AUTONOMY, NEUTRALITY, AND JUSTICE:
TOWARD A LIBERAL THEORY OF LANGUAGE RIGHTS

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My thesis aims to contribute to the development of a distinctively liberal theory of language rights. To this end, I seek to identify the philosophical foundations of language rights by asking which objectives and principles ought to guide the formulation of language policy in multilingual states. I ask whether language policy ought to seek to achieve convergence on a common public language, or to secure the preservation of endangered languages. I also examine whether a normatively satisfying theory of language rights can be constructed around the ideal of liberal neutrality.

I argue that achieving linguistic convergence in the public realm will tend to promote administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation. I further contend that in most real-world cases, it will either be the case that language maintenance is not necessary to secure the particular benefits that linguistic preservation is alleged to give rise to, or else, if preservation is necessary in order to secure those benefits, such preservation will nonetheless be unjustifiable in light of the interference with individual freedom of choice that it would entail.

Drawing on the work of Alan Patten, I claim that language policy should strive to ensure that all citizens enjoy a fair opportunity for self-determination. I argue that while it is practically impossible for the state to remain neutral in all matters of language and culture, extending neutral treatment to language communities will generally (although not always) promote the value of fair opportunity for self-determination for all. I insist, however, that the state may rightly implement language policies (be they neutral or non-neutral) that undermine rather than advance fair opportunity for self-determination for all, provided that such policies are aimed at securing sufficiently weighty liberal goods, and impair fair opportunity for self-determination no more than is necessary to that end.

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INTRODUCTION

Our world is a linguistically diverse place. In most countries, scores if not hundreds of different languages are spoken. This work seeks to understand how liberal states ought to respond to the diversity of languages spoken within their borders. Should the state's language policies strive to ensure that all citizens are fluent in one particular language, which is used in all state business? Should the state actively seek to preserve endangered languages? Ought the state to strive to be neutral between languages?

Philosophical explorations of these sorts of questions, and debate over the normative foundations of language rights, did not really begin until well after a similar debate was underway in respect of cultural rights more generally.[1] Minority rights scholars Will Kymlicka and Alan Patten point to a number of factors that help explain the rise, albeit belatedly, of scholarly interest in not just 'the language of politics' but also 'the politics of language'.[2] They point, for example, to the rise of entholinguistic conflicts in Eastern Europe in the 1990s;[3] growing interest in 'minority nationalisms' such as those found in Quebec and Catalonia;[4] increases in the numbers of immigrants living in developed countries;[5] the growth of 'transnational democracy', such as has been embodied by the expansion of the European Union;[6] and increasing public and scholarly concern over the death of (particularly indigenous) languages.[7]

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[1] An important exception to this observation is Leslie Green's article, 'Are Language Rights Fundamental?' (1987) 25 Osgoode Hall Law Journal 639.
[2] Stephen May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (2nd edn, Routledge 2012) 159.
[3] Will Kymlicka and Alan Patten, 'Introduction' in Will Kymlicka and Alan Patten (eds), *Language Rights and Political Theory* (OUP 2003) 3–4.
[4] ibid 4–7.
[5] ibid 7–9.
[6] ibid 9–10.
[7] ibid 10.

Whatever the causal explanation for the increased attention to language rights and language policy in the last 15 years or so, it is now clear, as Kymlicka and Patten write, that 'linguistic diversity is central to any larger theory of multicultural citizenship.'[8] This is so because any theory of citizenship in modern multicultural societies cannot avoid answering—or at least cannot avoid presupposing answers to—questions such as the following, all of which implicate language: Where are the boundaries of states, and the boundaries of sub-state regions, to be drawn?; Which languages should public institutions like courts and legislatures operate in?; Should citizens be able to interact with government officials in their mother tongue?; Should public money go to funding educational facilities in which the language of instruction is a minority tongue?; Should citizens be free to speak the language of their choice in private settings?

These are some of the issues that are at stake in debates about language policy. It is also important to note at the outset that what is at stake for individuals when it comes to how the above questions get answered is not just an interest in being able to communicate effectively. It is of course true that such an interest is implicated by decisions about which languages citizens can use in which specific contexts. In addition to this, however, individuals also have what Leslie Green has called an 'expressive' interest in being able to use a language with which they identify.[9] In other words, language policy impacts not merely our ability to communicate with others, but also our sense of identity and our relationships with others.[10]

[8] ibid 13.
[9] Green, 'Are Language Rights Fundamental?' (n 1) 658–60.
[10] See eg John Edwards, *Language and Identity: An Introduction* (CUP 2009). Green also notes that language is 'a marker of identity, a cultural inheritance and a concrete expression of community' ('Are Language Rights Fundamental?' (n 1) 659).

Some commentators, however, take the view that language issues do not, as such, engage questions of justice.[11] They grant that freedom of expression requires the state to allow citizens to use the language of their choice in their private lives, but otherwise see justice as silent on the questions we raised above. They claim that while states might provide legal entitlements for citizens to use certain languages in certain contexts, they ought to do so guided only by considerations of prudence and realpolitik. 'Just' or 'unjust' are inapt as descriptors of the particular linguistic arrangements a state may or may not strike.

In the pages to follow, we will reject this view. In light of both our interest in not being excluded from public life and our interest in expressing our identification with a particular linguistically-defined community, as well as our interest in enjoying a fair opportunity for self-determination, language policy decisions that hinder our ability to pursue our language-related goals do engage considerations of justice. We should understand language rights, in other words, as grounded in the existence of a moral right to the collective good of language,[12] and in our right to enjoy a fair opportunity to be self-determining. The state's interference with those moral rights, then, implicates justice since it directly bears on—as per Rawls's formulation of the subject matter of justice—'the distribution of the benefits and burdens of social cooperation'.[13]

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[11] See eg Chandran Kukathas, 'Are There Any Cultural Rights?' (1992) 20 Political Theory 105; Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Polity Press 2001); Jeremy Waldron, 'Minority Cultures and the Cosmopolitan Alternative' (1992) 25 University of Michigan Journal of Law Reform 751; Samuel Scheffler, 'Immigration and the Significance of Culture' (2007) 35 Philosophy & Public Affairs 93.

[12] See Green on both the moral interest in language that grounds language rights ('Are Language Rights Fundamental?' (n 1) 658-60), and on the collective nature of the 'shared good' of language (660). On language as a collective good, see also Stephen May, 'Misconceiving Minority Language Rights: Implications for Liberal Political Theory' in Will Kymlicka and Alan Patten (eds), *Language Rights and Political Theory* (OUP 2003) and Isaac Taylor, 'Language as a Global Public Good' (2014) 20 Res Publica 377.

[13] John Rawls, *A Theory of Justice* (Harvard University Press 1971) 4.

As such, this thesis aims to contribute to the development of a distinctively liberal theory of language rights. It does so by asking which objectives and principles ought to guide the formulation of language policy in multilingual democracies. The answers we provide will afford some practical guidance for policy-makers. More directly, however, we will endeavour to identify the normative foundations of language rights, and thereby provide general guidance as to how to fashion normatively defensible language policies.

An Outline of the Argument

In Chapters 1 and 2, we will begin by asking whether language policy should strive to ensure the preservation of threatened languages. We will examine seven arguments to that effect, some of which appeal to the alleged value of linguistic preservation for the world at large, and some of which point to the benefits that language maintenance promises to have for speakers of endangered languages. We will find, however, that none of the arguments canvassed support the contention that language policy should strive to ensure the preservation of endangered languages. Of each of them it will be said that either the benefits the argument alleges to flow from maintaining dying languages can be had without such linguistic maintenance, or, if they cannot, the coercive preservationist measures that will be required to secure those benefits will nevertheless generally represent an unacceptable moral cost. We will therefore conclude that there is no general right to the preservation of one's language.

In Chapters 3 and 4, we will examine the relationship between 'linguistic convergence' and five specific political objectives: administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation. We will see that linguistic convergence tends to promote each of these five objectives, although there is a significant risk that pursuing such convergence too aggressively could backfire and undermine rather than advance the latter four goals.

In Chapters 5–7, we will inquire into whether liberal states ought to strive for neutral language policies, as Alan Patten has claimed. In addressing this proposal, we will add some much needed conceptual clarity to ongoing debates about whether ‘state neutrality’ is an obligation of liberal justice by rejecting as inadequate all of the major conceptions of neutrality that are employed by contributors to those debates. Instead, we will carefully lay out an alternative account of neutrality that we will label ‘volitional neutrality’. Ultimately, however, we will conclude that neutrality properly understood is a practical impossibility when it comes to language and culture. We will also see that remaining neutral can conflict with the demands of fairness and justice, and that neutrality does not make a particularly good guide when it comes to formulating just language policies, since it is proscriptive and not prescriptive.

In Chapter 8, we will articulate a view of what fairness demands in respect of language that invokes the notion of expensive tastes. In doing so, we will reject the recent account of the philosophical foundations of cultural rights advanced by Alan Patten, which claims that neutrality is a pro tanto requirement of justice. Specifically, we will demonstrate that Patten’s account is flawed in the way that it conceives of crucial concepts like neutrality and recognition, and in how it understands the relationship between neutrality and fairness.

In Chapter 9, however, we will see that neutrality, properly understood, *should* inform and guide language policy in liberal democracies, in light of the way in which extending neutral treatment to languages and cultures will generally (although not always) further the central liberal value of fair opportunity for self-determination. We will also show that this fairness-based (or self-determination-based) case for neutrality is a defeasible one. That is, we may rightly, in some instances, trade off some degree of fairness in respect of individuals' opportunities for self-determination in order to secure other weighty liberal ends, such as those goods (including, again, administrative efficiency, economic development, and especially social mobility, social and economic solidarity, and democratic participation) that linguistic convergence tends to promote.

CHAPTER ONE

THE LANGUAGE MAINTENANCE MODEL:
PART I: THE BENEFITS OF LINGUISTIC PRESERVATION FOR THE WORLD AT LARGE

According to the best available estimates, there are currently between 6,000 and 7,000 languages spoken in the world.[14] These languages vary enormously when it comes to the number of people that speak them. For example, 'About 97% of the world's people speak about 4% of the world's languages; and conversely, about 96% of the world's languages are spoken by about 3% of the world's people.'[15] While the world's most widely spoken languages are at no risk of dying out anytime soon, languages with only a small number of speakers are increasingly endangered. According to The Foundation for Endangered Languages, approximately 'half the world's languages are moribund, which means that they are no longer being passed on to younger generations'.[16] One linguist who studies endangered languages, Michael Krauss, has estimated that up to 90% of the languages currently being spoken will be extinct by the end of the present century.[17] The linguist David Crystal has fixed the present rate of language death as one death every two weeks.[18] For many linguists, these figures presage an impending 'catastrophe'.[19]

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[14] M Paul Lewis, Gary Simons and Charles Fennig (eds), *Ethnologue: Languages of the World* (19th edn, SIL International 2016).
[15] United Nations Educational Scientific and Cultural Organization Ad Hoc Expert Group on Endangered Languages, 'Language Vitality and Endangerment' (International Expert Meeting on UNESCO Programme Safeguarding of Endangered Languages March 2003) 2.
[16] Carmen Llamas, Louise Mullany and Peter Stockwell (eds), *The Routledge Companion to Sociolinguistics* (Routledge 2007) 199.
[17] Michael Krauss, 'The World's Languages in Crisis' (1992) 68 Language 4, 7. This is now widely regarded as too extreme a prediction, with current estimates suggesting the correct figure is actually a little under 50% (see Karin Wiecha 'New Estimates on the Rate of Global Language Loss' (*The Rosetta Project*, 28 March 2013) <https://rosettaproject.org/blog/02013/mar/28/new-estimates-on-rate-of-language-loss/> accessed 10 April 2016).
[18] David Crystal, *Language Death* (CUP 2000) 19.
[19] Llamas, Mullany and Stockwell (eds) (n 16) 204.

In this chapter and the next, I ask whether the language policies of plurilingual democratic states should strive to ensure the preservation of threatened languages. We will examine seven arguments to that effect. Specifically, we will evaluate, in turn, the claims that linguistic maintenance is an appropriate language policy objective because such preservation will help to: maintain the unique worldviews of endangered linguistic groups; save scientific or cultural knowledge from being lost; preserve the aesthetic value that a diversity of languages represents; ensure minority language speakers are secure in their ability to communicate and connect emotionally with their descendants and with the descendants of others members of their community; show proper respect for the dignity of individual members of minority language communities, who may see their sense of self-worth as deeply tied up with the fate of their linguistic community; secure for all citizens the cultural preconditions of autonomy; or resolve collective action problems which threaten to lead to the death of languages even while their speakers wish for those languages to live on. In order to give each of these important arguments the attention they deserve, we will divide them in two. In this chapter, we will focus on arguments for preservation that ground their conclusions on the benefits that language maintenance is said to have for the world at large. In the following chapter, we will evaluate the remaining arguments for preservation, which call attention to the benefits that maintaining an endangered language will supposedly have for individual members of that linguistic group.

As a preliminary matter, in this chapter and the next I will understand the preservation of an endangered language to mean maintaining it as a live, spoken language, over the medium- to long-term, if not for the 'indefinite future'.[20] I will not

[20] For a discussion of how some proponents of linguistic preservation wish for languages to be preserved for the 'indefinite future' see Kymlicka and Patten, 'Introduction' (n 3) 15.

understand the arguments for preservation, for instance, as merely advocating efforts to prevent the complete extinction of languages—that is, their utter disappearance. Not only is such a fate typically only a live possibility for unwritten languages, but virtually everyone seems agreed that preservation efforts of this sort, employing such means as compiling dictionaries and making audio recordings of the language, are worthwhile.

Further, I should note that for the purposes of this chapter, I will be assuming that the endangered languages whose preservation the various arguments to be considered ostensibly recommend are in danger of dying out as a result of the free choices of speakers of those languages to leave their linguistic communities and join other, typically larger, ones.[21] This might seem an arbitrary assumption to make, or even one that unfairly stacks the deck against proponents of preservation, by casting them as all too eager to preserve languages against the will of their own speakers. As a framing assumption, however, it is not unfair, nor made arbitrarily, as this is the most common type of language death scenario.[22] In addition, although preserving an endangered language need not in all cases require resorting to strongly coercive measures, where the threat to a language's survival arises from a process of language shift that is occurring due to the collective choices of individual members of the minority language group to exit their community and integrate into the majority language community, preservation will require

[21] Of course, a process of language shift that is endangering a linguistic community may appear decidedly less than 'free' if members' choices to leave are heavily influenced by injustices visited upon speakers of that language in the past. Some presently endangered languages (eg, the Irish, Catalan, Welsh, and countless Aboriginal languages), of course *did* experience linguistic persecution and injustice, and this history *is* an important part of the causal story of how the languages' fortunes came to be what they now are. I rather artificially separate cases of free language shift from cases of historical linguistic injustice for ease of exposition and in order to highlight the important fact that for the liberal, how a language has come to be endangered is a crucial consideration in determining whether we ought to attempt to preserve it.
[22] See eg Llamas, Mullany and Stockwell (eds) (n 16) 201, and Alan Patten, 'Political Theory and Language Policy' (2001) 29 Political Theory 683, 707–08. See also Bernard Spolsky, *Language Policy* (CUP 2004) 216: '[w]hatever blame may reasonably be attached to language policies and social, economic, religious and political forces, it seems that the loss of linguistic diversity results less from linguistic genocide than from linguistic suicide'.

preventing at least a critical mass of these individuals from leaving.[23] And while we will examine below the possibility that preventing sufficient numbers of minority language speakers from leaving could be accomplished purely through positive inducements such as subsidies or cash transfers, or by simply educating would-be linguistic defectors as to the benefits of preserving their language and thus convincing them to stay, we will, to anticipate the argument, find little reason to be optimistic on either score. Instead, successful efforts at preserving an endangered language over the medium- to long-term will generally require the use of some coercive measures[24]—an assessment that is borne out when we notice the way in which, in real-world cases, governments of minority linguistic communities seeking to maintain their endangered language as the language of public life habitually employ coercive measures to do so.[25]

If we are not dealing with a case in which a linguistic community is threatened due to the free choices of its members, we will face a scenario in which the language is dying because of some sort of persecution or unfair external pressure being applied to speakers of the endangered tongue.[26] In such cases of persecution, however, the need to eliminate the undue pressure that has been placed upon members of the endangered linguistic group in order to force them out of their language, and the necessity of allowing them the opportunity to make their own choices about whether and when to use their own tongue, is clear *as a matter of basic justice*. As such, each of the particular arguments for

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[23] Preventing a fatal exodus of minority language speakers does not require that we prevent these individuals from learning and using the larger language, but it will require ensuring that in any event a critical mass of them continues to use the minority language, and in appropriate contexts. (See eg Jacob Levy, *The Multiculturalism of Fear* (OUP 2000) 117.)

[24] 'Coercive', of course, is not a synonym for 'draconian'. To say that something is coercive is not to say it is unacceptable from the perspective of political morality, as I will discuss at greater length below.

[25] Witness the many penalties authorised by legislation that are designed to protect minority languages such as those found within the *Charte de la langue française*, CQLR c C-11 (Quebec); *Llei 1/1998, del 7 de gener, de política lingüística* (Catalonia); and *Llei 20/2010, del 7 de juliol, del cinema* (Catalonia).

[26] An important possibility, and one that could be considered an intermediate case—namely, that while no undue external pressure is being applied, members of the endangered linguistic community, although desiring to do so, are nonetheless unable to preserve their language due to a collective action problem—will be addressed at considerable length in the following chapter.

language preservation that we will canvas over the next two chapters would in this respect be superseded. That is, we have ample reason (such as our commitment to equality, free speech, and free association) to condemn and stamp out the persecution of linguistic minorities, without needing to resort to arguments about the value of minority language preservation. When we turn our gaze to cases of forced language shift, in other words, arguments in favour of preserving languages are temporarily sidelined and only get in the game, so to speak, once we have successfully moved from a scenario marked by outright linguistic persecution to a situation in which there is linguistic freedom of choice. Restricting our evaluation of the various arguments for linguistic preservation to the latter sorts of contexts is thus neither arbitrary nor unfair. The question of whether there is sufficient reason to take action to preserve languages which are dying in contexts not marred by linguistic unfairness—where the dim prospects of survival are directly attributable to the uncoerced choices that the individual speakers of the threatened languages are making or have made—is therefore exactly the question we ought to be asking. And it is to that question that we will turn, following a brief detour to examine how the way we speak can affect the way we think.

The Relationship between Language and Thought

The notion that language can determine thought seems to be an entrenched piece of conventional wisdom. As George Orwell taught us in his novel *1984*, the way we speak influences the way we think and how we understand the world; having no vocabulary in which to express our indignation, that very sense of indignation may tend over time to sputter and die. Drawing again from the arts, John Wayne’s character in the western *Hondo* explained (in all earnestness) that the Apache are an honest people, as they ‘have no word for “lie”’.[27] We are also familiar with the way in which some words or phrases simply cannot be quite fully captured in another language. There is no English word to match the German *schadenfreude,* for example, nor do we have a phrase that captures the full meaning of the French *n'importe quoi*.

As we will see, the extent to which language influences thought is often profoundly exaggerated. However, as a general proposition, the claim that the particular language we speak can shape how we think must be taken as an established fact. For instance, recent research in linguistics supports the claim that the languages we use influence cognition and perception. Those who speak Russian, for instance, which obliges its speakers to differentiate between dark and light blue (whereas in English one can just refer to an item as ‘blue’), are able, relative to English-speakers, to more quickly distinguish dark blues from light blues in laboratory tests, but are no better than English-speakers at discriminating between shades that fall within the same (ie, light or dark) category.[28] Aboriginal Australians in the remote community of Pormpuraaw speak languages that do not use egocentric terms such as ‘left’ and ‘right’, but rather rely solely on cardinal directions. This means, as one commentator has delightedly reported, that ‘you say things like, “There's an ant on your southwest leg.”’[29] Testing has revealed that individuals from this community, as well as some Mayan groups and others whose languages do not include egocentric direction terms, have an ability to orient themselves in relation to cardinal directions that appears almost preternatural to those of us whose languages employ egocentric terms.[30] Further, the Amazonian Pirahã people, whose numbering system is said to consist only of terms meaning roughly ‘one’, ‘two’, and

[27] John Farrow and John Ford, *Hondo* (Warner Bros 1953).
[28] Jonathan Winawer and others, ‘Russian Blues Reveal Effects of Language on Color Discrimination’ (2007) 104 Proceedings of the National Academy of Sciences of the United States of America 7780.
[29] Lera Boroditsky, ‘Language: Pro, The proposer's opening remarks’ *The Economist* (13 December 2010) <www.economist.com/debate/days/view/626> accessed 20 March 2013.
[30] ibid.

‘many’, apparently have extraordinary difficulty counting accurately beyond three, judging from studies which have shown that they are often unable to distinguish between, or reproduce from memory, configurations of items such as nuts or batteries when there are upwards of three items in the configurations.[31] Also of interest here is the fact that when the tallest bridge in the world, the *Viaduct de Millau*, opened in France in 2004, it was praised by the press in Germany, where the word for bridge (*Brücke*) has a female gender, for its ‘elegance and lightness’, whereas the French press, whose word for bridge (*pont*) is masculine, tended to restrict themselves to characteristically masculine adjectives—for example, lauding the bridge as an ‘immense’ ‘concrete giant’.[32]

What has been roundly rejected, however, is the popular misconception that the ability to understand many concepts and beliefs is contingent on the language one speaks. This misconception was given the veneer of respectability by the work of linguist Benjamin Lee Whorf in the 1930s. According to Whorf, the Hopi people of America did not possess nouns referring to units of time, as the Hopi did not understand time to be divisible into discrete units in the way that Europeans did.[33] Whorf therefore surmised that this divergent understanding of time fundamentally shaped Hopi culture.[34] Investigations of Whorf’s claims, however, revealed that the Hopi did not in fact conceptualise time as Whorf suggested. Numerous other claims along similar lines, such as the much repeated notion that the Inuit have nine, or 27, or 50, or even 500 different

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[31] Anne Trafton, ‘MIT-led team finds language without numbers: Amazonian tribe has no word to express “one”, other numbers’ (*MIT News*, 24 June, 2008) <http://web.mit.edu/newsoffice/2008/language-0624.html> accessed 15 April 2016.

[32] Sharon Begley, ‘Why Language May Shape our Thoughts’ *Newsweek* (7 August 2009) <www.newsweek.com/why-language-may-shape-our-thoughts-81725> accessed 15 April 2016; Lera Boroditsky, Lauren A. Schmidt, and Webb Phillips, ‘Sex, Syntax, and Semantics’ in Dedre Gentner and Susan Goldin-Meadow (eds), *Language in Mind: Advances in the Study of Language and Cognition* (CUP 2003) 61, 70.

[33] John Carroll (ed), *Language Thought and Reality: Selected Writings of Benjamin Lee Whorf* (MIT Press 1956) 57.

[34] ibid 57–64.

words for snow,[35] have also been proven false. (According to one recent attempt to understand how Inuit actually do talk about snow, linguist Tony Woodbury documented '15 "snow lexemes" in Central Alaskan Yupik, compared with a list of 20-odd comparable terms in English'.[36]) In short, it is true that some languages contain words which name things that are unnamed in other languages. 'The no word for X trope'[37] does not, however, apply in nearly as many cases as is often assumed. (It turns out, for instance, that 'there is in fact an Apache verb meaning specifically "to lie", as well as an expression meaning "to deceive [someone]"'.[38]) Moreover, the fact that a particular language lacks a specific word—say, the fact that English contains only one verb for 'to sit', while Central Pomo has five, 'including different verbs for birds sitting on a wire, a person sitting on the ground, and an object sitting on a surface'[39]—does not prevent an English-speaker from being able understand the difference between these types of sitting, nor does it prevent her from being able to make clear to others which sort of sitting she has in mind at a given moment. She'll just have to use more words to get her meaning across.[40]

In summation, while there is now too much evidence to deny that language shapes thought, it is also clear that it does not fundamentally determine basic human perception or cognition. That we might simply not be able to understand a concept merely because we lack a word for it is therefore as absurd as the utterly ridiculous claim that as European tall ships first arrived in the Americas, native inhabitants, having no concept of

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[35] Mark Liberman, 'Language: Con, The opposition's opening remarks' *The Economist* (13 December 2010) <www.economist.com/debate/days/view/626> accessed 20 March 2013.
[36] ibid.
[37] ibid.
[38] ibid.
[39] Llamas, Mullany and Stockwell (eds) (n 16) 204.
[40] As the linguist Edward Sapir (Whorf's mentor, oddly enough) declared, 'We may say that a language is so constructed that no matter what any speaker of it may desire to communicate … the language is prepared to do his work' (as cited in James W Underhill, *Humboldt, Worldview and Language* (Edinburgh University Press 2009) 27).

objects of such enormous size, were physically unable to see them. Language, it turns out, often prompts us to think about many things in day-to-day life in a particular manner, but it does not set the boundaries of what we can think about. It shapes, in sometimes subtle and unnoticed ways, how we think and perceive, but it does not determine what we are able to think or to perceive.

We may still want to resist this conclusion. Is not the example of the Pirahã proof that at least in some cases there are concepts which are completely foreign to a particular language and therefore beyond the ken of its speakers? In response, we should concede that we cannot do complex mathematics without having names for large numbers. But it must be remembered that no language's word for forty-two, say, was given to that language from on high (any more than the terms 'square root', or 'gravity', or 'Higgs boson' were). At some relatively early stage in their evolution, many languages developed a counting system and words for numbers from scratch, as it were—their speakers having hit on the practical value of doing so. The point here is not that all languages must develop such words on their own, *ex nihilo*—clearly languages can borrow terminology from other languages that already have an expansive vocabulary in a given area.[41] Rather, the point is that even where thought seems most dependent on language—namely, when we rely on technical terminology—the relevant terms come about in the first place because people recognise a need for such terms in order to reason in a systematic and efficient way. That is, even when it comes to doing advanced mathematics, it is not correct to say that language sets the limits of what we are able to think or understand. On the contrary, it is the fact that we have taken up thinking about a particular field of inquiry only to discover that our current terminology is insufficient and needs to be expanded if our pursuit of knowledge is to continue—it is, in short, our

[41] Witness, for instance, the way in which people around the globe 'email' and 'surf' the 'Internet'.

wishes about how we want to be able to think about the subject in the future—that determines that (and which) additions to our vocabulary will need to be made.[42]

Languages as Unique Worldviews

One rationale that is commonly put forward for why we should seek to preserve endangered languages is that every language represents a unique worldview. On this view, such worldviews must be preserved, given that they represent, collectively, a kind of common pool of human wisdom and experience. This sort of argument is the official line taken up by UNESCO: 'Each and every language embodies the unique cultural wisdom of a people. The loss of any language is thus a loss for all humanity.'[43] When a language dies, that community's ways of understanding the world are at risk of disappearing. Specific views about the origins of the cosmos and the nature of the good life, for instance, as well as knowledge of the local ecology, are embedded in the group's language, with the result that if that language goes unspoken, these nuggets of cultural and practical wisdom may well be lost.

This type of argument is put forward surprisingly often in the literature on endangered languages. I say 'surprisingly' for two interrelated reasons. First, because the view of language's role in shaping thought which the argument presupposes has long been much out of favour among professional linguists. Secondly, because the argument appears to take up the view that having been shaped by language, much knowledge is

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[42] Thus as Mark Liberman writes, 'the presence or absence of technical vocabulary is not a basic difference among languages. If your language does not have chemical words and you want to think and talk about chemistry, you will quickly borrow the concepts, and invent or borrow the words. The fact that most Pirahã resist inventing or borrowing number words is a cultural fact, not a linguistic one' ('Language: Con, The opposition's rebuttal remarks' *The Economist* (16 December 2010) <www.economist.com/debate/days/view/627> accessed 20 March 2013)

[43] UNESCO (n 15) 1. See also their website for a more recent example of this argument: 'With the disappearance of unwritten and undocumented languages, humanity would lose not only a cultural wealth but also important ancestral knowledge embedded, in particular, in indigenous languages' ('Endangered Languages' (*UNESCO*) <www.unesco.org/new/en/culture/themes/endangered-languages/> accessed 10 April 2016).

therefore parasitic on language and incapable of surviving on its own absent its original host. We have already drawn attention to the weaknesses of these assumptions. We should also reject the notion that languages can be ranked in terms of objective value. The sound conclusion seems to be not that some languages are better than others, but rather that they are merely different. Further, as we have seen, their differences are often greatly exaggerated, at least when it comes to the ways of thinking and perceiving that they are said to engender in their speakers. Clearly, there is a diverse array of phonological, morphological, and syntactic differences on display across the world's tongues. There is no denying the foreignness of African 'click languages' such as Xhosa to the ears of speakers of non-click languages, for example. However, the vast majority of differences that do exist across languages must ultimately be considered quite superficial. Noam Chomsky and his followers, for example, have long asserted that there is a 'universal grammar' underlying all human languages, and Chomsky is of the opinion that Martian scientists surveying the Earth would quickly come to the conclusion that we all speak different dialects of the same language.[44] However, we don't have to accept that there is such a thing as universal grammar, which is hardwired into our brain, in order to see that such differences as do exist across languages are not of the right sort to support the argument that to preserve a language is to preserve a unique take on the world. That is, the differences do not causally give rise to specific, unique worldviews. It is in this sense that we can conclude that such linguistic differences are, for our purposes, superficial.

John McWhorter, for example, forcefully makes the point that 'For the better part of a century, all attempts to conjure any meaningful indication of thought patterns or cultural outlook from the vocabularies and grammars of languages has [sic] fallen

[44] Noam Chomsky, *Language and Problems of Knowledge: The Managua Lectures* (MIT Press 1988).

apart…, with researchers picking up only a few isolated shards of evidence.'[45] There is a tendency, McWhorter implies, to imbue with profound cultural significance what are ultimately inconsequential, if interesting, quirks of language. McWhorter cautions against this temptation:

> …because "table" has feminine gender in Spanish (*la mesa*), a Spanish speaker is more likely—if pressed—to imagine a cartoon table having a high voice. But this isn't exactly what most of us would think of as meaningfully "cultural," nor as having to do with "thought." And in fact, Spanish speakers do not go about routinely imagining tables as cooing in feminine tones.[46]

Thus while it is apparently true that Germans are somewhat more apt to view bridges as feminine, with French-speakers inclined to see them as masculine, such differences surely do not amount to the sort of distinct *worldviews* that proponents of the argument for linguistic preservation we are considering are concerned to save. We might well fear that it would be a loss for humanity if Germanic culture were to disappear, for example. But even if German-speakers were at present the only people in the world to unconsciously conceive of bridges as female, we have no reason to believe that their suddenly ceasing to do so would represent a substantial loss for humanity.

By way of summary, we saw earlier that—contrary to much popular belief and the wisdom of film-star cowboys—language does not strongly determine thought. It hardly needs to be said, however, that this fact alone does not imply that the world's numerous linguistic communities all share substantially similar worldviews with one another. They do not. When we look at Western Europe today, however, we see evidence that there can be a remarkable convergence on values across regions, even where a large number of different languages are spoken throughout the region. More importantly, it is clear that sharing a common language does not cause *individual speakers* of that language to share

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[45] John McWhorter, 'The Cosmopolitan Tongue: The Universality of English' (2009) 172 World Affairs 61, 64–65.
[46] ibid 65.

a common outlook on life. *Within* even relatively linguistically homogeneous nations, for instance, we can find an expansive range of individual worldviews, including, in the case of each nation, localised cultures that fit poorly with accepted national stereotypes, such as the subcultures of French neo-Nazis, German hippies, or British gourmets. In fact, when we open our eyes to the diversity within a given language community, we find, at least when we constrain ourselves to focusing on Western Europe and generalise about the overall worldview of each country within that region, that there is *less* variation in worldviews across the different linguistic communities than there is among individuals within a given nation who *share* a common language.

Further, an excellent illustration of how cultural values are not necessarily shared *across* nations which speak the same language is the Francophonie—encompassing as it does the liberal democracies of France and Canada, as well as the dictatorships of Rwanda and Cameroon.[47] And this is true not only of francophone nations. We find a similarly significant, if somewhat smaller, range of predominant cultural values across the native English-speaking world as well. There are undeniable cultural differences, for instance, between Dublin, Dallas, and Darwin.

Now, it is also true that these places exhibit very noticeable linguistic differences as well, including not just starkly different accents but also some substantially divergent vocabulary. However, it would be bizarre to think that these sorts of linguistic differences themselves *cause* residents in one place to embrace a worldview somewhat at odds with that generally adopted in the other locations. If anything, the causation is likely to run in the other direction: it is more likely that what we think and believe will determine how we speak than it is that how we speak will determine what we think and believe. As a

[47] See eg Canada's and France's recent expressions of misgivings over the point of maintaining a special relationship with countries in the Francophonie just because they are francophone: 'The Ties that Bind: La Francophonie' *The Economist: Johnson* (19 October 2012) <www.economist.com/blogs/johnson/2012/10/la-francophonie> accessed 15 April 2016.

general pattern, for instance, continued interaction by the members of a free community will tend over time to lead to roughly common worldviews across the community, such that it is sensible, if quite simplistic, to talk of *the* culture of Texas or of Ireland. In addition, people sometimes choose to speak in the fashion typical of a certain group when they find that group's worldview appealing and wish for others to identify them as a member of that community. A Glaswegian, for instance, may identify with the literary culture of London and practice speaking in the supposedly neutral tones of Received Pronunciation until it becomes second nature to him. Likewise, a rural Caucasian teen in Nebraska may consciously emulate the speech patterns of African American Vernacular English due to an affinity for Black American culture. None of this, it needs hardly to be said, is to suggest that we are somehow deviant or deceitful if we speak with a Texas twang but abhor all things stereotypically Texan, such as football, religion, and guns. Indeed, finding such Texans—those whose speech is quintessentially Texan and whose politics are anything but—is not particularly difficult, precisely because, again, our way of speaking does *not* determine our worldview.

Of course, it is clear that relatively few people actually spend much time making such conscious choices about how they will speak their language. For the vast majority of us, we simply wind up speaking pretty much as our friends and neighbours do. Notice that a similar dynamic obtains with regard to cultural views. We take ourselves as having more leeway to endorse or reject our community's prevailing mores than its way of speaking, and we generally think much more is at stake when it comes to the former project—often believing, for instance, that we have a *responsibility* to question our community's received cultural wisdom. However, we generally find that much of *both* our community's cultural and linguistic flavour has rubbed off on us more or less unconsciously and automatically. The point we are making here is that if we must identify which of our cultural or linguistic identifications is more likely to determine the other, it is much more plausible to think that cultural allegiances shape linguistic habits than vice-versa. McWhorter, for one, insists on this fact:

> [T]he oft-heard claim that the death of a language means the death of a culture puts the cart before the horse. When the culture dies, naturally the language dies along with it. The reverse, however, is not necessarily true. Groups do not find themselves in the bizarre circumstance of having all of their traditional cultural accoutrements in hand only to find themselves incapable of indigenous expression because they no longer speak the corresponding language. Native American groups would bristle at the idea that they are no longer meaningfully "Indian" simply because they no longer speak their ancestral tongue.[48]

In the end, the conclusion that a group's language does not causally determine their worldview should not surprise us. Earlier, for instance, we rejected the idea that a group's language determines what individual members can think. We must therefore also reject the notion that language determines a community's overall worldview, which after all is no more than the combined views of individual members. In the result, we have to at least take seriously McWhorter's conclusion that 'The main loss when a language dies is not cultural but aesthetic.'[49]

Language Preservation and the Preservation of Indigenous Knowledge: The Myth of Untranslatability

Before taking up the aesthetic case for preserving endangered languages, however, we should first address a different argument, one that shares many similarities with the 'languages as distinct worldviews' argument just discussed. It is proposed by some, for instance, that we should preserve endangered languages in order to preserve precious indigenous knowledge—that is, knowledge about the world that is possessed only by speakers of the dying languages.[50] The healing properties of a particular plant, for

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[48] McWhorter (n 45) 65.
[49] ibid.
[50] See eg Daniel Nettle and Suzanne Romaine, *Vanishing Voices: The Extinction of the World's Languages* (OUP 2000) 16, 177; Maarten Mous, 'Loss of Linguistic Diversity in Africa' in Mark Janse and Sijmen Tol

example, may only be known by the members of a certain linguistic community. Speakers of the language at issue may not share a distinct worldview simply in virtue of their language, but we can suppose, not unrealistically, that there are cases in which some piece of knowledge, particularly one that relates to a linguistic group's local ecology, is not possessed by anyone who does not speak their language. The concern is that if we fail to preserve the endangered language of a linguistic community whose members alone possess such knowledge, not only will the language die, the knowledge itself will die with it. (As noted in the introduction to the chapter, I will understand this argument as one that seeks to justify acting to preserve the endangered language by pointing to the benefits that preservation is thought to provide for the world at large, and not merely for members of the threatened community.[51])

This sort of concern, we should conclude, is much overblown. It tends to rely, for instance, on a Whorfian view of the relationship between language and thought in order to make more plausible the idea that some knowledge cannot be passed across languages. In reality, of course, there is nothing to prevent an Amazonian tribe from sharing its knowledge of local flora with, say, Portuguese-speaking outsiders who have never before encountered many of the plants. If a tribesperson learns Portuguese, for example, he may initially find it difficult to describe the properties of a plant for which the Portuguese language has no word. He might even conclude that any attempt on his part to impart wisdom about plant X is bound to be futile, since the mere fact that Portuguese has no

(eds), *Language Death and Language Maintenance: Theoretical, Practical and Descriptive Approaches* (John Benjamins 2003) 161; 'The Coolangatta Statement of Indigenous Peoples' Rights in Education' (World Indigenous Peoples' Conference on Education, Hilo, Hawai'i, 6 August 1999) <https://press.anu.edu.au/wp-content/uploads/2011/02/ch191.pdf> accessed 15 April 2016, para 2.3.5.

[51] To see how the putative beneficiaries of linguistic preservation might be the world at large, as opposed to merely the speakers of the language that is saved, imagine that there exists an indigenous community that has discovered that a particular plant, once prepared in a specific way, has powerful healing properties. We might suppose not only that their knowledge of how to make use of the plant's medicinal properties would be lost if their language were to die, but that at present many outsiders are being treated with medicines that rely on the prepared plant.

word for X expresses a judgement, common among Portuguese speakers, that X does not exist. But that conclusion would be absurd. Instead, the Portuguese language has no word for X because Portuguese speakers are as yet unaware of the thing that the Amazonian tribe calls X—or perhaps because, although aware of X's existence, they are as yet unaware of any useful purpose to be served by ascribing a name to X. If our tribesperson shows a Portuguese speaker that the plant exists, and that its existence is of some practical interest—medicinal, botanical, etc—to Portuguese speakers, the Portuguese speaker may need to coin a new term with which to refer to the plant and its constituent parts, or she might borrow the local tribe's own terminology, but she will be able to disseminate the knowledge gained from the tribesperson to other Portuguese speakers, in Portuguese.

It is of course true that there do exist lexical gaps, or lacunae, such that we are sometimes unable to find a word or phrase in a target language that captures precisely the word or phrase we would employ in the original language. These are often experienced as frustrating, and sometimes even jarring, episodes for multilingual individuals. (Indeed, I would conjecture that the consternation we experience in such situations is part of the reason so many of us are willing to accept the false notion that our language unconsciously determines our thinking.) However, there is no such thing as a completely untranslatable proposition; all knowledge can ultimately be translated because every language can be made to convey a given proposition, if sometimes only in a rather prolix fashion.

Even conceding all this, however, it might be claimed that we should see languages as valuable in themselves, in the same way we might regard a ship as a treasure in its own right, distinct from its cargo of gold bullion. I believe we *should* regard languages this way. As Denise Réaume has argued, each language represents 'a human accomplishment, an end, in itself', and 'a manifestation of human creativity which has value independent of its uses'.[52] In a similar vein, Anthony Ellis writes that 'The world would have been an immeasurably poorer place if Latin had disappeared without trace.'[53] However, all that these points argue for, I believe, is that we should preserve the ship from destruction, not that we must make it sail—much less guarantee that it will go on sailing for the indefinite future. Ellis, for instance, directly after asserting how great a loss it would have been for the world if Latin had entirely vanished, also expresses deep skepticism that we would have gained much, relative to the status quo in which Latin remains with us but only as a dead tongue, 'if some isolated community had retained Latin as a living language'.[54] And crucially, even if we would all be marginally better off if Latin had survived as a living language in this way, this benefit is insufficient to justify the targeted coercion of individual members of Latin-speaking communities that we would have to be willing to abide if we wished to guarantee the desired linguistic outcome. We should certainly attempt to record endangered languages in order to ensure that linguists are able to study them in the future, and so that future generations have the ability to learn them and read their texts in their original form. However, no language (not Latin, nor Pirahã, nor English) has such intrinsic value as a human construction that its preservation *as a living thing* must be guaranteed, even at the cost of denying its current speakers the option to leave their linguistic community for another.

Not Untranslatable but Untranslated

Many of those whose support for preserving endangered languages stems from the fear of losing the unique knowledge or cultural practices of threatened linguistic groups do not

[52] Denise Réaume, 'Official-Language Rights: Intrinsic Value and the Protection of Difference' in Will Kymlicka and Wayne Norman (eds), *Citizenship in Diverse Societies* (OUP 2000) 250.
[53] Anthony Ellis, 'Minority Rights and the Preservation of Language' (2005) 80 Philosophy 199, 216–17.
[54] ibid 217.

actually assert that such knowledge, or the significance of such practices, is untranslatable. Rather, the concern seems to be that were the dominant language to completely overwhelm the smaller tongue, valuable parts of the smaller linguistic group's collective life (be they pieces of ecological knowledge, traditional practices, or religious or moral beliefs), while in principle translatable, will not in reality be recognised by members of the dominant linguistic group. In other words, although the local wisdom may not be untranslatable, in the end it will go *untranslated*, in the sense of not being endorsed in the lives of individuals in the new linguistic setting as it was in the old. And, it is alleged, this is all the more likely because, although it may be possible for former members of the recently deceased language to retain and cherish the knowledge and customs of their people even while growing up in the new language environment, the prospects of these individuals keeping the faith in this manner are greatly diminished, simply in virtue of the change in linguistic landscape. It is claimed, that is, that while we can in theory maintain aspects of the worldview of a linguistic group that no longer exists, such maintenance would have a considerably greater chance of being realised were we to prevent the language from dying in the first place.

Consider, for instance, the claim that even if the useful properties of a plant previously unknown to the majority language community can be explained to them and made expressible in their own language, that knowledge will not really have been translated so long as it is not sufficiently cherished or remembered. That seems wrong. Clearly, translation as we normally speak of it has occurred. What has failed to occur is something altogether different: the taking up—or, in the case of former minority language speakers, the keeping up—of a piece of knowledge by people who recognise its value and, in ways great or small, shape their lives in the light of it. And who are we, we should immediately ask, to suppose that languages ought to be preserved, even at the cost of coercively preventing individuals from leaving their linguistic community behind in favour of another, in order to ensure that those insights about the environment, or about the nature of the good, that we judge truest or most valuable do not go unrecognised? Even if we feel confident that we should sometimes be willing to allow the use of coercion to ensure that a culture not ignore the truly valuable (lest it be lost to all of us, say), the very fact that the individuals concerned have not chosen to embrace what we regard as fitting under that category, despite the supposedly valuable knowledge or custom having been cognisable to them in their own language, should at least lead us to reconsider whether that custom or piece of knowledge is really so valuable after all. Indeed, as a general matter, the more valuable to humanity something is, the more we should expect that people exposed to that thing will come to recognise its worth and seek to preserve it.

Zeroing in on the Moral Costs of Linguistic Coercion

The distinction between a piece of knowledge that is untranslatable and one that simply winds up unappreciated—a distinction we might understand as the difference between something which will inevitably be lost *in* translation and something that will eventually be lost *after* translation—is an important one in another respect as well. Assume, for instance, as we have been assuming, that a particular piece of translatable knowledge cherished by an endangered language community is of objective moral value. Assume as well that the fact that this knowledge will quickly be forgotten after the death of the threatened language made us re-evaluate our conclusions about its value, but that these conclusions remained intact. Even so, we will have reason to be more cautious about advocating for the preservation of a language in order to save merely unappreciated knowledge as opposed to truly untranslatable knowledge (if such were to exist), since the benefits we should take ourselves to be providing by preserving either sort of knowledge will depend on more than merely the objective value of the particular piece of knowledge being saved. Specifically, in order to measure the benefits that can be provided by policies designed to encourage individuals to take up even objectively valuable pursuits, we must take into account how valuable the individuals affected subjectively believe those pursuits to be.

Since we are dealing with a hypothetical scenario in which the individuals involved choose not to preserve a particular piece of knowledge we insist must be preserved, we can assume they attach to it less than its actual value. We (correctly, let's suppose) regard it as having 100 units of value, say, while they only rate it a 50. The actual value that we should regard the preservation of that knowledge to have *in the lives of the individuals concerned* must thus be less than it would be if the individuals' subjective evaluations of the worth of that piece of knowledge were in line with its objective value. We can argue about whether its value for these individuals is no more than they take it to be (ie, 50), or averages out to 75, or is pulled only slightly downwards, to say 90. But we should not believe that the benefit remains at 100. In other words, in order to arrive at a true estimate of the benefit that preserving the knowledge in question would provide to potential coercees, the objective value of the knowledge, if this could be measured, must be discounted in accordance with the degree to which the individuals subjectively prefer what we are assuming to be an objectively less valuable life.[55]

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[55] Ronald Dworkin, for example, argued in favour of this broad idea. According to Dworkin, for instance, even if we could make people live in such a way that their actual, objective interests are satisfied, we should not do so if the way of life does not correspond with their subjective desires about how to live, since 'no component contributes to the value of a life without endorsement' by the person whose life it is (*Sovereign Virtue* (Harvard University Press 2000) 217). If that is the case, then preserving a language against the will of its speakers, in order to keep alive certain bits of knowledge that are being shed by those moving from the minority to the majority linguistic community, seems plainly unjustifiable, as the defecting minority language speakers clearly prefer a life in the dominant language without that knowledge to a life in their native language with it. In reality, however, as some of Dworkin's critics have pointed out,

So where does all this leave us? Without disregarding entirely the possibility that a given piece of knowledge (or belief, or custom) could be so valuable to humankind as to justify coercing specific individuals in order to ensure that it is does not go unappreciated, there are several hurdles we will have to surmount before we can come to such a conclusion. First, the benefits to the world of preserving that piece of knowledge will have to outweigh the benefits (if any) that would arise if the language shift, which we are assuming makes more likely the loss of the knowledge, were allowed to occur. As we will see in Chapters 3 and 4, for instance, we should not assume that patterns of language shift which result in the death of smaller languages are all cost and no benefit. Since we have in mind cases where language shift is occurring as a result of the free choices of members of the smaller linguistic group to leave that community and enter the dominant one, we can expect that for these individuals (as well as for members of the majority group),[56] their swapping language communities will give rise to a real benefit.[57] And it is possible that these latter benefits will outweigh the benefits that would accrue if the language shift were halted and the knowledge in question preserved, especially given the need to discount the latter benefits whenever those who have been made to benefit (objectively speaking) would prefer not to have been. In such cases, having weighed the potential benefits, we would have to conclude that the most good overall would be done by allowing the language shift to continue.

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things are not so simple, since coercion can lead to a shift in what it is the coercee desires (see eg Thomas Hurka, 'Indirect Perfectionism: Kymlicka on Liberal Neutrality' (1995) 3 Journal of Political Philosophy 36; Simon Caney, 'Consequentialist Defences of Liberal Neutrality' (1991) 41 Philosophical Quarterly 457). (Dworkin himself is aware of this fact (see *Sovereign Virtue* 218).) I discuss this possibility in the text shortly below.

[56] For discussions of how monolingual speakers of the majority language also generally benefit greatly from having foreign language speakers learn their language, see Philippe Van Parijs, *Linguistic Justice for Europe and for the World* (OUP 2011) 50–53.

[57] While this is true, it is complicated somewhat by the possibility of a collective action problem obtaining—a possibility that will be specifically addressed in the next chapter.

Even if the balance were in the opposite direction, and the first hurdle overcome, we must weigh the benefits of preserving the knowledge against the costs of doing so. And in weighing up these costs, we notice that ensuring the preservation of an endangered language comes, as compared to allowing the language shift to continue, with an extra cost. Specifically, since we are assuming that the language shift we are dealing with is occurring as a result of large numbers of individuals from the minority language group choosing to defect, as it were, to the majority community, the *moral* costs of this language shift, in terms of the interference with individuals' freedom of choice that it would involve, are nil, for the simple reason that no such interference is involved. When we factor in the badness of the interference with freedom of choice required to ensure that the language shift is halted and the specific piece of knowledge preserved, the *net* benefit of such a project[58] may well be lower than the net benefit of allowing the shift to proceed.

In this context, I understand freedom of choice impairing measures to include those that coerce,[59] as well as those that are not coercive but nevertheless manipulate the context in which an individual makes a choice in such a way as to significantly reduce the 'range and quality'[60] of the choices open to that person.[61] I accept the proposition that in

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[58] In using the term 'benefit' I don't intend to preclude the very real possibility that preservationist efforts especially, but also allowing language shift to continue, could see a negative overall 'benefit'.

[59] My understanding of coercion aligns closely with that presented by Robert Nozick in his seminal article 'Coercion' in White Morgenbesser (ed), *Philosophy, Science, and Method: Essays in Honor of Ernest Nagel* (St Martin's Press 1969) 440. Specifically, I accept the following somewhat streamlined description of Nozick's account of coercion given by Scott Anderson: '*P* coerces *Q* if and only if: 1. *P* aims to keep *Q* from choosing to perform action *A*; 2. *P* communicates a claim to *Q*; 3. *P*'s claim indicates that if *Q* performs *A*, then *P* will bring about some consequence that would make *Q*'s *A*-ing less desirable to *Q* than *Q*'s not *A*-ing; 4. *P*'s claim is credible to *Q*; 5. *Q* does not do *A*; 6. Part of *Q*'s reason for not doing *A* is to lessen the likelihood that *P* will bring about the consequence announced in (3)' (Scott Anderson, 'Coercion' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2015 edn) <http://plato.stanford.edu/archives/sum2015/entries/coercion/> accessed 17 April 2016).

[60] Anderson, 'Coercion' (n 59).

[61] Because my understanding of coercion includes a 'success condition', in the sense that I do not understand coercion to have taken place unless a coercer's threat has actually bent the will of his coercee by causing the latter person to take or refrain from taking some action in order to avoid the threatened consequence, I do not regard coercive linguistic measures that cause some individuals to remain in an endangered language community as *coercive* of those other members of the linguistic community who would be subject to the penalty were they to leave but whose decision to remain is unaffected by the threat of the penalty. I do insist, however, that such coercive measures undermine these individuals' freedom of choice, since the threatened consequence reduces the availability to them—just as it reduces the availability

some cases manipulating the ‘architecture of choice’ in order to influence the outcome of that choice may, on the whole, advance rather than undermine freedom of choice, as where such manipulation is relatively mild—a ‘nudge’ in the language of Richard Thaler and Cass Sunstein—and frees the agent from irrational biases, thereby opening up to her a greater range and quality of available options.[62]

However, it does seem clear that if we are serious about committing to a state-led effort to secure long-term linguistic preservation, coercive measures of some sort will have to be employed—be they, for instance, requirements to display the favoured language on commercial signage,[63] to show a given proportion of films in the territory in the favoured language, regardless of their language of origin,[64] or to enroll one’s children in schools operating in the favoured language.[65] In a great many real-world contexts in which a language is endangered, we see widespread agreement that nudging alone cannot remove the danger.[66]

Of course, the fact that preservationist measures impair individuals’ freedom of choice does not in itself imply that the net benefit of preservation must be smaller than the benefit of allowing the language shift to proceed. Determinations of this sort will hinge on how ‘bad’ we judge the impairment on freedom of choice, and in particular the coercion, at play to be. As liberals, for instance, I think we should generally regard all

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to their coerced co-linguists—of the option to leave the community (ie, regardless of the fact that they had no intention of choosing that option).

[62] Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness* (Yale University Press 2008). Distinguishing a ‘nudge’ from a ‘shove’, of course, will not be an easy matter—a point well made by Elizabeth Kolbert, ‘What was I Thinking?’ *The New Yorker* (25 February 2008) <www.newyorker.com/magazine/2008/02/25/what-was-i-thinking> accessed 17 April 2016.

[63] As in Quebec (*Charte de la langue française*, CQLR c C-11, s 58).

[64] As in Catalonia (Llei 20/2010, del 7 de juliol, del cinema, art 18.1).

[65] As in Quebec (*Charte de la langue française*, CQLR c C-11, s 72).

[66] This fact, for instance, should be sufficient for us to reject any idea that while we should not commit to always *securing* language preservation, we should commit to taking actions that tend to *promote* it. Committing to the latter, that is, would be to commit to implementing preservationist measures even where we know they would be unsuccessful. As such, we would in these cases be, at best, delaying the inevitable—and that at what will sometimes be a not-inconsiderable moral cost, as well as, oftentimes, a quite considerable financial cost.

coercion as prima facie 'pretty bad' and in need of justification.[67] So, while we need not assume that the only way to preserve the endangered language will be to segregate speakers of the minority community in ghettoes and flog them for speaking the majority language, even softer coercion we think potentially justifiable will strike us as distinctly distasteful, and something to be treated with suspicion. A liberal, that is, holds something like a rebuttable presumption that coercion is not justified, and requires compelling evidence before concluding otherwise. Thus while we suspect that some sorts of coercion can never be justified, other forms, if mild enough, and required to bring about sufficiently large benefits, will be acceptable.[68]

Further, when it comes to evaluating the legitimacy of coercive state policies, there is an important distinction to be made between coercing people into doing something that is believed to be in their interests but which they do not wish to do, and coercing them into doing what they actually desire to do, but for one reason or another would not do if left to their own devices. Ronald Dworkin for example, draws a distinction between what he calls a person's 'critical interests' (one's interest in 'having or achieving what it makes [one's] life a better life to have or achieve'[69]) and her 'volitional interests' (one's interest in 'having or achieving what in fact one wants'[70]). It seems plausible that coercion is less objectionable where we are coercing people to act in

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[67] See HLA Hart, *Law Morality, and Positivism* (Stanford University Press 1963) 20–21; Gerald F Gaus, 'Liberal Neutrality: A Compelling and Radical Principle' in Stephen Wall and George Klosko (eds), *Perfectionism and Neutrality: Essays in Liberal Theory* (Rowman and Littlefield 2003); Andrew Lister, *Public Reason and Political Community* (Bloomsbury 2013) 59–80; John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press 2001); Joel Feinberg, *Harm to Others: The Moral Limits of the Criminal Law* (OUP 1987); Stanley Benn, *A Theory of Freedom* (CUP 2011); Colin Bird, 'Coercion and Public Justification' (2014) 13 Politics Philosophy Economics 189, 200.

[68] See Joel Feinberg, 'Legal Paternalism' (1971) 1 Canadian Journal of Philosophy 105; Jane Mansbridge, 'Taking Coercion Seriously' (1997) 3 Constellations 407, 408–11; Gerald Dworkin, 'Compulsion and Moral Concepts' (1968) 78 Ethics 227; Grant Lamond, 'The Coerciveness of Law' (2000) 20 Oxford Journal of Legal Studies 39; Grant Lamond, 'Coercion and the Nature of Law' (2001) 7 Legal Theory 35; Bird (n 67) 200.

[69] Dworkin, *Sovereign Virtue* (n 55) 242.

[70] ibid.

accordance with their volitional interests, rather than merely in accordance with what we take to be their critical interests. Further, if we are coercing people into doing something that clearly runs counter to their current volitional interests, we will have an easier time justifying the coercion if what we are coercing them into doing accords with what we know or reasonably expect their volitional interests will be after the coercion has taken place.[71] We tend to think, in other words, that while coercing another with the words, 'trust me, you'll thank me later', is highly paternalistic and prima facie disrespectful, the coercion will at least stand a greater likelihood of being justified if that prediction is indeed well-founded.

Therefore, as compared with coercing people into acting in accordance with their volitional interests (what Dworkin calls 'volitional paternalism'[72]), coercing them to act against those interests (what he terms 'critical paternalism'[73]) tends not only to lead to fewer benefits, it also involves higher (moral) costs. We can focus, for instance, on three moral costs that surround any instance of coercion, but which loom larger when it comes to the latter sort of coercive projects. For example, the actual benefits of coercing people to take up a valuable way of life are, as we saw, diminished somewhat if these people regard that life as less valuable than it actually is. But more than that, the *resentment* they may feel at being coerced into taking it up represents, at the other side of the ledger, a cost which obviously would not be present if we allowed them to live as they pleased.[74]

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[71] For instance, it may turn out that having been forced to do something against my wishes, I afterwards come to see the value of continuing on doing that thing, and indeed want to do so. My desires have changed, and so I now endorse what I previously rejected (see eg Hurka (n 55) 36–57; Caney, 'Consequentialist Defences' (n 55) 457–75).

[72] Dworkin, *Sovereign Virtue* (n 55) 217.

[73] ibid.

[74] Incidentally, I think we could instead choose to understand the resentment experienced here as essentially reducing the benefit to be gained by coercion rather than adding to its cost. However, I do not think anything much hangs on how we conceive of the precise mechanism by which the resentment we are pointing to makes a coercive project less appealing than it otherwise might appear (although it would probably be undue double-counting to regard resentment as simultaneously lowering the benefit and raising the cost).

This feeling of resentment is also one typically engendered in the individual who is not strictly speaking coerced into acting as the coercer wishes him to (since he would have acted in that manner—say, remaining in the endangered linguistic community—even absent the coercer's threat), but who nonetheless sees an option which was previously available to him—leaving that community—become significantly less so in light of the coercer's threat.

