National Partiality and War

by

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Abstract

Many people believe that nations are morally permitted, and perhaps even morally required, to give at least some preference to the lives of their own civilians and combatants in a variety of circumstances—perhaps most notably, in war. Most philosophers writing on the ethics of war, however, either assume or argue explicitly that this common view is mistaken. I aim to challenge this broad philosophical consensus by articulating and defending a modest account of national partiality and by illustrating its application both to the conditions governing entry into war (jus ad bellum) and the conditions governing conduct within war (jus in bello). On my view, nations are morally permitted (and in some cases required) to give some preference to their co-nationals, but this must be balanced against their obligations to outsiders. My account therefore offers some measure of support to our pre-theoretical intuitions on national partiality in war, but stops well short of endorsing the extreme view according to which nations can give unbridled preference to their own.
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Many of my arguments were greatly improved from earlier drafts I presented elsewhere thanks to the efforts of many wonderful commentators and audiences. In particular, I would like to thank Kevin Buton-Maquet, Imola Ilyes, and Garrett Cullity for their written comments, and audiences in Lyon, Toronto, Jerusalem, and Kioloa for their questions and comments, on chapter 3 of this dissertation. I would also like to thank Joshua Brandt for his detailed comments on chapter 2, and for our many fruitful and interesting discussions about the topic partiality more generally.

My interest in this project was partly motivated by a deep appreciation of the value of special relationships. And, in a different sense, what kept me motivated throughout this project was the love and support of those with whom I share such relationships.

Unlike far too many parents, mine were supportive of my passion for philosophy from the start. They trusted me at every stage of this long process, which I’ve grown to understand is a
more valuable gift than most things parents can give their children. I am also grateful to my sister, Jennifer, and my grandmother, Mimi—two women whose passion for teaching and learning inspired me all throughout my academic and intellectual journey.

My friends and colleagues were also constant sources of inspiration and support. I am especially thankful for my fellow co-founders of the ‘Sakura School’, Eric Mathison and Steve Coyne. Much like the questionable budget sushi of which we were so fond, the ideas I attempted to test out at many of our lunch conversations were very poorly constructed. Not only did they tolerate this tendency, but they also seemed to indulge it, which added some much-needed levity to the many stressful and, frankly, bleak days I had during my time as a graduate student. Their friendship has meant so much to me.

In looking at the acknowledgements sections of others’ books and dissertations, I’ve noticed a trend in which philosophers conclude by mentioning their partners and spouses, often saying something about how they can’t find the words to express the depth of their love and gratitude. I used to think this was nonsense: philosophers are supposed to be experts in explaining complex, abstract concepts; surely it can’t be so hard, once one sits down to do it, to convey the extent of one’s love for a partner, or at least come close to approximating it. How naïve I was to think that. When I think of what I want to say to express my love and gratitude for my wife, Ellen, I know I could write something ten times longer than this dissertation, and it still wouldn’t be enough, nor would it come close capturing its essence.

Instead, I’ll conclude with this. One of the things I love most about Ellen is that we’re so often on the same wavelength: she knows exactly what I’m thinking without my ever needing to say it aloud. I can only hope the same holds true in this case.
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Chapter 1
The Sources of Partiality

1 The Problem of Impartialism

Partiality is a ubiquitous feature of human life. Parents spend more time reading to their children than to the neighbors’ child; we expend more effort contributing to the well-being of our friends and spouses than we do for strangers; colleagues prioritize each other over outsiders; members of organizations give special attention to each other over outsiders; and compatriots care more about protecting each other in war than those on the opposing side. Not all cases of partiality are equal in moral worth. Intuitively, cases of partiality fall along a spectrum of moral permissibility: on one end are the paradigmatic cases, which we tend to view as generally morally permitted or perhaps even in some cases obligatory. This is true in the case of a parent giving special attention to her own child, as opposed to another child, even one with somewhat greater needs. On the other end of the spectrum are the cases of partiality that we tend to view as morally unjustified or perhaps pernicious, for which we sometimes have specific names—such as nepotism, jingoism, and racism. For example, whites conferring special treatment on members of their own race is a paradigmatic example of morally impermissible—even morally repugnant—behavior. There are countless other examples, some of which elicit considerable disagreement concerning which end of the spectrum they are closer to. In the following chapters, we will consider one such case—namely, partiality towards members of the same nation.

For now, I want to consider the phenomenon of partiality more generally, with the goal of extending these conclusions, with certain modifications, to the case of partiality between members of the same political community. My aim in this chapter is to show that all justified cases of partiality share the same general justification—though, as I will argue in the next chapter, certain modifications must be made when we shift from close, interpersonal cases to collective partiality.

In claiming that there is a spectrum of cases, I am assuming that at least some cases of partiality are morally permitted. And this claim is by no means uncontroversial. Indeed, the very idea of permissible partiality clashes with what many of us take to constitute the core of morality. In particular, the demands of morality appear to be fundamentally agent-neutral—that
is, they make no essential reference to any particular individual, but rather, apply equally to all.\(^1\) The second core feature follows closely from the first: it concerns the scope of the consideration we give to other moral agents in our moral deliberation. On this view, all individuals have \textit{equal moral value}—that is, no one is more valuable, from a moral standpoint, than anyone else.\(^2\) So when weighing what I ought to do in a given situation, every individual should count for the same amount.

Taken together, these features make up the essence of a view I will call \textit{impartialism}. To see more clearly how this view is at odds with partiality, consider the following sketch of a definition of partiality: In certain circumstances, \textit{I}, and not all others more generally, have moral reason to confer special treatment on \textit{you}, and not all others more generally, in virtue of some set of ongoing facts about us. As the first part of this definition makes clear, reasons of partiality are \textit{agent-relative}: they are reasons that I possess that others might not. Thus, if partiality is ever permitted, strict agent-neutrality must be false.\(^3\) The latter part of this definition—i.e., the part that focuses on the person toward whom I express my partiality—shows that I have reason to weigh one individual’s interests more greatly than others. And this seems to constitute a rejection of the impartialist’s claim about \textit{equal moral value}: in some cases, certain individuals will have greater moral value than others, in at least some sense.

If this is right, then we appear to be faced with a clash between two very foundational moral intuitions or principles. On the one hand, the demands of impartiality seem central to morality. Indeed, some philosophers have even explicitly rejected partiality even in paradigm

\(^1\) Some of this language is borrowed from Thomas Nagel’s \textit{The View from Nowhere} (Oxford University Press, 1986): 152-54.

\(^2\) Strictly speaking, this statement is clearly false. As we will see in later chapters, individuals can be liable to certain forms of treatment—and may even be justifiably killed—in virtue of the threats they pose to others. But the point here is meant to be understood as setting aside such things as liability, desert, and other such morally relevant changes in an individual’s moral status.

\(^3\) There is a possible objection here that could be made by those who wish to justify partiality in consequentialist terms. Roughly, on that view, parents should give special treatment to their children because, when others do the same for their children, this practice yields the best consequences for all. Thus, one could deny my claim that partiality entails the falsity of morality as strictly agent-neutral. There is much to say in response to the consequentialist view. For one thing, as I will go on to discuss, I think it is very likely empirically false. Moreover, it does not seem to capture the phenomenon of partiality as I see it. Thus, while the view is indeed agent-neutral, it is not partiality, at least in the way I conceive of it.
cases. For example, William Godwin considers a case in which a man comes across a burning building and can save either his mother or the Archbishop (whose life, we are told, is much more valuable on agent-neutral grounds than that of the mother). Godwin argues that the demands of morality are clear: he must save the Archbishop over his mother. As he puts it, “What magic is there in the pronoun ‘my’ to overturn the decisions of everlasting truth?”

And yet, commonsense morality, I take it, points in the exact opposite direction. And many philosophers agree. Susan Wolf, for example, calls impartialism “patently absurd”. Others have argued that the impartialist’s demand that I treat my dearest friends with the very same regard as strangers serves as a reductio of any moral system in which it features. Indeed, it will seem obvious to most of us that we are permitted (or even required) to be partial in certain situations. Any moral theory that hopes to do justice to our firm pre-theoretical intuitions cannot be one that precludes us from giving any extra weight to the relationships that are central to our lives.

How might we resolve this conflict between two important approaches to morality? There are three natural ways forward. The first is to argue simply that one of these views is far too implausible. But this approach is unlikely to succeed: each view is built upon foundational intuitions, seemingly of equal strength, that the opposing view fundamentally denies. It therefore looks to be impossible to reject either view without simply begging the question against it. The second strategy would be to show that one or the other view bears the burden of proof—that is, that one view must prove that the other is false, and in the absence of such an argument, the former view stands. Of course, showing where the burden of proof lies would require an argument; and again, I see no way of showing that either view bears such a burden without simply begging the question.

7 Moreover, if what I said about the first strategy is true—namely, that the two views disagree in their fundamental intuitions—then it would make whichever view was free of the burden of proof true by default, or unfalsifiable, in virtue of that view’s core intuition ruling out all opposing views.
The third way forward is to show how the views are, despite their appearances, in fact compatible. This is a popular approach among utilitarians, who argue that a certain brand of utilitarianism can make room for partiality in many of the paradigm cases while remaining an impartialist theory at its core. On such a view, attending to one’s nearest and dearest is often the best way of maximizing utility. Thus, we are required to behave in a way that looks awfully similar to partiality in the pursuit of an overall impartialist goal.

There are, however, several reasons to doubt this picture succeeds. First, it is not clear, as an empirical matter, that I maximize overall utility by, e.g., reading to my son when the neighbor’s son needs much more help than mine does. Moreover, consider a case in which I can rescue a friend or loved one from a burning building, but in doing so, will fail to save two strangers. Those inclined toward partialism will say that, all else being equal, I am permitted to save my friend over the two strangers. Utilitarianism clearly denies this. And finally, this approach does not so much render partialism and impartialism compatible as it does deny genuine partialism altogether. That is, to say that one is permitted to be partial is, by its very definition, to say that one is permitted to do what impartialism denies we are permitted to do. At best, the utilitarian approach shows that there might be some overlap between what partiality permits and what utilitarian impartiality requires—though, as we just saw, there is good reason to be skeptical of the extent of the overlap. Still, this is not what partialism aims to capture.

If the foregoing is correct, then there is no plausible way of defending an account of (genuine) partiality that does not begin with the question-begging assumption that partiality is in principle permissible. Since defending such an account is the goal of this chapter, I must, by necessity, also begin with this assumption. For what it is worth, the same is true of impartialist theories as well. Consider the impartialist view known as cosmopolitanism, which I will discuss in the following chapters. In her recent book, Cosmopolitan War, Cecile Fabre begins her discussion by stating the cosmopolitan principle and articulating its commitments, along with a

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8 To avoid the otherwise inevitable question begging, we could perhaps construe the arguments of this essay as taking the form of a conditional: “If partiality is permitted at all, then this (i.e., the arguments of this chapter) is the most plausible account.” But this might seem strange if my arguments force us to take this form, as it would then seem clear that no argument for the antecedent clause is likely to succeed without begging the question.
suggestion that this idea is philosophical bedrock. The same is true of many others who embrace impartialism. Thus, to the extent that begging the question in the way I am suggesting a view like mine must is problematic, it proceeds in much the same was as many others who defend the opposite views. My reasoning here may seem commit something close to a tu quoque fallacy; but I think it is better understood as an inevitable piece of any argument that purports to be describing some feature at the core of morality.

It does not follow from this that we ought to jettison altogether the intuitions that underlie impartialism. Indeed, a plausible account of partiality will still be in some sense constrained by the idea that morality is, at its core, agent-neutral and that, when viewed from a certain perspective, all individuals have equal moral value. And while the absolute coherence of these two views is impossible, for reasons just discussed, we may nevertheless aspire to show the extent to which an account of partiality can be properly situated within an overall account of (otherwise) impartial morality. In other words, the most promising strategy is to argue for an account of partiality that is intuitively appealing, while showing the ways in which it is constrained by the intuitions at the core of impartialist thinking.

2 Agent-Relative Value

Let us assume, then, that partiality is at least sometimes permitted. The natural next question to ask is: What grounds partiality? That is, in virtue of what is partiality permissible? Answering this question is the central goal of this chapter. However, to do so, we must first get clearer on the concept of agent-relative value.

Recall the sketch of a definition of partiality we considered earlier: In certain circumstances, I, and not all others more generally, have moral reason to confer special treatment on you, and not all others more generally, in virtue of some set of ongoing facts about us. As we saw, the first part concerns the agent-relativity of the reason, while the latter part demonstrates partiality’s denial of equal moral value of individuals, at least when understood from a given agent’s standpoint. A different way of illustrating the same idea is to say that I have reason to

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9 Cecile Fabre, *Cosmopolitan War* (Oxford University Press, 2012). See also Uwe Steinhoff’s 2013 review of Fabre’s book in the *Notre Dame Philosophical Reviews*, in which he argues that Fabre assumes the very position she seeks to defend: <https://ndpr.nd.edu/news/cosmopolitan-war>.
confer special treatment on you because of the existence of some agent-relative value that takes me as its subject and you as its object. In other words, something about the specifics of our situation gives rise to a special type of value—one that is indexed to me (and not necessarily anyone else) and takes you (and not necessarily anyone else) as its focus or object.

Agent-relative value is a pervasive feature of our evaluative landscape. This weathered baseball bat sitting in the corner of my room has little, if any, agent-neutral value; for most people it holds no more value than a piece of firewood. But to me, this bat is a reminder of the playing days of my youth, which gives it a sort of value for me that it doesn’t have for others. That is, this bat—and not all other bats more generally—has special value for me—and not all other individuals more generally. Or consider G.A. Cohen’s example of a pencil eraser that he kept with him throughout his career, which he views as having value in virtue of this particular history. In general, dingy erasers bear no meaningful, non-trivial agent-neutral value. For Cohen, however, this particular eraser clearly possessed considerable agent-relative value.10

While the foregoing examples concern comparatively trivial objects, the objects of partiality with which we are primarily concerned are generally of much greater significance. Indeed, the sort of agent-relative value most relevant in discussions of partiality concerns individuals and their relationships. My relationship with my mother, for example, is an important source of agent-relative value for me; it has value for me that it does not have for others (except my mother herself, of course). Likewise, agent-relative value can arise in broader contexts, such as the relationships formed among members of certain solidarity movements; I will have more to say about this in the following chapter.11 Moreover, as I mentioned earlier, certain other things—such as the projects and pursuits that define my life, or the groups and collectives of which I am

10 G.A. Cohen, “Rescuing Conservatism: A Defense of Existing Value,” in Finding Oneself in the Other (Princeton University Press, 2012): 221. One might suggest that the fact of his having this attachment gives it at least some agent-neutral value, since we would all have some greater reason to, e.g., avoid throwing it out, as opposed to some other dingy eraser to which no one is particularly attached. This is perhaps true, but it does not bear centrally on the point at hand.

11 See Tommie Shelby, We Who Are Dark: The Philosophical Foundations of Black Solidarity (Harvard University Press, 2005). It is worth flagging here that not all such movements will qualify as having genuine agent-relative value on my account. This is because some of these collective projects (e.g., certain kinds of trade unions) are merely instruments for self-interested goals.
a part—also have agent-relative value for me, largely in virtue of their central role in shaping my identity, or featuring among the projects that give my life value and meaning.

The importance of these relationships and commitments in shaping our identities provides us with some reason for denying strict impartialism. As Bernard Williams famously argued, albeit with a slightly different goal in mind, the impartialist demands of utilitarianism require that we alienate ourselves from our core commitments, and this provides us with a compelling reason to reject the theory.\(^\text{12}\) More generally—and this is Williams’s broader point—our best moral theory ought to be sensitive to the importance of those things we take to have immense value for us and that form the core of our identity by affording them some additional weight in our deliberations.

It does not follow from this, however, that anything I take as central to my identity therefore has genuine agent-relative value. Some people take great pleasure in the watching others suffer. We can imagine that, for some of these people, this is among their life’s core commitments. And yet, intuitively, it does not seem right that watching others suffer therefore has agent-relative value. The most natural way of explaining why is that such activities are simply devoid of value altogether—that is, they do not have agent-relative value because they do not have any value at all. Or, to put the point more precisely: in order for something to possess agent-relative value, it cannot have agent-neutral disvalue in itself.\(^\text{13}\)

It is worth emphasizing the latter part of this claim—the ‘in itself’ qualifier. Without this, the claim would appear to preclude agent-relative value altogether. After all, anything thought to have agent-relative value will have at least some agent-neutral disvalue, since there will be cases in which that thing (e.g., a relationship) is pursued instead of some greater agent-neutral good


\(^\text{13}\) For the purposes of this argument, I will remain agnostic about whether or not relationships (of the sort I consider later on) can have positive agent-neutral value. Some philosophers either claim or at least suggest that relationships do have positive agent-neutral value. Susan Wolf seems to think they can and often do. (See: Wolf, “Morality and Partiality”, pp. 247-8.) Moreover, the agent-neutral value of a relationship can be either instrumental or non-instrumental; thus, relationships are agent-neutrally good insofar as they e.g., generate a better outcome than other alternatives. If this is right, then it seems that relationships have, at the very least, positive instrumental agent-neutral value.
that could have been pursued instead (e.g., saving five strangers instead of your relative). But in such cases, the apparent agent-neutral disvalue only arises when the relationship is compared with alternative courses of action. And this is not true of those cases of the sort we considered above, like the sadistic voyeur; it is not as though watching others suffer has disvalue solely (or even primarily) in virtue of the fact that one could have donated to Oxfam instead. Rather, watching others suffer simply has disvalue in itself—that is, it is non-instrumentally disvaluable. Admittedly, this point is far from precise, and as a result, is bound to be quite contentious. For one thing, it may seem to beg the question anew against the impartialist, insofar as it assumes that relationships or other such commitments assumed to have agent-relative value are not non-instrumentally disvaluable. But the more general point that underlies this idea is intuitively quite secure: those things that are devoid of moral value, such as sadistic voyeurism, are not plausible candidates for inclusion within the category of special values that our best moral theory ought to accommodate.

Notice that not all agent-relative value stems from things I take to be central to my identity or among my core commitments. Indeed, certain things possess agent-relative value for me regardless of my attitudes towards them. An obvious example of this is the agent-relative value to me of restoring wrongful conditions that I am responsible for causing. Surely I, and not all others more generally, owe you an apology or reparations of some sort for having wronged you, regardless of whether or not I value anything about you or our relationship. That is, our relationship has agent-relative value for me whether or not I take that to be the case. There are, of course, other examples more relevant to the present discussion. One such example, which I will argue later constitutes an important kind of partiality, is that of being responsible for having created a vulnerability in another.

Furthermore, the connection between agent-relative value and agent-relative reasons is very close: the fact that something possesses agent-relative value means there are also (and therefore) reasons to respond to that value in a certain way, such as, *inter alia*, to promote and protect it. This certainly seems true of the mementos in the cases we considered above. Suppose I come upon a scene in which your house and my house are both on fire, and I can rescue either your cherished baseball bat or mine (but not both). It seems I have reason, in virtue of its agent-relative value to me, to save my own over yours. The same can be said for cases in which the
things to be rescued are individuals: I have greater reason to save my spouse than I do your spouse; and this reason still holds true if I can save my spouse or your spouse and your brother.\(^\text{14}\)

In sum, agent-relative value is a central feature of our normative landscape, and the foregoing sketch offers us an essential building block for an alternative to strict impartiality. In particular, agent-relative value is the source of our reasons for partiality: when something possesses genuine agent-relative value for me, this gives me some reason for giving it greater weight in my moral deliberations. This point applies to a broad range of cases from baseball bats and erasers to people with whom we share special relationships. However, we typically reserve the term ‘partiality’ for the idea that other individuals and their interests receive greater weight in our deliberations.\(^\text{15}\) So, the kind of agent-relative value most relevant to partiality must be located in something of value about such people.

In what follows, I argue for a two-part account of partiality. The first part, which I call the valuing account, grounds partiality in one’s valuing (non-instrumentally) his relationship with another. On this account, our relationships have agent-relative value in virtue of the fact that we value them non-instrumentally. To be sure, this view is not entirely subjective; there are objective constraints on when such relationships actually have agent-relative value (which I will spell out shortly). But though it is not subjective, it is an agent-centered account, insofar as it grounds partiality primarily in morally relevant facts about the valuing agent. By contrast, the second part of my view, which I call the vulnerability account, grounds partiality partly in facts about the object of partiality herself—i.e., the person to whom one has reasons of partiality. On

\(^{14}\) Note that there are several different ways of accounting for the relationship between reasons and value. A popular type of approach, often referred to as “fitting attitudes” or “buck-passing” accounts, holds that the fact that a thing possesses agent-relative value is made true by the fact that we have reason to respond to that thing in a certain sort of way—in particular, by valuing it in certain ways. An alternative approach is to say the opposite—that is, that we have reasons to respond in this sort of way to those things that possess value \textit{because} they possess such value. (See: Francesco Orsi, “What’s Wrong with Moorean Buck-Passing?” \textit{Philosophical Studies} 164 (2013): 727-46.) The arguments of this essay will take the latter form, though I am agnostic between these two approaches. I suspect nothing would be lost in translation were one to rephrase my arguments so they cohere with fitting attitudes-style thinking. What is important at this stage is the claim that the connection between agent-relative value and agent-relative reasons is importantly and essentially close.

\(^{15}\) This point is ultimately just semantic: if one wishes to use partiality to refer to the full range of things to which we give extra weight, this will not affect the theory in any significant way. But it seems to me more accurate to describe partiality as a uniquely interpersonal moral phenomenon.
this view, A has reason to be partial toward B in virtue of A’s having created or sustained a certain sort of vulnerability in B. Of course, many cases of partiality involve the features in both accounts; thus, the valuing and vulnerability accounts may overlap. But there may nevertheless be cases in which one account, but not the other, is active.

Before turning to a more detailed examination of this two-part account, let me first address a possible worry about this approach. Nearly all of the leading accounts of partiality are monistic—that is, they offer a singular way of grounding partiality. As such, even those friendly to partiality might be deeply skeptical of any pluralistic account of the grounds of partiality. But I see no reason for wanting to avoid pluralism in our explanation of what grounds partiality. Indeed, quite the opposite seems true. For one thing, partiality is a broad phenomenon with wide-ranging applications. There may be one singular morally salient feature that unites friendships, parent-child relationships, collective relationships, and the myriad other sorts of special relationships; but I see no reason for insisting upon this, and plenty of room for doubting that it is so.

Moreover, one central feature of a common-sense view of partiality, which I have referenced already, is that it sometimes generates permissions, while in other cases it generates strong pro tanto duties. That is, sometimes we are merely permitted to be partial, and no duty of partiality exists; in other cases we act wrongly if we do not act partially. But most monistic accounts do not attempt to explain this difference; indeed, it is not at all clear how they could do so. By contrast, the dualistic account I defend below offers a straightforward explanation: with its agent-centered focus, the valuing account better captures our permissions of partiality; and by centering on facts about the object of our partiality, the vulnerability account better captures our duties of partiality.

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3 Valuing Account

According to the valuing account, my relationship with a particular individual has agent-relative value for me if and only if I value our relationship for its own sake. This view consists of two central and controversial claims: first, that our valuing something can give rise to reasons of partiality; and second, that it is valuing a relationship in particular that does so. Let us take these in turn.

I follow Samuel Scheffler in understanding valuing as a first-personal standpoint in which the individual possesses a “complex syndrome of dispositions and attitudes”, including certain kinds of belief, emotional and psychological vulnerability, and attachment.17 Understood in this way, valuing is much stronger than merely having certain desires, which for most of us are characteristically fickle and often ill considered. It is also much weaker than an alternative understanding of valuing on which the agent must be in possession of a highly intellectualized conception (e.g., the one just described) of what it is to value something. Rather, so long as the agent possesses this general “complex syndrome” toward an object, the agent can be said to value that object in this way.

In saying that a relationship is valuable for its own sake, I just mean that a relationship is valuable not merely as a means to some other value. Philosophers employ several different terms to make this very point: Scheffler says we value relationships non-instrumentally, while others would say relationships have final value.18 Still others may be inclined to say that we take relationships to have intrinsic value.19 Here, I will follow Scheffler and use the term non-instrumental value.

17 “Morality and Reasonable Partiality”, Partiality and Impartiality: Morality, Special Relationships, and the Wider World, Brian Feltham and John Cottingham, eds. (Oxford University Press, 2010): 104. Some of this is Scheffler’s language, some of it is mine, but all of it, I take it, reflects an essentially shared conception. This idea also shares some similarities with Harry Frankfurt’s notion of caring, though he explicitly denies the connection with caring for something and finding it valuable. See Frankfurt, “The Importance of What We Care About,” Synthese 53 (1982): 260.


19 However, this term is ambiguous between ‘for its own sake’ and ‘in virtue of its intrinsic properties’. Intrinsic value is better contrasted with extrinsic value: something has value intrinsically if it has such value in virtue of its intrinsic properties, and something has value extrinsically if it has such value in
While relationships must be valued non-instrumentally on this account, they need not be valued only non-instrumentally. We often tend to value certain relationships not just as ends in themselves, but also as a means to certain other goods, such as our own happiness. Certain relationships, however, are only instrumentally valuable to those within them, such as the relationships among teammates, members of strategic alliances (e.g., countries in multilateral agreements), and certain other interpersonal arrangements. In such cases, one or both parties use the relationship merely as a means of advancing some other end—generally, the self-interest of those in the relationship. It certainly makes sense to talk of such relationships as having a sort of agent-relative value—namely, the kind of agent-relative value that other objects of self-interest have, at least insofar as the ends sought are not morally bad. And this sort of agent-relative value does give rise to certain reasons to promote and protect it. But these reasons look much more like reasons of self-interest than reasons of partiality. After all, my alliance with you has special value for me only insofar as it serves my interests in not being voted off the island. Accordingly, my reasons are sensitive to your interests only insofar as they advance my own. Moreover, this relationship does not even look to be a genuine case of friendship, as typically understood. As Robert Goodin rightly puts it, “Someone who cultivates a ‘friendship’ purely for material gain would be guilty of a certain kind of fraud.”

Whatever else we want to say about such relationships, they seem importantly distinct from genuine cases of partiality, and should thus be understood as falling solely under the header of self-interest.

But just what constitutes a relationship, in the morally relevant sense? Surely it must be something other than merely formal or institutional, the paradigmatic example of which is marriage (in the legal sense), but other candidates might include ‘legal guardian’ or ‘co-tenant’, among many others. Consider, for example, cases in which two individuals are legally married virtue of its extrinsic properties, e.g., things external to it. Of course, part of the value of relationships comes from its extrinsic properties—most notably, the individuals they link together. So, to claim that relationships have intrinsic value partly in virtue of their extrinsic properties will appear incoherent. Thus, we will be better served in using final or non-instrumental value as synonyms for ‘valuable for its own sake’, and reserving intrinsic and extrinsic for claims about the properties of the objects themselves.


It might be argued that such formal relationships might constitute a type of promise. And of course, promises do tend to have some moral significance. However, I’m not sure that promises as such constitute a form of partiality. And even if they did, this particular form of partiality isn’t the sort with which I’m presently concerned.
but cannot or will not obtain a divorce. We can imagine this situation persisting indefinitely, with one party taking up another romantic partner and spending the rest of her life estranged from her spouse. Or consider a more extreme example from Harry Frankfurt: Suppose my wife and I detest each other, and she has recently attempted to kill me.\textsuperscript{22} In either case, while the nominal or legal relationship persists, there is clearly no enduring or meaningful (let alone \textit{good}) relationship between the spouses—at least not one that would give either party reason to be partial to the other.

Thus, we clearly need a more morally relevant notion of what a relationship consists in. Consider the following definition, which, though it is in certain ways imprecise and vague, will nevertheless be useful for what follows: A \textit{relationship} consists in an enduring (though not necessarily permanent) connection between people, based in certain facts about their history, their identities, or their interactions.\textsuperscript{23} The first part of this definition rules out temporary or coincidental relations, such as the person with whom I’m currently sharing a table at this coffee shop.\textsuperscript{24} This merely apparent relationship is ephemeral, and it does not bear any meaningful relation to the individuals’ shared history. The second part shows that the basis of a relationship is located in something shared between the individuals, such as (but not limited to) their prior interactions or the ongoing history of involvement in each other’s lives. Notice, however, that this definition does not rule out cases in which there is an ongoing interaction between, e.g., me and my dentist. As we will soon see, we can grant that this constitutes a relationship, on the current definition, but deny that it generates reasons of partiality on the basis of facts about the relationship itself.

Understood in this way, it is evident that certain relationships possess agent-relative value. Many of the interpersonal relationships in which we stand—e.g., being a brother, a son, a friend, and a spouse—are often essential parts of one’s identity. People often cite such relationships as being among their core values—the things that give meaning to their lives. And


\textsuperscript{23} This definition draws from Niko Kolodny’s “Love as Valuing a Relationship”; however, it does not include one part of Kolodny’s definition—namely, that a relationship must obtain between \textit{particular} people. My reasons for omitting this part of his definition will become clearer in the next chapter.

\textsuperscript{24} Kolodny discusses both sorts of case in “Love as Valuing a Relationship”, p. 148.
when this isn’t true, such as in the case of a neglectful parent, we think that the mere existence of that relationship is enough to show that the parent does have special reason to promote and protect it.

It might seem odd to claim that the relationship is the bearer of agent-relative value. After all, isn’t it the individual we have in mind when we act partially, and not the relationship that connects us? Moreover, when we talk of what we value in cases of partiality, we typically identify the person directly: it is my mother or my friend who has special value for me, not my relationship with my mother or friend. These points call for a few important clarifications. First, the claim about our identifying the person herself when we act partially overlooks the distinction between the focus of partiality and what grounds it. The focus of partiality is roughly whatever is present in my mind when I act partially, or the thing itself to which I am emotionally or psychologically attached. By contrast, the ground of partiality is that which provides the reason or justification. In most cases in which I act partially, my focus is not on the relationship itself; it is not as if I am (or ought to be) thinking about what it would mean for my relationship with my friend while I rush to save him from a burning building. But it does not follow from the fact that something is not my focus that it is therefore not what grounds my reason. When I give to charity, for example, my focus is generally on the people whose lives I hope to improve; however, what grounds my reason for giving to charity is something altogether different, such as the fact that I ought to give to worthwhile causes when I have the means to do so.

Second, strictly speaking, it is not merely that person as such that has special value for me. Rather, it is the specific fact of our relationship that makes this person especially important to me. Imagine a case in which someone to whom I am partial is substituted with someone else indistinguishable from her, except for the fact that I have shared a relationship with one but not the other. Suppose the two have every other property in common: same demeanor, same appearance, same quirks, same interests, and so forth. Clearly I have reasons of partiality only toward the one with whom I’ve shared the relationship, and not toward the one with whom I have not. This example shows that while the facts about the person can be relevant in various ways—perhaps I love certain of her quirks because they are hers—what grounds my special

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25 See also Kolodny’s discussion of this point, ibid., 154.
reasons to her cannot be located among those other facts about her, nor about her as such; rather, such reasons are grounded essentially in facts about our relationship.

Third, the strength of our reasons of partiality seems to supervene primarily on changes to the relationship and not changes to the person herself. For example, in many cases, the fact that two friends have drifted apart seems to weaken those individuals’ reasons of partiality toward each other, even if no other facts about the individuals themselves have changed. Or, if the relationship starts to take the form of being oppressive or mean-spirited, this too reduces, and in extreme cases eliminates, one’s reasons to be partial. There may be cases in which our reasons of partiality diminish in response to changes in the individual herself that do not directly bear on our relationship, such as her developing a vicious moral character. Perhaps my reasons to be partial to my friend weaken (or vanish) when she becomes involved in (or perhaps when I become aware of her partaking in) the act of assaulting random pedestrians for sport. However, these sorts of cases may be limited to only certain kinds of relationships. For example, many will be inclined, however reluctantly, to believe that parents have reasons of partiality toward their children no matter how irredeemably evil they become.26 Moreover, in cases where they do seem to generate changes to our reasons of partiality, such changes may be nevertheless better understood as constitutive of changes to the relationship itself. That is, perhaps it is not so much the fact that the other person has changed, but rather that the central features of our relationship are weakened or eliminated as a result.

And yet, it does not seem as though I am speaking merely metaphorically, or that I am just mistaken, when I assert that my sister, as an individual, has special value for me. After all, if the relationship does indeed have agent-relative value, as I have claimed, then it seems natural to suppose that this value will expand into its constitutive parts—in particular, to the individuals that comprise it. Thus, it is perfectly coherent to say that the individual in a valuable relationship also bears agent-relative value, but that such value is conceptually dependent upon the agent-relative value of that relationship. Without the fact of our valuable relationship, the individual herself has no agent-relative value for me. (She retains her agent-neutral value, of course.) But

26 This is certainly the feeling we get at the end of Lionel Shriver’s 2003 novel (and Lynne Ramsey’s 2011 film adaptation of) We Need to Talk About Kevin, when Eva visits her son, Kevin, in prison, where he is serving a sentence for brutally murdering dozens of innocent people, including his own father and sister.
ultimately, while both the relationship and the individual possess agent-relative value, what grounds partiality is the relationship, understood in the way just explained.

The valuing account has many appealing features. For one thing, it seems intuitively quite plausible that there will be, in general, a rather tight connection between the things we take as valuable for us and their having value for us. And as we have already seen, many of us take the relationships we have with others to be among the most valuable things in our lives. One plausible explanation for embracing the common-sense view that partiality ought to figure in our best moral theory is based on the premise that such a theory ought to take into account that which we take to have considerable value in our lives. Thus, this account has the virtue of grounding partiality in the very idea that explains why we should accommodate partiality in our moral theory in the first place.

Moreover, certain relationships seem inextricably linked with our valuing them. For example, in order to be a genuine case of friendship—one worthy of a special place in our moral theory—it cannot be the case that the parties do not value their relationship non-instrumentally. People in such relationships might be thought of as acquaintances, sources of mutual personal enjoyment, or perhaps, in some cases, merely former friends. It seems clear that the weakest of these relationships generate no reasons of partiality at all. And this is precisely what the valuing account holds. Thus, another virtue of the account is that it aligns with the particular sort of value in relationships that we think is morally relevant and worth preserving in our theory.

Furthermore, the valuing account offers a plausible account of our permissions of partiality. (As I will argue in the next section, the vulnerability account better captures our duties of partiality.) In other words, by grounding partiality in facts about what we value (subject to the relevant constraints), the valuing account makes room in our moral theory for a permission to give greater weight to certain people’s interests over others, just as it does with other objects with agent-relative value (e.g., Cohen’s eraser, my baseball bat, many other personal projects). And this aligns well with our pre-theoretical intuition that partiality is sometimes merely permitted, though not required. For example, I am sometimes permitted, though not required, to give greater weight to the interests of my friends—say, by helping them move instead of someone else on my block, or by helping them with their medical bills instead of someone more needy. And the valuing account gives a plausible explanation for why this is so: it is because I
value (non-instrumentally) my relationship with my friend, and our best theory of morality ought to accommodate this fact.

One might object that this account is insufficient for capturing all cases of agent-relative value relevant to partiality. In particular, the account will face difficulties in ascribing agent-relative value in cases like the relationship between a neglectful father and his son. It seems clear that the father has reasons of partiality because this relationship has agent-relative value, regardless of whether or not he values it in the relevant way. But cases of this sort only pose a problem for the present account if we assume it must be the exclusive source of reasons of partiality—that is, if it is the sole way of grounding partiality. However, the valuing account does not make this strong claim; it only says that our valuing relationships in this way is one source of partiality. Moreover, as I mentioned earlier, there are good reasons to be pluralists about the sources of partiality. I will now argue for another way of grounding partiality, which I call the vulnerability account. As we will see, taken together, the valuing and vulnerability accounts offer a pluralist grounding of partiality.

4 Vulnerability Account

The idea of vulnerability admits of myriad interpretations. Often, when we say that someone is vulnerable, we mean to emphasize the risk of harm that this person faces, either because he is at heightened risk to a very specific sort of harm, such as a particular attack or some force of nature, or else because he belongs to the class of the ‘generally vulnerable’, such as the severely disabled, the elderly, and young children (among others). People who are vulnerable in this sense are more likely, either in specific circumstances or in general, to suffer harms in virtue of certain facts about their condition. We might also say more broadly that we are all vulnerable in various respects, a condition that Onora O’Neill calls ‘persistent vulnerability’. Understood in any of these ways, vulnerability is first and foremost a claim about one’s risk of harm.

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This generic sort of vulnerability is surely important for understanding our obligations to others. But there is another important type of vulnerability that is not captured by this broad definition—namely, the particular sort of vulnerability that is present within many of our special relationships. These special relationships are characterized by deep emotional and practical vulnerabilities or attachments. We are concerned about our friends’ well-being; we craft our lives and futures around the desires, projects, needs, and lives of our beloveds; we are pained at our loved ones’ misfortune; we rely on them for comfort, support, and guidance; we share intimate and private parts of our selves with them; and we mourn their deaths. Some philosophers have sought to tie this sort of vulnerability to the fact that we care so deeply. George Tsai argues that our vulnerability in special relationships is part and parcel of our caring in the way we do about them.29 Harry Frankfurt draws a similar connection with caring:

A person who cares about something is, as it were, invested in it. He identifies himself with what he cares about in the sense that he makes himself vulnerable to losses and susceptible to benefits depending upon whether what he cares about is diminished or enhanced.30

Some of this vulnerability is vicarious in nature: we feel another’s pains and pleasures as though they were our own. Indeed, it is a hallmark of our most intimate special relationships that we often attempt, however foolish it may sometimes be, to shift their pain onto ourselves so that their own burden is lessened or at least shared; and we welcome this commiseration or shared suffering from those close to us when the pain is otherwise our own. In addition to these vicarious vulnerabilities, special relationships also give rise to unique kinds of ordinary harms or pains (and, to be sure, pleasures) to which those in the relationship become vulnerable. Some of these harms are special sorts of wrongdoing that can only arise within such relationships. The

29 George Tsai, “Vulnerability in Intimate Relationships,” The Southern Journal of Philosophy 54, Spindel Supplement, (2016): 166-182. Tsai’s discussion connects vulnerability to valuing in a way that my account allows for but does not require. Tsai claims that we are vulnerable (in roughly the way I mean here) because we value some particular thing. My view allows that vulnerabilities can emerge in this way; but it also allows that vulnerabilities can emerge even when one is not best understood as a valuing creature—e.g., children—or when one does not necessarily value the relationship in question, as may be the case in certain sorts of collectives.

wrong of betrayal, for example, can only occur from within a certain sort of special relationship, such as a friendship or romantic relationship; one cannot be betrayed by a stranger or mere acquaintance. Another type of harm arises from loss or damage to the relationship or the person with whom one shares the relationship. While we can surely regret or even become upset by the deaths of strangers or acquaintances, most of us only truly mourn the loss of those with whom we stand in certain kinds of special relationships.  

So, the first important distinction between the broad category of vulnerability and the particular type of vulnerability most relevant to special relationships is that certain special relationships create the possibility of various kinds of harms that simply do not arise, or at least not to the same degree, outside of those relationships. Yet it would be a mistake to conceive of all of these harms as on a par with those that arise from generic vulnerabilities, such as the harms that tend to befall the severely disabled, the elderly, and children. In these latter cases, we would generally prefer that the vulnerabilities in question not exist; indeed, we tend to make an effort to eliminate or mitigate the extent of these vulnerabilities through social policies, expanding care options, and so forth. Likewise when the vulnerability in question is specific, as is the case in, e.g., unjust attacker examples.

Most vulnerabilities of the generic sort are harms we have reason to avoid, to eliminate, and to view as largely negative. But I doubt many would characterize the vulnerabilities inherent in special relationships in this way. The fact that we are vulnerable in myriad ways to those close to us is not something most people wish they could do without, though of course we might well wish that we never have to experience certain of those harms—for example, betrayal. Rather, we tend to view this type of vulnerability as a constitutive and, in some cases, even a welcome feature of special relationships. The fact that I feel my friend’s pain as though it were my own is

What should we say in cases where people mourn the death of celebrities? I myself felt a pronounced sadness at the recent death of Anthony Bourdain, whom I had admired for years; people had more extreme grief reactions in the wake of Michael Jackson’s death several years ago. My sense is that these are cases in which one does not possess a relationship with the person, but that person serves as a sort of proxy for certain other values, such as the value of their art, music, or cultural value more generally. I tend to think that most of us do not truly mourn these losses in the same way that we mourn the losses of those who are in fact quite close to us; but I admit that exceptions to this would not be hard to conceive. The valuing account might simply require that the absence of a relationship precludes the application of the valuing account; I’m not sure how much of a problem this response would ultimately be.
not itself something I have reason to regret or avoid. If there were a miracle pill that could prevent us from experiencing these vicarious pains, I doubt many would opt to take it. Indeed, I suspect we would have trouble understanding how any person who would take such a pill could consider herself a friend.

Nor do we think it counts against entering into such relationships that by doing so we thereby render ourselves vulnerable in this way. For one thing, most people tend to think the goods of such relationships are significant and overriding. Recall Tennyson’s famous quote: “’tis better to have loved and lost than never to have loved at all.” Or consider the following point in a related context from Annette Baier:

Both the relations of interdependency and our responses to them, when we will their continuation, are fraught with risks—risks of mutual maiming, of loss and heartbreak, of domination, of betrayal, of boredom, of strange fashions of forsaking, of special forms of disease, and of disgrace. But they are also big with the promise of strengths united, of new enthusiasms, special joys, of easy ungloved intimacy, of generous givings and forgivings, of surprising forms of grace. And as in justice, so in love, it may be impossible to separate the good from the ill.32

Baier is of course speaking here of love, but the same idea applies to our more general reasons of partiality within special relationships. The claim here is twofold: first, the goods and harms of special relationships are inextricably linked; and second, special relationships give rise to a certain measure of vulnerability, but they also give rise to many concomitant goods that cannot be achieved without in some sense embracing these harms.

This point helps to show why people tend to seek out such relationships and to become further invested in them, even though doing so renders us vulnerable. Consider that most people who find themselves vulnerable in the generic way do not actively seek out opportunities to deepen or extend those vulnerabilities. The severely disabled do not relish the opportunity to render themselves even more severely disabled; the elderly do not tend to welcome further

decline in mobility and cognitive function. By contrast, it is quite common for those of us in friendships, parent-child relationships, or romantic relationships to seize or create opportunities to deepen the characteristic vulnerabilities of these relationships—that is, both the vulnerabilities we have to the other person, and the vulnerabilities they have to us. For example, we often take the opportunity to share intimate parts of ourselves with our friends, and to develop shared interests and projects with our partners. We seek to establish and deepen ties with others, even though we know that in doing so, we create this condition of vulnerability. Thus, unlike in the more generic cases, the fact that we experience these vulnerabilities in special relationships is not rightly viewed as an all things considered harm or evil. Rather, it is in some cases a necessary component of an important good, and in other cases it might even be a type of good in itself. This type of vulnerability is a feature of special relationships, not a bug.

One might worry that this picture of partiality arising out of vulnerability looks to be based on a compensatory model. That is, since the vulnerabilities I create in another are in part negative, the sort of partiality this justifies takes the form of obligations to compensate those I have harmed. And if this were true, certain unpalatable conclusions would seem to follow. First, it would suggest that we have less reason to be partial to those with whom we have a net-positive balance of goods over harms. Thus, friends who never betray each other, or who never suffer hardships that outweigh their pleasures, would have less reason to be partial than friends for whom the opposite is true. More fundamentally, this picture just does not seem to cohere with how we think of our duties to our friends: it is not as though we owe them good times as repayment for the bad times, or that an act of betrayal can be offset by throwing a particularly successful surprise party.

