

Constitutionalism and Language Rights in Latin America: A Preliminary Discussion

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- Who are you supposed to be?
- I'm your interpreter.
- I can speak and I understand. The problem isn't the language. What I don't understand are the people around here.¹

Introduction

As is known, one of the characteristic traits of Latin American constitutions after the third wave of democratization is recognition of cultural pluralism. The region left behind what Raquel Yrigoyen calls the horizon of the “assimilationist liberal constitutionalism” germane to the 19th century and the horizon of the “integrationist social constitutionalism” germane to the 20th century and incorporated texts which reveal the horizon of the “pluralist constitutionalism” germane to the 21st century, marked by its recognition of the diverse cultural backgrounds of the populations in our countries and by the will to establish rights and other protections for indigenous communities.²

These constitutional provisions typically include the right to use and transmit historical languages – some of which are declared official or co-official languages in sections of the national territory. The Constitution of Bolivia, for example, makes 36 indigenous languages official along with Spanish and establishes that official language use must proceed in at least two of them – Spanish and another one to be determined by taking into account a complex series of

¹ Couto 2000, p. 42, citado en Grupo Alfaqqueque 2010, p. 9.

² Yrigoyen Fajardo 2011, pp. 1-3. Dentro del horizonte del constitucionalismo pluralista Yrigoyen distingue a su vez tres etapas: el ciclo del constitucionalismo multicultural (1982-1988), el ciclo del constitucionalismo pluricultural (1989-2005) y el ciclo del constitucionalismo plurinacional (2006-2009), definido por la aprobación de textos como la constitución de Ecuador (2008), la de Bolivia (2009) y la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas (2006-2007). Sobre la distintividad de la llegada de las cláusulas culturales a las constituciones la región véase también Yrigoyen Fajardo 2006, Sieder 2002, Van Cott 2000 y Uprimny 2011.

factors.³ The Mexican Constitution – to cite a text which occupies a much more modest position in the “spectrum” of constitutional recognition of multilingualism – provides indigenous populations and communities with the autonomy to “preserve and enrich their languages, knowledge, and all elements that comprise their culture and identity”⁴ and calls on federal and local authorities to, in conjunction with these communities, increase schooling “favoring bilingual and intercultural education.”⁵

With these provisions in the constitutional frontispiece, one would expect the emergence of an academic debate bent on spelling out their possible developments and implications in more precise technical terms. Let us consider, for example, the notion of “official language” and the many questions that using it with a legal logic gives rise to: a definition of “official language” must be settled on, as well as how it will be distinguished from “national,” “original,” and “auxiliary” languages, whenever official texts include also references to them; the symmetric or asymmetric borders of co-officiality must be traced; the bundle of rights and duties of official language knowledge, use, and transmission and how they will be allowed for in educational curricula must be clarified; the contexts (courts, legislatures, public services) where speakers will have a right of linguistic option must be determined; the strength of the presumptions of official language knowledge must be agreed on, as well as the criteria for nullity or annullability attached to its disuse; the means that will be used to institutionalize multilingualism must be defined

³ El artículo 5 de la Constitución de Bolivia establece: “I. Son idiomas oficiales del Estado el castellano y todos los idiomas de las naciones y pueblos indígena originario campesinos, que son el aymara, araona, baure, bésiro, canichana, cavineño, cayubaba, chácobo, chimán, ese ejja, guaraní, guarasu’we, guarayu, itonama, leco, machajuyai-kallawaya, machineri, maropa, mojeño-trinitario, mojeño-ignaciano, moré, mosetén, movima, pacawara, puquina, quechua, sirionó, tacana, tapiete, toromona, uru-chipaya, weenhayek, yaminawa, yuki, yuracaré y zamuco. II. El Gobierno plurinacional y los gobiernos departamentales deben utilizar al menos dos idiomas oficiales. Uno de ellos debe ser el castellano, y el otro se decidirá tomando en cuenta el uso, la conveniencia, las circunstancias, las necesidades y preferencias de la población en su totalidad o del territorio en cuestión. Los demás gobiernos autónomos deben utilizar los idiomas propios de su territorio, y uno de ellos debe ser el castellano”.

⁴ Artículo 2, apartado A, fracción IV de la Constitución federal mexicana.

⁵ Artículo 2, apartado B, fracción II de la Constitución federal mexicana.

(personal or institutional bilingualism, linguistic competence as entry requirement or as supplementary qualification ...); the bonds that will exist, if any, between official uses and linguistic use in the sphere of private exchanges (product labeling, for example) must be considered... A vast array of normative and technical debates, in short, must be addressed before and after legislative action on the matter.⁶

The linguistic chapter of the new Latin American constitutions is, however, almost absent from specialized legal debates. I have the impression that the little that is said on the subject comes from sociologists, anthropologists, or linguists, not lawyers. This leads to an interesting series of questions: Why do constitutionalists and legal activists otherwise sincerely committed to realizing the promises of the constitutions in the region show so little enthusiasm for language matters? Why are language rights so far out on the periphery of the “neoconstitutional” conversation? Is it because the project of moving linguistic recognition from the terrain of constitutional rhetoric and political discretionality to the terrain of law and justice involves difficulties that we do not encounter in other areas – that of social rights, for instance? Are these difficulties of a normative-philosophical nature or are they more practical in kind? Does a distinctive connection between them arise in the area of language? Are the difficulties so broad in scope that we should feel paralyzed by them?

In this work I want to explore possible responses to these questions and undertake the exercise as an avenue (or, perhaps, as a pretext) to begin identifying which sources of difficulty have more weight than others and to begin exploring what premises should guide the development of appropriate language policies for Latin America.

⁶ Para una muestra ilustrativa del tipo de análisis jurídico al que me refiero véase Aguirreazkuenaga 1991, Milian i Massana 1991, 1992 y 2000, Pou Giménez 1998 y 2005 (cap. 4), Puig Salellas 1990 y Réaume 1988

The hypothesis I depart from is that language law's low profile in the region is certainly related to the persisting fear of becoming enmeshed in a normatively problematic project. The ambiguous result of debates between liberals and communitarians, between cosmopolitans and nationalists, or between pro-culture liberals and radical culturalists casts a shadow that leaves many people uncertain. As I will argue in the first section of this piece, however, many of such fears are largely unfounded. The arguments typically raised to highlight potential problems associated with maintaining ethnocultural diversity seem particularly weak when projected onto discussions on language, in comparison to other elements of "culture". Much to the contrary, the founding values of liberal democracy appear to provide reasons for choosing the protection of minority languages as an especially appealing and uncomplicated way to make progress towards the kind of ethnocultural justice our constitutions call for.

As I will point out in the second section, a much more imposing source of complexity emerges, however, when we abandon the classic confines of the abstract debate over the value of cultural diversity and become aware of the characteristics of linguistic dynamics in the Latin American context. As I will argue, taking language rights seriously in the social and historic context of our countries requires a serious questioning of the model most widely employed to make room for indigenous languages - a model based on the idea of leaving people alone and "free" to use them in a linguistic market that is unregulated or regulated against them. Jurists, however, have done little to explore existing institutional alternatives and those that do seem pertinent suggest the necessity of extending what I call "duties of linguistic collaboration" to speakers of majoritarian languages, and not just to speakers of minoritarian ones - something that does not yet appear to be commonly accepted.

