

LANGUAGE DIVERSITY SPEAKING TO AUTONOMY: EXPLORING THE RELATIONS BETWEEN AUTONOMY AND MINORITY LANGUAGE EDUCATION

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Abstract

This article explores the models through which political autonomy and language diversity relate to each other. Hence, it constitutes an approximation to the relation between different forms of autonomy (territorial, non-territorial) and educational models which separate or bring together students with different linguistic backgrounds (through immersion policies). It reflects on two longstanding notions: the imagination of a homeland and that of the mother tongue (where language is the essence of a particular group). It uses four parameters: the principles of territoriality and personality concerning autonomy and language rights on one hand (understanding territoriality as a geographically-defined regime and not as a mono-lingual policy) and the principles of separation and (dual or two-way) immersion concerning public language education policy on the other. Following the idea that contact between different ethnic groups promotes integration, it advocates for dual immersion-based educational systems which promote integration with due respect to the linguistic rights and national, ethnic or linguistic identity of both minority and (relative) majority students.

Todas las teorías son legítimas y ninguna tiene importancia.

Lo que importa es lo que se hace con ellas.

Jorge Luis Borges

Keywords: autonomy; language rights; minority rights.

LA DIVERSITAT LINGÜÍSTICA DIALOGA AMB L'AUTONOMIA. L'EXPLORACIÓ DE LES RELACIONS ENTRE L'AUTONOMIA I L'EDUCACIÓ EN LLENGÜES MINORITÀRIES

Abstract

Aquest article explora els models a través dels quals es relacionen l'autonomia política i la diversitat lingüística. Per tant, constitueix una aproximació a la relació entre diferents formes d'autonomia (territorial, no territorial) i els models educatius que separen o uneixen estudiants amb diferents passats lingüístics (a través de polítiques d'immersió). Reflecteix dos conceptes de llarg recorregut: la imaginació d'una pàtria (homeland) i la de la llengua materna (on l'idioma és l'essència d'un grup determinat). Es fan servir quatre paràmetres: d'una banda, els principis de territorialitat i personalitat relatius a l'autonomia i als drets lingüístics i, d'una altra, els principis de separació i immersió relatius a la política de l'ensenyament públic en matèria de llengües. Seguint la idea que el contacte entre grups ètnics diferents promou la integració, advoca per sistemes educatius basats en la immersió que promouen la integració amb el respecte pertinent als drets lingüístics i a la identitat nacional, ètnica o lingüística tant dels estudiants minoritaris com dels estudiants que constitueixen la majoria (relativa).

Paraules clau: autonomia; drets lingüístics; drets de les minories.

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1 Introduction

Most languages include in one way or the other the concept of political autonomy: home rule and self-rule in English, *autonomía* in Spanish to give some examples. But how does autonomy understand and comprehend languages? Autonomy regimes often incorporate linguistic diversity through its legal frameworks. Within such regimes, language education policy influences the linguistic make-up of their particular societies. Language education policies have consequences on the manner in which persons acquire formal education and a world view as well as in the way individuals and groups relate to public institutions and between themselves. In turn, the national, ethnic and linguistic diversity of a particular area often implies political demands for the institutional recognition of linguistic and self-governance rights. The result is an imperfect circular relation in which language, society and political institutions mutually and continuously shape each other: linguistic diversity influences the design of autonomy arrangements and *vice-versa*.¹

What is the role of the law-maker within this relation? As Picasso said: “some painters transform the sun into a yellow spot, others transform a yellow spot into the sun”. In law-making terms, the legislator may attempt to capture a linguistically diverse environment into a particular autonomy regime, but at the same time the resulting legislative form of autonomy will shape society itself and the way individuals understand themselves. This shaping will primarily take place through the educational system. Within the educational systems, a crucial decision is necessary in multilingual societies: whether to place all students together in the same classrooms and schools or to divide them according to their mother tongue or their parents’ choice of language of instruction. Of course, in many situations linguistic divisions also coincide with geographical ones, leaving the choice moot. However, it will still be necessary to decide whether and how isolated linguistic communities will be offered the opportunity to learn each other’s language (if at all). In this article, I consider the policies which separate students in accordance with mother tongue as “separation” and those policies which bring them together as “immersion”. Another possible term for this second type could be that of “conjunction”, as used by F. Vila I Moreno to refer to the Catalan education model and emphasizing the aim of social integration as well as promoting the use of the (perhaps otherwise declining) Catalan language as well as the fact that “immersion” only applies to those students whose mother tongue is not the first language used in education.² However, here I choose “immersion” because this term emphasizes the linguistic process involving the “other” (rather than its consequences) and also applies to contexts where regional or minority language promotion is not an issue. Moreover, I understand immersion as a “dual” or “two-way” process where both the relative minority language speakers and the majority ones learn each other’s language and culture.³

Students of a particular mother tongue are living either geographically dispersed or concentrated, and there may be two or more consolidated groups within a territory. Hence, the decision whether to place them together or not is intimately related to the wider principles of territoriality and personality in political autonomy. These principles indeed apply both to the making of autonomy arrangements and to language education policy.

Overall, from a normative perspective, the main legal policy dilemmas in the making of both autonomy regimes and language education policies consist first in the choice between the “territoriality principle” (understood here as defining rights afforded to all the inhabitants of a defined area within a state or political unit) and the “personality principle” (meaning in this context defining rights which persons belonging to certain groups enjoy throughout the whole of a political unit or a state’s territory). As Alan Patten describes, “the principle that citizens should enjoy the same set of language rights no matter where they are in the country is commonly referred to as the personality principle. The opposing principle, that language rights should vary

1 ARRAIZA, José -María, *Making Home Rules for Mother Tongues: The Legal Implications of Linguistic Diversity in the Design of Autonomy Regimes*, Doctoral Dissertation for Åbo Akademi University, Turku: Painosalama Oy, 2015.

2 In immersion systems, students with a particular first language or mother tongue (L1) are taught in a different language (L2). In the Catalan case, this happens only in specific cases, because a significant part of the population, which has Catalan as her L1, is taught in Catalan. So, the Catalan system is based on linguistic ‘conjunction’ (or non-separation of students) rather than on “immersion”. VILA I MORENO, F. Xavier, “Escola i promoció de l’ús: el paper del ‘model de conjunció en català”, 11 *Llengua I Ús*. Barcelona (1998, Primer Quadrimestre) pp. 65–76, p.66.

3 HOWARD, Elizabeth, SUGARMAN, Julie, PERDOMO, Marleny, ADGER, Carolyn T., *The Two Way Immersion Toolkit*, The Education Alliance at Brown University, 2015.

from region to region according to local conditions is generally labeled the “territoriality principle”. In the first principle, language rights follow persons wherever in the state they may choose to live; in the second, their language rights depend on what part of the territory of the state they find themselves in”.⁴ In territorial regime *language rights* (not necessarily a monolingual scheme) depend on where a citizen resides, in a personal regime, language rights strictly follow persons and their choices.⁵ In this article, I use this broad approach, understanding territoriality and personality purely as the manner in which the rules are defined. In this sense, territoriality and personality in both language rights and in political autonomy are similar. The main difference is that a territorially-differentiated language regime may be established in a given region through decentralization and without actually devolving an autonomous law-making power to that particular region (some examples could be the Autonomous Atlantic Regions in Nicaragua, the Autonomous Province of Vojvodina or the municipalities of Kosovo).⁶ Leaving this difference aside, the language territoriality principle (LTP) and the autonomy territoriality principle coincide.

