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Dispositional neutrality and minority rights

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Dispositional neutrality and minority rights

Alan Patten defends a novel principle of neutrality according to which the state must accommodate all conceptions of the good equally. This principle rests on the claim that the state must be equally responsive to the interests of all citizens. I introduce a competing principle – neutrality of disposition – according to which the state must be disposed to treat citizens with different conceptions of the good alike in relevantly similar situations. The requirement of the equal responsiveness of the state is neutral between these two conceptions of neutrality. Moreover, neutrality of disposition, unlike neutrality of treatment, is compatible with a plausible luck egalitarian view of cultural justice according to which justice requires the state to be more accommodating of some conceptions of the good than of others in situations where not being so will result in members of minority cultures being worse off than others through no responsibility of their own.

Keywords: liberalism; luck egalitarianism; minority rights; multiculturalism; neutrality; Alan Patten

Introduction

Alan Patten's book on minority rights, *Equal Recognition* (2014, henceforth *ER*), treats its topic with admirable clarity.¹ Unfortunately, I must ignore most of its rich discussions to focus on its account of liberal neutrality of the state. Many think neutrality is incompatible with minority rights; in Patten's view, however, it is compatible with the state recognizing different cultures equally. More specifically, Patten points out that many assume that neutrality should be understood either in terms of the aims of or justifications by the state behind its policies or in terms of their effects (*ER*, p. 112). This leads some to reject the ideal of neutrality. If it is understood in the former manner, intuitively nonneutral policies count as neutral, e.g., the establishment of a state religion in order to promote neutral aims, say, social stability. Understood in the latter manner, it implausibly condemns intuitively neutral policies that have differential effects on different conceptions of the good (*ER*, p. 114), e.g., an intuitively neutral laissez-faire policy that makes 'it relatively harder for people with expensive tastes to realize the ways of life they value' (*ER*, p. 114).

Patten proposes a third way of understanding neutrality:

Neutrality of treatment: the state violates this requirement when, relative to an appropriate baseline, its policies are more accommodating of some conceptions of the good than they are of others. (*ER*, p. 115)

Although the phrase could refer to intentions as well as to effects, by ‘more accommodating’, Patten intends to focus on neither. Rather, he focuses on ‘inputs’. According to this view, if the state taxes two goods, one of which is used in one conception of the good and the other in another conception at an equal rate, then the state is neutral towards these two conceptions of the good (*ER*, p. 116). Similarly, if the state supports two conceptions of the good on an equal per capita basis, then it is neutral input-wise between these two conceptions.

Neutrality of treatment avoids, Patten argues, the absurd implication regarding state religion, since, necessarily, declaring one religion a state religion is more accommodating of that religion than of others. It is also open to neutral policies having differential effects on conceptions of good, since even if the state is equally accommodating – e.g., adopts an evenhanded bilingual practice in a situation where a state consists of two linguistic communities – one might lose out to the other due to the linguistic choices of members of the two communities.

Patten’s observation that the distinction between neutrality of intentions and neutrality of effects is non-exhaustive is apt. However, the tripartite distinction between neutrality of intentions, of effects, and of treatment is also non-exhaustive. Consider:

Neutrality of disposition: The state violates this requirement when, across a suitable range of relevantly identical pairs of actual and possible scenarios, it is not the case that for all such pairs of scenarios it would adopt relevantly identical policies towards different conceptions of the good in the two scenarios.²

This requirement differs from neutrality of treatment. First, it permits states to be more accommodating of some cultures than others in terms of the policies *actually* pursued; e.g., it allows states to support perishing minority cultures by being more accommodating of them than of the majority culture provided it would adopt similar policies were the situation of the two groups reversed. Second, it allows that a state is accommodating of all conceptions of the good in Patten’s sense and yet is nonneutral; e.g., when the state is evenhanded because it believes that evenhandedness is the best policy for eradicating what it deems an inferior minority conception.

Section 2 explains and defends neutrality of disposition and relates the notion to the three other notions introduced. Section 3 argues that it is unclear how Patten’s premises – the state must grant equal consideration to the interests of all of its citizens and citizens have an important interest in self-determination (pp. 137–148) – justify neutrality of treatment rather than neutrality of disposition. Section 4 compares the implications of neutrality of disposition and neutrality of treatment in relation to perishing minority cultures. On luck egalitarian grounds, I argue that neutrality of disposition has more plausible implications in relation to such cases. Section 5 concludes that while the notion of neutrality of treatment has enriched the academic debate over minority rights, there are other notions of neutrality that are no less promising.

