

## *Equal Recognition: A Reply to Four Critics*

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Résumé de l'article

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## EQUAL RECOGNITION: A REPLY TO FOUR CRITICS

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### ABSTRACT:

*Equal Recognition* seeks to restate the case in favour of liberal multiculturalism in a manner that is responsive to major objections that have been advanced by critics in recent years. The book engages, among other questions, with two central unresolved problems. First, how should ideas of culture and cultural preservation be understood, given widespread suspicion that these ideas rely on an unavowed, but objectionable, form of essentialism? And, second, what exactly is the normative basis of cultural rights claims, and what are the limits on those claims? My four commentators advance a variety of different criticisms of the book's answers to these questions. I offer replies to each of their main challenges.

### RÉSUMÉ :

*Equal Recognition* réaffirme l'argument en faveur du multiculturalisme libéral de façon à répondre aux objections majeures qui lui ont été adressées ces dernières années. Le livre se penche, entre autres, sur deux problèmes centraux, non résolus. Premièrement, comment les idées de culture et de préservation culturelle devraient être comprises, étant donné la suspicion répandue selon laquelle ces idées se fondent sur une forme d'essentialisme aussi inavoué que répréhensible? Deuxièmement, quelle est exactement la base normative des requêtes de droits culturels, et quelles sont les limites à ces requêtes? Mes quatre commentateurs avancent une variété de critiques différentes quant aux réponses que ce livre apporte à ces questions. Je réponds ici à chacune d'elles.

Conflicting claims about culture are ubiquitous in contemporary politics, whether they originate from majorities seeking to fashion the state in their own image or from cultural minorities pressing for greater recognition and accommodation by the state. Theories of liberal democracy disagree about the merits of these competing claims. Multicultural liberals hold that particular minority rights are a requirement of justice conceived of in a broadly liberal fashion. Critics, in turn, have challenged this defense of multicultural liberalism on a number of grounds. They have questioned the coherence of the concepts of culture and cultural preservation that many justifications of cultural rights rely upon. They have objected to the reasons that liberal multiculturalists have offered for the claim that liberal principles mandate cultural rights. They have pointed out various perverse effects that may be brought about by a pursuit of the multicultural program. And they have questioned the motivation behind the liberal multiculturalist project by suggesting that the rights and entitlements protected by traditional, non-culturalist liberalism already offer ample accommodation of minority cultures.

In *Equal Recognition*, I seek to restate the case in favour of liberal multiculturalism in a form that is responsive to all of these major concerns. I elaborate a new, non-essentialist account of culture, one that is compatible with commonplace observations about cultures and that responds to some of the deep challenges that have been leveled against the very coherence of the idea. I rehabilitate and reconceptualize the idea of liberal neutrality, and use this idea to develop a distinctive normative argument for minority cultural rights. And I elaborate and apply this core theoretical framework by exploring several important contexts in which minority rights have been considered, including debates about language rights, secession and self-government, and immigrant integration.

My four commentators in this symposium address different parts of the argument. Jocelyn Maclure politely asks whether an account of cultural rights is still relevant today. He also wonders what response I would offer to non-multiculturalist liberal philosophers such as Samuel Scheffler. These are good, big questions with which to begin, and so I consider them first. I then turn to Andrew Lister's commentary, which zeroes in on the book's attempt to reconceptualize liberal neutrality. After offering some replies to Lister, I then take up Jonathan Quong's interesting challenge to the justification offered in the book for cultural rights. I close by considering Catherine Lu's very penetrating discussion of the book's account of the immigrant/national minority dichotomy. I'm very grateful to each of these colleagues for taking the time to read the book and write out their critical reactions. While I offer replies to the major criticisms, I regret that I didn't have these reactions available to me as I was writing the book.

Maclure begins his remarks by asking whether a political theory of cultural justice is still interesting and important in the context of today's debates about recognition, accommodation, and justice. In recent years, he detects a shift in these debates away from questions about culture and towards a focus on claims based on religion and conscience. Theories of cultural justice, Maclure thinks,

are not well equipped to illuminate these claims. The claims in question are not always made by minorities, and they revolve around moral and religious convictions rather than cultural attachments.

