

# Survey Article: The Justification of Minority Language Rights\*

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Every society in the world is characterized by at least some degree of linguistic diversity. This is obvious in countries such as Canada, Switzerland, Belgium, Spain, India, South Africa, and Nigeria, where more than a quarter of the population are members of historically rooted ethno-linguistic minorities. But even societies that like to think of themselves as having a single national language are home to significant language minorities. In the United States, for example, about 45 million residents over the age of five report using a language other than English in their homes, roughly 17.6% of all people surveyed in the 2000 census.<sup>1</sup>

In any context where more than one form of speech is in use, people face the problem of how they should communicate with one another. Although this problem arises in interesting ways in all sorts of informal, non-state contexts, it presents itself with particular force for public institutions that serve a linguistically diverse citizenry. Faced with linguistic diversity, what norms and practices of

language use should public institutions adopt? Should they adopt a policy of institutional monolingualism, in which they designate just one of the languages spoken by their citizens – e.g. the majority language – as the sole medium of public communication? Or should they opt for institutional multilingualism, trying to conduct business in several (or even all) of the languages used by the citizens they serve?

Suppose that public institutions did make the majority language the sole medium of public communication. Would minority-language speakers have a morally serious complaint about this arrangement and, if so, what exactly would it be? One can imagine two broad categories of complaints, which might be called *personal* and *impersonal*. The speakers of some minority language make a personal complaint when they object to the monolingual policy in terms that refer to their own interests, either as individuals or as a group. Their complaint is that the monolingual policy fails adequately to take into account the legitimate interests that *they* have in the accommodation of their language. They make an impersonal complaint when their objection refers, not to their own particular interests, but to the interests of some larger entity to which they belong, such as their society as a whole, or humanity, or even the universe.<sup>2</sup> In this case, the complaint is that the policy fails adequately to take into account the interest that *everyone* has in the accommodation of their language.

When minority speakers have a personal complaint, and that complaint is morally weighty enough to place the state under a duty to make some accommodation for their minority language, then I shall say that the minority speakers have a (moral) *right* to the accommodation.<sup>3</sup> This article surveys some of the main reasons for thinking that there are minority language rights. Minority

language rights are in particular need of justification, or so I will argue, because the case for state monolingualism is widely accepted and fairly compelling. Although it is not too difficult to think of personal complaints that minority speakers might level against state monolingualism, the challenge is to think of complaints that are sufficiently weighty to generate a duty on the part of the state to set aside the various concerns and priorities that support a monolingual policy and to make the appropriate accommodations instead.

A review of the small but growing literature on the normative bases of language rights points to at least five different kinds of personal complaints that minority speakers might make about state monolingualism. These complaints correspond to five categories of rights that I shall discuss: toleration rights, accommodation rights, context-of-choice rights, end-state rights, and fairness rights. My treatment of the first three categories is sympathetic but draws attention to important limits of scope in each category. The discussion of the fourth category is mainly critical, while the discussion of the fifth category is intended to be predominantly exploratory. I draw attention to some appealing features of fairness-based justifications of minority language rights but also raise a series of questions and challenges that point to a need for further work.

### **I. The Value of a Common Language**

Historically, most states have stressed the importance of monolingualism in a range of different areas in which they make language policy decisions. Even where states are home to long-standing language minorities, or where they

receive continuous streams of immigrants and refugees who speak a variety of tongues, they have typically sought to establish a single national language and to privilege its use in a range of contexts. In recent years, senior politicians have taken to reminding immigrants of their duty to learn the majority language, and a number of states have reaffirmed their commitment to monolingualism by symbolically designating a single language as "official."<sup>4</sup>

There are a number of bad reasons for adopting the monolingual approach. Many states have had a dominant ethno-linguistic group that shaped and directed the state-building process. Historically, such groups have often favored the privileging of their own languages as a way of consolidating their grip on the state and advantaging their own members in the competition for economic resources and opportunities. From this perspective, the rationale for state monolingualism has little to do with the common good and much to do with the particular circumstances and interests of the dominant group.

Other motivations for adopting state monolingualism involve appeals to chauvinistic assumptions about the intrinsic superiority or inferiority of particular languages. When Jacobins like Barère and Grégoire promoted French in the 1790s, they did so in an intellectual context where French was understood to be uniquely well suited for science, democracy, and progress.<sup>5</sup> French was praised for its precision, its clarity, its extensive vocabulary, and even its Subject-Verb-Object sentence structure, which was thought to express correctly the nature of things. By contrast, the regional forms of speech – contemptuously labeled "patois" – were dismissed as backward languages of superstition and subjection. Against this sort of picture, most linguists today would argue that languages are, in general, sufficiently elastic and versatile instruments that they

can be made to express all sorts of patterns of thought: science or superstition, democracy or subordination, progress or tradition.<sup>6</sup> The idea that some languages are intrinsically superior or inferior – often articulated in the early days of nationalism – no longer provides a convincing rationale for policies of state monolingualism.

But there are good arguments that can be made for state monolingualism as well.<sup>7</sup> The best reason for the state to privilege a particular language is in order to integrate all of its citizens into a common national framework. Such a framework consists of both a common language, to be used in public contexts of communication, and a common identity, a sense of attachment to the political community. The hypothesis is that state monolingualism will push speakers of less widely spoken languages to acquire the common language and (eventually) to affirm a common identity associated with the language and other symbols of the political community.

If state monolingualism can succeed at getting citizens to converge on a common language and identity, then a number of important goals can be advanced. A common language may well be essential if all citizens are to have an equal opportunity to work in the modern economy.<sup>8</sup> Minority-language communities risk being ghettoized when their members are unable or unwilling to master the majority language of the state. Their economic opportunities will be limited by the work available in their own language, and they will have trouble accessing the culture of the larger society or participating meaningfully in its political life. Conversely, as Ernest Gellner argued, employers depend on a public education in a common medium to place at their disposal a labor force

possessing the linguistic competences necessary for flexibility, trainability, and mobility in the modern workplace.<sup>9</sup>

It can be argued further that a common language facilitates the deliberative dimension of democracy. Democratic decision-making is not just a formal process of voting on the basis of antecedently given preferences. It also presupposes an ongoing activity of deliberation and discussion, mainly taking place in civil society, in which free and equal citizens exchange reasons and are sometimes moved by them to change their opinions and preferences. Too much linguistic diversity may be a barrier to the full flourishing of this informal practice of democracy. If citizens cannot understand one another, or if they seek to deliberate with co-linguists only, then democratic politics is likely to be compromised. State monolingualism works against this challenge by encouraging the formation of a common language of democratic dialogue.

State institutions are also more efficient when they operate in a single language only. With a single state language, it is no longer necessary to devote as much money or time to translations, simultaneous interpretation, separate networks of schools and hospitals, and so on. Freed from these costs, public institutions can devote more resources and energy to the core purposes for which they were created.

