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Rights, language regimes, and language policy: An international perspective

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Abstract

In this introduction to the special issue on *Rights, Language Regimes, and Language Policy: An International Perspective*, the guest editors explore how language rights, language regimes, and language policy interact. Noting the increased interest in language rights in recent decades, they start by exploring the different manifestations of language rights at the international, regional, and national levels, before considering the more complex interactions between language rights, language regimes, and language policies within States. The guest editors then discuss how the articles in this special issue explore these complex interactions within particular national (and, in one case, international) contexts. They demonstrate how these articles shed light on the potential—and the limitations—of particular language rights, regimes, and policies for managing linguistic diversity and multilingualism, and reveal the difficult balance that must be struck in order to manage linguistic diversity fairly and effectively.

Keywords: language rights, language regimes, language policy, multilingualism, law, sociolinguistics

Twenty years ago, Kymlicka and Patten (2003, 2) noted that there was a “new interest in language rights.” Globalisation and migration were producing societies of increasing linguistic diversity; ethnic conflict, often

along linguistic lines, had exploded in the former Yugoslavia and Soviet Union; and the rise of so-called global languages such as English was threatening many of the world's approximately 6,000 tongues with extinction. As a result, questions of language policy—which had long raised difficult political questions for States—had become increasingly pressing. The language of rights became an important part of debates concerning how to address these issues. Language rights received attention across a range of academic disciplines, from political theory (Kymlicka & Patten 2003), law (Mowbray 2012), and anthropology (Mascia-Lees & Lees 2003), to education (May 2014) and linguistics (Phillipson 2000). Language rights were also being claimed in practice, by non-governmental organizations and activists, including the “linguistic human rights” movement (Skutnabb-Kangas & Phillipson 1994) and the drafters of the 1996 Universal Declaration of Linguistic Rights. International bodies, such as the United Nations (UN) and the Council of Europe, were increasingly recognizing language rights, through instruments such as the European Framework Convention for the Protection of National Minorities (Articles 10, 11, and 14) or the European Charter for Regional or Minority Languages.

Twenty years later, language rights have become an established feature of debates about language policy and language planning. But what is the relationship between language rights and language regimes, and do language rights ultimately influence State language policy? This special issue considers these questions, exploring the relationship between language rights, language regimes, and language policy in comparative and international perspective. In this introduction, we briefly set the scene by giving an overview of language rights and the diverse forms which such rights may take, before considering their relationship with language regimes and language policies.

Language rights can be found in different legal systems at the international, regional, and national levels. At the international level, there is no singular right to use a particular language. However, several different human rights recognized in international law have implications for the protection of language-related interests. Minority rights, for example, provide that

members of minority groups “shall not be denied the right, in community with the other members of their group . . . to use their own language” (International Covenant on Civil and Political Rights, Article 27). Non-discrimination rights prohibit discrimination against individuals on the basis of language. Rights to freedom of expression allow individuals to express themselves in the language of their choice. Cultural rights protect language as an aspect of culture and aim to safeguard peoples’ cultural security (Carbonneau, Jacobs & Keller 2021). And other rights can be used incidentally to protect language interests in certain situations. For example, the right to a fair trial requires that individuals who do not understand the language used by a court be provided with an interpreter for criminal proceedings. The right to education may require education in particular languages, or special assistance for children who do not speak the language used in a particular school (Mowbray 2012, 37–39).

Regional rights regimes similarly have implications for language use. Of particular note in this context are two developments within Europe: the European Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages. The former provides more far-reaching language rights for national minorities within Europe than those available at the international level, including rights to use their own language in communications with administrative authorities (Article 10(2)) and to mother tongue education (Article 14). The latter does not give language rights to individuals per se, but requires States to take measures to protect regional and minority languages on their territories.

It is evident from this brief survey of language rights at the international and regional levels that the system of protection for language use is patchwork: the ability to use particular languages will be protected in different ways in different contexts. An important distinction to note here is that between tolerance-oriented and promotion-oriented rights (Kloss 1971). Tolerance-oriented rights, such as freedom of expression and non-discrimination, prevent States from interfering with individuals’ private language use. They allow individuals to use whatever language they choose in their private

communications, but they do not impose a positive obligation on the State to offer public services to an individual in the language of their choice. Promotion-oriented rights, on the other hand, require the use of a particular language by public institutions, such as courts, administrative authorities, and schools. International and regional human rights systems focus largely on tolerance-oriented rights, establishing the freedom of individuals to use their own language without State interference or risk of discrimination. Promotion-oriented rights, on the other hand, are limited to particular contexts, such as the enhanced rights for European national minorities under the European Framework Convention for National Minorities.