The final section of the paper will suggest that reformulating the discussion, taking as its starting point the idea that multilingualism must be sustained, in more egalitarian terms, by everyone, and recasting it as a debate that forces us to consider the obligations that some citizens have with regards others does not make it more complicated, but rather more promising. The adjustment enables us to see in a different light consequentialist criticisms repeatedly directed to policies that favor indigenous languages, like those that argue that such policies are prohibitively expensive, divert resources that can be put to better use, or could even erode social cohesion. There are actually reasons to believe that, because of the type of relationships between communities that it would promote, a more cooperative and equitable multilingualism could trigger dynamics of redistribution and citizenship-building that, in this part of the world, should be warmly welcomed. In any case the discussion becomes, as it should be, a discussion about equality and social cohesion, one relatively similar to many we ordinarily have on the subject of social rights – an analogy which warns us about the type of arguments we should be very reluctant to make.

I. Language and the debate over the value of culture

In recent decades an extensive theoretical debate has developed concerning the possibility of basing social coexistence in liberal democracies on responsiveness to the cultural pluralism of their populations. The debate possessed a more abstract philosophical dimension in its early stages (liberals disputed with communitarians the role of community in the formation of the subject, the sources of morality, and the relation of morality with politics) and gradually descended – at the pace with which newspapers filled their pages with an increasing number of “practical” problems – into the domain of political and legal theory where it diversified into a

wide range of more specific analytical spheres – immigration, religion, citizenship, multicultural education, tolerance, nationalism, indigenous rights, and so forth.

Surprisingly, despite the immediate and nearly intuitive connection we establish between culture and language, these debates have paid little attention to questions that are specifically linguistic. As the editors of one of the few books devoted to examining linguistic diversity from the perspective of normative political theory do stress, while it is possible to speak of “liberal theories of immigration” or “liberal theories of nationalism”, and identify with relative certainty their communitarian, feminist, postmodern, or republican critiques, it is almost impossible to identify an articulated theory of linguistic justice or language rights – be it liberal, communitarian, postcolonial, or any other.⁷

Furthermore, the conclusions drawn by existing attempts to explore the linguistic derivatives of the principles of freedom and equality are dishearteningly disparate. There is not only a great variety of responses – something that happens, of course, with almost every subject we take up – but also great heterogeneity in the questions asked and a distinctive lack of common analytic axes: if for some people models of linguistic management should be evaluated in terms of their objectives or results (pro-preservation, pro-accommodation, or pro-assimilation models), for others the only normatively relevant concern are the procedures and the causal path that leads to them (willingness, non-exploitation, revisability);⁸ if for some the model of “benign neglect” in language matters is the closest imaginable approximation for longed-for state

⁷ Kymlicka y Patten 2003, p. 1. Otros libros colectivos centrados específicamente en lo lingüístico (en el contexto de la reflexión académica escrita en inglés) serían Skutnabb-Kangas y Phillipson 1994, Vilfan 1993 y Van Parijs 2004. A nivel de obra individual habría que destacar sin duda la de Denise Réaume (1988, 1991, 1994, 1995, 2000, 2003), Bruno de Witte (1985a, 1985b, 1992) Stephen May (2001, 2002), Cristina Rodríguez (2001, 2006a, 2006b, 2008) y desde la ciencia política, Philippe Van Parijs (2000, 2003, 2004) y David Laitin (1989, 1992, 1994, 2004).

⁸ Kymlicka y Patten 2003, pp. 37 y 48-51 (identificando las posturas de autores como Laitin y Reich, Blake, Weinstock, Levy o Patten —incluidas en el volumen que editan— como propuestas fundamentadas en el respeto a estándares procedimentales).

impartiality,⁹ others consider it just another version of customary assimilationism;¹⁰ if for some the theory of “linguistic human rights” is key in the liberal egalitarian approach to linguistic interaction,¹¹ others see it as something close to not having a specific theory of linguistic justice at all;¹² if for some the model of nation-building is at the center of ethnolinguistic justice,¹³ others believe it arbitrarily marginalizes the languages that are not selected;¹⁴ if for some “preservationist” models offer the only realistic means for treating all persons equitably,¹⁵ for others they hide risks for children and disadvantaged people.¹⁶ No shared grammar, in conclusion, has reached the level of consolidation required to help us map out the positions that can be taken with regards the major basic questions: When is a specific instance of linguistic change unjust and when should it be welcomed? What are the pertinent criteria for evaluating coercion and freedom in the acquisition, use, and transmission of language?

In my view, a good part of the disparity can be explained by the difficulty of automatically projecting onto the linguistic plane the standard debate about the value of culture in general – a debate which tends to provide the basis for the normative proposals in this area and

⁹ Weinstock 2003, pp. 265-269 (argumentado que los estados actúan de manera justa en el ámbito lingüístico “cuando se apartan del principio de omisión bienintencionada exclusivamente lo justo para asegurar que podrán comunicarse con efectividad con la ciudadanía, pero no más”, 265)

¹⁰ Bauböck 2001, May 2001, Kymlicka 2001 (subrayando de distintas maneras lo ilusorio de la pasividad estatal en materia lingüística).

¹¹ Skutnabb Kangas y Phillipson 1994, Milian i Massana 1992, De Witte 1985^a y 1985^b (con propuestas de justicia etnolingüística basadas en la exploración del contenido lingüístico implícito de los derechos fundamentales).

¹² Kymlicka y Patten 2003, pp. 33- 35 (subrayando los límites de ese enfoque).

¹³ Kymlicka 1995, 2001 (desarrollando una propuesta basada en culturas societales articuladas en torno a la promoción de una lengua común para mayorías y minorías nacionales o indígenas y otorgando a los inmigrantes derechos lingüísticos muy delgados).

¹⁴ Pogge 2003, p. 106 (subrayando que la distinción traza Kymlicka entre minorías nacionales y grupos inmigrantes es moralmente arbitraria y lo lleva a auto-contradecir las premisas liberales de su análisis).

¹⁵ May 2003 (subrayando que un entendimiento política, social e históricamente informado del principio de trato igual por parte del Estado exige otorgar derechos lingüísticos de mantenimiento a las minorías lingüísticas) y Réaume 2000 y 2003 (argumentando que la igual consideración y correcta identificación de la dimensión colectiva y participativa de los intereses que las personas tienen en la lengua justifica protecciones de seguridad lingüística).

¹⁶ Pogge 2003, pp. 121-122 (sosteniendo que la selección de la lengua escolar debe dar preeminencia a los intereses de los niños sobre cualesquiera otros y argumentando que en los EEUU ello exige una educación pública en inglés como mejor opción para su inserción en la vida social, económica y política del país lengua, que puede ser suplementada sólo en cuanto no comprometa ese objetivo).

that has powerfully influenced the way we have imagined the theorization of diversity both in the South and the North – and by the repercussions this initial mismatch produces when we go from what David Miller calls the level of principles (where the basic terms to define justice are debated: necessity, merit, equality, etc.) to questions of scope (to whom justice is owed), context (in what circumstances one or another principle should be applied, if a certain degree of plurality of principles is admitted), and application (what measures and policies should be put in place in order to act justly, once the basic principles and issues of scope and context have been considered).¹⁷

The singularities of the linguistic domain do not make themselves immediately apparent when one addresses the point that has centered most of the general debate: the exploration of the links between cultural recognition and individual autonomy and identity. On the contrary, everything underlying the arguments that emphasize the value of cultural identity from this perspective seems to be easily predicable upon language. Of languages it can be said, as is said with regards culture in general, that they are very important for the proper exercise of individual autonomy, inasmuch as they provide the context that gives substance and meaning to the options that individuals may decide to incorporate into their life plans,¹⁸ that they play a central role in the definition of identity for people,¹⁹ that they are valuable not only as contests of choice but also as an integral part of chosen life plans,²⁰ or that they possess for their speakers a value that

¹⁷ Miller 2004, p. 17.