Territoriality and personality concerning language are however often understood as different degrees of coercion to use one or more languages, where territoriality is equated with a monolingual regime –with no possible choice for citizens– and personality with a bilingual or pluri-lingual regime – where choice is possible for citizens–. For example, Phillippe Van Parijs sees territoriality as a “a set of legal rules that constrain the choice of the languages used for purposes of education and communication” within a given territory (be it a region or a state). In his understanding, “the notion of a linguistic territoriality regime does not refer to how much power linguistically distinctive communities are given over linguistically relevant legislation, but to how constraining or, on the contrary, accommodating public practices are to the linguistic wishes of the people who happen to live within given borders, irrespective of whether the relevant legislative authority corresponds to those borders”. For Van Parijs, “in the standard case of a linguistic territoriality regime, one single language is imposed throughout the country concerned in the various contexts deemed to be in need of regulation”.⁷ As Helder De Schutter points out, “the strict and most popular version of the LTP states that (non-immigrant) languages should be territorially maintained, such that each particular territorial unit gives public support to only one particular language group”.⁸ In this manner, territorial coercion may be used to ensure equality between majority and) minority languages.⁹ Denise Réaume follows this stricter approach and also understands that regulating language use by territory means also requiring people “to adapt to the language of the place” and tend to favor mono-lingualism.¹⁰

These different understandings may lead to different qualifications of linguistic regimes. For example, according to the first broader approach, territoriality refers to a geographically-defined specific-set of language rules: a language regime that is determined by the authority that rules over a particular territory (not necessarily monolingual), and thus Catalonia would follow a territorial approach (applying only within Catalonia’s territory). According to the second, stricter, approach, territoriality refers to a policy of monolingual coercion. In such case, Spain proper would be the one following *stricto sensu* the territorial approach, while Catalonia by offering more than one linguistic option to its residents would follow a personality principle. Throughout this text, I follow the first approach, where territoriality is understood in the wider sense and means the geographic-specificity of a regime and not the degree of monolingual coercion.

4 PATTEN, Alan. *Equal Recognition: The Moral Foundation of Minority Rights*. Princeton: Princeton University Press, 2014.

5 PATTEN, Alan, “What Kind of Bilingualism?”, in PATTEN, Alan and KYMLICKA, Will, *Language Rights and Political Theory*, Oxford (2003) [e-book version] Chapter 13, para. 5.

6 Arts. 19, 26 and 27, Statute of the Autonomous Province of Vojvodina, Official Gazette of the Autonomous Province of Vojvodina, Nr. 20/2014, 22 May 2014; No. 162, On the Official Use of the Languages of the Communities of the Atlantic Coast of Nicaragua, 22 June 1993; Kosovo Assembly Law 02-L/37 On the Use of Languages.

7 VAN PARIJS, Phillippe, “The linguistic territoriality principle: right violation or parity of esteem?”, Re-Bel e-book n°11, 2011, p. 11. Available at <http://www.rethinkingbelgium.eu>

8 DE SCHUTTER, Helder, “Testing for linguistic injustice: territoriality and pluralism”, *Nationalities Papers*. Vol. 42 (6) (2014) pp. 1034–1052, p.1034.

9 IVES, Peter, “De-politicizing language: obstacles to political theory’s engagement with language policy”, *13 Language Policy* (2014) pp. 335–350, p. 339.

10 RÉAUME, Denise, “Beyond Personality: The Territorial and Personal Principles of Language Policy Reconsidered”, in PATTEN, Alan & KYMLICKA, Will, *Language Rights and Political Theory* (2003) [e-book version] Chapter 12, para. 2.

When it comes to self-government, the choice between territoriality and personality in the making of autonomy regimes results in territorial autonomy, national cultural autonomy or functional autonomy. Such choices affect directly how identities are defined (either through residency in a territory or self-identification with a recognized group).¹¹ Indeed, the territorial principle rests on the imagination of a physical homeland where certain language rules apply, while the personality principle implies the existence of a community capable of governing itself. There is in this sense an interesting parallel to the nuanced difference between the expressions *home rule* and *self-rule* (that is, autonomy deriving from the ancient Greek *auto-nomos*, *αὐτόνομος*: *αὐτός* meaning *self and νόμος* law)). Hence, the territoriality principle is normally accompanied by a residence-based identity, while the personality principle relies on self-identification (where often the mother tongue has a prominent role).

Thus, it is worth exploring the relation between different forms of autonomy and educational models which separate or bring together students with different linguistic backgrounds. In this article I analyze such relations and, as an approximation to a highly complex and multi-layered issue, propose an approach based on the coordinates of territoriality and personality in autonomy regimes and separation and immersion in language education. I use four parameters: the principles of territoriality and personality concerning autonomy on one hand and the principles of separation and immersion concerning public language education policy on the other. From a principle standpoint, not based on statistical analysis, I assume *a priori* that in absence of strong political polarization (which is often found in post-conflict societies such as Kosovo, or Bosnia and Herzegovina), immersion of relative minority speakers and hence promotion of multilingualism is a better choice in terms of social cohesion. In such contexts, the costs of not providing a “minority within a minority” with separate language services are worth the gain in terms of social integration.¹² In situations where such political and ethnic polarization is indeed present, I take Gordon W. Allport’s “contact hypothesis” to assume that separation prevents reconciliation and leads to increased tensions.¹³ From a wider perspective, interpretation of minority rights standards such as the Organisation for Security and Co-operation in Europe High Commissioner on National Minorities “Ljubljana Guidelines” also point to in this direction. As the guidelines mention “it is essential for societies to find the appropriate balance between the degree of separation that is necessary to the free expression and development of diversity on the one hand and the establishment and strengthening of links between and among the diverse communities of a society as a whole on the other. If cross community links are not sufficiently developed, integration is hindered, putting cohesiveness and, ultimately, stability at risk”.¹⁴

1.1 Territoriality and personality in relation to language rights

Following the broader territoriality principle, as approached earlier, a norm concerning languages will apply within a certain limited territory to everybody. All persons within the territory of Catalonia have the right to use both Spanish and Catalan before autonomy institutions. In the Åland Islands in Finland, the autonomy statute defines Swedish as the sole official language.¹⁵ In other cases, the territory is even limited within an autonomy regime. The language law of the Foral Community of Navarra in Spain for example divides its territory into a Basque speaking area, a bilingual area and a non-Basque speaking area.¹⁶ Each territorial division is subject to a different regime, where the Basque-speaking area maintains a higher degree of protection.¹⁷

11 TKACIC, Michael. “Characteristics of Forms of Autonomy”, *International Journal on Minority and Group Rights*. Vol. 15:2–3 (2008) pp. 360–401.

