


1993

## Whose Loyalties?

Christina B. Whitman

*University of Michigan Law School, cwhitman@umich.edu*

Follow this and additional works at: <http://repository.law.umich.edu/reviews>

 Part of the [Constitutional Law Commons](#), [Law and Philosophy Commons](#), and the [Public Law and Legal Theory Commons](#)

---

### Recommended Citation

Whitman, Christina B. "Whose Loyalties?" Review of Loyalty: An Essay on the Morality of Relationships, by G. P. Fletcher. Mich. L. Rev. 91 (1993): 1266-77.

This Review is brought to you for free and open access by the Faculty Scholarship at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Reviews by an authorized administrator of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

# WHOSE LOYALTIES?

*Christina Whitman\**

LOYALTY: AN ESSAY ON THE MORALITY OF RELATIONSHIPS. By George P. Fletcher. New York: Oxford University Press. 1993. Pp. xii, 211. \$21.

It is disconcerting to open a book subtitled *An Essay on the Morality of Relationships* and find that the two case studies that most interest the author are reciting the Pledge of Allegiance in public schools and the criminalization of flag burning. Although George Fletcher<sup>1</sup> begins to make his case for giving moral priority to loyalties by referring to the impulse to save one's mother from a burning house (p. 12), he is more concerned with the ties that bind individuals to groups than with the ethics of relationships between individuals. The loyalties to which Fletcher would give "moral importance" (p. ix) are those among people who share a common culture (p. xi). Yet, as is apparent in his opening reference to the imperiled mother, Fletcher wishes to ground those more far-reaching loyalties in the feelings inspired by family intimacy. The organization of the book assumes that the emotions felt in these two quite different contexts are analogous. In drawing out that analogy, Fletcher assumes that his own rather idiosyncratic views about family and state are widely shared. This results in a very confusing book, one that often leaves its conclusions obscure because it proceeds by assertion and assumption more than argument.

In the introduction, Fletcher states that *Loyalty* represents a new direction in his thinking. His previous philosophical work was concerned with "the Kantian theory of law and morality" (p. ix). Conversations during the mid-1980s with a friend who is a rabbi led Fletcher to believe that any ethical theory built upon impartiality is seriously limited. In this book he argues that the dominance of "impartial ethics," whether Kantian or utilitarian, has done great damage by undercutting the sense of obligation that individuals ought to feel toward groups. Our political life is impoverished, he claims, because impartial ethics encourage individuals to seek personal solutions, such as exiting a difficult situation, rather than to resolve problems through group action.<sup>2</sup>

---

\* Professor of Law, University of Michigan. A.B. 1968, M.A. 1970, J.D. 1974, Michigan. — Ed.

1. Beekman Professor of Law, Columbia University.

2. Fletcher is not only concerned about the tendency of people to look for individual solutions, such as exit from institutions, but also about the tendency to adopt the values of the marketplace in which loyalties are shifted to the highest bidders. In reference to his own profession,

Fletcher's main critique of impartial ethics, however, is that they are unsuited to the real world. His argument is not entirely clear. At one point he seems to claim that impartial ethics do not speak to the problems of human interaction. He argues, for example, that impartial ethics have the most "to teach the solitary individual, living in isolation from others" (p. 14). But he also seems to understand that the force of these ethical systems, their very impartiality, lies in the notion "that respecting the distinguishing feature of one's own existence . . . is no less important than respecting these qualities in others" (p. 14) — an odd ethical stance for someone who has no dealings with other human beings.