The flip-side of this resentment is another moral cost in its own right, namely the *disrespect* we show when we coerce a fellow person into living in a way we know to clash with their volitional interests. By contrast, the disrespect evinced by coercing someone into doing what they in fact wish to do—at least where part of our *intention* in applying the coercion is to satisfy the coercee's volitional interests[75]—is (where any is present at all)[76] often considerably less. And here again, the individual who is not technically coerced when our threats coerce his co-linguists is nevertheless also disrespected when his context of choice is significantly impaired by our threatening punishment if he chooses not to contribute to the preservation of his endangered language.[77]

The third and final moral cost flows from the second. Not only is it morally wrong to evince disrespect for fellow human beings, but doing so also debases the actor (and

[75] For what it is worth, I think that where coercion is applied in order to see that someone does *x*, then even if the intended coercee already wants to do *x*, if the fact that they want to do *x* is no part of the intended coercer's reason for coercing them into doing it, the intended coercer's actions will involve just as much disrespect for the coercee and her desires as would coercing her in a way that ran directly counter to her volitional interests. (Noting this complexity does not, however, detract from our main point that whereas critical paternalism always evinces significant disrespect for the coercee and disregard of her desires, volitional paternalism need not.)

[76] Where, for instance, a collective action problem obtains that leads individuals to act in ways that lead to suboptimal results, if we turn to coercive measures in order to resolve the problem and ensure that the participants' volitional interests are served, it is not clear that this will be disrespectful of the coercees at all.

[77] See Jeremy Waldron, 'Autonomy and Perfectionism in Raz's *Morality of Freedom*' (1989) 62 Southern California Law Review 1097, 1145–1146: 'Messing with the options that one faces, changing one's payoffs can be seen as manipulation … If it is done intentionally, it also takes on the insulting aspect of manipulation, for it treats the agent as someone incapable of making independent moral decisions on the merits of the case.'

does so even if the person disrespected does not come to resent the affront).[78] Since the disrespect involved in coercing people to act in accordance with their wants is often less than that involved when we coerce them to behave in ways they do not wish to behave, there is a smaller likelihood that the former sort of coercive effort will brutalise the coercer.

The upshot of all this is the following. We have in mind a hypothetical scenario in which preventing a language from dying is necessary in order to preserve an objectively valuable piece of knowledge that would be lost if we were to let the individuals concerned freely choose the manner and form of their speech. This is clearly not a straightforward case in which we will need to take coercive measures to bring the individuals' conduct in line with their present volitional interests. Neither is it clearly a case of bringing their conduct in line with their future volitional interests: those who are constrained in order that the knowledge not be lost may not in fact 'thank us later' for our efforts, even if those efforts were to prove successful.[79] Thus it will be even more difficult to justify the coercion involved in the cases of language loss we have in mind than it is to justify linguistic coercion in the abstract.

In summation, we can imagine two scenarios in which language loss is followed by the loss of an objectively valuable piece of knowledge. In the first scenario, following

[78] For a discussion of how the act of torturing can brutalise the torturer, see David Sussman, 'What's Wrong with Torture?' (2005) 33 Philosophy & Public Affairs 1.

[79] In fact, I would argue that it is decidedly unlikely that after an endangered language is preserved, by way of coercive efforts to foreclose language shift, the speakers of that language will 'come round' and embrace the valuable knowledge they were formerly willing to do without. For example, it seems that instances in which coercing someone to do something will turn out to accord with their future volitional interests despite conflicting with their present ones are most likely to occur in situations where those coerced were unaware of some piece of knowledge or some practice but whose value becomes apparent to them upon being given the opportunity to experience that value in their lives first hand. We might imagine a community whose land produces an abundance of berries that the people wrongly assume to be poisonous. After being made to eat them, they find them delicious and nutritious and are very glad to continue eating them. Such a 'once you try it, you'll never go back' dynamic, however, is of course not present in the language loss cases we are considering. There the defecting members of the endangered community already have 'tried it'. The knowledge or custom we are imagining as at risk of being lost is not something they are unaware of and will embrace once they are made aware of it; rather they are already aware of it but find its value insufficient reason to remain in their linguistic community.

the death of the language, the valuable knowledge formerly cherished within that linguistic community ends up going unappreciated because those exposed to it ultimately judge it insufficiently important to be passed on. In the second, that same knowledge simply cannot be expressed to new generations once the original language has died, and therefore goes down with the ship. It has been argued that there is a stark difference between the two scenarios, a difference which ought to affect the way we regard the loss of the knowledge in each case. We may feel a duty of rescue in the latter sort of case, but we should not take ourselves to be under such a duty in the former.

In fact, however, we rejected the argument that we should sometimes preserve languages in order to prevent valuable but untranslatable knowledge contained within them from being lost. Aside from emphasising the fact that we can (and should) record dying languages and thus prevent their extinction, we insisted that all human knowledge, valuable or not, is in principle capable of being translated into new tongues. We conceded, however, that it is conceivable that an important piece of knowledge, while fully cognisable in the terms of a dominant language, would not be taken up by its speakers, or kept up for long by former minority language speakers, were the minority language to die. We can also imagine that this knowledge might be of sufficient value that its preservation will benefit mankind more than would allowing the language shift which endangers it to proceed freely. In reality, however, (and to repeat) the class of such cases will be quite small. Moreover, we can be sure that the number of real-world cases in which the lost knowledge, despite going unappreciated, is nevertheless of sufficient value not only to outweigh the benefits that arise from the language shift, but is also sufficiently valuable to outweigh the *costs* of preserving the language, measured in terms of interference with individuals' freedom of choice, will be even smaller —especially when we keep in mind that what stands in need of justification is not coercion in the abstract but rather a particular coercive project that runs counter to the present volitional interests of those coerced and whose results cannot be guaranteed to ever match those individuals' future volitional interests.

Linguistic Diversity and Aesthetics

We turn finally to the argument from aesthetics, which runs roughly as follows. The world is a more beautiful and interesting place simply because it contains a wide variety of tongues. The death of any language thus leaves the world, from a purely aesthetic perspective, diminished. Therefore, states, as a matter of policy, should strive to maintain the languages spoken across their territory. In light of the conclusions we have already drawn in this chapter, this aesthetic argument can be disposed of rather quickly.

The proposition that the aesthetic value of having a diverse array of languages justifies the use of coercive measures to prevent members of a dying linguistic community from leaving their community for another must be rejected. The problem is that while many of the costs of linguistic preservation, including potentially serious limitations on individual liberty, will fall heavily upon individual members of the endangered community, the benefits that allegedly flow from preserving linguistic diversity are 'spread thinly and widely'[80]—across the world, in fact. These purported benefits, being so diffuse, are incapable of justifying the targeted coercion of particular members of the minority group.

Further, the aesthetic case for preservation fails because the extent of the aesthetic loss that proponents of the argument allege to occur whenever a language dies is greatly exaggerated. Being personally fascinated by how people use language, John McWhorter, for one, readily admits that 'The click sounds in certain African languages are

[80] Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (OUP 1995) 123 (speaking about the aesthetic value of *cultural* diversity).

magnificent to hear. The Ket language of Siberia is so awesomely irregular as to seem a work of art.'[81] McWhorter insists, however, that when it comes to the notion that the aesthetic value of a diversity of languages might justify efforts at linguistic preservation, the real 'question is whether there is some urgent benefit to humanity from the fact that some people speak click languages, while others speak Ket or thousands of others, instead of everyone speaking in a universal tongue.'[82] Furthermore, even if we did tend to think there is an urgent need to prevent a future in which everyone speaks in *one* tongue (and no doubt the unease we might feel at this prospect is due in large part to concerns about *cultural* homogeneity, as opposed to worries over linguistic homogeneity per se), such a world is emphatically not one that professional linguists envision us living in anytime soon. According to the best estimates, for instance, in the absence of an increase in official efforts at preservation, the world's languages are likely to be reduced from a little over 6,000 today to closer to 3,000 by the close of the century.[83] That is certainly a whopping amount of language loss. But is there, in McWhorter's words, an urgent benefit to humanity that its people speak a total of 6,000 languages rather than 3,000? I think the answer is clearly no.[84] This is not to say that the world is not a somewhat more interesting—and perhaps even a more beautiful—place the greater the number of languages it contains. But the increase is slight, and therefore the aesthetic argument does not succeed in justifying efforts to preserve a dying language by stemming the tide of freely chosen language shift.

[81] McWhorter (n 45) 65.
[82] ibid.
[83]Wiecha (n 17).
[84] Nor is it the case, to forestall an objection, that global language loss will be such a slippery slope that if we allow language loss to continue at its current pace, we will find ourselves completely unable, down the road, to preserve the world's remaining endangered tongues. In fact, there is every reason to think that the *rate* of language loss will *decrease* substantially over time as the world's most presently endangered languages die off.

Furthermore, there is no necessary connection between the aesthetic *value* that is preserved when we preserve a dying language and the actual *benefit* that would accrue to individuals were that result to be achieved. For instance, as McWhorter writes, the 'aesthetic delight' he takes in beholding the world's languages is a delight 'mainly savored by the outside observer, often a professional savorer…'.[85] As he goes on to note, however, 'Professional linguists or anthropologists are part of a distinct human minority. Most people, in the West or anywhere else, find the fact that there are so many languages in the world no more interesting than I would find a list of all the makes of Toyota.'[86] McWhorter might be overstating things here slightly, but his basic point seems sound: ordinary people do not much care that there are 6,000 languages on earth instead of 3,000, or 100 (or 10,000, for that matter). And of the approximately *half a million* languages that have gone extinct over the course of human history,[87] we certainly do not weep much for those that ceased to exist in the more distant recesses of our species's past. Thus even if, objectively speaking, we add non-trivial aesthetic value every time we save a language (or, presumably, whenever we invent a new one), no actual *benefit* will accrue to those who fail to recognise the value of such action. The world being made more beautiful does not benefit *me* if I fail to see the increase in beauty.[88] I am not here insisting, with Dworkin, that no one's life is ever made to go better unless one thinks it has been improved. Perhaps my life is made a little better whenever I gain a new friend, for instance, even if I doubt that it has been. However, I am suggesting that in order for something of purely *aesthetic* value to benefit me, I must perceive that thing as valuable.

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[85] McWhorter (n 45) 65.
[86] ibid.
[87] Lera Boroditsky, 'Language: Pro, The proposer's closing remarks' *The Economist* (21 December 2010) <www.economist.com/debate/days/view/628> accessed 20 March 2013.
[88] This is not necessarily to say that the only things possessing aesthetic value are things actually recognised as having such value. It is only to say that if I am to *benefit* from something of purported aesthetic value, not only must the aesthetic value actually exist, but I must apprehend it as existing.

This line of reasoning perhaps wades too deeply into substantive questions of aesthetics and philosophy. However, we need not be wedded to the idea that it is simply impossible for someone to benefit from an increase in the world's aesthetic value unless they recognise the value that has been added. Even if such a thing is possible, or even commonplace, our initial conclusions remain: the extent to which the death of individual languages actually diminishes the world's aesthetic value is minimal and, ultimately, insufficient to outweigh the costs in terms of coercion that successful efforts at preservation must be willing to pay.

Conclusion

We find, then, that none of the arguments canvassed above support the contention that state language policy ought to strive to ensure the preservation of endangered languages. Of each of them it can be said that either the benefits the argument alleges to flow from maintaining dying languages can be had without such linguistic maintenance, or, if they cannot, the coercive preservationist measures that will be required to bring about those benefits will nevertheless represent an unacceptable moral cost. In the next chapter, however, we will ask whether the case for maintaining endangered languages is stronger once we focus on the benefits that preserving such languages will have not for the world at large, but for individual speakers of those tongues.

CHAPTER TWO

THE LANGUAGE MAINTENANCE MODEL:
PART II: THE BENEFITS OF LINGUISTIC PRESERVATION FOR SPEAKERS OF ENDANGERED LANGUAGES

In the previous chapter, we looked at a number of arguments in favour of maintaining endangered languages that pointed to the alleged benefits that such linguistic preservation would have for the world at large. In this chapter, by contrast, we will focus on arguments for linguistic maintenance that turn on the benefits that preservation will supposedly have for the members of the relevant language groups themselves. The chapter will examine in turn four specific arguments for linguistic preservation. These arguments assert that the preservation of endangered languages may be required in order to, respectively, further the ability of members of endangered linguistic communities to connect emotionally with other members of their group across generations, to preserve the self-respect of endangered language speakers, to ensure that speakers of endangered languages have access to the kinds of social environments that make autonomy possible, or to remedy collective action problems surrounding individuals' language use choices. I then examine the possibility that since maintaining endangered languages can be accomplished without recourse to coercive means, language policy should aim at linguistic preservation even if none of these four arguments can justify employing strongly coercive measures to that end.

Language Maintenance as a Means of Fostering Intergenerational Connection

It is important not to unfairly portray arguments for linguistic maintenance. Not every proponent of linguistic preservation, for instance, posits a causal relationship between linguistic diversity and biological diversity, or holds up maximising the number of the world's languages as required in the name of aesthetics. Indeed, many of the arguments in favour of preserving endangered languages focus instead on the perfectly natural and understandable fears of those who stand to lose if their language dies. One such fear, for instance, is that the death of one's mother tongue will undermine one's ability to connect emotionally with one's ancestors and descendants, and with the ancestors and descendants of other members of one's community.

What are we to make of this argument in favouring of preserving threatened languages? In offering a response, it is helpful to ask two framing questions: will the benefit we allegedly secure (or the cost we allegedly avoid) by preserving the language in fact be secured (or avoided) if the language is saved? And, if so, does the benefit to be gained (or the cost to be avoided) outweigh the moral costs involved in ensuring the language's survival? When it comes achieving shared intergenerational identification, ensuring that the language of the older generation lives on would indeed further that goal—although I contend that it is not strictly *necessary* to that end. However, I will argue that the benefit of an increased opportunity to connect emotionally with future generations—despite, to repeat, our perfectly natural and understandable desire to do so—is not sufficient to justify the moral costs involved in ensuring that that benefit is brought about.

As we proceed, it is important to remember that, as we stipulated in the previous chapter, we are restricting our discussion of whether to preserve languages to cases in which the language is threatened because a sizeable proportion of its speakers are choosing to leave the linguistic community. In order to preserve the language, then, and thus foster the good of intergenerational emotional connection, we will have to ensure that a sufficient number of current members remain, and this will typically involve frustrating the desires of some of them to leave.[89]

In asking whether state efforts to maintain languages can be justified on the grounds that preserving languages will foster intergenerational connection, we might focus on the costs that *not* preserving the language would have for members of older generations. For these individuals, for instance, forming intimate relationships with their descendants (and also with some of the descendants of other members of their generation) may be something they regard as a crucial part of leading a meaningful and successful life. Given the potentially profound costs to members of the older generation who fail to connect emotionally with members of the younger generations, might the avoidance of these costs provide a good reason to compel younger members of the community to act to preserve the threatened language?

We must respond in the negative. In attempting to answer this question, Anthony Ellis notes that the desire to see a language preserved 'is not merely the self-regarding desire to live one's own life in a certain way—which, of course, everyone would accept as generating a strong right. It is inescapably an other-regarding desire, the desire that others should live their lives in a certain way in order that one's own life should have a certain significance.'[90] For Ellis, this desire, while 'not an unnatural one', is akin to the

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[89] It might be thought that an alternative way in which to ensure the retention of a critical mass of speakers is simply to make members of an endangered language community sufficiently aware of the benefits that preserving the language would bring. However, as we are about to see, in most real-world cases of linguistic endangerment due to free language shift (as opposed to endangerment caused by external unfairness such as hostile assimilationist efforts), the issue will not be that potential defectors are unaware of the benefits of staying in their linguistic community, but rather that they judge these to be less than the benefits of linguistic defection. (The situation may well be otherwise, however, if a linguistic group has internalised feelings of inferiority, such that its members are unable to apprehend the benefits their linguistic membership provides, or fail to give these benefits appropriate weight. But where that is the case, it will almost certainly be a symptom of a prior or ongoing linguistic injustice that has been done to this group. Further, erasing this sort of self-hate, while obviously a worthwhile goal, would not be to strive for linguistic preservation per se, and indeed does not rule out allowing for unfettered linguistic choice regardless of its impact on the preservation of endangered languages.)

[90] Ellis (n 53) 209.

desire of some heterosexual individuals that the institution of marriage retain the significance it has historically had, and which allowing homosexuals to marry would for these heterosexuals profoundly alter.[91] It is not clear that the desire of some members of a linguistic community that their language be preserved in order that they can feel an emotional connection with the descendants of living members shares all that much in common with the anti-gay marriage sentiment Ellis invokes. For instance, while accommodating the latter desire would require the deeply illiberal response of refusing to accord equal recognition and respect to individuals of all sexual orientations, accommodating the former desire is unlikely to involve anything so profoundly demeaning.

However, Ellis is quite right that both desires are unavoidably other-regarding. And even if we suppose that certain members of the older generation will experience considerable loss if younger members are not compelled to act in ways that ensure the language's preservation, such compulsion is highly unlikely to be justified.[92] We ought, here, to endorse the sentiment of Michael Blake, who regards losses of the sort we have in mind as an ineliminable corollary of the exercise of human freedom:

> …[W]e are all aware that our grandchildren will speak in different ways than we do, will find different things motivating, and will alter the culture they have received in ways we would not have chosen. This is a significant source of loss; it involves the knowledge that many of the things which give meaning to our lives will eventually disappear from view. Our reaction to these changes is often given the dismissive name of nostalgia, but the losses we experience are real and their power is not to be underestimated. *But they could not be eliminated without eliminating freedom itself.* The best of all situations, I think, still has some loss within it….[93]

[91] ibid 211.
[92] As Alan Patten asserts, for instance, 'the short-term transitional costs suffered by those who are unable to integrate… would be out-weighed by the long-term costs and burdens imposed on other members of the community as a result of the [preservationist] policies' ('The Autonomy Argument for Liberal Nationalism' (1999) 5 Nations and Nationalism 1, 14).
[93] Michael Blake, 'Diversity, Survival, and Assimilation' (2002) 12 Contemporary Legal Issues 637, 646 (emphasis added).

It might be thought that adopting Blake's line here is simply too harsh. Surely coercing some younger members of a linguistic community into staying within it is justified in order to prevent a situation in which all of the members of that community who are separated by more than one generation will be unable (at least during a transitional period) to connect emotionally with one another in a meaningful way? But that question is loaded. Why should we assume that my ability to form a close emotional relationship with my grandfather will be totally impaired if I do not speak his language? For one thing, he may, if grudgingly and only haltingly, come to speak mine. Further, even if I fail to share a word in common with my grandparents, this obviously does not prevent me from loving them and being loved in return. Nor will our love for one another necessarily be a merely perfunctory love that arises solely due to our genetic connection. I might come to cherish the quirks of character that make my grandfather who he is, independently of the affection (if any) I feel I owe to him simply in virtue of his being my grandfather. And this is to say nothing, of course, about the near certainty that there will be other members of our family—quite likely including my parents—who speak both my language and his, and who are thus able to mediate between us and ensure that our interactions, although not as immediate as those that occur between fluent speakers of the same language, may be genuine and meaningful as opposed to merely shallow and awkward.

The lesson, then, is that real and rewarding intergenerational connection does not in fact require the preservation of a common ancestral language. To be sure, if our objective is to guarantee that intergenerational relationships within our community are *maximally* rich and widespread, coercively ensuring the preservation of our shared language will help further that goal. But *that* (rather idiosyncratic) objective, we should conclude, does *not* justify the required levels of coercion. (Nor would the objective of merely getting intergenerational connection ‘on the cheap’, as it were—ie, without having to expend any time or resources learning a new language.) On the other hand, ensuring that the forging of meaningful intergenerational relationships is not rendered totally impossible probably *does* constitute an objective that could justify substantial amounts of linguistic coercion, *if such coercion were necessary to achieving that end*. As we’ve just seen, however, it is not. And since the objective can be achieved without resorting to linguistic coercion, such coercion is in the circumstances unjust.

At this point, someone who advocated linguistic preservation as a means to ensure intergenerational connection might wish to argue that in fact such preservation is in the critical interests of *all* members of the community—old or young (or even not yet born). However, as noted in the previous chapter, the very fact that some members of the endangered linguistic community are freely choosing to leave their language community[94] is some evidence that it is not in fact in their critical interests to stay, since, if it were, we would generally expect them to apprehend that fact. Of course, however, just because I fail to value something, or fail to regard possessing it as in my critical interests, does not show that it is in fact valueless or that having it is contrary to my best interests. There may, for instance, be something about the thing at issue that makes its actual worth opaque to me. In the case at hand, however, the purported good—remaining within one’s native linguistic community and reaping the opportunity for rich intergenerational connection that this brings with it—does not appear to be one whose true value is likely to be hidden from us. Quite the contrary, in fact: remaining in one’s native linguistic community is something whose great value, although we may take it for granted at times, we never really doubt. Thus, the fact that those who wish to leave their

[94] As we also mentioned in the last chapter, it is possible that a process of language shift that appears free on its face in fact owes much of its impetus to the injustices visited upon speakers of the dying language in the past—a possibility that makes prising apart those cases of language shift that involve linguistic injustice and those that do not often very difficult.

native linguistic community for another fail to regard staying put as in their critical interests—*even when the benefits of doing so seem so apparent to all of us, and where the alternative of integrating into a new language community is so clearly to depart from the path of least resistance*—suggests that exit, for those who have come to desire it, really is in their best interests; it implies that for them the value of leaving really does outweigh the value of staying.[95]

Furthermore, even if we had reason to believe, in light of the value of intergenerational emotional connection, that it was ultimately in the potential defectors' critical interests to remain in their language community, the coercive measures that would be required to ensure the preservation of the threatened language would generally represent an unjustifiable moral cost. It is one thing for it to be in my best interests that I remain in my linguistic community; it is another thing entirely to force me to act in accordance with those interests. This point was raised in the previous chapter, as were the general evils that are associated with coercion, and so we will not dwell on either topic again here. It should, however, be conceded that the extent of the coercive measures required to preserve an endangered language, and thus the moral cost of such language maintenance, will vary from case to case. For example, ensuring that a threatened language remains a thriving language of public life, on the order of French in Quebec, may require more coercive measures (in terms of both the severity of the coercion and the numbers of people coerced) than would merely ensuring that a threatened language remains spoken in select, highly specialised contexts, in the fashion of the Irish

[95] The situation is essentially the same whether we're dealing with preserving an endangered language or revitalising a moribund one. That is, whether we are considering coercing people into staying in the language they already speak with all its lesser opportunities, or whether we contemplate forcing them to spend time and effort to learn their community's ancestral language, we should conclude that it's highly likely that where the individuals involved determine that their best interests lie in not continuing to live in the endangered language, or not learning the ancestral one, they will have judged correctly.

language.[96] What is important to note, however, is that the moral costs of the coercion involved will never be nil. Mandating that Welsh children learn Welsh in state schools, for instance, while clearly not as restrictive as laws which would prevent them from attending publicly funded schools where English is the language of instruction, obviously forces children to spend time and effort learning Welsh—time and effort many of them would otherwise devote to other pursuits, possibly including the learning of other, more widely spoken languages.[97] For many Welsh nationalists, this is a small price to pay in order to see the Welsh language passed down across generations. But this claim begins to look dubious when we bring to mind the sheer number of Welsh children that have been forced to learn a language they would not have chosen to learn.

In addition, while, as we just saw, the moral costs involved in preserving an endangered language will fluctuate depending on the case, the benefits, in terms of fostering rich intergenerational relationships, will likewise vary. In fact, these benefits will be greatest where the coercive preservationist measures employed are most severe and wide-reaching: I may be better able to forge a meaningful relationship with my Irish-speaking grandmother if I have been forced to learn some Irish in school than if I could not speak a word of the language, but I will presumably be likely to form a still more intimate bond with my French-speaking grandfather if I have been required to complete all my primary and secondary schooling in French language institutions. Thus where efforts to further the goal of intergenerational connection offer the greatest possibility of success, these potential benefits are typically outweighed by the relatively high moral costs that will have to be borne in order to achieve them; whereas where these moral costs

[96] The number of Irish for whom the Irish language is more than a mere 'folkloric' language is not insignificant. However, when we look at the country as a whole, it is clearly true that Irish is a language of public life for only a tiny proportion of citizens.
[97] Ellis (n 53) 215–16.

are at their lowest, they will nevertheless still tend to be unacceptably dear, given that the benefit that paying such a price would bring is correspondingly slight.

In the result, then, we should reject the argument that dying languages should be preserved in light of the benefits, in terms of the ability to forge intergenerational relationships, that such preservation will bring to all members of the relevant linguistic community. Given that intergenerational connection of a real sort can be experienced without language maintenance, the moderate enriching of intergenerational relationships that linguistic preservation may bring will seldom outweigh the moral costs of achieving such preservation.

Linguistic Preservation and Self-Respect

It could be, however, that we have misunderstood, or at least underestimated, the loss that many people would suffer if their language were to die. We might think that what those wishing to remain in a language community that is at risk of dying stand to lose if the language dies is not merely the ability to connect with their descendants, but their very sense of self, and thus their self-respect. Charles Taylor, for instance, argues that in order to show true respect for persons, the state must not only recognise that we all possess equal human dignity, but must also recognise and respect persons 'in their particularity'[98]—that is, as holders of specific social or cultural identities.[99] Thus Taylor believes the liberal state must adapt to what he labels 'the politics of recognition' (to be contrasted with what he regards as the outmoded and ultimately inadequate 'politics of

[98] Axel Honneth, *The Struggle for Recognition: The Moral Grammar of Social Conflicts* (Polity Press 1995) 24. See also Charles Taylor, 'The Politics of Recognition' in Amy Gutmann (ed), *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press 1994) 39, 43.
[99] Taylor, 'The Politics of Recognition' (n 98).

equal dignity'), and accommodate the modern desire of democratic citizens that their governments 'cherish distinctness, not just now but forever'.[100]

Clearly, the suggestion that linguistic or cultural death can serve to deprive citizens of self-respect should be taken seriously by liberals. To put the Taylorian case in its best light, for instance, the sort of autonomous lives liberals wish to make possible presuppose that individual citizens possess both a sense of self (lest the very notion of choosing a path in life that represents a good way for me to live become incoherent) and a modicum of self-respect (lest I completely misapprehend myself and thus misjudge what a good life for me would consist in). Further, ensuring that every citizen enjoys self-respect seems a more pressing liberal priority than securing for them maximally meaningful intergenerational relationships. In the end, however, we should reject the notion that showing proper respect for persons entails securing the preservation of their language or culture—nor do I think that many actual people, even those who are deeply saddened by the prospect of their language dying, believe that their self-respect hinges upon such linguistic or cultural survival.

For instance, Taylor was quite right to bring attention to the rise of 'the politics of difference' and to note the growing demand, on the part of members of minority groups, for recognition of not just their basic humanity, but also their specific social identity. I also happen to think Taylor is right that out of a concern to show equal respect for persons, the state should adopt the presumption that citizens' specific social identities (provided they are not hateful or socially destructive) are legitimate and equally valuable.[101] But showing proper respect for persons does *not* require that we ensure that

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[100] ibid 40.

[101] See ibid 67–72. This is not to say we must be cultural relativists and believe that all cultures are ultimately of equal objective value. Nor must we even accept that all social identities, excepting again those that are hateful or socially destructive, are valuable *to their members*. However, while we can insist that some social identities are ultimately of less objective value than others, or that some are of negative overall value even to their own members, I think we should still be committed to a presumption of equal worth.

these various social identities *endure* through time as going concerns. Respecting persons 'in all their cultural specificity'[102] simply does not entail that states must accede to the desires of certain persons that their language survive in the short- or medium-term, to say nothing of surviving into the indefinite future. This is not, of course, to deny that experiencing the death or profound alteration of one's language or culture might be very disorienting and distressing for individuals; it is simply to deny that such an experience is in and of itself *demeaning*, and corrosive of self-respect. What showing proper regard for self-respect does require in the area of language, I believe, is that no one is discriminated against in virtue of the language they speak, and that their language community not be the target of unfair assimilatory pressures that prevent it from having a fair shot at survival.[103] If each linguistic community has enjoyed a fair opportunity to pursue its continued existence, then the state's decision not to preserve threatened languages, or not to revive moribund ones, will be neither unfair towards nor disrespectful of individual members of those language groups.

Linguistic Preservation and the Cultural Preconditions of Autonomy

Another ground on which we could argue for the preservation of dying languages is that such preservation is required in order to ensure that everyone enjoys access to what we

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Why? Because, as Taylor writes, 'for a culture sufficiently different from our own, we may have only the foggiest idea ex ante of in what its valuable contribution might consist' (67), and because to assume that it is appropriate to evaluate other cultures by the standards of our own only allows us to 'praise the other for being like us' (71), whereas to adopt a position of providing a favourable judgement of each culture's worth 'on demand' would be 'an act of breathtaking condescension' (70). (This presumption of equal worth, it is instructive to note, is a presumption about the equal worth of *particular, substantive* cultures. It is not, for instance, a presumption that all freely chosen social identities are valuable at least *qua* choices made by free persons—something we should, I think, not only presume to be the case but also insist upon, but something which does not actually exemplify an acceptance of Taylor's main thesis that such social identities must be recognised *in their specificity*.)

[102] Blake, 'Diversity, Survival' (n 93) 653. The full quotation, which mirrors the point I am trying to make in the text, is: 'From the fact that states must respect persons in all their cultural specificity, it does not follow that the states must respect the wishes of those persons as to what shall be the fate of their cultural structures after their deaths.'

[103] This is admittedly a very vague formulation. We will, however, expand on this idea greatly in Chapter 8.

might call the cultural preconditions of autonomy. Will Kymlicka, for instance, has famously argued that the ability to lead an autonomous life requires that one have access to a culture which provides one with meaningful options when it comes to how to live. For Kymlicka, 'societal cultures' foster autonomous choice in two interconnected ways: firstly, they provide their members with 'beliefs about value'[104]; second, they provide us with 'a set of options, at least some of which correspond to [our] beliefs about value',[105] which enables us to live out our beliefs and thus construct a life that is meaningfully our own. Kymlicka argues that because liberalism puts such great value on individual autonomy, the liberal state must ensure that these societal cultures have the tools they need to preserve themselves, in order to guarantee that no one is deprived of the meaningful options that autonomy requires.[106] Further, to make the connection to *linguistic* preservation explicit, it may be argued that an essential part of preserving a group's culture is preserving their language.

Obviously, we should hope to avoid a situation in which the death of a national minority's culture leaves former members of the group unable to integrate into another culture, and thus bereft of the cultural preconditions of autonomy. However, we should not assume that this is the fate that awaits all those who belong to a dying culture. As a number of Kymlicka's critics have pointed out, for instance, his argument about the relationship between culture and autonomy proves only that each of us needs access to *a* societal culture, not that we must have access to a *particular* societal culture, let alone our own.[107] In response to this criticism, Kymlicka asserts that while it is usually possible for those whose culture is dying to integrate into a new societal culture and enjoy the

[104] Kymlicka, *Multicultural Citizenship* (n 80) 83.
[105] This description of Kymlicka's view is provided by Alan Patten: 'Autonomy Argument' (n 92) 5.
[106] Kymlicka, *Multicultural Citizenship* (n 80) 75–106.
[107] See eg John Tomasi, 'Kymlicka, Liberalism, and Respect for Cultural Minorities' (1995) 105 Ethics 580.

autonomy-promoting goods that that culture provides to its members, doing so generally involves significant personal costs and is therefore more than we can reasonably demand of people. This response, however, is inadequate, given that Kymlicka's thesis is that liberal justice requires the state to extend to societal cultures the tools required to preserve their cultural structure—including, importantly, language rights—as a matter of course. That is, for Kymlicka, the propriety of providing national minority groups with such cultural protections is not a contingent matter.

But surely things are not as simple as Kymlicka supposes. Whether asking the members of a smaller, dying culture to integrate into the culture of a larger group is to ask 'too much', for instance, will in fact depend on a number of contingent factors. The gradualness of the decay of their culture, for example, will matter, as the more sudden the cultural change, the more difficult and painful it will be to move cultures.[108] On the other hand, where increasing exposure to a larger culture causes one's culture to gradually fade away, one will have had more time to get used to the larger culture and come to grips with its peculiarities—making it more likely that one will have endorsed some of its beliefs about value and will thus be able to find in it meaningful life options.

Another factor which must surely bear on the question of whether it is unfairly demanding to ask members of a dying minority culture to assimilate into a more vital culture is the extent to which the two cultures differ substantively. Of course, it will be difficult to quantify the distance between cultures. However, it surely makes sense to say that the culture of Catalonia is more like the culture of Castilian Spain than it is like Japanese culture, or the culture of the Maya. And the more foreign a culture is to my own,

[108] As an empirical matter, for instance, the type of language shift we have been focussing on in this chapter and the last—namely, the loss of a smaller language occasioned by a critical mass of its speakers defecting to a larger language community—typically occurs gradually. (It is true that the rate of language loss across the process generally tends to increase as time goes on, with the result that a language can be lost in the same fashion that Hemingway's character Mike Campbell in *The Sun Also Rises* is said to have gone broke: 'gradually, then suddenly'. Nonetheless, the process as a whole is more gradual than sudden.)

not only am I more likely to find it initially impenetrable, I am somewhat less likely, even after eventually making sense of much of it, to regard the life options it makes available as meaningful ones for me. However, where a linguistic or cultural community is threatened by the encroachment of a larger neighbouring community, that larger community is unlikely, just in virtue of the fact that it is steadily winning converts from the smaller community, to be regarded by members of the smaller group as either inscrutable or else devoid of meaningful options. As Philippe Van Parijs observes, 'the circumstances under which languages are most threatened are precisely those in which a switch to an alternative, more powerful, societal culture is easiest for people to achieve.'[109] We should not worry, for instance, that the death of a language will condemn some of its speakers to a non-autonomous life.[110] As such, the moral urgency with which some call for language preservation seems deeply misplaced.

What is more, I believe that in asking us to accept that we should regard the package of rights and protections he advocates extending to minority societal cultures as in all cases their due, Kymlicka fails to pay sufficient regard to the moral costs that preserving the particular endangered culture will have on citizens for whom the culture's preservation is not a matter of pressing concern (be these members of the majority culture or members of the dying minority culture itself). This might seem an unfair criticism. For instance, Kymlicka is quite explicit that no societal culture should be permitted to preserve itself via the use of what he calls 'internal restrictions'—that is, restrictions on the liberty of its members to alter the group's 'character' by challenging or defying a substantive component of their collective life.[111] In contrast, Kymlicka endorses the use

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[109] Van Parijs, *Linguistic Justice* (n 56) 146**.**
[110] As Jacob Levy astutely observes, for example, 'the moral picture looks different if persons face a choice between membership in their ancestral [language] and alienated life cast adrift from any cultural framework than it does if they face a choice between one [language] and another' (*Multiculturalism* (n 23) 120–21).
[111] Will Kymlicka, *Liberalism, Community, and Culture* (Clarendon Press 1991) 166–67.

of ‘external protections’, which merely limit the ability of outsiders to make decisions that threaten the security of the minority cultural ‘structure’—that is, the bare existence of the community, abstracting away from its character at any point in time.[112] However, Kymlicka is not sufficiently alive to the fact that preserving an endangered cultural or linguistic community will often require the limiting of its members’ liberty, in the form of coercing (a sufficient number of) them into remaining within that community. By only ruling out limiting the liberty of insiders to alter the culture’s character, in other words, Kymlicka’s recommendations would permit limiting the liberty of insiders to undermine its structure. But these latter restrictions, while probably not amounting to ‘internal restrictions’ under Kymlicka’s definition,[113] are nevertheless still highly suspect from the point of view of a liberal political morality.

Alternatively, it might be that these restrictions on the ability of insiders to undermine their culture’s structure would in fact count as internal restrictions on Kymlicka’s conception. If that were the case, however, then we would again be forced to conclude that Kymlicka’s prescription to empower minority cultures with the tools they require to preserve themselves is too strong, since such preservation will at times require resorting to the very ‘internal restrictions’, broadly interpreted, that Kymlicka himself disavows.

Thus, even putting aside our doubts that the costs of leaving one’s cultural community can generally be safely assumed to be unacceptably high, in cases in which this sort of coercion of ‘insiders’ is required to ensure the continued survival of the

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[112] See ibid 167; see also Kymlicka, *Multicultural Citizenship* (n 80) 35–36.

[113] On a different reading of Kymlicka, the coercing of insiders to preserve the culture’s structure that we have in mind could in fact be seen as an internal restriction. Such coercion, for example, seems to be straightforwardly encompassed by the slightly different definition that Kymlicka provides early on in his book *Multicultural Citizenship*, where he describes internal restrictions as efforts by a group ‘to limit the liberty of its own individual members in the name of group solidarity or cultural purity’ ((n 80) 7); we might, for our purposes, read ‘linguistic purity’ in place of ‘cultural purity’.

community's 'structure' (as it often will be under the sort of free language shift phenomenon we've been assuming), we should *not* commit ourselves to providing dying linguistic communities with the means by which to preserve themselves, given the price at which such preservation must sometimes be bought.

It is important to be clear about what we have shown and what we haven't. We have shown, I believe, that even if we accept (as I think we should) Kymlicka's notion that autonomy has cultural preconditions, the concern for autonomy which lies at the core of the liberal conception of justice will not always require that dying minority cultures be granted the tools they require in order to preserve themselves—whether or not such cultural preservation is thought to entail preservation of the cultural community's language. In short, the moral costs of such preservation will sometimes be too great to bear, especially in light of the fact that the personal costs of having to move to a new cultural or linguistic community will not always be as high as Kymlicka supposes. Therefore, it will sometimes be appropriate to allow a societal culture to die, thereby forcing its members to integrate into a new culture in order to live autonomously. What has not been proven, however, is that Kymlicka's autonomy-based argument for minority cultural rights fails because justice *never* requires that cultures or linguistic communities be given the means to preserve themselves. While we have shown that the personal costs associated with integrating into a new cultural or linguistic milieu will not always be particularly high, and while we have also shown that we will often have to be willing to pay a significant moral cost in order to prevent members of dying cultural or linguistic communities from having to pay those personal costs, we have not shown that these personal costs could never be so great as to outweigh that moral cost.

Distinguishing Language Death from Cultural Death

Even if we were to accept that for the sake of individual autonomy we should always provide minority societal cultures with the tools (short of internal restrictions) they require in order to preserve themselves (or if we reject this notion but feel that from time to time we may be confronted by cases in which, as a result of the way in which the contingent factors outlined above shake out, preserving a minority group's culture *is* required on autonomy-facilitating grounds), we will *not* be required, in the name of autonomy, to preserve each group's *language*. The reason for this is because, as we pointed out in the previous chapter, language death does not entail cultural death. Since it is false that one's worldview is determined by one's language, a minority group may lose its language and yet successfully preserve its culture.[114] We can connect the lesson here with our conclusions about Kymlicka's argument for minority rights for national minorities as follows. Regardless of whether we assume that a people's language is an essential, ineliminable, aspect of their culture, it is not the case that we will have to preserve the group's culture in order to ensure that their members enjoy access to some autonomy-promoting cultural environment or other. In addition, if we, rightly, reject the idea that a group's language is an essential part of their culture, then even if we did assume that the only way for a cultural group's members to secure access to meaningful life options was for their own culture to be preserved, this does not entail that we are under any obligation of justice to preserve their *language*.

[114] It is true that language death and cultural change often go together. However, this is because cultural death often causes language death—not vice-versa. And while it is possible to argue that the mere fact of language death necessarily *alters* a cultural in some way, such alteration will seldom if ever be so substantial that its members will be left unable to identify with it and thus unable to obtain from it the meaningful life options required to live autonomously.

Language Preservation and Collective Action Problems

Having now spent the better part of two chapters canvassing numerous arguments in favour of maintaining endangered languages, and finding them all unconvincing, we can make the following observation. Where the various arguments point to a real benefit that linguistic preservation is thought to further, preservation may not in fact be necessary to secure that benefit. And even where it is, the benefit will generally be insufficient to justify the coercion that preservation would involve.

According to the final argument in favour of linguistic preservation that we will examine, however, language maintenance need not involve any real coercion at all. This is because, as the argument has it, the sort of freely chosen language shift we have in mind will often arise as the result of a collective action problem. It is alleged, that is, that many languages die not because their speakers genuinely wish to leave their linguistic community for another, but because each person sees that since others have left or are poised to do so, the rational choice is for them to leave as well, so as not to miss out on the benefits of defection and be left as one of the few speakers of a tongue that has ceased to be a living, public language.[115] Thus while everyone prefers that the language survive, everyone's rational self-interest in defection ensures that it will not.

In such a scenario, to borrow Jacob Levy's schema, 'Where option 1 = the minority language survives and option 2 = the minority language does not survive, and option a = this individual gains access to the benefits of the majority language and option b = this individual does not, each individual's preferences are ordered such that (1, a) is preferred to (1, b) and (2, a) is preferred to (2, b).'[116] (We can also add that (1, a) is

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[115] Accordingly, as Jacob Levy notes, we will never be able say of any one individual that whereas her decision to leave will cause the language to die, her decision to stay would ensure its survival. (See *Multiculturalism* (n 23) 11.)
[116] ibid 116.

preferred to (2, a) and (1, b) is preferred to (2, b)). Where a case of language shift threatens to kill off a language, those who regard that process of language shift as a collective action problem add the following crucial premise: each person prefers a situation in which the language survives, even where this means that they must forego the personal benefits of defection, to a situation in which they reap such benefits but the language dies. That is, everyone[117] prefers (1, b) over (2, a). Thus we can list everyone's preferences, in order, as follows: (1, a), (1, b), (2, a), (2, b). However, because everyone has an incentive to 'defect'—ie, to choose (a) over (b)—and because the language will not survive unless a critical mass of speakers 'cooperate'[118]—ie, choose (b) over (a)— the language will in the end die, even though everyone prefers that it survive. Everyone, that is, (provided they act rationally) will eventually find themselves in the sub-optimal position (2, a), even though all would prefer to be in position (1, b).

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[117] Or almost everyone. (We will address below the possibility that a collective action problem-based argument for language preservation can still be made out if merely the vast majority, but not everyone, prefers (1, b) to (2, a).)

[118] This language of defection and cooperation, used by convention across examples of collective action problems, is perhaps most associated with one specific type of collective action problem: the Prisoners' Dilemma. The collective action problem we have described, however, is not technically a prisoners' dilemma. That's because, unlike in a true prisoners' dilemma, no one person's decision to either defect or cooperate has any effect on the position of the other party. As such, while it is an essential part of a prisoners' dilemma that both parties' preferences are, in order, D/C, C/C, D/D, C/D, in the language death scenario we are envisioning, if we take any two parties involved, both will actually prefer D/D to C/C (and, from a purely personal standpoint, will be indifferent as between C/D and C/C, as well as between D/D and D/C). Further, even if we modelled the language death scenario as, like a true prisoners' dilemma, a two party interaction in which each party's individual decision to defect or cooperate *is* alone sufficient to affect the position of the other party, it is a defining feature of a prisoners' dilemma that whichever option the other party is assumed to take, it would be rational for me to defect and irrational to cooperate, with the result that both of us defect. In the above language death scenario, by contrast, on the assumption that the other party (or enough of the other *parties*, depending on how we model the scenario) will choose to defect, there *is* an incentive for me to cooperate, as I prefer the outcome C/D (which, we stipulated, would see the language survive) to the outcome D/D (which would see the language die).

Schematically, we can model the possible scenarios involving any two members of this endangered language community with the following 2 x 2 grid.

	B Defects	B Cooperates
A Defects	A gains access to the benefits of the majority language; B gains access to the benefits of the majority language;	A gains access to the benefits of the majority language; B does not gain access to the benefits of the majority language;
A Cooperates	A does not gain access to the benefits of the majority language; B gains access to the benefits of the majority language;	A does not gain access to the benefits of the majority language; B does not gain access to the benefits of the majority language;

Both A and B are led by rational self-interest to defect, since it is in their interests to do so regardless of the choice made by the other party. However, if few enough of the other members of the language community (C – Z) opt to cooperate, then while each of the defectors will have gained access to the benefits of the majority language, the language will have died.

In the face of such a collective action problem, however, it appears that the state could respond and preserve the language without having to employ coercion of such a kind or severity as to be morally troubling. As Levy sums up the thinking here:

> There is a collective action or public goods problem with [linguistic] preservation. This problem can only be overcome with some special institutional provision, as is true for many collective action problems. If the institutional provision places some marginal apparent limit on the liberty of members, that is not to be worried over, any more than we worry about taxing people to support national defense. All of them wish for the [language] to be preserved, all will be happier if the [language] is preserved, and all are happy to give up their liberty to defect out of the [language] and migrate or assimilate provided that others do the same. Liberals, at least, dislike overtly paternalistic arguments, and in any event have trouble justifying the idea that continued [linguistic] membership is in the interests of members whether they like it or not; but if a collective action argument is available, then they need not resort to such claims.[119]

[119] Levy, *Multiculturalism* (n 23) 115. (I have replaced ‘culture’ and ‘cultural’ with ‘language’ or ‘linguistic’.)

That is, a state-led institutional response to the collective action problem we are faced with will not require that we coerce the parties concerned into acting against their current volitional interests. Rather, such coercion as is required to foreclose the possibility of defection will be specifically aimed at *allowing* the speakers of the endangered language to act on their genuine volitional interests.

Where the situation is as described, I believe that, all else being equal,[120] the state *should* step in and take action to solve the collective action problem. Such coercion as this might involve[121] should not trouble us, as it serves to, and is aimed at, furthering autonomy, not undermining it. (We should not fetishise anti-coercion, nor assume that since coercion is generally an enemy of autonomy it can never be a friend or facilitator of it.) In reality, however, cases of language shift will *not* represent the sort of collective action problem we have been envisioning, since some individuals will genuinely prefer a future in which they have gained the opportunities that defecting to a more widely spoken language brings, even if their mother tongue has perished, to a future in which the language survives but they have missed out on the fruits of defection. Some, that is, will always prefer (2, a) to (1, b). For these individuals, then, an institutional response which coercively discourages defection will indeed aim to induce them to act *against* their genuine preferences, and therefore, as we saw above, such coercion will be more difficult to justify than are coercive projects that aim to *allow* coercees to act on their volitional interests.

[120] I will spell out below what I have in mind by invoking this ceteris paribus clause.

[121] My personal view is that the institutional measures required to dissolve such a collective action problem probably do not constitute coercion at all. That is, I suspect that an action is not properly understood as coercive unless the coercer issues a threat that bends the will of the coercee by making the coercee wish to do that which the coercer wishes her to do. Therefore, if the state intervenes to dissolve a collective action problem by altering the pay-offs that would result from linguistic defection, it will not be acting to bend the will of anyone—rather, it will be acting to ensure that the participants may safely act on their independent, pre-existing preferences—and thus does not act coercively.

Now, we might not think that this fact should concern us. For instance, it seems clear that in the context of some collective action problems, we feel that the state acts properly in intervening to bring about the optimal result regardless of whether all the individuals concerned personally favour that result. Thus when it comes to collective action problems surrounding the maintenance of the environment, for example, we may have no qualms about using coercive legal measures that seek to prevent pollution, even by those parties who would genuinely prefer a world in which a clean environment is not preserved, but they are able to secure the benefits of polluting, to one in which a clean environment is secured, but at the cost of their having to forego the benefits that come with being able to pollute. As Jacob Levy notes, 'If we support environmental protection laws, *there is a real sense in which we don't care which motivation the polluter has*. We think the polluter would be wrong to be indifferent to widespread pollution; his or her desire to pollute doesn't affect our reasoning.'[122]

The situation is distinctly otherwise, however, when it comes to the language shift cases we have in mind. We must not say that the wannabe defector's desire to leave is irrelevant to the question of whether it is right that we coercively discourage his exit, in the way that we feel the happy polluter's desire to pollute is more or less irrelevant to the question of whether we should prevent him from doing so. As Levy observes:

> The preservation of [language] communities… isn't like [the preservation of the environment]. If [language] communities are valuable because of what they provide for their members … and someone sincerely prefers what is provided by another such community, then outsiders don't have grounds for criticizing the way they do in the polluter's case. The non-paternalistic, liberal arguments for protecting [language] communities rely on the knowing [sic] that members really do not want to leave, while the argument against pollution is indifferent to the desires of the polluters.[123]

[122] Levy, *Multiculturalism* (n 23) 119.
[123] ibid. (I have substituted 'language communities' for 'cultural communities'.)

Levy's insight here helps us to see that once we make the claim that the desires of individual potential defectors are irrelevant to the question of whether we should act to preserve their language, we are clearly no longer dealing with the collective action problem we first imagined. For the collective action problem argument in favour of linguistic preservation relies on the premise that such preservation is what the individuals involved genuinely desire, not that such preservation is good for them 'whether they like it or not'.[124]

Reconsidering Collective Actions Problems

It might be argued, however, that if, in a scenario in which all parties prefer 1,b to 2,a, the state should step in and ensure that everyone can act to further their genuine and overriding desire that their language survive, the state should also intervene to preserve the language even if the situation has changed slightly and a handful of individuals now prefer language death to missing out on the perceived benefits of defection.[125] This line of reasoning is not without some merit. For instance, I accept the idea that, abstracting away from the particular substantive content of the interests that the individuals concerned have in either seeing the language community preserved or in being able to defect, numbers do seem to matter. I do not wish, for example, to be understood to say that wherever even one solitary individual is, in the name of preserving an endangered language, coerced in a

[124] ibid 115. Levy is also correct in asserting that we don't have the same grounds for criticising a decision to defect as we have for criticising a decision to pollute. For instance, my decision to defect and join the dominant linguistic community, even if, counterfactually, it could be known that such a decision would seriously imperil our language, does not evince disregard for the rights of other members of my community. Secondly, decisions about how and when to use a language, and which language community or communities one wishes to belong to—implicating as they do individuals' abilities to express not just their thoughts but themselves and to make morally-laden trade-offs between, in Levy's words, 'the comfort of the familiar and other human goods' (121)—generally strike much closer to the core of autonomous human action than does the decision to pollute.

[125] The idea being floated here is that while not morally irrelevant, the desires of such individuals, *because they are so few in number*, must always be frustrated, given that if they were not, and these individuals were permitted to defect, such defection would mean that the wish of the much larger remainder of the community that their language be preserved could not come to pass.

way that she does not desire, the state necessarily violates that persons' right to freely defect from her language group, and therefore acts unjustly. For while I think everyone has an *interest* in being able to defect, without thereby incurring negative, state-imposed consequences, I am not committed to the claim that our interest here is always sufficient to justify placing others under a duty to refrain from coercively discouraging our defection—that is, that the interest will always ground a right to be free from such coercion. For instance, I think it possible that in some circumstances this right will not be made out, given what recognising such a right will mean for others members of the community who prefer survival to defection—given, that is, the precise interests that are at stake for *these* individuals—and given how many of these 'others' there are. Importantly, however, I wish to insist that where those who prefer defection represent a large enough group, it may still be unjustifiable to coercively restrict their linguistic choices, even where no individual member of that group can claim freedom from such restrictions as his *right*. Thus I believe that where those who prefer to defect represent a sizeable minority of the population, it is quite possible that coercing them into remaining in the language community will be unjustified—again, even if we should not, in the circumstances, say that each individual member of this subgroup enjoys the *right* to be free from such linguistic coercion—whereas it may well be justified to apply the same amount of coercion to a much smaller number of individuals.[126]

[126] In order to forestall confusion, we might say a word, in the light of our current discussion, about our earlier distinction between collective actions problems surrounding language and those surrounding the maintenance of a clean environment. That previous discussion endeavoured to prove that although it is always morally permissible (provided the coercion applied is not unduly severe) to coercively prevent people from polluting, without regard for their actual desires, it does not follow that it is also always morally permissible to prevent linguistic defection. Nowhere was it claimed, however, that it will always be morally *im*permissible to engage in such coercive discouragement of defection (as it would be, for instance, if we all possessed a general right to make linguistic choices free from such coercion.) My view, then, is that it will *sometimes* be morally impermissible to apply linguistically coercive measures, and sometimes not, and that one of the relevant variables here is the number of would-be defectors who would be made to experience unwanted coercion.

For the sake of clarity, it will be helpful to describe how all of this might bear on the specific arguments for linguistic preservation we have considered. Take, for instance, the argument from intergenerational emotional connection. I would argue that in light of the interests that the members of a given language community will ordinarily have in being able to make uncoerced choices regarding language use, even if the result of choosing to defect would be that all members are in general less able to forge the close intergenerational relationships they would have otherwise enjoyed, each member possesses the right to be able to exercise such choice. Alternatively, if we supposed that protecting such freedom of linguistic choice would leave a sizeable portion of the language community stranded, unable to access the preconditions of an autonomous life,[127] I would be inclined to conclude that it would therefore not be possible to make out an individual right to choose one's linguistic membership. At the same time, however, I do not think that we would thus be left with a successful argument for the necessity of preservationist language policies. This is because, as a general matter, uncoerced language shift (as opposed to forced linguistic assimilation) will only threaten the survival of a language where a significant number of its speakers genuinely wish to defect. Moreover, I believe that in the vast majority of real-world examples of the scenario we are imagining, there will be sufficiently many individuals who possess such a desire that coercively frustrating each of their interests in linguistic defection could not be justified by the competing interests such coercion would serve (especially as those who will in reality face a future devoid of meaningful cultural options if their language were to die will, if any such people even exist, be exceedingly few in number)—regardless of the fact that none of those involved could claim a freestanding right to be free from that coercion.

[127] A prospect which we have not endorsed.

So, in order to decide whether the collective action problems regarded by some as besetting the perpetuation of endangered languages are capable of grounding morally sound arguments in favour of ensuring linguistic preservation, we will have to carefully examine the consequences of, and alternatives to, securing such preservation. Suppose that in a given language community 80% of members wish for the language's preservation, while 20% desire to defect, even at the cost of the language's survival. Suppose further that while the defection of 20% of the community would not in itself doom the language, if the 20% were allowed to opt for defection, many members of the remaining 80% would, purely out of fear of being left behind, opt for defection themselves, and thus cause the language to die.

We appear to have only two options. Either we attempt to solve the collective action problem, at the cost of coercively deterring the 20% of members who genuinely desire to defect from acting on their preferences, or else we do nothing, and thus avoid having to coercively restrict the linguistic freedom of choice of the 20%, but at the cost of seeing the 80% rendered unable to make their own linguistic choices on the basis of their non-strategic preferences alone. This characterisation, however, is misleading. For those in the larger group are never actually denied the freedom to choose between staying and going. The only sense, for instance, in which these latter individuals are 'unable' to choose in accordance with their genuine desires for the fate of their language is that by doing so things will go badly for them. But even if the only options before me are bad ones, this is not the same as my having no options. Thus we cannot claim that by coercively requiring the 20% to stay within their linguistic community, we would merely be taking away their linguistic options in order to ensure the existence of such options for the much larger segment of the community that would otherwise lack them. Instead, we would be coercively intervening to ensure the 20% face what for them are nothing but bad options, in order to ensure that the 80% have what are for them good options—ie, options which accord with their non-strategic preferences.

And surely liberals should balk at the notion that we must, within a certain sphere of personal choice, actively limit the liberty of smaller groups whenever this is necessary to ensure that larger groups may have their non-strategic preferences fulfilled. Supposing a clear majority of consumers wished for the survival of Betamax, for instance, whereas the preferences of a mere minority for VHS were such as to lead rational Betamax fans to buy VCRs of their own, do we think that VHS aficionados ought to have been denied the ability to buy and use their favoured machines? Certainly not. We have good reason, then, to refuse to sacrifice even a minority's freedom of choice in order to ensure that the preferences of the majority are met.

Why should this fact not be dispositive when it comes to determining whether to take action to resolve the linguistic collective action problem we have been considering? The most likely response here is that there is a significant difference between being able to watch the videos one wishes to watch without having to adopt a less-favoured technology, and being unable to live the satisfyingly full life one wishes to lead without having to leave one's linguistic community. And surely it is important that we take into account the precise substantive nature of the specific preferences which a given collective action problem, if left unresolved, will ensure go unsatisfied. But it is likewise necessary that we take account of the precise nature of the preferences of the minority—preferences which, if the collective action problem is to be resolved, will themselves go unfulfilled (and this not because of the aggregate choices of their fellows, but because of the coercive intervention of the state). Further, as we've had occasion to note above, we should not simply assume that the personal cost of leaving one's linguistic community, even taken in isolation, will always be unacceptably high. Moreover, there is no reason to suppose that whereas fulfilling the abiding desire of certain individuals to see their language endure is essential to their wellbeing, the contrasting desires of other members of the community to defect and take up options available only within another language community will be of lesser moral importance.

Clearly, much turns on the specific interests (in both seeing the language preserved and in being free to defect) that the individuals have in the circumstances. It is possible, then, that the coercive restriction of linguistic defection that will be required to free the parties from the need to make linguistic choices on purely strategic grounds (and thus to solve the collective action problem) will be unjustifiable, even if it is only felt as *unwanted* coercion by a single person—provided that that person's interest in defection is sufficiently great (relative to the interests others have in seeing the language preserved). We have largely ignored this possibility, however, and assumed that the interest a solitary would-be defector has in being able to defect will not be sufficiently weighty as to require us to refrain from taking coercive measures to preserve the language in cases where such preservation is genuinely in the interests of the entire remainder of the community. Even where this assumption holds, however, such coercion as is necessary to remedy the collective action problem may still be morally unjustifiable if it is sufficiently widespread—that is, if the those who genuinely prefer defection and thus will experience the coercion as unwanted are sufficiently large in number. In other words, while the coercion here is not rendered unjustifiable purely on account of its severity, it is unjustifiable in light of its scope. If this were not the case—if neither the severity nor the scope of the coercion required in order to solve the collective action problem (nor the two in tandem) were such as to make the coercion illegitimate—then there is room to argue that the state should in fact intervene and put an end to the collective action problem. And indeed we should accept this conclusion. That is, in the circumstances we have stipulated into existence, all else being equal, we should support state action to ensure that where an overwhelming majority of individuals would otherwise be faced with a collective action problem, they are instead made free to act on their genuine preferences.

What is the upshot of all of this? I think we must conclude that it is theoretically possible for the sort of non-prisoners' dilemma collective action problem we have been envisioning to justify state efforts to preserve endangered languages. However, making out such an argument will require, as we have just seen, that after attending to the actual substantive interests that are at stake for all involved, we are able to show that the interests that those who prefer the language to survive have in seeing their preferences satisfied are sufficiently pressing (taking into account both the numbers of individuals who possess them, and the number of individuals who possess competing interests in being able to defect) to make ensuring the language's preservation a just course of action, notwithstanding that this will mean coercively preventing those with a perfectly valid preference for defection from acting on their desire.

