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# Immigrants, Multiculturalism, and Expensive Cultural Tastes: Quong on Luck Egalitarianism and Cultural Minority Rights

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Résumé de l'article

Kymlicka a offert une justification égalitarienne de la chance influente en faveur d'un catalogue de droits polyethniques visant les désavantages culturels dont souffrent les minorités migrantes. En réponse, Quong argue du fait que, si les éléments d'un tel catalogue sont justifiés, parce que les désavantages pertinents dont souffrent les migrants résultent de leur choix d'immigrer, (i) ces droits ne peuvent être dérivés de l'égalitarisme de la chance (ii) ce qui nourrit des doutes quant à l'égalitarisme de la chance en tant que théorie de la justice culturelle. En tant qu'alternative à l'argument de Kymlicka, Quong offre sa propre justification des droits polyethniques basée sur l'idéal rawlsien de juste égalité d'opportunités. Dans cet article, je défends l'égalitarisme de la chance contre l'objection de Quong en vertu du fait que si le choix compte, il compte également en ce qui concerne les désavantages culturels. En sus, l'idéal rawlsien de juste égalité d'opportunités ne peut justifier le type de droits polyethniques que Quong désire lui faire justifier, une fois mise de côté la coloration statiste injustifiée au sein de la conception de la juste égalité d'opportunités avancée par Quong. Quelles que soient les faiblesses de l'égalitarisme de la chance, son caractère inadéquat quant à l'accommodement des désavantages culturels dont souffrent les migrants n'en fait pas partie.

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# IMMIGRANTS, MULTICULTURALISM, AND EXPENSIVE CULTURAL TASTES: QUONG ON LUCK EGALITARIANISM AND CULTURAL MINORITY RIGHTS

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## ABSTRACT:

Kymlicka has offered an influential luck egalitarian justification for a catalogue of polyethnic rights addressing cultural disadvantages of immigrant minorities. In response, Quong argues that while the items on the list are justified, in the light of the fact that the relevant disadvantages of immigrants result from their choice to immigrate, (i) these rights cannot be derived from luck egalitarianism and (ii) that this casts doubt on luck egalitarianism as a theory of cultural justice. As an alternative to Kymlicka's argument, Quong offers his own justification of polyethnic rights based on a Rawlsian ideal of fair equality of opportunity. I defend luck egalitarianism against Quong's objection arguing that if choice ever matters, it matters in relation to cultural disadvantages too. Also, the Rawlsian ideal of fair equality of opportunity cannot justify the sort of polyethnic rights that Quong wants it to justify, once we set aside an unwarranted statist focus in Quong's conception of fair equality of opportunity. Whatever the weaknesses of luck egalitarianism are, the inadequacy of the position in relation to accommodating cultural disadvantages of immigrants is not among them.

## RÉSUMÉ :

Kymlicka a offert une justification égalitarienne de la chance influente en faveur d'un catalogue de droits polyethniques visant les désavantages culturels dont souffrent les minorités migrantes. En réponse, Quong argue du fait que, si les éléments d'un tel catalogue sont justifiés, parce que les désavantages pertinents dont souffrent les migrants résultent de leur choix d'immigrer, (i) ces droits ne peuvent être dérivés de l'égalitarisme de la chance (ii) ce qui nourrit des doutes quant à l'égalitarisme de la chance en tant que théorie de la justice culturelle. En tant qu'alternative à l'argument de Kymlicka, Quong offre sa propre justification des droits polyethniques basée sur l'idéal rawlsien de juste égalité d'opportunités. Dans cet article, je défends l'égalitarisme de la chance contre l'objection de Quong en vertu du fait que si le choix compte, il compte également en ce qui concerne les désavantages culturels. En sus, l'idéal rawlsien de juste égalité d'opportunités ne peut justifier le type de droits polyethniques que Quong désire lui faire justifier, une fois mise de côté la coloration statiste injustifiée au sein de la conception de la juste égalité d'opportunités avancée par Quong. Quelles que soient les faiblesses de l'égalitarisme de la chance, son caractère inadéquat quant à l'accommodement des désavantages culturels dont souffrent les migrants n'en fait pas partie.

## 1. INTRODUCTION

Many liberals are critical of cultural minority rights and believe that laws should be insensitive to cultural differences.[1] However, according to an influential line of argument by Will Kymlicka, cultural minority rights can be derived from liberals' core commitment to equality.[2] Kymlicka's argument takes its starting point in the claim that secure membership in one's own culture is a crucial resource.[3]

In fact, it is so important that, really, autonomous choices among different goods are only possible to the extent that one enjoys the 'context of choice' that secure membership in a societal culture uniquely provides. Accordingly, Kymlicka construes cultural membership as a primary good in the Rawlsian sense.[4] It is a good that any rational individual will want whatever life plans she has. Since justice requires that inequalities that are not traceable to choices made by individuals are eliminated, it follows that justice may require various sorts of cultural minority rights to ensure that all citizens, notably members of cultural minorities, are not denied access to their culture. Rightly construed, cultural minority rights may be necessary to realize an 'endowment-insensitive' distribution.[5]

More specifically, Kymlicka believes that this resourcist luck egalitarian argument justifies cultural minority rights for Canadian Indians (and Inuits). A Canadian Indian did not 'choose to be born... into an aboriginal minority surrounded by an English-Canadian majority, and therefore it seems unfair to expect [her] to bear the presumably considerable costs of assimilating to the majority culture'.[6]