¹⁸ Kymlicka 1995 (cap. 5) y 2001, pp. 209-210, Spinner-Halev 2000, pp. 76-77.

¹⁹ Margalit y Raz 1995, pp. 81-88, Tamir 1993, pp. 20-34, May 2001 (cap. 1) y 2003 (esp. pp. 139-143, subrayando el modo en que puede entenderse la importancia de las lenguas desde la perspectiva de la identidad a pesar del carácter “construido” de las identidades lingüísticas y la necesidad de separar estos argumentos de explicaciones esencialistas y deterministas de la etnicidad desacreditadas desde hace tiempo en la sociología, la antropología. Desarrolla el mismo punto, Réaume 2003, pp. 291-292.

²⁰ Tamir 1993, pp. 7, 21-32.

goes beyond their being the means to access other goods, a human achievement with a participatory dimension which has in itself a meaning.²¹

The uniqueness of language emerges, I think, in a discussion that is parallel to the one just mentioned, focused on the negative implications and problems that cultural recognition can also bring in. The most well-known arguments in this context are, no doubt, those that warn that processes of cultural recognition can lead to the institutionalization of rules and dynamics that end up compromising personal autonomy more than enriching it, by perpetuating asymmetrical power relations (gender inequalities, for example), by allowing for the violation of fundamental rights (life, integrity, due process...) of some people, or by preventing members from leaving the group.²² Basing rights and exemptions on preservationist policies, it is argued, might lead to condoning the mistreatment of the most vulnerable members in those communities in complete harmony with the rules of tradition.

In contrast, to speak a language and seek to transmit it does not seem to implicate this sort of risk. Language seems to possess, in this sense, fortunate singularities that could make it possible to draw a division between language rights and other potentially thorny pro-diversity policies, something that seems particularly attractive in the Latin American context.²³

The first singularity relates to the structure and nature of the bonds that hold the speakers of a language together. While members of a tribal or religious group typically share a comprehensive vision of the world that includes a mandate to follow a distinctive set of

²¹ Réaume 2003, pp. 278-284. Esta autora apela a la noción de valor “intrínseco” para capturar la idea de que las personas les dan un valor adicional al valor que tienen como medios que les permiten acceder a bienes distintos ellas, pero en todo momento construye sus argumentos desde la perspectiva de los intereses y necesidades individuales y colectivas de las personas, razón por la cual no debemos confundirlos con los argumentos de “valor intrínseco” que no remiten a esta conexión y presentan a las lenguas cuya subsistencia tiene un valor independientes.

²² Okin 1999, Shachar 2001, Bonilla Maldonado 2006.

²³ Tomo, en estos párrafos y hasta el final de la sección, partes del análisis en Pou Giménez 2003, pp. 103-108 y 2005, pp. 92-107.

behavioral rules, speaking a language does not imply accepting or sharing a set of beliefs with others. Linguistic preferences and loyalties are not simple, merely formal or adjective preferences, but rather are, as Yael Tamir puts it, “constitutive” preferences that “express the choices concerning the type of person that one wants to be and the kind of life one wants to lead” and offer at the same time the backdrop against which day-to-day decisions and judgments are made;²⁴ yet the essential “substance” of celebrating participation in linguistic practices is not intrinsically tied to specific schemes for the distribution of rights, duties, powers or opportunities.²⁵ As Cristina Rodriguez points out, “language as a system orients individuals to the world around them without prescribing a particular normative view of the world.”²⁶ That is why it does not seem accurate enough to liken the willingness to be speaker of a language and favor its continuance to subscription to “an ideal of the good life” – and if it were, it would be, as Eirik Lagerspetz remarks, a definition of the good life that the vast majority of persons share.²⁷

Languages seem to possess, then, a major advantage in that they are simultaneously tools of cultural preservation and transformation: they are the guarantors of a certain experience of identity as well as a rich resource for transforming it. Unlike adherence to religious practices or traditional family patterns, linguistic loyalties do not have straightforward implications in the domain of belief and provide an incomparable degree of freedom to shape original life plans,

²⁴ Tamir 1993, pp. 37, 41. Van Parijs (2004, pp. 372-373), en un intento por clarificar la noción de “cultura” que se asume como trasfondo de las discusiones en torno a su valor, describe muy bien, creo, el papel articulador de la lengua: “De modo que hay inevitablemente un alto grado de borrosidad respecto de si dos grupos tienen dos culturas distintas o diferentes variantes de la misma. Pero la raza, la religión y sobre todo la lengua pueden proporcionar fronteras bastante claras entre las culturas, de ninguna manera (en el caso de la raza) o no principalmente (en los otros dos casos) porque constituyan o determinen por sí los varios aspectos de las prácticas y pensamientos distintivos, sino porque (y en la medida en que) afectan significativamente la estructura de interacción, y por ello mismo las corrientes de información, educación, persuasión e imitación entre la gente” [traducción mía].

²⁵ Son precisamente los grupos cuya identidad se prolonga en la voluntad de mantener ciertas reglas de distribución y conducta los que dan vida a lo que Shachar llama la “paradoja de la vulnerabilidad multicultural”, por la cual políticas orientadas a disminuir las desigualdades entre grupos acaban por aumentarlas a su interior. Shachar 2001.

²⁶ Rodríguez 2001, p. 186.

²⁷ Lagerspetz 1998, p. 194. También, Spinner 1994, p. 152.

both at the individual and collective level.²⁸ That is why language does not seem at first glance susceptible to the criticism that pro-diversity authors constantly level at theoretical proposals on accommodation: the fact that, in all of them, the bounds of acceptable minority claims are inevitably defined by liberal values²⁹. Focusing on language enables us to imagine the debate over cultural diversity as somehow different from a conversation that takes place in a patio enclosed within the impassable values of liberalism: it enables us to move it to an open space where the content and place of such values can be defined in a conversation that is less biased from the outset towards a particular result.

A second singularity is that organization around internal hierarchies that give power to certain members to make decisions for others and control inclusion and exclusion from the group is not an essential feature of linguistic groups. While ethnic or religious groups are hard to imagine without leaders and priests, linguistic groups can easily be visualized as a network of horizontal ties. Lagerspetz points out that the speakers of a language do not constitute an “artificial person” and that the group in itself does not have an important role in the exercise of language rights; the right to employ a language in certain contexts, for example, automatically benefits everyone who in fact use it.³⁰ Moreover, and although it is clear that language (including accent) has been used to denote people as “other” or “inferior” in discriminatory dynamics, linguistic membership is based on criteria that in any case leave much room for self-adscription:

²⁸ Lo ocurrido en Québec ilustra este punto. La identidad nacional de los quebequeses (tal y como se desarrolló desde el momento que la corona inglesa expulsó a los franceses en 1759), tenía desde el principio entre sus ingredientes básicos la lengua francesa pero también un muy conservador entendimiento del catolicismo y valores tradicionales opuestos a la industrialización, la urbanización y la modernidad. El énfasis en la lengua fue crucial para el éxito de la Revolución Tranquila en la década de los sesenta. Québec emergió de ella como una sociedad moderna, liberal y secularizada y durante el proceso “lejos de ser erosionada por la modernización, la identidad de Québec fue reforzada y forjada de nuevo. La lengua continuó siendo su vehículo principal, pero la religión y la identidad de clase cesaron de serlo”. Keating 1996, pp. 86-87.

²⁹ Bonilla Maldonado 2006, p. 24.

