National Partiality, Immigration, and the Problem of Double-Jeopardy

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From this moment on, it’s going to be America First.
Every decision on trade, on taxes, on immigration, on foreign affairs, will be made to benefit American workers and American families. (…) We will seek friendship and goodwill with the nations of the world – but we do so with the understanding that it is the right of all nations to put their own interests first.

Donald Trump, Inaugural Address, January 20, 2017

1. Introduction

A foundational conviction of contemporary liberal thought is that all persons possess equal basic moral worth.¹ Modern moral philosophy in general takes it as axiomatic that, in the words of Thomas Nagel, “no one is more important than anyone else. (...) [E]veryone counts the same. For a given quantity of whatever it is that’s good or bad – suffering or happiness or fulfilment or frustration – its intrinsic impersonal value doesn’t depend on whose it is.”²

In light of this professed belief that, impersonally considered, everyone’s interests and well-being matter equally, it is striking that at the same time most people view their lives as governed by a host of particularistic attachments – to family, friends, co-religionists, etc. – all of which, according to common-sense morality, entail the permission, in many cases the duty, to care especially for the interests and well-being of these people.

One domain in which such partiality is particularly prominent is the sphere of collective political action. Modern states, as the primary organs of our collective self-governance, frequently pursue policies that strongly favor the interests of compatriots over those of foreigners. Though the degree of priority that states may assign their citizens is, of course, a matter of dispute, the more fundamental thought that states are permitted and often morally required to

give some measure of priority to the interests of citizens over non-citizens, is rarely contested. Let us call this the **Priority for Compatriots Claim**, or PCC for short. Being someone’s “compatriot”, in my sense, designates a legal condition of shared citizenship, not adherence to a shared culture or ethnicity (though these are, of course, characteristics that compatriots often have in common).

The apparent tension between the impartiality of our general moral and political convictions and the particularistic obligations suggested by common-sense moral principles like the PCC calls for a philosophical explanation. By far the most common strategy for justifying the PCC in the literature is to appeal to **associative duties**. Partiality towards our compatriots is justified and even required, it is argued, because we stand with them in special **associative relations** which give rise to special obligations to promote their interests. By contrast, we do not stand in such relations with foreigners.

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3 Even avowedly cosmopolitan thinkers such as Thomas Pogge, while arguing that the scope of national priority is circumscribed by duties of global justice, hold that some degree of partiality towards our fellow citizens is justified. See Thomas Pogge, “The Bounds of Nationalism” in Couture, Nielsen and Seymour (eds.) _Rethinking Nationalism_ (Calgary: University of Calgary Press, 1998).

4 We shall survey some suggestions from the literature in Section 4.

5 Of course, this is not the only way in which one might argue in support of the Priority for Compatriots Claim. In “What is So Special about Our Fellow Countrymen?”, _Ethics_, Vol. 98, No. 4. (Jul., 1988), pp. 663-686, Robert Goodin argues that duties of partiality towards our compatriots are not the result of associative obligations. Rather, they “derive the whole of their moral force from their connections to general duties.” (p. 679) According to Goodin, “[s]pecial obligations [in general] are (...) merely devices whereby the moral community’s general duties get assigned to particular agents.” (p. 678) These general duties, Goodin maintains, include a duty to ensure that everyone’s interests are protected and promoted. For various empirical reasons, including the avoidance of co-ordination problems and the fact that sentiments of closeness may make fellow citizens more disposed to help each other than others (p. 682), Goodin thinks that this general moral obligation will be most effectively fulfilled by assigning special responsibilities to prioritize the interests of their citizens to individual states and their officials.

Though theoretically elegant, Goodin’s account seems unpromising as a defense of the PCC in the political here and now. Given the vast disparities of resources between states, Goodin’s suggestion that assigning each state a duty to give priority to the interests of its own citizens is the best way of promoting everyone’s interests is surely questionable. In the words of David Miller, why should we expect the best results to be achieved by putting “the well-off in charge of the well-off and the badly-off in charge of the badly-off”? (“The Ethical Significance of Nationality”, _Ethics_, Vol. 98, No. 4. (Jul., 1988), p. 652). Goodin responds that this “is not a critique of [his] model but, instead, a critique of existing international boundaries from within [his] model.” (p. 685) This concession, however, robs Goodin’s proposal of much of its practical relevance. What we want to know is whether states can justifiably show a measure of partiality...
This paper issues a challenge to such arguments. I will seek to convince you that arguments from associative obligation in support of the PCC are crucially incomplete in the absence of a justification for the restrictions that most contemporary states place on immigration. Only if we can supply an independent justification for existing restrictions on immigration can we then appeal to the associative relations that exist among fellow citizens to justify the PCC (or at least certain strong versions of that claim).\(^6\)

This connection is not often drawn. Indeed, to the extent that political philosophers have made links between the Priority for Compatriots Claim and the topic of immigration, they typically view the connection as running in the reverse direction: we are justified in restricting immigration, it is suggested, on grounds of legitimate partiality towards our compatriots – for example, to protect domestic workers from the competition of would-be immigrants.\(^7\) Michael Sandel gives an admirably forthright statement of this position:

> Why should we protect our most vulnerable workers if it means denying job opportunities to people from Mexico who are even less well-off? From the standpoint of the least advantaged, a case could be made for open immigration. And yet, even people with egalitarian sympathies hesitate to endorse it. Is there a moral basis for this reluctance? Yes, but only if you accept that we have a special obligation for the welfare of our fellow citizens by virtue of the common life and history that we share.\(^8\)

In a similar vein, Stephen Macedo writes:

> [W]e ought to take seriously the proposition that recent patterns of immigration to the United States have been bad for distributive justice. Members of political communities have

\(^6\) See the following section.

\(^7\) This claim, of course, is also a staple of current political debates about immigration, in the United States and elsewhere. See the epigraph at the start of this paper.

special obligations of distributive justice to one another. There is a prima facie case in light of these considerations for the United States to move toward a more restrictive immigration policy, perhaps especially with respect to those low-skilled immigrants who compete with the poorest Americans for jobs. John Rawls, meet Lou Dobbs.9

I will argue that, given the present state of play in political philosophy, such arguments put the cart before the horse.10 If I am right, then – on pain of circularity – restrictions on immigration cannot in the first instance be justified by requirements of national partiality that derive from associative relationships among compatriots. This is because, in order to work, such associative arguments must presuppose that existing policies restricting immigration are morally permissible. However, it remains hotly contested amongst political philosophers whether states (in particular affluent states) are morally justified in restricting immigration, and if so, to what extent and by what criteria.11 In the absence of a resolution to this debate, any defense of the PCC from associative duties remains at best provisional.

