Context, Continuity, and Fairness

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Defenders of nationalism have claimed at least three advantages to cultural membership. The first two are goods for individuals. First, membership in a secure culture provides a sufficiently familiar moral space within which people can develop a rich and varied range of conceptions of the good. Second, it offers support for or confirmation of certain views of the good by placing them in a larger history. The third advantage is a good for societies: cultural membership is sometimes said to make justice possible by making citizens see the sacrifices demanded by a state as expressions of who they are rather than arbitrary burdens.

My interest is in the third role claimed for membership. To explore its significance, I distinguish it from the other two. Once the three supposed advantages of cultural membership are properly distinguished, there is little left to the idea that nations are especially well suited to being units of political sovereignty or that cultures, as such, have a right to political self-determination.

This essay begins with a brief discussion of the conditions under which a culture can provide a secure context of choice and a sense of continuity with the past. I argue that a culture’s ability to provide an individual with either of these goods depends entirely on that individual’s own attitude toward that culture. I then go on to consider the argument that cultural membership is necessary in order to make the sacrifices demanded by justice coherent. I distinguish between and reject three different versions of the argument. The first claims that national membership is particularly well suited to motivating sacrifices. I suggest that this argument rests on dubious empirical assumptions about the readiness to make different
sorts of sacrifices. The second version claims that demands of justice only arise between people who share other things. I reject it because different things must be shared to make justice possible. The third version claims that fairness requires assessing people in light of their own fundamental commitments, many of which are culturally based. Against it I argue that the very things that make cultural membership appropriate as a source of context and continuity make it an inappropriate basis for underwriting those sacrifices.

Before turning to the three roles of membership, I begin with what I hope are some fairly banal historical and sociological observations about nationalism in an attempt to make it clear which phenomena concern me. "Nation" does not cover all state activities or all cultural affiliations. Even a cursory reading of the last two centuries of history reveals that national identity is not always identified with any one language, religion, level of economic development, or history. Benedict Anderson suggests that nations are "imagined communities" because the members may have little contact with each other, but the community exists in their image of it. In calling nations imagined Anderson does not mean to suggest that the imagining is either aesthetic or sentimental. It is political, as the image is the product of conflict and struggle. Almost any community of any size exists largely in the imaginations of its members, who seldom, if ever, meet. But nations are imagined by the few for the many. \(^1\) In doing this, national leaders come close to the task that Rousseau assigns to the legislator: that of coming up with traditions through which people can recognize each other as fellow citizens (though nation builders may lack the unity of purpose one associates with a Rousseauian legislator). \(^2\) Their ability to provide their members with a sense of community depends at least as much on fabricating a common history as on discovering one. Anderson's studies of Southeast Asian nationalism show how nations could be forged out of diverse cultural and linguistic groups, groups that were brought together largely by the contingencies of battles and treaties between colonial powers. \(^3\) Other nations emerged through developments in bureaucracy and record keeping; much of the imagining of a common heritage (or even a common language) was done by what Eric Hobsbawm calls "the lesser examination passing classes." \(^4\) For my purposes, what is most important about nations is that they aim to be both cultural and political at once.

Context

Cultural membership enables individuals to find themselves in a sufficiently familiar moral space so that they can develop, revise, and pursue their own conceptions of the good. Having others around who have made what they will of similar cultural possibilities, individuals find themselves both with a broader range
of viable options and amid others whose lives and choices affirm the value of their own.

The notion of a context of choice may seem to suggest that a secure culture is needed simply as a precondition for forming a conception of the good but becomes less important once one has reached the age of reason. But developing a conception of the good is not a stage of development in the way that developing a distinctive accent or even a first language might be thought to be. Instead, developing a conception of the good is a process, which goes on throughout life, of deciding what matters most of the possibilities that are available. Thus it requires a rich store of alternatives that are familiar enough to present real options. When a culture is in danger of disappearing, its members may no longer be able to pursue a conception of the good they have already developed. More significant, they are unable to continue to develop it. But of course not every case of a disappearing culture fits this model. If a culture disappears because its members find some other, surrounding culture more appealing, they are not left without a context of choice. Instead, they slowly find themselves with a new one.

