In Defense of the Right to Exclude

IN MY VIEW, legitimate political states are morally entitled to unilaterally design and enforce their own immigration policies, even if these policies exclude potential immigrants who desperately want to enter. My argument for this conclusion is straightforward and requires only three core premises: (1) legitimate states are entitled to political self-determination, (2) freedom of association is an integral component of self-determination, and (3) freedom of association entitles one to not associate with others. Based on this reasoning, I conclude that legitimate states may choose not to associate with foreigners, including potential immigrants, as they see fit.

The first of these three premises is clearly the most important and controversial, so let me begin by explaining why legitimate states are entitled to political self-determination. To see this, recall the controversy surrounding the Nuremberg Trials. Among the many issues involved, critics objected that the Allied Powers had no business prosecuting and punishing Germans for crimes they had committed against their fellow citizens and subjects. In particular, while far fewer would have objected to punishing Nazi political and military leaders for waging an aggressive war, many thought it was inappropriate that outsiders should take it upon themselves to prosecute
Germans for crimes against their compatriots. It is not that critics denied that these crimes were utterly horrific; rather, the worry was one of jurisdiction. No matter how badly one German mistreats another on German soil, this seems paradigmatically a matter for the German legal system; it is simply not the business of outsiders, and the Allied Powers were not morally entitled to make it their business merely because they had won the war.

Although I am not ultimately convinced by this particular objection to the Nuremberg Trials, I am sympathetic to its general motivation. In essence, this objection centers around Germany’s right to political self-determination. The prosecution of crimes by and against German subjects on German soil is thought to be a private matter for Germany as a whole to adjudicate, because sovereign states are assumed to be morally entitled to design and operate their own systems of criminal law. Outsiders may understandably have clear and passionately held views about whether and how much various German individuals should be punished, but these outsiders have no right to take it upon themselves to ensure that these Germans be so punished. Thus, when the Allied powers punished Nazi leaders not merely for waging an unjust war but also for committing “crimes against humanity” against German citizens and subjects, the Allies thereby violated Germany’s right to exclusive jurisdiction over its system of criminal justice, a right to which it was entitled as a sovereign state.

But why think that countries are entitled to unilateral control over their systems of criminal law? The traditional answer is straightforward: Sovereign states enjoy moral dominion over their internal matters of criminal justice as one component of a more general right to political self-determination. A state is thought to be entitled to a sphere of group autonomy that includes all self-regarding matters. In other words, as long as a state’s conduct does not wrongfully impact any other country, it has full discretion to order its affairs however it sees fit. Indeed, this distinction between self- and other-regarding conduct explains why a particular portion of the Nuremberg Trials was especially intensely contested. Specifically, it was relatively uncontroversial to punish Nazi leaders for waging an aggressive war, since this war was emphatically not self-regarding. But punishing Germans for mistreating their fellow nationals was another matter altogether because—even though no one mistook this behavior as morally permissible—this mistreatment of some Germans by others seemed to be a paradigmatically internal matter. And if Germany occupied a privileged position of moral dominion over its self-regarding conduct, then it was entirely up to Germany to decide whether and how much to criminally punish those Germans who perpetrated these atrocities on fellow Germans. In sum, the political self-determination to which all sovereign states are thought to be entitled explains why, while it may have been permissible to punish Germans for their bellicosity toward other countries, it was wrong to prosecute Nazi leaders for their mistreatment of fellow Germans.

I mentioned above that I am not convinced by this particular objection to the Nuremberg Trials. This is because I do not share the premise that all states have a right to political self-determination. To the contrary, I believe only that all legitimate states occupy a privileged position of moral dominion over their self-regarding affairs; merely being a de facto state is not enough to qualify a country for the right to group autonomy. As I see it, only those regimes
with a moral claim to rule have a moral right to political self-determination. This distinction between de facto and legitimate states is relevant to the Nuremberg Trials because, even if Germany was a sovereign state during this period, it was clearly illegitimate.

This distinction between de facto and legitimate states raises the question of when and why a state is legitimate. To begin, notice that there is a moral presumption against political states because they are by nature coercive institutions. This presumption can be defeated, however, because this coercion is necessary to perform the requisite political functions of protecting basic moral rights. In my view, then, a regime is legitimate only if it adequately protects the human rights of its constituents and respects the rights of all others.1 Given both its genocidal campaign against German Jews, Roma, and homosexuals (among others), as well as its aggressive war against neighboring countries, Nazi Germany protected neither the human rights of its constituents nor respected the rights of outsiders.2 As such, it was painfully far from legitimate and thus not, in my opinion, entitled to be politically self-determining. As a consequence, I do not think that Nazi Germany enjoyed a moral right to order its own system of criminal law, and for this reason I am unmoved by the worry that the Allied Powers wrongly trampled over Germany's sovereign rights when they prosecuted Nazi leaders for their horrific mistreatment of fellow Germans. As an illegitimate regime, Germany lacked the right to political self-determination that would otherwise have made it impermissible for foreigners to unilaterally assign themselves the task of criminally prosecuting and punishing Germans for crimes against their fellow nationals.

The important point for our purposes, though, is not whether Nazi Germany was entitled to sovereign control over its criminal law, but whether it is plausible to claim that legitimate states enjoy this and the other rights associated with sovereignty. To appreciate the plausibility of this claim, consider a dramatically better candidate for legitimacy, contemporary Norway. Norway appears to protect the human rights of its constituents as well as anyone, and thus we would be hard pressed to deny that it satisfactorily performs the requisite political functions. If so, then presumably Norway is legitimate and is thereby morally entitled to political self-determination. And, as a consequence, Norway is entitled to sovereign control over its criminal legal system and thus would be righteously aggrieved if outsiders took it upon themselves to prosecute and punish Norwegian criminals, even if these outsiders had reasonable worries about the suboptimal fashion in which Norway pursues lawbreakers. Imagine, for instance, that the Norwegian legal system is relatively lax about enforcing speed limits, and, predictably enough, many people speed, and Norway's highways are home to more than its share of fatal crashes. Suppose also that, after becoming aware of these avoidable deaths, Swedish citizens urge their government to assign itself responsibility for prosecuting and punishing all drivers in Norway who exceed the highway speed limit by at least, say, fifteen miles an hour. Would it be permissible for Sweden to pursue such a venture? I suggest that Sweden may not impose this punitive system on Norway, even if doing so would dramatically reduce the number of deaths on Norwegian highways. In addition to all of the usual practical worries about its effectiveness and the possible repercussions for Swedish/Norwegian relations, the most important
point is the obvious and principled one: Sweden’s unilaterally punishing Norwegians for speeding on Norwegian highways would violate Norway’s sovereign rights. As a legitimate state, Norway enjoys a right to political self-determination, a right that includes dominion over its criminal legal system. And as long as Norway does a satisfactory job protecting the human rights of its constituents and respecting the rights of all others, it enjoys a privileged position of moral dominion over its own, self-regarding affairs. Most importantly, this dominion is not compromised by the fact that it does a less than perfect job managing its internal matters. Thus, even if it were true that Norway should more zealously prosecute and punish those who speed, and even if Sweden could do a markedly better job than Norway currently does, Norway retains its sovereign rights over this matter. I therefore conclude that Sweden would violate Norway’s right to self-determination if it were to unilaterally assign itself responsibility for criminally pursuing speeding Norwegians, even if we assume that these speeders are both morally and legally guilty and that Sweden could—without any deleterious repercussions—more effectively prosecute and punish these Norwegian speeders.

