

Language and Distributive Justice

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Introduction

Linguistic diversity can be found in every society in the world. This is obvious in major cosmopolitan cities, where speakers of hundreds of different languages live in close proximity. It is also apparent 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 national minorities that speak a language different than the majority's. In the United States, although English is predominant, about a fifth of the population report using a language other than English in their homes.

Whenever more than one language is in use people face the problem of how to communicate with one another. An important and fascinating challenge for social scientists is to understand how people work out this communication problem. What are the determinants of linguistic behavior under conditions of diversity? Why, for instance, do people acquire some languages and not others? And why do some languages rather than others come to be used in particular domains of communication?

As social scientists start to get a grip on this kind of question, it is natural for a second more directly practical sort of question to arise. If the first kind of

question concerns *explanation*, this second one is about *policy*. What, if anything, can be done to shape or influence the linguistic habits and practices of a particular society? What instruments do public policy actors have at their disposal for shaping linguistic practice and how can they most effectively use these instruments to accomplish whatever language-related objectives they may have? These questions could, in principle, arise for a range of different actors, but they arise most obviously for the state. Many citizens in a democratic state will have preferences about societal patterns of language use and will consider using the state as a tool for advancing these preferences. So what can the state accomplish? Given what we know about the determinants of linguistic behavior, what impact can the instruments of state policy have on language practices?

As soon as one formulates these questions about policy, however, it immediately becomes apparent that there is a third kind of question that also needs to be asked: a *normative* question. The policy question is focused only on means. It asks about what the state can hope to achieve with the various instruments at its disposal. By their very nature, however, we do not care about means for their own sake: we care about them as instruments for advancing certain ends. So what are these ends? What ends would it be appropriate for the state to pursue, and what other sorts of standards (besides ends) ought to guide the state's policies relating to language? And if the short answer to these questions is that, in a democracy, the state should pursue the ends and obey the

constraints that its citizens authorize, then what ends and constraints would it be appropriate for citizens – for ‘we the people’ – to authorize?

A fully satisfying answer to the normative question is not possible without grappling with the explanatory and policy questions. ‘Ought’ implies ‘can’, and in any practical context our views about what ‘can’ be done have to be compatible with a plausible understanding of how people actually behave linguistically, of how they are likely to respond to various incentives, penalties, processes of habituation and socialization, and so on. In this sense, the three kinds of questions are interconnected and one cannot make defensible normative judgments in isolation from a consideration of explanatory processes and policy options. The point of departure for the present discussion, however, is that ‘can’ does not imply ‘ought’. Even once we get clear about the set of things that can be done, a question remains about which of them *should* be done. It is this normative problem that is at the heart of recent work on language rights by political philosophers.¹

When others address the normative problem, a number of different goals are sometimes posited as being especially relevant to evaluating language policies. Many socio-linguists assume that preserving vulnerable languages and maintaining linguistic diversity are the appropriate goals of language policy. Political scientists highlight goals such as political stability and national unity, while economists focus their attention on economic efficiency and growth, public good provision, and other economic outcomes.

For political philosophers, while all of these ends are important, there is one standard that is arguably most important of all. A society that preserved linguistic diversity, or that achieved political stability or high levels of economic growth, would not have succeeded at what is most important if did not also realize justice. From the standpoint of political philosophy, the fundamental standard for evaluating different ideas and proposals about language policy is what Rawls has called the “first virtue of social institutions” – the achievement of justice.²

But what does political philosophy have to say about the demands of justice with respect to language – about “linguistic justice” as we might call it? In the small but growing literature on this topic, it is possible to find two main approaches to this question. One framework of analysis emphasizes the instrumental importance of language for distributive justice. From this perspective, although language policies and patterns of language use are not themselves a matter of distributive concern, these or other linguistic facts may be consequential for the distribution of that which does matter for justice. The other framework attaches at least some non-instrumental importance to language. From this point of view, part of what *makes* a distribution just is that it appropriately attends to the interests that people have in the use, the success, and/or the treatment of their languages.

In this contribution, I’ll rather briefly discuss some issues arising in the instrumental framework and then turn to a more detailed engagement with the

non-instrumental framework. In a concluding section, I'll reflect, again quite briefly, on how the concerns of the two frameworks might be integrated with one another. Throughout the discussion, the policy implications of the various claims about linguistic justice will be kept in view. In particular, we shall consider whether justice supports a *nation-building* policy, in which the state encourages everyone in a society to converge on a single national language, or whether it lends support to a *minority rights* policy, in which public services are offered, and public business is conducted, in more than one of the languages spoken in the society.

The Instrumental Framework

An instrumental account of linguistic justice brackets the question of whether language is itself an object of distributive concern. It posits a language-independent conception of distributive justice, and then explores the ways in which language diversity might help or hinder the realization of distributive justice so conceived. Obviously, a satisfactory discussion of such an account would need to specify the language-independent conception in enough detail to allow the relevant causal mechanisms to be identified. I will not attempt to justify any particular conception here, but will assume, for the purposes of discussion, that distributive justice requires some degree of equality of opportunity and social mobility. I also suppose that distributive justice, whatever exactly it consists in, normally rests on a willingness of persons to accept certain burdens for the sake

of the claims of others. These may be burdens of taxation and redistribution, or of democratic deliberation, or of some combination of these and other expectations.

Many different causal mechanisms might plausibly be expected to connect linguistic diversity and distributive (in)justice. In what follows, I draw attention to a few of the most important of these mechanisms. Some arise from linguistic diversity itself; others are triggered by familiar policy responses to linguistic diversity. The first four mechanisms hinge on the further idea that, despite its differences, a linguistically diverse society may still have a dominant language. This is the language spoken by most people and used most of the time as a lingua franca by native speakers of different languages. It is the language in which much of the economy operates, and in which other social institutions and practices are typically conducted. A linguistically diverse society with a dominant language is a society in which at least some people speak as their first language a language other than the dominant one. From an instrumental perspective, this leads to several challenges for distributive justice:

1. *Exclusion through lack of proficiency in the dominant language.* If some members of language minorities lack proficiency in a society's dominant language, they will be excluded from many economic, social, and cultural opportunities.