There are two interesting points to note about this restriction of promotion-oriented rights. The first is that these rights tend to be accorded to indigenous groups or national minorities, but not to immigrants. The European Charter for Regional or Minority Languages, for example, specifically excludes immigrant languages from its scope of protection (Article 1(a)). This reflects much work in the field of political theory which argues that national minorities are entitled to promotion-oriented rights whereas immigrants are entitled only to tolerance-oriented language rights (Kloss 1971, 259–262). The second point to note is that these rights are generally tightly circumscribed, being said to apply only “as far as possible” (Framework Convention for the Protection of National Minorities, Article 10(2)) and where there are “substantial numbers” of minority individuals (Framework Convention for the Protection of National Minorities, Article 10(2); European Charter for Regional or Minority Languages, Article 1(b)). Thus, even national minorities have no automatic right to receive public services in their own language—practical considerations, such as the level of demand for services in the minority language and the cost involved in providing such services, must be taken into account.

This suggests that language rights at the international and regional levels allow States to retain considerable discretion regarding which languages they use in the provision of public services. In this sense, the impact of international and regional rights on State language regimes and language policies may be limited. However, many States include language rights within their national legal frameworks also, and such rights may be more

far-reaching than those provided for under international and regional law. States with official policies of multilingualism, for example, accord promotion-oriented rights to speakers of all official languages. For example, certain linguistic minorities may have the right to have an entire trial conducted in their language (without an interpreter), as is the case with the French-speaking minority in Canada (Jiménez-Salcedo 2014). Within such systems, the relationship between language rights and language regimes becomes more complicated. Rather than functioning as a check or restriction on the operation of language regimes, such rights are an inherent part of the language regime itself.

At the national level, then, language rights and language regimes are often intimately connected. And the questions of *which* languages are chosen to have official or national status, and how other languages are protected within such regimes, assume critical significance. In this context, it is worth noting that a very large number of States maintain official policies of public monolingualism “or, at most, delimited multilingualism, in the public domain” (May 2015, 355–356). The majority of States have only one official or national language, which is to be used in all public communication.

Where States have more than one official or national language, however, things become more complicated (and more interesting). The range of language regimes, and associated systems of language rights, is potentially unlimited. In general terms, however, it is possible to draw a broad distinction between territoriality-based regimes and personality-based regimes (McRae 1975). Under territoriality-based systems, language rights are differentiated across the territory of the State, such that different regions have different language regimes. Under personality-based systems, by contrast, an individual will have the same language rights regardless of which region of a State they are in. Many States will combine elements of both systems, with broad territoriality-based language regimes accompanied by certain personality-based rights.

Language policies can be understood as both broader and narrower in scope than language regimes. On the one hand, language policy can

refer to the whole framework of rights, regimes, and regulations designed to achieve particular linguistic outcomes for a society, along with the ideas and ideologies which underpin that framework (Johnson 2013, 4). On the other hand, language policy can be very specific, such as policies regarding which legal documents must be translated in court proceedings. In this respect, there is a distinction to be made between legal rules concerning language use, embodied in legislation or even a national constitution, and policies, which are designed to regulate behavior but do not have the force of law. Language policy may be implemented through legal rules or rights, but also through policies, principles and guidelines which are not legally binding.

The interrelationship of broad language policies and ideologies, legal rights and regimes, and specific policy guidelines produces a complex web of interactions, which the contributions to this special issue explore. The five articles in this special issue cover five different territories: Canada, Switzerland, Spain, Chile, and the European Union. Canada and Switzerland represent two examples of federal regulation of language policy (Gagnon & Iacovino 2007; Meune 2011). Spain, on the other hand, could be described as a federal society, in the sense suggested by Livingston (1952): with different communities grouped together territorially, this State has historically had great difficulties in accommodating its linguistic minorities politically and legally (Jiménez-Salcedo & Carbonneau 2021). Chile has faced similar difficulties with recognizing its indigenous minorities (Rojas 2013). The European Union, on the other hand, seems to have solved the complex language management issues associated with the operation of one of the largest supranational organizations in the world, through stated recognition of multilingualism (Martín Martín-Mora & Jiménez-Salcedo 2021).

