

HUMPHREY TONKIN

Language Rights and Linguistic Justice¹

Abstrakt (Prawa językowe a sprawiedliwość językowa). Status praw człowieka zyskał nowy wymiar wraz z przyjęciem Karty Narodów Zjednoczonych w 1945 oraz zatwierdzeniem Powszechnej Deklaracji Praw Człowieka w 1948. Do tego momentu prawa człowieka były traktowane jako jeden z elementów konstytucji poszczególnych państw; teraz stały się uniwersalne w charakterze zasad prawa międzynarodowego. Jednakże dokumenty te poświęciły stosunkowo mało uwagi dyskryminacji względem języka, częściowo z powodu niechęci uznania praw językowych nie tylko za indywidualne, lecz także za kolektywne. Biorąc pod uwagę rolę języka w komunikacji, niesie on ze sobą sens kolektywny, który jest mniej typowy dla dyskryminacji na podstawie rasy, płci czy religii, i od dawna jest kojarzony z problemem praw mniejszości, zagadnieniem całkowicie ignorowanym przez twórców Deklaracji. Obecnie prawa językowe są respektowane przez państwa w różny sposób, mniej lub bardziej przychylnie. Dyskryminacja na tle językowym staje się problemem o charakterze międzynarodowym, ponieważ przepływ języków odbywa się ponad granicami i zmienia sposób, w jaki języki są używane w danych państwach.

Abstract. The status of human rights took a new turn with the adoption of the United Nations Charter in 1945 and the approval of the Universal Declaration of Human Rights in 1948. Up until that point, human rights had been regarded as essentially elements in the constitutional law of individual states; they now became universalized as principles of international law. But non-discrimination with regard to language received relatively little attention in either document, in part because of a reluctance to regard language rights as not only individual but also collective. Given its role as a means of communication, language carries with it a collective sense that is less inherent in non-discrimination on grounds of race, gender or religion, and it has long been associated with the problem of minority rights, an issue entirely avoided by the drafters of the Universal Declaration. Today language rights are recognized in many different ways by individual states, some strongly supportive and some less so. Increasingly, non-discrimination on grounds of language is becoming an international issue as cross-border language flows affect the ways languages are used in individual states.

¹ Revised version of a paper delivered at the Azerbaijan University of Languages, Baku, November 2010.

1. The principle of non-discrimination

Can a person be discriminated against on the basis of language? A moment's reflection would surely produce an answer in the affirmative. If, for example, a speaker of Spanish is arrested in the United States and can understand neither the charges nor the court proceedings, such a situation violates the legal principle of equal protection under the law. It does not matter that English, either by custom or by law, is the language of the law-courts: the accused is surely entitled to understand the charges against him and to be able to defend himself. By the same token, if someone from an English-speaking country is arrested in a non-English-speaking country, it would be unjust to imprison him after a trial he did not understand. From simple instances such as these, we can readily establish the existence of the concept of linguistic discrimination, or discrimination on the grounds of language, even if such a concept may not be recognized by all legal systems across the world, or applied with equal diligence. Put simply, discrimination can be defined as an unfair and unjust bias against an individual; if it is legally proscribed, such legal proscription implies a counterbalancing *right to non-discrimination*. Hence, if linguistic discrimination is a valid concept, its corollary, language rights, is also a valid concept.

The principle of non-discrimination is clearly recognized in international law (see, for example, Interights 2011, Bayefsky 1990). It is firmly established in the early documents of the United Nations, from which numerous further and more specific international instruments have flowed. But *language* has been slow to gain the full recognition accorded to some other grounds for non-discrimination. Although Article 1.3 of the United Nations Charter specifies that member-states shall promote and encourage "human rights and ... fundamental freedoms for all without distinction as to race, sex, language, or religion," early UN documents, notably the Universal Declaration of Human Rights, are relatively silent on the question of how human rights can be applied "without distinction as to ... language." The Universal Declaration mentions language only once, in Article 2, in a litany of areas of non-discrimination somewhat longer and more detailed than that in the Charter, but otherwise essentially the same: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Whereas most of these factors of non-discrimination, or negative rights, are expressed in affirmative terms elsewhere in the Declaration, language is not, even if it is implied in several Articles, notably Article 11 (on the right to a fair trial), Article 19 (on freedom of expression), Article 21 (on participation in the political process), and Article 26 (on the right to education). Article 27, Paragraph 1, on cultural rights, the most likely place for language to be mentioned, is brief in the extreme, and does not address the question of diversity, linguistic or otherwise: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and

its benefits.” The use of the definite article is telling: the text refers not to “his or her community” but to “the community” – presumably therefore the *majority* community (Morsink 1999:335).

