

# From Inevitable Establishment to Mutual Exclusion: The Challenge for Liberal Neutrality

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**Abstract:** One of the challenges that liberal neutrality faces in diverse societies is how to maintain neutrality towards conception of the good life, when establishment of a particular conception of the good and exclusion of other conceptions is inevitable, as in the case of language regulation. A possible solution is to justify this establishment by appealing to universal reasons, thus refraining from endorsing the intrinsic value of the established conception. This paper argues that such a solution is limited, as it does not cover all inevitable-establishment domains. This is because there is a distinction within inevitable-establishment domains: domains in which rival options can coexist, such as language policy, and domains in which options are mutually exclusive, such as land-use policy. The paper argues that language policy is a coexistence domain, since it allows for a degree of personal agency, and it can refrain from making value judgments about the language that is endorsed by the state. Spatial organization and land-use policy, on the other hand, must rest on value judgments about the good life and cannot accommodate neutral justifications. The distinction has important implications for the scope of neutrality: neutrality turns out to be applicable in coexistence domains, and inapplicable in mutually-exclusive domains. Ultimately, it may be the case that neutrality may not be applicable even in language policy, since language policy exhibits characteristics of a mutually-exclusive domain.

**Key words:** liberalism, neutrality, multiculturalism, language policy, land-use, intrinsic value.

The principle of liberal neutrality has been subject to much criticism, both normative and conceptual.<sup>1</sup> The neutrality principle requires that the state not take a stand on matters of conceptions of the good life, and therefore no conception of the good is to be endorsed by the state based on its intrinsic value (Dworkin 1985; Rawls 1996; Klosko 2003).<sup>2</sup> One of the challenges that liberal neutrality faces is how to maintain neutrality when establishment of a controversial conception of the good is inevitable, as in the case of language regulation, or policies towards minorities. Liberal neutralists like Will Kymlicka and Alan Patten have been defending a version of neutrality that is grounded in the ability to justify establishment on universal grounds, even in inevitable-establishment domains (Kymlicka 1995; Patten 2003, 2014).

In this paper I argue that neutrality is not applicable in all inevitable establishment domains. Specifically, I argue that sometimes inevitable establishment cannot be justified on universal grounds, making neutrality infeasible in these cases. To demonstrate this, I

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1] For normative criticisms see Arneson (2003), Hurka (1995) and Raz (1986). For conceptual criticism see Wall (2001). Steven Wall shows that when egalitarian ideals are concerned, the boundaries between neutrality of justification – generally the acceptable version of liberal neutrality – and neutrality of effects – generally opposed to in liberalism, collapse to a significant degree.

2] Conceptions of the good are treated here as overall views of what is valuable in life, whether they originate from moral, religious, philosophical or other beliefs (Klosko 2003, 168).

introduce a distinction *within* inevitable establishment domains: domains in which rival options can coexist and domains in which options are mutually exclusive. This distinction has important implications for the scope of neutrality: neutrality is feasible in coexistence domains, and infeasible in mutually-exclusive domains. I argue that language policy is a coexistence domain, whereas spatial organization is a mutually-exclusive domain. The upshot is that even if neutrality is a compelling moral principle, in mutually-exclusive domains, like land-use and spatial organization, it would be conceptually inapplicable. In turn, to the extent that the neutrality principle does not cover mutually-exclusive domains, we need alternative moral principles for such domains to replace the neutrality principle.

I employ a comparative method in order to gauge the relevant differences between language regulation and spatial organization, which will in turn justify why neutrality could work in the former and not the latter. A comparative approach could theoretically lead to any of the three possible outcomes:

(1) Language regulation and spatial organization have enough relevant commonalities. There already exists literature on language regulation which insists that neutrality is morally required and practically feasible in that domain (Patten 2003, 2009; Blake 2003; Weinstock 2003). Therefore, conceptually, if neutrality is feasible for language regulation it ought to apply equally well to spatial organization.

(2) Language regulation and spatial organization have enough relevant commonalities. Neutrality cannot be applied to spatial organization (for reasons discussed throughout this paper). Therefore, conceptually, if neutrality is infeasible for spatial organization we should not expect it to apply to language regulation (i.e., existing literature on the possibility of neutrality in language regulation is mistaken).

(3) Language regulation and spatial organization have enough relevant differences, so that even though neutrality might be applicable to language regulation, we should not expect it to apply to spatial organization.

In the first part of the paper I defend the third possible outcome. I will show that spatial organization allows for significantly less coexistence of competing options, compared to language regulation, and that therefore neutrality is much less feasible for the organization of spatial activities and spatial relationships. I choose to start with the third outcome because there already exists a body of literature insisting that language regulation is compatible with the requirements of neutrality. Since my chief aim is to show that neutrality is conceptually incompatible with spatial organization, I demonstrate how and why spatial organization is relevantly different from language regulation. If it is indeed relevantly different, then even if neutrality can be applied in language regulation, it would not be applicable in spatial organization. In other words, the argument in the first part of the paper is that in both language regulation and spatial organization, establishment of a particular conception of the good is inevitable. However, in the language domain this establishment can be given neutral justification, and therefore neutrality is feasible. In spatial organization, on the other hand, establishment cannot be given neutral justification, and hence neutrality is infeasible. However, there is a lot that can be said in favour of the

second outcome, namely that language regulation and spatial organization are similar, and since neutrality cannot apply for spatial organization we should not expect it to apply to language regulation. I discuss this possibility at the end of the paper. If either the second or third outcomes are convincing, i.e. neutrality is incompatible with (at least) spatial organization, then the first possible outcome (neutrality should be compatible with both domains) is logically impossible, and therefore not in need of further discussion.