2. The Effects of Acquiring an Associative Duty

Let us begin by reviewing the notion of an “associative duty”. Over and above the general duties that we owe to everyone in virtue of their simple humanity, it is often claimed that participation in significant social groups or personal relationships may, in addition, give rise to associative duties, which act to strengthen our existing (positive) duties vis-à-vis members of these groups or take the form of new (positive) duties not included in the set of our general

10 Another, quite explicit, attempt to derive principled restrictions on immigration from the Priority for Compatriots Claim is David Miller’s argument in National Responsibilities and Global Justice (Oxford: Oxford University Press, 2007), p. 223.
Thus, our (positive) associative duties go beyond our general (positive) duties, in the sense that they are either more extensive in content or more stringent, or both. For example, there are certain kinds of prima facie duties that I have towards my friend that I don’t have towards strangers, for instance to act as their confidant. And although I can be expected to bear some personal cost in order to provide assistance to strangers, I am required to bear greater costs to provide comparable assistance to my friend. Thus, one effect of acquiring an associative duty towards person A is that there are now things I have a duty to do for A that I didn’t previously have a general duty to do.  

But acquiring an associative duty towards A may also affect how I can permissibly treat non-associates. Besides those persons to whom the special duties are owed – what Samuel Scheffler has called the “In Group” – there are typically other persons who fall outside the scope of our particularistic concern. Call these the “Out Group”. Sometimes, these persons do so by their own choosing, but in other instances they are excluded from joining those special associative relationships, membership of which would allow them, too, to lay claim to our special concern.

According to commonsense morality, positive duties to one’s associates in the In Group sometimes take precedence over one’s positive general duties to non-associates in the Out Group, in cases where the two conflict. As a result, the existence of associative duties can license doing less for people in the Out Group than would have been permissible in the absence of any associative duties. For instance, special duties towards my children may make it

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13 All my claims about associative duties in the following are claims about positive associative duties. Whether associative ties can also strengthen my existing negative duties vis-à-vis associates or give rise to new kinds of negative duties towards associates is much more controversial. As Robert Goodin observes, in some cases, the opposite appears to be the case: we have certain negative duties towards non-associates that we do not have towards associates. For instance, we can deprive our compatriots of liberty by conscripting them into the army, while we are not permitted to do this to foreigners. (“What is So Special about Our Fellow Countrymen?”, pp. 667-71).

14 “Families, Nations, and Strangers”.
permissible for me to do less to fight world poverty than would have been morally permissible, had I remained childless.

Seeing this allows us to distinguish two versions of the Priority for Compatriots Claim. According to the

**Strong PCC:** States are permitted and often morally required to give some measure of priority to the interests of citizens over non-citizens, even when doing so means doing less for non-citizens than would have been permissible in the absence of any associative duties to citizens.

By contrast, according to the

**Weak PCC:** States are permitted and often morally required to give some measure of priority to the interests of citizens over non-citizens, but only when doing so does not cause us to do less for non-citizens than would have been permissible in the absence of any associative duties to citizens.

Correspondingly, we can distinguish two ways in which non-citizens might be affected by the existence of associative duties to our compatriots. If the Weak PCC is true, the existence of associative duties would lead non-citizens to be ‘disadvantaged’ compared to citizens, but only in a relative sense: the existence of associative duties makes it the case that we owe less to non-citizens than to our compatriots, but not because we owe non-citizens absolutely less than we would have in the absence of associative duties to our compatriots (– we just owe absolutely more to our compatriots). By contrast, if the Strong PCC is true, non-citizens would be ‘disadvantaged’ in an absolute sense: we may now owe absolutely less to non-citizens than would have been the case in the absence of associative duties to our compatriots.

I believe that most people who are attracted to the Priority for Compatriots Claim would embrace the Strong PCC. Consider the following case:

*Two Natural Disasters:* A larger and a smaller natural disaster occur at the same time. The smaller natural disaster takes place at home and affects compatriots. The larger disaster takes place abroad and affects foreigners. Our state could either direct our
resources to help at home or abroad (at the same low cost), but it cannot do both. Our state could save more lives by helping abroad.

Now, in the absence of any special associative obligations, I take it that our state ought to have helped where it can save more lives. To see this, imagine a variation on this case in which both disasters happen in foreign countries. Intuitively, our state ought to help in that country where our help will save more lives, all else equal. But I believe that most people who endorse the PCC would hold that, since in Two Natural Disasters the lives threatened by the smaller disaster are actually those of our compatriots, with whom we have various associative ties, our state may, all things considered, have a duty to help at home, where it will save fewer lives. This is consistent with the Strong but not the Weak PCC.

In this paper, I will focus on the Strong PCC. Thus, when I say in what follows that the presence of associative duties is thought to make it permissible to “give priority” to the interests of compatriots over non-compatriots, I will have in mind situations like Two Natural Disasters, where the presence of an associative duty to some makes it permissible to treat non-associates in a way that would be impermissible in the absence of these associative duties. Notice that this is more likely to be the case, the more extensive either our general duties to people in the Out Group or our associative duties to our compatriots are thought to be.


16 Thus, David Miller maintains that whereas our negative duty not to violate the human rights of foreigners is no weaker than our negative duty not to violate the human rights of compatriots, “the picture changes quite radically [when we turn to] the duty to provide resources of various kinds (...) In this case most people would accept a fairly strong version of priority for compatriots: if because of potential shortages we have to choose between securing the subsistence rights of compatriots and the equivalent rights of others, we should favour our compatriots. ... [H]ere perhaps we should apply a weighing model, and think of partiality towards compatriots as a matter of giving their rights-claims greater (though not absolute) weight when deciding how to use scarce resources.” (David Miller, “Reasonable Partiality Towards Compatriots”, Ethical Theory and Moral Practice, Vol. 8, No. 1/2(Apr., 2005), p. 75.)
3. Two Worries about the Appeal to Associative Duties

Let me distinguish two sources of resistance to associative arguments in support of the PCC.

