

## **Protecting Vulnerable Languages: The Public Good Argument**

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### **1. The Public Good Argument**

According to one estimate, a language dies out every 14 days.<sup>1</sup> Even languages that are not on the brink of extinction often face marginalization. They are used less and less frequently in high status contexts and are instead pushed into informal and private realms of communication. Faced with these tendencies, many speakers of vulnerable languages favor state policies designed to protect and preserve their languages. My topic is an important but understudied argument in favor of such policies.

The argument I have in mind is advanced by people who observe that the speakers of a language can face a collective action problem. They would prefer a situation in which their language is preserved at the cost of some constraints on their individual choices over a situation in which their choices are left unconstrained but the language is not preserved because of free-riding or failures of coordination. The argument is that, where language preservation problems have this structure, it is permissible for the state to impose the constraints that are needed to preserve the language. Since this argument treats languages as

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<sup>1</sup> Russ Rymer, "Vanishing Languages," *National Geographic*, July 2012.

public goods in something like the economist's sense, I shall call it the "public good argument" for language preservation.

The public good argument is hardly the only argument to be advanced on behalf of preservationist policies. Some advocates of such policies stress the importance of language to "identity," and ask "After all, if we're concerned with identity, then what is more legitimate than one's aspiration that it never be lost?"<sup>2</sup> Others emphasize the connection between language and culture, arguing that individuals depend on a healthy culture for their access to an adequate range of life options.<sup>3</sup> Yet another form of preservationism regards languages as intrinsically valuable. Rather like works of art, they are products of human creativity and ingenuity, and they ought not to be destroyed or undermined without a sufficiently good reason.<sup>4</sup>

In my view, each of these other arguments contributes an important perspective to normative debates about language policy. The connections between language, on the one hand, and identity, culture, and intrinsic value, on the other, point to plausible reasons why people might care about the health and prosperity of their language and/or their particular language community. Except in special circumstances, however, the fair way for public institutions to respond to these reasons is by offering equal treatment or status to the various languages

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<sup>2</sup> Charles Taylor, "The Politics of Recognition," in Amy Gutmann ed. *Multiculturalism and the Politics of Recognition* (Princeton, 2004) p. 40.

<sup>3</sup> Will Kymlicka, *Liberalism, Community and Culture*, (Oxford, 1989) and *Multicultural Citizenship* (Oxford, 1995).

<sup>4</sup> David Crystal, *Language Death* (Cambridge, 2000).

spoken by the citizens living under those institutions. Rather than elevating some particular language to a dominant official status, public institutions should respond in a proportionate manner to demand for services (e.g. schooling) in a particular linguistic medium.<sup>5</sup>

Although this regime of equal treatment will sometimes be of great value to speakers of vulnerable languages (who might otherwise find their language excluded from public institutions altogether), it may be insufficient to preserve some particular language in the long run. The equal treatment by public institutions of the several languages spoken in the community does not guarantee that those languages will be equally successful or even that they will all survive. The inegalitarian pressures of the economy, of global culture, of demographics, and of other determinants of language use, may swamp the preservationist tendencies fostered by equal treatment by public institutions.

This possibility leads some observers to conclude that equal treatment is too formal an approach to language policy. Equal treatment entails giving the same public rights, benefits, and resources to all even when it is predictable that some will race ahead and others lag behind. By treating all languages the same, very unequal outcomes result. For those who find this possibility objectionable, it is tempting to emphasize once again the importance of language for identity, culture, and intrinsic value. But, if my earlier comments were on the mark, this simply leads back to a regime of equal treatment. On plausible assumptions, the

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<sup>5</sup> Alan Patten, *Equal Recognition: The Moral Foundations of Minority Rights* (Princeton, 2014).

claims relating to identity, culture, and value are fairly accommodated by equal treatment itself. There is no further right to a *successful* culture, identity or realization of intrinsic value that would justify unequal treatment. Evidence for this comes from a comparison of language and religion. Many regard religion as an object of identity, a matter of culture, and a source of intrinsic value. But few would infer that there is a right to a successful religion; at most, these considerations bolster the argument for the equal treatment of religions.

The public good argument is worth considering because it suggests a way of defending further protections for a vulnerable language beyond those that are enjoyed as a result of equal treatment. The public good argument points to one significant difference between the situations of dominant and vulnerable language speakers, which is that the latter but not the former face a collective action problem. It is this difference, so the argument goes, that gives the state additional license to intervene in particular ways on behalf of a vulnerable language, even if this means some departures from equality of treatment. The public good argument also highlights a difference between religion and language. As Jean Laponce once put it, “I don’t have to pray with my neighbor, but I do have to talk with him.”<sup>6</sup> Because language involves a level of social coordination that is not generally necessary for religion, it is more vulnerable to collective action problems than religion.

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<sup>6</sup> Jean Laponce, *Langue et territoire* (Laval, 1987), p. 143.

Historically, something like the public good argument was an important part of the logic behind Quebec's language legislation. We shall look at this example in the next section. In recent years, the argument has received renewed attention from several prominent political scientists and philosophers. David Laitin argues that language communities and policies should be considered as consumption goods.<sup>7</sup> Groups may try to mobilize to get the state to provide this or that good, and beyond some bedrock liberal principles, the test of legitimacy is simply success in the democratic process. According to Laitin, "communities should be free to provide the public goods its taxpayers demand just so long as fundamental liberal principles are not violated".<sup>8</sup>

A key argument of the 2011 book on linguistic justice by Philippe Van Parijs can also be understood as a version of the public good argument. Following the approach developed by Laponce, Van Parijs argues that, because language is a tool for communication, its use always involves a form of coordination between people. When a multilingual person attempts to communicate with some other person or group, she must think, not just about her own preferences for language use, but, crucially, also about the language competences of her intended audience. She must look, in other words, for a *lingua franca*: a language that *both* she *and* the members of her intended

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<sup>7</sup> David Laitin, *Nations, States and Violence* (Oxford, 2007) 115-28.

<sup>8</sup> Ibid. p. 117. See also Yael Tamir, *Liberal Nationalism*, (Princeton, 1993), p. 54; and David Miller, *On Nationality*.

audience can speak.<sup>9</sup> This need to coordinate on a lingua franca can lead to collective action problems in which speakers of a vulnerable language find it personally convenient and advantageous to learn and use the more dominant language, even though if they could only coordinate their resistance to the dominant language the incentives would be reversed. dominant-language speakers would find it advantageous to learn the vulnerable language, and the vulnerable language would serve as the lingua franca.