The paper is organized as follows: the first section explains why in certain domains such as language regulation, multiculturalism and spatial organization, establishment of certain conceptions of the good is inevitable. The following sections present the relevant distinctions between language regulation and spatial organization: I start by demonstrating that language regulation allows for a greater degree of coexisting options, whereas in spatial organization options are mutually exclusive; I then show that language regulation allows for a greater degree of personal agency; the subsequent section describes why any land-use decision must rest on value judgments about the good life, whereas language regulation can refrain from them. Each of these essential differences provides a distinct reason to challenge the applicability of neutrality in the spatial domain. Taken together, they mount a powerful case against the possibility of neutrality in spatial organization, and by extension – in mutually-exclusive domains more generally. The final section explores the possibility that neutrality may be inapplicable for language regulation as well.

#### I. NEUTRALITY IN INEVITABLE ESTABLISHMENT DOMAINS

Liberal neutralists regard the principle of state neutrality towards conception of the good as morally compelling because in its absence, the state is forcing persons to adopt or live by values and norms which are foreign to them, and as such fails in its duty to treat all persons with equal concern and respect (Dworkin 2000; Rawls 1985; Nagel 1987). Furthermore, there is no way to universally determine the truth of any of the competing conceptions of the good that are held by reasonable persons in pluralist societies, providing another reason to insist on neutrality (Nagel 1987; Rawls 1996, xxii). Practically speaking, the state is morally committed to disestablish conceptions of the good life: either exercise ‘benign neglect’ or even-handedness towards rival conceptions (Kymlicka 1995, 3; Patten 2012).

However, complete disestablishment is often unavailable. This is so because disestablishment is possible when the state can leave matters that pertain to the good life in the hands of individuals, to be determined according to their own private moralities (Nagel 1987). Religious disestablishment, for example, means that the state does not support any religion, and leaves matters of faith to be pursued individually. In the case of language policy, this sort of disestablishment is impossible. The state cannot replace the use of an official language with no language (Kymlicka 1995, 111). While “the state should not recognize, endorse, or support any particular language or language group any more than it should recognize, endorse, or support a particular church or religion”, there is no way of disengaging language choices from public service provision, courts and legislature

and public education, hence linguistic establishment is a fact (Kymlicka and Patten 2003, 32). Especially in multicultural societies, the state needs to decide between establishing monolingualism or plurilingualism.

What is more, the establishment of an official language(s) is an establishment of a particular conception of the good life. Language matters to persons for a variety of reasons which cannot be reduced to instrumental reasons. Rather, people care about their language because language and culture are interdependent.<sup>3</sup> Many people care about the survival and flourishing of their language. People are proud of their first language and of the cultural achievements that have been expressed through it. They may take great pleasure in using their first language and in encountering others who are willing to use it (Patten, forthcoming). To the extent that language and culture are interdependent, language is a normatively-laden system of thought and meaning. Different languages, therefore, embody different systems of thought and meaning. Choosing to conduct the state's official business in one language over another is to impose on citizens a particular system of thought and meaning rather than another. To illustrate that different languages carry different normative meanings, consider the word freedom. Peled and Bonotti argue that "The English concept of 'freedom' cannot be easily translated across linguistic boundaries, since it is rooted not simply in the English language but also in the particular political culture in which it has emerged, which can hardly be described as universal in any empirical sense." (Peled and Bonotti 2016, 801) So for example, a constitution that uses the English word 'freedom' carries a particular normative interpretation of the term. This interpretation becomes the established term, pertaining to all persons who live under that constitution, even if in their native language the term carries a different meaning.

Another way to illustrate that language establishment is an establishment of a conception of the good is to consider the argument that holds that linguistic diversity is a good in itself. Some proponents of language diversity hold that just like biodiversity is good, so is language diversity: it makes for a world that is more colourful, richer and more interesting (Crystal 2000; Maffi 2000). Therefore, if the state establishes plurilingualism, it promotes the good of diversity. The upshot is that by establishing an official language (or languages), the state is promoting a system of norms and values that pertain to the good life, over which individual moralities have little control.

By the same token, the state cannot disestablish culture or spatial organization.<sup>4</sup> It cannot replace the distribution of, say, a city-suburb land-use organization with no distribution. Further, benign neglect is conceptually incoherent in the domains of language, spatial organization and multiculturalism, because it just obscures the fact that non-decisions are themselves a form of establishment.<sup>5</sup> However, Alan Patten holds that

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3] For an analysis of this interdependence and its implications for justice see Peled and Bonotti (2016).

4] Kymlicka makes a similar observation with respect to policies towards minorities (1995, 108).

5] This is because there are cases where the distinction between the state doing and allowing collapses (Wall 2001), and non-decisions in the domain of spatial organization represent such a case.

neutrality can be maintained in language policy if this inevitable establishment is justified by universal reasons: justifications that do not appeal to the merit or superiority of a controversial conception of the good (2003, 2014, forthcoming). Inevitable establishment, therefore, can be justified by neutral reasons if it leaves an adequate range of options for individuals to exercise autonomy and self-determination about the good life.