2. *Exclusion of language minorities through insistence on dominant-language instruction.* Concerned to avoid situations in which minorities lack proficiency in the dominant language, the state may insist that all schools provide instruction in the dominant language. But this may lead to its own problems if non-native speakers of the dominant language struggle to achieve literacy and other skills in an instructional setting of this kind. Lackluster development of these important skills can also lead to exclusion from opportunities.

3. *Exclusion through opportunity-hoarding by dominant-language speakers.*³ Language differences may provide a salient coordination point around which a group of people can mobilize to provide for themselves a greater share of social benefits and opportunities, with a lesser share left for “out-groups.” Since the linguistic differences that give rise to this pattern of exclusion may be fairly superficial in character, such as accent, surname, etc., a mechanism of this kind may diverge in its implications from a mechanism based on a lack of proficiency in the dominant language. Note too that language-related opportunity-hoarding may occur not just between but also within language groups. Variations in accent and dialect based on region, class, and ethnicity may align with other factors to produce objectionable inequalities.

4. *Exclusion through segregation by public policy.* In some situations, minority language status correlates with socio-economic status: native speakers of a minority language tend disproportionately to be disadvantaged socio-economically. In such a case, efforts to serve minority speakers in their own language may (perhaps unintentionally) end up reinforcing disadvantage rather than relieving it. For a variety of reasons, public education and public services that mainly cater to disadvantaged people are often associated with undesirable outcomes.

Other causal pathways that generate an instrumental relationship between language and distributive justice depend less on the presence of a dominant language and more on the fact that people have an identity based on their (first) language. They identify themselves as members of a group of speakers of the language and/or are so identified by others in their society; and they value, or are assumed to value, the language and the language group. Under conditions of linguistic diversity, these actual or presumed attachments can present several different challenges for distributive justice:

5. *Social solidarity weakened by linguistic diversity.* Some political theorists believe that the realization of distributive justice depends on the presence of strong ties of social solidarity grounded in a widely shared sense of national identity or political community.⁴ Linguistic differences might make it

more difficult for the requisite sense of common nationality to form and be sustained.

6. Social solidarity weakened by attempts to impose majority language onto minorities. When language minorities feel attached to their language and language community, they may resent attempts by the state to promote a common national language through policies that subordinate or marginalize their own language. In this scenario, unequal treatment makes it difficult for minorities to join in the sense of common nationality needed to sustain distributive justice.

For anyone interested in promoting distributive justice, the empirical issues raised by these different causal mechanisms are quite complicated. A major challenge is that the mechanisms seem to pull in different directions. Mechanisms 1, 4 and 5 would seem to recommend a nation-building approach to language policy. To prevent exclusion and to support the emergence of a common national identity, policy makers should seek to promote a common national language. Combined with other policies (anti-discrimination, anti-racism, the promotion of inclusion as an aspect of national identity, etc.) this approach offers a recipe for engaging with mechanism 3 as well. The successful diffusion of a common national language should tend over time to lessen the differences

that make language-related opportunity-hoarding possible and should generally diminish the salience of language as a basis for identity politics.

On the other hand, nation-building would not help with, and would in fact exacerbate, mechanisms 2 and 6. Aggressive attempts to diffuse a common national language through language immersion programs risk leaving minorities behind in their development of critical skills such as literacy, numeracy, and so on (mechanism 2). And the nation-building project may stir up resentment amongst minorities who perceive it as an obstacle to the survival and flourishing of their own language community (mechanism 6).

Many people will look at these different factors and conclude that, on balance, the nation-building strategy is the best one to follow over the long run. As was just noted, mechanisms 1, 3, 4 and 5 are broadly supportive of this hypothesis. Mechanism 2 pulls in the opposite direction but its pull will often be quite weak. Even if mechanism 2 is operative, there may be little to gain from a distributive justice perspective in substituting a minority language-based education for a majority language one. If most of the society's opportunities are available only in a dominant-language medium, then minorities have little choice but to learn the dominant language, even if the learning process leaves them trailing behind in other areas. In light of mechanism 2, it might make sense to offer bilingual instruction on a transitional basis, but the medium-term goal of such a policy is the nation-builder's one of convergence on a common public language. Mechanism 6 might also be rather weak in many contexts. A nation-

building project that is fairly successful at promoting a common national language may be resented by minorities at first. But, if subsequent generations are treated inclusively, there is reason to hope that the effects predicted by mechanism 6 will subside over time.

Advocates of the nation-building approach point out, as evidence for their approach, that many societies that do a satisfactory job of realizing distributive justice possess a common national language. Some of these societies may never have been terribly diverse linguistically in the first place (in part because of restrictive immigration policies) but this is not true in an important range of cases. France is the classic example of a society that was characterized by substantial linguistic diversity (around the time of the French Revolution) but which, over the course of the century that followed, consciously and very successfully set out to diffuse French as the common language of the country. Unlike France, the United States has never officially designated its dominant language as the national language, but it has been no less insistent at publicly privileging English over minority languages.

Of course any general argument for nation-building on instrumental grounds ought to come with significant caveats. Some language minorities are able to generate a fairly wide range of opportunities within their own communities. To the extent that this is true, mechanisms 1, 3 and 4 become less of a threat to the realization of distributive justice, while mechanism 2 may be more pronounced in its effects (greater numbers of minority-speaking families will

lack proficiency in the majority-language and will suffer under an educational regime that insists on majority-language instruction). More generally, the nation-building strategies that worked well in the nineteenth and early twentieth centuries may be less successful today faced with language minorities possessing their own institutions and public culture, and having a strong sense of identity and attachment to their own language. Under conditions where a strong sense of national identity based on minority language attachment has been mobilized, mechanism 6 may be very powerful indeed.

Still, with some appropriate caveats, it would not be terribly wrong to align the instrumental framework with the nation-building approach to language policy. This makes it all the more important to explore whether the instrumental framework is the full story about the relationship between language and justice. Is language of relevance to distributive justice in an instrumental way only, or are there other respects in which language matters to justice as well? The remainder of the contribution is devoted to answering this question. We shall see that there is indeed a non-instrumental dimension to linguistic justice and that once this dimension is appreciated any preference for nation-building needs further qualification.

