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Résumé de l'article

L'opposition entre les droits culturels et linguistiques des immigrants, d'une part, et ceux des groupes nationaux, d'autre part, est-elle justifiée, considérant que ces derniers apprécient un ensemble plus complet de tels droits que ne le font les immigrants? Patten pose que de modestes écarts de neutralité seraient acceptables dans le traitement des droits culturels des immigrants et ceux de la majorité ainsi que ceux de groupes nationaux minoritaires. Je critique sa thèse en demandant si de tels écarts sont justifiés eu égard aux immigrants déjà installés (plutôt qu'à venir); si l'argument pour les traitements inégaux n'est pas incompatible avec la théorie de la culture offerte auparavant dans le livre; enfin si les contextes d'injustice historique contre les groupes d'immigrants ne compliquent pas les jugements sur la dichotomie entre minorité nationale et immigrants lorsqu'il s'agit des droits des minorités culturelles.

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LIBERAL CULTURALISM AND THE NATIONAL MINORITY/IMMIGRANT DICHOTOMY

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ABSTRACT:

Is the discrepancy between the cultural and linguistic rights of immigrants on the one hand and national groups on the other justified, with the latter group typically enjoying a fuller set of such rights than the former category? Patten presents a case for accepting some modest departures from neutrality in the treatment of immigrants' cultural rights and that of majority and minority national groups. I challenge his thesis by asking whether such departures are justified with respect to already settled (as opposed to prospective) immigrants; whether the situational argument for unequal treatment is inconsistent with the theory of culture offered earlier in the book; and whether contexts of historical injustice against immigrant groups might complicate judgements about the national minority/immigrant dichotomy with respect to minority cultural rights.

RÉSUMÉ :

L'opposition entre les droits culturels et linguistiques des immigrants, d'une part, et ceux des groupes nationaux, d'autre part, est-elle justifiée, considérant que ces derniers apprécient un ensemble plus complet de tels droits que ne le font les immigrants? Patten pose que de modestes écarts de neutralité seraient acceptables dans le traitement des droits culturels des immigrants et ceux de la majorité ainsi que ceux de groupes nationaux minoritaires. Je critique sa thèse en demandant si de tels écarts sont justifiés eu égard aux immigrants déjà installés (plutôt qu'à venir); si l'argument pour les traitements inégaux n'est pas incompatible avec la théorie de la culture offerte auparavant dans le livre; enfin si les contextes d'injustice historique contre les groupes d'immigrants ne compliquent pas les jugements sur la dichotomie entre minorité nationale et immigrants lorsqu'il s'agit des droits des minorités culturelles.

The last chapter of Alan Patten's rigorously argued and clarifying work *Equal Recognition* addresses the question of whether it is justified to distinguish between immigrant and national minority groups in thinking about minority cultural rights. Is the discrepancy between the cultural and linguistic rights of immigrants on the one hand and national groups on the other justified, with the latter group typically enjoying a fuller set of such rights than the former category? Is it reasonable for liberal citizens to make the national/immigrant distinction the basis for inclusion/exclusion (Patten, 2014, p. 288)? "Is it reasonable or permissible for citizens attached to liberal democratic principles to adopt a policy that gives more help to members of national groups in securing what they care about than it does to speakers of immigrant groups" (Patten, 2014, p. 290)? Patten presents a case for accepting some departures from neutrality in the treatment of immigrants' cultural rights and in that of majority and minority national groups.

Overall, Patten's theory of equal recognition does not make a normative distinction between national and immigrant groups. One important aspect of his theory is how it allows us to distinguish between 'liberal culturalism' and 'liberal nationalism,' the latter of which tends to assume that the types of cultural groups that deserve accommodation and recognition must have a nationalist agenda or be viable nations, and that such national groups have justice-based claims to dominate culturally some part of the state (Patten, 2014, p. 6). For liberals who are uneasy with the use of liberal principles to endorse nationalist projects that may conflict with individual self-determination, Patten's theory contains the resources to criticize national majorities *and* minorities for imposing certain restrictions on the cultural or linguistic rights of members of other cultural minorities. For example, Patten argues that establishing fair background conditions for the self-determination of minority-language-speakers, including immigrants, entails offering after-school or in-school classes in "particular minority languages (where there is a demand) to help parents to pass on their native language to their children" (Patten, 2014, p. 286).

