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SCOPE RESTRICTIONS, NATIONAL PARTIALITY, AND WAR

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Most people believe partiality is justified among friends, parents and children, family members, and romantic partners. These are the paradigmatic cases of partiality. But many of us also think partiality can be justified in a broader range of cases as well—for example, toward those with whom we engage in certain shared projects, our colleagues, people in our local community, our co-unionists, and our conationals, among others. On this commonsense approach, partiality applies within a wide range of relationships—not just the more intimate relationships that characterize the paradigmatic cases but also certain relationships that consist of membership in a certain sort of collective.[1]

Given this broad application, it is no surprise that there are important differences in the way partiality applies in these various relationships. For one thing, not all relationships give rise to reasons of partiality of the same strength. The extent to which such reasons can outweigh other competing reasons—in particular, one's impartial moral reasons—will vary according to certain features of the relationship in question. Another difference, and the one on which I will focus in this essay, concerns the scope of the application of partiality within certain relationships. In particular, I will argue that certain relationships give rise to reasons of partiality that are *scope restricted*. To say that a given relationship generates scope-restricted reasons just means that it gives rise to such reasons only with respect to certain goods or in certain contexts. Recognizing the scope-restricted nature of certain forms of partiality is important for understanding the structure of the phenomenon of partiality, as well as its application in a wide range of contexts.

But it also serves as the basis for a rebuttal to a popular objection to the appli-

1 This is not to say that all of these relationships will give rise to partiality in every case. For one thing, many of these relationships will be purely instrumental, morally toxic, or otherwise devoid of significance to the parties within them. When this is true, partiality may indeed be unjustified. The point is simply that these relationships sometimes give rise to reasons to be partial.

cation of national partiality in war. According to the objection, if national partiality is justified in war, then it must be the case that we can prefer our conationals in ordinary interpersonal cases as well—for example, in forced-choice scenarios, like trolley problems. And yet, national partiality does not seem justified in many of these cases. Therefore, national partiality cannot justify prioritizing conationals in war. I argue that this analogous reasoning is misguided: the paradigmatic relationships are generally scope unrestricted, while national partiality is scope restricted. The two kinds of partiality are therefore not straightforwardly analogous. Indeed, we should expect that there are many cases in which national partiality is unjustified—namely, the cases that fall outside the relevant scope of that relationship. When a case falls within the scope, however, partiality may indeed be justified. I argue that war is one central case that falls within the scope of national partiality.

In the next section, I explain the conditions under which certain relationships give rise to partiality that is scope restricted. Then, in section 2, I show that partiality among conationals is another example of scope-restricted partiality. Finally, in section 3, I take up the aforementioned objection and show how our understanding of national partiality as a scope-restricted form of partiality serves to overcome that objection.

1. SCOPE RESTRICTIONS

To understand how reasons of partiality might be scope restricted, it is helpful to look at a specific example. Take the colleague relationship: I have reasons of partiality toward my colleague, which extend to the goods and the context 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 colleague 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. I do not have reason to, for example, 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 is a good or context relevant to the particular relationship we share.[2]

2 Some may wish to distinguish between *associative duties*, which are a type of agent-relative duty based in a special relationship, and *special duties*, which are based in certain kinds of interactions (e.g., promises or creation of expectations). And perhaps this distinction helps us

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 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—for example, to promote co-unionists' productive and economic life in that particular domain. 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 collective bargaining as members of the union, I do not have a similar reason to promote the economic life of my fellow unionists by helping them with consolidating their debts, refinancing their mortgages, 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 re-

to see why some relationships will turn out to be scope restricted and others not: the former are cases of special duties, while the latter are cases of associative duties. If this is true, then much of what I say about scope restrictions in fact just tracks the different kinds of duties in question. I do not have the space here to treat this worry completely. It will suffice to note that I think all the duties I discuss here are of a similar sort; they are all a kind of associative duty. I do not think the colleague or co-unionist relationship can be understood entirely as a mere promise or creation of expectation; I think there is something more morally important about such relationships.

lationships. In his discussion of associative duties, 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."[3] Sarah Stroud makes a related point:

> If 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 without any cost to my (or our) projects; so … I would not have the same moral case for directing it to her instead.[4]

These examples nicely illustrate 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 [they] 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 such 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.

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 parents have toward their children. Intuitively, a father's reasons of partiality toward his son do not concern only matters relating to 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.