A Non-Instrumental Framework: the Neutrality Model

I begin with a simple proposal about how language might be considered an object of distributive concern in its own right. On the simple proposal, language

matters non-instrumentally because it is something that people care about for a variety of reasons that do not reduce back to an instrumental connection with distributive justice. The appropriate way for the state to accommodate this fact about people's preferences is to adopt a stance of neutrality. When the state is neutral, it refrains from deciding which language-related preferences will be successful or unsuccessful and instead offers support to all of them in an evenhanded fashion. In the next section, we will consider some other accounts of language's non-instrumental significance and ask whether they add anything essential to the neutrality model. One alternative argues that treating language as a mere preference – something that people care about – fails to appreciate the fact that language is a matter of "identity" for some people. A second claims that language-related disadvantages should be of special concern in a theory of justice because they are part of a person's unchosen circumstances. I shall argue that neither of these alternatives offers a decisive challenge to the neutrality model, although the argument from choice does leave some lingering philosophical questions and the argument from identity may be relevant to balancing the claims of the instrumental and non-instrumental frameworks.

Many people care about their first language or languages – that is, the language or languages that they learn and use as young children. (Henceforth, for ease of exposition, I shall assume that people have just one first language, although clearly some people learn and use more than one language from a very young age). They self-identify with the (local) community of speakers of the

language. They are proud of the language and of the cultural achievements that have been expressed through it. They take pleasure in using the language and encountering others who are willing to use it. They hope that their (local) language community will survive and flourish into the indefinite future. They find that a number of their other preferences are linked with, and may be expressions of, their identification with their language community. In some contexts, they feel respected and affirmed when others address them in their language and denigrated when others use a different language. And so on.

It is true that some people are scarcely aware of having these attitudes and preferences. They are comfortably cocooned in an environment in which their first language enjoys pre-eminence and in which enjoying the benefits of the language is as automatic as enjoying the air that they breathe. The attitudes and preferences that I am attributing to people, however, are dispositional in character: persons have them if they would consciously be moved by them under conditions in which the language is not pre-eminent but is in meaningful competition with one or more other languages in at least some significant contexts of communication. This is not to say that all people care about their first language. Some people may be genuinely indifferent and would remain so even under the appropriate counterfactual conditions. But the attitudes and preferences mentioned above are instantly familiar and I assume they are widely if not universally shared.

Now the mere fact that people care about their language is not sufficient to justify the claim that language matters non-instrumentally to justice. People care about all sorts of things: the car they drive; the clothes they wear; the home they live in; the company they keep; and so on. Theorists of justice would not normally single out the make of the car a person drives as an object of distributive concern just because it is something that some people happen to value.

So how then does justice connect with the various preferences people have? John Rawls's influential answer is *procedural* in form.⁵ Faced with a wide range of different preferences, what justice requires is a fair framework in which people can strive to satisfy their preferences. On this approach, which Rawls calls a "pure procedural" conception of justice, there is no framework-independent notion of what constitutes a just distribution of particular objects of preference. A just distribution of such objects is simply whatever distribution emerges from people interacting within a fair framework. The theoretical problem under this approach is to specify the framework that shapes distributive outcomes such that the distribution that emerges can be considered just whatever it is.

To investigate whether linguistic preferences imply any non-instrumental justice claims, then, we need to know what procedure or framework could have this effect of conferring legitimacy on language-related distributive outcomes such as the success or failure of particular languages and the degree to which people feel respected by the norms of language usage. Following Rawls's

terminology again, we might call the conditions that define such a procedure “fair background conditions.”⁶ Our question, then, is what fair background conditions consist in once it is observed that some people may care deeply about linguistic outcomes. What conditions could make it such that it could reasonably be said that linguistic outcomes are just (from a non-instrumental perspective) whatever they are? The question being posed here parallels the question that might be asked when people care about particular religious outcomes. There is no particular religious outcome that is mandated by non-instrumental considerations of justice. Instead, justice is secured procedurally through fair background conditions, and the question of religious justice resolves itself into a question about what those conditions are.

One approach to specifying fair background conditions might be characterized as minimalist. Key requirements of a minimalist approach are:

- protection of a set of basic liberties (such as those identified by Rawls)
- freedom from discrimination in the economy and civil society
- a social minimum and/or a requirement that all persons have a decent or fair share of resources with which to pursue their ends
- various programs and policies that promote what Rawls calls “fair equality of opportunity”

Although each of these conditions needs further specification and refinement, a general sketch is enough for our purposes. The crucial claim is that any particular distributive outcome can be considered just so long as it arises in a

social system in which these requirements are satisfied. Thus, if some people live in one-bedroom downtown apartments, others live in suburban bungalows, and others in spacious rural farmhouses, this distribution of living arrangements raises no justice-based concern so long as it is generated in a context where the minimalist background conditions are realized. Likewise, there is no non-instrumental justice concern about a particular level of success (or failure) of Welsh in Great Britain so long as the minimalist requirements are in place. So long as Welsh-speakers enjoy freedoms of speech and association, as well as access to a fair share of resources with which to pursue privately whatever projects and ambitions they happen to have (including the promotion of a Welsh language community in Britain), then justice is compatible with any outcome for Welsh.

The important question for our purposes is whether minimalism is enough for procedural justice. In one respect, of course, the minimalist conditions are extremely demanding. There are few societies on earth in which they are completely satisfied. And yet it is important to ask whether they would be enough if they were completely satisfied. A negative answer might suggest that justice has a quite different shape – even in our imperfect world – than the one implied by minimalism.

Reflection about the case of religious justice suggests that minimalism is insufficient. Consider a state that officially establishes a particular religion. It is careful not to impose the religion on anybody coercively, so no basic liberty is

violated. But it does extend to the religion certain privileges that are not given to other denominations, such as tax breaks, subsidies, and special access to public land and property. The minimalist conditions are satisfied but, if you think about it from the standpoint of other denominations that are struggling to maintain themselves, the outcome will hardly seem justified by the background conditions. Those belonging to a disfavored denomination will quite reasonably complain that, far from being fair, the background conditions are tilted against them.