³⁰ Los hablantes de una lengua, dice Lagerspetz, “no son un grupo en ningún sentido más profundo que aquel en que decimos que lo son los zurdos” (Lagerspetz 1998, p. 192).

the entry into and exit from linguistic groups is not subordinated to the formal control of a group of authorities.

Thirdly, and in a crucial way, languages can be accumulated in a way that turns out to be impossible with regard to religious and tribal affiliations, an aspect that opens ways to handle points that are repeatedly raised in the debate over multilingualism. Why, people ask, invest effort and resources into maintaining minority languages that, by the same arguments we use for establishing their value, seem to offer fewer opportunities than others? Why not simply incorporate, as best we can, coming generations into linguistic communities that offer a broader range of opportunities? The attempt to respond to these questions typically leads to complex theoretical exchange aimed at debating the criteria that could be legitimately used for determining what constitutes a broader range of opportunities. Without rejecting the relevance of this discussion, linguistic recognition does not require it either and provides a direct response to the question: choosing between languages is simply unnecessary. Supporting the context of choice that indigenous languages offer their speakers does not block the context of choice coming from their being speakers of Spanish, Portuguese or English as well. *Ceteris paribus*, polyglots have more options than people who only speak one language.³¹ For this reason, policies *based on the multilingualism of individuals* – and not the simple preservation of languages per se – should be seen as particularly promising.

Language seems to clearly have, in short, an advantage over other elements of cultural recognition that makes it relatively simple to take the ensuing “steps” (scope, context, application) when thinking of ethnolinguistic justice. This should facilitate to some degree the

³¹ Grin 2004, p. 197.

discussion of the possibilities for the normative development of constitutional clauses that, in fact, *assume* the legitimacy of maintaining minoritarian languages.

II. Linguistic dynamics and the duties of linguistic collaboration

Yet what does it really mean, to use and transmit a language? What are we talking about and what are the primary implications of agreeing, *in Latin America*, that indigenous populations should be able to conserve and transmit their languages? The sociologist Abram de Swaan has developed an outline to explain linguistic dynamics that, although not immune to criticism, is fairly well-known and possesses a solid descriptive dimension that will help me bring out points I would like to incorporate into the discussion.³²

De Swaan observes that humans are linked up in a “global linguistic system” that coexists alongside the global economic, political, technological, and ecological systems. The six billion inhabitants of the earth are divided into some 5000 groups that do not understand each other (because they speak different languages), yet the effects of this division are overcome by the existence of multilingual individuals who guarantee intercommunication.³³ The multilingual connections are not random but rather follow a pattern (the global linguistic system) that is surprisingly strong and hierarchical. At the lowest level of the system are peripheral languages which comprise 98% of the five thousand existing language groups but are spoken by only 10% of the global population. They are used more for conversation and narration than reading and writing, more for storing memories than records.³⁴ Their speakers generally do not learn other peripheral languages to communicate with other groups, but rather learn a different language

³² Louis-Jean Calvet adopta el análisis de Swaan (inicialmente desarrollado en De Swaan 1991 y 1993) y lo rebautiza como un modelo “gravitacional” en Calvet 1999 y 2002.

³³ De Swaan 2001, pp. 1-2.

³⁴ *Ibid.* p. 4.

which becomes common and “central” to all of them. Such central languages are around a hundred in number and, altogether, are used by 95% of the world’s population. They are “registry” languages (a large part of what is said in them is “fixed” by some means) and are used in school, in communication media and, to some degree, most are used in politics, bureaucracy, and courts.³⁵ Many speakers of central languages are multilingual: some are speakers of peripheral satellite languages who have learned the central language; then there are native speakers of the central language who are not generally multilingual because they have learnt a peripheral language but rather one of the twelve super-central languages – the great regional *linguas francas*: Arabic, Chinese, Malay (Indonesian Bahasa), Hindi, Russian, German, Japanese, Spanish, French, English, Portuguese, or Swahili. All except Swahili have more than one hundred million speakers. Some of these people learn other super-central languages but typically communicate among each other by learning and using the hyper-language of our time: English.³⁶

The world, then, divided at its base and united by a layer of multilingual speakers, can be represented by a centripetal model – one de Swaan evokes as “linguistic constellations,” with stars and planets that orbit them – because it depicts how speakers tend to learn languages that are more central than those they already speak, rather than languages that are horizontally situated.³⁷ In any case, the details of linguistic change and maintenance, de Swaan emphasizes, force us to consider at least three factors: the characteristics of languages as a specific type of good, their communicative value, and their role in the conservation of cultural capital that people also take into account.

³⁵ Ibid. p. 5.

³⁶ Ibid. pp. 4-5.

³⁷ Ibid. pp. 5, 20, 25. Como subraya también Rainer Enrique Hamel, el multilingüismo de las personas es típicamente vertical, no horizontal (2008, p. 69).

Seen as a *type of good*, languages cannot be considered scarce (since there remain a great number one could learn) and, once a certain degree of competence is attained, they are free: access to them requires an “entry” investment of variable significance (which is why one cannot learn an unlimited number of them) but the languages that one knows can be freely used or abandoned whenever wanted.³⁸ Languages are furthermore goods whose enjoyment cannot be refused to people, since they are available to anyone who has access to the means of learning them³⁹ and, unlike most economic goods, do not undergo wear through use, but instead the opposite occurs: the more they are used, the more valuable they become. This trait, related to what economists call “network externalities”⁴⁰ permits us to qualify them not merely as collective, but hypercollective goods.⁴¹ Lastly, language is a good that requires the collaboration of some but not all of its speakers for continuance: it is neither endangered by an individual case of abandonment nor guaranteed by an isolated effort for preservation. No one has, then, veto powers over a language’s destiny.⁴²

The preferences for learning, using, or abandoning languages are strongly influenced by expectations concerning the behavior of others, and together with the impossibility of controlling who enters or leaves a linguistic and the hypercollective character of language, this makes stampedes in and out of linguistic groups frequent and distinctive. This results in the rapid expansion of languages that are expected to gain speakers and the desertion of those expected to

³⁸ Ibid. p. 27.

³⁹ De Swaan nota que ni los regímenes más reclusos en sí mismos, como Albania durante la Guerra Fría o Corea del Norte, han intentado prohibir que los de afuera aprendan la lengua del lugar, aunque obstaculizaban su práctica denegando la entrada a los visitantes. También deben tomarse en cuenta los intentos de exclusión al interior de los Estados (el kurdo en Turquía, por ejemplo), que según este autor no suelen ser efectivos, salvo cuando sus hablantes han sufrido deportación o incluso exterminación (p. 31 y nota 10).

⁴⁰ Las externalidades de red (external network effects) ocurren en las redes que no vinculan solamente a la gente con un fuente de distribución central sino con los otros usuarios —es el caso de las redes de comunicación: teléfono, Internet...— En su contexto la entrada de cada nuevo usuario aumenta el valor de ser un usuario existente y viceversa. De Swaan, op. cit. pp. 28-30 y, en general, Church y King 1993.

⁴¹ Ibid. pp. 28-30.

⁴² Ibid. p. 31.

lose members.⁴³ In the field of language, then, dynamics of mutual expectations tend to result in self-fulfilling prophecies.⁴⁴ De Swaan holds that these shifts are largely determined by the *communicative value or potential* that people esteem specific languages have, which he describes as a product of their “prevalence” and their “centrality” within their constellation.⁴⁵ The idea is that people would rather learn, use, and transmit languages that are widely spoken in their area and languages that are spoken by bilingual people (because this opens the possibility for them to access, indirectly, the activities conducted in the languages that bilingual people speak – usually more central ones in the constellation).