Fletcher offers a second, more coherent, critique: impartial ethical systems, by insisting on a disinterested perspective, require people to act like utopian figures in a perfect world, rather than historically situated human beings. Impartiality requires us to ignore the ties we inevitably have to other people. Fletcher proposes instead that ethics be rooted in the real affiliations people have with each other in the real world. Such an approach would, he claims, respect the "natural limits of sympathy" between people (p. 21). Although Fletcher repeatedly asserts, again somewhat incoherently, that "relationships [are] *logically* prior to the individual" (p. 15; emphasis added), what he apparently intends to stress is not logic, but the implications of the view that personal identity is socially constructed. Loyalty is defined as "an obligation implied in every person's sense of being historically rooted in a set of defining familial, institutional, and national relationships" (p. 21). Fletcher argues that our most powerful moral obligations are owed to those "groups and individuals that have entered into our sense of who we are" (p. 16). Responding to those obligations leads us to treat others appropriately and, even more importantly, becomes a matter of honoring ourselves by acknowledging the unique sources of our identity (pp. 16, 87).

In general outline, much in Fletcher's argument is attractive. But his challenge to impartial ethical theories benefits from his cursory treatment of the theories he rejects. Although he cites the works of other theorists such as Michael Walzer, Fletcher's treatment of their work is remarkably superficial.<sup>3</sup> Moreover, he fails to discuss the ways in which those systems that he categorizes as "impartial ethics" have been developed to respond to the claims of affiliation. In fact, he seems completely unaware of the existence of arguments that these systems can accommodate partiality.<sup>4</sup>

---

Fletcher talks about academics who "have become like baseball stars, willing to play for the highest bidder." P. 4. Fletcher himself has been a member of the permanent faculty of four schools and visited at five more. See ASSOCIATION OF AM. LAW SCH., THE AALS DIRECTORY OF LAW TEACHERS, 1992-93, at 368 (1992).

3. *E.g.*, pp. 18-20.

4. For example, within the deontological tradition, see THOMAS NAGLE, THE VIEW FROM

The core of Fletcher's work is not his critique of impartial alternatives, but his development of an explicitly and predominantly partial approach. The persuasiveness of this approach turns on whether his concept of loyalty helps us think fruitfully about moral questions. In what follows, I will explore that concept — first, in light of Fletcher's effort to distinguish between two sorts of personal loyalties; second, in the context of his extremely brief foray into the ethics of marriage and motherhood; and finally, in an extended discussion of his analysis of loyalty and the state. Fletcher turns out to have a peculiarly narrow view of which loyalties are worth protecting. The book's basic argument — that ethics ought to accommodate personal affiliations — is developed through examples that reflect the author's own biases in ways that he cannot have intended, for the end result is a powerful demonstration of the limitations of partial thinking.

To begin with, Fletcher's description of the "dimensions of loyalty" is deeply gendered. When he starts to explore the moral quality of loyalty, Fletcher begins with love. He draws examples from literature rather than life, and the choices he makes focus almost exclusively on the loyalty of women to men: the love of Cordelia for Lear, Solveig for Peer Gynt, Antigone for Polyneices, Penelope for Ulysses. With the exception of Antigone, who is motivated at least in part by principle, these women represent a loyalty that Fletcher describes as simple: "better suited for the theater than for subtle and intricate psychological novels" (p. 26); "an emotional, almost instinctive attachment, untempered by moral reflection about the right thing to do" (p. 31); "the nonrational embracing of the other" (p. 31) that takes the form of "selfless devotion to others" or "patient[] waiting" (p. 32). Such devotion gives significance to the lives of the women, though Fletcher sees in it no larger importance. Fletcher is not unselfconscious about this: he is aware that he is describing a selfless devotion attributed almost exclusively to women (p. 31). But he completely ignores that these are women portrayed in fiction by male authors. He accepts a romanticized, belittling picture of the love of women and is oblivious to the way in which male expectations of female loyalty can constrain women, limiting them to passivity in the nonfictional world.