Religious justice might seem like a special case in certain respects. For example, someone might argue that all establishment – even where it is non-coercive – violates a basic liberty. But the problem with minimalism is apparent in other areas too. For instance, imagine that tickets for professional football, baseball and basketball games are exempted from taxation (on the grounds that they are “American pastimes”) but other sporting events are subjected to regular taxation. The minimalist would be satisfied, but again fans of the other sports would have good grounds to complain of unfairness in background conditions.

In both of these cases, the state is *siding* with a particular preference or set of preferences held by some of its citizens over preferences held by others. It is extending benefits and privileges to the objects of some preferences and not to others, or it is imposing burdens and obligations on the objects of some preferences and not others. People holding disfavored preferences can reasonably feel that they are denied a fair opportunity to realize their own conception of the good life. For this reason, they can reasonably object to the

notion that the background conditions under which they are striving to realize that conception are fair.

If this analysis is correct, then an alternative to the minimalist specification of fair background conditions might be formed by adding to the minimalist conditions a requirement of state neutrality. Neutrality, as I understand it, is a claim about how the state should treat the various goods and activities that its citizens value.⁷ The state treats different preferences neutrally when, relative to an appropriate baseline, it extends the same benefits to, and imposes the same burdens on, the goods and activities valued by those preferences. On the neutralist specification of fair background conditions, a particular distributive outcome is considered just if and only if the minimalist requirements are satisfied *and* the state is treating neutrally the preferences that are implicated in that outcome.

It is easy to overlook the neutrality condition when thinking about justice because in so many cases it is satisfied negatively – by the state *not* doing certain things. The state treats different preferences neutrally by not offering any benefits to, or imposing any burdens on, particular objects of preference, but instead by striving to establish a general framework in which citizens enjoy rights and liberties to pursue whatever preferences they have as well as a fair share of resources with which to do so. What is going wrong in the religious establishment and sporting preference cases is a departure from neutrality understood in this

negative way. In contexts where it could quite reasonably do nothing, the state is actively backing particular options valued by some but not all of its citizens.

However, this do-nothing or privatization strategy for realizing neutrality does not make sense for every object of preference. With some goods and activities, the state cannot help but support some particular options, or, if it can help it, it would do so only at severe cost in other values. Language is one of those goods for which the privatization strategy is obviously unsatisfactory.⁸ Public institutions cannot wash their hands of any involvement with particular languages, and leave language up to the market and civil society. Since public institutions use language to communicate both internally and with the public, they must decide in which particular language or languages to do so.

Because the privatization strategy is unworkable in relation to language, it is sometimes said that neutrality is impossible or incoherent in this area. According to Will Kymlicka, “The idea that government could be neutral with respect to ethnic and national groups is patently false.” “In the areas of official languages, political boundaries, and the division of powers, there is no way to avoid supporting this or that societal culture.”⁹ If linguistic neutrality is impossible or incoherent, then supplementing the minimalist conditions with a neutrality condition might not make much of a difference for the requirements of justice with regard to language. Language’s non-instrumental contribution to justice would still be very marginal.

But this argument rests on an inadequate analysis of neutrality. It is not true that a state must choose *between* supporting this or that language. It can support two (or more) languages by offering public services in each of those languages and by giving citizens the right to conduct public business in any of those languages. Of course equal support of this kind does not guarantee equal outcomes for the different languages concerned. But neutrality of outcome (or “neutrality of effects,” as it is sometimes known) is not in any case an attractive demand to make of public policy.¹⁰ The conception of neutrality that is relevant to fair background conditions and procedural justice is neutrality of treatment.

The crucial point is that privatization is just one approach to realizing neutrality of treatment. Public institutions follow the privatization strategy by offering no special benefits to, and imposing no special burdens on, particular goods and activities that people value. An alternative strategy for realizing neutrality would involve positive provision of benefits tailored to particular goods so long as equivalent benefits were also tailored for and extended to rival goods. Following Joseph Carens, this strategy can be termed “evenhandedness.”¹¹ A municipality might practice evenhandedness in its public parks, for example, by providing equipment and facilities for different sports and recreational activities according to the distribution of preferences in the community.¹²

Consider two scenarios. In the first, there is only one language in which all public business is conducted – the majority language. In the second, public business can be conducted in either the majority language or the largest minority

language. Public services and public education are offered in both languages, and measures are adopted to make it possible for people to use either language while participating in public institutions (in the courts, the legislatures, the military, the bureaucracy, etc.).

Intuitively, there is a major difference between these scenarios for minority-speakers. If, in the first scenario, they have trouble satisfying their language-related preferences, it would be hard to justify such an outcome on grounds of procedural justice. Given that public policy is a major determinant of linguistic success, and that public policy shows a preference for the majority over the minority language, it would be hard to tell minority-speakers that the frustration of their preferences is legitimated by the fairness of the background conditions under which the outcome arises. Contrast this with the second scenario. In this situation, the support given to the largest minority language make it less likely that the language-related preferences of that minority will be frustrated. And, if those preferences are frustrated, a procedural justification of such a outcome starts to become more plausible. It can be argued that minority speakers have no legitimate complaint given that they enjoy the same rights and liberties as others, and given that their language enjoys public recognition and support that is comparable to that enjoyed by majority-speakers.

The neutrality model helps to account for these judgments. Whereas in the first scenario, public institutions are clearly siding with the linguistic preferences of the majority, in the second scenario they offer neutral treatment of the two

languages by adopting the evenhandedness strategy. As a consequence, the background conditions are fair and – so long as the minimalist conditions are also satisfied – it is plausible to regard outcomes as just whatever they are.