In his paper “Families, Nations, and Strangers”, Samuel Scheffler discusses an objection which, if successful, would support a general skepticism about associative duties. For Scheffler, associative duties arise out of relationships that one has reason to value non-instrumentally. On Scheffler’s account, one cannot value a relationship non-instrumentally without seeing it as a source of special responsibilities. To see a relationship with another person as a source of special responsibilities means to be disposed to see that person’s needs, interests, and desires as, in themselves, providing presumptively decisive reasons for action which would not have existed in absence of the relationship.\(^{17}\)

But what functions as an *explanation* of associative duties at the same time gives rise to a potent worry about the notion of associative duty itself: Can there really be associative duties, this so-called “Distributive Objection” asks, given their often highly *inegalitarian* implications? Associative duties, coming on top of the intrinsic rewards that standing in valuable relationships with other members of the In Group often brings, seem to *compound* one kind of inequality with another. As Scheffler writes:

> If (...) A and B have associative duties to each other, then, in addition to enjoying the rewards of Group membership, which C lacks, A and B also get the benefit of having stronger claims on each other’s services than C has. Why should this be? Why should the fact that A and B are in a position to enjoy the first sort of advantage give rise to a moral requirement that they should also get the second, and that C, who has already lost out with respect to the former, should now lose out with respect to the latter?\(^{18}\)

\(^{17}\) See Samuel Scheffler, “Relationships and Responsibilities” and “Families, Nations, and Strangers” in his *Boundaries and Allegiances*.

\(^{18}\) “Families, Nations, and Strangers”, p. 57
In what follows, I will not attempt to assess the merits of Scheffler’s Distributive Objection to associative duties. Instead, I want to press a distinct but related worry. Even supposing that Scheffler’s skeptical worry about associative duties can be overcome, is it licit to appeal to associative duties to justify giving lesser priority to members of the Out Group, given that we may have deliberately excluded these people from becoming members of the In Group?

Let me motivate this abstract concern with a concrete illustration: Suppose it was claimed – perhaps not very plausibly – that membership of a certain educational institution, such as Princeton University, gave rise to associative duties of partiality vis-à-vis other members or alumni of this institution.

Now, it seems to me that even if this type of associative relation were, in principle, apt to give rise to associative duties, partiality would in fact be justified only if the boundaries of the In Group were themselves drawn in a justifiable manner. If, for instance, membership of Princeton University were unjustifiably restricted on the basis of race or gender or religion (as, of course, it was for much of its history), this would invalidate claims to permissible partiality from the get-go.

This, I take it, is part of the explanation why we find “old-boy networks” morally odious: It isn’t just that the members show partiality or favoritism to other members on the basis of an associative tie – having gone to the same school or university – that, even in the best case, is probably not apt to give rise to permissible partiality. Moreover, they typically do so in conditions where eligibility for membership of these very schools or universities was unjustly restricted on the basis of social class or race or gender to begin with.

I propose, then, the following minimal necessary condition that associative relationships must meet, if they are to give rise to justifiable partiality. I call it the

**Boundary Principle:** If we deliberately and avoidably prevent another person from becoming one of our associates (either by directly refusing to stand in the relevant associative relation with her, or by otherwise making it impossible for her to enter into the relevant associative relation with us), then we cannot appeal to the fact that she isn’t one of our associates in order to...

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justify giving her interests less priority (in a way that absolutely disadvantages her), unless we act permissibly in preventing her from becoming one of our associates.

Let us think about the implications of the Boundary Principle for a variety of cases. In so doing, I have found it helpful to employ the diagrams on the following page. Using these diagrams, we can see that there are two cases in which the Boundary Principle is trivially satisfied.

The First Easy Case is one in which the relevant associative duties, if they exist, arise out of relational ties which are in principle unextendable to other people. Take, for instance, the genetic relation between progenitor and offspring, or the involuntary historical relation of having been through a shared experience of involuntary suffering, such as being interned together in a labor camp under a dictatorship. Ethnic and racial ties also belong into this category. If relations of these kinds are apt to give rise to associative duties – which of course will only be plausible for some relations in this category – there is no separate problem of justifying the make-up of the relevant In Group, and the fact that it does not include certain people. The Boundary Principle is trivially satisfied, since its antecedent is false. We do not deliberately and avoidably prevent another person from becoming one of our associates, in the relevant sense. Rather, the relevant associative relation is in principle unextendable to them.

In the Second Easy Case, justifying the boundaries of the In Group poses no difficulty either, because membership of the In Group is open to anyone who desires it. This is true, for instance, in the case of some religions, such as Islam or Christianity. Anyone can become a Muslim by pronouncing the Shahada or join the community of Christians by being baptized. Since membership in the In Group is open to anyone who wants it, the Boundary Principle is again trivially satisfied.

By contrast, the types of associative relations that exist between citizens, and which are thought by some to give rise to legitimate partiality towards compatriots, belong to a harder class of cases (illustrated by the third diagram). Duties of partiality towards compatriots, if they exist, do not supervene on a natural relation, but are the result of these persons occupying the legal status of citizen. Citizenship is conferred – typically at birth, but in some cases later in life, as in the case of naturalized immigrants. Unlike in the First Easy Case, the scope of the relevant In Group is fixed, not by natural or historic ties that are in principle unextendable to members of the Out Group, but by the policies of the
**Explanation of Diagrams:**

*Connected white dots:* The In Group, i.e., persons who stand in the relevant associative relations with one another.

*White dots:* Persons to whom membership in the In Group is open if they want it.

*Black dots:* People to whom membership in the In Group is not open, even if they want it.

*Solid boundary:* In Group membership is not open to all, and whether or not membership in the In Group is open to a particular person is not up to In Group members.

*Dotted boundary:* In Group membership is not open to all, and whether or not membership in In Group is open to a particular person is up to In Group members.

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**Easy Case 1:**

Examples of the relevant associative relations:
- Genetic ties (e.g., between biological parents and their children, siblings)
- Racial/ethnic ties
- Involuntary historical ties (e.g., having been interned in a labor camp together)

→ The Boundary Principle is trivially satisfied, since its antecedent is false. We do not deliberately prevent another person from becoming one of our associates in these kinds of cases. Rather, the relevant associative relation is in principle unextendable to them.

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**Easy Case 2:**

Examples of the relevant associative relations:
- Being a Muslim or a Christian

→ The Boundary Principle is again trivially satisfied, since its antecedent is false. (Membership in the In Group is open to anyone who wants it).