In fact, Article 27 appeared in the Declaration in this truncated form primarily as a result of marked disagreement among the drafters concerning whether the rights of minorities should be addressed at all in the Universal Declaration. Some drafters were concerned about affirming minority rights since the protection of such rights was the pretext used by Germany for its military incursion into Czechoslovakia and Poland. Others felt that, since the Convention on the Prevention and Punishment of the Crime of Genocide was also under consideration at the time, the rights of minorities should be dealt with in that context. Still others, notably the United States and the Latin American countries, asserted that, as countries with immigrant populations, they wished to promote cultural assimilation rather than cultural separation. Eleanor Roosevelt, of the United States, for example, declared flatly that in her country “there was no minority problem” (Morsink 1999:272).

John P. Humphrey, Director of the UN’s Human Rights Division, in his initial draft of the Article, went much further: “In States inhabited by a substantial number of persons of a race, language, or religion other than those of the majority of the population, persons belonging to such ethnic, linguistic or religious minorities shall have the right to establish and maintain, out of an equitable proportion of any public funds available for the purpose, their schools and cultural and religious institutions, and to use their own language before the courts and other authorities and organs of the State and in the Press and in public assembly” (Glendon 2001:274). Humphrey subsequently modified the wording somewhat (Morsink 1999:272). It gained initial support among a broad range of drafters, but such guarantees of “separate but equal” public institutions ran counter to certain prevailing progressive beliefs that, in the case of the United States, later coalesced into the civil rights movement. This consideration, too, produced hesitancy.

2. Non-discrimination and the nature of language

But, these issues aside, language is different from other considerations in its very nature. Whereas for the most part it is sufficient to ignore race (to a marked extent) and gender (to some extent) in the application of human rights, and whereas this is largely true of religion (to cite only the four grounds of discrimination specifically proscribed in the United Nations Charter), we cannot say the same of language. All four of these factors – race, sex, language, religion – may matter in, for example, the establishment of education policy – and numerous examples could be marshaled to prove that point. But at the ballot box, or in the law courts, or in employment, it is often enough to ignore race or gender or religion in order to establish fair and equitable practices. In themselves,

race, gender, and religion are not markers of communication. Language, on the other hand, is such a marker. We cannot communicate at all without adopting one language or another, normally to the exclusion of all other languages. Indeed, the very law itself is expressed in language: the Universal Declaration of Human Rights itself avails little if the citizen is not equipped to read and understand it (Djité 2012).

Language, in short, involves, as Vernon van Dyke puts it in a classic study of language and human rights, “the unavoidability of choice” (Van Dyke 1976). The question that accordingly confronts us in all such cases is the extent to which accommodation to language difference (by the provision of translation and interpretation, educational services in more than one language, multilingual ballots, and so on) confers benefits on particular sections of the population at costs that are tolerable to the community at large. It goes without saying that this question permits of multiple answers, depending on whether one is a member of the majority or of a minority and on how the pertinent laws are interpreted. Nor is there an obvious point at which benefits cease to outweigh costs, or costs begin to outweigh benefits.

In the example I cited at the beginning of this essay, it was quite clear that lack of linguistic understanding could, if special provisions were not made, result in unjust incarceration. But the concept of linguistic rights so defined is very narrow. The expanse of time between my being accused of a crime and my trial is likely to be short. I cannot be expected to learn a language in that time. But what if I have been in the country for ten years and have not learned the language sufficiently to defend myself? Is that my fault? Should the court continue to recognize my right to use my native language? And if I *am* reasonably competent in the language of the country but would prefer to defend myself in my native language, does the court have any obligation to make that possible by supplying an interpreter? Again, the responses are mixed. Some will make a distinction between an indigenous language and the language of immigrants. Some will suggest that if I am to claim legal protection and have had plenty of time to learn the language of the courts but have not done so, the courts have no obligation to compensate for my deficiencies. Some will make a distinction between genetic differences, like race or sex, and environmental (some might even say elective) differences like religion and language.

