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On the origin of linguistic norms: Challenge to the 1996 reform of German

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ABSTRACT

This article explores one aspect of the many public protests surrounding the 1996 reform of German orthography: the first in a series of LEGAL challenges, which was brought before the Federal Constitutional Court in May 1996. The first section begins by proposing how and why such protests can be usefully theorized in terms of Blommaert's (1999) concept of a "language ideological debate," and then describes the historical background essential for an understanding of this legal dispute. The second section focuses on a critical analysis of the case brought against the reform, looking at the details of the challenge itself, together with the justification for its rejection by the Constitutional Court. The third section considers what this dispute can tell us about debates over the perceived origin of orthographic norms, with particular reference to the ideological relationship between individual, speech community, and (nation-)state. Finally, there is a brief summary of the way in which the matter was finally – albeit unsatisfactorily – resolved in 1998–1999. (Orthography, spelling reform, language ideological debates, standardization, linguistic norms, German language, late modernity.)*

INTRODUCTION

In late 1995, a press release by the German Standing Conference of Ministers for Education and Cultural Affairs – the Kultusministerkonferenz or KMK – announced that a reform of German orthography had been approved. The proposed changes were an attempt to harmonize what was perceived to be a complex and inconsistent set of orthographic rules that caused unnecessary problems for language users of all ages, but particularly for young schoolchildren. The reform was to be introduced from 1 August 1998 to coincide with the start of the new school year, and this would be followed by a seven-year transitional period until 2005, during which time the old orthography would be considered "outdated" (*überholt*) but not "wrong" (*falsch*). However, many Federal states, or *Bundesländer*, chose not to delay the implementation of the reform until

1998 and instructed schools in their areas to begin teaching the new rules from the start of the school year 1996/7.

The decision to reform German orthography had not been taken lightly. The first, and hitherto only, set of official guidelines for all the German-speaking countries had been agreed to in 1901. The final proposal for their revision in 1996 was the result of almost a century of often heated debate among educationalists, linguists, politicians, writers, journalists, and other interested parties. Nor was the 1996 reform an exclusively German affair: From the late 1970s in particular, there had been close liaison between what were then the four main German-speaking states – the Federal Republic of Germany, the German Democratic Republic, Austria, and Switzerland – with the reform process facilitated to some extent by the unification of Germany in 1990. At various points, there had also been input from Liechtenstein, the only other country with German as its sole official language, and from German-speaking groups in Belgium, Luxembourg, Denmark, Italy, Romania, and Hungary. On 1 July 1996, representatives from many of these countries, together with German, Austrian, and Swiss officials, met in Vienna to sign the so-called Viennese Declaration of Intent, or *Wiener Absichtserklärung*, thereby agreeing to implement the new guidelines.

Although the disputes surrounding the state-sanctioned standardization of German orthography had never entirely abated since they first began in the mid-19th century, by the time the Viennese Declaration was signed in 1996, a new round of protests had already been gathering momentum. In May of that year, Rolf Gröschner, professor of law at the University of Jena, and his 14-year-old daughter took their case against the reform to the Federal Constitutional Court, or *Bundesverfassungsgericht* (BVerfG) in Karlsruhe. Although the court rejected their claim that the reform was at odds with the "German Basic Law" (*Grundgesetz*), their highly publicized campaign helped to rekindle what can probably be characterized as traditional public antipathy toward the idea of orthographic reform. In October 1996, a group of eminent writers and intellectuals, including the Nobel laureate Günter Grass, signed a petition circulated at the annual Frankfurt Book Fair by the Bavarian schoolteacher Friedrich Denk; this protest attracted considerable media coverage, culminating in a cover story in the German news magazine *Der Spiegel* (14 October 1996). In November 1996, Denk then went on to form a national "citizens' action group" (*Bürgerinitiative*), entitled "WE [the people] against the spelling reform" (*WIR gegen die Rechtschreibreform*), the aim of which was to topple the reform via a series of regional referendums (see Johnson 1999, 2000).

THEORETICAL AND HISTORICAL CONTEXT

Language ideological debates

In this article, I propose that the 1996 reform of German orthography and the public protests it inspired are a prime example of what Blommaert 1999 has

called a LANGUAGE IDEOLOGICAL DEBATE. Blommaert (1999:1–12) describes such debates as occurring in specific times and places where real social actors have collectively disputed the nature and function of language. These social actors, or IDEOLOGICAL BROKERS, can be then said to have engaged in the production and reproduction of LANGUAGE IDEOLOGIES, "sets of beliefs about language articulated by users as a rationalisation or justification of perceived language structure and use" (Silverstein 1979:193). At the same time, such ideological brokering can be theorized in terms of "bids" for AUTHORITATIVE ENTEXTUALIZATION (Silverstein & Urban 1996:11) – as concrete attempts to secure closure in a given debate, whereby a particular language ideology would eventually come to be seen as more or less natural and inevitable (Blommaert 1999:9).

Writing at the beginning of the 1990s, Woolard notes that "the topic of language ideology may be one much-needed bridge between work on language structure and language politics, as well as between linguistic and social theory" (1992:236). However, Blommaert's point of departure for the analysis of language ideological DEBATES is his contention that, although there is now a substantial literature on language ideology generally (see, *inter alia*, Joseph & Taylor 1990, Kroskrity, Schieffelin & Woolard 1992, Schieffelin, Woolard & Kroskrity 1998, Kroskrity 2000), and historians of language have similarly touched upon related issues, "the HISTORIOGRAPHY OF LANGUAGE IDEOLOGIES is something that remains to be constructed" (1999:1, emphasis in original). In any attempt to understand how and why some views of language gradually emerge as dominant while others are suppressed and marginalized, we need to attend to the HISTORICAL PROCESSES that inform the dynamics of social power as these obtain in specific debates over language (see also Milroy 2001).

Central to the historiographical approach advocated by Blommaert is the rejection of an "idealist" view of language that treats phenomena such as attitudes and ideologies as something language users merely "have," since this results not only in their DE-historicization but also in the mystification of the power processes underpinning them. Instead, Blommaert argues for a particular type of materialist view of language, which entails "an ethnographic eye for the real historical actors, their interests, their alliances, their practices, and where they come from, in relation to the discourses they produce" (1999:7). This, in turn, allows the theorist to expose the historical contingency of ideational phenomena, thereby contributing to their demystification. Such an approach does not, however, posit ideologies as coherent belief systems somehow epistemologically counterpoised to the "truth," but rather as a convergence of multiple and fluid "discourses that have specific CONSEQUENCES for relations of power at all levels of social relationships" (Barker & Galasinski 2001:66, emphasis in original). In this sense, ALL individuals and social groups hold ideologically informed beliefs – linguistic or otherwise – but "the difference between the dominant and subordinate groups is one of degrees of power and differing substantive world

views, not of ideological versus non-ideological ideas" (Barker & Galasinski 2001:66).[1]

A focus on ORTHOGRAPHY lends itself particularly well to the kind of historical-materialist approach to language ideologies advocated by Blommaert. Moreover, it is in tune with an emerging sociolinguistic literature that emphasizes the contingent nature of orthographic practices generally. Sebba (1998a:35–40), for example, describes how the dominant view of orthography has traditionally been that of a neutral, technical accomplishment the primary function of which is little more than the "reduction of speech to writing." Yet, drawing on Street's (1984) distinction between "autonomous" and "ideological" views of literacy, Sebba argues that an autonomous approach to orthography similarly masks the deeply ideological nature of the choices made by real social actors in the historical development of writing conventions. In his study of British Creole, for example, Sebba 1998a illustrates the ways in which a number of writers of Caribbean origin have tried to capture in written form a variety of speech for which there is no standard orthography. Especially interesting are the choices made by such writers in those cases where there is no PHONEMIC motivation for adopting a spelling that diverges from that of the lexifier language, English, e.g. ⟨tuff⟩ 'tough' or ⟨dhu/duh⟩ 'do' (Sebba 1998a:27). This suggests that Caribbean writers are choosing spellings that will actually CONSTRUCT a difference between British Creole and standard English in order to emphasize their own distinctiveness from mainstream cultural practices.

