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Integration and Recognition of Asian Immigrants: A Critical Exposition of Kymlicka's Polyethnic Rights

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ABSTRACT

This paper argues against Kymlicka's claim that immigrants' cultural rights only pertain to certain kinds of polyethnic rights. Using the concrete examples of Asian immigrants living in Canada, the USA, and Britain, where they constitute a large proportion of the population, Kymlicka identifies their lower sense of attachment to their societal culture of origin than national minority groups. Based on the argument of choice luck, Kymlicka further justifies polyethnic rights by outlining the aspects of immigrants' lives that are chosen and unchosen. However, Kymlicka's understanding of immigrants and of their cultural rights raises four fundamental questions: Is migration ever really a fully voluntary choice? And, if so, would this justify a less extensive set of polyethnic rights for those who choose to migrate? If immigrants overcome disadvantages they suffer, why should they still benefit from polyethnic rights? And finally, does it make any sense in a liberal society for immigrants to not have access to their original societal culture and its institutional embodiments, since they intend to integrate into the receiving society? I contend that Kymlicka does not have convincing responses to these questions.

Keywords: Kymlicka, Polyethnic Rights, Immigrants, Recognition, Individual and Group-rights, Integration.

1. INTRODUCTION

The failure to integrate immigrant minority groups into a receiving society is one of the reasons for the retreat of multiculturalism in the political arena in many countries (Kymlicka 2010, 2013). Kymlicka's proposed polyethnic rights aim to facilitate acknowledgment of immigrants and their distinctive culture by the state and by their receiving society. However, practically, these polyethnic rights burden such populations with social stigma (Cameron 2011, Philips 2005). In such cases, 'multiculturalism is blamed for: the residential ghettoization and social isolation of immigrants; poor economic integration of immigrants; poor educational outcomes of their children; high dependence on welfare; the perpetuation of illiberal practices among immigrant groups, often involving restricting the rights and liberties of girls and women; political radicalism, especially among Muslim youth and so on' (Banting and Kymlicka 2013, 578). It suggests that whether polyethnic rights can rightfully treat the immigrants remains a point of disagreement.

The concept of polyethnic rights for immigrants has received several important critical responses (Carens 1997, Quong 2006, Min 2013, Nils 2017, Levaru and Loobuyck 2019). Some critics argue that the group-rights Kymlicka has envisioned for cultural minorities derives from universal human rights

and therefore polyethnic rights are nothing more than common citizenship rights (Levaru and Loobuyck 2019, Galenkamp 1998). Other critics, who believe in group-specific rights, identify Kymlicka's perception of immigrants and their cultural identity is limited. Choice luck may promote some special rights for the national minority groups but cannot justify the polyethnic rights of the immigrants (Quong 2006). A third line of objection concludes that Kymlicka's polyethnic rights have not been logically derived from his liberal multiculturalism (Min 2013, Carens 1997). These critics, however, provide us with some good reasons to reconsider the notion of polyethnic rights presented by Kymlicka. I will therefore raise four fundamental questions: Is migration ever really a fully voluntary choice? And, if so, would this justify a less extensive set of polyethnic rights for those who choose to migrate? If immigrants overcome disadvantages they suffer, why should they still benefit from polyethnic rights? And finally, does it make any sense in a liberal society for immigrants to not have access to their original societal culture and its institutional embodiments, since they intend to integrate into the receiving society? I contend that Kymlicka does not have convincing responses to these questions.

2. IMMIGRANT MINORITY GROUPS AND POLYETHNIC RIGHTS

The classification of cultural minority groups as carried out by Kymlicka is based on his practical observation of western liberal democracies. He states that most liberal democratic countries are *multinational* or *polyethnic*, or both (Kymlicka 1995, 11-12). On the one hand, multinational states are characterised by incorporating different national groups who maintain a historical continuity within the same territory, and yet possessing separate cultural identities. On the other hand, polyethnic states are characterised by the coexistence of multiple immigrant groups who have migrated from different ethnocultural backgrounds to the receiving nation. On the basis of this distinction, Kymlicka classifies all cultural minority groups into one of two groups: national minorities (which includes settled ethnic, indigenous, and religious minority communities), and ethnic or immigrant minorities (which refers to groups that have chosen to migrate to the receiving nation). Kymlicka adds that for these two groups, there are three different group-rights that can apply: *self-government rights*, *polyethnic rights*, and *special representation rights* (Kymlicka 1995, 26-33). Whilst special representation rights ought to be offered to both groups, on Kymlicka's account, self-government rights are reserved for the national minorities and polyethnic rights are to be given ethnic or immigrant minority communities. To be clear, many western liberal countries such as Canada, the USA, Australia, Belgium, Sweden, contain a mix of both minority groups.