Van Parijs finds a linguistic rights regime based on equal treatment to be objectionable when it applies to a situation in which the speakers of one language are plagued by these collective action problems and the speakers of the other are not. The equal treatment approach leaves too much to be determined by the disaggregated, uncoordinated decisions of individuals. It is all too predictable that vulnerable languages will fare poorly in this environment, and that speakers of those languages may collectively produce an outcome that they disprefer to the outcome that would ensue if all (or at least most) of them stuck in the critical situations to the use and transmission of their own language. There is a role to be played by the state, on this argument, in raising the status of the vulnerable language to the point where it becomes the preferred lingua franca.<sup>10</sup>

My aim in this paper is to explore some of the contours of the public good argument. Although I maintain that the equal treatment model ought to be accorded a central place in an account of linguistic justice, I do think there is

<sup>9</sup> Philippe Van Parijs, *Linguistic Justice in Europe and the World* (Oxford, 2011).

<sup>10</sup> *Ibid.*, ch. 5.

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something to the public good argument and that such an argument can justify some genuine departures from equal treatment that are designed to better protect vulnerable languages. I shall argue against a more skeptical account of the public good argument, which suggests that the argument would hardly ever justify special government protections for vulnerable languages. At the same time, I doubt that the public good argument justifies a *significant* departure from the equal treatment model. Where background conditions are just, there are important limits on the reach of the public good argument. The account to be developed below helps to identify and justify these limits.

## ***2. Language Community as a Public Good***

Let me start with some examples to motivate the public-good lens that is being adopted here. In Montreal, in the 1960s, immigrants were given a choice over the linguistic medium in which their children were educated in the public schools system. There were public schools operating in both French and English, and parents could choose between them. For a variety of reasons, there was a pronounced tendency for immigrants to select an English-language option. Although Francophones represented a majority of more than 60% of Montreal's population in the 1960s, around 90% of Allophone children (children whose parents were neither native French- nor native English-speakers) were enrolled in English-language schools.<sup>11</sup> As the birthrate amongst Francophone Quebecers

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<sup>11</sup> Marc Levine, *Reconquest of Montreal* (Temple, 1990) p. 56. See also p. 101.

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was also falling at this time, immigrant school choices contributed to a serious anxiety that it was only a matter of time before French-speakers were relegated to minority status in Montreal. With this anxiety in the background, there were renewed efforts to make French-language schools more open and accommodating to new immigrants. And legislation passed in the 1970s (Bills 22 and 101) included measures that compelled Allophone children (with limited exceptions) to attend public school in French.

At the same time, another deeper source of anxiety concerned the school choices of Francophone parents. In the 1960s, a choice between French- and English-language public schools was given not just to immigrants and English-speakers, but to all Quebecers, including French-speakers. French-speaking parents could decide to educate their children in English schools if they so preferred. And while this was not an option that a great many ever took (in Montreal about 3% of Francophone children attended English-language schools in the 1960s and early 70s)<sup>12</sup> there was some reason to fear that an increasing number of Francophone parents would avail themselves of this opportunity. Traditionally, proficiency in English was not an essential requirement for employment in sectors where Francophone Quebecers tended to work. But with the economic and social changes of the 50s and 60s, Francophones increasingly sought out positions in white-collar positions in which English was an asset. These social and economic changes created an incentive for Francophone

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<sup>12</sup> Ibid.

parents to try to give their children an extra boost by sending them to English-language schools. The more that parents responded to this incentive the more that French would have been pushed into the margins of life in Montreal.

On plausible assumptions about the preferences of Francophones, the situation they were beginning to face had the structure of a prisoner's dilemma (PD). Suppose to begin with that Francophone parents in this situation have two relevant goals. First, they care about the fate of their own linguistic community. They want to see it survive and flourish, in part because they want to have the opportunity for themselves and for their children to use and enjoy the language in a wide range of contexts. Second, they care about the particular social and economic advantages of their own children. They want their children to be upwardly mobile, and they recognize that proficiency in English is an important asset for this purpose. (They have a third goal too, which is that *their* children learn French to facilitate intra-family communication in French. But they expect this goal to be realized adequately within the family and thus it is not relevant to schooling choices.)

The PD structure arises when parents have the following preference ordering:

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2. The French language community survives and flourishes; they educate their children in French (with English taught as a subject).

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3. The French language community does not survive and flourish; they educate their children in English.

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4. The French language community does not survive and flourish; they educate their children in French (with English taught as a subject).

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If parents are at liberty to make their own choices about the language of education, then a PD follows from these preferences. Parents will assume that whichever choice they make will have no perceptible impact on the survival or flourishing of their linguistic community. Given that assumption, it is rational for them to choose the option that advances their other relevant goal, namely, conferring social and economic advantages on their own children. But once enough of them reason in this way, the cumulative effect is to jeopardize the survival and flourishing of the linguistic community.

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Here is a second example of the phenomenon, adapted from the Van Parijs argument described earlier. Dutch-speakers in 1950s Belgium are attempting to communicate in an interpersonal setting with both Dutch-speakers and French-speakers. French-speakers have some level of proficiency in Dutch, and Dutch-speakers have some proficiency in French, but the second-language proficiency of Dutch-speakers is generally superior. Dutch-speakers in this

context have two relevant goals: the survival and flourishing of their language, and effectively communicating with others.

Suppose that the preferences of individual Dutch-speakers are as follows:

1. Their language community survives and flourishes; and they use French in mixed interpersonal settings with Dutch- and French-speakers.
2. Their language community survives and flourishes; and they use Dutch in mixed settings.
3. Their language community does not survive and flourish; and they use French in mixed settings.
4. Their language community does not survive and flourish; and they use Dutch in mixed settings.

Again the preference ordering gives rise to a PD. Each will reason that their personal choice of language in a given communicative interaction will have no perceptible impact on the security of Dutch. So they will focus on their goal of effective communication, which, given the weaker second-language proficiency of French speakers, implies opting for French. But to the extent that this pattern is repeated over and over again, it will ultimately jeopardize the security of Dutch. Dutch-speakers will have incentives to perfect their French further, while French-speakers will have no corresponding incentive to learn Dutch.