People also take into account, de Swaan says, the importance of languages as a key factor in the *maintenance of a community’s “cultural capital,”* and here he raises points similar to the ones we have considered in our references to the discussion on the value of language⁴⁶. When speakers of a language become aware of the possibility that it will cease to exist, de Swaan observes, this awareness can acquire special significance and lead to generalized expression of support for its continuance.⁴⁷ But then problems of collective action that are common in many other areas arise: people would behave a certain way if a sufficient number of other people did the same, but as long as uncertainty in this regards persists the action remains irrational.⁴⁸ A very large space is thus opened to discussion of free market versus interventionism and protectionism

⁴³ Ibid. 25-26.

⁴⁴ Ibid. 26.

⁴⁵ El “valor-Q” es definido como el producto de la proporción de gente que la habla, de la totalidad de hablantes de la constelación, y la proporción de hablantes multilingües cuyo repertorio incluye esa lengua, del conjunto de hablantes multilingües de la constelación. La gente preferiría la lengua que más aumenta el potencial comunicativo de su repertorio. Ibid. pp. 21 y 33-40.

⁴⁶ Ibid. pp. 18-19 y 54-55. De Swann apunta además, me parece que acertadamente, que junto con las dinámicas de poder e intercambio actuales, hay que tener en cuenta el peso de las pasadas (p. 42) y llama la atención sobre la “inercia” lingüísticas: las constelaciones lingüísticas no cambian tan rápido como las políticas; el mapa lingüístico actual no es tan distinto al mapa político de 1920 (p.11) (o, uno podría decir, es incomparablemente menos distinto de lo que lo es el mapa político del 2011).

⁴⁷ Ibid. pp. 42, 55-57.

⁴⁸ Ibid. 5-6, 56.

concerning language issues and their various possible results: diglossia (a stabilized situation characterized by the division of spheres of use between coexisting languages), growth of the linguistic community, or its eventual disappearance.⁴⁹

The Swaanian explanation of “motivations” that move people and shape linguistic dynamics is not the only one available⁵⁰ and could be adjusted in several ways, but without doubt it brings together several main points that are repeatedly confirmed by sociolinguistic analyses in concrete contexts and that should be allowed for in the legal construction of linguistic recognition: on the one hand, the need to give due weight to considerations about language’s instrumental value, and to recognize that any normative-legal proposal that forces people to put them in radical opposition to identity considerations is destined to fail (and in fact does not even make much sense from this last perspective, which presupposes *spoken* languages); and on the other hand, the need to be aware of, compensate for or make use, depending on the case, of the “multiplying” dimension of linguistic interaction and the collective action issues that overwhelm many of the relevant areas of action and decision.

What has been said to this point, in my opinion, sufficiently indicates the type of implications that stem from the project of moving constitutional linguistic recognition out of the field of mere symbolism in the most characteristic sociolinguistic scenario in our countries.⁵¹ In

⁴⁹ Ibid. pp. 47-59.

⁵⁰ Tamir desarrolla en uno de sus artículos (Tamir 2004) una explicación basada en la idea de que las motivaciones de las personas respecto de sus cambiantes afiliaciones identitarias y por tanto sus movimientos a lo largo del continuo comunitarismo – globalismo responden a la percepción de sus distintas y distintivas posiciones frente a riesgos y oportunidades. La autora liga la diferente posición ante riesgos y oportunidades a un entendimiento “actualizado”, para las sociedades post-industriales, de la noción de “clase”, identifica riesgos y oportunidades que unen y otros que desunen, y explora como eso influye en la posición que toman frente a los estados nacionales y, en general, su posición en el continuo.

⁵¹ Las consideraciones a partir de este punto son sensibles al contexto y por tanto, lo que pueda decirse en lo que yo considero “el escenario sociolingüístico característico” en América Latina puede ser muy distinto a lo que haya que decir, sobre la base de los mismos elementos, en otros escenarios. En América Latina misma, hay que pensar qué tanto del análisis es aplicable en contextos sociolingüísticos con rasgos que los alejan en varios puntos del típico de

countries marked by the presence of one super-central language (Spanish or Portuguese) and one hyper-central one (English), any non-hypocritical policy of language maintenance requires re-intervening a linguistic market nowadays strongly intervened in favor of Spanish and create structural conditions to slow the stampedes in which indigenous languages speakers are now predictably involved. A realistic appreciation of the enormous instrumental value differentials of the languages that interact in Latin America must not lead to negative value judgments – as it has traditionally happened – which are then used to justify policies that implicitly posit the conservation of indigenous languages as something undesirable, but to neutral-value assessments that can help reveal the institutional and cultural factors that could reduce these differentials.

In my opinion, to advance toward the construction of what Alan Patten calls the fair “background conditions”⁵² that grant individuals a real possibility of having (at a non-prohibitive personal cost) an adequate multilingual repertoire with an indigenous component (Zapotec-Spanish-English, for example), two things are necessary: 1) guaranteeing or creating real and prestigious domains of use for indigenous languages⁵³ and 2) adopting measures that assure (and convincingly transmit the perception that there will remain) a permanent mass of speakers large enough to support, at least, stable diglossic arrangements.⁵⁴ And unlike what might occur in communities that are larger or integrated by individuals with more resources (and thus, with greater capacity to self-sustain themselves), I believe this cannot be attained in Latin America without involving *also* the speakers of the majoritarian language – at the instance of the State.

la región —pienso sobre todo en Puerto Rico y Paraguay— y eso, desafortunadamente, es algo que no hago en este trabajo.

⁵² Patten 2003, pp. 316-317.

⁵³ Como destaca Hamel, “toda política y planificación del lenguaje que se propone influir en las dinámicas de las lenguas tendrá que intervenir en la verticalidad de prestigio y funciones y adoptar medidas que reduzcan el grado de asimetría [...] Las intervenciones tendrán que abarcar la planificación de prestigio y de identidad, así como la ampliación de las funciones de las lenguas subordinadas, lo que implica cambios sociales y económicos relevantes” (2008, p. 70).

⁵⁴ [Joshua Fishman, reversing language shift]

Let us consider for a moment the incorporation of indigenous languages into schools, which is perhaps the most central area from the perspective of the three elements identified (creation of prestige, possibilities for use, and guaranteeing the future existence of a linguistic community) and can be regarded as implicitly called for in any constitutional prescription concerning the preservation of indigenous languages. Independently of the territorial pattern of recognition that is adopted (only in areas where a minority historically settled or also in cities where appreciable numbers of speakers live), the indigenous language will have to be taught to *all of the children* within the defined region, including, then, those whose mother tongue is Spanish or Portuguese and whose family does not identify itself as indigenous.⁵⁵ Otherwise it seems illusory to believe that the sentiment of inferiority that many indigenous people associate with their language will subside – a sentiment that is understandably based, at the present time, on the observations that these languages “are not good for anything” and that the most prosperous people neither learn nor use them – or that the uncertainty regarding the future existence of the language can be quelled – which, along with the previous factor, provokes exit stampedes.