Finally, as anticipated above, a common national language may also help to generate the sort of solidarity, or social cohesion, required for a democratic state to provide public goods effectively and reliably. Fellow citizens must be willing to tolerate and trust each other, to defer to the requirements of public reason, and to accept burdens and sacrifices for the sake of the common good. Where the citizens of a particular community do not share some common

political identity, these virtues and dispositions may be absent or weakened. The worry is that an excess of linguistic diversity may fragment citizens into identity groups that do not share the affective bonds of common citizenship and see cooperation with one another solely as an instrument of mutual advantage.<sup>10</sup> The argument for state monolingualism is that it could work to dampen linguistic diversity somewhat by encouraging the emergence of a common language. A common language could, in turn, become one of the defining bonds of a common identity.

All in all, then, an impressive set of considerations can be advanced on behalf of state monolingualism. To be sure, a number of them rely on empirical assumptions and hypotheses that might be challenged. It is conceivable, for instance, that a scheme of minority language rights might do as good a job, or better, at promoting a common political identity as state monolingualism. The best way to promote a common identity may sometimes be to allow difference to flourish and to let the recognition of difference be a feature of the political community that attracts popular allegiance.<sup>11</sup> In the same vein, it is also conceivable that there would be no incompatibility between recognizing certain minority language rights and ensuring that minority language speakers master the majority language well enough to participate in the national economy and political community. High levels of personal bilingualism are fairly common amongst linguistic minorities, as is the expectation that they will have to use the majority language in some areas of life. What minorities often value, however, is the opportunity to use their own language in at least some other areas of life. More pessimistically, convergence on a common language may, in fact, do little to improve the economic opportunities or political participation of minorities.

These variables may be largely driven by deeper causes – e.g. socioeconomic status – that are only marginally affected by changes in language policy.<sup>12</sup>

Nevertheless many people will look at important historical examples such as Britain, France and the United States and feel that the success of these countries is due, in some measure, to their insistence on a common national language. Amongst developing world countries, states such as Indonesia and Tanzania, which started out with unpromisingly high levels of ethno-linguistic diversity, have done better than many observers expected, in part because of their success at forging a common national language and identity. Gesturing at cases like these is not a substitute for serious empirical analysis, but it does help to explain why people might feel themselves on safe grounds opting for state monolingualism.<sup>13</sup>

Of course if there were no good argument on behalf of minority language rights, then there would be even more reason to opt for state monolingualism. The policy of monolingualism would have a number of conjectural reasons counting in its favor and little or nothing counting against it. On the other hand, if minority language speakers did have weighty complaints about their situation under state monolingualism, then this would force us to take a much harder look, and perhaps to think about trade-offs, ways of reconciling the competing considerations, and so on. With this context in mind, let us turn now to some of the justifications that have been offered on behalf of minority language rights.

## **II. Toleration and Accommodation**

A couple of categories of minority language rights are actually quite straightforward to justify. These include toleration and accommodation rights.

The category of toleration-based rights derives from the pioneering work of Heinz Kloss, who distinguished between toleration-oriented and promotion-oriented language rights.<sup>14</sup> Toleration rights are protections individuals have against government interference with their private language choices. Rights that permit individuals to speak whatever languages they like – free from government interference – in their homes, in the associations and institutions of civil society, in the workplace, etc., are all examples of what Kloss meant by toleration rights. Promotion-oriented rights involve the use of a particular language by public institutions and are designed to promote the language in question. They are 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 in other official contexts.

Clearly many disputes about language rights raise questions that, in Kloss's vocabulary, concern promotion-oriented rights. Should the state adopt a monolingual education policy, designating a single language of instruction in all public schools, or should there be instruction in several languages, according to the needs and preferences of minority speakers? Should it offer public services in the majority language only or in certain minority languages as well? And so on. At the same time, when states aggressively pursue a policy of monolingualism, they are often tempted to curtail use of minority languages in the private sphere, and this does raise the question of toleration rights. The issue here is whether the state can legitimately seek to restrict or regulate language use away from public institutions: in the economy, civil society, private home, etc.

Toleration rights are fairly easy to justify, because they piggy-back on the protection of other important values and rights. If citizens have a morally weighty complaint when they do not enjoy these other values and rights, then they have the same complaint when they do not enjoy toleration rights. Although there are disagreements at the margins about the value and proper scope of freedom of expression, most people would regard it as a key principle to be defended in any free and democratic society. And it is difficult to see how it could be consistent with such a principle for the state to restrict or meaningfully regulate the languages in which people choose to express themselves.<sup>15</sup> The longstanding Turkish policy of banning Kurdish language newspapers and broadcasts was a straightforward infringement of freedom of expression.<sup>16</sup> Even if one were to maintain that ideas intended for expression in Kurdish could be perfectly translated into Turkish, any defensible principle of free expression would protect not just the content of speech but also its style and form.<sup>17</sup>

A similar argument can be made for privacy and parental autonomy. Again the boundaries of rights to privacy and parental autonomy are highly contestable, but again most people would accept that some rights in these areas are essential in a liberal democracy. The state should not be monitoring speech in the private home, in the associations of civil society, in private enterprises, or on the street, nor should it take away from parents all discretion regarding the moral or communal upbringing of their children.

In arguing that there are fairly straightforward justifications available for toleration-oriented language rights, I do not, of course, mean to suggest that these rights are universally respected, nor do I want to minimize the extent to which there are hard cases where limitations on toleration rights might

legitimately be debated. Quebec's famous restrictions on the language of commercial signs, or Belgium's attempts to control the language spoken by children in the schoolyard, are perhaps good examples of borderline cases in which the damage to free speech or personal privacy is relatively mild and the benefits to the public claimed by supporters of the policies are quite significant. The aim here is not to resolve the difficult borderline cases but to clarify why we think what we do about the core cases.

The analysis of accommodation rights runs along the same lines. To get a sense of what I mean by "accommodation rights" notice that Kloss's distinction between toleration and promotion rights is too crude. Consider, for instance, the right of an accused person lacking proficiency in the usual language of the court to a court-appointed interpreter. This language right is clearly not a tolerance-oriented right as that term has just been defined.<sup>18</sup> But nor is it obviously a promotion-oriented right either.<sup>19</sup> There is no real 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. Rather the aim is to ensure that the accused can understand the court proceedings.

What is needed, this suggests, is a further distinction: this time between two different sorts of non-toleration-oriented rights, or two different approaches to the treatment of minority languages in public situations. One approach, which might be called the "norm-and-accommodation" model, involves the predominance of some normal language of public communication – typically, the majority language of the jurisdiction concerned. Unless some special circumstance arises, this language is used in the courts and legislatures, in the delivery of public services, as the medium of public education, and so on.

Special accommodations are then made for people who lack sufficient proficiency in this normal language. These accommodations could take a variety of different forms depending on the circumstances. They might involve the provision of interpreters, the hiring of bilingual staff, or the use of transitional bilingual and/or intensive immersion educational programs to encourage rapid and effective acquisition of the normal language of public communication. The key priority is to establish communication between the public institution and those with limited proficiency in the usual language of public business, so that the latter can exercise the rights and access the benefits to which they are entitled.

The other approach might be called "promotion rights proper" or simply "promotion rights." The point of these rights is to promote the language with which they are associated and, unlike the special accommodations offered under the norm-and-accommodation approach, their enjoyment is not contingent on a lack of proficiency in a "normal" public language. A person is free to exercise her promotion rights in a minority language even if she is quite fluent in the majority language.