Dispositional neutrality

Let us return to the principle of dispositional neutrality. First, notice that it is a family of principles. This is due to the fact that there are different possible accounts of: 1) when ‘pairs of actual and possible scenarios’ are ‘relevantly similar’, and 2) of when ‘policies towards different conceptions of the good’ are relevantly identical.

Re 1): suppose the Danish state takes measures to promote Danish dialects spoken in the regions of Denmark outside Copenhagen in competition with ‘high-Danish’ – that is, the middle-/upper-class Copenhagen dialect that is the dominant Danish dialect – that go beyond those that would be permitted by Patten’s equal recognition view. On one view, a relevant identical scenario would be one in which the existence of the relevant Copenhagen dialect was similarly threatened. Should the Danish state then be so disposed that it would take similar measures to protect the Copenhagen dialect, it might be neutral between different Danish dialects even if, in terms of its actual policies, it favors one over others. According to another view, a relevant scenario would be one in which sociolects spoken by unprivileged persons – such as those Copenhageners speaking a working-class sociolect – were threatened. If, in such a hypothetical situation, the Danish state supports the relevant working-class sociolect, it might be neutral.

There are many different bases for determining whether two scenarios are relevantly similar. Perhaps, on some bases – say, two scenarios involving religious policies are identical if they involve treating false(/true) religions similarly – one would have pairs of scenarios where similar policies would be neither sufficient nor necessary for neutrality. This simply shows that applying dispositional neutrality rests on a prior understanding of similarities bearing on neutrality – one according to which whether situations are similar is not determined by whether the relevant religions are (believed to be) true or false.³

Re 2): if the intentions behind a policy are irrelevant to neutrality, it follows that a state adopts relevantly similar policies towards two religions in the following two cases. In the first case, the state officially recognizes one religion with the intention of promoting it. In the second case, the state officially recognizes another religion except that it does so with the intention of eradicating it – the state believes that the latter, unlike the former, religion thrives only when not being recognized by the state. The two cases are similar in all other respects. If the state is nonneutral in the latter case, then intentions matter to whether policies are relevantly similar. If the state is neutral – at least in the way that matters from the point of view of justice, – and one subscribes to dispositional neutrality, then intentions are irrelevant to whether policies towards conceptions of the good are relevantly similar. Dispositional neutrality leaves open, which is the case.

These remarks raise the question of how dispositional neutrality relates to neutrality of intentions and neutrality of effects. Because it does not specify what makes policies relevantly similar, it differs from both views, since they do specify the relevant grounds of similarity. Some principles of dispositional neutrality hold that intentions matter to similarity, others that

effects do, and yet others that intentions as well as effects do. This means that dispositional neutrality avoids the dilemma, which motivates Patten's equal treatment account:

If neutrality is interpreted as neutrality of intentions, then it is too sweeping to account for some of the most obvious and paradigmatic cases of nonneutrality. If it is understood as neutrality of effects, then it might account for such cases, but only because it indiscriminately rejects as nonneutral a wide swathe of policies, including some core liberal ones. (*ER*, p. 114)

A state that promotes Catholicism as a state religion not because it holds it to be the true religion but with the aim of achieving the – let us suppose – neutral aim of social stability and would have promoted any other religion had it believed that doing so would achieve social stability, arguably, is not *clearly* nonneutral between different religions, whatever other flaws it may have. And neutrality of disposition may allow that a state, which leaves a minority religion to die out because of its unpopularity and against a background of rules that are fair on Patten's account, is neutral provided it would do the same to other religions were they to become unpopular.

An implication of dispositional neutrality is that while it is open for friends of the principle to hold that effects on conceptions of the good matter, it is consistent with it that state policies have differential effects on different conceptions of the good. Take Patten's example of Misael from the Machiguanga culture, which inhabits a remote area in the Peruvian Amazon (*ER*, p. 46). Misael is disadvantaged because his culture is dying out and diminishing numbers of people are speaking his language. According to Patten, neutrality would be inconsistent with favoring Misael's culture over other cultures, such as by giving the Machiguanga culture more per capita support than other Peruvian cultures. According to some ways of construing dispositional neutrality, it is compatible with supporting the Machiguanga culture provided the Peruvian state would support other Peruvian cultures that come under existential threat to the detriment of their members.