Similar uses of orthography as a means of styling both Self and Other in debates over ethnic, regional, and/or national identities have been explored in the context of Scots English (McClure 1985), Indonesian and Malaysian (Vikør 1988), English Creole in Trinidad and Tobago (Winer 1990), Louisiana French (Brown 1993), Haitian Creole (Schieffelin & Doucet 1994), Manx (Sebba 1998b), Norfolk dialect (Trudgill 1999), and Corsican (Jaffe 1999). And whereas Clark & Ivanic (1997:195–211) critically explore the use of spelling and punctuation as a means of disciplining language users at school and beyond whereas Kress 2000 focuses on the emergent writing practices of young children as these attempt to marry the desire to use orthography as an expression of personal creativity, on the one hand, with the pressure to conform to mainstream practices, on the other (see also Kataoka 1997). Finally, in a special edition of the *Journal of Sociolinguistics*, Jaffe 2000 and her contributors (Androutsopoulos, Miethaner, Jaffe and Walton, Berthele, and Preston) explore many of the assumptions underpinning the use of nonstandard orthographies as a means of representing nonstandard speech, thereby highlighting the ideological nature of transcription processes more generally in the construction, conscious or otherwise, of social identities.

Inevitably, perhaps, much of this recent work in sociolinguistics and linguistic anthropology tends to focus on orthographic practices in the context of emergent, nonstandard, or endangered varieties of written language, since these present particularly exciting opportunities for observing the production of ideologies,

and the construction of social identities, against the backdrop of an often tense relationship with mainstream standards. Such opportunities are arguably less evident, however, when we consider varieties of written language that are already highly standardized and widely used, for it is here that what Milroy & Milroy 1999 refer to as "standard language ideology" is probably at its most pervasive (see also Milroy 2001). And even though, as Cameron (1995:39) has noted in her discussion of the "politics of style," standardization processes can never be entirely finished; once a standard variety has been widely accepted, diffused, prescribed, and codified, to use Haugen's (1972) classic terms, notions of orthographic (in)correctness can appear so utterly self-evident that their status as common sense is often considered literally BEYOND DEBATE. Therefore, it is perhaps primarily when such conventions are subject to a form of RE-standardization (Schiffman 1998:362; Joseph 1987:174), as in the 1996 reform of German, that popular awareness of the contingency of everyday usage resurfaces, and language ideological debates in the public domain are triggered once again (Vikør 1988).

The 1996 reform: Historical background

The explicit involvement of state authorities in questions of German orthography dates back to the mid-19th century, when differing guidelines were first drawn up for schools in various parts of the German-speaking areas (Mentrup 1993:17–18). With increasing importance accorded to DICTATION in the teaching of language and literacy, the differences between these guidelines were inevitably a problem for any pupil or teacher who moved from one area to another.[2] But the growing sense that something had to be done about such orthographical variability was not motivated primarily by linguistic or even pedagogic considerations. Despite the range of regional traditions, the ability of readers to decipher texts from areas other than their own was largely unaffected, and within each area there was still a high degree of orthographic consistency. As Sauer (1988:85) has noted, the main impetus for the standardization of German orthography was POLITICAL. With the unification of the German Empire by Bismarck in 1871, and with concomitant attempts to build a modern nation-state, came the perceived need for standardization in many areas of social life – currency, weights and measures, postal services, railways, education, and the legal system – of which language, including orthography, was an integral part.[3]

However, the process of reform would never be straightforward (see Schlaefer 1981). When the First Orthographic Conference of 1876 made its recommendations for the standardization and SIMPLIFICATION of German orthography (see *Verhandlungen* 1876), these were thwarted, not least by Bismarck himself, on the grounds that the population was already having to cope with changes in so many other areas of life in the wake of unification (Sauer 1988:87). When an agreement was finally reached following the Second Orthographic Conference of 1901, the outcome was less a comprehensive "reform" and more an endorsement of Konrad Duden's 1880 *Complete Orthographical Dictionary of the German Language*,

which was based on the guidelines for Prussian and Bavarian schools.[4] Indeed, it was the nature of this compromise that led Duden himself to claim that the 1901 guidelines were only really an "intermediary step" (*Zwischenziel*) on the path to further reform (see Russ 1994:165). That the achievement of such a reform would take almost another century is indicative of a paradox that surrounds orthography generally: its commonly perceived INSIGNIFICANCE, which meant that the question of reform was repeatedly marginalized in favor of more pressing political concerns (see Jansen-Tang 1988), coupled with its huge symbolic SIGNIFICANCE, the popular and media expression of which was evident in the many public controversies that accompanied both early reform attempts in the late 19th century and the 100 or so proposals put forward throughout the 20th century (see Küppers 1984, Ledig 1999, Zabel 1989, 1996, 1997a).

Ironically, it was the actions of Duden himself that, from the outset, threatened the ongoing process of standardization – or restandardization – he so fervently desired. For example, in the seventh edition of his dictionary (1902), Duden already failed to adhere to many of the guidelines specified in the 1901 agreement.[5] This trend was consolidated when, following his death in 1911, the general Duden dictionary was merged with the separate printers' Duden of 1907 to produce the ninth edition of a single Duden in 1915. By this time, many of the inconsistencies between the 1901 guidelines, the general Duden, and the printers' Duden had been ironed out, albeit frequently going against the 1901 proposals. In fact, as Kohrt (1997:304) has noted, although the state was certainly responsible for an initial fixing of a standard orthography, it was private enterprise that did much to INCREASE normativity, not least in areas where the state had itself preferred a degree of liberalism. Kohrt shows, for example, how the Duden continued to play a crucial role in the normification of areas either not covered by the 1901 guidelines (such as hyphenation and punctuation) or referred to only in general terms (such as noun capitalization), or by simply eliminating optional variability (as in the spelling of foreign loans). Kohrt therefore concludes that, by the late 20th century, it was not so much the 1901 rules that were in need of reform but the various modifications of those rules undertaken since that time (for further examples, see Sauer 1988:103–16).

After World War II and the division of Germany in 1949, it was especially clear that the success of any proposal for orthographic reform would depend on the agreement of ALL the German-speaking countries, although the first serious international reform attempt, resulting in the Stuttgart Recommendations of 1954 (see Strunk 1992, 1998) failed amid widespread public and media protest (see Küppers 1984:121–29). Moreover, by the end of that year, two separate versions of the Duden dictionary were now being published, one in East Germany (Leipzig) and one in the West (Mannheim). But it was the appearance in 1954 of a rival dictionary, published by Bertelsmann in West Germany, that was to trigger a landmark decision in the history of German orthography (see Augst & Strunk 1988). In 1955, the West German Duden editors turned to the Standing Confer-

ence of Ministers for Education and Cultural Affairs (*Kultusministerkonferenz* or KMK), asking for clarification of the situation vis-à-vis the norms of 1901. The KMK formally ruled that until revised norms were available, the 1901 guidelines would remain valid, but in "cases of uncertainty" (*Zweifelsfälle*), the supplementary rules contained in the Duden should be considered binding. In this way, Duden – a private company – secured an unprecedented commercial monopoly in the German dictionary market, thereby achieving its de facto status as the arbiter of German orthography for the next four decades (see Augst & Strunk 1988).