Fletcher makes no moral claims for this "women's loyalty." In fact, he explicitly denies its moral force: for the most part, "[t]here is no claim of truth or divine command that . . . justifies the action. There is no point to the loyalty except the loving attachment to the other" (p. 32). These women are not acting ethically but "naturally," instinctively. In contrast, Fletcher points to a higher form of loyalty, "notable in political and corporate life, [which] adds a factor of ideological commitment to the emotion of attachment" (p. 33). This sort

---

NOWHERE (1986), and, within the consequentialist tradition, see Peter Railton's excellent article, *Alienation, Consequentialism, and the Demands of Morality*, 13 PHIL. & PUB. AFF. 134 (1984).

of loyalty can be found in the bonds between man and man. The paradigm is described in terms that echo military solidarity: it includes relationships of hierarchy and obedience, such as that between foot soldiers and generals, and relationships of reciprocity, among, for example, the members of a combat unit (p. 33). Adopting a deep-rooted gender stereotype, Fletcher describes these loyalties, in contrast to the love of women, as based on will and reason as well as emotion. They grow out of commitment to a cause.

This initial effort to think through the different forms that loyalty might take draws too strong a distinction between familial love and group solidarity. Surely moral choices and emotions play a role in both affiliations. Fletcher's focus on women waiting for men leaves out too much. Obligations based on reason and will, as well as affection, arise between husbands and wives, and between parents and children, and unthinking, emotional attachments to groups are not unknown. The dichotomy between love and solidarity is also at odds with Fletcher's overall effort, for he apparently hopes to argue that familial and group loyalties are similar in ways that call for a similar response from the state: "I broaden the notion of the private sphere, secure against state interference, to include relationships expressing personal and religious loyalties" (p. 77).

Fletcher hopes to draw on his intuition that we understand and respect the instinct to put one's family first in arguing that we should understand and respect parallel claims of loyalty to larger groups. In describing the demands of loyalty, he mixes examples from family life with questions of patriotism and treason. Yet Fletcher pays very little attention to the actual merits of the claims of familial obligation. After the initial, definitional chapters there is only one page on marital fidelity and a longer section, almost five pages, on surrogate mothering. Perhaps Fletcher considers extended analysis unnecessary, for he focuses again on the loyalty of women, which he has categorized as the proper subject of nature rather than reason and morality. The argument misfires because he has a romanticized view of female devotion.

Loyalty in marriage is reduced, for Fletcher, to sexual fidelity, and he is primarily interested in why women have begun to demand fidelity from men.<sup>5</sup> Fletcher never mentions the possibility that these demands are based on the economic and social dependence of women on men. Dependence of this sort is not new, so it does not explain what Fletcher sees as the recent increase in demands of fidelity; perhaps women have begun to achieve just enough autonomy to voice a demand that they have felt, but not articulated, for a long time. Fletcher

---

5. The historical male expectation of fidelity from women is dismissed as less interesting and attributed to "the male interest in securing their blood line and being assured of a heir of their body." P. 76. Once again loyalty of women to men is pretty much taken for granted. "Of greater concern" is loyalty demanded by women from men. P. 76.

also thinks that, even in the age of AIDS, fears of sexual disease are not an adequate explanation “for the pain that lovers feel upon learning that their partners share sexual intimacy with others” (p. 76). Sex, Fletcher suggests, is valued as a ritual of loyalty. It is a “confirmation of the underlying relationship of emotional devotion. . . . a rite of pleasure that overcomes each partner’s recurrent doubts whether the other is fully there” (p. 76). This assumes too easily that sex is unproblematically pleasurable and that it lies at the core of marriage. What sort of relationship does sex ritually enact? Does marital loyalty demand something more than sexual fidelity? Why is sex rather than attention to the whole personality the best indication of “whether the other is fully there”? Does Fletcher mean to suggest that this “ritualist confirmation” is what sex means for women, but not for men? Why do people (for example, battered women) who do not derive “profound pleasure” from sex with their partners still feel betrayed by adultery?