The case of immigrants is different, however. A Dane who immigrates to Canada and finds that she lives 'surrounded by an English-Canadian majority' cannot say that these cultural disadvantages of hers – assuming that such they are – is not in any way traceable to her own choice and, accordingly, is unjust from a luck egalitarian perspective. Kymlicka, thus, thinks that the case of cultural minority rights – polyethnic rights as he calls them – is relevantly different from the case of minority culture rights of indigenous people: 'The expectation of integration [of immigrants to the majority culture] is not unjust, I believe, so long as the immigrants had the option to stay in their original culture. Given the connection between choice and culture... people should be able to live and work in their own culture. But like any other right, this right can be waived, and immigration is one way of waiving one's right. In deciding to uproot themselves, immigrants voluntarily relinguish some of the rights that go along with their original national membership.'[7]

Still, Kymlicka thinks that immigrants are owed certain polyethnic rights enabling integration.[8] These rights 'may require some modification of the institutions of the dominant culture in the form of group-specific polyethnic rights, such as the right of Jews and Muslims to exemptions from Sunday closing legislation, or the right of Sikhs to exemptions from motorcycle helmet laws. Without these exemptions, certain groups would be disadvantaged (often unintentionally) in the mainstream. Immigrants can rightfully insist on main-

taining some of their heritage, and dominant institutions should be adapted to accommodate those differences.'[9]

In a recent and very interesting article, Jonathan Quong has attacked Kymlicka's view of polyethnic rights in particular and luck egalitarianism in general. He believes that Kymlicka fails to endorse the implications of his own commitment to luck egalitarianism, when it comes to polyethnic rights. Quong writes as follows: 'But why should a theory of multicultural justice that is based on luck egalitarianism care about easing the costs of cultural integration for immigrants. Immigrants have chosen to move to the new societal culture. If we are adopting the chance/choice distinction at the heart of 'luck multiculturalism', shouldn't immigrants bear the full costs of integration?'[10] While one may exercise no or little direct or indirect control over one's cultural membership, the fact that the cultural preferences of immigrants are expensive is a result of their choice to migrate and that is what defeats the luck egalitarian case for compensation.[11] Because Quong thinks justice 'permits exemptions from generally applicable laws in many cases of cultural disadvantage (presumably including cases involving immigrants: KLR), and that justice requires exemptions when such cases involve the principle of fair equality of opportunity', he infers that luck egalitarianism fails to provide a satisfactory 'approach to questions of cultural justice'.[12] He then proceeds to offer his own justification of polyethnic rights based on a Rawlsian appeal to the public value of fair equality of opportunity, properly construed'.[13]

Broadly speaking, there are two lines of argument in Quong's negative argument against Kymlicka. One concerns whether the case of immigrants causes problems for luck egalitarians. Another more specific one concerns whether Kymlicka follows his luck egalitarian argument where it leads him with respect to polyethnic rights. In my view, Quong is right that there are various tensions or perhaps even inconsistencies in Kymlicka's views on equality and polyethnic rights. For instance, to the extent that polyethnic rights are grounded in a concern for equality, it is hard to see why immigrants might not have polyethnic rights even if these hinder integration into mainstream society.[14] However, my main interest is with the first and broader line of argument. I want to defend luck egalitarianism against Quong's challenge. His argument fails to specify the relevant circumstances that lead people to immigrate, and once we do that, we will see whether immigrants and non-immigrants faced equally good sets of options prior to the former's choice to migrate or whether they did not. If they did, luck egalitarianism is not implausible for holding that the situation does not call for compensation as a matter of justice. If they did not, justice may indeed call for compensation, but luck egalitarianism can justify such calls. Accordingly, Quong's challenge to luck egalitarianism is undermined. This defence of luck egalitarianism follows in Section Three after a more elaborate presentation of Quong's critique of 'luck multiculturalism', i.e. luck egalitarianism applied to

questions of cultural justice, in Section Two. Section Four turns to Quong's own positive defence of polyethnic rights. I argue that Quong's own argument relies on an unargued, implausible, statist assumption and that it fails to establish polyethnic rights in the kind of cases where Quong thinks such are permissible or required. Hence, the main claim of this article is that, despite Quong's criticism and his Rawlsian contender, the luck egalitarian view on polyethnic minority rights is defensible.

## 2. QUONG'S CHALLENGE

This section sets out the nature of Quong's challenge to luck multiculturalism in greater detail. The first thing that should be noted is that luck egalitarianism, or at least political philosophers normally identified as luck egalitarians, hold, or may hold, that different kinds of disadvantages may befall a cultural minority and that some of these disadvantages are unjust, *even if* the decision to immigrate amounts to a genuine choice. Hence, for the purpose of assessing Quong's critique, we should set aside *such* disadvantages. More generally, we should not assume that luck egalitarianism can be defined as the view that disadvantages traceable to choice are just *whatever the initial frame of choice*. So suppose, for instance, that the relevant disadvantage is discrimination against immigrants rooted in racial or cultural prejudice. Such disadvantages would be disallowed by Ronald Dworkin, who believes that justice requires that no one is disadvantaged as a result of the discriminatory, external preferences of others.[15] The sort of disadvantages that is of relevance to an assessment of Quong's criticism is disadvantages that reflect, say, nothing other than the relative numerical sizes of the relevant cultural communities. In this respect, the relevant disadvantages are of the very same sort as those experienced by people who favour pears over apples, when there are economies of scale in the production of fruits, and most people favour apples over pears.[16]

Note, next, that Quong's discussion proceeds from the assumption that immigrants are at a disadvantage relative to the majority population in their new country in which the former constitute a minority unlike in their country of origin. My discussion shall proceed on the same assumption, but I should like to note that this is a special, albeit perhaps quite common, case. Many immigrants move from illiberal countries in which they are minorities of their own and may in fact face even harder conditions in terms of access to their own culture. For instance, we can understand why Kurds immigrating from Turkey or Copts from Egypt will not be impressed with a dismissal of their claims to something stronger than polyethnic rights on the Kymlickean ground that they had 'the option to stay in their original culture' given the sort of pressures Kurds experience in Turkey and Copts in Egypt.[17] Also, some immigrants move to countries in which they do not constitute minorities, but where the non-immigrant population may find that they experience cultural disadvantages as a result of immigration. Perhaps this is the case for certain Anglophones in parts of Southern California where Latinos form the majority.