Following the failure of the so-called Wiesbaden Recommendations of 1958 (see Strunk 1992, 1998), discussions on orthographic reform continued throughout the 1960s and 1970s, not least in the context of the West German anti-authoritarian student movement with its impassioned critique of the use of orthography as a means of disciplining schoolchildren (see Jansen-Tang 1988:106–21). In an education system where the teaching of German continues to make extensive use of dictation (at least at the primary school level), and where all pupils are required to "resit" whole school years should they fail their end-of-year examinations, spelling reform coupled with a critique of dictation per se became key components of attempts to eliminate discrimination against working-class children, who were thought to have less contact with written German than their middle-class counterparts.[6] But it was not until the late 1970s, in the light of the various proposals drawn up in East and West Germany, Austria, and Switzerland, that there appeared to be sufficient common ground for an international agreement on reform (see Hillinger & Nerius 1997, Blüml 1997, Looser & Sitta 1997, Zabel 1997b). This led, in 1980, to the formation of the International Working Party on Orthography (*Internationaler Arbeitskreis für Orthographie*) (see Zabel 1997c). Along with a series of interim meetings, three formal conferences of the Working Party were held in Vienna in 1986, 1990, and 1994, known as the "First, Second and Third Vienna Talks" (*erste, zweite und dritte Wiener Gespräche*), but often collectively referred to as the Third Orthographic Conference (after 1876 and 1901).

Although the various proposals put forward by the Working Party were continually revised in the light of popular and media protest (see Zabel 1989, 1996), by 1995 it looked as though a workable set of guidelines was finally available. In November, the Standing Conference of Ministers for Education and Cultural Affairs of the 16 Federal German States put out a press release announcing that the German-speaking countries had reached agreement on what was formally known as a "revision of the guidelines governing German orthography" (*Neuregelung der deutschen Rechtschreibung*) (*Kultusministerkonferenz* 1995). The aim of those revisions, it claimed, was to reduce the overall number of rules for spelling and punctuation, and to eliminate some of the more general inconsistencies and errors that had arisen over time. However, the press release did not mention two further, and ultimately crucial, points. First, the new guidelines were legally binding only for those areas of public life over which the Ministers for Education and Cultural

Affairs had jurisdiction: schools and state authorities (*Behörden*). Second, approximating the procedure adopted in 1901 (see Augst & Strunk 1989), the revised orthography was to be introduced in Germany via decrees (*Erlasse*) issued by the Ministers for Education and Cultural Affairs of the individual federal states. In other words, no statutory laws (*Gesetze*) were planned at the level of either the regional parliaments (*Länderparlamente* or *Landtage*) or the national parliament (*Bundestag*).[7]

The actual revisions to German orthography are too complex to be described here in detail, but they can be categorized into six main groups, as follows:

(a) sound–letter classifications (e.g. *Känguruh→Känguru* 'kangaroo');
(b) compound spelling vs. separate words (e.g. *radfahren→Rad fahren* 'to cycle');
(c) hyphenation (e.g. *Hair-Stylist→Hairstylist/Hair-Stylist*);
(d) capitalization (e.g. *in bezug auf→in Bezug auf* 'with respect to');
(e) punctuation (a considerable reduction in the number of punctuation rules);
(f) the breaking of words at the ends of lines (e.g. *Zuk-ker→Zu-cker* 'sugar').[8]

Although it was generally estimated that the orthographic revisions required to an average text would amount to no more than approximately 0.5% (see *Bundesverfassungsgericht* 1998:239), their quantitative minimality did little to assuage popular resistance. Indeed, for many opponents, the limited impact of the reform was merely symptomatic of its general superfluity (see Ickler 1997), and by the summer of 1996, public and particularly media expression of dissatisfaction was once again widespread (see Ledig 1999, Zabel 1997a). Although there was probably very little that was new in the CONTENT of the arguments put forward during this time (most, such as fears of a decline in the national cultural heritage, had been made repeatedly since the 19th century), the year 1996 did appear to mark a significant fusion of various FORMS of protest, which would continue over the next two years and in some cases beyond.

THE CONSTITUTIONAL CHALLENGE OF 1996

I now turn to an analysis of the first legal challenge brought before the Federal Constitutional Court by Rolf Gröschner and his daughter in May 1996, consisting in two requests for a temporary injunction to halt the ensuing introduction of the reform. As a basis for my analysis, I shall critically discuss the document containing the official ruling of the Court on these two cases, *1 BvR 1057/96* and *1 BvR 1067/96*, which was published on 21 June 1996 (*Bundesverfassungsgericht* 1996). It is important to note, however, that in the years leading up to his petition, the central complainant, Gröschner, acted as the supervisor of a doctoral dissertation on constitutional aspects of orthographic reform by Wolfgang Kopke (Kopke 1995a). Many of the ideas underpinning Gröschner's case draw directly upon this thesis, the thrust of which is summarized in various papers (e.g. Gröschner

1997, Gröschner & Kopke 1997, Kopke 1995b, 1996, 1997), and which has been widely and critically discussed elsewhere (e.g., Hufeld 1996, Hufen 1997, Jäkel 1996, Knobloch 1998, Kolonovits 1997, Kranz 1998, Meder 1997, Menzel 1998, Munske 1997, Rivers & Young 2001, Roellecke 1997, Roth 1999, Zabel 1996). I will therefore expand on my discussion of the ruling in question with reference to the relevant secondary literature.

The complaints

In the first section of his complaint (1.2.aa),[9] Gröschner disputed the role being played by the Duden dictionary in trying to secure the implementation of the 1996 reform. The Duden, as we saw earlier, was declared in 1955 by the West German KMK to be binding in so-called cases of uncertainty until such time as a reform of the 1901 guidelines had been agreed. Meanwhile, the KMK resolution of 30 November 1995 had explicitly stated that the 1955 ruling would not be revoked until 1 AUGUST 1998 (I.1c.9). Since, however, the individual Federal states would be permitted to introduce the new guidelines at a time of their own choosing in the two-year period BETWEEN 1 August 1996 and 1 August 1998, and an edition of the Duden dictionary revised according to the new regulations was already planned for the summer of 1996, it was Gröschner's contention that the Duden would effectively function as a "lever" for the reform's implementation during this two-year transitionary period.

Kopke (1995a:48–65, 1995b:878–80) has argued at length that the original 1955 ruling of the KMK almost certainly infringed the West German constitution (or Basic Law), which was adopted by the newly unified German state in 1990. For example, Article 12 of the Basic Law states that "The practice of trades and professions may be regulated by law" – that is to say, ONLY by law (see *Grundgesetz* 1998). By the early 1990s, however, anxious about the ensuing loss of their 40-year monopoly, the Duden editors were especially eager to be seen publicly to have played a central role in the new reform, thereby continuing to convey the impression of the authoritative status of their dictionaries. For example, in a pamphlet outlining the new guidelines (Duden 1994), Duden declared their self-appointed task of helping to secure the implementation of the reform; their editor-in-chief, Günter Drosdowski, was happy to concede, in an interview in the news magazine *Der Spiegel* (19 June 1995), the role of his company as the "long arm of the state" in matters of orthography. All in all, Kopke was of the opinion that the position of the Duden publishers vis-à-vis the state was itself in need of statutory regulation – particularly because the 1996 reform was, in his view, tantamount to a recommendation to the population BY THE STATE to purchase an updated version of the Duden, in itself a potential further breach of Article 12. Only through the full and open public discussion that would necessarily accompany the drawing up of proper statutory legislation on the question of orthographic reform would other publishers, Kopke believed, be afforded their rightful opportunity to compete openly with the Duden.[10]

The additional three complaints put forward by Gröschner (I.2.bb) concerned various claims that the 1996 reform of German orthography constituted an infringement of his own constitutional rights as laid down in the Basic Law.