12 PATTEN (2014), pp. 227–232.

13 George W. Allport’s hypothesis enumerated four elements for contact to reduce conflict: equal status within the contact situation, intergroup cooperation; common goals, and support of authorities, law, or custom. DOVIDIO, John F., GAERTNER, Samuel L. & KAWAKAMI, Kerry. “Intergroup Contact: The Past, Present, and the Future”, *Group Processes Intergroup Relations*. Vol. 6:5 (2003), pp 5–21, 7. ALLPORT, George W. *The Nature of Prejudice*. Cambridge, Perseus Books, 1954. I use the term “polarization” in line with Charles Tilly’s proposal in *The Politics of Collective Violence*. Cambridge, Cambridge University Press, 2003, p. 84.

14 Organization for Security and Co-operation in Europe, High Commissioner on National Minorities (OSCE HCNM), 2012 Ljubljana Guidelines on the Integration of Diverse Societies, p. 17.

15 Section 36, “Act 1991/1144 on the Åland Autonomy Statute”, 16 August 1991.

16 Art.5, “*Foral Law on the Basque Language*”, Official Gazette of Navarra No. 154, 17 December 1986.

17 *Ibid.* Arts. 18 and 26.

Then, according to the personality principle, certain persons have concrete linguistic rights regardless of where they are. In Kosovo, persons belonging to minority communities such as Turks, Roma, Ashkaeli, Egyptians or Bosnians have the right to defend themselves court in their language.¹⁸ The resource intensive nature of such personality based rights means they are often tied to a certain demographic threshold which links the linguistic rule to a territory. The above mentioned Kosovo communities have additional linguistic rights, but these are only activated if certain demographic threshold is reached at the municipal level (5 per cent for full co-official status at the municipal level).¹⁹ In Hungary, in areas where at least 10 per cent of the population belongs to a national minority, persons belonging to such groups may access official documents and relate to the local administration in their language.²⁰ In Serbia, a minimum of fifteen students belonging to a minority are necessary to activate a right to education in the mother tongue.²¹

In order to implement such thresholds, norms based on the personality principle require that the state has demographic numerical information about the ethnic and national demographic make-up of the country. Personality based norms often are accompanied by the legal recognition of a certain list of groups (e.g., in Kosovo the Serbs, Turks, Ashkaeli, Roma, Egyptian). Assessing their demographic strength is often achieved through a census where individuals are given choices as to how to identify themselves in terms of belonging to an ethnic, national or linguistic group. The design of such a process is at the center of ethnic politics. In Bosnia and Herzegovina, Macedonia and Kosovo, the lack of an option to choose multiple identities has led to rigid understandings of ethnic and national origin. More recently, in the Republic of the Union of Myanmar, where a nation-wide census took place in 2014, data on ethnicity and religion was not publicly released due to political contestation.²²

Indeed, outside the parameters of minority language policies and autonomy, there are still states where the official policy is monolingual, following the one state-one language paradigm. No exception to majority rules is established either through territorial and personal principles. In this sense, Myanmar is also an example of a state which has had since the early 80's a strict one language policy, where no official institution, including education, used any other language than Myanmar/Burmese, despite the country having more than 135 legally recognized ethnic and linguistic groups.²³ The situation has to some extent changed, at least on paper, with the 2008 Constitution, which establishes Burmese as the only official language but recognizes certain minority language rights.²⁴ These rights are further developed through a "Law on Ethnic Rights" whereby "ethnic peoples" have the right to "teach and learn their languages as long as they do not counter the national educational policy".²⁵ The situation on the ground is far from such goals.²⁶ In practice, there are parallel systems where the territories controlled by ethnic armed groups such as the Karen National Union (KNU) implement their own education systems while government controlled areas implement a monolingual Burmese-only regime.

1.2 Territoriality and personality in relation to autonomy

When we talk about autonomy, a certain territory is physically defined where a political community will rule itself. Territorial autonomy regimes have normally a legislative body able to establish norms concerning language use as well as many other competences. Territorial forms of autonomy include territorial legislative autonomy (such as the autonomous communities of Spain, the Åland Islands, the Region of South Tyrol or

18 Art. 4(5), "Kosovo Assembly Law 03/L-047 on the Rights of Communities and their Members", 13 March 2008.

19 Article 2(3), "Kosovo Assembly Law No. 02/L-37 on the Use of Languages", 26 July 2006.

20 Art. 6(1), "Hungary Act CLXXIX of 2011 on Nationalities", 19 December 2011.

21 Art. 13, Republic of Serbia "Law on National Minorities". Official Gazette of FRY No. 11 of 27 February 2002.

22 2014 Republic of the Union of Myanmar Census, available at <<http://myanmar.unfpa.org/census/>>.

23 LO BIANCO, Joseph. *Building a National Language Policy for Myanmar, A Brief Report*. University of Melbourne/UNICEF/Pyoe Pin Programme/Thaybyay Foundation (2016).

24 Arts. 22(a), 354(d) and 450, 2008 "Constitution of the Republic of the Union of Myanmar".

25 Republic of the Union of Myanmar, "Ethnic People's Rights Protection Law" (2015 Pyidaungsu Hluttaw Law No. 8), 7th Waxing Day of Tabaung 1376 ME (February 24, 2015).

26 SOUTH, Ashley & LALL, Marie, *Ethnic Conflict and Education: Mother Tongue Based Education in Myanmar*. USAID and Asia Foundation, February 2016.

the Faroe Islands) which is the “classic” form of autonomy regime, including the power to legislate over certain enumerated competencies and where subsidiary powers lie at the central level.²⁷

The personality principle applied to autonomy may be described as the power of a community to govern itself in matters of culture (including language, education and traditions) through self-governance bodies which are elected by and represent exclusively the members of such community. The national cultural autonomy model was first theorized in the context of the disintegration of the Austro-Hungarian empire by the Austrian socialists Otto Bauer and Karl Renner, who proposed a model where nation and state were decoupled, organizing national groups into non-territorial public corporations (with the power to levy taxes amongst members) accompanied with certain rights as well as power sharing mechanisms at the central level.²⁸ Renner and Bauer’s model contested the idea that sovereignty is unitary and indivisible, that self-determination requires territorial control and after all that the nation state model is the only valid one. They advocated for integration into multi-national states which focused primarily on people and secondarily on territory.²⁹ There are several examples of national cultural autonomy in central, eastern and South Eastern Europe. National Minority Councils in Serbia, for example, may design education materials for their own communities.³⁰ The model reflected however a perhaps too essentialist and rigid idea of ethnic identity, which is reflected in the inner cultural conservatism of most national cultural autonomy institutions.

Another example of personality-based (or non-territorial) autonomy regimes is functional autonomy. In this type of regime a certain function (*e.g.*, education in a minority language) is entrusted to the representatives of a group, adding an administrative layer to the normal one. According to Markku Suksi’s, functional autonomy is “an organisational option for the provision of adequate linguistic services to a minority population in respect of a certain public function (such as education) by means of creating special linguistically identified administrative units at different hierarchical levels inside the general line organization charged with the national or local administration of the public function”.³¹ For example in Finland, Swedish education is administered at all levels by Swedish officials. The result of such policies may be to a certain extent the creation of a linguistic choice, which then aligns with the personality principle in language policy.