But what if inevitable establishment limits the range of options such that it constrains autonomy and self-determination? I argue that within inevitable establishment domains there is a distinction between two types of domains. The first type leaves an adequate range of options for autonomy. Language regulation belongs to this category. In the second type, options are mutually-exclusive and effectively constrain the opportunity for autonomy. Spatial organization belongs to this category.

Spatial organization is different from language policy in the following way: while both are domains in which establishment is inevitable, there is a difference between these domains, which has to do with the degree of personal choice that each domain allows. In language policy, establishment can be justified by neutral reasons, because it allows a decent degree of personal autonomy with regards to the good life. In spatial organization, on the other hand, establishment cannot be justified by universal reasons, because in spatial organization, as I argue below, there is little room for individual autonomy and self-determination. This makes neutrality infeasible in spatial organization, even if it is otherwise morally compelling.

## II. 'BOTH/AND' VS. 'EITHER/OR'

What makes neutrality feasible in *disestablishment* domains? Answering this question provides a benchmark from which we can determine if these conditions obtain in inevitable establishment domains as well. Religion is a paradigmatic case of disestablishment. Religious disestablishment is morally required because a state-endorsed religion leads to domination, hierarchy, subordination and disrespect of non-adherents (Nussbaum 2008, 20, 24, 226; 2011, 35). More generally, the 'humanistic freedoms' – freedom of speech, freedom of association, the right to vote according to one's conscience, freedom of sexual conduct, the right to have an abortion, the right to privacy, the right to marry regardless of sexual orientation (Raz 1986, 254-56) – prescribe neutrality for similar reasons that obtain for religion.

Each of the humanistic freedoms contains the potential for individuals to choose between competing, incompatible options: whether to vote for this party or that; whether to have an abortion or have the child; whether to speak out or stay silent; whether to express an opinion in favour or against an issue; whether to join (or remain in) a voluntary association or break with it, and so on. All these possibilities represent a category of choice between 'both/and' options. Importantly, the implicit assumption is that in a liberal state these incompatible options can coexist, and it is therefore the responsibility of the state to ensure that they are indiscriminately available to every citizen. 'Both/and' outcomes are

conducive to liberal neutrality since they enable the possibility for individual choice, for autonomous decision-making and self-determination. This is a crucial point: the state can remain neutral because the alternative options can exist. Disestablishment domains are therefore those in which competing options can coexist.

The distinction within inevitable establishment domains should therefore focus on the degree of coexisting options that they can contain. In other words, when the domain in question enables a significant degree of ‘both/and’ options in that domain, neutrality will be feasible. I will argue throughout the first part of the paper that language regulation is a domain which can maintain a higher degree of competing options and the possibility for autonomous choice making. Therefore, it is relevantly similar to the disestablishment domains, and as such can comply with the requirement for neutrality. In contrast, spatial organization, which is also a domain of inevitable establishment, is different in the relevant sense: it is a domain of ‘either/or’ choices (Harvey 2000, 196).

### III. MUTUAL EXCLUSION

Spatial organization is characterized by mutual exclusion of options, meaning that no two options (or more) can be accommodated within a single space, and therefore even-handed treatment (supporting both options) is conceptually impossible. Heather Campbell observes that “‘both/and’ is not an option when either a road, factory, retail ‘experience’, or wind farm is built or is not” (2002, 276-77). Rather, planning decisions are ‘either/or’ decisions. Importantly, ‘either/or’ decisions are substantive; they are the manifestation of a certain conception of the good. The act of zoning – fixing the function and sense of a place – is an inevitable commitment to some value (King 2004; Campbell 2006; Wachs 2013). For example, as soon as the local government issues a zoning ordinance for, say, minimum lot size or minimum parking standards, it inevitably imposes certain values on the area. Issuing zoning ordinances based on minimum lot size invokes the ideal of private homeownership. Allowing two parking spaces per residence promotes the model of an auto-dependent society, which rests on the ideal of separation between home, work and other activities (Williamson 2010, 5-6).

The regulation of languages allows for a greater degree of coexistence of rival options. At the macro-level, empirical observations show that multilingualism is on the rise in the modern world (Edwards 2012). At the individual level, multiple linguistic identities can and do overlap, both intra-personally and collectively (May 2003, 143). This means that persons are able to possess knowledge of two or more languages simultaneously. From a social point of view, this means that societies are accommodating of multiple languages within a single territory. The point is that linguistic reality in liberal conditions admits more coexisting options and therefore offers more choice. For example, immigrant parents can deliberately choose whether to speak to their children in their native language or in the majority language. The choice may be constrained by other considerations, such as the desire that their children be competent in the dominant language in order that they



obtain a better starting position in life, or an opposite desire that their children experience in a meaningful way their native culture. Either way, the absence of state coercion in this private realm means that the parents are making an authentic choice between two readily available – coexisting – options.

To take another example, even if the state establishes an official monolingualism policy, the liberal-neutralist argument is that there still remains a significant degree of personal choice. Alan Patten holds that a such a policy can be morally legitimate if it serves to increase social mobility. In a state which has only one viable “societal culture”<sup>6</sup> – a culture where minority speakers do not have sufficient opportunities or options to operate in their own language – a common language will ensure that these speakers have sufficient “access to an adequate range of economic, social political, and cultural options and opportunities” (Patten 2003, 381). So even if the common language is formally established (to the detriment of endangered minority languages), persons can still exercise a significant level of choice within this background of opportunities. In this respect, a minority-speaker who is proficient in the common language has more disposable opportunities in the employment market, than a “ghettoized” minority speaker who cannot find adequate work due to insufficient knowledge of the common language. When a minority culture cannot be reconstructed or revived by public policy, proficiency in the common language enables more access to opportunities compared with remaining in a cultural ghetto (Patten 2003, 381).