This discussion of Norwegian sovereignty strikes me as commonsensical (and it is certainly much less ambitious than the premise implicitly relied on by many critics of the Nuremberg Trials). What is more, it confirms, and is explained by, the plausible principle that legitimate political states are entitled to political self-determination. Nonetheless, many will question my analysis because of suspicions regarding the analogy between individual persons and legitimate states. In light of the morally significant differences between political states and individual persons, we should not be too quick to assume that the former can have moral rights analogous to those enjoyed by the latter. As Charles Beitz puts it, given “that states, unlike persons, lack the unity of consciousness and the rational will that constitute the identity of persons...[and are not] organic wholes, with the unity and integrity that attaches to persons qua persons...[i]t should come as no surprise that this lack of analogy leads to a lack of analogy on the matter of autonomy.” Thus, even if we are convinced that individual persons enjoy a privileged position of moral dominion over their self-regarding behavior, it does not follow that political regimes enjoy analogous rights.

Although authors like Beitz are surely right to call our attention to the difficult issues surrounding group self-determination, I do not believe that the admitted differences between individual persons and groups threaten our conclusions about state autonomy. A full discussion of the moral right to political self-determination would lead us too far astray from our principal task of analyzing the morality of immigration, but I would like here to explain why, despite two crucial differences between personal and state autonomy, we need not retreat from our commitment to the intuitively attractive premise that legitimate states are entitled to be politically self-determining over their self-regarding affairs.

Let us begin with the important question implicit in Beitz’s observation: Why care about group self-determination? Most specifically, assuming (as I think we should) that groups do not ultimately matter morally in the same way that individual persons do, why think that group autonomy matters in the same way that personal autonomy does? When we disrespect an individual’s autonomy, we wrong that person,
but if groups do not have the same ultimate moral standing as individual persons, it is not clear that they can be wronged. But if groups cannot be wronged, then why should we think it is impermissible to disrespect a group's autonomy?

One obvious answer to this question is that disrespecting a group's autonomy wrongs the individuals within the group, because a group's autonomy is an extension of each group member's personal autonomy. When an external body forcibly interferes with a chess club's decision to raise its membership dues, for instance, this interference does not wrong the group itself; rather, it wrongs the group's members, because it disrespects each member's personal autonomy. Unfortunately, this quick response will not suffice for political self-determination because, even if group autonomy can plausibly be considered an extension of each member's personal autonomy in the case of voluntary groups like that a chess club, political states are not voluntary groups. The fact that political states (even legitimate regimes) are nonconsensual coercive institutions is paramount here because, given that a country's membership does not depend on an autonomous choice, it is hard to see how a political state's autonomy is an extension of the autonomy of its members. To recapitulate: Both because (1) the morally relevant differences between groups and individual persons make it implausible to suppose that group autonomy matters in just the same way that individual autonomy does, and because (2) the nonconsensual nature of political states makes it implausible to posit that political self-determination is a straightforward extension of the personal self-determination of each of the state's citizens, there is no obvious way to theoretically ground my first premise that legitimate political states are morally entitled to be politically self-determining. This raises the question: Why not abandon all talk of political self-determination and focus exclusively on the autonomy of individual persons?

I appreciate the force of this question, but I am disinclined to jettison all talk of the irreducible rights of legitimate political states because of the unpalatable implications this would entail. To see this, reconsider the case of contemporary Norway. In particular, what do we think of the permissibility of Sweden's unilaterally deciding to enforce speed limits on Norwegian highways? More to the point (assuming that we think it would be wrong), why do we think it would be wrong? Would Sweden's conduct be wrong solely because of morally relevant practical considerations, or is it objectionable as a matter of principle? I am inclined to insist that Sweden's action would be wrong in principle, and the crucial point is that one cannot reach this conclusion unless one affirms the principle of political self-determination.

To make this point more forcefully, let us increase the stakes a bit. Imagine that, because of practical difficulties, the only way that Sweden could effectively enforce these speed limits would be to forcibly annex Norway. If we suppose that Sweden had the ability to unilaterally annex Norway without violating any individual human rights, would there be any principled reason to object to doing so? Or, for a (slightly) more realistic example, imagine that the European Union desperately wanted Norway to join, but Norwegians continued to prefer independence. If the members of the European Union had the wherewithal to unilaterally force Norway into the Union without jeopardizing peace or violating any individual human rights, would there be any principled reason against doing so? Unless we affirm
the principle of political self-determination for legitimate states, we cannot explain why it would necessarily be wrong for Sweden or the entire European Union to forcibly annex Norway. Because I find these implications unpalatable, I am disinclined to abandon my commitment to state autonomy.

These thought experiments involving Norway are doubly instructive. In addition to illustrating the steep price of jettisoning the principle of political self-determination, they point toward its potential theoretical justification. I say this because, when I consider the possibility of Sweden forcibly annexing Norway, for instance, it not only strikes me as wrong, it strikes me as wrong because it involves the Swedes wrongly disrespecting Norwegians. This suggests the promise of exploring whether the principle of political self-determination can be explained in terms of the moral importance of respecting the members of those political groups that are entitled to self-determination. This approach appears to be an attractive way to circumvent the problems we encountered above both because, (1) if the impermissibility of interfering with political self-determination is cashed out in terms of wrongly disrespecting the members of the group, then the relevant wrong would ultimately be done to individual persons, not the groups themselves, and (2) this wrong done to the members of these groups would not depend on the descriptively inaccurate assumption that legitimate political states have garnered the morally valid consent of all of their constituents.

My claim, then, is that interfering with a legitimate state’s political self-determination is impermissible first and foremost because it wrongly disrespects this state’s members. But why are they owed this respect? And how does interfering with their group’s self-determination disrespect them? In order to answer these questions, it is important to appreciate that, while violations of personal autonomy are a paradigmatic form of disrespect, there are other forms, because respect is not owed to people merely by virtue of their standing as autonomous individuals. In many cases people are owed respect because of their special roles, standing, abilities, or achievements. Consider, for instance, the respect owed to a conscientious parent. If a mother were horribly abusive or neglectful of her child, then external parties would presumably have a right (if not a duty) to interfere. If a parent is satisfactorily fulfilling her parental responsibilities, however, then she enjoys a privileged position over her young children, a dominion which entails that others are prohibited from interfering. Imagine, for instance, that a mother packs whole milk in her son’s lunch each day. Even if the child would be better-off drinking skim milk, this child’s teacher has no right to replace this boy’s whole milk with a carton of skim milk. The fact that skim milk is better may well give the boy’s mother reason to send skim rather than whole milk (and there would be nothing wrong with the teacher’s suggesting that the mother do so), but it does not justify the teacher’s interfering with the parent’s decision. Indeed, the consequences are largely beside the point because, given that the mother is satisfactorily performing her parental responsibilities, she is entitled to determine what type of milk her child drinks. And if the teacher replaces the whole milk with the skim milk, he wrongs the mother by disrespecting her parental dominion. That is, the teacher
wrongly fails to respect the parent's authority over her child, authority to which she is entitled by virtue of her satisfactory performance of her parental responsibilities. And notice: a parent need not be anything like perfect in order to qualify for this right to parental dominion. Just as one need demonstrate only a satisfactory level of competence in order to gain a driver's license, one need achieve only a threshold level of competence in order to maintain one's authority over one's children.