If the neutrality model is accepted, then the non-instrumental contribution language makes to distributive justice is far from trivial. When people care about their first languages, it is not enough for justice merely to guarantee certain basic liberties and access to a fair share of resources. Justice also requires that public institutions be neutral towards the objects of different personal preferences. In the case of linguistic preferences, the only way to realize this neutrality is by evenhandedly extending public recognition to each of the languages that people want to use publicly. Only when minority language rights are recognized and protected can background conditions be regarded as fair and outcomes considered just whatever they are.

I have been framing this argument in terms of Rawlsian ideas of pure procedural justice and fair background conditions. But it is possible to arrive at the same conclusion via Ronald Dworkin's theory of equality of resources.¹³ Dworkin argues that, in a context where people have diverse preferences over heterogeneous resources, markets are essential for realizing distributive justice. Imagining that a society's resources are allocated through an idealized auction in which each participant starts out with equal purchasing power, Dworkin argues that such a procedure would result in a distribution that satisfies what he calls the envy test: no person would prefer anybody else's bundle of resources to his own.

In such a distribution, each person's share, measured in terms of the opportunity cost it imposes on others, is equal.

In developing the view, Dworkin notes an important underlying assumption. The bundles that are put up for auction must not be arbitrarily defined in ways that suit some preferences and not others. If the auctioneer were to sell off land in lots the size of football fields, for instance, then the envy test would still be satisfied, but the resulting distribution would not be an equal one. An auction "provides a more genuinely equal distribution," Dworkin argues, "when it offers more discriminating choices and is thus more sensitive to the discrete plans and preferences people in fact have." The auction should respect a "principle of abstraction" requiring that resources be put up for sale in the most abstract form possible, such that they are as finely tuned as possible to the various plans and preferences that people might have. If this principle is not satisfied, then there is no guarantee that the auction will bring to light the true opportunity costs for others of letting some particular person control a particular resource.

Dworkin's principle of abstraction is relevant to our discussion because it entails that the state's (the "auctioneer's") choices have to be responsive to the actual preferences of citizens. In typical cases, this means that the state has to avoid imposing preferences held by some but not all citizens onto the operation of the market; it has to give the market the greatest possible space in which to operate. But Dworkin does recognize that, in some situations, letting actual

markets determine outcomes – “privatization” as I termed it earlier – is undesirable. Even here, however, he thinks hypothetical markets can play a heuristic role. In an intriguing exchange with G.A. Cohen about fairness in the acquisition policies of public libraries, Dworkin suggests that the right approach would mimic market justice as far as possible.¹⁴ It would be sensitive to the reading preferences of different patrons, as well as to the costs of acquiring particular books.

Dworkin’s discussion here has important implications for non-instrumental linguistic justice. As we have seen already, language policy is one of those decisions that cannot simply be left up to the market. Obviously, *some* choices about language can and should be left up to individuals to make for themselves, but the auctioneer (the state) must use some language or languages and it would be incoherent to insist that this decision could be put up for auction. This leaves open the possibility of mimicking market justice, however, by shaping language policy in response to the same sorts of factors that would determine outcomes in actual markets. This means making language policy sensitive to the distribution of linguistic preferences in the community, as well as to the costs of accommodating particular languages.

This Dworkinian argument for linguistic evenhandedness illuminates several nuances that were not apparent in the Rawlsian argument. One is that it is natural to think of an evenhanded language policy as involving a certain amount of pro-rating. Small language groups do not, as a matter of non-

instrumental justice, have a claim on as much linguistic support and recognition as large groups. The argument for pro-rating rests on two previously stated assumptions plus a third. The assumptions we have seen already are that each individual should be thought of as having equal purchasing power and that the market outcomes that are to be mimicked in determining the demands of justice with respect to language policy are sensitive to cost. The third assumption needed to make the case for pro-rating is that, when it comes to language support and recognition, there are increasing returns to scale. On a per capita basis, it is less costly for public institutions to support and recognize a widely spoken language than one that is spoken by only a small minority. Pro-rating is compatible with the Rawlsian argument sketched earlier – it is one way of understanding what exactly neutral treatment involves – but its rationale is more fully motivated by introducing Dworkin’s argument together with the assumption of increasing returns.

The second nuance relates to what economists call “market failure.” Dworkin is aware that actual markets sometimes produce sub-optimal outcomes because of externalities. Some goods are underprovided on the market because they require some level of cooperation between a number of people. When somebody whose cooperation is needed does not cooperate this impacts on others in ways that are not captured by market prices. (Dworkin’s example is the disruption by a single property owner of an effort by neighbors to give their immediate neighborhood a uniform architectural style). In cases of this kind,

Dworkin argues for a “principle of correction,” which would impose constraints on particular choices (e.g. by zoning particular neighborhoods) in order to better track the true opportunity costs associated with market allocations.

The principle of correction is potentially relevant to language policy, since linguistic outcomes are often influenced by externalities and collective action problems.¹⁵ Speakers of a minority language may feel a non-instrumental attachment to their language but have instrumental reasons for using the majority language in various important settings. Even if they care more about the non-instrumental reasons, they may find themselves in a collective action problem that makes it rational for them to act on the instrumental reasons. To the extent that everyone reasons this way, the destruction of the minority language may be a real danger. The Dworkinian approach explains why it may be legitimate, in some situations, for the state to take special protective measures on behalf of minority languages that would otherwise be vulnerable in a strictly evenhanded policy regime.

Alternative Accounts

On the neutrality model, language contributes non-instrumentally to justice because it is something that people care about for reasons that do not reduce to an instrumental connection between language and distributive justice. Many people care about their first language, want to have opportunities to use that language, and want to see the language and the community of speakers of the

language survive and flourish into the future. From a non-instrumental perspective, justice requires that public institutions cater to these preferences and attitudes in an evenhanded fashion. The same support and recognition ought to be given to minority languages that is given to the majority language. At the level of policy, the argument supports a fairly robust set of minority language rights. Subject to some limits imposed by numbers and costs, minority speakers can reasonably expect to be served in their own language by public institutions and to be able to use that language when they participate in those institutions.