The papers presented in this special issue examine each of these case studies and propose innovative ways of analyzing them. The new Canadian Official Languages Act, which Linda Cardinal (2023) discusses in her article, aims to resolve the minoritization of French in Canada by recognizing the actual asymmetry of this language with respect to English. The minoritization

of French has been hidden for decades by a federal language policy that touted formal legal equality between the two languages, as if the situation of French were comparable to that of English (Richard 2001). The new Act should better reflect the social reality of the situation of each language and help to address the minoritization of French, at least in those areas that fall under federal jurisdiction. However, Cardinal also notes the limits of this new legislation and possibilities for further development in future.

In his article, Manuel Meune (2023) presents the case of Switzerland, a country often described as exemplary in recognizing linguistic minorities. This success seems to be due to a system of political organization into territories (cantons), each with a single official language (that is, a territoriality-based regime). Cantons with several official languages can implement models of “differentiated territoriality” in cooperation with the federal level and taking into account existing social inequalities between languages. This has allowed the reinforcement of French in those monolingual or bilingual cantons where this language is spoken, as well as the recognition and promotion of Italian and Romansh as minoritized languages. Despite this, Meune also discusses three domains in which this idyllic image of a “glottophile” country can be challenged: the absence of Swiss-German dialects from the Constitutional texts—despite their great sociolinguistic vitality—, the lack of legal accommodation for the languages of immigrants, and the failure to recognize Franco-Provençal, a language still spoken in several French-speaking areas of the country.

María Ballester Cardell (2023) analyzes in her contribution how legal regulation in favor of minority languages is not sufficient to address sociolinguistic situations of minoritization when institutions in fact function in a monolingual way. The author studies the specific case of the administration of justice in Catalan in the Spanish region of the Balearic Islands, but her findings can be extended to other Catalan-speaking territories, such as Catalonia or the Valencian Country. Despite the declaration of official status enshrined in the Spanish Constitution, Ballester Cardell demonstrates—through her analysis of legislation and a Constitutional case study—that any language policy favorable to Catalan

in Spain is impossible to develop without change in the current legal and social context. In addition to legal obstacles, there are also barriers of a sociolinguistic nature, for example, the fact that legal training is done in Spanish, even in Catalan-speaking universities. This means that Spanish is perceived as the default language naturally used in formal contexts such as the administration of justice.

In his contribution to this special issue, Marco Espinoza Alvarado (2023) discusses the Rules of Procedure of the Chilean Constitutional Convention. The Rules have been presented as a model for promoting Chilean multilingualism, since they are supposed to promote indigenous languages, which have been hidden by the historical presence of Spanish as the only legally, administratively and socially relevant language of the country. Espinoza Alvarado conducts not only a textual analysis of the Rules, but also an analysis of the discourses of the social actors who intervened in the Convention and the communication practices observed in debates, as they were broadcast by the media and social networks. He finds that these discourses and communications practices undermined the principles established in the Rules of Procedure, such that these were not sufficient to change the established dynamic of monolingualism in Spanish.

The last case study explores a similar drive towards monolingualism, in this case in the institutions of the European Union. Alice Leal (2023) analyzes the contradiction between the formal principles of multilingualism expressed in the normative texts of the Union (particularly Regulation 1/1958 and the Treaties) and the de facto language policy of its institutions, which implicitly tends towards English monolingualism. This implicit or de facto policy is evidenced by factors such as the relative irrelevance of the multilingualism portfolio in the European Commission and the spread of English as a working language, as well as the massive increase of texts available only in that language. According to the author, these factors undermine and contradict the formal language policy established in the Treaties and, therefore, the founding principles of the Union. With a view to the future, Leal proposes a new *modus operandi* for the European institutions based on greater awareness

of language and cultural diversity and on procedures in which translation plays a more relevant role.

In our view, these five case studies demonstrate the difficult balance which must be struck by language rights and language policy in multilingual institutions and territories. On the one hand, the recognition of language rights has become an established feature of debates about any form of language policy and planning. On the other hand, these rights can be undermined in practice by the monolingual organization of States, ideologies favoring hegemonic languages, and neoliberal logics linked to economic profit and productivity. These factors represent a brake on the political and legal development of arrangements which protect and promote linguistic diversity. Addressing these factors requires careful language planning and crafting of language policy, but the survival of thousands of minority languages in their own historical territories or in migrant or diasporic communities demands the achievement of this difficult balance.

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