Gröschner maintained, first of all, that the reform, and the purportedly unlawful role played by the Duden in securing its implementation, were an infringement of Article 2, Paragraph 1 of the Basic Law, which stipulates that "everyone has the right to the free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral code." In addition, Gröschner cited Article 1, Paragraph 1 of the Basic Law, which states, "The dignity of man is inviolable. To respect and protect it is the duty of all state authority." It was Gröschner's contention that the spelling reform breached these rights because one of the basic conditions for the free development of his personality was what he referred to as "linguistic integrity." The spelling reform, he argued, impinged on that integrity because he would eventually be required – not only in his professional capacity as a civil servant, but even his private correspondence – to adopt the new orthographic rules in order to avoid the "social embarrassment" that generally accompanies an inability to spell correctly.[11] He therefore claimed that it was the duty of the state, as enshrined in Article 1, to protect the dignity associated with such linguistic integrity.

Kopke (1995a:277–93, 1996:1082) further develops this notion of "linguistic integrity" by arguing that, although Article 2, Paragraph 2 of the Basic Law specifically guarantees the PHYSICAL inviolability of the individual, Article 2, Paragraph 1, taken together with Article 1, could also be interpreted as guaranteeing PSYCHOLOGICAL inviolability. Given the intrinsic relationship between language and thought, an important component of such psychological inviolability would then be linguistic integrity. Kopke (1996:1083) justifies this view as follows: Article 5 of the constitution guarantees all citizens the right to freedom of expression in speech and writing. Although this has traditionally been interpreted in terms of CONTENT, Kopke argues that such freedom could also be extended to the FORM of expression – in this case, orthographic form. To justify this view, he draws on recent research on written language and orthography that demonstrates that writing is not merely, as traditionally maintained, a second-order representation of spoken language (underpinning the dictum "write as you speak"). This is so because readers do not make sense of the written word by simply decoding graphemes as direct representations of individual speech sounds, but, IN ADDITION, by coming over time to recognize the meaning of lexical items as complete semiotic units. Consequently, if writing can be demonstrated to constitute a system in its own right, then to demand that civil servants and pupils, like Gröschner and his daughter, be OBLIGED to change the system they have previously acquired– and crucially stored in their "mental lexicon" – amounts to a constitutional breach of their right to the free development of their personality.

Secondly, Gröschner argued that the spelling reform impinged on his constitutional rights as laid down in Article 5, Paragraph 3 of the Basic Law, which

guarantees that "Art and science, research and teaching are free." Gröschner considered that this freedom would be curtailed should he not be permitted, in his capacity as an examiner in state law examinations, to evaluate the new spellings as incorrect.

Third, Gröschner maintained that the reform contravened his constitutional rights as specified in Article 6, Paragraph 2 of the Basic Law, which states that the "Care and upbringing of children are the natural right of the parents and a duty primarily incumbent on them." Gröschner went on to argue how, while decrees on the part of the KMK frequently constituted an adequate means by which to introduce revisions to school curricula, the current reform was different. Because his daughter would be learning an orthography fundamentally different from the one he had learned, the reform impinged on his parental right to educate his daughter as he wished. He therefore argued that such a conflict of parental authority need not be tolerated without an appropriate parliamentary ruling, that is, a statutory law as opposed to a ministerial decree. This was reinforced by his 14-year-old daughter, who added that she too considered the spelling reform to be an infringement of the right to free development of her own personality, since she would be forced to use spellings other than those she had previously learned at home and school, and had therefore stored in her "mental lexicon."

The need perceived by Gröschner and his daughter for a statutory regulation of orthography is linked to the complex historical question of the RELATIVE powers of the legislature and the executive with respect to the German constitutional monarchy of 1901, on the one hand, and the postwar parliamentary democracy of (West) Germany, on the other. Augst & Strunk 1989 had proposed that the 1901 mode of implementing an orthographic reform via ministerial decree afforded an appropriate precedent for 1996, but this was severely disputed by Gröschner and Kopke (Gröschner 1997, Gröschner & Kopke 1997, Kopke 1995a, 1995b). Thus, while control over educational matters in both periods remained primarily in the hands of the executive (the Länder), Kopke argued that this by no means guaranteed the EQUIVALENCE of executive powers in the two historical periods. In fact, he proposed that, under the constitutional monarchy of 1901, the powers of the executive were significantly greater than in the new republic, for two main reasons. First, Article 7 of the Basic Law now states: "The entire education system is under the supervision of the state" (although the definition of both "supervision" and "state" remains open to interpretation). Second, the rights of the individual vis-à-vis the state are much more firmly embedded in the current Basic Law than in the 1901 constitution. This means that German citizens are now in a position to demand action on the part of the legislature – in other words, the statutory enforcement of executive action – wherever they consider their basic rights to be affected. It is a point of additional interest that, unlike in 1901, when the rights of civil servants and school pupils such as Gröschner and his daughter were afforded no protection, this has NOT been the case since 1949, when the rights of both groups have been constitutionally guaranteed (see Kopke 1995a:163, 215).

However, this postwar German model of a federal constitutional democracy brings with it a crucial dilemma, no doubt familiar to students of the US constitution, which itself afforded the inspiration for the German Basic Law. One of the main aims of the Basic Law was to rectify the flaws in the Weimar constitution that had structurally facilitated the seizure of power by the National Socialists in 1933 (see Dürig 1998:ix–xvi). This was to be achieved particularly via Article 20, with its proposition that "All state authority emanates from the people," and its guarantee of a separation of legislative, executive, and judicial organs. The problem here is that structures originally intended as a means of strengthening the democratic influence of the people against the potentially totalizing forces of the state simultaneously run the risk of an ever-increasing juridification of social life, which eventually threatens to stifle political action on the part of the state. This occurs as citizens repeatedly contest the authority of the executive (in this case, the KMK) by means of recourse to the judiciary (in this case, the Federal Constitutional Court) in order to demand action on the part of the legislature (in this case, either the national or *Länder* parliaments). It is precisely in an attempt to avoid such "over-juridification" that there is, in practice, frequent recourse to the "principle of fundamentality" (*Wesentlichskeitsprinzip* or *-doktrin*). This posits that rulings by the legislature, in the form of parliamentary statutes, are required only in those cases where the decisions to be made are too FUNDAMENTAL to be left to the executive (Gröschner 1997). The crux of all such disputes then lies in the specification of what is fundamental.

In a series of constitutional debates over educational issues since 1949, the principle of fundamentality has generally been interpreted thus: The KMK may stipulate changes to the content of school curricula by means of decree, provided that such changes are fairly limited and gradual, affecting only minor curricular details (so-called *Feinlernziele*). Where broader, more fundamental pedagogic aims and objectives (*Groblernziele*) are affected, action is required on the part of the legislature. Since the 1970s, a benchmark in this regard has been the extent to which curricular innovations were thought to have an impact extending BEYOND the limited realm of school pupils, thereby potentially impinging on the constitutional rights of citizens in the wider community. This was the case, for example, in 1977, when changes to the sex education curriculum proposed in Hamburg were deemed sufficiently to affect the constitutional rights of individuals in the wider community so as to require a statutory ruling on behalf of the regional parliament there (see Kopke 1995a:157–62).