There are two things worth noting about this example. The first is that the teacher wrongs the parent without violating the parent's autonomy over her self-regarding affairs. Rather, he wrongs the mother by disrespecting her dominion over her child. What is more, the mother is not entitled to this parental dominion qua autonomous person; rather, she is deserving of this respect by virtue of her standing as a conscientious parent. And if a parent can be wronged without her autonomy being violated, then perhaps Norwegians can be wronged without their personal autonomy being violated. With this in mind, let us explore whether the key to political dominion is not also some type of special standing.

In moving from parental dominion to political sovereignty, the first thing to notice is that parenting is not always done by a solitary individual. It could be that a mother and a father decide together that their son should take whole milk to school, and in this case the teacher would wrongly disrespect both parents if he daily confiscated their son's carton of whole milk. And if respect can be owed to groups of parents by virtue of their collective ability and willingness to adequately perform their parental responsibilities, then why can it not be equally owed to groups of citizens by virtue of their collective ability and willingness to adequately perform their requisite political functions? That is to say, perhaps the reason Norway is morally entitled to political self-determination is because interfering with its group autonomy would wrongly fail to give the Norwegians the respect they are owed as a consequence of their collective achievement of maintaining a political institution that adequately protects the human rights of all Norwegians. And it is important to bear in mind that outsiders are morally required to respect a group's self-determination even in those instances in which the outsider reasonably believes that she could perform some particular function better than the group on its own would. Just as the teacher may not interfere with the parents' decision to have their child drink whole milk even when the teacher correctly believes that the child would be better off drinking skim milk, for instance, the Swedish government may not unilaterally assign itself the task of prosecuting and punishing Norwegian drivers even when it reasonably believes that it could do a better job at this task than the Norwegian government currently does. The fact that the parents/Norwegians satisfactorily carry out their parental/political functions entitles them to their parental/political dominion, even in those instances in which they carry out their responsibilities less than perfectly. And finally, notice how this analysis confirms my initial contention that Nazi Germany was not entitled to political jurisdiction over its system of criminal justice. The Allied Powers did not wrongly disrespect the Germans when they conducted the Nuremberg Trials because, given that the citizens of Nazi Germany did not adequately protect human rights, they did not collectively fulfill the
requisite political function necessary to merit the respect in question. Thus, neither our imaginary Swedish government nor the Allied Powers showed respect for the foreign citizens on whom they unilaterally imposed criminal justice, but only the Swedes acted wrongly, because only they wrongly disrespected individuals who were entitled to this deference by virtue of their collective achievement.

Given this explanation of political self-determination, we can retain our conviction that legitimate states are entitled to a sphere of sovereignty without endorsing either the normatively implausible claim that groups have the same ultimate moral status as individual persons or the descriptively inaccurate supposition that citizens have autonomously consented to join their states. Despite this, some will remain skeptical that states can occupy a privileged position of moral dominion over internal matters because of a second point of disanalogy between individual persons and groups. In particular, while individuals are routinely said to have discretion over all and only their self-regarding affairs, a closer examination reveals that groups do not have a similar, morally neutral self-regarding realm. As Phillip Cole puts it,

[Even if we accept that in the individual case there is no liberal morality concerning private matters, and liberal morality only governs interactions with others, when it comes to the state there is no “private” sphere in this sense. The central concern is how the state interacts with others—its members; and therefore the relationship between state and members is the proper object of a public morality. And

so where the sovereign principle rests on an analogy with liberal arguments for individual freedom and autonomy—and therefore individual rights of non-interference—then that analogy has to be rejected.4

Putting Cole’s important point in terms of human rights, we should note that, whereas we need not worry about human rights being violated when an individual exercises discretion over her self-regarding affairs, we can have no such confidence about a state’s exercising control over its internal matters. To appreciate this point, think about Russia’s claim to have complete authority regarding its policies toward Chechen separatists. While many observers protest that Moscow’s policy involves wholesale violations of human rights, Russian leaders have consistently responded that Russia has dominion over this issue, because it is a wholly internal matter. The force of Cole’s point, however, is that both claims are correct: it is an internal matter and there are grave abuses of human rights. Thus, anyone concerned about human rights should not be comfortable extending sovereignty to states over all self-regarding matters merely on the grounds that we treat autonomous individuals as morally entitled to dominion over their self-regarding activity.

This second concern is a substantial one; there is an important disanalogy between an individual’s and a group’s self-regarding behavior, and political regimes must not be allowed to perpetrate human rights abuses under the cover of state sovereignty. To the contrary, we must never lose sight of the fact that states are composed of multiple individuals, some of whom may violate the rights of others, and a core legitimating function of any state is to help prevent
these potential violations. Liberals may well be correct to suppose that individuals are entitled to act in ways that set back their own interests, but a political regime has the moral responsibility to ensure that no one violates the human rights of its constituents. Notice, however, that one can concede the force of this important point without abandoning anything I have said in defense of political self-determination. This is because my account of state sovereignty necessarily respects human rights given that I insist both that (1) only legitimate states are entitled to political self-determination and that (2) political legitimacy must be cashed out in terms of satisfactory protection and respect for human rights.

To emphasize: recall that my account of political self-determination entails that contemporary Norway is, while Nazi Germany was not, entitled to exclusive jurisdiction over its own affairs, and the explanation for this distinction is that Norway does, while Nazi Germany did not, protect the rights of its constituents. Thus, the reason that Sweden may not interfere with Norway’s criminal legal system is because Norway’s satisfactory protection of human rights entitles it to order this system as it sees fit, even if this involves some inefficiencies or other suboptimal elements. Sweden would certainly not be morally required to stand by, however, if the stakes of Norway’s lapses were considerably higher. In sum, it is only because and to the extent that allowing Norway political self-determination is fully consistent with respect for human rights that Norway occupies the privileged position of moral dominion that it does. Moreover, the parental analogy used to motivate this account illustrates that there is nothing ad hoc or otherwise suspicious about conceiving of political self-determination along these lines.

In the domestic realm, we take it for granted that parents are entitled to their authority over their children if but only if they adequately perform their parental responsibilities. And respecting parental authority in these circumstances obviously does not involve turning one’s back on the rights of the child, because acknowledging parental dominion within these parameters is by definition consistent with the child’s rights. Thus, despite clear and morally crucial differences between an individual having discretion of her self-regarding affairs and a state exercising jurisdiction over its internal matters, we need not retreat from the principle of political self-determination in the form I have defended here. To conclude this discussion of the first core premise of my argument, then, it seems both intuitively plausible and theoretically defensible to posit that political states enjoy a privileged position of moral dominion over their internal affairs as long as one restricts these sovereign rights to legitimate regimes, where legitimacy is cashed out in terms of the adequate protection of, and respect for, human rights.