The fact that individuals have more linguistic choice than spatial choice is closely related to the idea of *agency*. Spatial organization is more restrictive of personal agency than language regulation. When the state institutionalizes a language, it creates a background context within which persons live their lives. As such it obviously determines a lot of what persons will be able to do. Nevertheless, liberal institutionalization of a language does not affect negative liberties directly: it does not tell persons what to think or how to express what they think. Persons retain a significant degree of control over their personal usage of language, they are still free – no one is legally prohibited – to speak whichever language they choose.

Yet the same degree of freedom is not attainable with respect to spatial organization. When institutions zone an area as, say, homogenous-residential, it undermines the agency of those who (fundamentally) prefer another pattern.<sup>7</sup> They are not free to exercise their preferable spatial organization. While they are not legally prohibited from exercising it, they are nevertheless unfree because the ability to actually do it is simply unavailable or incredibly difficult.

One reason for this is that the degree of personal effort that individuals or groups need to invest with respect to preserving minority language is somewhat lower than the

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6] A societal culture is “culture which provides its members with meaningful ways of life across the full range of human activities” (Kymlicka 1995, 76).

7] This type of preference is fundamental in the sense that it pertains to persons’ final aims and goals, not to superficial desires such as ice cream flavours (Scanlon 2006, 6-7).

efforts that individuals need to put into creating spatial alternatives. When institutional support for minority language is absent, minority speakers can pay for tutoring, for cultural activities and so on. These are things that can be done at the personal level or at the community level. Changing spatial patterns requires much more resources – money, organization skills, lobbying abilities, access to decision makers – than individuals or even communities can muster. This point helps strengthen the case that individual agency is somewhat more pronounced in the language domain compared to the spatial domain.

The implication is that it is possible to exercise neutrality in language policy so long as there is a significant degree of individual choice that individuals can exercise in their private lives regarding language. This will be much less feasible in spatial organization. As mentioned above, it is conceptually impossible to accommodate competing land uses in the same place. Persons cannot really exercise the same degree of individual choice regarding spatial organization as they would in the domain of language. The neutrality principle, which rests on the ability of persons to exercise autonomy and self-determination in their private lives, is therefore less applicable in domains such as spatial organization where personal agency and choice making are limited. The implication is that although inevitable establishment is a feature of both language regulation and spatial organization, the degree of coexisting options in language regulation is higher, allowing for neutrality, whereas mutual-exclusion of options in spatial organization precludes neutrality.

#### IV. INTRINSIC-VALUE JUDGMENTS

The second relevant difference between language regulation and spatial organization is that in language regulation, policy decisions can refrain from intrinsic-value judgments, whereas in spatial organization this is impossible. Since intrinsic-value judgments are inherent to spatial decisions, not only to the outcomes but to the decision-making process as well, they are inevitably non-neutral.<sup>8</sup>

Language regulation can refrain from intrinsic-value judgments: according to the liberal viewpoint, policies that debate whether to prefer a common language or to preserve minority language need to be fair to the speakers, not to the languages they speak (Patten 2003, 372). The assumption is that all languages have similar societal and cultural functions.<sup>9</sup> What is important for the liberal is not the intrinsic value of a particular language but the role it plays with respect to ensuring political, civic and cultural

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8] Intrinsic-value judgments in this context refer to the intrinsic value of the good, but they also apply to conceptions of the *right*. Since there is no reason to assume universality with respect to controversial conceptions of the right, judging between competing conceptions of the right is equally non-neutral (Arneson 2003, 195; Chan 2005, 22; Hurka 1995, 56; Caney 1998, 102-5).

9] Languages endow persons with a sense of identity; they are indispensable for a stable “societal culture”, a culture that provides for its members meaningful ways of life that embrace the full range of human activities, and they enable a ‘shared vocabulary of tradition and convention’ (Kymlicka 1995, 76, 82; Dworkin 1985, 231).



opportunities. Therefore, where there is a clear majority language, it doesn't matter which language it is, what matters is that minorities will be proficient in it so that they can enjoy an adequate 'context of choice' – a variety of options and opportunities that embrace the full range of human activities (Patten 2003, 380). Crucially, the intrinsic value of a language will not serve as justification for choosing it over other languages.

By contrast, debates about spatial policies require assessing the consequences of the suggested policies, and in many cases applying value judgments regarding the preferable option. The reason is that spatial policies, due to mutual exclusion, limit the applicability of universal justifications. This argument requires some explanation, which will be made clearer using a hypothetical metropolitan planning board. Imagine that this planning board is debating the best way to promote mobility (a universal goal), and its members are weighing two options: promoting car travel through car subsidies and generous parking supply (option A) and investment in public transport (option B).