In many cases, the advantages of cultural membership come without any cost. Many cultures are sufficiently secure to provide it to their members while engaging in the myriad business of everyday life. English, for example, is a fundamental cultural resource to those who speak it, but because its use is so widespread, it is available for free to almost anyone who might want it. In societies that are culturally homogeneous or largely so, state efforts to support and reinforce that homogeneity surely enrich the context of choice for some individuals. The French ministry of culture contributes to maintaining a way of life, though perhaps less so than the agricultural subsidies that sustain the French farmers. At the same time, the absence of those policies would not deprive ordinary people of their context of choice—it would, in normal circumstances, change in different ways and perhaps more quickly. Further, the same kinds of protection and sustenance are possible in units much smaller (or larger) than the nation. Other cultural resources may be just as vital to particular people's lives but be much harder to come by. Members of cultures that are endangered may be entitled to special protection so that they get something that others are able to take for granted. In this, cultural protections differ little from redistribution of income to those who have less for various morally arbitrary reasons. Something like this idea underlies Will Kymlicka's arguments for special rights for minority cultures and has just about the right reach for a liberal principle: everyone is entitled to some primary good; those who find themselves with less than an equal share for morally arbitrary reasons are entitled to be brought up to the level of others. But the good in question is not a way of life or success in pursuing it.

In defending protections for context, we need not suppose that everyone is entitled to sufficient resources to guarantee success in pursuit of their chosen life.
Protecting a context does not require ensuring that people will succeed in preserving their own particular visions of their culture. It requires only that diverse cultural resources be available. Subsequent generations require the same diversity of cultural resources but not the identical culture. As a result, those who make preserving some vision of the culture the object of their choices are not entitled to succeed.

Continuity and Survival

Nation and culture are often central to the stories that people tell of themselves and the way they locate themselves in a longer time horizon. Those stories also enable them to see certain things as mattering. By placing their lives and choices in a longer perspective, people are able to find greater significance in them. Viewed in the abstract, such an attachment to the past can be made to seem puzzling. But in concrete cases, many people feel a profound desire to remain true to the ways of their ancestors or at least to be true to some vision of them.

The desire for continuity is best thought of as a special case of a more general human tendency to find oneself in some larger context. Just as people seek connection with the past, so they try to model their lives on the lives of others they admire, from the past or the present, from cultural tradition or contemporary life. Just as I can find worth in my projects by looking back for centuries, I also can do so by discovering a connection with others I admire. But to do either I needn’t choose a single set of identifications for all of my projects and commitments. Instead, I choose my projects and connections to others together. At the same time, others sharing various roles and projects often demand particular identifications.

The attempt to maintain continuity with the past sometimes leads to charges of betrayal by others claiming connection with the same past. But cultural membership is only one of many sources of identity that lead to such charges. What needs to be protected is the individual’s source of identity, not the views of other members of some group about how well one is living those roles. The person who identifies with some rock musician or other figure from popular culture does not need to measure up to standards set by the musician’s official fan club. To fulfill a desire for continuity, it is important that individuals be able to find themselves in relation to what has gone before, not that they succeed by anyone else’s measure of their success.

Although a concern for continuity with the past may lead parents to raise their own children in particular ways, it does not entitle these parents (or the state acting for them) to dictate the terms on which their grandchildren shall be raised.

While continuity is both a backward-looking interest and a forward-looking one, only its backward-looking aspects are entitled to political protection. Any way of protecting backward-looking interests is bound to have consequences for for-
ward-looking ones, but the rationale for protection must always look backward. One of the most important ways of keeping connected with one's past is raising one's children in keeping with that past. If such attempts are successful, the result will be cultural survival. Yet the rationale is not survival, any more than the rationale for tax deductions for religious charities is to keep religions alive. Instead, each allows people to connect themselves with the things they find most meaningful in their lives. The rationale for protecting their culture is the same even if parents fail to pass this culture on to their children. Although policies that enable people to pass on their culture are not mandatory, given the sort of good that continuity is, if the state acts to protect it for some, it must, on grounds of fairness, act to protect it for others also.\(^8\)

A state policy of protecting a thin sense of continuity with the past has three virtues. First, it leaves people space within which to find continuity with some imagined past and enables the state to officially endorse their doing so without in any way preventing them from radically reinterpreting or even rejecting their past. Second, in a multicultural society (as most of the world's states now are), it holds out the possibility of teaching people to value difference and diversity. This not only gives people more pasts with which to connect themselves and a richer context within which to find themselves but also provides a model for greater tolerance and civility at an individual level. Third, it enables people from diverse cultures to be integrated into the larger society without giving up their sense of continuity with their past.

Continuity differs from what I have called context because it fills a different need. Both are required to enable people to find value in their choices. But context creates the range of possible choices, while continuity makes it possible to find value in them. Even if the context is rich enough for me to choose to live a particular way, if the surrounding culture constantly tells me that I have chosen badly, I may have a hard time finding value in my conception of the good. Yet I may be so rooted in my culture that I cannot give it up. In such circumstances, the effect of such messages may be to disparage my sense of self-worth rather than to provide me with alternatives. Conversely, someone might have a tremendous sense of continuity with the past, recognized (perhaps condescendingly) by others, yet have no real context of choice left.