Fortunately, this compensatory model is not the right way of understanding this type of vulnerability, and we should not feel compelled to endorse it. For one thing, as I have already suggested, we should not understand vulnerabilities as wholly or even mostly negative. Many of them, such as vicarious pains, simply do not seem appropriately understood as bearing a negative valence, though there is of course a sense in which actually experiencing such pains is negative. More generally, we should view the reasons of partiality that stem from these vulnerabilities as responsive to that fact or condition, though not an attempt to abate or remove it. As I have already said, this is not the goal for most who have such vulnerabilities, nor would it be desirable for many of them.
Relatedly, one might observe that many of our special relationships make us less vulnerable in various ways too. For example, to borrow from a related idea from Monique Wonderly, being a part of certain special relationships provides one with a sense of security. They often make us feel less alone or isolated, less prone to sadness, and less alienated. From this observation, one might be tempted to claim that special relationships cannot justify partiality on the grounds of creating vulnerabilities, since such relationships actually serve to eliminate or remove vulnerabilities that are already present prior to the relationship. I do not deny that this observation is true: we certainly are rendered less vulnerable in various ways by being part of a special relationship. But I deny the suggestion that because special relationships decrease our vulnerability in various ways this should foreclose the possibility that there is something morally significant about the vulnerabilities that such relationships do create. Again, the idea that we are merely weighing goods and harms against each other for our theory of partiality is mistaken: it is not as though our reasons of partiality are just to those whom we have made worse off on balance by way of these types of vulnerabilities. Rather, the point is that these vulnerabilities, when we are responsible for having created or sustained them, are a morally significant fact about the relationship between us and those with whom we stand in that relationship.

The foregoing points suggest another difference between generic vulnerability and the particular sort of vulnerability within intimate relationships—namely, the role of consent. In most ordinary cases of vulnerability, the fact that one has consented to being vulnerable seems to warrant discounting, at least somewhat, that person’s interests in our weighting of what we have most reason to do. For example, boxers are vulnerable to the harms involved in participating in boxing matches; but since they have in some sense consented to this risk of harm, we therefore have less reason to prevent or regret certain harms befalling them than others who have not consented to that same risk. And this generalizes to most cases in which one consents to the possibility of certain harms. But the same point does not seem true for many special relationships. After all, it seems we do consent—although perhaps only tacitly—to being a friend, a romantic partner, or a parent. And yet, this consent does not generate a discount to the reasons we have toward our friend, beloved, or child. Indeed, it seems the opposite is true: our reasons toward them increase in virtue of the existence of the special relationship.

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So, the vulnerabilities from within special relationships are distinct from more general vulnerabilities in several important ways. While special relationships give rise to vulnerabilities to certain types of harm, these harms are in a sense necessary for the relationship to exist. And many of these harms, to the extent that it makes sense to call them that at all, may even be understood as bearing a positive valence. Moreover, these harms are not, in general, things we wish we could jettison; indeed, we often seek to deepen our vulnerability to others. And unlike with more general vulnerabilities, the fact that one consents to the vulnerabilities of special relationships does not generate a discounting of the moral reasons toward her.

What, then, is the relevance of this fact about the vulnerabilities within our special relationships to our reasons of partiality? First, notice that while we stand in many different relationships marked by the sorts of vulnerabilities we have been discussing, it is not the case that any relationship in which vulnerabilities are created will generate reasons of partiality. Consider a case in which I have a stalker or admirer who is vulnerable to me in many of the aforementioned ways. Or consider the case of someone from my past who still considers himself to be very close to me, even though our relationship was merely superficial and, in any case, has been dormant for many years. Intuitively, I do not have reasons of partiality to my stalker or my former friend. If we thought that the mere fact of having created or sustained vulnerabilities in another was sufficient to give rise to reasons of partiality, then we would be forced to deny this intuition. But I think this intuition is correct, and what distinguishes these types of cases from the more clear-cut cases of partiality is that I am not morally responsible, in the relevant sense, for their vulnerabilities. That is, while it might make sense to say that I created the vulnerable condition of my stalker, it is a stretch to claim that I am responsible for his condition. Perhaps he has deluded himself into thinking we have a relationship, or has misunderstood, through no fault of mine, our brief and incidental interactions. Perhaps if I knew this vulnerability was emerging and took no steps to prevent it, I might be responsible—and even then, perhaps only very slightly. But given that I did nothing to enable it, it cannot be said, in this case, that I am responsible for it. Likewise with my former friend: intuitively, I am not responsible for the fact that he now finds himself vulnerable to me after many years without any of the characteristic ties of a friendship. Assuming I have done nothing to cultivate or revive the relationship, then it is hard to see how his vulnerability can give me any reasons of partiality.
I doubt we can offer a complete list of necessary and sufficient conditions for what makes someone responsible for creating or sustaining a vulnerability in this context. In any case, it is useful to highlight some of the relevant considerations that factor into a judgment of responsibility. The best place to start is with what is typically constitutive of, or what we know typically results from, those relationships in which we enter or find ourselves. As we have already seen, sincere friendships and romantic relationships involve mutual vulnerability, usually along multiple dimensions. This is something we know to be a general truth of friendships and romantic relationships, and we know that such attachments develop and become more firmly established as the relationship progresses: we see such effects building in ourselves, and, in most cases, we see signs of them in our friend or beloved as well. Similarly, expecting parents know (or ought to know) that bringing a child into the world—a being who will be wholly dependent on them for at least several years, and then perhaps to a lesser degree for another many years—constitutes creating a considerable and long-term practical and emotional vulnerability.  

So, in the paradigm cases of parents, friends, and partners, the relevant parties know—or at least ought to know—that the relationships they enter into or continue with involve the creation of these emotional and practical vulnerabilities. Thus, by entering into or continuing some such relationship, without taking the necessary steps to avoid bringing about its corresponding vulnerabilities, the person thereby at least tacitly accepts responsibility for creating these conditions. (In most cases, of course, I think the acceptance is more than merely tacit.) Again, she may not intend, in the strict sense, that these vulnerabilities come about; after all, in the course of a friendship, for example, we rarely if ever directly intend that others become

34 There are, of course, cases in which this point becomes much more difficult to apply. Consider, for example, the teen mother who was not fully aware of the consequences of her actions when she conceived the child. It may even be the case that the expecting mother is unable (say, because of the strict laws to which she is subject) to obtain an abortion or give the child up for adoption. In this case, we will likely want to say that the mother is morally responsible for creating the general vulnerability in her child; however, the account given here seems inapplicable. Or consider someone like the mother in Emma Donoghue’s 2010 novel Room—a person who is raped and forced to bear a child, and is subsequently forced into circumstances in which she is the only person able to provide for that child. Her situation is clearly not one she is responsible for bringing about; and yet, some may nevertheless be inclined to believe that she has some moral obligations to her child. I admit that these sorts of cases poses a problem for my view; however, given their unusual features, I suspect these cases will pose just as much a problem for any rival views. Moreover, in order to accommodate them, the account will likely have to introduce certain ad hoc claims. Given that doing so here would take us too far afield, I will simply flag these issues for now.
emotionally vulnerable to us. But they are reasonably foreseen outcomes of her action, in virtue of their being in a certain sense constitutive of that very relationship. As such, it makes sense to say that she is morally responsible for having created them. She can avoid this by taking the required steps to divest herself of these responsibilities—say, by clearly and deliberately, though perhaps with the necessary gradualness, bringing an end to the relationship. And by doing so, she weakens or eliminates her responsibility for the vulnerability that may (or may not) still remain afterward.

According to the valuing account discussed above, the fact that I value a certain relationship non-instrumentally (subject to certain conditions) gives that relationship agent-relative value for me. Thus, that value, and the reasons of partiality to which it gives rise, stem from facts about my attitudes or system of valuing—in short, their ground is primarily, though of course not exclusively, in facts about me. By contrast, on the vulnerability account, my responsibility for creating a vulnerability in another gives that relationship (and, derivatively, that person) agent-relative value for me, regardless of my attitudes toward it. Thus, while the valuing account grounds the reasons of partiality in facts that are, in the first instance, about what I value, the vulnerability account grounds reasons of partiality in facts that are primarily, though of course not exclusively, about the relationship and the other person—namely, the vulnerability I have created or sustained in her.

Both the valuing and vulnerability accounts are independent sources of partiality, and they differ in exactly what sorts of reasons they generate. In particular, I have already suggested that the valuing account, in virtue of its agent-centered focus, is much better suited to explain why we are sometimes permitted, as opposed to both being forbidden and being required, to prefer some over others. Our best moral theory, I argued, will accommodate special permissions for us in virtue of the fact that we value certain relationships non-instrumentally. By contrast, the vulnerability account, in virtue of its valuing-independent foundation, can better explain why in some cases we may be obligated, as opposed to being forbidden or merely permitted, to prefer some over others. That is, in virtue of the fact that others are vulnerable to us in myriad ways, our best moral theory will capture the idea that we have special duties to attend to these relationships. Notice that many cases will involve both valuing and vulnerability—indeed, I suspect most of our paradigmatic special relationships involve both sources. In such cases, we ought to understand a core set of duties, as well as a broader range of permissions, that are
applicable to those in these relationships. This hybrid account, it seems to me, best reflects the moral phenomenology of partiality in ordinary life.

This hybrid account has certain other virtues. Recall that what prompted our introduction of the vulnerability account was the need to accommodate cases in which one does not value the relationship he finds himself in, but we nevertheless think he has reasons of partiality. One such case was that of the neglectful father. As we saw, the valuing account could not explain why the father would have reason to be partial, since the father simply does not value his relationship with his son. By contrast, the vulnerability account provides an answer here: The son is vulnerable to his father in various practical and emotional ways. He depends on his father for, e.g., guidance, support, and love. And in most cases, the father is responsible for this vulnerability: he played a role in creating the child, and knew (or ought to have known) that doing so gives rise to a broad range of vulnerabilities in that child.35 The father’s relationship with his son therefore has agent-relative value for him, and it generates reasons to be partial toward him, regardless of the father’s attitudes toward his son.36 Moreover, as we will see in the next chapter, the hybrid account can best explain many of our attitudes in other, perhaps non-paradigmatic special relationships, such as those that obtain between members of certain political collectives.

While the valuing-vulnerability account just has many virtues, there is a closely related account that offers a similar sort of explanation of our reasons of partiality, and looks, at least on its face, to boast similar advantages. It will be helpful, therefore, to contrast my account with this alternative.

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35 There are exceptions, of course: e.g., sperm donors, sexual assault cases, secure adoptions, etc. These might qualify as cases in which the father has no moral responsibility, though of course he may still have legal responsibility. I set these aside for now.

36 This point, as well as the extensions of this point that follow, are all in some sense sensitive to cultural norms. If, in a particular society, child-rearing is an act performed by the entire community, it may turn out that a parent’s relationship with her child does not have this sort of agent-relative value. This is because, though she is responsible for having created a vulnerability, this condition is defeated by the fact that others take it as their responsibility to treat this condition of vulnerability. I think this account, so modified, gives us the right result in cases of this sort.
5 Historical Account

Historical accounts of partiality hold that partiality is grounded in facts about the particular shared history of the individuals in question. Accounts of this sort have much in common with the vulnerability account just sketched. Both accounts ground partiality in facts that we might call valuing-independent—that is, on these views, there is no need to make reference to what the agent values in order to ground her reasons of partiality.\(^{37}\) Instead, the two views ground partiality in facts about the particular sorts of interactions the individuals have had. The two accounts diverge, however, when we look more closely at the specifics of these interactions. On one leading historical account, the agent-relative value of a relationship emerges just from the shared history that exists between the parties of doing good (for each other or for outsiders) or suffering evil.\(^ {38}\) This view (or one quite like it) is favored by Thomas Hurka, Niko Kolodny, and C.D. Broad, among others.\(^ {39}\) On Hurka’s version of this view, the amount of value varies according to the amount of good produced and the closeness of the parties involved.\(^ {40}\) Hurka’s account is the most developed and specific of these views; moreover, among these three, it provides the clearest contrast with my own view. As such, I will employ it as our main representative of the historical account in what follows; however, most of what I say will apply \textit{mutatis mutandis} to the other versions of the historical account.

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\(^{37}\) Incidentally, certain of those who might be said to be defenders of historical accounts also embrace the valuing component I sketched earlier. See, e.g., Scheffler, “Morality and Reasonable Partiality”. Scheffler straddles the line between the valuing and value variants, since he holds that relationships are sources of reasons of partiality because they are characteristically valued pieces of our lives. It is therefore unclear exactly where Scheffler’s view would be more appropriately situated. See also, Niko Kolodny, “Which Relationships Justify Partiality? The Case of Parents and Children,” \textit{Philosophy and Public Affairs} 38 (2010): pp. 46-7.

\(^{38}\) See: “The Justification of National Partiality”. Where I use the term ‘reason’, Hurka uses the term ‘justified’. This makes sense in the context of his argument, since he goes on to discuss the features that will, in my usage of the term, justify partiality.


The idea of ‘a shared history of doing good’ is ambiguous. On the first reading, the history must involve no wrongdoing at all—that is, it must be a shared history of doing only good. Thus, if you and I spend an evening watching stolen cable, we are no longer justified in displaying partiality towards one another. Clearly, this interpretation is a non-starter. For one thing, some wrongdoing during the course of one’s life is nearly unavoidable, even within the boundaries of our relationships, so this would effectively render it impossible to ever have reasons of partiality. Moreover, this sort of minor wrongdoing simply does not seem to disqualify reasons of partiality.

On the second reading, the relationship must involve doing more good than bad—that is, it must be a shared history of doing good on balance. Thus, if we commit serious wrongs throughout the course of our relationship, we can regain our reasons of partiality only by doing enough good to overcome this deficit. While this reading fares better than the previous one, it is still inadequate. For one thing, it suggests there may be some amount of money that the Ku Klux Klan could donate to charity or medical research such that they would thereafter be permitted to display partiality amongst their co-members. It also suggests that I’m permitted to show partiality, perhaps indefinitely, toward the stranger who alerted me to the fact that I dropped my car keys, since his doing so produced some good. Neither of these implications seems particularly plausible.

Finally, on the third reading, the relationship must involve a shared history of doing good in general. Thus, despite some mild wrongdoing at various points throughout our history, we nevertheless continue to have reasons of partiality toward one another so long as, in general, we do good things together. And if the raison d’être of our relationship is morally wrong behavior (see, e.g., hate groups), this prevents the relationship from being generally good. It also rules out morally arbitrary cases, such as the kind stranger example just discussed. Clearly, these don’t consist in generally doing good, but are better viewed as one-off incidents.

So, on the most plausible reading of this view, relationships that involve a shared history of doing good (or suffering evil) in general give rise to agent-relative value, which in turn grounds partiality. But just how much of an improvement over the valuing-vulnerability account is the historical account? In my view, there are two different ways in which the hybrid view I have sketched fares better than this sort of historical view. The first concerns a number of cases
that the historical view seems incapable of capturing. The second issue concerns the connection
between the grounds of partiality and the permissions or duties it affords. While any theory of
partiality will face difficulty in explaining this connection, it seems to me the historical view is
less clear about the connection between the purported grounds of partiality and the reasons it is
supposed to generate. Let us take these two issues in turn.

First, notice that both accounts will render the same general verdict in many of the central
cases of partiality. Typical cases of loving spouses will satisfy both the central criterion for the
valuing account (i.e., that the individual values in itself her relationship with the other) as well as
the central criterion for the historical account (i.e., that certain historical facts obtain). And the
same is true of most other paradigmatic relationships, such as close friends and most family
relationships. Moreover, in many cases, a history of valuing the relationship non-instrumentally
seems effectively (though not strictly) necessary for the satisfaction of the historical account’s
criteria—namely, a shared history of doing good or suffering evil. As I have already suggested,
without this sort of valuing, genuine friendship seems impossible. Both accounts also rule out the
most troubling cases—that is, the cases that, were they accommodated by an account, would
serve as a reductio of it. For example, morally bad relationships, such as those that exist among
white supremacists, do not qualify on the valuing account because, even if they are in fact valued
by members, they do not give rise to agent-relative value due to their (non-instrumental) agent-
neutral disvalue.41 And on the historical account, such relationships do not consist in doing good
in general, so they are likewise disqualified.

While the two views agree on such central cases, there are other cases that my account
can capture but the historical view cannot. First, consider the case of adoptive parents at the stage
at which they first receive their new child.42 These new parents do not have the sort of historical

41 A less strict version of this claim might be that the value of these relationships diminishes in proportion
to the badness of it. A family of xenophobes can be partial to one another, but their moral permissions are
weaker than those of a non-xenophobic family (all else being equal). Moreover, the xenophobic family
has stronger duties to avoid acting in xenophobic ways that will override their purported permissions to
be partial in a wide variety of cases.

42 One might also be inclined to think many of the same points apply mutatis mutandis to new genetic
parents. To my mind, it is unclear whether or not they have satisfied the historical conditions. But given
that some will be inclined to insist that they have satisfied such conditions, I focus here on what is probably
a more clear-cut case—namely, adoptive parents.
relationship with their adopted child demanded by the historical account; however, it is clear they have significant reason to be partial to them. And indeed, if it is true that parents to adoptive children do not have reason to be partial toward them, then it would seem to follow that adoptive parents with more than one child will always (or at least for quite a long while) have greater reason to be partial to their other child over their adopted child.\textsuperscript{43} This is clearly wrong.

Relatedly, consider a version of the neglectful father case we discussed earlier. A father who abandons his child at birth, never to be seen again, has not shared in a history of doing good for that child. Indeed, to the extent that the child experiences any sort of trauma in his life that can be traced back to having been raised without his father, it may well be that this relationship instead consists in a history of doing harm to his child. And of course, we want to say that this father \textit{does} have reason to be partial to his son, because their relationship \textit{does} have agent-relative value for him. But the historical account rules this out.

Finally, consider the case of long-lost siblings. Suppose I first become acquainted with my long-lost brother as an adult; we did not grow up together, nor did we share any prior history of any other sort. Despite this lack of history, it still seems that I could have reason to be partial to him, under the right circumstances. Suppose, for example, that he needs a kidney, and I am a perfect donor match. Assuming I value the relationship we have, though merely nascent, I doubt many would object to my donating my kidney to my brother over someone else, even someone needier than him. Again, the historical account seems incapable of providing this conclusion; there simply is not a historical relationship of doing good that can be said to obtain between these two individuals. By contrast, the valuing component of my account can, provided the individual in question values that relationship in itself.

Thus far, I have only considered cases in which the historical account cannot capture partiality where we think it ought to, or at least could, exist. But the account also ascribes reasons of partiality in cases where it does not seem appropriate. For example, suppose I am an

\textsuperscript{43} Relatedly, if we endorse one of Hurka’s other claims—namely, that the amount of partiality we are justified in showing supervenes on the sum of both the good done in the relationship and the intimacy of that relationship—then it looks like parents will typically be justified in showing greater partiality toward their elder children, provided the amount of good increases roughly linearly over time throughout the parent-child relationship.
accountant at a company that has a long history of producing good in the community or world at large—say, by making products that people tend to enjoy. The employees of this company therefore seem to have a shared history of doing good. In fact, the good that certain companies do rivals that of some small countries. And on Hurka’s specific version of the historical account, the greater this good, the greater the extent to which partiality is justified. But does it seem right that, in virtue of my employment at this company, I therefore have genuine reasons of partiality toward, say, Cindy in the sales division? Perhaps there is a weak sense in which I am permitted to be partial toward Cindy; after all, I ought to prioritize getting her paycheck to her over making sure employees at other companies get their paychecks. But this seems to be closer to a promise or a contract than a genuine reason of partiality. After all, once Cindy has left the company, those reasons (whatever they were) cease to exist, despite the fact that our shared history of doing good remains unchanged. Moreover, Hurka’s specific version of the historical account will conclude not only that I have reasons of partiality in such cases, but also that they are rather significant reasons, given that they supervene on the extent of our shared history of doing good. And however plausible it turns out to be that I have reasons of partiality at all toward Cindy—as I have said, I do not think I do—it is much less plausible still that I have significant reasons of partiality toward her.

Or consider another type of case in which our interactions are purely instrumental in nature. My postman and I have a shared history of doing good: he always gets me my mail, and I make sure to shovel the path so he doesn’t slip and fall on his walk. The same point applies to most ongoing interactions in the service industry, as well as most other relationships that have the feature of mutual benefit. The point here is simply that it is difficult to see how this version of the historical account can rule out cases in which the relationship is essentially instrumental in nature.

The foregoing arguments provide some reason for preferring my account to the historical account. There is, however, another way in which my account fares better than the historical account that warrants discussion. The issue here concerns the connection between what grounds

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44 Hurka’s view can accommodate this particular point by adopting my idea of scope-restrictions, which I discuss in detail in chapter 3. Even with this point, however, the general problem that this example illustrates still applies.
partiality and the reasons partiality generates. More specifically, in addition to offering an explanation for what grounds partiality, the best theory of partiality will also explain how or why this particular fact generates new permissions and duties. All theories of partiality will face difficulty in articulating this connection; indeed, I am skeptical that any sufficiently detailed account of partiality could give a perfectly complete explanation of this connection. All else being equal, however, we should prefer the theory that draws a clearer connection between these two.

Consider first the valuing account. Why should the fact that I value my relationship with someone non-instrumentally give rise to permissions to do more to promote certain of their interests over the interests of others? As I have already suggested, our best theory of morality ought to accommodate the fact that certain things have agent-relative value for us, which will generate some exceptions to an otherwise entirely agent-neutral morality. Thus, the connection between this way of grounding partiality and the permissions it affords is just that accepting the former requires tolerating the latter. The valuing part of my account, therefore, offers a tidy explanation of the connection between partiality’s grounds and permissions.

The vulnerability part of the account, however, is somewhat less clear at first glance. Why should the fact that I have created or sustained a vulnerability in another generate duties of partiality to that person? This would be easier to see if we understood ‘vulnerability’ in this context as a sort of harm. After all, we do tend to think that we have special duties—though perhaps not duties of partiality, rightly understood—to those we have wronged. These are the familiar duties of compensation, reparations, apology, and so on. But as I argued above, the sort of vulnerability that is present in special relationships of the sort I am considering is not negative—indeed, it is nearly always a positive thing, something we not only welcome but seek to deepen within ourselves and those with whom we share these relationships. And yet, while we cannot easily appeal to such an explanation for the connection between the grounds of partiality and the duties to which it gives rise, we can appeal to a related idea. In particular, the fact that certain others have this sort of dependence or reliance upon me gives me special reason to attend to their needs—especially those that are particularly salient to our relationship. This is so even though this dependence is not born out of a morally wrongful interaction. It is, in this way, more similar to a promise—however, unlike a promise, a vulnerability is not the sort of thing one can
easily discharge. It is perhaps more like a promise that can never be entirely fulfilled—though the extent of the analogy here has limits, to be sure.

While the connection between the grounds and the duties is admittedly less tight for the vulnerability account than it is in the case of the valuing account, the explanation does seem reasonably clear. But does the hybrid view fare better than the explanation for the historical account in terms of drawing this connection? According to Hurka, the reasons of partiality are fitting or appropriate response to the values of the shared history.45 As he puts it,

It’s in general good to have positive attitudes to positive values: to love what’s good by desiring, pursuing, and taking pleasure in it for itself. [...] And it’s more fitting to respond in these ways to values you’re causally connected to, as you are to those in a history you shared.46

Niko Kolodny defends a similar view, which identifies this fittingness as a sort of ‘resonance’ between the value of the shared history and the value of the future (i.e. the reasons to which it gives rise).47

On the face of it, the idea of resonance offers a simple explanation for the connection between the grounds of partiality and its reasons. However, upon closer inspection, the question still lingers: Why does it matter that our shared history of doing good resonates with the reasons to do good for them now or in the future? In other words, why should a good history generate reasons to do more good to the same people? Notice that the appeal to resonance seems clearly wrong in certain other cases. The fact that you and I have a shared history of doing harm to one another does not give us reason to continue harming each other, even though that would be a

resonant response. Moreover, my shared history of doing good with some particular person might militate more strongly against doing any more good for that person. After all, I have already given them enough; it is unclear why any moral theory would license further special treatment or consideration of them or their interests, especially when it comes at the cost of distributing such benefits to others with (or to) whom I have not yet done any good.

I have argued that while my account has some overlap with certain historical accounts of partiality, we have good reasons to prefer the former to the latter. In response, a defender of the historical view (or, indeed, many other rival views) might argue as follows: whatever advantages my account has, it comes at a significant cost—namely, the lack of parsimony. That is, appealing to two separate grounds for partiality sacrifices the explanatory simplicity that other accounts, like the historical account, maintain. But as I have already argued, this is a feature of the view, not a bug. For one thing, a pluralist view is better suited to capture the presence of both permissions and duties of partiality. Moreover, partiality is a diverse phenomenon. I see no reason for treating this level of parsimony as a desideratum of a view that is so inherently broad in its application.

6 Conclusion

The primary focus of this chapter has been on cases of partiality toward particular individuals. But this was by no means an exhaustive treatment of all of the relevant and important types of partiality. Indeed, the foregoing examples were all relatively intimate cases, among individuals with close interactions. But another central type of partiality involves collectives: many of us are partial to our collective projects, as well as to those with whom we share such projects. While collective partiality will no doubt share certain features with the individualist examples on which we have focused here, the precise way in which the model I have articulated in this chapter applies in such cases is not immediately obvious. Explaining how this works is the task of the next chapter.

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48 Another part of Hurka’s view, which I have thus far omitted, concerns those who have a shared history of suffering evil. Hurka holds that those who have suffered evil together likewise have reasons of partiality to one another. But here it becomes less clear how this idea of fit or resonance applies.
Chapter 2
Valuing, Vulnerability, and National Partiality

1  Introduction

In the previous chapter, I argued that justified partiality has two sources—namely, one’s valuing a relationship non-instrumentally and one’s responsibility for having created or sustained a certain kind of vulnerability in another. This account, I argued, accounts for a broad range of cases, and in particular, accommodates each of the paradigmatic cases of partiality—i.e., parent-child, friendship, and romantic relationships. Moreover, this view explains why we are sometimes merely permitted to be partial, and other times seem to have duties of partiality. As I argued, the valuing account can better explain the former, while the vulnerability account can better explain the latter.

While our focus has been on partiality in these paradigmatic relationships, such relationships do not exhaust the range of plausible cases of partiality. In addition to other close interpersonal relationships, many other forms of intuitively justified partiality are based in membership in collectives. Unionists and members of social activist groups demonstrate solidarity with their co-members or ‘brothers’; participants in various collective projects, such as music ensembles and social clubs, typically give some preference to those with whom they participate in these projects; some families are sufficiently large and extended to be viewed as a collective in which family members are partial toward one another qua family member, even though they may not be members of the same nuclear family and perhaps may even be unknown (or relatively unknown) to one another. There are myriad other examples: colleges, corporations, religious and tribal communities, and certain political parties are all cases in which we witness, and often think justified, the special treatment members confer on one another and their collective more generally. Our main interest here and in the following chapters, however, is with national partiality—though many of the conclusions I draw here will apply, mutatis mutandis, to many of these other forms of collective partiality as well. Put briefly, national partiality is a form of partiality that applies to one’s nation and one’s co-nationals—that is, when certain conditions are met, one can give greater moral weight to one’s nation and co-nationals. In this chapter, I show how, with certain adjustments necessary for accommodating collective forms of partiality in general, the account I outlined in chapter 1 can explain our reasons of national partiality.
2 Valuing and Vulnerability

Recall that the valuing account holds that one has reasons of partiality when one values a relationship non-instrumentally, subject to certain constraints. Notice that the focus here is on the *relationship*, rather than valuing only the *person* herself, as some competing views hold. In paradigmatic cases of partiality, the idea of valuing a relationship is relatively easy to see: I value my relationship with my friend, my partner, or my child. Of course, in most of these cases, we also value the person on the other end of that relationship—that is, I value my friend, my partner, or my child *herself*. But as I argued previously, this value is in an important sense derivative of the value of the relationship itself. And the relationship, rather than the person, is the locus of our moral reasons. The value of these relationships is what grounds our reasons of partiality.

The same point can be extended to collective contexts, such as national partiality: I value my relationship with my co-nationals, but I do not value them in any special way as the individuals they are. Indeed, the relationship-centered view does considerably better than its closest rivals when applied to collective forms of partiality. Were one to insist that the valuing account must center on the individual herself rather than the relationship, such an account would judge that, e.g., co-national partiality (at least on this account) would be impermissible. After all, I do not know or relate to the vast majority of my co-nationals in such a way that would allow me to value them as the particular individuals they are. I cannot value them in this way, and as such, possess no reasons of partiality toward them. This conclusion is implausible for anyone inclined to accept any of the forms of collective partiality I canvassed above. The relationship view, by contrast, only requires that I have and value my relationship with them. It therefore makes space for collective forms of partiality such as national partiality where the rival view cannot.

But what exactly does the relationship among co-nationals consist in? A skeptic might claim that there is no relationship at all among co-members, due to their lack of interaction and intimacy; those slightly less skeptical might simply doubt that the relationship is anything but

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nominal. If partiality among co-members is to be explained by the valuing account, then we need a reply to these worries.

To do so, we first need to draw a distinction between two different types of partiality in collective contexts. The first, which I will call vertical partiality, concerns two distinct objects. First, it centers on the relationship an individual has towards the collective as such, understood as the group, over and above the particular individual members that comprise it. Thus, a cellist stands in a vertical relationship with her orchestra, and she may have reasons of partiality to promote and protect this body in various ways. For example, she is morally permitted to donate money to the group for promoting their events, paying for concert halls, and so on, rather than giving that money to other worthwhile causes. She may also prevent unjust intrusion into the collective, rather than helping prevent harm from befalling other collectives or individuals, even when these other collectives might be more needy or deserving, understood agent-neutrally. This point applies similarly to many other individuals in collectives, such as unionists and their union, members of solidarity movements and their organizations, and, most importantly for our purposes, individuals and their nation. Notice that this relationship is not that of one individual to another. This type of interpersonal partiality is the second type of partiality I mentioned above, which I discuss in detail below. The type of vertical partiality presently in focus, however, centers on the collective body as a whole.

There are many ways to illustrate this idea, but one particularly useful and intuitive way of doing so is based on what G.E. Moore called the “principle of organic unities”. The basic idea, in Moore’s words, is that, “the value of such a whole bears no regular proportion to the sum of the values of its parts”, and that, “The value of a whole must not be assumed to be the same as the sum of the values of its parts.”\cite{moore1903} Moore’s primary example is the value that arises out of conscious contemplation of a beautiful object.\cite{moore1903} On his view, when combined in the right sort of way, the two constituent parts—namely, the existence of beauty itself and conscious contemplation of (what the beholder takes to be) a beautiful object—generate an overall value

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\footnotemark{51} Ibid., 28. Moore’s example is that the conscious perception of the beautiful object is *intrinsically* valuable, which, though it may be true in that case, needn’t be assumed to be true in the state case on which we’re primarily focused.
\end{footnotes}
that is greater than their mere aggregation. For Moore, the value of each part remains the same
whether it is part of an organic unity or independent of it, and the additional value emerges from
the combination of the two parts as a whole. In other words, if two parts A and B, with values of
x and y, respectively, are combined to form an organic unity, then the value of each part taken
individually must be added to their value taken as a whole—say, z. Thus, the value of A and B
combined in the right way is \( x + y + z \), a value greater than the mere sum of \( x + y \).

This idea might also help explain the idea of vertical partiality. When individuals join
together to form a nation, this can yield an overall value greater than the sum of the values of its
parts. That is, the value of the nation as a whole is greater than the aggregate sum of the value of
the individuals that comprise it—or its value on the whole. On this view, the value of the
collective cannot be entirely reduced to the individuals that comprise it, since the fact of these
individuals’ interactions and participation in the context of the nation gives rise to a unique sort
of value. And this particular value, when it obtains, is partly agent-relative: the value produced
depends in no small part on the evaluative commitments and the special relationships that exist
between those who produce it.

One might object that any vertical partiality of this sort is ultimately toward individuals,
so thinking of partiality as toward the collective as such is misguided. It is of course true that the
effects of an individual’s actions, such as her partialistic philanthropy or defensive efforts, will
be felt in an important way by the members of the collective. And these collectives must have
members for us to make sense of their value, so there is a clear sense in which the value of the
collective depends on the individuals that comprise it (more on this later). And yet, in the first
instance, it is neither some of the individuals nor the aggregation of all of the individuals in the

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52 This way of understanding the value of an organic unity is what Thomas Hurka calls the “holistic
interpretation” (See: Thomas Hurka, “Two Kinds of Organic Unity”, The Journal of Ethics 2, no. 4
(1998), 299-320.) This is the view Moore endorses, but it is not the only possible interpretation. Another,
which Hurka calls the “conditionality interpretation”, says that there is no value attributed to the whole as
a whole; rather, their being combined in this way changes the value of one or both of the constituent parts
to create a value greater than the two values taken independently. In other words, the two parts A and B
have values of x and y respectively, prior to their combination. But when these two parts are unified, the
value of each becomes \( p \) and \( q \) respectively, where either \( p > x \), or \( q > y \), or both. Although the two
interpretations do not differ with respect to their verdicts on the overall value of a given organic unity, it
is important to note that they do differ with respect to the value they attribute to the parts of the whole.
collective that forms this unique relationship. After all, there might be many things one can do
toward her collective that do not effect change for any particular members at all. Many of the
things we do for our nation, for example, will only affect the lives of members of the nation at
some future time—i.e., the lives of those who aren’t yet born. It would be hard to explain this
sort of partiality as centering on the individual members of the nation taken in aggregate since,
by hypothesis, those who are the beneficiaries of this partiality are not (yet) members.
Furthermore, there seems to be an important and non-metaphorical sense in which we think of
the collective as possessing rights that are not merely understood in terms of an aggregation of
individual rights. For example, the right to collective self-determination and collective self-
defense cannot be easily reduced to an aggregation of individual rights of a similar sort, though
some have opted to defend this idea.\footnote{See: Helen Frowe, “Can Reductive Individualists Allow Defense Against Political Aggression?” in \textit{Oxford Studies in Political Philosophy}, vol. 1, eds. Peter Vallentyne, David Sobel, and Steven Wall (Oxford University Press, 2015).}

At any rate, those skeptical of the foregoing form of vertical partiality nevertheless ought
to preserve the basic concept of vertical partiality, since there is a second way of understanding
this idea. On this view, the object of partiality is the various special goods that the group
produces and makes possible, which are generally in some sense unique to it and typically have
agent-relative value for the members of the collective in question. In the case of the nation, such
goods may be cultural in nature, such as cultural traditions, values, and language, and a shared
national history.\footnote{Notice that these kinds of goods can be present in the absence of any sort of political institutions.} They may also be political goods, such as collective self-determination,
welfare or healthcare programs, and institutions of domestic and international security. Some of
these goods may be thought to be merely instrumentally valuable—i.e., only valuable insofar as
they contribute to improving the lives of the individuals in that nation (and perhaps elsewhere).
Of course, it is certainly true that in most cases, securing and preserving these goods will
positively affect the lives of particular individuals. After all, many people have a deep and
enduring interest in preserving their cultural traditions, or collective values more generally, and
would be significantly harmed were they prevented from doing so. And yet, understanding
certain of these goods as entirely reducible to their contribution to human flourishing or welfare would be in some sense incomplete.

To see this, consider Thomas Hurka’s example of the Quebecker who values the continuation of francophone culture in Quebec:

[The Quebecker] should grant that after enough time the disappearance of French culture would not be worse for persons in the sense of making the lives lived by persons worse. If, despite this, they continue to view the survival of their culture as a good, they must view it as an impersonal good in the following sense: it would be better if French culture survived even if this would not make the lives persons live more valuable.\textsuperscript{55}

While this example focuses on a shared language, it seems equally true of certain other goods listed above. Other cultural goods, such as a nation’s shared history, as well as some of the political goods, such as collective self-determination, seem also to be, at least in part, impersonal goods.\textsuperscript{56} In short, the point is simply that our concern in such cases is not exclusively for the personal goods that come from national membership, but for the nation as such and the particular goods to which it gives rise.

It is worth noting that while the vertical element is central to all forms of collective partiality, there is no vertical element in any of our paradigmatic cases—friendships, romantic partnerships, or parent-child relationships.\textsuperscript{57} While friendships may emerge or have as their source some sort of collective membership, a friendship involves a direct relationship with another person, which makes no necessary reference to some other body or collective apart from the two parties themselves. And while it is true that many parent-child relationships will take place within the context of a family, the existence of which might give rise to reasons of vertical

\textsuperscript{55} Hurka, “The Justification of National Partiality”, 145.

\textsuperscript{56} One may perhaps resist this claim with respect to certain of the political goods, such as security, since this seems to be a merely instrumental good. For present purposes, I remain agnostic about this claim, and nothing I say in what follows turns on the claim that all such goods are impersonal goods. It suffices that at least some of them are, and this much seems clear.

\textsuperscript{57} Though of course some parent-child relationships can look like family relationships, which, as I argue in the subsequent discussion, \textit{is} a form of collective partiality. The distinction should be clear here, however.
partiality, this vertical element need not be present for the parent-child relationship to give rise to reasons of partiality. Moreover, unlike the collective goods noted above, the relevant goods that emerge from the paradigmatic relationships are of a fundamentally different sort, whereas the goods in collective cases are in large part impersonal (i.e., not entirely reducible to their value for particular individuals).

Contrast this with horizontal partiality, which involves a special concern for one’s co-members. This is the type of partiality we witness in the paradigmatic cases; indeed, such relationships are only horizontal. Unlike the paradigmatic cases, each of the cases of collective partiality canvassed earlier has this two-dimensional structure: part of one’s special concern is for the group itself, while another part of one’s concern is toward her co-members. It is the sort of partiality that family members show each other (as opposed to the family as such), or that members of solidarity group show each other (as opposed to the group itself). And it is the partiality that co-nationals show toward one another, apart from the partiality they might show toward the nation itself.

One important upshot of this distinction is that the horizontal relationship in collective cases depends on this vertical relationship. This is certainly true of all the examples we have considered thus far. It is not at all clear in what sense I could be partial to my co-unionists qua co-unionists without our sharing a relationship in the union. And the same is of course also true of the nation: the fact of our shared membership in the nation provides the basis for understanding our horizontal relationship. It is unclear how I could be said to have reasons of partiality toward my co-nationals (qua co-nationals) without it being the case that we each have a

\[58\] To be clear, reasons of horizontal partiality do not necessarily depend on the existence of reasons of vertical partiality, though they do often appear together. This is because one can have reasons of horizontal partiality in virtue of having created or sustained vulnerabilities in a co-member without it being the case that she also has reasons of vertical partiality toward the collective as such. This is because a given individual does not make the collective vulnerable: the collective, such as I have characterized it here, is not the sort of thing that can be vulnerable, in the relevant sense. She only makes her co-members themselves vulnerable; and so the vulnerability account does not apply from an individual toward the collective (though it does apply in the reverse). Therefore, reasons of partiality toward the collective can only be understood by appeal to the valuing account: an individual has reasons of partiality to the collective if she values non-instrumentally her relationship with that collective. And it is possible, of course, that an individual will not value that relationship. In such cases, she may have reasons of partiality toward her co-members, according to the vulnerability account, while not having any reasons of partiality toward the collective as such, since neither account generates this sort of reason for her.
vertical relationship toward the same nation. After all, that fact about us is what makes us co-
nationals in the first place. Non-members, by contrast, do not have this particular vertical
relationship; by extension, they do not have a horizontal relationship with individual members
qua co-member.

So, on this approach, the horizontal relationship to one’s co-members is mediated through
their shared membership in the collective, i.e., through the vertical relationship they both have to
the same collective. But there is another means of arriving at the same conclusion, which is
compatible with the previous one; indeed, I think we can appeal to both explanations to support
the basic point here. This second approach emphasizes the fact that the nation is a collective, in
the sense of forming a plural subject that exists beyond the mere aggregate sum of its individual
members, and yet necessarily comprising them. Call collectives of this sort membership
collectives.

Generally speaking, membership collectives can form and act on collective intentions,
perform collective actions, or be held collectively responsible, and so on—though we need not
endorse any of these particular ideas for the success of the arguments herein. What is more
central to this point, however, is that one’s co-nationals are, in a non-
metaphorical sense, part of
the constitution of the nation itself—though, as we have seen already, in our discussion of
organic unities, it is possible that one would deny that the nation consists entirely in its members.
The point here is simply that the nation is—in a meaningful, if not complete, sense—its
members. This is demonstrated by many of the straightforward ways we think about how we
stand in relation to the collective. It is perfectly intelligible for an individual member of a nation
to speak in both the first person singular—e.g., “I value this”—and the first person plural—e.g.,

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59 I have described here groups to which the members relate positively—i.e., collectives that are valuable
or do good for their members. But the same point could be applied to members of (generally un-chosen)
collectives that suffer evil together, e.g., the Jews at a particular concentration camp. Cases of this sort are
clearly over-determined in terms of partiality, however: surely there are overwhelming reasons for anyone
to be partial to the victims of such atrocities such that partiality hardly figures into the explanation for
what we ought to do. The general point, however, is simply that the collective in question need not be
valuable in the way that most families, unions, and nations are. (However, as I argued in the previous
chapter, such collectives cannot be non-instrumentally disvaluable.)
“We value this”. And it makes sense for a member of the collective to take criticism, attacks, praise, or blame in a somewhat personal way—that is, as against a collective of which he is a part. Contrast membership collectives—like nations, unions, and families—with other kinds of groups, such as those that are best viewed as merely an aggregate of individuals who happen to share certain properties—e.g., the passengers on a plane, left-handed people, or tenants of a particular landlord. With some exceptions, we generally do not think of these groups as forming collectives, in the morally relevant sense of the word. And in ordinary cases, we would struggle to make sense of how these individuals constitute a “we”, in any sense beyond that which applies to any other simple aggregation of individuals.

In membership collectives, therefore, this version of the vertical relationship and the horizontal relationship are two sides of the same coin. The former is a relationship to the collective as a whole, over and above the members that comprise it; and the latter is to those individual members themselves who together comprise a significant part of the collective itself. At the risk of oversimplifying, we might say that the vertical relationship is to the whole, and the horizontal relationship is to certain of its parts.

With this, we are now in a better position to answer the question of how the valuing and vulnerability accounts apply in the case of national partiality. Let us begin with the valuing account. It is relatively clear how one could have reasons of vertical partiality toward her nation: she values (non-instrumentally) the particular goods, projects, and values that her nation makes possible. And her valuing her co-nationals is mediated through this vertical element. Drawing on the points we made previously, to say that I value my relationship with my co-nationals non-instrumentally is just to say that I value my relationship to those with whom I share membership in the nation—that is, I value my relationship with those people who stand in the same vertical relationship with the nation as I do. This idea looks less mysterious once we account for the fact that the nation, like other membership collectives, partly consists in its members—it is, in other words, part and parcel of valuing (non-instrumentally) one’s nation in the vertical way that one

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will also tend to value those members that comprise it. And if the valuing account is correct, then my valuing our relationship in this way gives rise to the possibility of reasons of partiality toward my co-nationals.

Notice that these reasons still apply toward those co-nationals who do not value their relationship with me: the valuing account gives me reasons (or, strictly speaking, permissions) to favor those with whom I share relationships that I value, but it does not always require that this valuing is reciprocated. However, this is nothing unique to co-national partiality, or even collective cases more broadly. The same is true in certain of the paradigmatic cases: I may still have reasons of partiality toward, e.g., my child, grounded in the valuing account, even though he does not value our relationship. (It is somewhat less plausible, though still possible, in romantic and friendship cases, if only because it may seem that a certain level of reciprocity is central to or constitutive of these relationships.) If what I have argued above is correct, it will be hard to understand how my co-national does not value his relationship with me unless he also does not value his relationship with the nation in the relevant respects—though we can grant that this might sometimes be true. After all, as I mentioned earlier, some will view their part in the collective as purely administrative, or otherwise without non-instrumental moral value. (I discuss this further in section 3.) But surely there must be a suitably high number of co-nationals who do value this relationship; otherwise it will be hard to see how this group of people could qualify as a collective, rather than a mere assortment of individuals. Provided this condition is satisfied, however, the fact of my valuing the relationship with my co-nationals gives me reasons of partiality toward them.