Fletcher also sees maternal devotion as self-evident and unproblematic. He cites the enforcement of surrogacy contracts as an example of a legal approach that is insensitive to the demands of loyalty (pp. 82-87). The key mistake in the *Baby M* case, he thinks, was failing to tell the hospital that Mary Beth Whitehead, the surrogate mother, should not be allowed any contact with her child. Once she held the newborn baby, a relationship of loyalty between mother and child was created that could not be disrupted without “consequences disastrous to [Mrs. Whitehead’s] self-esteem” (p. 87). This characterization of the problem removes Mrs. Whitehead as a rational actor in the situation. Once the mother is allowed to hold the baby, her reaction is inevitable. Fletcher acknowledges that this bond between mother and child has ethical implications; he describes it as giving rise to a sense of “duty” to care for the child. Once more, however, he attributes the loyalty of women to nature rather than reason: he describes the duty to keep the child and care for it as flowing out of “the experiential connection of carrying the child to term and nurturing it after birth” (p. 86). Would there be no duty if the mother had not held the child?

Fletcher offers no indication that Mrs. Whitehead’s decision might be, even in part, the sort that is appropriately the subject of ethical reflection. Is it obvious that a mother who chooses to give up a child is acting disloyally toward that child? Might there not be some situations in which a mother would feel that the best way to care for the child was to allow it to be raised in a more secure home? Wasn’t Mrs. Whitehead, in fleeing with the child after taking her from the Sterns, motivated at least as much by a sense of entitlement as by a sense of obligation? How does the language of “loyalty” help us to resolve these questions?

Fletcher makes the term do too much and not enough. “Loyalty”

covers affection, fidelity, obedience, responsibility, affiliation, and self-esteem. But he does not use the concept to answer questions about personal obligation with any precision. Fletcher is not really concerned with those questions. He is more interested in the role that loyalty should play in decisions made by the state. He argues, first, that the state should respect certain relationships of loyalty and, second, that the state can use legal sanctions to create loyalty among its citizens.

Both arguments draw on the analogy to the natural, unwilling loyalty of women to men and mothers to children. The love of women bears a resemblance to higher connections, based on reason as well as emotion, that bind members of some groups to each other and citizens to their state. The inevitability and strength of loyalty attachments, exemplified in the love of women which has the force of nature, means that the state simply cannot ignore such ties without doing great psychic damage to its citizens. Moreover, the nonrational nature of these bonds, exemplified by their creation and affirmation through the rituals of sex and nursing, indicates that the state may be able to promote loyalty to itself by building devotion through its own rituals of patriotism.

When addressing the first question, concerning state respect for personal loyalties, Fletcher rejects the view that an individual's assertion of a claim based on loyalty is sufficient to trigger special deference. Although he suggests that skepticism about assertions of loyalty is needed to weed out claims made in bad faith, Fletcher also seems to be motivated by his belief that not all loyalties are, in fact, equally worthy of protection. Fletcher's discussion of family relationships has already suggested this narrowness of focus, but the extent to which his biases limit his perspective first becomes clear in his discussion of the Free Exercise Clause of the Constitution. Fletcher argues that the best account of the deferential approach to religion embodied in this clause emphasizes loyalty: the Free Exercise Clause is an expression of respect for the loyalty of the individual to a transcendental authority (p. 95). However, "for a claim of higher loyalty to be plausible, it must be embedded in a community practice." There must be "some objective manifestation of what the higher power demands," so loyalty to God "becomes interwoven with loyalty to a community and fidelity to a tradition" (p. 95). This approach is insensitive to the Protestant Christian tradition, which stresses the individual's personal relationship with God, and it raises the possibility that genuine religious loyalties will be ignored because they are grounded in traditions that Fletcher does not recognize. For example, he makes much of the case of a Native American who refused to obtain a Social Security number for his child because his tribal chief said it would rob the child of her

spirit.<sup>6</sup> In the context of the particular case, the claim of religious authority may have been implausible, but Fletcher rejects any possibility that “the opinion of one chief, as interpreted by one man” (p. 96) could, without more, make out a claim of religious loyalty; he finds this argument absurd even if made sincerely. Fletcher demands something with a stronger “rooting in [the] community” (p. 97). He ignores the possibility that there is a strong community tradition of relying on interpretations of “the opinion of one chief.” In fact, Fletcher seems to feel truly comfortable only with religious claims that have a textual basis, claims that are grounded in “a biblical passage or its equivalent” (p. 99). Loyalties without such a pedigree are based not on religion but on “independently motivated customs and convictions” (p. 99).