Some might object that dispositional neutrality is not neutrality, but something else. Even if it is *ceteris paribus* just for a state to intervene to promote a conception of the good that, to the disadvantage of its followers, is threatened at its existence and at the expense of other conceptions of the good, it is not neutrality but the opposite.

I have two responses to this objection. First, consider what it is to be a neutral soccer referee; such a referee will sometimes make calls that favor one of the teams at the expense of the other, as when one of the teams is given a warranted penalty. The referee can be neutral between the two teams in that she would treat them no differently in a relevantly identical situation, i.e., one of its players acts in a manner warranting a penalty. In a very important sense, the referee is 'not taking sides between' the two teams (*ER*, p. 137), even if events unfold in such a way that she never intervenes in a way that benefits the other team. An ideal referee is a neutral one, among other things, and the present referee could be an ideal one. Thus, dispositional neutrality is a recognizable notion of neutrality. Indeed, we can recognize it from the commonly accepted liberal requirement that the state treats its citizens as equals.

This requirement also has a counterfactual element, not normally thought to be epistemically inaccessible, such that treating two groups of citizens differently in the presence of relevant differences justifying differential treatment might violate it, if the state would act differently were the situations of the two groups involved reversed.

Second, if my first argument is rejected, I could concede that dispositional neutrality is not neutrality, but something related to neutrality. What is important for me is that this is what liberals *should* care about with respect to the principle of neutrality. This brings me to an assessment of whether Patten's argument in favor of neutrality supports neutrality of treatment as opposed to dispositional neutrality.

A very different objection to neutrality of treatment holds that it is much harder to know if the state conforms to dispositional neutrality than to know whether it conforms to neutrality of treatment and that, given a suitable publicity constraint on principles of justice, this speaks in favor of the latter. In response, I note, first, that how informationally demanding dispositional neutrality may be depends on which version of the principle we are talking about and that, in our everyday lives, we sometimes think that we know that someone is dispositionally nonneutral between two parties, cf. my football referee example. More relevantly, there are also many real-world situations where we know states are nondispositionally non-neutral, e.g., we know that the Saudi Arabian state is not dispositionally neutral between different religions. Hence, neutrality of disposition can 'guide the decisions of whoever it is that is legitimately tasked with making decisions about cultural rights' (ER, p. 23).

Second while publicity is an important consideration in relation to which principles we should adopt as a rule of regulation, publicity is irrelevant to what is true at the level of fundamental principles of justice; a principle could be a true fundamental principle of justice even if we are never in a position to know if it has been complied with (cf. Cohen 2008, pp. 365–366).

The argument for neutrality

Patten characterizes his argument for neutrality of treatment as having three steps (ER, p. 127). According to the first, 'the liberal state has an obligation to be equally responsive to the interests of each of [its] citizens. It cannot legitimately single out some favored group, such as a national or religious majority, and act as if the interests of members of this group matter more than the interests of nonmembers' (ER, p. 127). This step 'is not especially controversial' and does not require 'further elaboration and defense' (ER, p. 127).

The second step says that self-determination 'is an important interest of all persons' (ER, p. 127) who have non-worthless conceptions of the good. 'As a result, the state has a *pro tanto* reason to adopt policies that leave each of its citizens (except for those with worthless conceptions) with a fair opportunity for self-determination' (ER, p. 127).

The third step asserts: ‘departures from neutrality of treatment involve denying holders of disfavored conceptions of the good a fair opportunity for self-determination’ (*ER*, p. 127). Given that the state has a *pro tanto* reason to leave each of its citizens with a fair equality of opportunity for self-determination, it follows that the state has a *pro tanto* reason to be neutral.