In reality, however, we will generally be unable to successfully make this argument. The coercion of those who genuinely prefer defection is a serious moral cost that stands in need of justification. In real-world cases, that justification will simply not be forthcoming, as the number of would-be defectors that would need to be coerced will be too large, and the interests of those who prefer preservation will not be sufficiently pressing relative to the interests of those who prefer defection. As such, it is clear that antipathy towards the existence of collective action problems surrounding individuals' choices about language use does not support the contention, which we have been exploring in this chapter and the last, that the preservation of endangered languages should be a central aim of state language policy.

Coercion-free Linguistic Preservation

Exactly how coercive linguistic maintenance efforts will have to be in order to successfully preserve a threatened language will vary depending on the case. For instance, we have said that where a language is endangered because more and more members are choosing to leave it for another, preserving it will require that some current members are prevented from following suit. Obviously, such prevention need not take the form of physically restricting members from leaving the linguistic group's territory, or regulating their private speech patterns. And while we noted above that in most real-world cases involving threatened languages it is clear than 'nudging' alone is not up to the task of securing linguistic preservation, coercive measures are not the only tools at the state's disposal here. Alongside threatening citizens with negative consequences for acting in ways which further imperil the language, states can and do also use inducements such as subsidies to encourage people to act in ways that help shore up the language. Further, unlike coercion, such positive inducements generally do not strike us as being morally suspect.[128] It is important to ask, therefore, whether all the talk in this chapter and the last about weighing the supposed benefits of language preservation against the moral costs associated with coercively securing that preservation might not be sidestepped. What's to stop us from embarking on a preservationist project that employs no coercion at all, relying instead on morally innocuous inducements such as heavily subsidised tuition fees at post-secondary educational institutions operating in the threatened language, or generous relocation benefits for native speakers of the language currently living outside the territory who settle within it?

[128] I am not here suggesting that offering an inducement could never be morally suspect. Clearly bribes can be morally illegitimate, and the line between an acceptable subsidy and a bribe or other undue inducement will not be easily drawn. Still, not all inducements are undue or exploitative, and many types of subsidies will be morally legitimate.

Here it is important to note that while I adopt the position of most contemporary commentators on coercion in holding that mere inducements cannot be coercive,[129] I do regard government subsidies as coercive when these are funded via compulsory taxation.[130] As such, I do not think we should deem all public subsidies that might be employed to preserve a language as 'mere inducements', nor do I believe that a preservation effort that employed only subsidies would necessarily be 'coercion-free'.

Even putting these objections aside, however, and assuming that a subsidy is by definition non-coercive, we cannot expect that successful language preservation efforts of the sort we have had in mind will be able to avoid resorting to some coercive measures. That is, while it may be feasible to use tax credits and the like, or even cash payments to individuals, in order to ensure that a language does not go completely unspoken, but rather is kept alive in homes smattered here and there across the territory, or at ceremonial occasions, these means will prove inadequate to ensure that the language remains a major language of public life over the medium- to long-term.

It is important to note here that as with coercive preservationist efforts, non-coercive maintenance projects will only be worth embarking upon if the costs that they entail are outweighed by the benefits they are likely to secure. Assuming that the sorts of subsidies and transfers we have in mind do not come with their own moral costs, they will of course exact a financial cost. And what is bought at this financial cost? As we have seen throughout this chapter and the last, the benefits of linguistic preservation that proponents point to are often quite speculative, and sometimes downright dubious. As a

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[129] Anderson, 'Coercion' (n 59).

[130] That is, I understand coercion to be at work wherever a compulsory taxation scheme exists and there are at least some taxpayers who would not contribute but for the threatened penalty that non-compliers face, who in the end do contribute in order to avoid that penalty. On the coercive nature of taxation, see Adam J MacLeod, *Property and Practical Reason* (CUP 2015) 131; Andrew Kernohan, *Liberalism, Equality, and Cultural Oppression* (CUP 1998) 98–100; James Andreoni, Brian Erard and Jonathan Feinstein, 'Tax Compliance' (1998) 36 Journal of Economic Literature 818. See also Michael Blake, 'Distributive Justice, State Coercion, and Autonomy' (2001) 30 Philosophy & Public Affairs 257, 277.

result, the benefits that language maintenance will in fact have in real world cases will often be outweighed by the benefits of consolidating the process of language shift that is endangering the language in the first place. Even where this is not the case, and the benefits of preserving a threatened language really would outstrip the benefits that would arise from that language group's integration into a larger linguistic community, we have seen that there is good reason to suppose that the benefits of preservation will still, on the whole, be modest. The financial cost of such preservation, however, will not be. Attempting to induce one's citizenry to maintain, say, a historically dominant but now threatened language as the working language of the territory, exclusively through positive reinforcement, as it were, and without recourse to coercive measures, cannot be done on the cheap.

A major problem faced by smaller linguistic communities, for instance, is that larger neighbouring groups enjoy economies of scale which typically result in a wider array of economic, cultural, and educational options than can be made available in the smaller community. A 'brain drain' often results, as members of the smaller community, and especially those members with highly coveted skills or expertise, are drawn to larger and greener pastures. The inducements required in order to get these people to remain in their native linguistic community, then, will have to be great enough to offset the perceived advantages that would come from leaving. And not only will this not be cheap when looked at from the perspective of absolute dollars, the expense will appear many times greater when we take into account the opportunity costs of reallocating resources in this way. Each dollar spent trying to make remaining in the linguistic community more attractive is a dollar that could have been spent, instead, on building hospitals, improving public transportation, and the like.

Moreover, if we are correct that both seeking linguistic preservation via positive inducements alone, and seeking preservation by relying solely on coercive measures, are ruled out by a cost-benefit analysis (under which the costs of the former approach are understood to be largely financial ones, whereas the 'costs' of the latter are taken to be moral costs), then it will generally, although certainly not necessarily, be the case that preservationist projects that combine inducements and coercion in various proportions will also be too costly. It is true that we could in theory have available a combination of the two sorts of measures that does not involve such severe coercion as to be ruled out as morally intolerable, nor such financial cost as to be prohibitively expensive, nor such a high total combined cost as to outstrip the likely benefits to be gained. This seems most likely, for instance, in cases where the minority linguistic community is rich and prosperous.

However, no matter how wealthy the state and the minority language community we have in mind, the measures needed to ensure that a critical mass of citizens continue to live in the minority language seem likely to become ever more costly. For example, especially where the larger language that is tempting members of the smaller linguistic group to defect is one that is luring linguistic converts from other languages as well, measures that are at the moment sufficient to convince me to stay where I am, linguistically speaking, may well not be up to the task down the road, since the fact that the larger language is being learned by more and more people means that by defecting I stand to gain an ever increasing number of speech partners, along with the opportunities for advantage (economic, cultural, educational, etc) that that brings.[131] Further, as the larger language group gains more new members, the economies of scale that helped it offer its members greater opportunities than those available to members of the smaller

[131] Van Parijs, *Linguistic Justice* (n 56) 14–15, 50–53.

language community only intensify. To keep pace, preservationist governments must be willing to spend more on inducements, or utilise more coercive techniques, or both.

All of this is to say that arguments for linguistic preservation cannot be successfully made simply by asserting that we can maintain threatened languages without having to use any coercion, or at least without having to use very much. Whether preservation is attempted exclusively via coercive measures, or exclusively by way of inducements, or through a combination of both, whatever benefits language preservation may bring in the circumstances will always come at considerable cost—be that cost financial, moral, or some combination thereof. And whatever the particular configuration of costs that preserving a given language would entail, we find that the benefits of preservation are generally unlikely to outweigh these costs.

Conclusion

The overall conclusion of this chapter and the last is that all of the pro-linguistic preservation arguments we have examined largely face the same general problem: either language maintenance is not in fact necessary to secure the particular benefits that they allege such preservation as giving rise to, or else, if preservation is necessary in order to secure those benefits, such preservation will nonetheless be unjustifiable in light of the moral and/or financial costs it will entail. Now, it has not been argued that state-led efforts to maintain an endangered language will *never* be appropriate; it is possible that scenarios might arise in which such linguistic preservation would provide a benefit great enough to outweigh the moral and financial costs involved. However, conceding that such might from time to time be the case is of course a far cry from establishing that state preservation should be a central objective of state language policy. In fact, that is precisely what we have been concerned to show that the arguments canvassed in this chapter and the last do *not* demonstrate.

It is, of course, perfectly understandable for many people to wish for, and feel their interests are at stake in, the preservation of their language. These individuals should certainly be permitted to act to further these desires, short of coercing others. Nor is it impermissible (although we suggested it will generally be quite unnecessary) for the state to embark on a campaign to publicly extol the virtues of endangered tongues in order to encourage citizens to apprehend their worth and therefore choose to contribute to their preservation. However, we must reject the contention that linguistic preservation ought to be a central principle regulating language policy, since the coercive measures typically required to ensure such preservation over the long-term are unacceptable from the point of view of a liberal conception of political morality.

CHAPTER THREE

THE CONVERGENCE MODEL:
PART I: CONVERGENCE AND THE PUBLIC PURSE

Now the whole world had one language and a common speech. As people moved eastward, they found a plain in Shinar and settled there.

They said to each other, … 'Come, let us build ourselves a city, with a tower that reaches to the heavens, so that we may make a name for ourselves; otherwise we will be scattered over the face of the whole earth.'

But the LORD came down to see the city and the tower the people were building. The LORD said, 'If as one people speaking the same language they have begun to do this, then nothing they plan to do will be impossible for them. Come, let us go down and confuse their language so they will not understand each other.'

So the LORD scattered them from there over all the earth, and they stopped building the city. That is why it was called Babel—because there the LORD confused the language of the whole world. From there the LORD scattered them over the face of the whole earth.[132]

Introduction

Another way in which a state might respond to the fact of linguistic diversity within its territory is by fashioning language policies designed to ensure that such linguistic diversity is held in check. I will understand such policies to be policies of 'linguistic convergence'.[133] Linguistic convergence policies may be aimed at achieving linguistic convergence in one or more 'realms'. They may, for instance, aim at ensuring that citizens converge on one or more selected languages when communicating with the government or accessing state services (which I will call 'official realm' convergence), or interacting with fellow citizens in public settings or workplaces (which I will call 'intermediate realm' convergence), or when speaking in private settings (which I will call

[132] *The Bible* (New International Version, Biblica 2011) Genesis 11:1–9.
[133] This phrase is borrowed from Alan Patten, 'Liberal Neutrality and Language Policy' (2003) 31 Philosophy & Public Affairs 356, 356.

‘private realm’ convergence’).[134] As a working definition, then, a linguistic convergence policy is a language policy that is aimed at ensuring that no more than *x* languages are used in a given realm.

We can therefore distinguish among the *strength* of various convergence policies according to the value of *x*. Where *x*=1, for example, we can say that the policy seeks C1 convergence, and is therefore stronger than a policy that assigns *x* a value of two and therefore seeks C2 convergence, which is in turn stronger than C3 convergence policies aiming for convergence on no more than three languages, and so on. Convergence, then admits of degrees. Moreover, where convergence is at work in a given realm, this does not imply that that realm is (or is in the process of becoming) linguistically homogeneous. Instead, only the strongest version of convergence, C1, aims at linguistic homogeneity, in the sense of there being only one language in use in a given realm. All other versions of convergence, by countenancing the existence of multiple languages in the realm, actually seek to achieve a state of affairs marked by some degree of linguistic heterogeneity.[135]

In addition to the different *realms* in which convergence can take place, convergence can also occur at different *levels*. For example, identifying the different realms in which convergence can take place involved distinguishing among different types of conversations—ie, conversations with family, with colleagues in the workplace or strangers on the street, or interactions with government officials. In contrast, identifying the different levels at which convergence can take place involves examining

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[134] There is also a fourth possible realm: the international realm. That is, a state may seek to have its citizens converge on one or a few languages when interacting with members of other states—as when the Swedish government, say, seeks to ensure all of its citizens acquire a working knowledge of English so that they may gain the benefits of being able to communicate directly with foreign nationals, and foreign corporations, in that language.

[135] In the literature, linguistic heterogeneity (or ‘linguistic diversity’) is recognised not *merely* to be a function of the *number* of different languages used in a given realm or place, but also of the evenness of the *distribution* of the different languages among the population, as well as of the linguistic *distance* between the different languages present. On evenness, see Van Parijs, *Linguistic Justice* (n 56) 176–87. On distance, see Lars Borin and Anju Saxena (eds), *Approaches to Measuring Linguistic Differences* (De Grutyer Mouton 2013).

where, geographically, these various types of interactions take place. Specifically, linguistic convergence can occur at the statewide or sub-state regional levels, as well as at the level of a transnational organisation. We can ask, for instance, whether there is convergence in a given realm in Catalonia, or in Spain, or across the European Union. If a state is a unitary one, then determining whether C1, or C2, or C3, etc obtains at the statewide level is a relatively straightforward matter of determining whether the state's language policies aim to ensure that no more than 1, or 2, or 3, etc languages are used in the relevant realm. If, however, a state contains multiple sub-state regions, then in order to determine whether C*n* obtains in a given realm (say the official realm) at the statewide level, we will have to examine the language policies of each sub-state region. Specifically, we will have to add up the number of different languages that each region seeks to ensure official realm convergence upon and confirm that the sum is equal to *n*.

Having defined linguistic convergence policies as those aimed at ensuring that no more than *x* languages are used in a given realm and across a given level, we can say something about the value of *x*. While in principle a language policy could aim for convergence upon 50 languages in a given realm and across a given level, convergence policies are ordinarily motivated by a desire to avoid the sorts of obstacles that too much linguistic heterogeneity in a given realm is thought to throw up. As such, real-world convergence policies seek to ensure that no more than *x* languages are used in a given realm and across a given level, with *x* being a relatively small number. This is not to say that *x* will always equal one or two. Switzerland, for instance, exhibits statewide linguistic convergence on four languages in the official realm and three languages in the intermediate realm. For our purposes, however, we will understand a convergence policy to be one that aims at convergence on no more than a handful of specific languages.

Further, linguistic convergence policies as we will understand them aim for citizens to both understand and make use of the relevant language(s). Take, for example, the possibility that if a plethora of languages are being used in the intermediate and official realms across a given state, this will be to the detriment of the quality and inclusivity of public debate in that country.[136] This potential evil is not one that can be avoided merely by making it the case that only one language is used in the country's intermediate and official realms. If, for instance, the sole language of public debate is one that is only spoken and understood by a small minority of citizens, then obviously the quality and inclusivity of public debate could in fact be worse in this scenario than in the previous one. It is not enough, in other words, that only one language is used if only a small proportion of citizens *understand* that language.[137] Contrariwise, even if everyone in a given state could speak and understand a given language, if few or none of them actually used that language when discussing issues of public concern—instead debating these issues in one of the myriad languages spoken natively by the citizenry—then we would again have cause to fear for the quality and inclusivity of any debate conducted in such a Babelesque environment.

We can thus refine our working definition of convergence as follows. Linguistic convergence policies strive to ensure that no more than *x* languages are used in a given realm, with all citizens knowing and using at least one of these. In fact, however, we should add that convergence policies do not strictly require that no more than *x* languages are 'used' in the relevant realm. Instead, the aim is rather to ensure that a relatively small number of languages are used *widely* in the realm, with all citizens knowing and using at

[136] This possibility, and the idea that its existence counts as an argument in favour of adopting linguistic convergence policies, will be specifically examined below in the penultimate section of this Chapter.
[137] By 'understand' here I mean being able to grasp the nuances of what others are saying when they speak in a particular language (not merely being capable of 'getting the gist of it'), and being able to communicate effectively oneself in that language.

least one of these widely spoken languages. We can say, for instance, that a language is 'capacious' in a given realm—say, the intermediate realm—if it is used widely enough in that realm for it to be the case that citizens are able to take part in virtually all important intermediate realm activities in that language. Inversely, we can say that a language is 'non-capacious' in a given realm—say, the official realm—if its use in that realm is not widespread, and if, as a result, those who speak that language will, in order to access a full range of official realm activities, at least sometimes have to make use of another language. Provided that the number of capacious languages in a given realm is relatively small, and that all citizens know and use at least one of these languages, such linguistic diversity as there exists will not unduly burden the state in its day-to-day public administration, nor will it prevent any citizens from accessing the full range of activities that occur in that realm. Importantly, this will be the case even if some other, non-capacious languages are also used at times within the realm.

It is also important to note that where we find a segment of the population that, in respect of any given realm, lacks proficiency in any of the languages that are capacious in that realm, we have two general options when it comes to bringing about convergence. We could, of course, strive to ensure that these individuals come to learn and use one of the languages that are already capacious in that realm. Alternatively, however, we could attempt to transform the non-capacious language that they currently speak into a capacious one.[138] Whether this latter course of action is desirable or even feasible will depend on the particular circumstances of the case. The theoretical availability of this option, however, is worth bearing in mind.

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[138] See Stephen May, 'Language Policy' in Michael Grenfell (ed), *Bourdieu, Language and Linguistics* (Continuum 2011) 161: 'the perceived limited instrumentality of particular minority languages at any given time need not always remain so. Indeed, if the minority position of a language is the specific product of wider historical and contemporary social and political relationships, changing these wider relationships positively with respect to a minority language should bring about […] enhanced instrumentality for the language in question'.

Two final points regarding the concept of linguistic convergence should be mentioned. Firstly, I will understand convergence to be a property not merely of language *policies* but also of *states of affairs*. That is, convergence, as a state of affairs, obtains in a given realm and across a given level wherever it is in fact the case that no more than *x* languages are used widely in that realm and across that level (again, with *x* being a relatively small number). Thus it is possible that linguistic convergence as a state of affairs may obtain even in the absence of convergence policies, and it is possible for convergence policies to be in effect even where convergence as a state of affairs does not obtain. Secondly, convergence is understood for our purposes as specifying an end and not a means. However, in keeping with our larger aim of providing the beginnings at least of a *liberal* theory of language rights, we will rule out of hand language policies that employ straightforwardly illiberal means of achieving convergence (such as physically beating people for using non-favoured languages, or installing listening devices throughout citizens' homes in order to confirm that convergence is taking place in the private realm).

Why might a liberal state strive for linguistic convergence? We will now turn to evaluating five potential reasons for enacting linguistic convergence policies. Specifically, we will test the hypothesis that linguistic convergence advances one or more of administrative efficiency, economic development, social mobility, social and economic solidarity, or democratic participation, and as a consequence represents a potential guiding principle for language policy in multilingual democracies. In doing so, we will be asking whether, out of a concern to promote these five enumerated ends, liberal states have reason to pursue linguistic convergence as opposed to non-convergence, and to opt for stronger versions of convergence over weaker ones.

Administrative Efficiency

One obvious potential benefit of linguistic convergence is increased administrative efficiency. Securing linguistic convergence in the official realm,[139] by reducing the number of languages in which public services are offered, holds the promise of saving the state money and generally increasing efficiency in public administration. In this section, we will consider whether the promise of these efficiency gains should lead us to pursue linguistic convergence policies in real-world cases.

Where public institutions are multilingual as opposed to monolingual, the administration of these institutions will require expenditures on translation and interpretation services. When litigants before courts or speakers before parliamentary bodies are not all required to speak in the same language, for instance, interpreters will be required to make their words comprehensible to all listeners, and translators will be required to afterwards convert the record of the participants' contributions into other languages.[140] This is not to say that in a monolingual public setting such translation or interpretation services will never have to be paid for from the public purse. I take it as a given, for instance, that in any jurisdiction there will be some who lack proficiency in any of the languages used in the official realm, and that the availability of publicly funded interpretation or translation services, in certain contexts such as receiving medical care or defending oneself from accusations in court, may be a requirement of basic liberal justice. Notwithstanding that the total value of the interpretation and translation services the state should purchase in an environment of public monolingualism is greater than zero, it

[139] It is worth noting that we are essentially focussing on official realm linguistic convergence in this section, since 'public administration' occurs in the official realm much more than it does in the intermediate realm.

[140] The need for such interpretation and translation is of course much less acute where all parties are highly proficient in one another's languages. Consequently, public multilingualism may not be much, if at all, more expensive than public monolingualism if all citizens are fluent in each of the languages of public life. However, this is a standard that is rarely if ever met in the real-world.

remains true that the value of such services will be considerably higher where the state is publicly multilingual.

In addition to requiring governments to spend more in the way of interpretation and translation services, public multilingualism will also increase expenses by requiring considerable duplication. Laws, for example, may need to be printed in multiple languages, as may legislative deliberations, decisions of the courts, or various administrative pronouncements by members of the bureaucracy. Not only will this involve the original text or speech being translated into another language, additional costs will arise when it comes to the printing and distribution of these translated materials. Public signage, too, may include multiple languages, thus resulting in increased costs, as well as reducing readability.

Often, public multilingualism involves the operation of parallel institutions, whereby each branch conducts its affairs in a different publicly recognised language. For instance, where publicly-funded schooling is offered in languages A and B, the state may establish a network of schools in which the language of instruction is A, and another in which the language of instruction is B, as opposed to requiring that all schools offer a full complement of courses in both languages. Separate school boards may also be established to oversee the operation of the respective school systems. However, the administration of the public education system will be more expensive where such parallel institutions exist than it would be if all schools operated in the same language and under the control of a single school board. Where parallel institutions exist, for example, this will generally require the state to employ more people to staff those institutions. Instead of paying the salaries of ten school trustees that oversee the whole of the jurisdiction’s primary and secondary public education system, for instance, it may need to employ twice that number—ten each to oversee the respective linguistically-defined school systems. In addition, the selection of these trustees will require holding multiple elections, rather than just one—with all the added costs that this entails. Further, the hiring of non-elected staff at these parallel institutions promises to be a more difficult and costly affair. Specifically, it will almost certainly be more difficult to find qualified candidates where different positions require proficiency in different languages than it would be if all positions merely required candidates to be proficient in the sole public language. Second, the existence of these different linguistic requirements will necessitate additional measures in order to ascertain prospective employees' linguistic competencies.[141] Further, parallel institutions will also tend to require parallel facilities. Additional schools may have to be built, for instance, and extra office space and deliberative chambers for school board members may need to be secured.

Of course, not all public institutions that operate in multiple languages will have to be cleaved into separate and parallel entities. Some institutions, such as hospitals, libraries, and community centres, for instance, could simply operate in multiple languages according to the linguistic preferences of those availing themselves of their services. But here again costs are bound to be higher than they would be if such institutions operated exclusively in one language. Libraries, for instance, will have to spend more to procure materials in each of the operative languages. Signage must be printed in multiple languages rather than in just one. Staff members who are fluent in multiple languages will need to be found—unless we are willing to pay for interpretation and translation services to mediate the divide between staff members and their patrons—and this will be costlier and more time consuming than searching for otherwise qualified monolingual candidates. Further, in light of the very fact that candidates who are otherwise qualified and

[141] This is not to mention any additional measures required to ensure that staff *maintain* such linguistic competencies.

multilingual will be more difficult to find, these candidates are likely to demand higher salaries than would monolingual employees.[142]

In addition to increasing costs, official realm multilingualism also reduces administrative efficiency in two other important ways: by causing delays and inaccuracies. Consider, for instance, the official realm multilingualism on display today across the institutions of the European Union. The EU's commitment to official realm multilingualism is (formally at least)[143] robust. For example, 'members of the European Parliament … are free (and often expressly expected) to use their own language when conducting official EU business',[144] and official documents must be translated into all official languages, which currently number 24.[145] Consequently, it has been estimated that each year the EU 'translates 1.8 million pages of written documents and provides interpretation for 11 thousand meetings',[146] with as many as 60 interpreters in attendance 'depending on the linguistic complexity of the meeting'.[147] Maintaining this official realm multilingualism is, unsurprisingly, extremely expensive. According to one expert, the EU, as of 2012, spent 'over €1 billion annually' on translation and interpretation services.[148] Furthermore, translation on this massive scale 'can take many months' to complete.[149]

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[142] There may also be a legitimate concern over a lack of meritocracy here—the idea being that the smaller the pool of linguistically qualified persons to draw from, the more likely that we will have to settle on a candidate who is on the whole less than fully competent.
[143] The extent of the EU's genuine commitment to multilingualism is questioned by some: 'The idea is widespread that all of these languages are equal in status on the EU level, but they never have been in reality…. Most institutions, especially their preparatory committees, use only the same small subset of languages regularly' (Ulrich Ammon, 'Language Conflicts in the European Union' (2006) 16 International Journal of Applied Linguistics 319, 321).
[144] Jan Fidrmuc, 'The Economics of Multilingualism in the EU' in Thomas Eger and Hans-Bernd Schäfer (eds), *Research Handbook on the Economics of European Union Law* (Edward Elgar 2012) 332.
[145] European Parliament, 'Language Policy' <www.europarl.europa.eu/atyourservice/en/display Ftu.html?ftuId=FTU_5.13.6.html> accessed 31 March 2016; European Commission, 'Translation' <http://ec.europa.eu/dgs/translation/translating/officiallanguages/index_en.htm> accessed 31 March 2016. In addition, 'EU citizens similarly are entitled to use their language when communicating with European institutions' (Fidrmuc, 'The Economics' (n 144) 332).
[146] Fidrmuc, 'The Economics' (n 144) 9.
[147] ibid.
[148] ibid 332.
[149] ibid.

These time-lags have considerable impact on public administration at the European level. For example, EU legal decisions ‘are often implemented with several months’ delay’, in order to accommodate the fact that such decisions are only valid once they have been published in each official language.[150]

Furthermore, the products that result from this costly and time-consuming process are frequently error-ridden. Translating complex and arcane information in an accurate manner is a difficult task at the best of times, and mistakes will sometimes be made. The magnitude and frequency of these mistakes, however, increases sharply when individual translators are not fluent in both the original and target language. For instance, while the translation of an EU document from English to German will be unlikely to result in many errors, where a document needs to be translated from Danish into Hungarian, the likelihood of finding a translator sufficiently proficient in both languages to do the job well is considerably smaller. In practice, when documents need to be translated from one of the EU’s “minor” languages into another minor language, a “relay” or “pivotal” language is employed. The original Danish, for instance, will be translated, typically, into English, German, or French (by a translator fluent in both Danish and the chosen relay language), and then that translation will be translated into Hungarian (by a translator fluent in both the relay language and Hungarian). Given the difficulty in producing truly error-free translation, doubling the number of translations involved in creating the final product multiplies the opportunities for errors to creep in.[151] Such errors can have a profound effect on the efficient functioning of linguistically diverse organisations. As the authors of one paper examining this issue conclude, ‘[t]ranslation and interpretation

[150] ibid.
[151] For examples of commentators pointing the finger at this relay translation process in particular as causing errors, see ibid: ‘The process is prone to errors too, in part because of the growing use of “relay translations” whereby a document or spoken word is translated from one language to another via a “core” language such as English, German or French.’

errors, as well as delays caused by translations, may end up paralysing multilateral discussions and negotiations.'[152] Moreover, a UN report concludes that the reliance on relay translations in the European Parliament results in a staggering 50% of the original information being lost.[153]

It is clear, then, that official realm linguistic convergence within the EU could increase administrative efficiency by reducing the need for costly and time-consuming translation services. In fact, whatever the number of languages in which public institutions at a given level operate, we stand to increase administrative efficiency whenever we reduce that number. That is, the EU would operate more efficiently if it reduced the number of languages in which its institutions operated from 24 to 23, and it would also see efficiency gains were it (sometime in the distant future) to reduce the number of its official realm languages from 3 to 2 or from 2 to 1. In particular, eliminating from public life languages spoken by very small numbers of people would seem to be particularly cost effective. For instance, because of the fact that in a given jurisdiction there may be considerable variation in the number of people who actually speak each official realm language, there is also likely to be variation in the numbers of those who stand to benefit from the opportunity to interact with public institutions in each language. Among EU citizens, for instance, there are approximately five times as many Spanish-speakers as Swedish-speakers.[154] As a result, if we focus solely on the EU's translation services and assume that the cost of translating any document from its original language to any other is the same, we discover that there are great discrepancies in the per person costs of providing such translation. Jan Fidrmuc, for instance, finds that based on

[152] Victor Ginsburgh, Ignacio Ortuno-Ortin and Shlomo Weber, 'Disenfranchisement in Linguistically Diverse Societies' (2006) 3 Journal of the European Economic Association 946, 948.
[153] United Nations General Assembly 'The Implications of Additional Languages in the United Nations System' (1977) UN Doc A/32/237.
[154] European Commission, *Special Eurobarometer 386: Europeans and their Languages* <http://ec.europa.eu/public_opinion/archives/ebs/ebs_386_en.pdf> accessed 31 March 2016).

the estimated €1.045 billion spent on translation by the EU in 2007, the cost of such extensive translation would appear to be a modest €2.30 per person per year. However, when we take account of the number of EU citizens who actually speak the respective languages, providing translation into such widely spoken languages as English, French, Italian, and German costs considerably less than that €2.30 figure, while 'Latvian, Slovene and Estonian cost in excess of €20 per person per year and Maltese costs well over €100.'[155]

There is also a second broad mechanism by which the per person cost of extensive multilingualism is higher in respect of less widely spoken languages. For instance, an entity's commitment to public multilingualism is likely to require not only that it make official documents publicly available in multiple languages on a website, but also that it provide, say, ballots and tax forms to its citizens in their mother tongue. Here, the number of documents that are produced in each language will be determined by the number of individuals that speak those languages.[156] Therefore, it is not the case that materials created in less widely spoken languages are read by fewer people; instead, all such materials are theoretically at least read by the same number of people—namely, one. Crucially, however, there are economies of scale involved in providing linguistic material, just as there are in providing most other goods. If the government needs to provide copies of a census to all of its citizens, for instance, and it chooses to provide unilingual copies of the census in ten different languages, the production costs per copy

[155] Fidrmuc then goes on to look at the number of European Union citizens who speak *only one* of the EU's official languages, and who would therefore be 'linguistically disenfranchised' unless translation were provided into that language ('The Economics' (n 144) 9–10). He finds that the cost of extending translation services to unilingual speakers of French, German, Italian, Polish and Spanish so as to prevent such disenfranchisement would be 'low: around or below €2 per disenfranchised person' (10). In contrast, as we extend these translation services to increasingly smaller languages, 'the costs per disenfranchised person start to increase quite dramatically and can be as high as €800 for Maltese' (9). In other words, it costs roughly 400 times more to ensure that no Maltese-speaker is left unable to read official EU documents than it does to ensure that no French-speaker finds herself in such a position.
[156] (Or possibly, again, by the number who speak one of those languages *and no other*.)

will vary according to the number of copies printed. Printing ten copies of the census in one of the jurisdiction's least widely spoken languages will cost considerably more than one-millionth of the cost of producing ten million copies in a widely spoken language.

Our overall conclusion should therefore be that administrative efficiency is best advanced not only by convergence as opposed to non-convergence, but by more convergence as opposed to less. If the Swiss government were pondering eliminating Romansch as an official language for reasons of pure administrative efficiency, such efficiency would be increased further if Italian were dropped and public institutions came to operate exclusively in French and German, and further still if one of these languages was made the sole language of public life. Looking at matters purely from the perspective of administrative efficiency, that is, we ought to prefer C to ~C, as well as C1 to C2, C2 to C3, and so on.

Economic Development

Another reason that a state might choose to enact policies aimed at achieving linguistic convergence is because it is believed that such convergence will promote economic performance. There is, for instance, a sizeable literature exploring the relationship between ethnic and linguistic fractionalisation, on the one hand, and economic performance, on the other. Many commentators suggest a negative relationship here, according to which linguistic heterogeneity[157] within a country correlates with poor economic performance and low growth.[158] A good early articulation of the position is given by John Spencer:

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[157] In much of the literature, a country's level of linguistic heterogeneity (or its 'linguistically diversity') is essentially taken to be a function of the number of different languages spoken across the territory, and of the number of individuals that speak them. However, those studies which use Ethnologue's data on linguistic diversity are thereby also accounting for structural and etymological differences between the different spoken languages in arriving at a measure of linguistic heterogeneity/diversity.

[158] William Easterly and Ross Levine, 'Africa's Growth Tragedy: Policies and Ethnic Divisions' (1997) 112 The Quarterly Journal of Economics 1203; William Easterly, 'Can Institutions Resolve Ethnic

> High or medium per capita gross national product tends to correlate with linguistic homogeneity, viewed nationally. In other words, what economists call 'developed' or 'intermediate' status in the rank order of development is normally to be found in linguistically homogeneous polities…. On the other hand, the correlation with linguistically heterogeneous polities tends the other way; multilingual states are characterised typically by low or very low per capita gross national product, and are consequently far down on the development rank scale.[159]

The general explanation for the negative relationship some scholars report finding between linguistic heterogeneity and economic performance is that the effective operation of a modern economy is a highly complex endeavour that requires the sort of ongoing coordination (involving government officials, central banks, tax agencies, corporations, employers, employees, and consumers, not to mention coordination between some or all of these and international actors) that linguistic uniformity facilitates and linguistic diversity undermines. As Spencer has put it, 'the more complex and interactive a socioeconomic organism becomes, the greater the handicap of linguistic complexity.'[160] Specifically, there are concerns that linguistic heterogeneity impedes economic performance by preventing the integration of markets, reducing labour mobility, increasing unemployment, causing higher transaction costs due to the expense of translation and interpretation services, and dampening innovation by restricting the flow of ideas across linguistic boundaries.

Overall, the bulk of the scholarship generally supports these conclusions. In countries with high private linguistic heterogeneity, for instance, it is more likely that clearly demarcated linguistic divisions will exist among the population. And where this is the case, the evidence suggests, such linguistic borders pose challenges to market

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Conflict?' (2001) 49 Economic Development and Cultural Change 687; Alberto Alesina and Eliana La Ferrara, *Ethnic Diversity and Economic Performance* (Harvard Institute of Economic Research 2003) 9.
[159] John Spencer, 'Language and Development in Africa: The Unequal Equation' in Nessa Wolfson and Joan Mayes (eds), *Language of Inequality* (Mouton 1985) 389–90.
[160] ibid 389.

integration.[161] Likewise, linguistic heterogeneity has been shown to reduce labour mobility, since the latter 'is impeded by known cultural and linguistic barriers and high psychological costs suffered by immigrants moving to an alien milieu.'[162] High unemployment also correlates with linguistic diversity, since the possibility that large numbers of working-age residents will be unable to speak the language of business in a particular jurisdiction—and therefore will be unable to hold down jobs there—increases as the linguistic diversity of the area increases.[163] And while the precise effect on a country's economic performance of the need to pay for translation and interpretation services will vary depending on circumstances, it is clear that the need for such services does increase—sometimes very significantly—the cost of doing business.[164]

However, when it comes to innovation and the spread of ideas across linguistic boundaries, a different picture emerges.[165] For instance, while it is no doubt true that innovations spread somewhat more easily among people who all speak the same mother tongue, in our increasingly globalised and interconnected world it is clear that ideas for innovative new products, production methods, and the like are rapidly diffused across linguistic barriers. Crucially, this exchange of ideas occurs not because individual countries and sub-state regions are becoming more linguistically homogeneous (although this is true as an overall trend),[166] but because economic actors within these jurisdictions

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[161] See Kevin Bartz and Nicola Fuchs-Schündelna, 'The Role of Borders, Languages, and Currencies as Obstacles to Labor Market Integration' (2012) 56 European Economic Review 1148, 1160–62.

[162] Panos C Afxentiou, 'Convergence, the Maastricht Criteria, and Their Benefits' (2000) 7 The Brown Journal of World Affairs 245, 250. See also Gabriel Von Toggenburg, 'The EU's "Linguistic Diversity": Fuel or Brake to the Mobility of Workers' in Andrew P Morris and Samuel Estreicher (eds), *Crossborder Human Resources, Labor and Employment Issues: Proceedings of the New York University 54th Annual Conference on Labor* (Kluwer Law International 2004).

[163] 'Mobile moans: Building euro-zone competitiveness' *The Economist* (London, 28 April 2012) 70.

[164] Rebecca Piekkari, Denice E Welch and Lawrence S Welch, *Language in International Business: The Multilingual Reality of Global Business Expansion* (Edward Elgar 2014) 31–33.

[165] Annekatrin Niebuhr, 'Migration and Innovation: Does Cultural Diversity Matter for Regional R&D Activity?' (2010) 89 Regional Science 563.

[166] Stephen May, 'Language Rights: Promoting Multiculturalism' in Marilyn Martin-Jones, Adrian Blackledge and Angela Creese (eds), *The Routledge Handbook of Multilingualism* (Routledge 2015) 134.

are able to find ways to communicate and do business with actors from other linguistic communities in spite of the fact that they do not share a mother tongue. Such communication may occur directly, as when officials are personally multilingual and can speak the language of the negotiators on the other side of the bargaining table, or indirectly, through the aid of interpreters and translators. However, the easier it is for members of different linguistic groups to communicate effectively with one another, the more, all else being equal, they are likely to trade with one another.[167] Since such communication is easiest and cheapest where interpreters and translators are not required, we can expect closer trade relationships between linguistic communities that are able to communicate with one another via a lingua franca.

As such, a state's economic performance is likely to be stronger the more that state ensures that the linguistic competencies of its citizens are such as to secure an *external* convergence with potential trading partners.[168] The question is whether they should also, in light of the negative correlation between private linguistic diversity and economic development, seek to secure linguistic convergence in any or all of the other three realms—namely, in the private, intermediate, or official realms. Let's break the question down and examine the case for convergence in each of the three realms in turn.

[167] 'It is well established in the trade literature that countries that share the same official language tend to trade more with each other. Fidrmuc and Fidrmuc, conclude "that raising proficiency in English in all EU countries to the level prevailing in the Netherlands would be expected to increase trade in Europe, ceteris paribus, by approximately three quarters"' (Fidrmuc, *The Economics of Multilingualism in the EU* (n 144) describing Jan Fidrmuc and Jarko Fidrmuc, 'Foreign Languages and Trade: Evidence from a Natural Experiment' (2016) 50 Empirical Economics 31).

[168] For instance, if the Belgian government were to ensure that all Belgians became highly proficient in English—the de facto lingua franca in Europe at the moment and for the foreseeable future—this could be expected to increase Belgium's trade flows with all of its European trading partners, and not only those in which English is the mother tongue of most citizens (ie, the United Kingdom and Ireland). However, merely ensuring that all Belgians speak expert English will not, of course, by itself solve the problems of restricted labour mobility and unemployment *within* Belgium caused by a lack of proficiency in the dominant working language of one's region, nor eliminate the extra costs of providing products for sale in linguistically heterogeneous markets (for example, those costs associated with labelling).

The Private Realm

Should statewide and sub-state regional governments in liberal democracies, out of a concern to maximise economic performance, enact language policies aimed at securing a convergence among the languages spoken by their citizens in those citizens' private home lives? There are a number of reasons why they should not.[169] Firstly, strong economic performance does not require this sort of linguistic convergence. Many of the world's most robust economies, in fact, exhibit fairly high levels of private linguistic diversity due to the large numbers of immigrants that are drawn to these countries. Moreover, the presence in the workforce of such immigrants—many of them highly skilled, and many willing to take jobs shunned by non-immigrant workers[170]—is itself a key driver of the economic growth of their respective countries. Consider, for instance, the economies of G8 countries with linguistically homogeneous public spheres such as Germany or France. Is it plausible to suppose that the economic performance of such nations is dragged down by the fact that large numbers of workers, after a workday in which they spoke exclusively in, respectively, German or French, then go home and spend the evening speaking with their families in Turkish or Arabic? The answer, clearly, is no. The real worry, then, about the effect of linguistic diversity on economic performance is that the economy of a country or region will suffer not because the private lives of its residents unfold in many different languages, but rather to the extent that that jurisdiction's *economic life*—comprising such things as the buying and selling of goods and services,

[169] One reason we could give here is that it is simply unjust to regulate the private lives of citizens in this way. This proposition will be examined at considerable length below, and so we will not pursue the idea here.

[170] See eg Jeffrey G Reitz, 'Immigrant Skill Utilization in the Canadian Labour Market: Implications of Human Capital Research' (2001) 2 Journal of International Migration and Integration 347; Tom Whitehead, 'High-skill Migrants "Taking Low-skill Jobs"' *The Daily Telegraph* (London, 28 October 2010) 1; Sharmin Mahmud, Quamrul Alam and Charmine Härtel, 'Skill Shortage and Underutilization of Educated Immigrants in the Australian Labour Market: A Paradox' (2008) 8 European Journal of Management 155.

investing, banking, mergers and acquisitions, management, negotiations, and the day-to-day activities of workers—takes place in a multitude of tongues.[171]

The lesson here is that we can have private linguistic heterogeneity *and* a strong economy, provided there is sufficient linguistic convergence on display in the intermediate and official realms. Indeed, in the abstract, private realm linguistic *homo*geneity seems, if anything, more likely to undermine economic performance than to promote it. This is because citizens in an environment of private linguistic heterogeneity possess language skills that are themselves economically valuable,[172] especially in the context of an increasingly interconnected global economy. Further, there is good reason to be concerned that the attempt to move a society from an environment of private realm linguistic heterogeneity to one of homogeneity (even if it were successful) would in fact do more harm than good to the economy. Specifically, such a policy would risk causing, over the short-term, a backlash within the (likely minority) language communities whose languages were not selected as the language upon which citizens should all converge in their private lives. And such unrest could well prove more costly to the economy than the efficiency gains the move to private realm homogeneity would have purchased. In addition, pursuing linguistic policies aimed at ensuring private realm homogeneity would, over both the short- and long-term, create an incentive for potential immigrants to the territory to instead bring their economically valuable skills and labour with them to some other jurisdiction in which they know they will be free to speak the language of their choice in their private lives.

A critic, however, might respond to the foregoing by asking the following question: 'If securing linguistic convergence in the private realm will not advance

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[171] The economic life of a country is for our purposes understood to encompass the intermediate realm and parts of the official realm, but not the private realm.
[172] See eg Francois Grin, 'Using Language Economics and Education Economics in Language Education Policy' (Council of Europe, 2002).

economic performance, why is it that private linguistic heterogeneity correlates with economic underdevelopment?' This is a valid query. The answer, quite interestingly, is that there seems to be a confusion of cause and effect at work here. For instance, all of the world's strongest economies underwent, at some point in their past, a period of industrialisation. Further, it is widely accepted that as countries have industrialised, they have also tended to become more linguistically homogeneous.[173] As one commentator puts it, 'industrial production entails a degree of social mobility, linguistic uniformity and specialised knowledge.'[174] In addition, Ernest Gellner and others have highlighted the way in which industrialism fosters large scale public education programs, which in turn 'ultimately forge[s] cultural homogeneity.'[175] As a consequence, while we might be tempted, in light of the negative correlation between private linguistic heterogeneity and economic performance, to say of a jurisdiction that is both economically less developed and linguistically heterogeneous in the private realm that it is economically less developed because it is linguistically heterogeneous, it seems that we are on safer ground in saying the reverse: that it is linguistically heterogeneous in large part because it is economically less developed.

The Intermediate and Official Realms

If we should not, in the name of economic performance, aim for linguistic convergence in the private realm, what about striving for such convergence in the intermediate and official realms?[176] In answer to this question, we should note that of course linguistic

[173] See eg Jacob Levy, 'Language Rights, Literacy, and the Modern State' in Will Kymlicka and Alan Patten (eds), *Language Rights and Political Theory* (OUP 2003).
[174] Sinisa Malesevic, *Nation-States and Nationalisms* (Polity Press 2013) 58.
[175] ibid 59. See Ernest Gellner, *Nations and Nationalism* (Blackwell 1983).
[176] A point of clarification: official realm linguistic heterogeneity fosters, whereas official realm linguistic homogeneity militates against, *intermediate* realm linguistic heterogeneity. It is, however, linguistic heterogeneity in that intermediate realm that has the most direct negative effect on economic performance, as it is linguistic heterogeneity in this realm that gives rise to the mechanisms note above, such as reduced labour mobility, less integrated markets, and unemployment due to lack of language skills, that undermine

homogeneity in these realms is not a requirement for economic success. But, as we saw in the introductory section above, linguistic homogeneity is *not* the same thing as low linguistic heterogeneity; linguistic convergence entails only the latter and not the former. It is quite clearly true, for instance, that countries like Switzerland and Canada are able to combine linguistic heterogeneity in the intermediate and official realms with robust economic performance. However, it must be noted that, notwithstanding their heterogeneous nature, the intermediate and official realms of both Canada and Switzerland exhibit considerable linguistic convergence at work. For instance, in Canada, two languages (English and French) are known and used widely in the intermediate realm, with the same two languages enjoying recognition as official realm languages. In Switzerland, three languages (German, French, and Italian) are known and used widely in the intermediate realm, with four (German, French, Italian, and Romansch) enjoying recognition as official languages. In both countries, however, there are dozens if not hundreds of additional languages that are used in the private realm. The governments of both countries are indeed very much concerned to ensure that the speakers of these additional private realm languages come to know and use one of the small number of languages on offer in the relevant realm of their respective countries.

Consequently, the examples of Switzerland and Canada—and any other countries we might think of that combine some degree of intermediate and official realm linguistic heterogeneity with a strong economy—go to show only that linguistic homogeneity in these realms is not necessary for strong economic performance, *not* that linguistic *convergence* is unnecessary to that end. We harbour little doubt, in fact, that if a country

economic growth. (Thus if a particular jurisdiction exhibits low linguistic heterogeneity in the intermediate realm, it is well-placed to enjoy strong economic performance, even if linguistic heterogeneity is high in the official realm. Likewise, if the jurisdiction exhibits high linguistic heterogeneity in the intermediate realm, this can be expected to temper its economic growth, regardless of whether public linguistic heterogeneity is low.)

were to forego linguistic convergence and become a modern-day Babel this *would*—profoundly—impair its economic performance.[177]

Reconciling Theory and Practice

To recap: we have found good reason, at least in theory, to believe that pursuing linguistic convergence in the intermediate realm, and (as a means to that end) in the official realm, will promote economic performance. What reasons might we have, then, for not implementing such policies? Here again we must flag the possibility that doing so—in either realm—could be unjust. State action designed to ensure that communication in the intermediate realm occurs in a specific language (or specific languages) would appear to be less of an invasion of individuals' privacy interests than a similar campaign aimed at achieving private linguistic homogeneity. However, it is at least arguable that in the intermediate realm, and not just the private realm, citizens have an interest in being at their liberty to use the language of their choice, and that this interest outweighs the state's interest in securing the gains in economic performance that achieving low linguistic heterogeneity would bring. Likewise, arguments can and have been made that efforts to achieve official realm linguistic convergence may also offend against justice. For instance, Will Kymlicka and Alan Patten both argue that where certain empirical conditions are fulfilled, liberal justice requires that public institutions operate in multiple languages (with the precise number depending on the circumstances). If that is the case, then in those conditions pursuing convergence policies designed to ensure that public institutions operate in a lesser number of languages will offend justice. These are

[177] Further, even if we believed that linguistic convergence in the intermediate realm merely *facilitates* economic growth, rather than being *necessary* in order to achieve that goal, we would still therefore have good economic reasons to pursue such convergence.

precisely the sorts of claims regarding 'linguistic justice' that we will tackle in Chapters 8 and 9, however, and so we will not pursue them further here.

Putting aside, then, uncertainty as to whether pursuing convergence in the intermediate or official realms might be unjust, can we at least conclude that achieving such convergence would, not just in theory but in practice, promote economic growth? We would be remiss here not to at least consider the possibility that securing such convergence could have some unintended consequences that might *negatively* impact on economic performance.[178] For instance, we know that in general people feel considerable attachment to their mother tongue. Where securing convergence in the intermediate realm would involve taking a situation in which significant numbers of individuals use their mother tongue in that realm and altering it so that their activities in the intermediate realm take place exclusively in some other language, there is a real chance that this would not sit well with those individuals. Convergence here would bring with it a risk of the sort of short-term 'backlash' we mentioned earlier.[179] Those who find that language policy actively seeks to drive their mother tongue out of the intermediate realm, for instance, might choose to protest these policies through economically damaging activities like strikes or boycotts. Some might choose to quit their jobs and attempt to find under-the-table work in which they can continue using their native language. In addition, we should also consider the possibility that convergence in the intermediate and/or official realms

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[178] As we did above in respect of reducing *private* realm linguistic heterogeneity in the name of economic growth.

[179] Which *particular* language(s) are selected to be converged upon will affect not only the size and likelihood of the backlash (that might offset somewhat the economic gains of that convergence), but will also play a direct role in the size of the economic benefits we can expect to accrue. That is, it is important to note that merely achieving linguistic convergence in the intermediate and official realms per se will not necessarily reap economic rewards. Rather, economic benefits will be greatest where we achieve convergence *on the 'right' particular language(s)*. The 'right' particular language(s) for any given place will of course depend on which languages are spoken there and in what proportions. Selecting a foreign language at random as the C1 language in the intermediate and official realms, for example, could cripple the economy over the short-term, not to mention the severe backlash such an action might provoke. Similarly, with regards to the language of convergence chosen for the 'external' realm, it is important to choose a language that is widely used by other actors beyond our borders.

could over time reduce linguistic heterogeneity in the private realm, thus leading to a decline in the language skills of individual workers. The estimated economic value of that loss will need to be factored in to any determination of the economic impact of linguistic convergence in the intermediate and official realms.

So where does this leave us? We have found that, unsurprisingly, linguistic convergence cannot guarantee strong economic performance. If we wish for economic development we should of course pursue it directly, through wise fiscal policies, creating a well-trained workforce, entering into trade arrangements with other nations, and the like. Further, pursuing too-strong linguistic convergence, or private realm convergence, or indeed any sort of convergence via overly aggressive means, may well undermine rather than facilitate economic growth. Overall, however, economic performance is indeed furthered by linguistic convergence in the intermediate and official realms. Assuming that we are concerned to promote economic development, then, we have a pro tanto reason in favour of implementing linguistic convergence policies targeting these realms.

CHAPTER FOUR

THE CONVERGENCE MODEL:
PART II: CONVERGENCE AND INDIVIDUALS' WELLBEING

Social Mobility

A third argument in favour of linguistic convergence appeals to the 'great importance attached to social mobility in a liberal democracy'.[180] Liberalism, for instance, is committed to ensuring that all individuals, regardless of the social positions into which they were born, have the ability to frame their lives in the way they see fit. Being free and equal moral beings, it is unacceptable that our life choices should be constrained merely because we belong to a particular race, ethnicity, or gender.[181] Patten draws out the connection between liberalism's prizing of social mobility and the idea of linguistic convergence as follows:

> Just as public institutions should seek to nullify the effects of class, race, ethnicity and gender on a person's life opportunities, they should do the same for language. It would violate an important principle of liberal justice—the principle Rawls calls "fair equality of opportunity"—if one's life prospects were to be significantly lower than those of fellow citizens for some avoidable reason related to his or her linguistic capabilities.[182]

The ultimate concern, then, is that in the absence of linguistic convergence, 'the speakers of some languages will become isolated in linguistic ghettoes'.[183] They will be denied an

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[180] Patten, 'Liberal Neutrality' (n 133) 380. For other examples of the often-made argument that individual social mobility is unduly jeopardised in the absence of linguistic convergence, see Thomas Pogge, 'Accomodation Rights for Hispanics in the US' in Will Kymlicka and Alan Patten (eds), *Language Rights and Political Theory* (OUP 2003); Levy, 'Language Rights' (n 173); David Laitin and Rob Reich, 'A Liberal Democratic Approach to Language Justice' in Will Kymlicka and Alan Patten (eds), *Language Rights and Political Theory* (OUP 2003).

[181] This way of discussing social mobility blurs the concept, to some extent, with the distinct notion of individual autonomy. For our purposes, however, I do not regard this as problematic. We can, for instance, regard the pages that follow as aiming to determine whether linguistic convergence promotes social mobility—valued for its own sake—*or* promotes autonomy *by way of* promoting social mobility.

[182] Patten, 'Liberal Neutrality' (n 133) 380.

[183] ibid. See also Kymlicka and Patten, 'Introduction' (n 3) 8, who point to concerns in the literature over minority linguistic 'enclaves' or 'ghettos'.

equal opportunity to frame their lives, as their linguistic community will not make available to them an adequate array of life options from which to choose. Further, the argument runs, this unequal state of affairs is avoidable, since the state could implement policies to ensure that the speakers of these isolated languages acquire proficiency in more widely-spoken languages, and thus have access to the wider array of life-options made available by these larger linguistic communities. As such, failing to strive for convergence in the circumstances does a grave disservice to the speakers of "ghetto" languages, and is positively unjust.

What are we to make of this argument? Firstly, we should note that the ideal of individual autonomy with which social mobility is intimately connected requires not just that individuals can evaluate a sufficiently broad array of meaningful life-options, but also that they are able to live out in their own lives the particular life-options they have endorsed. Even if we admit that individuals can belong to multiple ethnolinguistic communities simultaneously, and even if we insist that some individuals live a cosmopolitan lifestyle to such an extent that it is impossible to delineate which ethnolinguistic communities they belong to, we cannot deny that the bounds of what sort of life it is possible for us to live out in any particular place depends on certain empirical facts about that place. The relevant facts will include things like whether there exist the physical facilities required for some cultural activity to take place, whether the law authorises it to take place, and even whether the climate or terrain allows it to take place.[184] Some places are simply not hospitable to certain foreign cultural forms, in the same way that some places are simply not hospitable to foreign flora.

[184] One can't be a professional tennis player, for example, where no tennis courts exist, just as one cannot be a bullfighter where bullfighting is illegal, nor a mountaineer in Tuvalu.

Another relevant factor here is the behaviour of others. For instance, my ability to live out a particular life option may well depend on others participating with me in that action. (Language, in fact, is perhaps a paradigmatic example of this need for coordinated collective action, since the communicative value of any language depends on there being at least one party other than the speaker who understands what is being said.) Thus even if a woman from, say, the Serbian community in Helsinki was able to drum up enough interest in order to make a living as a geisha, she would have to do so while speaking Finnish, since an inherent part of that job (like most jobs, if not to the same extent) is communicating with customers, and since it is quite unlikely that there would be sufficient interest in her services among the tiny Serbian-speaking population of Helsinki. Indeed, being able to speak a language that is widely spoken in one's region is crucially important for one's ability to take up a wide range of different life options. This is true, for instance, if one wishes to find employment (since in the vast majority of cases one will have to speak the dominant local language in order to interact with customers, co-workers, or superiors), or to get an education (since the language of instruction will be one of the region's common public languages), or to be a member of most clubs or churches, or to hold public office. As an overall conclusion, we can say that social mobility requires access to a sufficient range of *implementable* life options, and that in most cases it is not possible to have the latter without being proficient in the dominant local language.

In asking whether linguistic convergence furthers social mobility (understood to be a question of access to implementable life options), we must note that a successful convergence policy results in a state of affairs in which the number of languages used widely in a given realm is relatively small, with virtually all people using at least one of those languages. This, plainly, is as we should wish it to be from the point of view of social mobility, since, in such a state of affairs, no individuals will lack adequate social mobility owing to issues of language. What sort of results can we expect if we do not pursue linguistic convergence? The answer here depends on the specific sort of 'non-convergence' policy we have in mind. If, for instance, the non-convergence policy (regardless of the number of languages it seeks to see used widely in the relevant realm(s)) expressly aims to ensure that a significant portion of individuals are *un*able to use any of those languages, then the state of affairs that would obtain if that policy were successful would clearly be much inferior from the point of view of social mobility than would a state of affairs in which convergence obtains. If, on the other hand, the non-convergence policy we have in mind aims to bring about a state of affairs in which all citizens know and use at least one of the languages widely used in the relevant realm but also seeks to ensure that *many* such languages obtain in the realm, then the result of that policy, if it were successful, would actually be acceptable from the perspective of social mobility. If there are a relatively large number of languages in which citizens can access a sufficient array of activities and options in the intermediate and official realms,[185] provided that all citizens are proficient in at least one of these languages, then no individuals will lack social mobility owing to issues of language.

None of this is to say, however, that in the name of social mobility we ought to actively pursue such non-convergence policies. For starters, for instance, this 'all citizens use at least one of a large number of capacious languages' scenario is no better, from the point of view of securing individual's social mobility, than is the 'all know at least one of a relatively small number of capacious languages' scenario. Indeed, the latter may in fact be preferable to the former. For example, where the number of languages used widely in

[185] Of course there is a practical limit to the number of such capacious languages that can exist in a given realm. If *hundreds* of languages are used within the intermediate or official realm, for instance, we can be sure that *not* all of these languages will be capacious within that realm.

a given realm is small, those languages will tend to be spoken by a very large number of people. In contrast, where the number of languages used widely in a given realm is large, these individual languages will tend to be spoken by fewer numbers of people. If we are inclined to believe that an individual's social mobility tends to be greater if she belongs to a larger linguistic community rather than a smaller one, then on social mobility grounds we will have reason to enact convergence policies, rather than 'high *x*, all speak one' non-convergence policies.

Finally, a language policy might aim neither to achieve nor to avoid convergence. Such a laissez-faire policy can of course be labelled a non-convergence policy. What states of affairs are most likely to result from such a laissez-faire approach? In theory, laissez-faire policies could lead to a state of affairs where convergence obtains.[186] Such a result is considerably less likely, however, under a laissez-faire policy than it is under a convergence policy. That is, if what we are after, for reasons of social mobility, is a state of affairs in which convergence obtains, we are, unsurprisingly, more likely to get it by implementing a language policy that aims at such convergence as opposed to implementing a language policy that aims at nothing at all. The fact of the matter, for instance, is that linguistic convergence policies are very much the norm and not the exception in our world. Virtually all state and sub-state governments and transnational organisations administer language policies that seek to ensure that all of their members are able, within a given realm, to use at least one capacious language, and that the number of such languages is relatively small.[187] These entities, that is, desire convergence as a

[186] On the notion of 'unintended convergence', see Kymlicka and Patten, 'Introduction' (n 3) 38.

[187] Just some of the policies and activities that can be seen as contributing to these ends include making only a few languages official, operating public institutions in only a few languages, state media using only certain languages in their communications, designating certain languages as the languages of instruction in public educational facilities; state officials making announcements or holding ceremonies in certain languages; prescribing use of certain languages only on street signs, public buildings, or even in some cases on private/commercial buildings.

state of affairs, and they overwhelmingly choose to pursue that goal by implementing linguistic convergence policies rather than laissez-faire policies.