3 Dworkin, *Law's Empire*, 200.

4 Stroud, "Permissible Partiality, Projects, and Plural Agency," 148.

While I certainly have strong reasons to attend to those matters uniquely concerning our romantic partnership or friendship—our mutual treatment of one another, our ongoing promises and agreements, and so on—my reasons of partiality also extend to other matters of my partner or friend's personal life, including her general welfare, her future, and so on.

One might deny that certain relationships are scope unrestricted. Even in the closest relationships, one might argue, the interests that can give rise to reasons of partiality are indeed limited in significant ways. For certain interests—perhaps those concerning the person's other relationships, private life, or other intimate affairs—one might rightly say, to put it colloquially, "that is none of my business." There are several different interpretations of this point. One might claim that some interests will fall outside the scope of even the paradigmatic relationships. But I doubt we will find a case of an interest of one's child that is, as a general matter, *never* the business of the parent at all—and likewise for the other paradigmatic relationships. Surely, we ought to respect our loved ones' privacy, avoid meddling too much in our friends' love lives, and give our children the space to make their own choices without our interference. But it does not follow from this that these interests are beyond the scope of our relationship. All this shows is that certain relationship goods prohibit certain forms of intervention.[5]

One might instead claim that while certain interests have special salience to us, and give rise to reasons of partiality, they are sometimes *silenced* by the presence of other important duties in particular contexts. For example, a police officer has (*qua* parent) reasons of partiality toward her son with respect to his well-being, but these reasons are silenced when determining whether she ought to arrest him for a serious crime of which he is rightly accused.[6] Surely there are other cases that take this general form. If so, then reasons of partiality might appear to be restricted in scope in certain cases due to the competing duties inherent in one's other social roles.

I am unsure whether reasons of partiality in such cases are in fact silenced, rather than significantly outweighed, by competing duties.[7] But I will grant the

5 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 with whom we share a special relationship, especially one based on trust. Thus, this noninterventionist approach is not just compatible with but also constitutive of the relationship.

6 One might be inclined to view certain professions or positions as roles, which come with their own distinctive moral obligations. For a prominent defense of role obligations, see Hardimon, "Role Obligations."

7 It could be that while the officer has a duty to enforce the law fairly, she is nevertheless permitted to give some special treatment to her son with respect to minor violations (e.g., speeding tickets), particularly when the cost to his well-being is significant. If so, this would

point here as it applies to certain social roles, such as police officer, judge, elected official, and others. Still, this point does not significantly threaten the claim that certain relationships are scope unrestricted. First, the claim about silencing does not seem true of ordinary relationships absent any such competing duties from social roles: while parents generally ought to avoid interfering in their children's lives, when the stakes are higher their intervention seems not just permissible but also required. If such reasons were silenced, this would not be the case. This suffices to show that at least *some* relationships are scope unrestricted. Furthermore, it is not the case that the police officer's relationship with her son is inherently scope restricted; were she to retire from the force tomorrow, no such restrictions would remain. It is, therefore, the particular combination of her competing duties—to her son, on the one hand, and to the code of her profession, on the other—coupled with the apparent supremacy of the latter over the former that explains the moral restrictions she faces.

It is worth noting that the foregoing points concern only the general structure of partiality. If it were to turn out that all relationships are scope restricted after all, the argument in the following sections would still go through. What would be important in this case would be the extent of the scope restriction with respect to these paradigmatic relationships. And it should be clear enough, given what I have said so far, that if these relationships have any such restrictions at all, they are much less extensive than those in the examples of scope-restricted relationships I mentioned above—in particular, national partiality.

It is worth noting two further aspects of scope-restricted partiality. 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: my reasons of partiality to the cellist in my quintet are generally much weaker than, 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, for example, 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—perhaps even significant demands. 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 be difficult, given that the boundaries in some cases are quite vague.

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suggest that reasons of partiality to her son are not silenced, but rather outweighed, by the significance of the opposing duties inherent to her role. I will not pursue this point further here, since it requires a more thorough discussion of the particular features of such roles, and does not bear too significantly on the central argument.

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 these investments are importantly tied to one's role as a laborer? Moreover, reasonable people might disagree about 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."[8] 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.[9] 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.