Third, it is one thing to say that luck egalitarianism does not imply that justice requires polyethnic rights for immigrants. It is another thing to say that luck egalitarianism is incompatible with polyethnic rights for immigrants. This difference is important here and softens Quong's criticism somewhat for the following reason. Some luck egalitarians say that inequalities that are not traceable to genuine choices are unjust, leaving open what justice requires about equalities.[18] Others say that equalities that are not traceable to genuine choices, e.g. because one person acted responsibly and the other acted grossly irresponsibly, and nevertheless, they end up equally well off, are unjust as well.[19] Call the former minimal luck egalitarians and the latter maximal luck egalitarians. The relevance of this distinction to the present issue is that minimal luck egalitarians can say that while their favoured version of luck egalitarianism does not imply that justice requires polyethnic rights equalizing the position of members of immigrant minorities with that of the majority of the non-immigrant population, it is not incompatible with it either. Hence, to rebut any kind of luck egalitarianism, it is not enough for Quong to argue that any plausible account of cultural justice must be compatible with polyethnic rights. Some forms of luck egalitarianism are compatible with such rights. Rather, he *must*, as in fact he does, make the stronger claim that any plausible theory of distributive justice must imply that justice *requires* polyethnic rights provided that immigrant cultural minorities exist etc.

Fourth, Quong presents his challenge as if it is specifically concerned with immigrants, because immigrants who form a cultural minority are disadvantaged as a result of a choice that they have made. But this focus misrepresents the nature of his argument. Consider the case of a *non-immigrant* cultural minority whose members suffer various disadvantages for being a cultural minority. Suppose, moreover, that the transaction costs involved in immigrating are zero and that the cultural majority in a neighbouring state has a culture identical to that of the minority in the first state. Suppose, finally, that these people do not choose to immigrate. Presumably, luck egalitarianism implies that if they choose not to, the disadvantages that they suffer are traceable to a choice that they have made, and accordingly, justice does not require that they be compensated for the disadvantages they suffer from being a cultural minority, albeit not a minority of *immigrants*. It is important to stress that not only immigrants are where they are because of choices they made. The same is true of those who choose to stay where they are rather than immigrating. Hence, rightly construed, Quong's challenge has a broader scope than that which he himself ascribes to it and, arguably, it is therefore an even more powerful challenge.[20]

## 3. IMMIGRANT BY CHOICE

With these specifications in mind, let us return to the core of Quong's rebuttal of luck egalitarianism. In my view, the apparent strength of Quong's argument derives from our thinking about the matter being shaped by the fact that inequalities existing within a state between immigrants and non-immigrants are in fact rarely simply traceable to choice but, to a large extent, reflect inequalities which were among the main reasons why the immigrants became immigrants in the first place. For instance, it is not as if the people who occasionally storm the Spanish enclave in Morocco, Melilla, or sail in small boats to the Canary Islands to arrive in Europe have equally good options as Europeans and, accordingly, that insofar as they succeed in ending up in Europe and experience various forms of disadvantages from being a cultural minority – in fact, very many different cultural minorities – these disadvantages are simply traceable to choice. These people are immigrants basically because they want to escape poverty in their countries of origin and believe their economic opportunities in Europe will be much better. Luck egalitarianism does not condone people being worse off as a result of choices they made to escape unacceptably bad situations, when those whom they are worse off than faced no such unfavourable choice situation. Hence, to make sure that our intuitions about the justice of polyethnic rights are not polluted by confusing facts about the desperate situation of many real-world immigrants, we must construct a scenario where these factors are eliminated.

Before I proceed to do so, I want to register that Quong himself recognizes the need to consider cases in which the decision to immigrate is the result of a 'genuine choice'. In an endnote, he writes: 'Following Kymlicka, I take it as given that immigrants are people who have a genuine choice about whether or not to immigrate – they are not, that is, refugees or asylum seekers.'[21] But this strikes me as not being the best place for such a crucial stipulation. Surely, in light of the fact that the sort of hypothetical immigrants we need to consider for theoretical purposes are so different from real-life immigrants, such a stipulation needs to be upfront and unless it is, we cannot trust that the intuitions we have concern immigration in principle (as opposed to persecution- or poverty-induced displacement). Obviously, it is huge question for luck egalitarians when a choice is genuine (whereby I will mean 'choice of such a nature that it may justify inequality'). Suffice for present purposes to say that for choice to warrant inequalities between two persons, it is necessary that they faced equally good choice situations, e.g. it is not the case that one agent faced better options than the other agent or was better informed about them than the other agent. While this may not be a sufficient condition for genuineness of choice, at least it is seen as a necessary one by some of the main proponents of luck egalitarianism.[22]

So consider a case where we have a world consisting of two different states. Let us suppose that these have different cultures and each is culturally homogenous. Let us moreover suppose that there are no unjust inequalities between the two

states and no unjust inequalities within the two states. For instance, it is not as if the climate in one country is harsh and arctic, while it is pleasant and Mediterranean in the other, or that GDP per capita is larger in one of the countries. Suppose that under these circumstances, one-tenth of the population in each of the two states decides to immigrate to the other state – suppose they want to experience the thrill of living in a different country or that they want to explore some particular aspect of life in the other country – where they will then form a cultural minority suffering various disadvantages as a result of their choosing to immigrate, e.g. they will find it hard to get a job where they can speak their language of origin etc. Hence, it is true of each member of the cultural minorities of the two countries that she is worse off than the majority population in her country, because she knowingly chose to act in a way that she knew would lead her to suffer the disadvantages of being a cultural minority. In this case, luck egalitarianism implies that minority members are not due compensation as a matter of justice.

