law

- Ahmet Hüsrev Altan v. Turkey, No. 13252/17 (ECtHR 13 April 2021).

- SPP's 34th Batch of Guiding Cases, Procuratorate Case No.136 (21 February 2022)
https://www.spp.gov.cn/spp/xwfbh/wsfbh/202202/t20220221_545102.shtml.
- SPC's Ten Typical Cases on the Protection of Rights and Interests of Martyrs (8 December 2022)
<https://web.archive.org/web/20230217133633/https://www.court.gov.cn/zixun-xiangqing-382301.html>.

IV. Reports and other documents from International Organizations

- HRC. CCPR/C/21/Rev.1/Add.7 (27 August 1996)
 Committee on Economic, Social and Cultural Rights. E/C.12/GC/21 (21 December 2009)
- OHCHR. "Minority Rights: International Standards and Guidance for Implementation, HR/PUB/10/3." Refworld, 2010. <https://www.refworld.org/reference/themreport/ohchr/2010/en/79004>.
- HRC. CCPR/C/GC/34 (12 September 2011)
 HRC. A/HRC/22/51 (24 December 2013)
 HRC. A/HRC/37/66 (16 January 2018)
- OHCHR. "OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China." (31 August 2022)
<https://www.ohchr.org/en/documents/country-reports/ohchr-assessment-human-rights-concerns-xinjiang-uyghur-autonomous-region>.
- Council of Europe. "Crimean Tatars' Struggle for Human Rights," (18 April 2023)
<https://rm.coe.int/report-on-crimean-tatars-by-dunja-mijatovic-commissioner-for-human-rig/1680aeb4b>.
- Nils Muižnieks. "Report by Commissioner Nils Muižnieks." (27 October 2024)
[https://rm.coe.int/ref/CommDH\(2014\)19](https://rm.coe.int/ref/CommDH(2014)19).

V. Reports and other documents from NGOs

- Article 19. "Johannesburg Principles on National Security, Freedom of Expression and Access to Information." Police and Human Rights Resources, April 17, 1996. <https://policehumanrightsresources.org/johannesburg-principles-on-national-security-freedom-of-expression-and-access-to-information>.
- V-Dem. "Democracy Report 2023 - Defiance in the Face of Autocratization." University of Gothenburg, March 2023. https://v-dem.net/documents/29/V-dem_democracyreport2023_lowres.pdf.

VI. Other materials and resources

- Andrii Nekoliak and Elizaveta Klochkova. "Weaponizing Russia's Memory Law: On Russia's Mnemonic Dissidents." *Verfassungsblog*, July 11, 2023. <https://verfassungsblog.de/weaponizing-russias-memory-law/>.
- ARTICLE 19. "Freedom of Expression and National Security: A Summary," December 7, 2020. <https://www.article19.org/resources/foe-and-national-security-a-summary/>.
- BBC News. "India-China Dispute: The Border Row Explained in 400 Words." June 16, 2020, sec. Asia. <https://www.bbc.com/news/world-asia-53062484>.
- BFM.ru. "Putin: we 'did not impose' on France (Путин: мы Франции «не навязывались»)." BFM.ru - деловой портал. Accessed April 6, 2024. <https://www.bfm.ru/news/335947>.