It may also be difficult to determine whether one has reasons of partiality in a given scenario because certain relationships (e.g., those among colleagues, which give rise to reasons of partiality that are scope restricted) are often also inchoate friendships, and friendship is 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 the scope of reasons for scope-restricted relationships? The most natural thought is that what grounds partiality can also be applied as its

8 Miller, *On Nationality*, 66.

9 This is perhaps based on the idea that at some colleges, professors and others in supervisory roles are required to act *in loco parentis* with respect to the students in their college. If true, this would explain the extent of the partiality in this case, though I am skeptical that it applies much beyond that. Thanks to Arthur Ripstein for suggesting this point.

scope. Consider again Stroud's view, which grounds reasons of partiality in joint agency: acting together on a shared project gives individuals reasons to confer special treatment on those with whom they pursue that project.[10] On Stroud's account, scope restrictions are effectively built into the grounds: this special treatment that individuals may confer on one another extends only within the parameters dictated by that joint project. Reasons of partiality cease to apply outside the context of the project that gave rise to them.[11]

Another popular view holds that partiality is grounded in certain relationship goods.[12] One of the most prominent defenders of this view is Jonathan Seglow, who argues that "participants in social relationships uniquely enjoy certain relationship goods, and their associative duties involve promoting those goods."[13] These goods vary according to the relationship, but the ones most relevant for our purposes are what Seglow calls "common purpose goods," which are "embedded within the purposes of those associations which seek to express and promote them."[14] Like Stroud's account, Seglow's account also draws a clear connection between partiality's grounds and its scope: the very same goods that ground our reasons of partiality also serve to limit the extent of the application of those reasons.

Finally, many philosophers ground partiality in a certain sort of shared history. C. D. Broad holds that this special consideration is justified by virtue of "the traces of innumerable actions and experiences in common."[15] Thomas Hurka argues that partiality is justified on the basis of a shared history of doing good (or suffering evil), and the extent of this justification is determined by the degree of interaction and the good produced in the relationship: the greater the degree of interaction and the greater the good produced, the stronger the reasons to

10 See also Gilbert, *Living Together*.

11 Stroud, "Permissible Partiality, Projects, and Plural Agency," 148. Ultimately, I think this account is too narrow, particularly in terms of context. It seems to rule out cases in which one could benefit another in an area that falls just outside their joint project. For example, the collective project in the 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 project—say, to help her work on a section of another piece she will soon perform as part of another ensemble. This does not bear centrally on the argument that follows, so I will set it aside.

12 Keller, "Four Theories of Filial Duty"; Seglow, *Defending Associative Duties*; Swift and Brighouse, *Family Values*.

13 Seglow, *Defending Associative Duties*, 2.

14 Seglow, *Defending Associative Duties*, 119.

15 Broad, *Examination of McTaggart's Philosophy*, 2:138.

be partial.[16] And Niko Kolodny argues that our reasons of partiality resonate with the good of the shared history of encounter.[17] While each of these versions differs slightly from the others, the central point on which they all agree is that reasons of partiality are grounded in a good shared history.

The shared history of a given relationship can also serve as its scope. The history I share with my co-unionists is limited to the economic and social roles we inhabit as members of a trade union. That is, our shared history is limited to a particular set of interests in a particular context. In ordinary cases, my history with a given co-unionist does not extend to her family life, her moral development, or other interests unrelated to our shared vocation. Nor does our shared history extend to certain otherwise relevant interests—namely, those pertaining to her economic life—when they arise in an unrelated context (say, her inheritance wealth, home value, or other sources of income). The same point applies to the cellist in my quintet: our shared history concerns our mutual interests in playing music and developing our musical talents and so can plausibly extend to related contexts, such as performing in other groups.[18] But it does not extend to other interests that are not part of that history, such as those concerning her marital relationship, spiritual life, or athletic endeavors.

The projects view and the relationship-goods view both yield a scope of reasons that involves promoting the very goods that ground partiality.[19] The shared-history account does not do this: it is not that the cellist has reason to

16 Hurka, "The Justification of National Partiality."

17 Kolodny, "Which Relationships Justify Partiality?"

18 Indeed, given the broad nature of the good in question, I suspect we would think it perfectly appropriate to devote special attention to helping the cellist (when possible) with a large range of musical interests—for example, practicing her drum rudiments, working on vocal melodies for her pop duet performance, or picking out a good used synthesizer—even if this would involve forgoing opportunities to help others, perhaps even many more, in similar ways.