Fletcher’s insistence on an historical pedigree is not simply a matter of constitutional interpretation. Within his general ethical structure, he means to recognize only those loyalties grounded in long-standing historical traditions.<sup>7</sup> This is due in part to his fear that less firmly rooted loyalties could be claimed too easily, but it is also a consequence of the confused connection he draws between the history of individuals and the history of groups. Fletcher’s focus on loyalties derives from his recognition that we are not isolated individuals but humans created by affiliations with other humans. Each of us has, in Fletcher’s words, a “historical self.” Acknowledging our roots is a way of acknowledging ourselves; so much is unremarkable. But Fletcher then appears to assume that only roots to distinct and identifiable social groups with established histories count (pp. 16-18). The “historical self” seems, to him, to be constituted by historical groups rather than by the individual’s personal history. Loyalties that are not historically based are insignificant to self-identity.

How far Fletcher means to push this distinction among loyalties is unclear. It leads him to be ambivalent, for example, about the need to respect affiliations acquired through choice rather than birth. Fletcher acknowledges that not every switch in allegiance is a betrayal, but he does not tell us how we can distinguish the breach of an obligation of loyalty from the acquisition of a new affiliation.<sup>8</sup> When it comes to occupational affiliations, Fletcher gives mixed signals. He dismisses lawyers’ claims that they owe a professional loyalty to their clients on

---

6. See *Bowen v. Roy*, 476 U.S. 693 (1986). The Social Security number was required as part of the process of applying for welfare benefits.

7. See, e.g., pp. 137, 155.

8. He is rather obtuse about one particular example of cultural redefinition. Fletcher points to the German constitutional decision that invalidated a liberal abortion law under a provision granting “everyone a right to life” as representing a judicial effort to identify the court “with what it took to be a humanist, life-affirming current in German culture.” P. 65. Yet the decision could just as well represent the opposite: an effort by the German court to distance itself from the brutal, life-denying experience of the Holocaust in German history.



the grounds that these obligations “derive solely from contract, from voluntary commitments, not from an historical self” (p. 22). Yet he praises an academic lawyer, Randall Kennedy, for placing his professional loyalty to “an all-encompassing academic and intellectual community” above his ties to his ethnic group of African Americans (p. 160).

Oddly, in a book arguing that law and morals must often defer to personal loyalties, particularly those loyalties rooted in birth and biology, Fletcher reserves his harshest criticism for advocates of “multiculturalism.” He defines “multiculturalism” as the claim that ethnic or racial identity “dominates all the others,” and he is willing to grant the justice of this claim only to those who live in places of extreme racial division where “the circles of religion, language, and historical consciousness tend to converge” (p. 155). The claim is inappropriate, he thinks, when made by those who live in a “pluralistic” country like the United States. If “multiculturalism” asserts “that we . . . are no more than distinct nations living side by side” (p. 156), then Fletcher may appropriately mistrust it as a general description of life throughout the United States. But the claim may be accurate for certain sections of the nation, and race can surely be personality-defining in our culture. Fletcher’s resistance to that idea seems, once more, to come down to an unnecessarily narrow definition of which groups can be properly regarded as the subject of loyalty. He makes no argument for his assertion that racial identification is of critical importance to personal identity only when “religion, language, and historical consciousness . . . converge,” and he simultaneously seems oblivious to the ways in which precisely that sort of convergence can be found among African Americans and other minority groups in the United States.