Another important intervention that Patten makes in this debate is to confine the term "immigrants" to the first generation only—that is, to "people who are adults at the moment of immigration" (Patten, 2014, p. 276). In popular discourse, people from historically immigrant groups (i.e., people whose parents were first-generation immigrants) are sometimes themselves still considered by the culturally dominant group to be (second- and third-generation) immigrants, even if they are born in the country. Patten, I think, is rightfully criticizing this popular discourse, especially if its implication is that second- and third-generation members of historical immigrant groups do not enjoy the same rights to fair opportunity for self-determination as members of dominant national groups, majority or minority. According to Patten's argument, even first-generation immigrant cultural minorities can appeal to the liberal principle of neutrality in support of their demand for certain cultural or linguistic rights.

But if liberal culturalism based on the principle of liberal neutrality is more accommodating of non-national cultural groups, how can the liberal state justify unequal treatment of national minorities and immigrants, granting a fuller set of cultural and linguistic rights to the former, and a more restricted set of such rights to the latter category of citizens? If Patten's theory cannot justify unequal rights between national minority groups and immigrant groups, and immigrants have grounds to claim cultural rights similar to national groups, this could mean that liberal culturalism would lead to an "uncontrolled proliferation of rights claims" (Patten, 2014, p. 270) in culturally pluralistic societies, making it an unsustainable theory. Privileging national minority groups' cultural rights would violate the principle of equal recognition founded on the idea of liberal neutrality, but giving equal cultural and linguistic rights to all groups, national and immigrant, would be infeasible.

As mentioned earlier, Patten's theory is generally hospitable to immigrants enjoying cultural rights as a requirement of liberal justice. He argues that prospective immigrants should not be deemed to have waived toleration and accommodation rights, or any rights that are relevant to an immigrant's capacity to integrate into the (or a) societal culture of the receiving society. Also, immigrants should not be deemed to have waived cultural and linguistic rights that could easily be extended to an indefinite number of groups without compromising other legitimate functions and purposes of the liberal democratic state. If some cultural or linguistic rights have a low cost or are not scarce, then it is unreasonable for the receiving society to make their surrender a condition of immigration. Patten also argues that there are some forms of partiality that are unreasonable and illegitimate, such as state officials favouring members of their own cultural group over other citizens, or members of the majority acting in a democratic capacity to favour their own culture over the minority culture of fellow citizens.

But Patten wants to endorse the conclusion that "there is nothing objectionable about a receiving society [of immigrants] that makes the waiving of a full set of cultural or language rights a condition of admission to immigrant status. In insisting on this condition, the receiving society is not exacting an extortionate price but is defending legitimate interests in a reasonable manner" (Patten, 2014, p. 293). Further, "by deprioritizing the claims of immigrants, a state is not denying them rights that are essential to freedom or a worthwhile life but is instead imposing on them a disadvantage that, in any case, will have to be imposed on some people given the impossibility of extending a full set of cultural and linguistic rights to all groups. And in prioritizing the claims of national minorities over those of prospective immigrants, a state is recognizing legitimate situational and perspectival differences between the different groups making claims" (Patten, 2014, pp. 294-295).

The situational reason addresses the potential of continual shifting of group rights, with some groups' rights being dismantled. Patten argues that "once it is common knowledge that the state would withdraw support in this way, its inter-

ventions on behalf of minority languages and cultures would become gradually less effective” (Patten, 2014, p. 289). Fair opportunity for self-determination, to be stable, requires some durability in the legitimate expectations that people have surrounding their cultural and linguistic rights. If such rights shifted to different groups depending on numbers, this is likely to be disruptive to the plans and expectations of people who had made decisions (and committed resources, including time and energy) based around the public guarantee of such rights. While I am mostly convinced by this argument, I wonder if the stability of legitimate expectations requires that they can never be legitimately changed. On Patten’s own theory of culture as the precipitate of shared, but fluid and ever-evolving, formative conditions of socialization, the expectation that cultural and linguistic rights of different cultural minorities would never change would not be a legitimate one, even if some people’s self-identification with a certain precipitate of culture is essentialist. Given the possibility of radical substantive cultural change over time, it must be conceivable and legitimate that the cultural and linguistic rights of different cultural minorities will change over (a very long period of) time.