Given that members of the two new-formed cultural minorities are worse off as a result of their own choice and that the alternative to making this choice was in no way unreasonably bad, luck egalitarianism does not imply that justice requires that they be granted polyethnic rights to ease their integration into mainstream cultural institutions even assuming that such rights are a way of addressing cultural disadvantage. I for one see no counterintuitiveness in this implication of luck egalitarianism.[23] So, as I see it, Quong is right that one can construe scenarios involving disadvantaged cultural immigrant minorities in which luck egalitarianism does not require polyethnic rights, but he is wrong to think of this as something that refutes luck egalitarianism. Note, also, that many forms of polyethnic rights may nevertheless be compatible with luck egalitarianism because they do not affect how well off people are.

One response to the argument so far may be that all I have done is to flesh out the uninteresting fact that Quong and I have different intuitions about what justice requires. So in the following, I shall back up my intuition with three supporting considerations.

First, Quong does not attack the assumption that expensive tastes voluntarily cultivated ground no claim for compensation. He considers a case of a political philosopher, Dan, who lives in a large, metropolitan city where satisfying his love for opera is 'relatively inexpensive'. Dan then 'chooses to relocate to a small rural town... Going to the opera is now very expensive for Dan as no one in his small rural town likes opera... Opera is only expensive for Dan because he chose to make it expensive... If Dan was not owed any compensation before, then he cannot possibly have a luck egalitarian claim to compensation when he immigrates to the small town.'[24] Apparently, Quong does not disagree that Dan has no claim for compensation on grounds of justice.[25] But if so, and if Quong thinks

that cultural preferences are different from, say, preferences for opera in a way that matters from the point of view of justice, he should explain what these differences consist of. However, as far as I can see, he offers no such explanation.

One might respond that it is not difficult to think of something Quong could say at this point, namely that cultural preferences are deep in a way most other expensive preferences, e.g. the preference for opera, are not.[26] However, this suggestion strikes me as false. For some people, e.g. artists, tastes for expensive art really are deep, deeper than their taste for their own culture. Moreover, for many people, their preference for their own culture over a closely related culture, say, some Danes' preference for Danish over Swedish culture, cannot be said to be deeper even if the preference for one's own culture over a very different culture may be different. In any case, however, this view of the depth of different kinds of preferences is fleshed out, it relocates the relevant cut. That is, the relevant difference from the point of view of justice is not located in the cut between expensive cultural preferences and expensive non-cultural preferences, but between deep and shallow expensive preferences, where expensive cultural preferences are then located at both sides of this divide.[27]

Second, it is hard to deny that choice makes *a* difference to one's claim to compensation for cultural disadvantages, if any choice ever is morally relevant for the injustice of a disadvantage. So compare the following two cultural minorities. The first minority suffers various disadvantages from being a cultural minority, and these disadvantages are unrelated to any choice made by members of this minority. They are not a minority as a result of immigration, and for some reason, it is literally impossible for them to immigrate. The second minority suffers from comparable disadvantages, but their disadvantages are disadvantages they knowingly brought upon themselves through their choice to immigrate, and they could eliminate these disadvantages completely through immigrating back to the country from which they immigrated. The decision to immigrate was not forced in any way, and similarly, immigrating back to their country of origin is neither costly nor difficult. In all other relevant respects, the two cases are identical. I submit that to the extent that we can compensate one and only one of these minorities for the disadvantages they suffer, justice is better served if we compensate the former minority. But if so, the choice to subject oneself to the disadvantages resulting from being a member of a cultural minority through immigration *is* relevant from the point of view of justice. Or to put this in a slightly more guarded way: to the extent that choosing to act in a way that makes one worse off than others defeats or weakens claims to compensation when such choice was made in a sufficiently good choice setting, decisions to immigrate do not differ from other choices regarding other matters in that they do not affect the strength of claims to compensation.

Admittedly, this does not imply that the costless choice to immigrate or the option of costlessly reversing this choice fully mitigates the injustice of suffering disadvantage as a result of being a cultural minority, but at least it shows that it is not irrelevant to the amount of injustice. Since Quong's position on this matter, which I return to in the next section, is to deny that choice makes *any* difference to the strength of claims to polyethnic rights to address cultural disadvantage, even the weaker claim that choice reduces the strength of claims to polyethnic rights is incompatible with his position.[28]

Third, consider a situation in which people have been dislocated and need to be resettled. Some people prefer to be located in an area where they form a cultural majority and, thus, where their cultural tastes are inexpensive. Others prefer to live in an area where they form a cultural minority (not *because* they form a cultural minority, but for some other reason) and, thus, will experience certain disadvantages. I contend that it is hard to see why, on the basis of Dworkinian luck egalitarianism, people who have the former cheap preference should compensate people who have the latter preference. But this situation is not relevantly different from a situation in which people are already distributed across different countries, but where there are no particular reasons to favour living in one country over another, e.g. that the average income in some countries are much higher than in others, and transaction costs involved in immigration are zero. Accordingly, it is hard to see why, on a Dworkinian luck egalitarian view, people who prefer to immigrate in this scenario should have a claim to compensation.