Furthermore, going to prison is an extreme situation. What about proceedings in civil courts, as opposed to criminal ones? And what about softer forms of discrimination, such as communication with public officials, or the education of my children? What about the use of my native language in the workplace with other employees who speak that language? And what about my use of my language in circumstances in which the supervisors in my workplace do not understand me? Language policies in different countries prescribe different answers to these questions.

All of these considerations relate to the situation of the individual. So perhaps the first consideration in the recognition of language rights is how far those language rights extend for a given individual. A related question, which I will not pursue here but which merits separate consideration, is that of the individual’s relationship to the identity markers associated with language, in other words to the very status of

language itself. Not only do such markers vary from culture to culture, but the very concept of mother-tongue, or of native language, is open to interrogation (Bonfiglio 2010), particularly in highly multilingual regions or countries, such as are the norm in large parts of Africa, for example. Are we perhaps in danger of fetishizing language, or of reifying what is essentially a culturally-determined mode of behavior (Reagan 2009:2-8)? Perhaps so.

3. Collective versus individual rights

We are touching here not only on the individual but on the community – and not only the community as an agglomeration of individuals, but the community as actor. Not only is language by its nature *individually* discriminatory (we have to use one language or another), but it also governs our collective conduct: particular languages are associated with particular groups of people, especially with particular ethnic groups, and sometimes language difference is submerged under other forms of discrimination (in the United States, much of what is expressed as racial discrimination may in fact be linguistic discrimination: it is not the Spanish-speaker's race that matters in the court, but the Spanish-speaker's language).

Does it matter whether the language at issue is a language traditionally spoken within the borders of the territory in which one lives, or does one's right to non-discrimination extend to all languages? In many countries languages belonging to minorities within those countries enjoy a privileged status compared to those from elsewhere in the world. If we recognize that Welsh has a special status in Britain, do we also recognize that Urdu (spoken by more people in Britain than Welsh, but the language of recent immigrants) should also have such status? And how do we distinguish between an indigenous language and an immigrant language? How many generations are needed for an immigrant language to become an indigenous language? Do these questions even carry meaning in the non-industrialized world?

And is the education of children a right pertaining to the individual or the collective? In other words, do I as a parent have the right to determine how the state should provide for my children linguistically, or even how I should be allowed to pay for my children's education? And how do my children's individual rights (for example to become productive citizens of their country by knowing its language or languages) get balanced with my own individual rights (for my children to learn and appreciate my cultural values as they are enshrined in the language that they speak)?

Clearly the simple protection of individual linguistic rights will sooner or later involve determination of what constitutes collective rights. Many legal experts deny the existence of collective rights and hence do not recognize the responsibility of the state to protect minorities as a group, but only the members of minorities in circumstances where their individual rights are threatened (see Kymlicka 1995 for one

nuanced approach to this issue and May's analysis of it [2001]; see also Van Parijs 2003, 2011).

Language remains, despite the experience of many parts of the world where multilingualism is the norm, a widely accepted marker of national identity and citizenship. The constitutions of many, perhaps most, countries specifically prescribe the language or languages of government and define so-called national languages (Faingold 2004). Such policies often have their origins in historical experience, or are colored by such experience. Clearly, they bestow on the speakers of such languages clear advantages, and they disadvantage those who do not speak those languages. The mere fact that, given the nature of language, such discrimination is in some measure inevitable, does not cause it to disappear as an issue (on theoretical approaches to overcoming it, see, for example, the discussions of distributive justice and linguistic justice in Kymlicka 2001 and Van Parijs 2011).