One complication is that Dutch-speakers might adopt a more dynamic perspective in their reasoning about language use. They might expect that if enough of them insist on using Dutch in mixed settings then local French-speakers will have an incentive to improve their level of proficiency in Dutch. If that were to occur, then their first and second preferences would be reversed, and the structure of the game would now be that of an assurance problem. If Dutch-speakers can be assured that enough from their ranks will insist on the use of Dutch, then there would (eventually) be no trade-off between the personal use of Dutch in a mixed setting and the security of the language. The problem, however, is that, in the absence of such assurance, French remains the preferred choice for personal communication.

It would be possible to construct many similar cases where language choices have [these familiar, PD- and Assurance-game structures](#). What these cases share in common is that the survival and flourishing of the (local) community of speakers of the vulnerable language is assumed to be a public good. To be sure, the goods associated with a particular language and language community are fully available only to those individuals who are proficient in the language. They are goods derived from participating in the language community, which implies at least some minimal level of comprehension and conversational ability. In addition, some of the goods associated with a language community -- e.g. much of its arts and entertainment -- are accessible only to people who can afford to pay for the relevant cultural goods. In this sense, the benefits of a

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distinctive language community are not available to everyone; some people are excluded.

In spite of these considerations, we can say that a language community is a public good for its members because it is characterized by what economists term “non-excludability”: if it is available for the enjoyment of anyone in the group who satisfies conditions like those mentioned above, then it would be unfeasible or unacceptably costly to exclude others in the group from enjoying the good, even if those others have not made contributions to the cost of supplying the good. For the purposes of the analysis here, the public-good status of language communities is not meant as a conceptual or logical claim, but as one that is empirical and normative in character and that is, to some extent, a matter of degree. The degree to which a good such as a language community ought to be considered public depends on the feasibility of restricting non-contributors from access to the good and on the moral character of any proposed mechanisms for restricting access (e.g. shunning or shaming non-contributors)<sup>13</sup>.

A standard and well-known problem with many public goods is that they are underprovided, or not provided at all, by decentralized decision-making processes such as the market. This problem arises most acutely when a good is produced under conditions that exhibit three features. First, the good is produced (and maintained) by the contributions of many people. The good is not naturally occurring, nor is it feasibly provided by a single person or a small number of

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<sup>13</sup> For some remarks about shunning, see Van Parijs, *Linguistic Justice*.

people. Second, the relevant contributions are costly to those who make them. And, third, a contribution by each and every person who will enjoy the good is not strictly necessary for the good to be provided. So long as *enough* people make costly contributions, the provision of the good will be secured. Public goods with these features are under-provided when and because individuals notice that their particular contributions are costly but unlikely to make a difference to the provision of the good. ▾

Vulnerable language communities fit the profile of public goods that are particularly vulnerable to under-provision. ▾ For a language community to survive and flourish, many different people need to use the language in a wide range of different contexts of communication (first condition). Although many uses of the language will be costless – two speakers of a language using their shared language to communicate together – some of them may come with a cost (second condition). As we have seen, using the language in the schooling of one's children, or in a business context, may mean forgoing an advantage that would be derived from the use of a more dominant language. And, while it is necessary for the survival and flourishing of a language that many people contribute, it is not necessary that everyone contribute (third condition). Some number of people could be passive consumers of the language who do not undertake costly efforts to support the language, and still the language community might survive and flourish as long as enough other speakers were contributing. ▾ To the extent that contributing is costly, and that individuals judge that their

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particular contribution is unlikely to be pivotal, the language community will be under-supported in a regime where contributions are discretionary. Over time, with all else being equal, one would expect the language to be spoken by a dwindling number of people, and for it to occupy an increasingly marginal position in the society's patterns of communication.

Notice that this analysis need not overlook the importance of language for identity. The logic of the argument has nothing to do with how or how much speakers of a vulnerable language value their language. Even speakers for whom the language is a core part of identity might be tempted to use a different more dominant language in key settings *if* doing so seems advantageous to them *and* they do not expect their personal decisions to be consequential for the security of their language.<sup>14</sup>

To be sure, there are serious questions about how far this analysis, or anything like it, approximates the actual condition of real world language communities. As I noted above, in the 1960s when there was choice with respect to language of instruction only a small minority of Francophone families in Montreal opted for English. Arguably, this outcome is consistent with the analysis just proposed, since the advantages of English may not yet have been salient for many people, and so the costs of sticking to French were relatively negligible. But it does

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<sup>14</sup> Admittedly, linguistic identity could be defined so that possessing such an identity means being committed to using the language even when it is personally advantageous to use another and even when it makes no perceptible difference to the health of the language or language community. Short of this stipulation, however, the argument sketched in the text is compatible with a range of different kinds and levels of attachment to one's first language.

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raise the question of whether the public good analysis is more illuminating in theory than in practice. I won't try to pursue this empirical issue here, but instead will content myself with the thought that, *if* the public good analysis is applicable in actual cases, then an important normative question needs to be considered.

The normative question is this. Does the fact that, in some situation, a language can be considered an under-provided public good justify state intervention on behalf of that language? An "intervention" in this context means a state protection for a vulnerable language that goes beyond a baseline of equal treatment and freedom of linguistic choice. As we have seen, some commentators argue that intervention in this sense is justifiable. Laitin suggests it would be justifiable if democratically approved by a majority, so long as the intervention would not violate any basic liberal rights or freedoms. Van Parijs maintains that the collective action problems facing vulnerable language-speakers support the adoption of the territoriality principle. This principle, which was adopted in 1960s Belgium, establishes a territory within the state in which the vulnerable language is in the majority and is designated as the sole public language for official and business purposes.<sup>15</sup>

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<sup>15</sup> The regime favored by Van Parijs thus rejects equal treatment within linguistic territories. But since each language is to get its own territory, there is a sense in which equal treatment is realized at a higher level in his model. Insofar as some speakers are caught on the "wrong" side of the linguistic frontiers, however, these individuals do not enjoy equal treatment of their language by the public institutions under which they live. So in general I count the territoriality principle as a departure from the baseline of equal treatment, and thus as something that needs a special justification such as the public good argument considered in the present article.