That is not to say that a laissez-faire approach might not, in some cases, be likely to result in a state of affairs in which convergence obtains. The likelihood of this surely must be affected by the particular circumstances of the individual case. If at present, for instance, there is only one language which dominates official and intermediate realm life in a particular state, and that language is also a large global language, then even if the government opted for a laissez-faire approach, the citizens of that state may have sufficient incentive to know and use that language in those realms such that we can rest assured that convergence will obtain for the foreseeable future. But even in this example, convergence will be jeopardised if circumstances change in ways that alter these incentives, such as might occur if there were a surge in immigration, for instance. And since social mobility is better secured where convergence obtains than where it does not, our overall conclusion is that a concern for the social mobility of individuals gives us a strong *pro tanto* reason to opt for linguistic convergence policies.

Convergence of What Sort, and by What Means?

Having found that concerns for social mobility should lead us to adopt linguistic convergence policies, we should next determine the strength of the convergence that these policies should aim for, as well as the means they ought to employ in order to bring about the sort of convergence they seek. Supposing we are correct, for instance, in saying that a concern for individuals' social mobility should lead us to prefer convergence over non-convergence, should these concerns over social mobility also lead us to favour C1 over all other species of convergence, in the same fashion that concerns over administrative efficiency lead us to prefer C1 to C2, C2 to C3, and so on? The answer is no. We have seen how important it is, from the perspective of social mobility, that all citizens, within both the intermediate and official realms, have access to at least one language that is capacious in that realm. Nowhere was it claimed, however, that social mobility requires there to be only one such language found within each realm. And indeed that is not required. In either or both realms, for example, there may be two or more such capacious languages in use. Where that is the case, it is enough, from the point of view of social mobility, that in each realm all citizens use *one or another* of these capacious languages.[188]

In other words, social mobility does not necessarily require C1 convergence. In Canada, for example, there are two languages which are capacious in the official realm: English and French. As a result, no Canadian who is able to use either English or French lacks adequate social mobility in the official realm. The official realm social mobility of English-speaking Canadians, for instance, which they enjoy due to the fact that a sufficiently broad array of official realm activities are available in English, is not undermined by the fact that a sufficiently broad array of official realm activities is also available in French. Rather, the fact that a sufficiently broad array of official realm activities are available in French as well as English merely ensures that French speakers who do not speak English can enjoy social mobility without having to learn and use English in the official realm.[189] The liberal's concern for the social mobility of individuals, therefore, provides no reason for thinking that all Canadian citizens should use only one of these languages in the official realm.

[188] See Patten, 'Liberal Neutrality' (n 133) 382 for a similar observation about how, under Kymlicka's account of societal cultures, the individual autonomy that access to a societal culture makes possible does not require that everyone belong to the *same* societal culture.

[189] And vice-versa, of course. That is, the fact that a sufficiently broad array of official realm activities are available in English as well as French ensures that English speakers who do not speak French can enjoy social mobility without having to learn and use French in the official realm.

Our answer, then, to the question of what kind of convergence is called for given our concern for social mobility is a negative one: C1 convergence is not necessarily required. Let's turn now to the question of *how* the convergence that a concern for social mobility requires in the circumstances should be achieved. In response to this question, we can provide a positive answer and a negative one. The means by which to ensure that all citizens have the linguistic skills to be able to enjoy intermediate and official realm social mobility will include positive measures like selecting capacious languages as the languages of instruction in public schools; administering specialised classes in public schools to teach capacious languages to students whose first languages are non-capacious tongues; offering similar subsidised courses for adults; and requiring proficiency in a capacious language as a condition for acquiring citizenship.

Ensuring that all citizens enjoy adequate social mobility will not, however, require that those who speak a language that is not a capacious language in either realm must cease speaking that language in their private lives.[190] On this score, for instance, it might be argued that linguistic convergence on capacious languages in the private realm is necessary in order to ensure a similar linguistic convergence on capacious languages in the intermediate and official realms. However, this argument fails. It fails because we have ample evidence that linguistic convergence in the intermediate and official realms does *not* require convergence in the private realm. We are very familiar, for instance, with the pattern of immigrant families living their private lives wholly or in part in their mother tongue while at the same time using the dominant language of their adopted homeland in the intermediate and official realms. Such a pattern of language use does not preclude these individuals from being active participants in the social, economic, and

[190] It is often, but erroneously, thought (and indeed many nation-building governments have historically encouraged the idea) that learning a capacious language means language replacement—ie, 'that one should/must learn these majority languages *at the expense of* one's first language' (May, 'Language Policy' (n 138) 159).

political life of their societies. Moreover, in fact, there is considerable evidence to suggest that requiring these individuals to cease using their mother tongues would positively undermine their ability to acquire fluency in a capacious language. For instance, not only has 'A plethora of studies… confirmed the benefits of maintenance and development of heritage languages in the educational sphere'[191] in general, 'A strong first language (L1) has also been found to be a prerequisite for successful majority language learning.'[192] Thus if our goal is to ensure universal acquisition of one or another capacious intermediate and official realm language, asking speakers of smaller ancestral languages to shed those languages would not only be unnecessary, it would be counter-productive.

Further, encouraging speakers of ancestral languages to maintain and develop their skills in these languages can help the speakers of these languages acquire proficiency in a capacious language in another, more indirect way. The general idea here is that 'the other' is more likely to take steps to integrate into an alien environment if his hosts make it clear that in making himself more like them he will not be made to shed everything that makes him who he is, and if his hosts also acknowledge that many of the things that make him different from them are of value. Thus when the state acknowledges

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[191] Henry PH Chow, 'The Challenge of Diversity: Ethnic Identity Maintenance and Heritage Language Retention in the Canadian Mosaic' (Department of Canadian Heritage Seminar, Halifax, November 2001) 5.

[192] ibid, drawing on the work of Arnulfo G Ramirez, *Bilingualism Through Schooling: Cross-Cultural Education for Minority and Majority Students* (State University of New York Press 1985). Many similar conclusions about the positive effect that maintaining and developing 'heritage languages' has on the ability of those who speak such languages to learn the 'majority' language (and thus on their ability to enjoy social mobility) can be found in the literature. For a discussion of how developing one's heritage language can improve cognitive skills, see Marcel Danesi, 'Early Second Language Learning: The Heritage Language Experience in Canada' (1983) 7 Multiculturalism 8, 12; Merrell Swain and Sharon Lapkin 'Heritage Language Children in an English-French Bilingual Program' (1991) 47 Canadian Modern Language Review 635, 41; and Gordon Wells, *Learning Through Interaction: The Study of Language Development* (1981 CUP). Joti K Bhatnagar also claims that heritage language development facilitates students' integration into their new educational and social environments—something which we should obviously expect to contribute to improving these students' social mobility ('Linguistic Behaviour and Adjustment of Immigrant Children in French and English Schools in Montreal' (1980) 29 International Review of Applied Psychology 141–59). Further, Stephen May concludes that overwhelming evidence now shows that students are better able to develop proficiency in a second language where they have access to education in their first language (Stephen May, 'Rearticulating the Case for Minority Language Rights' (2003) 4 Current Issues in Language Planning 95, 117).

the existence and value of the many ancestral languages that its citizens speak, those ancestral language speakers are more likely, given the way that language is such an important factor in self-identity, to feel that they as individuals are recognised as being worthy of respect.[193] In turn, they will be more likely to seek to integrate themselves—linguistically and otherwise—into the larger community than they would be if the state refused to acknowledge the fact of their linguistic difference.

Social and Economic Solidarity

A fourth general argument in favour of linguistic convergence might appeal to the value of social solidarity. There has recently been a great deal of debate, for instance, over whether the increasingly diverse nature of liberal democratic societies is leading to lower levels of inter-personal trust among citizens. If this is indeed a general trend, and in particular if it can be shown that *linguistic* diversity negatively correlates with social solidarity, then an argument can be made that linguistic convergence is in order.

In order to evaluate this argument, it is important to understand what is meant by social solidarity. For our purposes, and borrowing from the extensive literature on the relationship between diversity and solidarity, social solidarity will be understood as denoting both a sense of 'fellow-feeling' among citizens—ie, a sense among citizens that they and their fellow citizens are partners in a joint democratic enterprise—and a relatively high level of trust among citizens. The particular level of social solidarity exhibited in a state is relevant to the state's ability to pursue a number of different goals.

[193] Patten, for instance, notes this connection between the public recognition of minority languages and social mobility. Arguing that 'For people to be equipped for social mobility, however, it is not enough that they leave school proficient in the majority language' but rather 'must also have a range of skills, dispositions, competencies, and so on', Patten implies that one such disposition is a "positive sense of self": 'it is sometimes argued that developing a positive sense of self-identity is one of the keys to social mobility and that this positive sense of self can be effectively encouraged through education schemes, such as bilingual education, which develop and reinforce pre-existing social characteristics rather than attempting to negate them' ('Liberal Neutrality' (n 133) 384).

Low levels of solidarity, for instance, might manifest themselves in lower rates of political participation, patriotism, volunteerism, or military service. By contrast, where solidarity is high this might mean fewer people cheating on their taxes, more charitable giving, and greater levels of support for redistributive policies. In order to make our investigation manageable, however, we will focus in this section only on the relationship between linguistic diversity and this last concern: support for the redistribution that is characteristic of the modern welfare state. As such, our focus will be on whether high levels of social solidarity are necessary in order to achieve high levels of what we might call, borrowing from Philippe Van Parijs, 'economic solidarity'.[194]

Let us grant that social solidarity, and more specifically economic solidarity, is indeed an important good. Let us also grant that linguistic convergence by definition limits, to a greater or lesser extent, linguistic diversity in the intermediate and official realms. The crucial question, then, is whether linguistic diversity does in fact undermine economic solidarity. We can begin our investigation into this question by getting clearer on how it is that linguistic diversity is supposed to erode the social solidarity that many see as undergirding the modern welfare state. The general outline of the process is, allegedly, as follows. Citizenship, to quote a famous passage from T.H. Marshall, 'requires… a direct sense of community membership based on loyalty to a civilisation that is a common possession'.[195] Where the citizenry is diverse, this 'direct sense of community membership' does not arise, or is only weakly held. Lacking this robust sense of communal identity in turn reduces 'public enthusiasm for social programs, especially

[194] Philippe Van Parijs (ed), *Cultural Diversity versus Economic Solidarity* (De Boeck & Larcier 2004). Van Parijs's focus here is essentially the same as ours, as he is explicitly interested in the relationship between diversity and economic solidarity understood as *transfers* from lucky/rich to unlucky/poor and *not* as 'fellow feeling' (375).

[195] Thomas Marshall, *Citizenship and Social Class* (Pluto Press 1950) 8. (Other similar claims about the tendency of diversity to undermine a sense of 'public identity' or fellow-feeling can be found, eg, at John S Mill, 'Representative Government' in HB Acton (ed), *John S Mill Utilitarianism, Liberty, Representative Government* (JM Dent 1972) 392; David Miller, *On Nationality* (OUP 1995) 90–98; Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship* (OUP 2001).

those that are seen as transferring resources to minorities.'[196] As the argument goes, this is so because, although we will accept a regime under which some of our income is redistributed to the worse off if we identify and empathise with these individuals, we are much less likely to accept such redistributive schemes if we regard those who directly benefit from them as 'others'. In this sense, according to Philippe Van Parijs, 'diversity makes it more difficult for the better off to find redistribution to the worse off legitimate.'[197] There appears to be a deep tension, then, between embracing diversity and maintaining a strong welfare system. Such, it is said, is 'the progressive's dilemma'.[198] In this context, to be clear, the proposition that we are evaluating is that the absence of linguistic convergence this tension will exacerbate the dynamic noted above in which citizens find it increasingly difficult to identify with one another, and thus come to see robust redistribution as lacking legitimacy.

As a preliminary, it is worth mentioning that while there is now a very extensive literature on the relationship between diversity and solidarity, different scholars define diversity in different ways. Our focus, as mentioned, is on linguistic diversity, as linguistic convergence will of course really only be effective at controlling language diversity, as opposed to racial, religious, cultural, or ethnic diversity.[199] Other writers on the subject, however, focus on cultural diversity more broadly, while still others are

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[196] Keith Banting, 'Immigration, Multiculturalism and the Welfare State: Master-Narratives and Counter-Narratives About Diversity and Redistribution' (International Political Science Association Conference, Fukuoka, July 2006) 4.

[197] Van Parijs, *Cultural Diversity* (n 194) 377. Van Parijs also alleges that there is a second mechanism by which diversity threatens welfarism: 'diversity makes it more difficult for the worse off to articulate their demands successfully' (ibid)—something that seems especially likely in the case of *linguistic* diversity as opposed to ethnic or general cultural diversity.

[198] See eg David Goodhart, 'Discomfort of Strangers' *The Guardian* (London, 24 February 2004) <www.theguardian.com/politics/2004/feb/24/race.eu> accessed 15 April 2016.

[199] It is possible, however, to regard linguistic convergence as capable of reducing both linguistic and ethnic diversity, in light of the fact that language is often used as a marker of or a 'proxy' for ethnicity. Christopher Anderson and Aida Paskeviciute, for example, note that 'researchers have commonly used language as a proxy for ethnic variation in a country' ('How Ethnic and Linguistic Heterogeneity Influence the Prospects for Civil Society: A Comparative Study of Citizenship Behavior' (2006) 68 The Journal of Politics 783, 787), and that 'much of the literature has treated ethnic and linguistic heterogeneity as two sides of the same coin' (796).

predominantly concerned with race or religion. Even among researchers who explicitly take aim at ‘ethno-linguistic diversity’, there is considerable disagreement about what constitutes such diversity and how it should be measured.[200] For instance, the standard metric that was used in the 1980s and ‘90s, ‘ethno-linguistic fractionalization’ or ELF, was ‘based on data compiled by Soviet ethnographers’ in the early 1960s, and ‘relied mostly on language to delimit ethnic groups.’[201] The ELF index ‘measures the probability that two randomly selected citizens belong to different ethnolinguistic groups.’[202] The ELF index has been criticised from many quarters more recently, although it has not been altogether abandoned. A new and influential index of ethnolinguistic fractionalisation, for instance, was created by Alesina et al in 2003. This index, too, met with scholarly criticism, however.[203] Alternative indices have also been proposed by a slew of different scholars.[204] All of this is to say that drawing conclusions about the relationship between linguistic diversity and welfarism is complicated by methodological debates over what

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200 David Laitin and Daniel Posner, for instance, stress that ethnic identity should not be reduced to focusing on ethno-linguistic affiliation, but should also look to features like skin colour (see David Laitin and Daniel Posner, ‘The Implications of Constructivism for Constructing Ethnic Fractionalization’ (Newsletter of the Organized Section in Comparative Politics of the American Political Science Association, 2001). See also Holger Stichnoth and Karine Van der Straeten, ‘Ethnic Diversity and Attitudes Towards Redistribution: A Review of the Literature’ (2009 Centre for European Economic Research Discussion Paper No 09-036) 5 <ftp://ftp.zew.de/pub/zew-docs/dp/dp09036.pdf> accessed 15 April 2016.

201 Stichnoth (n 200) 5. For criticisms of ELF in the context of cross-country growth studies, see Kanchan Chandra, ‘Cumulative Findings in the Study of Ethnic Politics’ (Newsletter of the Organized Section in Comparative Politics of the American Political Science Association, 2001); David Laitin and Daniel Posner (n 200), ‘The Implications of Constructivism for Constructing Ethnic Fractionalization’ (Newsletter of the Organized Section in Comparative Politics of the American Political Science Association, 2001); Daniel Posner, ‘Measuring Ethnic Fractionalization in Africa’ (2004) 48 American Journal of Political Science 849. It is also worth noting that ‘for a number of countries levels of ethnic heterogeneity and linguistic heterogeneity vary significantly. Thus, Mexico, for example, scores low on linguistic heterogeneity…, but quite high… on ethnic heterogeneity. Conversely, the Philippines and Tanzania score extremely high on linguistic heterogeneity, but very low on ethnic heterogeneity’ (Anderson and Paskeviciute (n 199) 788).

202 Andrew Sharpe, France St-Hilaire and Keith Banting (eds), *The Review of Economic Performance and Social Progress 2002: Towards a Social Understanding of Productivity* (The Institute for Research on Public Policy 2002) 211.

203 See eg James D Fearon, ‘Ethnic and Cultural Diversity by Country’ (2003) 8 Journal of Economic Growth 195; Posner, ‘Measuring Ethnic Fractionalization’ (n 201).

204 Walter Bossert, Conchita D’ambrosio and Eliana La Ferrara, ‘A Generalized Index of Fractionalization’ (2011) 78 Economica 723; Lars-Erik Cederman and Luc Girardin, ‘Beyond Fractionalization: Mapping Ethnicity onto Nationalist Insurgencies’ (2007) 101American Political Science Review 173; James D Fearon, Kimuli Kasara and David Laitin, ‘Ethnic Minority Rule and Civil War Onset’ (2007) 101 American Political Science Review 187.

counts as ethnolinguistic diversity, and by the fact that there is no settled view on whether language can or should be analyzed in isolation from ethnicity or culture.

So what are the actual research findings of those who have studied the relationship between linguistic diversity on the one hand and social and economic solidarity on the other? Different scholars have detected different patterns. For example, a 2000 study by Louis Kuijs found that ethnic diversity (measured by ethno-linguistic fractionalisation) is correlated with low spending on education and healthcare.[205] Mueller and Murrell (1986) found that overall public spending across OECD countries was negatively related to ethnic diversity.[206] A more recent study focusing on the OECD finds that '[o]n average, preferences for redistribution indicate that within the OECD, there is no desire to change redistributive policies', and that in fact across a sample of *non*-OECD countries (which had lower levels of immigration and diversity than the OECD nations), 'on average there is a desire to redistribute less.'[207] Robert Putnam's famous recent scholarship into the decline of social capital in the United States suggests that the increasing diversity of the American nation has led to a worrying loss of social trust.[208] Focusing on the American case, Alesina and Glaeser (2004) point to ethnic diversity as a major reason why the U.S. has not constructed a strong welfare state on the European model.[209] Delhey and Newton, focusing on social trust as opposed to social spending, find that ethnically homogeneous countries enjoy high levels of social trust.[210] They give

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[205] Louis Kuijs, 'The Impact of Ethnic Heterogeneity on the Quantity and Quality of Public Spending' (IMF Working Paper No 00/49 2000).
[206] Dennis C Mueller and Peter Murrell, 'Interest Groups and the Size of Government' (1986) 48 Public Choice 125.
[207] Frank Neher, 'Preferences for Redistribution around the World' (School of Business & Economics Discussion Paper: Economics No 2012/2).
[208] See eg Robert D Putnam, *Bowling Alone: The Collapse and Revival of American Community* (Simon & Schuster 2000).
[209] Alberto Alesina and Edward Glaeser, *Fighting Poverty in the US and Europe: A World of Difference* (OUP 2004).
[210] Jan Delhey and Kenneth Newton, 'Predicting Cross-National Levels of Social Trust: Global Pattern or Nordic Exceptionalism?' (2005) 21 European Sociological Review 311.

linguistic fractionalisation's bivariate correlation with social trust as -0.134, which they label 'not significant.'[211] Alesina and Glaeser's 2004 work also detects a negative correlation between linguistic fractionalisation and social spending, but finds that once the countries' gross domestic product is controlled for, the correlation decreases substantially, although it remains significant.[212] In contrast, Desmet et al. believe the negative relationship between linguistic diversity and social transfers is significant, arguing that once the notion of "linguistic distances"—ie, the linguistic similarity of the particular tongues spoken in a country—is accounted for, 'linguistic diversity has both a statistically and economically significant effect on redistribution.'[213] Specifically, they find that '[w]ith an average level of redistribution of 9.5% of GDP' in their data set, an increase in language distance of one standard deviation 'lowers redistribution by about 10%.'[214]

One particularly interesting study in this field was conducted by Soroka et al in 2004. Their study of Canadian public attitudes towards multiculturalism and welfare spending tested 'the two-step proposition that ethnic diversity erodes feelings of trust in one's neighbours, and that this weakens support for social redistribution.'[215] Their finding, however, was that while ethnic diversity did indeed appear to lower social trust, this did not lead to lower levels of support for redistribution. As one of the architects of that study, Keith Banting, explains:

> The sobering news is that there is a tension between the ethnic diversity of one's neighbourhood and levels of trust in neighbours, even when one controls for all the other factors that might influence trust.… But there is also good news. Many analysts simply stop at this point, and assume that diminished trust necessarily

[211] ibid 316.
[212] Alesina and Glaeser (n 209).
[213] Klaus Desmet, Ignacio Ortuno-Ortin and Shlomo Weber, 'Linguistic Diversity and Redistribution' (2009) 7 Journal of the European Economic Association 1291, 1291.
[214] ibid 1305.
[215] This summary of the group's project is provided by Banting, in a subsequent paper entitled 'Is a Multicultural Welfare State a Contradiction in Terms?: Master Narratives, Counter Narratives and the Politics of Diversity' (International Sociological Association Conference on Retheorizing Welfare States: Restructuring States, Restructuring Analysis, Chicago, September 2005).

> weakens support for redistribution. This turns out not to be true, at least in Canada. We measured support for the welfare state with a battery of questions about specific programs, and found virtually no relationship between ethnicity and ethnic makeup of one's neighbourhood on the one hand and support for social programs on the other. […] There is no evidence of majorities turning away from redistribution because some of the beneficiaries are minorities and therefore "strangers." In the Canadian case at least, this evidence suggests that government can maintain expansive immigration programs and promote multiculturalism without necessarily eroding support for social welfare programs.[216]

This fascinating finding was replicated by Wim van Oorschot in a study that focused on comparing social solidarity levels not across regions but across countries. Specifically, van Oorschot found that while 'in all European countries the public is least solidaristic towards migrants, in comparison with elderly people, sick and disabled people and unemployed people', '[c]ontrary to expectation, there is little relation between welfare state characteristics and people's solidarity.'[217]

This finding might well seem puzzling. It is widely believed that an essential ingredient in crafting a generous welfare program is social solidarity among citizens. How then can it be that support for welfarism is unaffected by declining solidarity? The very plausible answer that has been given to this question is that there is an important difference between what it takes, by way of social trust, to launch a welfare state, and what it takes to maintain one. Swank and Betz (2003), for instance, argue that 'it is the comprehensive welfare state itself that forms a barrier against diversity-based retrenchment.'[218] It does this by creating entrenched expectations among citizens about the size and shape of the welfare benefits to which they are entitled. Banting puts the point especially well:

> the existence of the welfare state itself, and the social expectations embedded in it, condition the response of western democracies to contemporary diversities. Modern electorates do not easily surrender social benefits in the face of cultural

[216] ibid 7.
[217] Wim van Oorschott, 'Solidarity towards Immigrants in European Welfare States' (2007) 17 International Journal of Social Welfare 3, 3.
[218] ibid 5, describing the findings of Duane Swank and Hans-Georg Betz, 'Globalization, the Welfare State and Right-Wing Populism in Western Europe' (2003) 14 Socio-Economic Review 215.

> change. A previously homogeneous society that has become more diverse, or a country in which internal nationalisms have become more intense, might not build as comprehensive a welfare state if it were starting from a clean slate today. But they are not starting from a clean slate. The social commitments established in an earlier era shape contemporary responses to new forms of cultural diversity.[219]

In the result, Banting concludes that 'countries that established a comprehensive welfare state in the postwar era appear to have incorporated new forms of cultural diversity without turning majorities against the redistributive functions of the state, albeit perhaps at the price of more restrictive immigration policies.'[220]

Philippe Van Parijs, however, insists that there is indeed a worrying tension between ethno-cultural diversity and support for redistribution, and points out that Banting's and Kymlicka's findings that robust multicultural policies and increasing diversity have not on the whole undermined welfarism is consistent with the thesis that this will indeed be their long-term result.[221] Writing in 2003, Van Parijs acknowledged that 'the longer the prophecies of doom fail to show up in figures of the sort collected by Banting and Kymlicka, the less plausible [those prophecies] become.'[222] However, he also insisted that not enough time had yet passed for anyone to safely conclude that the danger to economic solidarity posed by diversity had been illusory. To the contrary, Van Parijs sounded the alarm, claiming that 'rather than believing that linguistically more diverse Europe will retain a significantly higher level of economic solidarity than the United States', the 'frightening truth seems to be that the opposite is the case'.[223]

There is, of course, no way to completely disprove the claim that growing ethnolinguistic diversity will *eventually* cause the levels of social spending across

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[219] Keith Banting, 'The Multicultural Welfare State: Social Policy and the Politics of Ethno-Linguistic Diversity' (Conference on Labour Market Institutions and Labour Market Outcomes, Burlington, September 1998) 33. Van Orschott makes a similar point when he notes, in somewhat understated fashion, that 'it can be questioned whether modern electorates would be willing to give up social rights in view of increased immigration' ((n 217) 5).
[220] ibid 33–34.
[221] Van Parijs, *Cultural Diversity* (n 194) 382, 390–92.
[222] ibid 382.
[223] ibid 390.

developed Western nations to drop significantly. From the best evidence available to us at this point in time, however, it appears that this has not yet occurred.[224] As Van Parijs has conceded, this fact alone should make us view the claim that diversity and redistribution are in serious tension with increasing skepticism and decreasing concern. At the same time, however, our hypothesis that rising diversity has reduced social trust without significantly driving down support for redistribution is not an entirely comforting one for those committed to maintaining generous redistribution programs. There is no guarantee, for instance, that support for redistribution is totally unaffected by social trust. It is very plausible to suppose that redistribution cannot be maintained at present levels if social trust continues to fall *indefinitely*. Once the lack of trust among citizens reaches a certain level, perhaps we can expect support for social spending to decline dramatically. Our not having reached that point yet is no guarantee that we will never reach it. Furthermore, the fact that we have not yet witnessed significantly lower levels of social spending in the face of increasing diversity does not imply that there is no tension between redistribution and ethnolinguistic diversity. For example, it may be that the generous social spending programs in place across democratic welfare states today owe their existence to the fact that these states have so far succeeded in *managing* that tension.[225]

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[224] Certainly, Gary Freeman's claim way back in 1986 that mass immigration 'has been little short of a disaster....It has led to the Americanization of European welfare politics' ('Migration and the Political Economy of the Welfare State' (1986) 485 The Annals of the American Academy of Political and Social Science 51, 61), seems too strong and too sweeping in light of the fact that actual levels of redistribution among most European nations have to this day remained much higher than that of the US.

[225] Van Parijs, for example, who as we noted does see a tension, observes that 'there are various ways in which the tension can be alleviated' (*Cultural Diversity* (n 194) 392). One such method, and, according to researchers such as Banting, Lijphart, and Van Oorschot, possibly the most important and effective measure is the use of consociationalism. Banting, for example, finds that overall, 'countries with substantial ethno-linguistic diversity unmitigated by consociational practices tended not to build as comprehensive a welfare state as did their more homogeneous neighbours' (Banting, 'The Multicultural Welfare State' (n 219) 32). Van Oorschot points to the ability of consociationalism to help maintain already established welfare programs: 'the consociational democracies of Europe, with their tradition of consensual policy making, have been able to accommodate ethno-linguistic diversity and welfare redistribution, while in other countries, such as the USA, the combination of such diversity and political fragmentation has constrained redistributive efforts' (Van Oorschott (n 217) 6).

The Lessons for Language Policy

What, then, can we safely conclude about the relationship between ethnolinguistic diversity and support for redistribution in wealthy democratic states? We have found reason to believe that in the context of wealthy democratic countries, a tension exists between ethnolinguistic diversity and social solidarity. Rising ethnolinguistic heterogeneity appears to lower social trust among citizens. However, the evidence that such lower social trust is leading to significant reductions in welfare programs is mixed at best, and the suggestion that it has not yet done so but will do so in the future is highly speculative. As Stichnoth and Van der Straeten summarise things in their comprehensive review of the literature on ethnic diversity and attitudes towards redistribution:

> [A]lthough numerous studies document a negative and statistically significant relationship, most of these studies do not point to a quantitatively important role for ethnic diversity in shaping natives' preferences for redistribution. … Moreover, it seems that the sizeable negative association between ethnic diversity and support for redistribution that is sometimes found in U.S. studies does not generalize to Canada or Europe.[226]

Given that rising ethnolinguistic diversity does not appear to have a straightforwardly corrosive impact on welfarism, should we still regard linguistic convergence as furthering the goal of maintaining a generous welfare system amidst a linguistically and culturally heterogeneous population? The answer is yes. As noted, there are other ways of going about managing the apparent tension between ethnic diversity and redistribution, including the implementation of consociational arrangements, integrationist multicultural policies, or immigration reforms. Linguistic convergence policies are not a panacea here. However, convergence should be seen as one part of a proper response to this challenge, and an essential one.

[226] Stichnoth (n 200) ii.

It is important to note, for instance, that when we inquire into the relationship between linguistic diversity and redistribution in a particular country, linguistic convergence will always already be a part of the story. In other words, the background against which diversity operates on support for redistribution is one in which policies aiming at linguistic convergence are at work.[227] As such, while we have not found ethnolinguistic diversity to be so corrosive of redistribution that we must implement stringent new measures to manage such diversity, neither have we found any reason to abandon those measures that are already serving this function.[228] To use an analogy, while the train is not—so far as we can tell—in immediate danger of jumping the tracks, this does not mean that we ought to release the brakes.

We can understand the braking effect of linguistic convergence as follows. Where the likelihood of two citizens selected at random belonging to different ethnolinguistic groups is high (which, again, is precisely what is measured by the ELF index), convergence policies help to ensure that the likelihood that two citizens selected at random will share a common language is also high. That is, convergence ensures that while the number of languages spoken in private, and the number of different linguistic groups citizens belong to, may be very high, everyone nonetheless converges on one or a few capacious intermediate and official realm languages. And while recent evidence suggests that social trust falls in the face of high ethnolinguistic fractionalisation, there is

[227] See Aviad Rubin, 'Language Policy and Inter-group Deliberation in Israel' in Juan Ugarriza and Didier Caluwaerts (eds), *Democratic Deliberation in Deeply Divided Societies* (Palgrave Macmillan 2014) 158: 'Most states maintain a unilingual public sphere and are very reluctant to acknowledge more than one official language. This trend holds true across the globe. In the Americas, only 7 out of 42 countries have more than one official language; in Africa, only 22 out of 56; in Asia, only 14 out of 50; in the Pacific region, only 8 out of 21; and in Europe, only 16 out of 49 countries….More strikingly, only 8 of the 27 democratic member states of the European Union acknowledge more than one official language, even though most EU member states contain more than one substantial linguistic group.'

[228] Of course, if we are of the view that present distributive levels are generally miserly to the point of injustice, then we would have an additional reason to push for convergence.

good reason to fear that in the absence of linguistic convergence social trust will fall much further, thus imperilling the long-term viability of the welfare state.

For instance, it appears that in countries with as dissimilar social models as America and Sweden, people have come to distrust their fellow citizens more as the likelihood that they and their neighbour will belong to the same ethnolinguistic group has decreased. We can expect that trust to fall still further—with decidedly negative consequences for the ongoing health of the welfare state—if, in addition, these citizens cannot even communicate with their neighbours in a common language. As Philippe Van Parijs has argued, 'the key strategy for sustaining generous economic solidarity despite growing local cultural diversity is based on sufficiently intensive interpersonal contact through school, work and other channels across the boundaries that tend to form around culturally distinct communities.'[229] Linguistic convergence facilitates this process, since the 'intensive interpersonal contact' that helps to break down these barriers is much more likely to occur where we can communicate directly with one another in a shared language.

What sort of Convergence?

It seems clear, then, that a concern to maintain the level of social solidarity required for a generous welfare state recommends convergence. But what sort of convergence should we opt for? Specifically, should we press for C1 convergence, or for convergence in the *private* sphere, in addition to the intermediate and official spheres? By way of an answer, it would be best, from the point of view of social solidarity, to have less linguistic diversity rather than more. We should, however, to paraphrase Rousseau, take men as they are and linguistic policies as they might be. And as we know, one of the politically

[229] Van Parijs, *Cultural Diversity* (n 194) 385.

salient features about the 'men' of a given country may be the fact that they comprise multiple linguistic nations.[230]

Where this is the case, linguistically-defined national minorities cannot be wished away on the basis that their existence is non-ideal. The fact that social solidarity is best achieved in conditions of ethnolinguistic homogeneity, therefore, does not by imply that wherever a state exhibits high linguistic diversity, proper concern for social welfarism demands that we transform the society into a monolingual bloc. Indeed, where there exist linguistically-defined national minorities, pursuing a C1 convergence policy stands a very good chance of undermining rather than strengthening social solidarity. This is because members of the minority nation who would be forced to learn the dominant language and cease using their own language in the intermediate and official realms are likely to view this as unfair and disrespectful. In the result, their sense of solidarity with the other members of the state that is pursuing this C1 agenda is likely to decrease rather than increase.

Such forced linguistic assimilation in the name of increasing social solidarity is thus likely to backfire, and may even lead to ongoing conflict along linguistic lines. As Stephen May has argued, 'the assumption that the enforcement of public monolingualism ensures the unity of the state is not only wrong, but… actually a principal reason for fostering disunity. Historically, the principal cause of most language-based conflicts has in fact been the denial of legitimate minority language rights rather than their recognition.'[231] Therefore, even if we could not hope for high linguistic diversity

[230] Roughly, what Kymlicka calls 'societal cultures': see *Multicultural Citizenship* (n 80) 76–79.
[231] Stephen May, *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language* (Longman 2001) 242. This sentiment is commonly expressed by others as well. See eg Patten, 'Political Theory' (n 22) 704–05: 'In some cases, far from leading to a common identity, a policy of withholding recognition from certain language groups would only lead to a sense of betrayal and alienation from the whole political community. Paradoxically, the best way to promote a common identity is sometimes to allow difference to flourish.'

combined with high social solidarity, we would be wise not to pursue C1 convergence, since an environment of high diversity and relatively low social trust is actually preferable—and by a large margin—to the environment of high linguistic diversity and outright conflict among linguistic groups that the pursuit of C1 is liable to bring about.

Furthermore, pursuing C1 in a context in which there exist multiple linguistically-defined national groups is, in addition to being likely to backfire in its pursuit of increasing economic solidarity, also *unnecessary* in order to achieve that end. For example, there are a number of countries in the world today that boast robust welfare systems, despite also containing sizeable linguistic minority groups, and maintaining a commitment to official multilingualism. Switzerland, Belgium, and Canada would fit that description. To return briefly to our earlier analogy, the brakes that such countries are applying against the centrifugal force of increasing ethnolinguistic fractionalisation—ie, C4, C2, and C2 linguistic convergence policies, respectively—appear to be doing the job adequately. There is no need, then, to adopt a new, more severe measure such as C1—which would be akin to slamming on the emergency brake.

These same conclusions about pursuing C1 convergence in the name of redistribution—ie, that the measure is neither necessary nor likely to succeed—apply equally to the notion that we should pursue *private* realm convergence in the name of economic solidarity. For instance, pursuing such private realm convergence in order to foster social solidarity is also likely to backfire, given what we know about how attached people are to their mother tongues, and given that state regulation of the manner in which individuals speak in the privacy of their own homes is highly intrusive. Further, such private realm convergence is not *necessary* in order to maintain generous welfare programs. That is, we found that the mere fact of growing linguistic diversity in the private sphere *has* led to reduced social trust among citizens, but we also found that even in states where such linguistic diversity has risen significantly the resulting decline in social trust has not led to significant reductions in social transfers.

Ultimately, then, the evidence suggests that we should indeed pursue linguistic convergence as a means of promoting social and economic solidarity. Prizing social and economic solidarity, however, does not require us to actively pursue C1 convergence, nor ought we to pursue convergence in the private realm.

Democratic Participation

The fifth and final argument in favour of linguistic convergence that we will examine has it that convergence is necessary in order to promote the ability of citizens to participate effectively in the democratic process. Specifically, the argument here is that linguistic diversity undermines such democratic participation, and that convergence, by keeping linguistic diversity in check, ensures that citizens retain access to important debates about public policy and the exercise of state power. For our purposes, the goal of democratic participation can be seen as involving two concerns in one: a concern over ensuring that citizens can participate fully and effectively in public debate, and a concern for the overall quality and vigour of such debates themselves.

The possibility that linguistic diversity might undermine citizens' ability to participate in rich and inclusive public debates over matters of public concern is particularly worrying if we understand democracy as an inherently *deliberative* process. In recent decades, for instance, many political theorists have 'shifted the emphasis in democratic theory from electoral procedures to deliberative processes.'[232] As Will

[232] Rubin (n 227) 156. The important contributions of Jürgen Habermas are worth noting here (see eg Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press 1998)), as is the fact that Habermas's ideas have 'led some theorists, like Donald Ipperciel, to conclude that 'there is no democracy without communication in a public sphere,' and that 'the solution seems quite clear: the bounds of this democratic state should be set wherever communication actually takes place, or—following a more stringent normative yardstick—can take place. And since there can be actual communication only in a common language, language becomes determinant in the setting of national

Kymlicka puts it, 'democracy is not just a formula for aggregating votes: it is also a system of collective deliberation and legitimation that allows all citizens to use their reason in political deliberation.'[233] The fear is that linguistic differences among citizens may act as obstacles that prevent those who do not speak the dominant language of political discussion from joining in the deliberative process—or at least prevent them from participating as often, and with the same assurance that their views are being heard and considered by their debate partners, as those who speak the dominant language. As Jan Fidrmuc puts it, 'Besides serving as a medium of communicative exchange and store of informational value, language also plays a third role: it is a tool of discrimination. Language not only facilitates communication between those who can speak it, at the same time it excludes from that communication all those who do not speak it sufficiently well.'[234] Further, the exclusion of those from minority linguistic backgrounds—who would likely have brought different perspectives to bear on the issues under discussion—is, in turn, likely to reduce the quality of the debate itself, since the debate will exhibit a narrower range of viewpoints and be less representative of the views of the citizenry as a whole.

In addition, according to Kymlicka, even if one understands and can speak the language in which political debate unfolds, one will have trouble being a full participant in that debate unless one has truly mastered not only the language, but also the specific way in which it is and has historically been employed in public discourse:

> Simply put, democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue. […] Moreover, political communication has a large ritualistic component, and these ritualized forms of communication are typically language-specific. Even if one

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borders, even proving, since it is inescapable, to be the most important criterion' ('Constitutional Democracy and Civic Nationalism' (2007) 13 Nations and Nationalism 395, 400).

[233] Will Kymlicka, 'New Forms of Citizenship' in Thomas J Courchene and Donald J Savoie (eds), *The Art of the State: Governance in a World Without Frontiers* (The Institute for Research on Public Policy 2003) 276.

[234] Fidrmuc, 'The Economics' (n 144) 8.

> understands a foreign language in the technical sense, without knowledge of these ritualistic elements one may be unable to understand political debates. For these and other reasons, we can expect—as a general rule—that the more political debate is conducted in the vernacular, the more participatory it will be.[235]

Kymlicka goes on to assert that while ‘There are of course ‘public spaces’ and forms of civil society that cut across language lines’, ‘these tend to be issue-specific and/or elite-dominated’, and he cites as evidence ‘Political debates at the federal level in multination states… or at the EU’, which he claims ‘are almost invariably elite-dominated’.[236]

Other commentators, however, see the relationship between public monolingualism and democratic participation differently. Some insist that multilingualism among the population can *enrich* the quality of democratic debate, and stress that allowing individuals to contribute to public debates in multiple languages helps to make public deliberation more inclusive. According to Milena Pandy, for instance, ‘a monolingual public sphere in a multilingual democracy can be seen not only as an exclusionary practice that should be ended because of its oppressive nature; it is also inherently undemocratic, in that it prevents linguistic minorities from participating in deliberative politics to the same extent as they otherwise would.’[237] Further, Cristina Rodriguez, who explicitly ‘conceptualize[s] participation as access to social institutions, not as conversation over issues of common concern’,[238] argues that ‘embracing’[239]

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[235] Kymlicka, *Politics in the Vernacular* (n 195) 213–14. For examples of other scholars who assert that democratic participation is undermined where deliberations among citizens take place in multiple languages, see Brian Barry, *Democracy and Power: Essays in Political Theory I* (Clarendon Press 1991) 178: ‘for democratic politics to work, the citizens must be able to communicate with one another *and have access to the same forums of political debate*’; David Miller, ‘The Left, the Nation-State and European Citizenship’ (1998) 45 Dissent 47; Rubin (n 227) 157: ‘People who do not speak an official language remain in an inferior position and can [not] fully practice their democratic rights’; Nicole Doerr, ‘Between Habermas and Rancière: The Democracy of Political Translation’ (*Transversal*) <http://eipcp.net/transversal/0613/doerr/en> accessed 15 April 2016: ‘part of European democracy research assumes language and culture barriers to be structural stumbling blocks for democratic public spheres’; Anderson and Paskeviciute (n 199) 783: ‘linguistic heterogeneity reduces people’s interest in politics’.
[236] Kymlicka, *Politics in the Vernacular* (n 195).
[237] ‘Pluralism in Everything but Communication?: The Place of Linguistic Diversity within Deliberative Democracy’ (Annual Meeting of the Canadian Political Science Association, Edmonton, June 2012) 7 (cited with permission).
[238] ‘Language and Participation’ (2006) 94 California Law Review 687, 695.
[239] ibid 696.

‘bilingualism in individuals and multilingualism in society promote[s] democratic values in those institutions.’[240] Rodriguez adds that such ‘bilingualism in individuals and multilingualism in society is more likely to make linguistic pluralism socially functional and to sustain the vitality of public and social institutions than demanding public monolingualism.’[241]

The Implications for Language Policy

What conclusions can we draw from all of this? I think it is safe to say that democratic participation is best advanced where debate over public issues takes place in one and the same language throughout the state. We have no reason, from the perspective of deliberative democracy, to positively wish for high levels of linguistic diversity (whether this is due to high immigration levels, or the presence of linguistic minority nations, or both). In saying this I explicitly reject the thesis that the presence of multiple languages in a given public debate enriches that debate. Instead, the ideal that best promotes democratic participation is one in which public debate is informed by a wide variety of different opinions and perspectives, but also one in which every citizen offers up their opinions and perspectives *in the same language*, so as to minimise the possibility that anyone’s contribution will be ignored or misconstrued, and so as to avoid the distrust that can arise when one is uncertain about what a debate partner has said. I also reject the possibility that whatever potential problems, by way of democratic participation, that a multilingual public debate may throw up can be nullified through the use of translation services. As we have seen, for instance, such translation will be costly and inefficient, not to mention often inaccurate. Worse, relying on translation and interpretation services would tend to limit many individuals’ participation to formal settings where such services

[240] ibid.
[241] ibid 687.

are available. The best we could say for translation here, then, is that while it 'could work in some contexts, when compared to a shared language, it is limited in its ability to facilitate deliberation.'[242]

There is indeed, then, a sense in which linguistic diversity is in tension with democratic participation. Democratic states, that is, will struggle to achieve inclusive, participatory public debates if they contain multiple linguistic nations. In contrast, merely exhibiting linguistic heterogeneity in the private realm is not, in itself, a significant obstacle to maintaining a truly participatory public sphere. Vigorous, inclusive public debates surely take place in countries with high levels of such linguistic diversity like the USA, France, or Australia that also possess a monolingual public sphere. The real concern, from the point of view of deliberative democracy, is rather with democratic states containing multiple linguistic groups whose members insist on, and expect to continue, participating in public debates in their mother tongue. In the context of individual states, then, it is the presence of linguistically-defined national groups that poses the real problem for deliberative democracy, as opposed to the presence of large numbers of immigrants with a diverse array of linguistic backgrounds.[243]

We have, then, identified the ideal when it comes to fostering an inclusive, rich public debate: all citizens contribute in one language, which they know well enough to be able to understand the ritualistic ways in which it is used in public deliberation. But of course the ideal and the real are two different things. What sort of language policies should we pursue in order to promote democratic participation in the real-world, in which many states contain linguistically-defined national minorities, or large numbers of

[242] Pandy (n 237) 10.

[243] Will Kymlicka's distinction between national minority groups and immigrant communities, and his account of the different expectations the two groups have as regards the accommodations that will be made for them by the larger state (see Kymlicka, *Multicultural Citizenship* (n 80)), helps us to understand why competing linguistic nationalisms pose a much greater threat to deliberative democracy than does mere private realm linguistic diversity (of the sort caused by high levels of immigration).

foreign-language speaking immigrants, or both? The answer depends on whether we have in mind a state comprising multiple linguistic nations, or a state where there is only one language of public life. Let's address first the easier case in which there are no minority linguistic groups on the order of Kymlicka's 'national minorities', and in which the state's public debates take place virtually exclusively in one language. Here the desirability of convergence policies is straightforward: convergence helps to ensure that regardless of whatever linguistic diversity exists in the private realm, all citizens will be able to use the dominant language, thus ensuring that they are not excluded from the deliberative life of their community due to a lack of fluency in that tongue. By preventing this sort of linguistic disenfranchisement, convergence furthers the goal of democratic participation. Specifically, the convergence policies that are recommended by a concern for democratic participation in states without minority linguistic nations are those that aim for C1 in the official and intermediate realms.

As a complement to such convergence policies aimed at ensuring that all citizens can participate in public debate in the dominant language, states should at the same time provide linguistic accommodations for those citizens not yet fluent in that language. It is right and proper, for instance, that as we encourage immigrants to learn the language that will provide them with the ability to participate as active democratic citizens, we also ensure that those who have not yet acquired the language skills necessary to participate in that language are given the chance to participate in whatever language they can. To give one example, we do well, for instance, to allow recent immigrants to make submissions to local government bodies in their mother tongue where it is straightforward and relatively inexpensive to find qualified individuals who are able to translate these submissions into the working language of the officials. It is in this sense that Rodriguez is correct in claiming that a multilingual public sphere furthers rather than undermines democratic participation. But such ‘multilingual policies’ as she advocates are only desirable from the point of view of democratic participation to the extent that there exist members of the citizenry that not only speak a language other than the dominant language of public debate, but are unable to speak the latter language with the required fluency. The need for such multilingual accommodations, in other words, certainly does not imply that convergence is to be eschewed as restricting the ability of minority language speakers to participate in society. These sorts of accommodations and convergence policies are complementary, not oppositional.[244]

On the other hand, if the state we have in mind contains multiple linguistic nations, pursuing C1 convergence in the name of democratic participation would be likely to backfire,[245] and to lead to animosity between the linguistic communities.[246] Imagine, for instance, that the Belgian government, say, sought to have all public debate over political issues in Belgium occur in French. As a result of such a C1 policy, democratic deliberation across the country would likely suffer as opposed to improve, since Flemings could be expected to respond, in the short-term at least, by participating *less*—if they would even be capable of participating (ie, participating in French) at all—in what they are apt to regard as an ‘inherently exclusionary and unjust’ monolingual public sphere.[247]

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[244] Rodriguez’s avowed focus on citizens’ *access to ‘mid-level institutions’* (Rodriguez (n 238) 721), I think, leads her to fail to pay sufficient attention to citizens’ involvement in the broader public debates that take place across society, and therefore to fail to note the necessity of convergence when it comes to facilitating that aspect of citizens ‘participation’ in public life. We can thus see Rodriguez’s claims about the need for multilingual policies as preoccupied with only one side of the coin. (For a discussion of the sorts of linguistic ‘accommodations’ that might be made in the context of social service delivery or the courts and legislatures, see Kymlicka and Patten, ‘Introduction’ (n 3) 18–21).

[245] See Kymlicka and Patten, ‘Introduction’ (n 3) 40–41: ‘if the policy is overly forceful, it can create further ill will on behalf of minorities towards the central state, divide the population, and make future dialogue more difficult’.

[246] In particular, of course, it is likely to lead to resentment among Flemish-speakers towards French-speakers.

[247] This language is borrowed from Kymlicka and Patten, who note that ‘the very process of selecting a single language [of public debate] can be seen as inherently exclusionary and unjust’ (‘Introduction’ (n 3) 16).

Further, it is important to note that just as adequate levels of economic solidarity can apparently be maintained in conditions of C2 convergence, the same is true of democratic participation. C1 convergence is not necessary to ensure an adequate level of democratic participation. On the whole, for instance, we should regard the sort of national debates obtaining in officially multilingual countries like Canada, Spain, Switzerland, and Belgium as relatively healthy and participatory ones, even if they all have room for improvement on this score. This reality is made possible by the fact that the media and translation services can be employed to foster deliberation between different linguistic groups.[248] This sentiment is confidently confirmed by Alan Patten, who insists that provided 'mediators and go-betweens are able, through personal bilingualism, or reliance on translators and interpreters, to bridge any linguistic divides that they encounter, a common public language is not necessary for deliberative democracy.'[249] The participatory nature of public debate in, say, Ontario no doubt exceeds that of Canada's statewide public debate, but that is in no way to say that democratic deliberation is impossible in the latter context.[250]

So C1 convergence is inappropriate, from the point of view of promoting democratic participation, where multiple linguistic nations reside in the same state. Instead, the state should seek only to ensure that all citizens achieve fluency in at least one of the languages in which a healthy public debate already occurs.[251] In other words,

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[248] Arash Abizadeh, 'Does Liberal Democracy Presuppose a Cultural Nation?: Four Arguments' (2002) 96 The American Political Science Review 495, 502–04.

[249] 'Liberal Neutrality' (n 133) 379.

[250] This is not even to mention the particular irony at play in requiring the members of a national linguistic minority to assimilate into a public debate occurring exclusively in the language of the majority linguistic community. For instance, given that our aim is ostensibly to ensure that all citizens can have their views heard, pursuing C1 in the face of the linguistic minority group's preference for maintaining their own sub-state level debate in their mother tongue can be seen as not sufficiently taking into account the views of individual members of this group on the question of the level(s) at which political decision-making should occur. In the result, pursuing C1 in the name of advancing 'democratic participation' may be decidedly undemocratic.

[251] States here also have reason to push for personal multilingualism among their citizens, as this obviously helps to make people understand one another's contributions without the need for translation services.

out of a concern for democratic participation, the French government should pursue convergence on one language: French; the Belgian government on two languages: French or Flemish; and the Swiss government on three languages: German, French, or Italian.[252] The reasons for this have been given already. Not pursuing convergence, or pursuing convergence but on a number of languages greater than the number of languages in which public debates occur in the country, can only see the number of languages used to debate public issues increase, thereby reducing the participatory nature of public life, as well as the overall richness and sophistication of the broader community's political argumentation.

Additionally, states ought—again, from the point of view of democratic participation—to devolve some decision-making powers to minority linguistic nations. In this way, we ensure that citizens are able to debate as wide a range of matters as possible within a deliberative environment that is highly participatory. Imagine, for instance, a state with two national linguistic groups, larger group A and smaller group B. We are essentially presented with three options. Firstly, we could choose to make one language—likely A—the sole language of public debate across the state, and set about ensuring that all members of the other group gain proficiency in the selected language. Second, we could allow the statewide debate to proceed in both languages, with members of group A typically contributing in language A and members of B in language B. Third, we could (especially where the territorial concentration of the respective linguistic groups lends itself to doing so) devolve some political power to each linguistic group, thereby giving rise to two sub-state public debates centring around those matters over which the respective linguistic groups have been ceded authority.[253]

[252] The omission of Romansch here is deliberate, as Romansch is not at present a language in which political issues are often debated in public.
[253] Theoretically, of course, there is a fourth option: secession. Obviously, this option will be viewed as a non-starter by many multilingual states. As an abstract proposition, however, the liberal democrat should

The first option, which amounts to C1, can be ruled out for the reasons already canvassed. Our choice, then, is really between the second and third alternatives. Under the second option, there will be one statewide public debate, taking place in both A and B, in which all matters of public concern are addressed. By contrast, under the third option, there will exist a statewide debate, again taking place in both A and B, in which matters of *federal* concern are dealt with, but there will also exist two other debates. Specifically, the members of each linguistic group will participate in a sub-state debate—taking place among the other members of that group and in that group's language—in which all the remaining (ie, non-federal) matters are addressed. Ultimately, then, the choice is between the unitary option, in which all citizens participate in one adequately but not highly participatory public debate, and the federal option, in which all citizens participate in one highly participatory public debate (ie, the sub-state debate) *and* in one adequately but not highly participatory debate (ie, the federal debate). Seen in this light, the choice is clear. Devolving decision-making power to linguistically-defined national groups, by creating highly participatory unilingual public debates among the members of those groups, better advances the goal of democratic participation by enlarging the range of matters that citizens can debate in a robustly participatory environment.

Conclusion

Linguistic convergence, as opposed to non-convergence, does indeed tend to promote administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation. None of these ends, however, require that we

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probably regard secession with equanimity (see eg Kymlicka, *Multicultural Citizenship* (n 80) 186). Indeed, from the point of view of democratic participation alone, secession may well be superior to the three options listed above—ie, by having A and B run their own states the members of both A and B will have greater access to political debate, and the respective debates in each state will be richer and more inclusive, than would be the case under the three options above.

pursue private realm linguistic convergence. Moreover, while each of them are in theory best achieved in conditions of linguistic homogeneity as opposed to heterogeneity, in the case of all but administrative efficiency there is a serious risk that pursuing C1 convergence will backfire and actually undermine rather than facilitate the goal we are seeking to achieve. When it comes to economic development, social mobility, social and economic solidarity, and democratic participation, for instance, pursuing C1 convergence is only appropriate where there does not exist a linguistically-defined national minority community. Where at least one such group exists, C1 convergence is contraindicated: we should not pursue convergence upon fewer languages in a given realm than the number of capacious languages currently in use in that realm.

We have, then, five separate pro tanto arguments in favour of making the pursuit of linguistic convergence a guiding principle of language policy in modern democratic states. This is not to say, however, that at the end of the day these reasons will outweigh the reasons we might find *against* pursuing linguistic convergence. We have not yet provided an answer to that latter question. In order to do so, we will turn now to the issue of whether linguistic convergence policies must in fact be eschewed, on the grounds that they violate the ideal of liberal neutrality.

CHAPTER FIVE

THE NEUTRALIST MODEL: PART I: ALAN PATTEN'S 'NEUTRALITY OF TREATMENT'

A third principle according to which we might seek to regulate language rights regimes is neutrality. There is considerable confusion, however, about what exactly is entailed by the notion of liberal neutrality. Even leading proponents of neutrality, for instance, disagree about the range of matters over which the state must be neutral, the strength of the constraint that neutrality places upon state action, and the very definition of neutral treatment—ie, whether neutral treatment is that which is neutral in its effects, justification, or intent.[254] Further, in order to plausibly advance the idea that language policies should be guided by an ideal of neutrality, one will not only have to defend neutrality at a general level, but also provide a reasonably specific account of what exactly neutrality requires in the realm of language policy. It is one thing, for instance, to say that in deciding which groups ought to be accorded minority language rights, and what the content of those rights should be, we should be guided by the principle of neutrality; it is another to specify the sort of treatment that language policies must manifest in order to count as neutral.

In his writing on language rights and political theory, Alan Patten has taken up the challenge just mentioned.[255] He advocates a neutralist model of language policy

[254] For a good synopsis of some of the grounds of disagreement among proponents of neutrality, see George Klosko and Steven Wall (eds), *Perfectionism and Neutrality: Essays in Liberal Theory* (Rowman & Littlefield 2003) 1–11. Leading defences of liberal neutrality include Ronald Dworkin, 'Liberalism' in Stuart Hampshire (ed), *Public and Private Morality* (CUP 1978); John Rawls, *Political Liberalism: Expanded Edition* (Columbia University Press 2005) 173–211; Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press 1980); Charles Larmore, *Patterns of Moral Complexity* (CUP 1987); and Thomas Nagel, *Equality and Partiality* (OUP 1991).

[255] See *Equal Recognition: The Moral Foundations of Minority Rights* (Princeton University Press 2014); 'Liberal Neutrality' (n 133); 'Liberal Neutrality: A Reinterpretation and Defense' (2011) 20 The Journal of Political Philosophy 249. Another case for neutrality in respect of language policy can be found in Abizadeh (n 248).

according to which ‘The task of language policy is not to realize some specific linguistic outcome but to establish non-outcome based fair background conditions under which speakers of different languages can strive for the survival and success of their respective language communities.’[256] In his article, ‘Liberal Neutrality: A Reinterpretation and Defense’, Patten explains that the ‘neutrality of treatment’ he advocates ‘connects neutrality up to a widely held, even if controversial, picture of distributive fairness’, namely a ‘resourcist conception of justice.’[257] He further asserts that ‘If resourcism is the right way to think about the state’s obligations of fairness to its citizens, then neutrality of treatment is a natural corollary.’[258] I will assume in this chapter that this resourcist conception of fairness—which we will discuss at greater length in Chapter 8—is broadly correct. However, we will see that Patten’s neutrality of treatment should not be regarded as a corollary of fairness, so understood. Neutrality of treatment will in fact at times lead to unfairness, and thus, conversely, doing as fairness demands will sometimes require departing from neutrality of treatment. In addition, we will also come to see, along the way, that neutrality of treatment is not even a plausible account of what neutrality consists in.

Patten’s Account of Neutrality

Patten presents his neutralist model of language policy as a clear alternative to models which aim at specific linguistic outcomes. According to Patten, these latter models, whether they aim for convergence upon a common public language or the preservation of endangered languages, are attempts at ‘language planning’.[259] The neutralist vision of

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[256] Patten, *Equal Recognition* (n 255) 215.
[257] ‘Liberal Neutrality: A Reinterpretation’ (n 255) 272.
[258] ibid.
[259] Patten, *Equal Recognition* (n 255) 52.

language policy, in contrast, eschews language planning by not attempting to achieve any particular linguistic result.