19 One might wonder whether the fact that these relationship goods are dependent on certain underlying goods means those latter goods must also qualify as falling within the scope of the relationship. For example, the cellist in my quintet can only perform well provided that her mental health is cared for, her economic resources are adequate, and so forth. I admit that cases of this sort highlight an ongoing challenge for my view concerning how to delineate precisely what falls within the scope of a given relationship. One plausible, though imperfect, response is to hold that certain underlying elements—such as one's mental health—are in most cases mere preconditions for the relationship and not a part of the relationship *per se*. This would explain why mental health more broadly is beyond the scope, but a specific case of anxiety-driven yips might fall within the scope. Moreover, in many cases, even if the goods are indeed relevant, the context of the interaction will explain why they lie beyond the scope of the relationship. (Thank you to an anonymous reviewer for suggesting this point.)

promote her shared history of interaction with the members of her quintet. Rather, on certain versions of the shared-history account, the goods one has special reason to promote are those that resonate with the goodness of the history, and the context of the shared history provides the context of the relationship in which those goods have particular salience.[20] Paradigmatically scope-unrestricted relationships, like long-standing friendships or romantic relationships, will have such broad and extensive shared histories that the context is effectively unlimited.

There are still other accounts of partiality that could extend in this way to delimit the scope of reasons, but these three will suffice for our purposes.[21] I remain agnostic here about which of these is the best account of partiality's grounds. The arguments to follow are broadly compatible with all three accounts just discussed.

2. NATIONAL PARTIALITY

If the foregoing arguments are correct, then some relationships generate reasons of partiality that are scope restricted, while others are scope unrestricted. What should we say about national partiality? We can understand the nation as a political community centered on some cluster of the following: shared institutions, societal norms, cultural traditions and values, language, laws, and shared recognition of their relationships among themselves. This remains imprecise, of course, but we need not settle on any narrow view of what the nation consists in for our present purposes; our commonsense understanding of this idea should suffice for now. Conationals, on this view, are just people who share membership in the nation, however we understand this idea.

Are the reasons of partiality among conationals more like those that exist between parents and children and between 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 comembership?

In my view, the conational relationship has much more in common with the relationship between co-unionists than it does with the relationship between parents and children. Just like co-unionists, conationals share many important political projects and values within the context of which partiality is often appropriate. Of course, the scope of the conational relationship is generally much wider

20 Hurka, "Love and Reasons"; Kolodny, "Which Relationships Justify Partiality?"

21 There are also pluralist views, according to which there are several grounds of partiality. For one recent example of a view like this, see Lord, "Justifying Partiality."

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 conational relationship extends beyond these to include a broader range of interests—namely, those 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 certain features of the nation in question. To see this, we can look to the history that conationals share or consider what constitutes their relationship in the first place. This relationship centers on a shared history of creating and sustaining important institutions; preserving and protecting a certain way of life, which for many is a key component of their identity; and focusing efforts on securing and protecting individuals' core rights and interests.

And yet, despite this rather broad range of interests that are central to the conational relationship, partiality among conationals seems restricted in a way that partiality toward one's child (or dear friend or spouse) does not. In particular, though the broad range of interests of one's conationals gives rise to reasons within the context of their shared life, such as the institutions they share, these interests cease to give rise to such reasons outside such contexts. To see this, consider the following scenario:

> *Desert Island*: You and I are conationals 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 of many different nationalities. As we scrounge to survive, 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 to help rescue you over any of the others? Many 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 in section 3.

But another response to this case allows for a general endorsement of national partiality and yet preserves the intuition that conationals are not morally permitted to prioritize one another *qua* conationals in this case. This response appeals to the scope-restricted nature of the relationship and, in particular, the

importance of the context of interaction. While the goods of survival and care give rise to reasons of partiality between us within certain contexts, such as those falling under the remit of our shared institutions, the current context is importantly different: the fact that we are conationals is completely incidental to our current circumstances. It is not the restriction on the goods, then, but the restriction on the context that limits the scope of conational partiality in cases like this.