Before assessing this argument I want to simplify it in order to foreground the aspects on which I want to focus. First, in the interest of having a clearly deductively valid argument, I ignore the shift from ‘obligation’ to ‘*pro tanto*’ and assume that the state has a *pro tanto* reason to be equally responsive to its citizens’ interests. This claim is implied by the claim that it has ~~such~~ an obligation of the former kind and, in any case, I weaken the first premise in Patten’s argument is not because I object to the stronger premise. Second, I ignore citizens with worthless conceptions of the good or conceptions of the good that reject the value of self-determination. Third, I ignore other interests than the interest in self-determination. Doing so allows me to ignore the complication of a nonneutral state that: i) is equally responsive to the overall interests of each of its citizens; ii) is more responsive to A-citizens’ interests in self-determination than B-citizens’ similar interests; but iii) is also less responsive to A-citizens’ non-self-determination-related interests than B-citizens’ similar interests such that the former differential responsiveness is counterbalanced by the latter.

Given these simplifications, we can represent Patten’s argument as follows:

- (1) The state has a *pro tanto* reason to be equally responsive to the interests of all of its citizens.
- (2) The state is equally responsive to the interests of all of its citizens if, and only if, the state adopts policies that leave each of its citizens with fair opportunity for self-determination.
- (3) The state adopts policies that leave each of its citizens with fair opportunity for self-determination only if it complies with the neutrality of treatment principle.
- (4) Thus, the state has a *pro tanto* reason to comply with the principle of neutrality of treatment.

For the sake of argument, I accept premise (1).⁴ However, ‘equally responsive’ and ‘fair opportunity’ in premise (1) and (2) can be fleshed out in many different ways. Indeed, they can plausibly be fleshed out in such a way that (3) is false while (3*) is true:

- (3*) The state adopts policies that leave each of its citizens with fair opportunity for self-determination only if it complies with a certain version of the principle of neutrality of disposition.

Giving citizens fair opportunity for self-determination may sometimes involve adopting non-equivalent policies ‘for rival conceptions of the good’ (*ER*, p. 115). Misael does not enjoy fair opportunity for self-determination unless the Peruvian state adopts policies towards the Machiguanga culture that are more accommodating than the policies that it adopts toward the majority Spanish-Peruvian culture. True, Misael’s unfortunate situation does not reflect any

policies of the Peruvian government to undermine Machiguanga culture but might simply reflect that its members are relatively few and that they have non-culture-related, e.g. economic, reasons for migrating.

How should we resolve this disagreement? We receive little help from premise (1). As Patten says, it is relatively uncontroversial because it is relatively open to different interpretations. Specifically, both neutrality of treatment and dispositional neutrality require that states are equally responsive to the interests of its citizens. More relevant are Patten's remarks on understanding fair equality of opportunity in such a way that it sometimes requires supporting minority cultures despite what he sees as a fair background.

Arguing in favor of his understanding of fair equality of opportunity, Patten defends it against an alternative view according to which fair equality of opportunity requires equalizing 'the success of the conceptions of the good that people happen to hold' (*ER*, p. 127). In effect, he argues that this view is not entailed by the requirement of equal consideration of the state and by citizens' interests in self-determination, because any such inference ignores citizens' responsibility for whether they hold a successful conception the good (*ER*, p. 139). In response, I make two claims.

First, I agree with Patten's non-entailment claim. However, something like the reason he offers in defense of it – that what the state has a duty to do in response to citizens' interests depends on how others exercise their responsibility in this regard – also applies to neutrality of treatment. Suppose [Qatar](#) funds a mosque in any town in Uganda with a Muslim minority. For reasons similar to those offered by Patten against the requirement to equalize the success of all conceptions of the good, the Ugandan state could plausibly argue that its duty to give equal consideration to all of its citizens' interests requires unequal treatment of different conceptions of the good if members of other religious communities in Uganda are unable to fund religious buildings themselves.

Second, in any case the requirement to equalize the success of different conceptions of the good is not what I defend; instead, I believe that it requires equalizing citizens' opportunities for leading a life in accordance with the conception of the good to which they subscribe. This luck egalitarian view of fair equality of opportunity does not require that the state equalizes the success of different conceptions of the good; for example, as measured by the number of people subscribing to the relevant conception. Hence, Patten's arguments against the competing view do not apply to my view. Yet we might learn something about the defensibility of my view from addressing his arguments against the equality-of-outcome conception of fairness.