It was Gröschner's belief that the 1996 reform of German orthography affected broader pedagogic aims and objectives in two main ways (Gröschner 1997). First, he argued that the reform resulted in an orthography with content fundamentally different from that of the previous one. In his view, the 1901 agreement had not really constituted a reform at all but had simply documented an "organic" process of language change, whereas the 1996 reform had introduced a number of previously nonexistent spellings.[12] This, he then argued, meant that pupils would

be required to learn a version of German orthography that was FUNDAMENTALLY different from the previous one. The second reason concerns the much-disputed question of the relationship between school curricula and their implications for the wider community. Here again, Gröschner held the conviction that the 1996 reform would have implications extending beyond schools, thereby affecting the constitutional rights of the wider population. Not only did Article III of the Vienna Declaration clearly state that the long-term aim of the reform would be to work toward the preservation of orthographic unity in the whole German-speaking area; further evidence was provided by the role of the Duden Corporation in securing the implementation of the reform right across the speech community. All this underpinned Gröschner's belief in the need for a statutory ruling on orthographic reform at either national or *Länder* level.[13]

The Court's response

Section II of the ruling outlines the response of the Constitutional Court, which is obliged formally to accept constitutional complaints by individuals in conjunction with two sections of the Law of the Federal Constitutional Court (*Bundesverfassungsgerichtsgesetz* or *BVerfGG*). The first of these, §93a Paragraph 2, states that complaints can be accepted only where FUNDAMENTAL significance in terms of constitutional rights can be attached to the disputed measures– and the Court rejected that such significance was forthcoming in Gröschner's case. Given their inadmissibility, the complaints therefore could not be considered in relation to §90, Paragraph 1, which states that every individual has the right to make a constitutional complaint to the Constitutional Court should he or she believe that the actions of state authorities have impinged on constitutional rights. The Court justified its refusal to accept Gröschner's complaint as follows: For an individual to be FUNDAMENTALLY affected by a breach of one or more constitutional rights, he or she must be "personally, currently and directly" affected (II.1). The Court ruled that this was not the case where Gröschner was concerned and dealt with the complaints in reverse order.

The first reason for the rejection of Gröschner's claim that he was DIRECTLY affected by the spelling reform referred to the question of parental rights. The Court ruled that the spelling reform was, at the time of the complaint (May 1996), limited to a mutual obligation entered into by the Ministers for Education and Cultural Affairs of the 16 *Länder*, who would subsequently be responsible for its actual implementation in schools. However, since at the time of Gröschner's complaint that implementation had not yet begun, Gröschner could not yet claim to be directly affected (II.1.a.aa) – indeed, nobody could. In other words, the complaint was dismissed because it was prematurely lodged. This legal technicality, not surprisingly, infuriated opponents of the reform, who argued that, by the time the reform had in fact been introduced, they would be dealing with a *fait accompli*, which (as they rightly anticipated) would be even harder to reverse (see Ickler 1997:136–37).[14]

The second reason why the complaint was rejected reflects the requirement – stipulated in §90, Paragraph 2, Sentence 1 of the Law of the Federal Constitutional Court – that, prior to lodging a complaint, complainants must first have taken their case to the lower courts and exhausted the requisite legal channels. However, the same paragraph goes on to state that complainants may proceed directly to the Constitutional Court should they consider themselves to be severely and unavoidably disadvantaged by first proceeding through the lower courts. In this case, the Court did not believe that such a disadvantage was forthcoming and ruled that Gröschner's complaint was therefore inadmissible.

After stating that the actions of the Standing Conference of Ministers for Education and Cultural Affairs could not be considered to constitute a breach of parental rights, the Court proceeded to rule that the actions of neither the Standing Conference of the Prime Ministers of the 16 *Länder* (Ministerpräsidentenkonferenz or MPK) nor the Federal government could, for the same reasons, be considered to affect the complainant directly (II.1.bb). Nor would Gröschner's rights be directly impinged on by the signing of the declaration of intent planned for 1 July 1996 in Vienna (II.1.cc): This declaration, the Court claimed, would neither function as a legally binding agreement for the Federal Republic, nor would it directly affect the implementation of the reform. However, as Kopke (1997:112–13) later argued, this merely highlighted the practical unenforceability of the reform, since no legal action could be taken against any country or Federal state that subsequently failed to secure its implementation.

Finally in this section, the Court dealt with the disputed role played by the Duden dictionary vis-à-vis the 1996 reform (II.1.dd). The Court thereby reiterated the KMK ruling of 1955 that the 1901 rules remained valid until a further reform had been implemented, and that ONLY in so-called cases of uncertainty should reference be made to the supplementary rules contained in the Duden. The Court ruled that, in those *Länder* where the reform had not yet been introduced, any version of the Duden that did not conform to the 1901 guidelines (i.e., one revised according to the new rules) was not covered by the ruling of 1955 and therefore disqualified itself from use in the classroom. This meant that, in the two-year period between 1 August 1996 and 1 August 1998, teachers in the "pre-reform" *Länder* would be required to refer to pre-1996 versions of the Duden in "cases of uncertainty." In reality, this was what happened, because such "pre-reform" *Länder* would not have acquired new, updated dictionaries until the reform had actually been introduced; this undermined Gröschner's argument that teachers would be obliged to distinguish between the pre- and post-1996 editions of the Duden during the interim period (see also Menzel 1998:1181).

Having dismissed Gröschner's assertion that the reform required a statutory ruling to secure its implementation (and having rejected his daughter's case on the same grounds, see II.2), the Court proceeded to address the two remaining aspects of Gröschner's complaint. First, the Court rejected outright Gröschner's claim that his freedom of teaching would be curtailed, since it did not accept that

he was either directly affected by the reform or that his duties with regard to state examinations were embraced by this aspect of the Basic Law (II.1.b). Second, the Court dismissed Gröschner's complaint that the reform constitute a breach of his constitutional right to the free development of his personality (II.1.c), refusing to accept his suggestion that he would be forced to adopt the new orthography in order to avoid social embarrassment in the eyes of the speech community. This, according to the Court, was so because the speech community does not base its views regarding the correctness of particular spellings specifically on rulings made by the STATE. Instead, perceptions of orthographical correctness depend on those rules that the COMMUNITY ITSELF considers to be binding. The Court therefore proposed that those members of the speech community who had already learned to read and write would not conclude that Gröschner was writing incorrectly should he continue to use the old spellings; they would merely assume that he was adhering to the traditional, as opposed to the revised, rules.

From Gröschner's perspective, the ruling of the Court arguably missed the point because, as becomes clear elsewhere, underpinning his complaint is precisely the fear that the speech community would conclude that he was adhering to the traditional, pre-reform spellings. Gröschner then argued that, through continuing to use the old orthography, he would in fact be "outing" himself as "conservative" (Gröschner & Kopke 1997:299).[15] However, of particular theoretical interest in this regard is the distinction made by the Court between de jure rulings on orthographical correctness (i.e., by the state) and de facto perceptions of correctness (within the speech community), whereby precedence is given to the latter. In doing so, the Court would appear to have sidestepped the all-important sociolinguistic question of the relationship between these two spheres and their relative significance for the individual language user, a point to which I will return in the next section.