Let me complete this treatment of Quong's negative argument against luck egalitarianism with a brief note on Cohen's later views on expensive tastes. In 'The Currency of Egalitarian Justice', Cohen held that the cut between choice and luck (i.e. that which was not the result of genuine choice) was the basic distinction from the point of view of egalitarian justice. In his later work, he retracted from this position arguing that people who have a preference 'with which they strongly identify and which happens to be expensive' cannot reasonably be expected 'to forgo or restrict satisfaction of that preference (because it is expensive)'. This would amount to asking them to 'accept an alienation from what is deep in them'.[29] As I read these passages, they imply that, on Cohen's later view, immigrants who strongly identify with their cultural preferences, which happen to be expensive – unlike snobbish preferences where part of the reason why some good is preferred is exactly that it is expensive – cannot reasonably be expected to forgo the satisfaction of these preferences. On the assumption that polyethnic rights are necessary to this purpose, this would imply that, on Cohen's later view, polyethnic rights to ensure the satisfaction of the expensive cultural preferences of a minority can be justified. Quong, however, thinks otherwise, repeating his 'fundamental point', i.e. that 'immigrants are a paradigmatic instance of people who are responsible for the fact that their (cultural) tastes are expensive'.[30] But it is unclear if this point accommodates Cohen's 2004-view about the unreason-

ableness of asking people to alienate themselves from something that is deep in them. On this view, the mere fact that a person is responsible for her taste being expensive does not imply that she has no claim to compensation, since she might strongly identify with this preference.[31]

Whatever is the right interpretation of Cohen's later view, this has no bearing on the main issue at hand. For his later view introduces a distinction – the distinction between tastes with which one identifies and tastes with which one does not identify – which is not best seen as a distinction between chosen and unchosen tastes or expensiveness of tastes, and it is the latter distinction which Quong thinks lies at the heart of luck egalitarianism as he understands it and rightly so in my view.

## 4. RAWLSIAN FAIR EQUALITY OF OPPORTUNITY AND POLYETHNIC RIGHTS

As I have noted, Quong himself is not opposed to polyethnic rights. Indeed, he thinks that some are permitted by justice and that others may be required. In their defence, he offers an argument that 'relies on a Rawlsian view of justice and fair equality of opportunity'.[32] On Quong's view, 'the purpose of a theory of justice is to ensure that all citizens have a reasonable or adequate chance to pursue their conception of the good. This primary aim, however, is constrained by the compossibility condition: the principles of justice must ensure (as far as possible) that we do not ruin other people's chances of pursuing their conception of the good while we pursue our own'.[33] Obviously, it is crucial what Quong means by 'reasonable or adequate chance'. On one view, a chance is 'reasonable or adequate' when it is attractive enough in some absolute sense that does not involve comparisons with the chances of other people. However, this is not the sense that Quong has in mind. On Quong's view, people's chances are 'reasonable or adequate' when and only insofar as people have fair equality of opportunity in Rawls' sense. Equality of opportunity in this sense obtains when and only when 'people with similar abilities and ambitions have the same chances of success.'[34] So, for instance, if an adolescent cultural minority member is exactly as talented and has exactly the same ambitions as an adolescent cultural majority member and yet is likely to be less successful in realizing her ambitions, then inequality of opportunity obtains and, accordingly, the society in which they live is unjust.

While Quong appeals to Rawls' principle of fair equality of opportunity, he distinguishes between unfair inequalities of opportunity depending on whether these concern the 'basic opportunities of citizenship' or not. For where 'a law disadvantages members of a particular cultural and religious group, but where that disadvantage does not affect the basic opportunities of citizenship... [cultural exemptions are permissible]', but not required.[35] However, where such inequalities do affect basic opportunities of citizenship 'like employment and education,' such exemptions are required by justice.[36]

The case of a rule that, say, makes it harder for orthodox Jews to '*combine* the pursuit of their chosen conception of the good with the career of a police officer', e.g. because police officers are required to work on Saturdays, illustrates an inequality of the former sort, i.e. one that violates fair equality of opportunity and, thus, ought to be rectified.[37] The case of Sikhs and an exemption from a rule that requires construction workers to wear helmets falls within the former category.[38] In short: ensuring fair equality of opportunity often requires polyethnic rights.

Does Quong's Rawlsian equality of opportunity account justify the sort of polyethnic rights that he wants to justify? I see several problems here. Suppose, as in one of my examples above, that immigration involves no transaction costs, and suppose that for any minority member, there is some country to which they could immigrate such that, in this country, they would not suffer from any cultural disadvantages since they would form a cultural majority in this country. In this scenario, there would, in a certain sense, be no unfair inequalities of opportunity. True, it may not be the case within a country that 'people with similar abilities and ambitions have the same chances of success' provided that the case of immigration is ignored for the purpose of determining whether fair equality of opportunity obtains. However, once we take into account the option of immigration, such fair equality of opportunity would obtain. Members of the cultural minority would have better opportunities than members of the relevant cultural majority in case they chose to immigrate, and this counterbalances the worse opportunities that members of the minority have compared to members of the cultural majority in the situation where they do not immigrate.

Quong might well respond that the ideal of fair equality of opportunity disregards the possibility of immigration and enjoin people to enjoy equal opportunities within the country in which they presently live. Quong puts it this way: 'The purpose of a theory of justice is to ensure that all have a reasonable or adequate chance to pursue their conception of the good' where, by 'all citizens', he means all citizens who belong to the same polity and, thus, relate to one another as co-citizens and not all citizens whichever polity to which they belong.[39]
Obviously, this is how the ideal of equal opportunity is often understood, and it is well known that Rawls, in his formulation of his principles of justice, only considered societies that were closed immigration-wise.[40]

However, on reflection, it is unclear why opportunities that people would have if they were to immigrate are irrelevant to justice. In particular, the view that they are strikes me as unfounded in cases where immigration involves no transaction costs. Moreover, this view seems hard to reconcile with the view that opportunities involving intrastate migration counts for the purpose of assessing the justice of inequalities. So suppose that my set of options is as good as that of my fellow Americans, but to realise the best options, I must move from Boise to

New York, whereas some of my fellow Americans can realise their best options while staying in New York. Suppose that either moving involves no transaction costs for me or it does, but that these are offset by the extra benefits (relative to people already living in New York) that will accrue to me if I migrate to New York. Most would say that these opportunities defeat the injustice of inequality, i.e. if I choose to stay in Boise and, as a result, end up worse off than New Yorkers this is not unjust, because I had the choice and chose to stay where I was. Why should they think any different if Idaho were to secede from the US even if everything else remained equal?