Let us also consider the regulation of public/official use of languages. As declarations of officiality are tools that “disrupt” market dynamics, ensure prestigious spheres of use for languages and powerfully augment their communicative potential – and much more easily than in private spheres, where linguistic regulation must respect the linguistic content implicit in several fundamental rights – it is difficult to believe that anything will change if such declarations continue to benefit exclusively the languages that need them the least, rather than

⁵⁵ Me refiero, entonces, a una discusión distinta y previa al debate sobre los modelos de enseñanza bilingüe (respecto del que hay una bibliografía ingente, derivada del trabajo de sociolingüistas y antropólogos). Lo que quiero destacar es el cambio en el universo de niños que una u otra política educativa multilingüe con componente indígena debería considerar.

being used to open spaces for the use of minoritarian languages in spheres that are crucial to recuperate linguistic vitality.⁵⁶

The legal-institutional options needed to foster this kind of changes are diverse and can only be identified in light of aspects specific to the groups involved (level of concentration or dispersion, size, patterns of interaction, linguistic culture) and the intensity deemed necessary to institutionally offset prevalent linguistic dynamics. Yet all of them do seem to require regulation – not a free market approach – and the involvement, to varying degrees, of the group of people who speak the super-central language – not, as is systematically assumed best, leaving speakers of peripheral indigenous languages “to themselves.” Indigenous language rights have customarily been molded by a normative model in whose context indigenous groups are given the “option” of speaking their languages, understood in a way that does not justify the imposition of duties on the majoritarian group so as to create the preconditions for this option to be real. Making a commitment to the preservation of indigenous languages would now therefore require limiting institutional state support to the “option” of the majority to continue using their language in an environment “uncontaminated” by the presence of minority tongues.

The speakers of the majoritarian language are implicated, then, in two ways: first of all, in terms of money, given that public resources – coming from contributions made by speakers of the majoritarian language and (lest we forget) by members of minority groups – will have to be employed differently from what has been the case until now, and second of all, in terms of behavior, since, albeit to varying degrees of intensity and scope, they will have to become accustomed to the legitimacy of indigenous language presence in schools and public offices.

⁵⁶ [referencias sociolingüísticas generales: si una lengua no se usa en ámbitos públicos es difícil contrapesar su declive].

Members of the majority would retain the right to use their language in every sphere, but they would not have the right to exempt their children from learning an indigenous language at school and would observe the progressive reorganization of public services under conditions appropriate to make it possible to exercise a right of language choice.⁵⁷

It would involve, in other words, bundling costs and benefits in a way that would give the prospects for maintaining or acquiring a linguistic repertoire with an indigenous component some hope for success. It would involve formulating policies that would bring about greater numbers of individuals possessing a multilingual repertory – some who would initially come from the majority, and others from minorities – which would increase the interrelated possibilities for several linguistic communities to thrive, instead of just one.⁵⁸ One way to summarize the idea is presenting it as the extension (or generalization) of the collaboration required to sustain multilingualism (for the sake of a more egalitarian enjoyment of the language rights of all) in contrast to the currently prevalent system, in which the collaboration is unidirectional (on the part of minority members towards those in the majority).

III. Multilingualism, redistribution and citizenship building

Let us briefly recapitulate what has been suggested up to this point. Indigenous linguistic recognition at the constitutional level bears witness to the existence of societies where language pluralism is not only a fact but also a valued feature that must be translated into legal arrangement capable of ensuring, at the minimum, that indigenous communities will be able to

⁵⁷ En una versión, el derecho de opción lingüística implicaría el derecho de escoger la lengua a usar y la lengua en la que el Estado responde. En otra, implicaría que tanto uno como otro pueden seleccionar la lengua de comunicación, lo cual impondría a la otra parte la carga de hacer lo necesario para entender (hipótesis que muestra la necesidad de coordinar el uso oficial de las lenguas con su presencia en el sistema educativo).

⁵⁸ Véase en Colomer 1996 una interesante exploración de las posibilidades comunicativas que abre el multilingüismo de los individuos en esquemas que no implican tener que recurrir siempre a la misma lengua común (uso de la lengua por turnos, por mayorías variables, etcétera).

use and transmit their languages. There are not strong arguments of principle to fear that linguistic pluralism will lead to dynamics that are difficult to coordinate with the rest of the constitutional body because languages are cultural practices that do not require adherence to specific rules of behavior, because they generate open communities, and because, within certain limits, they can be accumulated, such that systems based on personal multilingualism enhance an individual's prospects and should be considered a relatively unproblematic avenue for cultural recognition.

However, for indigenous languages to be able to integrate individuals' linguistic repertoires in a real way and be valuable inasmuch as collectively used, it is necessary to set up policies capable of shifting the equilibrium of costs and benefits their maintenance entails, as revealed by an informed examination of language dynamics determinants. And this, in the most common socioeconomic and sociolinguistic Latin American context, requires us to stop lending credence to the belief that such small linguistic communities must be left "by themselves" and allocate public resources to enlarge spheres of language use through institutional arrangements that involve to some degree, by one means or another, members of other linguistic communities. In this way impulse would be given to a cooperative sort of multilingualism permitting a somewhat more egalitarian satisfaction of the language rights of everyone.

In this last section I will suggest that building on the previous premises offers an opportunity to change the emphasis of the debate around the constitutionalization of linguistic diversity in Latin America. In my view, this change of emphasis centrally compels us to confront head-on two common consequentialist arguments in the field that concerns us – the argument of the economic costs of pro-diversity policies and that of their impact on social cohesion – and reevaluate them and rethink their possible outcomes.

Let us consider, first, the argument about economic costs. A common assertion in the debate over multilingualism holds that, while implementing policies that are fairer to speakers of indigenous languages is not “intrinsicly bad”, the cost is excessively high and in any case diverts resources that could be directed to disadvantaged citizens through better means. A perspective that is open to the possible forms of a more cooperative multilingualism suggests, however, that many of the assumptions surrounding these conclusions are inexact.

First off, as Philippe Van Parijs has noted with precision, we should start by identifying the many ways in which the linguistic status quo is unjust.⁵⁹ The global linguistic system, based on asymmetrical multilingualism, is without doubt an efficient one, but also one that is without doubt unfair in terms of the distribution of costs and benefits.⁶⁰ When speakers of a language that is not dominant learn, as is often the case, a more central language, they create a public good – mutual understanding – from which the majority benefit and cannot be excluded from but one that they do not contribute to;⁶¹ the communicative value of the language spoken by the majority, furthermore, is increased by the addition of new speakers without requiring any action on the part of the former⁶². A free-riding effect is thus produced that could be compensated for by employing various methods aimed at reducing to some degree the gap between efficiency and equity, as it is suggested in the sophisticated analyses by political scientists who have focused on the subject.⁶³

⁵⁹ Van Parijs 2003, pp. 156, 167.

⁶⁰ De Swann 2001, p. 51.

⁶¹ Van Parijs, op.cit. p. 155.

⁶² De Swann, op.cit. p. 51

⁶³ Véase Van Parijs 2003, pp. 157 y ss. Este autor compara cuatro modelos distintos de posible redistribución: el criterio propuesto por Church y King (1993), el propuesto por Jonathan Pool (autor de un artículo clásico en la materia: Pool 1991), el criterio del beneficio relativo maximin de David Gauthier (1986), aplicado a lo lingüístico, y el suyo propio (desarrollado también en de Briey y Van Parijs 2002).

Pointing at this redistribution debate affords an opportunity, I believe, to underscore how anomalous it is to constantly associate pro-diversity language policies with large transfers of financial resources to the speakers of minoritarian languages, without ever considering the large transfers of wealth implicit in the linguistic status quo (both in terms of direct costs such as those of learning a new language and in terms of opportunity costs that some must assume while others are spared). In general, as François Grin points out, “popular beliefs” regarding the costs of multilingualism do not feel any necessity to resort to empirical studies – that, moreover, are nearly inexistent – and disallow an important series of considerations: that “expenditure” is not equivalent to “cost;”⁶⁴ that exchanges carried out in majoritarian languages produce effects that are not analyzed in terms of their cost although they should;⁶⁵ or that it is necessary to consider the counterfactual aspect (looking more closely at what is being compared to what), which suggests that the proper question is therefore not how much does it cost, for example, to move from a monolingual educative system to a bilingual one, but rather how much more it does it cost than what would be necessary to spend anyhow to meet the invariable state obligation to school children.⁶⁶ Grin emphasizes that from the perspective of resource allocation (as different from resource distribution) debates over language policy are very similar to those that occur over environmental policy and, just as in the latter, an effort must be made to identify extra-market

⁶⁴ Grin 2004, pp. 192-193.