With regard to Gröschner's alleged breach of his personality rights, the Court ruled once again that, because the reform had not yet been introduced into schools, there was no actual basis for a constitutional complaint at that point in time. But the Court went on to add that, even though the writing practices of the wider community were unlikely to remain unaffected in the longer term by the particular version of orthography taught in schools at any one time, the constitution would never ultimately be in a position to offer the complainant PROTECTION from confrontation with such spellings. In this regard, the comments of the Court highlight an intriguing paradox. By stating that the Basic Law could not protect the complainant from new spellings taught in schools, the Court would appear to be admitting that reforms are in fact POTENTIALLY fundamental, in the constitutional sense maintained by Gröschner. Clearly, the effects of a reform cannot be limited to school-aged children and official authorities (over which the KMK has jurisdiction); they are always intended to percolate through the speech community (over which it has none) – an intention clearly stated by the Vienna Declaration. But leaving aside the obvious question as to what the purpose of a school

education is meant to be, if not to prepare pupils for later life as part of the wider community (and what are pupils, in any case, if not ALREADY a part of that community?), it is precisely this aspect of the constitutional dispute surrounding the 1996 reform of German orthography that takes us to the heart of the IDEOLOGICAL relationship between the individual, the speech community, and the nation-state.

DISCUSSION

Orthography, ideology and the nation-state

As a branch of language planning, language standardization is closely connected with the rise of nation-states and the concomitant project of modernity (Joseph 1987, Milroy & Milroy 1999, Kroskrity 2000). Williams (1992:128) describes how, as part of that project, language itself becomes tied into the evolutionary view of progress central to modernist thinking. Accordingly, languages and/or specific VARIETIES of language are objectified and dichotomized into "modern" versus "traditional" and "developed" versus "less developed," and, Williams writes, "The most important of the diacritica of such a typology are literacy and writing" (1992:128).

The German language was no exception in this regard. Indeed, Durrell (1999:292–93, 302–3) has noted that the history of standard German is probably best characterized as the standardization of the WRITTEN LANGUAGE, or *Schriftdeutsch*, whereas the standardization of English drew historically on both written AND spoken usage. Underpinning the comparatively greater emphasis on written German were a number of factors, including the lack of an obvious single metropolis or region that might have afforded a spoken model for a national standard, as London or the Home Counties did for English. These factors, in turn, relate to the fractured political histories of the German regions, and they partly account for why language was to take on such an important symbolic function in the "imagining" of the German *Kulturnation* – a nation based on a common cultural heritage as opposed to a shared political history (see Coulmas 1995:57). They also offer some explanation as to why, following the relatively late political unification of Germany in 1871, state authorities would play a more proactive role than their British counterparts in the standardization of the national language, particularly its written variety (see Durrell 1999:291).

For Williams (1992:20–35), standardization was and is an ideological project, according to which language is frequently invoked by the state as an instrument for the socialization of its subjects (see also Blommaert 1996). As a symbol of both unity and division, language thereby acquires a crucial gatekeeping function through which membership in the nation-state is not only afforded but also denied. At an INTER-national level, this operates via the specification of those individuals and groups who do or do not have a native command of the national language, a specification grounded in the Herderian conflation of language, cul-

ture, and nation, which Blommaert & Verschueren (1998:117–47) refer to as "homogeneism." At an INTRA-national level, by contrast, such linguistic gatekeeping works via the setting of a national STANDARD. Here, the specification of what is "modern" becomes tantamount to a prescription of what is "correct." Because the selection of the standard variety is itself ideologically motivated (it is no coincidence that the 1901 guidelines on orthography were based on usage in the two largest and most powerful regions of Germany at the time, Prussia and Bavaria), language emerges as a useful means with which to shore up the interests of already powerful social, economic, and regional groups, thereby legitimizing inequality. As Williams (1992:25) points out, a central role in the naturalization of this disciplinary discourse of language is accorded to education, where the inculcation of the values associated not just with the usage but especially with CORRECT usage of the national language becomes "a pedagogical exercise" (see also Milroy 2001).

However, the pursuit of modernism and the concomitant standardization of any area of social life raise a fundamental philosophical dilemma with regard to the authority of the state over its subjects. Central to this dilemma, according to Williams (1992:9), is the distinction between what Tönnies referred to as *Gemeinschaft* 'community', on the one hand, and *Gesellschaft* 'society', on the other. Tönnies 1887 argued that, following the Renaissance, processes of urbanization and industrialization had meant that the *Gemeinschaft*, with its primordial ties of friendship and kinship within a "community of fate," had gradually been forced to give way to the *Gesellschaft*, with its complex regulatory frameworks superimposed by the state. There are many objections to this view. Dahrendorf (1968:146–47), for example, not only describes the community/society dichotomy as "historically misleading, sociologically uninformed and politically illiberal" (my translation); he also doubts the very existence of the idealized version of "community" posited by Tönnies, which romanticizes the premodern era together with the purportedly "organic" origins of its regulatory social practices.[16] As Williams (1992:10–11) notes, however, such objections do not render the ideological purchase of the *Gemeinschaft/Gesellschaft* distinction less valuable for the emergent nation-state. This is because "the superimposition of time upon society in such a way that social change proceeds in a unilinear direction with a degree of inevitability means that *Gemeinschaft* MUST give way to *Gesellschaft*, thereby implementing and justifying the state in society" (1992:10, emphasis added). In other words, it is the very inevitability of the supposed transition from community to society that is invoked by the state in order to legitimize its intervention into hitherto unregulated areas of social life.

At this point, the interests of the state would appear to be in direct conflict with those of the community. Although this arguably underlines the state's need to divert the individual AWAY from a dependency on community ties, the dilemma then becomes one of how to conserve the moral imperative – a sense of right and

wrong – as forms of social organization become increasingly complex. The problem is especially vexing given that the nation-state is itself the creation of individualism, which necessarily puts a premium on the rights and freedom of the individual. As Williams notes: "In this sense it is not the state and the community which are in opposition but the state and the individual" (1992:11). The "solution," it seems, lies once again in an invocation by the state of the concept of *Gemeinschaft*, this time with its idealized solidarity as a source from which individuals derive their moral imperative. As Williams (1992:11) concludes, the objective of the state then becomes that of teaching its subjects to " 'respect the sacred bond' of community," for it is precisely in order to consolidate its own interests that the state must COMPEL the individual to act as a member of the community.

On the origin of linguistic norms

The legal dispute over the 1996 reform of German orthography provides a fascinating illustration of the ideological process outlined above. Here, the various brokers – Gröschner and his daughter, on the one hand, and the judges of the Federal Constitutional Court, on the other – are engaged in an ideological debate over who has the right to control the German language. In their respective pursuit of "authoritative entextualization," many questions arise about the nature, function, and origin of orthographic norms. Do such norms originate "organically" as a result of a moral imperative from within the SPEECH community, or *SPRACHgemeinschaft*? Is it legitimate, not to mention desirable, for the state to intervene actively in the prescription of such norms? What are the implications for– and rights of – the individual language user within this complex?

The roots of this particular debate lie, as we saw earlier, in the historical development of the German language and the decision by the newly founded nation-state to engage in the formal prescription of orthographic norms at the beginning of the 20th century. Having laid down a set of standardized guidelines, the German state was then confronted with the classic modernist dilemma of how to reconcile the static quality of a fixed standard with the dynamics of social and linguistic change. Not only had the 1901 rules crystallized an inevitably imperfect snapshot of a standard orthography, itself subject to much dispute at the time; in addition, orthographic conventions would continue to evolve throughout the 20th century, gradually increasing the state's need for RE-modernization, a process for which, crucially, no provision had been made in 1901. The problem was particularly acute if the efficacy of orthography was to be maintained as a means of inculcating the value of standard language more generally, especially via education. By the end of the 20th century, a range of discrepancies had arisen between the official 1901 guidelines and what was perceived to be "current usage" – disseminated not least via the combined Duden of 1915 and subsequent editions of the dictionary– and as a result, many schoolteachers were finding the teaching and evaluation of orthography increasingly frustrating and time-consuming, par-

ticularly in the early years of schooling, when dictation exercises are still common. If this disciplinary function of orthography was to be sustained, something once again had to be done, although the need for restandardization was at no time framed in such explicitly political terms.