I detect a similar shift, as Maclure does, in the issues that are receiving both public attention and attention from political theorists. In part, this is because some of the central cases that have animated normative debate about cultural recognition—e.g., Canada/Quebec and Israel/Palestine—have turned into protracted stalemates. Meanwhile, as Maclure observes, debates about religion, conscience, secularism, and “reasonable accommodation” could hardly be more prominent in the United States, in Europe, and in Canada and Quebec. In addition, debates in political theory seem to have a normal lifespan. A topic becomes hot, and a great many interesting scholars try their hand at contributing to it. Over time, the contributions to the debate become ever more refined and minute, and eventually people become bored with it and move on. Since completing the book, I have followed a similar migration to other theorists interested in diversity by turning my attention to a new project about religious liberty.

Although I see some of the same trends as Maclure, I am not convinced his observation works as a criticism of the book. Even if the public’s attention, as well as the attention of some political theorists, has moved on from debates about cultural recognition and accommodation, this certainly does not mean that the underlying philosophical issues have been resolved. Many of the more recent contributions to these debates have come from liberal skeptics. As I noted at the outset, they have questioned the coherence, the desirability, and the liberal credentials of multiculturalism and nationalism. Even if these questions are not at the top of the political agenda today, there is a set of philosophical problems here that merit attention.

My book engages, among other questions, with two central unresolved problems. First, how should ideas of culture and cultural preservation be understood, given widespread suspicion that these ideas rely on an unavowed, but objectionable, form of essentialism? And, second, what exactly is the normative basis of cultural rights claims, and what are the limits on those claims? I don’t think the defenders of liberal multiculturalism—Kymlicka, Raz, Taylor, and so on—get to the bottom of these questions, and in this sense I am sympathetic with critics of the past fifteen years—e.g., Barry, Appiah, Benhabib, Buchanan, and Scheffler. But I also think that the conception of justice advocated by these latter thinkers is missing something important in the liberal tradition—a notion of liberal neutrality that, I argue, can be grounded in the claim that each individual has to a fair opportunity for self-determination.

Maclure seems to think that some of these philosophical questions are of little interest because a notion of self-determination can do the work that cultural justice is offering to do. “It is not clear that liberal culturalism has the normative weight that it claims,” he writes. “Can we not derive the collective rights of minority nations from the principle that nations or peoples ought to enjoy some

form of political autonomy or self-determination right?” But this is a puzzling view. Claims about self-determination and autonomy are fundamentally about *who* gets to decide particular questions. A theory of cultural rights—of equal recognition—by contrast is a theory about what substantive standards should guide the deliberations and decision making of whoever it is who has the responsibility to make decisions. Appeals to self-determination and autonomy don’t take us far enough. A self-determining people still need some criteria for *how* they should decide. Should they seek to accommodate minorities or should they put all their power behind expressing the culture of the majority? This is the sort of question that my book is designed to address.

Moreover, self-determination claims are themselves contested, both legally and normatively. Should Quebecers be regarded as a self-determining people with respect to central domains of their lives or should these domains be controlled by all Canadians? This is the sort of question that a theory of cultural justice can help to address. In chapter 7 of the book, I argue that considerations of national identity and culture are relevant for thinking about both the boundaries of the political unit and permissible and impermissible attempts to change those boundaries through secession.

Returning to the relationship between culture and religion, I agree, of course, that it would be unhelpful to mechanically apply a theory of cultural recognition to the domain of religion and conscience. Each domain has its own idiosyncrasies and its own specialized concepts and principles, so Maclure is right to say that an account of religion and conscience needs to be partly independent or free-standing. However, we shouldn’t let this partial independence obscure the ways in which the problems are related. Contrary to Maclure’s expectation, I have found that a theory designed to illuminate questions of cultural justice can also be helpful for thinking about claims of religion and conscience (and vice versa). In each of these contexts, the question of justice is, in part, a question about what is owed to people in virtue of the fact that they have certain commitments and attachments. The nature of these commitments and attachments varies in interesting and significant ways from case to case, but in general I think the problem has the same theoretical structure.

The answer I would defend for both the cultural and religious spheres also has the same generic form: what is owed to people is a fair opportunity to pursue and realize the commitments and attachments that they in fact hold—what I call in the book a “fair opportunity for self-determination.” Having a fair opportunity is not a guarantee of the success of one’s cultural or religious commitments, but it is also not a norm that makes no difference with regard to the treatment of those commitments. In the case of culture, as the book argues, fair opportunity can justify the equal recognition of different cultures. In the case of religion and conscience, fair opportunity helps to explain what is objectionable about religious establishment, and also whether and why various accommodations are justified.