The perspectival reason, according to Patten, allows citizens to deviate from the impartial or impersonal perspective, and to express some partiality for their own attachments and projects. With respect to scarce cultural and linguistic rights, citizens can collectively favour the cultures that are found among themselves over the cultures of would-be immigrants in allocating scarce cultural rights (Patten, 2014, p. 293). For Belgians, according to Patten’s example, “several of the languages whose claims are being considered are their own and are, for some of them at least, objects of attachment” (Patten, 2014, p. 291). It would not be unreasonable, then, for the Belgian state to refuse the demand of Arabic-speaking immigrants that Arabic be recognized as Belgium’s fourth national language. According to the perspectival argument, there is an “asymmetry in decision-making authority between potential immigrants and national groups: it is from the perspective of the latter, not the former, that decisions about cultural and linguistic rights are made” (Patten, 2014, p. 288).

One limitation of this argument is that it focuses on what the receiving state can impose as a condition of immigration on prospective immigrants, and not on whether the cultural and linguistic rights of established national groups and settled historically immigrant groups (second- and third-generation members) should be asymmetrical in principle. While the argument may justify the Belgian state requiring that prospective Arabic-speaking immigrants to Belgian waive a right to have their children educated in Arabic, it does not justify prioritizing the established national languages over demands by Arabic-speaking Belgians (second- and third-generation) to make Arabic a fourth national language.

Indeed, Patten’s particular understanding of culture and his theory of equal recognition actually should push liberal states towards periodic reconsiderations and revisions of the cultural and linguistic rights of the various groups that make up society. According to Patten, a distinct culture is “the relation that people

share when, and to the extent that, they have shared with one another subjection to a set of formative conditions, that are distinct from the formative conditions that are imposed on others” (Patten, 2014, p. 51). Cultural continuity exists when new generations and newcomers are exposed to the same distinctive set of formative conditions that are controlled by members of the culture. At the same time, Patten notes that the substantive content of a culture can change quite radically, without amounting to cultural loss or disappearance. For example, Canada’s population is no longer dominated by people with British and French ethnic or cultural heritage, and Canada’s national identity has changed over decades, away from the idea of Canada as “two founding nations,” and in favour of a multi-cultural Canadian identity. These changes make it plausible that the cultural and linguistic attachments of Canadians have likely changed over time. If through immigration, the cultural make-up of a country changes, it is not clear why the cultural rights of established national groups, majority and minority, should have priority over those of settled historically immigrant groups (who are now also members of the larger culture) who may seek to change substantively the formative processes and conditions of the society. In terms of the perspectival argument, while it is true that there is an “asymmetry in decision-making authority between *potential* immigrants and national groups” (*italics mine*), there should be no asymmetry in decision-making authority between settled (historically immigrant) culturally distinct groups and established national groups over the cultural and linguistic rights such existing groups enjoy; otherwise different conceptions of the good valued by citizens would not enjoy neutral treatment by the state.

Patten might find it implausible that second- and third-generation members of historically immigrant groups, whose socialization involved learning the dominant languages, would advocate recognition of their parents’ or their own minority native languages. It is true that currently, many second- and third-generation citizens never develop fluency in the language of their immigrant parents, but this might be because liberal states have not provided adequate accommodation and toleration rights to such cultural minorities. For example, they do not offer after-school or in-school classes in “particular minority languages (where there is a demand) to help parents to pass on their native language to their children” (Patten, 2014, p. 286). If we imagine a more culturally just liberal society in which minority-language speakers have greater access to minority-language education for their children, it is conceivable that second- and third-generation citizens would build up an attachment to such languages, which could be the basis of a demand for equal recognition with national minority languages.

Patten also considers the possibility that historical injustice (against a national minority group) may require reparation or amends, which might take the form of prioritizing their claim on scarce linguistic-cultural rights over that of immigrant claims. If we think about the denial of Indigenous self-determination and destruction of Indigenous cultures in Canada, Patten’s argument supports the idea that the state may be required to provide a proportionately larger share of resources, compared to other cultural groups, to assist such Indigenous cultures

to revive their languages and cultural practices, even if the people who benefit from such assistance constitute a small portion of the Canadian population.