Incidentally, by showing how the valuing account applies in collective cases, I have also highlighted another reason to prefer it over certain of its rivals. For instance, an alternative valuing account holds that partiality stems from valuing the person, not the relationship. But this is clearly impossible in most collective contexts. I cannot value my co-nationals as individuals because I do not even know the vast majority of them as individuals. Thus, these

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61 It is worth re-emphasizing that this should not be read as suggesting that the nation only consists in its members, as some of those who suggest mere aggregation would have it. The point here is simply that

62 For one recent defense of this sort of view, see Simon Keller, Partiality.
alternative valuing accounts cease to be of use when we turn to the collective context. Defenders of these views must look elsewhere for an account of collective partiality, or else they must deny that collective partiality can be justified. The former option sacrifices parsimony of explanation, and the latter is implausible. By contrast, I have shown that the valuing account I defend can apply, with appropriate modifications, to accommodate collective partiality. This seems to me a clear conceptual advantage.

Let us turn now to the vulnerability account. It is clear enough that members of a collective, such as a nation, can be vulnerable to that collective. I have various practical and emotional vulnerabilities to my nation and the goods and projects around which our relationship centers, which have special agent-relative value for me. The same is true for many other collectives: family members are vulnerable to their family, understood collectively; and a union member is vulnerable to the solidary project of which she is a member. But while it is easy enough to see how members of a nation can be vulnerable to the nation, understood in terms of its collective goods, it is less clear how members of a nation can be vulnerable to their co-nationals. That is, how can I be vulnerable to someone elsewhere in the nation, whom I have never met? Given that the vulnerability account generates reasons of partiality when I am responsible for creating or sustaining vulnerabilities in another person, the central question for extending the account to national partiality is: How do I create or sustain such vulnerabilities in my co-nationals, and how can I said to be responsible for doing so?

I will start with the first part of this question, leaving the question of responsibility to the next section. There are two different ways of approaching the issue of creating vulnerabilities in co-nationals, each of which relies on the idea that the nation is a membership collective. First, notice that in most membership collectives, members play a distinct and essential role in structuring and shaping the collective projects to which other members are vulnerable. This is clearest in democratic nations, in which members influence and decide on the values and projects of their nation, though it will also hold true in varied ways for many non-democratic nations as well. Thus, if one is vulnerable to the collective, and the shape of this collective is determined in no small part by the actions and values of its members, then a given member’s vulnerability extends to her co-nationals in virtue of their role in shaping the collective. That is, individual members render each other vulnerable in virtue of their distinct shared relationship in determining how the collective to which they are similarly vulnerable proceeds, changes, and
shapes the goods and projects that have agent-relative value for them. Here again we see how the horizontal relationship is mediated through the vertical relationship: for membership-dependent collectives like nations, vulnerabilities to other co-members are mediated through one’s relationship and vulnerability to the collective—understood in terms of its goods, projects, and values—itself.

Another closely related way of answering the question rests on the idea that a nation’s members are, on one view, partly (though not exclusively) what constitute the nation. On this view, to be vulnerable to the collective is, in a non-metaphorical sense, to be vulnerable to the members who comprise it. Of course, one could be vulnerable only to the goods, projects, and values of a nation without being similarly vulnerable to the individuals that comprise it. But given the close connection between the members of a nation and the goods it brings about, as well as the particular ways these goods are manifest in the members of that nation, this seems to be little more than a conceptual possibility. In practice, one’s vulnerability to the nation extends to the entire national project, including not only the nation’s particular goods, but the members who partake in their promotion and preservation.

It is worth briefly revisiting here a point we discussed in the context of the paradigmatic relationships in the previous chapter. Notice that the vulnerabilities that give rise to partiality are not what we might call conditional vulnerabilities. That is, they are not vulnerabilities that members accept only because they must, and would just as soon jettison if given the choice. (This is of course true of certain of our co-nationals; I will discuss this point in greater detail in section 3.2.) Put differently, vulnerability to one’s co-nationals should not be construed as an unwanted dependency relationship for which the best way forward is extinguishing the relationship. Indeed, if this were true, it would be hard to see how I could ever have reason to prefer the lives of my co-nationals. On this understanding, the death of a co-national would eliminate a vulnerability for which I am responsible. If eliminating such a vulnerability were viewed as good, then I should in some sense prefer my co-national’s death to that of some unaffiliated person, at least insofar as it absolves me of this sort of obligation. Instead of this approach, therefore, we ought to view vulnerabilities to co-nationals in much the same way as we viewed them in the context of paradigmatic relationships. In particular, the apparent harm of vulnerability is not strictly speaking a harm, but indeed tends to have a positive valence, as it is
in a sense a necessary feature of the valuable relationship. And we generally do not wish to jettison these vulnerabilities; indeed, we often seek to deepen them.

3 The Membership Problem

The foregoing arguments show that membership in the nation plays an important role in determining reasons of partiality. To be sure, membership itself does not ground partiality in collective contexts. Were that the case, we would have no need for the valuing or vulnerability accounts, since we could simply state that membership itself is somehow the source of our reasons. But this would be philosophically unsatisfying for a few reasons. First, as I have attempted to show throughout this chapter and the previous one, it is much more plausible to understand all forms of partiality, including national partiality, as essentially continuous and sharing a similar underlying justification. Were we to appeal to group membership alone to ground partiality, national partiality’s tie with other forms of partiality would be severed. And second, we would require an explanation for why membership itself is morally significant. In the absence of such an explanation, the account would look implausibly ad hoc.

The best approach to understanding the role of membership in national partiality, therefore, is to ground partiality in something more fundamental than membership, while appealing to membership in other ways to delimit the application of partiality. This has been my approach thus far. But while this approach avoids these problems, it invites a new one. To see this, consider first the vulnerability account. While it is true that many, or perhaps even most, of our co-nationals will be vulnerable to the nation, many other members will not be. Some might see their membership as unjustly coerced or unwanted, or they are simply not active within the nation in any meaningful way. They might not see it as bearing any moral significance for them, or they possess none of the characteristic ties that members of a nation often have. It is therefore not the case that I have made all of my co-nationals vulnerable; there will be some who are my co-nationals but whom I have not made vulnerable.

Furthermore, many non-members of the nation will be equally vulnerable, or perhaps even more vulnerable, than many of our co-nationals. Consider, for example, outsiders who participate in many of the very same cultural practices of the nation, are frequent visitors with various ties to other members, are associates in various trans-national commercial endeavors, and so forth. Clearly, such outsiders can be quite vulnerable to the nation in various ways, and are
perhaps even more vulnerable than many of our co-nationals. It is therefore not the case that I have made only my co-nationals vulnerable; there will be some who are not my co-nationals but whom I have made vulnerable.

To put the point another way, the problem is that my account of collective partiality (and national partiality in particular) looks to be both under- and over-inclusive. It is under-inclusive because it seems to rule out many of those who are in fact our co-nationals; and it is over-inclusive because it includes many non-members. Call this the membership problem.63 I have introduced the problem by focusing on the vulnerability account, but the problem also affects the valuing account in much the same way. If there are members who do not value their relationship with the nation and their co-nationals, then, on this account, these members do not have reasons of partiality toward them. Thus, the valuing account appears under-inclusive. It is also over-inclusive because it looks as though non-members who value the collective will, on this view, have reasons of partiality. In order for the valuing and vulnerability accounts to succeed, we require responses to these worries of under- and over-inclusiveness.

3.1 Valuing Account

Let us begin with the over-inclusiveness worry for the valuing account. Notice that the valuing account tells us only whether or not the valuer has reasons of partiality—in particular, permissions—to toward the object of her valuing. It does not tell us anything about whether or not the object of her valuing has reasons of partiality toward her. In other words, the worry here concerns only whether or not an outsider has reason to prefer the nation or its citizens over other, third-party outsiders.

There are two ways in which an outsider might be thought to value her relationship to a nation of which she is not a member, which correspond to the distinction between vertical and horizontal partiality. Let us begin with the idea of an outsider who values her relationship to the nation—i.e. the worry as applied to vertical partiality. There are many plausible cases in which people may take themselves to have a special relationship with a nation that is not their own. For

63 This problem is not unique to my account. Other accounts that aim to ground partiality in something deeper than membership, such as the various other shared history accounts that are on offer, will have to contend with the membership problem.
example, in virtue of the time I spent living there in my early 20’s, I have a special affinity for France. I adore French culture; I have an ongoing interest in French political life; I value the French language I spent so much time learning and practicing, and I would deeply regret its extinction (though this is obviously quite unlikely); and, more generally, I care more about French affairs than I do those of most other nations. The valuing account seems to conclude that, given that I value non-instrumentally my relationship with that nation, I have reasons of partiality toward France—that is, that I am permitted to devote special attention to France, understood as a collective, even at some cost to others. This seems clearest in beneficence cases: for example, I suspect many would find it permissible for me to devote considerable energy to helping preserve some part of France’s cultural heritage, even though other nations may be more needy and equally deserving, understood agent-neutrally.

Understood as a claim about collective goods, this seems to me to be the right conclusion: there is nothing mysterious about an outsider valuing collective goods of other nations, or that nation itself. But this is surely because such goods will have agent-relative value for these outsiders, and so for that reason will generate permissions to prefer them over other things. That is, these goods have value for the agent herself; and so, like other such goods, we have special permissions to prefer them. This is just a rather unremarkable feature of goods that possess agent-relative value.

When we turn to the question of whether or not the individual has reasons of vertical partiality of the other sort—i.e., to the nation, taken as a collective—or horizontal partiality—i.e., to that nation’s individual members—our judgment will surely be different. This is because the valuing account requires that one must value their relationship, and by virtue of their lack of membership, outsiders do not have a relationship with the nation, understood in these ways. As I suggested earlier, the existence of a relationship in collective contexts is usually demarcated by membership; this is certainly true in the case of nations. And so, while certain of that nation’s collective goods may have agent-relative value for outsiders, the collective as such, as well as its members, do not generate reasons of partiality. Among other things, this means that, for

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64 Perhaps one way of describing my relationship with the French is one of a “former resident”. But this relationship is fundamentally historical, with no enduring features; so I suspect it won’t qualify as a relationship in the morally relevant sense we require here.
example, I am not permitted to rescue a single French national instead of two members of some other nation. But I am permitted to direct my charitable donations to preserving French cultural heritage sites instead of donating to preserve heritage sites in other parts of the world.66

One piece of support for this claim is that the idea seems equally true when applied to other collectives of a similar sort. I may value a particular religious community, perhaps in virtue of my fascination with their culture and history. But while it does seem permissible for me to devote special attention to, e.g., preserving their cultural practices, it does not seem permissible, e.g., for me to prefer to rescue members of that community over some larger number of outsiders, when I must choose between saving one and saving the other. Of course, my special attention aimed at the collective will, in various ways, benefit individuals within the collective; this is just one of the consequences of securing and promoting collective goods. But it is surely different from preserving the individual lives of members of that group, with whom I stand in no meaningful relationship.

Therefore, this version of the over-inclusiveness worry can be avoided by appealing to the importance of having a relationship for the valuing account. Let us turn now to the under-inclusiveness worry. The worry here centers on the fact that there will be some members who do not value their relationship with the nation of which they are a member, and so would not, on this view, have special permissions to be partial to it. Perhaps such a person is neutral about her role in her nation; or perhaps she does indeed value her relationship, but only instrumentally—that is, she values it only insofar as it is a tool for securing certain rights.67 In either case, it is not clear why we would expect our best moral theory to provide her with special permissions. If we cannot appeal to the special non-instrumental value this relationship has for her, what else could justify overriding other agent-neutral considerations?

65 In the next chapter, I will offer a further explanation for this fact in some scenarios, which is rooted in the idea of partiality being restricted in scope.

66 It does not follow from what I have said here that I can act so as to preserve heritage sites over saving lives.

67 Notice that in cases in which she views her relationship as merely instrumentally valuable, she may have permissions to devote special attention to her nation, provided this is for reasons of efficiency.
I therefore think the bullet to be bitten here is rather small and of no great significance: if she does not value her relationship with her nation or co-nationals non-instrumentally, then we should simply accept the conclusion that she does not have special permissions to be partial toward them. Notice, however, that the fact that she does not value her relationship with her nation and co-nationals does not entail that she has not made her co-nationals vulnerable (and they her) in various ways. Again, these two grounds must be understood separately, though in many ordinary cases they overlap. Thus, there may be cases in which someone does not value this relationship, but is nevertheless responsible for creating vulnerabilities in her co-nationals. In this case, she would therefore have duties of partiality to her co-nationals, but would not have a broader range of permissions that extend beyond these duties.

3.2 Vulnerability Account

Let us turn now to the problem as it concerns the vulnerability account. The problem here is just like the problem as it applied to the valuing account: membership does not perfectly delineate those who are vulnerable. Many non-members will be vulnerable, and many members will not be vulnerable.

Recall that this account explains both my duties to my co-members as well as their duties to me: my duties to them stem from my having made them vulnerable in the relevant ways, and their duties to me stem from their having made me vulnerable. Given that the over-inclusivity worry concerns the ways in which some non-members are vulnerable to us, it therefore concerns only the obligations we have to them. It does not concern the question of whether they have made us vulnerable, since, as I have already suggested, membership in the nation is a necessary condition for our being vulnerable to them. The under-inclusivity worry, however, concerns both our obligations to our co-nationals, and their obligations to us.

Let us look first at the over-inclusivity worry. This worry starts with the observation that non-members might sometimes be vulnerable to a collective of which they are not a member. Some of these are analogues of the examples we discussed with the valuing account: I might be vulnerable to some other nation’s culture, or certain of their collective goods; I might be fascinated with (and, so, invested in) their language; or I might have a special sense of attachment to the collective in virtue of the time I spent as a visitor there. I might also have friends or family who are members of this nation, and so am vulnerable to that nation insofar as
it affects the ones I love. To be sure, these do not exhaust the ways in which one can be vulnerable to a nation that is not one’s own, but they should suffice to illustrate that possibility.

If non-members can be vulnerable in this way, then it seems that the nation has duties of partiality to them. However, we need not accept this conclusion, since we can appeal to the specifics of the vulnerability account and bind it more closely with the idea of membership, which will rule out a broad range of problem cases.

First, notice that many of the relevant vulnerabilities—that is, the vulnerabilities that trigger reasons of partiality—are simply not active in non-members. As our earlier discussion showed, the most central vulnerabilities in collective cases involve facts about the internal relationship between members, such as their shared roles in collective decision-making, and mutual participation in the collective project, and so on. These are simply inapplicable to those who are not members of the collective. To see this, consider this point as applied to another collective, such as the union. As we have seen, members of a union make each other vulnerable in a broad range of ways; but the majority of these vulnerabilities depend on the existence of the co-unionist relationship. That is, their cooperative roles in the union, and the joint project of securing fair and safe labor standards for themselves creates a set of vulnerabilities that are unique to those inside the union. It is of course true that the actions the union takes will affect outsiders in myriad ways: union wages affect non-union wages; strikes affect the broader community; and the employer’s operating practices must adapt to meet union demands. But these are not the types of vulnerabilities that give rise to the special relationship among co-unionists; these are vulnerabilities of a wholly different sort—i.e., vulnerabilities that might explain other sorts of special obligations, but not partiality per se. We ought, therefore, to view the vulnerabilities relevant to partiality to the nation as having an essential tie to membership in the nation (and the same goes, mutatis mutandis, for other collectives).

So, one way of avoiding the worry of over-inclusiveness for the vulnerability account is by binding vulnerabilities to membership: non-members will not be vulnerable in the relevant respects in virtue of their being non-members. While I think this view helps considerably to defuse the objection, I suspect some will remain unpersuaded. There is, however, a second way of avoiding the over-inclusiveness worry. This approach also appeals to another central feature of the vulnerability account, which we discussed in the previous chapter—namely, one’s
responsibility for creating or sustaining a vulnerability in another. The idea of responsibility is, as we saw, somewhat imprecise in this context. Generally, one is responsible for creating and sustaining vulnerabilities when one acts in such a way (including participation in collective projects) that one intends, foresees, or ought to foresee, will engender or deepen such vulnerabilities in others. This point is clear enough as applied to the paradigmatic cases, since they all obtain among particular individuals who share a defined relationship.

But once we shift to the collective context, we must refine the idea somewhat. Recall the stalker example from chapter 1: an individual creates a vulnerability in her stalker, but intuitively she is not responsible for this, and so does not have reasons of partiality toward her stalker. To see how this point applies at the collective level, we can imagine a variation of this case that applies not to an ordinary person, but to a celebrity or entertainer—i.e., someone with a broad audience and a wide range of fans or admirers. We ought not to understand the claim about the entertainer’s responsibility as a simple statistical point. For example, it is not as though the fact that it is statistically foreseeable that some fan may become vulnerable that the entertainer is therefore responsible for any resulting vulnerability. Rather, the point about responsibility is specific to particular individuals and the particular relationships they stand in with one another. Thus, in this case, we must consider the idea as applied to a particular entertainer and some particular fan. It is difficult to see how, in the vast majority of cases, an entertainer could act in such a way that she intends or foresees such vulnerabilities arising in some particular stalker. As such, she is not responsible for the resulting vulnerability.

Moreover, consider the fact, which we discussed earlier, that the vulnerabilities relevant to partiality are generally seen as desirable (or at least neutral) by both the creator and recipient of the vulnerability; at least, they are not typically or fundamentally negative. As I said earlier, many of the vulnerabilities that arise in the paradigmatic cases, as well as among co-nationals, are viewed positively (or neutrally) among those who are party to the relationship. But stalker cases are not like this: the vulnerabilities created in stalkers are fundamentally negative—both agent-neutrally and from the perspective of the person being stalked. And to the extent that we could call this a ‘relationship’, the entertainer would welcome its quick dissolution. Of course, this generally isn’t true in the paradigmatic cases, nor is it common in national partiality cases (though I will consider shortly what we ought to say when it does occur).
In short, the entertainer is not responsible, in the sense relevant to partiality, for the vulnerabilities she creates in her stalker because she does not intend or foresee those effects in that particular individual; and furthermore, the relationship, assuming it makes sense to call it that at all, is fundamentally of non-instrumental agent-neutral disvalue: it is a relationship that no one would wish to be in, and one that the entertainer surely has no interest in deepening.

The task now is to see whether or not members of a nation, or the nation taken as a collective, are responsible, in the aforementioned sense, for the vulnerabilities they create in outsiders (assuming for the moment that such vulnerabilities are possible). To do so, we need to ask whether the relationship between insiders and outsiders is more like standard cases or more like stalker cases. And it seems to me that when considering purported cases of both vertical and horizontal partiality, the vulnerable outsider looks more like a stalker than a standard party to the relationship. Whether we take the nation as a whole, or a given individual member, and consider their responsibility for the vulnerabilities of outsiders, we are likely to conclude that they (i.e. the nation or the member) should not be held responsible in virtue of the considerations just discussed. That is, the nation and its members could not reasonably foresee the resulting vulnerability with respect to particular outsiders; these vulnerabilities, from their perspective, are fundamentally negative; and they would rather these vulnerabilities cease to exist, or never exist in the first place. These vulnerabilities are, it seems to me, unintentional side-effects of pursuing the just projects of the nation. It is not as if the nation and its members intend that others become vulnerable in these ways. These vulnerabilities would have been overly costly to have avoided; they would effectively require abandoning the national project altogether. For this reason, cases of outsider vulnerability look much more like stalker cases than standard cases. To be sure, in cases of the sort I have described, the pernicious attitudes resembling that of a stalker are absent; for that reason, these cases are surely less morally problematic, in a broader sense, than stalker cases. And yet, it does seem that the emotional and practical vulnerabilities that inhere in such outsiders are based on an illusory understanding of their role in the collective—that is, on some sort of imagined relationship that is neither particularly welcomed nor reciprocated by those inside the group.

Ultimately, I doubt that such vulnerabilities can be said to apply to outsiders—namely, for reasons I sketched above concerning their lack of membership. However, even if we assume that they could apply to non-members, the foregoing argument shows how we can appeal to the
idea of responsibility that is contained in the vulnerability account to avoid the over-inclusiveness worry and the conclusion that nations have duties of partiality to outsiders. Of course, nations may have other duties to outsiders, which stem from the various other ways their actions affect or harm them. They have duties of restorative justice to those they’ve wronged; they have duties of beneficence to those they can help without undue cost to themselves; and they have special duties to protect innocents in war, among many other duties. But none of these are duties of partiality.

Let us turn now to the under-inclusiveness worry. As I said, there are two worries concerning under-inclusiveness for the vulnerability account. The first concerns those members who are not vulnerable to the nation in the relevant way. According to the vulnerability account, this means that we do not have duties of partiality to them. This judgment will strike some as implausible, since our duties of national partiality, it may be thought, must necessarily extend to each and every one of our co-nationals. But I think we should proceed on this point just as we did with the under-inclusiveness worry for the valuing account. If there are members of our group who truly are not vulnerable to our nation or their co-nationals, then perhaps this is because they do not have significant ties to the nation, or do not find it to be a source of moral value—perhaps it is merely taken to be a morally arbitrary administrative instrument for organizing their life. They view the role of the nation in much the same way that many people view the role of things like congressional voting districts, counties, and neighborhood subdivisions. In such cases, I am unsure why exactly we should expect our best moral theory to give us special duties to them. If their role in the national project is effectively irrelevant to them, why should it be relevant to our moral theory? Again, to the extent that this constitutes a bullet, I see no reason not to bite it.

The second version of the under-inclusiveness worry concerns whether or not a member of a certain sort is responsible for making others vulnerable, and therefore has duties of partiality to these members. Consider a member of a nation, such as the one I just discussed, who is indifferent to his role in the nation, or who takes his participation to be purely administrative in

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68 It is still possible that they owe us duties of partiality, insofar as they have contributed to our ongoing vulnerability to them, as members of the collective. It is difficult to see how this is possible in the scenario described, but I would not want to rule out the possibility.
nature. Such a member, it might be thought, cannot be said to have duties of partiality to his nation and co-nationals. We might arrive at this judgment via the responsibility clause of the vulnerability account: this member would prefer his co-nationals are not vulnerable to him in this way; he only creates these vulnerabilities by way of his participation in the just end of participating in the purely administrative tasks of organizing his life and community; and it would be overly burdensome for him to not participate in his nation in this way. Again, I think we ought to accept this conclusion. If there are members of a nation for whom the foregoing is true, then it is hard to see why we should think they owe their co-nationals duties of partiality. Indeed, given the circumstances, the best thing to do would be to release them from any such formal obligations at all, to the extent that this is possible.69

As it happens, I think cases of the sort I’ve just described are relatively rare in most nations. To be sure, there may be individuals who might not value their role in the nation, for various reasons. It is not uncommon, especially in less stable or poorly organized nations, to find people dissatisfied (or worse) with the state of their nation, or who vacillate between positive nationalistic sentiments and a desire to renounce their membership altogether. This lack of valuing may contribute to a weaker vulnerability, just as it would if, e.g., I do not value my relationship with my parents. However, it should be clear enough that one can nevertheless be vulnerable to another without valuing that relationship. And given the types of vulnerabilities that are applicable to members of a nation, I see no reason for the inference from a lack of valuing a relationship to the lack of vulnerability.

4 Conclusion

In this chapter, I have argued that the account of partiality that I put forth in the previous chapter can be extended, with certain adjustments, to the case of national partiality. In particular, I illustrated how the valuing and vulnerability accounts can accommodate both the vertical and horizontal features of national partiality. And I showed how these accounts can accommodate certain apparently problematic marginal cases.

69 Of course, they will still have a broad range of special obligations, such as the duty to pay taxes, in virtue of facts concerning their ongoing presence in a particular society. To see this, consider that I might owe county, city, or neighborhood taxes, even if partiality toward my county, city, or neighborhood is not appropriate.
On this latter point, one might object that by both allowing that the underlying justification for national partiality might extend to some non-members, and accepting that it will sometimes not apply to members, I have thereby failed to give an adequate explanation for the phenomenon of national partiality such as it is. This type of partiality, one might say, ought to explain why we have reason to prefer our co-nationals as such—if not because they are members, then for some other underlying reason that is perfectly co-extensive with it. Otherwise, I am just describing a generic form of partiality that happens to apply among co-nationals.

In reply to this objection, let me make three points. First, as I have previously mentioned, I doubt that these marginal cases are so widespread as to constitute a considerable weakening of national partiality in general. As I said, I suspect it is rather rare that outsiders are vulnerable in the relevant ways. Moreover, if it turns out to be true of a given nation (or as a wider phenomenon) that few insiders are vulnerable in the ways I have described, then I am willing to accept that partiality is absent or inapplicable in such cases. But then we ought to ask why we should find this result troubling. Ultimately, I think the fact that my account is not perfectly co-extensive with membership offers a more plausible account than the alternative.

Second, it does not follow from the fact that I have not given an account that perfectly maps onto members (and only members) of a nation that I have failed to give an account of national partiality. After all, the account provided does apply to a broad range of people with whom one shares a relationship of co-nationality, and does so in a way that captures something special, if not wholly unique, about that relationship. Moreover, the objection assumes that the phenomenon of national partiality involves its perfect alignment with membership; but as I said, this strikes me as implausible.

Third, it is important to note that this objection is likely to apply to virtually any account that seeks to locate the grounds of partiality in something apart from membership as such. That is, no matter what the ground of partiality is, there will be some cases—whether possible or actual—in which some non-members satisfy the condition and some members do not. By contrast, accounts that ground partiality in membership avoid this problem: in virtue of one’s being a member, one therefore has reasons of partiality. But this approach lacks explanatory power. After all, why should membership itself give rise to such reasons? Surely this is nowhere near normative bedrock; there must be some further ground. Thus, while the membership views
avoid marginal cases, this comes at the cost of being explanatorily weak. We must, therefore, weigh these costs against each other. In my view, given the relative scarcity of marginal cases, combined with the fact that it otherwise captures a quite broad range of the right cases, we have greater reason to adopt the view I have defended.

Let me conclude by pointing toward another resource for delimiting to whom reasons of partiality apply. In the next chapter, I will argue for another structural difference between national (or most forms of collective) partiality and the paradigmatic cases. I argue that some forms of partiality, like national partiality, are scope-restricted, which means that partiality is applicable only within a particular range of interactions or cases. I will postpone the argument until the next chapter. For now, it will suffice to note that the argument for scope restrictions can also serve as a further principled explanation for why outsiders do not have reasons of partiality toward group members. That is, even if we were to grant that the outsider and a given insider share a relationship, that relationship would be scope-restricted. And given the fact that they do not share a domain of interaction—such as through the shared institutions or collective, as co-nationals do with one another—all interactions between an outsider and any given insider would fall outside the scope of their relationship. Thus, the idea of scope restrictions could supplement certain of the foregoing arguments to rule out cases of over-inclusiveness.
Chapter 3
Scope Restrictions and National Partiality

1 Introduction

In the previous two chapters, I argued for a general theory of partiality based in valuing a relationship and creating vulnerabilities, and I showed how national partiality is likewise justified according to that theory. In the previous chapter, I outlined one important structural feature of many forms of collective partiality, including national partiality—namely, the distinction between vertical and horizontal partiality. In this chapter, I turn to another important structural feature—namely, the idea of scope restrictions. The argument of this chapter proceeds in three steps. First, I argue that some forms of partiality are restricted in scope. In brief, this means that some forms of partiality give rise to reasons only toward certain goods in certain contexts, and not in others. I then argue that, like these other forms of partiality, national partiality is also scope-restricted. Finally, I show how this distinction bears fruit. In particular, it allows us to avoid a persistent and otherwise decisive objection against the application of national partiality in war.

2 Scope Restrictions

Consider the wide range of relationships in which some form of partiality may be thought to be justified. We have already considered the paradigmatic cases of partiality—namely, between friends, romantic partners, and parents and children. But many of us also take ourselves to have reasons to confer special treatment on, e.g., those with whom we engage in certain shared projects, our colleagues, people in our local community, our co-unionists, and our co-nationals. Each of these relationships differs exhibits certain structural features that distinguish them from the paradigmatic cases. I discussed one such feature in the previous chapter—namely, the distinction between horizontal and vertical partiality. In each of these relationships, one might have reasons of partiality toward individual members (horizontal) as well as to the group as a whole (vertical). Of course, this is not to say that all of these relationships will give rise to one or the other type; for one thing, many of these relationships will in fact be purely instrumental, morally toxic, or otherwise devoid of significance to the parties within them. The point is simply
that this structure applies to all relationships of this sort—that is, all relationships of collective partiality.

These relationships also share a second structural feature—namely, that reasons of partiality to which they give rise are what I will call *scope-restricted*. To say that reasons of partiality are scope-restricted is to say that these reasons are applicable only with respect to certain interests and in certain contexts. For example, I have reasons of partiality toward my colleagues, which extend to their interests relevant to the particular relationship we share, such as those relating to our productive lives and our particular industry. Indeed, these reasons might be quite strong in some cases: they might give me reason to break otherwise significant promises to others, to divert financial resources to my colleagues instead of others, and so on. And yet these reasons of partiality arise only with respect to certain interests and within the context of our relationship as colleagues. Put differently, it is not as though all of my colleague’s interests have special salience for me. For example, I do not have reason to, e.g., break important promises to others or divert financial resources to him instead of others so as to promote his athletic or domestic interests, since neither of these interests falls under the purview of the relationship we share.

Moreover, even those reasons that do fall under this purview might cease to apply outside the context of the relationship. For example, even though I have reasons of partiality to promote my colleague’s work-related interests, these only apply within the context of our shared work life. I do not have reason to promote these interests of his when, for example, he takes another job in the same field, or even when he takes a second job doing similar work. In many cases, the context is limited to interactions via particular institutions, of varying degrees of formality, such as a government or other collective body; a system of laws, customs, or practices; and so forth. Those in relationships of this sort have reasons of partiality to act through these institutions that do not apply in the absence of such an institution (whether in general or in a particular situation). For example, the co-unionist relationship is governed in part by their shared membership in the union. Co-unionists therefore have reasons of partiality toward one another with respect to a narrow set of interests only when acting through or within that institutional arrangement—e.g., to
promote co-unionists’ productive and economic life in that particular domain.\textsuperscript{70} And, all else being equal, co-unionists do not have such reasons when the institution is not the means through which the goods would be promoted. So, while I may have reason to promote the economic life of my fellow unionists in the context of, e.g., collective bargaining as members of the union, securing certain economic goods as terms of our employment, and so forth, I do not have a similar reason to promote the broader economic life of my fellow unionists by helping them with consolidating their debts, refinancing their mortgage, or making investments. Though such issues do indeed constitute part of their economic life, they are not part of the institutional arrangement that forms the core of our relationship. These interests, therefore, fall beyond the scope of our relationship.

So, the scope of one’s reasons of partiality is restricted both to a certain set of interests and to a particular context of interaction. The particular type of relationship in question delimits the interests that have special salience; some interests will have special salience in some relationships and not others. And these interests only have special salience within the context of the relationship; outside this context, these interests ought to be considered only impartially.

Several other philosophers have recognized this feature of certain special relationships. Ronald Dworkin says, “my concern for my union ‘brother’ is general across the economic and productive life we share but does not extend to his success in social life, as my concern for my biological brother does.”\textsuperscript{71} Sarah Stroud makes a related point:

[I]f the cellist in my quintet needs a new bow and is too poor to buy one, I might be permitted to direct money that could otherwise go to famine relief to the cause of getting her one, in so far as that makes possible the continuation of a collective project in which I am engaged: playing the Schumann Quintet. But if she needs money for reasons unrelated to the quintet project, then it seems I can send my money to famine relief

\textsuperscript{70} I admit that this is a controversial view of unions, as some believe that unions are all connected by their aim to support oppressed and exploited people. I set this debate aside here.

without any cost to my (or our) projects; so...I would not have the same moral case for
directing it to her instead.72

These examples nicely illustrate on the restriction on interests. As Dworkin’s example
shows, the salient interests of one’s co-unionist are only those that are central to the
relationship—namely, those that are part of the “economic and productive life we share.” Many
of his other interests—e.g., his social life—are simply not salient to their relationship, and
therefore, fail to generate reasons of partiality with respect to them. Stroud’s example proceeds
in a similar fashion. The only interests of my quintet partner that have special salience for me are
those related to our relationship—or as Stroud would put it, those that form part of the particular
joint project we share. Her interests that do not concern this project are not eligible for partiality.

These examples can also be adapted to highlight the importance of context. Consider the
case of the cellist. While her musical needs have special salience to me within the context of our
relationship, these same interests lose such importance when they are outside the relationship.
For example, there are certain musical needs she may have that, though they would generate
reasons of partiality were they to be relevant to our quintet, they fail to do so when they are for
some entirely unrelated project.73

By contrast, certain other relationships do not seem to give rise to reasons that are
restricted in this way; call such reasons scope-unrestricted. The clearest case of this is the
reasons of partiality parents have toward their children. Intuitively, a father’s reasons of partiality
toward his son do not concern only matters relating to, e.g., developing and preserving their
special relationship: he also has reasons that extend to his son’s health and general welfare, life
prospects, happiness, education, and so on. The same seems true of intimate romantic partners
and friends. While I certainly have strong reasons to attend to those matters uniquely concerning
our romantic partnership or friendship—e.g., our mutual treatment of one another, our ongoing

72 Sarah Stroud, “Permissible Partiality, Projects, and Plural Agency,” in Partiality and Impartiality:
Morality, Special Relationships, and the Wider World, Brian Feltham and John Cottingham eds. (Oxford

73 However, see my discussion below, where I argue that Stroud’s particular version of this claim is
nevertheless too narrow. What I claim here is only that there are some musical needs that fall beyond the
scope. What I argue there is that Stroud’s interpretation of which needs fall beyond the scope is too narrow.
promises and agreements, etc.—my reasons of partiality also extend to other matters of my partner’s or friend’s personal life, including her general welfare, her future, and so on.

To the idea that some relationships are scope-unrestricted, one might object in one of two ways. First, one might argue that even in the closest relationships, such as those just mentioned, there are limits to the interests that can give rise to reasons of partiality. To put it colloquially, for certain interests—perhaps those concerning the person’s other relationships, private life, or other intimate affairs—it might make sense for us to say, “That’s none of my business.” The idea here is that the range of interests is indeed restricted, since some interests will always fall outside the scope of the relationship. A second, related objection holds that there are a number of interests that, though they generally have special salience and give rise to reasons of partiality, are silenced by the presence of other important duties. For example, suppose I am a police officer. While I generally have reasons of partiality toward my son with respect to his well being, these reasons lack salience when determining whether or not I ought to arrest him for a crime of which he is rightfully accused. Thus, reasons of partiality are sometimes restricted in scope in virtue of one’s social roles or other obligations.

Put differently, the objection is that other duties can silence our reasons of partiality with respect to a given interest, which means that such relationships are indeed at least partly restricted. I grant that in these cases these competing duties win out against our reasons of partiality; surely we ought to respect our beloved’s privacy, and surely police officers ought not to give special treatment to their children. But it does not follow that reasons of partiality are silenced in these cases; rather, it seems clear that they are merely outweighed. And their being outweighed is consistent with the relationship being scope-unrestricted. After all, our reasons of partiality can be outweighed by any number of other considerations; they do not enjoy lexical priority. Thus, for the objection to succeed, it must be the case that these other interests are not just outweighed but silenced. The main test to see whether interests are silenced or outweighed is to consider whether they can ever overcome competing duties of differing weights. For example, while the police officer has a duty to enforce the law fairly, I suspect few would object to the officer giving special treatment to his son with respect to a parking ticket or minor speeding violation, especially if it would come at great cost to her son’s well-being. And while I have a duty to respect my friend’s privacy that wins out against my concern for her private life, I surely have reasons of partiality (beyond my more general impartial reasons) to intervene once the
interest becomes significant enough—say, if her domestic situation becomes threatening. These two examples suggest that our reasons of partiality are indeed active in these cases, though they will be outweighed in a broad range of cases—e.g., if the police officer’s son is accused of a more serious crime. I therefore see little reason to accept that our reasons of partiality in these cases are silenced. At any rate, the core of the argument that follows does not rely heavily on the idea that some relationships are scope-unrestricted. It would not be devastating for my position were it to turn out that all relationships are scope-restricted after all.

With this contrast between scope-restricted and scope-unrestricted forms of partiality in hand, let me now highlight two further points. First, it does not follow from the fact that partiality in a given case is scope-restricted that such reasons are therefore weaker than in scope-unrestricted cases. Of course, they may sometimes be weaker: generally my reasons of partiality to the cellist in my quintet are much weaker, and would often be outweighed by, my reasons of partiality toward my romantic partner. However, this may not always be true. Indeed, my reasons to confer special treatment on my union brothers may, in certain contexts, outweigh some of my other reasons of partiality (e.g., to my friends or family), and they may even override certain demands of morality more generally, as Stroud pointed out in the cellist example. Thus, a given reason’s weight cannot be entirely determined by its scope.

A second important point is that determining the exact scope for a given relationship will often be difficult, given that the boundaries are in some cases quite vague. Often this is because it may be unclear which specific interests fall within the scope for a given relationship. Does the fact that the co-unionist relationship involves shared membership in a collective concerned with members’ economic and occupational lives give rise to reasons of partiality for one co-unionist to help another with tending to her work-related injury or learning new occupational skills, since such things could plausibly be thought to extend to her occupational life? While one’s personal investments are generally outside the scope of the co-unionist relationship, what about when

74 Indeed, the duty of privacy is, in an important sense, another reason of partiality: surely we have a stronger pro tanto duty to respect the privacy of those to whom we share a special relationship, especially one based on trust. So it makes sense that, among duties of partiality, the duty to respect privacy simply outweighs, but does not silence, our reasons of partiality concerning their well-being.
these investments are importantly tied to one’s role as a laborer? Moreover, some might be inclined to challenge the scope in a given case. For example, David Miller claims that one’s “collegial obligations extend to general human interests, so that if there are two students who need to be driven urgently to the hospital, and I can only take one, then…I ought to give priority to the one who belongs to my college”75 This claim appears to rest on his belief that the collegial relationships within certain colleges (i.e. his own) have a broader scope, perhaps (though this part is left unexplained) by virtue of their more tightly knit community. This strikes me, and I suspect many others, as implausible. But we need not resolve it here; while answers to these and other similar questions are necessary for rendering a precise verdict in specific cases, they are not required for the purposes of the present discussion, which seeks only to show that such scope restrictions do exist and can be explained by these general features of the relationships.

Another reason why it may be difficult to determine whether or not one has reasons of partiality in a given scenario stems from the fact that certain relationships—for example, among colleagues, which give rise to reasons of partiality that are scope-restricted—are often also inchoate friendships—a paradigmatically scope-unrestricted relationship. Consider once more the co-unionist from my adapted version of Dworkin’s example. As I said, qua co-unionist, I do not have reasons of partiality with respect to his economic affairs outside of the context of our co-unionist relationship; qua friend, however, I may indeed have such reasons—though perhaps such reasons in cases like these are quite weak in general. Thus, as scope-restricted relationships evolve in the direction of scope-unrestricted relationships, this will give rise to an expansion of the scope of the reasons of partiality that applies to them.

How do we know when the reasons of partiality in a given relationship are scope-restricted? A natural starting point is to look to those who have gestured toward this idea already to see how they have defended it. Unfortunately, Dworkin offers no explanation for why one’s obligations to one’s co-unionists are scope-restricted. Stroud, however, does offer an explanation for why members of a quintet have restricted reasons. On her view, one’s reasons of partiality in a given case are triggered by joint agency: acting together on a shared project gives individuals reasons to confer special treatment on those with whom they pursue that project, but only within

the parameters dictated by that project. This account essentially builds scope restrictions into the definition: for any relationship, reasons of partiality cease to apply outside the context of the project that gave rise to them.\textsuperscript{76}

While Stroud’s explanation of scope restrictions is appealing in certain respects, her account faces several problems. For one thing, as we saw in chapter 1, the projects-centered approach seems incapable of accounting for the existence of reasons of partiality in cases when I do not care about a given project (e.g., the deadbeat dad example). Relatedly, the requirement of joint agency seems to rule out any non-reciprocal reasons of partiality—again, the most obvious case here is between parents and children, but it perhaps also applies in cases of persistently incapacitated partners, or, more broadly, in cases where the individuals’ projects do not overlap with respect to a given action. Finally, Stroud’s way of characterizing the collective project—and so, therefore, the scope of partiality—seems far too narrow as it stands, since it would rule out cases in which one could benefit another in an area that falls just outside their particular project. For example, the collective project in her example is defined strictly as “playing the Schumann Quintet”, and she no doubt has reasons of partiality with respect to that shared project. However, it seems intuitively plausible that she also has reasons of partiality that extend just beyond that particular project—say, to help her work on a particular section of another piece she will soon perform as part of another ensemble. Of course, there will be certain interests of hers that fall too far beyond their particular relationship, as I argued above. The point here is that there are surely some interests of hers that fall outside the particular joint project, and yet seem to generate reasons of partiality.

In light of these issues, we should look elsewhere for an explanation of scope restrictions. In my view, the best explanation is to be found in both the broader justification for partiality in a given case, and the constitutive features of the type of relationship in question. Let us consider these in turn.

Recall that in the previous chapters, I argued for a two-part justification of partiality. The first part is what I called “the valuing account”: A has reasons of partiality toward B when A

\textsuperscript{76} Stroud, “Permissible Partiality, Projects, and Plural Agency,” p. 148.
values her relationship with B non-instrumentally, and subject to certain moral constraints. The second part is the “vulnerability account”. This account says that A has reasons of partiality toward B when A is morally responsible for having created or sustained general vulnerabilities in B.

Given the purely subjective nature of the valuing account, I doubt that it offers a suitable explanation of scope restrictions. After all, it would be strange if it turned out that the scope of my reasons of partiality toward the cellist in my quintet were restricted by the scope of what I value about her or our relationship. Were this the case, the mere fact that I have a particularly keen interest in the health of her investment portfolio—which, I assume, has nothing whatsoever to do with our quintet—would give me reason to insert myself into this part of her financial life. But it seems obvious that no such reasons exist, and they cannot be made to exist merely by the fact that I happen to value a given aspect of her life.

The vulnerability account, however, does seem to provide a helpful way of understanding scope restrictions. First, it helps us to understand the particular interests that are salient. Many of the vulnerabilities I am responsible for creating in my co-unionists seem limited to the economic and social roles we inhabit as members of a trade union. In ordinary cases, I am not responsible for the vulnerabilities that arise as a result of, say, my co-unionist’s family life. Thus, I do not have reasons of partiality toward him with respect to these interests. By contrast, many of the vulnerabilities we create in our most intimate relationships—i.e., between parents and children, close friends, or life partners—are typically widespread and ubiquitous. The vulnerabilities I create in my closest friends or my spouse, for example, are not limited to a particular context, nor are they limited to a certain sort of interest of theirs (or mine). This fact helps to explain why I have reasons of partiality that extend so broadly in these relationships (though notice that the valuing account will also do part of the work in many of these cases).

The second way of explaining scope restrictions appeals to the constitutive features of the relationship itself. In many cases, once we define more clearly what the relationship in question is about, or what it is based on, we will have an answer to the relevant interests and context. In a way, this seems to be what Stroud was hoping to achieve with her joint agency view: we simply consider the project around which our relationship centers, and this will tell us the extent of our reasons of partiality. While I reject the specific proposal Stroud offers, for reasons just discussed,
I nevertheless think there is something correct in the general approach of looking to what the relationship is centered on for guidance as to its scope. For example, it seems to be a constitutive feature of a close friendship that the various needs and interests of one’s friend always have some salience, and so give rise to (defeasible) reasons of partiality. And this fact does not seem to be some extraneous or contingent feature of friendship. Were this the case, there would be no reason to deny the label of “friendship” to a similar arrangement in which there exist reasons of partiality between the parties concerning only each other’s finances; and yet, I suspect few would be willing to call this a genuine case of friendship, in the morally relevant sense. This point helps to show that the boundless inclusion of one’s needs and interests in built into the very definition of what it means to be friends—it is, in other words, a constitutive feature of true friendship.

The same is not true, however, of many other relationships, such as those that exist among co-unionists, colleagues, and neighbors, among others. In contrast to friendship, these relationships are defined much more narrowly: both the co-unionist and colleague relationships are defined in terms of shared membership in a particular collective with a relatively restricted set of aims and interests, which focus, respectively, on members’ shared plight as laborers in a particular field, and their shared involvement in a collective project; the neighbor relationship is defined in terms of the relative proximity of residence and the needs and interests related to that particular community. As such, there are certain interests of the individuals in each of these cases that are clearly outside the scope of the relationship in question, some of which we canvassed earlier. Since these interests are not part of what constitutes the relationship in question, they do not give rise to special reasons for those with whom they share in that relationship to be partial with respect to those interests.