Moreover, none of the underlying moral justifications listed above—joint projects, relationship goods, or a shared history—seem to apply here. Our vacations have nothing to do with our joint projects, nor do they provide a context in which we realize our distinctive conational relationship goods, and the context does not fall within our shared history as conationals. Put differently, our conationality is not morally salient for partiality in this scenario: I no longer relate to you *qua* conational, but rather *qua* individual—that is, just as I relate to the other survivors of the accident. This conclusion applies similarly to other scope-restricted relationships—for example, if instead of being conationals stranded on a desert island, we were co-unionists, or played in a quintet together.[22]

But we would draw an entirely different conclusion if the relationship in question were scope unrestricted.[23] Suppose that instead of being conationals, 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 that 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 some specific context. It is not the case that we merely happen to encounter each other here as siblings or friends, as in the conational case.[24] Indeed, the central feature of scope-unrestricted relationships is that they do not seem incidental in this way.[25] This idea is supported by the fact that the underlying moral justification of the relationship is essentially unrestricted: the joint projects, relationship goods, and

22 For some of these cases, it will not 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.

23 I assume here that my earlier argument concerning the possibility of scope-unrestricted relationships was sufficiently persuasive. If not, then this point should be amended to reflect the idea that such relationships are indeed scope restricted, though such restrictions are many fewer in number. The point I am making here is not ultimately affected in any significant way by this change.

24 Notice that this is true even if we modify the example so that we were not traveling together, and only discovered we were on the same flight after it crashed.

25 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.

shared history of a genuine friendship are not limited to a particular context. The pervasiveness of their application is just part of what a genuine friendship is.[26] But again, we would not say the same for the conational relationship.

As I noted, one important feature of Desert Island is that it is an example of conational interaction in the absence of, among other things, any of the institutions that form part of the broader conational relationship. However, if we change the example such that the conational interaction in question is mediated through one of the conationals' shared institutions, we get a different verdict.

> *Desert Island Rescue*: Your plane crashes on a remote island, and you now find yourself among the dozens of survivors of many different nationalities, some of whom are your conationals. 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 conationals. Unfortunately, they only have room and supplies for a limited number of additional passengers. They can take you and your other conational survivors, or else a group of other survivors chosen at random.[27]

I suspect many would accept that this crew has reasons of partiality to rescue their conationals, rather than a random group of survivors. But now suppose that instead of being a naval vessel, it was a random fishing vessel that happened to be composed of members of your nation. I think many would think the crew aboard this ship does not have a compelling moral reason to rescue only their conationals. Morality would require that they rescue based on 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 part of one of your nation's shared institutions, and interactions between conationals via institutions they share take on a different character from interactions outside of those institutions. That is, these shared institutions can make a context that would otherwise be outside the scope of the relationships that fall within it. This is not just limited to cases involving the military. Indeed, the same point applies with respect to certain other institutions we share, such as a health-care system: we have strong reasons to care for our conationals'

26 I use the term "genuine" here to distinguish from more casual cases—for example, the "friends" you happen to play tennis with at the tennis club or your inchoate friendships where calling someone a "friend" is partly intended to be proleptic.

27 Rescues of this sort are not entirely uncommon. For one recent example, see the evacuation of nearly fifteen thousand American citizens in Lebanon at the onset of the Lebanese civil war in 2006. The details of this case differ slightly from those in Desert Island Rescue, but the cases are sufficiently similar in all the most morally salient ways.

health via the institution we share that serves this purpose, but we have no such reasons of partiality outside of that context.[28] 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, an extension of the nation itself. As such, this example might look like a top-down version of partiality rather than partiality among conationals. But notice that even other conationals 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 conationals abroad. In other words, I have reasons of partiality 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 conationals in part as an arm of the nation, this does not exhaust the ways of understanding the role that shared institutions play in shaping the context of conational interaction.

One might object that those on the fishing vessel also have reasons of partiality to rescue you and your conationals. After all, they have benefited from your nation's economic and educational institutions, perhaps even in relation to their particular expedition. Do not those facts provide sufficient context for our current interaction?[29] It is important to remember, however, that the mere existence of shared institutions does not determine whether a given interaction falls within the scope of the relationship; this would make the issue of context functionally irrelevant, since all interactions between conationals would inevitably qualify. Nor is it determined simply by the fact that there is some causal connection between these institutions and our current context. This, too, would be overbroad for the very same reasons: the causal connection between overseas visits like those of the fishermen and, for example, state-provided elementary education, government administration, and interstate highways is far too weak to serve as grounds for a relevant context of interaction between conationals.

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 re-

28 This is not to say that we would not also have reasons to care for their health if the institution in question were sorely lacking or if it were to fail in its efforts in certain ways.