As with toleration rights, the justification of accommodation rights has a "piggy-backing" structure. Accommodation rights are instrumental to the enjoyment of other entitlements and their justification derives from the justification of those entitlements. The right of a defendant to a court-provided interpreter, for instance, derives from the right to a fair trial. The right to a transitional bilingual program in the public school system derives from the right of children to gain literacy and numeracy even while they are learning the normal language of the society (together with the empirical judgment that

transitional bilingualism will best allow children to enjoy the latter right). And so on.

As the discussion should indicate, I believe that the justification of certain toleration and accommodation rights in a liberal democracy is very firm indeed. At the same time, it should also be clear that these categories of rights represent only small sub-sets of the broader range of possible rights that minority language speakers might want to claim. The toleration rights only protect the discretion minority language speakers have to use their own language in private contexts of communication. They do not say anything about whether state institutions themselves have an obligation to use or recognize minority languages in any situations.<sup>20</sup>

Accommodation rights do mandate positive state action but they too are limited in significant ways. Most importantly, they cannot be claimed by people who could, if they so chose, speak the majority, or normal, language of public communication. In addition, even focusing on cases where the minority speaker does not understand the majority language, accommodation rights do not invariably imply an obligation on the part of the state to conduct activities in the minority language. The implication may instead be that the state should do a better job of teaching the majority language. In the United States, for instance, the current controversy over bilingual education mainly takes place within the accommodation rights framework.<sup>21</sup> As a result much of the debate centers on the empirical question of whether transitional bilingual education programs or special English immersion ones do a better job of imparting a basic primary education to English language learners.

None of this, I should emphasize, is intended to be critical of toleration or accommodation rights. These rights do represent a significant qualification of state monolingualism and their denial, it should be clear, would give rise to morally weighty complaints on the part of minority speakers. The point is that these rights do not come close to exhausting the sorts of minority language rights that someone might want to justify. Minority language activists often call for rights that are not restricted to the private sphere and that are not conditional on an inability to speak the majority language: they call for promotion rights. None of the arguments discussed so far suggest a justification for such rights.

### **III. Context of Choice**

Amongst political philosophers, the best known attempt to justify a set of minority cultural rights can be found in the work of Will Kymlicka.<sup>22</sup> Kymlicka explicitly attempts to ground the rights of minority cultures in principles that are generally accepted in liberal political theory. In particular, he argues that cultural rights may be necessary to protect the interest in personal autonomy of minority culture members.

Liberals think that people who face the loss of autonomy under some institutional arrangement would have a weighty complaint about that arrangement. They must also think, therefore, that individuals have a weighty complaint when they face the loss of the *conditions* necessary for autonomy. Kymlicka argues that one of these conditions is a secure "context of choice." To be autonomous, a person needs access to an adequate range of options and

alternatives from which to make choices. Since people are different, and they frequently revise their ends, there needs to be a variety of options and opportunities if all individuals are to flourish. This context of choice is supplied by a person's culture and, in particular, by what Kymlicka calls a "societal culture." A societal culture, in Kymlicka's jargon, is closely connected with what others have termed a "national culture": it refers to a set of institutions and practices that define an adequate range of options across the full range of different areas of life.<sup>23</sup>

From this claim about the conditions of autonomy Kymlicka infers that individuals have a morally weighty interest in the security of the societal culture to which they belong. If a societal culture is overrun by some more powerful national or global culture, or if it is threatened with decay or decline in some way, then the autonomy of its members is in jeopardy. The upshot, he suggests, is that members of minority cultures have a set of cultural rights – including language rights – that are designed to protect their societal cultures.

Kymlicka's theory of minority rights has been widely discussed by political theorists interested in cultural diversity. I will not try to rehearse all the criticisms that have been leveled against it, but I do want to mention several of the most important. A common tendency in the critical literature is to question the assumption that autonomy depends on access to a societal culture. According to this objection, people find options and opportunities to choose from in all sorts of cultural materials, not all of which are obviously part of their particular societal culture. Pressing this point, Jeremy Waldron celebrates the cosmopolitan who, "though he may live in San Francisco and be of Irish ancestry,...does not take his identity to be compromised when he learns Spanish, eats Chinese, wears

clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment, follows Ukrainian politics, and practices Buddhist meditation techniques."<sup>24</sup>

Another standard criticism probes Kymlicka's idea of "protecting" a societal culture. Does this mean freezing the culture in its current form, so that it does not change or evolve in any way? Kymlicka disavows this version of cultural protection, arguing that he is interested in maintaining the "existence" of the culture rather than its "character."<sup>25</sup> But how sustainable is this distinction, the critics ask, between existence and character?<sup>26</sup>

A third line of criticism presses Kymlicka on why individuals should depend on their *own* societal culture in order to be autonomous.<sup>27</sup> From the standpoint of access to an adequate range of options and opportunities, what is so special about the particular societal culture in which someone happens to have been raised? Could an American not find an adequate range of options and opportunities in the Swedish societal culture, if she managed to learn the Swedish language and is welcomed by Swedes with a reasonable level of toleration and openness?

These criticisms seem quite troubling for Kymlicka's project, although he has tried to respond to them.<sup>28</sup> I believe that they can be partially sidestepped, however, if the concept of a societal culture is reinterpreted linguistically. Adapting Kymlicka's framework, we might say that a language corresponds to a "societal culture" when a monolingual speaker of that language can find in her community an adequate context of choice. To say that there is a Francophone societal culture in Quebec, for instance, is to say that a French speaker in Quebec has access to an adequate range of options operating in the French language. To

say that there is no Italian-speaking societal culture in the United States, by contrast, would be to deny that an Italian speaker in that context has an adequate range of Italian-language options. To enjoy personal autonomy, an Italian-speaker in the United States must learn English and access the English-language societal culture that dominates the country. As these examples suggest, an individual's interest in the conditions of autonomy can be satisfied in two different ways. There can be a societal culture operating in a language that the individual speaks. Or the individual can integrate into a societal culture by learning the language in which it operates.

Interpreted this way, Kymlicka's arguments about societal cultures can be sheltered from some of the standard criticisms sketched above. There is no need to agonize over whether the practice of eating sushi in the USA is an instance of "multicultural *mélange*" or whether it counts as participating in American societal culture. Instead, the boundaries of a societal culture are settled by the range of options and opportunities that can be accessed in a given language. If an English-speaking American can enjoy sushi in an American city, then for the purposes of the argument this option is offered by American societal culture. The distinction between character and existence can also be reinterpreted to deflect the standard worries. Languages change over time and of course come to refer to different things as practices and institutions evolve. Change within a language seems easily distinguishable from cases of language shift, in which large numbers of people in a community stop using a particular language and start using another one instead. As a language changes, members of the language community normally change with it and nobody is left too far behind. When language shift occurs, by contrast, a new language may assume an important role

in key domains of communication, excluding altogether people who do not speak that language and leaving them with diminished options and opportunities.