An assumption that I think underlies Maclure's remarks is that religion and conscience involve claims that are special in a way that cultural claims are not. Claims of religion and conscience are relevant to a person's moral identity, Maclure says, whereas cultural claims have a different sort of valence. I agree with Maclure that there is a difference here. In the book, I argue that claims to the neutral treatment of religion and conscience ought to enjoy an especially weighty presumption in virtue of their assertion of normative authority.<sup>1</sup> At the same time, we should avoid thinking about the character of different kinds of commitments in too dichotomous a fashion. Cultural commitments have some, even if not all, of the features that mark out religious claims as special. The presumption in favour of neutral treatment of cultural claims is perhaps not as weighty as it is for religion, but it is weightier than it would be for many ordinary tastes and preferences.

One other question raised by Maclure is how my account of cultural justice would respond to Samuel Scheffler's contention that (in Maclure's words) "liberal egalitarianism, well understood, is already capacious enough to secure fair terms of cooperation for members of cultural minorities." Although there aren't a great many specific references to Scheffler<sup>2</sup>, chapter 5 of the book offers a sustained engagement with a Scheffler-like position. The more minimal picture of egalitarian liberalism favoured by Scheffler and others (what I call "basic liberal proceduralism") is treated as a null hypothesis, which is then challenged for permitting the state to depart from neutrality in significant ways. When neutrality is added to the conditions emphasized by Scheffler (to form what I call "full liberal proceduralism"), the case for minority cultural rights comes into view. Maclure is right that "cultural rights raise thorny questions about cultural essentialism and the status of internal minorities," but that is why the book devotes so much space to trying to resolve these questions in a reasonable way.

Andrew Lister correctly identifies neutrality as a central normative principle in the book. Rather than grounding cultural rights directly in autonomy or identity considerations, I argue that such rights are based on the weighty reasons that states have to be neutral between the different commitments and attachments of their citizens. This strategy shares an affinity with some suggestions made by Will Kymlicka—when he talks of the inevitable non-neutrality of the state—and by Joe Carens when he talks of "even-handedness."<sup>3</sup> I try to work out how exactly this argument is meant to go and how it is rooted in some basic commitments of liberal thought—in particular, the idea that each individual should enjoy a fair opportunity for self-determination.

Neutrality is usually understood by political theorists in terms of either the *intentions* of lawmakers (their aims and justifications) or the *effects* of legislation on different conceptions of the good. I propose a third conception of neutrality, which I term "neutrality of treatment." A state extends this form of neutrality to several different attachments or commitments when, relative to an appropriate baseline, its policies are equally accommodating of those different attachments



and commitments. The reasons that the state has to be neutral in this sense are based on the reasons it has to leave people with a fair opportunity for self-determination.

Lister's comment seeks to get a better grasp on what neutrality of treatment involves, and what its relationships are with neutrality of justification and neutrality of effect. His main question is whether my book is committed to a more foundational ("upstream") conception of neutrality than it admits, but he raises several other questions as he builds up to that one.

One set of questions concerns the dilemma that neutrality of treatment is meant to solve. I motivate the introduction of a new conception of neutrality by pointing out limitations of the two main existing conceptions. Neutrality of intentions has trouble explaining why some intuitively non-neutral policies should be regarded as such. In the book's example, a state seeks to bolster its own perceived legitimacy by aligning itself with the symbols and practices of the majority religion. Since the intention is to strengthen the state, such a policy looks neutral according to neutrality of intentions. But this seems to be the wrong judgment, as many would regard the favouring of the majority religion as a paradigm of non-neutrality. As I understand it, Lister's response consists in biting the bullet and insisting that, properly understood, the policy in question is a neutral one if indeed it is justified by an appropriate balance of public reasons. This gives up on neutrality as a specific norm within political morality and instead makes it a kind of meta-norm that imposes a public reason constraint on justification. I don't object to theorists using the term in this way, but my hunch is that they are then going to need to coin some other term to capture the difference between a state that favours some religions (or conceptions of the good) over others and a state that seeks to avoid such favouritism. Whatever terminology is adopted, it is this second issue that I am interested in.