Having defended the political self-determination of legitimate states, I must now show that freedom of association is a crucial element of self-determination, and that its value stems in large measure from the right to not associate with others. Perhaps the best way to make this point is to consider what life would be like if one were denied freedom of association. Imagine a stark case in which one’s familial relations were determined at the discretion of one’s government. Suppose, for instance, that a governmental agency were empowered to decide not only who would marry and who would remain single, but who would get married to whom, whether or not various couples would get divorced (and after what
duration of marriage), and which children would be assigned to be raised by whom. Thus, this agency might tell Jennifer that she is to remain unmarried and raise five children who will be assigned to her; it may tell Jill and Jack that they are to be married for the duration of their lives but may not raise any children (any children borne by Jill would be reassigned to others of the government's choosing); and it might tell John and Joe that they are to be married for twelve years before divorcing and remaining single and childless for the remainder of their lives.

Now, these governmental prescriptions may lead to the best possible lives for Jennifer, Jill, Jack, John, Joe, and the five children involved, but it is also possible (to put it mildly) that they may not. Indeed, these associative requirements could leave everyone disastrously unhappy. What if Jennifer does not want to raise children (or at least does not want to raise five biologically unrelated children as a single parent) but instead would prefer to be married to John, with whom she shares a requited love? And, speaking of John, what if he is heterosexual and would prefer a union with Jennifer, whom he loves? And what if Jack is homosexual and would prefer to be married to Joe, who loves him in return? And perhaps Jill would like to remain single and without children for her entire life, so that she can dedicate all of her time and energy to reflecting on the morality of immigration. Whatever one thinks of the prospects that a governmental agency could do a good job of designing appropriate familial associations for its constituents, one thing is clear: the lives of the citizens in this society would not be self-determined. Self-determination involves being the author of one's own life, and these individuals' lives clearly have vital parts of their scripts written by the government rather than autobiographically, as it were.

I suspect that readers will be aghast at this imaginary society. If so, it is because they share the widespread conviction that each of us enjoys a privileged position of moral dominion over our self-regarding affairs, a position which entitles us to freedom of association. And notice: familial freedom of association does not merely involve the right to get married. One is fully self-determining only if one may choose whether or not to marry a second party who would have one as a partner, whether or not to raise children with this partner, and whether to stay married to this partner. And crucially, one must not only be permitted to join with a willing partner, a potential partner must not be allowed to associate with you unless you too are willing. In other words, one must have the discretion to reject the proposal of any given suitor and even to remain single indefinitely if one so chooses. As David Gauthier explains, "I may have the right to choose the woman of my choice who also chooses me, but not the woman of my choice who rejects me." Thus, it seems clear that part of what makes freedom of association so important is that it necessarily includes the discretion to reject a potential association. Stuart White captures this point nicely:

Freedom of association is widely seen as one of those basic freedoms which is fundamental to a genuinely free society. With the freedom to associate, however, there comes the freedom to refuse association. When a group of people get together to form an association of some kind (e.g., a religious association, a trade union, a sports club), they will
frequently wish to exclude some people from joining their association. What makes it their association, serving their purposes, is that they can exercise this "right to exclude."6

White’s quote is helpful not only for its clarity about freedom of association’s necessarily involving a right to exclude, but also because it reminds us that freedom of association is valuable in a variety of contexts. That is, while the discretion to choose one’s associates is perhaps most important in the familial realm, we rightly value associative control in various aspects of life. As White goes on to explain, “if the formation of a specific association is essential to the individual’s ability to exercise properly his/her liberties of conscience and expression, or to his/her ability to form intimate attachments, then exclusion rules which are genuinely necessary to protect the association’s primary purposes have an especially strong presumption of legitimacy.”7 White may well be correct that exercising self-determination over groups that are either intimate or related to liberty of conscience and expression is especially valuable, but it is important to see that the presumption in favor of freedom of association should not be restricted to these contexts. As George Kateb insists,

[T]he very basis that has permitted or required courts to protect choices in close or intimate relationships . . . should be the basis for protecting other kinds of association. It is not up to courts (or any governmental entity) to rank associations for people, or to hold that close or intimate relationships are inherently more significant than other relationships and therefore more deserving of protection. Even if it is true that for many people (perhaps most people) close or intimate relationships are the most important

Along these lines, consider, Kateb’s critical evaluation of Justice William Brennan’s reasoning in one of the U.S. Supreme Court’s landmark decisions regarding freedom of association, Roberts v United States Jaycees. The Jaycees was a nonprofit organization founded in 1920 to, among other things, foster the development of civic and economic awareness and skills among young men, aged 18–35. All interested men were welcome, but women were allowed to join only as nonvoting, associate members. When two Minnesota chapters started admitting women as full members, the national organization tried to revoke their charters. These local Minnesota chapters sued the Jaycees, and the case worked its way up to the U.S. Supreme Court, which ruled in favor of the Minnesota chapters, thereby legally forcing the Jaycees to accept women as full members.

In Kateb’s view, the Court reached this misguided conclusion only because the Justices failed properly to value freedom of association as a fundamental right. For instance, Kateb found Justice Brennan’s claim that forcing the Jaycees to include women was permissible because it did not interfere with the Jaycees’ freedom of expression doubly problematic. Not only does Kateb protest that expression is in this case “joined inextricably” to association, he insists that the latter should also be valued as a fundamental right.8 In other words, not only is Brennan wrong to think that limiting the Jaycees’ freedom of
association will not restrict their freedom of expression, the connection between association and expression is irrelevant, because the Justices should be just as respectful of freedom of association in its own right, as they are of the freedoms of conscience and expression. In sum, because Brennan and the concurring Justices fail to fully grasp both the instrumental and the intrinsic value of association, Kateb laments that “[f]undamental rights endure a hard fate in Roberts and its successor cases. Above all, the value of association is not appreciated and hence not constitutionally respected. A right is made to give way to what is not a right, but rather a social gain (only).”

Without necessarily endorsing Kateb’s reasoning in every detail, I certainly agree that we should always begin with a weighty presumption in favor of freedom of association, whether or not the groups in question are intimate or linked directly to freedoms of conscience or expression. I say this because it seems clear that one cannot limit freedom of association without restricting self-determination. Thus, if one begins with a general presumption in favor of self-determination, as I do, then even in an association as relatively trivial as a chess or golf club, it strikes me that we should begin with a presumption in favor of freedom of association.