Kymlicka offers several responses to the objection that he cannot explain what is so special about a person's own societal culture.<sup>29</sup> One of these responses – that it is costly and difficult to integrate into a new societal culture – fits naturally with the linguistic interpretation I have been developing. If a person's societal culture is deteriorating, it may not be feasible for her to learn a new language associated with a healthier societal culture. For adults at least, learning new languages is a costly and difficult proposition, one for which success is not always guaranteed. In practice, the disintegration of a societal culture may leave some of its members without an adequate context of choice – just as Kymlicka argues. If minority language rights can prevent such disintegration from occurring – by raising the status of a minority language at risk – then there would seem to be a rationale for such rights that liberals should take seriously.<sup>30</sup>

As I have been recasting it, then, the context of choice argument applies to cases of what might be called "vulnerable" societal cultures. A vulnerable societal culture is one that currently offers its members a range of options that are adequate for autonomy, but which is on the brink of deteriorating below the threshold of adequacy. In a vulnerable societal culture even fairly minor changes in demographics, or a modest accumulation of individual decisions to use another language, can leave the culture in a position where it is unable to provide an adequate context of choice to its members. In these cases, minority language rights for the vulnerable language can help to protect it from deterioration.

The major limitation on the context of choice argument is that it does not recommend minority rights for languages not corresponding to a vulnerable societal culture. There are two kinds of cases in which this limitation is apparent: (1) cases where the language does support a societal culture, but the culture is not vulnerable; (2) cases where the language does not correspond with a societal culture. The type-(2) cases are most limiting, so let us focus on them.

Many minority language communities in the world do not correspond to societal cultures. They live in the midst of some larger linguistic community and many key options and opportunities are only available in the larger community. Earlier I mentioned Italians in the United States. For a variety of reasons, Italian-speakers in the United States have never established the full set of Italian-language economic, social and cultural institutions and practices to provide the adequate range of options necessary for autonomy. This absence of a societal culture is typical of linguistic communities established by immigrants, but, significantly, it is also true for many national minorities. Because of low numbers, territorial dispersion, low socio-economic status, and other factors, many national minorities do not have anything resembling a societal culture as both Kymlicka and I understand it. Joseph Carens has forcefully developed this last point, concluding that "we have good reason to doubt whether most national minorities have (or could have) a societal culture in Kymlicka's sense of the term."<sup>31</sup>

In the all-too-common type-(2) cases, then, the autonomy-based concern for protecting contexts of choice does *not* recommend minority language rights, since there is no adequate context of choice present to protect. If anything, in these cases, the context-of-choice argument suggests that more should be done

(state monolingualism?) to encourage minority language speakers to learn the majority language: it is in the majority language, rather than in their own minority language, that they will find the range of options and opportunities needed to support their autonomy. There may be good reasons to extend rights to minority language speakers, but in these cases protecting a context of choice is not one of them.

In summary, then, the argument from context of choice does enlarge the justifiable set of minority language rights beyond the toleration- and accommodation-based rights explored in the previous section. The argument suggests that fragile small nations that are part of a larger political community may have a good claim, grounded in the protection of the autonomy of their members, on language rights designed to protect their language community. At the same time, the argument does not recommend rights for the many minority language groups that do not form intact societal cultures, nor for groups whose members are also highly proficient in the majority language. For someone interested in defending a full set of language rights for these groups, the search for a justification is still on.

#### **IV. Attachment to Particular Linguistic Options: The End-State Argument**

To focus our search, consider an example that abstracts away from the empirical circumstances that give rise to the toleration, accommodation, and context-of-choice arguments. Take the case of the 700,000 or so native-Frisian-speakers living in Holland.<sup>32</sup> The great majority of these individuals speak not only their

native tongue, but are also fluent speakers of Dutch.<sup>33</sup> As a result of their upbringing and socialization, however, we might suppose that they have come especially to value the opportunities they get to speak Frisian. And quite apart from the opportunities that *they* have to use their native language, members of the Frisian-speaking community also value the existence and flourishing of the community: they value the fact that *others* use the language and they want to see this fact continue into the indefinite future.

Suppose that, by whatever the relevant standard of adequacy might be, the Frisian-language community does not come close to affording its members an adequate range of options for autonomy. On the other hand, counting in the options that they can access given their facility in Dutch, Frisian-speakers do have, overall, an adequate range of options. Suppose also that the Frisian language community is not faring very well. For demographic reasons, and because of the attractive, assimilatory power of Dutch, Frisian is spoken in fewer and fewer areas of life by an ever dwindling number of people.

Let's assume, finally, that, contrary to actual fact,<sup>34</sup> Frisian-language speakers do not enjoy any language rights beyond the toleration and accommodation rights discussed earlier. Given the poor health of Frisian in this example, the question would eventually arise as to whether introducing Frisian language rights might be justified. If the analysis of the previous section was correct, however, then the context-of-choice argument would not recommend such a move, for two distinct reasons. Frisian, as I have imagined it, does not represent a case of a language that is barely managing to provide its speakers with an adequate range of options but that risks dipping below the threshold of adequacy unless governmental action is taken. As I stipulated above, Frisian

does not currently provide an adequate range of options. Secondly, the individuals in question are not monolingual. They also speak Dutch and can find an adequate range of valuable options in this language. For both of these reasons, then, the Frisian-speakers of my example have no compelling autonomy interest in the maintenance and flourishing of Frisian and thus no autonomy-based argument for Frisian language rights.

Looking at this case, one might still feel that the Frisian-speakers have some kind of weighty complaint about their situation that could ground a set of language rights. Even if their autonomy was not compromised by the declining health of their language community, the decline does mean that some of the particular things which are valued by Frisian-speakers – namely the opportunity to use their native language and the existence and flourishing of their language community – are gradually being lost to them. They may not be losing an *adequate range* of valuable options – since they can access Dutch-language options – but they are losing *particular* options that have value to them. This analysis, it might be thought, points to a distinctive argument on behalf of minority language rights, one that treats such rights as an instrument for preserving particular options that are valued by speakers of the minority language. Could this be a reasonable justification of a set of minority language rights that is designed to preserve the Frisian language?

To explore this possibility, we need to distinguish several possible forms that the argument might take. According to the *end-state* argument, the mere fact that a particular linguistic community to which Frisian-speakers are strongly attached is currently failing to flourish and/or is expected, at some time in the future, to disappear is sufficient to justify a set of protective language rights. By

contrast, the *fairness* version of the argument claims that there is something unfair about the social process that is eliminating Frisian-language options and it is this unfairness (rather than the failure to flourish or survive *per se*) that grounds the claim to language rights. For reasons I shall sketch in a moment, I do not think that there is any general right to the availability of particular linguistic communities that one values, and so I have grave doubts about the end-state argument. As I argue in the following section, however, the fairness version of the argument does offer a plausible way of thinking about the justification of minority language rights, albeit one that gives rise to a number of questions and challenges.

My aims in this article are mainly positive: I want to survey the best possible arguments in favor of minority language rights in the face of the obvious power of state monolingualism. For this reason, I will not attempt a decisive refutation of the end-state argument nor will I try to chase down and rebut every conceivable reformulation of it. It is important to say something about the end-state argument, however, in part to distinguish it clearly from the fairness argument, and in part because the two arguments have potentially different policy implications. On the end-state view, the mere fact that a given language valued by some people is not flourishing (compared with some norm) is sufficient to ground a complaint and to recommend a reconfiguration of language rights that would offer protection. By contrast, the fairness argument only recommends rights up to a cut-off point determined by an independently specified conception of fairness.