I argue that neutrality of effects suffers from the opposite problem: apparently neutral, and generally uncontroversial policies (to liberals, at least), such as protections for the basic liberties, may produce non-neutral effects. Giving people the freedom to think, or say, or do what they want may lead to outcomes in which boring or frustrating conceptions of the good are unsuccessful, and interesting and stimulating ones flourish. If a principle of neutrality objects to such outcomes, then that principle doesn't look like one that liberals have any reason to adopt. Lister replies, however, that this objection to neutrality of effects fails to appreciate a subtlety in the view. The judgment that some set of effects is neutral or non-neutral can only be articulated relative to a specified baseline (which, among other things, determines *which* effects are relevant). It is open to the proponent of neutrality of effects to select a baseline that filters out the differences in effects that give rise to the problematic judgments about the basic liberties, or that account for other apparent counterexamples. Lister suggests that once the baseline question is addressed there may turn out to be no difference between neutrality of effects and neutrality of treatment: the latter would turn out to be merely a special case of the former. Lister does not actually formulate the

baseline that he thinks would have this implication, so it is hard to evaluate his challenge here. But, even if he is right, and neutrality of effects could be rigged up so that it coincides with neutrality of treatment, I'm not convinced that Lister and I have anything more than a terminological difference. Whereas Lister recognizes several different variants of neutrality of effects (corresponding to different specifications of the baseline), my proposal could be viewed as pulling one of these variants out, giving it its own label, and arguing that it is not vulnerable to objections that afflict the other variants.

Lister's reflections on the relationship between neutrality of effects and treatment lead him to wonder whether neutrality of treatment might be dropped in favour of a principle requiring the state to provide equal treatment relative to a baseline set by fair opportunity for self-determination. Once one crucial clarification is added, this is indeed the view that I defend (again, I'm not too bothered about the labels). The needed clarification pertains to the object of equal treatment. Lister writes as if it is *persons* who are owed equal treatment on my proposal, and then rightly points out that what counts as equal treatment depends on one's overall view of justice. But neutrality of treatment says something more specific than this: it says that, relative to a baseline determined by fair opportunity, it is *conceptions of the good* that are to be given equal treatment. I am taking for granted a background conception of justice, which is shaped in part by the idea that each person should enjoy a fair opportunity to pursue and fulfill the conception of the good that he or she holds. And I am arguing that equal treatment of persons in this sense implies that the state should extend equal treatment to the conceptions of the good that are valued by those persons.

Lister's main question is about the philosophical foundations of neutrality of treatment. I characterize neutrality of treatment as a "downstream" conception of neutrality, meaning that it is supposed to follow from accepting some other value (which I argue is fair opportunity for self-determination), and there is no claim that this other value is itself neutral. Lister interprets this to mean that I am rejecting, or am open to rejecting, neutrality of justification as an overarching requirement. I do not, for example, say that the fundamental values that figure in public justification must be public in Rawls's sense. This is a problem, Lister suggests, because, without a public reason requirement, I have no good response to the perfectionist opponent of neutrality. If neutrality of treatment is not based on a neutral value (because of a reluctance to invoke neutrality of justification), then how do I fend off perfectionist challenges? What do I say to the perfectionist who thinks that self-determination isn't the only value and who wants to balance claims of self-determination (including neutrality of treatment) against claims about the value of particular ways of life? Such a perfectionist might think that justice requires that people have a fair opportunity to pursue true well-being ("to flourish") rather than to pursue whatever conception of the good they happen to have (to be "self-determining").

This is an interesting and difficult challenge. The book does briefly engage with a version of the challenge, albeit in a slightly different context than Lister has in



mind.<sup>4</sup> My argument against perfectionism is a substantive one rather than a metatheoretical one about public reason. In short, I offer well-being-related and autonomy-related reasons for thinking that self-determination matters for individuals, even when their ends are not favoured by a perfectionist standard. It is true that perfectionists hope to *influence* what ends people have, but this is merely an aspiration. There is no guarantee of success. A perfectionist standard of what opportunities are owed to people risks unfairness to those who cling unrepentantly to conceptions of the good that are disfavoured by such a standard. They are left with fewer resources and opportunities with which to pursue their ends, and thus with diminished prospects for well-being and/or autonomy. Lister imagines a perfectionist who thinks that meaningful work is an essential part of the good life, and who thus evaluates economic systems in part on the basis of their propensity to encourage meaningful work. My concern is with people who, rightly or wrongly, do not value meaningful work but prefer to prioritize leisure instead. Under Lister's fair opportunity for flourishing, they may end up with fewer resources and opportunities than they would under a justice standard that was equally accommodating of different conceptions of the good. To my mind, there is a fairness problem here with perfectionism, one that does not depend on an appeal to public reasons or justificatory neutrality.