Suppose that the stipulated preferences in the education example are universally shared amongst Francophones. With this special assumption granted, many observers would agree that the case for state intervention in the marketplace of decisions about language is very strong. A prohibition on education in English would make *everybody* better off, raising them from their third most preferred outcome to their second most preferred. It is true that there might be technical difficulties in determining who is to be considered a Francophone for the purposes of such an intervention. In addition, the idea of distinguishing Francophones from non-Francophones and applying different rules to each might be considered invidious, divisive, or in some way unfair. I shall return to these concerns later [on](#). But setting them aside for the moment, the case for state intervention seems very compelling.

This analysis is obviously driven by the extreme assumption that all of the people who would be directly impacted by a prohibition – Francophone parents – have the same preference orderings with respect to language and education. It thus abstracts from the most difficult and controversial feature of policies to protect a vulnerable language: the fact that they typically impose costs and burdens on [people](#) who do not share the strong commitment to preserving and promoting the language that inspires those policies. If it is allowed that some Francophone parents may be strongly committed to giving their children an English-language education and/or relatively indifferent to the fate of the French language community, then the argument I've just sketched is no longer available.

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For these parents, preferences 2 and 3 are swapped, and so it is not the case that intervention leaves them better off by their own lights.

This sort of problem is even more apparent in the example of communication in a multilingual setting. In this case it cannot be presumed that all who would be directly affected by a state intervention would share the same preference orderings. The structure of the problem guarantees that there will be winners and losers. There needs to be a common standard for all (a lingua franca) but different participants have diverging preferences about what that standard should be. The collective action problem arises for speakers of the weaker language, who are trying to more effectively *compete with* the stronger language. Thus, even if Dutch-speakers are assumed to have identical preferences, a policy to promote Dutch as the lingua franca in multilingual settings would have an impact on French-speakers, whose preferences will predictably not be the same.

What we need, then, is some kind of framework for thinking about the legitimacy of state interventions to provide public goods in circumstances where people in the community have different preferences relating to those goods. Much of the rest of this paper will be devoted to developing such a framework and applying it to the problem of vulnerable language protections. The framework I shall describe consists of two central principles – the *unanimity principle* and the *principle of correction*. These two principles pull in opposite directions, but are based on a common value – the idea that each person should enjoy a fair

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opportunity for self-determination. I shall argue that, overall, the best way of promoting this value is by seeking a compromise between the two principles, a compromise that allows for some departure from unanimity in the provision of public goods. Applying this framework, we shall see that the public good argument does sometimes (but only sometimes) justify state interventions to protect vulnerable languages.

### **3. The Unanimity Principle**

The argument for the unanimity principle presupposes a distinction between two different categories of public goods, which I shall call “essential” and “discretionary” public goods. Essential public goods are public goods the support or provision of which by the state can be given a reasonable public justification that is independent of the fact that they happen to be valued by some citizens.

For instance, education is a public good (insofar as we all benefit from a better educated population), and state policies to ensure that all children receive an education (e.g. through public schools) can be justified on grounds such as personal autonomy, equality of opportunity, democratic citizenship, and economic prosperity. Street lighting is a public good that helps to create a safe environment in which people can move around after dark. And so on. If someone says that they do not value or care about public goods of these kinds, there exists a public justification that can be offered to explain why that person should still be expected to contribute to the provision of that good (e.g. by paying taxes). One

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can debate whether this or that public good ought to be considered essential, and also whether the category of essential public goods is a small one (as libertarians and classical liberals maintain) or a substantial one (as many liberal egalitarians believe). The important point for our discussion is that essential public goods not be conflated with discretionary ones. The unanimity principle, as we shall see, applies only to discretionary public goods.

Discretionary public goods are public goods that are not essential but that are valued by a significant number of people. As public goods, these goods are vulnerable to under-provision (for the reasons explored earlier) and so people turn to the state for support or provision. Since state intervention on behalf of discretionary public goods cannot be supported by a reasonable public justification of the kind described above (this is what makes them discretionary) all that can be said in favor of intervention is that people value them and they would be underprovided in the absence of intervention.

The unanimity principle was first formulated by the Swedish economist Knut Wicksell and then defended by John Rawls in *A Theory of Justice*.<sup>16</sup> According to the principle, it is legitimate for the state to support or provide discretionary public goods if and only if taxpayers agree to pay the taxes needed to cover the costs of state action “if not unanimously, then approximately so.”<sup>17</sup>

<sup>16</sup> Knut Wicksell, “A New Principle of Just Taxation,” translation by James M. Buchanan, Richard A. Musgrave and Alan T. Peacock (eds.) *Classics in the Theory of Public Finance* (New York, St. Martin’s Press, 1958) 72-118. John Rawls, *A Theory of Justice: Revised Edition* (Harvard, 1999) 246-50.

<sup>17</sup> Rawls, *A Theory of Justice*, p. 250.

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Rawls's argument for the unanimity principle is very simple. He begins with the assumption that a just distribution of income and wealth has been established in some society. If there wasn't justice in this sense, and state provision of the public good was relevant to achieving it, then presumably there would be a reasonable public justification for state intervention, and the good would not be discretionary. Rawls then asks whether further public expenditures on public goods would be legitimate beyond the expenditures that are needed to establish and maintain the just distribution

In response, Rawls claims that, in the context of a just distribution of wealth and income, it would be illegitimate for the state to tax away some of one person's resources simply in order to subsidize another person's discretionary expenditures. It follows from this claim, and the assumption that the distribution of resources is actually just, that the question of the legitimacy of public expenditure on discretionary public goods can be reduced to a question of efficiency. Taking into account the means of financing some specific public expenditure proposal, would everyone be better off, or at least not worse off, than they would be without such an expenditure? To allow non-efficient expenditures on public goods (i.e. tax/expenditure proposals which leave at least one person worse off) would, in effect, be to violate the requirement that one person's justly held share of resources not be taxed away simply in order to subsidize the expenditures of others. As Rawls puts it, "there is no more justification for using the state

apparatus to compel some citizens to pay for unwanted benefits than there is to force them to reimburse others for their private expenses.”<sup>18</sup>

The underlying idea is that each individual should have a fair opportunity to pursue and fulfill the ambitions that she in fact has – a fair opportunity for self-determination.<sup>19</sup> Part of what it means to have such a fair opportunity is to have a fair share of resources at one’s disposal. When the baseline distribution is just, and the state taxes somebody in order to subsidize the expenses of another, then the taxpayer is left without a fair opportunity to pursue her own ambitions. This is as much true for taxes to support unwanted discretionary public goods as it is for taxes to subsidize private expenditures by others on discretionary private goods.