Although what I have called context and continuity are distinct, it is essential to see that they matter in the same way—to those currently alive who wish to make use of a culture. They do not provide a rationale for the state acting to ensure the future survival of a culture or any particular interpretation of it. This isn't to say that parents should be denied the wherewithal to pass traditions on to their children but simply that the state should not discriminate against those who choose not to pass these traditions on or who reject the ways of their ancestors. Although most people find value in relation to some understanding of the past, no particular understanding of the past has a claim on those who reject it. Continuity is im-
important to a person's ability to find value in the choices he or she has made. When choices conflict with the past, the past loses its claim because a culture can only provide a sense of continuity if its members see themselves as such.

Imagination and Sacrifice

I have so far pointed to two ways in which cultural membership is important to an individual's ability to be a member of a political society. I now want to suggest that whatever does the job of providing context and continuity is unsuitable to underwrite a liberal commitment to fairness. Although we come to political life thick with particularity, not all of those aspects matter, and not all that matter, matter in the same way. That I have some cultural attachments or other surely matters in political life, but which particular ones I have should not matter.

The idea that a commitment to fairness needs something like culture to underwrite it comes in at least three versions. The first is an empirical claim about motivation. The second is a conceptual claim about the conditions under which justice makes sense. The third is a claim about the nature of fairness. I examine them in turn.

Membership and Motivation

Cultural membership is sometimes offered as the solution to a problem about motivation. It is often suggested that without some further reason for citizens to care about the demands fairness makes on them, a liberal society will tend to disintegrate. In recent years, community has become increasingly popular as a candidate for the solution to this purported problem. Thus Charles Taylor suggests that community provides an alternative to the unrealistic liberal alternatives of either "moral high-mindedness or narrow self-interest." Instead, people will willingly make sacrifices for those with whom they share common projects.

The search for some way to motivate sacrifices seems to suppose that the demands of justice must somehow stand over against the individual's other motives or the settled mores of the culture. Once we accept this premise, it is hard to see how anything could qualify as a solution. Anything that could do the job would have to be both sufficiently robust on its own to motivate sacrifices and flexible enough to motivate the particular demands that liberalism hopes to make. It is not surprising that the standard examples of shared goals sufficient to motivate sacrifices have little to do with politics. Michael Sandel's example is mutual concern felt by members of a family; Charles Taylor's is a group of music lovers who bring the symphony orchestra to their suburb. These examples aren't just difficult to generalize. They face a more serious problem. Why would sharing a goal lead the
members of a group to make sacrifices in the interest of fairness among their members? Yet those are the sacrifices that liberalism demands and is putatively unable to motivate.

Yael Tamir has offered a version of this argument that offers nationality in place of other forms of community.11 Tamir talks less about motivating sacrifices than about making sense of political obligation. By viewing political obligations as a species of more general forms of associative obligations, Tamir hopes to use nationalism to make sense of the normative claim of a state as of a piece with the role of “social and political institutions as representing a particular culture and as carriers of the national identity.”12 The argument is interesting both because it is offered as an interpretation of liberalism and because nationality often means roughly the same thing to large groups of people. Historically it has served to motivate major sacrifices. Tamir gives the striking example of people learning, and in part making up, a new language—an enormous sacrifice when one is trying to find the right words.13

Inspiring though these sacrifices may be, I doubt that they can solve the supposed problem with liberalism. Liberalism doesn’t need a moral psychology to explain why people will or should find it reasonable to make sacrifices for national self-determination; it needs an account of why people should make sacrifices in the interest of fairness. Even if we all share a commitment to our independence or the preservation of our language, will that lead the fortunate among us to make sacrifices for the sake of the less fortunate? Perhaps it will, insofar as doing so will promote our national aspirations—the fortunate might willingly contribute to educating less fortunate children in the ways of “our” culture. But it isn’t clear that this would lead to economic redistribution or equality of opportunity unless either was perceived as aiding national goals. It is striking how one form of sacrifice—military service—does seem to derive considerable force from the idea of nation. Fighting to get rid of foreign domination requires a sharp sense of who “we” are and who “they” are. But however important these features of nationalism are for understanding political history and sociology, their relation to the more ordinary demands of fairness is far from obvious.14

In questioning the relevance of nation to the demands of justice, I don’t mean to deny that people who share a language and culture will usually have an easier time with the administrative demands of running a state than those who don’t. Nor do I mean to deny that (for example) people will usually have a harder time honoring the demands of fairness when interacting with others with whom they share a history of enmity. Such factors are plainly relevant to determining the viability of various political units.15 Goodwill and ease make any form of cooperation run more smoothly. For that matter, there is a clear meaning of the word “culture” in which different societies have different political cultures, and nothing I have said should be taken to suggest that political cultures are irrelevant to the readiness to make sacrifices for the sake of justice. But political culture is not the same as the sort of
thing that ordinarily provides context and continuity. I mean only to question the claim that readiness to make one sort of sacrifice tells us very much about readiness to make others.