3 National Partiality

Let us now turn to the central question of this discussion: Is national partiality scope-unrestricted or scope-restricted? Put otherwise, are the reasons of partiality among co-nationals more like those that exist between parents and children or close friends, in that they extend to virtually all matters in that person’s life, or are they more like those that exist among members of a union or members of an orchestra, in that they extend only to those matters directly related to their co-membership?
The answer to this question depends on the type of national partiality in question. Recall from chapter 2 that there is an important distinction between horizontal and vertical partiality: horizontal national partiality concerns partiality toward our co-nationals, while vertical national partiality concerns partiality toward the nation as a whole, understood either as the collective or as the impersonal collective goods that have agent-relative value for us. My focus in what follows is scope restrictions on horizontal national partiality.

Horizontal national partiality has much more in common with the relationship among co-unionists than it does with the relationship between parents and children. Just like co-unionists, co-nationals share many important political projects and values within the context of which partiality is often appropriate. Of course, the scope of the co-national relationship is generally much wider than that of the co-unionist relationship: while the co-unionist relationship only extends across the economic and productive life the two share (as Dworkin puts it), the co-national relationship extends beyond these to include other matters concerning individual welfare, health, general safety, education, and so on; the precise extent of the relationship will be determined and constrained in each case by the specific constitution of the nation itself. And yet, despite this rather broad scope, partiality among co-nationals seems restricted in a way that partiality toward one’s child does not. In particular, unlike the parent-child relationship, though the broad range of interests of one’s co-nationals give rise to reasons within the context of the nation, these interests cease to give rise to such reasons outside that context.

To see this, consider the following scenario:

*Desert Island*: You and I are co-nationals who happen to be traveling on the same flight across the South Pacific, each of us taking completely independent vacations. Our plane crashes on a remote island, and you and I now find ourselves among the dozens of survivors, comprising many different nationalities. As we scrounge for survival, each of us finds ourselves in a position (though with no particular authority) of being able to divert certain scarce resources, which are necessary for survival, to some but not all of the victims. (Assume that everyone’s needs with respect to these resources are roughly the same.)

Does the mere fact that we share a nationality now give me special reason to allocate scarce resources to you over the others? (Does the mere fact that certain other survivors also share a
nationality give them such reasons to favor each other?) Am I permitted (or required) to help rescue you over any of the others? Most, I suspect, will say no. One view, of course, is that national partiality is unjustified in general when it comes to cases of this sort, no matter the particular story. This is roughly the cosmopolitan approach that we will see later on. But I think there is another response to this case that allows for a general endorsement of national partiality, and yet preserves the intuition that co-nationals in this case are not morally permitted to prioritize one another. The answer relies on scope restrictions: while our interests in survival and care are clearly relevant interests within the context of our nation and would give rise to reasons of partiality between us in that context, the situation in which we now find ourselves falls outside that context, in virtue of the fact that our co-nationality is completely accidental to the circumstances. Moreover, the underlying justification and constitutive features of the co-national relationship do not extend to cases in which we merely happen to share this connection, irrelevant though it is in the context. Put roughly, our co-nationality is not morally salient for partiality in this scenario: I no longer relate to you qua co-national, but rather qua individual—i.e., just as I relate to the other survivors of the accident. This conclusion applies to a number of other scope-restricted relationships—e.g., if, instead of being co-nationals stranded on a desert island, we were co-unionists, or played in a quintet together, and so on.77

But we would draw an entirely different conclusion if the relationship in question were scope-unrestricted. Suppose that instead of being co-nationals, you and I are siblings, close friends, romantic partners, or father and son. In any of these cases, our judgment would surely shift: it seems clear I do have special reason to allot scarce resources to you, and to prefer rescuing you over others. This is because these interests of yours are not restricted to any particular context. It is not the case that we merely happen to encounter each other here as siblings or friends, as in the co-national case.78 Indeed, the central feature of scope-unrestricted

77 For some of these cases, it won’t be the different context itself that rules out partiality, because the interest in question does not have special salience in any context. I think it is plausible that this is true of the members of a quintet, but we need not settle this point here.

78 Notice that this is true even if we modify the example so that we weren’t traveling together, and only discovered we were on the same flight after it crashed.
relationships is that they do not seem incidental in this way. This idea is supported by the fact that the underlying justification and the constitutive features of the relationship are essentially unrestricted: to take one example, the vulnerabilities to which a genuine friendship gives rise are widespread, and not limited to a particular context. That is just what a friendship is. But again, we would not say the same for the co-national relationship.

One important feature of *Desert Island* is that it is an example of co-national interaction in the absence of, among other things, any of the institutions that form part of the broader co-national relationship. However, if we change the example such that the co-national interaction in question is mediated through one of their shared institutions, we will get a different verdict.

*Desert Island Rescue:* Your plane crashes on a remote island, and you now find yourself among the dozens of survivors, comprising many different nationalities, some number of which are your co-nationals. There happens to be a small naval vessel in the vicinity composed of members of your nation’s Navy. Upon learning of the crash, this naval ship comes to rescue you and your other co-nationals. Unfortunately, they only have room and supplies for a limited number of additional passengers. They can take you and your other co-national survivors, or else a group of other survivors chosen at random.

I suspect few would deny that this crew has reasons of partiality to rescue their co-nationals, rather than a random group of survivors. But now suppose that instead of being a naval vessel, it was a random fishing vessel comprised of members of your nation. I think many would think the crew aboard this ship no longer has compelling reason to rescue only their co-nationals. Morality would require that they rescue on the basis of the morally relevant factors—for example, who is in most need of care, regardless of nationality.

One way of explaining this pair of judgments is that the Navy, unlike the fishing crew, is one of our nation’s shared institutions, and interactions between co-nationals via institutions they share take on a different character than interactions outside of those institutions. That is, these shared institutions can make a context that would otherwise be outside the scope of the

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79 Though of course one can imagine fanciful cases in which one discovers that another passenger is one’s biological brother. This mere biological relationship is not what I (or, I suspect, anyone) has in mind when they imagine the moral relevance of the sibling relationship.
relationship fall within it. This is not just limited to cases involving the military. Indeed, the
same is true with respect to certain other institutions we share, such as a health care system: we
have reasons to care for our co-nationals’ health via the institution we share that serves this
purpose; but we have no such reasons outside of that context. It might be thought that the
members of the institution in question—in our above example, the members of the Navy—are, in
an important sense, part of the nation itself. As such, this example might look like a top-down
version of vertical partiality rather than horizontal partiality. But notice that even other co-
nationals may have reasons of partiality of a relevant sort. That is, I have reasons of partiality to
promote and fund (e.g. with my tax dollars) the ongoing efforts of the Navy with respect to its
mission to help my co-nationals abroad—i.e., to promote the existence and efforts of the shared
institution. (The same can be said for other forms of international protection, such as embassies.)
I do not have such reasons to promote similar efforts by fishing crews who head out into
international waters. Thus, while it is true that, in this case, the members of the Navy encounter
their co-nationals in part as an arm of the nation, this does not exhaust the ways of understanding
the role shared institutions play in shaping the context of co-national interaction.

The previous example is one in which the actions of insiders to the relationship cause the
context to shift, thereby altering the reasons of partiality. But actions of outsiders to the
relationship can cause this shift as well. To see this, consider the following example:

_Terrorist Vacation:_ There are two neighboring, relatively isolated beach resorts: one
happens to be populated entirely by vacationers from Nation A; the other happens to be
populated entirely by vacationers from Nation B. By coincidence, two distinct terrorist
groups attack the two resorts: Group 1 attacks the resort populated by Nation A; Group 2
attacks the resort populated by Nation B. Furthermore, suppose that the terrorist groups
chose their respective targets because of the specific populations at those resorts: Group 1
wanted to attack members of Nation A; Group 2 wanted to attack members of Nation B.
As with _Desert Island_, both groups are in a position to divert scarce resources, attention,

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80 This is not to say that we wouldn’t also have reasons to care for their health when the institution in
question is sorely lacking, or when it fails in its efforts in certain ways.
and aid to some but not all of those in both victim groups who have been injured by the attacks.

While the example is (admittedly) unrealistic, the more basic question it raises is important: Does the fact that one’s nationality was central to the causal story explaining one’s predicament change the moral salience of the co-national relationship in that setting? I submit that it does: the fact that members of Nation A were attacked because they are members of Nation A creates a context for their co-nationality where there would not have been one in the absence of that aim. Indeed, this is part of what separates our judgment in Terrorist Vacation from that of Desert Island. In the former, but not the latter, the relationship becomes salient by virtue of the specific intentions of the attackers. As a result of this, these co-nationals have reasons of partiality toward each other, while they would not have had such reasons had they been targeted for some unrelated reason (e.g., mere opportunism) or found themselves in this scenario by happenstance (e.g., as in Desert Island). To be sure, this particular example is unlikely to arise, but the feature it isolates and highlights is much more pervasive. In the next section, I will argue that war provides a similar context in which the co-national relationship can become salient by virtue of the actions of others.

4 Scope Restrictions and War

The foregoing discussion has shown that scope restrictions are an important structural feature of national partiality. But this idea is more than just a basic feature worth recognizing; indeed, as I suggested at the outset of this chapter, this idea also allows us to sidestep one of the most common objections leveled against the application of national partiality in war.

Many proponents of national partiality believe that nations may give greater weight to the lives of their own citizens than to the citizens of the enemy state in the context of war. (I argue for this view in considerable detail in subsequent chapters.) One popular strategy for defending

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81 Notice that our judgments might shift slightly were the group’s composition more mixed—i.e., with some of Nation A and some of some other nation. In this case, the context of the co-national relationship is active, as it is in the purer case, but we might have reasons of a different sort to tend to those who were caught in the middle of an attack against us. It might therefore be that, all things considered, we do not have greater reason to attend to the needs of our co-nationals over the other victims.
this claim proceeds by analogy with other cases of justified partiality, such as the relationship between parent and child. It is worth considering an example of this in detail. Thomas Hurka considers a case in which a victim is attacked by an aggressor, and a third party is able to rescue the victim only by throwing a grenade that will kill, as an unavoidable side-effect, one innocent bystander. Hurka claims that, if the third party is not in any special relationship with the victim, then he is not permitted to throw the grenade. This changes, however, if the third-party is the victim’s father. In this case, he says, “It seems to me that he may throw the grenade, and may do so even if this will kill some number of bystanders greater than one. If he is not aiming at the bystanders but killing them collaterally, he may show some preference for his daughter.” Hurka then goes on to claim that this case is analogous to the partiality that co-nationals may show in the context of war: “when weighing its own civilians’ lives against those of enemy civilians it will merely collaterally kill, a nation may give some preference to the former.”

Several philosophers have challenged the sort of analogous reasoning at work in Hurka’s argument. David Lefkowitz denies the analogy between a parent’s reasons of partiality toward his child and one’s reasons of partiality to her co-nationals. In his view, in order to see whether or not national partiality is justified in war, we must test whether or not it is justified in non-war contexts. And for Lefkowitz, the proper non-war scenario in which to test the strength of national partiality is a case in which one can save a co-national at the cost of one non-co-national bystander collateral death.

As for Hurka’s non-war scenario, a variation on it more closely analogous to choosing between harm to compatriot or to enemy non-combatants would involve throwing a grenade that will kill one or even several foreigners in order to save one compatriot. I contend that such an act is not morally justifiable.

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83 Ibid., p. 62.
In other words, the mere fact that certain individuals share a nationality is insufficient to outweigh the competing moral demands concerning others in this kind of interpersonal case. Therefore, it cannot outweigh those same sorts of demands in war cases.

Cécile Fabre has raised a similar objection. She argues that what she calls “patriotic partiality” does not generate special permissions in regular, interpersonal cases, and so we can infer that it has no role to play in wartime cases either. To support her claim, she employs the following example:

Suppose that André, in the course of defending his life, has a choice between killing Carl and foreseeably killing Bernard, and killing Carl and foreseeably killing Werner, a German bystander who is wholly innocent of Carl’s wrongdoing. According to cosmopolitan justice he may not confer greater weight on Bernard’s life than on Werner’s simply on the basis that the former is, whilst the latter is not, a compatriot.\(^{85}\)

As with Lefkowitz, Fabre’s objection rests on the idea that national partiality is impermissible in certain ordinary, interpersonal contexts, and is therefore impermissible in cases involving similar harms in the context of war. Put differently, Lefkowitz and Fabre conclude that national partiality in the context of war is impermissible if and only if the same sort of national partiality could not be permissibly shown in a relevantly similar interpersonal context.\(^{86}\) If their claim is correct, Hurka’s view and others like it proceed by way of a faulty analogy to a mistaken conclusion.

There are several ways a proponent of Hurka’s view may respond to this type of challenge without giving up the core of the view. The first is to simply deny the intuitions pumped by these examples—i.e., to claim, contra Lefkowitz and Fabre, that one would indeed be permitted to save a co-national at the cost of a non-co-national bystander death in these ordinary contexts. After all, both Lefkowitz and Fabre appeal only to intuition here; and some

\(^{85}\) Cecile Fabre, *Cosmopolitan War*, p. 85.

\(^{86}\) Fabre does, however, grant that a certain kind of “patriotic partiality” is permitted in war, but it does not involve the sort of partiality with which we have been heretofore concerned (i.e., attributing special moral status on someone in virtue of shared membership in a nation.) Rather, it involves defending jointly-held rights, and thus makes no necessary reference to the moral importance of one’s co-national relationship.
serious defenders of national partiality may wish to push back against this judgment. Whether or not this approach will be successful depends partly on how one perceives the size of the bullet to be bitten: I suspect some of those sympathetic to Hurka’s view are likely not to be persuaded by the intuitions pumped by Lefkowitz’s and Fabre’s examples, and so would be content to resist their conclusions by denying the force of these intuitions.

However, let us grant that there is something compelling about these intuitions. There does seem to be something strange about preferring our co-nationals over foreigners in certain interpersonal contexts. While this might seem to concede Lefkowitz and Fabre’s argument, there is in fact another way of responding to this challenge that allows one to accommodate the claim that co-nationals are not permitted to be partial to one another in the non-war scenarios described above while also rejecting Lefkowitz’s and Fabre’s conclusion that co-nationals are not permitted to be partial toward one another in war. This approach begins with the claim, outlined in the previous section, that (horizontal) national partiality is subject to scope restrictions. (This alone suffices to show that national partiality is not perfectly analogous to parent-child partiality, which does not have scope restrictions, thus conceding the first part of Lefkowitz’s criticism of Hurka’s view.) This opens up the possibility that national partiality is permissible in some contexts and not others. Let us grant that national partiality is not permissible in the sorts of non-war cases imagined by Lefkowitz and Fabre. The question to ask, then, is whether or not the context of war renders the co-national relationship morally salient in a way that it does not in these non-war cases.

There seem to me good reasons to think that it does. First, consider that the context of the interaction in war is fundamentally different from other contexts: in its most basic form, war consists in a uniquely political confrontation between two or more political collectives, in which the individuals that comprise such groups encounter one another primarily (though of course not exclusively) as members of their respective collectives. Moreover, as we saw in the previous section, the context of the co-national relationship can change when the nation and its members is seen by the opposition as a particular target of harms or aggression. This is clearly true of
many wars, and one need not look far back in history for examples: the wars in the former Yugoslavia in the 1990s are a clear case of hostility on the basis of nationality.\(^\text{87}\)

Second, we can look at the grounds of partiality to understand the extent of the scope of national partiality. Examples like *Desert Island* and those stripped of any contextual features, such as the cases imagined by Lefkowitz and Fabre, seem not to create the sorts of unique vulnerabilities that characterize the co-national relationship; but the context of war does seem to do so. After all, one central feature of a political community like a nation is protecting certain of its members’ rights, and defending them from unjust harms posed by outsiders. Indeed, most clear cases of just war involve protecting a nation’s shared impersonal goods or shared political projects, which includes, among other things, a mutual protection of co-nationals’ interests and security.\(^\text{88}\) Given that these are so central to the makeup of the relationship among co-nationals, it seems right to conclude that they form part of the core set of vulnerabilities that co-nationals create and sustain in each other. Thus, when war threatens these rights, the relationship between co-nationals falls within its designated scope, and can therefore give rise to reasons of partiality not entirely unlike that which obtains between parents and children.\(^\text{89}\)

If this is correct, then we have *prima facie* support for the claim that war offers a uniquely salient context for the co-national relationship—that is, that the sorts of encounters in war on which we are focused in our present examples may indeed fall within the scope of the co-national relationship. This allows us to reject Lefkowitz’s and Fabre’s claim that the co-national relationship is insufficient for giving rise to reasons of partiality (i.e., of a similar sort to the same

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\(^{87}\) For an in-depth discussion of the role of nationality in these wars, see: Catherine Baker, *The Yugoslav Wars of the 1990s* (Palgrave MacMillan, 2015).

\(^{88}\) This claim is of course clearest to see if one endorses the view that the moral restrictions governing war apply in virtue of one’s membership in a particular collective; however, one need not endorse such a view to endorse this claim.

\(^{89}\) Interactions between non-co-nationals in the course of ordinary political life—e.g., individuals of one nation or state visiting or residing in a foreign nation or state, such as is assumed to be the case in a more concrete version of Lefkowitz’s and Fabre’s examples—would be mediated by various complicated and contingent facts about what is promised or perhaps expected upon granting entry into a given territory. Thus, even if it is in general true that a particular nation has special reason to prefer the security of its own citizens over non-nationals, non-nationals granted entry (temporary or otherwise) into the boundaries of the nation will usually be doing so under the agreement that they will be, for the proper duration of their stay, treated as though they were co-nationals. (One could imagine here certain analogies with temporary custody over non-biological children alongside one’s own biological children, for example.)
reasons to prefer one’s child) within the context of war. And, importantly, we may do so while also endorsing their claim that the co-national relationship may not be salient in many ordinary interpersonal contexts.

The broader upshot, then, is that by endorsing the idea of scope restrictions, proponents of national partiality can defuse otherwise powerful objections without sacrificing the central aspects of their view. To clarify, I do not intend to claim that Hurka or others who employ the analogous approach must endorse my account of scope restrictions in order to vindicate their view. As I have said, rejecting the intuitions guiding Lefkowitz and Fabre’s arguments, and holding instead that the co-national relationship is properly analogous to the parent-child relationship, is still a live option. Moreover, one may endorse scope restrictions—both in general or with respect to the co-national relationship—while disputing the location of the divide I have suggested for distinguishing what falls within and without the scope of the relationship. My argument here has sought only to show that scope restrictions are an intuitively plausible component of many forms of partiality, including co-national partiality, and to show that endorsing these restrictions offers a plausible way of avoiding specific powerful objections to particular defenses of national partiality.
Chapter 4
Partiality and Killing

1 Introduction

In the previous three chapters, I have offered an account of what justifies partiality—both in general and, more specifically, toward one’s nation and co-nationals. I have argued that we are permitted to do more for those with whom we stand in certain special relationships, subject to several constraints. This means that, among other things, I have reason to allocate certain resources to them instead of others, even those who might be in greater need; and I have greater reason to avoid causing them harm than I do to avoid causing harm to strangers. This is just what it means to be partial.

But the presence of partiality in a given case does not eliminate our more general moral reasons to others. Indeed, our reasons to, e.g., avoid harming others, or to give them aid, are just as weighty as ever. In some cases, however, these two sets of reasons must be compared: we need to know how these two sets of reasons weigh against each other. In short, the central question at this juncture is: just how much partiality can special relationships justify?

Much has been written on the question of whether or not our reasons of partiality may override certain of our positive duties of beneficence to others—for example, our duties to provide aid and famine relief to the global poor. The growing literature on global justice, for example, contains much discussion on the issue of balancing duties to our co-nationals against our positive duties of beneficence to those in need elsewhere in the world, especially those affected by severe poverty. While there is disagreement about the grounds and the extent of such partiality, many philosophers believe that we may indeed give some preference to our co-nationals over outsiders, though of course this is limited by a host of factors.

By contrast, very little has been said concerning the question of how to weigh our various duties to our co-nationals against our negative duties of non-maleficence to outsiders—in particular, our duties to avoid harming or killing them. While the issue of beneficence arises most naturally in discussions of global justice, the question of our duties of non-maleficence is especially pressing in the context of war, which generally involves risking, harming, or killing
many innocent people, some of whom are our co-nationals, but many of whom are not. Whereas
many philosophers accept that our duties to our co-nationals may in some cases outweigh our
duties of beneficence to outsiders, very few philosophers accept that we may prefer our co-
nationals when it comes to duties of non-maleficence to outsiders.

My goal in this chapter is to show that partiality can sometimes justify overriding certain
otherwise weighty negative duties to those with whom we share no special relationship in order
to satisfy duties, both positive and negative, that we have towards those with whom we do share
such a special relationship. As I will argue, this conclusion follows from endorsing certain
plausible assumptions about the relative base-weights of various duties, as well as what I will
show to be the most plausible account for how to determine the added weight that partiality
affords.

Before turning to the question of how to add weight to our existing duties, however, we
must first determine what those duties are. In the next section, I will canvass what I take to be the
two most relevant distinctions for our discussion—namely, the doctrine of doing and allowing,
and the distinction between opportunistic and side-effect killing.

2 Killing, Harming, and Aiding

2.1 Doing and Allowing Harm

A centerpiece of deontological ethics is the distinction between positive and negative duties. The
core positive duties are our duties to provide others with certain goods, such as securing their
basic interests—e.g., to food, health, shelter—and aiding them when unjust harms threaten to
befall them. Such duties therefore demand positive action from those bound by them: they
typically require that one performs some particular action.90 Furthermore, one fails in one’s duty
by not performing that action—assuming, of course, that the relevant action has not already been
performed or the duty otherwise discharged. By contrast, our core negative duties are our duties
to refrain from doing certain things to others—e.g., damaging their property, violating their
autonomy, or, more severely, seriously harming or killing them. Unlike positive duties,

90 The point here is intended to be agnostic on, and so compatible with, the idea that these are imperfect
duties.
respecting negative duties generally does not require positive action: one satisfies one’s negative duty to another by not performing some particular act or action (and fails in one’s duty by performing it).

The general distinction between positive and negative duties forms the structure of another basic distinction in deontological ethics—namely, between doing and allowing harm. Generally speaking, when one does harm, one might be said to infringe or violate another’s negative right against harm, whereas when one allows harm to occur, one might be said to infringe or violate another’s positive duty to rescue or aid. Whether or not these judgments are acceptable depends on the facts of the case; the point here is just that the two distinctions tend to align in this way.

Some deontologists deny that the distinction between doing and allowing harm bears any intrinsic moral significance. In certain cases, they claim, there is no morally relevant difference between killing (i.e. violating one’s negative right against being killed) and letting one die (i.e. violating one’s positive right to rescue). The canonical version of this claim comes out in the following pair of cases, first introduced by James Rachels:

Bathtub 1: Since he stands to gain financially from his nephew’s death, Smith enters the bathroom where his nephew is taking a bath and forces his head underwater, drowning him.

Bathtub 2: Since he stands to gain financially from his nephew’s death, Jones enters the bathroom where his nephew is taking a bath, notices he has already started drowning, and does nothing to aid him (even though such aid would require no sacrifice on Jones’s part).

In Bathtub 1, Smith violates his nephew’s negative right against being killed, while in Bathtub 2, Jones violates his nephew’s positive duty to rescue. According to Rachels, Smith and Jones act equally wrongly in both cases. The fact that Jones merely allows the death of the nephew

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doesn’t seem, on Rachels’s view, to make his action any less bad than Smith’s. Some may find the examples sufficient for rejecting the distinction between doing and allowing harm. After all, if Jones seems to act just as wrongly as Smith, and there are no other morally salient differences between the two cases, then it seems the mere fact that one was a doing and the other was an allowing does not itself make a moral difference.

One might deny that this shows that the distinction between doing and allowing is illusory. For one thing, it may seem as though the Smith and Jones case is over-determined, since the wrongness of their actions is captured entirely by their malevolent intentions regarding the boy’s death. However, even if one agrees that there is no important moral difference between Smith and Jones, it still does not follow that there is never any important moral difference between doing and allowing harm. For one thing, many other cases, particularly those in which the clearly malevolent intentions of Smith and Jones are absent, will show more clearly that killing is in general worse than letting die. However wrong it is to allow someone to die in a fire, it is surely worse to start the fire yourself, even accidentally; however wrong it is to let someone starve, it is surely worse to starve him yourself, even unintentionally.

Beyond looking at other examples, however, we might instead appeal to a more principled explanation for the moral difference between doing and allowing. Put broadly, the two types of duties make different demands of agents, and we should expect that this entails different thresholds for when morality can demand that agents must act in certain ways. Following Frances Kamm, Fiona Woollard has recently argued that the doctrine of doing and allowing serves as a principle that protects individuals from harmful imposition. By setting the moral threshold for doing harm sufficiently high, the doctrine protects victims from others’ behavior intruding on one’s right to one’s body. Similarly, the moral threshold for allowing harm is lower, since this protects agents—that is, the agents who would be required to perform positive duties of rescue, for example—from the undue intrusion of others’ needs on their own. In other words, the distinction between acts of doing and allowing harm turns on the extent of the demands each type of action places on the individuals’ bodies and actions.

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Of course, it does not follow from the above points that the constraint against doing harm will always outweigh that of allowing harm, nor that negative duties are lexically prior to positive duties. This is easiest to see when we compare relatively minor negative duties and relatively serious positive duties, such as in the following case:

*Trespasser:* Doug is drowning in a pond, and he will only survive if you throw him a life preserver. Fortunately, you see one close by; however, this life preserver belongs to Perry, who hasn’t consented to your using it. There isn’t time to ask his permission, and there are no other life preservers nearby.

Even though Perry possesses a negative right against your borrowing his life preserver without his consent, it is clear that Doug’s positive right to be rescued outweighs Perry’s negative right in this case. (You, or perhaps Doug, may owe Perry some amount of compensation, though I will set this issue aside here.) If negative duties were always lexically prior to positive duties, we would be forced to reject this result.

One might accept the result that negative duties are not lexically prior to positive duties, while holding that negative duties *of a given type* are indeed lexically prior to positive duties *of the same type*—in other words, that the constraint against doing harm of a certain type is lexical to the constraint against allowing harm. And yet, even when we consider a case in which the duties in question are sufficiently similar, it still does not seem that doing is always worse than allowing harm. Consider the following case:

*Trolley:* You see a trolley heading in the direction of five innocent people, who have been tied to the tracks by a madman. You can pull a lever, which will switch the train onto the branch-line track, thereby saving the five. But in doing so, one innocent person who was tied to the branch-line track by the same madman, will die.

Many people have the intuition that you are permitted to turn the trolley to rescue the five, even though this will involve killing the one on the side track as a result. In other words, it seems you are permitted to fulfill your positive duty to aid the five, even though this means violating your negative duty not to kill the one. In other words, you may do harm to the one in order avoid allowing the five to die. If negative duties were lexically prior to positive duties, we would be
forced to deny this result. Indeed, we would be forced to deny this result even if the number of lives saved by the switch were much higher—say, 10, or 100, or 1 million.

If negative duties are not lexically prior to positive duties, we should ask how to determine the relative weight of the two sorts of duties, in order to determine what the morally right action is in cases like *Trolley*. We know that, all else being equal, a single positive duty with an expected outcome of a certain type is less weighty than a single negative duty of the same sort—but how much less weighty? We know from *Trolley* that five positive duties of a certain sort are enough to outweigh a single negative duty of the same sort. But what if the former number is smaller: intuitively, in this scenario, one positive duty is not enough to outweigh one negative duty; but are two positive duties enough to outweigh that negative duty?

This is an important point, and we will consider it at greater length in the later sections of this chapter. As it stands, however, the question is underspecified. Even if we hold fixed that the positive and negative duties in question both involve a death—a failure to rescue in the first case and a killing in the second case—our answers will depend in part on the particular type of killing. Thus, before we can hope to gain any clarity on these issues, we must first examine the different thresholds for different types of killing.

### 2.2 Opportunistic and Side-Effect Killing

Not all types of killing are equally morally wrongful. Many philosophers endorse the doctrine of double effect (DDE), which distinguishes between intentional killing and allowing, and acts of killing and allowing that are merely foreseen. Generally speaking, intentional killing is more wrongful than merely foreseen killing. Some philosophers draw a further, related distinction between opportunistic and side-effect killings. In cases of opportunistic killing, the killer

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95 See, e.g., Quinn, “Actions, Intentions, and Consequences: The Doctrine of Double Effect”, pp. 344-50. Most who endorse this distinction also recognize a category known as *eliminative* killing. An act of killing is eliminative when its aim is to remove an obstacle or threat posed by another individual. In cases of pure eliminative killing, I achieve no direct benefit from your death that I would not have been able to achieve in your absence. Given that many standard cases of eliminative killing involve further features, such as the person’s liability for a threat they pose, I will set aside the issue of eliminative killing in what follows. It is worth noting, however, that some philosophers hold, implicitly or otherwise, that side-effect killing is
derives a benefit from his victim’s death that he could not have achieved in her absence. Cases of opportunistic killing generally involve the aggressor treating the victim (and, typically, her body) as a means to his (i.e. the aggressor’s) ends. This is what makes opportunistic killing more objectionable than side-effect killings: in these latter cases, the killer derives no benefit from the death of his victim that he could not have achieved in her absence.

Some readers might take the DDE to be the relevant moral distinction; however, I think there is greater reason to center our discussion on the distinction between opportunistic and side-effect killing. For one thing, the idea of opportunistic killing allows us to employ a morally important feature that the DDE omits—namely, that in such cases the victim has been used in a way that is particularly morally objectionable. What makes opportunistic harms especially wrongful is not essentially a fact about the aggressor’s intentions or mental state at a given time; rather, it is a fact about the victim’s causal role in the sequence in question. And this strikes me as more closely tied to our intuitive understanding of the duties we have, and our reasons for thinking doing harm is in general worse than allowing harm. That is, just as the doctrine of doing and allowing protects individuals against harms being imposed on them for the benefit of others, so the distinction between opportunistic and side-effect killing protects individuals against harms being imposed on them in the service of others’ ends. Of course, I do not mean to suggest that the DDE has no role to play at all in our moral judgments, or that it is wholly disconnected from these other moral constraints. I do believe that intentional harming is generally worse than merely foreseen harming. However, to simplify the discussion, I will set it aside in what follows. (In section 3, devotees to the DDE may find it useful to employ DDE-type language in place of opportunistic/side-effect language. I suspect the main arguments will, for the most part, survive this substitution.)

Let us consider more closely the relationship between opportunistic and side-effect killing. For the reasons suggested above, side-effect killing is easier to justify than opportunistic killing. Actually a species of eliminative killing. (See, for example, Seth Lazar, *Sparing Civilians* (Oxford University Press, 2015), chapter 3.) This is so, they argue, in virtue of the fact that in both types of cases, the killer derives no benefit from killing his victim that he would not have been able to achieve in her absence. Yet, while it is true that eliminative and side effect killing share certain commonalities, such as the one just noted, they are nevertheless importantly morally different.
killing. But there are several ways in which all else may not be equal in a given scenario. I want to highlight three such ways: the presence of liability or responsibility; aggregation; and reasons of partiality, which will be the focus of the remainder of this chapter. First, if an individual is liable or responsible for a given threat—e.g., through causal responsibility for initiating or continuing the threat, or forgoing a costless opportunity to remove himself from posing a threat or obstruction—it is much easier to justify harming him. I will set the notion of liability aside for now, though it will be central to our discussion in the next two chapters. For the rest of this chapter, I will assume that all the individuals the harming of whom we are attempting to justify are not liable to that harm. Next, notice how this relative ordering changes when the aggregate numbers of individuals changes. As we saw in Trolley, even though negative duties to avoid side-effect killing are in general of greater weight than positive duties to rescue, when enough positive duties to rescue are aggregated, they can together overcome the weight of the negative duty against side-effect killing. Finally, this relative weighting can be altered by the presence of a relationship of partiality. After all, partiality just is the view that we are sometimes permitted to do more for those with whom we share certain special relationships. But this raises a series of questions: Does it allow us to do more only when the other duties—the duties we have to others that would be infringed by our acting partially—are of a certain type? Does it allow us to do a set amount more, or is it a more complicated function? These are the questions to which I shall now turn.

3 When does partiality apply?

Let me begin with a note on the methodology I employ in what follows. My approach to comparing the added weight of partiality against other moral duties consists in employing rough ratios between various types of action and a fixed added weight in favor of partiality. This type of mathematical discussion can quickly become confusing. To help show the ideas more clearly, I have chosen to illustrate them with stacked bar graphs. Each graph illustrates a pair (or trio) of relevant duties that can be fulfilled or infringed in a given scenario. The x-axis of each graph

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96 The same ordering applies when comparing cases of allowing one to die as a side-effect and allowing one to die opportunistically. Since I do not consider examples of this sort in this chapter, I will set this point aside for now.
contains the relevant duties to be compared. The y-axis measures the overall weight of the duties: the taller the bar, the greater the weight of the duty, and therefore, the more reason an agent has to perform the action that fulfills that duty. Bars of equal height illustrate equally weighty duties. In such cases, the agent must employ some other means of determining what ought to be done—e.g., a fair decision procedure, like flipping a coin. The tallest bar in a given graph represents the duty (or set of duties) the agent has most reason to defend or avoid violating. The duties represented by the shortest bar, therefore, may be permissibly infringed in order to defend or avoid violating the duties in the taller bar. A darkened bar stacked atop another bar represents the added weight from partiality.

While illustrating my arguments with graphs has the advantage of clarity, it also involves what might be viewed as a rather controversial, or perhaps even misguided, approach to answering the philosophical questions. For example, some may be inclined to think that it renders too precise what are fundamentally vague comparisons. But I do not mean to defend any precise ratios or precise values; indeed, I am skeptical that any such precision is possible. Rather, my aim is only to show one plausible way of understanding these comparisons. Moreover, as will soon be clear, the most central claim is about the structure of partiality: the core conclusions I draw do not rely on any precise ratios, and are amenable to slight shifts according to the reader’s differing intuitions. (Depending on the extent and nature of the changes, however, some of the minor conclusions may no longer follow.)

Let us begin by sketching a broad claim to serve as our starting point. As we have already seen, it follows from the fact that partiality is sometimes justified that we are sometimes permitted to prefer those with whom we share certain special relationships over others. The most natural way of putting this is that we are sometimes permitted give some amount of extra weight to their interests or rights. This is, roughly, what I shall call the Extra Weight Thesis:

*Extra Weight Thesis:* The existence of a relationship of partiality generates extra weight in favor of fulfilling one’s duties to the person with whom one stands in a special relationship. If the weight of one’s impartial duties is \( x \), then the weight of one’s duties

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97 All the examples we will consider here are what are often called ‘forced choice’ scenarios, in which an agent must choose between two *pro tanto* wrongful actions.
from partiality is either \( x + n \), where \( n \) is some set positive amount; or \( xn \), where \( n \) is a multiplier function.

On this view, our duties to those to whom we are permitted to be partial are understood as a positive function—either additive or multiplicative—of our more general impartial duties we have to everyone. For simplicity, in what follows, I shall refer to the overall weight of our duties to those to whom we are partial as our partial duties, and the overall weight of our duties to others to whom we are not partial as our impartial duties.

So, on this view, if the impartial base weight of a duty to, e.g., one’s spouse and a duty to a stranger are equally weighty, the extra value from partiality toward one’s spouse, \( n \), combines with the impartial duty and at least serves to break the tie in favor of fulfilling that duty, though on most views it can justify much more than just this. Of course, competing duties will often have different base weights; some duties are just more important than others. Thus, we need to know the precise amount of \( n \) in order to know whether or not, e.g., \( x + n > y \)—that is, whether or not the presence of partiality combined with a less weighty impartial duty can overcome a weightier impartial duty to an outsider.

But before we can determine the value of \( n \), we should consider whether \( n \) applies in all possible scenarios, or if it is silenced in some cases and active in others. While there are many possible views, let us look closely at what I take to be the three most plausible—namely, the Impartial Duty Relativity View, which holds that extra weight from partiality may not be added to any of our duties of partiality when the duties we thereby infringe involve certain kinds of impartial duties to others; the Partial Duty Relativity View, which holds that extra weight from partiality does not apply to certain types of duties; and the Particular Combination View, which holds that extra weight from partiality does not apply when our choice is between a particular combination of a duty of partiality and an impartial duty. Let us take these in turn.

### 3.1 Impartial Duty Relativity View

The first view holds that the presence of the extra weight from partiality in a given scenario depends on the kinds of duties we have to the outsider(s) that would be infringed by our fulfilling the duty to the person with whom we stand in a special relationship. Call this the Impartial Duty Relativity View:
I am inclined to think that this [duty] excludes any form of partiality towards compatriots […] I am also doubtful that one would be justified in infringing a stranger’s rights in order to avoid infringing a compatriot’s. I don’t think it would be justifiable to switch the trolley from a track on which it was hurtling towards a compatriot on to a track on which it would hurtle towards a foreigner. Nor do I think, if one takes the view that when the difference between the numbers on the two tracks becomes large enough, one ought to switch the trolley, that there should be any additional weighting in favour of compatriots.98

98 David Miller, “Reasonable Partiality Towards Compatriots,” *Ethical Theory and Moral Practice* 8 (2005): 74-5. Miller goes on to say, “If one should switch the trolley to kill one in order to save ten, then the identity of the ten and the one is irrelevant. At this level, morality appears to me to require strict impartiality at least as far as nationality is concerned.” Miller’s claim about the identity of the ten and one being irrelevant might suggest a view according to which extra weight from partiality is silenced regardless of the sort of duties—i.e., whether the duties are positive or negative. That is, if there are ten foreigners on the main track and one co-national on the sidetrack, Miller seems to think that turning the trolley toward one’s co-national ought not to affect the judgment of what is permissible to do. If this were true, then Miller would have a much more restrictive view than I have attributed to him here. But I think this cannot be his view. For one thing, the discussion at this part of his essay centers exclusively on negative rights. It would be a much broader claim, which he seems to deny elsewhere in the essay, to extend the idea of silencing partiality to positive duties of rescue as well. I think a more natural reading of the claim concerning the irrelevance of identity of the ten and one is that it does not matter that one or more of the ten are our compatriots, and that the one on the sidetrack is a foreigner, rather than a broader claim that it never matters.
To put Miller’s point slightly differently, the fact that we owe the foreigner a negative duty to avoid side-effect killing is enough to silence any extra weight from partiality to our positive duties of rescue to our compatriots. Thomas Pogge suggests a similar view:

It is morally more important to stop injustices and other wrongs committed against our compatriots than to stop such injustices and wrongs committed against foreigners by third parties; and, more generally, it is morally more important to attend to the needs of our compatriots than to give like assistance to foreigners. In the other case, however, when the undue harms foreigners suffer are our own doing, foreigners and compatriots are on a par.99

Pogge claims that positive duties to compatriots take priority over positive duties of a similar sort to outsiders. I assume this point also holds a fortiori when the duties to our compatriots are negative duties, since those duties are weightier in general. But, he says, our negative duties to outsiders are no weaker than (at least) our negative duties to our compatriots. In other words, there is no extra weight from partiality when the relevant duties to outsiders are significant negative duties, such as the duty to avoid side-effect killing.100

Given its relative popularity, let us focus for now on this particular version of IMPARTIAL DUTY RELATIVITY. Comparing Figures 1 and 2 below will help us to see more clearly what the view allows: in Figure 1, extra weight from partiality is applicable in virtue of the fact that the duty to the stranger (which would be infringed by acting so as to fulfill the partial duty) is a positive duty. By contrast, in Figure 2, any extra weight from partiality is silenced in virtue of the fact that the duty to the stranger (which would be infringed by acting so as to fulfill the partial duties) is a negative duty of a particular sort—i.e., to avoid side-effect killing. (The same would

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in such cases what the identities are.


100 Pogge does not explicitly consider cases in which we must choose between fulfilling positive duties to compatriots and negative duties to foreigners—e.g., the case of turning a trolley away from a compatriot and towards some greater number of foreigners. This is perhaps because these cases are comparatively rare in the discussion of world poverty, which is his focus in this discussion. I take Pogge’s view here to center on the importance of these duties to outsiders, so I strongly suspect he would rule out partiality’s application in such cases as well.
be true were it an opportunistic killing instead.) Notice that it is the structure of these cases that is important here; the amount of extra weight shown is arbitrary and purely to illustrate the general structure.

While it certainly has some intuitive appeal, IMPARTIAL DUTY RELATIVITY generates implausible conclusions. Consider first this variant on Trolley:

*Lesser Evil Trolley:* Same as Trolley, but there are two sidetracks. My sister is strapped to side-track A, while a stranger is strapped to side-track B. I must divert to either A or B in order to avoid the deaths of five innocents on the mainline track.

This example, prior to any extra weight from partiality, is illustrated in Figure 3 below.
Let us assume the view suggested by Miller and Pogge—namely, that partiality ceases to apply when the impartial duties are negative duties to avoid side-effect killing. There are three relevant duties in this case:

(1) the negative duty to my sister to avoid side-effect killing;
(2) the positive duties to the five on the mainline; and
(3) the negative duty to the stranger to avoid side-effect killing.

In order to know what we have most reason to do, we must make the following three pairwise comparisons: (1) and (2); (1) and (3); and (2) and (3). Let us consider these in turn.

As we have just seen, according to IMPARTIAL DUTY RELATIVITY, positive duties to strangers do not silence extra weight from partiality. Therefore, in the comparison between (1) and (2), the negative duty to my sister receives extra weight from partiality, since the duties that are infringed by fulfilling this negative duty to her are mere positive duties. Therefore, (1) outweighs (2). However, according to IMPARTIAL DUTY RELATIVITY, negative duties to strangers do silence extra weight from partiality. Therefore, in the comparison between (1) and (3), there is no extra weight from partiality, since the competing duty is a negative duty to a stranger. Therefore, (1) and (3) are equally weighty. Finally, in comparing (2) and (3), since five positive duties to rescue are weightier than one negative duty to avoid side-effect killing, (2) outweighs (3).
Assuming transitivity, we would expect that since (1) outweighs (2), and (1) and (3) are equally weighty, then (3) should also outweigh (2).\footnote{Some philosophers have raised objections to the application of transitivity in contexts such as these. See Larry Temkin, “Intransitivity and the Mere Addition Paradox,” \textit{Philosophy and Public Affairs} 16 (1987). I doubt these objections stand in the way of the particular point I aim to raise here, so I will set them aside.} But as our comparison between (2) and (3) shows, this is not the case. Instead, the above shows that (1) outweighs (2), (2) outweighs (3), and (1) and (3) are equally weighty. Of course, this fails to satisfy transitivity: if we were to try to determine what I ought to do in this scenario, we would find ourselves stuck in an inescapable loop, since none of the options outweighs both of the remaining options.

This conclusion seems to me clearly mistaken. Absent any special reasons, we should expect that such extra weight will satisfy the requirement of transitivity. More generally, it seems intuitively clear that I may save my sister over saving a stranger, even though this involves killing that stranger as a side effect. Samuel Scheffler seems to agree with this verdict in a similar case:

[I]t may be thought that one's negative duties to one's associates take a certain precedence over one's negative duties to others in cases where the two conflict. So, for example, if one is driving a runaway trolley as it approaches a fork in the track, and one must either steer it onto the branch on which one's brother is trapped or onto the branch on which a stranger is trapped, then, on this view, one ought to do the latter.\footnote{Samuel Scheffler, “Families, Nations, Strangers”, Lindley Lectures (University of Kansas: 1994): 53.}

Figure 4 below illustrates this idea.
Consider another example to help illustrate the problem with IMPARTIAL DUTY RELATIVITY:

*Trolley 3:* Just like *Trolley*, but instead of five people strapped to the mainline track, there are only four, while there is (as with *Trolley*) one person strapped to the branchline track.