Reducing the problem of expenditure on discretionary public goods to a problem of achieving an efficient allocation of resources suggests that the unanimity principle is the correct principle to regulate the state provision of such goods. If the means of covering the cost of some proposed expenditure on a discretionary public good cannot be agreed upon unanimously (or “approximately so”), then this must be because some people are declaring that the tax/expenditure proposal would leave them worse off than they were before.

It might appear that the application of the unanimity principle would rule out any kind of state intervention on behalf of a public good that is not independently required by justice when not everyone in the community regards

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<sup>18</sup> Ibid.

<sup>19</sup> [For discussion of this idea, see Patten, \*Equal Recognition\*, ch. 4.](#)

the public good as worth paying for. I shall argue that the unanimity principle is too restrictive in certain cases, but it is worth noting that this last suggestion makes it out to be more restrictive than it actually is. The suggestion presupposes that any costs and burdens that are entailed by state intervention to provide some good must be *uniformly* imposed on all members of the community. But nothing in the unanimity principle entails this assumption and, indeed, both Rawls and Wicksell seem to have imagined that the most broadly acceptable tax/expenditure proposals would operate according to a benefit criterion whereby those who benefit more shoulder a greater share of the costs and burdens.<sup>20</sup>

Applying this framework to the protection of vulnerable languages, an initial question is whether language preservation should be considered an essential or a discretionary public good. As noted at the outset, my assumption is that justice mandates equal treatment of languages but does not support a stronger right or claim to language preservation. If there is a reasonable public justification for additional support for vulnerable languages, it is not directly based on justice.

David Miller has suggested that there might be an identity justification that is indirectly based on justice. According to Miller, there are certain identity goods, including language, architecture, and patterns of landscape, that help to constitute a community. If someone insists that she does not personally benefit

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<sup>20</sup> Rawls, *Theory of Justice*, p. 250; Wicksell, "A New Principle," p. 104. This point is also made by David Miller, "Justice, democracy, and public goods," in K. Dowding, R. Goodin, and C. Pateman (eds), *Justice and Democracy: Essays for Brian Barry* (Cambridge, 2004) pp. 131-32.

from or value these features of her community, Miller thinks she should be reminded that “she benefits from belonging to a political community that is constituted in part by the values in question.”<sup>21</sup> If the goods were to diminish or disappear, “the community could not exist in its present form.”<sup>22</sup> The disappearance of the identity goods, Miller adds, might reduce the willingness of these people to support and uphold institutions that realize justice.

But this kind of reason for treating language as an essential public good is not very compelling.<sup>23</sup> If the point of describing language as an identity good is to highlight the great importance that language preservation can have for speakers of the language, then this consideration is already built into assumption that justice requires equal treatment of languages. There isn’t a further public justification for state intervention based on identity in this sense. (Again compare the reasons the state has to intervene in order to preserve struggling religions). Miller’s suggestion that support for justice-realizing institutions could be eroded by language loss is problematic for different reasons. Presumably it is wrong for people to condition their willingness to support justice-realizing institutions on getting their way in language policy. (Imagine a variation on Miller’s scenario in which speakers of the dominant language demand that even less be done for vulnerable languages). There might occasionally be a pragmatic reason to give

<sup>21</sup> Miller, “Justice, Democracy, and Public Goods,” p. 138.

<sup>22</sup> Miller, “Justice, Democracy, and Public Goods,” p. 138.

<sup>23</sup> For further discussion of Miller’s view, see Alan Patten, “Public Good Fairness,” in Daniel Butt, Sarah Fine, and Zofia Stemplowska (eds.) *Political Philosophy Here and Now: Essays in Honour of David Miller* (Oxford University Press, forthcoming).

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into unreasonable demands to avoid a greater evil. But there isn't a general justification of language protection policies that emerges from this kind of argument.

If language protection is indeed a discretionary public good, and the argument sketched by Rawls is sound, then any policies designed to protect a vulnerable language would have to satisfy the unanimity principle. This does not mean that everyone would have to share identical preferences regarding language. We are exploring what happens when this extreme assumption is relaxed. Rather, it means that the policies would have to be devised so that nobody ends up bearing a cost for whom there isn't an offsetting or greater benefit. The costs and burdens of such policies must be borne by people whose preferences are such that, all things considered, they are happy taking on those costs and burdens in exchange for the level of linguistic protection that is provided in return. So, for instance, in our education example, the prohibition might be applied only to those families that have the pro-preservation preferences imagined in the example. For them, but presumably not for families with different preferences, the loss of liberty is worth it.

Obviously, this is a very limited basis on which to rest a case for state protection of vulnerable languages. As we have seen, what makes such policies controversial in the first place is the prospect of costs and burdens being imposed on members of the community who do not share the relevant preferences for the protection of the language. The unanimity principle agrees

that this prospect would make such policies objectionable, in effect limiting the set of permissible state interventions to cases where no cost or burden is imposed on people without pro-protection preferences. If the unanimity principle is the only relevant principle in this area, then it follows that state intervention to solve the collective action problem facing Dutch-speakers in our example involving communication amongst multilinguals would not be permitted, since this would impose costs on Francophones who are assumed to lack the relevant preferences. It would also follow that a general French-language education requirement in the education case would be impermissible, since we are assuming that some Francophone families lack the relevant preferences. The unanimity principle would permit a French-language education requirement that exempted families who declared themselves to have divergent preferences. Since this is not much of a “requirement” it is clear that the unanimity principle permits only a modest departure from the equal-treatment view of linguistic justice.

#### ***4. The Principle of Correction***

I noted at the outset that the equal treatment model of linguistic justice was consistent with significant disparities in the security of the dominant and the vulnerable language communities. Since the unanimity principle offers at best a weak instrument for further protection of the vulnerable language, it may do little to reduce the possibility of these disparities. But the disparities will likely lead

members of the vulnerable community to suggest that there is something unfair about the way they are being treated. We saw in the previous section that the unanimity principle is based on the idea of fair opportunity for self-determination. If background conditions are otherwise just, people shouldn't be forced to contribute to the provision of discretionary public goods that others value but they do not. To force people in this way would leave them with less liberty, or fewer resources, with which to pursue their own ends. But perhaps members of the vulnerable linguistic community can claim that the unanimity principle (in conjunction with equal treatment) would deny *them* fair opportunity for self-determination. It is unfair that dominant language speakers enjoy language security for free, while vulnerable speakers have to pay a stiff cost for it or find it unrealizable at any cost.