Partiality

A variant of the motivational argument claims that community membership makes partiality toward its other members morally acceptable or even required. According to this reading, sacrifices—of whatever sort—for the sake of the other members of the community make moral as well as psychological sense in a way that the same sacrifices for outsiders purportedly don't. Thus Michael Walzer tells us that "distributive justice presupposes a bounded world within which distributions take place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves." This version of the argument may seem especially compelling when it comes to economic redistribution. Some might suppose that the demands of economic redistribution are only real, or especially pressing, within the boundaries of a state. According to this view, perhaps shared culture explains or justifies this sort of partiality.

There are serious problems with the significance of state boundaries to obligations of political morality. Yet it is difficult to see how cultural identification could solve them. If cultural membership is construed just as a matter of subjective attachment, redistributive obligations would cease if people cease to feel strongly about their conationalists. As such, the supposed rationale for partiality collapses into the motivational argument we have just considered. But if membership is thought of as unchosen, perhaps on the model of the biological family, the choice of culture as the basis of that obligation becomes obscure—even if we put to one side worries about the political processes that define it. Everyone associates with many different people on many different terms. Why not focus on geographical proximity or economic integration instead? Or, more significant, on obligations more directly connected to the justice of institutions? The idea that some obligations are unchosen but particular has considerable plausibility, but the content of those obligations is tied to the particular roles that generate them. It is far more difficult to see how sharing some feature with others could form the basis of an open-ended obligation to be partial to them. Here, too, we confront a shadow version of the motivational argument, with all of its problems. If cultural membership generates obligations, they are related to cultural membership, not to distributive fairness. One might more plausibly suppose that there are greater obligations to sustain just institutions or to work to create such institutions in settings in which they are feasible. By focusing on institutions, we might make some sense of the idea of partiality within them and thus of the liberal tendency to focus on the state as the locus of questions of justice. We can even put this point in terms of
culture, if by that we mean political culture, so long as we do not confuse it with
culture in the thicker sense that provides context and continuity.

The Demands of Fairness

In this section I look more carefully at the ways in which a liberal state
makes demands of its members in the interest of fairness. Many of the most press-
ing questions about fairness come out of the context within which a decision must
be (implicitly) made about who should bear various misfortunes.21 All societies
have practices that determine whose bad luck various things are. Consider some
answers implicit in contemporary practices. I don’t endorse all of these but men-
tion them to bring out the things those practices take for granted. Some misfort-
unes are thought to lie where they fall: if I slip while getting out of the shower,
that’s (typically) just my problem. Other sorts of misfortune turn out to belong to
someone other than the person they happened to: if you are careless and I am in-
jured as a result, the misfortune is yours, and so you have to repair my losses. Still
other types of misfortune are thought of as held in common: if I become seri-
ously ill (anywhere but in the United States), the medical costs of my loss are
borne by all.

In order to decide which sorts of bad luck fall into which category, a liberal
community needs views about a wide variety of questions, including questions
about the importance of various kinds of activities and the nature of various kinds
of losses. In each case, the community must have a view about how much people
can expect of each other. If I’m harmed because you get the job I want, that’s just
my problem; if I’m careful and you’re injured, that’s just your problem (unless I’m
doing something like using explosives or keeping wild animals). If you’re careless
and I’m injured, that’s your problem, unless I did something to expose myself to
danger. But it depends on how I exposed myself. Some things that might have so
exposed me, like going out at all even though I know I have an eggshell skull, don’t
make me bear the risk. Again, normally if I’m injured, I have a duty to mitigate the
damages, but if my religious beliefs prevent me from doing so, that’s your prob-
lem, not mine. In order to resolve any of these questions fairly, we need some un-
derstanding of how various goods matter and why. This isn’t to say that we must
decide which things we want to promote and set up an incentive structure accord-
ingly. Instead, we think of certain kinds of activities—walking down the street or
practicing one’s religion—as the kind of things that people have an important in-
terest in making up their own minds about.22 We cannot decide which activities
matter and how by considering how strongly people feel about them. Different
people feel different ways. Instead, we need to figure out how to allocate them
fairly. To do so, we need some view about how important various activities and
various sorts of injuries are.
In similar ways, we need some way of determining which losses are thought of as held in common. Earthquake victims may get compensation, but those who were not fortunate enough to have anything to lose in the earthquake may get nothing. Background misfortunes and sudden losses are often treated differently. Whether or not this is fair depends in part on how unfair the background misfortunes themselves are. Like questions about how bad luck is to be borne between particular people, these questions turn on views about the importance of various activities and the seriousness of particular losses. Protecting cultural membership, as a source both of context and of continuity, can be understood in this light as a decision to treat the misfortune of having an endangered culture as something to be held in common.