This is another important intervention that Patten makes in discussions about the relationship between cultural rights and cultural preservation. Patten's understanding is that the commitment to liberal neutrality as the ground for cultural rights is not a defense of a right to cultural preservation or to any particular cultural outcome (Patten, 2014, p. 29): "The point of cultural rights is not to guarantee the preservation of any particular culture but to secure fair background conditions under which people who care about the survival or success of a particular culture can strive to bring about that outcome" (Patten, 2014, p. 31). Patten's argument for enhanced cultural rights for Indigenous peoples based on the rectification of historical injustice does not imply that Indigenous peoples have a unique right to preserve their cultures. Rather, such assistance is a rectificatory measure to try to repair the consequences of denials of cultural self-determination, with a view to establish fair background conditions from which Indigenous peoples may pursue their cultural endeavours.

While Patten seems to think that historical injustice against national minorities can be a ground for giving priority to national minority claims over those of immigrants, it would be interesting to consider whether historical injustice against immigrant groups might complicate this judgement. History is full of injustices, not only to national minorities but also to immigrants. In Canada, for example, the Chinese head tax and the Exclusion Act were state policies that actively sought to reduce and prevent immigration of ethnic Chinese to Canada.¹

Between 1880 and 1885, Chinese immigrants, many hired mainly to help build the Canadian Pacific Railway, came to make up between 15 and 40 per cent of British Columbia's population.² In the context of so-called nation-building, Canadian politicians came to be concerned about what a large Chinese population "could do to the character of the new country." As early as 1876, in the British Columbia Legislative Assembly, various politicians expressed the view that it was "expedient for the Government to take some immediate steps...to prevent this Province being overrun with a Chinese population to the injury of the settled population of the country."³ In 1885, then-Prime Minister John A. Macdonald told the House of Commons that the Chinese worker "has no common interest with us, and while he gives us labour he is paid for it, and is valuable, the same as a threshing machine or any other agricultural implement which we may borrow from the United States on hire and return it to the owner on the south side of the line. He has no British instincts or British feelings or aspirations, and therefore ought not to have a vote."⁴ To discourage Chinese immigration, the Canadian government implemented an increasingly prohibitive head tax in 1885 on prospective Chinese immigrants, while providing financial assistance to British (white) immigrants to Canada. In 1923, the passing of the Chinese Immigration Act, also known as the Chinese Exclusion Act, restricted virtually all immigration from China to Canada, effectively halting Chinese immigration to Canada between 1923 and 1947 (when the Act was

repealed). According to census data, the number of Chinese in Canada declined between 1921 and 1951, from 39,587 to 32,528.

If immigrants, national minorities, and Indigenous peoples have all endured historical injustices of various kinds, rectificatory justice for historically mistreated national minorities does not necessarily imply a justified deviation from the standard of liberal neutrality regarding immigrants' cultural rights.

Furthermore, let's imagine that these racially discriminatory and exclusionary policies did not exist and Chinese immigration continued to increase, to the point where Chinese immigrants became the majority of the British Columbian population. While such immigrants would come to be socialized into formative processes established by the British settlers, it is conceivable that they would have eventually also sought to alter such processes. On what grounds could the British settler minority have any claims for priority of their cultural rights over the majority Chinese immigrant population, rather than neutral treatment? If the Chinese-Canadian (second- and third-generation) population supported legislation to make Chinese an official language—at least, of British Columbia—it is difficult to see how Patten's theory of equal recognition could defend partiality toward the British settler population and deny the extension of linguistic rights of the Chinese-Canadian population, from the point of view of a liberal state that is supposed to represent and be responsive to the interests of all of its citizens, and provide conditions of fair opportunity for self-determination.

NOTES

- ¹ This policy also prevented Chinese in the United States from emigrating to Canada.
- ² Most of the information in this paragraph comes from the CBC Digital Archives, “Chinese immigrants not welcome anymore.” <http://www.cbc.ca/archives/entry/chinese-immigration-not-welcome-anymore>
- ³ Extract from *Journals of Legislative Assembly of British Columbia*, 9 May 1876, p. 4 (UBC Archives).
http://archives.leg.bc.ca/EPLibraries/leg_arc/document/ID/LibraryTest/395021239
- ⁴ <http://www.cbc.ca/archives/entry/chinese-immigration-not-welcome-anymore>

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