Although my global regard for self-determination commits me to a general presumption in favor of freedom of association, I am emphatically not positing an absolute right of all groups to refuse associates. We need be absolutists here no more than elsewhere, and a reasonable pluralism may well lead us to deny that various groups enjoy the right to exclude in the fashion that they would like. With this in mind, consider the Augusta National Golf Club, which has recently come under fire for its longstanding exclusion of women. Augusta National is arguably the most exclusive and prestigious golf club in the United States. Neither their membership nor their rules of incorporating new members is public knowledge, but apparently no women are members. Despite the fact that this club is neither intimate nor necessarily connected to its members’ freedom of conscience or expression, I believe that we must begin with a presumption in favor Augusta National’s right to set its own admissions policy, even if it continues to exclude potential new members on sexist grounds. However, given that women continue to face a variety of considerable disadvantages in the United States, it is altogether understandable that so many would protest Augusta’s exclusion of women. These activists plausibly suggest that women’s access to prestigious “old boy” clubs like Augusta National will better enable them to “network” and thus break through the glass ceilings that continue to impede eminently qualified women from ascending to the highest ranks in public life. And in addition to the advantages that might accrue to those women fortunate enough to join Augusta, there is an important symbolic impact when traditionally all-male centers of power are integrated.

My own view is that this is a matter about which reasonable people can disagree. For the sake of argument, however, let us assume that the gains to women would be substantial enough to justify forcing Augusta to include female members. In other words, suppose that the Augusta National’s presumptive right to freedom of association is outweighed by a sufficiently compelling interest in advancing the cause of oppressed women. The point I want to emphasize here is that, even if this were the case, it would
in no way undermine the core premises of my argument. It merely confirms what I have already acknowledged: we should not be absolutists about freedom of association; the right to exclude is only presumptive and thus is vulnerable to being defeated in any given context. And notice, we do not posit a merely presumptive right in this case only because we regard golf clubs to be relatively trivial associations. On the contrary, even our associative rights in the familial realm are at least in theory vulnerable to being overruled. (If my marrying Anna Kournikova would somehow cause an insanely jealous Vladimir Putin to launch a massive nuclear strike against the United States, for instance, then presumably Kournikova’s and my presumptive rights to marry would be outweighed by the consequences of a nuclear holocaust.) So, while the weights of the various presumptive rights may vary, it seems to me that any individual or group entitled to self-determination enjoys a presumptive right to freedom of association. Just as an individual has a right to determine whom, if anyone, she would like to marry, even relatively inconsequential social groups like golf clubs have at least a presumptive right to choose whom, if anyone, to admit as new members, even if they ultimately prefer to select their members in what many understandably regard as an abhorrently sexist manner.

We are finally in a position to draw the relevant conclusion from my defense of the three core premises of my argument: Legitimate political states are entitled to a sphere of political self-determination, one important component of which is the right to freedom of association. And since freedom of association entitles one to refuse to associate with others, legitimate political states may permissibly refuse to associate with any and all potential immigrants who would like to enter their political communities. In other words, just as an individual may permissibly choose whom (if anyone) to marry, and a golf club may choose whom (if anyone) to admit as new members, a group of fellow citizens is entitled to determine whom (if anyone) to admit into their country.

The force of this argument stems from the fact that it seems hard to deny that the logic and morality of freedom of association applies in the political realm just as it does with all of our other relations. Nonetheless, two potential objections present themselves. First, it may strike some as misleading to compare having discretion over one’s partner in marriage to the selection of potential immigrants, because having control over one’s associates is plainly paramount in marital relations but seems of little consequence within the large and impersonal political context. Second, even if we concede that a legitimate state’s right to freedom of association applies in its relations to other countries or international institutions, this seems quite different from alleging that large political regimes enjoy freedom of association with respect to individual foreigners. Both of these objections are important, so let us consider each in turn.

In response to the first worry, it admittedly seems clear that freedom of association is profoundly more important in intimate relations. Notice, for instance, that while I expected readers to be aghast at my hypothetical society in which a governmental agency determines whether, to whom, and for how long one would be married (and whether, for how long, and which particular children one would raise), readers would no doubt be less taken aback at the thought of a political society in which
citizens had no control over immigration. Acknowledging this is unproblematic, however, since it amounts to conceding only that rights to freedom of association are more valuable in intimate contexts, not that they do not exist elsewhere. At most, then, this objection highlights only that it may require more to defeat the presumptive right in intimate contexts.

Second, notice that there are many nonintimate associations where we rightly value freedom of association very highly. Religious associations in which people attend to matters of conscience and political groups through which members express themselves can often be large and impersonal, and yet the Supreme Court has for understandable reasons been extremely reluctant to restrict their associative rights. (And theorists like Kateb still criticize the Court for systematically failing to appreciate that freedom of association is in all contexts a fundamental right.)

Third and finally, it is worth spelling out why, despite the admitted lack of intimacy, freedom of association remains so important for political states. To see this, it may be helpful to begin by noting why even members of relatively insignificant associations like golf clubs are so concerned about their control over potential members. These members typically care about their club’s membership rules for at least two sets of reasons. First and most obviously, the size of the club can dramatically affect the experience of being a member. In the case of a private golf club, for instance, some may want a larger number of members, so that each individual will be required to pay less in dues, while others might well be against including new members for fear that the increased number of golfers will result in decreased access to, and more wear and tear on, the golf course. In short, whereas some will be chiefly concerned to cut costs, others will be happy to pay higher fees for a more exclusive golfing experience. Second and perhaps less obviously, members will care about the rules of membership because all new members will subsequently have a say in how the club is organized. In other words, caring about the first set of issues concerning the experience of being a club member gives one reason to care about the rules for admitting new members, because, once admitted, new members will typically have a say in determining the future course of the club.

And if the reasons to concern oneself with the membership rules of one’s golf club are straightforward, there is nothing curious about people caring so much about the rules governing who may enter their political communities, even though a citizen will typically never meet, let alone have anything approaching intimate relations with, the vast majority of her compatriots. Indeed, there are a number of obvious reasons why citizens would care deeply about how many and which type of immigrants can enter their country. Even if we put to one side all concerns about the state’s culture, economy, and political functioning, for instance, people’s lives are obviously affected by substantial changes in population density, so it seems only natural that citizens who like higher population density would welcome huge numbers of immigrants, while those with contrary tastes would prefer a more exclusive policy. And in the real world, of course, a substantial influx of foreigners will almost invariably also affect the host state’s cultural make-up, the way its economy functions, and/or how its political system operates. And let me be clear: I am not assuming that all of these changes will necessarily be for
the worse. More minimally, I am emphasizing only that citizens will often care deeply about their country’s culture, economy, and political arrangements, and thus, depending on their particular preferences, may well seek more or fewer immigrants, or perhaps more or fewer immigrants of a given linguistic, cultural, economic, and/or political profile. In the case of Mexican immigrants into the United States, for instance, it is not the least bit surprising that some favor a more open policy, while others lobby for the government to heighten its efforts to stem what they regard as a “flood” of unwelcome newcomers. Without taking a stand on this particular controversy, I wish here to stress only the obvious point that, even with large anonymous groups like contemporary bureaucratic states, the numbers and types of constituents have an obvious and direct effect on what it is like to be a member of these groups. Thus, unless one questions why anyone would care about their experience as citizens, there is no reason to doubt that we should be so concerned about our country’s immigration policy. What is more, as in the case of golf clubs, the crucial point is that—whether one interacts personally with them or not—one’s fellow citizens all play roles in charting the course that one’s country takes. And since a country’s immigration policy determines who has the opportunity to join the current citizens in shaping the country’s future, this policy will matter enormously to any citizen who cares what course her political community will take.