1.3 The individual and the homeland

Personality and territoriality comprise two very different conceptions of self-rule. The reason is they have a different understanding of the “self” in self-rule. For the personality principle the self means a group and the individuals that comprise it. It refers often to an exclusive community. Language is often the strongest defining feature of ethnic and national groups. This was a clear feature of early European linguistic nationalism, which considered the mother tongue as nation’s spirit. Late 18th- and early 19th-Century German romantics saw language purity as the primary ingredient of national identity. They were fascinated with the transcendental aspects of language. For Fichte, the mother tongue was the root of the “fatherland”; for Herder, a “collective treasure”; for Von Humboldt the “spiritual exhalation” of the nation.³² In their view, their language was ideal and superior over others. The mother tongue in this view is the irreplaceable language with which an individual can express his or her inner thoughts and feelings. Individuals are thereby supposed to belong to one language community only.³³ At the heart of it lies the implicit idea that the linguistic and the political should be one. Linguistic nationalism seeks language purity and imagines an ideal national subject, monolingual,

27 SUKSI, Markku. *Sub-State Governance through Territorial Autonomy, A Comparative Study in Constitutional Law of Powers, Procedures and Institutions*. New York: Springer, 2011, pp. 138–139.

28 MC GARRY, John & MOORE, Margaret, “Karl Renner, Power Sharing and Non-Territorial Autonomy”, in NIMNI, Ephraim (ed.). *National Cultural Autonomy and its Contemporary Critics*. New York: Routledge, 2005, pp. 74–95.

29 NIMNI, Ephraim, “National Cultural Autonomy as an Alternative to Minority Territorial Nationalism”. *Ethnopolitics*. Vol. 6:3 (2007) pp. 345–364, 348, 360.

30 Republic of Serbia “*Law on National Minority Councils*”, Official Gazette of the Republic of Serbia, No. 72/2009.

31 SUKSI, Markku. “Functional Autonomy: The Case of Finland with Some Notes on the Basis of International Human Rights Law and Comparisons with Other Cases”. 15 *International Journal on Minority and Group Rights*, Vol. 15 (2008), pp. 195–225, p.195.

32 MARTYN, David. “Borrowed Fatherland, Nationalism and Language Purism”, 72:4 *Germanic Review* (1997), pp. 303-315; PAN, David, “G. Herder, the Origin of Language, and the Possibility of Trans cultural Narratives”, 4:1/2 *Language & Intercultural Communication*, (2004) pp. 10–20

33 YILDIZ, Yasemin. *Beyond the Mother Tongue: The Postmonolingual Condition*. Fordham: Fordham University Press, 2012, pp. 30–66.

whose linguistic soul belongs to a single nation and a state structure.³⁴ In opposition to such views, Yasemin Yildiz describes the multilingual world of Franz Kafka to demonstrate how “(l)anguages do indeed relate to identities, but not in any predetermined, predictable way (...).”³⁵

Indeed, the understanding of languages and identity has indeed evolved a lot since the early nationalist romantics. Michel Foucault observed different periods in the historical evolution of languages, starting with an initial “resemblance”, moving on to a Cartesian view of language as a “discourse” expressing ideas and finally developing into the current “modern” understanding of language as an autonomous “object” and the birth of philology.³⁶ Similarly, the triad one nation/one language/one State has given way to “one world, many States (and inter-governmental institutions) and a universe of cultures. The trend is obviously not constant: the pendulum swings back and forth between a homogeneous conception of the state and a distribution of power between groups through various measures, including language policies.

Conversely, for the territoriality principle the self in self-rule (or better *home-rule*) refers to a homeland, another central myth in nationalism which often considers it as an eternal, unchanging and sacred entity. Since the inception of European nationalisms territory has been imagined by linguistic nationalism as representing the body of the nation and the language its soul. Constitutional and national identity has been understood as an identical ideal.³⁷ This is however far from the complex relations between identities and languages. This vision disregards the historical and often arbitrary making and unmaking of states’ boundaries. The attachment to a land, to a territory is also a fundamental feature of nationalism, which according to Ernest Gellner consist on the political principle by which the national and the political (read here as territorial) units should be congruent.³⁸ In practice, “home rule” constitutes the norms that apply within a territory for a community which is fundamentally defined by physical boundaries.

1.3.1 Personality and territoriality-based group identities

Personality-based norms require to some extent that the groups are defined by law: Hungarian, Serbian Kosovo and Macedonian legislation for example define which groups are entitled to certain rights (they even provide specific lists of groups).³⁹ In Myanmar, an administrative instruction lists one by one the 135 recognized ethnic groups derived from the 1982 Citizenship Law.⁴⁰ The down side of such recognitions is the non-recognition of those groups left outside (in Myanmar, notably the Rohingya in Rakhine).

This is a clear distinction from territorial based regimes, such as Spain where legally speaking, political identities are defined by place of residence. Thus while the condition of, for example, Albanian in Serbia is primarily a result of personal self-identification (and recognition of the group by law), the “political condition of Basque” is defined in the Basque Autonomy Statute by the legally registered place of residence (last legal place of residence if residing outside Spain).⁴¹ The same applies for Catalanian, Valencian and all other identities. Acquiring such political condition is easier in Spain than in the Åland Islands, where the equivalent right of domicile (awarded to Åland residents and their descendants) is only awarded to (Finnish) newcomers after five years of residence.⁴²

1.4 Immersion and separation in relation to language education

When a sub-state entity is given at least a shared non-exclusive power to legislate on education matters, it may broadly pursue different bilingual education models. It may as in Catalonia, seek to ensure that all

34 *Ibid.*, p. 56.

35 *Ibid.*, pp. 203–211.

36 MANJALI, Franson D. “Nietzsche, Derrida and the Deconstruction of European Linguistic Modernity”. *Yearbook of the Goethe Society of India, 2005: Rethinking Europe*. (2005) pp. 81–107.

37 ROSENFELD, Michel. *The Identity of the Constitutional Subject*, New York: Routledge, 2010, pp. 152–156.

38 GELLNER, Ernest. *Nations and Nationalism*, New York: Cornell University Press, 2008.

39 In Hungary: Bulgarians, Greeks, Croats, Poles, Germans, Armenians, Roma, Romanians, Carpatho-Rusyns, Serbs, Slovaks, Slovenes and Ukrainians. Appendix, Art. 22(1), “Hungary Act CLXXIX of 2011 On the Rights of Nationalities”.

40 1982 Burma “Citizenship Law”, Pyithu Hluttaw Law No. 4, 1982.

41 Art. 7(1), Cardinal Law 3/1979, 18 December 1979, *On the Autonomy Statute of the Basque Country*.

42 Arts. 6 & 7, Act 1991/1144 on the Autonomy of Åland, 16 August 1991.

inhabitants are fluent in both the majority and the regional or minority language while promoting the latter through “immersion” (or in Catalonia perhaps more specifically “conjunction”) policies or it may prefer to separate students on linguistic basis, which could hereby be called “linguistic separation” (the model, for example, in Québec’s education system).⁴³ There are also possibilities for offering mixed arrangements.