It might be replied that this comparison between inter- and intrastate migration is flawed because migration within states does not involve cultural disadvantages of the sort that migration across state borders does. However, while it might be true in general that cross-border migration involves greater cultural disadvantages, it is not true of cross-border migration per se. Presumably, intra-Scandinavian migration may involve fewer cultural disadvantages that polyethnic rights are meant to address than, say, intra-state migration in the former USSR. It seems that, at the root of Quong's defence of polyethnic rights, there is a problematic and yet unargued state-centred restriction on the scope of the principle of fair equality of opportunity (not rooted in a view about cultural disadvantages, but more likely reflecting a state-centred view of justice to the effect that justice requires the state to give its citizens a fair equality of opportunity *qua* members of that state).[41] However, in the present dialectical setting, canvassing this restriction on Quong's part threatens to undermine his criticism of luck egalitarianism. For, surely, if Quong is entitled to disregard opportunities not realized through a choice (not to) immigrate, then so are luck egalitarians. So imagine that a group of immigrants who face unfair inequalities of opportunities in Quong's sense and who are worse off than their new fellow citizens in terms of the relevant luck egalitarian currency, but whose members would have avoided either disadvantage had they chosen not to immigrate in the first place. Quong wants to say that the former kind of inequality is unjust and, presumably, he can do so only if he disregards the fact that immigrants failed to realize the best choices in their opportunity set in deciding to immigrate. But if Quong can say this – and I write 'if', stressing that I think disregarding immigration-related opportunities is *ad hoc*, although I concede this is a huge discussion in itself – then so can a luck egalitarian, i.e. she might say that since the choice to move to another country, unlike other choices, does not defeat the injustice of inequalities between immigrants and non-immigrants in the country to which the immigrants have moved.[42] Hence, it turns out that the objection that Quong directs against luck egalitarianisms appears to stick to it only because he denies luck egalitarians the option of disregarding immigration choices when assessing the justice of disadvantages, while allowing himself the very same assumption. But that means that he has provided us with no reason to favour his own fair equality of opportunity-based position over luck egalitarianism.

While, as indicated, I am sceptical of state-centred views of justice, the present argument neither relies on this scepticism, nor purports to defeat state-centred views. In a nutshell, it simply points out that in his contrast between luck egalitarianism and his own fair equality of opportunity view of justice, Quong ignores state-centred versions of luck egalitarianism and cosmopolitan versions of his own view. Hence, even if we accept Quong's view that the option of immigrating should be ignored for the purpose of assessing distributive justice, this neither refutes luck egalitarianism as such (since there are state-centred versions of luck egalitarianism that are compatible with this claim), nor supports fair equality of opportunity view (since there are cosmopolitan versions of this view that are incompatible with the claim that the opportunity of immigrating is irrelevant justice-wise). As we have seen, Quong believes that justice 'permits exemptions from generally applicable laws in many cases of cultural disadvantage, and that justice requires exemptions when such cases involve the principle of fair equality of opportunity'. [43] This view has an interesting implication which Quong does not mention. For suppose that while immigrants suffer from various kinds of cultural disadvantage, they also enjoy a number advantages not related to their culture.[44] Suppose, for instance, that they have a higher education and more savings than people in the country to which they immigrate, generally speaking.[45] If we think polyethnic rights are required by justice, when necessary or sufficient to bring about fair equality of opportunity, where this ideal requires that people have fair equality of overall opportunities and not fair equality of opportunity for each major category of opportunity (e.g., family life, worshipping, jobs), then polyethnic rights for immigrants would not be justified in such cases. In fact, we could imagine that 'exemptions' from general laws favouring the non-immigrant majority could be a way of realizing fair equality of opportunity overall.

Alternatively, Quong might say that not only should people enjoy fair equality of opportunity overall, but they should enjoy fair equality of opportunity in different spheres, where one such sphere is access to culture.[46]

But even this view would not secure polyethnic rights to address cultural disadvantage. Not all cultures may be equally accessible. Suppose, for instance, that the language of the majority culture is very difficult to acquire, e.g. Chinese written language, which involves thousands of different symbols and not just twenty eight letters, and which is very different from the spoken language. Again, to achieve fair equality of opportunity in terms of culture, it may be the case that exemptions should be made that favour the non-immigrant majority. While an appeal to fair equality of opportunity may justify a requirement of justice that polyethnic rights favouring disadvantages of immigrant minorities are implemented to address cultural disadvantages deriving from minority status, it might also favour exemptions favouring the non-immigrant majority despite the fact that the immigrant minority suffers from cultural disadvantage as a result of constituting a minority.

## 5. CONCLUSION

From the point of view of multicultural theory, the question whether immigrant minorities should be compensated for cultural disadvantages is crucial. Kymlicka has offered a luck egalitarian catalogue of so-called polyethnic rights addressing such disadvantages. In response, Quong argues that while the items on the list are justified, in the light of the fact that the relevant cultural disadvantages of immigrants result from their choice to immigrate, Kymlicka's luck egalitarianism is unable to justify them and that this casts doubt on luck egalitarianism as a theory of cultural justice. Instead, Quong offers his own justification of polyethnic rights based on a Rawlsian ideal of fair equality of opportunity. I have defended luck egalitarianism against Quong's objection arguing that choice matters in relation to cultural disadvantages too, if it ever matters. Also, I have contended that the Rawlsian ideal of fair equality of opportunity fails to justify the sort of polyethnic rights that Quong wants to justify, once we set aside an unwarranted statist focus in Quong's conception of fair equality of opportunity. Whatever the weaknesses of luck egalitarianism are, the inadequacy of the position in relation to accommodating cultural disadvantages of immigrants through polyethnic rights is not among them.[47]

## NOTES

1 E.g., Barry, Brian, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, Cambridge, Polity Press, 2001.

2 Kymlicka, Will, *Liberalism, Community, and Culture*, Oxford, Clarendon Press, 1989, esp. pp. 182-205. I discuss Kymlicka's luck egalitarian argument in favour of cultural minority rights in Lippert-Rasmussen, Kasper, «The Luck-Egalitarian Argument for Group Rights», in Sune Lægaard, Nils Holtug, and Kasper Lippert-Rasmussen, eds., *Nationalism and Multiculturalism in A World of Immigration*, London, Palgrave Macmillan, 2009, pp. 53-80.