Suppose that the weight of the aggregated positive duty to save four strangers is just slightly less than the weight of the negative duty to avoid harming a stranger as a side effect. If this is indeed true, then we should not turn the trolley onto the branchline track, since the weight against that sort of harm is greater. Now suppose that one of the four on the mainline track is a member of your close family—say, your mother or father. Intuitively, this immediately changes the weights: while rescuing four strangers was just slightly less weighty than the duty not to harm a stranger as a side effect, surely the duty to rescue three strangers and a member of one’s immediate family is enough to tip the scales in favor of that action. If one endorses IMPARTIAL DUTY RELATIVITY, however, this conclusion does not follow, for the impartial duty is a negative duty to avoid side-effect killing, which silences any possible extra weight for the partial duties. Again, this seems to be the wrong conclusion.

Figures 5 and 6 illustrate these points. Figure 5 represents *Trolley 3* in its initial form, and, incidentally, the overall judgment of the proponent of IMPARTIAL DUTY RELATIVITY even after we learn about the special relationship. Figure 6, by contrast, represents *Trolley 3* once
partiality has been taken into consideration—a conclusion that, in my view, better represents our intuitions about such cases.

I have so far considered only the particular version of IMPARTIAL DUTY RELATIVITY I have attributed to Miller and Pogge. But one might wonder whether different versions of IMPARTIAL DUTY RELATIVITY fall prey to the same objections. One alternative version of this view holds that partiality can apply when the competing duties are positive duties to outsiders, but most negative duties to outsiders—that is, not only those involving duties to avoid killing or seriously harming, but also other important negative duties, such as the duty to avoid interfering with important liberties—silence the extra weight from partiality. Javier Hidalgo suggests a view like this in his discussion of the role of associative duties in immigration:

It does not seem that the duties to refrain from harming or wronging other people merely outweighs the relevant associative duty. Instead, it appears that the associative duty does
not even count as a consideration in favor of violating these negative duties. That is, the associative duties in these cases are silenced.\textsuperscript{103}

A less restrictive version of this view holds that the extra weight from partiality is only silenced when the duties to outsiders are of the most extreme sort—i.e., the negative duty to avoid opportunistic killing—but this weight still applies when the duties to outsiders are other forms of negative duties, such as the duty to avoid side-effect killing.

Unfortunately, the very same difficulties arise for both of these views that beset the previous version of the view. I will focus on the latter view, since it is the less restrictive of the two, and therefore seems \textit{prima facie} more likely to succeed. But the arguments here apply, \textit{mutatis mutandis}, to both of these alternatives.

First, the issue concerning pairwise comparisons and transitivity would still apply in cases in which I must compare:

1. a negative duty to avoid opportunistically killing someone with whom I am partial;
2. a positive duty to rescue some large number of strangers; and
3. a negative duty to avoid killing a stranger opportunistically.

As with the previous case, this will likewise yield an intransitive conclusion. Moreover, it seems intuitively clear that, in certain scenarios involving these duties, I should give greater weight to the person with whom I share a special relationship. To see this, consider the following case:

\textit{Trolley Bridge Partiality}: A runaway trolley is hurtling down the track toward a massive number of innocent people who are trapped and incapable of moving out of the trolley’s path. (The reader is invited to stipulate a number of people that would render their aggregate deaths sufficiently catastrophic.) You are on a bridge that overlooks the trolley. Next to you are two bodybuilders. If you were to push one of them onto the tracks in front of the speeding trolley, his size would be sufficient to stop the trolley from killing the group of innocents, but he would die as a result. One of the bodybuilders is a stranger; the other is your brother.

Once we stipulate that the number of people trapped is sufficiently high, doing nothing and allowing them to die is not a morally permissible option. At that point, you have most reason to rescue the innocents, which entails killing opportunistically one or the other bodybuilder. Do you have greater reason to kill your brother or the stranger? Some, like defenders of IMPARTIAL DUTY RELATIVITY, may claim that you ought to flip a coin to decide between the two. That is, you are not permitted to prefer your brother to the stranger. But this seems intuitively wrong. It is certainly true that significant justification is required to overcome the weight of the duty not to opportunistically kill someone. But it is also the case that significant justification is required to subject someone with whom we stand in a special relationship to that same sort of harm as well. In other words, just as partiality permits us to do more for those with whom we are partial, it also sets the bar higher for what harms we may permissibly inflict on them. By insisting that partiality is inapplicable here, IMPARTIAL DUTY RELATIVITY effectively denies this latter point. Notice that even a small amount of partiality would be enough to tip the scales in favor of your brother, but this view denies it. See Figure 7, where, for the sake of space, I have left off the extra weight of partiality atop the first bar, opting instead for a symbol meant to show that some amount of extra weight belongs there.
3.2 Partial Duty Relativity View

These arguments suffice to demonstrate the implausibility of IMPARTIAL DUTY RELATIVITY. Let us turn to another possible view, which takes the opposite approach. This view holds that the weight of partiality is not relative to the particular sort of duties to strangers, but to the particular sort of duties we have to those with whom we stand in a special relationship. Call this the Partial Duty Relativity View:

**PARTIAL DUTY RELATIVITY**: Whether or not the extra weight from partiality applies to the duties we have to those with whom we stand in a special relationship depends on the type of duty it is. When the duty to this person involves certain significant duties, partiality is silenced.

As with IMPARTIAL DUTY RELATIVITY, defenders of this claim must indicate where the threshold for partiality’s applicability is to be placed. One version of this view might take Miller’s argument and apply it to the other side of the scenario. That is, perhaps partiality ceases to apply when the duties to our relative are above a certain level. Just as before, we need not settle this question here.

One feature of PARTIAL DUTY RELATIVITY is that it avoids the central problem that beset IMPARTIAL DUTY RELATIVITY. Unlike that view, PARTIAL DUTY RELATIVITY does not have difficulties with transitivity, since whether or not the extra weight is added is just a function of the type of duty to which it would be added, and doesn’t concern any of the other duties at play in the scenario. In other words, we only need to know what type of duty we have to our relative, beloved, or friend; partiality either applies or it doesn’t; and then we weigh it against the alternative duties, whatever they happen to be. Transitivity is therefore guaranteed.

But with this improvement comes a significant cost. As I briefly mentioned above, we tend to view partiality as not only generating greater reasons to give aid to those with whom we stand in certain special relationships, but also greater reasons to avoid harming them. And the more serious and significant (viewed impartially) the harm, the greater reason we have to avoid bringing about that type of harm to our relative. While anyone can ask of a given harm “How could you do that?”, a central feature of special relationships is that it renders perfectly appropriate the personalized charge of “How could you do that to me?” It therefore seems at
odds with our commonsense understanding of our special duties to suggest that they are rendered inapplicable once the type of harm in question is significant enough. On the contrary, it is precisely because significant harms are so significant that we should prefer not to bring them upon our relatives.

To put the challenge differently, it is not clear why the significant weight of, e.g., opportunistic killing should preclude partiality’s application. Recall Trolley Bridge Partiality and Figure 11 above: it seems exactly backwards to hold that since the type of harm that you would be forced to bring against your brother is of a certain sort, you are therefore required to save the stranger, or else to flip a coin to decide between them. This conclusion shows that Partial Duty Relativity must be false.

3.3 Particular Combination View

The third and final view worth considering is what I shall call the Particular Combination View:

**PARTICULAR COMBINATION:** Whether or not the extra weight from partiality applies to the duties we have to those with whom we stand in a special relationship depends on the particular combination of these duties and the duties to strangers. When the partial duty is a positive duty to rescue (or weaker), and the impartial duty to a stranger is a negative duty to avoid opportunistic killing, partiality is silenced.

An example will help bring this out.

*Trolley Bridge Partiality 2:* A runaway trolley is hurtling down the track toward your brother. You are on a bridge that overlooks the trolley. Next to you is a bodybuilder who, if you were to push him down onto the tracks in front of the speeding trolley, would die while stopping the trolley from killing your brother.

I suspect most will agree that you are not permitted to throw the bodybuilder onto the tracks to save your brother. Whatever the appropriate amount of extra weight in favor of rescuing your brother here, the negative duty to avoid opportunistic killing is simply too important to be

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104 In theory, Particular Combination could accommodate any number of combinations. But it is most plausible when we focus on the starkest contrast between duties, which is what I have done here.
outweighed by that comparatively weak duty. A defender of PARTICULAR COMBINATION might cite our judgment in this case as evidence of the truth of their view: when the combination is between a positive duty to rescue a relative and a negative duty to avoid killing a stranger opportunistically, the latter will always win out because extra weight from partiality atop the former is silenced. This case is modeled in Figure 8 below.

![Figure 8](image)

Positive Duty (save my brother)  Negative Duty (avoid opportunistic killing of a stranger)

However, this case does not ultimately show us that partiality is inapplicable when these acts are combined. It could instead be the case that the extra weight from partiality, whatever it turns out to be, combined with a positive duty to rescue is simply too weak to overcome the very significant base weight given to duties to avoid opportunistic killing. This is shown in Figure 9 below.
Thus, a demonstration of the truth of PARTICULAR COMBINATION would require a case that cannot be explained as an instance of the base weight of opportunistic killing trumping the sum of the base weight of the positive duty to rescue and the extra weight from partiality. The following case shows this:

*Trolley Bridge Partiality 3:* A runaway trolley is hurtling down the track toward \(x\) people who are tied to the tracks. You are on a bridge that overlooks the trolley. Next to you is a bodybuilder who, if you were to push him down onto the tracks in front of the speeding trolley, would die while stopping the trolley from killing these \(x\) people.

I invite the reader to stipulate an appropriate value for \(x\) such that it is just shy of the tipping point for justified opportunistic killing—that is, \(x+1\) would justify pushing the bodybuilder, but \(x\) does not. For simplicity, let us assume that \(x\) is 15 people. As it stands, then, you are not justified in pushing the bodybuilder. Now assume that one of the 15 is your brother. According to PARTICULAR COMBINATION, since the duty in question is a positive duty to rescue as against a duty to avoid opportunistic killing, partiality does not apply. This means that the fact that he is your brother cannot tip the scales in favor of pushing the bodybuilder. But this seems intuitively wrong: the fact that he is your brother surely counts for something; and, I submit, it must make as much of a difference as one additional person being tied to the tracks. Indeed, I suspect most will think the fact that he is your brother could make much more of a difference than that of a
single person. The point, however, is simply that PARTICULAR COMBINATION denies that this fact can change what you are permitted to do here. This is surely implausible.

A defender of PARTICULAR COMBINATION might reply that cases of this sort are importantly different, since they involve aggregating positive duties as against the duty to avoid opportunistic killing. Once we aggregate duties, they say, the thesis no longer applies so cleanly; it is only meant to apply in one-versus-one cases. That is, it is only applicable when we are comparing one positive duty to a relative against a duty to avoid opportunistic killing of a stranger. But if this is the claim, then I fail to see how the defender of PARTICULAR COMBINATION can separate their view from those competing views according to which the base weight of the duty to avoid opportunistic killing is simply so great as to trump any positive duty, even once the extra weight from partiality has been added. If all the defender of PARTICULAR COMBINATION wants to achieve is the conclusion that partiality in one-versus-one cases of this sort cannot overcome the gravity of opportunistic killing, then defenders of other views can agree with them. In this case, it is not clear what PARTICULAR COMBINATION has to offer that other views cannot accommodate much more easily and with much less cost.

4 How much extra weight does partiality allow?

The foregoing illustrated how each of the three views just canvassed—IMPARTIAL DUTY RELATIVITY, PARTIAL DUTY RELATIVITY, and PARTICULAR COMBINATION—is beset with difficulties. While there are other possible views, I think these arguments suffice to show that, in terms of its application, partiality is unrestricted: it can apply regardless of the types of relevant duties at work in the scenario.

Our next task is to determine just how much extra weight partiality gives. Put in the language of the Extra Weight Thesis we sketched earlier, we need to determine the value of \( n \). In order to do that, however, we must first determine whether \( n \) is a fixed value, or whether it varies according to certain other features of the case.

4.1 Fixed Added Weight View

Consider the following view, which I shall call the Fixed Added Weight View:
**Fixed Added Weight**: This added weight, \( n \), is an unrestricted fixed weight—i.e., a specific amount of added weight that applies equally to all acts of partiality.

On this view, partiality allows for a fixed amount of extra weight on top of our preexisting duties to our relative. As stated, the view leaves open precisely how much added weight should be added. The value of \( n \) is something over which proponents of this view might disagree. But since the view holds \( n \) fixed over all types of cases, we need only consult our intuitions about a given case to get a sense of the general range of possible values for \( n \). To see this, consider the following case:

*Fire*: Ten innocent people are trapped inside a burning building. You can either go into the first room and rescue one person, or the second room and rescue nine people, but you are unable to do both.

I suspect most will have the intuition that you ought to save the nine: all else being equal, when faced with the choice between fulfilling one positive duty of rescue and nine positive duties of the same sort, we ought to do the latter. However, if we alter the case such that the one person in the first room is your child, and those in the other room are strangers to you, our intuitions will surely be the reverse: in that case, you are surely permitted (or perhaps required) to save your child, even though this means allowing the deaths of nine innocent strangers.\(^{105}\) These two cases are illustrated in Figures 10 and 11 below respectively.

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\(^{105}\) This claim is made by way of a similar example in Seth Lazar, “Associative Duties and the Ethics of Killing in War”, *Journal of Practical Ethics* 1, no. 1 (2013): p. 26. He claims that the number of innocents we may allow to die in order to save our child is ten.
As we can see in Figure 10, the weight of a single positive duty to save is far outweighed by the combined weight of saving nine lives. However, Figure 11 shows that the presence of partiality toward the one is enough to outweigh the combined weight of saving nine lives.

Of course, intuitions may vary: some might be inclined to think that you are permitted to save your child only when the other room contains no more than, say, seven strangers. And some might think that the number of strangers you are permitted to let die in this case is higher: perhaps you are permitted to save your child up until the number of strangers in the other room reaches, say, twelve. A defender of FIXED ADDED WEIGHT should therefore look to a broader range of cases to gain clarity on what the most intuitively plausible fixed weight for \( n \) is. But we can safely set this issue aside for now, since what I want to say about this view does not require a settled answer to this question. Let us assume, in what follows, that the value of \( n \) is as it appears in Figure 11—namely, slightly more than the combined value of the positive duties to save the lives of eight strangers.

The central difficulty for FIXED ADDED WEIGHT lies in its implications for lower-stakes cases of partiality as against higher stakes alternatives. Consider the following case:

*Homework:* You are faced with the following choice: you can either help your child with her homework, or you can rescue some number, \( x \), of other children from a burning building. Assume that neither your child nor the other children will receive help otherwise.
I suspect nearly all will agree that any positive value of \( x \) renders saving the other children morally required. That is, if you can rescue even one stranger from a burning building, and the only cost is to helping your child with her homework, you are morally required to perform the rescue. (Indeed, this seems true even if the harms that would befall the other child are less severe, like losing a limb.) According to Fixed Added Weight, however, this is not the case. On this view, the weight of the duty toward your child is the sum of the weight of the base positive duty to aid with homework and the value of \( n \), i.e., the value of eight positive duties to rescue a stranger. Thus, no matter the precise value of the positive duty to aid with homework, provided it is positive (which, by hypothesis, it must be) the total weight in favor helping your child will far outweigh that of rescuing the other children, when the value of \( x \) is one. Indeed, this view holds that you are permitted to help your child with her homework even if you could rescue eight strangers. This conclusion is surely unacceptable. (These two conclusions are modeled below in Figures 12 and 13. Note that the positive duties represented in these figures are not to scale.)

Thus, the central problem for Fixed Added Weight is that a fixed added weight generates implausible results in cases where this weight is added to duties with a low base weight, and even more implausible results when these weak positive duties to our relatives are compared with otherwise weighty duties to strangers. This is sufficient reason to jettison the view. (However, as I will argue in section 4.4, a suitably modified version of Fixed Added Weight is plausible in cases in which duties of similar sorts are compared against each other.)
4.2 Fixed Multiplier View

One might wonder if perhaps the problems with **FIXED ADDED WEIGHT** could be resolved by assigning a fixed multiplier, rather than a fixed added weight, to the base weight of each duty. Call this the Fixed Multiplier Thesis:

**FIXED MULTIPLIER**: This added weight, \( n \), is an unrestricted fixed multiplier.

Recall the version of *Fire* we see in Figure 2, in which the added weight of partiality can overcome the positive duties to rescue nine strangers. **FIXED ADDED WEIGHT** gave the correct verdict—namely, that I am permitted to save my son over nine strangers—but it now looks as though the explanation given—namely, that the added weight from partiality comes in the form of a fixed added weight—was mistaken. But we can render the same verdict by understanding the added weight as a fixed multiplier effect rather than a fixed added weight. If we assume *Fire* as our test case, it looks as though the multiplier effect would be around 10 times the base weight of the duty to which it is applied. (This does not alter the representation of the case in Figure 11; it is simply a different function that gives us the same outcome.)

So, on **FIXED MULTIPLIER**, we simply multiply the base weight of a given duty by 10, which gives us the sum of the weight of our duties to our relative. Recall the implausible verdict that **FIXED ADDED WEIGHT** gave in *Homework* above—namely, that one is permitted to prefer helping one’s son with his homework rather than saving nine strangers from a burning building. **FIXED MULTIPLIER**, by contrast, avoids this conclusion: given that the base weight of the initial positive duty to help one’s child with their homework is quite low to begin with, multiplying this duty by 10, as this view prescribes, would leave the weight in favor of that action relatively low, which would generate the conclusion that one is required to save the nine from the fire. This, I take it, is the right conclusion. It is modeled in Figure 14 below (note that it is not perfectly to scale).
**FIXED MULTIPLIER** therefore seems to be an improvement over **FIXED ADDED WEIGHT**. But it too has what seem to be insurmountable problems. First, one might reject the view for the verdict it raises in a modified *Homework*–style case, such as the following:

*Homework 2:* You are faced with the following choice: you can either help your child with her homework, or you can help some number, \( x \), of other children, with whom you stand in no special relationship with their homework. Assume that neither your child nor the other children will receive help otherwise, and the effects on each individual child will be similar.

Given that the base duties (i.e. positive duties to aid with homework) are of the same type, **FIXED MULTIPLIER** tells us to take the base duty to help my son with his homework and multiply it by 10. But this means that if I can help my son or help 11 other children, I am required to do the latter. Some might find this conclusion too strict. It seems plausible to me that I may help my son even at the cost of helping an entire classroom full of children, and perhaps many more.

A more serious problem, however, arises when we apply the multiplier in higher-stakes scenarios. Consider the following variant of *Trolley*:

*Trolley Multiplier:* You see a trolley heading in the direction of five innocent people, who have been tied to the tracks by a madman. You can do nothing, in which case the five will die; or you can pull a lever, which will switch the train onto the branch-line
track, thereby saving the five. But in doing so, one innocent person who was tied to the branch-line track by the same madman, will die. This innocent person, it turns out, is your wife.

Many will agree that you are permitted to let the trolley kill the five in order to spare your wife. Indeed, I suspect five is not especially near to the threshold of how many you could allow to die in order to spare your wife; as I will argue later, with certain assumptions in hand, I suspect the number is about 13 or so. I realize that many will find this hard to accept. But notice that Fixed Multiplier renders an even more surprising verdict—namely, that one may allow almost 50 strangers to die rather than turning the trolley to one’s spouse. (With these numbers, modeling this case would be too unwieldy here.) We arrive at this conclusion by multiplying the base weight of the generic negative duty to avoid side-effect killing, which we saw was just slightly less weighty than five positive duties to rescue. Fixed Multiplier says that we should multiply the base weight of the negative duty by 10. We would therefore have to multiply the number of positive duties by 10 to overcome this added weight from partiality. Whatever one takes to be the threshold for how many one can forgo saving in favor of one’s spouse, surely 50 strangers is too high.

Thus, Fixed Multiplier is not permissive enough in Homework–style cases, and too permissive in Trolley–style cases. One might hope to avoid this conclusion by altering the multiplier; perhaps, upon reflection, the previous case reveals that our multiplier was too high. But I suspect that it will be difficult to find a fixed multiplier that gives plausible results in cases like Trolley Multiplier and cases like Fire. That is, if we lower the multiplier too much to accommodate the former sort of cases, this will generate implausible outcomes in cases of the latter sort. For these reasons, we ought to jettison Fixed Multiplier.

4.3 Variable Multiplier View

Another possible view holds that the added weight from partiality figures in as a multiplier function that varies according to the base weight of the act to which it applies. Call this the Variable Multiplier View:
**VARIABLE MULTIPLIER:** The value of the added weight from partiality, \( n \), is a multiplier function based on the initial base weight of the relevant duty and the relevant multiplier for that particular type of action.

In other words, to determine the value of \( n \), we must first look at the particular duty we have to our relative and determine its base weight. The base weight is determined in part by the gravity of the duty: relatively unimportant positive duties (e.g., to help with homework, to give comments on a draft essay) will have a relatively small base weight, whereas relatively serious positive duties (e.g., rescue someone from a burning building) will have a comparatively large base weight. All else being equal, positive duties to rescue have a lower base weight than negative duties to avoid serious harm, which have lower base weight than opportunistic killings.\(^{106}\) We then apply the relevant multiplier function for a duty of that particular sort, which gives the amount of partiality that may be added on top of the base weight.

This view overcomes all of the major problems that beset the other views we have thus far considered. First, since each multiplier is a function of a given duty’s base weight, the multipliers will be comparatively high for those positive and negative duties that are much less significant—that is, those that do not involve serious harms of the sort on which we have been focused. This feature allows us to avoid the central problem for FIXED ADDED WEIGHT—namely, that duties of a relatively low base weight, once the fixed weight of partiality is added on, would generate highly implausible permissions to prefer aiding one’s child in a relatively unimportant way over the saving the lives of strangers. Second, this view is focused on the duties to one’s relative, which means it avoids the worries about intransitivity that seemed to plague IMPARTIAL DUTY RELATIVITY. And third, it does not rule out partiality’s application for any types of harm, but, rather, adjusts the added weight of partiality in accordance with the duty in question. This sidesteps the problems illustrated in cases like *Trolley Bridge Partiality*, which lead us to reject both IMPARTIAL DUTY RELATIVITY and PARTIAL DUTY RELATIVITY.

For all its successes, it may turn out that VARIABLE MULTIPLIER brings with it a different set of problems. In that case, there may be no reason to prefer it to the other views. However,

\(^{106}\) Once again, cases of so-called eliminative killing do not sit comfortably within this hierarchy, given the various factors involved in such cases.
whether or not that is the case will most likely depend in large part on the precise multipliers we apply and whether the conclusions that follow from them are plausible. I now want to offer a way of determining the multipliers that I think is plausible, not overly ad hoc, and relatively parsimonious.

4.4 Fixed Weight Variable Multiplier View

In order to test the plausibility of VARIABLE MULTIPLIER, we require much more information. First, we need to know what the base weight is for a given action—more precisely, we need to know the comparative base weight, or the trade-off ratio, between the various possible actions. For example, we need to know how many positive duties to rescue are required in order to overcome one negative duty to avoid side-effect killing. If our judgment in Trolley was correct, this is about five-to-one: if there are five (or more) people trapped on the mainline track, switching to the branchline track, thereby killing the one as a side-effect, is what one ought to do; if there are only four people trapped, one ought not to switch tracks. We also need to know the comparative base weight of opportunistic killing. I know of no widely acknowledged case in the literature on which to base a claim of widespread endorsement of a given tradeoff, but I suspect a modified version of Trolley 2, in which the number of innocents strapped to the tracks is much higher, would get us closer to an answer. (I will return to this question toward the end of this section.)

In addition to the base weights, we also need to know the various multipliers for all of the actions that are eligible for added weight from partiality. The value of a given multiplier is determined both by facts about the relationship and facts about the duties to which it applies. Surely the value of various special relationships—even those that are eligible for partiality—will vary considerably. I have reason to be partial to my cousin, but even greater reason to be partial to my spouse. As such, we should expect that, all else being equal, the multiplier as applied to my spouse would be greater than the multiplier as applied to my cousin. To simplify matters here, let us assume that the ideal forms of the paradigm relationships—i.e., parent-child, romantic partner, sibling, close friend—all generate roughly the same reasons of partiality. When these relationships are weaker, or when we look at other relationships, our conclusions will require adjusting. And when other relationships provide just as much reason, they ought to be viewed as proper candidates for similar conclusions, mutatis mutandis. (In the final section of
this chapter, I shall consider how the conclusions drawn herein apply to the case of national partiality.\(^{107}\)

The multipliers will also vary according to facts about the duty in question. At a minimum, we would expect that the multipliers would depend in some sense on the duty’s base weight. Given that the added weight is a multiplier function of the initial base weight, we should expect that those duties with low base weight would receive larger multipliers.\(^{108}\) More specifically, it seems the multipliers ought to depend on the type of duty: positive duties to rescue will have larger multipliers than negative duties to avoid killing; and among negative duties, side-effect killing will have larger multipliers than opportunistic killing.

But how can we determine more specifically what the different multipliers are? It seems to me there are three basic desiderata for any specific account of the multipliers. First, the various multipliers should not be overly ad hoc. That is, we should expect that there will be at least some unifying relationship between the various multipliers. Second, the account should capture all of our central cases, about which our intuitions are relatively firm—though it may require revising our intuitions in less central cases. And third, the account should not yield any deeply implausible verdicts in other cases.

I now want to sketch an account that I believe satisfies these desiderata. Stated briefly, the proposal is as follows:

**Fixed Weight Variable Multiplier:** The extra weight from partiality for a given duty is a variable multiplier. The size of the multiplier, in terms of the added weight it provides, is roughly equivalent to the absolute added weight from partiality to other duties with relevantly similar outcomes (understood in roughly consequentialist terms, prior to aggregation).

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\(^{107}\) I divide the discussion in this way because my present argument requires drawing on examples on which others in the literature have focused their arguments (e.g., trolley cases, rescue cases), which are largely the sort that apply most naturally to relationships I have called *scope-unrestricted*. For reasons I explained in chapter 3, this precludes their application to certain valuable relationships—most notably, the co-national relationship.

\(^{108}\) I am here speaking only of the size of the multiplier itself (i.e., 1x, 2x, etc.), and not the absolute size of the additional weight it affords.
Some clarification is in order. First, this is a variable multiplier view: the multiplier that applies to each duty is determined by and sensitive to the base weight of that duty. In general, the greater the base weight, the smaller the multiplier; the smaller the base weight, the greater the multiplier. This helps us to avoid the problems that beset FIXED MULTIPLIER—in particular, the results in the Homework cases.

Second, in order to determine the precise weight of a given multiplier, we must consider other duties that generate similar outcomes when infringed. For example, most of the cases on which we have largely focused thus far involve an individual’s death, whether by killing or letting die. So, while these duties have a different deontological status, their infringement nevertheless give rise to a roughly similar outcome, understood here prior to aggregation. As such, the added weight is, in absolute terms, the same for each of them, and the multiplier for a given duty (e.g. a negative duty to avoid side-effect killing, positive duty to rescue) will reflect that. The same idea can be applied to various other duties, and the extra weight will reflect the difference in duty types. Thus, the view is both locally constant—the added weight it affords is the same across all duties with infringements that yield outcomes of a similar sort—and globally non-constant—the absolute value of this extra weight differs in cases with different outcomes. In other words, the absolute value is the same when the outcome is death (whether by killing or letting die); but the absolute value is different when the outcome is some small amount of pain.

This account has a number of advantages. For one thing, it is clear that it satisfies the first desideratum above: it avoids the charge of being ad hoc by unifying the absolute value the multipliers afford across duties with infringements that yield similar outcomes. Another advantage of this approach is that it captures the basic intuitions behind several of the views we canvassed earlier, such as FIXED ADDED WEIGHT. We saw earlier that that view could not possibly be correct: in particular, we saw that it generates highly implausible conclusions in cases in which we must choose between low-stakes positive duties to a relative and a high-stakes negative duty to a stranger. But when we look at what FIXED ADDED WEIGHT prescribes for duties with infringements that yield similar outcomes, we can make progress on understanding the multiplier function for certain duties, which we can then apply in a broader range of cases without generating any of the aforementioned implausible conclusions.
One might argue that the view is not suitably parsimonious, since it requires that we provide an amount of extra weight for every particular duty, of which there must surely be many. But while this does indeed lack simplicity, I see this level of complexity as an unavoidable feature of nearly any plausible view of partiality’s application. While it is true that many alternative views will not need to specify duties, they must nevertheless offer some explanation as to why the multipliers for various duties are such as they are. This strikes me as no more parsimonious than the view I am offering. Moreover, if a rival view fails to offer such an explanation, then the charge against my view that it is unparsimonious seems grounded only in its attempt to offer greater precision than the rival view. It would be strange for a defender of a view to object that another view is unparsimonious in virtue of its offering a more detailed explanation than the view the defender herself holds.

In order to see whether or not this account satisfies the second and third desiderata, we need to look at some cases. My approach in what follows is to consider what I hope are fairly widely shared intuitions about how much partiality we may show in a given case, and build upon these conclusions to show that **Fixed Weight Variable Multiplier** is very plausibly correct. I realize that some will demur from my intuitions. For those for whom this is true, an option that may preserve the general view is reflective equilibrium. That is, one can revise the various inputs (i.e., the stated intuitions about cases) until they form a reasonable and consistent package of conclusions. And I suspect that they will: those who have more conservative intuitions regarding the application of partiality in one type of case are likely to have similarly conservative intuitions about the others—in which case, the outcomes will reflect this general tendency. My argument in favor of **Fixed Weight Variable Multiplier**, at least at the most basic level, does not therefore depend entirely on the particular intuitions I use here.

To begin, recall the case we considered earlier called *Fire*. As we saw there, it seems that you are permitted to save your child instead of saving nine strangers. I take it intuitions about this case will be widely shared, though there will of course be some variance with respect to the exact number of strangers we could forgo saving in order to save one’s child.\(^{109}\) This suggests

\(^{109}\) See Lazar, “Associative Duties and the Ethics of Killing in War”, p. 26. His case (Case 8) involves the choice between diverting multiple different meteors, but otherwise shares the same basic structure as *Fire*. 
that the multiplier for a positive duty to rescue a relative is a bit higher than 9-times the generic positive duty to rescue a stranger. (This is because it must be enough to overcome, and not just tie, the combined weight of the nine positive duties to strangers.) For reference, we can put the point this way:

(1) **Multiplier: Positive Duty to Rescue = ~9x**

In fact, the number is slightly higher than nine, which allows it to overcome the nine positive duties. But for simplicity, let us round this down to nine. This conclusion is reflected below in Figure 15:

![Figure 15](image)

According to **Fixed Weight Variable Multiplier**, then, the *absolute value* of partiality across all duties with a similar outcome (as previously discussed) is slightly more than 8 positive duties to rescue. As it stands, however, this proposed value is not especially well supported. We should therefore test this proposed absolute value to see whether or not it accords with our intuitions in other examples, particularly those concerning other types of killing. If this value for \( n \) is indeed compatible with our intuitions in these cases, then our confidence in that value should rise accordingly.

To this end, let us now consider a case in which different kinds of duties are at stake—namely, *Trolley*, which we first discussed earlier in section 2.1. Recall that, when faced with the choice between saving five and killing one as a side effect, and letting five die in order to avoid killing the one, I argued that one ought to do the former. Furthermore, recall that we said our
intuitions would shift were the number on the mainline track much smaller—say, three instead of five. If that were the case, one should not turn the trolley. This case was represented earlier in *Trolley 3*.

I assume most people who subscribe to a broadly deontological framework will be inclined to accept both of these results, though perhaps the point at which our judgment shifts in the second case is not so precise. *Trolley* is modeled in Figure 16 below; *Trolley 3* was modeled in Figure 9 above, but is reproduced here as Figure 17 to simplify the comparison.

![Figure 16: Trolley](image1.png) ![Figure 17: Trolley Partiality](image2.png)

How does our judgment change in these two cases once partiality is introduced? Consider the following alteration to *Trolley*:

*Trolley Partiality*: Just like *Trolley*, there are five people strapped to the mainline track and one person strapped to the branchline track. Unlike *Trolley*, however, the person strapped to the branchline track is your spouse.

I suspect many will have the strong intuition that you are not required to turn the trolley towards your spouse in order to save the five. Frances Kamm has made this very claim with respect to one’s child, and we should expect that the same conclusions follow in the spousal case.\(^{110}\)

Turning the trolley would be an instance of killing your spouse as a side effect in order to save

five strangers. The reasons in aggregate in favor of rescuing the five do not seem to outweigh your reasons against infringing the negative duty you have not to harm someone with whom you are in a special relationship. This result is shown in Figure 18 below. (Imagine removing one of the positive duties from the right column to visualize how the addition of partiality would change Trolley 3 as well.)

Indeed, as Figure 19 shows more clearly, you seem to be permitted to avoid turning the trolley toward your spouse up until the number of strangers on the mainline whom you would allow to die approaches 13.
This number may seem quite high at first. However, the type of harm you would otherwise be required to bring about in this case is more significant than allowing death to occur, and the person to whom you would bring about that harm is your spouse. We not only have special reason to avoid harming those with whom we stand in special relationships; we also have greater reason to avoid harming them in more objectionable ways.

With this case, we are now in a position to state clearly multiplier for side-effect killing:

(2) **Multiplier: Negative Duty to Avoid Side-Effect Killing** = \(~3x\)

Now consider a case that is structurally the reverse of *Trolley Partiality*. In this type of case, rather than weighing killing one’s spouse as a side effect against rescuing five strangers, we consider the possibility that one may be permitted to kill some number of strangers in order to rescue one’s spouse. Consider again the following case from Thomas Hurka, which I’ll call *Grenade Partiality*.

*Grenade Partiality*: “[A] Imagine that a victim is being attacked by an aggressor and that the only way a third party can save the victim’s life is by throwing a grenade that will kill the attacker and also, unavoidably, an innocent bystander. […] [B] But now imagine that
the defender is the victim’s father. It seems to me that he may throw the grenade, [C] and may do so even if this will kill some number of bystanders greater than one.”

This case involves three distinct claims, which I have marked as [A], [B], and [C] above. Let us focus first on [A] and [B]. Hurka’s claim is that whereas it would be impermissible to act in the way described in [A]—i.e., to kill one innocent bystander in order to rescue one victim—the presence of the special relationship in [B] renders the very same action permissible, and perhaps even extends slightly that number of bystander deaths one could permissibly (though unintentionally) cause. Hurka takes his judgment here to be supported by common sense, and others have agreed. As Jeff McMahan puts it: “It seems to many people, myself included, that it is more than merely excusable if a person saves her child when her doing so unavoidably kills an innocent bystander (or perhaps even two innocent bystanders) as a side effect.”

Consider a similar case in which one must choose between saving oneself (and not, as in Hurka’s case, one’s relative) and killing as a side effect two innocent strangers. In the course of defending the general idea that associative duties sometimes generate permissions to kill, Seth Lazar suggests that while it is permissible to kill one as a side effect of saving one’s daughter, it would be “surely impermissible” to kill two as a side effect of saving oneself. Lazar doesn’t explicitly state whether what explains these judgments are the differences between the weights of one’s duties to one’s daughter and one’s permissions to prefer oneself, or the shift in the number of side-effect deaths from the first case to the second. By contrast, Frances Kamm has argued

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113 Jeff McMahan, “The Just Distribution of Harm Between Combatants and Noncombatants,” Philosophy and Public Affairs 38 (2010): 277. He goes on to claim, however, that this intuition is not applicable to the relationship of co-nationals. For general discussion of this point, see chapter 3 of this dissertation.

114 Lazar, “Associative Duties and the Ethics of Killing in War”.

115 There are some reasons from the text to believe Lazar’s view is the former. Lazar claims elsewhere in the article that the latter case concerns only one’s own well being, while the former case involves associative duties. Combined with assumptions about the gravity of associative duties (and the relative lack of gravity of facts about one’s own well being), we might expect that, were the latter case to involve one’s daughter rather than oneself, Lazar might view it as permissible.
that, *contra* Lazar, one is permitted to redirect a trolley from oneself to two others.\(^{116}\) (This case is structurally similar to Hurka’s and Lazar’s, since both involve comparing positive duties to aid and side effect killings.) Again, however, Kamm’s case involves permissions to avoid sacrificing oneself, rather than one with whom one stands in a special relationship. It is unclear whether or not Kamm would have the same judgment when the trolley is heading toward one’s daughter.

Overall, I suspect some will agree with the intuitions behind Hurka’s claim in [B], though presumably fewer will endorse the claim in [C]. But are either of these claims consistent with FIXED WEIGHT VARIABLE Multiplier? To test this, consider the three figures below, one for each of the three parts of the case. These are illustrated by Figures 20, 21, and 22 below; let us look first at Figures 20 and 21.

As we see in Figure 20, the choice is between the negative duty to avoid killing the bystander as a side effect and the positive duty to rescue the victim. We have already seen that a single positive duty to rescue cannot overcome the weight of a single negative duty to avoid side-effect killing. Thus, [A] is confirmed; though I suspect its truth was scarcely in question. Once partiality is introduced, however, this relative weighting shifts. As we see in Figure 21, the

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\(^{116}\) Frances Kamm, “Failures of Just War Theory: Terror, Harm, and Justice,” 674. It is worth mentioning that Kamm does not understand the duty to avoid harming others in such cases as a straightforward negative duty, given its different causal source.
presence of partiality on the side of the positive duty to rescue the victim, in accordance with our previous findings, does indeed overcome the weight of the negative duty to avoid side-effect killing. Thus, [B] follows from our previous findings and assumptions—namely, FIXED WEIGHT VARIABLE MULTIPLIER, the value of the multiplier for side effect killing, and the particular absolute value the multiplier adds.\textsuperscript{117}

Consider now Figure 22, which illustrates part [C] of Hurka’s case:

![Figure 22](image)

As I said, however firm our overall intuitions were about [B], our intuitions are likely to be somewhat less firm with respect to part [C]. I suspect some will accept [B] and deny [C], holding that the permissions that partiality affords are enough to overcome the weight of one side-effect killing, but not two. Others may be inclined to hold that partiality is enough to overcome the weight of two side-effect killings, though perhaps only barely. This result is represented in Figure 19, where we see that the value of the multiplier is just enough to overcome the weight of two side-effect killings. This result is likely within a plausible margin of error: with only a slight downward modification of the value of the multiplier, the weight of partiality would fall just

\begin{footnotesize}
\textsuperscript{117}Depending on the overall confidence one has in one’s intuitions about this case, this result could suggest either increased support for the particular value of the multiplier, or else evidence of its need for revision; we cannot simply assume the modus ponens when the modus tollens is a live option as well. And yet, I think the revisions that would be required to the value of the multiplier in order to accommodate a different result for [B] would come at too great a cost.
\end{footnotesize}
short of being able to overcome the weight of two side-effect killings. Such a modification would, of course, have important ramifications for our conclusions in the many previous examples—though, as far as I can tell, none of these results would be dramatically affected to the point of rendering them implausible.

So while our findings in these cases support Hurka’s first controversial claim, [B], it offers only slight support for his second controversial claim, [C]. But, in my view, this should be seen as a welcome result for two reasons. First, it is consistent with our expectation that intuitions about [C], particularly among those who already endorse [B], are bound to be mixed. And second, it offers us a clear way of drawing the upper limit, vague though it still remains, of the value of the multiplier, which was something the previous examples were incapable of doing with much precision. For while the previous cases illustrate partiality’s ability to overcome the weight of certain other duties, it is also essential to show that partiality will, in many cases, fail to overcome those weights. The weight of partiality could fail to overcome other weights in many ways; one obvious case is if we aggregate enough of any type of positive or negative duty toward strangers. A case that doesn’t involve aggregation, however, is one that involves opportunistic killing. Recall the following case:

*Trolley Bridge Partiality 2:* A runaway trolley is hurtling down the track toward your brother. You are on a bridge that overlooks the trolley. Next to you is a bodybuilder who, if you were to push him down onto the tracks in front of the speeding trolley, would die while stopping the trolley from killing your brother.

For simplicity, I have reproduced this case in Figure 23 below.
This case involves comparing the weight of a positive duty of rescue to one with whom one stands in a special relationship, and the weight of a negative duty against opportunistic killing. As we saw earlier, the weight of opportunistic killing is considerable; it is the most objectionable category of killing we have considered, and is for that reason the hardest to justify. Even though partiality adds significant weight in favor of rescuing your brother in the above case, it isn’t enough to overcome the weight of the duty to avoid opportunistically killing the bodybuilder.

I do not have especially firm intuitions about the base weight of opportunistic killing. (The right column in Figure 23 should therefore be understood as demonstrating only that the base weight of opportunistic killing is sufficient for overcoming a positive duty to rescue a relative, and not as attempting to render that base weight as a precise value.) It seems to me that if I can rescue some significant number of people from a runaway trolley only by pushing a sufficiently large bystander onto the tracks, I should do so. But what number of people is significant enough?

I suspect views about this case will differ considerably. For the sake of illustration, suppose we stipulate that the number is 15. According to our previous findings, then, this means that if the large bystander happens to be your son, you can forgo pushing him onto the tracks
unless just over 23 innocents will die otherwise. If this number seems too high or too low, it may be proof that Fixed Weight Variable Multiplier is false or in need of revision; however, it could just as easily be that the base weight of opportunistic killing requires revising. Therefore, given that we have only vague intuitions about opportunistic killing, no matter what precise number we posit for its base weight, it will offer evidence neither for nor against Fixed Weight Variable Multiplier.

What we can say with some certainty, however, is that the value of the multiplier for opportunistic killing is less than 2. This is because the base weight of opportunistic killing is very likely to be greater than the absolute value of the added weight from partiality, i.e., about 8.5 positive duties. We saw evidence of this in Figure 20, where the value of a positive duty to rescue your brother (i.e., the weight of a positive duty, plus the added weight from the multiplier) was insufficient to overcome the base weight of a case of opportunistic killing. Thus, although this is still far too imprecise, we can state the multiplier value for an opportunistic killing as follows:

\[(3) \text{ Multiplier: Negative Duty to Avoid Opportunistic Killing} = <2x]\n
Now that we have some sense of the specific values of the core multipliers, we are in a better position to judge the merits of Fixed Weight Variable Multiplier. It seems to satisfy our earlier desiderata: it is not overly ad hoc, since there is a basic connection between the various multipliers; and it captures the central cases, as we have just seen. Finally, it does not appear to yield any implausible results in other cases. Revisiting two earlier examples, Homework and Homework 2, we will notice that, when combined with the multiplier appropriate to it, the base weight of the positive duty to aid your child with her homework, which is quite low already, will generate an appropriately small amount of partiality. Most importantly, this avoids the deeply implausible conclusion in Homework—namely, the permission to aid your child with her homework over rescuing a stranger.\footnote{Recall that the absolute value of added weight from partiality, on this view, is around 8.5 positive duties. Therefore, the height of the bar would be about }\footnote{It is, however, difficult to see what the relevantly similar negative duties are, which is necessary to determine what the absolute value of the multiplier would be.}
therefore seems to be the most plausible view for how partiality affords extra weight in various cases.

5 Two Further Issues

In closing, I want to flag two outstanding issues, which, for a more complete view of the additional weight of partiality, require further development.

First, in this chapter I have focused primarily on what I have called the paradigmatic relationships—friendship, romantic relationships, and parent-child relationships. I have argued in previous chapters for the ways in which the case of national partiality is similar to and different from these cases. For example, as we saw in chapter 3, the cases on which the arguments here have relied are largely inapplicable when applied directly to co-nationals: We cannot in general allow trolleys to kill several innocents in order to save one co-national, nor can we prefer saving a co-national from a burning building over multiple strangers. But as we have already seen, when a given scenario falls within the scope of the co-national relationship, reasons of partiality are activated. Thus, in order to apply the foregoing discussion to the case of national partiality, we need to imagine variations on the above cases that fall within the scope of the co-national relationship. I won’t attempt to recreate each of these cases here, though doing so would require mostly changing the circumstances of each case to reflect those of wartime.

Even after we have resolved the issue of scope, some may object that the base weight of the co-national relationship is simply not on a par with that of other paradigm relationships of partiality. Thus, when applied in accordance with the view I have defended here, an objector might claim that the amount of partiality the co-national relationship justifies will be much less than what other relationships justify. This objection does not call into question FIXED WEIGHT VARIABLE MULTIPLIER as such, but rather, its straightforward application to the case of national partiality. At this juncture, however, I doubt that a further argument could be made to convince the skeptic: if the arguments of chapters 1, 2, and 3 were found unpersuasive, then it seems clear that the arguments of this chapter will likewise fail to convince.