⁶⁵ Grin enumera: el “efecto de mercado privilegiado”, el “efecto de ahorro en la comunicación”, el “efecto de ahorro en la adquisición de lenguas”, el efecto “de inversión alternativa del capital humano” y el efecto retórico y de legitimación”. Op. cit. pp. 198-199.

⁶⁶ Op. cit., p. 193. Grin señala, además, que, conforme a los escasos estudios que hay, los costos no son enormes: el costo de la bilingüización del sistema educativo vasco estaría en un 4.75%, una cifra que, subraya, es muy parecida a la que arrojan los datos sobre el costo que añade al sistema educativo guatemalteco ofrecer una opción vehiculada en maya: entre un 4% y un 5%. Op. cit., pp. 192-193.

effects (both costs and benefits) despite of the fact it is neither technically nor conceptually an easy task.⁶⁷

It appears, then, that the right question to ask is not whether the costs of implementing more egalitarian language policies would be superior to current ones, but rather if the policies would be redistributive and *in what way they would be so*. One could think that taking constitutional multilingualism seriously and orienting it for the development of language policies that are not transitional or symbolic and are more equitable might provide development opportunities for groups of people who, in Latin America, largely overlap with the poorest.⁶⁸ Requiring bilingualism in administrative offices, for example, would mean substituting people who are not competent in indigenous languages with multilingual people (who would earn as much as the former); corpus planning tasks and the increased use of indigenous languages in courts, schools, normative production, entertainment or the market could give rise to new “industries” of indigenous language learning (similar to the “industry” of English instruction that exists today) which could in turn open up other avenues of development as yet inexistent. The risks of seeing bilingual elites monopolizing opportunities is always there and the possible interconnections between language policy and other redistributive policies would have to be carefully thought out and evaluated, but there is no reason to outright reject the possibility of ending up in scenarios redistributively preferable to those now in place.

Let us consider, in the second place, the debate over the effects of linguistic pluralism on social cohesion, sentiments of unity and predisposition towards solidarity among citizens. One recurrent consequentialist argument – and one that should not be regretted, for it concerns a

⁶⁷ Op. cit. p. 196.

⁶⁸ [Citas].

crucial issue in Latin America – asks “to what extent do recent multicultural initiatives and reforms support or impede the development of a shared citizenship or civic identification in the countries of the region.”⁶⁹ The need to preserve the political ties necessary to sustain democratic deliberation and practices of social justice among co-citizens has been a constant concern for the liberal theoreticians of cultural diversity,⁷⁰ many of whom have argued that it is an objective very difficult to attain in the absence of a common language.⁷¹

Once again, I believe that taking up the issue with a notion of cooperative multilingualism in mind will enable us to see it differently. The discussion could certainly begin by remarking that a model based on personal bilingualism does not negate the existence of a common language: it simply means that this language does not have to be always the same one.⁷² And it could keep on by drawing attention to the fact that, in Latin America, centuries of policies oriented toward the linguistic monopoly of Spanish and its promotion as the *exclusive* language inside the countries of the region has not generated a sentiment of ‘common venture’ among fellow citizens. In Mexico – the country I have in mind and one that we can take as an extreme example of common trends – the low percentage of people who do not speak Spanish⁷³ does not prevent the country from being profoundly segmented and inhabited by citizens that do not trust the State nor each other, with the effects (in terms of non-existence of a law-abiding culture,

⁶⁹ Sieder 2002, p. 7.

⁷⁰ Kymlicka y Norman 2003, Van Parijs 2004.

⁷¹ Kymlicka pone esta preocupación en el centro de su propuesta por crear “culturas societales” articuladas en torno a una lengua común —siendo la diferencia con el asimilacionismo tradicional que acepta que dentro de las fronteras estatales existan varias culturas societales (las de las mayorías nacionales u las de las minorías nacionales o indígenas), sin dar reconocimiento a las lenguas de los inmigrantes en la esfera pública—. A su juicio sin la trabazón proporcionada por la lengua explícitamente promovida como lengua común entramos en el riesgo de tener sólo un debate democrático superficial y elitista (como el que se da, opina, en la Unión Europea) y de debilitar los vínculos de los que depende la viabilidad de mecanismo de solidaridad entre los ciudadanos. Como destaca el título de uno de sus libros, la política se hace en lengua vernácula (Kymlicka 2001).

⁷² Colomer, op. cit.

⁷³ Aunque no tanto como uno esperaría. Según el INEGI (el instituto de estadística mexicano) el porcentaje de la población monolingüe en lengua indígena es de un 15.2% (Censo de Población y Vivienda 2010), incluyendo las personas que no contestaron la pregunta de si sabían o no español.

responses to insecurity, etc) that our seminars have given us numerous opportunities to examine. As confirmed, though clearly on a more anecdotal level, by the bicentennial celebration program – inaugurated by the “bones” affair⁷⁴... – the country is imbued with a sense of nationalism in which an exaggerated sensitivity for symbols and an excessive emphasis on the past seem to suggest a need to compensate for the incapability to point to something real and present.⁷⁵ Moreover, the emphasis constitutional reforms on indigenous matters put on the autonomy of communities – that is, on giving them the power to organize and manage certain topics on their own – seems to have given rise to a pattern of even greater separation between the majoritarian community and indigenous populations.⁷⁶

In these circumstances, one could wonder whether cooperative multilingualism might potentially achieve what has been up to now avoided: creating some type of *real* interaction between citizens who self-identify with culturally distinct groups, and in doing so, creating dynamics that can enlarge predispositions for social justice.

⁷⁴ El acto inaugural de los festejos del Bicentenario fue una ceremonia solemne, con honores militares y posterior desfile, en la que el Presidente de la República y otros altos funcionarios extrajeron del interior de la Columna de la Independencia, en el paseo de la Reforma, unas urnas llenas de huesos revueltos supuestamente pertenecientes a los esqueletos de los héroes patrios. De ahí fueron llevados al Museo Nacional en Chapultepec para que funcionarios del Instituto Nacional de Antropología e Historia procedieran a su clasificación y conservación y, terminada la operación, al primer piso del Palacio Nacional —cerca del mural enorme de Diego Rivera que la mayoría de ustedes conocen—donde quedaron expuestos al público hasta agosto del 2011. Sin descartar la posible influencia del poso cultural meso-americano, la centralidad del episodio en los festejos me parece una perfecta ilustración a escala de una identidad nacional “oficial” definida negativamente (en oposición a los españoles y en general los extranjeros), muy poco secular (en tanto los héroes patrios son objeto de culto, e incluso existe una tradición de “reliquias cívicas” a la manera de las religiosas —el brazo de Álvaro Obregón, la pierna de Santa Anna, la lengua de Belisario Domínguez!—) y protagonizada por sistemáticas remisiones al pasado.

⁷⁵ La sobresensibilidad por las cuestiones simbólicas se hizo patente en el intenso debate judicial en torno al conocido “caso bandera” (ver Pou Giménez 2006) y en general, en el alto grado de protección legal del que goza en el país el “derecho al honor” de los símbolos patrios.