The reason that Patten rejects planning models and embraces neutrality when it comes to language rights is due to his underlying views about what fairness and equality require. From Patten's perspective, for instance, the common public language and linguistic preservationist models may seek to guarantee certain linguistic outcomes that can only be guaranteed by significantly limiting the space in which some individuals are free to make decisions about language use for themselves. This, insists Patten, deprives individuals of the 'fair opportunity for self-determination' that we are all entitled to enjoy.[260] In making this fairness-based argument for neutrality, Patten appeals, as mentioned, to a resourcist conception of fairness and justice. Now, on Ronald Dworkin's classic formulation of equality of resources, justice requires that the resources with which each individual may pursue well-being be equalised, except where an unequal distribution of resources is required in order to compensate individuals for innate disadvantages, or for what Dworkin calls accidents of 'brute luck',[261] that, if left uncompensated, would leave those individuals, through no fault or choice of their own, in a position of disadvantage when it comes to pursuing their well-being.[262] In contrast, however, the resourcist view asserts that it would be unfair to eliminate the inequalities between people that have arisen as the result of individuals' choices, such as those made while trading in a competitive market. In this way, equality of resources, by insisting that people be held

[260] ibid 126.
[261] Dworkin, *Sovereign Virtue* (n 55) 73–74.
[262] ibid 65–119. Dworkin's account of equality of resources does not actually seek to fully compensate for all innate or unlucky disadvantages, but rather recommends a system of taxation and redistribution, modelled on a fictive insurance market, that would provide compensation equal only to the level of insurance that 'average people of normal prudence would likely have purchased if they had had the opportunity to do so on equal terms, given the premiums that insurers in a competitive insurance market would have charged for such insurance' ('*Sovereign Virtue* Revisited' (2002) 113 Ethics 106, 108).

responsible for their choices, but not for their endowments, is 'choice sensitive' but 'endowment insensitive.'[263]

This resourcist account of fairness is in direct contrast with the 'equality of welfare' view, according to which the level of well-being that everyone actually enjoys should be equal. For Patten, the reason why a concern for fairness should lead us to embrace neutrality and reject language planning is because the former is fairer than the latter: neutral treatment respects the ability of individuals to make language choices for themselves against a background of equal resources, whereas under a language planning regime such an equal background is happily traded for an unequal one, if the latter is thought to more reliably lead to the desired outcome. Patten's objection, then, is that instead of giving rise to conditions of choice that are fair to all, and then letting the cards fall where they may, language planning models stack the deck to favour some individuals and communities over others.

Not Disestablishment but Even-Handedness

Patten frames his liberal neutrality model as a 'way of responding to diversity' that derives from the political philosophy of John Rawls.[264] For instance, Patten endorses Rawls's view that public institutions should not attempt to promote particular forms of life, but rather should establish 'a just basic structure within which permissible forms of life have a fair opportunity to maintain themselves and to gain adherents over time.'[265] Patten wishes to apply the neutralist model to language so that linguistic communities can compete for members on an equal footing, just as, according to neutralists, conceptions of

[263] Dworkin, *Sovereign Virtue* (n 55) 89; Will Kymlicka (ed), *Contemporary Politcal Philosophy: An Introduction* (2nd edn, OUP 2002) 74.
[264] Patten, *Equal Recognition* (n 255) 215.
[265] ibid (citing Rawls, *Political Liberalism* (n 254) 198).

the good such as religious and moral doctrines ought to be left to fight it out, against a set of fair background conditions, for adherents.

Patten is mindful, however, of the danger of analogies between religion and language,[266] and he is aware that there are serious questions about whether neutrality is even possible in the realm of language and culture. Will Kymlicka, for one, charges that the aspiration to neutrality in this area is incoherent: ‘The idea that government could be neutral with respect to ethnic and cultural groups is patently false.’[267] ‘In the areas of official languages, political boundaries, and the division of powers’, he continues, ‘there is no way to avoid supporting this or that societal culture.’[268] Patten appreciates the plausibility of Kymlicka’s claim. Patten specifically notes, for instance, that in the area of political life in which a policy of neutral treatment has apparently been employed to the greatest effect—namely, religion—neutrality has largely been achieved via what Brian Barry has labelled a ‘strategy of privatization.’[269] According to this general strategy, the state does not establish or promote any particular faith, but rather, after securing for all the rights to religious freedom necessary to ensure fair background conditions, allows actual patterns of religious worship to be left up to the free choices of individual conscience. As Patten concedes, however, it is precisely this notion of disestablishment that appears unfeasible and even incoherent when we turn our attention to language.[270]

Luckily, says Patten, creating fair background conditions does not always require disestablishment: ‘disestablishment represents one possible interpretation of how liberal neutrality could be realized’,[271] but it ‘is not the only conceivable way of meeting the

[266] ibid 24.
[267] *Multicultural Citizenship* (n 80) 110–11.
[268] ibid 113.
[269] Barry, *Culture and Equality* (n 11) 19–62.
[270] As Kymlicka writes, ‘The state can (and should) replace religious oaths in courts with secular oaths, but it cannot replace the use of English in courts with no language’ (*Multicultural Citizenship* (n 80) 111).
[271] Patten, ‘Liberal Neutrality’ (n 133) 369.

fairness requirement.'[272] Patten thus seizes on what he sees as an alternative approach to creating fair background conditions, which, borrowing from the work of Joseph Carens, he calls "even-handedness".[273] In the linguistic context, for example, under an even-handed approach, 'public institutions might offer some roughly equivalent form of assistance or recognition to each of the various languages spoken by their citizens.'[274] 'In this way,' Patten adds, 'a kind of equality of treatment can be achieved without the evident absurdity of linguistic disestablishment.'[275]

Patten goes on to describe a specific language rights scheme, which he calls 'prorated official multilingualism', that he believes would meet the requirements of even-handedness.[276] As mandated by the liberal neutrality model, Patten's prorated official multilingualism does not aim at any specific linguistic outcome. Instead, Patten's official multilingualism scheme aspires to create fair background conditions by way of ensuring equal treatment. The specific form of equal treatment meted out by official multilingualism is equal *recognition*, which means, according to Patten, that if a public service is offered, or a public matter conducted, in one language spoken in the community, then the same service should also be offered, or the same matter conducted, 'in other languages spoken in the community.'[277] Patten then adds a proviso: an official multilingualism policy ought to be prorated, so as to take some account 'of the numbers of people demanding services in each recognized language.'[278] Reasoning that 'Liberal neutrality directs public institutions to be fair to individuals who speak different

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[272] ibid.
[273] See Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (OUP 2000). The idea that evenhandedness is *a form of* neutrality is not obvious. Carens, for example, *contrasts* evenhandedness with 'liberal neutrality' and stumps for the former over the latter (1–20).
[274] Patten, 'Liberal Neutrality' (n 133) 371.
[275] ibid.
[276] ibid 371–73.
[277] ibid 372.
[278] ibid.

languages, not to be fair to the languages themselves',[279] Patten offers a proposal for the specific form equal recognition should take: 'Fairness to individuals would arguably require offering the same per capita level of assistance to the different languages those individuals speak.'[280]

In explaining his larger account of neutrality of treatment, Patten provides the following 'schematic representation of state policy-making': 'With intentions *I*, the state adopts policy *P*, which can be expected to have effects *E*.'[281] According to Patten, while proponents of neutrality of intentions focus on *I*, and proponents of neutrality of effects on *E*, neutrality of treatment concentrates our attention on *P*. Patten explains that 'P represents either a form of assistance to one or more conceptions of the good (if it can be expected to promote those conceptions) or a form of hindrance (if its effects are expected to be negative).'[282] For neutrality of treatment to be satisfied, the state must, 'relative to an appropriate baseline'[283] extend 'equivalent forms of assistance/hindrance to rival conceptions of the good.'[284] Patten further defines neutrality of treatment by asserting that 'The state violates this requirement when, relative to an appropriate baseline, its policies are more accommodating of some conceptions of the good than they are of others.'[285] Patten then goes on to explain that a policy is 'accommodating' toward a conception of the good or a component of such a conception if the policy 'can be expected, in conjunction with other necessary inputs, to make a particular conception of the good more successful'.[286] In essence, then, Patten's neutrality of treatment requires that if a state implements a policy that can be expected to make a particular conception of the

[279] ibid.
[280] ibid.
[281] Patten, *Equal Recognition* (n 255) 128.
[282] ibid.
[283] ibid 129.
[284] ibid 129.
[285] ibid 132.
[286] ibid 132.

good or component thereof more successful, neutrality requires that the state also act to make all other conceptions of the good more successful in equal measure.

One of the strengths of Patten's neutrality of treatment is that it allows us to avoid an unduly circumscribed account of neutrality according to which neutral treatment is always 'hands-off' treatment. For instance, a plausible and widespread interpretation of neutrality is that acting neutrally means not differentially helping or hindering the parties to a dispute.[287] However, there is nothing in the idea of not *differentially* helping or hindering the parties that requires that we refrain from helping or hindering them in any way. Rather, to avoid differentially helping or hindering, we need only ensure that such help or hindrance as is given to one party is given equally to all. In the end, however, we must reject Patten's proposal that language policy ought to be guided by a commitment to neutrality of treatment for two reasons. Firstly, neutrality of treatment is a flawed account of neutrality. Secondly, neutrality as Patten conceives of it, when applied to real world cases, will often lead to unfairness—with fairness positively requiring, in some instances, treatment which Patten would label *non*-neutral.

Problems with Neutrality of Treatment as an Account of Neutrality

One way of understanding Patten's account of neutrality of treatment is to see it as requiring identical treatment. In his earlier article 'Liberal Neutrality and Language Policy', for instance, Patten described his view of liberal neutrality as centring on 'equality of treatment.'[288] If 'equality of treatment' is satisfied when each party receives

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[287] See Alan Montefiore (ed), *Neutrality and Impartiality: The University and Political Commitment* (CUP 1975) 5–6. See also Joseph Raz, *The Morality of Freedom* (Clarendon 1986) 110–133.
[288] 'Liberal Neutrality' (n 133) 371. In his later article 'Liberal Neutrality: A Reinterpretation' (n 255) 9-13, and his most recent book, Patten advocates 'neutrality of treatment', which he contrasts with 'neutrality of intent' and 'neutrality of effects', and which he understands as requiring 'equal accommodation' of the relevant parties (the parties in the context of his discussion here being conceptions of good, not individuals) (Patten, *Equal Recognition* (n 255) 121–65). However, in the latter two works Patten also appears to regard neutrality as ultimately requiring equal treatment—ie, sameness of treatment—since he understands 'equal accommodation' of the parties to mean treating them in an equal manner (as opposed to, say, treating the

equivalent assistance—if determining what neutrality requires in the circumstances does not require, for instance, answering the further question of what the separate standard of treating people 'as equals' would require—then it would seem that 'equality of treatment' here should be taken as a synonym for 'sameness of treatment.' But mere sameness of treatment is simply not a plausible account of what fair treatment consists in. This is simply the old lesson learned from Aristotle: treat equals equally and unequals unequally, for there can be nothing so unfair as the equal treatment of unequals.

Consider, for example, a scenario in which a coach is tasked with outfitting a two person wrestling team consisting of Aidan and Bryce. One of her jobs is to provide the wrestlers with money to buy wrestling shoes. As it happens, Aidan has much larger feet than Bryce. Suppose further that the cost of wrestling shoes varies directly with their size, with the result that, with a given sum of money, Bryce can buy top of the line shoes that fit him perfectly, whereas Aidan, with that same sum, will be forced to compromise either on quality or fit. In this case, for the coach to extend equal treatment to each wrestler by providing them both with an identical amount of money with which to purchase shoes strikes us as *non*-neutral. Given that the coach's action here would seem destined to result in Aidan suffering with a disadvantage that Bryce is spared, we want to say that that action violates, rather than accords with, the demands of neutrality.

It is possible, however, to read neutrality of treatment's prohibition on unequally *accommodating* conceptions of the good as allowing for the possibility that a neutral actor might extend to the relevant conceptions treatment that on its face differs—such as allocating somewhat more tax-payer dollars to one than to the other—provided the overall act could not be expected to make any conception of the good more successful

parties in whatever manner leads to their equal success, or to the equal satisfaction of the parties' respective needs).

than it made all the others. On this reading, however, neutrality of treatment still runs into the problem of having to label as neutral acts that our pre-theoretic understanding of neutrality would regard as non-neutral.

Consider, for instance, an example that Patten relies heavily upon in explaining his neutrality of treatment account. A philanthropist is 'faced with a decision about how to allocate money between two worthy projects.'[289] According to Patten, one option here 'would be for the philanthropist to give each project the amount that is calculated to bring the projects as close as possible to equal levels of success. A second would simply be to give each project equal amounts of money. One decision rule equalizes across outputs; the other across inputs.'[290] However, since 'the idea of neutrality of treatment is to equalize across the state's inputs,'[291] the philanthropist acts neutrally on the neutrality of treatment account only if he opts to allocate the money in the latter, as opposed to the former, manner. Further, explains Patten, 'The basic idea behind neutrality of treatment is to generalize from cases like that of the philanthropist.'[292]

Assuming again that equal accommodation does not require 'equalizing across inputs' in the sense of extending only sameness of treatment, the problem that this interpretation of neutrality of treatment still faces is that we can imagine cases in which the philanthropist's donating equal sums of money to two different charitable projects would *not* strike us as neutral. Consider, for example, a case in which there exist two competing charity projects, both of which the philanthropist is contemplating donating to. One project involves buying up and restoring to their former glory some wetlands, while the other project aims to purchase the same property in order to fill it in and erect low-

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[289] Patten, *Equal Recognition* (n 255) 132.
[290] ibid.
[291] ibid 132. (This, says Patten, is in contrast to neutrality of effects, 'the basic idea of [which] is to equalize across outputs of the policy process' (132)).
[292] ibid.

cost social housing. The two projects are in direct competition with one another, since the lands can only be purchased by one group, and the first to raise sufficient funds to cover the asking price will secure the property.

Patten's focus on 'equalizing inputs' leads him to regard the philanthropist giving the same sum to each project as in a sense immune from the criticism that one could expect that act to make one project more successful than the other. However, it is possible that in doling out exactly equal sums to the two projects as described, one might expect that action to make one recipient more successful than the other, even absent a situation in which one of the parties between whom one wishes to be neutral naturally requires more resources than another in order to enjoy the same opportunity for success (something which was true of Aidan in the previous example). The philanthropist, for instance, may be well aware that by donating $X to both projects he will be providing one but not the other with exactly the sum they presently require in order to meet the asking price and thus to buy the lands in question. If he proceeds to make that equal donation while equipped with this knowledge of the consequences his actions will have for the chances of success of the two projects, then we understand him—rightly, as I will argue in Chapter 7—to have acted non-neutrally.

The reason that donating the same sum to two different parties may clearly benefit one more than the other is that the extent to which one's chances of success in a given conflict increase is not purely a matter of comparing how much better off, in absolute terms, each party is at $time_2$ as compared to $time_1$. For example, if we were to picture Aidan the wrestler before we entered upon the scene with 10 'units of advantage' to Bryce's 2, and envision some funds we have to distribute between Aidan and Bryce as amounting to 6 units of advantage, we are faced with two quite different possible courses of action. On the one hand, we might divide the 6 units equally, leaving Aidan with 13 units and Bryce with 5. Here Aidan's initial 8 unit absolute advantage (10 – 2 = 8) would remain intact after our intervention (13 – 5 = 8). But what we might call Aidan's relative advantage[293] would have decreased, as Aidan's absolute position would no longer be greater than that of Bryce by a factor of five (10:2), but rather by a factor of only 2.6 (13:5). Alternatively, we could elect to preserve Aidan's relative advantage over Bryce, by giving the monetary equivalent of 5 units of advantage to Aidan and only 1 unit to Bryce. But that would obviously be to distribute the money in a decidedly unequal manner. It would also mean that Aidan's absolute advantage would grow from 8 units (10 – 2 = 8) before our intervention to 12 units (15 – 3 = 12) after it. The question is, which distribution—3/3 or 5/1—would we expect to 'equally accommodate' the two wrestlers, in the sense of not differentially increasing either party's chances of success?

The answer to this question, which drives home the point that in donating equally to both projects the philanthropist is not necessarily acting neutrally, is that either option could be equally accommodating, depending on the circumstances. A party's chances of success must be looked at holistically. Ordinarily, if A is competing with B to collect the greatest number of shells on a beach, for example, C's giving 10 shells to each of A and B will not differentially increase either party's chances of success. Things will be different, however, if we imagine that A got a late start on the proceedings, which allowed B to collect 50 shells before A even began searching, but that thereafter A has been finding five shells for every one that B has been finding. Here, since A has been clawing back her initial deficit at the rate of fives shells to B's one, for C to give 10 shells to each would now be to reduce A's chance of success and improve B's. This is so

[293] 'Relative advantage' is admittedly an imperfect and potentially misleading term, since the parties' 'absolute' advantages are in fact only measures of the extent of their advantages relative to one another. Readers might therefore wish to substitute 'relative advantage' for what I am calling 'absolute advantage', and whichever term they find apt, such as, perhaps, 'ratio of advantage' or 'factor advantage', for what I have called 'relative advantage'.

because if C had not acted, we would have expected that an increase in B's total shell count of 10 (being the number of shells received from C) would have been accompanied by an increase in A's count of not an equal 10, but rather of 50.[294] Further, suppose that at present A has more than made up her initial deficit, and has now accumulated 125 shells to B's 75. The ratio of A's count to B's is 5:3. Imagine that C, concerned to preserve the parties' relative advantages, divides, say, 120 additional shells between the two by allocating 75 (being five-eighths) to A and 45 (being three-eighths) to B. Given that A has been finding shells at a fivefold greater rate than B ever since A began searching for them, while this allocation indeed preserves relative advantage, it again should be seen as differentially benefitting B. This is so because, if C had not acted, we would have expected A to acquire not five-eighths (75) but rather five-sixths (100) of these 120 shells.

To summarise, equalising inputs in the fashion of Patten's philanthropist, because it entails giving equal absolute dollars to each party, is bound to preserve the parties' absolute advantages relative to one another. But as we saw, in some circumstances it will nonetheless result in an increase in a particular party's chances of success. The same, as we also saw, can be said of acting in a manner that preserves relative advantage. The conclusion we ought to draw from all this, then, is that there is no simple formula to follow if our desire is to see to it that no party involved in some conflict we are seeking to be neutral across is differentially advantaged by our actions.

[294] Or, to look at things the other way around, we could say that if C had not acted, we would have expected that an increase in A's total shell count of 10 (being the number of shells received from C) would have been accompanied by an increase in B's count of not an equal 10, but rather of 2.

Seeing off Neutrality of Treatment

At this point, one could seek to rehabilitate Patten's account of neutrality along the following lines. First, one might concede that the example of the philanthropist deciding how much to donate to the wetlands project and how much to the social housing project shows that Patten is wrong to see neutrality as a matter of equalising inputs. Secondly, however, one might insist that his idea that a neutral act is one which cannot be expected to make a party to the relevant conflict more successful (unless the actor also acts to make all other parties equally more successful) suffices to erase the force of the example, since the philanthropist in the imagined hypothetical *does* expect his donation to differentially benefit the one project. To this sort of argument two rejoinders can be made. Firstly, we could offer a revised hypothetical, according to which the philanthropist in deciding how much to donate to the two projects believes both of them to be roughly equally far from their fundraising target, but has it on good authority that the wetlands project is no farther from that goal than is the housing project. We can imagine that in these circumstances the philanthropist, in donating $X to each group, does so for the reason that his action *might* accrue to the greater benefit of the wetlands group than to the housing group, albeit without an expectation that his equal donation will actually have that effect. Here again, I think we clearly want to say—and, as I will argue in greater detail below, we should say—that the philanthropist would be acting in a non-neutral manner.

The second rejoinder we should make is that it is not open to us to simply shed the 'equalize inputs' component of neutrality of treatment while keeping the 'don't act in the expectation of unequally accommodating a party' component. The problems faced by Patten's account of neutrality are not so easily solved. Patten, for instance, is well aware that in light of its requirement that inputs be equalised, for his conception of neutrality to 'get off the ground',[295] 'there must be some metric of inputs that does not simply reduce back to outputs.'[296] It is for this reason that he invokes the example of a philanthropist, whose 'inputs' can be measured in absolute dollar values and thus without reference to 'outputs'. Further, Patten, as mentioned, is explicit that the whole idea of neutrality of treatment is built upon the equalisation of inputs such as that which marks his philanthropist's charity. To reject the proposition that neutrality consists of such an equalisation of inputs is thus to reject neutrality of treatment itself.

But reject it we must. As the wetlands and housing projects example shows, for instance, equalising inputs is not sufficient to guarantee neutrality. Instead, as that example also shows, and as we will see in Chapter 7, acting neutrally requires that we do not select inputs which we intend to cause differential outputs. This selection of inputs based on their expected effect, however, is clearly incompatible with neutrality of treatment's directive to equalise inputs. In consequence, neutrality of treatment is to be rejected, and a conception broadly in keeping with neutrality of intentions is to be preferred.

Neutral Treatment and Fairness

We have found, then, that Patten's neutrality of treatment is inadequate as an account of neutrality. The reason that we inquired into this matter, however, was because we wished to examine Patten's larger claim that neutrality of treatment is a principle by which we ought to regulate language policy. We should, therefore, direct our attention to the question of whether neutrality of treatment, despite not actually amounting to neutrality properly understood, might nevertheless be what fairness and justice require when it comes to language policy. Much more will be said about fairness and justice in later

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[295] Patten, *Equal Recognition* (n 255) 132.
[296] ibid.

chapters. For present purposes, however, fairness will be understood in a broadly resourcist manner—which is to say that where background conditions are just,[297] each person's resource holdings ought to be a function of the particular choices they have made.[298]

If we interpret neutrality of treatment as requiring identical treatment, it seems clear that neutrality of treatment will at times be quite inconsistent with the demands of fairness, so understood. Returning to the wrestling example, for instance, if we assume again that Aidan has larger feet than Bryce and that the cost of wrestling shoes varies directly with their size, we see that extending the same treatment to each by giving each an identical sum with which to purchase shoes would put Aidan at an unfair competitive disadvantage relative to Bryce. The situation would be unfair because in not giving Aidan a greater sum than we give to Bryce, Aidan, through no fault of his own, will enjoy (all else being equal) a lesser opportunity for wrestling success than that enjoyed by Bryce. Here, then, treating the two wrestlers in an identical fashion will be unfair, and treating them as fairness demands will require treating them differently.

If, however, we again interpret Patten's neutrality of treatment, with its emphasis on equal accommodation, as allowing for departures from identical treatment in cases where a party naturally requires more resources than another in order to enjoy the same opportunity for success, might the sorts of policies neutrality of treatment recommends accord reliably with the demands of fairness? The answer is again no.

Imagine, for instance, a state across whose territory two languages are widely spoken. Both language A and language B are mediums of public life: government services are offered, and public education takes place, in both languages, and Parliament,

[297] See Patten's invocation of 'just' and 'fair' 'background conditions' in Patten, *Equal Recognition* (n 255) 142–43, 154–58, 164.
[298] See Colin MacLeod, *Liberalism, Justice, and Markets: A Critique of Liberal Equality* (1998 Clarendon) 52.

the courts, and the state media also operate in both. However, language B was, until recently, consigned to the private realm, and even those who chose to speak it in their homes and places of business did so under threat of sanction if they were heard conversing in that tongue. As a result, the current speakers of language B represent only a fraction of those who spoke the language a generation or two ago. Moreover, while languages A and B today receive equivalent per capita assistance from the state, membership in linguistic community B continues to dwindle as more and more B-speakers take up language A and leave their native linguistic community behind.

Armed with his idea of neutrality of treatment, Patten can argue for only two general responses to such a scenario: either the state should shift to a hands-off, benign neglect approach under which it provides no support to either linguistic community, or it should maintain an even-handed approach and provide positive support at some undetermined level equally to both communities. Patten makes his antipathy to 'benign neglect' clear.[299] And he is right to imply that a hands-off approach does not necessarily lead to clean hands: if one party is unfairly advantaged, adopting a hands-off policy will only perpetuate the unfairness. But in the situation we have just imagined, exactly this same charge can also be levelled at any 'hands-on' approach which mandates sameness of treatment. Whether we reject state support for language A and language B alike, or provide each with the same per capita level of assistance, we are, *precisely because we thereby treat both parties equally*, only perpetuating the unfairness faced by B-speakers. Only if we leave off giving support in equal measure to both groups, and instead offer *different* levels of support to the respective language communities—ie, offer a greater level of per capita support to B-speakers than is provided to A-speakers—can we achieve the 'fair background conditions' that are Patten's goal. Overall, then, the objection to

[299] Patten, *Equal Recognition* (n 255) 171–76, 199–200.

Patten's account of neutrality and its relation to fairness can be summed up as follows: that which is neutral may not be fair, and that which is fair may not be neutral.

Patten, to his credit, does notice that to treat parties neutrally may not always be to treat them fairly. This concession comes in a revealing footnote in his article 'Liberal Neutrality and Language Policy', in which he writes:

> A complexity that I am glossing over here is the possibility that *fair* treatment may not always involve *equal* treatment or even-handedness. If the participants in a particular way of life are burdened by the lasting effects of an historical injustice, for example, then there may be nothing particularly "fair" about a policy of according the same treatment to that way of life as to more historically advantaged ones.[300]

I think Patten errs, however, in 'glossing over' the fact that equal treatment and fairness will at times pull in opposite directions. Patten assumes—rightly—that speakers of all languages (and holders of all worthwhile conceptions of the good) have, fundamentally, an equal interest in being free to pursue a life in their mother tongue, or within their favoured religious, moral, or aesthetic mode. But in focusing on this common basic interest, Patten fails to pay sufficient attention to the fact that where certain individuals have been deliberately hindered from pursuing this interest in the past, they may today need more than others in order to make up the underlying deficit.

Therefore we should not adhere to neutrality of treatment when constructing language policy because such neutrality of treatment often conflicts with fairness. Specifically, assuming neutrality of treatment mandates sameness of treatment, neutrality of treatment is in opposition with the demands of fairness wherever one of the parties to which an actor extends identical treatment has a special need such that in receiving the same treatment as all other parties that party benefits less than does at least one of the others. Further, on the assumption that neutrality of treatment is actually consistent with

[300] Patten, 'Liberal Neutrality' (n 133) 371 n 29.

extending non-identical treatment in that sort of scenario, neutrality of treatment still conflicts with the demands of fairness wherever a party's present opportunity for success is less than it would have been had it not been for the lingering effects of some past unfairness.

To be fair, the former scenario is unlikely to be of much relevance when we turn our attention specifically to languages and linguistic communities. It is implausible that some languages will have special needs relative to others in the way that Aidan has a special need for expensive footwear relative to Bryce. We can, however, safely conclude that the latter sort of scenario—in which a language community is presently less successful than it would be were it not for some unfairness it suffered in the past—is one that a not insignificant number of language groups presently find themselves in.

This is not to say that wherever a linguistic group is less successful than we judge that they would have been but for some historical injustice committed against them we must restore that community to their 'but-for' position. Articulating a comprehensive account of exactly how the lingering effects of historical linguistic injustices ought to be remedied is beyond the scope of the current work. It would involve a detailed analysis of the conditions under which injustices can be, to use Jeremy Waldron's phrase, 'superseded'. This in turn would open up thorny philosophical questions about agency and collective responsibility, not to mention the added difficulties of counterfactual reasoning. On top of all of this we would need to wrestle with empirical questions pertaining to the likely real-world effects on both recipients and contributors of reparations or other remedial measures. Although a complete theory of linguistic justice would need to grapple directly with all of these issues, I, like Patten, do not attempt to do so. I trust, however, that it will not be seriously doubted that in many cases we can be reasonably certain that but for some historical linguistic injustice a particular language group would be more successful than they now are. I also trust that few if any of us would suggest that in *all* such cases we treat these communities fairly merely by ‘equalizing inputs’. Some injustices, I think—including linguistic ones—we *should* understand to be ‘superseded’. But others will have lingering deleterious effects that fairness requires us to rectify. And since such rectification can’t be accomplished if we adhere to neutrality of treatment’s requirement that we refrain from action which we can expect to benefit one party more than another, fairness will also require us to depart from neutrality of treatment.[301]

Furthermore, even if we assume both that neutrality of treatment does not always call for strictly identical treatment and that background conditions are fair, it remains true that an actor who acts in accordance with neutrality of treatment may well act unfairly. As we saw, for example, preserving the ‘absolute advantage’ one party holds over another—which is what, by ‘equalizing inputs’ neutrality of treatment does—can differentially affect the parties’ ‘relative advantage’. Acting so as to preserve absolute advantage, as we saw in the philanthropist example, is also consistent with causing one party to win and the other to lose a contest. Indeed, an actor who *deliberately* acts in order to cause one party to succeed and the other to fail is endorsed by neutrality of treatment as neutral so long as she achieved this differential impact by way of extending to the parties equal treatment—ie, so long as she ‘equalized’ her ‘inputs’. Clearly, however, it is not difficult to imagine cases in which an actor’s acting for the purpose of causing such a decisive and differential effect on the parties would be unfair. In the

[301] Now, it could be that Patten or a proponent of neutrality of treatment such as Patten might wish to supplement neutrality of treatment with some secondary principle of ‘justice in rectification’, a la Robert Nozick. Such a principle might counsel—and as we said it must if it is to be sound—extending treatment that would violate neutrality of treatment. As we also mentioned, Patten does not advance such a principle. Even where such a sound principle was on offer, however, we should still say that neutrality of treatment does not make a very good guide to formulating just language policies, for the reason just mentioned in the text above. That is, in light of the fact that there are many real-world instances of enduring linguistic injustice, the ‘secondary’ justice in rectification-type of principle would need to be turned to rather too often.

linguistic context, for example, a state might choose to provide the national arms of both Alliance Française and the Goethe-Institut with a grant in the amount of, say, $100,000, knowing that that is precisely the amount with which Alliance Française could secure the exclusive rights to use some new language learning software that the Goethe-Institut would dearly love to acquire, and knowing as well that some outstanding debts owed by the Goethe-Institut will leave it unable to come up with the leasing price even after receipt of the grant. As such, giving $100,000 to each party at this particular moment, as the state officials are well aware, would on the whole benefit Alliance Française much more than the Goethe-Institut. The point is that while providing the grants under these circumstances will, all else being equal, be unfair to the Goethe-Institut, it is also perfectly consistent with adhering to neutrality of treatment. In other words, that which is neutral on the neutrality of treatment account will not necessarily be fair.

Neutral Treatment and *Justice*

Our earlier conclusions regarding the way in which striving to achieve linguistic convergence may be a requirement of justice imply that we ought not to adhere strictly to neutrality of treatment. While it might seem obvious that language planning efforts designed to achieve such convergence violate neutrality, whether this is so or not will in fact depend on the conception of neutrality we are working with. Patten’s neutrality of treatment, for instance, is specifically articulated as being in opposition to language planning. By contrast, justificatory accounts of neutrality that understand neutrality as essentially a merely anti-perfectionist principle would be compatible with language policies aimed at either convergence or preservation. (We will directly address the question of whether neutrality as understood on such justificatory accounts ought to guide language policy in the following chapter.)

Further, we can say something illuminating about the relationship between neutrality of treatment and justice by noting another reason why Patten might have felt entitled to gloss over the frequent disconnect between neutrality of treatment and fairness. For instance, Patten concludes that language policy ultimately should not be settled upon according to fairness considerations alone. If fair background conditions lead to linguistic outcomes that ghettoise certain groups, for example, then Patten contends that it may well be appropriate to embark upon some form of language planning so as to alleviate that ghettoisation, even if this means establishing background conditions that are unfair. Thus, writes Patten, 'In some cases, considerations of social mobility do warrant compromising liberal neutrality in order to encourage certain linguistic outcomes.'[302] However, given that Patten regards 'the appeal of the liberal neutrality model' as lying in 'The importance we attach to a framework that secures certain individual freedoms together with basic fairness between individuals',[303] he insists that 'It will normally take a fairly plausible and urgent reason to warrant abandoning or compromising this framework.'[304]

As will be discussed in greater detail in Chapter 9, I agree with Patten that in fashioning language policy we ought in the first instance to be guided by a concern to establish a framework of language rights that secures individual liberties and fairness between persons, and I further agree that it may nevertheless be appropriate to compromise this framework, where that is necessary to secure pressing interests of overriding importance. Thus Patten has the right idea in arguing that his neutrality of treatment ought to only *partially* guide us in our formulation of just language policy. Once we appreciate that Patten's even-handedness will often lead to *un*fairness, however, we have even less reason to strive to realise that form of neutrality in our language

[302] 'Liberal Neutrality' (n 133) 386.
[303] ibid.
[304] ibid.

policies than Patten supposes. Put slightly differently, moving away from a language rights regime that secures the framework of *fairness* that Patten advocates as, generally speaking, the proper end of language policies will indeed require a very compelling reason; for although—or so I shall argue below—what is fair may in some cases be unjust, and what is just may be unfair, more often than not what is fair will be just and what is unfair will be unjust.[305] As compared to departing from what *fairness* requires, however, it will be considerably easier to justify departing from Patten's vision of what *neutrality* requires, since Patten's 'liberal neutrality model' will not always secure fairness between individuals in the first place.

Conclusion

We have found that Patten's 'neutrality of treatment' is a flawed conception of neutrality. We also found that adhering to the neutrality of treatment standard will sometimes lead to unfairness and injustice, and that sometimes in order to ensure that we act fairly and justly we will have to act in a manner that violates that standard. Further, if we were to simply define neutrality as whatever is fair, the concept of neutrality would—in addition to being stretched well beyond its accepted meaning—be left devoid of independent content and thus would collapse into fairness. As such, neither Patten's neutrality of treatment, nor such a 'neutrality as fairness' account, support the argument that neutrality represents a good guide when it comes to the formulation of language policies. Might there not, however, be other accounts of neutrality on which neutral treatment has a closer connection with fairness and, more importantly, with justice? The following chapter is

[305] As I will argue in Chapter 8, fairness and justice may diverge, with the result that acting in accordance with fairness may at times be to act unjustly and acting as justice requires may be to act unfairly. However, it is clear not only that fairness and justice will very often point in the *same* direction, but also that *neutrality* will often point in the opposite direction of both.

devoted to exploring whether a further conception of neutrality—neutrality of justification—fits that bill.

CHAPTER SIX

THE NEUTRALIST MODEL:
PART II: NEUTRALITY OF JUSTIFICATION

If we are searching for an account of neutrality such that neutrality has a necessary connection with fairness and justice, neutrality of justification, with its requirement that the state be able to justify its actions to those affected by them, will clearly warrant our consideration. We will see, however, that neutrality of justification is an implausible account of what neutrality consists in, and that, in any event, neutrality of justification should not be regarded as an effective guide to the creation of just language policies, since—being proscriptive and not prescriptive—it is insufficiently action-guiding. We will also make some comments about how the sort of justificatory requirements that a neutrality of justification account can be taken to lay down—despite not amounting to the constraint on action that neutrality properly conceived of imposes—might nevertheless contribute to justice, although we will not directly take up the question of what justice requires in the way of language policy until Chapters 8 and 9.

Justificatory Neutrality Defined

Steven Wall and George Klosko formulate the principle of justificatory neutrality as follows: 'The state should not aim to do anything to promote any particular conception of the good, or give greater assistance to those who pursue it, unless a plausible neutral justification can be given for the state's action.'[306] On this view, just because the *effect* of some action taken by the state is more favourable to some conception of the good than others does not mean that the state has thereby non-neutrally favoured that conception.

[306] Klosko and Wall (n 254) 8.

Instead, 'the requirement that the state not favor any conception of the good simply rules out various arguments or considerations for justifying state action.'[307] Specifically, 'the state should not justify what it does by invoking *controversial* claims about the worth or value of different conceptions of the good.'[308] Provided that the state can provide a justification of its action which does not appeal to such proscribed grounds, that action will be neutral notwithstanding any differential impact it may have on the popularity or realisability[309] of citizens' various conceptions of the good.

If we return to the schema offered up by Patten—'With intentions *I*, the state adopts policy *P*, which can be expected to have effects *E*'[310]—it is difficult to see exactly how neutrality of justification fits in. Neutrality of justification, for instance, is generally understood to be a distinct account from that which is alternately labeled neutrality of intentions or neutrality of aim. So while the proponent of neutrality of justification certainly does not claim that an inquiry into the neutrality of a given action should focus on *E*, nor on *P* per se, they also do not wish to focus on *I*. Instead of focussing on the aim or intention of the act, for instance, they claim that we should focus on what would be a new element of the above schema, *J*. The revised schema might look something like the following: 'With intentions *I*, the state adopts policy *P*, which can be expected to have effects *E*, and which is justified by reason *J*'. For the proponent of neutrality of justification, then, an act's neutrality or non-neutrality is solely a matter of the properties

[307] ibid 7.
[308] ibid 8 (emphasis added). A focus on *controversial* conceptions of the good is in evidence, for instance, in Roberto Merrill, 'Introduction' in Roberto Merrill and Daniel Weinstock (eds), *Political Neutrality: A Re-evaluation* (Palgrave Macmillan 2014): 'A conception of the good in its broadest sense is therefore equivalent to a controversial normative belief about the good' (8). (For an argument that liberal states ought to be neutral as between *non*-controversial conceptions of the good as well as controversial ones, see Ruwen Ogien, 'Neutrality toward Non-controversial Conceptions of the Good Life' in Roberto Merrill and Daniel Weinstock (eds), *Political Neutrality: A Re-evaluation* (Palgrave Macmillan 2014).)
[309] For a helpful discussion about the difference between the popularity of a conception of the good and its realisability, see Patten, 'Liberal Neutrality: A Reinterpretation' (n 255) 13–14 and 17–18, and Patten, *Equal Recognition* (n 255) 131–134.
[310] *Equal Recognition* (n 255) 128.

of *J*. Specifically, if *J* abjures appeal to certain proscribed reasons for action, then the action is neutral, regardless of the actor's intentions (*I*), and regardless of the nature of the act (*P*) or its effects (*E*).

In the introduction to a recently edited collection on political neutrality, Roberto Merrill draws out the contrast between neutrality of justification and neutrality of aim or intention by offering two distinct definitions. Neutrality of aim, he says, holds that 'the state should do nothing with the aim of promoting a conception of the good life over others'.[311] Neutrality of justification, in contrast, holds that 'the justification of political principles or state policies should not be based on the superiority of a conception of the good life'.[312] As Merrill notes there, some authors do not really distinguish between neutrality of aim/intention and neutrality of justification.[313] There is, for instance, some question as to whether neutrality of justification ultimately collapses into neutrality of aim. Part of the reason for this confusion is that while many theorists assume that neutrality of justification is the best way to understand the idea of neutrality as applied to the political lives of states,[314] it is not clear exactly what conception of justification these theorists employ. For example, the 'justification' that the neutrality of justification approach demands might be understood to mean a rationale which actually succeeds in legitimating the taking of the particular act to which it applies. Alternatively, the justification of a given act might be taken to refer to the reason for which the actor in fact acted, although this would seem to elide justification with aim.

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[311] Merrill, 'Introduction' (n 308) 2.
[312] ibid.
[313] ibid 5.
[314] See ibid: 'Neutrality of justification is the version of neutrality endorsed by most defenders of the ideal of neutrality'. As Klosko and Wall note, 'Neutrality of justification has been the dominant formulation of the neutrality principle', and most of those writing on the subject in recent years have proceeded 'on the assumption that it is clearly the correct formulation' ((n 254) 8).

As such, we might interpret neutrality of justification as requiring that an actor's reason for acting is not based on any appeal to the superiority of a particular conception of the good. Alternatively, we might understand it as focussing our attention instead on the question of whether we can point to some reason upon which the actor could have acted as she did which would in fact have legitimised the taking of that action.[315] To add a third possible interpretation, we might, with Thomas Nagel, claim that the state adheres to justificatory neutrality by taking only such action that no one could reasonably reject.[316] Regardless of the interpretation we choose, however, neutrality of justification represents an implausible account of neutrality.

Languages and Conceptions of the Good

We should, then, regard there as being two general species of neutrality of justification. On the one hand, justificatory neutrality could be understood to require us to refrain from acting where our act could not be justified except by appeal to the worth of a particular conception of the good. Alternatively, neutrality of justification could be understood as requiring us to refrain from action unless that action is reasonably acceptable to all. For ease of reference, we will refer to the former proscription as the 'anti-perfectionist' version of justificatory neutrality, and the latter as the 'reasonable non-rejectability' version.

A preliminary matter that should be addressed is how the anti-perfectionist version could possibly apply to the field of language policy. A language, for instance, is plainly not a conception of the good, and so it may be unclear how favouring a particular language could amount to non-neutrality on the first species of justificatory neutrality. The answer, however, is quite simple. Conceptions of the good are conceptions of what

[315] Klosko and Wall (n 254) 8.
[316] Nagel (n 254).

the good life consists in, of what makes a life go well.[317] While a language is not itself a conception of the good, it may well be that a particular conception of the good has it that a life lived in a particular language makes that life go better than a life lived in another—or, possibly, in any other—language. Here the language is, as Patten terms it, a 'component' of the conception of the good.[318] Moreover, being that which the conception picks out as good, it is the component upon which the conception is built. Further, where the state acts to promote something that a particular conception of the good identifies as good, and justifies its doing so by claiming that that thing is in fact good, the state's action is an endorsement of that conception of the good. We will see later on that it is a mistake to understand neutrality as having application solely between conceptions of the good. But putting that matter aside for now, it is easy to see how the first species of justificatory neutrality rules out actions that appeal to the value of the particular languages that certain conceptions of the good identify as valuable, just as it rules out actions that appeal to the value of those conceptions of the good themselves.

Neutrality and Reasonable Non-Rejectability

The anti-perfectionist account of neutrality of justification is relatively straightforward. It requires, as we saw, that the state refrain from action where the justification for that action would involve appeal to at least controversial conceptions of the good, or to the specific things such conceptions identify as good. Thomas Nagel's idea of neutrality as reasonable non-rejectability is somewhat more complex, and warrants further description.[319]

[317] See Merrill, 'Introduction' (n 308) 7–8.
[318] Patten, *Equal Recognition* (n 255) 46, 174–75. For a similar idea, see 'Introduction' (n 3088), where Merrill gives the example of the French language as being a 'priority' in a person's conception of the good (6).
[319] For a short critique of Nagel's neutralist argument, see Simon Caney, 'Thomas Nagel's Defence of Liberal Neutrality' (1992) 52 Analysis 41

In *Equality and Partiality*, Nagel writes that his account of neutrality 'emphasize[s] the second formulation [of Kant's categorical imperative]: that one should treat humanity never merely as a means but always also as an end.'[320] Nagel then goes on to express sympathy for an interpretation of this principle according to which it 'implies that if you force someone to serve an end that he cannot be given an adequate reason to share, you are treating him as a mere means—even if the end is his own good, as you see it but he doesn't.'[321] Nagel continues: 'In view of the coercive character of the state, the requirement becomes a condition of political legitimacy.'[322] In essence, Nagel's claim is that neutrality requires that the state not act for reasons that are reasonably rejectable, unless that action is nonetheless 'admissible under a higher-order principle which [everyone] acknowledge[s], or would be unreasonable not to'.[323]

In its most abstract formulation, Nagel's contractualist account of justificatory neutrality does not define neutrality with specific reference to conceptions of the good. What neutrality requires is that the state be able to explain its actions in terms that no one could reasonably reject. In theory, then, even if the state were to establish a state religion, and did so on the grounds that that religion was the one true faith, it would still be acting neutrally provided no one could reasonably reject that claim. Conceptions of the good, in other words, need not be excluded unless they are reasonably rejectable. Even 'controversial' conceptions of the good, therefore, are not necessarily excluded as reasons for action by Nagel's account, if by 'controversial' we mean only that these conceptions of the good are the subject of disagreement, as opposed to being the subject of *reasonable disagreement*. Further, excluding from political justification that which is reasonably rejectable may rule out grounds for action that do not amount to conceptions of the good,

[320] Nagel (n 254) 159.
[321] ibid 159 (footnote deleted).
[322] ibid.
[323] ibid 160.

such as some conceptions of 'the right'—ie, justice. This is because just as not all conceptions of the good need be reasonably rejectable, not everything which is reasonably rejectable must be a conception of the good.[324] Under Nagel's formulation, then, respecting persons will not always require that state action be justifiable in a manner that abjures appeal to the value of a particular conception of the good.[325]

As it happens, Nagel, along with most other commentators who have written about neutrality—whether to defend or critique it—seems to believe that most if not all of people's views about the good life are reasonably rejectable by other of their fellow citizens.[326] In addition, Nagel is explicit that when it comes to 'religion and other basic choices regarding what life is about and how it is to be led',[327] there is no higher-order principle of necessity that would make it reasonable for us to assent to a policy we would otherwise reasonably reject. This being the case, Nagel insists, 'legitimacy requires that individuals be left free, consistent with the equal freedom of others, to follow their own paths'[328] in these areas. Legislating in this field in the face of reasonable disagreement would disrespect the dissenters and show illegitimate partiality towards adherents of favoured conceptions of the good.[329]

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[324] See Caney, 'Thomas Nagel's Defence' (n 3199); Simon Clarke, 'Contractarianism, Liberal Neutrality and Epistemology' (1999) 47 Political Studies 627. As Stephen Lecce summarises the point: 'the distinction between what can be known with certainty and what cannot is unlikely to map neatly onto the distinction between justice and conceptions of the good. More plausibly, one can be certain about some but not all questions of justice and some but not all questions of the good' (*Against Perfectionism: Defending Liberal Neutrality* (University of Toronto Press 2008) 169).

[325] The implication of this is that if Nagel's notion of the state not acting for reasons that are reasonable non-rejectable amounts to a defence of liberal neutrality—as seems widely accepted (see Caney, 'Thomas Nagel's Defence' (n 319))—then neutrality is not merely a principle that regulates how we may act in respect of conceptions of the good, but rather has broader application.

[326] Nagel does not however, press the claim that *all* conceptions of the good are controversial. Instead, he simply confines his focus at the outset to those that are controversial and then sets himself the task of asking how liberalism should deal with conflicts over conceptions of the good that are the subject of reasonable disagreement.

[327] Nagel (n 254) 165.

[328] ibid 165.

[329] For Nagel's general defence of the state's duties of impartiality, see ibid 154–68.

Problems and Counter-Examples

We can see that neither version of justificatory neutrality amounts to a satisfying account of what neutrality consists in by looking at a few examples. Expanding on an example provided by Alan Montefiore, we can imagine a father whose two children appeal to him for assistance in a dispute between them.[330] Let us suppose the two children are in a boxing match with one another. Given that one child is much older than the other, the father knows that if he remains non-involved, or if he provides equal assistance to both children, the older child, being much bigger and stronger, will inevitably prevail. Imagine that the father, fearing for the safety of his younger child, provides that child with headgear, but in no other way intervenes in the fight. Suppose that it is clear to both the father and each of his sons that while the younger son's chances of winning the bout have improved now that he enjoys the protection of the headgear, realistically the larger child remains virtually certain to win the contest. Here we should not see the father's actions as justified by appeal to the superiority of a particular conception of the good—or to the superior worth of one child over the other—nor should we see them as reasonably rejectable. And yet we still regard them, I think, as clearly non-neutral.

In our example, for instance, we can imagine that the father does not act to protect his smaller child out of a greater estimation of that child's worth, but rather out of equal concern for the well-being of *both* his children. In addition, it is clear that the father does not go so far as to act in the manner that would be required to make the fight a fair one. In order to have that effect, for example, he would be required to take much greater steps to either assist the smaller child or hinder the larger, such that the larger child's size and strength advantages were offset. *That*, plainly, would be non-neutral. Thus, as Joseph Raz notes in *The Morality of Freedom* while discussing Montefiore's example, it is crucial to

[330] Montefiore (n 287) 7.

apprehend that ‘neutrality should not be identified with action securing a fair contest’[331] and that ‘there are circumstances in which it is unfair to act neutrally, where there are not even prima facie reasons to be neutral.’[332] However, given that the father’s actions in providing only the smaller child with head protection prevented that child from being seriously injured, and did so without seriously jeopardising the older child’s chances of success, we could well say that the father’s intervention was in a sense ‘only fair’. The point, that is, is that in the circumstances it would not be reasonable for even the larger child to object to his father’s limited intervention. As such, there is present in our example neither the appeal to the worth of a conception of the good, nor the reasonable rejectability, that the anti-perfectionist and reasonable non-rejectability versions of justificatory neutrality, respectively, identify as necessary conditions for non-neutrality. And yet, owing to the fact that the father quite deliberately intended to assist one of his children but not the other, we regard him as having acted non-neutrally. This strongly suggests that both versions of neutrality of justification are inadequate as accounts of neutrality.

At this point, a proponent of neutrality of justification might respond by arguing that while the father does indeed act non-neutrally, what neutrality consists of in a broader context is different from what neutrality involves in a *political* context. In the political context, it might be claimed, a *state* only acts non-neutrally where its action is justified by appeal to the worth of a particular conception of the good, or alternatively where its action is reasonably rejectable. But this would be to quite bizarrely take a concept that is widely used in ordinary life and alter it in a substantial and seemingly ad hoc manner.

[331] Raz (n 2877) 114.
[332] ibid.

The dynamic that is occurring, I think, when political theorists vaunt neutrality of justification as a liberal commitment, is that in selecting justificatory neutrality as the best interpretation of neutrality, these theorists are led by an antecedent belief in neutrality as a normatively appealing political principle. In latching onto an interpretation of neutrality that they believe promotes just state action, they propagate a view of neutrality that is at odds with the ordinary meaning of the concept. So it appears we are faced with something of a dilemma. Either we adopt a conception of neutrality that squares with the ordinary meaning we assign to it, in which case neutrality, as a principle of political morality of general application, is not particularly normatively appealing, or else we define neutrality in such a way that although it is a political value worth aspiring to, it offends our ordinary understanding of the concept.

At this stage it may seem easiest to take the latter route, and simply jettison our conventional understanding of neutrality. After all, it is probably a mistake to suggest that "neutrality" has become a term of art. Unlike other concepts in the liberal lexicon with a much longer pedigree, such as "liberty" or "equality", for example, serious debate over whether neutrality is a core liberal commitment really only arose after publication of Rawls's *A Theory of Justice*.[333] Perhaps unsurprisingly, then, the term's intension is not settled; different theorists use the concept differently. Consequently, there is an argument to be made that we should be free to define neutrality in whatever way suits our purposes. Even granting that this argument has some force, however, and that we have some flexibility in the way we define neutrality, there ought at least to be a good reason for us to define it in a way that is clearly incongruous with our ordinary understanding of the term. And ultimately the aim of making neutrality a desirable political ideal should not be regarded as a sufficient reason. In fact, when it comes to understanding what a liberal

[333] Klosko and Wall (n 254) 2.

conception of justice demands of the state, positing a duty on the state to act neutrally is in the end at best unhelpful. We should insist that in light of their fundamental moral equality, the state is under a pro tanto duty to treat its citizens impartially and fairly. But—to make a point we will have occasion to return to in the following chapter—claiming that the state is under an additional duty to treat its citizens neutrally leads ultimately to mischief and misunderstanding.[334]

For the moment, however, we can merely note that proponents of 'liberal' or 'political' neutrality did not invent a new term for the standard of political morality they wished to articulate and defend. Instead, they took a term that we were already familiar with and sought to show how its application in the field of politics was a matter of liberal justice. Part of the task, then, of articulating neutrality as a political ideal is asserting why we should strive for it.[335] Proponents of neutrality ought not be allowed, in other words, to simply assume that neutrality must have normative appeal and then work backwards, through a kind of reverse engineering, to fill in the concept in such a way that it tracks roughly—and, necessarily, only roughly—our ordinary, pre-theoretic understanding. It is fair to insist that the work go in the other direction. That is, in articulating a conception of neutrality that can be applied to politics we should move upwards, with the result that the final contours of neutrality, whatever else they look like—and be they such as to make neutrality normatively appealing or not—keep faith with our basic understanding of what it means to be neutral. If we undertake such a process, the conclusion that we face—as we will see further in the next chapter—is that neutrality properly so-called is not a

[334] See János Kis, 'State Neutrality' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012); Ogien (n 308) 305.
[335] See Jeremy Waldron, 'Legislation and Moral Neutrality' in Jeremy Waldron (ed), *Liberal Rights* (CUP 1993) which criticises what Waldron labels Bruce Ackerman's 'noncommittal' (152) and 'promiscuous' (153) justification of neutrality.

requirement of justice in as many cases as proponents of political neutrality suppose. This fact itself, however, is an important insight.

Two More Counter-Examples

Even within the political context, we will clearly want to label as non-neutral some action that justificatory neutrality would have to endorse as neutral. To make the point by way of a somewhat whimsical example, suppose we discover an opera-loving alien race that credibly threatens to annihilate Earth unless the earth's inhabitants turn en masse from Hollywood blockbusters to opera. If individual states were to respond by taking action to ensure that their citizens regularly attend the opera and stop going to the cinema, we would say that although they have acted very sensibly, and likely in a manner that is reasonably non-rejectable, they have not acted neutrally—either as between opera and cinema or as between citizens who at the time of the threat preferred opera and citizens who at the time of the threat preferred cinema.

One final example may help to illustrate the inadequacy of justificatory neutrality as an account of neutrality from a slightly different angle. America, we say, was not neutral (at least post-1941) in the Second World War. They were not neutral because they chose to act with the specific intention of assisting the Allies in their fight with the Axis Powers. Now, it is arguable as to whether the justification for taking sides in the conflict involved an appeal by the American government to a particular conception of the good. (It could be argued, for instance, that the justification for their committing to the fight lay in the apprehension that liberalism was of greater worth than fascism.) It could also be argued that the decision to get involved in the war was one that was reasonably rejectable—by some American citizens, for instance, and not just by Germans or Japanese. But the important point to notice here is that we don't need to determine the answers to those questions in order to decide whether the Americans were neutral or non-neutral. We can see straight away that they weren't acting neutrally. The fact that they were clearly acting with the intention of helping the other Allied forces defeat the Nazis is sufficient reason for us to regard them as non-neutral. No further inquiries need be made.

Likewise, we regard Sweden as having been neutral during World War II, but that judgement does nothing to settle the question of whether Sweden's policy of neutrality was reasonably non-rejectable. Our ordinary understanding of neutrality, for example, emphatically holds open the possibility that neutrality can, in certain contexts, be a morally impermissible posture to adopt. Such was the sentiment famously expressed, for instance, by John F. Kennedy, ostensibly borrowing from Dante, when he promised that 'The hottest places in hell are reserved for those who in time of moral crisis preserve their neutrality.'[336]

All of this suggests, then, that an adequate account of neutrality—whether we are seeking to label as neutral or non-neutral an action taken in, or an actor belonging to, the political or any other realm—will focus on the effects that the actor intended her act to have.[337] Such an account will be laid out at length, and defended from possible objections, in the following chapter.

Neutrality of Effects

We have seen that neutrality of justification is a seriously flawed account of neutrality. In the next chapter we will carefully lay out a satisfying account, since it is only once we are

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[336] 'U.S. Policy Misses Issues, Kennedy Says' *The Washington Post and Times Herald* (Washington, 24 November 1958) A24. In point of fact, this quotation does not appear in Dante's *Inferno* (See Ralph Keyes, 'Ask Not Where This Quote Came From' *The Washington Post* (Washington, 4 June 2006) B2.

[337] Paying attention to intended effects, therefore, is not only of assistance in determining whether a governmental policy is justified, it is also, and quite independently, necessary in order to determine whether that policy is neutral.

armed with one that we can properly evaluate the notion that language policy ought to be regulated by neutrality. We will, very shortly, move on to ask whether we should craft language policy so as to satisfy the standard for state action that justificatory neutrality—notwithstanding that it is an inadequate account of neutrality—lays down. Before we do that, however, it is worth asking whether the much maligned neutrality of effects is not in fact an acceptable account of neutrality.

According to Roberto Merrill, neutrality of effects (or 'neutrality of consequences', as he terms it) holds that 'the state should do nothing that would have the effect—this effect being intentional or not—of favouring a conception of the good life.'[338] (For reasons mentioned above, we will not understand neutrality as restrictively applying only to action taken in respect of conceptions of the good. Instead, we will understand the concept as applicable to an actor's actions wherever it is the case that the actor is aware of a conflict between certain parties, and where that actor's acts or omissions will potentially impact the parties to the conflict.) On the neutrality of effects account, then, an actor who acts to make an unfair contest into a fair one, or to establish a fair contest that would not have obtained had the actor not so acted, has acted non-neutrally, since the effect of his action is to provide differential assistance to the parties that were unfairly disadvantaged until his action, or to those who would have been unfairly disadvantaged had he not acted. Now, given the bedrock liberal commitment to equality of persons[339] and a concomitant commitment to treating citizens fairly, this implication counts strongly against the neutrality of effects account of neutrality, *if* what we're after is a theory of neutrality according to which it is an attractive liberal ideal.

[338] Merrill, 'Introduction' (n 308) 2. Klosko and Wall describe neutrality of effects as requiring that 'the state should not do anything that has the effect—whether intended or not—of promoting any particular conception of the good or of providing greater assistance to those who pursue it' ((n 254) 8).
[339] See Dworkin, *Sovereign Virtue* (n 55); Rawls, *A Theory of Justice* (n 13).

Whether this implication of neutrality of effects conflicts with our ordinary understanding of neutrality is, it is important to note, a separate question.

In fact, though, neutrality of effects does conflict with our pre-theoretic understanding of neutrality. Imagine, for example, that the father in our previous boxing example attempted to be neutral in the match between his sons by intervening only so far as to give each of them a sip of some sports drink between rounds. Totally unexpectedly, one of the children had an allergic reaction to some chemical in the drink, which caused him to become weak and sluggish, thus greatly reducing his chances of winning the match. Here, since the differential effect that the father's action caused was not something he foresaw when he acted, we do not think he acted non-neutrally. Neutrality of effects, however, would force us to say that he did.

The problem, in a nutshell, is that neutrality of effects focusses exclusively on an action's effects and takes no note of the intentions with which the actor took that action. This suggests, again, that a proper account of neutrality should focus instead on the actor's aims and intentions. Such an intentions-based account of neutrality will be defended in the following chapter.

Anti-Perfectionism and Reasonable Non-Rejectability as Guides to Fashioning Just Language Policies

Notwithstanding that it represents an unsatisfying account of neutrality, we might ask whether the standard that justificatory neutrality lays down for state conduct ought to be adhered to. In the name of justice and fairness, that is, should governmental policy, including language policy, be crafted so as to satisfy neutrality of justification? It is important to note that the question is a sensible one, since rejecting neutrality of justification as an account of neutrality does not commit one to rejecting the general contractualist account of political legitimacy out of which neutrality of justification, at least in the works of Nagel, Rawls, and Brian Barry, arises. In rejecting neutrality of justification, in other words, we can insist that the contractualists' reasonable non-rejectability criterion is inadequate as a definition of neutrality, without having to cast judgement on whether it is a sound general principle of political morality.

There is, however, a significant problem with the idea that language policy ought to satisfy neutrality of justification (on whichever of the two versions of justificatory neutrality one has in mind). The problem can be described succinctly as one of a lack of prescriptive power. In essence, the objection is this: when interpreted as neutrality of justification, neutrality is incapable of providing policy-makers with anything but the most general of guidance as to the specific policies they ought to adopt.