This connection between a group’s membership and its future direction underscores why freedom of association is such an integral component of self-determination. No collective can be fully self-determining without enjoying freedom of association because, when the members of a group can change, an essential part of group self-determination is exercising control over what the “self” is. To appreciate this point, consider again the controversy over Mexican immigration into the United States. It is not merely that large numbers of these immigrants would almost certainly change the culture of those areas where they tend to relocate en masse, it is also that (if legally admitted and given the standard voting rights of citizenship) these new members will help determine future laws in the United States, including its immigration policy toward other potential immigrants from Mexico (and elsewhere). Thus, if I am right that legitimate political states are entitled to political self-determination, there appears to be every reason to conclude that this privileged position of sovereignty includes a weighty presumptive right to freedom of association, a right which entitles these states to include or exclude foreigners as they see fit.

I would now like to consider the second, more specific objection. This is the worry that, while legitimate states are indeed entitled to freedom of association, this right applies only against other corporate entities, such as foreign countries or international institutions; it does not hold against individual persons who would like to enter a given political community. An objector of this stripe shies away from a blanket denial of political freedom of association in recognition of the unpalatable implications such a position would allow. Think again of contemporary Norway, for instance. If one denied Norway’s right to freedom of association, then there seems to be no principled way to explain why Sweden or the European Union would act impermissibly if either were to forcibly annex it. Presumably neither Sweden nor the EU may unilaterally merge with Norway; rather, Norway
has the right to either accept or refuse these unions. But affirming Norway’s right to reject these mergers is just to say that Norway enjoys a right to freedom of association that holds against foreign countries like Sweden and international organizations like the EU. It does not necessarily follow, this objection continues, that Norway therefore has the right to deny admittance to any given Swede or citizen of an EU country who would like to enter Norway. Indeed, in terms of self-determination, the contrast between merging with Sweden and admitting an individual Swede is striking, in that only the former would appear to seriously impact Norway’s control over its internal affairs. Thus, insofar as freedom of association is defended as an important component of self-determination, perhaps sovereign states enjoy freedom of association only with respect to macro institutions and not in their micro dealings with individual persons.

It admittedly seems wildly unrealistic to suppose than an individual immigrant would have anything like the impact on Norway’s political self-determination that a forced merger with Sweden or the EU would. Nonetheless, I am unmoved by this objection for at least two basic reasons. Not only do we routinely (and rightly, I think) ascribe rights of freedom of association against individuals to large, nonpolitical institutions, it seems to me that political states would lose a crucial portion of their self-determination if they were unable to refuse to associate with individuals. Consider these points in turn.

Let us begin by considering two garden-variety large institutions like Microsoft Corporation and Harvard University. Presumably each of these institutions enjoys freedom of association, and thus Microsoft could choose to either accept or reject an offer to merge with Cisco Systems, and Harvard would have the discretion as to whether or not to accept an offer to form a cooperative alliance with, say, Stanford University. And notice: we do not restrict their freedom of association exclusively to their dealings with other corporate entities; Microsoft’s and Harvard’s rights to self-determination also give them discretion over their relations with individuals. Thus, no matter how qualified I may be, I may not simply assign myself a paying job at Microsoft, nor may I unilaterally decide to enroll in Harvard as a student or assume a position on their faculty. And if large bureaucratic organizations like Microsoft and Harvard are perfectly within their rights to refuse to associate with various individuals, why should we think that freedom of association would operate any differently for political states? At the very least, it seems as though anyone who wanted to press this second objection would owe us an explanation as to why the logic of freedom of association does not apply to political states as it plainly does in other contexts.

The best way to make this case would presumably be to point out that (as the Norway case was designed to show), because political states are so enormous, an individual’s immigration will have no discernible impact on any given country’s capacity for self-determination. I acknowledge that one person’s immigration is typically insignificant, but this fact strikes me as insufficient to vindicate the objection. Notice, for instance, that one unilaterally appointed student at Harvard or a single employee at Microsoft would not make much of a difference at either institution, but we would never conclude from this that Harvard and Microsoft are not entitled to admit and hire
applicants as they please. What is more, as the example of Mexican immigrants into the United States illustrates, even if a solitary immigrant would be unlikely to have much of an impact on any given state, a sufficient number of immigrants certainly could make an enormous difference. And unless a state is able to exercise authority over the individuals who might immigrate, it is in no position to control its future self-determination.

Thus, it seems clear that the very same principle of political self-determination that entitles Norway to either join or reject an association with other countries like those in the EU also entitles Norway to set its own immigration policy for potential individual immigrants. Indeed, to see why immigration policy is such a vital component of political self-determination, imagine an alternative history to Lithuania’s association with the Soviet Union. In a brazen act of disrespect for Lithuania’s right to freedom of association, the Soviet Union forcibly annexed Lithuania and then subsequently flooded it with migrants. Presumably this forcible annexation was impermissible because, as even this objector acknowledges, Lithuania’s right to self-determination entitling it to reject unwanted relations with other countries like the Soviet Union. Because this objector presumes that a country’s freedom of association does not apply to immigrating individuals, however, the Soviet Union could have proceeded in an alternative course that would have been entirely permissible: it could have first flooded Lithuania with immigrants and then asked if it would like to merge with the Soviet Union. Given sufficient numbers of immigrants, these relocated Soviets could have outvoted the native Lithuanians, and thus the recently expanded Lithuanian population as a whole would have agreed to join the Soviet Union. According to the logic of this objection, such an alternate history would have been fully justified because neither the initial migration nor the subsequent, “mutual” merger would have been impermissible. But this seems crazy. Thus, imagining this alternative history is doubly instructive. Not only does it provide a striking illustration of why control over immigration is such an important component of political self-determination, it reveals that denying a state’s right to freedom of association over individual immigrants is wrong in just the same way and for the same reasons that forcibly annexing it would be.

To summarize our discussion of these two potential objections: Even though (1) the association among compatriots may be far less important than the intimate relations among family members, and (2) a single immigrant is likely to have no discernible influence on a political community’s capacity to be self-determining, legitimate political states have weighty presumptive rights to freedom of association that entitle them to either accept or reject individual applicants for immigration as they see fit. In short, the principle of political self-determination explains why countries have a right to design and enforce their own immigration policies. Whether any given (legitimate) state wants to have entirely open borders, exclude all outsiders, or enact some intermediate policy, it has a presumptive right to do so.

As mentioned earlier, though, this right is merely presumptive and thus remains liable to being overridden in any given set of circumstances. Below I will consider a variety of arguments which purport to show that countervailing considerations clearly defeat a state’s presumptive right to control its own borders. Before moving to those
arguments, though, it is worth pausing to notice two things about my position: (1) I am arguing on behalf of a deontological right to limit immigration rather than a consequential recommendation as to how any given state should act, and (2) insofar as my position focuses on the rights of all legitimate states, it does not depend on any controversial claims about the importance of preserving a country’s economic, political, or cultural status quo. It is important to see how these two points distinguish my account from many other prominent views in the literature.