Examples like these show ways in which good and bad fortune are “distributed” by any political order and the ways in which that distribution imposes costs on various people. A liberal state needs to answer such questions in order to know which “sacrifices” to demand of whom. The only setting in which it can coherently make such demands is a special sort of community. This is not a point about the psychology of sacrifice. The liberal commitment to treating people as equals means that everyone is held to the same standards or presumed to have an interest in a reasonable share of the same thing, regardless of individual departures from them. You may not care about religious freedom; I may need to concentrate much harder on driving carefully than you do. Fairness requires both that we be treated equally (which requires a common currency of equality) and that all be able in some sense to share the perspective from which such decisions are made, even if their individual concerns depart from the public perspective. As a result, that measure cannot depend on the fact that any particular person understands him- or herself in a particular way or in terms of a particular culture. Of course, any such measure will overlap the views of some more than the views of others. But that is an unavoidable feature of any impersonal measure, not a sign of unfairness.23 Those who hold different views are not entitled to opt out. Any such perspective cannot make one person’s rejection of it the measure of another’s liberty or security.

In calling these things “decisions” and talking about “sharing a perspective,” I’m oversimplifying. For one thing, the decisions are seldom made explicitly and the perspective is even less frequently explicitly adopted. And there are better and worse ways of dealing with various misfortunes, which concepts of fairness go some way toward addressing. If fairness requires that people bear the costs their activities impose upon others, then distributive shares must themselves be fair in order to avoid endlessly remeasuring (and reproducing) past inequalities. Conversely, the value of distributive shares depends in part on the ways in which particular misfortunes are allocated. But views about the importance of various goods are needed to give content to ideas of fairness. For present purposes, the point is that any state requires some sacrifices of its members, at least against some alter-
native benchmark that they can imagine. Whether those sacrifices make sense depends on the members' ability to see these sacrifices as fair in light of views about the importance of various goods. In order to make demands at all, liberalism needs a content through which to express its egalitarian aspirations. It doesn't just need to motivate people to make sacrifices; it needs some currency in which to measure costs across persons in order for talk about sacrifices being required by fairness to make any sense at all.

It's important to recognize that the demands made when bad luck is held in common are not necessarily greater than those made when it turns out to be the bad luck of someone in particular. There is no natural baseline against which such demands can be measured in the abstract. Just because I injured myself rather than being injured by somebody else, or you were careful and I got hurt anyway, or I was momentarily distracted and you got hurt, I may end up very badly off. Were various misfortunes treated differently, I might have avoided those burdens. These, too, are among the "burdens" that any state places on its members. Of course, one might be fortunate enough to go through life escaping such demands, and they aren't faced day in and day out in the way that the demands of redistribution are by those who might be materially better off without them. Still, although adjudicative demands may not involve a large-scale principle of sharing, they involve no less by way of demands.

The shared perspective from which misfortunes are distributed provides the sort of community that is prerequisite for fairness. If we share such a perspective, the claims that the state makes against us will seem reasonable. Ways of allocating misfortune provide a thin form of community in that its members will identify with their fellow citizens and perhaps locate its practices within a longer time horizon. Indeed, some measure of such attachments is probably required if the demands of justice are not experienced as utterly foreign and arbitrary. But such a civic culture is different from the sort of substantive historical culture that provides a thick context of choice or continuity with one's ancestors.

I will use a fine-grained example of a Canadian criminal case to illustrate this point. Detailed cases often show what is really at stake in profound disagreements. Large portions of criminal law are so obvious to everyone, apart from any other views they might have, that the other commitments on which it rests are easy to overlook. When we look at the ways in which conduct that is otherwise wrongful can be excused, some of those presuppositions begin to emerge. And while criminal law isn't obviously about deciding whose bad luck things are, it is part of a more general account of how much we can reasonably demand of each other, and it must often come to terms with incidents that nobody wanted to happen. One place where this is particularly apparent is in the defense of provocation, which reduces a homicide from murder to manslaughter. The law of provocation doesn't just ask whether or not someone lost his or her temper but whether a reasonable person would have lost his or her temper in the same circumstances. In so asking,
it is apportioning punishment to the amount of self-control people can expect of each other. The point of imposing a standard of reasonableness is that the fact that someone may have perceived something as an insult doesn’t automatically excuse it.