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**Harder Case:**

Examples of the relevant associative relations:
- Friendship
- Families (given the possibility of marriage and adoption)
- Being a member of Princeton University
- Various associative relations that exist between compatriots

→ These cases raise a non-trivial justificatory demand, because membership of the In Group is (i) not open to anyone who wants it and (ii) because it is up to members of the In Group to determine who is eligible for membership.
state in question. Unlike religious communities, however, states typically exercise their ability to confer membership in the In Group with extreme discretion. At present, citizenship, or even residency, especially in the affluent societies, is denied to most foreigners who would want it.20

These two factors combine to make it the case that in the case of the associative ties that exist between compatriots, the Boundary Principle gives rise to a non-trivial justificatory demand.

Before I say more about the associative relations between compatriots, let me pause to address a question that may be forming in your mind: As the third diagram illustrates, there is a structural similarity between the associative relations among compatriots and the intimate associative relations amongst friends or spouses. In all these cases, membership of the In Group is not open to everyone who may want it, and, in addition, it is, de facto, left to members of the In Group to determine who is eligible for membership. Thus, it is up to me to decide who I want to be friends with or marry, and moreover, this is a power I exercise with great discretion: I am married to only one woman, and am close friends with no more than a few dozen people. And yet, we think of friendship and spousal relations as paradigmatic instances where partiality towards one’s associates is justified. Do these cases, then, raise a challenge to the Boundary Principle?

I do not think they do. It is not that, when I appeal to the fact that I am friends with Peter but not with Paul in order to justify giving priority to the interests of Peter over Paul, I escape a requirement, under the Boundary Principle, to show that withholding my friendship from Paul but not from Peter is permissible. Rather, it is that such a justification is readily to hand: it is generally accepted that we have a broad personal prerogative to determine the makeup of our elective intimate associations, which I exercise when I decide to be friends with Peter but not with Paul. And, as a general matter, a demand to

20 Consider the figures for the figures for the annual U.S. Diversity Visa Lottery (“Green Card Lottery”), which allocates permanent resident visas to persons from countries with low rates of immigration to the United States – primarily developing countries: For the fiscal year 2018, this lottery received 14,692,258 qualified entries for 50,000 visas, or almost 294 applications per slot. https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2017/visa-bulletin-for-july-2017.html
show that one’s φ-ing is permissible is conclusively met by citing a valid moral prerogative to φ.²¹

Of course, philosophers will want to ask further questions, for instance about what explains the fact that we have such a personal prerogative to determine the make-up of our elective intimate associations. I don’t here have the space to go very deep into this question, but a satisfying answer might appeal, inter alia, (a) to the costs of maintaining friendships and intimate partnerships and (b) to conditions on the value of friendships and intimate partnerships.

Relationships take work. They require lots of time and emotional and mental energy. Moreover, at least when it comes to the most intimate ones, their value is diluted when one has more tokens of the type. My relationship with my friend Peter, or my wife Ekédi, would not be quite so valuable if I had very numerous friends or multiple intimate partners. (I don’t want to make this claim in too sweeping a fashion; other people, and perhaps people in other social forms, might be able to avoid this dilution.) Finally, friendships and intimate partnerships are less valuable when at least one party’s heart isn’t in it, so to speak. Put together, these facts might help explain the prerogative to choose the friendships and intimate partnerships that one wants.²² Of course, not every instance in which I exercise this personal prerogative and permissibly decline to enter into an intimate association with another person need be one where taking on another relationship would be too much work or where the value of my other relationships would be diluted. In general, to claim that some set of considerations C explains why I have a prerogative to perform actions of type X is not to claim that every instance in which I exercise my prerogative

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²¹ The claim that (1) S has a moral prerogative to φ is distinct both from the claim that (2) S has a moral right to φ and the claim (3) that S is not making a moral mistake by φ-ing. (1) and (2) are not equivalent, since having a moral right to φ does not entail that one’s φ-ing is morally permissible. Rather, if S has a moral right to φ, this entails that it is typically impermissible for third parties to prevent S from φ-ing. It does not entail that S’s φ-ing is morally right or permissible. We can have rights to do what is wrong. See Jeremy Waldron, “A Right to Do Wrong”, Ethics, Vol. 92, No. 1 (Oct., 1981), pp. 21-39. (1) and (3) are not equivalent, since it being morally permissible (i.e. not morally wrong) for S to φ does not entail that this is the option that S has most moral reason to choose. Doing φ could be what Elizabeth Harman calls a “morally permissible moral mistake”. See Elizabeth Harman, “Morally Permissible Moral Mistakes”, Ethics, Vol. 126, No. 2 (Jan. 2016), pp 366-393.

²² I am indebted to Adam Kern for helpful discussions of these points.
and permissibly perform a token of type $X$ is one in which considerations $C$ apply.\(^{23}\)

What is more important to my argument than these cursory attempts to explain the personal prerogative in question is the fact that few philosophers deny that we do indeed possess such a prerogative, whatever its exact explanation may be.\(^{24}\) Hence, relationships between friends and spouses are not counterexamples to the Boundary Principle, but rather cases where it is not trivially but nonetheless uncontroversially satisfied.

Let us return now to the main line of the argument.

### 4. The Argument from the Boundary Principle and the Problem of Double-Jeopardy

If the Boundary Principle is correct, it follows that in order to justify the Priority for Compatriots Claim by giving an associative argument, we must not only identify a feature of the relationship between compatriots that might ground an associative duty. In addition, we must also explain why outsiders are permissibly excluded from entering those relationships which give rise to

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\(^{23}\) Compare: according to interest theories of rights, the function of a right is to further the right-holder’s interests. (The *locus classicus* is Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986).) Thus, a promisee has a claim-right in the performance of the promised action because, in general, promisees have an interest in the performance of the promise which is a sufficient reason for holding the promisor to be under a duty to perform the promised action. But this is not to say that every instance in which a promisee asserts her right to the performance of the promise is one where the promised action furthers the right-holder’s interests. I can have a right that you keep your promise to return my borrowed bicycle *tonight* rather than tomorrow, even though I won’t need the bicycle until next week and, in fact, it is less convenient for me to receive the bicycle tonight rather than tomorrow.