Jonathan Quong's comment zeroes in on a central claim in my justification of minority rights. I argue that neutrality of treatment implies certain minority rights, and, when these rights are denied, minorities are at a disadvantage about which they can justifiably complain. Critics of multiculturalism have sometimes dismissed this form of argument on the grounds that the disadvantage in question boils down to the frustration of preferences, and preference satisfaction is not something that should concern a liberal theory of justice. To think that justice does concern itself with unfulfilled preferences is to open it up to a problematic indulging of expensive tastes. This implication is problematic, so the critics say, if persons are regarded as responsible for their preferences. Assuming responsibility, it is the job of society to establish fair background conditions, and it is up to individuals to adjust their preferences within those parameters to arrive at the desired level of preference satisfaction.

In *Equal Recognition*, I embrace the idea of responsibility for preferences but deny that this idea is in tension with the neutrality-based justification of minority rights. Even if we take a case in which the preferences of the members of a group have indisputably been acquired voluntarily—such as the case of the Tuesday Worshippers—still the members of the group have a good neutrality-based claim on an accommodation of their religion or culture. The general argument for this proposition has two steps. The first consists in the observation that responsibility for preferences is a reasonable expectation only if background conditions are fair. And the second says that part of what makes a set of background conditions fair is that those conditions extend neutral treatment to different conceptions of the good. I look for support for this general argument in two different places. One is a case in which a state establishes Christianity as the official religion, and Muslim citizens complain that this violates neutrality of

treatment. Since we would not want to dismiss the complaint on the grounds that the Muslim preferences are “expensive,” it seems that the fact that background conditions are unfair (in this instance because of the establishment of Christianity) is sufficient to insulate the Muslim claimants from that charge. The second place I look for support is Dworkin’s theory of equality of resources. This is surprising because Dworkin’s theory is associated with the expensive-taste objection, but I show that the theory’s principle of abstraction implies a responsiveness to preferences that lends support for including neutrality of treatment in the background conditions needed for preference responsibility.

In his contribution to this symposium, Quong disputes both of these supporting arguments. He agrees that the Muslim complaint about Christian establishment should not be dismissed on expensive-taste grounds, but he sees a difference between the Muslim/Christian case and the case of the Tuesday Worshipers. The difference seems to be that the Muslim preferences were not developed under fair conditions and thus they cannot reasonably be held responsible for those preferences. By contrast, by assumption, the preferences of the Tuesday worshippers *were* developed under fair conditions, and thus it is legitimate to hold them responsible for those preferences and so to deny the claim for an accommodation. As for Dworkin, Quong argues that my argument rests on a misinterpretation. If Tuesday worshippers are permitted to insist on a “rerun” of the auction, once they’ve changed their preferences, then the same would be true in ordinary market cases, which is something that Dworkin’s theory clearly cannot countenance.

In reply, let me explain why I remain unconvinced by both of Quong’s objections. Consider, first, Quong’s take on the Muslim/Christian case. We both agree that responsibility presupposes fair background conditions but we understand those conditions in importantly different ways. For Quong, the key issue is the fairness of the conditions under which preferences are developed. Since, by assumption, those conditions are unfair (Christianity was established as the state religion), he thinks the Muslims should not be considered responsible for their preferences, and thus the expensive-taste objection cannot be pressed against them. The Tuesday worshippers are different, since they form their preferences under fair background conditions: by assumption, there were no Tuesday worshippers around at the moment they formed their preferences, and so there was nothing unfair about the absence of any measures designed to accommodate worship on Tuesday. On my view, by contrast, the key issue is the fairness of conditions at the moment at which a claim for accommodation is made. A claim is tantamount to a request for a subsidy of an expensive taste only if there isn’t some other fairness-based rationale that could be adduced in favour of the claim instead. Viewed from this perspective, the Muslim/Christian and Tuesday-Worshiper cases *are* alike. In both cases, at the moment at which a claim for accommodation is made, that claim can be justified on neutrality-of-treatment grounds. This contrasts with the claim of Carl (in Quong’s example), who cannot justifiably complain, even at the moment of making a claim, that his preferences are non-neutrally treated.