To what extent, then, is it legitimate to extend the concept of linguistic rights from the individual to the collective? Arguably, the debate over the protection of minorities that broke out among the drafters of the Universal Declaration of Human Rights had its origin in precisely this issue. Whereas individual rights are relatively easy to define in terms of individual freedom, and while a long philosophical and legal tradition can be invoked to justify them, group-differentiated rights are a different case entirely. If one gives certain rights to some groups and denies them to others, or if the law defines some people as constituting a community and fails to recognize others, group-differentiated rights and individual rights rapidly collide. Perhaps the most extensive literature on the linguistic side of this much problematized issue comes from Canada, where years of political upheaval over the relative rights of English and French speakers have led to finely nuanced efforts to reconcile the two (notably in the work of Charles Taylor and Will Kymlicka). "My own position," writes Stephen May (2001:11) "is that group-differentiated rights are defensible as long as they retain within them the protection of individual liberties." Such a view, while widely held, only serves to beg the question: Is it possible to achieve both results at the same time?

Regardless of our answer, we must recognize, first, that the individual's right to language and the collective rights to language are two different things, and, second, that they may well turn out to be in conflict. Such conflicts arise particularly in cases where language policy is established by geographical regions, as, for example, in Spain, or in India.

4. Origins of language rights

Interestingly, the concept of language rights can be said to have originated not in the codification of individual rights but in the identification of collective rights. At least in the west (in other parts of the world, earlier examples of the recognition of such regional

multilingualism may be identifiable), it emerged in the eighteenth and nineteenth centuries in arrangements for the education of minorities, for example in the Austrian Empire, where local populations were sometimes accorded the right to conduct schools in their own languages, and (paradoxically) in the right to *access* to national majority languages: if French was to be the medium whereby the French constitution bestowed civil liberties on its citizens, it follows that French citizens had a right of access to the French language. Thus the Final Act of the Congress of Vienna (1815) recognized the existence of national minorities, and the Austrian Constitutional Law of 1867 accorded equal rights to provincial languages “with regard to education, administration and public life” (Skutnabb-Kangas & Phillipson 1995). The Treaty of Berlin (1878) also addressed minority issues, particularly religious issues, in what was in effect a reprise and extension of the Peace of Westphalia (1648), which established the system of nation-states in Europe, each with its own religion (and often, by inference, its own language), but with guarantees for Christians of other denominations than the established religion in the country in question.

These nineteenth-century legal developments were largely confined to individual countries and were intended to guarantee rights within the framework of those countries. The picture changed somewhat in the aftermath of World War I, when, with the break-up of the old European empires, new states came into existence. As a precondition to diplomatic recognition, states were obliged to sign so-called minority treaties guaranteeing the fair treatment of minorities under their jurisdiction – with an appeal mechanism to the Permanent Court of International Justice, an arm of the League of Nations. Such minority treaties were primarily intended to prevent cross-border disputes over the treatment of minorities: while recognizing the sovereignty of a given state over a given minority, the negotiators in Versailles and their successors the League of Nations wished to maximize political stability between states. Language was an important element in such treaties, since language difference was one of the principal indicators of minority status and minority consciousness. The treaties were imperfect mechanisms, not least because the established countries saw them as primarily a device for dealing with the wholly new states, and these states in turn tended to see them as a potential violation of their sovereignty. This period in the development of human rights was, then, not so much an international recognition of human rights as a recognition of the responsibility of individual countries to guarantee certain rights to their citizens. But it was clearly a step on the road to such international recognition.

However, as we have noted, it was not until the middle of the twentieth century that the idea of language rights was given full recognition in international customary law, primarily in the Universal Declaration of Human Rights adopted by the United Nations in 1948. Among those rights and freedoms are such provisions as a right to a fair trial, a right to freedom of opinion and expression, a right to education, and the none the less vexed question of a “right freely to participate in the cultural life of the community.” Each of these rights, and many of the others mentioned in the Declaration, has an important linguistic dimension.

The Universal Declaration of Human Rights has formed the basis for a number of more elaborate statements on human rights over the past sixty years, in both areas

covered by the Declaration: political rights on the one hand and economic and social rights on the other. Many of the provisions of the Universal Declaration are spelled out in greater detail in the International Covenant on Economic, Social and Cultural Rights (which deals, among other things, with education) and the International Covenant on Civil and Political Rights (which includes a section on court proceedings), both of which came into force in 1976. They are taken up again in the United Nations Convention on the Rights of the Child, widely ratified by UN members, and in the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, approved by the General Assembly in 1992. These international instruments, and others like them, are, of course, the products of negotiations between states: modern concepts of human rights rely, in some sense, on the recognition of nation-states as the essential building blocks of international order.