2.1 WHO ARE IMMIGRANTS?

There are substantial differences between national minority groups and immigrant groups. Immigrants, for Kymlicka, are those 'individuals who voluntarily leave their territory alone or with family and uprooted their original societal culture to settle down in another county knowing that their successful accommodation is only possible through integration into another societal culture' (Kymlicka 1995, 96). For example, 19th and 20th century Italian, Irish, Chinese, and Jewish immigrants in the USA qualify as this kind of group. Hence, individuals who belong to this group are immigrants who are likely to have established permanent residency in a new country (Kymlicka 2000). In contrast, national minority groups hold 'a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture (Kymlicka 1995, 11) within a wider majority population. For example, the Inuit in Canada, the aboriginal people of Australia, the Maori of New Zealand, and the Sami of Scandinavian belong to this category. This distinction allows Kymlicka to draw out two specific claims. First, migration is a voluntary choice made by immigrants and this preference deprives them of many significant rights that are associated with their original societal culture. Yet, since this is the product of their own choice, the disadvantages

suffered by immigrants in a receiving country do not need rectifying. Second, an individual's voluntary choice of to migrate only aims at integration – that is, immigrants, by definition, intend to incorporate into another societal culture in order to eventually obtain full citizenship rights in the receiving nation (Kymlicka 1995).

2.2. WHAT IS POLYETHNIC RIGHTS NOTION?

Polyethnic rights respond to widespread demands of particular immigrant groups in western liberal democracies for greater recognition (Kymlicka 2003). Polyethnic rights 'are intended to help ethnic groups and religious minorities express their cultural particularity and pride without it hampering their success in the economic and political institutions of the dominant culture' (Kymlicka 1995, 31). Polyethnic rights are the means to provide *fair terms of integration*; they facilitate immigrants to actively take part in a receiving society in a manner which is respectful of their own original cultural identity (Kymlicka 1995, 31). These rights particularly involve normal civic rights – such as freedom of expression, freedom of religion, right to association – but also some more focused group rights – such as a right to receive public funding to represent distinct cultural practices and the right to have cultural and religious exemptions from general laws. For example, Sikh men's religious beliefs require that they wear *turban* sat all times, and therefore, the Canadian states gives them an exemption from motorcycle helmet law and from the official dress-codes of the police forces; the Quaker religious groups seek immunity from military service on religious grounds; the Amish children are exempt from compulsory schooling in the USA (Shorten 2010).

Polyethnic rights are different to self-government rights in terms of their nature and purpose. This difference is primarily based on the conception of *societal culture*. By 'societal culture', Kymlicka means 'a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated and based on a shared language' (Kymlicka 1995, 76). Some features of the societal culture are pivotal here – shared language, history and territory—that help to formulate self-governmental rights and to promote cultural distinctness for the future generations (Kymlicka 2000). Societal culture can be constructed only by national group since their societal culture contains these aspects and they have the motive to give it institutional recognition. Immigrants chose to leave their societal culture, so they are neither eligible to access self-governmental rights nor to participate in the nation-building process. In Kymlicka's word, 'the historical evidence is that the capacity and motivation to undertake such as ambitious nation-building project is only found in national minorities, rather than immigrant groups' (Kymlicka 2001, 159). It is equally challenging for immigrants to re-create their original societal culture in a new land. This is arguably for two reasons, as Kymlicka asserts: first, immigrants are too dispersed and mixed groups in the new territory, and second, they lack essential pre-conditions such as *compact thought*, *self-consciousness* and *culture-maintenance* that make possible to re-create a societal culture of origin (Kymlicka 1995, 96). Even a hosting country does not guarantee the institutional embodiment of their immigrants' original ethnic culture.

3. FIRST QUERY: IS MIGRATION EVER REALLY A FULLY VOLUNTARY CHOICE? AND, IF SO, WOULD THIS JUSTIFY A LESS EXTENSIVE SET OF POLYETHNIC RIGHTS FOR THOSE WHO CHOOSE TO MIGRATE?