In response to this charge of unfairness it might be argued that the mere fact that one person's (or group's) preferences are more costly to satisfy than another's does not imply that anyone is denied a fair opportunity for self-determination. People with a fondness for beachfront living will generally find that their preferences are much more costly than those of people who prefer living in remote inland locations. There is nothing unfair about this difference. The higher price for beachfront properties reflects the opportunity cost that others face when somebody ends up the owner of such a property. If others are expected to go without something that they really want, then it is right that the person who does get that thing should have to pay a price for it that reflects the level of frustration

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of the preferences of others. That way the others at least don't have to compete with as much of the owner's purchasing power when they turn their attention to alternative ways of realizing their preferences.

As Ronald Dworkin argues, this opportunity-cost account of fair prices suggests a special connection between fairness and market prices.<sup>24</sup> In general, market prices are a gage of opportunity costs: the more that people would be forgoing in not getting to be the owner of some resource, the more they will bid up the market price. When each person has a fair share of purchasing power, then the allocation of resources through the market leaves each person with a fair opportunity for self-determination, even when some people find that the market prices facing their preferred way of life are much higher than the prices facing others with different preferences.

While this response is effective against some versions of the complaint that vulnerable language speakers are treated unfairly by equal treatment, it fails against a version of the complaint that stresses the public good character of language protection. The reason is that the opportunity-cost justification of market prices breaks down for public goods. For private goods, market prices do track opportunity costs. But this relationship between market prices and opportunity costs disappears for public goods that are subject to free-riding and/or assurance problems.

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<sup>24</sup> Ronald Dworkin, *Sovereign Virtue* (Harvard, 2000).

Depending on the context, the “price” of a public good could be interpreted in several different ways. In some contexts, it could mean the “tax-price,” that is the tax that citizens would be charged to enjoy another unit of provision of the good. If the unanimity principle is adhered to, then such a tax would have to be voluntary: people who declare that they do not value the public good enough to pay the tax should not be charged. But then the “price” would be driven up, not just by the fact that some citizens genuinely don’t value the public good in question, but also by the fact that some citizens engage in free-riding or are driven to misstate their true preferences because of a lack of assurance. As a result, from the fact that the tax-price of a public good is high, it cannot be inferred that people who claim not to value the public good would be forgoing a lot if it were to be provided. They might actually benefit from the provision of the good. That is, there might be people who don’t declare that they benefit, either because they are free-riders or because they lack assurance concerning what other potential contributors will do. They judge that they would be net beneficiaries of a scheme under which the public good is provided at a particular level and they contribute their fair share, but they decide not to contribute (by declaring that they would not benefit) because they think their own contribution would be inconsequential given the contributions made by others (free-rider problem) or because of doubts about whether enough others would contribute (assurance problem).

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In the absence of a voluntary tax scheme, the “price” of a public good could be interpreted differently. It could be understood as the amount of the side-payments that individuals would have to pay to other individuals in order to secure provision of an additional unit of the public good. Suppose that, in the education case, if people are left to make their own choices, there would be widespread free-riding and French would (eventually) disappear. Those who care intensely about French-language preservation realize, however, that if they offer substantial enough side-payments to potential free-riders, and spend enough on monitoring the behavior of these individuals, then they will be able to secure their language after all. They can preserve their language, then, but the price is high. Anglophones, by contrast, are able to preserve their language for free: under a regime of equal treatment, enough people will decide to use English that the language will be secure without anyone having to incur additional costs. The problem is that this price disparity cannot be justified on opportunity cost grounds. The price of French language preservation is not high solely because of people who genuinely prefer choice over preservation. It is high in part because of free riding. By failing to capture the positive externalities enjoyed by the free riders when the language is protected, the price overstates the costs that are imposed on others by adopting a policy of linguistic protection. Unlike high market prices for private goods – which on Dworkin’s argument track something of ethical significance – high prices for public goods deny people with a preference for those goods a fair opportunity for self-determination.

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A very similar analysis can be given of the multilingual communication case. Dutch-speakers might be able to overcome the assurance problem they face by entering into assurance contracts with one another. But these contracts would be very expensive to arrange and to enforce, making language protection a costly proposition for Dutch-speakers. But the high price of Dutch preservation cannot be justified on opportunity cost grounds. As with the education case, the price overstates the costs that others would bear if the law were to simply mandate the use of Dutch in public contexts within a particular territory. There would be some [people](#) for whom such a law is genuinely costly (e.g. French-speakers) but others who would benefit from it even though they would not have independently chosen to use Dutch without assurance about the behavior of others.

A fair scheme for pricing public goods like linguistic security would reflect the *true* opportunity costs that devoting resources to those goods, or restricting liberty for their sake, imposes on the rest of the community, once the benefits to free riders or those in need of assurance are netted out of actually observed prices.<sup>25</sup> The scheme must reflect the value to the rest of the community of alternative uses of those resources or liberties. But it must also be attentive to the fact that the provision of a public good does not, in general, benefit only the individuals who would contribute in the absence of state intervention but has

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<sup>25</sup> On “true opportunity costs,” see Dworkin, *Sovereign Virtue*, pp. 156-57. True opportunity costs, Dworkin argues, are the costs that people would face in an auction characterized by perfect information and costless organizational transactions.

positive spillover benefits for those who free-ride or lack assurance.<sup>26</sup> In other words, if people with preferences for public goods (such as language protection) are to enjoy a fair opportunity for self-determination, then some kind of *correction* must be offered to the outcome that would arise in the absence of state intervention.