3 It is important for Kymlicka that cultural membership is construed as a resource rather than as a source of or a component in welfare since, as a resourcist luck egalitarian, he rejects that people with welfare deficits due to so-called expensive tastes merit compensation, and from a welfarist, egalitarian point of view, cultural preferences simply qualify as expensive tastes; see Cohen, G. A., «Expensive Tastes and Multiculturalism», in Rajeev Bhargava, A. Kumar Bagchi, and R. Sudarshan, eds., *Multiculturalism, Liberalism, and Democracy*, Delhi, Oxford University press, 1999, pp. 80-100. Also, Kymlicka assumes that membership in *one's own* culture is the relevant important resource. Cross-cultural migration is very difficult and, in many cases, unreasonably costly according to Kymlicka; for critical discussions, see Waldron, Jeremy, «Minority Cultures and the Cosmopolitan Alternative», in Will Kymlicka, ed., *The Rights of Minority Cultures*, Oxford, Oxford University Press, 1995, pp. 93-119; Lippert-Rasmussen, K. «The Luck-Egalitarian», pp. 80-100.

4 Rawls, John, *A Theory of Justice*, Oxford, Oxford University Press, 1971, pp. 90-95.

5 'Endowment-insentivity' and 'ambition-sensitivity' are the two requirements that Kymlicka thinks sum up Ronald Dworkin's theory of egalitarian justice : Dworkin, Ronald, *Sovereign Virtue*, Cambridge, Mass., Harvard University Press, 2000, esp. pp. 11-119.

6 Quong, Jonathan, «Cultural Exemptions, Expensive Tastes, and Equal Opportunities», *Journal of Applied Philosophy*, vol. 23,no. 1, 2006, 53-71, p. 55; Kymlicka, *Liberalism*, p. 189.

7 Kymlicka, Will, *Multicultural Citizenship*, Oxford, Clarendon Press, 1995, p. 96.

8 Kymlicka's egalitarian defence of 'group-specific rights for ethnic and national minorities' is not the only argument for such rights that he offers. He also believes that these rights are justified on grounds of the value of cultural diversity and (in some cases) historical agreements, *ibid*. pp. 108-123.

9 *Ibid.*, pp. 96-97. It is harder to identify polyethnic rights than one might initially think: see Holtug, Nils, «Equality and the Rights of Religious Minorities», *Res Cogitans*, vol. 4, no. 2, 2007, pp. 49-79. The rule that shop owners must close on their day of worship may well serve the same purpose as an exemption of Jews and Muslims from Sunday closing laws even if it is a rule that applies to everyone. Since none of my arguments depends on the exact definition of polyethnic rights, I set aside this issue and rely on the use of rather uncontroversial examples of polyethnic laws.

10 Quong, «Cultural», p. 55.

11 Cf. Cohen, G. A., «Expensive Tastes Rides Again» in Justice Burley, ed., *Dworkin and His Critics*, Oxford, Blackwell Publishing, 2004, 3-29, p. 7.

12 Quong, «Cultural», p. 53.

13 *Ibid.*, p. 53.

14 As an example of how Kymlicka does not follow his own luck egalitarian argument where it leads him with respect to polyethnic rights Quong mentions the exemption of Sikhs from 'laws requiring motorcycle or construction-site helmets', Quong, «Cultural», p. 56. Kymlicka endorses this exemption. But according to Quong, Kymlicka is not in a position to do so, given his luck egalitarian view. On this view, Sikhs who prefer not to wear helmets simply have 'an expensive cultural habit that [Kymlicka] himself has defined as chosen rather than unchosen', *ibid.*, p. 56.

15 Dworkin, Ronald, *Taking Rights Seriously*, London, Duckworth, 1977, pp. 235-238; cf. Kymlicka, *Multicultural*, p. 96.

[16] Cf. G. A. Cohen, «The Currency of Egalitarian Justice», *Ethics*, vol. 99, 1989, pp. 906-944.

[17] The issue raised by such cases is how many costs members of one state have to bear to cushion the bad effects of unjust policies of unjust elites or majorities in other states.

[18] For instance, this is true of a widely used definition of telic egalitarianism as the view that '(i)t is in itself bad if some people are worse off than others', Parfit, Derek, «Equality and Priority», in Andrew Mason, ed., *Ideals of Equality*, Oxford, Blackwell Publishers, 1998, p. 3.

[19] Cohen, G. A., «Luck and Equality: A Reply to Hurley», *Philosophy and Phenomenological Research*, vol. 72, no. 2, 2007, pp. 439-446.