Against this backdrop, it starts to become clear how reaching agreement on the LINGUISTIC aspects of the reform would not be the only problem with which the state would have to contend (see Augst et al. 1997). Once a new set of guidelines had been finalized by 1995, it would be their POLITICAL implementation that would then be a major headache for the reformers (Scheuringer 1997). Although the implementation of the 1901 regulations was itself much disputed at the time, it was clearly not just language that had evolved in the intervening century. Following World War II, the revised constitutional arrangement of the West German state– and from 1990, that of the newly unified Germany – meant that the rights of the individual citizen were now much more firmly anchored in the constitution. This, together with a range of political developments such as the student protest movement of the 1960s and 1970s and the rise of "citizens' action groups" (*Bürgerinitiativen*) in the 1980s, meant that German citizens were not only more constitutionally able but also perhaps more fundamentally willing to challenge the authority of the state on a wide range of issues and from a broad spectrum of political standpoints (Beck 1992, 1995, 1997). Add to this the increased expression of skepticism toward authority and expertise that is generally thought to characterize the period now referred to as "late" or "high" modernity (Giddens 1991), and it is clear that the German state was faced with a very different set of social and political circumstances in which to instigate a process of orthographic reform (see Antos 1996:238–49).

Central to the case put forward by Gröschner and his daughter is the dignity of the INDIVIDUAL language user, itself highly dependent on the views of orthographical correctness held by others within the speech community. What is then being disputed by the complainants is the right of the state to take action that upsets the purported balance of consensus within that community, thereby impinging on the dignity of the individual. There is, of course, some irony in this line of argument. Given their familiarity with the historical complexities surrounding the reform, Gröschner and his daughter must have been aware that the orthographic norms that obtained within the speech community before 1996 were at least partly the product of state intervention in the form of regulations for schools since the mid-19th century, culminating in the guidelines of 1901, along with the state sanctioning of the Duden in 1955. And familiar with the discussions in Kopke's thesis (1995a:294–371), they will have understood that at the root of the debate over orthographic reform is its use by schools as a means of disciplining pupils. However, it is interesting that at no point in the case presented to the Constitutional Court was this particular function of orthography under dispute. On the contrary, a cornerstone of Gröschner's argument was his claim that the reform would actually UNDERMINE his own personal authority over his daughter

and the students whose examinations he marked. At a more abstract level, it is possible to characterize Gröschner's views as very much in accordance with the model outlined by Williams above: As an individual, Gröschner is convinced that he takes his moral imperative not from the state but from within the speech community; yet in his role as a parent and university professor, he actively and willingly participates in the dissemination within the speech community of what might be seen as a state-sanctioned ideology of standard orthography via the education of those in his charge.

Of course, it was precisely in order to maintain the disciplinary function surrounding orthography that the state was now obliged to modernize the guidelines of 1901. But whereas processes of modernization typically serve to consolidate the social, economic, and cultural capital of already powerful groups, this particular process was one in which Gröschner and his daughter presumably feared they stood to lose. Accepting the premise that spelling errors are commonly taken to be an indicator of low intelligence by the speech community, the two now considered themselves to be vulnerable should they adhere to the pre-reform spellings. It was a threat of social marginalization that they were willing to contest with all the constitutional force they could muster. But however radical the form of their protest might appear, there was little that was radical in its content: This protest in no way challenged the more general ideological function underpinning the standardization of orthography. Theirs was a defense of tradition, albeit a tradition that was itself once modern. It was, moreover, a defense that invoked– and arguably romanticized – the organic solidarity of the speech community and pitted this against a more mechanical form of regulation imposed by the state.

We saw earlier that wherever German citizens consider actions by third parties to have impinged on their rights as laid down in the Basic Law, it is their constitutionally guaranteed right to contest those actions, first via the lower and upper administrative courts and then, if necessary, via the Constitutional Court. In such cases, it is the remit of the Constitutional Court to mediate between the various parties and, as Dürig (1998:xvi–xvii) describes in his introduction to the Basic Law, there are three important elements to that process. First, it is the fundamental task of the Court to protect the constitutional order on which the state is founded.[17] Second, the protection of that constitutional order is to be achieved by allowing conflicts to surface rather than by repressing them. Third, the Court aims to resolve such conflicts via a process of DEPOLITICIZATION.

The impossibility of depoliticizing what is an inherently political conflict is clear. Although the judges of the Court did not address the ideological functions of orthography that lie at the heart of the dispute, they nonetheless engaged in a crucial piece of ideological brokerage on behalf of the state, much in line with the process characterized by Williams above. In order to justify the right of the state to prescribe orthographic norms by ministerial decree, the Court dismissed the significance of the reform for the wider speech community. Yet at the same time,

the success of state action – i.e., the reform – is self-evidently dependent on the compliance of that community. The Court therefore tried to reassure Gröschner that the speech community would not think less highly of him for his continued use of the traditional orthography, because the speech community allegedly bases its views of orthographic correctness not on the norms prescribed de jure by the state, but on the norms acknowledged de facto by the speech community. In doing so, the Court – just like the complainants – invoked the idealized solidarity of the speech community as the source of the individual's moral imperative. This, however, is a potentially contradictory line of argumentation that merely lends credence to the complainants' original assertion that the 1996 reform of orthography might indeed be of fundamental significance for the wider speech community in the sense maintained by Gröschner.

CONCLUSION

Following the rejection of the complaints brought by Gröschner and his daughter in 1996, many parents of school-aged children challenged the reform in the lower and upper administrative courts of various German *Länder*. Altogether, about 30 cases were heard, with just over half going in favor of the reform.[18] In May 1998, the case was referred back to the Federal Constitutional Court for a final hearing based on a set of complaints broadly similar to those of Gröschner and his daughter, this time put forward by Thomas Elsner and Gunda Diercks-Elsner, the parents of two children of primary-school age in the state of Schleswig-Holstein (see *Bundesverfassungsgericht* 14 July 1998). Having already exhausted the requisite legal channels, and given that the reform had actually been introduced in Schleswig-Holstein and elsewhere, the complaints were this time formally accepted for a hearing by the Constitutional Court.[19]

Once again, the complaints were rejected. The Court argued, inter alia, that it did not accept that a reform affecting only 0.5% of the written language constituted a fundamental intervention into the broader pedagogic aim of teaching pupils to read and write, thereby impinging on the constitutional rights of either pupils or their parents in any fundamental way. Although the Court conceded that the reform was certainly of GENERAL relevance for the wider speech community, it noted that such relevance did not in itself render the reform unconstitutional; complainants must be able to show that the changes affected in a FUNDAMENTAL way the basic rights of individuals within that community and, again, no such impact was apparent. The Court therefore upheld the right of the executive to implement the reform and did not deem involvement of the legislature to be necessary.

As Rivers & Young (2001:176–77) have proposed in a legal and linguistic assessment of the 1998 ruling, the decision of the Constitutional Court might well be seen as a sensible and pragmatic attempt to avoid the further juridification of orthographic norms, combined with a healthy degree of agnosticism regarding

the vexed question of who exactly controls the German language. They note, nonetheless, the unsatisfactory nature of the ruling concerning the reform's implications for the wider speech community. Here, the Court reiterated that, outside of schools and official authorities, people were free to continue writing as they wished. Although this is technically true, once the Court admitted consequences OF A SORT for the wider community, tradition dictates that the Court should then at least have addressed the constitutional issues thereby raised. But it did not: It simply dismissed the implications of the reform for the speech community as an irrelevance (Rivers & Young 2001:177).