Consider the case of *Regina v. Ly.* Ly, a Vietnamese immigrant to Canada, killed his girlfriend when she arrived home late. He offered the defense of provocation, claiming that he took her late arrival as evidence of infidelity. Ly and other members of Vancouver’s Vietnamese community testified that in their culture infidelity is a grievous insult to a man’s pride and should serve to excuse his loss of self-control. Ly’s argument was that in deciding whether or not a reasonable person would have been provoked in like circumstances, the individual’s culture should be taken into account.

In cases of provocation, the law always presumes that the victim somehow did not deserve to die. The law asks whether or not a reasonable person would have lost self-control and whether the accused did, in fact, lose self-control. Ly’s defense turned on the claim that since he was a member of a group that was more likely to lose self-control in such circumstances, less self-control should be required of him. If the aim of the law were to punish only people who didn’t lose self-control, we could see the force of Ly’s claim. But if that were the law’s aim, then Ly’s cultural affiliation would be beside the point because it at best provides evidence of whether or not he lost self-control and thus of whether he was subjectively guilty.

The court rejected the argument on the grounds that the law must protect people equally from each other and cannot make allowances for a person’s culture any more than it can for a person’s unusually short temper or deeply felt belief that he or she had been insulted, whatever the source of the belief. It especially cannot make allowances for a man losing his temper because he regards a woman as his property, however deeply ingrained such a view may be in some culture.

*Ly* illustrates two points of interest to a theory of liberal community. The first is that when we are faced with a dispute of this sort, a person’s culture is the wrong place to look. We need to appeal to something else to do the sorting, so that the mere fact that there is an inherited culture is itself not supplying the content to the required political values. Political values provide an index of fairness between people, so the mere fact that someone feels strongly about something does not give that thing a claim against others. Fairness cannot be dictated by what an individual person or his or her culture of origin thinks fair. In rejecting Ly’s claim that his culture should be taken into account, the court noted that if the provocation had taken the form of a racial slur, Ly’s culture would be relevant. That is, culture matters in some ways—everyone has a legitimate, though not unlimited, interest in being free of racial invectives. The interest isn’t unlimited because it provides only a limited excuse when it leads to the death of another. Being free of racial invective
is a candidate for a legally protected interest in a way that one's general interest in acting in keeping with one's culture is not.  

Contrast this with the other two roles of cultural membership we've considered. When culture is thought of either as a context of choice or as a way of locating oneself in a longer history, the mere fact that some person finds him- or herself with that culture gives it whatever role it has within that person's life. I may come to reject the culture that provided me with the resources to even think about rejecting it, but its ability to provide me with a context of choice depends on my having once identified with it. By contrast, subjective identification with culture cannot be the basis for fixing the limits of the responsibilities of one person to others.

The second point is that the example is in no way idiosyncratic of the fact that Ly was Vietnamese or a member of a cultural minority. In numerous English cases, for example, men entered similar defenses (often successfully) without explicitly mentioning their culture because they could take it for granted. In those cases, culture was used to resolve issues, with results that were no more acceptable than in Ly.

The example may seem heavy-handed. Why condemn all cultures just because some have unpalatable aspects? But the point goes deeper. Caring deeply about something is necessary to provide both a context of choice and a time horizon, and when the right sort of thing is the object of that attachment, it is sufficient to provide both. In deciding what is fair between parties, in contrast, the mere fact that someone cares is not sufficient to decide what is fair because there is always a question about whether it is fair to others to ask that they bear the costs of that person's subjective commitment. The question arises in exactly the same way whether it is one person or the entire society that will otherwise bear the costs. The only way to answer is with an index of primary goods—a catalog of which interests count as fundamental in measuring costs across persons. Cultural identification, both as a context of choice and as a time horizon, belongs in the index of goods through which we determine how much we can reasonably ask of each other. But it is a part of that index, one important good among many, not the basis for making the list as a whole. Holding Ly to the same standards of self-control to which we hold others deprives him of neither a time horizon nor a context of choice. Although saying that the state's interest in preserving life must take priority over a culture's understanding of itself may be interpreted by some members of the culture as a rejection of that culture's worth, the importance of that sort of recognition is only one good among many. Because fairness depends on measuring costs across persons, allowing each person to dictate the terms by which the costs of his or her choices to others are measured is not a coherent element of it. In the same way, an individual cannot be allowed to use the standards of his or her culture to measure his or her responsibilities to others. From the point of view of fairness, cultural membership is one interest among others that must be fairly pro-
tected for all, not utilized as the basis for evaluating in each case what someone owes to others.