Suppose that car transport (option A) is shown to promote mobility. Nevertheless, there exists an important reason for inquiring into the intrinsic value of this policy, and that is that prioritizing car travel has a tendency to reinforce "automobility" – the culture of the solo-driver individual (Urry 2004; Gartman 2004).<sup>10</sup> This shows that certain aspects of spatial organization go to the core of conflicts over conceptions of the good. Importantly, sprawled settlements are often associated with preferences for privatism and consumerism (Williamson 2010, 4),<sup>11</sup> making any policies that favour automobile travel unevenly accommodating of that particular conception of the good. If indeed road infrastructure helps create and reinforce a certain culture, it introduces an institutional bias in favour of this culture, and against others. The outcome is not an innocent by-product of the policy; when policy makers debate what kind of accessibility-policy to promote, they are in effect debating the good life. Intrinsic-value judgments, therefore, are inherent to the debate, even when policy aims are discussed in universal terms.

#### V. CONFLICTING UNIVERSAL JUSTIFICATIONS

Applying intrinsic-value judgments for spatial policy is inevitable for another reason. Very often, the appeals to universal justifications within the adequate 'context of choice' will pit two or more universal values in direct conflict. When this happens, we need a criterion that will enable us to choose between them. In fact, the very concept of 'context of choice' and its adequacy is value-laden, especially in mutually-exclusive domains. For we do not know what a proper adequate context of choice is until we determine what it contains and what it excludes. Therefore, as Simon Caney notes, a neutral theory will

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10] Sheller and Urry expand: "*automobilization* [...] leads to the extension of human habitats, the dispersal of places across space, the opportunities to escape certain locales and to form new socialities, and the fragmentation of temporal flows, especially through suburbanization" (2000, 742).

11] See also Robert Kirkman (2010) on the genealogy of suburban preferences.

not be able to supply us with such a criterion to determine the content of the context of choice, or the universal values that justify its makeup, since the only criterion available is an appeal to ‘a more specific account of the good’ (1996, 102).

As such, the value of, say, accessibility, will have to be ranked and compared against other values, and the resolution will ultimately have to be grounded on sectarian or comprehensive reasons (Ferdman 2017). I illustrate this by referring once again to the planning board, whose members are now debating an accessibility policy that centers on massive investments in public transport.

The board members have to take into account that implementing public transport, especially mass transit, requires substantially more land in designated areas (along the route itself and around the stations). Suppose that most of the designated land is currently privately held, and can be acquired only involuntarily (by expropriation/taking). Suppose further that property owners oppose the taking, on grounds that it seriously interferes with their comprehensive conception of the good in a way which defies neutral justification.<sup>12</sup> They could offer several universal counter-arguments: that it harms their freedom of occupation; that it harms their autonomy; that it harms their integrity by withholding from them what is considered to be a basic human need – a home; that it is an affront to their personhood (Radin 1982, 1006); that they’re being used as a means and not an end. On the other hand, refusal to consent to the taking on the part of each property owner could strike some as excessively egoistic. The homesteader’s preference that her home is kept intact at the expense of other persons’ resources could be regarded as an expensive taste – a taste (in the broad sense) that requires more resources to satisfy compared to resources that others have (Dworkin 2000, 48-59). We have to make a value judgment with respect to whether losing an hour a day over a work-lifetime is merely an inconvenience or rather a serious harm to one’s welfare<sup>13</sup> or a reduction in one’s ability to practice their conception of the good.<sup>14</sup> This is something that must include intrinsic-value judgments with respect to what makes things central to one’s welfare and conception of the good.

The different arguments in favour and against the taking help to demonstrate that in questions of justice, reasonable disagreement between citizens on matters of distribution is bound to occur. Cecil Laborde notes that in conflicts over religious establishment “[...] citizens will reasonably disagree about the relative importance of such fundamental

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12] Note that these persons cannot accuse the state of being non-neutral in the effects of the policy. Non-neutral effects are a natural result of the relative attraction of different conceptions, that is determined purely (in ideal situations) by the preferences of free and autonomous persons. Recall that liberal policy towards languages does not promise the equal success of every language, but rather the equal background for each to strive for its success. Similarly, therefore, non-neutral effects of transportation policy will not gain the sympathy of the liberal.

13] Empirical evidence suggests that it is not a minor inconvenience: commuting for over 30 minutes a day – especially by non-auto travel modes – significantly reduces welfare (Office for National Statistics 2014).

14] Supposing, arguably, that saving on commuting time could be spent with one’s family, or spent on other intrinsically valuable activities.

values as freedom of religion and (more generally) of conscience, non-discrimination, equal opportunities, parents' and children's rights, 'compelling state interests' and so forth" (2013, 11). In cases of profound disagreement, the liberal logic pulls towards disestablishment, even if no constitutional freedoms are violated (Laborde 2013, 19-20). However, disestablishment is conceptually unavailable in spatial organization, and what's more, in order to reach a spatial decision the merits of each option have to be balanced against each other. There is no way to avoid sectarian, non-neutral reasoning in this decision-making process.

Further, the neutral even-handed approach (i.e. supporting all conceptions evenly) cannot work for spatial organization, precisely because the intrinsic value of the competing options needs to be evaluated prior to the commitment to indiscriminately supporting all of them. The even-handed approach in language policy aims to ensure that persons have a fair opportunity for self-determination, through the preservation of an important part of their personal and collective identity. It offers recognition of minority languages whenever they are a local majority,<sup>15</sup> including offering services in the minority language, and allowing parents to choose that their children be educated in their minority language where such education exists.<sup>16</sup> These services and accommodations cannot be replicated in the spatial domain.