A second outstanding issue concerns whether or not the added weight from partiality aggregates—that is, when instead of saving one of my children, my choice is between saving some strangers and saving two of my children. In such cases, does each child receive the full
added weight from partiality, in accordance with **Fixed Weight Variable Multiplier**? Or are there limits to how much partiality can be added in a given scenario? The answer is not obvious. One might worry that allowing unrestricted aggregation of partiality would generate permissions to inflict or allow massive amounts of harm on others (e.g., in order to save a few of my friends), and our best theory of morality cannot license this sort of thing. In response to this worry, one might be inclined to endorse one of the following limitations, listed in what I take to be increasing order of plausibility: (1) the extra weight from partiality only applies once, regardless of how many relatives are to be spared by a given action; (2) the extra weight from partiality applies more than once in a straightforward way, but ceases to apply past a certain point; or (3) the extra weight from partiality declines proportionately or asymptotically with each additional special relationship present in a given duty or set of duties. This issue is particularly important in the case of national partiality, since in a great many cases—war of course being one of them—we are not faced simply with the choice of saving one of our co-nationals, but rather, many of them. Thus, in order to fully apply the view I have defended in this chapter to the case of war, we will require an answer to the question of how to aggregate multipliers.
Chapter 5
National Partiality and Jus Ad Bellum: Just Cause and Proportionality

1 Introduction

In the previous four chapters, I have developed an account of national partiality and shown how the permissions it generates may in some cases justify actions that would otherwise be difficult to justify, like certain forms of killing and letting die. As I have suggested already, the arguments of the previous two chapters have clear application to war. But this chapter and the next apply these arguments more directly to certain of the jus ad bellum and jus in bello conditions. The next chapter focuses on what I take to be the central restriction of the jus in bello, or the criteria governing conduct in war— namely, the moral distinction between combatants and non-combatants—and how that affects the in bello proportionality constraint. The present chapter, however, centers on the two central jus ad bellum criteria— namely, just cause and proportionality—which concern the entry into war.

In particular, I shall argue that the presence of justified national partiality calls for three important alterations to these two conditions. First, whereas the just cause condition is typically thought to offer only a permission to enter into war (assuming other conditions are satisfied), I argue that the presence of justified national partiality shifts this from a mere permission to a strong pro tanto duty when the just cause in question has agent-relative value (subject to some constraints). Second, while some have argued that certain conditional just causes, like deterrence and disarmament, are wholly or partly ineligible for inclusion within the proportionality calculation, I suggest that national partiality can render them permissible subject to certain limitations. And finally, whereas the proportionality condition is typically understood to weigh all goods and harms equally, I argue that justified national partiality enables us to weigh most (but not all) goods and harms to our side more heavily. These conclusions have important implications for the wars nations are permitted and required to fight. Contra the cosmopolitan approach, my view suggests we have greater pro tanto reason to fight wars that involve violations of our co-nationals’ rights, and greater pro tanto reason to fight wars in a way that avoids or offsets harms to our side.
2 Just Cause & Proportionality

Arguably the most fundamental idea in the jus ad bellum is the idea that a war must have a just cause. Broadly put, the main just cause is rectifying or preventing imminent cases of certain very serious wrongs or rights violations, such as acts of violence against a nation’s citizens, serious violations of their political rights, or serious violations of the nation’s sovereignty. When our nation is the aggressed party, we tend to label our actions in the above cases ‘resisting unjust aggression’. When another nation is the victim group, whether facing aggression from a third-party or from within its own borders, and we wage war alongside them or on their behalf, this is called ‘third-party defense’ or ‘humanitarian intervention’. Following Jeff McMahan and Robert McKim, let us call unjust aggression and humanitarian intervention sufficient just causes, since either of these two ends is sufficient for satisfying the just cause condition. They contrast these with what they call contributing just causes, or what others have called conditional just causes. These are the other various ends that may be pursued by means of war, such as deterrence and disarmament.

The ad bellum proportionality condition holds that the harms a war brings about must not be out of proportion to the goods it causes. This condition is motivated by the idea that war

120 Jeff McMahan and Robert McKim, “The Just War and the Gulf War,” Canadian Journal of Philosophy 23 (1993): 502-6. McMahan and McKim actually call these “sufficient just aims,” but I see no reason to adopt the distinction between aims and causes—indeed, I see some reasons for avoiding it, e.g., the fact that a nation need not aim at these ends, at least in the sense of aim that involves something like intention.


122 McMahan and McKim, as well as others who discuss this distinction, also include as another conditional just cause the prevention of lesser human rights abuses. But I think this is a fundamentally different sort of good than that of deterrence and disarmament, and I have doubts about including them alongside these other two. For one thing, if the lesser human rights abuses are not connected with the just cause in any clear way, then I doubt they are the sort of thing that may be pursued by means of war—especially when this involves further harms. And if the rights abuses are connected with the just cause, then they are indeed the sort of thing that may be pursued by means of war. Now, given that they are lesser human rights abuses, they may not themselves justify resorting to war when they are the only sort of rights abuse present in a given scenario. But this is ultimately a question of how we individuate wrongs: if we understand the broad category of ‘human rights abuses’ as the sort of thing that, when sufficiently serious in aggregate, can justify resorting to war, then it does not matter what sorts of individual abuses are among those in that grouping, provided it is sufficiently serious in aggregate. The same is true in general of other violent harms and serious wrongs. We need not settle this matter here, and I believe the conclusions I draw in what follows are compatible with including lesser human rights abuses among the conditional just causes.
almost inevitably causes untold death and destruction, and only the achievement of some very important goods can justify such harm. What exactly counts as proportionate, however, is not immediately obvious. There is a range of plausible options: a strict interpretation says that wars must not do more harm than good; a less strict version says that wars must not do a great deal more harm than good; and a more general version simply says that the harm that is caused must be reasonable.\(^{123}\) I will not attempt to settle this question here.

3 Just Cause & Partiality

With this picture of just cause in hand, we can now consider the extent to which the presence of justified partiality alters it. As I have argued in previous chapters, justified partiality typically involves conferring greater weight on the interests of a particular individual or group of individuals (or, sometimes, certain collective goods) with whom one stands in a certain sort of relationship. There are a number of ways of understanding how this applies to the just cause condition. A quite natural thought is that the just cause gets a boost in our calculations: nations give greater weight to the causes that have agent-relative value for them. There are at least two ways of spelling this out. First, as I will argue in greater detail in section 5, the goods of the just cause are the only relevant goods for proportionality. So, to give greater weight to the just cause on the basis of partiality, a nation boosts the relevant goods of proportionality that have agent-relative value for them.\(^{124}\) All else being equal, this means that just causes with agent-relative value will be able to justify a greater amount of harm. But clearly, this outcome is better understood as a shift in the proportionality condition. Accordingly, I will say more about it in section 5.

However, there is another, somewhat more direct way that partiality affects the just cause condition. The basic idea here concerns the shift from permissions to duties. To begin, notice that the proportionality condition, as it is typically understood, tends to focus only on permissions: satisfying proportionality does not by itself render a war obligatory, even pro tanto. It merely


\(^{124}\) There are certain restrictions, however, which I explain in detail in section 5.
shows that, provided all the other relevant ad bellum conditions are met, war is permitted. In other words, the proportionality condition marks an important normative threshold: upon satisfying it, something that was previously prohibited—i.e., fighting a war that is disproportionate—becomes pro tanto permissible—i.e., fighting a proportionate war.

Of course, this is not the only important normative threshold among the ad bellum conditions. Another important threshold is located between permissions and duties. For example, consider a war in which the just cause is third-party defense against an unjust aggressor. Suppose that our fighting on behalf of the victim state would only barely satisfy proportionality: while the costs involved would be significant, they are outweighed, however slightly, by the benefits of achieving the just cause of thwarting the unjust aggressor. In this case, our joining the war in their defense is permitted, but not required: we would not act wrongly by not getting involved, and in general, our aid would be supererogatory. Now consider a version of this case in which the goods would massively outweigh the harms—say, because our intervention would somehow involve considerably fewer civilian and just soldiers’ deaths, while achieving the just cause. At a certain point, our intervention shifts from being merely permitted to obligatory: since so much good can be done at such little cost, it would be pro tanto impermissible to abstain from intervening.125

The just cause in this example concerns aiding others. For reasons I will detail later on, third-party defense and humanitarian intervention are not just causes that have agent-relative value for us. By contrast, wars of national defense clearly do have agent-relative value for us: the aggressor threatens us, violates our co-nationals’ rights, invades our territory, and so on. Is the threshold at which permissions become duties located at the same point for all of the different just causes, regardless of whether or not they bear agent-relative value for us? Surely not. Whereas in cases without agent-relative just causes (i.e. third-party defense and humanitarian

125 There are many reasons why a war of this sort could still fail to be all things considered permitted. One relevant consideration might be if enough of the members of the group on whose behalf we intervene do not authorize or want us to do so. Generally, however, this means that the good that would be achieved by our successful intervention would be lower: if the people whose rights appear to be under threat do not authorize our assistance, than there is limited good we can do by aiding them. For more on the question of how to calculate the good in intervention cases, see Jonathan Parry, “Defensive Harm, Consent, and Intervention,” Philosophy and Public Affairs 45 (2017): 356-396.
intervention) the duty arises only once the good is much greater than the harm, in cases of national defense, no such appeal to the proportionality condition is needed. Indeed, just causes with agent-relative value that satisfy the other conditions to at least a minimal degree are pro tanto obligatory.

To see this, consider a version of the previous case with national defense as the just cause, rather than third-party defense. Many of us will judge that it does not seem merely permissible to pursue the cause of national defense until the good massively outweighs the harms, at which point it becomes a duty. Rather, it is pro tanto obligatory to pursue national defense in virtue of the fact that it is our nation that is the recipient of the aggression.\textsuperscript{126}

All else being equal, a nation’s decision-makers would wrong their members by declining to pursue national defense when it would satisfy proportionality. The presence of agent-relative value in the just cause condition therefore has the effect of erasing the normative threshold between permissions and duties.

To clarify, I am not claiming that nations must \textit{always} pursue national defense. It is merely a strong pro tanto duty, which means it can be outweighed in certain cases. But what considerations can trump this duty? The clearest case is when we must choose between this duty and another war that is also pro tanto obligatory but that does considerably greater good on balance. Suppose our nation could either defend itself against a trivial act of aggression—e.g., a bloodless invasion aimed at temporarily occupying an insignificant piece of uninhabited territory on the other side of the world for commercial fishing purposes—or else render non-costly aid to members of a neighboring nation whose civilians are being slaughtered, a just cause that, let’s assume, would be very easy to achieve. In this case, it seems clear that the nation would be wrong to fight its own war, and must instead come to the aid of its neighbor. Both duties are pro tanto, and so we must look to the other considerations to determine which of these wars we ought to fight.

\footnote{This duty could be overridden, of course—for example, if the members of the nation decide, perhaps according to some appropriate democratic procedure, that it will forgo its own war. I will not argue for the details of this issue, other than to suggest that Parry’s arguments (op. cit.) would be useful for understanding why this is.}
Apart from the relatively obvious cases, though, how do we know the limits of the pro tanto duty our nation has to fight its own wars? First, all else being equal, the pro tanto duty to fight our own wars will trump alternative wars (or other courses of action more generally) that are merely permitted. So, if we have a choice between defending against the bloodless invasion (or some other minor but proportionate just cause), and giving aid to others elsewhere when doing so is not a pro tanto duty but merely permissible, we ought to do the former. Simply put, duties outweigh mere permissions.

Most would accept, however, that we sometimes have a pro tanto duty to aid others in their wars. What should we say about cases in which two pro tanto duties must be weighed against each other? It cannot be as simple as deferring to the proportionality calculations as a tie-breaker—that is, by fighting whichever war satisfies proportionality to the greatest degree. After all, humanitarian wars only become pro tanto duties for third-party actors (i.e. unaffiliated political collectives) in the first place when they do significantly greater good than harm. If we were to defer to the proportionality calculation in this way, then we would be required to fight any humanitarian war that does more good on balance than our own war of national defense. But this is far too restrictive to be plausible. While successful wars of national defense can bring about great goods, they are also incredibly costly. This means that it is not uncommon for wars of this sort to only barely satisfy proportionality. And yet, I doubt many would be willing to conclude that a nation may not fight against its unjust aggressor and instead must choose to capitulate to that aggressor and provide aid to its neighbor, simply because the latter better satisfies proportionality than the former. Indeed, I suspect most would hold that the opposite is true.

For this reason, turning to the proportionality to break the tie won’t do. Instead, I think the best approach for understanding how to weigh pro tanto duties in these circumstances is found at least partly within the just cause condition itself. In particular, the issue is not one of proportionality per se—weighing the overall harms against the benefits—but rather a more straightforward evaluation of the just causes in question. While on my view, repelling a

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127 At this juncture, I have yet to explain how partiality influences the weights in proportionality, so I must be slightly imprecise on this issue here. It should not affect the basic point, however.
bloodless invasion does constitute a just cause, and is therefore a pro tanto duty, it is a rather weak duty as it stands. After all, if a nation had to choose between fighting against its own bloodless invader and against some other more serious threat to itself or its members, and both had equivalent proportionality calculations, the latter threat is clearly more serious and ought to be prioritized. This shows that the bloodless invasion just cause is a pro tanto duty, but it is more easily outweighed. By contrast, a war of national defense against an aggressor that more seriously threatens our co-nationals’ vital interests constitutes a weightier pro tanto duty. We do not need to turn to the more complex proportionality calculation to see this.

Of course, the question now is how these pro tanto duties of national defense weigh against the pro tanto duty to fight particular humanitarian wars. And to answer this question, we must look to the proportionality calculation. More specifically, we need first to locate the threshold within the proportionality calculation for the humanitarian war at which fighting this war shifts from a permission to a pro tanto duty. We must then consider how far beyond that threshold this particular war is. In other words, we must determine how much more good on balance would this war do beyond the amount that suffices for it becoming a pro tanto duty. I do not think we can render precise judgments for either where the pro tanto duty threshold is, or, a fortiori, how far beyond it this particular war is. But we can still apply a general rule, which helps us understand the basic idea. The rule is this: the greater the gap between what suffices to make it a duty and the amount of good it will do—the greater its ability to override competing pro tanto duties of all sorts, including those that are weighted more heavily on account of partiality. Put more simply, this pro tanto duty to fight the humanitarian war becomes stronger as the good to which it would give rise grows.

So, again, when we compare a bloodless invasion against a humanitarian war that will thwart countless deaths at virtually no cost, the pro tanto duty to fight the former may be outweighed. But again, this is not because of comparative judgments about the proportionality of these two wars: the wars could do an equal amount of good over harm and our judgment would remain unchanged. Rather, it is because of the comparative insignificance of the just cause of the former as compared to the extraordinary good on balance done by the latter. But in a broad range of other cases—including other wars of national defense that might only barely satisfy proportionality—the pro tanto duty to fight our own war wins out, given the significance of the just cause in question.
The upshot is that the proportionality calculation helps us to understand something about just causes—namely, whether fighting the humanitarian war rises to the level of a duty, and if so, whether it is weighty enough to trump our pro tanto duty to fight our own war. Later on, I will discuss how the reverse is also true—namely how the just cause condition helps us to understand something about proportionality. But first, let us consider another issue at the intersection of the just cause condition and national partiality.

4 Conditional Just Causes & Partiality

In order to weigh the relevant benefits or goods of a war against the relevant harms it causes, we must first know what the relevant goods and harms are. Let us begin with the relevant goods. According to one commonly held view, only the goods that are part of the just cause can count toward the goods of proportionality. So, whereas the goods of, e.g., financial gain are excluded from the condition, the fact that a war resists unjust aggression is included. To say that a good is included in the proportionality calculus is to say, effectively, that it can help justify (or partly offset) the relevant harms that war will bring about. And surely resisting unjust aggression can justify some amount of harm—or else war is unlikely to ever be justified.

Notice, however, that resisting unjust aggression is what we previously called a sufficient just cause. But while few would deny that the goods within the sufficient just causes may be counted as goods in the proportionality calculation, there is some disagreement concerning whether the same is true of the conditional just causes. Jeff McMahan has argued that the only goods that can be included in the proportionality calculation are those that “involve the prevention or correction of wrongs for which those warred against are responsible.” On his view, the goods of preventing unjust aggression qualify, as do the goods of preventing or correcting widespread human rights abuses, since these are among the sufficient just causes. However, only a portion of the goods that stem from the conditional just causes qualifies: the additional good of, e.g., deterring future aggression cannot justify any additional harms, unless those harms are necessary to return the overall level of deterrence back to what it had been prior to the war. The same is true of other conditional just causes, such as disarmament: if disarming an aggressor is necessary in order to prevent an imminent attack, this qualifies as a relevant good, and so may justify imposing certain additional harms. But disarming an aggressor who does not pose an imminent threat—e.g., some aggressor who might threaten us at some point in the future, but
does not threaten us currently—does not count as a relevant good, and therefore cannot justify any additional harms. In other words, disarmament is only relevant when it pertains to the threat we currently face; this is so in virtue of the fact that it prevents immediate wrongful threats for which the agent to be thwarted is, by hypothesis, liable. According to McMahan, to suppose that we may impose further harms in pursuit of these ends “seems to imply that the pursuit of an end that is insufficient to justify killing and maiming […] can contribute to the justification for an activity—war—that necessarily involves killing and maiming. And that makes no sense.”

Some philosophers have resisted McMahan’s claim. Frances Kamm argues that the goods of the contributing just causes do indeed count in the proportionality calculation, though only when they are side effects of the pursuit of the sufficient just cause. For example, we may count the goods of deterrence in the proportionality calculation, which is to say that they can effectively offset other harms that arise throughout the course of the war. However, these goods only qualify when they come about as unintended byproducts of pursuing the just cause—say, thwarting an unjust aggression. On her view, we are not permitted to inflict or initiate any additional harms in order to achieve the ends of deterrence. Thomas Hurka defends an even more expansive alternative. On his view, the contributing just causes can indeed justify further harms, though their doing so is conditional on the presence of a sufficient just cause. On his view, once a sufficient just cause is present, the conditional just causes are all activated—i.e., they count toward proportionality, and so may justify further harms.

I suspect Hurka’s view aligns best with our pre-theoretical intuitions. We certainly are inclined to think that an initial wrongdoing opens up the range of other permissible goals we may pursue, even if this involves introducing new harms that would otherwise be unjustified. Hurka argues that something similar is true for punishment: while we generally do not think we can justifiably imprison someone purely for deterrence purposes, once they have committed some other crime, issuing a prison sentence for the purposes of deterrence seems justified. And yet, it is not clear, upon reflection, that punishment is sufficiently analogous to the conditional just

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causes. Consider that the relevant effects of this sort of punishment are centered on the guilty party: we can do more harms to him because of his prior wrongful actions. It does not, however, justify introducing further harms to unaffiliated third parties. But this is precisely what seems to be justified by Hurka’s approach in the context of war: in particular, by allowing the conditional just causes to count in the proportionality calculation, we allow them to count against all of the various harms, including the deaths of civilians. If the conditional just causes can enter into the proportionality calculation in the way suggested, it looks as though we will need a different argument to show why this is.

The breakdown of this analogy might prompt us to side with McMahan. The strongest argument in favor of McMahan’s position, it seems to me, rests on the observation that the conditional just causes cannot—either individually or in aggregate—justify the resort to war (i.e. they are not sufficient just causes), so it would be strange if they could count towards rendering the war just via the proportionality calculation. And yet, for reasons similar to those Hurka cites in his response to McMahan, this view is excessively restrictive. Perhaps many cases of, e.g., deterrence are insufficient to justify such serious harms as killing innocents, but certain other cases might be capable of doing so—particularly when the effect of the deterrence is that it will save many lives in the future. Of course, these calculations are hard to perform; and surely we overestimate the deterrent value far too frequently. The point, however, is simply that the actual deterrent value in some cases might be sufficient to justify these further harms. Note that it is not enough simply that some deterrent effect would be achieved; the value must be substantial.

In short, it seems McMahan is right that (contra Hurka) the ends of the conditional just causes are generally too insignificant to be able to justify introducing further harms; but to insist that they can never do so is, as Hurka rightly suggests, too strict. Once the value is considerable, such harms can be justified. In other words, conditional just causes can be included within the proportionality calculation alongside a sufficient just cause. However, given their insignificant base value, they are functionally inert in nearly all but the most extreme cases.

As it stands, it seems we are left with a sort of hybrid view, but one that does not generate any significant permissions. But there is more we can say. In particular, we must consider how the conditional just causes can be altered by the presence of national partiality. Consider first a case in which the sufficient just cause is one of national defense, and the relevant conditional just
causes relate to that same goal. So, in addition to thwarting our aggressor, we also have as a conditional aim the goal of, e.g., deterring any future action by this aggressor. We have already seen, in the previous section, that the sufficient just cause possesses agent-relative value for us: we care especially that the aggressor threatens us, and this alters the strength of that cause in our deliberations. In that context, the cause shifted from a mere permission to a strong pro tanto duty. This is because the just cause condition itself does not involve the sorts of comparative judgments that are the core concern of the proportionality calculation. Once again, we see that conditional just causes are importantly different from sufficient just causes: given that they depend on a sufficient just cause, the central question is not whether or not they may be pursued at all, but rather the extent of what they can justify. That is, the question is centrally one of proportionality—in other words, how much extra weight does partiality afford the conditional just cause?

I will consider the ways partiality affects the weights of the proportionality condition in greater detail in the following section. For now, let me simply state the basic idea, which will require some qualification in what follows: when a particular good—such as the good of the conditional just cause—has agent-relative value for us, we are permitted to afford it greater weight in the proportionality calculation. Thus, in the case just mentioned, the conditional just cause of deterring future aggression receives a boost in its value. Whereas the agent-neutral base weight of that value is, as we have seen, quite minimal, the additional weight afforded to it from partiality raises its overall value to a level such that it could justify imposing further harms, since the positive weight of the former can offset the negative weight of the latter.

The basic idea makes intuitive sense: deterring our aggressor from committing future acts of aggression against us has special value for us. All else equal, it should permit us to do more to achieve it. Nearly all who are inclined toward partiality would be sympathetic to this idea. But when we consider a range of possible cases, there are clear intuitive limits on this principle. First, notice that the case we have just considered is one in which the sufficient just cause also has agent-relative value. And recall that without a sufficient just cause, the conditional just causes—though still valuable—cannot be justifiably pursued at all. This is, after all, what makes them conditional just causes in the first place. Something similar is true with respect to the effects of partiality on these causes: just as a conditional just cause is eligible for inclusion at all (no matter the particular view) only if a sufficient just cause is present, so is a conditional just cause with
agent-relative value for us is only permissibly pursued—that is, it only receives extra weight from partiality that is sufficient to overcome the relevant harms of military force, i.e., deaths and destruction—when the sufficient just cause also has agent-relative value for us. Thus, the application of partiality to the conditional just causes mirrors the more basic structure that is thought to exist between these two kinds of just cause.

This limitation rules out the application of extra weight to the conditional just causes when the sufficient just cause does not have agent-relative value for us. Or, more specifically, it would render ineligible the conditional just causes because the sufficient just cause on which it relies does not have agent-relative value. This will be obvious in cases where neither the sufficient nor the conditional just causes have agent-relative value, but less clear in cases where the sufficient just cause lacks, but the conditional just causes have, agent-relative value. For example, imagine that the sufficient just cause we possess is one of humanitarian intervention or third-party defense on behalf of some other nation. This just cause does not itself have agent-relative value for us. But suppose that by engaging in this conflict, we would deter future aggression against us from others who would be impressed by our demonstrated military prowess. This conditional just cause clearly has agent-relative value for us: we would benefit from the good of deterring future aggressors by demonstrating our military capacities here and now. Should the mere fact that the conditional just cause in this case has agent-relative value suffice for applying extra weight from partiality to it? I do not think so. This is easier to see when we consider what this extra weight would justify—namely, further deaths to civilians, and other considerable destruction, particularly in the country we are purportedly helping, in order to thwart or diminish the vague possibility of some unrelated future aggression to us. This would be an especially distasteful form of profiting from our humanitarian efforts, or of using others’ unfortunate circumstances to further our own distinct goals.

Moreover, the limitation also effectively excludes conditional just causes that do not have agent-relative value for us, even in cases when the sufficient just cause does have such agent-relative value. For example, suppose that in deciding how to defend against our unjust aggressor, we could do so in a way that would help to deter future attacks against some other, third-party country, but would cause further harms to innocent civilians in the country that aggresses against us. Are we permitted to take the former route? To be clear, when we can deter our aggressor from future attacks against us, my view says this conditional just cause receives extra weight and
may therefore justify some additional harms. But when the deterrence applies to other countries, my view says this conditional just cause remains at its initial level—which is to say, it is incapable of justifying any further harms. Why should we think this is so? Again, the point concerns the ends of our use of force, and what can justify the relevant sorts of harms that count in the proportionality calculation. The mere fact that some future harms might be thwarted is not enough to justify additional harms of this sort, unless such harms are imminent—in which case the cause shifts from a conditional to a sufficient just cause. But the fact that the harms will happen to us seems to count towards justifying further harms, just as it has elsewhere in our moral theory (as we have already seen, particularly in chapter 4). The fact that some harms might befall us, I have argued, is a morally salient fact about the circumstances that can render the impermissible permissible. Just how much harm it can justify is a function of many different factors. My point here is simply that it can justify some harm, at least in theory.

It is worth noting how this view differs from McMahan’s and Hurka’s views. First, this view is more permissive than McMahan’s view: whereas he does not allow pursuit of the conditional just causes, except when necessary to restore that good back to its status quo ante, my view allows that we may pursue these goods when there is agent-relative value in both the sufficient just cause and the conditional just cause itself. But while my view is more permissive than McMahan’s, it is more restrictive than Hurka’s. In particular, Hurka allows that conditional just causes can be counted in proportionality once the sufficient just cause is present. Hurka would therefore demur from my conclusions in both of the previous cases. For Hurka, it does not matter whether the just cause is national or other-defense, or whether the conditional just causes have agent-relative value for us: they can offset harms, even harms to innocents, in any of these cases. As I have argued, this seems false in many cases. In particular, something of greater moral significance must be present for such goods to be eligible for inclusion in the proportionality calculus. I submit that national partiality is a good candidate for such a value.

There may be further relevant restrictions or qualifications to this view. For instance, it seems that goods that are tangential to the present conflict should be discounted as against the goods that are more relevant to this conflict. For example, compare the good of deterring future aggression by the very country that is currently attacking us, versus the good of deterring future aggression by other countries who are impressed by our military prowess. I suspect most would agree that the former is capable of justifying more harm than the latter. Perhaps this claim relies
on an assumption about the relationship between a country’s citizens and the wars that are fought in their name. I will not argue for this here. The point is intended simply to highlight the fact that not all conditional just causes receive the weight: some, such as the goods of deterring unrelated third-parties, will receive less weight. Whether this reduction in weight comes out of the base weight of the good or the extra weight from partiality is a question I cannot answer here. The upshot here is simply that there is more that can be said about restricting conditional just causes than I have discussed here.

Let me close this section by issuing one further clarification. In accepting the foregoing arguments, we are not thereby committed to the view that conditional just causes are never eligible for inclusion in the proportionality condition whenever the sufficient just cause lacks agent-relative value for us—namely, in humanitarian intervention or third-party defense cases. This is because one important feature of those cases is that our role as interveners involves acting on behalf (in whole or in part) of those whom we defend, and we might view them as having transferred (or extended) their agent-relative permissions to us.131 (This is roughly analogous to what happens in interpersonal cases with bodyguards, for example—though, of course, this analogy also has limits.) If this is true, we would indeed be permitted to pursue conditional just causes in such cases, acting on the victim party’s reasons of partiality based on their own agent-relative goods. I do not have the space to pursue this question fully here. Clearly, whether or not we can accommodate this conclusion depends on whether our view of agent-relative permissions allows for their transfer.132 If, however, we grant that agent-relative permissions can transfer in these cases, then the view I have just sketched is much closer, practically speaking, to Hurka’s view—though certainly some differences remain, particularly regarding the conditional just causes that do not have agent-relative value for us.


132 Moreover, none of what I say here precludes the possibility of achieving the aim of disarmament (a conditional just cause) from within the restrictions of the jus post bellum.
5 Proportionality & Partiality

5.1 The Asymmetry Thesis

We just saw that there are clear limits to the kinds of goods that can count towards proportionality. But the same kinds of limits do not seem true of harms. For example, the fact that waging war would offer a significant boost to our economy does not count as a relevant good, but the fact that a war would be devastating to our economy does count as a relevant harm. And the same holds for a broad range of other harms, ranging from preventing or disrupting scientific and cultural achievements to the dissatisfaction and displeasure of our combatants and co-nationals. Thus, the limits to the relevant goods and the relevant harms to be included in the proportionality calculation are asymmetrical; call this the asymmetry thesis. On this view, certain types of harms might count against proportionality, even though their good counterpart does not count towards it. More broadly, there are also many relevant harms that don’t have counterparts worth countenancing as potential goods, either because they do not tend to be effects of war, or because they aren’t straightforward counterparts at all. Death, maiming, and destruction are clearly relevant harms, though the things we might take to be their positive counterparts aren’t generally relevant to war—and if they were, we would exclude them as irrelevant goods.

Why is the list of relevant harms so much broader than the list of relevant goods? First, as I suggested earlier, the just cause condition restricts the ends that may be pursued by means of war, which thereby serves to restrict the goods that can count in favor of a war’s proportionality. But there is no such condition restricting the range of harms that count against war. It is not as if there is a corollary to the just cause condition that delimits the permissible grounds for avoiding going to war. More generally, a central assumption of jus ad bellum as a whole is that there is a strong pro tanto case against waging war. And the just cause condition further manifests this tendency: its default assumption is that war is unjust unless one of a select few ends is present; this considerable burden of proof rests with those seeking to go to war. Thus, this asymmetry within the proportionality condition is a case of a more general asymmetry within the overall theory of which it is a part.

For more on this idea, see Thomas Hurka, “Proportionality in the Morality of War”.
While the list of harms is indeed much more inclusive than the list of goods, it is not unlimited. The fact that a nation’s declaring war would cause me to lose a high-stakes bet does not seem to count as a relevant harm in the proportionality calculation. Or consider a case in which our nation’s successful campaign against an unjust aggressor will prevent some third-party nation from establishing favorable economic ties with the aggressor. Surely that qualifies as a harm to both the third-party nation and the aggressor; and yet, it seems irrelevant from the standpoint of proportionality. Notice, however, that it is not merely in virtue of the fact that one is a third-party—which is true of both the betting case and the economic ties case—that explains why the harms to them are excluded. After all, war routinely harms third parties in very serious ways: innocent bystanders are killed or harmed; unaffiliated neighboring countries suffer violations of their territorial integrity; the environment, both locally and globally, is often destroyed. And no one thinks these harms are irrelevant to the proportionality calculation. Thus, we must look elsewhere for an explanation.

Let me gesture at one possible explanation as to why certain harms, such as the ones just mentioned, may be excluded—though I am unsure if this is indeed the best explanation. One plausible idea is that the harms that count in the proportionality calculation are those that our nation is in some sense morally responsible for; and, by contrast, harms for which our nation is not, or perhaps only very minimally, morally responsible are excluded. We can then appeal to our best account of moral responsibility to provide the details of the various harms for which our nation is responsible. This is quite vague, of course; but a more thorough look at the details of such an account would take us too far afield. It will suffice to note here that such an account would judge that nations are morally responsible for the death and destruction they immediately bring about, even if their actions are all things considered justified. Their responsibility diminishes, though perhaps not with any constant slope, as the effects of their actions become more causally remote or over-determined. Beyond a certain point, responsibility may disappear altogether. One way our responsibility diminishes is when the harms are brought about through the independent agency of others who could have reasonably acted otherwise—though

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134 To be clear, this explanation is consistent with the asymmetry thesis, though Hurka does not himself endorse it. He discusses the discounting of causally remote harms, but no further explanation is given as to why these are discounted. Perhaps the explanation I offer here is one possibility.
admittedly there are cases that complicate this general rule.\textsuperscript{135} While responsibility is of course not zero-sum, generally speaking, the greater the causal intervention from other agents, the less I am responsible for those harms.\textsuperscript{136} There are obvious limitations, however: the greater my evidence that some harm will indeed eventuate, the less my responsibility diminishes. Indeed, if I am certain that my actions will eventually lead to some relevant harm, even though it will be causally mediated by many other agents over a long stretch of time, I still bear significant responsibility for this harm. There is much more that would need to be said to articulate the full account of why some harms are excluded. This sketch, however, provides a rough illustration as to how we can secure the conclusion that a nation is not in general morally responsible for, e.g., the bets people have placed on its actions, certain of the causally downstream actions of third-party countries, and other harms we tend to find irrelevant.

5.2 Offsetting Goods

I have claimed that the list of goods that count towards proportionality is limited to only those found within the just causes, but it is worth noting an important exception or qualification. While the goods of the just cause are the only goods that can justify introducing new harms, there is another category of goods that count towards proportionality only insofar as they offset harms of a similarly related sort. Let us call these \textit{offsetting goods} and the relevant goods they are contrasted with \textit{standard goods} (and \textit{standard harms}, though there are no offsetting harms). This

\textsuperscript{135} One such case is that of human shields. Some philosophers believe that those who employ human shields, or who place military bases or soldiers in highly populated areas, bear the responsibility for doing so. For this view, see Asa Kasher and Amos Yadlin, “Military Ethics of Fighting Terror: An Israeli Perspective,” \textit{Journal of Military Ethics} 4 (2005): 18. Others argue that human shields are no different from bystanders. As Adil Haque puts it, “the responsibility of the defending force is not even a ‘moral tie-breaker’” See: Adil Ahmad Haque, “Human Shields,” in \textit{The Oxford Handbook of the Ethics of War}, Seth Lazar and Helen Frowe, eds. (Oxford University Press, 2015). Others hold intermediate views. See Thomas Hurka, “Proportionality in the Morality of War”, 47-50.

\textsuperscript{136} One issue here concerns what Derek Parfit calls the “share of the total view”. (See: Derek Parfit, \textit{Reasons and Persons}, Oxford University Press (1984): 67-70.) There are cases in which my causal contribution makes all the difference, given what others already do, and thus I am responsible for all of the result (rather than merely my share of the total outcome). Cases like these have relevance here, but a full treatment of them would take us too far afield. The basic point is that, intuitively, there tends to be a connection between factors like causal remoteness and other agents’ contributions and a lower level of responsibility.
idea is most helpfully illustrated with the following example, adapted from a case first introduced by Christopher Eberle:137

*Job Creation:* By entering into an otherwise just war with a neighboring aggressor, our nation would suffer crippling economic losses, leading to, among other things, the loss of 1 million jobs in the service sector. Assume that the other features of the case make it such that the loss of 1 million jobs is enough to render the war disproportionate. However, there is a way to organize the war effort such that 1 million new jobs are created in the defense industry. (Assume, if necessary, that the 1 million new jobs are not instantaneously created, but are created throughout the course of the war.)

According to the asymmetry thesis, the loss of 1 million service jobs counts among the relevant harms in the proportionality calculation. But this view also holds that economic goods such as job creation do not number among the greater or lesser just causes, which means that the defense sector jobs that are created do not count as relevant goods. Thus, from the standpoint of the asymmetry thesis, the war leaves us with −1 million jobs, and may therefore be disproportionate. But intuitively, this seems wrong: surely the 1 million jobs created to fight the war offset the 1 million jobs lost, leaving us with an even balance. The harm that would otherwise have eventuated has been prevented. Furthermore, if we don’t count the 1 million jobs created in this case, we end up counting harms that, on balance, are never actually realized.138 And it would be odd to withhold fighting a war on the basis that the economic harms it will inflict are disproportionate—as per our assumption—if those harms are entirely offset.

This point requires further qualification. Intuitively, the offsetting goods should apply to the very same group, roughly speaking, as the harms they offset. It would be strange if we could offset, e.g., economic harms to the other side’s civilians by economic gains to our own civilians. After all, the motivating idea behind offsetting goods was that there should be no important difference between losing 1 million jobs and regaining 1 million jobs to what is essentially the

138 Of course, there is a sense in which they may have been realized for specific individuals—namely, those who lost their jobs but did not have them replaced by the new scheme.
same group. Were the idea of offsetting goods to be expanded to allow for benefits to accrue to very different groups, this crucial element would be lost.

While offsetting goods must apply only to that group that has suffered those harms, these goods do not have to come from the very same group that would otherwise lose them. This point is easiest to see in cases where it is possible for one group to compensate for the relevant harms that another will suffer. For example, in wars of third-party defense or humanitarian intervention, countries may offset the harms from the war when the country on whose behalf (or at whose side) it fights promises compensation for these losses. Politicians on both sides of the political spectrum considered this idea in the lead-up to the Libyan Civil War. In 2011, Donald Trump said, “Unless we take the oil from Libya, I have no interest in Libya.” On the left, Neera Tanden, President of the Center for American Progress, made a similar suggestion:

We have a giant deficit. They [Libya] have a lot of oil. Most Americans would choose not to engage in the world because of that deficit. If we want to continue to engage in the world, gestures like having oil rich countries partially pay us back doesn’t seem crazy to me.

Of course, cases of this sort have many confounding factors that will shift our judgments in different directions. In order to see the underlying theoretical point, we must set aside certain complicated and controversial details, such as whether or not the economic costs the U.S. would incur would actually be significant enough to count much against the proportionality constraint, or whether the promise of oil would effectively offset that cost. The basic claim here is that the economic harms that the U.S. would suffer as a result of aiding the Libyan revolution could be

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139 I doubt, as a general matter, that states may fight only on condition that such compensation is paid. There are surely many cases in which such defense is morally required.


offset by a guarantee of compensation from Libya. And this comports well with our understanding of offsetting goods and how they can be achieved.\textsuperscript{142}

Of course, under the proposed plan, many Libyans—in particular, those in especially precarious economic circumstances—would likely be harmed by the massive expropriation of one of their country’s most valuable natural resources. In other words, even if the economic gains to the U.S. could balance the costs they would incur, doing so would impose further costs on Libyans. In this case, these new harms must be included in the proportionality condition. And when the harms caused by the particular means of achieving offsetting goods are sufficiently large—as perhaps they would be in the Libya case, or so some might argue—we may have reason to avoid soliciting them. But this would be a judgment based in the outcome of the proportionality calculation, not based on particular limitations of the goods themselves.

In sum, the asymmetry thesis ought to be amended to allow for a category of goods that, though they do not count in favor of the war, can nevertheless offset harms that the war would otherwise produce.\textsuperscript{143} To be clear, offsetting goods can only offset the harms that would otherwise occur. Put differently, these goods do not count in favor of the war, nor can they offset any other harms, such as those that befall the other side. To count surplus offsetting goods would be to elevate the creation of these economic goods from mere offsetting goods to standard goods. But this would be to put such goods on a par, in terms of their justificatory power, with the goods of the just cause. And clearly, this would be a mistake.

5.3 Goods, Harms, & Partiality

Let us now consider how partiality affects these goods and harms. As we saw in chapter 4, a plausible way of understanding the impact of partiality is to see it as generating extra weight to the already present moral weight (though the precise details of this extra weight are complex).

\textsuperscript{142} See also my discussion below concerning how proportionality differs in humanitarian intervention and third-party defense cases. If, as I suggest is plausible, the relevant goods in these wars receive basically no boost from partiality, and the harms do receive such a boost, satisfying proportionality will be more difficult in wars of this sort. Thus, in some cases, the offsetting goods in the form of compensation may be the only way for proportionality to be satisfied.

\textsuperscript{143} Hurka appears to endorse the basic idea here in a later article. See Thomas Hurka, “Kamm on Intention and Proportionality in War,” \textit{Journal of Moral Philosophy} 11 (2014): 422.
One natural thought is that partiality can boost the weight of any of the standard goods and harms that have agent-relative value (i.e., for the nation in question). Call this the complete agent-relative view. Whatever the agent-neutral value of the good of thwarting unjust aggression, the good of thwarting the aggressor who threatens our nation has agent-relative value for us, and so on this view receives additional weight in the proportionality calculation.\(^{144}\)

The same idea applies to standard harms, such as the deaths of my co-nationals. As we have seen already in part in chapter 3, and as I will argue in greater detail in chapter 6, harms to both our combatants and non-combatants have agent-relative value for us, in virtue of the special ties among co-nationals. These harms, however, must be weighed against the other special obligations we have to other groups, such as the enemy’s non-combatants in virtue of the principle of non-combatant priority. I will leave further discussion of this point until the next chapter. For now, it is enough to point out that one factor that must be taken into account is the agent-relative value of the lives of our co-nationals, which, though they may be outweighed, nevertheless receive extra weight in the proportionality calculation.\(^{145}\) There are, of course, other harms that have agent-relative value, such as the violation of serious political rights, the economic costs we incur, the destruction of our cultural property, the loss of our territory, and so forth. On the view under consideration, each of these harms also receives added weight from partiality because of the agent-relative value that each of these harms possesses.

Offsetting goods can also receive additional weight, though again there are restrictions. We have already seen that offsetting goods must directly offset the same sort of harm for the very same group—namely, our nation. And the offsetting goods receive a boost of precisely the same weight as the harms they offset. For example, the harms of economic loss have agent-relative value for us, and are therefore weighted more heavily in the proportionality calculation. Since the harms receive added weight, so too must the offsetting goods—indeed, they must

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\(^{144}\) The same is true in general of the goods of the conditional just causes. However, it is less clear exactly whether the idea of further extra weight is applicable here, since partiality already renders these goods eligible in proportionality. It’s unclear if there is any meaningful sense in which we could say they add extra weight beyond that, instead of just understanding whatever weight they do have as inherently tied up with that good’s agent-relative value.

\(^{145}\) The discussion in chapter 6 addresses the in bello proportionality calculation, but the same general points apply to the ad bellum proportionality condition.
receive the very same additional weight (i.e., per job) as the harms they offset. Otherwise, the offsetting goods would be less valuable than the harms they are meant to offset.

So, on the complete agent-relative view, the standard goods and harms that possess agent-relative value for us receive extra weighting, while those that do not possess agent-relative value do not. While this view has some plausibility, there are a few intuitive limits. First, there may be cases in which some relevant good possesses agent-relative value for us merely in virtue of that good’s instrumental value, but the good does not seem to receive extra weight from partiality. Consider a case in which the relevant good of our intervention is to prevent severe human rights abuses in some other country. And suppose that in doing so, this country will be able to realize its ambitions of establishing a democracy, which in turn will secure for our nation certain strategic or economic benefits in the future. While ending severe human rights abuses is certainly a relevant good for proportionality, the resulting strategic and economic goods that accrue to us are not relevant goods, despite their having agent-relative value for us. Thus, while ending human rights abuses has clear agent-neutral value, its agent-relative value for us is purely instrumental. Intuitively, the fact that it is merely instrumentally valuable precludes any extra weight from partiality as applied to the good of ending human rights abuses. To be clear, I do not doubt that this is a genuine case of agent-relative value. I assume that goods can have such value instrumentally, and that the strategic and economic goods are appropriate candidates for such value, despite not being relevant goods for proportionality. What I reject, however, is the idea that the mere presence of any sort of agent-relative value in the relevant good suffices to give it extra weight for us in the proportionality calculation.

This case involves a relevant good with agent-relative value for us that is instrumentally valuable for achieving some irrelevant good with agent-relative value for us. But there might also be cases in which a relevant good is instrumentally valuable for achieving some other relevant good with agent-relative value for us. Cases like this are hard to find, however; most intuitively plausible cases of this sort will involve conditional just causes, such as deterrence and disarmament. Suppose that fighting to prevent widespread and serious human rights abuses in some other country (a sufficient just cause) will have the effect of deterring that (or some other) country from attacking us in the future (a conditional just cause). Deterrence, as we have already seen, can sometimes be a relevant good; and it clearly possesses agent-relative value for us in this case. However, as I suggested earlier, such goods are only eligible for inclusion in the
proportionality condition when they are taken in tandem with a sufficient just cause that has
agent-relative value for us. And yet, given that deterrence is not eligible for inclusion in
proportionality unless there is also a sufficient just cause with agent-relative value, and no such
sufficient just cause is present in this example, deterrence is therefore not a relevant good for
proportionality here—and so, a fortiori, is not eligible for extra weight from partiality.