The taxonomy of different set of rights for different cultural minority groups maps onto how immigrants' polyethnic rights differ from the self-governing rights of minority national groups. So why should immigrants benefit only from polyethnic rights? To answer this question, Kymlicka, for the most part, depends on a luck egalitarian justification. According to Kasper, the central idea of luck egalitarianism is that '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, notable members of cultural minorities, are not denied access to their culture' (Kasper 2011, 177). On this account, differences between individuals in terms of intelligence, strength, ethnicity, gender, sexual orientation, or natural abilities are not traceable to their choices. Luck or chance is the source of these differences. For luck egalitarians, justice thus requires taking remedial action to compensate for the disadvantages caused by luck, because brute luck is an illegitimate source of disadvantage. Inequalities that emerge from the result of choices made by individuals, however, are not unjust and do not warrant rectification.

Rawls and Dworkin had a significant influence on Kymlicka's perspective on choice luck (Kymlicka 2002, 58-59). Despite the fact that this early egalitarian group was not labelled as luck egalitarians, they outlined why people's bad luck must be taken into account in the issue of equality and distribution. According to Rawls' 'different principle', in order to provide 'equality of opportunity,' those with natural disadvantages, such as cognitive or physical disabilities, must be prioritised first, even if this may appear arbitrary from a moral standpoint (Rawls 1971, 65-66). However, for Dworkin (1981), when an individual faces negative consequences because of her deliberative act entirely made on her risk assessment ability and choice is called option/choice luck, and this sort of luck carries no consideration for compensation. In the same way, Kymlicka contends that an un-chosen culture may bestow disadvantages and can make an individual the subject of unfair treatment, whereas a chosen culture does not carry the same consideration. Given the connection between choice and culture, Kymlicka expects 'people should be able to live and work in their own culture. But like any other rights, this right can be waived, and immigration is one way of waiving one's right. In deciding to uproot themselves, immigrants voluntarily relinquish some of the rights that go along with their original national membership' (Kymlicka 1995, 96). A cautious choice of migrations therefore best fits in the model of polyethnic rights. Kymlicka believes polyethnic rights are justified as these help to promote a suitable integration of diversity by making possible modification of the existing 'prejudice and discrimination' laws and regulations of the society (Kymlicka 1995, 87).

While there is no doubt that luck plays a role in minority nations' rights, a new perspective on the situation of immigrants has emerged. This is because immigrants' migration decision is not only voluntary, but also instrumental. However, many immigrants face a shortage of both personal and impersonal resources (the concepts of Dworkin) while deciding to migrate (Knight 2013). Impersonal resources indicate a lack of cognitive aptitude on the part of immigrants, whereas personal resources indicate a lack of comprehension of a foreign culture, language, and immigration process. As Nils (2017, 130) argues that 'a lack of knowledge may affect a person's ability to control the outcome of her choices, it may distort the impression that a particular choice reflects her most basic values, and it may more generally render her ignorant of the reasons she has to act in particular way'. Individuals who have migrated from countries such as India, Bangladesh, Pakistan, Myanmar, and Sri Lanka, for example, live in poverty and make their migration decisions primarily for economic and political reasons, without considering the disadvantages they may face once they arrive in a new country. Instead, they pay a high price for the language requirement and visa process. That is why, Kasper (2011) asserts that a choice-based theory of immigration is simple to apply because it ignores numerous current realities about immigrants and promotes a uniform image of them.

On the other hand, the central issue in Kymlicka's concept of group rights is *societal culture*. The question is whether societal culture can encompass all aspects of culture. Will a group's distinct culture lose all of its values if they are unable to correlate to it through institutional attachment? Tradition, religion, moral code of conduct, practises, beliefs, and many other components of culture are all part of the cultural package. However, societal culture does not place equal importance on all of these. As Min claims, 'Kymlicka mistakenly understands immigration as people's leaving their culture because he defines culture as a set of embodied institutions to provide options to its members. However, not

all meaningful cultural aspects are contained in an institutionalized form' (Min 2013, 402). There are other important roles, such as participation, merit, and need of immigrants, Heim argues, that contribute to bring recognition to them but are not dependent on history or territory (Heim 2016). Perhaps this is because Bhuiyan (2011) regards Kymlicka's society culture as distinct from the minority culture he is concerned with.