An example will help illustrate the difficulty of applying this approach in the spatial domain. Let's say there are two rival conceptions in the city, one that reflects the desires to self-segregate into fortress-like enclaves (say gated communities),<sup>17</sup> and the other which prizes the values of community and solidarity and requires a more open and civil-oriented spatial setting (along the lines of the idealized "traditional" neighborhood). The state could allocate space equally between these two conceptions, so that a fortress city will reside next to the traditional neighborhood. *Prima facie*, even-handedness is successful.

Nevertheless, there is something potentially problematic about the even-handedness that is awarded to these conceptions, since it does not require of the conceptions to be *reasonable*. We could find (as is in fact the case with respect to many instances of self-segregation), that the desire to retreat rests on an unreasonable desire to exclude (Bickford 2000; Williamson 2010, 171; Kohn 2004; Young 2000, 204-10). One of the possible justifications for ruling out unreasonable conceptions is that they do not uphold principles of justice that treat everyone as equal. In this case, not all instances of self-

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15] Michael Blake notes that not all minority languages can claim they have a right to language preservation; such measures should be reserved only to those policies of minority-languages that are vulnerable due to past discrimination (2003, 223-25).

16] This prerogative holds even if the child is completely fluent in the majority language (Patten 2003, 371-72).

17] 'Fortress communities' are separate cities within the city. These urban quarters are differentiated along several dimensions: race, class, occupation and ethnicity, whether residential or commercial enclaves, these fortress-like neighborhood offer complete insulation from other quarters via physical boundaries such as walls, gates and surveillance (Marcuse 2002).

determination will have gained an equal moral status. Those based on “offensive tastes” will be a priori ruled out (Rawls 1999, 27-28). In the gated community case, the exclusion of non-members from the public spaces of the gated community is unreasonable, because it does not treat them as equal moral agents.

Therefore to be reasonable, in the context of self-segregation, is to recognize that privacy, seclusion and exclusion come at a price for others, and to relax the demand for these amenities in the name of equal respect (Bickford 2000, 366). The upshot is that before ‘blindly’ giving institutional support to any conception of the good in an even-handed manner, it is morally required of the state to look into the reasonableness of the competing allocative claims. Note that institutional support does not need to be limited to monetary support. Zoning and regulations which permit gated associations and their restrictive policies are also a case of institutional support. In any case, the need to examine the reasonableness of the allocative claim requires a different sort of moral justification, substantive rather than neutral. In order to decide on spatial policy we need to make value judgments and inquire into the reasonableness of the rival ways of life, before making policy decisions. Again, this would be unnecessary in the case of language, since languages are not categorized according to their reasonableness.

So far I have surveyed the reasons which distinguish spatial organization from language regulation. This comparison shows that language policy allows for a certain degree of coexisting options. Spatial organization, on the other hand, is a domain of mutually-exclusive options. While in both domains establishment is inevitable, in the mutually-exclusive domain (e.g. spatial organization) neutrality is infeasible. This is because neutrality can be maintained if the inevitable establishment is justified by universal reasons, such that do not pertain to the merit or superiority of any conception of the good. While in the domain of language such justifications exist, in the domain of spatial organization, universal justifications are hard to come by. First, because in the mutually-exclusive context there is a minimal degree of opportunity for individual choice-making in the private sphere. Second, because ultimately the justifications for spatial policy rest, implicitly, on ideas about the good life. In the final section I examine whether despite the *prima facie* difference between language policy and spatial regulation, ultimately language policy rests on ideas of the good too.

#### VI. CAN LANGUAGE POLICY BE NEUTRAL?

Liberal language regulation requires that a language policy be justified by an appeal to a value or values that is universal – should be able to respond to every citizen’s interests, regardless of their particular conception of the good. Alan Patten, for example, regards language regulation as neutral when it is justified by values such as social mobility or self-determination (Patten 2003). David Miller appeals to the value of belonging to a community that has some shared values, like its common language (2004, 138). Will

Kymlicka appeals to the idea of having a meaningful ‘context of choice’, language being one of its basic elements (1995, 83).

What I want to defend in this section is the argument that these justifications can come into direct conflict with other universal justifications. When this happens, as discussed above, the policy resolution will have to rely on non-neutral, sectarian arguments. Tradeoffs between universal arguments are common in all policy areas,<sup>18</sup> and justifying these tradeoffs requires ranking the conflicting universal justifications, in which case the criteria for ranking is inevitably sectarian, as I will briefly illustrate below.

For example, when minority speakers are a local majority Patten proposes a minority language maintenance model – official multilingualism – justified by the value of self-determination (2003, 369-73). Importantly, official multilingualism requires a stable linguistic and cultural background (Kymlicka 1995, 82-84). This background, however, can be interpreted in two ways: one way is to provide an adequately rich and stimulating linguistic and cultural background in the majority language. Another way, proposed by Denise Reaume, is that this background has to include minority languages as well. Reaume holds that persons are entitled not merely to *a* language and *a* culture but to *their* language and *their* culture (2000). Languages have value independently from their instrumental roles, they are ‘an end in itself’, ‘cultural inheritance’ and ‘markers of identity’, and therefore bearers of intrinsic value (Reaume 2000, 250-51). Presumably Patten shares this view, or he wouldn’t propose the language maintenance model for self-determination. The moral implications of the second interpretation, however, may be problematic as Daniel Weinstock notes: if minority languages are intrinsically valuable then “minority languages *themselves* have rights against all others, *including their own speakers*, to have their intrinsic value affirmed” (2003, 255). As such they generate duties, *even against their own speakers*.