To some observers, the conclusion of this argument – that there are significant non-instrumental claims of justice at stake with language policy – will seem correct but the argument for it unsatisfactory. One possible reason for dissatisfaction is that the neutrality model may seem to overlook the importance of language for *identity*.¹⁶ The language a person speaks – especially a person's first language – matters to them in ways that are not captured by the more clinical idea of "preference" that was used in developing the neutrality model. When something matters to a person's identity, it makes them psychologically vulnerable. It implicates dignity and the sense that life is worth living, and leaves a person exposed to feelings of shame and humiliation. Identity is also central to a person's practical reasoning. To have an identity focused on X is, in part, for X to figure in one's reasoning about what to value and how to act.

However, it is not obvious that insisting on the identity dimension of language makes much of a difference as far as the neutrality model is concerned.

It is true that, in presenting the neutrality model, I referred to individual *preferences*, but this was an analytic term meant to cover a range of different pro-attitudes (desire, attachment, commitment, etc.) including the complex set of attitudes that one has in mind in attributing a particular identity to somebody. Substituting “identity” for “preference” may end up being little more than a semantic change.

The challenge may be sharpened further, however, by insisting that identity does make a substantive difference by strengthening the protections that are owed to weaker, more vulnerable languages beyond the protections offered by the neutrality model. Objects of identity, on this picture, require *better-than-neutral* treatment. But in other domains where identity is invoked, identity claims do not imply more than the fair treatment promised by neutrality. Consider an applicant to an elite university whose family has attended the university for generations. It might be devastating for this person not to be accepted. The parents might be beside themselves. The university might truly be central to the family’s identity. But it is doubtful that identity considerations should make any difference at all to admissions decisions beyond reinforcing the importance of fair admissions procedures. Or consider someone whose identity is focused on a particular religious community. It is far from clear that special measures – beyond those called for by neutrality – ought to be taken to protect or preserve the community in question. Even if identity is at stake, many people would judge that the state’s responsibility is to establish fair background conditions, and then to

allow religious outcomes to work themselves out through the choices of individuals.

We will return briefly to the theme of identity in the concluding section below. First, I want to consider in more depth a different kind of concern about the neutrality model. The concern is that the neutrality model overlooks the important distinction between a person's choices and her circumstances. By failing to conceptualize a person's linguistic situation as part of her circumstances, the model we have been exploring misses a major reason why support for disadvantaged languages excites the concern of liberal egalitarians. Moreover, the choice-circumstance distinction makes a difference to policy, helping to explain the sense shared by some commentators that mere neutrality is not enough. Neutrality is consistent with smaller, weaker languages being crushed in what appears to be a neutral competition. Once it is allowed that a person's linguistic situation is a matter of her circumstances rather than her choices, justice may mandate protections for vulnerable languages beyond the evenhandedness promised by neutrality.¹⁷

The distinction between a person's choices and her circumstances is a cornerstone of the strand of liberal egalitarian theory that has come to be known as "luck egalitarianism." The distinction is meant to capture the idea that some features of a person's life are subject to her choice, while others are simply given by outside circumstances. In the view of luck egalitarians, disadvantages that can be traced back to conditions that are or were subject to choice do not, as a

matter of justice, ground as strong a claim for assistance or compensation.

Disadvantages that cannot be avoided through appropriate choice, by contrast, should stimulate a full measure of egalitarian concern: they call for prevention, assistance and compensation.

The neutrality model does not rely on luck egalitarian assumptions. But perhaps luck egalitarianism can ground a superior conception of the non-instrumental relation between justice and language? One feature of a person's situation that certainly counts as part of her circumstances is her first language. Whether this or that language is the one that a person first learns and uses as a young child is not something that is ever subject to a person's choice. It is more-or-less entirely a matter of the linguistic capacities and choices of her family and of any other formative institutions to which she is exposed at a young age. Some commentators have suggested that it is this fact – that one's first language is not a matter of choice – that grounds a luck egalitarian analysis of linguistic justice. Nobody chose to be raised a Welsh-speaker and thus it is unfair for Welsh-speakers to have to face various disadvantages that are escaped by English-speakers.

For this argument to go anywhere, it will need to specify the relevant disadvantages more precisely. The mere fact that some feature of a person's life is unchosen is not enough to ground a justice claim. Many given features of a person's life are of no great importance for justice. Whether a man goes bald in his forties, or maintains a full head of hair, is largely determined by his biological

makeup and there may be little he can choose to do to prevent nature from running its course. But since differences with respect to this part of a person's circumstances do not correspond to major disadvantages or inequalities, there is no reason to think that justice is at stake.

The first question then is whether there are disadvantages that can be traced back to the fact that people have different first languages. One reason to think that there might be was encountered in our earlier discussion of the instrumental framework. If a person's first language is also the only language she is able to speak proficiently later in life, and that language is not a medium in which many of the society's economic and social opportunities are available, then she may find herself at a serious disadvantage. It is true that she could have tried to learn new languages as an adult, including the society's dominant language. If she opts not to, then this makes her dominant-language competences a matter of choice not circumstance. But it is hard for adults to learn new languages and it is quite possible that some will not be successful if they try. The language repertoire of people who speak a non-dominant language as their first language, and who are unable to learn the dominant language, should be considered as part of their circumstances. Given the disadvantages to which such a repertoire leaves them exposed, it is plausible to think that they have some kind of claim for assistance or compensation.

Although considerations of justice do seem to arise in this kind of situation, the analysis has not taken us beyond the instrumental framework. As we saw

earlier, it is plausible to assume that access to an adequate (perhaps equal) set of social and economic opportunities is a condition of justice. And once this assumption is made it immediately follows that anyone who cannot speak the dominant language of a society (where there is one) is facing a serious disadvantage. But, as with the instrumental argument considered earlier, this version of the luck egalitarian argument is broadly supportive of a nation-building approach to language policy rather than a minority rights one. If it is true that adults sometimes have trouble mastering a new language, then the most effective response may be to do a better job of teaching the dominant language to all people when they are still children. It is possible that, in some cases, even childhood language training may be ineffective. It is notoriously hard to teach English-speaking children a second language proficiently. But what seems quite unlikely (even if not impossible) is the conjunction of two facts: on the one hand, a language is unable to provide adequate opportunities to its speakers, *and*, on the other, childhood dominant-language education for speakers of this language is likely to be ineffective. At best, there may be a few cases that are exceptions to this generalization, and in these cases some special form of minority language protection may be the best approach.¹⁸

Another version of the luck egalitarian argument locates the disadvantage faced by native speakers of some languages in a different place. It is not so much that they cannot speak the dominant language but that they care about using their own native or first language. It might seem that we have already

explored this possibility. After all, this is where the neutrality model started from as well. But there are a couple of twists that a luck egalitarian can introduce to the argument that pushes it in new directions.