Fletcher’s discussion of the case of Randall Kennedy clearly demonstrates that he is not simply rejecting an “enclave” version of racial identity. In fact, he is unsympathetic to a wide range of appeals for ethnic group representation in the intellectual and educational life of our culture. Professor Kennedy became the subject of controversy when he published an article in the *Harvard Law Review* critical of the claim that legal scholarship by authors from a variety of racial and ethnic backgrounds is intrinsically valuable.<sup>9</sup> The response to this article from other African-American law professors interests Fletcher because he sees it as charging Kennedy with disloyalty. Fletcher’s analysis of this very painful debate is troubling not because he sides with Kennedy, but because his characterization of the motives of Kennedy’s critics reveals how little he appreciates their sense of the connection between personal identity and group affiliation. First, Fletcher dismisses the claim that members of an ethnic or racial group might

---

9. Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745 (1989).

have something unique to say because they are witnesses to a particular experience. He sees this as “a denial that individuals speak in their personal and distinctive voice” (p. 157) — an odd insistence on the distinction between social influences and personal identity in a book that has been stressing all along how individuality is constructed out of affiliations. Therefore, Fletcher decides, the claims that Kennedy is disloyal to his race must reflect something much more mercenary: “If race . . . is not a qualification [for academic employment], then obviously candidates who might benefit from this factor will receive fewer jobs . . . . This is precisely the point that . . . makes his blackness rhetorically relevant and allegedly disloyal to his ‘community’ ” (p. 158). In other words, the loyalty at stake here is something like nepotism, rather than loyalty to a particular perspective. Fletcher believes that Kennedy’s critics are only seriously concerned with getting jobs.

Fletcher thinks that group affiliations are irrelevant to academic discourse because this is an arena in which impartiality is appropriate. He argues that the appeal to multiculturalism confuses belief, which can be plural and culture-dependent, with truth, which must be reached through “neutral and universal discourse” (p. 174). Belief can properly be the subject of loyalty, but truth cannot. Fletcher draws this distinction too rigidly. He ignores the ways in which knowledge can be as partial as emotional ties. Just as we develop as individuals with affiliations to particular religions or particular nations, we also develop as individuals with limited experiences of the world. Fletcher is correct when he states that, “[f]or an argument to be worth making, it must be cast in a language that appeals to those who have no loyalties to the proponent” (p. 174). But the insight that gives birth to a particular line of thought may come from an experience that not everyone shares. Moreover, a people may change its understanding of its own history — see, for example, the revision in American views of the relationship between Native Americans and European settlers — because it comes to see that the old interpretation was formed by a limited perspective.

Fletcher is struggling with the difficult question of how a common culture can be nurtured in the United States. He acknowledges that an American national culture must be pluralistic, and he distinguishes what is acceptable in this country from the view found among certain French intellectuals that education ought to be aggressively secular, designed to “offer[ ] all children an opportunity to liberate themselves from their communities of origin” (p. 108). Yet Fletcher finds the teaching of national loyalty to be powerfully appealing. What worries him most about “multiculturalism” is the possibility that it will encourage students to favor their racial identity over their national citizenship. Fletcher is troubled not by the creation of loyalties, but by the particular loyalties that this perspective tries to inculcate.

In fact, Fletcher argues that we have become unnecessarily reluctant to use governmental authority to inspire devotion to appropriate loyalties. National loyalty can be inspired by rituals, such as the recitation of the Pledge of Allegiance, and by symbols, such as the flag. The second question Fletcher asks with regard to loyalty and the state is: To what extent can the law be used not only to encourage and respect affiliations, but affirmatively to require participation in rituals and respect for symbols that will build affiliations?

Fletcher finds mandatory recitations of the Pledge more troubling than criminal sanctions for flag burning, and once again his conclusions seem based at least as much on his personal history as on argument. Fletcher introduces this book with a story. Challenged at a border crossing where he found himself without a passport, he is asked to prove his citizenship by reciting the Pledge of Allegiance. As the words remembered from elementary school return, he is reminded of the way in which patriotic rituals “nurture and maintain a common national identity and a sense of responsibility for the welfare of the nation as a whole” (p. xi). But Fletcher also has a negative experience with compulsory pledges. As an employee of Columbia University, he is required by state law to sign an oath of allegiance. Though this oath consists of promises of future behavior (“I will support the Constitution . . . and . . . I will faithfully discharge the duties . . .” of a Professor of Law (p. 67)), Fletcher thinks the oath “ludicrous” and “demeaning,” resonant of the loyalty oaths used in the McCarthy period to “weed[ ] out the politically unreliable” (pp. 67-68). In the absence of ritual, the requirement that he sign the oath seems to Fletcher to indicate only government suspicion of his past loyalty. But when set in a different context — for example, recited by a class of children as an opening to the school day — the Pledge “is surely not [designed] to test the loyalty of the young but rather, by a process of ritualized expression of respect, to instill an emotional attachment to their country” (p. 104).