Crucial here is Patten's appeal to Rawls' idea of 'a social division of responsibility':

society, citizens as a collective body, accepts responsibility for maintaining the basic equal liberties and fair equality of opportunity, and for providing a fair share of the primary goods for all within this framework; while citizens as individuals and associations accept responsibility for revising and adjusting their ends and aspirations in

view of the all-purpose means they can expect, given their present and foreseeable situation. (*ER*, p. 140)

Neutrality of treatment rests, Patten claims, on this view. While he concedes that he does not vindicate it, he notes that it is widely shared by liberals and offers two supporting remarks.

Patten's first remark appeals to something akin to Dworkin's argument regarding expensive tastes. If individuals are not responsible for their conceptions of the good then one must accept, implausibly, that fairness requires that 'certain extravagant preferences ought to be subsidized by people with more modest preferences' (*ER*, p. 142). I have three responses to this argument.

First, as Patten agrees, not all forms of minority culture-promoting policies impose costs on the majority; e.g., the famous exception for Sikhs in relation to wearing protective helmets might not do so. And even if, as a matter of fact it does, as when non-Sikhs feel aggrieved that an exception is made for Sikhs, it is a further question whether they *should* feel aggrieved. Perhaps they should not in light of the fact that Sikhs require various forms of recognition going beyond equal recognition in order to enjoy a fair equality of opportunity.

Second, insofar as Misael's preferences are extravagant, they are so in an extraordinary sense. For instance, he might prefer to raise his children in his own language without disadvantaging them. This preference is no different content-wise from the similar preferences of Spanish-speaking Peruvians; it is just that due to the unfortunate circumstances of the Machiguanga culture beyond Misael's control, it is very costly to satisfy his preference. Accordingly, his situation is different from that of Martin – Patten's stock character of someone with expensive preferences – whose 'idea of the good life involves control over a large estate, drinking expensive wine, having household staff at his disposal, possessing a townhouse in the city, and flying first class' (*ER*, p. 141). Content-wise, his expensive preferences differ from those of others. Indeed, some of them are different in that they involve social hierarchy and for wanting to surpass his fellow citizens in terms of their consumption patterns. A rejection of 'problematic indulgence of [Martin's] expensive tastes' (*ER*, p. 145) could be justified for reasons that do not imply that Misael's different expensive cultural tastes should not be accommodated either.⁵

Third, many expensive tastes should not be catered to. However, the reason for this is not that they are expensive, but rather that those with expensive tastes could have refrained from cultivating expensive tastes or can school themselves out of them, in which case they have the same opportunities (for welfare) as others or had the same opportunities and must take responsibility for not having used them better (Arneson 1989, Cohen 2011, pp. 3–43). Defending this line of argument is beyond the scope of this article. However, it is relevant to cultural minority rights in that many members of non-thriving minority cultures are not responsible for facing worse cultural opportunities than others (cf. *ER*, p. 144). Whatever complaint Spanish-speaking Peruvians, who through no merit of their own enjoy ample cultural opportunities, might have against a scheme that imposes some costs on them to

improve Misael's cultural opportunities, the complaint on fairness grounds that this scheme leaves them 'on the hook for [Misael's] tastes and preferences' (ER, p. 142) is unconvincing.

Patten offers a second consideration to support his construal of 'a fair opportunity of self-determination'. He appeals to a distinction between having and making a choice: 'Having choice is a matter of having an array of reasonable options, having information about those options, and having the capacity for discrimination between and reflection about one's options. It is distinct from making a choice, which involves a more reflective and intentional act of will where one consciously selects one of the options' (ER, p. 143). Having a choice often suffices for being substantially responsible for something. Patten adds that individuals in liberal societies generally have a choice about their preferences and, thus, are responsible for them (ER, p. 144).

Again, I do not find this argument conclusive. First, at least in the case of some cultural issues, people really do not have an array of reasonable options, especially if this requires having an array of options that is no worse than the array of options available to others. Returning again to the case of Misael, perhaps he does in some sufficientarian sense have an array of reasonable options, but it is still unfair that he is worse off than his fellow Spanish-speaking citizens. This is where my second worry about Patten's appeal to the distinction between having and making a choice becomes relevant.