To begin, notice that there is a big difference between defending a person’s right to X and recommending that a person actually do X. Many of those who would defend Augusta National’s right to exclude women presumably also wish that Augusta would admit women, for instance. This combination of positions may at first seem contradictory, but it is not. What Augusta National ought to do and who is entitled to decide what Augusta National does are two separate issues. Thus, it is important to bear in mind that, in defending a legitimate state’s right to exclude potential immigrants, I am offering no opinion on the separate question as to how countries might best exercise this right.

There are several reasons I am not comfortable making any recommendations as to how jealously states should guard their borders. First and most obviously, determining what immigration policy would be best for a country’s citizens and/or humanity as a whole requires a command of massive amounts of detailed empirical information that I simply lack. Just as importantly, though, it seems to me that there is unlikely be any “one size fits all” prescription that would be appropriate for every country in the world. On the contrary, there is no reason why a certain number and type of immigrants could not be beneficial in one country and yet quite harmful in another; it all depends on the particular social, cultural, economic, and political circumstances of the host country. Consider, for instance, the economic impact of immigration. While some writers warn that opening a country’s markets to outsiders will have potentially disastrous effects, others counter that the impact of open borders will (in the long run, at least) invariably be beneficial, since removing any artificial boundary will allow the market to operate more efficiently. I would guess, however, that the truth lies somewhere between these two polar positions. Even if we restrict our focus exclusively to the economic impact on those who were initially in the host state (as these debates often implicitly presume we should), how helpful any given influx of newcomers would seem to me to depend on a number of factors, such as this country’s antecedent level of unemployment and the types of skills and work ethic these immigrants have. In addition to determining what the overall affect of the immigrants would be, it is important to consider how the various costs and benefits are distributed. As Stephen Macedo has emphasized, for instance, in many cases the influx of relatively unskilled workers may disproportionately help relatively wealthy business owners (who benefit from the increased supply of labor) and hurt working-class people (who now face greater competition for jobs whose wages have been decreased). Thus, if one follows Rawls in thinking that we should be especially concerned about our worst-off compatriots, then this might provide a reason of justice to limit immigration even in circumstances in which the overall net economic impact of more porous borders would be positive.
In light of these observations, I am reluctant to recommend a specific immigration policy as the ideal solution for any given (let alone every) state to follow. If forced to show my hand, however, I must confess that I would generally favor more open borders than the status quo. I appreciate that countries have a variety of good reasons to refrain from completely opening their borders, but I suspect that many of the world’s current policies are more the result of unprincipled politicians’ exploiting the xenophobia of their constituents for short-term political gain than of well-reasoned assessments of what will be to the long-term advantage. In saying this, however, I am in no way retreating from my contention that legitimate regimes may set their own immigration policy. In my view, there are deontological reasons to respect a legitimate state’s rights of political self-determination, and so those countries that qualify have a deontologically based moral right to freedom of association. Thus, whether they exercise this right rationally or not, it is their call to make. Just as my friends and family may not forcibly interfere with my imprudent decisions to get married or divorced, for instance, external parties must respect a legitimate state’s dominion over its borders, even if the resulting policy seems plainly irrational.

The second point worth highlighting about my approach is the way in which it is importantly distinct from those accounts that currently dominate the literature. The most popular way to defend a state’s right to control immigration is to claim that states must do so to preserve their economy, security, political capacity, and/or cultural distinctiveness. (In many cases, these elements are combined, as when one argues that a country’s economic productivity depends on the constituents having a distinctive, culturally ingrained work ethic, or that the proper functioning of the political system depends on its citizens having a sufficient level of cultural homogeneity.) The most frequently invoked strategy among those who defend closed borders, for instance, is the so-called liberal nationalist approach, which argues that states are justified in restricting immigration because doing so is necessary to preserve their distinctive cultural identities. Among the liberal nationalists, David Miller is arguably the most sophisticated and prominent. In his view, it is not merely that people (understandably) care a great deal about the stability of the cultural context in which they live, it is also that liberal democratic regimes typically function best when there is sufficient trust and fellow-feeling among their compatriots. This trust and mutual identification is essential because, without it, citizens would be unwilling to make the sacrifices necessary to sustain a robust and equitable democratic welfare state. And finally, Miller contends that this trust and fellow-feeling cannot be counted on in all circumstances; it generally emerges and endures only when there is sufficient cultural homogeneity.

Critics have responded to Miller’s liberal nationalist account with a variety of empirical and normative questions: Do liberal democracies really depend on sufficient trust and fellow-feeling among their compatriots, and, if so, is a common culture genuinely necessary to secure this trust and mutual concern? Just how homogeneous must such a culture be? Liberal democracies like the United States, Canada, and Great Britain appear to function reasonably well despite a great deal of cultural diversity, for instance. In light of this, why worry that outsiders pose a substantial threat? Is it plausible to think that immigrants
will not assimilate to the requisite degree once they have settled in their new state? Notice also that, even if this account can in some cases justify denying admission to culturally distinct foreigners, it would appear to provide no grounds for excluding outsiders who share the requisite cultural attributes. And even if the answers to these empirical questions ultimately vindicate the liberal nationalist account, tricky moral questions remain. For instance, do the inhabitants of well-oiled liberal democracies have not only an interest, but a moral right to the exclusive protection afforded by their enviable political regimes?

Analogous questions have been raised in response to writers who stress the impact a specific culture can have on a country’s economic system. Is it true that the economy depends on the workers having a certain cultural characteristic? Do foreigners really lack this cultural attribute? (Again, if only some foreigners lack this cultural trait, then this rationale apparently provides no justification for turning away those immigrants with the desired cultural make-up.) Is it reasonable to speculate that newcomers will remain resistant to this putatively necessary cultural characteristic once they enter the country in question, especially when many of these immigrants will have been drawn to their new states specifically by the opportunities to work in its labor force? And, once again, moral questions present themselves. For instance, are we convinced that those citizens lucky enough to be born in a country with a given economic structure have an exclusive right to the fruits of this booming economy?

Notice that these sorts of questions are relevant even for those who defend closing borders in order to protect national security. After the terrorist attacks of 9/11, the ordinary citizens in liberal democracies have generally become much more sympathetic to the idea of restricting immigration in order to protect ourselves from foreign terrorists. Without denying the importance of national security, Chandran Kukathas has questioned this strategy on the grounds that it is far from clear how helpful restricting immigration will actually be. Kukathas raises two worries. First, tighter immigration policy may well dramatically reduce legal immigration, but it is not clear that it will do anything to curb people from illegally entering the country. This point is relevant to national security, of course, because it seems unlikely that a potential terrorist who is willing to bomb a country’s civilians would at the same time be so deferential to that state’s laws that she would abort her terrorist mission rather than illegally enter the country. Second, even if we concern ourselves exclusively with legal entrants, merely restricting immigration will not suffice, because masses of people routinely visit as tourists, students, and businesspeople. And because a terrorist could just as easily enter under one of these auspices, we cannot seriously suggest restricting immigration in order to exclude potential terrorists unless we are willing to similarly limit those who visit for shorter periods.