There are two main reasons to be skeptical about the end-state argument.<sup>35</sup> The first is that a principle guaranteeing all persons access to the particular

options that they have come to value is likely to be incoherent. To some extent, options compete with one another for attention and success. When some ways of life flourish, and the options they embrace are readily available, this typically entails that other ways of life are not faring so well. When options reflecting a permissive approach to sexuality are pervasive, for example, then Catholicism, Islam, and other traditional religious ways of life, are faring proportionately less well – and vice versa. There may well be *no* configuration of social institutions in which the options corresponding to every way of life are readily available. To attempt to secure one person's or group's access to the options they value would be at the same time to reduce the availability of options valued by some other person or group.

This objection applies with particular force to the case of language, where the zero-sum structure is especially pronounced. A flourishing language is one that gets used in a variety of high-status contexts, such as white-collar employment, popular culture, politics, formal social occasions, and so on; a language's survival is in peril when it is completely shut out of all such domains of language use. Since there are a limited number of languages that can be used in high status language domains, it follows that any goal of promoting the survival and flourishing of all languages is likely to be unachievable. There is no way of arranging social and political institutions to protect every language, and thus the mere fact that under some institutional arrangement a particular group's language is not doing well is not sufficient to warrant a complaint grounding a right on the part of members of the group.

The second problem with the end-state argument is that the rights and policies it recommends may impose unreasonable demands on others. If the

Frisian-speakers did have a good claim on rights just in virtue of the fact that their valued options are unavailable, then presumably the same would be true of people who valued other kinds of options (besides their language) and found that these options were not available for some reason or other. But this quickly leads to absurd implications. Consider Alice, who prefers independent films to Hollywood blockbusters and who lives in a small town with only one movie theatre. If most other movie-goers in the area prefer the blockbusters, then Alice may face frustration. Or consider Brian, a fan of ice hockey who lives in the United States. Since most American sports fans prefer basketball and football during the winter months, he finds it difficult to follow his favorite hockey team on TV. In both cases, the choices and preferences of the majority make it difficult for our pair to access the particular options that they value. I take it, however, that neither Alice nor Brian would have any morally weighty complaint about the situations they find themselves in, let alone one that could ground a right to state support for their preferred options. In neither case is there anything obviously objectionable about the preferences of the majority and so it is not clear why members of the majority should have to give something up (airtime for *their* preferred films or sports) in order to accommodate Alice or Brian. If Alice or Brian somehow lacked a fair share of resources with which to pursue the options they value, that would be different. But the end-state argument does not stipulate that anyone lacks a fair share of resources. Where Alice and Brian do have their fair share of resources the mere fact that they cannot access the options they value does not, by itself, ground a case for state intervention.

It might be responded that these examples belittle the value people attach to their native language by comparing it to a kind of leisure activity. Language, it

is sometimes argued, has a qualitatively different kind of value. Of course, one way in which language is different is that it is a tool for communication. But in our example we are abstracting from this function of language by stipulating that the minority-language speakers in question (the Frisians) are also fluent in a more widely spoken language (Dutch). If it really were the communicative value of language that should be insisted upon, then we would be back with the toleration, accommodation, and context-of-choice arguments, and the various limitations they entail.

There are other ways, however, in which the value that people attach to their own language might be regarded as distinctive. Unlike a valuable leisure activity, one's language community might be thought to give rise to various obligations. Concerned with maintaining intergenerational continuity, minority-language speakers might believe that they have an obligation to use their own language and to pass it on to their children. Language might also be thought of as an encompassing value. Unlike a leisure activity, it is not merely one valued end among many that a person might possess. A person's language may color and inflect all of her ends: her various ends may all take place *in* her language and derive some of their value from the value of the medium in which they are pursued. Finally, language may be regarded as an identity-constituting value. The ability to use their native language, or the mere existence of their linguistic community, may be so central to some people's sense of who they are that the loss of these options would represent a devastating psychological blow to their well-being.<sup>36</sup> In these respects, the value of a language to its speakers may share certain features in common with the value of a religion to its followers. Both

language and religion may present themselves to some people as sources of obligation, as encompassing of other ends, and as partly constitutive of identity.

Although the analogy between language and religion is obviously an imperfect one, it is instructive to think about the obligations of the state with respect to the treatment of religion. The state does, in my view, have an obligation to accommodate certain kinds of claims of conscience, and, although I will not pursue the point here, this obligation may well have an analogue in the linguistic arena that would be relevant in working out the fairness argument below. The important point for now, however, concerns what the analogy does not establish. The duties of the liberal state with respect to religion and conscience do not extend so far as a guarantee to anyone of a flourishing religious community, or even one that survives. The state ought to avoid policies that disadvantage religious communities in certain ways, but this falls far short of securing their existence or success. Whether or not a religious community survives, or indeed flourishes, will depend, not just on favorable treatment by the state, but on the preferences and choices of individuals as they deal with issues of faith in their lives. If, in the context of an accommodating state policy, a particular religion is doing less well than some of its members might like – because other members are abandoning it and it is difficult to recruit new ones – there is no special claim to further state assistance or recognition. Exactly the same point applies to language. Certain accommodations may well be part of a fair treatment of language (see below) but these accommodations fall well short of any guarantee of the survival or flourishing of a particular language community.

I cannot rule out the possibility that somebody might succeed at identifying a sense in which the value of a person's own language is unique, something that distinguishes the value of language from the value of leisure activities and from other values that are obligation-imposing, encompassing, and identity-constituting such as religion. However, any attempt along these lines to rescue the end-state argument would have to confront the general thesis that citizens should, in an otherwise fair context, bear the costs of their own commitments and attachments.<sup>37</sup> When a person struggles to access her preferred options, this may be because of some unfairness in the social system that determines the availability of the options: this is the starting point of the fairness version of the argument, to be explored in a moment. Alternatively, however, it may be because the person has set herself goals that are unrealistically ambitious, given the resources that are available and the legitimate goals and preferences of other people. According to the standard liberal thesis, it is perfectly legitimate for people to set themselves hard-to-realize goals, but they should not expect others to step in, at cost to themselves, and subsidize the attainment of those goals if it turns out that their pursuit requires more than a fair share of resources, or if they require the co-operation of many other people who, under fair conditions, would otherwise prefer not to co-operate. In short, although citizens have a general claim to fair treatment, beyond that they should take responsibility for their own ends.

#### **V. Attachment to Particular Linguistic Options: The Fairness Argument**

Let me turn now to the fairness argument, which I believe to be much more promising than the end-state one. According to this view, it is not the disappearance, or failure to flourish, of valued linguistic options *per se* that grounds a legitimate complaint by Frisian-speakers about their situation. Instead, the justification of language rights is based on the claim that, without them, there would be unfairness in the social process that determines the availability of Frisian-language options.