[20] In fact, its scope is even broader. Not only is the core of Quong's argument not specifically concerned with *immigrants* as opposed to non-immigrants. It is not even specifically concerned with cultural *minorities* as opposed to cultural majorities. Consider the case of a cultural majority whose members suffer various disadvantages relative to a cultural minority living in the same state for being a cultural majority. Suppose, for instance, that the various disadvantages that result from being a cultural minority are more than counterbalanced by the advantages of intercommunal solidarity and cohesion that come with being a minority. Suppose that the societal culture of the majority will disintegrate because of the complacency and disregard for culture resulting from being a majority with the result that people born into the majority culture will suffer various unchosen disadvantages in the absence of polyethnic majority rights. In that case, it would seem that there is a luck egalitarian case for polyethnic majority rights – whether the relevant majority consists of immigrants or non-immigrants – that is no weaker than the case for polyethnic minority rights under the different and more realistic assumption that cultural disadvantages result from being a cultural minority rather than a majority. While this is a normative implication that I find plausible given certain admittedly quite unrealistic empirical assumption, I shall set this case, as well as that of a non-immigrant cultural minority mentioned in the previous paragraph aside, and focus on the case which Quong addresses in his argument, i.e. that of an immigrant cultural minority.

[21] Quong, «Cultural», p. 69n12.

[22] Arneson, Richard J., «Equality and Equal Opportunity for Welfare», *Philosophical Studies*, vol. 56.1, 1989, 77-93, esp. pp. 85-87; Cohen, G. A., «The Currency of Egalitarian Justice», *Ethics*, vol. 99.4, 1989, 906-944, esp. p. 934.

[23] As noted in section two, first paragraph, the sort of cultural disadvantages that I am concerned with here reflect nothing other than the relative numerical sizes of the cultural communities involved. Hence, I am not here suggesting that luck egalitarians must endorse cultural disadvantage reflecting unjust discriminatory state policies etc.

[24] *Ibid.*, p. 57.

[25] Note that I am not asserting that Quong's reasons for withholding compensation to Dan are of a luck egalitarian sort.

[26] Actually, Quong believes that 'depth matters, and when a society's basic rules affect a person's capacity to combine her deep commitments with primary opportunities like employment and education, this is prima facie a matter of justice' (personal communication: on file with author).

[27] I am not sure exactly how to specify depth here. Presumably, the more a preference is tied to one's self-conception, the deeper it is, other things being equal; *ibid.*, p. 58.

[28] As Quong puts it : 'If social justice ought to be realized *within* states, then the majority in State A owes the minority fair terms within the confines of their state and not by reference to opportunities elsewhere' (personal communication : on file with author).

[29] Cohen, «Expensive», p. 7.

[30] Quong, «Cultural», p. 70n20.

[31] This is not to say that Cohen's 2004-view implies that immigrants necessarily have a claim to compensation. If they could costlessly immigrate to somewhere else, where they would suffer no cultural disadvantage, in a sense they are not being asked to alienate themselves from something that is deep in them, when the state to which they have immigrated does not compensate them for their present cultural disadvantage.

[32] *Ibid.*, p. 53.
[33] *Ibid.*, p. 58.
[34] *Ibid.*, p. 58.
[35] *Ibid.*, p. 58.
[36] *Ibid.*, p. 62.
[37] *Ibid.*, p. 64.
[38] Much here hangs on when a law disadvantages someone. On a very inclusive understanding, a law disadvantages a minority whenever there is an alternative law such that under this law, this minority would be better off. On a more restrictive understanding, the law has to be the cause that triggers the relevant disadvantage. On the latter view, a disadvantage suffered by a linguistic minority is likely to be a case where the law 'disadvantages members' of the minority. Quong's text is not very explicit on this issue. Some passages seem to involve the narrow understanding – e.g. *ibid.*, pp. 61, 63 – while others seem to involve the broader understanding – *ibid.*, pp. 64, 65. Also, I am not sure why exactly Quong thinks the police officer and the construction worker examples differ with regard to 'basic opportunities of citizenship'. One possibility is that, on his view, the religious concern underlying the working conditions discriminating against orthodox Jews cannot be expressed in terms endorsed by public reason, whereas the safety concern underlying the relevant helmet regulation can.
[39] *Ibid.*, p. 58.
[40] Rawls, *Theory*, p. 8.
[41] I owe this formulation of the state-centred view of justice to an anonymous reviewer of this journal. I have assumed throughout that our issue is one that concerns the fundamental principles of justice, in part because the luck egalitarian account of justice, which Quong criticizes, is located at this level. If, instead, Quong's defence of polyethnic rights is located at a non-fundamental level, e.g. at the level of principles of regulation, such that the fact that, in the real world, immigration involves significant transaction costs bears on which principles we should accept, I do not want to reject his position. However, Quong's disagreement with luck egalitarianism would disappear if his critique is so located. Given certain empirical facts, including facts about transaction costs and the political and social situation of real-world immigrants, luck egalitarianism may well justify polyethnic rights.
[42] This restriction may be one that luck egalitarians will find it hard to provide a plausible rationale for, perhaps harder than Rawlsians who believe the scope of justice is restricted for reasons having to do with reciprocity and participation in a shared basic structure. But, first, the relevant Rawlsian restriction is problematic as well and, second, its relevance to the present issue is unclear in light of the Poggean view that a global basic structure exists.
[43] Quong, «Cultural», p. 53.
[44] I here set aside the complication that while immigrants differ among themselves such that some of them have much better opportunities than others, polyethnic rights compensate all members of the relevant group for worse opportunities.
[45] In fact, such disadvantages may interact with the disadvantage of belonging to a cultural minority such that for people who are generally resourceful in terms of income, education, etc., belonging to a cultural minority may be less of a disadvantage than for people who are disadvantaged in terms of other resources. If so, we could imagine that two groups of immigrants should have different polyethnic rights, etc. from the point of view of luck egalitarian justice, even if, in some sense, their cultures differ to an equal degree from the culture of the majority population.
[46] I assume without argument that the view that overall equality of opportunity is irrelevant, while fair equality of opportunity in relation to different kinds of good is relevant is an unattractive view.
[47] I thank Jonathan Quong for some very detailed and insightful written comments on a previous draft. Also, I thank Søren Flinch Midtgaard, Xavier Landes, Orsolya Reich, and an anonymous reviewer of this journal for tremendously helpful criticisms.