29 Thank you to an anonymous reviewer for raising this objection.

> sorts: 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, 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) fanciful and unrealistic, the 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 conational relationship in that setting?[30] I think it does: the fact that members of Nation *A* were attacked *because* they are members of Nation *A* creates a context for their conationality where there would not have been one in the absence of that aim.[31] Their relationship becomes salient because others have chosen it to be salient by virtue of the particular aims behind their actions. As a result of this, the victims of the attack have reasons of partiality toward their conationals, while they would not have had such reasons had they been targeted for some unrelated reason (e.g., mere opportunism). This particular example is unlikely to arise in this pure form, but the feature it isolates and highlights is much more pervasive. In the next section, I argue that war provides a similar context in which the conational relationship can become salient by virtue of the actions of others.

3. SCOPE RESTRICTIONS AND WAR

The foregoing discussion has shown that scope restrictions are an important structural feature of partiality in general and national partiality in particular. But

30 Though the specifics are quite different, it is a commonly accepted idea that reasons of partiality—at least of a sort—might arise from the fact that others have made your group identity relevant. For a discussion of solidarity in the Black community, which bears some similarities to this point, see Shelby, *We Who Are Dark*.

31 Notice that our judgments might shift slightly if the group's composition were more mixed—i.e., with some of Nation *A* and some of some other nation. In this case, the context of the conational 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 conationals over the other victims.

they are more than just a relatively overlooked structural feature of partiality. Indeed, as I suggested at the outset of this essay, this idea also provides some of the resources for avoiding one of the most common objections leveled against the application of national partiality in war.

Several proponents of national partiality believe that nations may confer greater weight on the lives of their own citizens than on the citizens of the enemy state in the context of war.[32] One strategy for defending this claim proceeds by analogy from other cases of justified partiality, such as the relationship between parent and child. For example, Thomas Hurka considers a case in which a victim is attacked by an aggressor, and a third party can rescue the victim only by throwing a grenade that will kill, as an unavoidable side effect, one innocent bystander. 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, Hurka 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 conationals 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."[33]

Some philosophers have objected to Hurka's reasoning. David Lefkowitz argues that the right approach to determining whether national partiality is justified in war is not to reason by analogy from cases of parent-child partiality to wartime cases of partiality among conationals, but rather to consider whether national partiality is justified in certain nonwar contexts. In his view, the proper nonwar scenario for testing the strength of national partiality is a case in which one can save a conational at the cost of one non-conational 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."[34] In other words, the mere fact that certain individuals share a nationality is insufficient to outweigh the competing moral demands to others in this kind of inter-

32 Bazargan-Forward, "Weighing Lives in War"; Hurka, "Proportionality in the Morality of War"; Kamm, "Failures of Just War Theory"; Lazar, "Associative Duties and the Ethics of Killing in War"; McMahan and McKim, "The Just War and the Gulf War"; Miller, "Reasonable Partiality towards Compatriots."

33 Hurka, "Proportionality in the Morality of War," 61.

34 Lefkowitz, "Partiality and Weighing Harm to Noncombatants," 307.

personal case, even if such duties might be outweighed when the relationship is, say, between parent and child.[35] Therefore, the conational relationship 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 interpersonal cases, and so we can infer that it has no role to play in wartime cases either.[36] 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.[37]

David Miller has argued in a similar vein against national partiality's ability to justify violating certain duties that are characteristic of war. He claims that while national partiality does give rise to certain permissions to favor one's conationals, national partiality cannot justify violating serious negative duties toward others, like the duty to avoid infringing their basic rights. Referencing the trolley problem, made famous by Philippa Foot and Judith Thomson, Miller writes: "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.... At this level, morality appears to me to require strict impartiality at least as far as nationality is concerned."[38] Miller's reasoning is just like that of Lefkowitz and Fabre: we can tell whether national partiality can justify infringing certain duties that are characteristic of war—for example, killing or severely harming others—by appealing to interpersonal cases among conationals, like trolley cases. While Miller does not refer to war specifically in

35 To be clear, Lefkowitz does not claim specifically that throwing the grenade is justified in these interpersonal cases. My point is simply that one could, and many likely do, hold this pair of judgments consistently.

36 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 to 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 conational relationship.