Following Ronald Dworkin, I call this the “principle of correction.”<sup>27</sup>

According to the principle, as Dworkin defines it, “constraints on freedom of choice are required and justified” if they would help “to achieve a genuinely equal distribution measured by true opportunity costs.”<sup>28</sup> Dworkin offers the example of a group of homeowners who want to maintain a uniform architectural style in their neighborhood. He thinks it would be legitimate for the law to restrict new construction so that it conforms with the generally preferred style. Even if the preference for the uniform style is not unanimous (which would be the case if

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<sup>26</sup> The argument here is related to but narrower than the “fair-play” principle defended by H.L.A. Hart and John Rawls. In Hart’s original formulation, “when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission” (“Are There Any Natural Rights?” *Philosophical Review*, (1955) 64: 174-91, at 185; for Rawls’ development of the principle, see *Theory of Justice*, p. 96). My notion of true opportunity costs does not suppose that individuals should pay their fair share of *any* benefit they receive that is produced by cooperative action. True opportunity costs factor in only those benefits for which a voluntary contribution would not be made *because* of free-riding or an assurance problem – that is, only those cases where the would-be contributor would decline to contribute because of a belief that his or her contribution would be inconsequential and/or because of doubts about whether other beneficiaries would contribute.

<sup>27</sup> *Ibid.*, p. 155

<sup>28</sup> *Ibid.*, p. 157.

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someone proposed to build in a different style) Dworkin thinks that a local ordinance mandating uniformity would be justified in order to protect others from the spillover costs associated with someone departing from the style.<sup>29</sup>

Applying the principle of correction to the problem of language protection, we find strong support for state intervention on behalf of languages that are vulnerable to collective action problems. Whenever prices are driven up by free riding or assurance problems, the principle of correction provides a reason for intervention. In the absence of intervention, the vulnerable language speakers would face prices for preserving their language community that do not reflect the true opportunity costs that would be imposed on others by their managing to bring about language preservation. In situations of this kind, many others in fact want the language to be preserved, but are willing to free ride on the efforts of others or lack assurance about the behavior of others. There is a sense, then, in which these prices are too high, and thus those with preservationist preferences would lack a fair opportunity for self-determination.

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<sup>29</sup> Although he does not say so himself, I believe that the principle underlying Dworkin's argument here is that each person ought to have a fair opportunity to realize the goals and ambitions that she in fact has. Putting the principle this way helps in fending off possible objections. For example, why does Dworkin's argument not imply that people with a preference for racial segregation should be assisted by a "whites-only" municipal ordinance. The answer is that nobody has a claim to anything more than a *fair* opportunity to realize their preferences. Given what we know about the evils of racial segregation, it could not be claimed that a refusal by the state to help with segregation (or for that matter an active effort by the state to desegregate) would deny anybody a fair opportunity.

### **5. Finding a Compromise**

The principles formulated by Rawls and Dworkin highlight different considerations that need to be acknowledged when examining the state's responsibilities to support or provide public goods. The unanimity principle favored by Rawls is grounded in the thought that, in a context where everyone has a fair share of income and wealth, it would be unfair to impose burdens on individuals for the sake of providing public goods that they genuinely do not value enough to make the burdens worth bearing. If compelled to contribute, those individuals would be denied a fair opportunity to pursue and realize their own preferences and ambitions. Dworkin's principle of correction, in turn, is motivated by the idea that individuals should have the opportunity to translate their fair shares of income and wealth into goods needed for their vision of the good life on the basis of prices that are fair. When there are free-riders or problems of assurance, market prices (including voluntary tax rates and side-payments needed to induce free-riders to cooperate) cease to be fair because they overstate the costs that others would bear if the public good were provided. In effect, so long as there are problems of free-riding or assurance, leaving public good provision up to the market, or correcting only when unanimity can be secured, produces a bias against ideas of the good life that presuppose collective action and in favor of more individualistic visions of the good. People with cooperative preferences are denied a fair opportunity for self-determination.

There is tension, then, between the two principles and thus between the two components of fair opportunity that underlie the two principles. The tension arises because of free-riding and/or assurance problems. If everyone perfectly revealed their preferences – neither misrepresenting them for personal advantage, nor distrusting that others will act cooperatively if that is needed to secure their top preference – then the gap between the two principles disappears. Public goods could be provided on the basis of the unanimity principle, and nobody could reasonably complain that the resulting prices were unfairly high. With perfect preference revelation, those prices would track the net opportunity costs imposed on others and would thus be fair.

There may perhaps be situations in which perfect preference revelation is possible. They would presumably involve smallish numbers of people, a limited number of decision points, and the capacity of the state to establish procedures that align truthful preference revelation with self-interest. However, the protection of vulnerable languages is not a case in which perfect preference revelation seems realistic. The cases we are concerned with involve a large number of speakers making a huge number of decisions about language use in areas of life that are often removed from the gaze or the incentives of the state.

So in the kinds of cases we are considering the tension between the two principles cannot be dispelled. In general, no unfairness-free policy is likely to be available: one or other of the requirements of fairness is likely to be offended. Either some people will have to contribute to discretionary public goods that they

do not value, or other people will find that their ends are more costly or difficult to pursue than they ought to be because of assurance problems and free-riding. Since both requirements of fairness can be traced back to the idea that each person should have a fair opportunity for self-determination, there is at least a common metric for thinking about trade-offs. It would make no sense to recommend a major violation of one requirement for the sake of a minor improvement in the satisfaction of the other. A lop-sided tradeoff would result in a net loss of fair opportunity.

Instead, the best that can be done is to try to balance the competing demands in a reasonable way. This balancing process should be sensitive to several different factors. State intervention becomes preferable,

1. the greater the potential for free-riding and assurance problems; and
2. the more consequential that free-riding/assurance problems are for the costs of providing the good that face the individuals who value it and are willing to do their share.

State intervention becomes less preferable,

3. the greater the number of people who attach little or no value to the public good in question; and
4. the more significant the costs that such non-valuers would be made to pay were the state to intervene.

Let us see how this framework performs in the context of the examples introduced in Sec. 2. Running through the four elements of the framework, one

could, I think, mount a fairly strong defense of Quebec's requirement that Francophones send their children to French-language schools: 1. For the reasons outlined in Sec. 2, the theoretical potential for free-riding in this case seems quite high, even if widespread actual free-riding had not materialized in the years before the language legislation was adopted. 2. If the government were to forgo intervention (instead adopting a policy of equal treatment plus freedom of choice), and free-riding were to be widespread, French could quite quickly find itself in a marginal position, especially if other (arguably more controversial) components of Quebec's language legislation were also to be dropped. 3. Among Quebec Francophones support for the education provisions has always been very high, and there has been relatively little political or legal contestation of those provisions. 4. And the fact that it would be reasonable *only* to offer French-language public schooling options if not for the presence of the historic English minority suggests that the contribution that is forced upon Francophones with atypical preferences regarding their language should not be considered very substantial. (To see that this would indeed be reasonable, compare with a 100% Anglophone Canadian province or U.S. state. Few people would insist that such a province or state ought to provide French-language public schooling options just because some Anglophone parents might prefer such an education for their children).