This would be a problematic consequence for liberals, because it could interfere with persons’ autonomous preferences to assimilate into the common language (Weinstock 2003, 256; Blake 2003). So, on the one hand we have the value of self-determination, prescribing a multilingual language-preservation model, whereas on the other hand we have the liberal value of ensuring uncoerced choice. Any choice in the matter will have to appeal to a controversial conception of the good, either one that touts the intrinsic value of cultural heritage or one that extols moral individualism.<sup>19</sup>

Another point is that linguistic even-handedness may contain an arbitrary bias that cannot be neutrally justified. A language policy that treats minority languages even-handedly entails a per-capita distribution of resources language maintenance, recognition of minority languages whenever they are a local majority, offering services in the minority language, and allowing parents to choose that their children be educated in their minority

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18] I am grateful to George Sher for stressing this point.

19] Kymlicka’s ‘context of choice’ is vulnerable to the same challenge: it can be either any combination of meaningful choices, or it can be the particular elements of one’s culture, with similar implications for individual autonomy.

language where such education exists. However, not all minority languages can be encompassed by such a multilingual policy. Certain languages have too little speakers and would tax general resources disproportionately. Therefore, there must be a policy cutoff somewhere, to determine which languages merit support and which require prohibitive costs. This cutoff will inevitably be arbitrary, whether grounded on sheer numbers or on relative power (Weinstock 2003, 261-62), and will not be universally justifiable.

With respect to David Miller's justification – a common language as a shared value that enables the community to function properly – one could claim that minority communities require protection of their shared values precisely because the survival of such values is vulnerable to begin with, and in their absence the minority community might disintegrate. Here we need to make a value judgment with respect to the question: what is more fundamental to persons-as-community-members: belonging to a stable local cultural community or belonging to a stable national community. It looks like the answer to this question can only be given by intrinsic-value non-neutral arguments.

#### VII. DISAGREEMENT OVER THE RIGHT AND OVER THE GOOD

As Patten himself notes, minority-language rights that are based on fair treatment – ensuring fair background conditions for one to pursue her conception of the good – will very often clash with other values (Patten 2009, 123-24). When this happens, in order to maintain neutrality, the decision has to be taken through some procedural process that is itself impartial: majority vote, a referendum, a lottery or an auction.<sup>20</sup>

Nevertheless, as certain writers have pointed out, these procedural processes themselves are instances of controversial conceptions of the *right* (Arneson 1998; Chan 2005; Caney 1996).

Disagreement over conceptions of the right is therefore conceptually similar to disagreement over conceptions of the good (Arneson 2003, 195; Chan 2005, 22; Hurka 1995, 56). If neutrality is required for issues of justice then conceptually it is impossible to see how it should not apply to other political controversies as well (Caney 1996, 102-5). Beliefs about the right can be just as controversial as beliefs about the good (Arneson 1998, 77-78). Therefore, conceptions of the right with their respective procedural processes are bound to incite disagreement, since they could not be justified to dissenters. In this sense, institutional decisions on which value to prefer (fairness vs. other considerations), cannot appeal to an 'impartial' procedures, and will not be immune from charges of non-neutrality.

This is a general conceptual point about the legitimacy of neutrality as a political morality and it pertains beyond language and spatial organization. The implication is that if the state operates on a conception of the right that is non-neutral, without needing further justification, then it is equally legitimate for the state to establish a non-universal conception of the good, without needing further neutral justification.

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20] I am grateful to Hillel Steiner for raising this possibility.



There are two ways to approach this last point about the similarity between conceptions of the good and conceptions of the right. One way is to accept that disagreements over conceptions of the right are similar to disagreements over conceptions of the good and that since neutrality is impossible for the latter, it follows that it is also impossible for the former. In other words, to reject neutralism completely. Let us call this the 'symmetry approach', as it holds that there is symmetry between disagreement over the right and over the good. According to the symmetry approach, because neutralism is conceptually mistaken in general, then it would also be conceptually mistaken in particular in language and spatial organization. Defending the symmetry approach will require much more space than can be given here, and anyhow it is beyond the purpose of this paper, which is to examine whether neutrality can be exercised, specifically, in inevitable-establishment domains.

Let us therefore consider the 'asymmetry approach', which denies that there is a conceptual similarity over the right and the good. According to the asymmetry approach, neutrality is required for arbitration about the good, but not about the right. This approach aligns with the liberal commitment to exercise neutrality towards (only) the good. This paper shows that even if one favours the asymmetry approach, it nevertheless remains the case that neutrality is inapplicable in mutually-exclusive domains. According to the asymmetry approach, neutrality is regarded as a morally compelling principle, yet one which is not feasible in spatial organization or language policy, because justifications for policy are inevitably grounded in ideas about the good life. Stated more generally, neutrality may be morally compelling, yet in domains of mutual exclusion it is infeasible.

The challenge that this paper raises has to do with the scope of neutrality. The symmetry approach holds that there is a similarity between disagreements over the right and disagreements over the good, and that therefore neutralism should be rejected for both. The argument advanced in this paper is somewhat different. It does not call for a complete rejection of neutralism. Rather, it holds that the scope of neutralism is limited. It may be applicable in disestablishment domains, and in certain inevitable establishment domains, but it is not applicable in mutually-exclusive domains. If one accepts that language policy ultimately rests on non-universal justifications (that is, rests on ideas that pertain to the good life), then language policy cannot accommodate the principle of liberal neutrality, which makes the scope of neutrality narrower.