The first option, or the “linguistic immersion” model, aims to further the sub-state entity’s own nation-building program through compulsory learning of the regional or minority language as well as offering bilingual services across the board to ensure a dual approach (promoting bilingualism). Apart from Catalonia, this is also the case of South Tyrol in Italy and with certain nuances the Basque Country in Spain. The result is not mono-lingualism but a form of bilingualism where the dominant minority language and the majority or “State language” are normally acquired by all inhabitants of the territory.⁴⁴ The mono-lingual Åland Islands in Finland (even though Swedish is legally not a minority language but a national one) would be an example of territoriality united to a monolingual language policy, where Finnish is given minimal attention.⁴⁵

The second option, referred here as the “linguistic separation” model implies for the central level to establish a mixed territorial and non-territorial model by offering more than one language of public instruction through separate schools (or classrooms) whenever a certain demographic threshold is met or by directly defining bilingual territories. This means establishing a degree of functional autonomy, especially if the measure is implemented through specialized administrative units at both local and central levels. Such a model is present in the Autonomous Province of Vojvodina in Serbia, in mainland Finland (Finnish and Swedish schools), the Region of South Tyrol (German and Italian schools), Macedonia (Albanian and Macedonian schools) and Serbia’s national minority schools. Mainland Finland presents in this context a two-way model promoting multilingualism, where Finnish and Swedish language schools teach the other language as a second national language.⁴⁶ This is striking when taking into account that native Swedish speakers are a clear minority in Finland. Implementing such a policy in places like Spain would not be politically acceptable (few inhabitants of mainland Spain would willingly take on Basque, Catalan or Galician as a subject).

Finally, outside the remnants of multilingual policies and autonomy is of course purely coercive monolingual education absent of any consideration of regional and minority languages (with the exception of second languages such as English). The case of the Myanmar mentioned earlier would be an example. In South East Myanmar, for example Karen children have for decades faced the choice of enrolling in the Burmese-only schools or studying in the earlier mentioned parallel unrecognized educational institutions run by non-State actors (the KNU). At present, and in the context of peace negotiations (the 2015 National Ceasefire Agreement calls for the recognition of linguistic diversity), the idea of offering multilingual education is on the table, with some policies being implemented as a pilot project in regions such as the Mon State (for education in the Mon language).⁴⁷ Discussions in the States of Karen and Kachin (where armed conflict is ongoing) are also taking place at the political level as part of the peace process.

2 A relation between two dichotomies: territoriality/personality and separation/immersion

How do then the dichotomies between territoriality (understood as geographic-specific regimes, not monolingualism) and personality regarding autonomy and language rights on one side and separation and immersion regarding education policy on the other interact with each other? The principles represent very different ideas on language and the relation between the individual, the state and the community. In order to expand knowledge on the interrelation between autonomy and languages, it may be useful to group such

43 Arts. 72 and 73, National Assembly of Québec “*Charter on the French Language*” CQLR c C-11 (Bill 101). VILA I MORENO (1998).

44 HUGUET, Ángel, ‘La educación bilingüe en el Estado español: situación actual y perspectivas’, *Cultura y Educación*, Vol. 16:4 (2004), pp. 399–418.

45 Arts. 36 and 37, “1991/1144 *Act On the Autonomy of Åland*”.

46 Art. 10(2), “423/2003 *Finland Language Act*”. This is not the case however with the Saami language, which is only used as language of instruction in the Sami Homeland together with Finnish.

47 Arts. 1(f) & 25(a)3, *The Nationwide Ceasefire Agreement between the Government of the Republic of the Union of Myanmar and the Ethnic Armed Organisations*, 2015.

relations into four areas of language policy and autonomy design: personality and separation, personality and immersion, territoriality and separation and territoriality and immersion (Fig. 1).

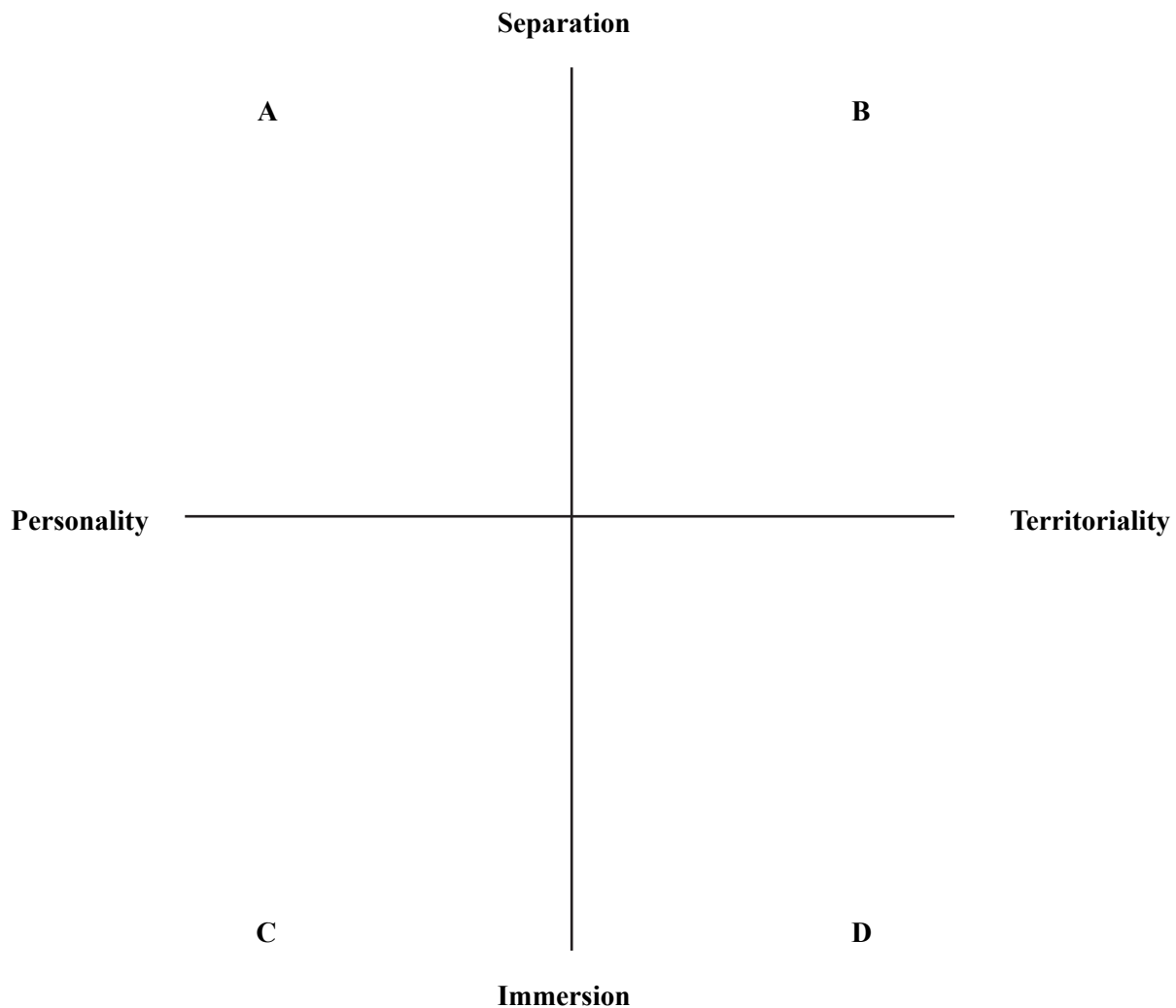


Fig. 1. Personality and territoriality in autonomy and language rights in relation to separation and immersion in education.