The present point does not depend on the truth of that earlier claim, though: even if the
view I sketched above is false, it still seems intuitively wrong that a nation may do more—i.e.,
harm more innocent civilians, cause more damage—in order to achieve agent-relative deterrent
effects, when we are fighting for an agent-neutral just cause. As I have already suggested, this
would be an especially distasteful form of profiting from our humanitarian efforts, or of using
others’ misfortune to further our own particular interests. This is true even in cases where such
benefits come as a side-effect: we may be pleased that they occurred and do no wrong in
benefiting from them when their realization was merely accidental. But we cannot use them to
justify or offset further harms even in these cases. It is hard to see how, in either sort of case, this
could justify further infliction of harm, especially to those whom we are in the process of aiding.

While these cases illustrate the intuitive limits to the ways in which agent-relative value
affects the proportionality condition, they also suggest a principled limitation. In particular, it
seems that only relevant goods with non-instrumental agent-relative value for us receive extra
weight in the proportionality calculation. Or, when a good has both instrumental and non-
instrumental agent-relative value, only the non-instrumental value of the good is eligible for
extra weight.

Are there similar limits with respect to relevant harms? I do not think so. In order to see
why, we must consider a case in which a relevant harm has merely instrumental agent-relative
disvalue for us for some relevant harm. Perhaps one instance of this can be seen in the idea that
we ought to treat the lives of the aggressor’s civilians as especially weighty—that is, of even
greater weight than dictated by the principle of non-combatant immunity—since avoiding harms
to these civilians has instrumental agent-relative value to us in our mission to “win hearts and
minds”, which, we may suppose, is necessary for securing the just cause of preventing future
harmsto us.\textsuperscript{146} In other words, harms to the enemy’s civilians are instrumentally disvaluable insofar as they tend to bring about greater harms to us. But unless we afford considerably greater weight to these civilians’ lives—for example, to the point of outweighing our own civilians’ lives—then it is hard to see what would be troubling about this. Consider the standpoint of those civilians: I doubt they would find it objectionable to be treated as a means—if it even makes sense to describe it this way—in cases in which the direct result is that their moral status is effectively elevated. If this is correct, then it reinforces the basic feature of the asymmetry thesis we saw earlier, since there are restrictions on the effects of agent-relative value that apply only with respect to goods and not with respect to harms.

This should suffice to show that the complete agent-relative view cannot be exactly right. Instead, the most plausible view, as I have shown, is one according to which there are certain limits on the extent to which something with agent-relative value receives additional weight in the proportionality calculation. Call this the \textit{non-instrumental agent-relative view}.

\subsection{5.4 Permissiveness & Canceling Out}

The non-instrumental agent-relative view is a clear improvement over the complete agent-relative view. However, it still yields several conclusions that might seem at first glance unpalatable to those friendly to partiality. Consider the fact that giving greater weight to the relevant harms that befall our side—e.g., harms to our combatants and civilians, economic and social harms, and so on—means that each of these harms counts more strongly against proportionality than do those very same harms when they befall the other side. It therefore looks as though the extra weight from partiality afforded to such harms makes proportionality more

\footnote{One might object here in the following way: if performing a given act will make achieving the just cause more difficult than abstaining from it or performing some alternative act, then this act fails to satisfy (in bello) necessity. And this is what acts that fail to ‘win hearts and minds’ do: they make achieving the just cause more difficult, because it both fails to encourage the local population to cooperate with our aims, and in some cases even encourages some members of that population to take up arms in response to what they perceive to be unjust acts on our part. As such, the issue of how these harms factor into proportionality is moot: the act is ruled out according to the necessity condition. There is a lot to unpack in this objection, so I cannot address it in its entirety here. Let me mention only that I am not convinced that the necessity point goes through so easily. Often these harms bring about certain advantages, and it is unclear how they weigh against each other. Moreover, the harms that come from encouraging others to join the fight against us involves the complicated issue of intervening agency, which I do not have the space to address here.}

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difficult to satisfy than on an impartialist or cosmopolitan view; indeed, some wars might fail to satisfy proportionality for precisely this reason. In other words, holding all else equal, each additional harm to our side counts more against proportionality than it would on a cosmopolitan model. But this is counterintuitive: surely partiality generally has the effect of making war more, not less permissive. Call this the permissiveness worry.

We might think we can avoid this worry once we incorporate the greater weight that partiality affords the relevant goods as well. That is, while it is true that the harms on their own count more against proportionality, the goods also receive extra weight, which counteracts the extra weight the harms receive. But then it looks as though the extra weights simply cancel each other out, thereby generating a judgment of proportionality that is no different than that of rival cosmopolitan views. Again, this seems counterintuitive: presumably partiality actually has some effect on what we are permitted to do, but this conclusion suggests otherwise. Call this the canceling out worry.

Let us begin by looking at the permissiveness worry, which will also provide us with the resources for responding to the canceling out worry. There are at least three reasons why the permissiveness worry is not a significant problem for this view. First, in general, the fact that harms befall those with whom we stand in special relationships does seem to count more strongly against performing that action. This was one of the central conclusions of the previous chapter, and it is equally applicable here. It is certainly true of many cases of wronging: breaking an important promise to a stranger is wrong, but breaking an important promise to a friend is much more seriously wrong, all else being equal. The same point seems true of all harms more generally: if we must harm one person or another, one of whom is my brother, it is more seriously wrongful to harm my brother than the stranger. This is a feature rather than a bug of the view.

Second, the worry gets its force in certain cases only by ignoring relevant features of these cases. Consider first a defensive war that will involve some amount of harm to our side—

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147 This point does not apply neatly in the case of self-defense, since it is much less clear that one could wrong oneself in the sense I mean here. The point here, therefore, applies only to special relationships with others.
say, 500 deaths. The worry, it seems, is that there is some amount of good such that the impartialist or cosmopolitan model, which gives no extra weight to these harms, would judge that it is proportionate—i.e., that this amount of good is proportionate to that amount of harm—while the partialist view under consideration would judge that this amount of good is insufficient to offset that amount of harm, and therefore that the war fails to satisfy proportionality. This is indeed true if we hold fixed the value of the relevant goods across both views. But to do so would be to ignore the fact that the partialist view holds that, for defensive wars, the value of this good has greater weight on account of its agent-relative value—namely, the particular value to us of defending our nation and co-nationals from unjust aggression. The cosmopolitan view, by contrast, does not give extra weight to either the goods or the harms. So, we cannot assume that the cosmopolitan view would be more permissive than the partialist view in an example of this sort. Whether or not this is so would depend on several factors.

First, we need to know the strength of the multipliers for the relative agent-relative harms and goods. If the extra weight applied to these goods is the same (e.g., a 2x multiplier) as the extra weight applied to the relevant harms to us, then the partialist and cosmopolitan views would indeed render the same verdict: the wars are equally proportionate on both views. (Notice that it does not follow from this that we must be neutral between the two wars in all ways; consider the arguments of section 3 of this chapter concerning the strong pro tanto duty to fight wars of national defense.) If, however, the extra weight applied to these goods is greater than the extra weight applied to the harms, then the partialist view is indeed more permissive. While I cannot argue decisively for this point here, it does seem prima facie plausible that the multiplier for the goods is greater than that of the harms. After all, in many cases, the goods involve preventing many greater harms than would be realized by fighting back; it is natural, then, that they would count for more overall.

Another central factor in determining the relative weights in this calculation is the extent of the harms and goods that receive a boost. Our assumption thus far has been that all the harms and goods receive a boost when the war is one of national defense, but this is generally not true: while all the relevant goods are agent-relative (by hypothesis), it is rare that all the harms would befall only our side. After all, many of the harms will befall citizens of the aggressor nation, and so would count as relevant harms but receive no boost from partiality. Thus, compared to a cosmopolitan model, the partialist’s picture tends to involve a complete boost of all the relevant
goods, and a boost of only some of the relevant harms. This will tilt the balance in favor of the goods. In other words, this will tend to make the partialist view more permissive than the cosmopolitan model.

The third and final reason why the permissiveness worry is not much of a worry at all concerns the available alternatives. Notice that the previous example gives us only one way of fighting the war, but this does not accurately portray most real world scenarios: in most cases, we can fight the war in multiple ways, some of which involve harms to our side, and others that involve harms to others. Suppose we can fight our defensive war in one of two ways: on the first, we would bring about 500 deaths to our side; on the second, we would bring about 500 deaths to the other side. (Bracket for now the distinction between civilians and combatants; assume either that they are of equal value, or that the harms in question are to the same group-type in both cases.) The cosmopolitan view says there is no difference between these two: deaths and harms count for the same amount, regardless of which group the members belong to. The partialist view, by contrast, holds that each death to one of our co-nationals counts for more than a death to one on the other side of the conflict. Thus, assuming all else is equal—i.e., that we are comparing similar act-types (e.g., side-effect killings)—we should prefer to fight the war in the second way. This is clearly more permissive than the cosmopolitan view. And I think it is in agreement with our pre-theoretical intuitions.

While the previous examples focus on cases of defensive war, we must also look at how the permissiveness worry applies in cases of humanitarian intervention or third-party defense. Consider the same setup as the previous case: there are two ways to fight the war, the first will cause 500 deaths on our side, and the other will cause 500 deaths on their side (or even many more). One important difference in this case concerns the relevant goods: it is not a war against our unjust aggressor, but a war to aid some other country, whether in thwarting their aggressor or in defense of a civilian population against aggression on the part of its own people. Given that these goods do not have agent-relative value for us, they do not receive extra weight from partiality. The harms, however, still have agent-relative value for us: the deaths of our co-nationals retain their agent-relative value in all cases.

The upshot is that the very same number of deaths to our co-nationals will count more significantly against proportionality in humanitarian wars than in defensive wars, since only in
the latter cases do the goods receive the extra weight capable of balancing against these
weightier harms. For example, suppose that 500 deaths on our side is the threshold for
proportionality in a war against our unjust aggressor. This means that 500 deaths on our side is
not out of proportion to the good of thwarting our unjust aggressor. However, by changing the
good in question, such that it no longer receives nearly as much weight—in this case, because it
receives no extra weight from partiality—then 500 deaths on our side will be disproportionate,
and perhaps by a considerable amount. On this view, then, wars of humanitarian intervention or
third-party defense become disproportionate much more quickly (for us) than do wars against
our unjust aggressor, since deaths to our co-nationals in the former cases are weighed against
goods that do not have agent-relative value for us.

But again, I think this conclusion is a feature rather than a bug of the view. If we accept
that we ought to place a greater weight on the lives of our co-nationals in virtue of the special
relationship we share, then it will take a significant amount of good to justify their deaths. In
cases of defense against our unjust aggressor, this good is sufficient in virtue of the extra weight
this good receives from partiality. The same good taken impartially—e.g., a third-party defense
against the same level or type of aggression—might fail to be significant enough to weigh
against the harms to our side. Of course, the good does not need to have agent-relative value to
be sufficiently significant: a much greater amount of impartial good, such as ending a genocide
or mass killings elsewhere, might also be enough to justify harming our co-nationals. This shows
that a war of humanitarian intervention or third-party defense will generally satisfy
proportionality only when the good in question is overwhelming—or else when the deaths on our
side are expected to be minimal.148 By contrast, wars against our own aggressor will more easily
satisfy proportionality, since the relevant good has agent-relative value for us. I suspect those
friendly to partiality will be happy to accept this conclusion.

If the foregoing arguments are correct, then the permissiveness worry is not really a
worry at all. It is indeed true that harms to our own are harder to justify—this is as we should
expect it to be—but this generates verdicts in war that comport with our general intuitions. Let us
turn briefly to what I called the canceling out worry. The worry, recall, is that in some cases

148 This depends, of course, on the size of the multiplier.
partiality appears to have no effect at all on the proportionality condition, compared to the cosmopolitan alternative, since it might turn out that two wars, one of which has goods and harms that both receive extra weight from partiality, and another with goods and harms that are both entirely impartial, will equally satisfy proportionality. But the foregoing arguments have shown that this is not a fully accurate picture of most wars. In particular, the goods tend to have a greater weight than the harms, by virtue of the fact that all of the goods receive a boost (in defensive wars) while only some of the harms do (i.e. the harms to our side).

Nevertheless, let us grant that it is possible that there are some cases in which the weights cancel out in this way. Still, it would not follow from this that we must be neutral between the two wars. For one thing, proportionality does not require that we fight the war that is most proportionate; it only requires that the war is proportionate. Furthermore, there are factors external to the proportionality condition that count in favor of fighting our own war. One obvious candidate is the just cause condition. As I argued previously, partiality has the effect of turning mere permissions to fight certain wars—e.g., those that involve defending against our own aggressors—into strong pro tanto duties. Thus, the fact that goods and harms might cancel each other out is only a problem if proportionality were the only relevant ad bellum condition. But of course, it is not: the just cause condition is capable of issuing the judgment that some wars of self-defense will be all things considered morally required.

6 Conclusion

If the arguments of this chapter are correct, then partiality alters the two central ad bellum conditions, just cause and proportionality, in at least three ways. First, for the just cause condition, agent-relative causes like national defense change from mere permissions to weighty pro tanto duties. Second, I have argued that there is some reason to believe that partiality affects which just causes may be permissibly pursued—i.e., which causes are included in the proportionality condition. And finally, nearly all of the relevant goods and harms of the proportionality condition receive extra weight from partiality—though, as I have argued, not all do.
Chapter 6  
Weighing Lives in War

1 Introduction

In addition to the jus ad bellum criteria we explored in the previous chapter, which govern the resort to war, just war theorists also recognize a separate set of criteria, the jus in bello, which govern conduct within war. The jus in bello consists of three basic conditions. The first two, necessity and proportionality, are roughly analogous to the ad bellum last resort and proportionality conditions, respectively. Similar to last resort, the in bello necessity condition holds, roughly, that there must not be a less harmful way of bringing about the same, or nearly the same, relevant goods. And the in bello proportionality condition holds that the relevant harms of an act of war (e.g., a particular engagement, such as a bombing) must be proportionate to the relevant goods it achieves.

While there is much to say about each of these conditions on their own, this chapter will focus the third in bello principle—the principle of discrimination—and its relationship to the in bello proportionality condition. In its most general formulation, the principle of discrimination prohibits intentional targeting of non-combatants, except in cases of supreme emergency. This serves to distinguish non-combatants from combatants, the latter being legitimate targets in war. In order for this principle to have any purchase, however, we must first determine who counts as a non-combatant. The standard view holds that combatants are members of the armed forces of a

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149 As with last resort, a full definition of necessity requires more detail concerning cases in which an alternative is less harmful but achieves less of a given relevant good; less harmful but achieves fewer of the relevant goods taken together; or is less harmful but, were it to prove unsuccessful, stands a high chance of increasing the likelihood of greater relevant harms in the future. As this condition does not feature in the discussion that follows, I will set aside these issues here.

150 See: Michael Walzer, Just and Unjust Wars (Basic Books, 1977); Jeff McMahan, “The Sources and Status of Just War Principles,” The Journal of Military Ethics 6 (2007): 96-97; Larry May, War Crimes and Just War (Cambridge University Press, 2002), chapter 5. It is an open question whether or not national partiality applies in cases of extreme emergency, which would permit the intentional targeting of non-combatants, subject to certain other constraints. I see no immediate reason why national partiality would not apply in such cases, though perhaps the extraordinary nature of such cases is such that partiality would offer very little boost to our reasons. At any rate, I do not pursue this question in what follows, and I will set it aside for now.
state or nation at war, as well as others who participate directly in the war; those who do not fit this description are non-combatants. To be sure, the question of whether the scope of who may be permissibly targeted in war is broader than this in a controversial one, but we can set it aside for now.\footnote{For discussion of this point, see Jeff McMahan, \textit{Killing in War} (Oxford University Press, 2009), chapter 5 and passim; and Seth Lazar, “The Responsibility Dilemma for Killing in War: A Review Essay,” \textit{Philosophy and Public Affairs} 38 (2010).}

It is important to note that this prohibition extends only to \textit{intentionally targeting} non-combatants; it does not prohibit inflicting \textit{merely foreseen collateral damage} on non-combatants. Yet the underlying principle here is that, in virtue of some set of facts about their status relative to the war—e.g., their moral and perhaps material innocence, their lack of liability to harm, or perhaps their role or lack thereof—non-combatants warrant greater protection than combatants. Call this the principle of \textit{non-combatant priority}. In addition to justifying the prohibition on intentional targeting of non-combatants, this principle also justifies prioritizing non-combatants against the full range of harms that might befall them in war, such as in cases of collateral killings, acts of rescue, and other forms of protection. To be sure, neither killing non-combatants collaterally nor failing to remove them from harm’s way violates the discrimination condition. But harms to non-combatants do receive greater weight in the in bello proportionality condition. That is, the fact that some of the people who will be harmed or killed as a side-effect of a given military action are non-combatants counts more strongly against the proportionality of that action than if that same group consisted entirely of combatants.\footnote{Some philosophers believe that, when our side fights for a just cause in a just way, deaths of the other side’s combatants do not count against proportionality whatsoever. Others will demur. But notice that the same general point applies when we consider the relative importance of the deaths of our own co-nationals: the fact that some action of ours will kill some number of our civilians counts more against proportionality than if it would kill that same number of our combatants.}

The principle of non-combatant priority helps us to understand the relative moral priority of different individuals in war, but it is not the only morally relevant distinction worth considering. As we have already seen in previous chapters, under certain conditions, the co-national relationship generates permissions to confer greater weight on one’s own co-nationals, which will sometimes be enough to overcome the weights of certain other moral duties to
outsiders. Thus, on top of the principle of non-combatant priority, which applies broadly between combatants and non-combatants, we must also account for the fact that some individuals in each of these groups are our co-nationals, while others are not.

Often these two distinctions must be weighed against each other. Consider a case in which we are faced with a choice between harming some number of our combatants and some number—perhaps the same number—of the other side’s non-combatants. Taken by itself, the principle of non-combatant priority requires that we ought to avoid harming the non-combatants. However, the fact that the combatants in question are our co-nationals means they should receive greater weight when compared with those who are not our co-nationals. Which of these two demands of priority wins out? Should we avoid the harm to our combatants or to their non-combatants?

The answer to this question is far from obvious. Most philosophers who have written on this issue endorse cosmopolitanism, or at least something quite like it. Roughly, this view holds that the mere fact that someone is our co-national gives us neither a permission nor a duty to weigh their interests more heavily. As a result, non-combatant priority will generally outweigh avoiding harm to our combatants. By contrast, many non-philosophers seem not only to reject the cosmopolitan picture, but also to embrace a rather extreme view at the opposite end of the spectrum. In a recent study, Americans were asked to consider a hypothetical scenario in which the U.S. has been attacked by Iran, and now faces a choice between launching an air strike in which some number of Iranian civilians will die, and a ground war, in which some number of U.S. troops will die. When the air strike would kill 100,000 Iranian civilians and the ground war would leave 20,000 U.S. troops dead, a majority of respondents preferred the air strike. Indeed, two-thirds of respondents said they would approve of a nuclear air strike on Iran in these circumstances. In a different study, the same authors found that a narrow majority of

153 Another relevant factor for morality might be the special ties that soldiers have toward one another. I will set this issue aside in what follows.

154 The main contemporary defense of this idea is Cecile Fabre, Cosmopolitan War (Oxford University Press, 2012), esp. chapter 2.

155 Scott D. Sagan and Benjamin A. Valentino, “Revisiting Hiroshima in Iran,” International Security 42 (2017): 59. The number of respondents who approve of the attack in a conventional, as opposed to nuclear, strike is 67.3%.
respondents would accept the deaths of 5 U.S. troops in order to avoid causing 200 civilian deaths on the other side; however, three-quarters of respondents opposed the deaths of 40 U.S. troops to save 200 civilians on the other side.\textsuperscript{156} This suggests that, contra the cosmopolitan view, most people are unwilling to accept the death of even one of our combatants to avoid the death of five civilians on the other side.

There are, of course, many different conclusions we can draw from these studies. It is also possible that this view is a uniquely American phenomenon, though I suspect this is unlikely. In any case, it is clear enough that there is in general a significant divide between popular opinion and the predominant philosophical view on this question. My aim in this chapter is to articulate and defend an account that lies somewhere between these two views; however, while it accommodates part of the motivation behind the lay intuitions, it lies much closer to cosmopolitanism than the views espoused by the respondents in these studies. Of the claims I defend in what follows, the two most controversial are that non-combatant priority outweighs national partiality when, all else being equal, we must choose between killing the other side’s non-combatants and allowing our combatants to die; and national partiality allows us to prefer our non-combatants when the choice is between our non-combatants and their non-combatants, whether by killing or letting die.

Let us begin by assuming that the war in question is one of resisting unjust aggression. Later, I will consider how the argument shifts if the just cause is one of humanitarian intervention. For now, let us assume that one side—namely, the victim—possesses a just cause, and we can assume that the other side—namely, the aggressor—does not.\textsuperscript{157} To simplify discussion, I will use the terms ‘non-combatant’ and ‘civilian’ interchangeably; likewise with ‘combatant’ and ‘soldier’.\textsuperscript{158} I will also tend to refer to the nation on the receiving end of the unjust aggression using first person plural pronouns—e.g., our combatants, our non-

\textsuperscript{156} Ibid., n. 55.

\textsuperscript{157} However, unlike some philosophers—perhaps most notably, Jeff McMahan—I doubt that it is so unlikely (or impossible) that both sides could be in possession of a just cause. See: Jeff McMahan, \textit{Killing in War} (Oxford University Press, 2009). Nothing in what follows rests on the assumption that at most only one side is in possession of a just cause.

\textsuperscript{158} This is in keeping with other philosophers’ tendency to do the same; however, strictly speaking, neither of these pairs are synonymous.
combatants—and the aggressor’s side using third person plural pronouns—e.g., *their* combatants, *their* non-combatants. Finally, let us also assume that the other *ad bellum* criteria are met, and that our side satisfies the criteria for permissible national partiality.

2 Categories of Priority

The most useful way of evaluating the competing demands of the principle of non-combatant priority and national partiality is to organize the relevant groups—our non-combatants, our combatants, their non-combatants, their combatants—according to their relative moral priority in cases when all else is equal. One feature I will bracket for now is the doctrine of doing and allowing—or, in this context, the distinction between killing and letting die. Later on, I will show how introducing this distinction alters the order of priority in particular cases. For now, to simplify matters, this ordering should be understood as comparing cases of killing versus killing only. For reasons that will become clearer later, examples in which we must choose whom we will let die are rendered more complicated on this model by the fact that the principle of non-combatant priority seems to be fundamentally about killing, and so the facts about non-combatants’ status seem inapplicable, or at least significantly changed, when we switch to rescue cases. And of course, mixed cases—cases in which we compare an act of killing versus an act of letting die—are also quite complicated. It seems therefore more useful to begin with like cases before branching out into the more complicated scenarios.

Let me also note that the following discussion is not meant to suggest that the philosophers I discuss in the context of each of these views ignored or cast aside the relevant distinctions, such as killing versus letting die. Indeed, in some cases, their conclusions rely, implicitly or otherwise, on drawing this very distinction. In other words, I am not suggesting that these philosophers held the view to which they have been here assigned in all cases across the

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159 Of course, I could have done this exactly oppositely, making *us* the aggressor and *them* the victims. But doing it in the above way has the benefit of simplifying the agent-relative aspects of the discussion, and articulating them in a way that will read more naturally. In the event that my choice nevertheless seems tendentious, I submit the untested and unverified hypothesis that intuitions on these matters, at least among philosophers, are likely to be more permissive in favor of partiality when we employ cases in which we ask whether someone else (and not the reader herself) possesses agent-relative permissions. If I am right about this, I have only made my task here harder by using first-person pronouns throughout the discussion.
killing and letting die distinction. Rather, I mean only to suggest that they have articulated a view of this general sort, which applies in at least some cases.

There are many different possible arrangements, but I will consider four categories, each of which has received some sort of defense in the literature, and which seem to me to capture the most intuitively plausible options. These four categories of priority are outlined in the chart below.

**Order of Priority**

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<th>Highest priority</th>
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<th>Lowest priority</th>
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<tbody>
<tr>
<td><strong>Strong partiality</strong></td>
<td>our non-combatants</td>
<td>our combatants</td>
<td>their non-combatants</td>
</tr>
<tr>
<td><strong>Weak partiality</strong></td>
<td>our non-combatants</td>
<td>their non-combatants</td>
<td>their combatants</td>
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<td><strong>Weak NCP</strong></td>
<td>our non-combatants</td>
<td>our combatants</td>
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<td><strong>Strong NCP</strong></td>
<td>our non-combatants</td>
<td>their non-combatants</td>
<td>our combatants</td>
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For a given view, the group in the column furthest to the left receives the highest priority. This means roughly that, when all else is equal, inflicting harms on members of this group is the most difficult to justify. This difficulty decreases as we move right within each row; for a given pairwise comparison, holding all else equal, we should prefer inflicting harms on those in the group to the right over those in the group to the left.

### 2.1 Strong Partiality

Let us begin with the first row of the chart—a view I’ll call *strong partiality*. As the name suggests, this view prioritizes the demands of partiality over those of the principle of non-combatant priority. Thus, the groups that enjoy the highest priority are those with whom we stand in a relationship of co-nationality—our non-combatants and our combatants. Within this group, we must distinguish between non-combatants and combatants, with the former receiving greater protection than the latter. This is repeated for the groups on the other side: we should prioritize the non-combatants on the other side over their combatants. The principle of non-combatant priority therefore applies at most only within members of a given group. Notice, however, that a defender of *strong partiality* could base the prioritization of our non-combatants
over our combatants on an alternative argument—for example, one rooted in explicit promises made by the latter to the former. In this case, the principle of non-combatant priority would only serve to distinguish between the two groups on the other side of the conflict—namely, their non-combatants and their combatants. At any rate, unless these latter two groups are not distinguished at all, there is still some non-trivial role for the principle of non-combatant priority on this view.

The most controversial pairwise ordering in *strong partiality* concerns the two middle groups: our combatants receive priority over their non-combatants. Defenders of strong partiality are likely to defend this ordering in one, or perhaps even both, of the following ways. First, they might seek to emphasize the importance of the special obligations a nation has to *all* its citizens, which is scarcely weaker with respect to those who fight on its behalf. Asa Kasher and Amos Yadlin put this point as follows:

A combatant is a citizen in uniform…His life is as precious as the life of anyone else. A democratic state may send him to a battlefront only because it has a duty to defend its citizens and it cannot do this without some of them defending the others…The state ought to have a compelling reason for jeopardizing a citizen’s life, whether or not he or she is in uniform.\(^{160}\)

On this view, the fact that our combatants are *combatants* does not lower their moral status vis-à-vis those on the other side. So, if we are permitted to prioritize our non-combatants over their non-combatants, as a defender of this view holds, then we are likewise permitted to prioritize our combatants over their non-combatants.

Second, defenders of this sort of view might offer special reasons for thinking non-combatant deaths on a side engaging in unjust aggression are easier to justify than the deaths of our combatants. Kasher and Yadlin, for example, argue that when the other side’s non-

\(^{160}\) Asa Kasher and Amos Yadlin, “Military Ethics of Fighting Terror”, *Journal of Military Ethics* 4 (2005): 16-17. It is worth mentioning that Kasher and Yadlin also make space for the category of non-co-national non-combatants who are under our state’s effective control. According to Kasher and Yadlin, this group would be situated on the above chart between Our Non-Combatants and Our Combatants. I will not return to this point in what follows, though I think it bears mentioning here, in part because it featured as an important point of dispute in an exchange between Kasher and Yadlin and Michael Walzer and Avishai Margalit, the latter of whom will serve as my representatives for the view I’m calling *strong non-combatant priority*. 
combatants are harmed, it is generally due to the fact that the combatants on that side have chosen to fight or otherwise engage in military operations in close proximity to civilian populations. The responsibility for this choice, they argue, rests with the combatants on that side, rather than our combatants:

Where the state does not have effective control of the vicinity, it does not have to shoulder responsibility for the fact that persons who are involved in terror operate in the vicinity of persons who are not. […] [J]eopardizing combatants rather than bystanders during a military act against a terrorist would mean shouldering responsibility for the mixed nature of the vicinity for no reason at all.161

In other words, Kasher and Yadlin’s claim is that the enemy’s non-combatants have lower priority due to certain actions taken by their own co-nationals. To be sure, there are other possible ways of explaining these non-combatants’ lower priority. One could claim that even the non-combatants in an unjust war ought to bear a greater portion of the costs of that war than those on the just side—that is, greater costs than even the combatants on the just side. But such an argument would need to appeal to some further idea, like the non-combatants’ vicarious liability, or perhaps their complicity in the unjust war, in order to be plausible.162

Notice, however, that these ways of justifying the lower status of their non-combatants will ultimately rest on factors that override (or at least seriously diminish) non-combatant priority. But if this is true, then the apparent conflict between partiality and non-combatant priority is much less serious. Moreover, I suspect this sort of argument will have significantly limited application. It therefore seems to me that the best case for strong partiality is the first one mentioned above—namely, emphasizing the importance of the special obligations we have to our combatants qua co-nationals. Indeed, a robust version of this claim is all that is necessary for explaining the difference in priority between the two middle categories.

161 Ibid, 18.
2.2 Weak Partiality

Consider an alternative view, which I will call weak partiality. According to this view, it is indeed true that we have special obligations to our co-nationals, and this extends to our combatants. But the fact that our combatants are ours is not enough to overcome the weight of the principle of non-combatant priority, at least in some cases. This is because the added weight of partiality is counterbalanced by a discount in our combatants’ weighting due to certain facts about their particular role. Thomas Hurka, who defends a version of this view, puts it this way: “Although our soldiers are ours, they are also soldiers, which means they are legitimate targets of military force and their deaths are an expected consequence of war as civilians’ deaths are not.”  

Hurka goes on to suggest that this discounting renders the weights of both our combatants and their non-combatants roughly on a par with each other.

I therefore feel forced to treat them [our combatants and their non-combatants] as of approximately equal weight, so our soldiers’ and enemy civilians’ lives count roughly equally. While a nation may prefer its own civilians’ lives to those of enemy civilians, it may not do the same with its soldiers’ lives. Instead, it must trade those off against enemy civilians’ lives at roughly one to one.  

On this view, it is not the principle of non-combatant priority as such that outweighs national partiality; rather, it is the independent fact about soldiers’ role that lowers their priority. In other words, what distinguishes weak partiality from strong partiality is the fact that the former view discounts our combatants’ status (relative to their non-combatants) in virtue of facts about their role, while the latter view does not. In order to maintain the distinction between weak partiality and strong partiality, our combatants’ special status is discounted.  

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164 Ibid.

165 This is perhaps slightly imprecise as a reading of Hurka, since he seems to locate the principle of non-combatant priority within the idea of the lack of risk acceptance on the part of non-combatants; on his view non-combatants do not accept the risks of war, while combatants do.
partiality and strong partiality, then, we need to consider in greater detail the question of risk acceptance. I take up this task in section 3.2.

2.3 Weak Non-Combatant Priority

A third view, which I will call weak non-combatant priority, denies that the weights of our combatants and their non-combatants are on a par, as weak partiality claimed. Instead, priority should be given to their non-combatants over our combatants. There are several different ways of justifying this ordering. One way is to claim that the principle of non-combatant priority is simply weightier than national partiality.\footnote{This seems to be the approach favored by Frances Kamm. See her “Failures of Just War Theory: Terror, Harm, and Justice,” \textit{Ethics} 114 (2004): 673-680, esp. the diagram on 678.} An alternative approach follows the proponent of weak partiality in recognizing that our combatants accept certain risks, but applies a greater discount than that view had assumed. Thus, this discount does not leave the two groups on a par; rather, it is enough to tip the scales in favor of their non-combatants.

In either case, weak non-combatant priority warrants the name because the resulting ordering amounts to a general prioritization of the principle of non-combatant priority over that of national partiality. Notice, however, that national partiality is not altogether disregarded. Indeed, national partiality justifies prioritizing our non-combatants over their non-combatants; this is the main feature that distinguishes it from strong non-combatant priority. As Frances Kamm puts it:

[W]hile the inviolability of noncombatants in the enemy country…is not lowered relative to a standard baseline, special care owed by [our country] raises the inviolability of [our] noncombatants…This explanation for treating people unequally gives rise to a duty not to harm one’s own noncombatants rather than noncitizens, if someone must be harmed in a permissible manner.\footnote{Ibid, 674}

Thus, while non-combatant priority requires that we prioritize both categories of non-combatants over both categories of combatants, national partiality permits us to favor our non-combatants over their non-combatants, when we must choose between the two.
2.4 Strong Non-Combatant Priority

An even stronger view endorses the first part of weak non-combatant priority—namely, that we ought to prioritize their non-combatants over our combatants—but rejects the latter part of that view—namely, that we are permitted to prefer our non-combatants to their non-combatants. Douglas Lackey defends a version of this view, based on what he calls “the cosmopolitan principle”. As he puts it:

If targeting O justifies killing some number of enemy civilians or soldiers, then targeting O justifies killing the same number of friendly civilians or soldiers. Attacks that kill a certain number of the enemy are morally justified only if it would be morally justified to kill the same number of friendly soldiers and civilians to achieve the same result.¹⁶⁸

Michael Walzer and Avishai Margalit endorse a similar view:

Whatever Israel deems acceptable as “collateral damage” when its own captured citizens are at risk—that should be the moral limit in the other cases too. If, as an Israeli, you think that a military operation will cause excessive harm to Israeli civilians, you should have equal concern for the excessive harm done to other civilians, whether they are welcome guests, unwelcome guests, or enemy noncombatants.¹⁶⁹

Setting aside the key differences between them, both of these views advocate for a very strong version of the principle of non-combatant priority that effectively ignores national partiality in the priority ordering. The fact that some non-combatants are our co-nationals is, on both of these views, morally irrelevant. If national partiality has a role to play at all in this priority ordering, it could at most help to justify prioritizing our combatants over their combatants. Yet, the fact that, by hypothesis, our combatants possess a just cause and their combatants do not, suffices to

¹⁶⁸ Douglas Lackey, “Soft Power, Hard Power, and Smart Power,” Philosophical Forum 46 (2015): 125, emphasis in original. Notice that Lackey’s view starts by discussing targeted killings, which would be covered by the principle of discrimination, but goes on to discuss killing more generally. In light of what he says elsewhere (see the next section), I think we should read him as suggesting something broader than merely targeted killings. Indeed, I think he has in mind here the full range of killings, i.e., both targeted and side-effect killings.

explain why we should prioritize the former over the latter, thereby making any reference to national partiality otiose.

3 Weighing Lives

Though they differ in several ways, all of the views just canvassed agree on at least two things: first, their combatants receive the lowest priority; and, second, our non-combatants receive the highest priority—though, of course, strong non-combatant priority maintains that they share that position with their non-combatants. The two most controversial priority orderings are (1) our non-combatants and their non-combatants; and (2) our combatants and their non-combatants.

Before looking more closely at these two comparisons, however, it is important to mention a third morally relevant feature of these cases that plays an important role in determining what we are permitted to do—namely, the distinction between killing and letting die. Most of the philosophers I mentioned in our discussion of the different priority orderings were focused only on cases of killing versus killing—i.e., killing our non-combatants versus killing their non-combatants. This is of course a familiar scenario in war: soldiers and military leaders are sometimes required to choose between killing members of one group and those of another, such as killing groups of civilians or soldiers. But acts of war also commonly involve either killing members of one group or letting members of another group die. The clearest case is when we must decide between letting our soldiers die (say, by leaving them embedded in a dangerous environment) or killing some enemy civilians (thereby allowing us to extract our soldiers). Thus, we must consider not only how to weigh partiality against non-combatant priority, but also how the distinction between killing and letting die affects these weights.

3.1 Our Non-Combatants vs. Their Non-Combatants

Of the views sketched above, the only one that denies that we may prioritize our non-combatants over their non-combatants is strong non-combatant priority. And as I mentioned, this view

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170 This is seen most clearly in the passages from Kamm, Lackey, and Walzer and Margalit. Hurka seems to ignore this distinction in the quoted passage. Kasher and Yadlin also do not discuss the distinction, and they appear to be focused on letting die in the quoted passage.
effectively denies the relevance of national partiality to the priority ordering. But there are good reasons to doubt that this is the correct view.

First, certain defenders of *strong non-combatant priority* tend to argue by stipulating the principle from which that view can be derived and testing our intuitions. Consider Lackey’s ‘cosmopolitan principle’, which I referenced above. In defense of this idea, Lackey invites us to consider the following case:

Consider, for example, American targeting policy against the Taliban and radical Islamic groups in Pakistan and Afghanistan. […] The cosmopolitan targeting principle asks whether the president and American military leaders would implement the same pattern of bombing if Taliban fighters were loose, say, in Ohio, and that drone attacks against these Taliban fighters, with some frequency, killed off dozens of people at American weddings. […] Would the United States have launched the Zero Dark Thirty attack if Osama bin Laden was suspected of holing up in a Holiday Inn in Cleveland, with the attendant risks to other guests in the hotel? I think not. 171

To be sure, this example is intended to illustrate what the cosmopolitan principle is committed to. But Lackey also seems to think that it shows that since we would not pursue a particular course of action if our non-combatants’ lives were at risk, it would be wrong to pursue the same course of action if it puts their non-combatants’ lives at risk. That is, we should treat our non-combatants’ and their non-combatants’ lives no differently. But this example is not a persuasive argument for that view. Indeed, the example is perfectly consistent with the claim he hopes to reject—namely, that we ought to prioritize somewhat our own non-combatants, which will render certain courses of action impermissible when the risks are borne by our own non-combatants as opposed to those on the other side. A defender of one of the other views might reply to Lackey’s claim in the following way: “Of course it would be wrong to drop the bomb in Cleveland. We have much greater reason to protect our non-combatants than theirs, and the plan to bomb Cleveland puts ours at too great a risk.” Thus, absent some further argument in defense

of the cosmopolitan principle, Lackey has, at best, forced a quick stalemate between \textit{strong non-combatant priority} and the alternative views.

Walzer and Margalit’s discussion proceeds in a similar fashion. As the quoted passage above shows, much like Lackey, their defense of this part of \textit{strong non-combatant priority} also relies heavily on stipulating the immutable nature of the principle of non-combatant priority—though, as we will see shortly, they do offer arguments against the ordering of our combatants and their non-combatants in Kasher and Yadlin’s \textit{strong partiality}.

We are therefore left without much of an opportunity to challenge \textit{strong non-combatant priority} by rebutting the arguments put forth by its defenders. The most plausible way of showing \textit{strong non-combatant priority} to be false must therefore proceed by offering positive arguments in support of the claim that our non-combatants ought to receive the highest priority—a claim that all other alternatives under consideration take to be true. As it happens, I think the best way of doing this is by showing that our intuitions support this conclusion over that of strong non-combatant priority—that is, by employing a similar method as that of defenders of \textit{strong non-combatant priority}. This move may seem like rhetorical hypocrisy; however, in this context, I think it is better understood as pushing back on an unintuitive suggestion by giving cases that pump the opposite intuitions. To be sure, in the context of the present argument, this might seem to leave us with a stalemate. In order to break the stalemate, we need an argument for why partiality matters. I have offered such an argument in the foregoing chapters, but any argument of this general variety would suffice to break this tie.

Notice, however, that arguing against \textit{strong non-combatant priority} does not necessarily require employing arguments from national partiality. Indeed, one possible argument in favor of our non-combatants, based in agent-neutral considerations, relies on a claim about the vicarious liability of their non-combatants for the harms committed by those who act on their behalf.\footnote{Another related argument concerns their complicity: perhaps, on one view, civilians are complicit in the wrongs of their nation—e.g., by engaging in various ways in promotion or support of their aggression. But I suspect this sort of involvement would shift one from being an innocent civilian—who is afforded the appropriate protections that all civilians receive—to a liable party—perhaps less liable than armed belligerents, but nevertheless not an inappropriate moral target, in at least some cases.} On this view, when we are faced with a choice between collaterally harming the members of a
victim state and the members of the aggressor state, we—from an agent-neutral perspective—should give preference to those in the victim state. To insist otherwise is to require that victims bear an equal share of the harms of the very aggression that made them victims in the first place—which is to say, to victimize them again. I do not mean to offer a defense of this view. Rather, I mean only to suggest that if this principle, or something like it, can be shown to be correct, then some preference, however slight, should be given to our non-combatants. That is, if a claim like this can be made plausible, then we have an argument against strong non-combatant priority that does not rely wholly on insisting that something like the cosmopolitan principle is false.

As it happens, however, I think a more plausible and broadly applicable way of rejecting strong non-combatant priority rests on the idea of national partiality. Rather than rehearsing anew the arguments in favor of national partiality, I will make a few observations that seem to me to show that, at the very least, our non-combatants enjoy some measure of priority over their non-combatants. First, while most of the examples on which the discussion has thus far focused are ones in which we are killing non-combatants, there are, to be sure, many cases in war in which the harms occur by allowing deaths, or at least allowing harms. And it strikes me as rather uncontroversial that we may prioritize our non-combatants in these cases. The following example illustrates this idea.

*Preventive Attack 1:* There are two imminent attacks by the enemy state, only one of which we will be able to prevent. The first is a bombing of a village bordering our two states, in which \( x \) of our non-combatants will die. The second is a bombing of a town (assume we do not currently hold it) in the enemy’s own territory, in which \( x \) of their non-combatants will die. (Alternatively, instead of preventing the attack, suppose we can rescue one or the other group from harm’s way.)

It seems to me obvious that we may (some may say should) prefer acting to prevent the first attack. If this is right, then, at the very least, when it comes to preventing the same amount of harm to each group, we may show some preference for our own non-combatants. But I think our intuitions support a stronger version of this claim. That is, even if the number of non-combatants that will die in the first attack is smaller—perhaps even quite a bit smaller—than the number of non-combatants that will die in the second attack, we are still permitted to prioritize our own
non-combatants. Indeed, we may go stronger still: I believe we are permitted to prevent the first attack even if doing so required killing some small (but proportionate) number of their non-combatants as a side-effect of our rescue mission.

Of course, some will demur from the two stronger claims; however, it should be relatively clear that, at least when it comes to preventing harms, our non-combatants enjoy a certain measure of priority. Strictly speaking, this is all that is required to show that strong non-combatant priority is false. However, defenders of strong non-combatant priority may respond that they can accept the foregoing conclusion concerning allowing deaths, since the core of their claim is that we ought to treat the two groups of non-combatants identically only in cases of killing. But the rejoinder is clear: why should we treat (side-effect) killing so differently from other types of harms? It may indeed be the case that the preference we may show toward our non-combatants is less in cases of killing than in cases of allowing to die; but this is a difference of degree, not kind. I have already argued, in chapter 4 of this dissertation, that the difference between side-effect killing and letting die is one of degree, not kind.

Moreover, while we have greater reason to avoid killing their non-combatants as opposed to letting them die, we also have greater reason to avoid killing our non-combatants as opposed to letting them die. That is, while killing is harder to justify than letting die in general cases, it is even harder to justify when the person being killed is a co-national. To see this, consider a modified version of the previous case:

*Preventive Attack 2:* There is an imminent attack by the enemy state, which if realized, would be catastrophic. We can prevent it in one of two ways. The first is to bomb munitions factory A, in which case \( y \) of their non-combatants will be killed as a side-effect. Or we can bomb munitions factory just across the border B, in which case \( y \) of our non-combatants, who happen to live right on the border and just inside the blast radius, will be killed as a side-effect.