37 Fabre, *Cosmopolitan War*, 85.

38 Miller, "Reasonable Partiality towards Compatriots," 74–75. For the two most classic discussions of the trolley problem, see Foot, "The Problem of Abortion and the Doctrine of Double Effect"; and Thomson, "The Trolley Problem."

this discussion, his claim picks out the same general category of duties, which are central to war, as Lefkowitz and Fabre pick out, and his claim clearly extends to the domain of war.

The view shared among these philosophers is essentially that national partiality in the context of war is impermissible if the same sort of national partiality is not permissible in a relevantly similar interpersonal context. Call this the *interpersonal cases argument.* If this argument is correct, Hurka's view and others like it proceed by way of a faulty analogy to a mistaken conclusion.

Some who are sympathetic to Hurka's view may wish simply to reject the intuitions pumped by Lefkowitz's, Fabre's, and Miller's examples. But let us grant here that it is wrong to prefer our conationals over foreigners in certain interpersonal contexts, like those in the above examples, even though this is not the case with certain other relationships, like the parent-child relationship. (If this is correct, then we must concede the first part of Lefkowitz's argument: *pace* Hurka, national partiality is not so closely analogous to parent-child partiality after all.)

And yet, in granting the claim that conationals are not permitted to be partial to one another in the nonwar scenarios described above, one is not thereby committed to the interpersonal cases argument's main conclusion—namely, that national partiality is impermissible in war. We cannot draw conclusions about the justification of national partiality in some cases from the (im)permissibility of national partiality in other contexts. This is because, as I argued above, national partiality is scope restricted: the conational relationship gives rise to reasons only in particular contexts.

To prove that the interpersonal cases argument is false, however, it is not enough to show that national partiality is scope restricted. That national partiality is scope restricted only shows that it *does not* follow that national partiality *is not* permitted in war. To show that it *is* permitted in war, as Hurka has argued, we must also defend the claim that war is one of the contexts in which the conational relationship is sufficiently morally salient.

Consider what the various possible grounds of partiality discussed earlier suggest about the context of war. War typically involves threats to conationals' joint projects of national defense against unjust aggression; the relevant relationship goods, including self-determination, protection from outside aggressors, and the preservation of a collective democratic life; and their shared history of promoting and developing their shared life across generations. All of these goods involve collective deliberation about group and individual political rights and values, and they take place within their institutions and via their culturally accepted practices, which generally requires seeing these goods as worthy of protection from unjust interference or harms by outsiders. Many paradigmat-

ic cases of just war, such as certain cases of resisting unjust aggression, involve securing or defending a nation's shared impersonal goods, political projects, or institutions. Such wars also generally involve, among other things, protecting conationals' interests and security from threats to their shared political life.[39] All of these elements support the idea that war is, in general, a context in which the conational relationship is salient.

Again, these interests are not always active among conationals who happen to find themselves together. This is what Desert Island demonstrated: examples like this—and others stripped of any relevant contextual features, such as the cases imagined by defenders of the interpersonal cases argument—do not involve a context in which conationals' joint projects, their relationship goods, or their shared history are morally salient. The individuals in Desert Island simply happen to be conationals; their interaction does not occur within a relevant context.

However, when conationals participate in the shared life of their community, or act within or rely upon certain of its institutions in various ways, this changes the context. This is part of what Desert Island Rescue helped to show: interactions mediated through the collective itself can create a context for justified partiality where one would not exist in the absence of that context. As applied to war, the point is that the political and cultural life conationals share is part of what grounds justified partiality; and when these values are threatened, as they typically are in war, or when the security of those participating in our collective life (which aims partly at this very sort of protection) is in jeopardy, the context of the conational relationship becomes salient.[40]

Furthermore, the context of the interaction in certain defensive wars—a paradigmatic case of just war—is importantly different from many other contexts. Many wars of this sort involve an aggressor nation that views the defender nation and its citizens primarily (though of course not exclusively) as targets by

39 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.

40 Interactions between non-conationals 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 nonnationals, nonnationals 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 conationals. (One could imagine here certain analogies with temporary custody over nonbiological children alongside one's own biological children, for example.)

virtue of their membership in that nation. As we saw in the previous section with Terrorist Vacation, the relevance of the conational relationship changes when the nation and its members are seen by the opposition as a particular target of harm or aggression. This is clearly true of many wars, and one need not look far back in history for examples: the Yugoslav wars of the 1990s are a clear case of hostility on the basis of nationality.[41] When this is true, giving relevant preference to the lives of one's conationals in the course of the war falls within the scope of that relationship.