For Quong's objection to find its mark, he would need to provide some justification for focusing on the fairness of background conditions at the moment of preference-formation rather than at the moment at which the claim is made. The more one thinks about the Muslim/Christian case, the shakier such a justification starts to seem. One question is what Quong would say about a case in which Muslim preferences were formed under a regime of neutral treatment and in which only now has the state established Christianity. The deeper question is why the fact that Muslims formed their religious commitments under conditions in which their religion was disfavoured by the state should make them any less responsible for bearing the costs associated with those commitments. If Muslims were complaining that they are not more numerous, then that would be one thing. Unfavourable treatment by the state is a plausible factor accounting for their numbers. But suppose we are evaluating claims made by people who have formed the relevant commitment and want nothing more than an accommodation that reflects their actual numbers. If anything, the fact that the commitment was formed in a context where their religion was disfavoured might raise our confidence that the commitment is voluntary. For this reason, I would submit that my presentist conception of fair background conditions does a better job of accounting for the Muslim/Christian case than does Quong's backwards-looking conception. And on the presentist conception, the Muslim/Christian and Tuesday-Worshipper cases are alike.

I am also unpersuaded by Quong's alternative interpretation of what Dworkin's theory of equality of resources would imply about the Tuesday-Worshippers case. Quong characterizes the Tuesday worshippers as requesting a "rerun" of the auction determining weekly days of rest. But this notion of a rerun is ambiguous. It could mean a *do-over*, in which all the consequences of the first run are nullified and there is a fresh determination of everyone's property holdings. Or it could mean an *update*, in which further transactions are permitted after an initial run of the auction, with these transactions quite likely influenced by the whole history of previous transactions. Quong rightly objects, on Dworkinian grounds, to a demand for a do-over by someone who changes his or her preferences. Such a demand would betray a failure to take responsibility for one's previous choices. But the Tuesday worshippers needn't be understood as asking for a do-over. Instead they want the public process that determines days off to mimic the ongoing operation of markets. They want the same sort of opportunity to update that market participants normally enjoy. The ongoing character of markets *is* plausibly connected with Dworkin's principle of abstraction. In part, this is because, from the start, individuals may have life plans that require a sequence of transactions over time. But it is also because people predictably revise their preferences over time, and an ongoing market allows for better responsiveness to these preferences (compared with a single run of the auction at the outset) consistent with the other constraints of Dworkin's theory.

Quong's example of Albert and Betty obscures the parallel between an ongoing market and a public process with updates. The Albert/Betty example is not a case of a single once-and-for-all run of an auction to settle holdings for all time.

It is a case with an ongoing market, but one in which, with his fair share of resources, Albert finds he cannot afford the resources he wants (after he revises his preferences) because those resources are highly valued by Betty. The lesson to draw from this case is not that the Tuesday worshippers display expensive tastes when they request a periodic update to public rules about days off, but that they would display expensive tastes if they insisted on an accommodation that were disproportionate to their numbers, given the distribution of preferences among all citizens at the moment at which they advance their claim to such an accommodation. If one wants a better market analogue to my case of the Tuesday Worshippers, then one should revise the Albert/Betty example so that Betty's land is affordable to Albert. Under such a revision, we would of course say that Albert should be allowed to adjust his holdings by purchasing Betty's land. If such a transaction were prohibited, then Albert would have a legitimate complaint—a complaint that would, in effect, be grounded in the principle of abstraction.

Finally, let me turn to Catherine Lu's characteristically generous and insightful comments. Lu discusses the argument I make in the concluding chapter of the book, where I seek to defend a version of the national minority/immigrant dichotomy. This dichotomy is one response to a problem of which proponents of minority cultural rights have long been aware. Contemporary liberal democracies contain a tremendous number of different cultural groups. For some rights, including self-government rights and certain language rights, there is no way that a full and equal set of cultural rights could be extended to so many groups. The costs to other values of such a rights proliferation would be prohibitive.