The balance of the argument seems quite different if the restriction to French-language public schooling swept beyond Francophones to include

Anglophones as well. 1. On plausible assumptions about their preferences, Anglophones would not be free-riders on the protection of French. 2. French-language education for Anglophones is not essential for securing French. 3. Many Anglophones would regard the elimination of English-language public schooling as a significant burden. 4. Arguably this reaction would be reasonable given that such a policy would greatly accelerate the demise of the historic Anglophone community in Quebec.

As I mentioned earlier some might find objectionable the very idea of distinguishing Francophones from non-Francophones and applying different rules to each. There are various reasons why this might seem problematic, not all of which I can explore here. It is perhaps worth recalling that, in most liberal democracies, the law makes distinctions between different groups of persons all the time. For example, veterans, or farmers, or the disabled, are treated by the law in ways that diverge from the treatment of everybody else. What is important is that differences in treatment not be arbitrary, but reflect genuinely different claims or burdens. The analysis sketched above is intended to suggest that Francophones and Anglophones are in different situations. To this extent, the application of different rules is not arbitrary and the objection loses some of its force. It might still be objected that there is something especially unfair about differences in legal treatment based on birth rather than individualized assessment. There is something to this objection, but it does not rule out demographic categories if they are a very good proxy for the sorts of individual-level differences in needs and claims that are

appropriately taken into account. If it were discovered that this is not the case, then defenders of Quebec's legislation would need to reassess.

The other kind of case we have been considering involved communication in multilingual settings. In this case, two groups are competing to establish their language as the lingua franca. The more dominant language (e.g. French in Belgium) has a default status because it is more widely or proficiently spoken as a second language. But speakers of the vulnerable language (e.g. Dutch) would do better if they could coordinate their resistance to French and establish their own language as the common standard. In this scenario, the potential for coordination failures arises within the Dutch-speaking group, but not amongst Francophones, who can be assumed to have different preferences. However, unlike the education case, there is no policy option of limiting the cost imposition associated with promoting Dutch to Dutch-speakers. Promotion in this kind of case consists in giving some advantage to Dutch so that it can more effectively compete *against* French. For instance, it might involve requiring that businesses over a certain size conduct their internal operations in Dutch, or that communications amongst professionals (e.g. medical records, legal documents) be written or conducted in Dutch. So it is predictable in this scenario that costs will be imposed on non-free-riders.

Still, I think government action may sometimes be justifiable in these cases. Suppose to begin with that the pro-Dutch policies are confined to the area of the country where Dutch-speakers are in the majority (i.e. Flanders). Then, the

burden imposed on non-free-riders (i.e. Francophones in our example) is not especially substantial. The reason for this is that there is considerable utility in having some lingua franca or other in the sorts of situations we are considering (e.g. communication among professionals, within and among large businesses, etc.). In a linguistically diverse society, it is inevitable that some will have to accept that their language will not serve as the common linguistic standard. The only question is whether this lingua franca will be determined by government policy or as the equilibrium outcome of uncoordinated decisions about language use and acquisition. Given that this burden should fall on somebody, it does not seem objectionable to use government policy to make it fall on the minority rather than the majority. To put this another way, the burden on the Francophone minority of making Dutch the lingua franca is not as great as it initially seems. It is true that they are required to use Dutch in certain kinds of contexts and this is burdensome to them. But they also *benefit* from the establishment of a lingua franca and so the *net* burden they face is less severe. In all this, there is a disanalogy with the education case, where there is not the same imperative to coordinate on a single linguistic standard.

## **6. Conclusion**

In general, then, the public good framework can help to justify certain language protections that go beyond a norm of equal treatment. These protections help speakers of the vulnerable language to overcome the potential for free-riding and

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assurance problems and thus leave them with a fair opportunity to realize their language-related preferences. At the same time, the framework explains why some restrictions that might be defended in terms of the public good argument would not in fact be justified. Such protections impose excessive costs on non-beneficiaries, costs that deny *them* a fair opportunity to pursue and realize their preferences.

Commentators like Laitin and Van Parijs who make the public good argument for language protection thus raise an important point. To insist that linguistic justice is exhausted by equal treatment would be to overlook the genuine relevance for justice of the collective action problems facing speakers of vulnerable languages. The claim that there is a tight analogy between linguistic and religious justice makes the same mistake. Unlike religion, language is rife with potential collective action problems.<sup>30</sup> At the same time, Laitin and Van

<sup>30</sup> I do not dispute that religious believers might sometimes face a collective action problem. Consider, for instance, semi-devout Catholics who strongly value the continued existence of a Catholic cultural community but who also value secular activities that conflict with (eg) attending Mass. Individuals with these beliefs and preferences might find themselves in a prisoner's dilemma. Or imagine semi-devout Catholics who especially value the social benefits of religious worship and so are inclined to attend Mass only if they are assured that others with whom they would enjoy social interaction would attend. Still I think there is a difference in kind between the linguistic and religious cases. As religious believers, individuals have good reasons to participate in religious worship regardless of what co-religionists do. Language use, by contrast, is in many contexts largely a matter of coordinating behavior and so is more fundamentally dependent on what others are doing. It is coherent for a religious believer to observe her religion even when others are lapsing. It makes little or no sense for a speaker to insist on using her native language when none of the people she is addressing can understand that language. Moreover, even in cases where religious believers do face a collective action problem, my hunch is that

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Parijs fail to theorize the limits of the public good argument. They don't acknowledge that the same fundamental reason for thinking that justice requires some state intervention on behalf of under-provided public goods is also a reason for thinking that justice would prohibit such intervention when the benefits are slight or when the costs imposed on non-beneficiaries are significant. Overall, the equal treatment approach should be qualified by the public good argument but it remains at the core of how we should think about linguistic justice.

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the case for state intervention would generally be weaker than in the linguistic case because the value of allowing people to make their own decisions about religion is greater than the value of letting people make their own decisions about language use. I'm grateful to [Kevin Vallier](#) for [correspondence about](#) this issue.

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