This should not actually be surprising. Proponents of political neutrality offer it as a general *constraint* on state action.[340] Neutrality's supporters say, in essence, that whatever *else* it should do, the state cannot act in a non-neutral fashion or else it acts illegitimately. Neutrality thus identifies particular waters the state must not venture into, but it is seldom alleged, even by its proponents, to provide positive guidance about the precise course the state ought to chart.

Let us take each version of justificatory neutrality in turn. On the anti-perfectionist version of justificatory neutrality, the proscription on state action which neutrality of justification lays down is too weak. For instance, an injunction to refrain from acting for reasons that appeal to the value of particular conceptions of the good—or the inherent value of particular languages—may well still leave numerous policies open to us. When it comes to language policy, for example, we might conceive of a state with a

[340] 'Most writers have spoken of the neutrality principle as a *constraint* on legitimate state action' (Klosko and Wall (n 254) 10). Seyla Benhabib, *Situating the Self: Gender, Community and Postmodernism in Contemporary Ethics* (Routledge 1992), for instance, claims that 'The most significant conversational constraint in liberalism is neutrality' (81). See also Ackerman who likewise describes neutrality as a 'conversational constraint' ((n 254) 11).

large number of distinct language communities, each with roughly equal political power. Suppose that the members of all the linguistic groups want to remain within the larger state, but acknowledge that in order for this to occur one (or two or three) language(s) will need to be made official across the country. Even if we commit to selecting the language or languages that will gain official status without reference to any ideas about the greater worth of some as compared to others, we are still a long way from having a formula to follow in order to decide which languages to make official. Should we, for instance, select the historically dominant language, or the languages most widely-spoken in the territory, or those most widely-spoken by the world at large or by a powerful neighbour? Justificatory neutrality does not, in itself, provide us with an answer.

It is important to note here that while in Chapters 3 and 4 we found that there will at times be good liberal reasons for aiming to secure linguistic convergence, it was never claimed that the reason we ought sometimes to aim for convergence on a particular language (or languages) is because that language is (or those languages are) of greater intrinsic worth than others. That sort of claim, in fact, was emphatically rejected. In consequence, if we were to understand neutrality in the realm of language policy as requiring merely that the state not justify its linguistic policies by appeal to the greater worth of particular languages, then we should indeed abide by this standard of neutrality. Again, however, as a regulatory principle that is alleged to guide us towards crafting just language policies, it is of quite limited assistance.

Thus while nothing that was said in Chapters 3 or 4 is incompatible with adhering faithfully to the anti-perfectionist version of justificatory neutrality, it is difficult to discern whether our findings there conflict with the demands of the reasonable non-rejectability interpretation of justificatory neutrality. This, too, is unsurprising. For instance, the answer to this latter question depends on whether the convergence policies we advocated are such that no one could reasonably reject them. It is, however, notoriously difficult to articulate convincingly the precise conditions under which a policy either will or will not be capable of reasonable rejection. Consequently, the reasonable non-rejectability standard can (reasonably!) be regarded as both potentially too strong and potentially too weak.

For example, a common objection to Nagel's notion that the liberal state should not act for reasons that someone could reasonably reject is this reasonable non-rejectability criterion rules out far too much.[341] Depending on what we understand to be required in order to *reasonably* reject something, it may not be possible, for instance, for *any* language policies to satisfy Nagel's criterion. Further, as we will see, it would be unjust for the state in a plurilingual democracy not to enact any protections for minority language speakers. Should reasonable non-rejectability properly understood rule out all such actions, then adhering to that version of justificatory neutrality would lead to injustice. In this sense, reasonable non-rejectability would act as a too strong guide. For instance, it probably makes sense to see taking away all of someone's options as a way of guiding their action—ie, by ensuring they take no action. But where this occurs, that person may well legitimately complain—as may, in our example above, the state that is barred from enacting any minority language protections—of having been overly constrained, and of being in need of a good deal *less* 'guidance'.

Depending again on the precise understanding of reasonable non-rejectability that we adopt, however, it may also be argued that the standard is too weak to effectively regulate the creation of just language policy, since it provides no guidance on which

[341] Andrew Lister, 'Public Justification and the Limits of State Action' (2010) 9 Politics, Philosophy & Economics 151; Simon Caney, 'Liberal Legitimacy, Reasonable Disagreement and Justice' in Richard Bellamy and Martin Hollis (eds), *Pluralism and Liberal Neutrality* (Frank Cass Publishers 1999) 29; Joseph Chan, 'Legitimacy, Unanimity, and Perfectionism' (2000) 1 Philosophy & Public Affairs 5; Jonathan Quong, 'Disagreement, Asymmetry, and Liberal Legitimacy' (2005) 4 Politics, Philosophy & Economics 301, 303.

particular policy, from among a number of policies all of which are reasonably non-rejectable, the state ought to adopt. For instance, an injunction to act only for reasons that no one could reasonably reject, just like an injunction to refrain from acting for reasons that appeal to the value of particular conceptions of the good, may well still leave numerous policies open to us. To see this, let's return again to our example of a state with a large number of distinct language communities, each with roughly equal political power. Let us suppose, again, that while the members of all the linguistic groups want to remain within the larger state, they recognise that in order for this to occur one (or two or three) language(s) will need to be made official across the country. Even if the case for selecting any one of the respective languages were, prima facie, reasonably rejectable by at least some citizens, each person may have, in Nagel's terminology, a higher-order interest in there being an official language, such that each person would support the creation of one, even though they know they run the risk that the language selected will be one which they would otherwise have been able to reasonably reject. The question that still remains, however, is how to select the language(s) that will be given official status. Neutrality of justification does not specify a particular procedure for doing so. Should we thus strive for a particular result? Ought we, again, to select the historically dominant language, or the languages most widely-spoken in the territory, or those most widely-spoken by the world at large or by a powerful neighbour? Justificatory neutrality remains silent on the question.

In the end, the fact that we can sensibly mount arguments to the effect that the reasonable non-rejectability standard is both too strong and too weak points to possibly the largest problem with it as a potential guiding principle for language policy: it is inherently difficult to ascertain just what is reasonably rejectable and what is not.

Certainly it is possible to identify some beliefs as clearly unreasonable.[342] But, notoriously, it is often difficult to identify which of a set of views we think false are nevertheless reasonable.[343] Nagel's counsel that 'Belief is reasonable when grounded on inconclusive evidence plus judgement' is unhelpful, since, by leaving "inconclusive evidence" undefined, it essentially just restates the problem in new terms. Moreover, even accepting that one can reasonably hold a false view, what are we to make of cases in which the view in question directly contradicts our own? Is it unreasonable for us to maintain belief in *x* if we judge another person's belief in ~*x* to be reasonable? If both you and I have access to the same evidence and yet come to opposite conclusions about the truth value of *x*, must not one of us be unreasonable? Nagel thinks not, although he readily admits that 'It is not easy to say what distinguishes cases like this from others in which the recalcitrance of those who are not convinced can be dismissed as unreasonable.'[344] He does appear confident, however, in rejecting the view that 'it is reasonable to believe something only on grounds which make it unreasonable or irrational not to believe it.'[345] This, of course, is quite controversial. In fact, its being controversial gives us reason to pose the following question: might not any general account of how to draw the line between reasonable and unreasonable belief itself be the subject of reasonable disagreement?[346]

The point to take away here, however, is not that Nagel is wrong in his assertion that two people can come to conflicting yet reasonable opinions on identical evidence,

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[342] Nagel gives the example of rejecting germ theory, and contrasts this with ordinary religious beliefs ((n 254) 161).

[343] Complicating matters further is the fact that we can't even be sure that all true beliefs are reasonable. Some religious believers, for instance, regard their faith as true yet incapable of rational defense.

[344] Nagel (n 254) 161.

[345] See ibid 161.

[346] This query in turn points to a common critique of contractualism in the literature—ie, that it's self-defeating. This is a claim which I will not press here, but which it is useful to note would certainly have to be overcome before the contractualist could posit neutrality as an effective guide in picking out just language policies.

nor that his general prescriptions for how to draw the line between reasonable and unreasonable belief are necessarily rendered invalid by his own larger moral theory. The point is, rather, that even if Nagel's views on these matters are both consistent and correct, separating reasonable from unreasonable belief will still be an exceedingly difficult task. Clearly, on the contractualist account, we cannot simply ask people what hypothetical language policies they would in fact happen to reject; we must determine instead which policies they would reject if they were acting reasonably. Answering that question, however, may well turn out to be no easier than answering our initial question of which language policies are just. This fact, given that we only took on the task of answering the former question as a way of getting help in answering the latter, amounts to a significant indictment of the wisdom of turning to justificatory neutrality to guide language policy. If determining what is neutral is as difficult as deciding what is just, the former does not recommend itself as a guide to the latter.

Conclusion

We have found that on neither of its two most widely promoted interpretations is neutrality of justification a plausible account of neutrality. Nor does justificatory neutrality as understood on either version provide us with a standard that the liberal state ought to adhere to in its efforts to fashion just language policies. Let us turn, in the following chapter, then, to providing an account of how we should understand neutrality, before directly asking in the final two chapters what fairness and justice require when it comes to language policy, and whether neutrality properly understood figures largely in that story.

CHAPTER SEVEN

THE NEUTRALIST MODEL:
PART III: VOLITIONAL NEUTRALITY

Introduction

The overarching argument of the previous two chapters was that none of the accounts of neutrality examined there provide a reliable guide to justice in the realm of language policy. As it turns out, however, not only did we find good reasons for concluding that none of neutrality of treatment, neutrality as fairness, neutrality of justification, and neutrality of effects ought to serve as a guiding principle in the formulation of language policy, we also found strong reasons to reject each of the above as accounts of what neutrality consists in.

In this chapter, we will lay out a plausible account of what it means to be neutral, which I will label 'volitional neutrality'. After describing and defending this conception of neutrality at length, we will conclude, however, that even on the best available interpretation of the concept, neutrality in respect of languages can lead to unfairness and injustice. We will also note that in any case neutrality will not provide much in the way of practical guidance for policy-makers.

Volitional Neutrality

As will likely have become clear by this point, neutrality is a complex and easily misunderstood concept. The sheer amount of disagreement within the by now extensive literature on neutrality as to how the concept should be interpreted is good evidence of this fact. As a result of its complexity, we will flesh out our conception of neutrality in a series of steps. By engaging in this iterative process we can revise our working account of neutrality in the light of possible objections and counter-examples, until we are left with a conception of neutrality that is able to meet all such challenges.

The Basic Idea

Although we will see shortly how volitional neutrality diverges from neutrality of intentions, the basic idea behind volitional neutrality is essentially the same idea that animates neutrality of intentions. It can be expressed very simply, in the form of the following proposition:

> ***N1*****:** Acting neutrally means not favouring a party to a conflict.

Definitions

In order to defend *N1*, of course, we will need to provide an explanation of what it is to 'favour' a party to a conflict. I will understand an actor to favour or disfavour a party, respectively, where the actor intentionally differentially helps or intentionally differentially hinders that party. To differentially help a party, A, means to help A without also helping all other parties, B and C, to an equivalent degree. To differentially hinder A, by contrast, means to hinder A without likewise hindering B and C. For present purposes, and although we will come to see how the following definitions are susceptible of multiple interpretations, I will understand an actor to 'help' a party to a conflict when the actor, generally via the provision of some sort of aid or assistance, increases that party's chance of success in the conflict. Conversely, to 'hinder' a party will be understood as decreasing that party's chance of success, ordinarily by way of saddling that party with some kind of obstacle or disadvantage.

In turn, we will need to know how to understand a party's 'chance of success' in the relevant conflict. In a zero sum, two person contest, each party's chances of success are their odds of winning the contest. Many conflicts, however, will not be as simple as this. In many contests, for instance, one party's success will not necessarily be another party's failure. As a general definition applicable to any contest, then, a party's chance of success amounts to the likelihood that that party will meet with success, however 'success' is defined in the context of that specific contest. Thus, for instance, the chances of success of a particular language or lifestyle will be increased when it is made more likely that that language or lifestyle will be realised in the lives of individuals.

The definition of neutrality provided by *N1*, however, faces a problem, which can be illustrated with the following example. Consider the case of a profiteering arms dealer who strikes a deal to supply weapons to A in their war with B. The arms dealer does not attempt to provide equivalent assistance to B, nor does he attempt to offset the expected effects of his supplying A with arms by additionally hindering A in some way. Suppose further that the arms dealer acts here solely for the purpose of making a profit; he is totally indifferent to the fact that his provision of arms to A will increase A's chances of winning the war. According to *N1*, an actor acts non-neutrally only where they act with the intention of differentially helping or hindering a party to the conflict. Here, however, the arms dealer was not motivated to act by a desire to differentially help A, notwithstanding that that was the predictable effect of his action. The arms dealer has thus acted, pursuant to *N1*, in a neutral manner. The problem that this poses for our working definition of neutrality, however, is that it seems clear, I think, that the arms dealer has not in fact acted neutrally.

In order to account for our belief that the arms dealer acts non-neutrally, we will therefore have to revise *N1*. Consider the following refinement:

> ***N2*:** Acting neutrally means not intentionally differentially helping or hindering a party to a conflict, with an 'intention' to differentially help or hinder a party understood as existing wherever the actor either acts *for the purpose* of differentially helping or hindering a party, or acts *in the belief* that there is a substantial likelihood that their action will differentially help or hinder a party.

Before going on to consider further counter-examples and possible objections to *N2*, it will be necessary to spend a moment to unpack the implications of the expansive interpretation of 'intention' that *N2* employs. Volitional neutrality, as the term suggests, understands neutrality to be fundamentally a question of the volition of an actor performing an act. According to *N2*, for instance, an actor acts in a non-neutral fashion if she is *either* subjectively motivated by a desire to differentially help or hinder a party to a conflict—which is to say, if she *aims* at, or acts '*for the purpose*'[347] of having, that effect—*or* if, although she does not act for the purpose of having such a differential effect, she *believes* that her act is substantially likely to have that effect and performs the act nonetheless. As such, when volitional neutrality speaks of an actor's 'intending' to differentially help or hinder the parties to a conflict, this is understood to encompass cases where the actor may not have specifically aimed at that result—or even desired it. In this sense, the mental state of the actor that suffices for a finding of non-neutrality is broader than that ordinarily understood by the term 'intention'. Further, it is important to note that on the volitional neutrality account, the relevant mental state is that of the actor at the moment of her action, as opposed to, for example, the state of mind that we should ascribe to a hypothetical reasonable person performing the same action.

It is also worth spending a moment to appreciate an important point about the relationship between subjective motivation and belief under the volitional neutrality account. For instance, where an actor does *not* believe that her act will differentially benefit a party to a conflict, her act will still be non-neutral pursuant to *N2* if it is taken for the reason that it *might* do so—ie, if it is taken because the actor believes that performing the act will make that result more likely than it otherwise would be. There are, then, three possible scenarios, all of which, where they obtain, are sufficient to make

[347] See Robert Nozick, *Anarchy, State, and Utopia* (Basic 1974) 272–73.

out ‘intent’ as that term is expansively understood on the volitional neutrality conception. Firstly, the actor might believe that their action will cause a differential benefit and might act so as to bring about that result. Secondly, the actor might perform an action in the belief that doing so will cause a differential benefit, albeit without acting for the purpose of bringing about that benefit but rather due to some other motivating reason. Thirdly, the actor might choose to perform an act with the aim of causing a differential benefit, despite not believing that the performance of that act will actually cause that effect. (An actor acts neutrally only in the fourth and final possible scenario in which her action is *neither* motivated by a desire to cause a differential effect, *nor* taken in the belief that such will be the result.)

The Subjective Nature of the Enquiry

Volitional neutrality, as mentioned, enquires into the *subjective* aims and beliefs of the actor. An actor therefore acts non-neutrally when they subjectively believe their act is likely to cause a differential benefit, even if a reasonable person would not have expected that act to have that effect in the circumstances. And conversely, an actor cannot be said to be non-neutral simply because their action in the circumstances is something that a reasonable person would have regarded as likely to cause a differential benefit; the actor acts non-neutrally in performing that act only if *he* judged it likely that it would have such a consequence.

Similarly, if an actor desires to see a preferred party enjoy a differential benefit and thus performs an act for the reason that he wishes to thereby make that result more likely, he acts non-neutrally, even if it was entirely unreasonable for the actor to think that his action would have the desired effect. Conversely, if an actor performs some act that he does not believe will cause a differential benefit, but which is an act that a reasonable person would perform just because it *might* possibly have that effect, the actor acts non-neutrally only if that was also *his* motivation in acting.

Volitional neutrality, in enquiring into an actor's subjective motivations, forces us to distinguish between cases involving an actor who desires some state of affairs to come about, but does not act for the purpose of bringing that state of affairs about (nor for the purpose of making it more likely to arise), and similar cases in which an actor's desire that some state of affairs come about *does* lead him to act for the purpose of bringing that state of affairs about (or for the purpose of making it more likely to arise). If I perform an action which I do not believe to be likely to differentially help or hinder either language A or language B, and neither do I act for the purpose of making that result more likely, then I act neutrally, even if at the time I performed the action I would have been pleased to learn that it would in fact differentially benefit language A, say. Since I was not motivated to act by my desire that language A see its chances of being successful increase, my merely having that desire does not render my action non-neutral.

Admittedly, distinguishing between motivating and non-motivating desires in this manner is inherently difficult. I submit that the appropriate enquiry is whether the desire was *any part of the actor's reasons for acting.* Now, it might initially seem too demanding to say that an actor acts non-neutrally if any part of her reason for action involves a desire to see a particular party to a conflict differentially advantaged. However, this is, I think, quite in line with how we ordinarily understand what it takes to be truly neutral. Neutrality, for example, will always require a kind of purity of intention on the part of the actor, and maintaining this purity of intention can be hard work. This is what Nozick appreciated, for example, when he wrote that the liberal state '*scrupulously* must be neutral' between its citizens.[348]

The Relevance of the Parameters of the Conflict

We left off, before delving into the ramifications of our expansive interpretation of 'intention', having tentatively offered the following definition of neutrality:

> ***N2*:** Acting neutrally means not intentionally differentially helping or hindering a party to a conflict, with an 'intention' to differentially help or hinder a party understood as existing wherever the actor either acts *for the purpose* of differentially helping or hindering a party, or acts *in the belief* that there is a substantial likelihood that their action will differentially help or hinder a party.

For ease of reference, we can simply read 'intentionally' in this liberal manner, thus allowing us to shorten *N2* to read:

> ***N2′***: Acting neutrally means not intentionally differentially helping or hindering a party to a conflict.

This definition is nearly identical to that found in *N1*, although in moving from *N1* to *N2* to *N2′* we have given a vital clarification of how the language of *N2′* should be interpreted.

The definition of neutrality found in *N2′*, however, still faces a problem. The problem is well drawn out by an example that Joseph Raz employs in *The Morality of Freedom*. There, Raz asks us to imagine a scenario in which our nation, through trade, provides food to the Reds but has no commercial relations with the Blues. If a conflict arises between the Reds and the Blues, Raz asks, how are we to act neutrally with respect to it? 'If we continue supplying the Reds,' says Raz, 'we will be helping them more than the Blues. If we discontinue supplies, we will be hindering the Reds more than the

[348] Nozick (n 3477) 33 (emphasis added).

Blues.'[349] As Raz puts it, cases such as these 'form a special class where, in the circumstances of the case, not helping is hindering.'[350]

In such cases, then, there is no possibility of the actor acting in a way that neither differentially helps nor differentially hinders. Therefore, according to *N2′*, unless the actor irrationally fails to comprehend this fact, there is no possibility of the actor acting neutrally. The rub, though, is that we do think it sensible to say that a rational actor in a scenario like the imagined conflict between the Reds and the Blues may act neutrally. We do think, for instance, that—at least generally—it would be neutral to continue trading with the Reds as we did before the outbreak of hostilities.

According to Raz, for instance, the right way to regard situations like these is to insist that while we 'do not have the option of action that neither helps nor hinders'[351] the war efforts of either side, it nevertheless makes sense to ask whether we act neutrally in respect of the conflict between the Reds and the Blues. What we should do, says Raz, is to understand our pre-existing commercial relationship with the Reds as establishing a baseline, against which our actions can be evaluated in order to determine whether we have acted neutrally. For instance, if we differentially help the Reds over and above what is required of us according to the baseline commercial relationship, we act non-neutrally, just as we also violate neutrality if we help the Reds any less than maintaining that baseline requires.

I think Raz is on the right track here—although, as we'll see, he quickly departs from it. For example, it is true that where an actor intends by its action to leave the parties facing the same chances of success in the conflict as it estimates they would each have faced if it continued trading with the Reds in its previous manner (which would likely be

[349] Raz (n 287) 121.
[350] ibid 122.
[351] ibid 123.

its intent, for instance, if it did in fact continue to trade in that manner), the actor will ordinarily be acting neutrally. However, the reason that hewing to that 'baseline' is what neutrality requires is not, as Raz evidently supposes, because that was the state of affairs in place at the time the conflict began. Rather, the reason that an actor that keeps up its previous trading relations and in no other way intends to help or hinder either the Reds or the Blues will, most likely, be acting neutrally is because it seems likely that the existence of that trading relationship should be regarded as an inherent part of the parameters of the conflict itself.

Consider, then, the following definition of neutrality:

> ***N3*****:** An actor acts neutrally if and only if the actor's act: 1) is not performed *in the belief* that that act is substantially likely to cause a differential effect on the parties, *unless* the performance of that act is *called for by the parameters of the conflict itself*; and 2) is not performed *for the purpose* of causing a differential effect on the parties to a conflict.

Many conflicts, for instance, take place in conditions under which the parties have a shared understanding of certain ways in which the conflict will unfold. These shared understandings amount to the internal rules or parameters of the relevant conflict. If I'm asked to neutrally umpire a tennis match, for instance, there are certain rules that shape the conflict which I am expected to acknowledge and enforce. I am not, for example, to award the match to the player who has won the most points, but rather to the first player to win two sets. Similarly, a judge—perhaps the paradigmatic example of a neutral actor—does not act non-neutrally in deciding a preliminary matter on the admissibility of certain evidence in one party's favour. To be sure, the plaintiff's chances of success in the overall suit may be higher—and the defendant's lower—in light of the judge's decision than they would have been had the ruling gone the other way. Moreover, the judge, we can assume, was well aware of this fact, just as we are well aware that whether we cease or continue trading with the Reds, the respective parties' fortunes will be different than they would have been if we had chosen the other course of action.[352] The judge has not acted non-neutrally, however, since the action he took was only that required by the very rules of the conflict he has been tasked with neutrally resolving.

It is worth noting here that strictly speaking we should say that the judge acts neutrally not because he has acted merely in accordance with what the rules of the conflict required of him, but rather because he has acted merely in accordance with *his understanding* of what the rules of the conflict required of him. Thus, for example, if an actor subjectively believes that the rules of a given conflict require her to perform act *x* that differentially benefits a party, and she does perform *x*, she may still act neutrally, even if she was objectively mistaken about what the rules required of her and *x* was *not* an act that the rules of the conflict obliged her to perform.

Consider, briefly, the contrasting manner in which Raz opts to deal with the Reds versus Blues example. In order to be able to claim that the actor acts neutrally in continuing to trade, Raz posits a distinction between 'comprehensive neutrality' and 'narrow neutrality'. Comprehensive neutrality, Raz explains, 'consists in helping or hindering the parties in equal degree in all matters relevant to the conflict between them.'[353] Narrow neutrality, by contrast, 'consists in helping or hindering them to an equal degree in those activities and regarding those resources that they would wish neither to engage in nor to acquire but for the conflict.'[354] Thus we can be narrowly neutral without maintaining comprehensive neutrality. Raz, for instance, asserts that although by acting to maintain the baseline in the Reds versus Blues example we cannot claim to be comprehensively neutral between the Reds and the Blues, we will satisfy narrow neutrality. Further, asserts Raz, 'narrow neutrality is often all that is meant by

[352] In addition, given our expansive definition of 'intention', it is clear that an actor who knows or believes their act will alter the fortunes of the parties should be taken as also intending that result.
[353] Raz (n 28787) 122.
[354] ibid.

‘neutrality’.’[355] So long as we satisfy narrow neutrality, he implies, we should understand ourselves as having acted neutrally.

From the perspective of volitional neutrality, however, Raz’s approach is problematic. We could, for instance, be narrowly neutrally even though we intend our narrowly neutral actions to differentially benefit one side in the conflict. For example, we could provide the Reds with some good (such as food, say) which they clearly would still want in the absence of the conflict, because we know that, having been freed from the need to expend energy or resources to obtain that good in some other way, the Reds will instead be able to devote that energy or those resources directly to their fight with the Blues. Thus we ought to say—and volitional neutrality does say—that narrow neutrality of this sort is no neutrality at all.

The Relevant Baseline: Non-Involvement, not the Status Quo

N3, by taking account of the rules or parameters of a given conflict, implies that an actor that acts only as those rules require him to act may act neutrally, even if he performs his act in the belief that it will help one party and hinder another. On closer inspection, however, we can see that the exception that *N3* carves out for actions done in accordance with the requirements of the relevant contest is not actually necessary in order to vindicate our judgement that the nation that continues trading with the Reds likely acts neutrally in doing so. We can see this by taking a closer look at how we should understand the notion of a party’s chance of success in a given conflict. For example, calculating the overall odds of success for a given party in a lawsuit will require making determinations as to the likelihood that each of the substantive legal arguments the party is likely to mount will convince the judge, as well as the likelihood that procedural

[355] ibid 123.

decisions such as the admissibility of evidence will go her way. As such, the possibility that a judge might find that certain evidence that a party wishes to adduce is legally admissible, but nevertheless decide to exclude it, is simply not something that is taken into account when determining the litigant's chances of success. Instead, the judge's acting on these questions in the way that the law requires is simply part of the basic parameters of the conflict. The parties' chances of success, that is, are calculated on the basis that the judge will act as the very rules of the contest require.

As such, there is no need to make an 'exception' for actions that 'favour' a certain party to a conflict but are required by the rules of that conflict. No exception is necessary, because such action will not actually 'favour' any party. Specifically, the actor's action here will not increase any party's chances of success in the conflict, since in determining each party's chances of success at the time the actor performed the action we assume that the actor will take that action, as well as any others that the rules of the conflict require of him. The judge's action in admitting the evidence, say, should therefore not be seen as taken with an intention to increase a party's chances of success, but rather as intended to *preserve* the parties' chances of success—ie, by not failing to do that which it was taken for granted in determining the parties' chances of success that he would do.

Make-up Calls

We might, therefore, wish to fall back on *N2′* as our definition of neutrality. There is, however, another hypothetical we could imagine that reveals a mistaken and somewhat hidden assumption lying behind both *N2′* and *N3*. Consider, for instance, the idea of a 'make-up call'. A make-up call, in sporting parlance, is a decision by a referee or umpire that some action performed by a member of one team amounts to a violation of the rules of the game, and which is influenced by the fact that the other team was previously penalised in dubious circumstances. In short, the referee opts to make a borderline or even bad call against Team A in order to offset a prior borderline or bad call that was made against Team B. The referee's motivation in making the latter call is not to favour Team B by hindering Team A, but rather to erase (or 'neutralise') the effects of the prior call, which advantaged Team A by hindering Team B. In this way, while he cannot reverse the prior call that hindered Team B, his subsequent hindering of Team A in an equivalent manner ensures that his impact on the proceedings is an even-handed one.

In light of the referee's motivation in making the call against Team A, we ought to regard such make-up calls as neutral acts. Neither *N2′* nor *N3*, however, allow us to do so. For example, the referee in making the make-up call against Team A subjectively intends to increase Team B's chances of success in the contest, due to his belief that those odds of success are presently less than they would have been had he not made the first, dubious, call against Team B. According to the logic of *N2′* and *N3*, then, the referee in making the make-up call acts non-neutrally, in that he clearly intends to increase Team B's chances of success, at the expense of Team A's chances.[356]

The defect in *N2′* and *N3* which prevents us from being able to conclude that the referee acts neutrally in whistling the foul against Team B is that there is, implicit in the two definitions, an assumption that in order to determine whether a party's chances of success have been increased by an actor's act, we must compare the party's chances of success after the act has been performed with their chances of success just prior to the performance of that act. What we should compare, instead, is the party's chances of

[356] Actually, we should regard *both* his calls as neutral. The first, for instance, is neutral because at the time he made it he thought it was merely what the rules required of him, and only some time afterwards came to think it was a bad call in the sense of not being required (nor even permitted) by the rules. (That is not to say, of course, that a referee could not call a make-up call after earlier having made a poor call with which he specifically aimed to differentially hinder a party. In that case, the latter call may be neutral, but the former would not be.)

success after the act has been performed[357] with their chances of success *had the actor remained non-involved for the duration of the conflict*. ('Involvement' here is taken to mean performing an action (or omitting to perform an action) whose commission (or omission) bears on the parties' chances of success in the conflict.) We can therefore advance a new definition of neutrality:

> ***N4*****:** Acting neutrally means not intentionally differentially helping or hindering a party to a conflict, with an actor understood as intending to help a party wherever the actor intends that the party will face, as a result of the actor's action, a chance of success that is greater than the chance of success the actor estimates that party would have faced had the actor remained non-involved for the duration of the conflict.[358]

In many cases we can rightly judge that an actor acted non-neutrally without having to choose between what we might label the 'status quo' and 'non-involvement' reference points. For example, where a father intervenes in a fight between his two children by providing safety equipment only to his younger child, the father is *both* causing that child's chances of success to be greater than they were at the moment before the father acted, and causing the child's chances of success to be greater than they would have been had the father remained non-involved for the duration of the conflict. (This is due to the fact that at the time just before the father acted, he had indeed been non-involved for the duration of the conflict up to that point.) What *N4* insists on, however, is that the non-neutrality of the father's actions in this scenario hinges on the fact that we can describe them as having been intended to have the *latter* rather than the former effect.

[357] The fact of multiple post-action time points is not a problem given our metric of 'chance of success'. That is, if an actor intends to cause a party to lose a few battles post-action before later gaining the upper hand and winning a string of later battles and ultimately the war, we should understand the actor to have intended to raise the party's chances of success to whatever he estimated the party's overall odds of winning the war would be.

[358] An intention to *hinder* a party would of course be understood in complementary fashion as an intention on the part of the actor that the party will face, as a result of the actor's action, a chance of success that is *less* than the chance of success the actor estimates that party would have faced had the actor remained non-involved for the duration of the conflict.

The importance of the distinction, of course, is that we can encounter situations in which the actor intends only one or the other of these two things. The make-up call example is one such case. There, for instance, while the referee *did* intend to cause a party's (Team B's) chances of success to be greater than they were at the moment before he made the make-up call, he did *not* intend to cause Team B's chances of success to be any greater than they would have been had he remained non-involved for the duration of the conflict. It is for this reason that the referee has acted neutrally.

There are a couple points of clarification that should be made here, before moving on to discuss how *N4* in turn is in need of further refinement. Firstly, it is important to forestall a potential confusion about the relationship between fairness and neutrality, as defined by *N4*. Although we mentioned above that the motivation of the referee in calling the make-up call is purely to ensure that his impact on the game is an *even-handed* one, we should emphatically *not* conclude that therefore any actor who seeks to take an unfair contest and make it a fair or fairer one therefore acts neutrally. Neutrality and fairness are far from synonymous. The referee's decision to whistle Team A for a phantom foul may well make the contest fairer than it would have been had he not made that make-up call, for instance. But that is not what makes his action neutral.[359] A father, for instance, who chooses to intervene in a fight between his two children specifically in order to make it a fair contest—and who therefore, say, provides his younger child with whatever amount of equipment or other resources are necessary to offset the natural advantages of size and strength possessed by the older child—acts non-neutrally according to *N4*, since he clearly acts with an intention to make his younger child's chances of success in the

[359] To be clear, in making a make-up call, a referee is not necessarily acting to make the contest fair, nor is he even necessarily acting to make it fairer. Rather, he acts with the intention merely of *evening things up*—which is to say, he acts for the purpose of bringing Team B's chances of success back up to what they would be had he, rather than making the dubious call against Team B, been non-involved.

contest better—and thus to make his older child's chances worse—than they would have been had he remained non-involved for the duration of that contest.

Secondly, it is important to note the significance of the stipulation that we must compare the parties' chances of success following an actor's action to the chances of success they would have faced had the actor remained non-involved *for the duration of the conflict*. On this standard, as we saw, while the referee's make-up call can be said—rather loosely—to 'favour' Team B in the sense that it leads to their chances of success being greater than they were before the call was made, it should not, on the whole, be seen as favouring Team B for the purposes of determining the neutrality of the action. Of course, we might note that in calling the make-up call the referee *does* cause Team B's chances of success to be greater than they would have been had the referee chosen to remain non-involved *from the time he made the initial bad call onwards*. As indicated, however, that is not the appropriate standard. Total non-involvement—ie, non-involvement for the entire duration of the conflict—is the better reference point. With this reference point in mind, for instance, we see that the referee's make-up call is a neutral act, as it not intended to improve Team B's chances of success relative to their chances had the actor all along been non-involved. The act is a neutral one because it is intended, instead, to *restore* Team B's chances of success to the level they would now face had the referee been non-involved throughout.

Involvement Required by the Rules of the Conflict Itself

In the case of the Reds versus Blues conflict, our inclination, as we saw, was that the actor acts neutrally in continuing trading with the Reds after the hostilities break out. If *N4* is the proper definition of neutrality, however, it's not clear what we should say about the neutrality or non-neutrality of the actor. How, for example, are we to evaluate whether the actor's action causes the Reds to enjoy a better chance of success than they would have enjoyed had the actor all along been non-involved in the conflict? Specifically, how can we be expected to know what chance of success the Reds would have faced had the actor all along been non-involved in the conflict, given that non-involvement was never possible? The counterfactual suppositions we would need to make to answer this question could, depending on the circumstances, be incredibly speculative. It might seem, then, that we cannot say anything at all about the neutrality or non-neutrality of the actor in cases such as these. At the very least, it would seem clear that we cannot declare with any confidence—as, ordinarily at least, we would wish to—that continuing to trade is neutral.

To make sense of these sorts of cases in which some form of involvement by an actor is required of that actor by the very rules of the conflict, we should, as a final refinement, revise *N4* by ensuring that our definition of neutrality takes account of the parameters of the relevant conflict. The necessary refinement to *N4* is similar to the way in which we earlier attempted to refine *N2′* by offering up *N3*.

> ***N5*:** Acting neutrally means not intentionally differentially helping or hindering a party to a conflict, with an actor understood as intending to help a party wherever the actor intends that the party will face, as a result of the actor's action, a chance of success that is greater than the chance of success the actor estimates that party would have faced had the actor remained, throughout the conflict, *as non-involved as permitted by the parameters of the conflict itself*.

Armed with this definition of neutrality, we can see the nation that continues to trade with the Reds, as well as our hypothetical judge, as neutral actors. For instance, whatever we might think about what the chances for success of the parties to the respective conflicts might have been had the two actors been non-involved for the duration of the conflicts, we can see that, provided they involved themselves only so far as required by the rules of the conflict itself, it is true by tautology that they could not have caused a party's chances of success to be other than what that party's chances of success would have been 'had the actor remained, throughout the duration of the conflict, as non-involved as allowed by the parameters of the conflict itself.' As such, unless the actors are assumed to have (irrationally) *intended* to cause such an effect when they acted merely as the rules of their respective conflicts required, they will have acted neutrally.

The Neutrality Determination Exercise

It will be helpful to summarise our conclusions about the proper way to understand neutrality by laying out the three-step procedure that we ought to follow in order to ascertain the neutrality or non-neutrality of a given action. For simplicity's sake, let us imagine that the relevant conflict we have in mind has only two parties, A and B. In addition, let a party's 'post-action position' (PA) describe the chances of success that an actor estimates that party will face following the actor's action. Let a party's 'minimal involvement position' (MI) describe the chances of success that an actor estimates that party would face, were the actor to be as non-involved as the rules of the conflict permit. First, we must compare the chances of success that the actor intended his act to see A face post-action to A's MI position. Second, we must compare the chances of success that the actor intended his act to see B face post-action to B's MI position. If the chances of success that the actor intended his act to see A face post-action are better than A's MI position, the chances of success that the actor intended his act to see *B* face post-action must be equally better than *B*'s MI position. If this is the case, the actor acted neutrally; if not, he acted non-neutrally. If the chances of success that the actor intended his act to see A face post-action are worse than A's MI position, the chances of success that the actor intended his act to see *B* face post-action must be equally worse than *B*'s MI position. If this is the case, the actor acted neutrally; if not, he acted non-neutrally. And if the chances of success that the actor intended his act to see A face post-action are the same as A's MI position, the chances of success that the actor intended his act to see *B* face post-action must be the same as *B*'s MI position. If this is the case, the actor acted neutrally; if not, he acted non-neutrally.

Slightly cumbersomely, we can label this three-step procedure 'the neutrality determination exercise', and lay it out via a somewhat more concise formulation than that just provided.

> ***The Neutrality Determination Exercise*:** 1) Compare the chances of success that the actor intended his act to see party A face post-action to the actor's estimate of A's minimal involvement position; 2) Compare the chances of success that the actor intended his act to see party B face post-action to the actor's estimate of B's minimal involvement position; 3) Ask whether, if the chances of success that the actor intended his act to see A face post-action are better or worse than, or the same as, the actor's estimate of A's minimal involvement position, the chances of success that the actor intended his act to see *B* face post-action were, respectively, equally better than, or equally worse than, or the same as, the actor's estimate of *B*'s minimal involvement position.

According to volitional neutrality, as defined by *N5* above, where the condition contained in the third step of the neutrality determination exercise is satisfied, the actor's action was neutral. If it is not satisfied, then the action was non-neutral.

Rounding out our Understanding of Volitional Neutrality

One implication of the volitional neutrality account of neutrality that is worth noting is that an actor may act neutrally even where they are motivated to do so by the expectation that remaining neutral will ensure the success of a particular party to a conflict that they wish to see succeed in that conflict. This fact highlights the disconnect between neutrality and impartiality. The actor in the above scenario, for instance, is clearly not impartial as between the parties to the conflict, but that is not to say he is non-neutral between them. He possesses the sort of mental state that often accompanies and motivates non-neutral acts. However, he has not actually performed a non-neutral act, since he has not performed an action for the reason that it may, or in the belief that it will, differentially affect the relevant parties' chances of success, relative to the chances of success he believes each would have faced had he remained all along as non-involved as the rules of the contest permitted. In short, neutrality that is maintained for strategic reasons does not therefore cease to be neutrality.

It is also the case, on the volitional neutrality account, that the neutrality or non-neutrality of a given act may be exceedingly difficult to ascertain. This is so given the inherent difficulties involved in identifying the particular motivations of a given actor, as well as the difficulties in determining the actor's subjective expectations as to the likely consequences of her actions.[360] In addition, we run into further potential complications when we seek to ascertain the neutrality or non-neutrality of an action taken by a *collective* entity such as the state or a legislature. Here, for instance, there is some controversy about whether it even makes sense to speak of the intention of Parliament, say.[361] However, these difficulties in determining whether a given action is neutral do not give us reason to reject the volitional neutrality account. On the contrary, the implication that we may sometimes face difficulty in labelling an action as neutral or non-neutral suggests that the volitional neutrality account is in line with the way we ordinarily speak about neutrality, since we will often hesitate to declare an action neutral or non-neutral for want of insight into the relevant actor's state of mind. An account of neutrality such that determining the neutrality or non-neutrality of actions will always be an easy matter would for that reason be a *worse*, not a better, conception of neutrality.

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[360] Added to this is the difficulty of determining precisely how likely an actor must regard it as being that her action will cause a differential benefit before we may say that she 'intended' to cause that benefit. Volitional neutrality is somewhat vague on this score, claiming only that the question is whether the actor regarded that consequence as 'substantially' likely. I think this vagueness must be tolerated, as greater precision could only be bought at the cost of arbitrariness.

[361] While there is not space to tackle this issue, I believe we can sensibly speak of the intention of a collective. For a well-argued defence of this notion, see Richard Ekins, *The Nature of Legislative Intent* (OUP 2012).

Is Neutrality 'Unruly'?

A potential objection might be raised regarding the way in which volitional neutrality takes into consideration the rules, or 'parameters', of the relevant conflict. Volitional neutrality, to repeat, understands neutrality as requiring that the relevant actor not intentionally differentially help or hinder a party to a conflict, where an actor is understood as intending to help a party whenever the actor intends that the party will face, as a result of the actor's action, a chance of success that is greater than the chance of success the actor estimates that party would have faced had the actor remained, throughout the conflict, as non-involved as permitted by the parameters of the conflict itself. If the rules of the conflict are taken into account in this manner, however, there is some reason to be concerned that we could be forced to regard as neutral conduct that seems anything but. For example, what are we to make of a conflict between A and B that takes place against the backdrop of an understanding among all the parties that while A and B battle each other in the boxing ring, for example, third party C will regularly pelt A but not B with eggs, say? Are we not forced, on the volitional neutrality account, to declare C's actions neutral, and is this not clearly absurd?

We should respond by conceding that C's actions here are in fact neutral according to volitional neutrality, and by insisting that this is no embarrassment for that account. Where both A and B agree to participate in a boxing match in which one of them will have to endure constant bombardment from third party C, C's fulfilling their expectations by pelting only A and not B is to act neutrally in respect of the conflict between A and B. Throwing eggs at one boxer during a match, plainly, would ordinarily not be a neutral act. But that is because the sort of conflicts we are imagining in such 'ordinary' cases are markedly different from the conflict in which A and B are engaged in our example. Where, as in the ordinary course of things, there is no expectation that a third party is to take action to make it harder for one fighter to land his blows, an individual that did so would be acting in a non-neutral fashion. But where the expectation is that C will do just that, it is his *failure* to do so—eg, by throwing eggs at both fighters, or throwing no eggs at all, or throwing eggs at B and not A, or throwing not only eggs but, say, rocks as well at A—that would be non-neutral. In other words, it may be, in the circumstances, that C's involvement in the conflict makes the conflict unfair. It might also be that were the fight a fair one, it would not be one that involved any third party throwing objects at a particular participant. If that were so, then in the context of *that* conflict, C's pelting one boxer only with eggs would be to act non-neutrally. But in the actual, unfair conflict that we have imagined, C's actions in egging A will be neutral, since they will be taken in the knowledge that they simply ensure that each party's chances of success following C's action are identical to the chances of success each would have faced had the actor remained, throughout the conflict, as non-involved as permitted by the parameters of the conflict. And this is so because C *will* have 'remained, throughout the conflict, as non-involved as permitted by the parameters of the conflict.'

It is, however, important to note that in setting up a particular conflict—in establishing its rules or parameters—an actor can act non-neutrally. We could imagine, for instance, an actor, C, that happened upon an ordinary, fair boxing match between A and B and, via threats and cajolements, say, convinced the boxers to continue their match under the same rules as before, except for a solitary amendment to those rules which calls for A to fight with one hand tied behind his back. If, in the ensuing rounds, C does not involve himself in any way in the proceedings, and simply watches as the one-armed A struggles to stay upright against B, C acts neutrally in respect of the new conflict whose unfair rule he put in place. It may well be, however, that C has acted non-neutrally *in respect of another, underlying and pre-existing conflict* between A and B.

It might be, for example, that the bout between A and B that C's rule change has turned into a farce is part of a larger, ongoing competition involving A and B for, say, points awarded for winning individual matches that count towards the conferring of a championship belt. In that case, C will almost certainly have acted non-neutrally *in respect of this latter conflict* when he put in place his unfair rule and hence established the new conflict in respect of which he remained neutral. The establishment of the one-sided conflict between A and B, that is, may well have been done with the intention to see that B's chances in the larger contest for the championship belt increase (and A's decrease), as compared with the chances B would have faced had C been, for the duration of that conflict, as non-involved as the rules of that conflict permitted. This is because C was under no requirement, pursuant to the rules of the larger, pre-existing conflict, to set up the later one-sided conflict; C's being as non-involved as the rules of the former conflict permitted would have seen him remain non-involved entirely.[362]

As a last word on the topic of how a given conflict will have its own internal rules or parameters, we should note that these parameters may change over time. The rules of a conflict, for instance, emerge from the understandings and expectations of those associated with it. Sometimes those understandings and expectations will be formally codified, as they are in the rulebooks of sporting leagues, for example. Often, however, those understandings and expectations will be unwritten. In either case, the rules can change as expectations change. It is possible, therefore, for an expectation to arise that C's ongoing support of A in their conflict with B will continue for the duration of the conflict, such that over time it will become a rule of the conflict between A and B that C involves itself in this way for the remainder of the conflict. In this manner, C's

[362] To be clear, C's acting to impose the unfair rule and thereby establish the later, one-sided conflict amounts to his being 'involved' in the pre-existing conflict for the championship belt, given our above definition of 'involvement' as 'performing an action (or omitting to perform an action) whose commission (or omission) bears on the parties' chances of success in the conflict'.

involvement, which may well have initially been non-neutral in respect of the conflict between A and B as it existed at the time, may become what the amended rules of the conflict in its subsequent stages require of C in order for C to remain neutral.

Is Volitional Neutrality Overbroad?

Another potential objection to volitional neutrality might be that neutrality as it is understood on this view renders far too much ordinary governmental action non-neutral. In particular, the concern is that a liberal state that protects freedom of religion, association, speech and the like might therefore act non-neutrally, since it can be expected that the protection of such basic liberties will differentially benefit certain conceptions of the good—for example, secular humanism, or even non-'boring' ways of life.[363] This concern is of course far more worrying for those who are committed to the notion that whatever liberal neutrality means, it must be understood as an appealing political principle. Our goal in this chapter has instead been merely to articulate and defend a coherent and plausible account of neutrality, free from any presuppositions as to whether, on such an account of neutrality, neutrality will amount to an ideal liberal states ought to strive for. It is thus open to us to concede that even state actions which are obviously desirable on a broadly liberal conception, such as the protection of Rawls's basic liberties, *do* violate neutrality properly understood—but are no less desirable, and no less a requirement of justice, for that.

We should not, however, simply concede the point. In order to properly determine whether protection of the basic liberties is neutral or non-neutral, we must engage in what we earlier labelled the neutrality determination exercise. We must, that is, ask whether, in acting to ensure respect for basic individual rights, the state acts in the belief that this

[363] Patten, *Equal Recognition* (n 255) 131.

will, or for the reason that it might, cause the chances of success of particular conceptions of the good to differ from the state's estimate of what those chances of success would be had the state, for the duration of the conflict between these conceptions, remained as non-involved as the rules of the conflict permitted. On the assumption that the state is not motivated by an irrational expectation, the task therefore essentially involves asking how each conception of the good could be expected to fare in a state of nature. That is, since there is nothing inherent in the nature of the competition between conceptions of the good that requires the state to involve itself in that conflict, a state of nature is what would be in place were the state to remain as non-involved as the conflict permits.

So how could we expect various conceptions of the good to fare in such a state of nature? There seems good reason to suppose that 'non-boring' lifestyles and conceptions of the good would be more successful than boring ones, since a lifestyle's being boring is an inherent liability when it comes to attracting individuals willing to participate in it. The mere fact that protecting basic liberties will see non-boring lifestyles enjoy more success than boring ones therefore would not imply that in affording such protection the state acts non-neutrally.

Consider, however, lifestyles and conceptions of the good that preach aggressive proselytisation or the commission of violence against the adherents of rival conceptions of the good. Such violent conceptions of the good will clearly stand a better chance of success in a state of nature, where the resort to such violence does not meet with state censure, than in an environment in which basic rights are protected. As such, protection of the basic liberties non-neutrally favours non-violent conceptions of the good. Therefore, volitional neutrality does indeed imply that some fundamental liberal commitments are non-neutral. Nowhere in our defence of volitional neutrality, however, have we claimed that that which it picks out as non-neutral is for that reason unjust. Thus the non-neutrality of even the fundamental liberal commitment to the protection of the basic liberties should not be regarded as suggesting that that liberal commitment is in fact unjust. Rather, it is strong evidence that acting justly does not require acting neutrally (and in fact may require acting non-neutrally), thus implying that doing justice and being neutral are two very different things.

The Province of Neutrality

Two final clarificatory points are in order regarding how the volitional neutrality account understands the scope of neutrality. According to the conception of neutrality we laid out above, 'neutral' and 'non-neutral' are adjectives that can properly be applied to both acts and to actors. Specifically, where an actor performing an act does so neither in the belief that his action will, nor for the reason that it might, cause the chances of success of a party to a conflict to be other than they would be had the actor, for the duration of the conflict, remained as non-involved as the rules of the conflict permitted, we can say both that that act and that actor are neutral. What makes the actor, and his action, neutral is the volitional state with which that actor performs his act. In this sense, the relation between a neutral actor and her neutral act is akin to the relation between a good faith actor and an action she takes in good faith.

Furthermore, on the volitional neutrality account, an actor can act neutrally or non-neutrally in respect of a conflict involving many sorts of parties. Specifically, it is not the case that actors can only act neutrally or non-neutrally in respect of a conflict involving conceptions of the good. This, of course, is completely in line with our ordinary understanding of neutrality. We have absolutely no trouble understanding the claim that an actor has acted non-neutrally as between his fighting children, for instance, or that one state has been neutral in a war between two others. On the other hand, theorists who write about neutrality as a political principle, almost without exception,[364] focus exclusively on the question of whether the state should adopt a neutral stance towards conceptions of the good.[365] What explains this apparent dissonance between neutrality as a political principle and neutrality as an everyday concept?

The answer is that, as alluded to above, theorists of political neutrality have generally gone about things backwards; they search for an account of neutrality such that requiring states to hew to neutrality so understood is a requirement of political morality, as opposed to fully articulating the familiar notion of neutrality and asking whether *it* amounts to a standard that states, as a matter of justice, must live up to. The latter exercise is what we embarked upon at the beginning of Chapter 5, since our question has all along been whether neutrality, and not some ersatz version of it, ought to guide language policy.

Now, it's rightly assumed that the state's remaining neutral in respect of all conflicts involving its citizens cannot be a requirement of liberal justice. However, responding to this fact by reverse engineering a fit for purpose account of neutrality leaves us, as we have seen, with a somewhat bowdlerised, and ultimately a warped and defective, account of neutrality. On this score, for example, we noted how 'neutrality of

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364 Patten is a very notable exception. For instance, Patten, as we have seen, regards neutral treatment as cashed out in the form of equal recognition. He defines 'the objects of recognition' as '*preference[s]* that [are] informed by, or expressions of, an identification with some group or community' (ibid 175; emphasis added). He also writes of neutrality between language communities and lifestyles, in the process opting not to contrast 'neutrality exclusively with perfectionism', but rather 'oppos[ing] it to a broader range of uses of political power' ('Liberal Neutrality: A Reinterpretation' (n 255) 250–51). Further, while Patten says in *Equal Recognition* that state neutrality is technically a stance the state takes vis-à-vis *conceptions of the good*, he goes on to assert that we can speak of neutral treatment of *cultures* as a 'shorthand' for the neutral treatment of 'identity-related *components* of conceptions of the good' (175). The linkages that Patten seeks thereby to draw between cultures and conceptions of the good are dubious. As Patten himself notes, a culture is not synonymous with a conception of the good (176). Nor do all members of a culture necessarily share a particular conception of the good. *Languages* are even more clearly distinct from conceptions of the good, and it is even less plausible to say that members of a linguistic community share the same conception of the good than it is to say that members of a cultural community do so. In the result, it seems clear that Patten extends the scope of neutrality beyond the realm of conceptions of the good.

365 See Merrill, 'Introduction' (n 3088) 7: 'All authors participating in the debate' over 'what normative considerations are excluded by the requirement of neutrality' 'agree that these normative considerations concern the "good".'

justification' represents a very strange account of the concept of neutrality. While it is arguable that the *justice* of a given state action depends on whether that action meets the standard of reasonable non-rejectability or anti-perfectionism, it is clear that the *neutrality* of an action does not. Where C remains non-involved in a conflict between A and B whose rules do not require C to be involved, C acts neutrally, even if someone might reasonably reject C's doing nothing, and indeed even if *everyone* could reasonably reject it. Similarly, if C intervenes in that conflict in order to differentially benefit A, C acts non-neutrally, even if a non-perfectionist justification for C's intervention is available. We see, therefore, that when it comes to determining whether certain actions are neutral or non-neutral, a 'fit for purpose' account of neutrality such as neutrality of justification risks giving us the wrong answers, and, more importantly, makes us ask the wrong questions.

Now, none of this is to deny that it is possible to make an argument to the effect that although neutrality (as it is properly understood on the volitional neutrality account) can apply in respect of conflicts between many sorts of parties, the liberal state is under an obligation of political morality to be neutral only in respect of conflicts between conceptions of the good. Nor is it, exactly, to deny that the sort of state action that proponents of a given defective account of neutrality are actually advocating in regards to conceptions of the good might be exactly what political morality requires of liberal states. We might think that states, as a matter of justice, must take action that differentially impacts on conceptions of the good only where they can justify those actions in non-sectarian terms, as anti-perfectionism requires. Or we might think that states must, as a matter of justice, adhere to the standard of impartiality that Nagel's idea of reasonable non-rejectability lays down. But what we should *not* think is that either of these views about how the state ought to act vis-à-vis conceptions of the good amount to compelling conceptions *of neutrality*. Using the label 'neutrality' here (as opposed to, for example, labels such as 'impartiality' or 'non-perfectionism') to describe these varied accounts of what justice requires in respect of the state's treatment of conceptions of the good is unhelpful; it obscures rather than illuminates.[366]

Volitional Neutrality as a Guide to Language Policy

Having finally found an interpretation of neutrality that squares with our ordinary understanding of the concept, we must ask our organising question: is neutrality so understood a good guide to the formulation of just language policy? The answer, for three reasons, is no.

Firstly, ensuring that language policies are neutral (on the volitional neutrality account) would prevent the state from acting in order to secure linguistic convergence, since seeking to have citizens converge on one or more languages is to act for the purpose of seeing the preferred languages (and those languages only) gain more speakers than they otherwise would. Aiming at such convergence would not necessarily violate a conception of justificatory neutrality according to which neutrality only rules out actions which cannot be given a non-perfectionist justification, since the justification of pro-convergence policies we defended in previous chapters, for example, emphatically did not rely on the false proposition that some languages are inherently superior to others. Once we acknowledge that neutrality must be understood according to the volitional neutrality account, however, aiming to secure linguistic convergence is plainly non-neutral. Further, as we saw in Chapters 3 and 4, the liberal state is under a duty of justice to foster at least some degree of convergence.

[366] See Kis (n 3344) 318.

A second drawback to employing neutrality—properly understood—as a guide when it comes to the formulation of just language policy is that it would prevent us from acting to remedy the lasting effects of historical linguistic injustice. This is unacceptable because justice sometimes requires that we remedy a past injustice by favouring the parties or conceptions of the good that have been disadvantaged by the injustice.

There is, however, an argument that can be made that neutrality does not actually constrain us from taking the remedial measures that justice requires in such cases. For instance, in many if not most instances of historical linguistic injustice, we find that the injustice has been perpetrated by a state. If the same state now decides to favour some linguistic community it persecuted in the past, then on the volitional account of neutrality we have settled on, it might be said that the state is acting neutrally, in the same way in which the referee who made the make-up call in our earlier example acted neutrally. If the state should be understood as a single moral entity enduring through time from the date of the initial persecution until today, that is, we could then understand its remedial actions as merely intended to offset its own earlier misdeeds—ie, by seeing to it that the historically wronged language community comes to enjoy the same chances of success that they would have been likely to face today, had the state remained all along as non-involved as the rules of the conflict permitted.[367]

This argument, I think, can succeed, but only where two conditions are met. Firstly, it must indeed be appropriate for us to regard the contemporary state as the same moral agent that acted unjustly in the past. This condition may not to be met, for example, where there has been an important transformation of the structure of the political system, or change in the state's territory, in the intervening years. Secondly, it must not be the

[367] This is assuming of course that there were no such rules that required the state to unjustly harm the linguistic community in the manner that it did.

case that the very rules of the present conflict between linguistic communities require the state *not* to remedy past injustices. This condition will not be met, for example, where all parties understand that ‘bygones’ are to be treated as bygones, and that each linguistic community is to compete for success against a backdrop that precludes the possibility of special treatment designed to compensate for past injury.

In other words, if either of those two conditions are not satisfied in the circumstances, then neutrality will preclude remedying the relevant historical injustice. And, as we said in Chapter 5, although there is not space in the current work to prove that at least some historical linguistic injustices have lingering present-day effects that justice calls upon us to redress, we can safely assume that that is the case. In addition, even if both conditions are met, volitional neutrality still prevents the state from redressing the consequences of historical injustices perpetrated by some other actor—eg, a rival linguistic community or other group of private citizens.

To be clear, in order for neutrality to serve as a reliable guide in the formulation of just language policies it is not necessary that neutrality must *always* recommend the (morally speaking) best course of action. Even a good guide may fail to get you to your destination once in a while. And we have certainly not claimed that language policies which satisfy volitional neutrality will, for that reason, necessarily be unjust. Rather, the claim is that neutrality so understood is not, in itself, a sufficient guide to justice because such policies *may* well be unjust. The proper conclusion to draw here—one that we will explore at greater length in the remaining two chapters—is not that aspirations to (volitional) neutrality must never play any role in guiding the formulation of linguistic policy, but rather that such neutrality will sometimes undermine rather than further the pursuit of just language policies.

The third and final reason why volitional neutrality is not an especially good guide when it comes to formulating just language policies is that it, like neutrality of justification, simply does not provide much in the way of specific guidance. To be fair, it would seem that an injunction to not intentionally benefit one party to a dispute at the expense of another is of somewhat greater practical guidance than an injunction to not do anything anyone could reasonably reject, for instance. Thus volitional neutrality is likely a less bad guide in this sense than is neutrality of justification. But in the end, even if we rule out favouring particular languages—that is, intentionally benefiting some over others—there will still exist a wide range of possible ways in which we can deal neutrally with languages. Should the state take up a stance of non-involvement with regard to languages? Or should it provide each language with the maximum level of support it can, without violating the injunction against acting with the intent of benefiting any one over the others? Or, alternatively, should the state strive for some intermediate level of support for languages? If so, which level? These are not questions to which volitional neutrality provides answers. In the final analysis, then, both neutrality of justification and volitional neutrality tell us what not to do, while not saying all that much about what in fact we should do.