- Cambridge Dictionary. "Narrative," February 21, 2024. <https://dictionary.cambridge.org/dictionary/english/narrative>.
- Carna Pistan. "HOW MEMORY POLITICS TURNED THE RUSSIAN CONSTITUTION INTO A WAR WEAPON" PONARS EURASIA POLICY MEMO NO. 798 (September 26, 2022). <https://www.ponarseurasia.org/alarming-alterations-how-memory-politics-turned-the-russian-constitution-into-a-war-weapon/>.
- China National Radio. "Two Men Wearing Japanese Military Uniforms to Take Photos at Zijinshan Anti-Japanese War Site Were Detained for 15 Days." Accessed March 2, 2024. https://news.cnr.cn/native/gd/20180223/t20180223_524141827.shtml.
- Christopher P. Atwood. "Bilingual Education in Inner Mongolia: An Explainer." *Made in China Journal* (blog), August 30, 2020. <https://madeinchinajournal.com/2020/08/30/bilingual-education-in-inner-mongolia-an-explainer/>.
- Dmitry Shlapentokh. "New Russian Identity Makes Way into the Constitution." Institute of Modern Russia, June 26, 2020. <https://imrussia.org/en/analysis/3126-new-russian-identity-makes-way-into-the-constitution>.
- Ernest Renan. "What Is a Nation (Qu'est-Ce Qu'une Nation)?" Accessed March 16, 2024. <https://mjp.univ-perp.fr/textes/renan1882.htm>.
- "Foreign Ministry Calls Soviet Operation in Poland in 1939 a 'Liberation Campaign' (МИД Назвал «освободительным Походом» Операцию СССР в Польше в 1939 Году) — РБК." Accessed March 6, 2024. <https://amp.rbc.ru/rbcnews/politics/17/09/2021/61446e499a7947feb46c4df0>.
- Helen Davidson. "Chinese Woman 'Detained for Wearing Japanese Kimono.'" *The Guardian*, August 16, 2022, sec. World news. <https://www.theguardian.com/world/2022/aug/16/chinese-woman-detained-for-wearing-japanese-kimono>.
- Human Rights Watch. "Crimea: Persecution of Crimean Tatars Intensifies" November 14, 2017. <https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies>.
- Jiawen Ji, Lin Wu, and Congrong Zhang. "Suzhou Girl in Kimono: Police Confiscated My Clothes, Shoes and Socks, Saying They Were Tools of the Trade (in Chinese)." *Beijing Youth Daily*, August 18, 2022. <https://web.archive.org/web/20220818125324/https://news.ifeng.com/c/8IaL5AtIKYM>.
- Jinping Xi. Xi Jinping's speech at the first meeting of the 13th National People's Congress, http://www.xinhuanet.com/politics/2018lh/2018-03/20/c_1122566452.htm.
- Li Xisuo. "Liang Qichao Was the First Person to Propose the Title of 'Chinese Nation'. 梁啟超是提出"中華民族"稱謂的第一人," October 13, 2009. <https://web.archive.org/web/20091013184320/http://theory.people.com.cn/BIG5/49157/49163/4089792.html>.
- Minority Rights Group. "Russian Federation - Current Issues," November 2, 2023. <https://minorityrights.org/country/russian-federation/>.
- Nikolay Koposov. "Memory Laws: Historical Evidence in Support of the 'Slippery Slope' Argument." *Verfassungsblog*, January 8, 2018. <https://verfassungsblog.de/memory-laws-historical-evidence-in-support-of-the-slippery-slope-argument/>.
- OVD-Info. "Part 2, Article 354.1 of the Criminal Code · Anti-War Criminal Cases." Accessed March 6, 2024. <https://repression.info/en/persons/igor-orlovsky>.
- . "Which Articles of the Criminal Code? · Anti-War Criminal Cases." Accessed March 6, 2024. <https://repression.info/en/articles/>.
- Permanent Mission of the Russian Federation to the European Union. "The Concept of the Foreign Policy of the Russian Federation | Russian Mission," April 10, 2023. <https://web.archive.org/web/20230410161817/https://rus-siaeu.ru/en/news/concept-foreign-policy-russian-federation>.
- SOVA. "Orenburg region: case under Art. 354.1 of the Criminal Code (Оренбургская область: дело по ст. 354.1 УК) / COBA." Accessed March

- 6, 2024. <https://www.sova-center.ru/misuse/news/persecution/2023/05/d48148/>.
- . “The court fined a Krasnodar man on the article about identifying the actions of the USSR and Nazi Germany (Суд оштрафовал краснодарца по статье об отождествле...) / COBA.” Accessed March 6, 2024. https://www.sova-center.ru/misuse/news/persecution/2022/07/d46660/?sphrase_id=4647.
- TASS. “Russian Actions Aim to Save People, Demilitarize, Denazify Ukraine — Lavrov.” Accessed April 6, 2024. <https://tass.com/politics/1414061>.
- U.S.-Asia Law Institute. “Picking Quarrels: The One Essential Charge in China,” November 5, 2023. <https://usali.org/usali-perspectives-blog/picking-quarrels-the-one-essential-charge-in-china>.
- Xiaotong Fei. “Plurality and Unity in the Configuration of the Chinese People.” Accessed March 29, 2024. https://tannerlectures.utah.edu/_resources/documents/a-to-z/f/fei90.pdf.
- Xinhua. “The Taiwan Question and China’s Reunification in the New Era.” Accessed April 8, 2024. <https://www.china-daily.com.cn/a/202208/10/WS62f314b6a310fd2b29e71619.html>.
- Yearbook of the People’s Republic of China. Modern History. https://www.gov.cn/guoqing/2021-04/09/content_5555766.htm.
- Zemin Jiang. Jiang Zemin’s report at the 16th National Congress of the CCP, https://www.gov.cn/test/2008-08/01/content_1061490_7.htm.
- Zijie Liang. “Wearing Kimono ‘picking quarrels and provoking trouble’ was torn clothes and arrested? Woman apologizes for hurting national sentiment by wearing Japanese clothes in Suzhou (in Chinese).” HK01, August 15, 2022. <https://www.hk01.com/即時中國/804176/穿和服-尋釁滋事-遭撕衣逮捕-蘇州女道歉-穿日服傷害民族情感>.
- ВЗГЛЯД.РУ. “Imperial march through Moscow, Имперский марш прошел по Москве.” Accessed April 2, 2024. <https://vz.ru/politics/2007/4/8/76422.html>.