\(^{24}\) For an interesting dissenting view, see Kimberley Brownlee, “Freedom of Association: It’s Not What You Think”, *Oxford Journal of Legal Studies*, Vol. 35, No. 2 (June 2015), pp. 267–282. Brownlee contends that at least in certain cases, where a person’s ‘fundamental associative needs’ cannot be met by others, we have a duty to associate with her, e.g. by being friends. Hence, our permission not to associate with others is at most conditional. While I do not have the space to discuss Brownlee’s argument, suffice it to say that if Brownlee is correct, this would in no way undermine the case for the Boundary Principle; rather, it would give it more bite, in the case of intimate relationships. Far from showing that we escape a justificatory demand when it comes to partiality towards our intimates, Brownlee’s view suggests that this demand may be less easy to satisfy than most philosophers assume. I thank Kimberley Brownlee and Laura Valentini for a helpful discussion of this issue.
associative obligations between compatriots. The argument for this could be stated as follows:

**Argument from the Boundary Principle**

1. If we deliberately and avoidably prevent another person from becoming one of our associates (either by directly refusing to stand in the relevant associative relation with her, or by otherwise making it impossible for her to enter into the relevant associative relation with us), then we cannot appeal to the fact that she isn’t one of our associates in order to justify giving her interests less priority (in a way that absolutely disadvantages her), unless we act permissibly in preventing her from becoming one of our associates.

2. We deliberately and avoidably prevent many would-be immigrants from settling in our country and becoming our fellow citizens.

3. By preventing would-be immigrants from settling in our country and becoming our fellow citizens, we make it impossible for them to enter into the relevant associative relations with us.

Therefore, we cannot appeal to the fact that would-be immigrants do not stand in the relevant associative relations with us to justify giving their interests less priority unless it is permissible for us to prevent them from settling in our country and becoming our fellow citizens.

However, as we shall now see, most attempted justifications of the PCC from associative duties in the literature do not meet this justificatory demand, and hence cannot provide a complete justification of the PCC.

Let us consider two representative examples from the literature. They stand in for many other discussions with a similar structure.

A common strategy for justifying the PCC starts from the assumption that states are, essentially, cooperative social enterprises for mutual advantage. Our membership in these joint cooperative ventures, in the words of Charles Taylor, is a means “to obtain benefits through common action that [we] could not
secure individually". The most prominent modern proponent of this conception of the state is, of course, John Rawls. In this paper, however, I shall focus on an article by Richard Dagger.

In “Rights, Boundaries, and the Bonds of Community”, Dagger develops an account of our special obligations towards compatriots as grounded in the principle of fair play. Participating as equals in such cooperative enterprises for mutual advantage, which typically include welfare provisions, such as health insurance and unemployment benefits, gives us reciprocal duties to accept the burdens that maintaining these social institutions and caring for needy compatriots places on us. If we refused to take the burdens of cooperation with the benefits, we would be treating our conationalists “merely as means not as ends”, and would thereby violate their right to autonomy. Given that like relations of co-operation do not exist between us and nonnationals, Dagger argues, we are justified in assigning considerably lower priority to their interests.

This strategy for justifying the PCC faces some well-known objections. Thus, as Robert Goodin and Andrew Mason point out, if the PCC is grounded in a duty of fair play, this fails to explain why special duties of partiality are not equally owed to resident aliens who contribute to the cooperative social enterprise of their host-nations. On the other hand, we should give little if any special weight to promoting the wellbeing of co-nationals permanently living abroad, or to those fellow citizens who have not been able to significantly contribute to the social product of our country, for instance due to a severe congenital handicap.

The Argument from the Boundary Principle raises a different worry about Dagger’s argument: Modern states severely limit the scope of economic migration, and thereby prevent many would-be contributors to the collective enterprises of our affluent societies from ever entering into relations of reciprocal cooperation with us that would give rise to special duties of partiality.

28 “What is So Special about Our Fellow Countrymen?” (op. cit).
on our part. Not only are potential immigrants excluded from the benefits that participation in these schemes would itself confer on them.\(^{30}\) In addition, the fact that we so exclude them is indirectly regarded as justifying us in assigning significantly lesser weight to their interest in the formulation of state policy. But, in the absence of a valid moral justification for our restrictive immigration policies, this would be implausible.\(^{31}\)

A similar problem besets Andrew Mason’s civic republican case for national partiality in “Special Obligations to Compatriots”. Mason’s argument draws inspiration from Joseph Raz’s account of why friendship justifies special obligations.\(^{32}\) Raz makes three main claims: (1) friendship is an intrinsically valuable relationship; that is, it is properly valued for its own sake; (2) part of what it is for two people to be friends is for each to be under certain obligations to the other, and these obligations are justified by the moral good of friendship; (3) these special obligations are internally related to the good of friendship, that is, they are part of that good.

Mason suggests that the most promising argument in support of special obligations among compatriots takes an analogous form:

Citizenship has intrinsic value because in virtue of being a citizen a person is a member of a collective body in which they enjoy equal status with its other members and are thereby provided with recognition. This collective body exercises significant control over its members’ conditions of existence (a

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\(^{30}\) Stephen Macedo cites work by the economist Mark Rosenzweig, which estimates that Mexican high school graduates can, by leaving Mexico and finding a job in the United States, increase their income sevenfold; Mexican college graduates can increase their income ninefold. (See “When and Why Should Liberal Democracies Restrict Immigration”, p. 317). For less developed countries than Mexico, this figure must be higher still.

Moreover, the consequences of exclusion are not only felt by those who are excluded. It is estimated that about 200 million migrants help to support about 800 million family members in their home countries through regular remittances from their wages. The amount of money involved is more than the total amount of bi- and multi-lateral foreign aid. Hence, excluding one person from entry into the labor market of a developed country excludes several from the benefits of participation in the labor market. For more data see World Bank Group, Migration and Development Brief 27 (April 2017). My thanks to Chuck Beitz for discussion of these issues.

\(^{31}\) For a broadly similar critique of Dagger’s argument, albeit one that does not explicitly articulate the Boundary Principle, see Arash Abizadeh, “The Special Obligations Challenge to More Open Borders” in Sarah Fine and Lea Ypi (eds.) Migration in Political Theory: The Ethics of Movement and Membership (Oxford: Oxford University Press, 2016), pp. 105-124.

degree of control which none of its members individually possesses). It offers them the opportunity to contribute to the cultural environment in which its laws and policies are determined, and opportunities to participate directly and indirectly in the formation of these laws and policies. Part of what it is to be a citizen is to incur special obligations: these obligations give content to what it is to be committed or loyal to fellow citizens and are justified by the good of the wider relationship to which they contribute. In particular, citizens have an obligation to each other to participate fully in public life and an obligation to give priority to the needs of fellow citizens. A good citizen is, in part, someone who complies with these various obligations and responsibilities, and in doing so realizes the good of citizenship.33

Like Dagger’s argument from fair play, Mason’s civic republican argument for partiality fails to account for the Boundary Principle. According to Mason, the normative basis for giving priority to the interests of our compatriots is simply that we stand with them in a valuable relationship – that of shared citizenship – which constitutively entails certain special obligations towards them. Vis-à-vis foreigners, we lack this relationship. But, of course, it is true of many foreigners that the only reason why they don’t stand with us in this valuable relationship is precisely that we deliberately prevent them from doing so, by stopping them from immigrating to our country and becoming our fellow citizens. Surely, some independent argument is needed to justify this fact in order for Mason’s argument to get off the ground.