In sum, the sorts of encounters in war on which we are focused in our present examples indeed fall within the scope of the conational relationship. When we limit ourselves only to cases that fall within the relationship's scope, the conational relationship looks quite similar to the relationship between friends, romantic partners, or parents and children. Some might even think that these reasons are all of roughly similar strength. In a certain sense, then, the analogy that Hurka draws between families and nations is not entirely misguided; however, we must restrict our cases of conational partiality to those that fall within the scope of that relationship for the analogy to work.

This, as I have shown, is the key to rejecting the interpersonal cases argument: we can accept the claim that the conational relationship does not give rise to reasons of partiality in many ordinary interpersonal contexts, while rejecting the claim that is thought to follow from it—namely, that the conational relationship therefore does not give rise to reasons of partiality within the context of war.

One might object here that while this argument does appear to succeed in the case of war, it yields counterintuitive verdicts in other cases, such as the following:

> *Hospital Aggressor*: Aggressor threatens to remove Bob's privately owned lifesaving medical device, and the only way you can prevent him from doing so is to throw a grenade that will kill Aggressor and two bystanders. Bob is a conational of yours; the bystanders are not.[42]

Throwing the grenade seems impermissible. But what if the medical device had been provided by a state institution, such as a national health-care program? My view seems to suggest that in the first case, it would be impermissible, because Bob's medical care appears to fall beyond the scope of the conational relationship; however, in the second case, it would be justifiable to throw the grenade, because the device is government issued. And this, one might claim, is implau-

41 For an in-depth discussion of the role of nationality in these wars, see Baker, *The Yugoslav Wars of the 1990s*.

42 Thank you to an anonymous reviewer for raising this objection.

sible. Moreover, this calls into question the basis of the argument as applied to the wartime context.

But as I have argued here, the fact that one's care takes place in the context of a valuable social institution, such as a government-run health-care program, constitutes a significant moral difference; indeed, the same is true in general of cases involving government-issued education (as opposed to private education), government land (versus privately owned property), and so on. Interactions within these contexts are not merely between individuals but conationals as well, and this fact gives rise to special moral permissions, perhaps even duties, to render aid and rescue.

The objector might reply here that who provided a medical device is too flimsy a basis for altering our moral permissions so significantly. Even if we were to grant this point, however, it would not significantly threaten the argument as applied to the wartime case. As I have shown above, the context of war is not the result of a subtle shift in context or a mere technicality. In general, war constitutes a significant shift in the context of the conational relationship: it involves not one but several of the most central institutions that govern the relationship, and it involves not one part of the conational relationship but its very foundations. Even if one is skeptical of a case like Hospital Aggressor, the wartime case is surely different in several morally relevant ways.

4. CONCLUSION

Rejecting the interpersonal-cases argument is an important step toward showing how national partiality can be permitted in war, but it does not fully vindicate Hurka's conclusions on its own. My argument, if successful, only shows that war is a context in which national partiality is salient; it does not show that the conational relationship is powerful enough to justify infringing significant negative duties to others to the extent that Hurka suggests. To show this would require a supplementary argument that focuses not on the applicability of national partiality but on its strength when weighed against competing duties to outsiders. I do not have the space to pursue such an argument here. While many writers on the subject have expressed doubts about national partiality being strong enough to justify serious harming, others believe it can sometimes be justified.[43]

My goal here has not been to defend any specific conclusion about the extent

43 For the former, see McMahan, "Comment on 'Associative Duties and the Ethics of Killing in War'"; Van Goozen, "Harming Civilians and the Associative Duties of Soldiers"; and Betz, "The Priority Problem for the Associativist Theory of Ethics in War." For the latter, see Lazar, "Associative Duties and the Ethics of Killing in War."

to which national partiality can justify actions in war. Rather, my aim was simply to show how the concept of scope-restricted partiality can help us to see why we might agree with the interpersonal arguments, insofar as they show that national partiality is not plausibly justified in many interpersonal cases, and yet reject the claim that it is not applicable in war. The defender of the interpersonal-cases argument might insist that their primary concern is to show that national partiality lacks the strength to justify significant harming and that the interpersonal cases argument was simply their attempt to show that conclusion. But if I am right about scope-restricted national partiality and its application in war, then this approach is unsuccessful in demonstrating that point. In that case, both sides of the debate still need to provide an argument for how we should understand national partiality's strength.[44]

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