The important difference in this case is that our preventive attack will cause some collateral deaths of non-combatants. The question is whether we have greater reason to prefer one over the other. Assuming they would be equally effective in preventing the attack, and assuming that the number of non-combatants killed as a side-effect is otherwise proportionate, it seems the defender of strong non-combatant priority would claim we should be indifferent between these
two cases. But this seems clearly false. Perhaps a defender of the view could reply that in tie-breaker scenarios, we may prefer our own non-combatants. But in this case, we can simply change the example so that there would be slightly fewer deaths of their non-combatants if we bomb factory A. But this still seems false. Surely the fact that some of those that would be killed are our co-nationals matters. For one thing, I suspect many would be inclined to draw a similar conclusion in other relationships of partiality, like one’s friends or children: if you had to prevent a catastrophe by killing one of two groups, one of which consists of some strangers, and the other consists of a slightly smaller number of your friends, I suspect nearly all will agree you may choose the former. Of course, there are limits to the discrepancy between the two groups in terms of size; our co-nationals (or friends, etc.) do not receive lexical priority. But unless the discrepancy between the number of our non-combatants and their non-combatants is significant, we may still prioritize our own. This point strikes me as providing sufficient reason for rejecting strong non-combatant priority.

Thus far, I have shown that we are permitted to prefer our non-combatants over their non-combatants both when we must kill some number of non-combatants in either group, and when we must let some number of non-combatants in either group die. But what about in cases where the choice is between acts that fall on opposite sides of the distinction—for example, when choosing between killing some number of their non-combatants or letting some number of our non-combatants die? Consider the following case:

**Preventive Attack 3:** There is an imminent attack by the enemy state, which if realized, would result in the deaths of many of our non-combatants. We can prevent it only by attacking the enemy first, which will involve killing some number of their non-combatants as a side-effect.

Whereas national partiality, I argued, allows us to prefer our own non-combatants in both *Preventive Attack 1* and *Preventive Attack 2*, it is not the only morally relevant consideration in *Preventive Attack 3*. We must also take into consideration that the choice is between killing their non-combatants and letting our non-combatants die. Thus, we must consider how the killing and letting die distinction balances against the extra weight from national partiality.

The arguments from chapter 4, if correct, provide the resources for answering this question. As I argued there, partiality in general, and national partiality in particular, gives extra
weight to our positive duties, even when they are weighed against negative duties to outsiders. Thus, a positive duty to rescue a co-national can, in general, outweigh a negative duty, e.g., to avoid side-effect killing a stranger. This is a function both of the base weight of these duties and the extra weight partiality affords. Furthermore, when national partiality is within its scope, as I have argued (in chapter 3) it is in the case of war, the extra weight given to the base weight of the positive duty can be significant—perhaps even roughly the same as with other paradigmatic cases of partiality. Thus, on my view there is no reason in principle why we could not give extra weight to our non-combatants in Preventive Attack. Certainly in a one versus one case, we can—that is, if we must decide between killing one of their non-combatants and letting one of our non-combatants die—then we can prefer our non-combatant, which is to say we are permitted to attack, thereby killing their non-combatant. This is a result of the fact that partiality carries greater weight than the difference between the base weights of a positive and a negative duty.

Of course, most real world cases do not involve only one non-combatant death, but multiple deaths—perhaps dozens or even hundreds. If the extra weight from partiality aggregates without diminishing in value as numbers grow, then we will reach the same conclusion as before, provided the numbers are the same on either side. However, as I mentioned at the end of chapter 4, I am skeptical that partiality aggregates in this way. Indeed, I suspect that as the number of people to whom we have reasons of partiality grows, the extra weight from partiality will be comparatively less per person; past a certain point, it may cease altogether (though I do not believe it will go lower than zero extra weight). If this is true, then as the numbers in our example grow, there will come a point at which the extra weight from partiality ceases to be enough to overcome the combined weight of the negative duties to avoid side-effect killing their non-combatants. In other words, while we are right to judge that we may prefer our non-combatants in a one-versus-one scenario, we may reach the opposite conclusion if the choice is between killing, e.g., 100 of their non-combatants and letting 100 of our non-combatants die. This is perhaps easier to see if the number of our non-combatants whom we would allow to die is half that of the number of their non-combatants we would otherwise kill.

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173 Again, that number may be higher; to know this value with greater certainty would require a more precise theory than I can give here—indeed, I am skeptical such a theory is possible.
The upshot here is two-fold: first, in the basic case—i.e., a one versus one case—when choosing between killing their non-combatants and allowing our non-combatants to die, we may still prefer our non-combatants; and second, whether or not this conclusion holds as the numbers in the case grow is unclear, and depends entirely on how we think the extra weight from partiality can aggregate. In what follows, I will set aside this aggregation question, and focus just on the basic one-to-one comparisons. With this in mind, I have organized the priority ordering between our non-combatants and their non-combatants in the chart below.\textsuperscript{174} (I do the same for the comparison between our combatants and their non-combatants at the end of the next section.)

\begin{center}
\textbf{Our Non-Combatants vs. Their Non-Combatants}
\end{center}

\begin{center}
\begin{tabular}{|c|c|}
\hline
Killing Their Non-Combatants / Killing Our Non-Combatants & our non-combatants & their non-combatants \\
\hline
Letting Their Non-Combatants Die / Letting Our Non-Combatants Die & our non-combatants & their non-combatants \\
\hline
Killing Their Non-Combatants / Letting Our Non-Combatants Die & our non-combatants & their non-combatants \\
\hline
\end{tabular}
\end{center}

3.2 Our Combatants vs. Their Non-Combatants

If the arguments of the previous section are correct, then strong non-combatant priority is false: on all three relevant combinations, our non-combatants have priority over their non-combatants. With this, we now know which groups have the highest and lowest priority: all of the remaining priority orderings agree that our non-combatants receive the highest priority, and their combatants receive the lowest. In between these two poles, however, lie the two remaining groups: our combatants and their non-combatants. And the possible options are simple: either our combatants have priority, their non-combatants have priority, or the two are roughly tied.

\textsuperscript{174} I omit here the combination of killing our non-combatants versus letting their non-combatants die, since I assume it follows \textit{a fortiori} from the other conclusions.
In order to determine which view is correct, we need to decide how best to weigh the competing obligations to our combatants *qua* ours, and their non-combatants *qua* non-combatants. What makes this comparison different from that of the previous section is that we must now address the differences between combatants and non-combatants—in particular, the idea of non-combatant priority. There are many different ways of grounding non-combatant priority; I cannot treat all of them here. Instead, I will focus on sketching what I take to be the most intuitively plausible view, which centers on the justification for lowering combatants’ priority (rather than, say, reasons for elevating the priority of non-combatants). While the conclusions I draw here rely on the truth of this particular view, I suspect that most other plausible arguments for lowering combatant priority will generate similar conclusions as well.

Recall Hurka’s point, which we saw earlier in our discussion of *weak partiality*, that soldiers accept certain risks of war by becoming soldiers. Others have made similar points. As Jeff McMahan puts it:

> The reason why combatants are required to expose themselves to risk in the course of defending those who are threatened with wrongful harm is simply that it is their *job* to do that: it is what they have pledged to do and are paid to do. It is part of their professional

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175 This cannot be done, however, without first assuming a rough starting balance for the two weights: we start with no weights on the scale, and then place national partiality on one side and non-combatant priority on the other. We must then assume how those base weights balance against each other. Alas, there is no way of doing this that will not seem dubious to some readers. For example, were I to begin by assuming that national partiality is already weighted somewhat heavier than non-combatant partiality, this would seem overly tendentious; likewise were I to assume the opposite. I have decided, therefore, to begin with the assumption that the two are roughly evenly balanced. This seems to me the most neutral starting point available. Moreover, I think it coheres well with our intuition concerning what is interesting about the present analysis. As I said in the introduction, it is not immediately obvious how these two factors balance against each other, so we can assume in what follows that they are roughly on a par and see how other factors that might be present in certain cases add weight in either direction. One result of this strategy is that my arguments will only tell us whether or not these features make a decisive difference in the types of cases I’m considering. It cannot address the question of whether or not these factors make a difference to proportionality *at all*, i.e., in other cases in which the numbers are not the same, as they are in most of the cases to follow.

176 Most accounts on offer might seem to suggest that non-combatant priority is grounded in terms of *elevating* their status over that of combatants, as opposed to *lowering* combatants’ status. See, for example, Seth Lazar, *Sparing Civilians* (Oxford University Press, 2014). However, I think this is not what these accounts really claim. Indeed, I take it the most common view is that a combatant’s status is lowered.
role. In this respect they are like other paid professional defenders or rescuers, such as police, fire-fighters, bodyguards, and lifeguards. All such people have professional role-based duties to take risks and even on occasion to allow themselves to be harmed when that is necessary to fulfill the functions of their role.¹⁷⁷

On these views, soldiers receive lower priority in virtue of the risks they accept by assuming that role. Those who endorse this claim will tend to use it as a premise in an argument for one of the views according to which our combatants have lower, or at least no greater, priority than their non-combatants. But what, exactly, does it mean to ‘accept’ risks, and what relevance does this have for their moral status?

First, it cannot be merely that our combatants passively accept risks—that is, that in virtue of the circumstances, they are more likely to be harmed but do nothing significant to ameliorate or avoid their condition. For, if this were the case, then we might think the same is true of many non-combatants who are resigned to their fate as potential collateral damage of war. More generally, we might be forced to conclude something similar for many innocent victims of any number of harms. And in any case, it is questionable whether or not it is true that soldiers do nothing significant to ameliorate their condition, since they expend considerable time and effort training and preparing for combat, and in some cases have already thwarted some of their attackers. Nor can it be the case that they merely foresee risks, as with a bank teller who foresees the possibility that he might be put in harm’s way from a bank robber. There is perhaps a natural sense in which we might say the bank teller accepts that risk: he takes the job knowing that type of harm is a possibility, though it is surely somewhat remote. But in the morally relevant sense of ‘accept’ we have in mind here, this is not what the bank teller does: he clearly does not accept the risk of being harmed by bank robbers in any way that involves a change to his moral status.

Rather, the idea must be that combatants actively accept risks—that is, they effectively consent to being the preferred targets of certain types of military action in certain cases, as well as to directing or redirecting a significant portion of certain of the harms of war toward themselves when possible. This idea seems much more in line with our way of thinking about

soldiers’ roles, and it comports for the most part with other similar roles that involve significant risks, such as police officers and firefighters. Consider, for example, this quote from Addington Stewart, the president of the International Association of Professional Black Firefighters, which illustrates the basic idea:

What makes firefighting unusual is that as we’re rolling out of the firehouse with sirens on—whether responding to a fire, drug overdose or car crash—we know that what we encounter may be the worst moment in someone’s life. Our hearts are pounding, and we’re aware that any call could be a one-way trip for us. Smoke inhalation, building collapse and backdraft are known risks and we accept them.\textsuperscript{178}

To be clear, this is not to say that soldiers (or others working in these relevantly analogous professions) consent to being \textit{harmed}, only that they consent to accepting the \textit{risk} of being harmed. The former idea suggests that one is not wronged by being harmed; the latter preserves this option. McMahan draws this very distinction when he writes:

The idea that combatants consent to be attacked must not, however, be confused with the idea that they agree to accept the \textit{risk} of being attacked. When soldiers go to war, they undoubtedly assume a certain risk. They voluntarily expose themselves to a significant risk of being attacked. But this is entirely different from consenting to be attacked.\textsuperscript{179}

But just what is the moral relevance of actively accepting risks? There seem to me two broad possibilities. The first is \textit{general}: Accepting risks yields a generally lower moral status for the one who inhabits the role in question. On this view, by accepting certain risks, soldiers thereby lower their moral status in a more general way with respect to the full range of risks to which they are exposed within the course of the war. But this view, so understood, seems false. In other cases, inhabiting a role that involves accepting certain risks does not seem to yield a generally lower moral status. While firefighters accept the risks involved in rescuing people from burning


\textsuperscript{179} McMahan, \textit{Killing in War} (Oxford University Press, 2009): p. 52. Here he also draws on the analogy with police officers.
buildings, they do not accept the risks involved in confronting dangerous arsonists, and so are not given lower priority in such cases. If we could save a civilian or a firefighter from the imminent threat from an armed arsonist, we have no clear reason to prefer the former over the latter—nor does the firefighter have an obligation to direct the threat toward her in such a case. The reverse is true for police officers: they accept certain risks involved in confronting dangerous arsonists, and accept no risks in rescuing people from burning buildings.

An alternative view, which is much more plausible, is what we might call specific: If accepting certain risks diminishes or lowers one’s moral status, it only does so with respect to the risks one has actually accepted in virtue of the particular (though perhaps still somewhat vaguely-defined) aspects of their role, and not more generally with respect to the myriad risks that might come his way as an occupant of that role. For example, in virtue of their role, firefighters accept only a circumscribed set of risks, which includes the risks inherent in rescuing people from burning buildings, but excludes the risks involved in confronting the dangerous arsonist—and vice versa for the police officer. If this is correct, then in order to understand the extent to which their status is altered, we must first determine precisely which risks our combatants can be said to actively accept.\(^{180}\)

A natural view would hold that our combatants actively accept the risks inherent to combat—i.e., being harmed or killed by enemy combatants. This means that our combatants receive lower priority when the harms in question stem from the other side’s combatants, but they do not receive lower priority in other cases, such as when the harms stem from other agents or Mother Nature. This view is appealing in part because it seems to follow roughly the pattern of other similar roles, like police officers and firefighters. After all, combat is the combatant’s role, so it makes sense that they would accept the risks inherent to that domain.

But while this view seems initially plausible, I doubt that it is correct, as the following pair of cases helps to illustrate:

\(^{180}\) One might object here that these roles are defined this way for reasons of legal liability: the firefighter does not confront the arsonist because he is not trained for that, and so would pose a liability for his department in doing so. This is probably true, though I do not think it captures the full extent of our understanding of the roles these individuals inhabit.
Pinned Down: Our combatants are pinned down by enemy fire. At the same time, in a nearby village, terrorists are attacking their non-combatants. We can evacuate $x$ of our combatants, or $x$ of their non-combatants; but we do not have the resources to do both. Those not evacuated will die.

Flash Flood: The area in which our combatants are fighting has been hit by a tropical storm and is flooding quickly. We can evacuate $x$ of our combatants, or $x$ of their non-combatants; but we do not have the resources to do both. Those not evacuated will die.

If the above view concerning the risks our combatants actively accept is correct, then our combatants receive lower priority in Pinned Down, but they do not receive lower priority in Flash Flood. This is because the former, but not the latter, involves harms against our combatants from their combatants. As a result, a proponent of the above view would likely conclude that in Pinned Down we either ought to save their non-combatants or use some fair procedure for deciding between the two groups.\(^{181}\) (To avoid the ‘fair procedure’ conclusion, we can reimagine the case such that the number of non-combatants to be rescued in each case is slightly higher than the number of our combatants to be rescued. I think our judgments will be unchanged.) By contrast, the proponent of this view would claim that we may save our combatants in Flash Flood, since the harm comes not from enemy combatants but Mother Nature.

But I do not think we should treat these two cases differently. Rather, I suspect most will conclude that in both cases we may rescue our combatants, and indeed may do so even when the number of their non-combatants we do not rescue is somewhat (or perhaps even a lot) higher than the number of our combatants we rescue. If this is correct, then we ought to jettison the suggestion made above that our combatants’ lives are of lower priority in virtue of their having actively accepted the risks of being harmed or killed by enemy combatants.

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\(^{181}\) It is possible that one could employ this argument and judge that the discount to our combatants qua combatants does not entirely offset the boost they receive qua our co-nationals. Thus, one could both defend this claim about accepting risks and hold that we are nevertheless permitted to rescue our combatants in both of the above cases. But while this is theoretically possible, I am most interested in the arguments from those who claim that combatants’ risk acceptance explains why their status is either less than or equal to that of their (i.e. the other side’s) non-combatants.
One possible explanation for these judgments, it seems to me, is that the risks our combatants accept are fundamentally bound up with considerations of national partiality. That is, the risks they accept are relative to their co-nationals, whose rights they aim to protect, and whose lives they aim to defend by way of placing themselves in harm’s way. This is a fundamental fact about their role, and it is why they accept the risks that they do. It is not mere metaphor to say that a volunteer soldier offers himself as a sort of shield in order to protect and defend his co-nationals from the harms of war. That is, special considerations aside, soldiers accept the fact that they will be targeted, because in doing so they spare their co-nationals’ lives, or at least minimize the harms that come their way. In this sense, combatants are less like police officers and firefighters and more like bodyguards.

It seems to me, therefore, that the best explanation for how and when our combatants’ status is lowered is that they actively accept essentially the full range of risks of harm that would otherwise befall our non-combatants in the course of the war, as well as those harms required for preventing different types of harm (including certain significant rights violations) that would befall our non-combatants. Of course, our non-combatants’ lives do not have lexical priority over those of our combatants; there are limits to how much harm combatants can be expected to accept. But they certainly accept a general reduction in priority. It is much less clear, however, that our combatants actively accept the full range of risks to which the other side’s non-combatants might be exposed throughout the course of the war. To be sure, there are certain costs that combatants must inevitably bear in order to satisfy the various moral and legal conditions that apply to their actions. For example, they must still adhere to the in bello conditions, and doing so will sometimes require accepting certain costs to themselves. If soldiers do not accept the risks inherent in complying with these conditions for their own sake,

\[182\] There are, to be sure, cases in which combatants fight as members of trans-national militaries, like the U.N. peacekeeping forces. But these combatants do not lose their allegiance and affiliation with their own national army. Moreover, while it is clear that not all wars are fought for reasons of partiality, this just means that not all wars will be replete with examples in which reasons of partiality can be easily invoked. It does not mean, however, that the combatant’s role is not still importantly tied to her own nation.

\[183\] This requires a more fine-grained theory of counterfactuals here, but I set this issue aside, as I think the basic idea is intuitively plausible enough as it stands.

\[184\] Strictly speaking, however, all of these costs apply to anyone in these circumstances; there is nothing special about the combatant’s role as such that involves imposing extra costs on them that would not also be imposed on non-combatants who might find themselves similarly situated.
they at least accept them as necessary conditions for the realization of their goal of protecting and defending our non-combatants. Moreover, there are good reasons independent of their own status to avoid killing those who are not liable for the war, which is certainly true of most non-combatants, at least in the way we are employing this concept here. Thus, the present argument does not make it more permissible to kill non-combatants more generally. Rather, its permissiveness extends only to cases in which we must choose between our combatants and their non-combatants.\textsuperscript{185}

While the foregoing discussion does not definitively show the specific basis for lowering the status of combatants, it does, at a minimum, provide the basic resources for understanding how any argument of this sort must proceed. In any case, let us assume that the view I have sketched is roughly correct, and see what follows concerning the relative priority of our combatants and their non-combatants.

Let us begin by looking at a case of killing versus killing. Consider the following case:

\textit{Targeted Bombing:} In order to stop an imminent catastrophic attack that will kill thousands of innocents, our bomber pilots must bomb one of two munitions factories. They can either bomb factory A, which will kill as a side-effect $\times$ enemy non-combatants who are located nearby and cannot be relocated in time; or they can bomb factory B, which will kill as a side-effect $\times$ of our own combatants, who are on the scene as part of a related mission, but cannot be moved in time (suppose the means of communication is out of service.)

\textsuperscript{185} There is a possible worry about circularity here concerning the proportionality condition. We need to know more specifically what this condition ultimately requires of combatants before we can state more precisely the risks they can be said to have actively accepted. But our current discussion, of which the issue of risk acceptance is at the heart, is an attempt at understanding the principle of non-combatant priority and how it shapes the proportionality condition. Thus, we cannot say precisely what risks our combatants accept until we know what that condition requires of them, but we cannot know what the condition requires of them until we know precisely what risks they accept. It appears we can avoid this circularity only by stipulating the extent to which our combatants indeed accept the risks associated with satisfying the principle of non-combatant priority. There is no question that they must accept the principle of discrimination, which prohibits targeting non-combatants. Beyond this, however, the role of the principle of non-combatant immunity in our combatants’ risk acceptance is much less clear. Do our combatants accept that this principle will require them to sacrifice themselves for the sake of their (i.e. the other side’s) non-combatants? Or do they accept the principle only insofar as it does not entail such sacrifices? The answer is not obvious.
Targeted Bombing presents us with a choice between the deaths of those with whom we share a special relationship—namely, our combatants—or those with whom we share no such special relationship, but whose status as non-combatants involves our combatants accepting certain risks and therefore a lowered status. As I suggested above, it is unclear how to weigh these two base values against each other: partiality counts somewhat in favor of our combatants, but their status as combatants in this context counts somewhat against them. Unlike certain other cases in war (one of which we will consider shortly), there is no further feature that tips the scales: both harms are instances of killing rather than letting die. As it stands, then, I’m inclined to view the competing weights in Targeted Bombing as roughly balancing out. All else being equal, we have no greater reason to avoid killing their non-combatants than we do our own combatants. This priority ranking is illustrated by weak partiality.

Now consider a case in which we have to decide whom to rescue. This type of case involves either letting our combatants die or letting their non-combatants die:

Rescue Mission: If we don’t intervene to protect them, \( x \) of the enemy’s civilians are at risk of being murdered by their government. We can intervene to save them, but doing so will bring about the deaths of \( x \) of our combatants by soldiers of the other side. Assume that there is no other way of proceeding: we must either allow their non-combatants to die, or we rescue them, in which case we allow our combatants to die. Perhaps soldiers can be expected to take certain risks to rescue civilians on the other side; our attitudes about the right

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Furthermore, it is difficult to craft a sufficiently analogous case from interpersonal morality (e.g., with police officers, firefighters, etc.) that will illuminate the issue, since it is hard to conceive of such a situation in which all the same variables apply equally—for example, one in which one officer has accepted the relevant risk; a second officer in the position to act possesses reason of partiality vis-à-vis the first officer, but has no similar duties vis-à-vis the civilian; and the second officer also has special reasons to avoid killing the civilian that do not apply similarly toward the first officer. For example, if we were to try to craft an analogous version of Targeted Bombing, I suspect it would be difficult to do so in a way such that the second officer—the officer who must do the killing—does not also stand in a similar relationship of partiality toward the civilian. And in any case, even we could craft such a case, I doubt that it would offer much support for any particular view about how to weigh the variables in Targeted Bombing. At best, it would merely comport with our intuitions about that case.

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Admittedly, this looks quite like a case of humanitarian intervention, so it might not fit perfectly with the present discussion. We can certainly modify the case so that it involves elements of defense against our own aggressor, in order to make the case more clearly one that fits our current picture.
level of risk involved in humanitarian intervention in general may vary. But it at least seems plausible that our combatants do not accept the particular sort of risks involved in *Rescue Mission*; again, they do not accept the full range of risks that befall them in war. Moreover, notice that the central principle behind non-combatant priority is absent in this case: while it is true in general that we have stronger reasons to avoid harming (or allowing harm to befall) civilians, the principle of non-combatant priority centers primarily on our duty not to actively kill (or harm) civilians. And by declining the rescue mission, our combatants do not actively kill civilians—they simply allow them to die. Thus, the principle of non-combatant priority is inactive; the considerations in favor of our combatants are therefore weightier.

One might claim that an important feature of this case is that our combatants would have to actively trade their lives at one-to-one, and using their deaths effectively as an instrument in the rescuing of the other side’s civilians. But we can imagine another case that doesn’t have this feature, which yields the same verdict. Recall a case we discussed earlier called *Pinned Down*:

*Pinned Down*: Our combatants are pinned down by enemy fire. At the same time, in a nearby village, terrorists are attacking their non-combatants. We can evacuate $x$ of our combatants, or $x$ of their non-combatants; but we do not have the resources to do both. Those not evacuated will die.

It seems clear, again, that we have greater reason to rescue our combatants, in virtue of the special relationship we have toward them, which doesn’t apply with respect to the other side’s non-combatants. (Notice, however, that if they were our non-combatants, as opposed to their non-combatants, our intuitions would shift: I think we would have greater reason to rescue them, as opposed to our combatants.) The upshot in this example is that, in rescue cases like this, we ought to prioritize our combatants over their non-combatants. This yields a priority ranking that matches strong partiality.

We have just seen that in cases where we must choose between killing our combatants or killing their non-combatants, we ought to treat the two groups as on a par; and when we must decide between letting members of either group die, we may prefer our combatants. But another very common scenario in war is one in which we must choose between killing their non-combatants and allowing our combatants to die. Consider the following example, adapted from Michael Walzer’s discussion of French bomber pilots in World War II:
Altitude Bombing: In order to prevent an imminent catastrophic attack that will kill thousands of innocents, our combatants must bomb a given area. They can do so in one of two ways. By flying at a high altitude, our pilots accept little risk to themselves, but in so doing, considerably decrease their bombing precision, and so will inevitably kill some number, \( x \), of enemy non-combatants nearby. Our pilots can instead fly at a lower altitude, which allows them to be precise in their bombing, thereby sparing the enemy non-combatants. However, in doing so, our pilots accept a greater risk to themselves that they will be shot down by enemy combatants. Suppose that flying at this lower altitude will mean \( x \) of our combatants will be shot down and killed.

In his discussion of his version of the case, Walzer says, “even if the target is very important, and the number of innocent people threatened relatively small, [our combatants] must risk soldiers before they kill civilians.”\(^{188}\)

In order to determine what our combatants in Altitude Bombing should do, we must first consider the full range of factors at work in the example. The fact that we share a special relationship of co-nationality with our combatants means that they ought to receive higher priority than those with whom we share no such relationship. However, as we just saw, the fact that they are combatants counts somewhat against this priority in cases of this sort. But the case also presents another feature that counts in favor of priority toward their non-combatants—namely, that the deaths of their non-combatants would be instances of (side-effect) killing. By contrast, the deaths of our combatants would be instances of letting die: by imposing extra costs on those combatants who will die, we do not kill them, in the morally relevant sense; rather, we allow them to die—namely, by placing them in a position where the actions of the enemy combatants will kill them.\(^{189}\) Assuming the background conditions—i.e., national partiality and combatant status on the one hand, and non-combatant priority on the other—roughly balance out, the fact that our combatants’ actions would kill non-combatants means that they have greater


\(^{189}\) This claim is controversial. Some supremely risky missions might be rightly thought of as “suicide missions”—or, perhaps more appropriately, “homicide missions”—because they amount to certain death for those involved. This is an important issue that deserves a deeper treatment than I can give it here, so I will set it aside for now.
reason (with respect only to this condition) to avoid the deaths of the enemy’s non-combatants as opposed to the deaths of our combatants. For this example, then, their non-combatants receive higher priority than our combatants, which aligns with Walzer’s judgment of the case. This priority ranking is illustrated by *weak non-combatant priority*.

Of course, the priority of their non-combatants in such cases is not lexical. Consider a modified version of this case in which $x$ of our combatants and $y$ of their non-combatants are at risk. What must the ratio be between $x$ and $y$ such that the soldiers are permitted to fly at the higher altitude? I doubt any clear line can be drawn at a precise value for $y$, but it seems clear enough that if $y$ is roughly half the value of $x$, our combatants may proceed with the bombing. That is, when the side-effect killing of their non-combatants is half the number of our combatants whom we will allow to die, we may prioritize our combatants. As the value of $y$ approaches the value of $x$, however, our judgments will shift. Where exactly the change will occur, I cannot say for certain.

If the foregoing arguments are correct, then our judgments are as follows. When the harm to both groups involves *killing*, we have no greater reason intrinsic to their respective statuses, to prefer either group; their respective weights balance out. When the harm to both groups involves *letting them die*, we may prefer our combatants to their non-combatants. And when the harm to our co-nationals is merely *letting them die*, and the harm to their non-combatants is a *killing*, we ought to prioritize their non-combatants. In short, then, there is no simple way of organizing the relative priorities of the various groups, since who ought to receive priority largely depends on the type of harm in question. These results are listed in the table below.

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190 Once again, there are worries here about partiality and aggregation.

191 One might find this conclusion to be somewhat at odds with the way the categories have previously been organized. In some cases, the philosophers I have employed as defenders of the various views had a more narrow set of circumstances in mind. For example, the Kasher/Yadlin–Walzer/Margalit debate is largely focused on the issue of killing civilians as collateral damage. Nevertheless, I find that viewing the full range of priority rankings is useful to see how we are to weight the lives of those in each of the categories overall. My argument should therefore not be understood as an attempt at rebutting any of the above arguments directly. Rather, it should be understood as an attempt to bring together all the various considerations in favor of one or another group into a more thorough picture of the comparative weighting of those groups.
**Our Combatants vs. Their Non-Combatants**

<table>
<thead>
<tr>
<th>Highest priority</th>
<th>Lowest priority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Killing Their Non-Combatants/Killing Our Combatants <em>(Weak Partiality)</em></td>
<td>their non-combatants</td>
</tr>
<tr>
<td>Letting Their Non-Combatants Die/Letting Our Combatants Die <em>(Strong Partiality)</em></td>
<td>our combatants</td>
</tr>
<tr>
<td>Killing Their Non-Combatants/Letting Our Combatants Die <em>(Weak NCP)</em></td>
<td>their non-combatants</td>
</tr>
</tbody>
</table>

It is worth taking note of the differences between these judgments and both the cosmopolitan view and the lay intuitions from the study cited at the beginning of this chapter. Recall that the cosmopolitan view holds, roughly, that partiality does not play any meaningful role in determining whom we may permissibly kill or let die. We already saw, in the previous section, how a view that accommodates national partiality would differ from the cosmopolitan view. In particular, I argued, contra the cosmopolitan, that when deciding between our non-combatants and their non-combatants we are permitted to prioritize our non-combatants. When we turn to cases in which we must decide between our combatants and their non-combatants, I suspect most cosmopolitans will agree with the third line of the chart above, if only because of the importance of the killing and letting die distinction. They are likely to disagree with the first and second judgments, however. When deciding between killing members of either group, most cosmopolitans will deny that we should treat the two as on a par, since most also endorse non-combatant priority, and will therefore lower the status of our combatants without applying any extra weight from partiality. And cosmopolitans are likely to disagree with the second comparison, at least in the types of cases we have considered here; I suspect they would either give priority to non-combatants or treat the two groups as on a par.

By contrast, others, such as those who espouse the views of the people from the study cited earlier, will have essentially the opposite response: unlike the cosmopolitan, they will agree with our judgments in the first set of cases—i.e., the cases in which we compare our non-combatants and their non-combatants. But I suspect they will disagree with the first two views I
have sketched in the second set of cases—i.e., killing their non-combatants versus letting our combatants die, and killing their non-combatants versus killing our combatants. In both of these cases, I suspect the lay intuition is that we may prefer our combatants. In other words, this view would hold that strong partiality applies in every sort of case considered.

In one sense, then, the view I have laid out here lies somewhere between these two views, though it is clearly much closer to the cosmopolitan view than the lay intuitions. This is because, like cosmopolitanism, my view is sensitive to the value of the principle of non-combatant priority. But, again, my view differs from the cosmopolitan insofar as it takes seriously part of what motivates the lay judgments—namely, the value of national partiality.

4 Further Issues

I now want to consider three further issues—namely, the relevance of strategic considerations, how this ordering differs in cases of humanitarian intervention, and how we ought to understand the priority of neutral bystanders.

4.1 Strategic Considerations

The foregoing priority ordering focuses on basic facts concerning the moral status of the members of the various groups. However, this does not exhaust the full range of facts that might influence the judgment of whom we ought to prioritize, all things considered. One important set of considerations concerns those facts that, while contingent on certain real world circumstances, are nevertheless generally applicable in a broad range of wars. One such consideration is whether or not our giving priority to a certain group might generate further downstream harms, whether to our side or to theirs, as well as further impediments to our success in achieving the just cause.

To take one example, consider the possible consequences of our prioritizing our combatants over their non-combatants—or even prioritizing their non-combatants, but not to a sufficient degree (i.e., misapplying some perceived permissible trade-off between lives.) It is quite possible that this will encourage civilians in the aggressor state to take up arms, motivated by the perceived injustice of our side’s actions; or it may lead to reprisals against our combatants or non-combatants, whether at home or abroad. This may not only bring about greater harms to our side in the long run, but may also frustrate our efforts to achieve the just cause, which may also bring about further harms to all parties. Thus, while it may be theoretically permissible to
prefer our combatants over their non-combatants, it may ultimately turn out that we ought to prioritize their non-combatants in order to better win “hearts and minds”, which will ultimately lead to much less killing overall. There is, of course, the question of whether our side is responsible for such harms, due to the fact that such harms were brought about via intervening agents. But the present question is not whether or not we are responsible for them, but whether or not, as a matter of satisfying partiality more broadly and achieving the just causes, we ought to give our combatants lower priority than their non-combatants.

However, if we are accounting for such strategic considerations, we ought to consider the full range of such considerations. And while it does seem that our prioritizing our combatants may lead to further downstream harms, not prioritizing our combatants may produce a similar result. That is, not prioritizing our combatants’ lives will predictably yield greater casualties among our combatants, which will thereby weaken our ability to achieve the just cause, assuming (as is plausible) that there are not endless reserve soldiers waiting to fight in their place, and adding the further assumption that morale back home will tend to lower as the death toll among our soldiers rises. Moreover, enduring such casualties on our side may make us hesitant to engage in future wars, even when our cause is just. It is plausible that this would likewise yield greater harms in the long run.

I am unsure how to balance the ‘hearts and minds’ point against the cost to our achievement of the just cause. I doubt this particular question can be answered from the armchair, since it will depend heavily on the facts on the ground in specific cases. When it is indeed true that giving our combatants lower priority is necessary for a quicker resolution to the war, then doing so may turn out to be consistent with the risks they accept, since one such risk is doing what is necessary to prevent future harms of the relevant sort to our co-nationals. If this is true, then our combatants’ status may indeed be lowered.

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4.2 Humanitarian Intervention & Third-Party Defense

Our discussion thus far has focused on wars of national defense against unjust aggression. There is, however, another just cause for which wars may be permissibly waged—namely, humanitarian intervention or third-party defense. We ought therefore to consider the extent to which our conclusions regarding the priority ordering in wars against unjust aggression might change in the context of a war of one of these kinds. Given the claims I will make in what follows, I will treat them both under the heading of “humanitarian intervention”.

Wars of humanitarian intervention differ from wars against unjust aggression in a few important ways. Whereas in wars against unjust aggression, our combatants fight in defense of our nation and our non-combatants, in wars of humanitarian intervention, the intervening army—in this case, our combatants—intervenes on behalf of, or with the goal of aiding, a civilian population in the victim country. That is, our combatants fight to protect or aid their non-combatants.

Notice, however, that this does not depend on (nor does it necessarily thereby create) a relationship of partiality. The relationship between our combatants and their non-combatants is analogous to the relationship between a third-party intervener and a victim in ordinary self-defense cases against unjust aggressors. The relationship between our combatants and our non-combatants, by contrast, is analogous to the same self-defense case if the victim were, e.g., the third party intervener’s spouse. As such, our combatants have compelling reasons to fight to protect the victim state’s non-combatants, but such reasons are broadly applicable to anyone in a similarly capable position. From this it follows that, should circumstances arise in which our combatants must choose between our non-combatants and their non-combatants, the reasons we gave earlier that supported our combatants’ prioritizing our non-combatants still apply.

Incidentally, such scenarios are quite rare in most humanitarian interventions, at least if we understand the category of ‘non-combatants’ to exclude those who essentially work directly

\[193\] I set aside cases in which the intervener has special reasons due to, e.g., a past injustice, which might give rise to special reasons that extend beyond those that apply to everyone else. I also set aside the question of whether a relationship of partiality emerges after having intervened, especially when that intervention introduces new harms.
with or alongside soldiers—e.g., war reporters, contractors, and so forth. If we understand the category of non-combatants to include only those who are, in the standard sense, uninvolved with the war effort, such people are rarely at substantial risk. For example, as far as I am able to tell, there were virtually no American civilian casualties in one of the most recent high-profile wars of (ostensibly) humanitarian intervention—namely, the NATO bombing campaign during the Kosovo War. However, if we broaden the scope of non-combatants to include war reporters, contractors, and others who participate in various ways in the war but do not fight, then there is indeed some risk to our non-combatants. Deciding this question here would take us too far afield. Moreover, doing so is not necessary, since there is no reason to think the relative paucity of risk imposed on our non-combatants is a necessary truth of humanitarian intervention; we can surely imagine cases in which our non-combatants are indeed at significant risk throughout the course of the war.

The foregoing points reveal that, for wars of humanitarian intervention, the group with the highest priority is the same as it was for wars against unjust aggression: our non-combatants. And the lowest priority is, again, their combatants. Thus, the question once again concerns the relative priority of our combatants and their non-combatants.

Are the factors that applied in our previous priority ordering different in the case of humanitarian intervention? Recall that one factor concerned the extent to which our combatants accept certain risks in virtue of their role. I argued that, for wars against unjust aggression, our combatants plausibly accept only a subset of the risks to which they are exposed, and this excludes certain risks involved with protecting the other side’s civilians against all types of harm. But on the face of it, the reverse seems true in cases of humanitarian intervention. In these cases, the very reason for which the war is fought is the protection of the other side’s civilians; that is just what a humanitarian intervention is. It would be quite implausible to maintain that our combatants do not accept a broader range of risks—in particular, those associated with protecting the other side’s civilians. If true, this factor tips the balance toward prioritizing somewhat their non-combatants over our combatants.

We must now consider if there are any other factors that tip the balance back in the other direction. One possible factor is that their non-combatants are the expected beneficiaries of our combatants’ intervention. The idea is that their non-combatants should accept a greater portion of
the risks of the intervention fought on their behalf, because this diminishes their overall expected risk of harm. As Jeff McMahan puts it, “in some cases it is permissible for just combatants to fight in a way that will foreseeably harm innocent noncombatants as a side effect rather than fight in a different way that would involve greater risks to themselves.”\textsuperscript{194} So, even in cases where their non-combatants would be killed, and our combatants would merely be allowed to die, it would still be permissible for our combatants to prefer the former option over the latter. According to McMahan, then, no matter the types of harms in question—i.e., whether they are acts of killing or letting die—our combatants have priority.\textsuperscript{195} The correct priority ordering for humanitarian interventions therefore looks to be that of strong partiality.

This conclusion is somewhat ironic. We would expect that the priority ordering most favorable to national partiality would apply only to those views that actually make reference to partiality; and yet, this view of humanitarian intervention just sketched, and the priority ordering that appears to follow from it, requires no reference whatsoever to national partiality. Indeed, this conclusion is one that relies only on agent-neutral considerations.

This conclusion has a further hint of irony as well. Consider the fact that, as a practical matter, most wars of humanitarian intervention are not purely altruistic: the intervening state generally receives some benefit for its intervention—primarily, though not exclusively, future geopolitical advantages.\textsuperscript{196} In his discussion, McMahan emphasizes that one qualifies as an expected beneficiary of a war only if the war diminishes her overall expected risk of harm. And plausibly, securing these geopolitical advantages yields a decreased expected risk of harm for both our combatants and our non-combatants in the long run, especially if our combatants accept generally lower risks to themselves throughout the intervention. Thus, by fighting in certain humanitarian wars, our side similarly qualifies as beneficiaries of the war. If this is correct, then

\textsuperscript{194} McMahan, “The Just Distribution of Harm Between Combatants and Noncombatants,” 359. McMahan’s central point in this discussion is distinguishing between innocent bystanders and the non-combatants who benefit from the intervention. He does not directly argue for the claim from the quoted passage, though it seems he expects it follows from the more general argument.

\textsuperscript{195} Moreover, if the intervention does not diminish their non-combatants’ risk of harm, then surely our combatants ought to retreat, for this fact would reveal that the intervention fails to satisfy some other criterion, like proportionality.

\textsuperscript{196} See: the U.S.’s intervention in Libya in 2011, France’s intervention in Mali in 2013-14, among others.
it seems that either our combatants’ priority is greatly diminished, or else it cancels out the decrease in priority afforded to their non-combatants. I am unsure how precisely we ought to weigh the two groups in light of this point. In either case, we should expect that the ultimate priority ordering will be closer to *weak partiality* or *weak non-combatant priority*, once the distinction between killing and letting die is taken into consideration. (It is perhaps ironic, then, that the more our side’s actions invoke agent-relative considerations, the further we move away from the strongest partiality view.)

### 4.3 Neutral Bystanders

The foregoing discussion has focused on what many take to be the four main groups in the context of war: our non-combatants, our combatants, their non-combatants, and their combatants. But some have pointed out that wars occasionally involve risks of harm to a fifth group—namely, neutral bystanders. These are individuals who have non-combatant status, but do not belong to either side of the conflict.

One view is that neutral bystanders receive the highest priority. That is, when given a choice between directing harm to (i.e., killing) either group of non-combatants (ours or theirs) and the same number of neutral bystanders, we should in either case prioritize the bystanders. This claim rests on an idea about who should bear the costs of war. As Frances Kamm puts it, “war by its nature involves engagement between designated parties who are expected to absorb all costs. The appropriate analogy for war is a prize fight; people in the audience are not liable at all to being punched.”

Thus, neutral bystanders are more akin to those in the audience or in the vicinity of the match: they should not be expected to shoulder any of the burdens of a war of which they are not a part. Moreover, on this view, the non-combatants on both sides are among those who ought to bear the burdens of war, in virtue of their being members of one of the designated parties in the conflict.

On this view, it is therefore the case that the combined weight afforded to a neutral bystander—i.e., being a (1) non-combatant, and (2) unaffiliated to the conflict—is enough to overcome the combined weight afforded to our non-combatants—that is, the combined weights

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of being (1) a non-combatant, and (2) one of ours. In other words, this view places a significantly greater weight on being unaffiliated than it allows for partiality. But we have already seen, in chapter 3, that certain common intuitions regarding partiality support the idea that, when necessary, we may kill bystanders as a side-effect in order to save our child. Thus, there is already some reason to think that partiality warrants greater weight than the special status we afford to unaffiliated bystanders.

More generally, we must ask why it is that non-combatants of either side ought to shoulder the burdens of war. After all, one of the central motivating reasons for insisting on special treatment of non-combatants is that they are not the proper targets of war. To borrow Kamm’s boxing analogy, when they are threatened, non-combatants are best viewed as audience members who were dragged into the ring. It is hard to see why merely being forced into the ring against one’s will gives one a lesser moral status than those in the audience.

One morally relevant factor that might help us to distinguish between the various groups is the idea of being a beneficiary to an intervention. As we saw there, the fact that a group of non-combatants’ overall expected risk of harm will decrease as a result of the intervention means that we may distribute some greater amount of harm to them instead of to our own combatants. In cases of defending against unjust aggression, our non-combatants are often beneficiaries of our combatants’ efforts to defend them; in wars of humanitarian intervention, the victim state’s non-combatants are often beneficiaries of our combatants’ efforts to defend them. By contrast, neutral bystanders are never beneficiaries (in this sense) of such wars; otherwise, they would no longer be unaffiliated. Thus, invoking the idea of beneficiary status might help to explain why neutral bystanders receive special status beyond that of affiliated non-combatants.

However, even if it is true that our non-combatants are beneficiaries in the relevant sense, they are still our non-combatants, which gives them a special status that balances (at least partly) against their being beneficiaries. In a pairwise comparison between their non-combatants and our non-combatants, we concluded that our non-combatants receive priority; and yet our non-combatants are, in such cases, beneficiaries, while their non-combatants are not. Thus, in those cases, being a beneficiary did not discount our non-combatants’ status enough to render them equal to their non-combatants. Absent some further argument about the relevance of the neutral
bystanders’ unaffiliated status, we therefore should not expect that the mere fact that our non-combatants are beneficiaries will render them of lower priority than neutral bystanders.

To my mind, a better view would be to treat neutral bystanders as either in the same group as their non-combatants, or else of slightly higher priority than them. The former option respects both groups’ status as non-combatants, and avoids making any claims about how their non-combatants ought to bear burdens for wars fought merely in their name. However, there is also some intuitive pull to the latter suggestion, especially if we think their non-combatants are even slightly vicariously liable to the harms that would befall them. That is, if somehow in virtue of their membership in the aggressor state, they bear some responsibility—small though it may be—for the harms perpetrated by that state, it may make sense to afford higher relative priority to the unaffiliated bystanders who have no such responsibility at all.

5 Conclusion

In this chapter, I have argued for how we ought to weigh the lives of members of various groups against each other in the context of war. As I have shown, the order of priority depends heavily on the types of harms in question, and it is possible that this priority ordering will shift in light of certain strategic considerations. Finally, I have argued that, in standard cases, this priority ordering does not change in cases of humanitarian intervention, due to the fact of their non-combatants’ status as beneficiaries; and I have argued that rather than viewing neutral bystanders as the highest priority, as some would have it, we ought to view them as roughly on a par with their non-combatants.
References