The table shows four main choices at the disposal of the law maker (A, B, C and D). Area A refers to linguistic separation and personality-based regimes, such as the functional autonomy or the national cultural autonomy educational systems. Area B corresponds to territoriality and separation. Area C relates to personality and immersion, a model where personality defined self-government rights over culture and language do not lead to physical separation of students. Finally, Area D covers the territorial immersion models where monolingual units offer education in the (relative) majority language in that sub-state territory.

2.1 Personality and separation

First, the area of personality and separation refers to situations in which autonomy regimes (and subsequently language rights) are designed in terms of the personality principle (through national cultural autonomy or functional autonomy) and the education system at least offers the possibility of separating pupils in accordance to language. Within this area, Serbia and Hungary would be examples of personality defined language rights and separate schools. From a self-governance perspective they both have personality defined national councils for national minorities with competencies over education policy.⁴⁸ Hungarian nationality

⁴⁸ These are the Bulgarians, Greeks, Croatians, Poles, Germans, Armenians, Roma, Romanians, Carpatho-Rusyns, Serbs, Slovaks,

self-governments have administrative powers over culture, media and education and a consultative role.⁴⁹ Similarly, Serbia's national minority councils, elected through a special voters' register, have important competences in the field of education (proposing the management boards of minority schools, proposing curriculums to national education institutions).⁵⁰

Personality and separation could also refer to cases in which functional autonomy or national cultural autonomy systems are in place but there is a strong effort to provide multilingual education to all students regardless of their mother tongue. The case of mainland Finland where -in addition to the existing functional autonomy system triggered by demographic percentages- all Finnish citizens are obliged to learn Swedish to a certain degree may be located within this area.

In Finland, the 2003 Language Act creates a linguistic division of the country on unilingual Finnish, unilingual Swedish, or bilingual municipalities, subject to revision every ten years. Unilingual municipalities use either Swedish or Finnish, while bilingual ones are obliged to use both languages in public documents. According to the Basic Education Act, "the local authority in a municipality which has both Finnish and Swedish-speaking residents shall be responsible for arranging basic and pre-primary education separately for both linguistic groups".⁵¹ The functional autonomy system is established through separate Swedish and Finnish administrative boards of education at municipal, provincial and state levels (indeed, a full educational system in Swedish).⁵² Students of primary and secondary education are allocated to schools in accordance with their mother tongue (Swedish or Finnish and Saami in the Saami Homeland).⁵³

Unfortunately, the personality and separation approach is ill prepared to deal with highly polarized post-conflict scenarios such as Bosnia and Herzegovina and Macedonia. For example, in the Central Bosnia canton (in the Federation entity), schools offer two types of curriculums within the same building, producing the phenomenon known as "two schools under one roof". The UN Committee on the Elimination of Racial Discrimination condemned it for creating fear of the "other" and the Federation of Bosnia and Herzegovina Supreme Court has judged the practice discriminatory on an ethnic basis.⁵⁴ Similarly, in Macedonia, separating students according to language (and ethnicity) has raised concerns on integration since the signature of the Ohrid Framework Agreement in 2001. The OSCE voiced concerns that Albanian students do not effectively learn Macedonian or regularly interact with ethnic Macedonian students, increasing polarization.⁵⁵

Indeed, in area A, the personality principle, where identity is defined by self-identification and not residence in a territory, could be seen as pointing towards strengthening the idea of separate exclusive ethnic or national identities which are relatively independent of their physical location and perhaps in some cases a more "essentialist" understanding of identity. Said that, the case of Finland's functional autonomy educational system does not arguably fit in a linguistic nationalism label. The complexity and differences in historical and political contexts are in this sense determinant.

2.2 Territoriality and separation

The Basque Country and South Tyrol could be included as examples of situations in which territorial legislative autonomy is present and education takes place separately in accordance with the students' mother tongue. In these two cases, within territorial legislative autonomy regimes students are divided according to language (A, B and D models in the Basque Country) and German and Italian schools in South Tyrol. In the Basque Country, students are given three options (not determined by a student's mother tongue but

Slovenes and Ukrainians. Appendix, Art. 22(1), Hungary Act CLXXIX of 2011 *On the Rights of Nationalities*".

49 Arts. 19, 24(1) & 118.

50 Arts. 11–21, 47, Republic of Serbia "Law on National Minority Councils", Official Gazette of the Republic of Serbia, No. 72/2009. Minority voters may register in one national council only.

51 Article 4(4), Finland "629/1998 *Basic Education Act*".

52 *Ibid.*, p. 204.

53 Arts. 10(1), 10(2) and 6(2), Finland "*Basic Education Act*". Finland "629/1998 *High School Act*".

54 The Supreme Court of the Federation of Bosnia and Herzegovina ruled that there was discrimination on access to education in Mostar. Supreme Court of Bosnia, Judgment 58 0 Ps 085653 13 Rev, 29 August 2014.

55 Government of Macedonia, Ministry of Education and Science, "Steps Towards Integrated Education in the Education System of the Republic of Macedonia" (2009).

by parental choice). Option A means the majority of classes are given in Spanish with Basque as a subject. Option B is the middle ground with an equal amount of classes in Spanish and Basque and Option D is the option which gives primacy to Basque language education.

In South Tyrol, the 1946 De Gasperi-Gruber Agreement ensured linguistic rights (both in education and the administration) for German speakers and gave South Tyrol legislative and executive powers. South Tyrol is competent to legislate over primary and secondary education as long as it conforms to the principles set out by the central level. The Tyrol model is different from the Basque model, because it is not solely based on parental choice as much as on the student's mother tongue. The importance of language as an identity marker is much stronger in South Tyrol than in the Basque country, where use of Basque language is in practice much lower. Hence, the idea of placing students of different linguistic groups (Ladin, German, Italian) has historically met strong resistance. As a result, parallel German and Italian school systems are in place and German and Italian students are taught the second language as a subject. As Verena Wisthaler points out, a more inclusive model is found in the Ladin schools, where instruction is provided in both German and Italian and Ladin language is taught as a subject.⁵⁶ After primary education, Ladin school students normally enter either the German or the Italian secondary schools due to their low numbers.⁵⁷ In 1980, the South Tyrolean governments' approach to education was summarized in the principle that "the better we separate each other, the better we understand each other".⁵⁸ Obviously, mixed families and migrants are not well reflected within this strict scheme.

The proponents of separation argue that immersion education models are in detriment of the weaker language as they force all the population to be bilingual. The majority language speakers remain in a stronger position while minority language speakers may struggle to continue to use their language. According to this approach, equal recognition is not enough for language preservation in light of assimilation pressures, economic and historic injustice and market failures. In a territorial autonomy regime, "minorities within the minority" would arguably benefit from separation as they do not see themselves forced to learn the regional or minority language (e.g., persons who choose the Spanish language model within the Basque educational system). The question is whether the interference with Spanish mother tongue speakers is worth the gain through immersion. Advocates of the territoriality and immersion principle argue that the price is worth paying.⁵⁹ Proponents of separation maintain that, for example, French in Québec would be endangered by an immersion system due to the relative weakness of French.