In general, the presence or absence of options in a given society is highly dependent on individual choices. In this respect, language is no exception. What forms of speech become dominant, and which ones recede or disappear, is a function of the millions of uncoordinated, unmonitored decisions about language use that people make every day in going about their lives.<sup>38</sup> It is this dependence of linguistic outcomes on individual choices that helps to fuel skepticism about language rights designed to protect vulnerable languages. If a language is vulnerable, so the skeptic argues, this is because people are choosing not to use it; and, if people are choosing not to use it, there is no valid reason for the state to intervene to promote a different outcome.<sup>39</sup> In a limited way, I myself argued along these lines against the end-state argument. At a certain point, I suggested, we just have to say that speakers of a vulnerable language have been unsuccessful at getting others to value their language sufficiently. Just as it may be regrettable for Alice that she cannot persuade her neighbors to share her enthusiasm for independent films, but not grounds for state intervention, the same is arguably true for people who value the linguistic options associated with a disappearing language.

It would be a serious mistake, however, simply to leave things there. Language choices do not take place in a social vacuum. They are profoundly influenced by the incentives and opportunities provided by social practices and institutions. These practices and institutions help to raise or lower the various costs and benefits associated with acquiring and using particular languages. If, for example, much of a community's economic activity and popular culture are conducted in the majority language, then parents have less reason to choose to pass on their minority language to their children and children may be less keen to learn it. Or, if the public schools use a particular language as a medium of instruction, then the cost to parents of passing that language on to their children is much lower than it would be if instruction were only available privately.

Many social practices and institutions themselves emerge and are reproduced as a result of individual choices and to this extent their impact on linguistic outcomes still may not give rise to any special demand for state involvement. But, as the example of the public schools illustrates, some of the most crucial institutions affecting language use are public ones, or are structured and regulated by the state. These institutions are not established and maintained by individual choices in civil society, but by public policy. Government decisions about language norms in the public sector, in the delivery of public services, in the courts, legislatures, and military, in the selection and naturalization of immigrants, and so on, all profoundly influence the incentives people face in making choices about language use. They raise the symbolic and practical value of learning and using some languages and lower the value of others.

Focusing on these facts, some theorists argue that decisions by government which privilege the majority language for use in public contexts are

unfair to those minority speakers who value their language and want to use it in public and to see it survive and flourish. An early statement of this claim can be found, for instance, in a series of papers by Leslie Green and Denise Réaume. For reasons similar to those advanced in the previous section, Green and Réaume reject the idea that language minorities have any right to the survival of their language. Minorities do have “identity” or “expressive” interests in the use and success of their languages, but to insist that these interests ground a right to linguistic survival would be to risk imposing unreasonable duties on the rest of society. But even if there is no justifiable right to linguistic survival, Green and Réaume argue, there is a right to “linguistic security.”<sup>40</sup> Whereas survival is a future-oriented concern, security is a matter of the language’s present flourishing.

On its own this shift from survival to security does not add anything crucial to the case for minority language rights. Linguistic security remains an end-state concept and thus a right to linguistic security would seem to be subject to the same objections that were canvassed in the previous section. But in a number of passages in their writings on language, Green and Réaume point to a different idea which does, I think, add something important. The right to linguistic security, they argue, is not a right to the present flourishing of one’s language but to protection against “unfair or coercive pressures” that threaten to compromise the flourishing of the language.<sup>41</sup> The crucial distinction here is not between survival and security, but between a right to a particular linguistic end-state (be it survival or security) and a right to fair treatment in the processes that determine linguistic end-states. In general, Green and Réaume suggest, the fairness right is violated when the government prohibits the use of a particular

minority language in certain contexts or when it fails to make it possible for speakers of that language to use their language when accessing, or participating in, public institutions.

Will Kymlicka can be read as advancing similar claims about fairness in some important passages of his work on cultural justice. In *Politics in the Vernacular*, he distinguishes three stages in the theorization of minority rights.<sup>42</sup> The second of these stages places minority rights in a liberal framework and includes Kymlicka's own theory of cultural rights as protecting a context of choice. The third stage theorizes the recognition of minority cultural rights as an injustice-preventing condition of majority nation-building. Kymlicka argues that, notwithstanding pretensions to ethno-cultural neutrality, it is normal for the majority national group of a state to engage in nation-building – that is, to support a series of policies designed to promote the integration of all citizens into a societal culture based on its national culture and identity. Although Kymlicka emphasizes (as I did in Sec. I above) that nation-building serves a number of important goals, he also thinks that it can involve injustices for minorities. The designation of the majority language as the “national” language would put minorities at a great disadvantage and put pressure on them to assimilate. This disadvantage would be unfair unless national minorities were given the same opportunity to engage in minority nation-building.<sup>43</sup> Of course, neither the majority nation-building project nor the minority one should be permitted to violate standard liberal principles (e.g. ethnic cleansing is forbidden to majority and minority alike). But, “all else being equal, national minorities should have the same tools of nation-building available to them as the majority nation, subject to the same liberal limitations.”<sup>44</sup>

I am sympathetic with the fairness-based approach to justifying language rights and have tried, in previous work, to develop an account of this kind.<sup>45</sup> The approach avoids the problems associated with the end-state argument while at the same time offering an attractive way of taking seriously the attachment that minority speakers often feel to their own language. The justification of minority language rights that this approach points to is much more general in scope than the other arguments we have been considering. Minority speakers may be eligible for fairness-based rights even if they are perfectly fluent in the majority language and even if their language does not correspond to a societal culture. At the same time, considerable theoretical work remains to be done with this approach to make it more compelling and more precise. Although I will not try to do that work here, I do want to conclude the article by pointing to some of the areas in which further work is needed.<sup>46</sup>

1. *Relationship to established theories of liberal justice.* An important selling point of Kymlicka's "second-stage" context of choice theory is that it attempts to connect minority language rights with well understood and broadly accepted principles of liberal political theory. It is less clear how the fairness argument is related to fundamental principles of liberal justice. The fairness arguments I have been describing make specific judgments about fairness. But what is the broader, or more general, principle of fairness upon which they rely? What does this principle imply for the treatment of other kinds of attachments, commitments, beliefs, preferences, etc. that people have? What reasons are there for thinking that somebody committed to the values of liberal democracy ought to endorse this principle?

2. *Rival views?* Since the relevant general claim about fairness is typically not formulated by theorists advocating the fairness approach, it comes as little surprise that there is also little systematic attempt to canvass or assess rival accounts of fairness. One alternative, for instance, stresses a certain view of state neutrality. On this view, the state has a sufficient response to a complaint of unfairness if it can show that it has treated different attachments and commitments neutrally.<sup>47</sup> And it can show neutrality if it can establish that its policies did not have as their fundamental rationale the advantaging or disadvantaging of particular attachments or commitments but instead were adopted for some neutral reason. This view, which works with a justificatory conception of neutrality, has some basis in liberal practice, e.g. in the response by US courts to claims for religious accommodations.<sup>48</sup> One could easily imagine an analog view concerning linguistic attachments. So long as the rationale is neutral in character (citing, e.g., one of the legitimate aims discussed in Sec. I above) rather than to advantage or disadvantage a particular linguistic group per se, the policy is neutral. And so long as it is neutral there is sufficient response to a complaint of unfairness. A rival view of this kind leaves government with the discretion to extend minority language rights, but denies that such rights are *required* by fairness.<sup>49</sup>
3. *Countervailing considerations?* Presumably, an answer to the challenge just referred to would involve showing that the mere fact of neutrality does not, on its own, suffice to answer a charge of unfairness. If the putatively neutral rationale is trivial or of only moderate significance, then the fact that some policy has the incidental effect of making it difficult or impossible for