⁷⁶ cita pendiente.

Literature on trust suggests that it is not necessarily a utopian idea. David Miller, for example, in an attempt to evaluate how cultural identities⁷⁷ affect the disposition of people to see justice done for those they consider insiders or outsiders to their group – drawing on empirical analyses seeking to trace the nexus between cultural identification, trust, and social justice – observes that there does in fact seem to be a negative correlation between the degree of trust and the degree of cultural heterogeneity, but that what truly matters is not cultural or ethnic pluralism *per se*, but rather the form intercultural relations take.⁷⁸ There exist, he holds, three major possibilities:

[A]*lienation*, which occurs when cultural groups share a common space but have relatively little contact with each other; *segregation*, which describes situations where cultural groups have separate locations and people basically interact with others from their own group; and *integration*, which occurs when members of groups live and interact with each other in interconnected associations of various types. The first situation will in all likelihood lead to mistrust between people who do not share the same cultural background. The second will probably create high levels of trust of people within the same group and mistrust of the others. The third type is the most favorable for reinforcing generalized trust.⁷⁹

Miller concludes that the impact of cultural diversity on social justice cannot be consequently measured by simply counting the number of cultural groups in a society or the percentage of people that belong to a minority; what is crucial “at micro-level, is how the cultural groups are distributed in physical space, and the extent to which their members interact on a daily basis in voluntary associations, and in political settings.”⁸⁰ At the macro-level, he adds, “what matters is the availability of an inclusive identity that is accessible to the members of all cultural groups,”⁸¹ which in turn invites debate, he observes, over whether “this needs to be a national identity in the

⁷⁷ Y ello no es, aclara Miller, por ninguna razón intrínseca sino porque las mismas son una fuente de diferenciación social, y de un tipo de diferenciación social que puede ser difícil traspasar, sobre todo si es relativamente permanente. Miller 2004, p. 25.

⁷⁸ Ibid. p. 28.

⁷⁹ Ibid. p. 28.

⁸⁰ Ibid. p. 29.

⁸¹ Ibid.

normal sense, or whether a common loyalty to a set of political institutions – some sort of constitutional patriotism – may give a sufficiently strong sense of shared identity”.⁸²

In my opinion, interaction at the micro-level could be promoted by endorsing policies that, on the macro-level, make everyone’s multilingualism the nucleus of the shared identity. Even though, as the citation from the novel of the Mozambican author Mia Couto at the beginning of this paper suggests, we should not overestimate the capacity of language to overcome cultural barriers and enable us to understand others – and this sets the limits of communication in indigenous languages as well as those of communication in any other one–promoting policies that require people to be conscious of the medium used for communication with others may, in a very basic way, lead to something that never happens in Latin America: making them visible, and making them visible as *different*, yet not for this reason less fellow citizens – thus creating paths to change a pattern of relations that currently corresponds, in my opinion (again, at least in Mexico) to the type Miller calls “alienation.”

In addition, the possibility that citizen interactions occur in different languages does not seem a ludicrous means to make progress towards the truly *intercultural* communication repeatedly identified as a requirement or derivation of our time’s constitutional contract.⁸³ In any case, institutionally promoting public debate of an issue that will not only require the collaboration of all but will also force, in a tangible way, an examination of who we “all” are, could be in itself notably more than what usually occurs when indigenous populations are concerned.

⁸² Ibid.

⁸³ Hamel 2008, pp. 46 y 74, Torbisco Casals 2003, Sieder 2002, p. 13.

Conclusions

The development of constitutional provisions concerning indigenous languages in Latin America posits normative, technical, and public policy debates that are numerous, must be interdisciplinary, and are extremely complex – a bit more so than average, I sincerely believe, due to the conspicuous refusal of language to fall neatly into the categories and distinctions that ordinarily organize most of our analyses. This paper has not addressed these debates directly, but instead has glided between a few of them – it is a preliminary discussion – to show why it would be of interest to devote energy to analyze them and scrutinize certain directions that, to my mind, the enterprise could take.

The philosopho-normative discussion surrounding the use and transmission of languages is very rich and omnipresent, but we should not feel paralyzed by it. As has been observed, tension between values underpinning the constitutional provisions referring to indigenous minorities and cultures has created obstacles to their development and implementation within the legal system.⁸⁴ My analysis has presented elements which, assuming that this may also be true with regards the specific case of constitutionalizing Latin American multilingualism, offer ways to remove tones of exceptionality and gravity from the situation and create paths to nurture a theoretical discussion in which law (and not only sociology or anthropology) has a place.

The discussion of indigenous linguistic plurality has been framed within the context of the debate over recognition and multiculturalism. Being this understandable in some sense, it should not exhaust the limits of our imagination on the subject. Situating the debate in this context captures part of what is relevant but should not prevent us from underscoring the

⁸⁴ Bonilla Maldonado 2006, p. 31 (“Infortunadamente, en el núcleo de la constitución colombiana de 1991 existe una tensión entre unidad y diversidad cultural que ha generado obstáculos para el adecuado desarrollo jurídico y para la adecuada protección de los derechos concedidos a la minorías culturales”).

“fortunate” singularities of language and the way these somewhat reduce the complexity of the discussion. Nor should it limit our capability to observe that the use and transmission of language is culture, yet at the same time it is many other things and is related to economics and politics in a way that the traditional framework does not illuminate with sufficient force.

In my analysis, I have tried to show that a non-symbolical treatment of language issues in Latin America requires putting at the top of the agenda state intervention into the linguistic market and considering the implementation of inter-communitarian mechanisms which necessarily will have consequences in terms of redistribution and social cohesion. Instead of seeing this as a problem, I noted, it should be seen as an undertaking that could open up development opportunities for people who in Latin America largely belong to the most socioeconomically disadvantaged groups, and as a means of bringing about dialogue between all citizens, not just among members of the same group, thus countering indigenous communities proclivity to remain in their shell and preventing everyone else from staying, as always, “indifferent to everything.”

But beyond outlining preliminary arguments of optimistic outlook, I have tried to suggest that it is necessary to link the debate over autonomy-freedom with the debate over equality-solidarity – or, more to the point, that it is necessary to conceptualize it as a debate that is fundamentally about equality and solidarity. This makes the legal and political discussion of multilingualism in Latin America much more similar to the discussions of social rights than what initially comes to mind – something that could be taken as an obvious conclusion, since after all DESC [the common abbreviation for economic, social, and cultural rights in Spanish] ends with C, if only we could discount the fact that this “C” has been in practice treated very differently from the other letters – and suggests more fertile paths from which to approach the subject. It

leads us, for example, to the idea of a status quo that is profoundly inequitable, something taken for granted when speaking of social rights but rarely if ever questioned with regards language rights; to detect the insufficiency and socially regressive implications of a negative, laissez-faire approach to the enjoyment rights, again generally acknowledged in the field of social rights but unbelievably accepted in the field of language rights; or to the idea of a general contribution to the enjoyment of rights by everyone, a deeply ingrained idea in the domain of social rights – it does not occur to anyone to argue that the debate surrounding the right to water or to health only involves “those who lack water” or “those who lack health services” – which starkly contrasts with the ease with which the position that the preservation of indigenous languages falls exclusively to the responsibility of their speakers continues to be made.

The twist, in conclusion, is an invitation to visit lines of analysis that are common in other spheres of constitutional rights and to take linguistic justice much more seriously, since it could turn out to be something that in Latin America might lead – as Nancy Fraser would like it⁸⁵ – to recognition and social justice at the same time.

⁸⁵ Fraser 1997.