The issues are highly contextual. Recently, a Basque colleague once exposed the argument to me as follows: if three persons are engaged in a conversation and only two of them speak a minority language, the group will turn to a majority language in order to include the minority (the majority language speaker). In this sense, applying a separated system in Catalonia would seriously erode efforts to promote this language. The difference lays to some extent in the status of French in comparison to Catalanian. A minority language such as Catalanian needs a strong public effort towards its promotion, while French is sufficiently strong internationally not to require such a support.

In sum, Area B introduces a territorial arrangement to separated education which adds layer to communal identities. It is a complex zone where in addition to the territorial differentiation through an autonomy regime, separation may be determined either by physical location, by ethnic or national belonging or simply by personal or parental choice (for example, many Basques whose mother tongue is Spanish have chosen the Basque instruction model in the last decades).

2.3 Personality and immersion

Area C, personality and immersion, would reflect a model in which personality defined autonomy regimes do not necessarily lead to the physical segregation of students. Such an approach would address one of the

⁵⁶ WISTHALER, Verena. "Identity Politics in the Educational System in South Tyrol: Balancing between Minority Protection and the Need to Manage Diversity", *Studies in Ethnicity and Nationalism*. Vol. 13:3 (2013) pp. 358–372, p. 363.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ PATTEN (2014), pp. 227-232.

problems of personality-based autonomy and language rights arrangements: ensuring contact between the students of different linguistic groups. This is a reason for further polarization in post-conflict societies such as Macedonia, Kosovo or Bosnia and Herzegovina.

In this context, examples of what could personality and immersion (e.g., daily contact between students of different groups) could be schools in the Balkans where a model of “integrated education” is sought in order to overcome ethnic divisions. The Nansen Dialogue Model of Integrated Education, developed by the NGO Nansen Dialogue, and which received the Max Van Der Stoel award from the Office of the High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe in 2011 provides students with education in their mother tongue to Albanian and Macedonian students within the same shift (unlike Bosnia and Herzegovina’s “two schools under one roof”). Albanian and Macedonian students sit most of the day in separate classes following the official Albanian and Macedonian *curricula*, however, there are also continuous extra-curricular activities where students (and teachers) interact.⁶⁰ Such educational activities promote inter-ethnic linkages, in line with Allport’s “contact hypothesis”. This is easier in areas where demography permits mixing students (i.e., where communities are not geographically isolated). Some states, notably the U.S. have used public transport to counter *de facto* segregation linked to residence.⁶¹

An alternative reading of Area C (Personality and Immersion) could perhaps relate to situations in which the identity and personality of the constitutional subject is though as monolingual and no minority languages are recognized (only one official language, no separation on linguistic or other basis) and immersion is understood as full assimilation in the “State language”. This would be the increasingly rare space of the classic nation state where individual (indeed, citizen), language, nation and state are equated in places such as the Union of Myanmar before the enactment of the 2008 Constitution. It could also refer countries like Greece, Iceland or France there is little or no recognition of ethnic and national diversity in their legal systems.⁶² However, in the context of this article personality refers only to situation in which some language rights are recognized. Immersion is also understood here as a two-way process and not as assimilation, where minority identities are not respected.

2.4 Territoriality and immersion

Catalonia and the Åland Islands would be examples of territoriality and immersion (Area D). From an autonomy perspective the model is territorial legislative autonomy and from a language policy point of view the approach is full immersion in the local official language. The approaches and contexts are however quite different. Catalanian is the “*llengua propia*” of Catalonia, it is almost unique to its territory and neighboring regions, in contrast with Åland’s Swedish. The autonomy of Catalonia is the result of a very different historical process (currently based in the 1978 Constitution of Spain) from the exceptional case of Åland, where autonomy was created to address a territorial conflict between two sovereign states. The use of Catalanian has gained strength in the education system and Castilian Spanish is today the third language, after Catalan and English. Students receive approximately three hours of Spanish language per week. The justification for this low percentage is that the majority language is in fact dominant in the wider social setting.

Moreover, unlike in Catalonia, where both Spanish and Catalanian are co-official, the Autonomy Act of Åland establishes Swedish as its only official language which means that non-Swedish speakers do not receive the same linguistic protection as in mainland Finland. The Act on the Autonomy of Åland gives its Legislative Assembly full competence concerning language education within its territory.⁶³ In fact, the Advisory Committee on the Framework Convention for the Protection of National Minorities considered Finnish speaking population in the Åland a “minority within a minority”.⁶⁴ When the AC FCNM pointed

60 See Nansen Model for Integrated Education, Manual for Parents, Nansen Dialogue Centre Skopje, 2012. The Nansen Model for Integrated Education website is at: <<http://nmie.org/index.php/en/>>.

61 In *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) the Court sanctioned the policy of busing students from distinct neighborhoods to ensure a racial balance and prevent segregation.

62 ARRAIZA (2015), p. 106.

63 Article 18(14), “Act 1144/1991 on the Autonomy of the Åland Islands”, 16 August 1991.

64 Advisory Committee on the Framework Convention for the Protection of National Minorities, *First Opinion on Finland*. ACFC/INF/OP/I(2001)002, 22 September 2000, *paras.* 17, 46.

to the possible problems faced by Finnish mother tongue students, the authorities stated that the possibility to study Finnish as the second “foreign” (*främmande*) language from the fifth grade and the availability of certain remedial education in which Finnish can also be used “reflects the special status of Åland as a monolingual province”.⁶⁵

The reasons for this strong degree of protection are in the 1921 Decision by the Council of the League of Nations on the Åland Islands. The decision granted this Swedish speaking territory both self-government and language rights.⁶⁶ While in the mainland the historical process of nation building during the Russian dominated Grand Duchy of Finland area led to Finnish by-passing Swedish as the language of elites and massive primary education, the Åland Islands continued to be predominantly Swedish-speaking.⁶⁷ The 1921 international decision inserted new guarantees concerning the preservation of education in Swedish in order “(...) to assure and to guarantee to the population of the Åland Islands the preservation of their language, of their culture and of their local Swedish traditions (...)” which indicates the weight that language had in the negotiations.⁶⁸ Linguistic rights which apply to citizens of the Åland Islands include an exemption from linguistic proficiency in Finnish to access higher education in mainland Finland.⁶⁹

Area D seems to offer an inclusive territorial identity which is based on language for all inhabitants of a territorial arrangement. The model promotes integration and social cohesion in places like Catalonia, however it also reinforces differences with the mainland state (Spain) and obliges “minorities within the minority” to follow a perhaps unwanted policy. The model seems well prepared for situations in which the relative minority can accept immersion in the regional language. In Catalonia this is made easier by the fact that the language is close to Spanish and relatively easy to learn and widely used. Implementing such a policy with the Basque language would for the same reasons not be feasible. In highly polarized societies this is usually not feasible. The implementation of an immersion policy in the Serbian language in the Republika Srpska in Bosnia and Herzegovina leads, for example, to ethnic Bosnian parents sending their children to study in the Federation Bosnian schools.⁷⁰ Similarly, in Myanmar, immersion in Burmese with almost complete disregard for minority languages has led to parallel education systems which now faces significant challenges for integration.

65 Advisory Committee on the Framework Convention for the Protection of National Minorities, *Second Opinion on Finland*, adopted on 2 March 2006, para. 141.