minority speakers to use their language in public institutions remains a reason for regarding the policy as unfair. This form of response raises a further question, however. Even if some neutral rationales (e.g. a small financial saving) could be dismissed as trivial or only moderately important, presumably others cannot be dismissed so easily. To return to the Frisian example, for instance, imagine that Holland were a failed state and would be likely to remain so for generations to come unless it could somehow overcome identity conflicts sustained by enduring linguistic diversity. Or suppose that (contrary to my original description of the case) Frisian-speaking youths would be encouraged by state bilingualism to forgo the learning of Dutch, in the process condemning themselves to economic marginality. On these conditions, it is plausible to think that a Dutch-only policy could be defended against the charge of unfairness. The question, then, is how to specify the conditions under which the fairness claim ought to be determinative. What are the criteria for balancing fairness with other legitimate ends and goals that can be connected with language policy? The question is partly a matter of assessing the importance of these other ends or goals. But it also requires an understanding of the importance that ought to be placed, in a liberal political theory, on facilitating the fulfillment of linguistic attachments.

4. *Content.* A fourth issue concerns the content of fairness-based rights.

Kymlicka's framing of the fairness argument in terms of rival nation-building projects might be taken as implying that the rights in question are fundamentally rights of national groups to impose a particular language and culture on "their" territory. This might mean allowing a national

minority to conduct official business exclusively in its language on its territory, while allowing the majority national group to do the same elsewhere in the state. Language rights come to be associated with a “territoriality principle”; they do not follow speakers of different languages around the state, wherever they should decide to settle (sometimes referred to as the “personality principle”).<sup>50</sup> An alternative interpretation of the fairness argument, on the other hand, would not specify the content of fairness rights in terms of a right *to* nation-build but as rights *against* certain forms of nation-building. On this interpretation, rights would no longer be tied to national territories and could, in principle, be claimed by “internal minorities” situated on the “wrong side” of internal boundaries.<sup>51</sup>

5. *Language rights for whom?* A final problem is how proponents of fairness-based rights should deal with the problem of allocation. Most states are home to dozens, even hundreds, of language groups. There is no reason why members of each of these groups should not be able to enjoy toleration rights. Likewise, certain accommodation rights ought to be extended to all (e.g. rights to an interpreter in a court of law), although others (e.g. rights to transitional bilingual education) might plausibly be allocated with some regard to local demand and supply. The hard question is how to allocate fairness-based rights. Certain modest fairness-based rights might be extended to all, especially if considerations of demand and territorial concentration are allowed to play some role. In principle, an indefinite number of language groups might receive support for after-school language classes, and an indefinite number of neighborhoods might be zoned as bilingual in various languages (with corresponding signs, street names,

public services, etc). For a variety of reasons (some of them sketched in Sec. I), however, generalized multilingualism will not work in other areas.

Nobody thinks it a good idea to have parallel education or health services in dozens of different languages, or to extend equality of status to dozens of different languages in the national legislature, courts, or civil service. In these areas, some principle is required for deciding which languages ought to enjoy full fairness-based rights and which should not.

Arguably, the problem is made a little more tractable if one opts for Kymlicka's version of the fairness argument, which emphasizes the right to nation-build. Since, presumably, only a small number of groups enjoy the right to nation-build, it might be argued that only a small number of groups have a claim on a full set of fairness-based language rights.<sup>52</sup> One problem with this strategy, however, is that it seems to push the problem up a level without really solving it. Now we need some principled basis for deciding which groups ought to enjoy a right to nation-build.

In general, there seem to be two broad kinds of candidate principles. One specifies certain general criteria, such as size, territorial concentration, and so on, and then allocates fairness rights on the basis of these criteria.<sup>53</sup> The other argues that historical precedence does make a difference and claims that long-established "national" groups are entitled to expect immigrants to waive their non-universalizable fairness-based rights as a condition of admission into the society.<sup>54</sup> Neither approach seems obviously unsalvageable to me, though both give rise to difficult questions. Depending on what general criteria can be defended, the first approach may not lead to allocations that match our intuitions: large immigrant groups

might jump to the head of the queue ahead of tiny autochthonous groups, for instance. The second approach has provoked a daunting array of criticisms, challenging the voluntariness of the decision to migrate, the alienability of cultural rights, and the legitimacy of the host society's claim that it can attach conditions to admission.

I do not raise these questions and challenges as objections or because I cannot imagine possible answers to them. The point, instead, is that these are some of the areas in which more reflection and theorizing is needed. The fairness approach has considerable appeal, but theorists like myself who are inclined to defend such an approach have their work cut out for them.

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## Notes

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<http://ourworld.compuserve.com/homepages/JWCRAWFORD/census02.htm#I>

<sup>2</sup> For the claim that cultural diversity is valuable to the majority, as well as to minorities, see, e.g., Goodin 2006. The argument that linguistic diversity is valuable for all of humanity is frequently made by linguists and language activists, many of whom draw a parallel between linguistic diversity and bio-diversity. See, e.g.: Nettle and Romaine 2000, p. 14; and Crystal 2000, pp. 32-6. By an appeal to the "interests of the universe," I have in mind the argument that languages and linguistic diversity possess an intrinsic value that persists even when they do not serve the interests of any human beings. Ronald Dworkin (1993, pp. 71-81) develops an idea of intrinsic value along these lines (mentioning the preservation of cultures as an example). For criticism of intrinsic-value-based arguments in the area of language policy, see Weinstock (2003).

<sup>3</sup> The relationship between moral and legal rights here is quite complex. On the one hand, not all arguments for legal rights need to appeal to moral rights. Legal rights might be an appropriate policy instrument for responding to legitimate impersonal complaints about monolingualism.

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On the other hand, moral rights need not find their expression in legal rights. A state might, without the prodding of legal rights, adopt a fairly settled policy of serving minorities in their own language, thereby respecting their moral rights.

<sup>4</sup> For some examples, see Patten and Kymlicka (2003, p. 25).

<sup>5</sup> Balibar and Laporte 1974.

<sup>6</sup> See, e.g., Kibbee 2003.

<sup>7</sup> The next few paragraphs in the text summarize points made in Patten (2001, pp. 700-702). Most of the arguments can be traced back to the 1990s literature on liberal nationalism and indeed to earlier sources that that literature relies on. For liberal nationalism, see, e.g.: Tamir 1993, Miller 1995; Kymlicka 2001.

<sup>8</sup> Kymlicka 2001, p.26. Barry 2001, pp. 103-9, 220. Carens 2000, p. 79.

<sup>9</sup> Gellner 1983.

<sup>10</sup> Mill 1991, ch. 16. Van Parijs 2000a. This concern, and the related earlier one about the conditions of deliberative democracy, have figured in debates about democratizing the European Union. See, e.g., the exchange between Grimm (1995) and Habermas (1995).

<sup>11</sup> Young 1990, p. 179; Réaume 2000, pp. 260-1, 269-72; Rodríguez 2006, pp. 724-5. Rodríguez also emphasizes the positive instrumental value that the experience of linguistic diversity has for the promotion of various democratic values (pp. 726-8).