The general problem that Dagger’s and Mason’s arguments have in common is one that infects many other associative arguments for the PCC.34 It is this: All these arguments take the boundaries of citizenship as given, and then seek to derive an account of the PCC from certain features of the relationship among fellow citizens. What this overlooks, as we have seen, is the fact that most modern states severely limit the scope of migration, and thereby prevent

33 “Special Obligations to Compatriots”, p. 442.
many would-be immigrants from ever entering into the relevant associative relations that would give rise to associative duties on our part. Not only are would-be immigrants excluded from the benefits that settling in our country would itself confer on them. In addition, the fact that we so exclude them, and thus prevent them from standing in the relevant associative relations with us, is regarded as justifying us in giving significantly less weight to their interests.

However, in the absence of a moral justification for placing restrictions on migration, this inference is implausible. To see this, suppose there was no adequate justification for the ways in which we limit migration. In attempting to justify the priority we give to the interests of compatriots, we would, in effect, be saying to would-be immigrants: “Given that we are impermissibly excluding you from entering into certain valuable relationships with us, we are justified in giving less weight to your interests, in a way that absolutely disadvantages you, because you do not stand in these relationships with us.” This, I believe, is a justification that they could reasonably reject. By adding partiality to impermissible exclusion, we would simply be compounding one injustice by another. Call this the Double-Jeopardy Problem for the PCC.

The Double-Jeopardy Problem should be distinguished from a superficially similar argument presented by Javier Hidalgo in “Associative Duties and Immigration”. Like Scheffler, Hidalgo believes that associative duties arise only from relationships that are intrinsically valuable. In addition, however, Hidalgo maintains that only relationships that do not reliably cause injustice to outsiders can be intrinsically valuable. By contrast, if a special relationship systematically involves injustice to outsiders, then we have no reason to value this relationship, and hence it necessarily fails to ground any associative duties. Hidalgo then suggests that the relationship between compatriots may be just such a relationship, given the way in which restrictions on immigration limit membership in the In Group of compatriots: “Immigration restrictions may in general be impermissible. The explanation is that immigration restrictions impinge on important liberties and our reasons to refrain from interfering with these liberties defeat the reasons in favor of these restrictions.”

One obvious difference between Hidalgo’s argument and my own is that since Hidalgo affirms that existing restrictions on immigration are unjust, in virtue of impinging on the liberties of would-be immigrants, his conclusion is

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an *unconditional* one: the relations between compatriots cannot give rise to justified partiality. By contrast, the conclusion of the Argument from the Boundary Principle has a *conditional* form: if existing restrictions on immigration are impermissible, then the associative relations among compatriots could not support the Strong PCC.

Beyond this, Hidalgo’s argument strikes me as too procrustean, for two reasons. First, it relies on the axiological premise that a relationship which involves systematic injustice to outsiders (for instance by involving morally indefensible restrictions on membership) must for that reason be devoid of intrinsic value. This seems too strong. For instance, even at a time when women and religious and ethnic minorities were unjustifiably excluded from Princeton University, I believe that the relationships within the community of scholars and students at Princeton possessed some intrinsic value. It was something they had non-instrumental reason to value as such (– though, all else equal, they would of course have had stronger reasons to value a relationship not marred by this kind of injustice). The same may be true, on an account like Mason’s, of the relationships of equal citizenship amongst citizens in a democratic polity, even if we assume that membership in their political community is unjustly closed off to outsiders.

Second, Hidalgo’s account suggests that all associative duties amongst citizens are lost, if their relationship involves systematic injustice to outsiders. This, again, seems false. There is no reason to assume that associative duties whose performance does not adversely impact outsiders (such as the associative duty to participate fully in public life, posited by Mason) need lose their force, just because the boundaries of their political community are unjustly drawn.

The Argument from the Boundary Principle avoids both these shortcomings. The argument does not rely on the axiological claim that, if a state unjustly excludes would-be immigrants from citizenship, the relations between citizens necessarily lose all intrinsic value. Rather, the Boundary Principle makes a purely *deontic* claim: it is a necessary condition on us having justified partiality towards our compatriots, in a way that absolutely disadvantages foreigners, that foreigners not be unjustly excluded from citizenship. If this necessary condition is not satisfied, then *even if* the associative relations between compatriots possess intrinsic value, they do not give rise to legitimate partiality in the strong sense.
Second, my argument is compatible with the claim that citizens may have some associative duties to one another even if the boundaries of their political community are not justly drawn. The Boundary Principle makes a more limited claim: if some foreigners are unjustly excluded from citizenship, then we may not be partial towards our citizens in a way that renders these foreigners absolutely worse off. But this is consistent with us having other associative duties towards our compatriots that we lack vis-à-vis outsiders. The Argument from the Boundary Principle is thus compatible with the Weak PCC.

5. Two Kinds of Double-Jeopardy Argument

I have labeled my worry about associative arguments for the PCC the problem of “double-jeopardy”. This is not so much a reference to the legal doctrine prohibiting double trial and double conviction, as a nod to a famous argument in bioethics with a structure similar to my own: John Harris’s “Double-Jeopardy Objection” to the use of so-called QALY-maximization in bioethics and health economics.\(^3^7\) Since I believe Harris’s argument to be subject to forceful objections, it will be instructive to compare and contrast our two double-jeopardy arguments, to see how they differ.

QALY maximization (or some variant thereof) is a widely-employed method for the allocation of scarce health resources. The basic idea behind QALY-maximization is that, in deciding who should receive a scarce health resource (such as an organ transplant or an expensive medical procedure) or which of two medical programs we should finance, it is not enough to attend only to how many lives will be saved through either option, or even to how many \textit{life-years} will be preserved. Both these measures ignore an important factor: \textit{quality} of life. The QALY or “Quality-Adjusted Life-Year” is a measure of the effectiveness of health interventions that takes into account both \textit{length} of life and \textit{quality} of life. A year of completely healthy life is assigned the numerical value 1. A year of life at \textit{less} than full health is assigned a value between 1 and 0. The size of the discount factor depends on the severity of the health problem (e.g. a year as a paraplegic might be assigned a score of 0.5). QALY-maximization is the consequentialist notion that, for a given input of money or resources, we ought to select that medical intervention which maximizes the number of quality-adjusted life-years that are lived.