Conclusion

In this chapter and the previous two, we have asked whether the notion of neutrality can serve as an effective organising principle when it comes to language policy. We found that in order to properly tackle that question, we must articulate and defend a particular account of neutrality from among several possible interpretations. To that end, we considered the following accounts of neutrality: Patten's neutrality of treatment, neutrality as fairness, neutrality of justification, neutrality of effects, neutrality of aim, and volitional neutrality. We concluded that none but the last conception of neutrality squares with our ordinary understanding of the concept. We found that neutrality of treatment may lead to unfairness and injustice, and concluded that our linguistic policies therefore should not strive for neutrality as it is understood on this account. Further, we objected to employing neutrality of justification to guide language policy because we found that it fails to provide us with sufficient guidance about the specific sorts of policies we should implement. We also noted that a state that actually satisfies the demands of neutrality of effects would necessarily have to be an illiberal one. Then, after advancing volitional neutrality as the proper way to understand neutrality, we noted that volitional neutrality would prevent us from acting to remedy the lasting effects of past injustices, and from advancing the linguistic convergence policies we defended in previous chapters. Finally, we noted that volitional neutrality is, like neutrality of justification, susceptible to the additional criticism that it provides policy-makers with little in the way of positive guidance.

In the end, then, we have made headway on two fronts. Firstly, we have articulated a coherent and plausible account of neutrality—something that, it turns out, many theorists writing about neutrality as a political ideal appear to be operating without the benefit of. Secondly, we have cast serious doubt on Alan Patten’s suggestion that in order to craft just language policies, the state should be animated by the objective of ensuring that those policies are neutral. In the two remaining chapters, we will articulate a vision of what fairness and justice in this field look like, and what aims and ideals the liberal state should in fact strive to achieve via its language policies.

CHAPTER EIGHT

ALAN PATTEN'S DEFENCE OF LINGUISTIC AND CULTURAL RIGHTS

Introduction

In the preceding chapters we have explored the propositions that language policy ought to be regulated by, respectively, the pursuit of linguistic preservation, the pursuit of linguistic convergence, or the value of neutrality. We found that there are compelling reasons in favour of ensuring that language policy achieves a degree of linguistic convergence, and that it will be a rare case in which we ought to fashion policy in such a way as to secure the preservation of a particular language. As for the idea that language policy ought to be neutral, we identified volitional neutrality as the best account of neutrality, but found that it does not guarantee fairness, nor does it provide much in the way of guidance when it comes to the specific positive measures involving language that the state should adopt.

According to Alan Patten, the answer to the question of which of the three objectives should guide language policy is 'all three'. That is, Patten argues that 'liberal neutrality… should play a modest, but not negligible role in the construction of a normative theory of language politics.'[368] He contends that the reason neutrality should play only a modest role in grounding minority language rights is due to the way in which concerns for achieving specific linguistic outcomes—be they some species of convergence or preservation—can at times outweigh the value of linguistic neutrality.[369]

[368] Patten, 'Liberal Neutrality' (n 133) 357.
[369] In such cases, says Patten, the benefits to be gained from departing from neutrality in order to achieve that specific linguistic outcome 'crowd out the relevance of the liberal neutrality model' (ibid).

Given the richness of Patten's argument, and given that the normative account of language rights that I will advance in the next chapter is structurally similar to Patten's, we will, in this chapter, examine Patten's general argument in considerable detail. While we will see that Patten's account is flawed in the way that it conceives of crucial concepts like neutrality and recognition, and in how it understands the relationship between neutrality and fairness, we will eventually vindicate Patten's assertion that the normative justification of language rights turns on the state's pro tanto duty to treat languages—or, more accurately, the individuals who speak those languages—fairly.

Patten's Argument:

According to Patten, the moral case for minority rights rests on the value of self-determination. For the purposes of organising the remainder of this chapter and the next, we can isolate five distinct claims that comprise Patten's defence of cultural rights. These five claims are as follows:

1) *The Neutrality Claim*: Neutrality should be understood as 'neutrality of treatment', which is violated whenever, 'relative to an appropriate baseline, [the state's] policies are more accommodating of some conceptions of the good than they are of others'[370];

2) *The Recognition Claim*: Recognition should be understood as 'a customized form of accommodation of an identity-related component of a conception of the good'[371];

3) *The Fair Opportunity for Self-Determination Claim*: At least in conditions that are antecedently just, the state must treat languages and cultures neutrally, including by extending equal recognition to them, since doing otherwise will leave individuals belonging to disfavoured linguistic or cultural groups with a less than fair opportunity for self-determination;

4) *The Rights Claim*: Minority cultural and linguistic rights are therefore, pro tanto, required as a matter of justice where the majority's culture and language is being accommodated and recognized, since these rights will be necessary to ensure that the minority's culture and language is accommodated and recognised to an equal extent (which is in turn necessary to secure a fair opportunity for self-determination for all);

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370 Patten, *Equal Recognition* (n 255) 132.
371 ibid 174.

5) *The Defeasibility Claim*: The state may justifiably depart from the requirements of neutrality and equal recognition where it has sufficiently weighty countervailing reasons for doing so.

In the remainder of this chapter we will focus on and critique claims 1) – 3), arguing that all three are in need of revision. In the following chapter, we will directly tackle the question of how to craft just language policies, and in so doing address claims 4) and 5).

The Fair Opportunity for Self-Determination Claim

It will be helpful to focus our discussion by getting clear on precisely how Patten understands the notion of 'fair opportunity for self-determination'. For Patten, 'self-determination' is an aspect of autonomy, and involves forming, revising, and pursuing preferences and beliefs about value.[372] Patten is also clear that to be self-determining implies that one is at least minimally successful when it comes to actually *satisfying* one's preferences.[373] Patten posits that the value of self-determination can be defended in two main ways: firstly, on the grounds that being able 'to pursue and enjoy the conception of the good [one] happen[s] to have', as opposed to being made to live in a manner that is at odds with that conception, promotes an individual's well-being,[374] and, secondly, on the grounds that self-determination is 'intrinsically valuable', since 'it is valuable for people to be autonomous' and given that a crucial aspect of being autonomous is enjoying self-determination.[375]

Patten acknowledges that given the importance his account of minority rights places on the value of self-determination, it might be wondered why the state should merely ensure that all citizens enjoy a *fair opportunity for* self-determination. Given the way that self-determination contributes to well-being and autonomy, why should we not

[372] ibid 131–36.
[373] ibid 149.
[374] ibid 148.
[375] ibid 149.

regard the state as under a duty to ensure that all citizens enjoy equal (or at least a minimal amount of) success when it comes to self-determination? Why should the state not ensure that citizens can live out their particular conceptions of the good and satisfy their particular preferences and thus actually *achieve* self-determination in respect of them?

Patten's considered response to this hypothetical question endorses Rawls's notion of a 'social division of labor', according to which 'the state's responsibility to promote self-determination is limited to providing fair background conditions; it is the individual's responsibility to achieve self-determination within those parameters.'[376] The reason, according to Patten, that the state's responsibility is limited in this manner is owing to what he calls a 'key assumption of liberal thought'[377] which has it that 'citizens should be regarded as responsible for their own conceptions of the good.'[378] Provided the state establishes and maintains fair background conditions, no one has a valid complaint of justice simply because their conception of the good is difficult to realise. Instead, it is appropriate that such an individual must 'put up with this disadvantage himself.'[379] This is right and proper because the individual had the opportunity to change his difficult-to-realise conception of the good or preference in favour of a more successful—ie, a more easily realised—one, but chose not to.

Patten is aware that he might appear to be skating on rather thin ice here, given the fact that 'for the vast majority of people, many preferences were not consciously chosen at any point in their lives.'[380] However, Patten persists in pressing the argument that 'When, under the right circumstances, some condition is subject to a person's choice,

[376] ibid 158.
[377] ibid 156.
[378] ibid.
[379] ibid 159.
[380] ibid.

then any complaint the person might have about burdens or disadvantages associated with that condition is diminished or eliminated altogether.'[381] He does so by invoking Thomas Scanlon's account of 'substantive responsibility', under which it may be appropriate to hold an individual responsible for some set of difficulties they face even where those difficulties have not arisen as a result of a choice the person has made, provided the individual had the opportunity to make a choice that would have avoided those difficulties.[382] Patten asserts that at least when certain empirical conditions relating to the ability of citizens to access and pursue a wide range of options are satisfied (which he claims they often are in liberal societies), 'it is plausible to think that people have a reasonable opportunity to avoid unsuccessful conceptions of the good should they so choose.'[383]

Patten's defense of the idea of 'responsibility for choice' here is explicitly aligned with 'a resourcist conception of justice'[384] such as that famously developed by Dworkin. On this view, justice demands that citizens in a hypothetical founding moment each be given equal resources with which to pursue their preferences, as opposed to being given whatever level of resources would be required in order to ensure that either their level of preference satisfaction, or their 'opportunity for advantage'[385] in respect of preference satisfaction, is equal to that of all others.[386] The alternative to holding individuals in a

[381] ibid 160.
[382] Patten summarises Scanlon's distinction between having a choice and making a choice as follows: 'One can have a choice without making a choice when one possesses the appropriate opportunity to choose but then drifts forgetfully or inattentively into one option rather than others' (ibid).
[383] ibid 161.
[384] As Patten explains in his article 'Liberal Neutrality: A Reinterpretation', 'The conflicting views of fairness' when it comes to opportunity for self-determination 'are obviously related to the broader debate between "resourcist" and "welfarist" conceptions of equality. … Ultimately, neutrality of treatment is an aspect of a broader, resourcist conception of justice, and stands or falls with such a conception' ((n 255) 272).
[385] Richard Arneson, 'Equality and Equal Opportunity for Welfare' (1989) 56 Philosophical Studies 77; GA Cohen, 'On the Currency of Egalitarian Justice' (1989) 99 Ethics 906.
[386] See also Patten's explanation at one point in his recent book *Equal Recognition* that 'The metric of equality assumed here is broadly "resourcist" rather than "welfarist." By this I mean that equality of recognition depends on facts about the rules that are adopted, the facilities that are made available, the resources that are expended, and so on. It does not depend on the degree to which people who have the

well-ordered liberal society "responsible for choice",[387] says Patten, would require the state to indulge expensive tastes. Failing to adhere to the social division of labour would commit us to the highly objectionable view that someone with lavishly expensive tastes 'is owed a subsidy that might leave him with many times the resources provided to his fellow citizens who have more modest preferences.'[388] This is objectionable, according to Patten, because 'his fellow citizens will be on the hook for his tastes and preferences, leaving them with a diminished share of secure resources with which to pursue their own ambitions.'[389]

We should accept Patten's contention that fair opportunity for self-determination does not necessarily mean equal opportunity for self-determination. For example, we ought to quickly rule out the idea that the state must equalise the *achievement* of self-determination in respect of cultural preferences. This is because equalising the achievement of self-determination would mean that individuals do not bear responsibility for the manner in which they put their resources to work in the cause of satisfying their preferences. For instance, consider two individuals who share all of the same preferences. The first judiciously directs all of his resources into securing goods and services that will allow him to see that his preferences are satisfied. The second person spends many of her resources unwisely, succumbing to temptation and purchasing many goods and services that in the end do not actually help her to satisfy any of her preferences. It is right, and fair, that the first person should enjoy more preference-satisfaction—ie, that he should achieve self-determination in this area to a greater extent than does the second person.

relevant conceptions of the good manage to convert these benefits into a successful way of life' ((n 255) 178).

[387] See Patten, *Equal Recognition* (n 255) 159–61.

[388] ibid 158.

[389] ibid 159. In a similar vein, Patten argues that 'When, against a background of justice, the state taxes away some of [an individual's] resources to spend on advancing somebody else's conception of the good, it denies them a fair opportunity to advance their own conception of the good. It denies them a fair opportunity for self-determination' (142).

And it is wrong, and unfair, that resources should be taken from the person who has chosen wisely and given to the person who has chosen unwisely in an attempt[390] to increase the preference-satisfaction level of the latter until it is equal to that of the former.[391]

We can also rule out an obligation to equalise individuals' *opportunity* for self-determination. For while equalising opportunity for self-determination, unlike equalising the achievement of self-determination, is compatible with holding individuals responsible for the manner in which they utilise their resources in the pursuit of their preferences, it is incompatible with holding individuals responsible for the fact of their having those preferences. As such, requiring that individuals' opportunities for self-determination be equalised would be seriously misguided, for the sorts of reasons that are familiar to liberal theory and which are taken up by Patten. That is, sometimes we will have (or will have had) a choice of the right sort about which cultural or linguistic commitments to pursue—even if we have not *made* a conscious choice of this nature. And if, in these circumstances, someone develops or retains an expensive preference, it is quite fair that they should face a lesser opportunity for self-determination than they would have enjoyed had they retained or developed a less expensive preference. Likewise, it would be unfair to equalise each person's opportunity for self-determination by taking resources from those who have less expensive preferences (thereby reducing those individuals'

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[390] And, of course, this is all that it could ever be—ie, an *attempt*. That is, if our aim is to ensure that a particular individual who is in the habit of misspending her resources instead spends them appropriately, merely giving her *more* resources can hardly be guaranteed to achieve that result! (This suggests that equalising the achievement of self-determination in relation to cultural preferences by transferring resources from those who encounter more initial success to those who encounter less may not only be unfair, but is also unlikely to be effective.)

[391] I am here arguing against transferring resources simply to equalise preference-satisfaction, *not* the transferring of resources in order to bring the unwise spender to some level of sufficient material welfare, such as she may lack if her poor choices have led not only to her enjoying comparatively little preference satisfaction, but also to her enduring significant want—as measured in absolute terms.

opportunity for self-determination) and giving them to those who have, by choice, more expensive preferences.[392]

We are now in a position to authoritatively state what fair opportunity for self-determination consists in, and what it requires. Specifically, I understand *fair opportunity for self-determination* as demanding that an individual's ability to realise their preferences or conceptions of the good is solely a function of a) the amount of resources they fairly hold, in combination with b) the natural expensiveness of the preferences or conceptions of the good that they hold and which they had a choice not to hold. As such, where two individuals fairly hold an equal amount of resources, it is fair that one of them (A) faces a lesser opportunity for self-determination than the other (B) if and only if one of the following two conditions applies: 1) A has chosen a more expensive preference than the preference that is held (whether chosen or not) by B; or 2) while both A and B share an identical preference, it is true of A but not B that he might now hold a different, less expensive preference, but has chosen not to.[393]

"Choosing" Linguistic Preferences

It is important to note that this 'responsibility for choice' rationale for not equalising the achievement of self-determination is only available where those whose preferences are less successful did in fact have a choice to make about whether to retain their preference. Moreover, as Patten observes, that choice must have a certain character: 'It is a mistake to

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[392] Cf Kymlicka and Patten, 'Introduction' (n 3) 51: 'Nor do people have a right to the equal success of their identity, since some people adopt identities that are rather easy to realize whereas others have difficult-to-satisfy identities.'

[393] Condition 1) means that where A and B are assumed to have equal resources, if B prefers beer, whereas A prefers claret but had a choice to instead develop a taste for beer, then regardless of whether B had a choice *not* to prefer beer, it is fair that A's opportunity for self-determination is less than that of B. Condition 2) means that where A and B are assumed to have equal resources, if both A and B prefer claret, and A had a choice to prefer a less expensive drink whereas B did not, it is fair that A's opportunity for self-determination is less than that of B.

think that choice always generates responsibility.'[394] This is surely correct. When someone hears 'your money or your life', for instance, and as a consequence of taking this threat seriously hands over his wallet, he has indeed made a choice to do so. But we hardly think it appropriate to hold him 'responsible' for that choice in the sense that he should be left to simply 'put up with the disadvantage' of his wallet being in another person's pocket. Likewise, Patten invokes the example of Muslims in a state that 'officially establishes Christianity': here too it is unfair to hold that if a Muslim chooses not to convert to Christianity, then she has no complaint about the fact that her opportunity to exercise her religious beliefs is less than that of Christians.[395] For Patten, it would be unfair to hold the mugging victim and the Muslim responsible for their choices because the conditions under which they were put to their respective choices were themselves unfair. As Patten writes, 'Without fair background conditions, it is unreasonable for the policy that produces the burden to expect individuals to choose between the alternatives it leaves, and thus the mere fact that those individuals had a choice is insufficient to render the outcome fair.'[396]

The relevant question for our purposes, then, is whether Patten is correct in assuming that those who hold preferences for unsuccessful cultures and languages have, or have had, a choice of the right sort. The question, that is, is how to understand the choice that someone might face between the alternatives of, on the one hand, retaining their cultural or linguistic commitments, but doing so in the knowledge that they will likely experience little success in realising those preferences, or, on the other hand, developing other cultural or linguistic preferences that are more easily satisfied. Is such a choice essentially the same as that which confronts someone who has a predilection for

[394] Patten, *Equal Recognition* (n 255) 163.
[395] ibid 163.
[396] ibid 164.

claret over beer, or is it another example of the sort of impoverished choice that the Muslim citizens unfairly faced in Patten's example of religious establishment?

The answer, I think, is that we are here dealing with a middle ground. Unlike Patten's Muslims, the individual whose culture happens to be declining against fair background conditions is not unfairly forced by the state into choosing between two bad options, since it is not the state that puts this choice to the individual. Rather, the dilemma is foisted upon her by external factors—namely the aggregate choices of the members of her society that have made her culture unpopular and thus made her cultural preferences difficult to realize. But neither, however, is it the case that someone born and raised in, say, Flemish culture could simply choose to develop a preference for Walloon culture in the manner that one who has a natural taste for claret can develop a taste for beer. Patten himself, for instance, notes that 'it is sometimes suggested that liberal assumptions about responsibility are particularly implausible in relation to cultural attachments.'[397] For Patten, one of the distinctive characteristics of cultural attachments is how seldom people consciously choose to have them. Notwithstanding this fact, however, Patten believes, as we saw, that Scanlon's distinction between having a choice and making a choice can be used to vindicate the idea of personal responsibility for cultural commitments. What Patten fails to sufficiently notice in this context[398] is that cultural and linguistic attachments are not only things that many of us have not chosen to have, they are things that some of us could not really have chosen *not* to have. Not only, that is, do we seldom *make* choices in respect of these sorts of attachments, we may not really even *have* a choice to make—at least not a choice of the right sort to ground responsibility.

[397] ibid 157.
[398] Patten certainly does notice the centrality of culture and language to personal identity (see ibid 151–152).

No one thinks that a diabetic really has a choice to stop her expensive insulin treatments, for example. It is not impossible for her to do so, but she will very likely die as a result. In this case she faces an extreme Hobson's choice, which is to say she has no real choice at all. Now, it would be a gross exaggeration to suggest that the stakes are equally high for someone faced with the alternatives of remaining within their culture or developing a preference for a different, more successful culture. In Chapter 2, for instance, we poured cold water on the idea that many people are simply incapable of integrating into a new cultural or linguistic community; in fact, this sort of integration is common-place. Those who shed their unsuccessful cultural commitments certainly do not thereby expose themselves to a high risk of death, as does the diabetic who goes off insulin. However, in developing and pursuing new cultural attachments, individuals do typically pay a high personal cost. For the vast majority of us, it would be much more psychologically difficult and disorienting to shed our cultural preferences than it would be for us to shed our non-cultural preferences for expensive food and drink.

It will, of course, be very difficult to pick out the point at which the personal cost that an individual would have to pay in order to drop a cultural preference and develop a new one becomes undue. For our purposes, however, I will understand the personal costs associated with dropping a particular cultural preference as 'undue', or 'unfair', where such costs would substantially impair the payer's opportunity for self-determination. For example, when I speak of an individual 'dropping' an expensive preference and developing a less expensive one, I do not mean to imply that the initial expensive preference is one the person must thereafter entirely cease to hold. Where one's preference is 'dropped', then, this is implies merely that one develops some other, comparable preference—whether the latter preference replaces, or is added to, the initial preference—and goes about satisfying (or at least attempting to satisfy) the latter preference and not the initial preference.

However, the fact that dropping an expensive preference does imply foregoing the satisfaction of that preference in favour of the satisfaction of some less expensive preference gives rise to the possibility that one's dropping an expensive preference will at times involve paying an undue personal cost. For example, where the expensive preference is one closely connected with a particular individual's sense of self, or where satisfying that preference is a central aspect of that person's conception of the good, not being able to satisfy that expensive preference—or at least not being able to do so without thereby enduring a lesser opportunity for self-determination than those whose comparable preferences are less expensive—means that that person's ability to be self-determining—to live their life in accordance with their own 'beliefs about value'[399]—is impaired. It is impaired not only in the sense that they must forego the satisfaction of that preference, but also in the more important sense that there is not available to them a 'replacement' preference whose value they can endorse to the same extent as they endorse the value of the preference whose satisfaction they must forego. (That is, it is often *because* dropping an expensive preference does *not* mean completely ceasing to hold that preference that having to forego its satisfaction so as to satisfy another, cheaper preference will impair one's ability to be self-determining.) Where that impairment is substantial, I will say that the cost to the individual of 'dropping' that preference is therefore 'unfair' or 'undue'.

It is in the inherent nature of cultural, linguistic, and religious communities, for instance, that we are immersed within them before we develop the sorts of capacities required to make our own choices about the good and about which preferences we wish to develop. By the time we do develop those capacities, the fact of our being immersed in

[399] Kymlicka, *Multicultural Citizenship* (n 80) 83.

these communities has typically already led us to identify strongly as members of them. Moreover, when we begin to ask what the good life consists in, and which preferences we ought to develop and which to shed, we often ask these questions (sometimes consciously and sometimes unconsciously) from the point of view of someone situated in our culture.[400] We ask, that is, what a good life is for an Iraqi Sunni Muslim, or for a French Canadian, or for an Italian-American. For many of us, the idea that we will retain our core cultural commitments, whatever other preferences we may choose to shed or develop, is non-negotiable.[401] And it is non-negotiable not because we are merely stubbornly disinclined to develop new cultural attachments, but because we feel that since shedding our present ones would involve such a painful personal sacrifice, that is not a live option for us.

This is precisely the distinction we ought to draw between the individual who finds herself with a taste for claret and, say, the Catalan who finds himself with a taste for the Catalonian culture and the Catalan language. The claret-lover will no doubt be unhappy with the choice she is faced with, given that her "drink of choice" is so much more expensive than that of others. But she can wean herself off her preference for claret without having to pay a significant psychological cost. This is not true, however, of a typical Catalan. It does *not* appear that someone whose unsuccessful preferences are for the culture and language within which they were raised can always be said to have had, in Patten's words, an 'adequate opportunity to develop alternative convictions'.[402] For some

[400] Here I would endorse the words of Michael Sandel: 'to have character is to know that I move in a history I neither summon nor command' (*Liberalism and the Limits of Justice* (2nd edn CUP 1998) 179). Importantly, however, I do not endorse Sandel's broader idea that individuals' identities are *constituted* by their linguistic, cultural, or geographical communities, and that Rawlsian liberalism errs by assuming individuals possess atomistic, unencumbered selves. On the contrary, liberalism is perfectly capable of admitting the obvious fact that an individual's character is often deeply shaped by their cultural attachments. Further, as liberals, we should readily accept that proposition, while also embracing the evident truth that individuals can and do move freely between cultural and linguistic groups.

[401] On the 'non-negotiable character' of 'some conceptions of the good, or elements of such a conception' see Patten, *Equal Recognition* (n 255) 15–52.

[402] ibid 163.

of these people at least, their lesser opportunity for self-determination—vis-à-vis their fellow citizens who happen to have been raised in cultural and linguistic communities that have proven successful—*cannot* then be said to be fair in light of the 'social division of labor' thesis. Even if the state has established and maintains fair background conditions, and an individual's culture has emerged as an unsuccessful one against this backdrop, her lesser opportunity for self-determination cannot be shrugged off as something she could easily have chosen to avoid, in the manner that we shrug off the claret-lover's lesser opportunity for self-determination vis-à-vis beer-lovers. As such, it is not permissible to simply invoke a 'responsibility for choice' argument in order to transpose our antipathy towards equalising the preference satisfaction of claret-lovers and beer-lovers to the idea of equalising the achievement of self-determination when it comes to *cultural* preferences.

Ensuring Fair Opportunity for Self-Determination in Respect of Linguistic Preferences

Having seen that we do not have the same reasons to refrain from equalising individuals' opportunities for self-determination in respect of cultural and linguistic preferences as apply to equalising opportunity for self-determination in respect of food preferences, we must still ask whether there are *other* good reasons for not equalising citizens' opportunities for satisfying their cultural and linguistic preferences. And here we find that the answer will ordinarily be yes.

Let us, drawing somewhat on present-day America as inspiration, imagine two individuals: an anglophile and a hispanophile. These individuals have a particular fondness for, respectively, the English and Spanish languages—as opposed to merely being fond of the culture or history, say, of England or Spain—and desire to live their lives as much as possible within those linguistic milieux, including by using their language in public institutions and when interacting with state officials. Let us assume that in our example a preference for English is less expensive to satisfy than a preference for Spanish. By this I will understand that it requires a greater expenditure of time and effort, and/or is more costly, for the individuals in our hypothetical to realise in their lives the latter preference as compared to the former, due to the latter's being less popular than the former.[403] Suppose, for the sake of simplicity, that both parties possess the same amount of resources. Let us further suppose, crucially, that the hispanophile's Spanish preference is one the shedding of which, if it could be accomplished at all, would come at undue personal cost. We are assuming, that is, that her preference is 'undroppable'.[404]

The fact that Spanish is a more expensive preference means that if both parties put their resources to full use, the anglophile will be able to enjoy more in the way of linguistic preference satisfaction than will the hispanophile.[405] In order to equalise each party's opportunity for preference-satisfaction, we would therefore need redistribute to the hispanophile some of the anglophile's current resources. Specifically, we would need to redistribute from the anglophile that amount of resources which, once transferred to the hispanophile, would leave each in a position, were they to put their resource holdings to full use, to achieve an equal amount of linguistic preference satisfaction.

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[403] In this sense the expensiveness of a linguistic preference is not straightforwardly a matter of whether or not it is '*inherently* expensive' in the way of things like caviar or champagne whose production and hence consumption inescapably require the expenditure of a large amount of resources.

[404] As alluded to above, I use the term 'undroppable' here and below to denote a preference which is one the holder could not but hold—at least not without suffering, or having suffered, an undue personal cost. That is, I will understand an 'undroppable' preference to be a preference that is not only one which the holder cannot now shed, but is also one that that person at no time in the past could have shed. (I will also understand this to imply that an 'undroppable' preference cannot be one which the holder once failed to hold and later chose to cultivate.)

[405] In this chapter I will understand an 'anglophile' as a person with a fondness for English, whether or not that person is also a hispanophile. That is, since an individual with a fondness for both English and Spanish is happy to live in either an English or a Spanish milieu, they—like those fond only of English—can secure linguistic preference satisfaction by partaking of the less expensive linguistic option. In contrast, a 'hispanophile', is to be understood as an individual with a fondness only for Spanish—ie, an individual who can only secure linguistic satisfaction by partaking of the expensive linguistic option.

Of course, such an equalisation process could not help but lead to an overall reduction in preference satisfaction.[406] This is so because resources that previously would have been used to purchase the cheaper preference are now being put to use in securing satisfaction of the more expensive preference. Thus, if our aim were purely to maximise the sum total of preference satisfaction in our simplified two person society, we would reject equalisation. However, few of us, I think, would immediately reject equalisation in the example above simply because total preference satisfaction would thereby decrease. This is because our concern is *not* exclusively with maximising aggregate preference satisfaction. Rather, we wish to give some priority to the position of the worst off, and are willing to trade off some reduction in aggregate preference satisfaction—ie, aggregate self-determination—in order to purchase some increase in the preference satisfaction of the worst off individual, particularly where her opportunity for preference satisfaction is low in absolute terms.[407] So, for instance, a Rawlsian originalist behind a veil of ignorance that prevents him from knowing whether he will occupy the role of anglophile or hispanophile could well prefer a world in which the unfairly lower opportunity for self-determination of hispanophiles is brought up, at the expense of anglophiles, until it equals that of anglophiles.

That is not to say, however, that in *all* cases such an originalist would endorse the equalisation of opportunity for self-determination as between individuals holding an inexpensive preference and individuals holding an undroppable expensive preference. As we'll see shortly, for instance, the originalist will not endorse equalisation in cases where this would involve transferring resources from anglophiles to both hispanophiles with an ineluctable preference for Spanish and large numbers of hispanophiles whose preference

[406] Or rather, strictly speaking, opportunity for preference satisfaction.
[407] See Derek Parfit, 'Equality and Priority' (1997) 10 Ratio 202; Rawls, *A Theory of Justice* (n 13).

for Spanish is (or at least was) droppable. In addition, however, the originalist may well reject equalisation even in the simplified two-person scenario we are considering depending on the relative expensiveness of the expensive preference—ie, depending on just how much more expensive the expensive preference is in comparison with the less expensive preference.

For example, where a Spanish preference is only moderately more expensive than an English preference, equalisation will see the population's average preference satisfaction decrease moderately. In contrast, where the expensive preference is considerably more expensive, the decrease in mean preference satisfaction could be quite drastic. From the point of view of the hispanophile, of course, equalisation here would still represent an improvement on the status quo. Equally clearly, equalisation represents a losing proposition for the anglophile. What is crucial, however, is how things would appear to the originalist who is ignorant as to which role he will occupy. Such an originalist will note that equalisation in this scenario reduces aggregate preference satisfaction quite dramatically. The originalist will also note that the ratio of preference satisfaction lost by the anglophile to that gained by the hispanophile will be much higher than it would be if the cost of the expensive preference were not so much greater than the cost of the inexpensive preference. As such, there is good reason, I submit, to think that the originalist would judge the gains that would accrue to the hispanophile under equalisation as being too meagre to offset the quite substantial losses to the anglophile that equalisation would entail. Accordingly, the originalist would reject equalisation. He would 'take his chances', so to speak, knowing that in the absence of equalisation his opportunity for self-determination, should he turn out to occupy the hispanophile role, will be somewhat lower than it could have been, but knowing also that his opportunity for self-determination, should he turn out to occupy the anglophile role, will be markedly higher than it would have been under an equalisation regime.

To be sure, attempting to comprehensively defend this judgement about the risk an originalist would be willing to take on could easily draw us into a lengthy discussion of probabilistic decision-making, risk-aversion, and human psychology. We will of course not undertake that sort of discussion here. It is, however, worth pointing out that the proposition that an originalist might forego a small gain in the preference satisfaction of the worst off in order to avoid a considerably larger reduction in the preference satisfaction of the better off does run contrary to the sort of strict maximin reasoning that Rawls claims his originalist would employ. That is, the proposition being put forward here is that an originalist, contra Rawls, would not adhere strictly to the difference principle and give lexical priority to ensuring that the opportunity for preference satisfaction of the worst off (hispanophiles) is as great as possible over ensuring a high mean preference satisfaction level. While he would give *priority* to the position of the worst off, he would not give it absolute priority in the sense of concluding that no increases in the opportunity for preference satisfaction of better off individuals—regardless of how great those increases might be—could ever justify a decrease in the preference satisfaction of the worst off—regardless of how minute that decrease might be. This notion that human beings are not slaves to strict maximin reasoning in this sense cannot, as noted, be given a fully adequate defence here. It will have to suffice for our purposes to simply note that the proposition that rational humans will invariably adhere to the strict maximin principle seems quite implausible.[408]

[408] Richard Arneson 'Justice After Rawls' in John S Dryzek, Bonnie Honig and Anne Phillips (eds), *The Oxford Handbook of Political Theory* (OUP 2006) 55: 'The difference principle lies *at the extreme end of a continuum of views* that accord variously greater weight for achieving a gain of a given size for a person, depending on how badly off in absolute terms the person would be, absent receipt of this gain' (emphasis added).

Practical Complications

In asking whether the state has an obligation to equalise individuals' opportunities for self-determination in respect of preferences, we will of course need to consider more than just two parties, one with an ineluctable preference for Spanish (whom we can call the 'incorrigible hispanophile') and one with an unchosen preference for English (the 'ordinary anglophile'). There will, for instance, likely also be some individuals who at a young age found themselves with a Spanish preference that they might have shed but chose not to (whom we'll call 'stubborn hispanophiles'). There may also be people who similarly found themselves with a Spanish preference but successfully shed that preference and developed a fondness for English (the 'converted anglophiles'). And there might be individuals who were bred into an English preference but chose to develop a preference for Spanish (the 'converted hispanophiles'). The complicating presence of all of these individuals does not in itself make it impermissible to redistribute resources to the incorrigible hispanophile in order to increase her opportunity for self-determination and bring it in line with fairness. Theoretically, for instance, we could still take resources from all those who either have less expensive preferences or who had a choice to have such less expensive preferences but chose otherwise, and distribute them to the individuals with ineluctable expensive preferences until it is the case that no one's opportunity for self-determination is lower than anyone else's except as in accordance with their respective choices.

In reality, however, the presence of these various sorts of individuals *will* present a serious obstacle to any attempt to secure a fair opportunity for self-determination for the incorrigible hispanophile. To see why this is so, consider that there are, in general, two different approaches that might be taken in order to increase the opportunity for self-determination of a person with an undroppable expensive preference. Firstly, we could tax those with less expensive preferences and transfer these resources directly to those in the incorrigible hispanophile position, providing these individuals with the opportunity to satisfy more of their preferences than they were previously able to. Secondly, we could achieve the same effect by subsidising the expensive preference. As we saw, increasing the incorrigible hispanophile's opportunity for self-determination via direct transfers from ordinary anglophiles is in theory permissible, provided the expensive preference is not *too* expensive. In practice, however, it may prove difficult to distinguish hispanophiles (of any kind) from anglophiles. That is, it will be difficult to ascertain who holds a genuine preference for Spanish, and who is merely claiming to do so in order to receive transfers from those identified as anglophiles. In the result, one of the problems with the transfer method is the potential for abuse. Transfers intended to increase the purchasing power of incorrigible hispanophiles by allowing them to secure more opportunities to live in Spanish could find their way not only to non-incorrigible hispanophiles, but also to anglophiles, who would then use these extra resources to satisfy preferences unconnected to the Spanish language.

A related practical problem that would beset equalisation in the real-world is that we will seldom be able to accurately distinguish incorrigible hispanophiles from stubborn hispanophiles or converted hispanophiles. That is, it will be exceedingly difficult to identify, from among a pool of individuals with a preference for an expensive language, precisely whose preference is a matter of choice and whose is not.[409] In light of this fact, we face a real quandary when it comes to advancing the liberal goal of fair opportunity for self-determination. For instance, it is clear that if we leave things as they are and do

[409] In the case of converted hispanophiles, it might conceivably be that their Spanish preference is now undroppable, and so it would not be the case that the feature that distinguishes incorrigible hispanophiles from such converted hispanophiles is that only the former have an undroppable preference for Spanish. The distinguishing feature, instead, would be that whereas these converted hispanophiles *chose* to have their expensive preference which is now undroppable, the incorrigible hispanophiles did not.

not tax the anglophiles, incorrigible hispanophiles will face a lesser opportunity for self-determination than the ordinary anglophile and the converted anglophile will, and it is also clear that this cannot be justified on the grounds that the latter two individuals have chosen their preferences more wisely than did the former. In short, the status quo is unfair, as it offends the notion of 'responsibility for choice'. If, on the other hand, we wish to raise the opportunity for self-determination of incorrigible hispanophiles until it is equal to that of anglophiles by taxing away resources from these anglophiles, the fact that we cannot accurately distinguish incorrigible hispanophiles from stubborn hispanophiles or converted hispanophiles means that the opportunity for self-determination of stubborn hispanophiles and converted hispanophiles will also be brought up to parity with that of anglophiles. And that will of course involve many of the anglophiles' resources being transferred to hispanophiles who could have become or remained anglophiles but simply chose not to. This too is unfair, as it does not hold the stubborn hispanophiles or converted hispanophiles responsible for their choices.[410]

We thus face a dilemma. Moreover, simply appealing to fairness or 'responsibility for choice' cannot recommend one horn over the other, since there is a real sense in which both options—ie, improving the incorrigible hispanophile's opportunity for preference satisfaction at the cost of reducing the anglophile's opportunity for preference satisfaction, or refraining from doing so—will unavoidably involve some unfairness and offend against the idea of responsibility for choice. Although Patten fails to adequately address this possibility, he does gesture towards it when he writes that:

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[410] We should regard the unfairness here as twofold: firstly, it is unfair to the ordinary anglophile and the converted anglophile that some of their resources are taken from them and given to stubborn and converted hispanophiles despite the fact that the stubborn and the converted hispanophile could simply have chosen to adopt a cheaper preference; secondly, it is unfair to each of the ordinary anglophile, converted anglophile, and incorrigible hispanophile that their opportunity for self-determination will after equalisation be the same as the stubborn hispanophile's and the converted hispanophile's despite the fact that the stubborn hispanophile and the converted hispanophile could simply have chosen to adopt a cheaper preference.

> it may be that liberal theory is wrong to consider people generally responsible for their conceptions of the good, even if they are responsible in some situations. On such a view, neutrality of treatment would offer a fair opportunity for self-determination in cases where responsibility is appropriately assigned to the individual, but in other cases, where the individual cannot reasonably be regarded as responsible, some more active form of assistance for struggling conceptions of the good would be called for by fairness.[411]

Here, Patten emphasises that his argument for cultural rights is built upon the idea that neutrality and equal recognition ensure (at least in conditions not marred by past injustice) a fair opportunity for self-determination, and he explicitly acknowledges that *if* it would be wrong to hold an individual responsible for having an expensive preference, ensuring a fair opportunity for self-determination for that person will require something more than neutrality. However, since he does not pursue this possibility further, what Patten fails to notice is that in reality the 'something more' that would be required to make things fairer from the perspective of this individual may, unavoidably, make things less fair from the perspective of other individuals. He fails to notice, that is, that there may well in practice be no way to ensure fairness for all.

Resolving the Dilemma

I believe the appropriate response to this dilemma, however, becomes clear once we consider the relative numbers of individuals that, in reality, are likely to occupy the position of the incorrigible hispanophile, on the one hand, and the position of the stubborn hispanophile or converted hispanophile, on the other. Specifically, I think we should say that when it comes to expensive cultural or linguistic preferences, these preferences *are* droppable for most of the individuals that hold them.

This is, of course, not to say that such preferences are always droppable. We explicitly rejected this proposition above, and we should continue to insist that some

[411] Patten, *Equal Recognition* (n 255) 157.

people's cultural and linguistic preferences will not be droppable in a way that authorises the state to hold these individuals responsible for retaining them. But those who would argue that few of us could ever integrate into a foreign culture or linguistic community without paying an undue psychological or emotional price are surely protesting too much. The particular point at which the price of developing other cultural or linguistic preferences becomes undue will, as we noted, be difficult to pick out. Further, particular cultural and linguistic tastes may well tend to be more difficult to shed (or to develop) than others, and some individuals may well find it easier or more difficult to drop (or to add) a given cultural or linguistic preference than will others. However, as a general matter, we can safely say that incorrigible hispanophiles will be significantly fewer in number than the combined ranks of stubborn hispanophiles and converted hispanophiles. This is especially true in light of the fact that an individual's transition from one cultural or linguistic milieu into another can be considerably eased by the presence of bilingual or bicultural go-betweens, and given that the transition to a more successful culture or language will seldom be one that an individual is forced to make all of a sudden.

Consider, then, a scenario in which there are two preferences—one expensive and the other inexpensive—and in which, instead of there being one incorrigible hispanophile and one anglophile, there is, in addition to the incorrigible hispanophile and the anglophile, five individuals each in the role of stubborn hispanophile and converted hispanophile. There are two very significant differences between the post-equalisation outcome in this scenario, in which there are 10 non-incorrigible hispanophiles, as compared to the scenario in which there is only one incorrigible hispanophile and one anglophile. Firstly, the increase in the number of non-incorrigible hispanophiles means that the amount of preference satisfaction the anglophile and the incorrigible hispanophile would be in a position to purchase post equalisation will be lower than the amount they would have been in a position to secure, post-equalisation, had such equalisation involved fewer non-incorrigible hispanophiles. Accordingly, the presence of additional non-incorrigible hispanophiles skews the ratio of the loss in opportunity for preference satisfaction suffered by anglophiles and the gain in opportunity for preference satisfaction enjoyed by each hispanophile. In essence, the presence of additional undeserving recipients (stubborn hispanophiles and converted hispanophiles), whom we cannot distinguish from deserving recipients (incorrigible hispanophiles), means that equalising opportunity for self-determination will require that more is sacrificed for less benefit.[412] The efficacy of the redistribution is diluted in proportion to the increase in the number of non-incorrigible hispanophiles relative to incorrigible hispanophiles.

What is the upshot of all this? The reason we are concerned to analyze the implications of equalisation in more realistic scenarios involving many more non-incorrigible hispanophiles than incorrigible hispanophiles is because we wish to determine whether or not the state has an obligation of justice to equalise citizens' opportunities for self-determination in respect of cultural and linguistic preferences. The determinative question here, we have argued, is whether an originalist would insist upon such equalisation. So would she? Given that we can ordinarily expect there to be many more individuals holding a droppable expensive preference than individuals for whom that expensive preference is undroppable, and given that equalising the incorrigible hispanophile's opportunity for self-determination in respect of her linguistic preferences would involve bringing the opportunity for self-determination of all stubborn and converted hispanophiles up to parity[413] as well, the anglophile's post-equalisation

[412] The effect here, then, is the same as we would observe if instead the number of non-incorrigible hispanophiles were to remain constant but the cost of their expensive preference were to increase.
[413] The problem of undeserving recipients besets not just *equalisation* of incorrigible hispanophiles' opportunities for self-determination with those of anglophiles (ie, the bringing of both levels to parity), but also *any increasing* of the incorrigible hispanophiles' opportunities for self-determination, no matter how small.

opportunity for self-determination would be much less than the opportunity for self-determination they would enjoy if no equalisation were undertaken. Further, the incorrigible hispanophile's opportunity for self-determination would not be that much greater post-equalisation than it was pre-equalisation. Thus it seems clear that the originalist would not insist on such equalisation. Instead, she would wish to roll the dice here, knowing that the upside significantly outweighs the downside.[414] As such, equalising citizens' opportunities for self-determination in respect of cultural and linguistic preferences cannot be said to be a requirement of liberal justice.[415]

It is also important to compare the distribution of opportunities for self-determination in respect of linguistic preferences in this scenario involving 10 non-incorrigible hispanophiles with the distribution that we earlier said fairness would recommend in such a scenario. We noted, for instance, that a fair distribution would be that which resulted from having all those who are not the incorrigible hispanophile (ie, stubborn hispanophiles, converted hispanophiles, and the anglophile) donating to the incorrigible hispanophile until that individual's opportunity for self-determination in respect of their linguistic preference is equal to that of the anglophile. Refraining from such equalisation would be unfair to the incorrigible hispanophile. However, equalisation would actually be less fair, on the whole. This is because achieving the fairest possible distribution would see the anglophile's opportunity for self-determination dropping somewhat, that of the each of the non-incorrigible hispanophiles dropping as well, and

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[414] We are looking here at a case in which the combined ranks of stubborn incorrigible hispanophiles and converted hispanophiles outnumber the incorrigible hispanophiles 10:1. In reality the ratio is likely to be higher than that—ie, those who ought not to be held responsible for preferring a less successful culture or language on the grounds that they truly could only have developed a more successful cultural or linguistic preference at undue personal cost will be fewer than 10% of all those holding that expensive preference. And this being the case, the appeal of equalisation for the originalist will be correspondingly lower even than it is in this hypothetical case.

[415] This is provided, of course, that that the fact that a hypothetical originalist would reject *x* implies that there is no duty of justice on the state to see to it that *x* obtains—ie, the assumption is that this sort of contractualist approach to questions of justice is essentially correct. For reasons of space I am unable to explicitly defend that position here.

that of the incorrigible hispanophile rising substantially. Thus while non-equalisation obviously does nothing to remedy the unfairness of the incorrigible hispanophile having to face a lesser opportunity for preference satisfaction than that enjoyed by the anglophile, the fact that we cannot distinguish between the incorrigible hispanophile and the (many more) non-incorrigible hispanophiles means that equalising the incorrigible hispanophile's opportunity for self-determination with that of the anglophile would involve *drastically* reducing the opportunity for self-determination in respect of linguistic preferences of the anglophile, only *slightly* increasing that of the incorrigible hispanophile, and actually *increasing* (contra the demands of fairness) that of each non-incorrigible hispanophile.

We can therefore see that equalisation in the circumstances we are imagining to exist would be less fair than non-equalisation. For example, if we were to compare the opportunities for self-determination in respect of linguistic preferences that each party would face post-equalisation with the opportunities they would face in the absence of equalisation, we would find that the total extent to which the parties' opportunities for self-determination in the equalisation world would be below the levels of such opportunity they would enjoy under a fully fair distribution is considerably greater than the extent to which the parties' opportunities for self-determination in the *non*-equalisation world would be below the levels of such opportunity they would enjoy under the ideally fair distribution. (Indeed, this will always be the case where the non-incorrigible hispanophiles considerably outnumber incorrigible hispanophiles.) The reason for this is that equalisation leaves both the anglophile and the incorrigible hispanophile below the level of opportunity for self-determination they would enjoy under the fair distribution, whereas non-equalisation sees only the incorrigible hispanophile below the level of opportunity she would enjoy under the fair distribution—

and not necessarily by all that much more than the amount by which, post-equalisation, she and the anglophile would be below the opportunity for self-determination each would face under fully fair conditions.

Consequently, in the sort of real-world language scenarios we can expect to obtain—ie, scenarios that involve numerous individuals with expensive linguistic or cultural preferences for whom those preferences are droppable, and whom we cannot efficiently distinguish from those who hold the same preference without having had a choice in the matter—hewing to neutrality and refraining from equalising the parties' opportunities for self-determination[416] will better promote fair opportunity for self-determination than would equalising everyone's opportunities for self-determination. As such, state neutrality in respect of language in real-world circumstances will generally *promote* rather than undermine the value of fair opportunity for self-determination for all. However, we should continue to insist on the point that neutrality (even in antecedently just conditions) will not, as Patten claims, always be *sufficient to ensure* such fair opportunity for all—since it does nothing to alleviate the unfairness faced by the individual with an undroppable and expensive linguistic preference. In summation, in the sort of real-world circumstances that modern states find themselves in, the state will have, unless there is something special about the case that allows it to effectively distinguish incorrigible hispanophiles from non-incorrigible hispanophiles, a pro tanto, fairness-based reason to act neutrally as between language groups.[417] Crucially, though, this is not

[416] Equalising individuals' opportunities for self-determination here (or acting so as to bring them *towards* parity) amounts to acting non-neutrally on the volitional neutrality account. This is so because there is nothing in the 'rules' of the conflict between language communities for members that obliges the state to depart from the non-involved position that they occupy by refraining from equalisation efforts. We can further see that acting to bring a party's opportunity for self-determination in respect of a linguistic preference up to or nearer to parity with that of another person is non-neutral by noting that doing so is to act to increase the former party's 'chance of success' in realising her linguistic preferences.

[417] To be clear, it is not being suggested that an originalist determining whether to endorse equalisation or non-equalisation will always select the fairer course of action. As we saw in the two-person scenario in which the hispanophile's expensive taste is vastly more expensive than the anglophile's preference, the originalist will reject equalisation, even though such equalisation would—where the hispanophile's

so because neutrality always leads to fair opportunity for self-determination for all, and is thus (in any scenario we might imagine where background conditions are just) a pro tanto obligation of justice—it doesn't, and it isn't—nor even because neutrality *in ordinary circumstances* will see everyone enjoy a fair opportunity for self-determination—it won't—but rather because neutrality *in ordinary circumstances* will best advance fair opportunity for self-determination, in the sense that it will lead to a situation which is fair*er* than what non-neutrality would bring about.

Forestalling some Objections

It might be objected that in asking how the originalist would view the prospect of the state equalising citizens' opportunities for cultural preference satisfaction, the originalist would not focus solely on comparing the respective positions of the anglophile and the incorrigible hispanophile pre-equalisation to their positions post-equalisation, but would also be influenced by the difference that equalisation would make to position of the stubborn hispanophile and the converted hispanophile.

In fact, however, focussing on the relative pre- and post-equalisation opportunity for self-determination levels of those with droppable Spanish preferences (as opposed to focussing solely on the relative levels enjoyed by non-incorrigible hispanophiles and anglophiles) would make equalisation less rather than more appealing to the originalist. This is because someone socialised into having from a young age an expensive linguistic preference could actually be said to be better off, in terms of their opportunity for self-determination, *without* equalisation. The reason for this has to do with the *incentives* that an equalisation regime would create. For example, it is true that equalisation would

expensive taste is undroppable—be precisely what fairness demands. (The originalist, therefore, will in some cases opt for a less fair distribution over a fairer one, if, for example, the average opportunity for self-determination in the less fair distribution is considerably greater than it is under the fairer distribution.)

improve the opportunity for linguistic preference satisfaction of non-incorrigible hispanophiles. Consider, however, the converted anglophile, who has shed his expensive preference for Spanish and developed a more easily satisfied preference for English. If, as a result of a transfer program, his opportunity for self-determination in respect of his preferences winds up being no greater than that of the stubborn hispanophile, his decision to shed his Spanish preference and develop a fondness for English will have achieved precious little. Those who find themselves with droppable Spanish preferences who might otherwise have chosen to drop them and become converted anglophiles, then, will have little incentive to do so, and will instead occupy the role of the stubborn hispanophile. However, since the anglophile's opportunity for self-determination in the absence of equalisation is greater than everyone's level after equalisation,[418] if no equalisation occurs, the person with a droppable Spanish preference stands to enjoy, by way of choosing to develop a preference for English, considerably more preference-satisfaction than that which she will possess if equalisation were to take place.

[418] There is a potentially complicating wrinkle that should be mentioned where we are dealing with a presently expensive *linguistic* (or cultural) preference. For example, a language is not *inherently* more or less expensive than another (with, possibly, some minor exceptions to do, for instance, with the costs of printing material in languages with numerous or extravagant characters, etc.) Generally, it is the case that a particular minority linguistic preference is expensive in the circumstances *because* it is a minority taste—ie, because it is less popularly held than is a preference for the majority language. As such, transferring resources or creating subsidies that see more people develop a preference for a language that is presently expensive could, by making that language more popular, also serve to make it less expensive. This feature suggests that equalisation efforts are more appropriate in respect of linguistic preferences than, say, culinary preferences. However, we should still regard equalisation here as something that an originalist would be unlikely to endorse, given the following facts: 1) even if such equalisation would make the beneficiary language less expensive as more speakers join it, such equalisation would also likely serve to make those languages which these converts would otherwise have spoken correspondingly *more* expensive for not being as popular as they otherwise would be; 2) were equalisation to have this effect of driving down the price of the formerly expensive language as it grew in popularity, the value of fair opportunity for self-determination would therefore require that some of the resources transferred, or some of the value of the subsidies created, be eventually returned to those that contributed to but did not benefit from the equalisation efforts (ie, the anglophiles), which would introduce a layer of administrative complexity and cost that may well offset any advantages gained from equalisation; and 3) there is a certain 'stickiness' to individuals' linguistic and cultural preferences in any event, which make it less likely that individuals would, in light of financial incentives flowing from resource transfers or subsidies, take up a new language—as opposed to, say, a new drink of choice—in the first place.

In addition, the incentives and disincentives that an equalisation regime would throw up would, predictably, undermine not just the non-incorrigible hispanophiles', but also the incorrigible hispanophiles' and anglophiles', post-equalisation levels of opportunity for self-determination. For example, in real-world cases in which there are initially, say, hundreds of millions of anglophiles, tens of millions of stubborn hispanophiles, hundreds of thousands of incorrigible hispanophiles, and perhaps thousands of converted hispanophiles, the very fact that we are equalising opportunity for self-determination will, as we saw, have implications for how many anglophiles we're left with. Equalisation will provide a disincentive for non-incorrigible hispanophiles to develop a fondness for English—ie, many of those who would otherwise have been converted anglophiles will instead be stubborn hispanophiles—and could even lead to some ordinary anglophiles who would otherwise have remained anglophiles to instead become converted hispanophiles. In this way, as compared to the respective numbers of hispanophiles and anglophiles we would expect if no transfers were undertaken, the mere fact of there being a transfer scheme will mean that there will come to be considerably more hispanophiles and considerably fewer anglophiles. And this is to say that there will be many more *recipients* of the transfer program, and considerably fewer *contributors*. As such, the pool of resources from which transfers are drawn (ie, the total resources held by anglophiles) will be significantly smaller than we might have expected, and the number of individuals among whom they are to be distributed (ie, the class of hispanophiles) will be significantly greater.

In consequence, in order to equalise everyone's opportunity for self-determination, we will have to draw from each anglophile a greater absolute number of resources than we would if the anglophiles as a class were larger in number. Likewise, each deserving incorrigible hispanophile will receive by way of equalisation a smaller absolute amount of resources than they would have received if the undeserving hispanophiles were fewer in number. As such, the post-equalisation level of opportunity for self-determination of anglophiles and incorrigible hispanophiles will of course be less than it would be had there been more anglophiles, or fewer non-incorrigible hispanophiles, or both. Our earlier claim that there is no general obligation of justice to equalise citizens' opportunities for self-determination is thus further strengthened once we consider these broader effects that a tax and transfer scheme would have.

The Special Nature of Linguistic and Cultural Preferences

When it comes to specifically cultural and linguistic preferences, however, merely transferring resources from those with less expensive preferences to those with more expensive preferences will often be insufficient to improve the opportunity for self-determination of the latter. The reason for this is that cultures and languages are inherently *collective* enterprises.[419] One's preference for a particular culture or language is not simply a desire to live in a certain manner or speak in a certain tongue, but to live or to speak in that way *in concert with others doing likewise*. Imagine, for example, that there exists in our society a dying language with only a dozen remaining speakers. Simply transferring to these dozen people some of the resources of their co-citizens whose languages are vibrant and much more widely spoken is unlikely, on its own, to improve the ability of the speakers of the dying language to satisfy their preference for living in that tongue. Instead, to achieve that end we need to ensure that the number of speakers of that language increases. Now as we said above, while direct resource transfers represents one general strategy for equalising the opportunity for self-determination of those with expensive preferences, subsidising the exercise of these

[419] Cf Green's concept of a 'shared good' ('Are Language Rights Fundamental?' (n 1) 660).

expensive preferences represents a second. Increasing the number of people who speak an endangered language, then, may mean that we will have to provide subsidies targeted at the speaking and learning of that language, so as to ensure that some of those who would not otherwise have used the language (or who would have used it only in limited contexts) come instead to use it (or come instead to use it in a wide variety of contexts).

The problems that we found to beset the equalisation of opportunity for self-determination via a tax and transfer scheme, however, do not disappear once we consider using subsidies instead. It is true that by employing subsidies rather than transfers we could avoid the abuse problem raised above, under which some individuals falsely claim to hold an expensive preference in order to receive resources which they then use to satisfy their inexpensive preference. However, precisely because subsidies facilitate the realisation of a particular preference, they tend to be *indiscriminate*, in the sense of benefitting all who hold that preference, regardless of whether the preference is for these individuals droppable or undroppable. And while it is in theory possible to tailor subsidies in such a way that they benefit only those for whom the relevant preference is undroppable, in reality it will prove exceedingly difficult to make subsidies available only to incorrigible hispanophiles, and not to stubborn hispanophiles or converted hispanophiles—just as we said it is exceedingly difficult to ensure that resource transfers only benefit incorrigible hispanophiles and not stubborn hispanophiles or converted hispanophiles. Further, employing subsidies as opposed to transfers does not change the fact that such subsidies will have to be funded out of the anglophiles' resources.

So, there is no doubt an unfairness at play when, in the absence of equalisation, the incorrigible hispanophile faces a lesser opportunity for self-determination than that which the anglophile faces. However, equalisation via subsidies will also involve unfairness—directed this time towards the anglophiles—and for the same reason that a tax and transfer means of equalisation would be unfair to them. That is, subsidies, like transfers, involve resources being taken from the anglophiles, which then go to benefit non-incorrigible hispanophiles (who are likely to substantially outnumber incorrigible hispanophiles), in violation of the idea of responsibility for choice. Further, such subsidies see incorrigible hispanophiles, ordinary anglophiles, and converted anglophiles emerge with precisely the same opportunity for self-determination as non-incorrigible hispanophiles—again, in violation of the idea of responsibility for choice. In addition, subsidies, like transfers, reduce the incentive for those with a droppable expensive preference to develop an inexpensive preference (meaning fewer non-incorrigible hispanophiles will become converted anglophiles), and eliminate the incentive for those born with an inexpensive preference to retain that preference (meaning that some ordinary anglophiles may become converted hispanophiles).

Overall, then, the problems that beset equalisation of opportunity for self-determination by way of subsidies are the same as those that bedevil equalisation via transfers. Our answer to the central question of whether the state is under a general obligation of justice to equalise opportunity for self-determination in respect of cultural and linguistic preferences via subsidies should accordingly be the same as our answer to the question of whether it has such an obligation to achieve equalisation via transfers. To both forms of the question, that is, our answer should be no. An individual in Rawls's original position would not accede to a principle according to which citizens' opportunity for self-determination in respect of their cultural and linguistic preferences are to be made equal. Justice, therefore, does not call upon the state do so.

To summarize, it is unfair that someone with an ineluctable expensive preference should face a lesser opportunity for self-determination than someone else, purely because the former's preference is more expensive than the latter's. It is unfair because the lesser opportunity for self-determination that the former individual faces is not something she could have chosen to avoid. Where we can accurately distinguish between those individuals whose expensive preference is for them undroppable and those for whom the preference is droppable, I believe a liberal state committed to equality and concerned to advance the autonomy of its citizens ought to make equal the opportunity for self-determination of those individuals who are unable to shed the expensive preference and those who hold the inexpensive preference (provided that the expensive preference is not vastly more expensive than the inexpensive preference).

However, since in reality we will generally be unable to distinguish between incorrigible hispanophiles and non-incorrigible hispanophiles, equalising the opportunity for self-determination of hispanophiles and anglophiles will be unfair to anglophiles, just as not doing so will be unfair to incorrigible hispanophiles. Moreover, once we consider that there are, generally speaking, likely to be far more non-incorrigible hispanophiles than incorrigible hispanophiles in real-world cases, we are drawn to the conclusion that equalising hispanophiles' and anglophiles' opportunities for self-determination will—again, generally speaking—be unjust in the circumstances. This conclusion is only strengthened when we notice that where an equalisation regime is followed, this fact alone will tend to swell the ranks of the non-incorrigible hispanophiles and reduce the number of anglophiles, thus making equalisation even more unfair to the anglophiles—and less beneficial to the truly deserving recipients (ie, the incorrigible hispanophiles)—than we might have supposed.