Human rights have also received close attention in regional agreements, both in the European Union and in the Council of Europe. The Council of Europe's European Charter for Regional or Minority Languages goes part-way to recognizing the existence of collective linguistic and cultural rights, but the question of how these are reconciled with individual rights remains an open practical and legal issue. It is not difficult to imagine, nor indeed to find, examples of cases where a given state, wishing to afford a minority group special protection in a given geographic area, perhaps infringes on the rights of citizens in that area who are not members of the minority in question (we could cite the case of Estonia and the Baltic States, indeed of numbers of post-Soviet republics). Such claims, as we have seen, have been a source of legal conflict in the officialization of French in the Canadian province of Quebec, a process that fundamentally changed the socio-economic status of the French-speaking majority and permanently altered the cultural environment.

We might note that the Universal Declaration relies on the theory that there are rights inherent in us as human beings. In other words, they are one of the ways in which we define our own humanity. In this sense, they transcend all other considerations, including religion, philosophy, and custom: they are based on natural law. While the governments of the world were willing to commit themselves, more or less, to such a concept in 1948 (though even then it was difficult to find philosophical common ground), there is relatively little evidence that all governments, or all individuals, adhere to these principles today. The very concept of rights is, in the abstract, hard to explain or even to justify. It is certainly hard to assert in the face of the pragmatics of day-to-day politics. I express this doubt not so much to undermine my own argument as to remind us how tenuous and uncertain in today's world the very foundation of human rights remains (see Morsink 1999, Glendon 2001, Moyn 2010). Personally, I would maintain that their very precariousness is a reason to argue for them all the more strongly, but to do so with a realization that their application is a complex process that often depends not so much on what is desirable as on what is attainable. Politics, as has been said many times before, is the art of the possible.

5. Language rights in practice

But let us return to the main topic. Rights are important only when they are challenged – in other words when custom turns into confrontation. They may be challenged by groups attempting to assert themselves politically or economically, or when these groups feel threatened by others who are seeking to assert themselves. Rights are most interesting, in other words, when they collide with other rights. This is particularly true of language rights, and it is one of the things that make it hard to draft good language legislation (Kibbee 1998). Education is perhaps the best case in point: while education relates ultimately to the individual, it is delivered through educational communities called schools. Most linguists would agree that, after the family, schools are the most important locus for the acquisition of a language. Hence they are crucially important in ethnic politics, and they bring us back to our earlier discussion of individual versus collective rights. Does a right to education imply the right to have one's children educated in a given language? If there are no other children in the vicinity who use that language, presumably not. But how many families are required to reside in a given area before the state has a responsibility to address their needs in their language, if at all? And, in this area as in others, is there a difference between education in a language indigenous to the country in question and a language imported into the country by immigrants? Does the state have a responsibility to help new arrivals acquire the language of the state, or other languages? And does a right to participate in cultural life imply a responsibility of the state to support a given culture and keep it vigorous? If indigenous languages are likely to wither and die, is it a responsibility of the state to keep them alive (for answers in the affirmative, see Maffi 2001, Skutnabb-Kangas 2001, and Nettle & Romaine 2000). In other words, when do we pass from non-discrimination to the promotion of minority languages and cultures?

Tove Skutnabb-Kangas (2000) and others have laid out for us a scale ranging from outright prohibition of a given language (forbidding its use entirely), through relative neutrality (tolerance-oriented policy), to a situation in which that language is encouraged through education, support for cultural activities in the language in question, and the encouragement of both corpus and status planning (promotion-oriented policy). Different countries and polities employ different strategies.

Clearly it is wrong to forbid people from using their own language entirely. Yet in some countries, people are prevented from, or even punished for, using their language in public, or in the workplace. Such was the situation years ago in many of the schools run by the U.S. Bureau of Indian Affairs, where the use of Native American languages was strictly forbidden. In an article on the current state of Cherokee, the *New York Times* reported (September 21, 2003) the experience of the father of Chief Chad Smith of the Cherokee Nation: "If you spoke the language [at school], your mouth was washed out with soap ... It was an effort to destroy the language and it was fairly successful." The 2003 article went on to state that today, only 8000 Oklahoma Cherokees out of a total of 100,000 speak the language well, and most are over the age of 45. Probably that

number is now lower. Similar, indeed still more severe, restrictions were imposed on the Koreans by the Japanese during their occupation of Korea and on Taiwan during the Japanese occupation there.