Harris points out that QALY-maximization renders intuitively troubling verdicts in cases like the following:

Choice of Life-Extension: Hannah and Sally are two 55 year-old patients who have both contracted a deadly virus. Either patient will die within days unless she receives a dose of some scarce drug. Unfortunately, we have only one dose of the drug. Whoever receives the drug will be expected to live another 20 years. There is only one difference between the patients: Hannah has a congenital spinal problem which forces her to use a wheelchair. Assume that an additional year of life for Hannah would have a QALY score of 0.8. By contrast, other than having contracted the virus, Sally is completely healthy. An additional year of life would for Sally would have a QALY score of 1.

The problem with QALY maximization, Harris points out, is that in cases involving life-extending treatment, the use of QALYs produces a systematic ‘bias’ against the disabled and sick. Less QALYs will be produced by extending their lives than by extending the lives of the otherwise fully healthy, all else equal. (In the present case, Hannah will receive only 16 QALYs to Sally’s 20). So QALY-maximization recommends against giving them the life-extending treatment.

But this, Harris argues, is unfair. It imposes on the sick and disabled a form of “double jeopardy”:

QALYs dictate that because an individual is unfortunate, because she has once become a victim of disaster, we are required to visit upon her a second and perhaps graver misfortune. The first disaster leaves her with a poor quality of life and QALYs then require that in virtue of this she be ruled out as a candidate for life-saving treatment (…) Her first disaster leaves her with a poor quality of life and when she presents herself for help, along come QALYs and finish her off!38

Harris’s objection and my own Double-Jeopardy Problem have the following structure in common: Both concern cases where some agent A seeks

38 Ibid., p. 120.
to appeal to a fact $p$, the obtaining of which is independently a set-back to the interests of some subject $S$, in order to justify treating $S$ in a way that further disadvantages $S$ in an absolute sense. In Harris’s case, the relevant fact $p$ is that the patient in question enjoys a lower quality of life, due to her congenital disability; in the context of associative arguments for the PCC, it is the fact that a would-be immigrant does not stand in the same, independently valuable, relationships with us as do our compatriots.

These surface similarities notwithstanding, there is an important difference between the two cases: The fact $p$ that the QALY-maximizing agent appeals to is true independently of this agent. That Sally suffers from a congenital disability that gives her a lower quality of life is in no way owed to the behavior of the deliberating agent. By contrast, in the context of national partiality, the relevant fact $p$ (that $S$, a would-be immigrant, does not stand in the relevant associative relations with us) is a fact that the relevant agent—our state—makes true through its choice of immigration policy. I believe that this empirical difference makes for an important moral disanalogy between the two cases.

Harris’s Double-Jeopardy Objection to QALY maximization seems to implicitly appeal to what Frances Kamm has called the

**Non-Linkage Principle:** “The fact that some undeserved bad thing has happened to you [ought] not make it more likely that another bad thing will happen.”

However, despite its prima facie attractiveness, this principle does not in fact appear to be valid, as Kamm herself points out. Suppose we must choose whether to give a life-saving heart-transplant to a quadriplegic or a non-disabled person. The non-disabled person is expected to live for another twenty years, whereas the quadriplegic, because she is unable to exercise, is unlikely to survive for more than 18 months with the transplanted heart.\(^\text{40}\) Surely, pace the Non-Linkage Principle, it is not wrong to appeal to the fact that some undeserved bad thing (quadriplegia) has happened to a person as a ground for imposing on them a further disadvantage (not receiving the heart transplant),


\(^{40}\) The case is Kamm’s.
given how the fact that the patient is quadriplegic will affect her ability to benefit from the heart transplant. But, if this is true, it appears to undermine the central normative principle underpinning Harris’s Double-Jeopardy Objection to QALY maximization. 41

My own Double-Jeopardy Worry does not rely on the flawed Non-Linkage Principle. According to my argument, if the exclusion of would-be immigrants is morally permissible, then we could appeal to the fact that foreigners have not established the relevant associate ties with us to justify giving their interests lesser priority. This would be true even though the fact of their exclusion would constitutes an undeserved disadvantage. (That we are permitted to exclude them, after all, does not mean that they deserve to be excluded).

My argument relies not on the simple “anti-compounding” idea of the Non-Linkage Principle, but instead on the Boundary Principle from Section 3. What this principle picks up on is not just the fact that foreigners do not stand in the relevant associative relations with us, but moreover that this fact is of our own making, indeed the deliberate result of our state’s immigration policies. That we ourselves cause this fact to obtain, I argued, places us under a justificatory demand, which we fail to satisfy if our state’s immigration policies are morally impermissible.

Consider the following analogy from distributive desert: A father has a policy of giving his children pocket-money for little extra tasks they perform around the house. However, although all his three children are eager, the available tasks are always assigned to the same favorite child, who as a result has lots of pocket-money while his siblings have none. When challenged about the resulting inequalities among his children, it would be preposterous for the father to reply that the other two children “just aren’t doing anything to deserve pocket-money.” This, after all, is a fact which the father himself deliberately and avoidably causes to obtain (by only giving opportunities to earn pocket money to his favorite child) and which he therefore can be called on to justify. But, of course, the father has no good justification for his behavior – his blatant favoritism is morally wrong.

I maintain that the fundamental normative idea underlying both this example and the Boundary Principle is captured the following principle:

41 This is not to say that QALY maximization isn’t subject to other, more successful objections. These are explored with great subtlety by Frances Kamm in the two articles cited above.
Cohen’s Principle: If an agent is making it the case that some fact $p$ obtains by deliberately and avoidably doing $\phi$, then she cannot appeal to $p$ to justify performing some other action $\psi$, unless she is morally permitted to do $\phi$.42

Elsewhere, I argue that Cohen’s Principle is a corollary of a plausible account of interpersonal justification, according to which $A$ succeeds in justifying to $B$ her action(s) $X$ in circumstances $c$ just in case $B$ cannot make a successful normative “counter-proposal” concerning how $A$ should act in $c$.43 By a successful normative counter-proposal, I mean a proposed course of action for $A$ in $c$, whereby (i) $A$ does not do $X$, but instead performs some other action(s) $Y$ and (ii) doing $Y$ is a more plausible answer to the question “How ought $A$ to act in $c$?” than doing $X$.