Fletcher finds this educational ritual entirely appropriate. He acknowledges the constitutional limits on the extent to which it can be made mandatory; they are based on the deference required by the Free Exercise Clause to conflicting loyalties “to an external authority, namely, to the perceived word of God, as interpreted in a religious community” (p. 123). But mere “fidelity to one’s inner convictions is not so respected”; objections to the Pledge based on conflicting loyalties not rooted in religious orthodoxy need not be given deference. Fletcher suggests, for instance, that “abstaining students” might receive lower grades because they have refused, without a basis in established religious doctrine, to participate in an educational activity of the school; dismissal from school goes too far even for him (p. 124). Once more, Fletcher seems insensitive to loyalties that he does not share. His distaste for the New York oath of allegiance is understandable.

But the psychic injury and disrespect that he finds implicit in the oath requirement is not obviously more serious than that suffered by a fourth grader who finds herself penalized because her family's objections to the Pledge are not sufficiently rooted in doctrine.

When it comes to punishing flag burning, Fletcher is not so ambivalent, for he thinks the act is itself disloyal. Flag burning is not, to Fletcher, a victimless crime. It is an offense against the community — destruction of the flag is “a violation of our collective sense of what is permissible in our public space” (p. 147), an infringement on “the community's shared interest in cultivating the values of reciprocal loyalty and solidarity” (p. 149). Fletcher thinks that the First Amendment arguments against the criminalization of flag burning are misplaced because promoting “a flag culture” does not involve the imposition of any particular political belief. Instead it is “a legitimate effort to promote a neutral interest in national solidarity” (pp. 140-41). But Fletcher cannot have it both ways: if protecting the flag is an important expression of national solidarity, this protection is not “neutral.” Those who burn the flag are questioning and challenging the very idea that Fletcher wants to promote — that the United States is a unified nation or one deserving of loyalty. Yet again Fletcher decides a difficult question too quickly because he gives his own allegiances (here, loyalty to flag and country) great weight, while failing to appreciate the strength of the views of others.

Fletcher recognizes the “moral hazard” in loyalty, that it may lead to blind preference for one's own group over the legitimate interests of others. “The greatest sin of loyalty, of course, is war” (p. 151). But he can offer at most only vague and unsatisfying suggestions for restraining the imperialist tendencies of group affiliation. Some checks, he thinks, will come from the conflicting demands of competing loyalties upon an individual with multiple affiliations. Others will come from the demarcation of certain arenas, such as the courts, where justice, rather than loyalty, should prevail. But the way these restraints will operate is expressed only in the most general, aspirational terms. Significantly, Fletcher also calls on impartial moral theories as a potential source of limits on loyalty. But he has already dismissed those approaches as insufficiently sensitive to the claims of partiality, and he has no clear sense of the extent to which they should be resurrected. Fletcher makes a passing suggestion that a mixed ethical system composed of both partial and impartial theories would be ideal, but the form that system might take is not spelled out in any detail. Finally, he presents exit from a group which demands too much loyalty as a moral alternative. That solution, however, does not address the moral hazard problem. Exit is an alternative for someone who no longer agrees with the values of the group; it is not responsive to the danger that someone will believe in the values of the group too much.

The great danger of partiality is that we will not be aware of how it limits our vision. We will find our own affiliations worthy of respect and deference and dismiss the ties of others as too tenuous, idiosyncratic, or divisive to merit similar protection. Fletcher sees this danger, but, in this book, he also exemplifies it.