But it is not self-evident that the most active protection and promotion is necessarily the best. While we may recognize that the preservation of cultural and linguistic diversity is inherently a good thing, we must admit that language shift will take place, that languages will converge and separate, and that populations will migrate or disperse. A crucially important question is the role of the state in this process. To what extent is it legitimate for the state to intervene, and with what purpose? One thing is clearly apparent: language planning and policy must take into consideration contradictory responsibilities – the need to preserve diversity, but also the need to provide for integration.

We have already noted that the application of adequate language arrangements by the authorities in a given community or country often requires resources – resources that the majority may regard as better used elsewhere, or resources that in many countries simply do not exist. Thus the use of multiple languages in the courts or in the delivery of education requires proactive positive intervention by the state.

In the United States, in the well-known *Lau v. Nichols* case of 1974, the Supreme Court found that school administrators do not meet their obligation to provide equal educational opportunities merely by treating all students alike, but have an obligation to help students unable to understand English. Although there may be differences of opinion on what such help might minimally require, the principle that non-speakers of English are entitled to various kinds of assistance in access to public services, in participation in elections, and in various other ways, is well established in law.

But, as we have noted, what about situations in which a country simply does not have the resources to provide special services for linguistic minorities – nor indeed enough money to send everyone to school? What about situations in which a state recognizes the official status of several languages in its constitution but lacks the resources to provide services in that language?

A classic example of the problems inherent in dealing with language rights issues is the case of South Africa. Under apartheid, a regime that disintegrated only some twenty years ago, the government recognized two languages as official: English and Afrikaans. Eager to maintain harmony between Afrikaans-speaking whites and English-speaking whites, it practiced a form of equal treatment of the two languages, investing considerable resources in maintaining school systems in both languages and providing legal guarantees to the two groups. But today we sometimes forget that the white South African government also expended resources on the promotion of African languages – within the territories known as Bantustans, areas of the country (generally the least fertile and least developed) set aside for blacks. Their goal was to keep the blacks out of white areas by promoting local linguistic communication in languages of little use in the white heartlands. Thus money was spent on both corpus and status planning of African languages.

Today, the South African constitution recognizes eleven languages, including English and Afrikaans, as having equal status. But the resources available to develop

the African languages are completely inadequate. Furthermore, black South Africans, wishing to become part of the mainstream economy, are eager to learn English, the language that provides them with the best opportunities to improve themselves and their status. So, while the use of other languages is permitted, emphasis is falling almost entirely on English. Even Afrikaans, long seen by many as the language of the oppressor, is losing ground to English and faces a very bleak future (Krog, Morris & Tonkin 2010).

There are no specific laws in South Africa that favor English over other languages, but there are also no specific laws, so far as I know, that limit its use – at least in practice. The South African situation is a perfect example of the fact that there is no such thing as no language policy: lack of a policy constitutes a policy. This is a point often emphasized by experts in the field – Phillipson (2000, 2003), Fishman (1991, 2001), Eggington (2002) and others. The situation of English in South Africa is also a good example of what Myers-Scotton (1990, 1993) has called “elite closure” – speakers of a particular elite language using it to exclude others from power.

It takes no more than a minute to realize that the South African situation has been paralleled by similar situations in other parts of the world – particularly in imperialist settings in which otherwise admirable concepts, such as mother-tongue education, have been used not to integrate people linguistically but to exclude them from participation in elite culture, or in which limited promotion of regional languages has been used to maintain overall political stability and power, as in the case of the Soviet Union. There are other more ambiguous cases, such as regionalism in Spain (Arzoz 2008), or multilingualism in India.

