

Territoriality in an acceptable way

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My discussion bears on the following three points : 1) Territoriality: for exclusion, or for promotion? 2) The choice of a regime : by whom? and when? 3) How do we apply these ideas to the Brussels area, within the Region and in the periphery?

I. Territoriality: meant to be for exclusion — or for promotion?

a) An evolution in terminology.

In Van Parijs (2004: 42-149), the issue here under discussion was designated exclusively by the expression of “linguistic territoriality principle”¹. Within Belgium, that expression is systematically understood (in academic as well as political statements often made by *e.g.* constitutional law Professor Vande Lanotte) as implying a one to one correspondence between each geographical (or political) area and one specific language². This has established a sort of undisputed common wisdom in Belgium, according to which the territoriality principle is a synonym for unilingualism. When couched in legal form, the principle receives an institutional implementation the source of which is then called the *right of the soil* (*grondrecht*)³.

Now, in Van Parijs (2010 and 2011: *passim*), the expression of “linguistic territoriality principle” is avoided and replaced by what he designates as a “linguistic territoriality regime” (in Van Parijs 2010) or, and better, “territorially differentiated coercive linguistic regime” (hereafter TCLR), as in Van Parijs (2011, chapter 5). No “principle” anymore, and thus no foundation either for a right of soil. But then what is it replaced by?

b) A definition

A TCLR is defined as “*a set of legal rules that constrain the choice of the languages used for purposes of education and communication*” (Van Parijs 2010).

That no “principle” be invoked anymore is not without significance: the principle is in fact abandoned as a justification because the legitimacy of the existence of “a set of legal rules” is done in other terms, lengthily and beautifully, in chapter 5 of Van Parijs (2011).

¹ Van Parijs adds that to legitimately defend itself, a linguistic community is entitled to “grab a territory”. I strongly challenged this view in Tulkens 2008, asserting that institutions that establish territorial unilingualism are in triple contradiction with the values of (i) democracy, (ii) justice and (iii) nondiscrimination.

² The constitutionally bilingual Brussels Region is of course a major infringement to the universality of the “principle”.

³ An expression which, in the sense specified above, has a purely Belgian significance. It is also used in other countries, say, in France or in the USA, but with a quite different meaning.

Let me say that basically, I find the notion of TCLR a quite valid and useful one. The author's arguments for its justification are convincing.

c) Connection with the earlier notion

When contrasted with the Belgian common wisdom recalled above of unilingual territoriality, the key new point now introduced in the reasoning by Philippe Van Parijs is the one of *flexibility*. Indeed, in his detailed exposition of what an TCLR can be, it appears that there are many alternative rules, that is, regimes, that can be conceived of, and these may differ in the extent of what they constrain, and in the degree to which they do that. Thus, there are as many versions of TCLR as there are different such rules.

d) A critique and a suggestion

Van Parijs claims TCLR are justified to *defend* a language, and I share this view. But I wonder whether he is not too unilateral in this search for justification. Indeed, what about rules when they consist of, or are interpreted as *ways to exclude* the use of any other language than the one legally attributed by the regime to the area? Such case is nothing else than an extreme version of the TCLR, *imposing* unilingualism with no exception. Here defense is sought by means of exclusion, which quickly leads to discrimination and injustice.

Quoting this extreme case, on which I shall return, leads me to a first critical comment of Van Parijs's writings: what the rules exactly are is in fact a bit fuzzy! A long series of scattered examples is given, but why is the reader not offered instead *a well-ordered list of rules*, presented with appropriate comments as to their virtues (positive or negative) *vis-à-vis* the paramount criterion of linguistic justice?

To be constructive, let me hasten to add that I would dream to see the rules of an LCTR be oriented towards the *promotion* of the language which is to be protected, rather than towards forbidding the use of competing languages. Additions of rules of that nature would be welcome.

2. The choice of a regime

My second point is in the form of a double question: by whom, and when, should a regime be chosen?

a) By whom? That is: who is to decide about choosing a TCLR, and the rules it contains?

I am not sure there is anything on that in Van Parijs (2010), but Van Parijs (2011: section 5.13) asserts that it should occur "*no doubt, by some sort of democratic process*". I am in full agreement.

But let us read what follows: "One [...] should not prevent politically organized linguistic communities from changing their minds in the light of new trends and democratic debate about whether or not territorial protection is worth the trouble. (...) But the purpose of the regime is likely to be better served if subsequent debates (...) did not focus on abolishing, creating or shifting some linguistic borders, but rather on relaxing or stiffening the coercive rules for the territory concerned." I much agree, but I think the point needs to be made more clearly: Philippe Van Parijs *is in favor of consulting populations on changes of linguistic regime*.

This was exactly the conclusion of my Re-Bel radical proposal of December 2008 (Tulkens 2009). I am glad to retrieve it here, and I know that I am not, by far, to be the only one to think that way. Philippe, welcome to the club! In fact, asking the citizens' opinion is a triviality for all educated people who reasonably care about the welfare of their co-citizens, more than about territorial nationalism.

b) When? Of course, at any reasonable time, and with any reasonable frequency, compatible with the organization of administrative life in a country of reasonable people.

Here, as a professional economist, I take pleasure in highlighting that philosopher Philippe Van Parijs is taking recourse to “benefit-cost” arguments to rationalize public decisions on these points (see Van Parijs 2011: section 5.12).

3. Applying all this to the Brussels area.

Although I have a lot to say on that aspect of the subject, I shall limit myself to two short questions:

1) Within the confines of the bilingual Brussels Capital Region, can Philippe Van Parijs tell us which kind of TCLR is exactly in force there? Once this is made precise, would he please tell us whether it is acceptable in the spirit of linguistic justice, and if yes, why?

2) For the unilingual geographical area called the Brussels “periphery” (understood as including the 6 communes with “facilities” as well as those where a significant proportion of voters is French speaking), can Van Parijs tell us which kind of TCLR is exactly in force there? Again, once this is made precise, would he please tell us whether it is acceptable in the spirit of linguistic justice?

In case of a difference between the answers to questions 1) and 2), a compelling justification, if any, for that difference would be intellectually welcome.

In the meantime, I take advantage of this discussion to summarize in the Appendix below the gist of my views.

Appendix

The conclusion of Tulkens (2009) was :

“My message is as follows: a fundamental reform that the Belgian community badly needs is to *abandon* the notion that, in our multicultural country, a territory belongs to a single community (in this case, a linguistic community), *with its unilingualism implication* — and to replace it by the idea that for each local constituency (each commune), the language or languages that have official status be those chosen by a reasonable proportion of its inhabitants. Institutionally, this would transform the zero-sum game of exclusion of our current institutions into a positive sum game of cooperation among individuals who effectively respect each other, irrespective of whether they speak, practice and wish to live with one, two or more languages.”

References

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