At this point, readers will likely have noticed an emerging pattern. In response to anyone who argues that we may justifiably limit immigration in order to preserve X, critics will invariably ask both (1) Is limiting immigration really necessary and/or sufficient to secure X? and (2) Even if limiting immigration is necessary and sufficient, do those who seek to restrict immigration actually have a moral right to X? Fortunately, there is no need for us to answer these questions. For our purposes here, we need only to
emphasize the distinctness of my approach and, accordingly, why I need not grapple with these questions. First and most importantly, notice that my account focuses on a country’s legitimacy, rather than whether its constituents share a common and distinctive culture. In my view, it does not matter how culturally diverse or homogenous a country’s citizens are; if they are collectively able and willing to perform the requisite political function of adequately protecting and respecting human rights, then they are entitled to political self-determination. I do not deny that citizens will often be concerned about the number and type of immigrants precisely because they care about the cultural make-up of their country, but (on my view, at least) this demonstrates only why they may value their right to freedom of association; it is not what qualifies them for this right. What is more, my account does not include any presumption as to what stance citizens will or should take regarding cultural homogeneity. Consider Norway, for instance. While it is in many respects relatively culturally homogenous, Oslo contains a relatively large and vibrant Pakistani community. My account takes no stand on whether this type of diversity is to be celebrated or lamented. I suspect that many Norwegians consider the presence of the Pakistani community to be one of the most appealing features of life in Oslo, while others regret this island of cultural difference and the complex social and political issues it creates. My approach to the morality of immigration favors neither party in this debate. Instead, it merely says that, insofar as Norway is a legitimate state, the Norwegians as a whole are entitled to determine whether they would prefer to adopt policies that encourage more individuals from various other foreign destinations to settle in Norway, or whether they would prefer to close their borders to culturally distinct outsiders.

Thus, if it turns out that greater cultural diversity in Norway would have no deleterious effect on its capacity to protect its security, economic productivity, or political functioning, these facts would in no way damage my defense of a state’s right to control immigration into its territory, since my account does not depend on descriptive claims about what valuable things are made possible only within culturally homogeneous environments. And notice that this feature of my account does not stem merely from an ad hoc attempt to circumvent the standard concerns voiced against the liberal nationalist approach; on the contrary, it springs from the commonsensical notion that a regime’s rights to political self-determination should depend on its ability and willingness to perform the requisite political functions, rather than its cultural attributes. Furthermore, reflection on freedom of association in other contexts confirms this orientation. Recall, for instance, the controversy that surrounded the Jaycees and Augusta National’s rights to freedom of association. Whatever one thinks about the justifiability of forcing either of these groups to include women as full members, it seems implausible to suppose that their presumptive rights to reject potential applicants depended on these clubs’ being all male. If anything, perhaps the opposite is true; one might think that these two groups would have had even stronger presumptive rights to exclusive control over membership if their admissions policies had not discriminated against women. Thus, there is nothing suspicious about a theory of political self-determination that does not feature cultural characteristics as its centerpiece, and so—whatever other problems my account may face—it
need not fight many of the descriptive and normative battles that the liberal nationalist must win.

To recapitulate the highlights of what has been a relatively long discussion: Invoking individual human rights will not enable one to explain why it is in principle wrong for an external body such as Sweden or the EU to forcibly annex a legitimate state like Norway; an adequate explanation requires affirming that corporate political entities such as Norway are entitled to freedom of association. But if legitimate political regimes enjoy a sphere of self-determination that allows them to refuse relations with foreign countries and international organizations, it seems only natural to conclude that they are similarly entitled to reject associating with individual foreigners. Thus, any regime that satisfactorily protects and respects human rights is entitled to unilaterally design and enforce its own immigration policy. In sum, just as an individual has the right to determine whom (if anyone) he or she would like to marry, a group of fellow-citizens has a right to determine whom (if anyone) it would like to invite into its political community. And just as an individual's freedom of association entitles him or her to remain single, a corporate political entity's freedom of association entitles it to exclude all foreigners.

As striking as this conclusion may sound, it is not ultimately all that controversial once one recalls that the right in question is not absolute, but merely presumptive. Even those who believe that groups like the Jaycees and Augusta National should be forced to include women as full members typically concede that these groups have a \textit{presumptive} right to exclude women, for instance; these activists simply believe that the presumptive rights of these two groups are outweighed by more pressing egalitarian considerations.

Similarly, many who insist that morality requires (more) open borders might happily concede all of the conclusions for which I have argued to this point, because they are confident that whatever presumptive rights legitimate states have to exclude foreigners are often (if not always) overridden by more weighty moral concerns. Although I know of no way to rule out this possibility a priori, I am highly skeptical that a sufficient competing case can be made. With this in mind, let us now consider the four most prominent and sophisticated arguments in favor of open borders which have been proposed, in turn, by egalitarians, libertarians, democrats, and utilitarians.

Notes

1. Two clarifications are in order here. First, in addition to adequately protecting/respecting human rights, states cannot be legitimate unless they respect the self-determination of qualifying groups. (This explains why a state that annexes or colonizes another country would not be legitimate even if it violated no individual moral rights, for instance.) Second, although I often use terms like "constituents," "citizens," "subjects," and "nationals" interchangeably in what follows, here I deliberately specify that legitimate states must protect the rights of their "constituents" (as opposed to their "citizens") in part because states cannot be legitimate unless they protect the rights of everyone (including foreigners) residing on their territory, but also because I do not assume that states must necessarily protect the rights of their citizens who are living abroad.

2. I understand human rights to be individual moral rights to the protections generally needed against the standard and direct threats to leading a minimally decent human life in modern society.

15. Indeed, many consider it much more likely that terrorists would be short-term visitors than immigrants. Recall, for instance, that intelligence experts traditionally discounted the threat of terrorist sleeper cells in countries like the United States because it was always presumed that foreigners would not long sustain their hatred of America and its values if they were able to live in the United States and experience firsthand the benefits of liberal democracy.

2

The Egalitarian Case for Open Borders

ANYONE EVEN VAGUELY familiar with the stark global inequalities of wealth should be aghast that such a high proportion of the world’s population lives in eviscerating poverty while masses of others enjoy unprecedented levels of material consumption. How can such a cruel inequality persist? Part of the answer is that the stunningly affluent tend not to live side-by-side with those in absolute poverty; in today’s world, the rich and poor are generally politically sorted in distinct countries. While there is a great deal of relative inequality within Norway or Chad, for instance, there is virtually no absolute poverty in Norway and precious few wealthy people in Chad, and the median person in the lowest quintile in Norway is dramatically better off than the median person in the highest quintile in Chad. Of course, the average Norwegian is not entirely unaware that so many Chadians are desperately poor, but she is not personally confronted with this poverty as she would be if it were being experienced by friends and neighbors. The typical Chadian also lacks a detailed knowledge of life in Norway, but she knows enough about it to be willing to risk everything for the chance to resettle there. Thus, to deter this massive migration, countries like Norway jealously patrol their borders with guns.