One solution to this problem would be to refuse to grant the rights in question to anyone. If one can't give a benefit like minority recognition to everybody, then better to give it to nobody. Although there is a superficial fairness to this approach, I don't think it survives closer inspection. It is no fairer to draw the circle of inclusion around the majority culture and exclude all others than to draw the circle so that it includes the majority and one or several minority cultures but excludes others. A second solution would be to limit a full set of cultural rights to only a few groups, and to select these groups on the basis of general criteria such as size, territorial concentration, economic need, and so on—criteria that make no reference to the national or immigrant character of the groups. This 'general criteria' approach strikes me as a worthy default position and may be the best that can be hoped for. But it has trouble explaining some cases, such as the strength of the claims of Indigenous peoples and of tiny European national minorities who find themselves on the wrong side of international boundaries.

In chapter 8 of *Equal Recognition* I set out to defend a third approach to allocating cultural rights, which posits a categorical difference between immigrant and national minorities. I think there is some truth in Kymlicka's suggestion that immigrants can be understood to have voluntarily relinquished certain cultural rights, whereas national minorities more typically were involuntarily incorpo-

rated into the state or voluntarily joined the state with an understanding that their culture would be recognized and accommodated. As Lu points out, the version of the dichotomy I defend is quite modest. I do not think the liberal state can invoke the dichotomy to deny toleration or accommodation rights to immigrants. These include rights that individuals have to speak their own language and follow their own cultural beliefs in private, and the rights that individuals have to transitional accommodations that ease their integration into the majority culture (e.g., translation and interpretation services in courts and hospitals for immigrants who cannot yet speak the majority language). I also think it would be impermissible for the host society to insist as a condition of admission that immigrants give up neutrality-based rights that could feasibly be extended to everyone. The dichotomy is relevant only to rights that could not be extended to all cultural groups without excessive cost to other values. A state cannot have a limitless number of official languages or offer self-government to a limitless number of cultural groups. Given that some groups will not be able to enjoy rights to these cultural accommodations, I argue that it is permissible for a host society to expect immigrants to waive their rights to them.

As Lu notes, I offer both a “situational” and a “perspectival” argument for this thesis. The situational argument draws on the familiar idea that there is a presumption in favour of established practices and institutions insofar as they are functioning well. A host society deciding which cultures to prioritize in allocating rights might reasonably give some priority to patterns of recognition and accommodation that are already entrenched in successful practices and institutions. The perspectival argument maintains that the citizens of the host society can permissibly give some priority to their own cultures because those cultures are their own and it is permissible for people to show some partiality to their own projects and attachments.

Lu puts pressure on even my moderate version of the dichotomy in several ways. First, she says that, even if my account has some traction for prospective immigrants, it doesn’t justify the dichotomy with respect to already settled immigrants. We sometimes use the term “immigrant” to describe whole groups of people (e.g., Chinese-Canadians) even though many members of these groups were born in the receiving country or were children at the moment of immigration. Presumably, there is no sense in which these individuals ever voluntarily relinquished rights as a condition of immigration.

Second, while she thinks there is something to the situational argument, she questions whether it implies that cultural rights could never be changed. She thinks this is inconsistent with the theory of culture advanced earlier in the book, according to which cultures are in a constant state of flux and evolution. Third, Lu fastens upon an important complication in the situational argument: some national groups—e.g., Native peoples in Canada—were excluded at the outset of the creation of a Canadian state. The situational argument seems to imply that long-excluded groups might have no or only a weak claim on a full set of minority rights. In the book, I acknowledge this possibility and suggest that the unjust



exclusion of a group might give it a different kind of claim on a full set of cultural rights: a claim to the rectification of a historical injustice. But Lu argues that it is not just national groups who have experienced past injustices; immigrant groups, like the Chinese in Canada, did so as well. Does this mean that contemporary Chinese immigrants have a good claim on a full set of cultural rights grounded in the rectification of past injustice?