#### VIII. CONCLUSION

Neutrality towards conceptions of the good, even if it is morally required, is not achievable in each and every political domain. Certain domains require state establishment of conceptions of the good. Language regulation, policies towards cultural minorities and spatial organization are such domains. Liberal neutralists hold that some instances of this establishment can be neutrally justified. If some universal justification for establishment

exists, then neutrality towards conceptions of the good can be maintained. My aim in this paper was to show that not all inevitable establishment can be justified neutrally, and this requires making distinctions within inevitable-establishment domains, to determine when neutrality is feasible and when it is not. I argue that the scope of neutrality does not cover mutually-exclusive domains like spatial organization, and there are good reasons to argue that neutrality does not extend to language regulation either.

In the first part of the paper I compare spatial organization with language regulation – both inevitable-establishment domains – to show why neutrality may be feasible in language but not in spatial organization. Language regulation, even though it establishes a certain linguistic outcome, still offers a certain non-trivial degree of coexistence of competing options: persons can be proficient in more than one language, and they can collectively invest in language preservation should they choose to do so, at a relatively lower cost compared to spatial organization. In spatial organization, the physical existence of one spatial conception precludes the existence of others. Furthermore, there is less room for agency, since it requires enormous collective efforts to change land-use patterns, markedly more than the efforts required for resisting linguistic assimilation.

In addition, institutional decisions regarding spatial organization require using value judgments about the intrinsic merit of competing options. Where the societal background is one of incompatible, controversial conceptions of the good, as is the case in pluralistic societies, resorting to value judgments is inevitably non-neutral, because competing conceptions have to be ranked according to their intrinsic worth, but this ranking is precisely what persons disagree about to begin with. In order to answer questions such as what is the best transportation policy; what is the best residential arrangement, etc. one has to acknowledge that no straightforward answer can be given without explicitly discussing the merits of sprawled vs. condensed neighbourhoods; without heeding to the implications of contemporary western societies' reliance on the private car vs. the socio-cultural effects of public transport. Language regulation, in comparison, need not appeal to the intrinsic value of the different spoken languages in the society, it only needs to take account of their existence. This way, neutrality towards linguistic-cultural conceptions of the good can be a coherent requirement, whereas it cannot be for spatial conceptions of the good.

However, one can insist that the difference between language regulation and spatial organization is in fact minor, making the establishment of language regulation more like the non-neutral establishment of spatial organization. In the latter part of the paper I considered this possibility and showed that indeed there might be some truth to this claim, especially considering that arbitrating between competing universal justifications for language regulation is ultimately made by appeals to intrinsic value of either controversial conceptions of the good or of the right. Neutrality's scope, therefore, might be even narrower for language regulation than what liberal-neutralists would be content with.

While this paper focused on two specific domains – spatial organization and language regulation – the conceptual conclusions regarding the challenge for neutrality can potentially be applied to other domains that also feature a high degree of mutual exclusion.

Interestingly, this could involve a time dimension. Whenever initial options in a sequence of events generate path-dependence, they will exclude other potential alternatives from their respective futures. Unfortunately, the scope of this paper precludes an elaboration of this idea. Still, as long as this is a consequence of state regulation and not of individual choice, neutralists have to consider this as a potential restriction on neutrality.

As for a normative conclusion, if indeed sectarian or comprehensive reasons ultimately ground spatial policies, then these reasons should be made explicit.<sup>21</sup> People should be able to deliberate on these matters openly and with informed views, even if at the end of the day neutral justifications will not be available. This points to a higher-order plane of disagreement, about the proper content of public discourse: public reason theorists, for example, view disagreement as a problem to be impartially contained. An opposing view considers this concept of disagreement as a failure to show equal respect to those engaged in the debate. Receding from the disagreement is tantamount to paternalistically treating the reasons that persons bring to the discussion as mere preferences, rather than the principled fundamental beliefs that they really are (Enoch 2015). Therefore, it is necessary to both acknowledge that sectarian reasons ultimately ground (at least) spatial policies, and, as important, to encourage an informed discourse on the right policy, even if neither the policy nor the procedure can ever be justified neutrally.

Finally, this paper has dealt with the question of what to do when there is a conflict regarding two or more mutually exclusive options. These options, at least as represented in this paper, reflect existing preferences or beliefs. The discussion therefore revolved around the impossibility of gaining universal agreement for policies in the face of *existing* competing conceptions. An important question that this paper has not dealt with is the question of *potential* preferences. Potential preferences are those which given the right circumstances could emerge, and they therefore depend heavily on the institutional and cultural background. A rich background will obviously do more for the emergence of potential preferences than an impoverished one.

But do potential conceptions have the same moral force that existing conceptions have? I believe that they do, and that social arrangements should make room for them. Those concerned about the ability of cultures to provide a meaningful background of options might be sympathetic to the necessity to incorporate potential preferences alongside existing ones. Nevertheless, this view is very much a perfectionist, non-neutral, account of the responsibility of the state towards the good life, favouring variety and diversity over ad hoc homogenous tastes. A defense of this proposal, however, will have to await another occasion.

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21] Communitarians raise a similar point: people have local commitments that bond them together, without which society cannot function. As such, by distributing goods and resources, the state inevitably promotes certain values over others. Therefore, the state should not be indifferent to different conceptions of the good, but rather recognize them openly and make its decisions explicitly based on them (Pasternak and de-Shalit 2007, 176).

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