Both twists have to do with responsibility for preferences. Liberals typically assume that individuals should be considered responsible for their preferences: the mere fact that some preference is likely to be relatively unsuccessful does not ground a justice claim. People with unsuccessful preferences might be able to argue that their preferences have been treated non-neutrally. This was the possibility we explored in the previous section. But if their preferences are treated neutrally and yet they are still relatively unsuccessful then they have no further justice-based complaint. This liberal assumption about preferences is itself sometimes given a luck egalitarian justification. People are held responsible for their preferences because they are assumed to have the opportunity, over the course of their lives, to influence what preferences they have.

The first twist offered by luck egalitarians accepts the liberal assumption about preferences (if only for the sake of argument) but argues that it still leaves space for a certain kind of justice claim. Even if individuals are responsible for their preferences, they are not responsible for the fact that particular preferences are difficult or costly (or conversely easy or cheap) to satisfy.¹⁹ Welsh-speakers might be responsible for the attachment they feel to their language, but they are not responsible for the fact that only a tiny fraction of U.K. citizens speak Welsh

and that this makes it difficult and costly for them to enjoy the flourishing of their language.

However, this version of the luck egalitarian argument strikes me as unsuccessful. The same reasons that motivate the view that individuals are responsible for their preferences are also reasons for resisting the roundabout suggestion that individuals have a claim for assistance or compensation whenever their preferences are difficult or costly to satisfy for reasons that are outside of their control. Consider, for instance, a stock example of somebody with expensive tastes, such as Harold, who needs champagne to get the same level of satisfaction that others derive from mass-produced beer. Almost nobody would maintain that Harold is owed compensation or assistance: his is the sort of case that drives liberals to endorse responsibility for preferences. But of course the factors that make his tastes costly to fulfill – the difficulty of producing champagne, the fact that many people around the world desire it, etc. – are completely outside of Harold's control.

As a general matter, if people are rightly considered responsible for their preferences, it is because they have the opportunity, over the course of their lives, to influence what preferences they have. Suppose that Harold did have this opportunity. Then that would count as a reason, not just for holding him responsible for his preferences, but for dismissing his complaint that he is unfairly burdened by the external factors that make his preferences expensive. After all, he could have avoided the burdens in question by developing different

preferences. Likewise, it makes little sense to hold people responsible for their linguistic preferences but then to turn around and say that they are none the less owed compensation or assistance for the externally determined factors that make those preferences difficult or costly to satisfy.

This brings me to the second luck egalitarian twist, which questions whether it is indeed reasonable to hold people responsible for their linguistic preferences. Linguistic attachments may have been developed at a very young age and they may be very strongly held. It may simply not be true that a person had a genuine opportunity over the course of her life to replace her attachment to her language with some other set of attachments.

This is a fundamental question for any account of linguistic justice, indeed for any account of distributive justice. It is hard to say anything very decisive, but there are a couple of skeptical observations about this latest version of the luck egalitarian argument that are worth noting. The first is that, while it is certainly true that people *tend* not to revise their linguistic attachments, it does not follow that they *could* not revise them if they tried. The fact is that most people identify with their attachments, even when those attachments are relatively unsuccessful. They would not revise them even if they could do so costlessly. Being unwilling to do something is not the same, however, as being unable to do it. It is the latter condition that matters for responsibility, not the former. To be sure, people do not normally control their preferences and attitudes directly. But, over the course of their lives, they can influence their preferences by engaging with new options and

forms of life. In a liberal society, where there are a plurality of valuable ways of life, someone who really chafes at having a relatively unsuccessful set of preferences has the freedom to explore alternatives.

The second response is that luck egalitarianism is itself a contestable position. Suppose the previous observation is set aside and it is conceded that individuals are not generally responsible for their linguistic preferences. It would then be natural to suppose that individuals are not responsible for *many* of their preferences. For presumably whatever reasons there are for doubting preference responsibility in the linguistic domain carry over into other domains as well. But then it seems that luck egalitarians will be on the hook for Harold and his expensive tastes (or at least that the case of Harold could be refined so that they are on the hook). This seems a significant embarrassment to the luck egalitarian view, and might lead one to question whether the choice/circumstance distinction can bear all the weight that is being placed on it. As was noted earlier, the neutrality model does not depend on luck egalitarianism and would survive the rejection of that position.

Integrating the Two Frameworks

Thinking about linguistic justice from within the instrumental framework generally, even if not invariably, counsels in favor of nation-building. In nationally divided societies, there may be intense disagreement about which nation it is that should be privileged. Should Catalan be the common public language of Catalonia or

Spanish? But the idea that the state, or a politically autonomous sub-state unit, should seek to promote convergence by all its citizens on a common national language is shared in common by observers who adopt the instrumental approach. By contrast, the non-instrumental framework, as theorized by the neutrality model, favors minority language rights. Such rights are an integral part of a framework that defines fair background conditions under which minority speakers with an attachment to their language can strive to satisfy their preferences. Depending on which approach to linguistic justice is adopted, then, rather different policy recommendations seem to follow. Given this apparent tension, it might be wondered whether and how the two frameworks can be integrated with each other. Can we say anything overall about what justice requires of language policy?