Patten presents himself with the following challenge: does the appeal to an array of reasonable options not prove too much? Take the case of Muslims living in a country that makes Christianity the state religion. Assuming that converting to Christianity is a reasonable option – a reasonable course of action that Muslims have a choice about – does Patten's argument not imply (absurdly, Patten thinks, and I agree) that Muslims have no neutrality-related complaint against making Christianity a state religion? Patten thinks not: 'It is a mistake to think that choice always generates responsibility... Without fair background conditions [*in casu*: the absence of a state religion: KLR], it is unreasonable to expect individuals to choose between the alternatives it leaves, and thus the mere fact that those individuals had a choice is insufficient to render the outcome fair' (ER, pp. 146–147). I agree with these remarks and believe they save Patten from the state religion objection. However, they open up another flank in Patten's argument. For what are fair background conditions? Specifically, what Patten will say to the suggestion that, neutrality-wise, fair background conditions involve the satisfaction of (3*) and, *ceteris paribus*, that everyone has equally good opportunities for satisfying their cultural preferences? Accepting this view implies that the state must sometimes violate neutrality of treatment to be equally responsive to the interests of all citizens.

Patten does not answer this question. Obviously, his second argument is of no help here, because it concerns under what circumstances having a choice makes a difference to responsibility. That question must be answered before we can justify anything by appealing to the fact that someone had a choice about it. His first argument is not irrelevant for this reason, but I argued above that it is not very strong.

In response to this conclusion, one might argue that I am barking up the wrong tree. Patten explicitly alerts his reader to the fact that his argument presupposes a liberal framework, which he does not justify (*ER*, p. 140). Since a liberal framework implies a social division of responsibility along the lines sketched by Patten, my challenge is not really a criticism of his argument, but rather one that points to a reasonable and self-acknowledged limitation of his book's argumentative ambitions.

Except for two points, I have no quarrel with this suggestion. First, I offer a sketch of an alternative account of fair equality of opportunity, which needs to be addressed at greater length than Patten does (and, for that matter, than I do). Second, I am skeptical of any attempt to make specific claims on behalf of 'liberalism'. Liberalism is a vague concept and a view could qualify as liberal even if it endorses the notion of fair opportunity that I have hinted at instead of Patten's favored notion. If it could not, this suggests that the content of liberalism is part of the topic under discussion, not something to be taken as parametric.

A luck egalitarian account of minority rights

This section briefly sketches a luck egalitarian account of minority rights consistent with neutrality of disposition, compares it to Patten's view, and suggests that it is not implausible. According to this account:

Justice requires cultural minority rights promoting a certain minority culture if, and only if, members of this minority are worse off, culture-wise, through no responsibility of their own and these disadvantages are not counterbalanced by advantages in their favor in other spheres.

On this view, it is an entirely contingent matter whether cultural minority rights are justified (cf. *ER*, pp. 14–18). Deficiencies in terms of culture can be counterbalanced by other advantages. Some might find this implausible. If so, this is not an objection to luck egalitarian accounts of cultural minority rights as such; only to such accounts whose scope is not restricted to culture.

Second, by 'promoting a minority culture' I mean acting in such a way that being a member of it is not a relevant disadvantage. Promoting a culture in this sense might, but need not, involve disproportionate support for a minority culture by Patten's standards of equal treatment, e.g., when a culture is supported economically on a much higher pro capita basis than other cultures. 'Promoting' in the present sense is not restricted to monetary means and covers symbolic recognition, say, acknowledging a language as one in which one can communicate with the state.

Third, like Patten's account, this account leaves open whether there are other non-justice-related values that speak against the cultural minority rights required by justice or speaks in favor of the cultural minority rights not required by justice.

Fourth, my account is ambiguous in relation to the distinction between individual and collective choice. Suppose the culture of a certain minority is at the verge of disappearing due to choices made by all of its members. None of the members makes choices that noticeably affect the survival of the culture, but all of their choices together are what weakens their culture and threatens it with extinction. One view, which my present formulations leaves open, is that justice does not require cultural minority rights in such a case. For this and other reasons, my account, like Patten's, is compatible with the fact that some cultures rise while others fall.