In the class of cases to which Cohen’s Principle applies, $A$’s actions in $c$ consist in doing $\phi$ (thereby making it the case that $p$ obtains) and doing $\psi$. $A$ can successfully justify her actions to $B$ just in case $B$ cannot make a successful normative counterproposal concerning $A$’s actions in $c$. But if $A$ is not morally permitted to do $\phi$ in $c$, then we know that $B$ must be able to offer a successful normative counter-proposal. For, given that doing $\phi$ is impermissible in $c$, there must be a more plausible answer to the question “How ought $A$ to act in $c$?” than a course of action that involves $A$ doing $\phi$ (and $\psi$).44 Hence, if doing $\phi$ is impermissible, the fact that $A$ does $\phi$ (and thereby makes $p$ true) can play no role in justifying $A$’s doing $\psi$; for we already know that any course of action that involves $A$ doing $\phi$ is subject to a successful normative counterproposal. This gives us Cohen’s Principle.

The Boundary Principle, in turn, is a straightforward corollary of Cohen’s Principle: In the Boundary Principle, the fact $p$ is the fact that non-citizens do not stand with us in the relevant associative relationships. The act $\phi$ which makes $p$ obtain is the state’s deliberate and avoidable act of excluding would-be immigrants from coming to our country and becoming our compatriots. And

42 The principle is named in honor of G.A. Cohen, who was the first to explore principles of this general kind. See his “Incentives, Inequality, and Community,” Tanner Lectures in Human Values, delivered at Stanford University, May 21-23 (1991), and reprinted as Cohen Rescuing Justice and Equality (Cambridge, Mass.: Harvard University Press, 2008), chap. 1.

43 See my “What We Owe to Hypocrites: Contractualism and the Speaker-Relativity of Justification”, Philosophy & Public Affairs 44.4 (2016), pp. 223-265, especially Sections 5 and 6.

44 I am assuming that there are no moral dilemmas, i.e. situations where all courses of action available to $A$ are morally impermissible.
the act \( \psi \), which according to associative arguments for national partiality is justified by \( p \), is the act of giving priority to the interests of our compatriots, even in a way that disadvantages non-citizens in an absolute sense.

Despite their surface similarities, my Double-Jeopardy Problem thus differs in its deeper moral underpinnings from Harris’s Double-Jeopardy Objection to QALY-maximization. At the most fundamental level, my Argument from the Boundary Principle is grounded in Cohen’s Principle, a plausible moral principle which itself is a corollary of an attractive account of interpersonal justification, not in the flawed Non-Linkage Principle that underlies Harris’s argument. My argument therefore does not suffer from the problems that beset Harris’s argument.

6. Responding to the Problem of Double-Jeopardy: Justifying Limits on Immigration

If the Argument from the Boundary Principle is sound, then much of the published literature on the Priority for Compatriots Claim is flawed. It is flawed insofar as it presupposes that we can provide a free-standing defense of the PCC, based only on the associative relations in which we stand to our fellow citizens. This, I have argued, is not the case. Lest we confront the Double Jeopardy Problem, we must first be able to give a principled moral justification of the restrictions that virtually all contemporary states place on immigration. Moreover, on pain of circularity, this justification cannot itself appeal to the idea of permissible partiality to compatriots.

This is not to maintain that the PCC can play no role in justifying limitations on immigrations. Suppose it could be shown, on independent grounds, that the state has a right to exclude would-be immigrants from becoming members of our political community. We could then, in a second step, appeal to the associative relations that exist among the members of our justly delimited political community to vindicate the PCC. And the PCC, in turn, could then give us further reasons to limit immigration, for example reasons of the kind sketched by Sandel and Macedo in the passages quoted at the outset of this paper. By contrast, in the absence of a free-standing defense of the right to exclude, appealing to the PCC to justify restrictions on immigration would be to put the cart before the horse.
What would such a free-standing defense of existing immigration restrictions involve? First and foremost, it would have to successfully rebut the powerful case mounted in recent years by cosmopolitan and libertarian political philosophers to the effect that justice requires largely open borders. Even successfully clearing that hurdle, however, would not ensure that the Problem of Double-Jeopardy is avoided. Showing that some restrictions on immigration are permissible in principle does not entail that the extent of such restrictions in practice, or the particular criteria for exclusion, are also permissible. So a fuller response to the Problem of Double-Jeopardy would in addition have to investigate, in a more fine-grained fashion, the various actual policies of immigration restriction practiced by contemporary states.

Of course, political philosophers have risen to this challenge, and recent years have seen a wealth of sophisticated and credible defenses of some form of ‘right to exclude’. Assessing which side has the better of this debate is

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46 Indeed, even supposing that a state was permitted to exclude all would-be immigrants – i.e. to have a policy of entirely closed borders – this would not imply that all grounds for less comprehensive practices of exclusion would ipso facto be permissible. There could be conditional obligations restricting the grounds on which a state may permissibly choose amongst would-be immigrants, if it decides to allow any immigration, e.g. not to discriminate on the basis of race or ethnicity or religion, or, more controversially, on the basis of education or professional qualifications. Thus even the permissibility of entirely closed borders would not entail the permissibility of full discretionary control over immigration.

beyond the scope of the present paper. However, given the quality of interventions on both sides, the question whether existing practices of immigration, or something resembling them, can be morally justified certainly strikes me as one on which reasonable people can disagree for the time being. Unlike the claim that we have a personal prerogative to determine the make-up of our intimate associations, which is rarely challenged, we are still quite far from a reasonable consensus on the question of immigration.

7. Conclusion

The upshot of my discussion is not that a defense of national partiality in terms of associative obligations cannot succeed. I do not deny that if we can give an independent justification for the way in which existing limits on immigration restrict eligibility for membership in the In Group, we might then appeal to associative accounts like Dagger’s or Mason’s to ground the PCC. What I have argued is that a successful defense of national partiality in these terms is more closely tied to issues concerning the ethics of immigration than most political philosophers have hitherto acknowledged. An associationist defense of the PCC cannot be free-standing. Rather, it depends for its success on questions concerning the state’s right to exclude that must, for the time being, be considered unresolved.