The index of primary goods in light of which such decisions are made should be thought of as neither expressing the views of a particular culture nor somehow transcending all culture. A political culture that decides where bad luck is to fall can be conceptually independent of the culture that provides context and continuity. Of course its content will be causally dependent on the cultures of the people making it up (in both senses). But nothing will derive its claim to importance from the fact that it is part of the culture. The political culture is an attempt to be fair and thus can't allow any inherited culture as such to be the measure of anyone's liberty or security.

Consider another example to see how cultural attachments might be more appropriately accommodated. One summer afternoon, Ruth Friedman and Jack Katz were on their way down a ski lift in the Catskills. The attendants turned off the lift and went home for the day, stranding Friedman and Katz. Hours passed, and the sun began to set. Friedman, an Orthodox Jew, became increasingly concerned because she believed that she was forbidden to be alone with a man other than a family member after dark. She jumped from the ski lift, injuring herself, and successfully sued the State of New York, the operator of the lift.³⁰ Needless to say, the court did not find for Friedman on the grounds that jumping from ski lifts is the sort of activity that is always acceptable. Instead, it held that it is reasonable to give priority to one's religious beliefs rather than to mitigating damages brought about by another's wrongdoing. The principle has its limits because a court would probably have been less ready to allow Friedman to avoid liability had her religious beliefs resulted in the injury of another.

Notice that this view of the importance of religion doesn't depend on a shared religion. In fact, most religions presumably wouldn't think of their practices in terms of their costs to others. The determination of when religion is and isn't a justification for various things is for political purposes only. It also doesn't depend for its rationale on the fact that liberal cultures have a history of religious freedom. Although historical experience has shaped what we find plausible, no appeal to a particular tradition provides a unique rationale for looking at religion this way. Instead, one can endorse the view of the role of religion coming from any number of different religious or nonreligious traditions. In much the same way, one can recognize the importance of culture (or any of the other goods) coming from a wide variety of cultures. Coming from different cultures may even mean recognizing it for different reasons, in what John Rawls characterizes as an overlapping consensus.³¹ Although inherited cultures may lead some people to affirm such a view (and the fact that the state leaves room for the affirmation of particular cultural practices may lead to greater allegiance to it), established nationality may or may not do the job. At least as important, the overlapping view of justice may inform the historical interpretation people make of their particular cultures.
Conclusion

A liberal community makes fairness its central political value, through which views about various goods are expressed. But fairness is a good for politics rather than for all of life; when we locate its centrality within political life, the role of the state is as an agency of fairness. But the state is the expression not of what really matters but of what is fair. Liberalism's liberating insight is that "who we really are" is of limited importance to questions of the legitimate use of state coercion. Politics at its best should make it possible for institutions to be fair toward people who may disagree about what matters most in life. As a result, political membership must be understood in terms of fairness rather than in terms of history or culture. This needn't stand in the way of people acting to preserve their cultures (even with state aid in certain circumstances), but we may at least hope that it precludes denying rights of citizenship on the basis of culture or history.  

NOTES

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3. Anderson, Imagined Communities.


5. How often does this happen? Kymlicka's example of Canada's aboriginal peoples may be misleading because the history of racism, discrimination, and unsuccessful attempts at forced assimilation against them pretty much precludes their using mainstream Canadian culture as an alternative context. For examples, see Geoffrey York, The Dispossessed: Life and Death in Native Canada (London: Vintage, 1990). In other cases, a surrounding culture might provide a context of choice over a period of several generations.

6. Often the only way to protect a culture is to transfer material resources to members of the culture so that they don't exhaust their other resources in attempting to protect their culture. See Will Kymlicka, Liberalism, Community, and Culture (Oxford: Oxford University Press, 1989), esp. chap. 9.

7. For a discussion of this point, see Amelie Rorty and David Wong, "Aspects of Identity

8. I postpone to another occasion the question of policies appropriate to doing so.


10. Sandel's more recent suggestion is easier to generalize but seeks to build community out of overlapping goals rather than use community to motivate them. President Clinton is reported to have taken notes furiously when Sandel suggested that an emphasis on making the streets safe from crime might bring Americans together as a community (Sidney Blumenthal, "The Education of a President," *New Yorker*, January 24, 1994, p. 41).