An Alternative View of Fairness

It could, however, be argued that if an originalist would object to the prospect of taking measures to equalise the opportunity for self-determination of those with undroppable expensive preferences, that is sufficient to make non-equalisation fair in the circumstances. I think we should resist this kind of move, however. It is true that when Rawls employs his heuristic of the original position he does so in order to elucidate a conception of 'justice *as fairness*' according to which what is acceptable to the originalist is therefore fair. I think, however, that there is good reason for us to continue to describe as "unfair" a situation in which the incorrigible hispanophile endures a lesser opportunity for self-determination than others due to the comparative expensiveness of her ineluctable preference. The incorrigible hispanophile's predicament is unfair, that is, because no matter how unjust it would be to undertake the measures that would in the circumstances be required to improve her inferior position, that position is undeserved. We are further reminded of this when we note that the only justification that can be given to her as to why she should be left to continue occupying her unenviable position must appeal exclusively to the interests of other individuals. As such, we ought to regard the situation as just on the whole to the extent that this justification succeeds, but continue to insist that there is an important sense in which things are, from the point of view of the incorrigible hispanophile—and even where the justification does succeed—unfair. To fully defend this idea that even where equalising the opportunity for self-determination of incorrigible hispanophiles would be unjust, *not* doing so would represent an unfairness, it would be necessary to present a full account of the value of fairness. I will follow Patten in not attempting that here.[420] It is instructive, however, to note the fact that in everyday life we often hear people complain that such and such is 'unfair'—say, the fact that their helping

[420] For what it is worth, as the beginnings of an account of fairness, I would suggest that someone endures an unfairness when their interests are negatively affected in circumstances in which this negative effect is not: i) a result of their either making or not making a particular choice that it was open to them to make; nor ii) in accordance with some broader framework or process which they have endorsed; nor iii) a state of affairs the person could not reasonably reject. The basic idea, not to be pursued further here, is that where any of these three criteria *are* met, the person affected cannot complain of an unfairness, whereas if none of the criteria are met, then the person has suffered an unfairness—although this would *not* imply that they have suffered an *injustice*.

an elderly person across the street caused them to miss their bus and thus arrive late for a meeting with an important client—without understanding them to have made any claim at all about whether that state of affairs is also un*just*.

Patten's 'Neutrality Claim'

Regardless of our conclusion that refraining from equalising citizens' opportunities for self-determination in respect of linguistic preferences will in the real-world generally be just, the foregoing discussion of what fair opportunity for self-determination involves in the linguistic context clearly refutes what we earlier called Patten's 'Neutrality Claim'. Specifically, neutrality—properly understood as volitional neutrality—does not (even where background conditions are just) always ensure fair opportunity for self-determination. Taking a neutral stance and not equalising opportunities for self-determination in respect of language preferences, for example, will, as we saw, leave those with undroppable expensive preferences to face an unfairly constrained opportunity for self-determination.

Further, even if we understood neutrality according to Patten's flawed 'neutrality of treatment' account, such neutral treatment again does not ensure fair opportunity for self-determination, and nor will treatment that violates neutrality of treatment always undermine fair opportunity for self-determination.[421] As such, neutrality—on either conception—is sometimes not even a *pro tanto* requirement of justice.

Why does there not exist the tidy relationship between neutrality and fair opportunity for self-determination that Patten alleges? The answer is that the state's

[421] In fact, in respect of conflicts between language communities, volitional neutrality and Patten's 'neutrality of treatment' call for the same thing—namely, identical (prorated) treatment. This is due to the fact that volitional neutrality only calls for treatment that differentially benefits the parties where such treatment is in turn demanded by the rules of the conflict itself. Such treatment is not part of the parameters of ordinary conflicts between language communities competing for members.

acting neutrally as between languages leaves individuals to bear the costs of their own linguistic preferences, be they droppable or undroppable. Because of this insensitivity to what we might call droppability, neutral treatment in respect of languages will see those whose linguistic preferences are equally expensive face an equal opportunity for self-determination in respect of their preferences. Likewise, neutrality will see those whose preferences vary in terms of their expensiveness face varying opportunities for self-determination in respect of their preferences—with those whose preferences are less expensive enjoying a greater opportunity and those whose preferences are more expensive enduring a lesser opportunity. Now, when it comes to ordinary, everyday, *non*-linguistic preferences, the expensiveness of people's preferences may vary widely, but will generally all be droppable. Here, then, neutrality *will* (at least generally) lead to a state of affairs marked by fair opportunity for self-determination for all—ie, by ensuring that those with more expensive droppable preferences face a lesser opportunity for self-determination in respect of their preferences than do those with less expensive droppable preferences.

The fact that neutrality promotes the value of fair opportunity for self-determination in these ordinary cases, however, is what leads Patten astray. His error is to extrapolate from these cases involving universally droppable preferences to the case of linguistic preferences. He fails to take proper notice, that is, of the fact that sometimes an individual's expensive linguistic or cultural preference will be undroppable. And for all those with linguistic preferences that are both expensive and undroppable, neutrality ensures that their opportunity for self-determination in respect of those preferences will be *un*fair.

Patten's 'Recognition Claim'

We should respond to Patten's claims about recognition in the same way we should respond to his claims about neutrality. That is, we ought to reject both Patten's account of what state recognition of cultures consists in, and his claim that if recognition so defined is not extended to all cultures equally, this will (at least in conditions that are antecedently just) undermine fair opportunity for self-determination. On the first score, Patten is upfront about the fact that, compared with the more 'familiar usages' of the concept of recognition in political philosophy, his 'own understanding of the concept is rather specific and idiosyncratic.'[422] The problem with Patten's definition of recognition—which, again, specifies that recognition is customised accommodation of identity-related conceptions of the good—is two-fold. The first problem lies in Patten's insistence that recognition involves *customised* accommodation. The second problem is that his account of recognition fails to apprehend that recognition has an inherently evaluative aspect.

Patten's definition of recognition as *customised* state accommodation of identity-related conceptions of the good or components of conceptions of the good is problematic because it has the effect of withholding the label 'recognition' from state actions that should strike us as clear instances of recognition. For instance, Patten observes that there are three conceptual possibilities when it comes to how the state might commit itself to remaining neutral. It could, 'as far as possible', disentangle itself 'from the regulation or provision of the goods and activities that figure in the pursuit of conceptions of the good.'[423] Alternatively, it could take an active role in the provision of these goods and activities, but do so while ensuring that 'a roughly equivalent form of regulation or provision is applied to various rival conceptions of the good.'[424] Lastly, it could

[422] Patten, *Equal Recognition* (n 255) 173.
[423] ibid 136. He labels this the 'privatization' strategy (see 136–39).
[424] ibid 136. Patten calls this the 'even-handedness' strategy.

‘entangle’ itself in the business of regulating or providing goods and activities ‘that figure in the pursuit of conceptions of the good’, but only to the extent of regulating or providing the goods and activities ‘that play a role in all, or at least almost all, conceptions of the good.’[425] In this way, this strategy of ‘generic entanglement’ ‘is compatible with equal accommodation since no special form of assistance or hindrance is being extended to or imposed on some conceptions of the good but not others.’[426]

The problem for Patten’s definition of recognition is that where a state provides generic assistance to some but not all conceptions of the good, we would be unable to understand this approach as involving any state recognition of conceptions of the good. For example, if the state opted to provide firefighting services to all places of worship within its borders with the exclusion of mosques, this would not be to provide any *customised* form of assistance or accommodation to those adhering to, say, the Christian, Jewish, or Buddhist faiths. (Patten himself, for instance, offers ‘fire prevention services’ as an example of a ‘generic’ good that aids individuals in the pursuit of all, or almost all, conceptions of the good.[427]) And yet it seems clear that in picking out Muslims as the one faith community whose houses of worship are not serviced by the state’s fire department, that state would be extending a form of recognition to the Christian, Jewish, and Buddhist religions that it is denying to Islam.[428] Likewise, and even more obviously, if the state were to choose to provide fire protection services to only *one* religious group—say, Christians—it would thereby be recognising the Christian faith but no others. This is the case despite the fact that the state, in providing only Christian churches with firefighting services, has not provided the Christian worldview with *customised* accommodation.

[425] ibid 136.
[426] ibid 136.
[427] ibid 174.
[428] Arguably, what is happening here instead is that the state is extending a form of anti-recognition or misrecognition to Islam and Islam only. Whichever way we wish to see it, however, the point is that Islam is not being equally recognised.

There is nothing special about Christian churches (qua *Christian* churches, anyway) that make them peculiarly susceptible to fire, for example. To be sure, Patten would no doubt recognise that while generic entanglement 'is compatible with equal accommodation',[429] the truncated generic entanglement (as we might call it) of the above examples would not be. But he is unable, given his faulty definition of recognition, to acknowledge that the unequal accommodation that truncated generic entanglement would involve represents unequal *recognition*.

The second way in which Patten's definition of recognition is inapt is its failure to notice that recognition has an inherently evaluative aspect. State recognition of cultures involves a judgment on the part of the state that a given culture, or some aspect of it, is of value, which judgment is then outwardly demonstrated by some action taken by the state. Patten's definition of recognition is the poorer for not including any mention of this evaluative feature. For instance, Patten, as we know, understands recognition as a form of customised accommodation. In turn, Patten understands a state to be "accommodating" of a culture or conception of the good to the extent that some action it takes can be expected to make that culture or conception of the good more successful—that is to say, more easily realised within the lives of individuals.[430] Consequently, Patten is unable to label a state's action vis-à-vis a culture as "recognition" unless that action is expected to make it easier for individuals to live out that particular culture. This is problematic, however, because it seems clear that if a country's head of state made public pronouncements venerating some long forgotten culture, the state would thereby recognise that culture, regardless of whether there was any reasonable expectation that these pronouncements would actually increase the ease with which modern-day citizens could live out that

[429] Patten, *Equal Recognition* (n 255) 136.
[430] ibid 132–33.

culture. An account of recognition that stresses the way in which state recognition involves an evaluative judgment regarding the worth of cultures, by contrast, would have no trouble identifying the state's actions in this example as extending a form of recognition to the previously forgotten culture.

Further, once we acknowledge the fact that recognition is an inherently evaluative concept, defining recognition so as to require *customised* accommodation loses any appeal it might have held. For example, defining recognition as customised accommodation would be sufficient to ensure that we would not have to label all of the generic accommodation of conceptions of the good that a state might provide—things such as 'police, fire, and school-bus services'[431]—as "recognition". But it is not necessary. By acknowledging the evaluative aspect of recognition, we possess the resources with which to say that the reason that extending these "accommodations" does not amount to "recognizing" the conceptions of the good and cultures which are thereby accommodated is not because the accommodations are generic as opposed to customised, but rather because they do not result from or signify any evaluative judgment on the part of the state as to the relative worth of the conceptions of the good and cultures being accommodated.

Another suspect element of what we are calling Patten's 'Recognition Claim' is the proposition that unequal recognition undermines the value of fair opportunity for self-determination. In disputing this claim, our previous observations about the infelicities of Patten's definition of recognition are again relevant. For instance, because Patten's definition of recognition is non-evaluative, his account automatically rules out customised state accommodation of cultures or conceptions of the good wherever other cultures or conceptions of the good are not extended equivalent customised

[431] ibid 138.

accommodation. It does so on the basis that such non-universal customised accommodation would undermine the opportunity for self-determination of those individuals whose cultures or conceptions of the good are not in receipt of equivalent customised accommodation. But it is highly implausible to think that this will always be the case.

Suppose, for instance, that in conditions in which all citizens' opportunities for self-determination are fair, the state seeks to bring a more orderly and formal appearance to its police force, and to that end is considering passing legislation requiring all police officers to wear a standard-issue hat. Suppose further that wearing this hat would impinge on the ability of observant Sikh males to wear their turban, but would not impinge in any way on the members of any other religious or cultural community when it comes to their opportunity to pursue their religious and cultural commitments. In such a scenario, if the state were to respond by adding an exception to the proposed legislation specifically exempting observant male Sikhs from the wearing of these police hats, this action would constitute 'customised' accommodation of Sikhism, and would therefore count as extending unequal recognition under Patten's definition of that term.

However, such unequal recognition would hardly undermine the fair opportunity for self-determination of all those who are not observant male Sikhs. Instead, *failing* to accommodate these Sikhs' commitment to wearing the turban would in fact undermine fair opportunity for self-determination, as it would reduce these individuals' opportunities to pursue *their* religious and cultural commitments (while not reducing the opportunity of non-Sikhs to pursue their religious and cultural commitments to an equivalent degree). Far from undermining fair opportunity for self-determination, then, the exemption—despite the fact that Patten would regard it as amounting to unequal recognition—is necessary in order to *promote* fair opportunity for self-determination for Sikhs and non-Sikhs alike.[432]

Conclusion

What lessons should we draw from this lengthy discussion about equalising individuals' opportunity for self-determination? Firstly, we should conclude that Alan Patten's account of the philosophical foundations of cultural and linguistic rights misconceives neutrality and recognition. We also saw that Patten errs in claiming that neutrality and equal recognition ensure (at least where background conditions are just) that everyone enjoys a fair opportunity for self-determination. That is, on either his defective interpretations of neutrality and recognition, or a proper understanding of each, neutral treatment and the equal recognition of languages can perpetuate unfairness. We saw this by noticing that while the liberal state should not equalise citizens' achievement of self-determination in respect of all their preferences, nor equalise their opportunities for self-determination in respect of all their preferences—and this due to liberalism's commitment to the idea of responsibility for choice—Patten is wrong to assume that the state's neutrally refraining from equalising citizens' opportunities for self-determination in respect of their *linguistic* preferences will (at least where background conditions are just) ensure that everyone's opportunities for self-determination in respect of such preferences—whether they be great or small—will be fair. This is not so, given that there will be some individuals for whom their expensive linguistic preference is undroppable. That is, the state's refraining from equalising their opportunity for self-determination and

[432] Another problematic aspect of Patten's account of recognition is that it does not allow for the possibility that the state can recognise *non*-identity-related conceptions of the good. That is, it seems clear that the state *can* recognise "mere preferences" that are not identity-related on Patten's definition. It's true that unequal recognition of these sorts of non-identity related preferences rightly concerns us less than does unequal recognition of identity-related conceptions of the good. But "recognition" it remains. It is so much the worse for Patten's account of recognition that it does not allow us to say this, but rather forces us to regard the former sort of recognition as no recognition at all.

that of those with expensive linguistic preferences will leave the former with an *un*fair opportunity for self-determination. Further, this fact is in no way undercut by our finding that due to real-world complications to do with the difficulty of distinguishing those with undroppable expensive linguistic preferences from those merely claiming to possess such preferences, equalising citizens' opportunities for self-determination in respect of their linguistic preferences will generally be unjust.

Patten's overall argument that minority cultural rights are grounded in a pro tanto duty to treat cultural and linguistic minorities fairly, which in turn places the state under a pro tanto duty to be neutral between cultural and linguistic communities, therefore does not succeed. In the final chapter, however, we will see that Patten's account of the normative foundations of cultural and linguistic rights is not far off the mark. That is, while state neutrality in respect of language does not have the tidy, necessary connection with fairness that Patten claims, we will show that the best philosophical defence of linguistic and cultural rights does indeed centre on the idea of treating linguistic and cultural minority communities fairly, and thereby promoting the fair opportunity for self-determination of their members.

CHAPTER NINE

CRAFTING JUST LANGUAGE POLICIES

Introduction

Our discussion of Alan Patten's theory of language rights in the last chapter found that individuals' cultural and linguistic preferences will not always be subject to choice in such a way as to make it fair for the liberal state to hold citizens responsible for the costs of satisfying those preferences. As such, even against 'fair background conditions', state neutrality with regard to culture and language will sometimes mean that individuals with expensive cultural or linguistic preferences face an unfair opportunity for self-determination in respect of those preferences. We therefore found Patten's self-determination based defence of neutrality in matters of culture and language to be in clear need of revision.

Fair Opportunity for Self-determination as a Defeasible Obligation

Whereas Patten claims that the state always has pro tanto, but not necessarily conclusory, reasons to remain neutral among language, cultures, and conceptions of the good, we ought instead to say that the state always has pro tanto, but not necessarily conclusory, reasons to ensure that all citizens' opportunities for self-determination in respect of language, cultures, and conceptions of the good are as fair as possible.[433] The state has a

[433] As we saw, in real-world conditions, practical difficulties will generally make it impossible for the state to ensure that everyone's opportunity for self-determination in respect of linguistic preferences are perfectly fair. (Such equalisation efforts as are practically feasible, for instance, would benefit non-incorrigible hispanophiles and thus be unfair, whereas non-equalisation would see the incorrigible hispanophiles endure an unfairly constrained opportunity for self-determination relative to anglophiles.) Given that 'ought' implies 'can', it would therefore be a mistake to claim that the state has a pro tanto obligation to actually ensure fair opportunity for self-determination for all; technically, the pro tanto duty that the state is under, instead, is to ensure that individuals' opportunities for self-determination are as fair as possible.

pro tanto obligation, that is, to take that action which best promotes the value of fair opportunity for self-determination for all—whether that action is neutral or non-neutral. The state is under such a general pro tanto obligation because self-determination is a necessary precondition of personal autonomy (which in turn can be understood as an intrinsic good), because self-determination contributes to an individual's well-being, and because of the bedrock liberal value of equal concern and respect for all individuals. Since the obligation here is a pro tanto one, a given state action that would on the whole undermine rather than advance the value of fair opportunity for self-determination for all may nonetheless be just.

How can we defend the defeasible nature of the case for fair opportunity for self-determination? Essentially, things boil down here to the fact that, as Charles Larmore has put it, neutrality 'is not the liberal's only desideratum'.[434] Given that we have offered an account of neutrality in which its value derives from its (contingent, not necessary) connection with fair opportunity for self-determination,[435] we ought really to revise the point as follows: *fair opportunity for self-determination* is not the liberal's only desideratum.

Where, for instance, non-equalisation of citizens' opportunities for self-determination in respect of their cultural or linguistic preferences will leave some individuals to face an unfair opportunity for self-determination, the fact that fair opportunity for self-determination for all is not the liberal state's only objective means that it may be just for the state to take action that actually further reduces the already unfairly constrained opportunity for self-determination that these individuals face. For this to be so, however, the evil of undermining the value of fair opportunity for self-

[434] Larmore (n 254) 67.
[435] Note that neutrality is therefore rightly seen as being, in Patten's formulation, a 'downstream [liberal] value', in the sense that the justification of neutrality requires appeal to some more fundamental '*nonneutral* values' (Patten, *Equal Recognition* (n 255) emphasis added).

determination in this manner must be necessary to purchase some outweighing liberal good. For example, where a state's extending greater recognition to two or three of its larger language communities than that which it extends to smaller linguistic groups is necessary to secure healthy levels of participation in national debates among citizens from all of the country's ethnic and linguistic groups (and to ensure that these public debates are informed and relevant to all citizens), then the state's (non-neutral) action here may well be justified in the circumstances, notwithstanding that it will, unfairly, reduce the opportunity for self-determination of members of smaller linguistic groups.[436]

Determining whether the Pro Tanto Obligation is Defeated

How, though, can we determine when the negative impact of a given state action on individuals' opportunity for self-determination is justified in light of some other good that the action that undermines their opportunity for self-determination promises to secure? I propose, more or less in line with Patten's general comments on the matter,[437] that the question of whether a particular departure from neutrality can be justified, in spite of the negative consequences it will have for the goal of fair opportunity for self-determination, should be adjudicated using a framework akin to that known to Canadian law as the

[436] It is worth noting here that often some of the liberal goods that a state might wish to secure by way of an action that would appear to undermine the opportunity for self-determination of members of certain linguistic groups may in fact, on the whole, improve their opportunity for self-determination, not undermine it. For example, if the state's extending greater recognition to two or three of its larger language communities than that which it extends to smaller linguistic groups is necessary to secure adequate social mobility for the speakers of these smaller languages, then it seems likely that that action, given the connection between social mobility and self-determination, will have a net positive effect on these individuals' opportunities for self-determination.

[437] 'Whether the state has a conclusory reason to be neutral in a given case depends on several factors. …[T]hese factors include the degree to which a possible departure from neutrality would in fact unfairly affect the opportunity for self-determination of some[,] and the degree to which the countervailing considerations, be they perfectionist considerations or considerations of the public good, are themselves weighty and can be advanced through and only through neutrality-curtailing measures. The relevant factors also include … the degree to which self-determination has a heightened importance for persons who are affected by a nonneutral policy because of the special nature of the commitment or attachment that is adversely affected' (Patten, *Equal Recognition* (n 255) 128).

‘Oakes test’. This test, first employed by the Supreme Court of Canada in *R v Oakes*,[438] is used by Canadian courts to determine whether state action that limits the rights of Canadians as set out in the *Charter of Rights and Freedoms*[439] nonetheless qualifies as a ‘reasonable limit’ on those rights pursuant to s. 1 of the *Charter*.[440] Under the Oakes test, legislation that limits a *Charter* right can only be saved under s. 1 if it passes a two-stage analysis, consisting of four distinct steps.

Firstly, the legislation must aim at a ‘pressing and substantial objective’. Courts will not countenance the limitation of a right merely in order to secure some trivial benefit. Likewise, in order to find that a governmental act that violates fair opportunity for self-determination is justified in the circumstances, it should first be demonstrated that the objective at which that act aims is pressing and substantial. It is also appropriate, when applying an Oakes-esque analysis to state actions that undermine an individual’s general interest in a fair opportunity for self-determination, to measure the weightiness of the state’s objective according to a sliding scale. For example, we should regard violations in respect of more identity-laden preferences as requiring, if they are to be justified, more pressing and substantial objectives than violations that impinge on the pursuit of less identity-laden preferences.

For example, according to the understanding of the concept of fair opportunity for self-determination we have been working with, if the government subsidises the cost of butterscotch ice cream, then I, given my preference for chocolate ice cream, face (all things being equal) an unfairly lesser opportunity for self-determination in respect of my ice cream preference than does my butterscotch ice cream-loving neighbour. The evil of

[438] *R v Oakes* [1986] 1 SCR 103.
[439] *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
[440] ibid s. 1 reads: ‘The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.’

the state's non-neutral action in this sort of case, obviously, is relatively minor. Given that we value fair opportunity for self-determination, the state's unequal accommodation of the two flavour preferences does stand in need of some justification; however, given the reasons *why* we value fair opportunity for self-determination, the *sort* of justification that will be sufficient here will be different from the sort of justification that would be necessary had the non-neutral action hindered the pursuit of more important preferences. In other words, while we value self-determination in light of the way in which achieving one's preferences contributes to one's well-being, and in light of the fact that one can be autonomous only if one is to some extent self-determining, we are unconcerned that the difficulty we are unfairly made to face when it comes to satisfying our chocolate ice cream preference will seriously undermine our well-being, or our autonomy. Accordingly, the *weight* of the reason that the state should be made to provide in order to justify its action—ie, the degree to which its purpose in acting in that manner is pressing and substantial—will be less than what would be demanded had the state acted to favour not butterscotch ice cream-lovers but Buddhists. When it comes to linguistic and cultural commitments, we should see non-neutral measures that undermine fair opportunity for self-determination as demanding for their justification an objective whose weight is greater than that which suffices to justify non-neutrality among ice cream preferences, but less than that required to justify non-neutrality among religious preferences.

We need not detain ourselves long in explaining why. Patten's thinking here, for example, seems compelling and relatively uncontroversial. According to Patten, for instance, 'the presence of certain special commitments in a person's conception of the good makes self-determination an even more important interest with respect to those commitments',[441] in the sense that 'It would be an especially serious setback for an

[441] Patten, *Equal Recognition* (n 255) 150.

individual to be denied a fair opportunity to fulfill these commitments.'[442] Relevant factors here, for Patten, include whether the commitment occupies a 'central and pivotal' role 'in a whole set of a person's ends'.[443] If it does, then where state non-neutrally frustrates that commitment, 'not only will that commitment be frustrated, but other preferences and values that are connected with it will be too',[444] since it is the nature of a 'central and pivotal' commitment that various other, less central commitments flow from it. An additional pertinent factor, according to Patten, is whether the relevant 'conceptions of the good (or elements of such a conception)',[445] have a 'nonnegotiable character'[446] for those who hold them—which will be the case 'when part of what it is to affirm the conception is to believe that some of the values it includes are binding in a nonnegotiable fashion.'[447] For Patten, we have a particularly strong interest in being free to pursue nonnegotiable commitments given that 'it is likely to be psychologically painful'[448] for us if we are not, and given that we may be 'vulnerable to a range of different sanctions'[449] from members of our community who socially enforce these commitments if we 'fail to honor' them.[450]

The upshot of this discussion is that the magnitude, or moral salience, of an impairment of fair opportunity for self-determination will vary depending on the circumstances. Where fair opportunity for self-determination is more significantly affected—for example, where the state action impairs the ability of a person to pursue a commitment that is central to their identity and which they understand to have a nonnegotiable character—then in order for that action to be justified the state's objectives

[442] ibid.
[443] ibid.
[444] ibid.
[445] ibid 185.
[446] ibid 151–53, 175.
[447] ibid 151.
[448] ibid.
[449] ibid.
[450] ibid.

in pursuing that course of action must be correspondingly weighty. As such, the first stage of our modified Oakes test analysis asks whether the state's objectives are *sufficiently* pressing and substantial—in light of the extent of the impairment of fair opportunity for self-determination—as opposed to asking whether they are pressing and substantial in the abstract.

The second stage of the Oakes test, comprising three steps, is said to consist of a 'proportionality' analysis. The right-impairing measure is examined, firstly, in order to ensure that it is 'rationally connected' to the objective identified at stage one. The measure, in other words, must actually be likely to further the pressing and substantial objective, and cannot be arbitrary or unfair.[451] Provided that that is the case, the inquiry proceeds to step two of the second stage, where the issue to be determined is whether the impugned law is 'minimally impairing' of the applicable *Charter* right. Here, the legislation will be held to be unconstitutional if the objective could have been achieved via other means that would have been less restrictive of *Charter* rights, although the courts grant some flexibility on this score and require the state to prove that the impugned legislation was 'within a range of reasonably supportable alternatives'[452], as opposed to being necessarily the very least impairing of those alternatives. The final step in the analysis asks whether, even if the measure can be successfully defended at all previous steps of the inquiry, its effects are on the whole disproportionate to the benefit that the measure would secure or make likely. However, in light of our discussion of the way in which state actions that undermine fair opportunity for self-determination should first be examined to see if there exists a 'sufficiently weighty' objective that the action serves—ie, in light of the way in which we argued the first step of the Oakes test should be

[451] *Oakes* (n 438) [70].
[452] ibid [101].

modified when applied to cases involving the impairment of fair opportunity for self-determination—the ‘proportionate effect’ branch of the Oakes test would be redundant. Having determined that a relevant state objective is sufficiently weighty, that is, the question of whether there is proportionality between the rights infringement caused by the state action and the objective served by that action has already been answered—and answered in the affirmative. The inquiry need not be repeated again following investigations into questions of rational connection and minimal impairment.

In summary, state actions that undermine fair opportunity for self-determination are pro tanto wrongs that stand in need of justification. In order to be justified, these measures must, firstly, be animated by an objective that is sufficiently weighty as to represent a good that at least offsets, if not outweighs, the evil of the measure’s unfair effects on individuals’ opportunities for self-determination. Secondly, the measure must be logically related to this weighty objective in such a way as to actually advance that objective. Thirdly and lastly, the measure must be minimally impairing of fair opportunity for self-determination. Even if the benefit that the measure in question would secure is sufficiently pressing as to outweigh the measure’s negative effects on individuals’ opportunities for self-determination, that is, the measure will not be permissible if some other measure could have been taken that would have achieved that or a similar objective at less cost to the value of fair opportunity for self-determination.[453] So, for instance, where the state non-neutrally grants official language status only to one

[453] The foregoing, to be clear, claims that the state has a pro tanto obligation not to undermine fair opportunity for self-determination, and that the revised Oakes test laid out above is the right way of determining as a matter of political morality whether state action which has such an effect is nonetheless justifiable in the circumstances. However, an at least arguable claim can be made that virtually all governmental decision-making will lead to *some* impairment of fair opportunity for self-determination for *someone* or other. I am not suggesting, therefore, that ‘fair opportunity for self-determination’ ought to be seen as a free-standing right, any violation of which should be reviewable by a court of law. The suggestion is, rather, that the conceptual analysis laid out above is the right philosophical framework for determining whether state action that impairs fair opportunity for self-determination is justifiable. That that analysis should be formally conducted by a court, and in respect of all impairments of fair opportunity for self-determination no matter how minor, is a rather different suggestion, and one that is not here being made.

or a few languages spoken across its territory, this is generally a pro tanto wrong. Such a policy, however, may also be justified, all things considered. The reason for this is that despite impairing the opportunity for self-determination of those who speak the non-privileged languages, the policy might be necessary to achieve a countervailing objective, and may do so in a way that only minimally impairs these individuals' opportunities for self-determination.

Stepping Back

We should, then, take the value of fair opportunity for self-determination for all as a guiding principle of language policy. Further, as we saw in the previous chapter, in real-world contexts, this value will ordinarily be best served where the state is neutral between languages. To be sure, however, using fair opportunity for self-determination as a guide when formulating language policy suffers from one of the same drawbacks we earlier said would arise if we employed neutrality as such a guide. Specifically, fair opportunity for self-determination is not particularly prescriptive. Nothing in the foregoing discussion, for instance, provided policy-makers with much in the way of specific, practical guidance. That, however, is no real embarrassment, given that we are merely aiming here, as Patten does in his recent book, to lay out the theoretical foundations upon which real-world decisions about language policy should be made. Further, fair opportunity for self-determination represents a *better* guide to language policy than does neutrality precisely because neutrality will not always best advance fairness.

It might be wondered how all of this squares with our conclusion in the previous chapter that non-neutral measures requiring the transfer of resources from those with inexpensive preferences to those with undroppable expensive preferences (so as to equalise opportunity for self-determination) will, in most real-world cases, be impermissible. Given that conclusion, how is it that we are now suggesting that measures of this sort—or even possibly of the sort that would see resources flow from those with undroppable expensive preferences to those with inexpensive preferences—could be permissible after all, despite their negative effect on fair opportunity for self-determination? The answer is that we now have additional items on the other side of the scale. Thus, when we consider measures that would see resources flow from anglophiles to hispanophiles, we are now imagining that this would have the effect not merely of bringing the opportunity for self-determination of incorrigible hispanophiles closer to that of anglophiles, but of doing other things besides. Likewise, while measures that would benefit anglophiles at the expense of hispanophiles would only exacerbate the problem of the incorrigible hispanophile's unfair opportunity for self-determination, they could theoretically secure other important liberal goods. The value of these "other goods" that the non-neutral action would bring about, we are saying, may well be such as to offset or outweigh the negative impact that that action will have on fair opportunity for self-determination.[454]

That, then, is how we should understand the philosophical foundations of minority rights—both rights in respect of language and of culture more broadly. These rights—to be able to use and, ordinarily,[455] to be understood in a p articular language (generally, one's mother tongue) in particular contexts—are not grounded in some general right to cultural or linguistic preservation. They are instead grounded in a right to fair opportunity for self-determination in respect of one's linguistic and cultural preferences. We have no

[454] We claimed, for instance, that in real-world cases involving linguistic preferences, an originalist would not endorse the equalisation of all individuals' opportunities for self-determination in respect of their language preferences. Since such equalisation would be non-neutral on the volitional neutrality account, we are claiming that an originalist would reject that non-neutral action. We did not, however, claim that an originalist would reject *all* possible non-neutral measures with respect to language, regardless of the particular objectives those non-neutral actions were seeking to achieve.

[455] *Société des Acadiens v Association of Parents* [1986] 1 SCR 549; *MacDonald v City of Montréal* [1986] 1 SCR 460; Denise Réaume, 'The Demise of the Political Compromise Doctrine: Have Official Language Use Rights Been Revived?' (2002) 47 McGill Law Journal 593.

general right that our language be preserved, but we do have a right that it be treated fairly. In a nutshell, all individuals have an important interest in enjoying a fair opportunity for self-determination in respect of their linguistic preferences (which interest is similar in kind to, but stronger in degree than, our interest in enjoying fair opportunity for self-determination in respect of our ordinary, less identity-laden preferences). This interest gives rise to a defeasible obligation on the part of the state to refrain from action that undermines its citizens' ability to pursue their respective linguistic and cultural preferences. Further, since individuals face, all things being equal, a fairer opportunity for self-determination where language rights—ie, the entitlement of individuals to use their (generally mother tongue) language in specified contexts—are recognised, such language rights too are a pro tanto requirement of liberal justice.

Specifically, language rights promote fairness because it is a practical inevitability in a modern state that one or a few languages will enjoy official recognition and support from the state. Language rights that are guaranteed to speakers of languages other than those the state uses in its official business therefore aim merely at providing roughly equivalent per capita recognition and assistance to the speakers of these non-official languages. Such even-handed support is a requirement of fairness (where background conditions are themselves fair), since in the absence of such equivalent recognition and assistance those speakers of the non-official languages whose preferences for their respective languages are undroppable—something that, as we saw, will be true of some although by no means all of them—would have to face an unduly constrained opportunity for self-determination. That is, their opportunity for self-determination in respect of their expensive linguistic preference would be less even than the opportunity for self-determination they would face were the state to remain neutral as between languages—which as we saw would itself be less than what fairness demands.

Language Rights and Neutrality

The state's goal in protecting language rights, then, ought to be ensuring that all of its citizens are treated in such a way that their opportunity for self-determination in respect of their linguistic preferences is a function only of the natural expensiveness of their chosen preferences and the amount of their fairly held resources. For example, where there is a variety of linguistic preferences among citizens of a given state some of which are more naturally expensive than others (because they are less widely held than others), and each of which are equally undroppable, then language rights should further the goal of ensuring that everyone's opportunity to realise their linguistic preference is equal.[456] In reality, of course, the language rights regimes of countries around the world do not—nor are they designed to—have this effect. Instead, language rights secure for speakers of only a select few languages a guaranteed opportunity to use their favoured language in certain contexts. The specific linguistic communities picked out for this favourable treatment are generally *not* selected on the basis of the natural expensiveness of the preference for speaking that language. Instead, they are typically selected based on the historical importance of the community in the life of the state, or due to the community's political clout, or on the basis of some historical agreement guaranteeing language rights to that community.

How, then, are these real-world language rights regimes to be defended, given that we ought to be concerned with ensuring that everyone—and not just those belonging to currently large or historically important language groups—enjoys a fair opportunity to realise their linguistic preferences? Various attempts have been made to justify the selective nature of language rights in liberal democracies, and in particular to make the case that extending language rights to large and historically powerful linguistic

[456] Assuming, that is, that everyone's fairly held resources are equal.

communities but not to smaller or more recent language groups is not in fact unfair.[457] Both Alan Patten and Will Kymlicka, for instance, argue that recognising the language rights of 'national minority' groups but not those of recent immigrant groups may be fair in light of the way that members of the latter groups have waived their rights to be able to use their mother tongue in public institutions.[458] There is insufficient space to address this interesting debate. However, it does seem clear that not all members of immigrant communities, for instance, and in particular second- or third-generation immigrants, have in fact waived their rights in the manner alleged. As such, I believe that language rights regimes that offer official status only to the country's largest or most historically influential languages are only legitimate to the extent that they represent *justifiable impairments* of the value of fair opportunity for self-determination for all.

There are, for instance, very clearly limits on the number of different languages which a modern liberal state can guarantee that its citizens will be able to use in public life, before such public sector multilingualism significantly hinders practical goals such as administrative efficiency and economic performance, or, more worryingly, threatens to erode social solidarity, democratic participation, and social mobility. Capping the number of officially recognised languages, for instance, will be necessary in order to secure these pressing and substantial practical objectives. Moreover, as these objectives are sufficiently weighty in theory as to justify limiting the scope of language rights to a few select languages, the first part of our revised Oakes test is met. Suppose, for instance, that in a particular state circumstances are such that if we extend official language rights to any more than three language communities the result would be a serious impairment of one or some combination of the five practical objectives just enumerated above. Capping

[457] See eg Kymlicka, *Multicultural Citizenship* (n 80) 95–96; Patten, *Equal Recognition* (n 255) 286–314; Green, 'Are Language Rights Fundamental?' (n 1) 663–66; and to a lesser extent Carens (n 273) 56–57, 84–87.
[458] Kymlicka, *Multicultural Citizenship* (n 80) 95–96; Patten, *Equal Recognition* (n 255) 286–309.

the number of languages that citizens enjoy a right to use in public at three is therefore rationally connected to the objective. It will generally also be minimally impairing provided that the particular languages that are selected are the three most widely preferred languages among the population.[459] In essence, then, the goal ought to be to establish a language rights regime that provides as many citizens as possible with a right to use their language in public life, while not extending the scope of the regime so far as to unduly jeopardise the securing of other important practical ends, such as the five listed above.

The Extent of the Pro Tanto Obligation to Advance Fair Opportunity for Self-Determination

Just how broadly applicable is the pro tanto obligation to see that citizens' opportunities for self-determination in respect of their preferences are as fair as possible? One possible answer here is that we should regard the state as being under a pro tanto obligation to be neutral among all of the preferences of its citizens, with the exception of those whose satisfaction would cause harm to others. Brian Barry, for example, pulls no punches in critiquing the idea that the state must be neutral as between all of the preferences its citizens hold, which he thinks commits us to the surely absurd notion that we must be neutral as between a rapist's preference for rape and the preference of his potential victim not to be raped.[460] In response to Barry, however, we could note that a large part of the reason we found for regarding fair opportunity for self-determination as a central liberal good turns on the way in which self-determination contributes to individual well-being and autonomy. Since it is quite possible to argue that a preference for rape is one that, if

[459] In the example above, for instance, capping the number of officially recognised languages at two or one, although rationally connected to the objective, would not be minimally impairing of the right to fair opportunity for self-determination. Nor would it be minimally impairing if comparatively few individuals actually prefer the three particular languages selected.
[460] *Culture and Equality* (n 11) 34.

realised, does not advance but rather undermines the well-being of the rapist, we could deny that the value of fair opportunity for self-determination for all gives us a reason to treat neutrally the rapist's preference for rape.

Such a response, of course, would be to deny that the state has a pro tanto duty to see that citizens enjoy the fairest possible opportunity to pursue *all* their preferences. Patten, for instance, takes this view, claiming that the state is only under such a duty in respect of 'minimally worthwhile' preferences.[461] We should, however, resist this move. Instead, I would maintain that individuals do have an interest in realising even their objectively worthless or harmful preferences.[462] Where someone holds an objectively worthless or evil preference, for instance, it still remains the case that that person has an autonomy interest in being able to realise that preference. That is, a person who is able to realise his preference for rape is in a better position to live an autonomous life than is someone else whose ability to realise his preference for rape is curtailed—for example, by law.

This line of thinking immediately brings into stark relief a point well made by Joseph Raz, which is that where an objectively evil act is performed autonomously, this fact, far from giving the act some kind of ethical value, appears to make the act a morally worse one than it would have been had it been performed in a non-autonomous fashion.[463] However, while an actor's committing a bad act as a result of an autonomous decision to do so—at least where the actor *knew* of the badness of that act—does indeed make the act a morally worse one, this does not change the fact that the actor retains an

[461] Patten, *Equal Recognition* (n 255) 45–46.
[462] I assume here that there are such things as objectively worthless or evil preferences, and while this is not uncontroversial, once we appreciate the difference between context-invariable moral absolutism and context-variable moral objectivism, the claim that there are objective moral evils is one most of us take for granted. (In any case, it is a claim that for reasons of space can only be assumed and not demonstrated here.)
[463] Raz (n 2877) 412.

autonomy interest in having even such evil preferences realised. Rather, what is clear is that this autonomy interest will often be *outweighed* by the interests that other people have in seeing that this person does *not* realise their morally evil preference.[464]

Even noting the way in which the interest a person has in being able to realise an evil preference may be outweighed by his own competing interests or the interests of others, some might still find it absurdly constraining of government, however, to suggest that fairness generally places upon the state a pro tanto duty to be neutral as between all its citizens' preferences. The suggestion, though, is only absurd if one fails to notice the defeasible nature of the obligation (or if one adopts the neutrality of effects conception of neutrality).

It is also the case, I would submit, that a person's autonomy interest in being able to realise a preference that is harmful only to themselves may be outweighed by their own interest in well-being. That is, where an individual has a taste for heroin, say, we should admit that she is more autonomous to the extent that her ability to satisfy this preference is unimpeded. But we may well be able to conclude that this interest is outweighed, given the health-destroying effects of heavy heroin use, by her competing interest in individual well-being. This, in any event, is the kind of argument that we should be making when we are voicing support for perfectionist measures of this sort; we should not insist that an individual's interest in fair opportunity for self-determination amounts only to an interest in having a fair opportunity to realise 'minimally worthwhile' preferences.

[464] Interests, to be clear, that may well include their own interest in autonomy, given that some evil preferences—for example, rape—are such that their fulfilment would involve violating the autonomy of another.

Situating the Argument within the Literature

In saying more about why there is no general right to linguistic preservation, we can both recap some of the key arguments of this work, as well as identify the way in which the account we have developed compares with other influential defences of cultural and linguistic rights found in the literature. As our discussion of this question in Chapters 1 and 2 suggested, the reason that there is no general right to linguistic preservation is because the interests that we have in linguistic preservation are not ordinarily sufficient to hold others under a duty to refrain from interfering with those interests. Specifically, the three general interests that commentators and activists have suggested are at stake when it comes to linguistic survival do not suffice to place us under a duty to ensure the preservation of languages (whether others' or our own). For example, what Patten labels the 'identity argument'[465] for linguistic preservation claims that the way in which an individual's sense of identity is often bound up with the success of their linguistic community generates a right to linguistic preservation. This is wrong, as we noted in Chapters 1 and 2, because enforcing such a right would often require significant curtailment of the rights of others to speak the language(s) of their choice. The interest in identity that the identity argument holds out, while surely one that is in play for many people in respect of language, cannot by itself ground a right. It is clear, for instance, that just because my sense of identity may be deeply bound up with being a loyal supporter of my hometown football club, this does not mean that it is my right that the club endures as a going concern. Were it to fold, my sense of identity may well be upended, but no violation of my rights would be involved.

Secondly, a right to linguistic preservation cannot be made out on the grounds of what Patten labels the 'autonomy argument', put forward by commentators such as

[465] Patten, *Equal Recognition* (n 255) 24.

Kymlicka. The reason for this is because it is simply not the case that many, if any, people would be left to face a non-autonomous life should their language die out. (It is important, in this context, to note that when we have spoken of some people's linguistic preferences being 'undroppable', we have understood this to mean that for these individuals developing a different linguistic preference would involve paying an undue psychological cost. That an individual's linguistic preference is 'undroppable' therefore does *not* imply that were her preference to cease to be available she would be unable to access any linguistic group and therefore cease to be an autonomous person.) Having access to some linguistic community or other is probably a necessary condition of an autonomous modern life,[466] but having access to one's own linguistic community is not.[467]

Thirdly, we have what Patten himself puts forward as the most compelling account of the badness of cultural or linguistic loss, and which he labels the 'adequacy account'. The idea here is that when my culture or language dies, while I will be able to remain autonomous by choosing from among the options some other cultural or linguistic community provides, I will not be able to access, within this new cultural or linguistic milieu, as many meaningful and appealing[468] options as were presented to me by my previous cultural or linguistic community. This much, in fact, we insisted upon in Chapter 2. However, it was also found there that this does not suffice to ground a general right to cultural preservation—again, because the interest invoked is not sufficiently great, and

[466] This claim gains credence in light of the compelling arguments Kymlicka provides in support of the notion that to live autonomously one must have access to a culture, for instance (*Multicultural Citizenship* (n 80) 75–106).
[467] The claim that Kymlicka's exposition of the value of cultural membership to autonomy does not support the conclusion that individuals need access to *their own* culture in order to enjoy autonomy has been made by a number of other critics, including for example Tomasi (n 107); Patten, *Equal Recognition* (n 255) 108.
[468] The term 'adequacy' is for this reason actually a misnomer—ie, it makes it sounds as if the individuals concerned are at risk of having an inadequate range of options and thus will lack the ability to be autonomous, whereas really the issue is that they may lack a wide range of specific options they find subjectively meaningful or appealing.

because the duty that would have to be imposed on others in order to see that my adequacy interest is not interfered with would often be quite onerous. As Patten summarises things here:

> From the mere fact that the prospect of cultural loss leaves a person with subjectively inadequate options, it cannot be inferred that she has any strong moral claim, or cultural right, that the loss of the culture be prevented from occurring. … [I]t may well be the case that the danger of cultural loss arises because of others exercising their rights, or because others use the resources to which they are legitimately entitled in certain ways. And it may be that the only way to prevent the situation from arising, or of remedying it once it has arisen, would involve interfering with those same rights and entitlements.[469]

We see again, then, that individuals may not validly demand that the state preserve their language. However, we should reiterate that individuals can rightly demand that their language be treated fairly, meaning that the state—unless it has very good reasons for not doing so—will refrain from actions that it knows or should know will undermine individuals' fair opportunity for self-determination in respect of their linguistic preferences.

[469] Patten, *Equal Recognition* (n 255) 118.

CONCLUSION

What principles or objectives ought to regulate language policy in liberal democracies? We have specifically inquired into the role, if any, that the objectives of preservation and convergence, and the principle of state neutrality, ought to play in guiding language policy. We found that achieving official realm linguistic convergence will tend to promote administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation, although there is a significant risk that pursuing such convergence too aggressively could backfire and undermine rather than advance the latter four goals. When it comes to efforts to preserve languages, we found that in the vast majority of real-world cases, it will either be the case that language maintenance is not in fact necessary to secure the particular benefits that preservation is alleged to give rise to, or else, if preservation is necessary in order to secure those benefits, such preservation will nonetheless be unjustifiable in light of the infringement of freedom of choice that it will entail. We concluded that there is no general right to see one's culture or language preserved.

On the question of whether liberal states ought to strive for neutral language policies, we found this to be a practical impossibility. In doing so, we provided an account of how neutrality ought to be understood, which we called volitional neutrality. This conception of neutrality was found to be superior to the neutrality of justification and neutrality of treatment accounts, and also preferable to an interpretation according to which neutrality is co-extensive with fairness. We found that neutrality, properly understood, *should* inform and guide language policy in liberal democracies. We found, that is, that while extending neutral treatment to languages and cultures will not guarantee fairness for all, it will generally (although not always) further the central liberal value of fair opportunity for self-determination. We also found, however, that this fairness-based (or self-determination-based) case for neutrality is only a defeasible one. We may rightly, in some cases, trade off some degree of fairness in respect of individuals' opportunities for self-determination in order to secure other weighty liberal goods, such as those goods (including, again, administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation*)* that linguistic convergence tends to promote.

In making these claims, we have been trying to work towards a general theory of linguistic justice by getting clear on the philosophical foundations upon which cultural and linguistic policies should be based. We have not directly sought to provide detailed guidance on how policy should be employed to resolve individual, real-word scenarios involving issues of language. Thus any guidance we have afforded for resolving these specific matters was provided in a manner essentially incidental to our larger task.

Language Rights and the Requirements of Justice

Are linguistic and cultural rights, as such, a requirement of liberal justice, or are they merely legal entitlements that a state may choose to—but is under no duty of justice to—make available? This is a question that Patten poses,[470] and it is a good question by which to summarise much of the overall argument in the pages above. In order to answer it, it will be helpful to address a distinction widely found in the language rights literature that we have not yet mentioned. The distinction, famously advanced by Heinz Kloss, is that between 'toleration rights' and 'promotion rights'.[471] As Patten explains the distinction, 'Toleration rights are protections individuals have against government interference with their private language choices.'[472] So-called 'promotion rights', in contrast, 'involve the

[470] ibid 20–27.
[471] Heinz Kloss, 'Language Rights of Immigrant Groups' (1971) 5 International Migration Review 250.
[472] Patten, *Equal Recognition* (n 255) 206.

use of a particular language by or in public institutions', and include 'rights that an individual might have to the public use of a particular language—in the courts, the legislature, the public school system, the delivery of public services, and other official contexts'.[473]

As Patten points out, however, Kloss's distinction is 'too crude'.[474] Specifically, it fails to account for a number of language rights that go beyond guaranteeing the mere toleration of particular languages by the state, but do not go so far as to promote those languages. Patten gives the example of 'the right of an accused person lacking proficiency in the usual language of the court to a court-appointed interpreter'.[475] Here we do not simply tolerate the person speaking their language in the courtroom, but instead actively seek to ensure that he can understand the proceedings going on around him and participate in them via the interpreter. Neither, however, is there an actual attempt to 'promote the accused person's language: if there were, the right would not be conditional on an inability to understand the usual language of the courts'.[476]

Patten therefore compellingly argues that we will need to recognise a second type of non-toleration language rights, which he terms 'accommodation rights'.[477] The accommodation model of language rights, which encompasses the right to an interpreter in court proceedings, does not 'promote' a language by way of ensuring that public institutions operate in that language. Rather, it involves guarantees that accommodations will be 'made for people who lack sufficient proficiency in th[e] normal language'.[478] Accommodation rights are distinct from promotion rights in that the 'key priority' of the former is to 'establish communication between the public institution and those with

[473] ibid.
[474] ibid 207.
[475] ibid.
[476] ibid.
[477] ibid 205.
[478] ibid 207.

limited proficiency in the usual language of public business'.[479] They therefore do not extend to those already proficient in the dominant language, whereas a person 'is free to exercise his promotion rights in a minority language even if he is quite fluent in the majority language.'[480]

For my part, I think it would also be helpful to differentiate between certain of the rights that both Patten and Kloss lump together as 'promotion' rights. For example, I believe there is an important difference between a full-blooded promotion right that guarantees that the state will actively seek to secure the flourishing of my language community, for instance by making public education in that language compulsory for children, or by launching publicly-funded advertising campaigns extolling the value of that tongue, and a so-called promotion right that guarantees that public institutions will operate in my language.[481] In any event, however, for the purposes of our present discussion we can follow Patten's lead and refer to all language rights that go beyond toleration or accommodation as 'promotion' rights.

To return to the question with which we began: are language rights, as such, a requirement of justice? With respect to toleration and accommodation rights, the interests that ground such rights are ones long regarded by liberal thinkers as worthy of state protection, such as our interest in freedom of expression, non-discrimination, a fair trial, democratic participation, and privacy. I take it as a given that such interests generate moral rights, and that therefore such protections are required by justice. It may be argued, however, that toleration and accommodation language rights are not, *as such*, required by justice, but rather are justified in a more derivative manner. Patten, for example, claims

[479] ibid.
[480] ibid 208.
[481] One relevant difference, for example, would seem to be that the state may apprehend that granting the latter sort of 'promotion' right is likely to have the *effect* of promoting the relevant language to some extent, but need not act, in recognising that right, *for the purpose* of having that effect.

that the justification of toleration and accommodation rights ‘has a piggybacking structure’, in that these rights ‘are instrumental to the enjoyment of other rights and entitlements, and their justification derives from the justification of those rights and entitlements.’[482]

It should certainly be acknowledged that the justification of toleration and accommodation rights can ‘piggyback’ in this way on the justification of other, longstanding, liberal rights and freedoms. I do not think, however, that anything much turns on whether, in the light of this fact, we say that these sorts of language rights are not, *as such*, requirements of justice. The much more important question is whether so-called promotion rights are in themselves required by justice.

On this score, we could conceive of a state that recognised no promotion rights. Imagine, for instance, that none of the languages spoken across the state’s territory are given a privileged status, and that the way in which citizens and public institutions communicate with one another is worked out on an ad hoc basis, with no one enjoying a right to communicate with state officials in any particular language. Public institutions themselves operate in a Babelesque manner. Laws are recorded in a hodgepodge fashion, requiring anyone who attempts to inform herself of all the laws of the land to read dozens of languages. In such a context, the absence of promotion rights would not offend justice. By not extending such rights here, that is, the state will not undermine the value of fair opportunity for self-determination for all, since in the hypothetical that we are imagining the state is operating in a way that does not unfairly impact on anyone’s opportunity for self-determination in respect of language.

In reality, however, no states operate in an environment of complete linguistic anarchy. That a minimally functional modern state should do so is therefore, as we have

[482] Patten, *Equal Recognition* (n 255) 208.

said, a practical, if not a conceptual, impossibility. As Kymlicka points out, for instance, *some* language or other will have to be used in affairs of the state, as well as on the street signs and government communications that citizens are exposed to on a daily basis.[483] And not only do some languages or others need to be used in these contexts, we need to limit the number of such languages that are so employed. The financial and efficiency costs of operating public institutions in each and every language spoken across the territory would be insupportably high (to say nothing of the fact that such an ecumenical language policy would seem likely to undermine other important liberal goals such as social mobility, democratic participation, community solidarity, and economic performance). Further, whichever language or languages we choose to make available in these public contexts therefore become more realisable linguistic preferences than the languages that are passed over.

The practical unavoidability of state recognition of one or a few languages (whether it be de facto or official recognition) leaves those citizens whose linguistic preference is for some other language with, all things being equal, a lesser—and therefore an unfair—opportunity for self-determination. In light of the gravity of the interest that we all have in enjoying a fair opportunity for self-determination, this state of affairs is unjust, unless the policies that give rise to it can be justified with reference to a sufficiently weighty objective that is pursued in a rational and minimally impairing manner. It is in this sense that we can say that even so-called promotion language rights *are*, as such, a requirement of justice. For instance, in light of the unavoidable privileging of certain languages that the operation of a modern state entails, it is a requirement of justice that similar privileges be extended to additional languages unless refraining to do so can be given a compelling justification along the lines just offered. Where the state

[483] Kymlicka, *Multicultural Citizenship* (n 80) 113.

cannot, as a practical matter, make public services available in Languages A–Z but could do so in Languages A–C, it is unjust for the state to restrict the languages in which these services are delivered to some subset of Languages A–C (ie, to offer services in only one or two, as opposed to all three, of these languages).[484] While strictly speaking all that is required in the name of justice here is that the relevant services are offered in Languages A–C—ie, whether this is done in accordance with a legal right to the same or by mere convention—specific recognition of the language rights of B- and C-speakers can hold the state's feet to the fire and ensure that the interests in linguistic self-determination of not just A-speakers but also B- and C-speakers are accommodated (and will *continue* to be accommodated).

A Final Word

The overall argument of this work can be characterised as a 'liberal culturalist' one. Kymlicka, for instance, describes 'liberal culturalism' as:

> the view that liberal-democratic states should not only uphold the familiar set of common civil and political rights of citizenship which are protected in all liberal democracies; they must also adopt various group-specific rights or policies which are intended to recognize and accommodate the distinctive identities and needs of ethnocultural groups.[485]

According to Patten, many of those who reject the liberal culturalist position, such as Jeremy Waldron, Brian Barry, Chandran Kukathas, Samuel Scheffler, and to some extent Kwame Anthony Appiah, argue 'that the older understanding of liberal political theory, typified by the principles of justice defended by John Rawls, is perfectly adequate for thinking about the claims of cultural minorities, even if it was not originally developed

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[484] There is an important sense, then, in which language rights, as they are accorded in real-world states, are *not* neutral. That is, citizens will generally have a right to speak (and, ordinarily, to be understood while speaking) *this* language, but not *that* language. In this way, language rights ensure at least roughly equal accommodation of the languages to which the rights extend—and to no others.
[485] Kymlicka, *Politics in the Vernacular* (n 195) 42. This idea essentially maps on to Patten's notion of 'full', as opposed to 'basic', 'liberal proceduralism' Patten, *Equal Recognition* (n 255) 167–73).

with those claims in mind.'[486] My argument is therefore a liberal culturalist one, in the sense that it holds that since modern liberal democratic states must, as a *practical* matter, recognise and accommodate some languages and ethnocultural identities, they also must as a matter of justice extend such recognition as widely as possible until such point that further extension would unduly undermine other important liberal goods.

Considerably more research remains to be done in order to determine the level of public multilingualism beyond which we can generally expect an "undue" negative effect on such things as administrative efficiency, economic development, social mobility, social and economic solidarity, and democratic participation in any given political community. We will need to get clear on these issues, as well as the thorny question of how linguistic injustice perpetrated in the past affects the sort of policies we must implement in order to secure justice in the present and for the future, before we can offer a truly comprehensive, general theory of linguistic justice. Other issues that would also need to be directly addressed by such a theory include the extent to which achieving personal multilingualism among the citizenry is an objective that ought to inform language policy, and whether some form of compensation might be owed to those whose fair opportunity for self-determination is justifiably undermined by state action.[487]

Returning to the question of how the argument of this work relates to the existing literature, the overall argument is a 'liberal culturalist' position in the following additional sense. According to Patten, the scholars just mentioned who attack the liberal culturalist position do so on the basis of an 'understanding of liberalism [that] does not contain grounds for condemning majority nationalism, so long as core liberal principles

[486] Patten, *Equal Recognition* (n 255) 21.
[487] The idea here being that even if some government policy that unfairly undermines the opportunity for self-determination of those with a certain linguistic preference is justified in the circumstances, the individuals with that preference might be entitled to be compensated for their lost opportunity.

are respected.'[488] On the argument that this work has put forward, in contrast, the core liberal principle of fair opportunity for self-determination *does* provide a *pro tanto* reason to condemn majority nationalism. That is, it calls on us to conclusively condemn majority nationalism in cases where that majority nationalism prevents members of minority groups from enjoying a fair opportunity for self-determination in respect of their cultural and linguistic preferences, and where such a consequence is not a necessary evil in the service of some outweighing liberal good.

To be clear, then, language rights are not a requirement of justice in the way that many commentators—'non-liberal culturalists', we might call them—have tried to argue. Our identity, autonomy, and adequacy interests in seeing our linguistic and cultural communities persist, for instance, do not alone make it the case that we are each owed, as a matter of justice, the opportunity to use our language in public life. Justice will, in some cases, require that we are afforded such opportunities. But where this is the case, our moral right to the use of our language flows instead from our interest in enjoying a fair opportunity for self-determination—and from the contingent fact that in the circumstances there exists no compelling justification for denying us that opportunity.

[488] Patten, *Equal Recognition* (n 255) 22.

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