A first point to note is that, in some cases, the tension between the two frameworks is more apparent than real. The state can recognize and protect minority language rights *and* expect that the values associated with nation-building will be respected. In some of these cases, minority language communities are small and can offer only limited economic, social and cultural opportunities to their members. In these cases, the state may be able to offer some set of minority language rights confident that the minority will likely learn the dominant language anyways and use it in many contexts. In other cases, language minorities are rather large and contain a quite adequate set of economic, social and cultural options. In these cases, public recognition of the

minority language does not conflict with nation-building values (e.g. economic opportunity, democratic self-government, etc.) because the minority language community is capacious enough to allow for the realization of those values internally and there is no need for a common national language.

The difficult cases are ones in which there is a genuine tension between the values promoted by nation-building and the values realized by minority rights. By recognizing and protecting minority language rights, the state exacerbates efforts to realize the nation-building values. In our discussion of the instrumental framework, we have seen how this tension might arise.

To grapple with this tension, we need to take a closer look at the value of neutrality, which I have suggested underpins the minority rights perspective. Neutrality is grounded in an idea of fairness: when the state extends fewer benefits to or imposes greater burdens on some object of preference than it does for objects of other preferences, then it denies bearers of that preference a fair opportunity to realize their conception of a good life.²⁰ Once the value of neutrality is fleshed out in this way, however, it becomes apparent that neutrality is best viewed as a presumptive or pro tanto obligation of the state. There are weighty, fairness-based reasons for the state to treat different preferences neutrally, but these reasons can, on occasion, be outweighed by other values.

Neutrality has this presumptive character for at least three different reasons. First, violations of neutrality are not the only way of denying people a fair opportunity to realize their conception of the good. Another way of denying

people this opportunity is by leaving them without access to a fair share of resources with which to pursue their preferences. These different elements of fair opportunity may compete with one another (we have seen how they might in the language case) and may need to be balanced appropriately. Second, fair opportunity to realize one's conception of the good is surely not the only or the supreme value. At the very least, it is important that persons be put in a position where they can reflect critically about whether they have the right conception of the good. And, third, there may be other competing values as well, such as the perfectionist one of having a *valuable* conception of the good.

Once the normative foundation for minority rights is seen to have a presumptive character, the path is open to balancing such rights against the values promoted by the instrumental framework. Because neutrality is based on a dimension of fairness, it is not a trivial concern that would be overridden by just any competing consideration. Minority rights should not be overridden because of moderate costs or because of added administrative burdens, nor are they defeated by citing highly speculative or improbably risks or vague national goals. The fact that identity is at stake for some individuals is also relevant to balancing the two frameworks. Just as the importance for believers of their religious convictions makes state neutrality with respect to religion a weighty concern, something like the same is true of language. Even if linguistic identity is not put on the same level as religious conviction, it is reasonable to suppose that the former shares at least some of the weightiness of the latter.

On the other hand, if the arguments for the instrumental framework are sound, then instrumental considerations are sometimes very weighty too. It is plausible to think that they will be weighty enough in some instances to override neutrality. One implication of integrating the frameworks, for instance, is that the number of different languages in a single state that can be given extensive minority language rights is probably quite limited. States cannot perform their core functions if they devote too high a proportion of their resources and energies to accommodating linguistic differences. A state that is committed to linguistic justice should, on balance, select a small number of languages and reserve its official support and protection for these. Another implication is that minority rights should be scrutinized very closely when there is a risk that they will exacerbate existing socio-economic inequalities by segregating disadvantaged language minorities from the majority population.

These points about balancing are meant to be illustrative rather than exhaustive.²¹ The more general claim is that someone concerned with linguistic justice does have some theoretical resources with which to integrate the instrumental and non-instrumental frameworks we have been considering. These resources become apparent upon thinking about the value of neutrality that informs the non-instrumental framework and then asking how that value relates to other values and concerns that ought to be part of a conception of justice. The upshot is a coherent, if complex, theory of linguistic justice, one that supplies, in the appropriate contexts, an argument for minority language rights.

Endnotes

¹ Kymlicka and Patten 2003 is a collection of essays by political philosophers about the normative issues surrounding language policy and language rights. Other treatments of this topic include: Green 1987; Kymlicka 1989b, 1995, 2001; Réaume 1991, 1994, 2000; Taylor 1992; Carens 2000; Van Parijs 2000, 2011; Patten 2001, 2003, 2009, 2014; De Schutter and Ypi 2012.

² Rawls 1999

³ On “opportunity hoarding,” see Anderson 2010.

⁴ Miller 1995, Van Parijs 2000, 2011, Kymlicka 2001.

⁵ Rawls 1999, 2005

⁶ Rawls 2005

⁷ I develop an account of neutrality in Patten 2012 and 2014, chapter 4.

⁸ Kymlicka 1995, Carens 2000, Patten 2001.

⁹ Kymlicka 1995

¹⁰ Kymlicka 1989a, Arneson 2003, Patten 2012, 2014.

¹¹ Carens 2000.

¹² This “evenhandedness” variant of neutral treatment remains distinct from neutrality of effects. Neutrality of treatment is achieved by equalizing the public resources (the “treatment”) extended to each activity for which there is citizen demand. Neutrality of effects, by contrast, seeks to equalize along the dimension of outcome, i.e. the success of the activities in question. Since some activities are relatively expensive and some forms of success have hard-to-satisfy pre-conditions (e.g. large numbers of participants), neutrality of treatment and neutrality of effects are not equivalent. The state could equalize treatment and still one would not expect equal levels of success. For elaboration, see Patten 2012, 2014.

¹³ Dworkin 2000

¹⁴ Dworkin 2004

¹⁵ Laitin 1993; Van Parijs 2011; Patten 2015

¹⁶ May 2001

¹⁷ Kymlicka 1989b; De Schutter and Ypi 2012

¹⁸ For discussion of these special cases, see Patten 2014, ch. 6.

¹⁹ Kymlicka 1989b; Cohen 1989, 2004; De Schutter and Ypi 2012.

²⁰ Again see Patten 2012 and 2014, ch. 4.

²¹ One question that arises here is whether there is any general reason to prioritize the language claims of national groups over those of immigrants. For a cautious and qualified affirmative answer to this question, see Patten 2014, chapter 8. See also Kymlicka 1995.