66 Council of the League of Nations, *Decision on the Åland Islands Including Sweden's Protest*, Official Journal of the League of Nations No. 697, September 1921.

67 *Ibid.*

68 SUKSI, Markku, *Sub-State Governance through Territorial Autonomy, A Comparative Study in Constitutional Law of Powers, Procedures and Institutions*. New York: Springer, 2011, pp. 144–151.

69 Art. 41, Finland, “*Act 1991/1144 on the Autonomy of Åland*”, 16 August 1991.

70 European Commission Against Racism and Intolerance (ECRI): Report on Bosnia and Herzegovina, CRI(2011)2, February 8, 2011.

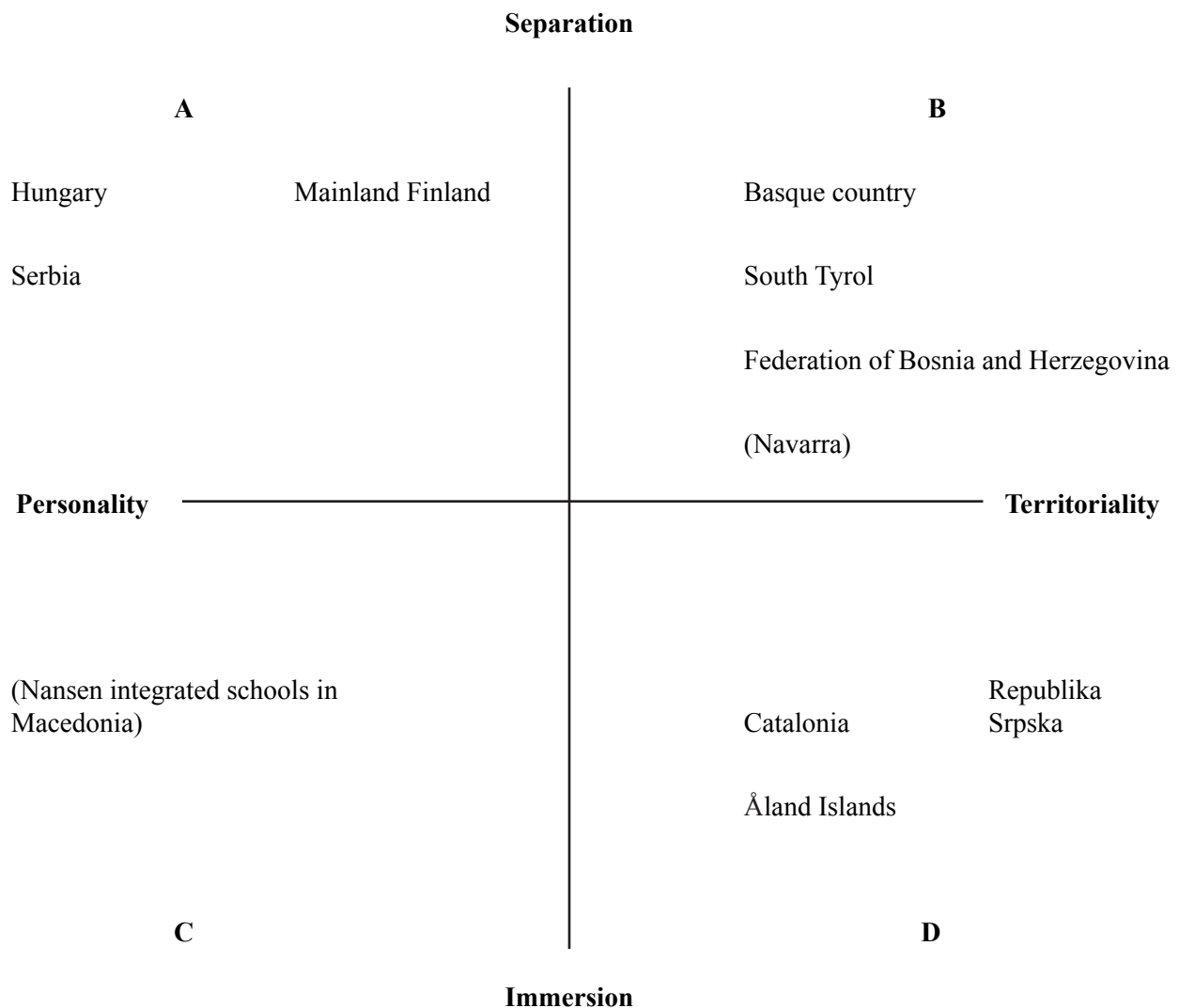


Fig. 2. Examples of education and autonomy systems in relation to separation/immersion and personality and territoriality.

3 Concluding observations

Autonomy is one form of making the political and the cultural congruent. Political structures help re-create group identities that are in turn used as platforms to demand territorial or cultural self-governance. Giving rights to a group in turn helps to consolidate it as such: political institutions have an impact on linguistic groups and *vice versa*. There is however no single formula to translate into law the multiple relations between autonomy and language diversity.

The proposed approach to understand the complex relations between personality and territoriality in autonomy and language policy on the one hand and separation and immersion in education on the other provides only an approximation to at least some aspects of the relation between autonomy and language diversity. In order to draw some lessons from the different approaches it would be however necessary to complement a comparative law approach with concrete statistical data, beyond a purely comparative legal methodology. In this sense, this comparison could be used to further research in this area.

Clearly, the models and their consequences are highly contextual and escape easy generalizations. Each combination of territoriality and personality concerning autonomy and language rights and separation and immersion concerning education may have different consequences in different contexts. Hence, while it is

not possible to draw firm general principles out of this approximation to a highly complex issue, there are some initial observations which can be extracted.

(Dual) immersion models seem more likely to promote integration following the contact hypothesis as well as European minority rights standards (which generally seek to balance integration with respect for diversity).

Models based on separation have the advantage of protecting minority identity. However, they do so through isolation and may also promote a rigid and essentialist understanding of ethnic, national and linguistic differences. In highly polarized societies, such as Macedonia, linguistic separation may be combined with immersion policies through integrated education approaches which place students in the same building and promote joint extra-curricular activities. In light of the relative failure of such policies and continuous instability it is even reasonable to argue for stronger measures aimed at cohesion with respect to diversity.

Where linguistic minorities are dispersed, non-territorial autonomy is an option to implement personality-based linguistic rights, as it is the case in Hungary. In this regard, mainland Finland's functional autonomy seems to offer a less essentialist approach to identity than national cultural autonomy institutions, which probably require further legal definition of the group (and an essentially different understanding of it).

Territoriality and separation are adequate in such contexts where a strong territorial, homeland based, identity is present but members of the different linguistic groups would not readily accept immersion in the other's language, as it is the case in Navarra. Perhaps, it may also be adequate where there are more than two languages to accommodate in place.

Finally, the outliers such as Myanmar, where no minority language or autonomy arrangements have been firmly established (yet) show the unsustainability of not dealing appropriately with minority issues. After decades of civil war between ethnic armed groups and the state forces and in the middle of a multi-layered peace process and an imperfect political transition it is abundantly clear that the only option which is not feasible for a legal system is to deny cultural diversity and self-government. The only non-option –the only clear risk– is actually not to deal with autonomy and language rights and ignore their potential.

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