These are hard questions about a section of the book that I have always regarded as the most exploratory and speculative. Let's take the case of settled immigrants first. Suppose, for the sake of argument, that my position on potential immigrants is accepted. It is permissible for the state not to offer certain limited sorts of rights that are offered to established groups—including some language and self-government rights. Presumably this will impact the way in which these immigrants are integrated into the host society. When all goes well, subsequent generations will speak the dominant language of the host society and think of their political identity as tied to the host society. There will likely be very little demand for a full set of cultural rights.

Things will be different where there is substantial injustice and exclusion in the way in which immigrants are integrated. Here separate immigrant identities may harden over time, and there may well be demands for cultural rights (as one sees in various places in Europe). These demands do carry extra weight, I think, although there may also be especially weighty countervailing considerations having to do with what Elizabeth Anderson calls the “imperative of integration.”

So, in principle, I don't disagree with Lu's analysis of my theory's implications for second- or third-generation immigrants. Such immigrants could, in principle, have a strong attachment to their language, or to self-government by their ethnic group, and their claims based on such an attachment should be treated as being on all fours with the claims of established, national groups. In practice, however, a successful, liberal, egalitarian state will normally integrate immigrants into the dominant host culture (or one of the host cultures if there are several). Second or third generations will normally want to be full participants in the dominant culture, and large numbers will not seek to educate their children, or receive public services, in a distinct linguistic setting or to establish their own structures of self-government. This generalization may not extend to non-ideal cases of immigrants who have been excluded and marginalized, and so for these groups the claims might be proportionately stronger. But, as noted above, these are also the cases in which countervailing considerations favouring integrationist policies are especially strong.

Lu's comments about the situational argument also strike me as plausible in theory but unlikely to pose a serious challenge in practice. I do regard cultures as diverse and evolving, and so in principle it's possible that new demands and claims for cultural recognition and accommodation could come to the fore. Remember, though, that, on my view, the host society can permissibly expect immigrants to waive only a limited set of cultural rights: rights that cannot feasi-



bly be extended to all groups without prohibitive cost, such as rights to equal linguistic status or to structures of self-government. So, I'm not, in general, unsympathetic with new demands and claims for cultural recognition and accommodation. The rights that can reasonably be limited do strike me as highly susceptible to situational considerations. Consider, for instance, the critical question of which languages will serve as the principal medium of public education, including public high schools and universities. It seems to me that a plausible answer to this question will, in large part at least, be driven by the existing situation in society. Schools will properly prepare students to participate in the society's existing economic, social, cultural, and political institutions and practices. As a consequence, even though a culture is pluralistic, and it evolves and changes over time, there will still be legitimate pressure to conduct some of society's most important business in the established, more dominant cultures.

Finally, let me say something about Lu's third point. The Chinese in British Columbia do seem like a pretty hard case to me. On the one hand, the British settlers had only just arrived themselves, and the Chinese were perhaps the only sizeable local minority. On the other hand, the Canadian state in the west was only being established at the time and presumably its capacity to accommodate cultural difference was much less than it is today. Later in Canadian history an effort would be made to recognize the substantial Francophone population elsewhere in the country by establishing statewide French-language rights. Overall, with hindsight, but bracketing the actual motives of decision makers, the decision not to extend full language rights to Chinese-speakers in B.C. was arguably defensible. The motives driving this decision were in fact racist, and, as Lu points out, there were many instances of unjust treatment of Chinese immigrants in the Canadian West. There was historical injustice in this case that calls out for acknowledgement and rectification. But I'm not persuaded by Lu's comments that the appropriate form for these reparative efforts to take would be to extend full language or self-government rights to Chinese-speakers. The injustice suffered by Chinese-speakers in Canada is different in kind than the injustice suffered by Indigenous peoples, and so the remedy is appropriately different as well.

## NOTES

<sup>1</sup> Patten, Alan, *Equal Recognition: The Moral Foundations of Minority Rights*, Princeton, NJ, Princeton University Press, 2014, p. 168.

<sup>2</sup> But see, *Ibid.*, pp. 151 n. 1, 168.

<sup>3</sup> Kymlicka, Will, *Multicultural Citizenship*, Oxford, Oxford University Press, 1995; Carens, Joseph, *Culture, Citizenship, and Community*, Oxford, Oxford University Press, 2000.

<sup>4</sup> Patten, *Equal Recognition, op. cit.*, pp. 146-147; the main argument against perfectionism is developed at pp. 128-139.