Finally, cultural minority rights so construed are compatible with neutrality of disposition, though they might clash with neutrality of treatment. Consider:

The Machiguanga culture is disappearing. Being a small minority its members are often disadvantaged if they speak their own language. This disadvantage is not a result of the choices that its members make, or to the extent that it is this is because the conditions under which they must make linguistic choices are much less favorable than the similar conditions facing their Spanish-speaking co-citizens. To counterbalance this disadvantage resulting from minority status, the Peruvian state privileges the Machiguanga language in the relevant province such that speakers of the Machiguanga language are not disadvantaged relative to Spanish speaking co-citizens. Had there been another province in Peru where Spanish-speaking people had formed a minority and Machiguanga people the majority and the former had faced unchosen disadvantages in the way that Machiguanga people do, the Peruvian state would similarly have privileged Spanish in that province.

In this case, the Peruvian state acts as it should do on my luck egalitarian account of cultural minority rights. Moreover, it respects dispositional neutrality but violates neutrality of treatment. In the previous section I argued that the requirement that the state is equally responsive to the interests of all of its citizens is not plausibly construed in such a manner that it rules out the present policy. The question then becomes whether the relevant privileging of Machiguanga is unjust. I do not think so.

First, there might be non-justice-related reasons for why the relevant policy should be avoided, such as reasons pertaining to the welfare gains from nation-building; but, as Patten agrees, these are irrelevant to what justice requires. Second, it might be difficult to imagine that the relevant language policy is the only way to counterbalance the disadvantages in question. If the circumstances are as I have described them, however, I see no injustice in policies favoring Machiguanga over Spanish. Third, in the real world, such a policy would probably generate resentment among the Spanish-speaking majority. But this is no different from how the policies implemented to compensate those who have had bad luck in the natural lottery by taxing those who have had good luck will be met with resentment from the latter.

Think of the situation I have described in analogy with the situation regarding heterosexuals, on the one hand, and gays and lesbians on the other. The vast majority of

people are ‘straight’, and, setting aside prejudice etc., gays and lesbians suffer from disadvantages from being a minority. For example, they find it harder to meet a potential partner. Suppose that in order to compensate for this advantage, the state permits gay and lesbian bars to ban straight people but forbids any bar from banning gays and lesbians such that the latter have some places to meet where they can enjoy something like the same high probability, as heterosexuals can, that the people they socialize with are potential partners. This violates neutrality of treatment but can be fully compatible with neutrality of disposition. Heterosexuals should realize that the relevant differential regulations is a way of countering a disadvantage for which gays and lesbians are not responsible and, accordingly, not see the state as being in any way less responsive to their interests than to the interests of gays and lesbians when it accommodates the latter in a way that it does not accommodate heterosexuals.

Conclusion

I have contrasted Patten’s notion of neutrality of treatment with neutrality of disposition. The latter view diverges from the former as well as the more well-known principles of neutrality of intention and neutrality of effect. I then took a close look at Patten’s justification for neutrality of treatment. This justification proceeds within an assumed liberal framework, but even so it does not favor neutrality of treatment over neutrality of disposition. Finally, I proposed a luck egalitarian justification for cultural minority rights that, in some cases, would justify a better than equal treatment in Patten’s sense of vulnerable minority cultures. This justification is consistent with a luck egalitarian form of neutrality of disposition, which is intuitively no less attractive than Patten’s neutrality of treatment account. Patten’s observation that neutrality has been construed too narrowly in the debate so far is important. However, neutrality of disposition deserves at least as much attention as neutrality of treatment.

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References

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Notes

¹ References below without an author's name are to this book.

² Patten's statement of neutrality of treatment includes a tricky bit: 'relative to an appropriate baseline'. If that baseline is the degree of accommodation compatible with neutrality of treatment, the two views become coextensive. Clearly, however, this is not the sort of baseline Patten has in mind.

³ Dispositional neutrality gives a sufficient condition for violation of neutrality. Hence, it is consistent with pairs of scenarios that are not relevantly similar involving violation of neutrality.

⁴ One reason for being skeptical about premise 1 comes out in my Uganda example below. However, I shall understand 'equally responsive' in such a manner that premise 1 is not defeated by that example.

⁵ One reason is that some of his expensive tastes are snobbish. For a discussion of snobbish preferences, see Lippert-Rasmussen (2015, pp. 93-98).