<sup>12</sup> May 2003, p. 136.

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- <sup>13</sup> For an empirically serious attempt to defend the ‘Tanzanian’ model, see Miguel (2004).
- <sup>14</sup> Kloss 1977. For adaptations of, and critical responses to, Kloss’s distinction, see: Green 1987, pp. 660-62; Réaume 1991, pp. 50-1; MacMillan 1998, pp. 11-4; Rubio-Marín 2003a, pp. 54-5; Patten and Kymlicka 2003, pp. 26-7.
- <sup>15</sup> Carens 2000, p. 77.
- <sup>16</sup> Reports by Human Rights Watch ([www.hrw.org](http://www.hrw.org)) suggest that restrictions on Kurdish language expression have been eased somewhat in recent years. Kurdish-language publications and broadcasts are now permitted, however publications are still routinely confiscated and broadcasts are given very brief airtime and are restricted in content.
- <sup>17</sup> Green 1991.
- <sup>18</sup> The analysis here departs from Green (1987, pp. 660-2), who groups toleration and (what I am calling) accommodation rights into a single “regime of linguistic tolerance” that “is not restricted merely to negative rights.” Green suggests that the general character of tolerance-based language rights is “integrationist” (661-2). This is true of accommodation rights, and is plausibly illustrated (as Green says) by the US Supreme Court’s reasoning in *Lau v. Nichols* 414 US 563 (1974). It is not necessarily true of toleration rights, however. As the Court noted in its other major case on language rights, *Meyer v. Nebraska*, 262 US 390 (1923), integrationist goals can militate against toleration of the private use of minority languages.

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- <sup>19</sup> Green 1987, p. 661. Rubio-Marín 2003a, p. 55. For a detailed discussion, see Réaume (2000, pp. 255-8, 262-6).
- <sup>20</sup> But see Levy (2003) for an interesting attempt to justify a broad package of language rights as instrumentally valuable in helping to protect toleration rights.
- <sup>21</sup> See, e.g., the discussions in Crawford 2000 and Schmidt (2000).
- <sup>22</sup> Kymlicka 1989; 1995.
- <sup>23</sup> Kymlicka 1995, p. 85.
- <sup>24</sup> Waldron 1992, p. 754.
- <sup>25</sup> Kymlicka 1995, pp. 104-5.
- <sup>26</sup> Waldron 1992, pp. 786-88; Tomasi 1995.
- <sup>27</sup> See, e.g.: Waldron 1992, p. 762; Tomasi 1995; Patten 1999a,b; Réaume 2000.
- <sup>28</sup> Kymlicka 1995, pp. 84-105.
- <sup>29</sup> *ibid.*, pp. 84-90. Some of these responses emphasize “identity” considerations, which I explore in Secs. IV and V below.
- <sup>30</sup> Réaume (2000, p. 250) asks rhetorically: “if we *could* significantly reduce or eliminate the costs of transfer, would it then be permissible to expect people to transfer rather than allowing them to maintain their own culture and language?” I agree with Réaume that the answer implied by Kymlicka’s theory is “yes” and that this is a serious problem with such a theory. My point in the text, however, is that the antecedent clause in Réaume’s question will not always be satisfiable. For language groups

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that correspond with societal cultures, attempts to transfer the whole population into a different language and culture in a generation or two may well be utopian, especially once one considers class and regional differences in language learning. When the antecedent clause is unlikely to be satisfied, Kymlicka's theory does seem relevant and important. Whereas Réaume is led by her objection to set aside Kymlicka's "instrumental" (as she terms it) approach to defending cultural rights and to propose an alternative account emphasizing the "intrinsic" value of language, my general thesis is that there are a variety of categories of language rights that can be defended, each under more-or-less specific empirical conditions that need to be identified by theoretical work.

<sup>31</sup> Carens 2000, p. 62.

<sup>32</sup> This figure is from the Ethnologue database, accessed at <http://www.christusrex.org/www1/pater/ethno/Neth.html>. For discussions of the Frisian case, see: Buruma 2001; Fishman 1991, ch. 6; Gorter 2001.

<sup>33</sup> Fishman 1991, p. 156; Buruma 2001.

<sup>34</sup> Gorter 2001.

<sup>35</sup> Both doubts are influenced by Rawls (1975; 1993, pp. 195-200). See also Réaume 1994, pp. 127-8.

<sup>36</sup> The claim that language is crucial to identity is a commonplace in the literature on linguistic rights. See, for instance: Fishman 1991; Taylor 1994; Kymlicka 1995, pp. 89-90; May 2001; Appiah 2005, p. 102; Rodríguez 2006, pp. 734-6. Authors who make an identity argument do not necessarily

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have in mind the specific claim that loss of one's language would be "psychologically devastating." Sometimes they mean just to say that people value, and are attached to, their language as something more than a vehicle of communication. My aim in this section and the next is to determine what a defensible identity argument, in this broader sense, would look like.

<sup>37</sup> Rawls 1993, pp. 178-87. Dworkin 2000. For a dissenting view, with specific reference to debates about multiculturalism, see Cohen (1999; 2004) and Mason (2006, pp. 175-82). For a response, see Dworkin 2004.

<sup>38</sup> Coulmas (2005) offers a treatment of language dynamics that emphasizes the role of individual choices.

<sup>39</sup> E.g. Barry 2001, pp. 65, 71; Blake 2003, p. 219.

<sup>40</sup> Green 1987. Green and Réaume 1989. Réaume 1991; 1994.

<sup>41</sup> Green and Réaume 1989, pp. 782-3. Réaume 1991, p. 47; 1994, pp. 129-30. See also Rodríguez 2006, p. 739.

<sup>42</sup> Kymlicka 2001, pp. 18-29.

<sup>43</sup> Kymlicka 2001, pp. 28-9, 32

<sup>44</sup> Kymlicka 2001, p. 29. For a related discussion, see Kymlicka 1995, p. 113.

<sup>45</sup> Patten 2003a.

<sup>46</sup> For some further challenges, see Weinstock 2003, pp. 260-3.

<sup>47</sup> Barry 2001, p. 32.

<sup>48</sup> *Employment Division, Department of Human Resources v. Smith*, 494 US 872 (1990)  
and *Church of Lukumi Babalu Aye v. City of Hialeah*, [508 US 520 \(1993\)](#).

<sup>49</sup> Carens (2000) and Laitin and Reich (2003) emphasize the distinction between saying that a given cultural or linguistic accommodation is *required* by justice and that it is *permitted* by justice.

<sup>50</sup> McRae 1975, Green 1987, pp. 653-8, Laponce 1984 and 1993, Van Parijs 2000a,b, Kymlicka 2001, pp. 212-13, Patten 2003b, Réaume 2003.

<sup>51</sup> Patten 2005.

<sup>52</sup> Bauböck 2001.

<sup>53</sup> Réaume 2000, pp. 266-67; Carens 2000, pp. 77-87; Barry 2001, 105-6 Rubio-Marín 2003b.

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<sup>54</sup> Kymlicka 1995, pp. 95-100; Patten 2006.