Moreover, Nils identifies a crucial issue: immigrants frequently make migration decisions based on preconceived notions of recipient countries, which provide newcomers with a limited set of rights. This means that the rights and amenities available to immigrants in a new region are largely determined in advance by the policies of the hosting state. As a result, it is a disadvantageous level from which immigrants made their migration decision (Nils 2017). This suggests that claiming that immigrants have fewer rights as a result of their migration decision is inaccurate. Based on these assumptions, it could be argued that immigrants are entitled to a less comprehensive set of rights as a result of their departure from a societal culture is inappropriate.

4. SECOND QUERY: IF IMMIGRANTS OVERCOME DISADVANTAGES THEY SUFFER, WHY SHOULD THEY STILL BENEFIT FROM POLYETHNIC RIGHTS?

Despite the fact that immigrants chose to migrate, it provided them with polyethnic rights demonstrates Kymlicka's opposing viewpoint to his choice luck viewpoint. One possible reason is because those who belong to a cultural minority group, such as immigrants, are always subjected to some type of discrimination. However, Kymlicka clarifies this by emphasizing on the fundamental liberal idea of distributive justice, which states that all people are entitled to an equal allocation of fundamental rights. To defend cultural rights as morally desirable for everyone, it is necessary to first explain why and how culture is so important. In this case, Kymlicka adopts Rawls' (1971) liberalism. Rawls' notions of *Original Position* and *Veil of ignorance* aim not only to discover the appropriate principles of justice to rule society, but also to identify those primary goods that are thought to be disseminated under the command of liberal principles. He conducts a thought experiment in *Original Position* (an initial social contract situation) by concealing rational individuals' personal particularities, such as racial or cultural identity, beneath the *veil of ignorance* (Rawls 1971, 19-20, 137). So that no one's personal interests can influence their decision in choosing the ultimate principles of justice (Rawls 1971). However, this indicates that individual's cultural identity can have a significant impact on their rational decision, and this is sense what makes the possibility of culture to be a primary good of society.

Taking the normative perspective, Kymlicka contends that freedom of culture and religion is one of the fundamental human rights. Cultural rights are morally desirable to everyone since they are deeply intertwined to an individual's personal autonomy and independence. Individuals can make meaningful life decisions based on their cultural background, with the option to revise their decisions if necessary (Kymlicka 1989). Immigrants, as individuals, are entitled to this essential right, and failing to exercise it may result in unfair disparity. Kymlicka, like Rawls, believes that a free choice of migration would break people's ties with their territorial or political borders, but not with their cultural ones. Even after relocating to another country, immigrants frequently retain their distinct 'shared language' and 'historical values' (Kymlicka 1995, 87). Just because immigrants do not have the ability to re-create a societal culture does not mean they do not have the right to retain their original ethnic identity (Kymlicka 1995). Nonetheless, 'without these exemptions, certain groups would be disadvantaged (often unintentionally) in the mainstream. Immigrants can rightfully insist on maintaining some of their heritage and dominant institutions should be adapted to accommodate those differences' (Kymlicka 1995, 96-97). Polyethnic rights are therefore matter of justice.

However, it might be argued that Kymlicka's model of polyethnic rights focuses on the fundamental rights that should be dispersed across individuals first. This means that immigrants have the freedom

to practise their private cultural and religious customs, which are protected by the concept of basic rights. For example, if an immigrant desires to be addressed by her own religion or to belong to a certain culture of origin, she has the right to do so. Galenkamp (1998) expands on this critique, stating that cultural and religious exclusions from laws and regulations are not the same as rights. There is nothing more to it than an institutional, political, and administrative framework for minorities. He went on to say that a recent change to international human rights law fully covers this exemption for all people (Galenkamp 1998). As a result, it is conceivable to argue that polyethnic rights are simply basic rights, not group-specific rights.

It is apparent that Kymlicka understands immigrants' cultural rights on a fundamental level, where immigrants are only allowed to maintain their ethnic identity in private while respecting fundamental human rights. The idea of polyethnic rights for immigrants, according to Levaru and Loobuyck (2018), is pointless and does not bear any special recognition for immigrants, because these rights—freedom of expression, religion, and association—fall under the category of common citizenship rights, which are usually exercised by everyone. They further continue, if immigrants' customary behaviours are merely considered as a private option or choice, and immigrants lose their rights to their societal culture of origin by migrating, polyethnic rights effectively preserve no particular rights for immigrants in terms of their distinct cultural identity.

5. THIRD QUERY: DOES IT MAKE ANY SENSE IN A LIBERAL SOCIETY FOR IMMIGRANTS TO NOT HAVE ACCESS TO THEIR ORIGINAL SOCIETAL CULTURE AND ITS INSTITUTIONAL EMBODIMENTS, SINCE THEY INTEND TO INTEGRATE INTO THE RECEIVING SOCIETY?