6. Beyond the nation-state

This brings me to my final point: the question of language rights and responsibilities beyond national boundaries – a topic perhaps too large to be argued adequately here. Occasionally it is maintained that young people in schools have a right to exposure to international languages, particularly English, because they will inhabit, perhaps already inhabit, a world that is essentially international, and in which opportunities will lie in their ability to prosper in the globalized environment that it has produced. This is particularly so in regional groupings of states, such as the European Union. But in such arenas the risk is further privileging of English-speaking states. Unfortunately, the EU has been signally unsuccessful in developing, or at least observing, a policy sufficiently practical to counter the wholesale linguistic erosion that a preference for English produces. Mere endorsement of multilingualism is insufficient, since here, too, the wholesale expansion of the number of languages of formally equal status has resulted in the favoring of one: as in South Africa, that language is English, which is gradually pushing other languages out of the way (Phillipson 2003, Van Parijs 2004a,

2004b, 2011). As a result, the English-speaking members of the Union enjoy an inherent advantage, and, here too, a form of elite closure is taking place (Tonkin 2007).

The spread of English-based science and commerce may have brought advantages to many and prosperity to countries previously in poverty; at the same time we might argue that language discrimination has now moved to the international level and now threatens the cultural integrity of entire nations. Should we view this trend as benign – the simple expression of a large part of the world’s population to join an English-speaking world – or should we view it as threatening the integrity of other languages and the further reinforcement of a world language system (de Swaan 2000) in which some languages are increasingly more powerful than others (Lapenna 1969)? Does it matter that languages are disappearing in this process, for example (Nettle & Romaine 2000)?

I have argued elsewhere (Tonkin 2003, 2011) that it is short-sighted to see language rights and language discrimination as concerns only in the context of national language policy. They occur at all levels, even the international level, where international language flows are realigning linguistic relationships, advantaging some and threatening others. Here again, lack of policy is in itself policy.

Although language rights now enjoy international recognition, at least in theory and in law, such language rights may in reality be largely luxuries affordable only in highly-developed states with resources to support linguistic diversity and also the will to do so. Or perhaps they should be regarded as necessities worthy of everyone’s attention. Perhaps, for the moment, the best that we can hope for in much of the world is the interdiction of persecution and discrimination against members of language minorities.

Or, alternatively, this may be our last chance to establish language rights as important in the formation of a just international (and national) order – in which event they merit our urgent and sustained attention.

Bibliography

- Arzoz, Xabier (ed.) 2008: *Respecting Linguistic Diversity in the European Union*. Amsterdam: Benjamins.
- Bayefsky, Anne F. 1990: The principle of equality or non-discrimination in international law. *Human Rights Law Journal* 11/1-2:1-34.
- Bonfiglio, Thomas Paul 2010: *Mother Tongues and Nations: The Invention of the Native Speaker*. New York: Mouton de Gruyter.
- de Swaan, Abram 2001: *Words of the World: The Global Language System*. Cambridge: Polity Press.
- Djité, Paulin G. 2012: Droits linguistiques et droits de l’homme: La cas de la Côte d’Ivoire. *Language Problems and Language Planning* 36/1:46-68.
- Egginton, William G. 2002: Unplanned language planning. Robert B. Kaplan, ed. *The Oxford Handbook of Applied Linguistics*. Oxford: Oxford University Press. 404-415.