12. Ibid., p. 74.

13. Ibid., p. 88.

14. Questions about how much sacrifice can be called forth by various affiliations and memberships turn on empirical issues about which philosophers are notoriously lacking in expertise. The psychology of perceived gains and losses is itself at best poorly understood. To mention one example, most people apparently regard a tax refund as some sort of windfall, even though in economic terms the refund plainly represents a recovery from a loss. One's sense of what sort of person one is plainly figures in such evaluations—many people would pay someone else to have some domestic chore done but would not consider doing the same chore for someone else, even for a larger sum of money, because they don't wish to think of themselves as the sort of person who would do such things for money. Such examples make me wary of speculating about what will be perceived as a loss and what as a gain and of what sacrifices are seen as legitimate in light of particular memberships. People are plainly willing to give things up if the demands seem fair, but just what makes things seem fair is murky at best.


17. This seems to be close to Tamir's position (*Liberal Nationalism*, p. 139).

18. This question is explored in Jeff McMahan, "The Limits of National Partiality," paper presented at the Conference on the Ethics of Nationalism, University of Illinois at Urbana-Champaign, April 1994.

19. See the excellent discussions of this point by Michael Hardimon, "Role Obligations," *Journal of Philosophy* 91, no. 7 (July 1994): 337.

20. These remarks are by their very nature tentative, as I am not firmly convinced that there is sense to be made in this area. Compare Ronald Dworkin's claim that a liberal can be integrated into his or her community in the sense that how well or badly his or her life goes will in part depend on the justice of the community. Dworkin points out that an "integrated" community is constituted by the attitudes and practices that create the community as a collective agent. As such, the communal concerns with which people properly identify are those tied to those attitudes and practices rather than those that extend amorphously to all members. Although Dworkin doesn't focus on culture, his argument points to the same conclusion as mine: institutions organized around justice make the sacrifices demanded by


22. That is, we treat them somewhat like the way John Rawls advocates treating “primary goods,” although the index of such goods may be indefinitely long. See A Theory of Justice (Cambridge, Mass.: Harvard University Press, 1990).

23. Some readers of earlier versions of this essay have suggested that those whose views did not prevail in determining what costs were important and which should be borne by whom were being treated unfairly. Such an objection misunderstands the role of interpersonal measures in making fairness possible. Complaining that such treatment is unfair is no different from complaining that those whose views about fairness do not prevail are being treated unfairly. The latter complaint slides directly into incoherence for modifying practices so as to treat those people fairly would require treating still others unfairly. A view of fairness that allows one person’s view to determine the legitimate claims of others is no view of fairness at all.


25. The details of provocation vary in different common-law jurisdictions. For example, English law asks whether a reasonable person who lost self-control would have done the act in question. For discussion, see Jeremy Horder, Provocation and Responsibility (Oxford: Clarendon, 1992).

26. So, too, is being able to participate in consensual activities that would otherwise be classified as minor assaults. See the discussion of Regina v. Abesanya in Bhikhu Parekh, “British Citizenship and Cultural Difference,” in Citizenship, ed. Geoff Andrews (London: Lawrence and Wishart, 1991). Abesanya was a Nigerian mother who cut the cheeks of her nine- and fourteen-year-old sons in a ceremony. Abesanya was granted an absolute discharge in part because the children had been willing parties and in part because the ceremony was unlikely to leave permanent marks. Cultural sensitivity allowed the court to treat what at first appeared as a brutal practice no differently than it would treat ear piercing.

27. Although such communities typically need to be imagined together to be imagined at all, the individual’s use of that culture depends on his or her taking it seriously.

28. A similar point is made by Samuel Scheffler in his discussion of what he calls “the distributive objection” to associative obligations. Scheffler raises this as one objection to all associative obligations. I am making the more limited point that associative obligations can only be given a political role in circumstances in which all can be supposed to benefit from parallel obligations. See Scheffler, “Families, Nations, and Strangers,” Lindley Lecture, University of Kansas, 1994.


30. Friedman almost certainly had her Jewish law wrong, as all rules contain exceptions to allow for protection against serious danger. However, the court accepted the testimony of her expert witness, a rabbi who had known her since childhood. Friedman v. New York, 282


32. If fairness is a central value, self-rule must always be secondary. I conclude this overly abstract and academic discussion with a more concrete example to make this point. In debates over the last two failed Canadian constitutional accords, a central question was whether self-government for minority groups should be subject to the “notwithstanding” clause of the *Charter of Rights and Freedoms*, which allows governments to override Supreme Court rulings that legislation violates the charter. Part of the issue was fueled by distrust on both sides. But even if we suppose that the “notwithstanding” clause would never be used in a way that violated fundamental rights and thus that the issue would make little practical difference, there was a deep symbolic question as well. Is self-rule subject to the demands of equality, or does equality get its claim from being chosen by a self-ruling people? This very same question arises about cultural belonging. It carries the weight it does because of fairness, not vice versa.