Let's look at Kymlicka's interpretation of polyethnic rights in practise. Kymlicka claims that immigrant minority in receiving countries are excessively varied, dispersed, and assimilated. Studies, on the other hand, reveal how immigrants have positioned themselves in terms of cultural rights and integration. According to Min (2013), many immigrants are strongly drawn to their ethnicity and seek to re-form their ethnic group, even if they are in a new territory. California, New York, Texas, Illinois, and Florida, for example, receive nearly 70% of all immigrants. California is home to about 40% of the country's Asian Americans. This demonstrates how immigrants add to their descendants and contribute to the receiving countries (Min 2013). Common citizenship rights have limited influence on Asian immigrants because these rights are unable to effectively separate them from their native culture. Immigrants have also shown their institutional embodiment in a new country by organizing and participating in various social and cultural programmes, particularly those that promote their own ethnic identity. Many liberal countries, notably Canada and the United States, are implementing measures to guarantee immigrants' language rights. California's public schools, for example, have approved Spanish and Chinese as official school languages (Min 2013). As a consequence, it is evident that immigrants are not always dispersed; in many nations, they live in close quarters.

Min shows how most Asian American immigrants are unwilling to assimilate into the majority society, according to statistics from the Pilot National Asian American Political Survey (PNAAPS). According to his research, 'over 60% of Asian Americans today are new arrivals from Asia. The new arrivals lead their ethnic features more than later generations by continuously recharging their distinctive culture. As a result, immigrant groups are not 'too' assimilated into the mainstream' (Min 2013, 401). Despite their intention to migrate, they are eager to be addressed by their ethnic identity and to be identified as Asian Americans (Min 2013). Instead, involuntary integration makes them feel discriminated and disadvantaged. Kymlicka's approach to polyethnic rights thus appears to be an egalitarian nationalistic viewpoint aimed at justifying a means for a host country to assimilate its cultural diversity.

Even identifying cultural and religious exemptions for immigrants is also practically challenging. The pattern of cultural behaviours is evolving day by day in a super diversified world (a concept of the

interculturalists). Individuals who are members of the same ethnic or religious community may have distinct priorities. A person of the same culture or religion may not require the same exemptions. Carens (1997) argues that Kymlicka's concept of polyethnicity is both limited and misleading, as it fails to recognise the vast array of cultural distinctions that immigrants bring with them to a hosting country (Carens 1997, 35). Many Muslims, for example, may prefer to live a vegetarian lifestyle. As a result, an exemption from the humane slaughtering method may benefit certain Muslims, but not all. Nonetheless, among the many unanswered questions, Kymlicka also left to explain which types of immigrant cultural practises are legitimate for exemption. Quong, on the other hand, specifies these prerequisites and demonstrates a different manner of justifying immigrants' special privileges. He explains 'cultural exemptions are permissible where a law disadvantages members of a particular culture or religious group, but where that disadvantage does not affect the basic opportunities of citizenship. When a cultural disadvantage is also tied to these basic civic opportunities, then I claim that cultural exemptions can become a requirement of justice' (Quong 2006, 58).

6. CONCLUDING REMARKS

In liberal democracies, the inclination of nationalistic politics against minority group rights has always been a trend. However, Kymlicka's theory of *group-differentiated* rights, by advocating the rights of cultural minorities, surely countered this tendency. However, it is undeniable that Kymlicka observed immigrants and their cultural rights in a limited sense. Claiming them separate of their original societal culture, however, does not legitimize a lower number of rights, nor does it diminish immigrants' aspirations to maintain their original cultural identity and their refusal to be integrated into another society. If we assume immigrants and their cultural rights as Kymlicka did, we best can have an individualistic approach. Kymlicka's explanation of immigrants' ethnic identification treats them as individuals rather than a group, since they are dispersed without their original societal culture in a new society. As a result, polyethnic rights could perhaps establish some space for immigrants to cherish their cultural beliefs, although mostly in private. Whilst Kymlicka's explanation demonstrates that immigrants' voluntary choice of migration warrants particular polyethnic rights, a different perspective makes it more reasonable, namely, that it is the idea of polyethnic rights that collaborates to create a different image of immigrants. If we modify Kymlicka's description of immigration, it is likely that immigrants have a reasonable position on their particular rights and public acknowledgement.

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