- Faingold, Eduardo D. 2004: Language rights and language justice in the constitutions of the world. *Language Problems and Language Planning* 28/1:11-24.
- Fishman, Joshua A. 1991: *Reversing Language Shift: Theoretical and Empirical Foundations of Assistance to Threatened Languages*. Clevedon: Multilingual Matters.
- Fishman, Joshua A. (ed.) 2001: *Can Threatened Languages Be Saved? Reversing Language Shift, Revisited: A 21st Century Perspective*. Clevedon: Multilingual Matters.
- Glendon, Mary Ann 2001: *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. New York: Random House.
- Interights. 2011: *Non-Discrimination in International Law: A Handbook for Practitioners*. London: Interights, at <http://www.interights.org/handbook/index.html>
- Kibbee, Douglas A. (ed.) 1998: *Language Legislation and Linguistic Rights*. Amsterdam: Benjamins.
- Krog, Antjie, Rosalind C. Morris & Humphrey Tonkin 2010: Translation as reconciliation: A conversation about politics, translation, and multilingualism in South Africa. In: Tonkin & Frank 17-35.
- Kymlicka, Will 1995: *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.
- Kymlicka, Will 2001: *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*. Oxford: Oxford University Press.
- Kymlicka, Will & Alan Patten 2003: *Language Rights and Political Theory*. Oxford & New York: Oxford University Press.
- Lapenna, Ivo 1969: La situation juridique des langues sous le régime des Nations Unies. *La Monda Lingvo-Problemo* 1:87-106.
- Maffi, Luisa 2001: Language, knowledge, and indigenous heritage rights. In: Luisa Maffi, (ed.): *On Biocultural Diversity: Linking Language, Knowledge, and the Environment*. Washington, DC: Smithsonian Institution Press. 412-432.
- May, Stephen 2001: *Language and Minority Rights: Ethnicity, Nationalism and the Politics of Language*. Harlow, Essex: Longman.
- Morsink, Johannes 1999: *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. Philadelphia: University of Pennsylvania Press.
- Moyn, Samuel 2010: *The Last Utopia: Human Rights in History*. Cambridge MA: Harvard University Press.
- Myers-Scotton, Carol 1990: Elite closure as boundary maintenance: The evidence from Africa. Brian Weinstein, ed. *Language Policy and Political Development*. Norwood, NJ: Ablex. 25-42.
- Myers-Scotton, Carol 1993: Elite closure as a powerful language strategy: The African case. *International Journal of the Sociology of Language* 103:149-163.
- Nettle, Daniel & Suzanne Romaine (ed.) 2000: *Vanishing Voices: The Extinction of the World's Languages*. Oxford: Oxford University Press.
- Phillipson, Robert 1992: *Linguistic Imperialism*. Oxford: Oxford University Press.
- Phillipson, Robert (ed.) 2000: *Rights to Language. Equity, Power and Education*. Mahwah, NJ & London: Erlbaum.
- Phillipson, Robert 2003: *English-only Europe? Challenging Language Policy*. London: Routledge.
- Reagan, Timothy 2009: *Language Matters: Reflections on Educational Linguistics*. Charlotte, NC: Information Age Publishing.
- Skutnabb-Kangas, Tove, and Robert Phillipson (ed.) 1995: *Linguistic Human Rights: Overcoming Linguistic Discrimination*. Berlin and New York: Mouton de Gruyter.
- Skutnabb-Kangas, Tove 2000: *Linguistic Genocide in Education – or Worldwide Diversity and Human Rights?* Mahwah, NJ: Erlbaum.

- Skutnabb-Kangas, Tove 2001: Linguistic human rights in education for language maintenance. In: Luisa Maffi, (ed.): *On Biocultural Diversity: Linking Language, Knowledge, and the Environment*. Washington, DC: Smithsonian Institution Press. 397-411.
- Tonkin, Humphrey 2003: The search for a global linguistic strategy. In: Jacques Maurais & Michael A. Morris, (ed.): *Languages in a Globalising World*. Cambridge: Cambridge University Press. 319-333.
- Tonkin, Humphrey 2007: Exclusion and inclusion in Europe: The search for a European language policy. In Pol Cuvelier, Theodorus du Plessis, Michael Meeuwis & Lut Teck (ed.): *Multilingualism and Exclusion: Policy, Practice and Prospects*. Pretoria: Van Schaik. 207-223.
- Tonkin, Humphrey 2011: Language and the ingenuity gap in science. *Critical Inquiry in Language Studies*. 8/1:105-116.
- Tonkin, Humphrey & Maria Esposito Frank (ed.) 2010: *The Translator as Mediator of Cultures*. Amsterdam: Benjamins.
- Van Dyke, Vernon 1976: Human rights without distinction as to language. *International Studies Quarterly* 20/1:3-38.
- Van Parijs, Philippe 2004a: L'Anglais lingua franca de l'Union Européenne: impératif de solidarité, source d'injustice, facteur de déclin? *Économie Publique* 15/2:13-32.
- Van Parijs, Philippe 2004b: Europe's linguistic challenge. *European Journal of Sociology* 45/1:113-154.
- Van Parijs, Philippe 2003: Linguistic justice. In: Kymlicka & Patten 2003:153-168.
- Van Parijs, Philippe 2011: *Linguistic Justice for Europe and for the World*. Oxford: Oxford University Press.
- [See also the bibliography at <http://www.unesco.org/most/ln2bib.htm>]