I would argue that there is good reason for this. As I have shown throughout this essay, even though the successful implementation of the reform in the long term will clearly depend on the cooperation of the wider speech community, its successful enforcement in the short term was equally dependent on the marginalization of that role. This is so because, while schools and state authorities are under the jurisdiction of the executive, the wider speech community is not. Although it is crucial to emphasize that the Constitutional Court was in no way obliged to side with the state on this or any other matter, once it began seriously to explore the question of whether the constitutional rights of those outside of schools and state authorities were in any way affected, it would at some point have been obliged to address the crucial question of the reform's overall purpose in respect to individual speakers within the wider speech community. However, it is difficult to see how this could have been achieved within the Court's own remit of depoliticizing conflict situations, and without ultimately exploring the political and ideological dimensions of the standardization process per se. In the final analysis, the Court therefore bypassed one of the most important questions surrounding the reform by simply ignoring it. However, the fact that the judges were in a position to ignore such a crucial question was ultimately contingent on the power with which the Court is invested by the state. And therein, no doubt, lies the ability of many an ideological broker to reproduce a dominant language ideology and to secure "authoritative entextualization" in a language ideological debate.[20]

NOTES

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[1] C.f. Schiffmann (1998:368), in the context of a discussion of the (re-)standardization of spoken Tamil, argues: "These days it is fashionable, in many circles in the West, to deny both the existence and legitimacy of standard English or other standard languages – because standards have often been used capriciously and maliciously, to deny non-standard speakers access to power. Therefore, we now hear and see a great deal about hegemony, power imbalance, linguistic prejudice, maintenance/denial of privilege, empowerment, and many other allusions to ideological control of language." Although

Schiffman is right to point out that standards may serve important functions in terms of securing the communicative effectiveness of a given language (e.g., in foreign-language pedagogy), he undermines his own "anti-ideological" line of argumentation when he points out: "The fact is that, when all is said and done, speakers of natural languages make judgments about different kinds of speech and writing of which they hear and see samples, and some of those judgments are, like it or not, hierarchical social judgments" (1998:369). As I see it, the underlying premise of work on language ideologies and language ideological debates lies not in some kind of politically motivated disregard for sociolinguistic processes such as standardization (as implied by Schiffman), but in this work as a means of deepening our understanding of precisely such processes via a more holistic account of the relationship between the relevant linguistic and social factors (see Milroy 2001 for a similar line of argument).

[2] See Fix (1994:25–74) for a critical discussion of the historical relationship between the standardization of orthography, the implementation of planned curricula, and the increasing use of dictation as a means of teaching and evaluating literacy.

[3] Parallel to the state codification of orthographic norms was the specification of the spoken standard (see Siebs 1898). For an interesting comparative discussion of the ensuing standardization of the legal and orthographic traditions in the different regions before and after unification in the 19th century, see Meder 1997.

[4] Some changes were nonetheless agreed, among others (i) the abolition of ⟨h⟩ in words of German origin such as *Thür→Tür* 'door'; (ii) the use of ⟨k⟩ or ⟨z⟩ to replace ⟨c⟩ in foreign loans, e.g. *Classe→Klasse* and *Medicin→Medizin*; and (iii) the reduction of ⟨aa⟩ to ⟨a⟩ in words such as *Waagen→Wagen* 'car'. Not included, however, was the recommendation of 1876 to abolish postvocalic ⟨h⟩ in items such as *Sohn* 'son', *Huhn* 'chicken', or *Gefühl* 'feeling' (see *Protokoll* 1901).

[5] There has been much speculation on why these discrepancies occurred. Sauer (1988:103) suggests a number of reasons, such as the speed with which the 1901 guidelines were incorporated into the seventh edition of the dictionary, which appeared in 1902, allowing insufficient time for proofreading. Also, the needs of printers, who had little desire for optional variability, were an obvious influence on Duden's subsequent actions. Later, deviations from the 1901 guidelines tended to be justified by the claim that the Duden was merely documenting actual usage within the speech community.

[6] An article in the newspaper *Die Zeit* (23 February 1973), for example, suggested that three-quarters of all children made to repeat school years were forced to do so because of their spelling (cited in Clyne 1995:181–82). For a critical discussion of the role of dictation as a means of disciplining schoolchildren, see Jäger 1974. An empirical investigation highlighting the negative impact of dictation on the overall achievement of working-class pupils can be found in Rigol 1977. For a broader critical discussion of the teaching of spelling, see Spitta 1977.

[7] Similar arrangements were made in Switzerland and Austria. This article, however, focuses on the implementation procedures and surrounding disputes within Germany.

[8] For complete text, see *Deutsche Rechtschreibung* 1996, a summary of which is available in Heller 1998. For a brief description and discussion in English, see Johnson 2000. It was also agreed that a new Commission for German Orthography (*Kommission für die deutsche Rechtschreibung*), based at the state-funded Institute for German Language (*Institut für deutsche Sprache* – IdS) in Mannheim, would be established,with the specific remit of overseeing the introduction of the reform, monitoring future developments in German orthography, and making further gradual revisions.

[9] References are to specific parts of the document, e.g., section I.2.aa or I.1c.9.

[10] This does, in fact, sideline the issue that by 1996 many other revised dictionaries would also be available, including that of Duden's main rival, Bertelsmann. In this regard, Gröschner has been widely criticized for overestimating the significance of the Duden dictionary in the reform process, as well as the role played by its editors (see e.g., Zabel 1996:359–60; Hufeld 1996:1076). But whether those other dictionaries could ever really compete on a level playing field with the Duden, given the latter's long-term position of authority, was and still is open to debate, and it was Gröschner's belief that the Duden was seen BY THE POPULATION as authoritative in questions of orthography, which was central to his argument.

[11] Most schoolteachers and university professors in Germany have civil-servant status, hence Gröschner's recognition that he would be formally obliged to conform to the new guidelines on orthography in his professional correspondence, and the concomitant emphasis here on his private correspondence.

[12] Gröschner is referring here to the creation of previously nonexistent spellings, such as *Känguru* (formerly *Känguruh* 'kangaroo'), where the final ⟨h⟩ was dropped in order to bring it in line with items such as *Gnu*. See Mentrup 1998 for a comprehensively illustrated rejection of Gröschner's contention that the 1901 guidelines did not make FUNDAMENTAL changes to German orthography at the time; see also my note 4.

[13] There has been some confusion in the literature as to what kind of legislative action was being demanded by the opponents of the reform. Menzel (1998:1183) points out, for example, that such action need not have involved the detailed specification of standard orthographic rules on the part of the state, merely a parliamentary ruling clarifying responsibility for such issues (see also *Bundesverfassungsgericht* 14 July 1998:236).

[14] It is important to note here that there is in fact constitutional provision for bringing complaints in advance of the implementation of disputed measures. This is possible where the measures in question will be implemented in the very near future and will lead to circumstances that will no longer be rectifiable (Gersdorf 2000:10) – both of which arguably applied here.

[15] Nor does the Court ruling engage with the psycholinguistic dimension of the complaint, which sees the reform as a potential breach of the complainants' right to the free development of their personalities in the light of its alleged impact on the spelling system already stored in their "mental lexica." I am grateful to one of the anonymous readers of this paper for drawing this to my attention.

[16] Dahrendorf (1968:145) describes the threat of the demise of the "community" as a result of the artificially imposed structures of the "state" as part of the "folklore of German political consciousness" (my translation). Although it is certainly true that the dichotomy has been drawn on at several key points in German history – Hitler, for example, promised to bring to an end the political upheavals of the Weimar era by appealing to the idea of the German-speaking peoples as members of a "community of fate" or *Schicksalsgemeinschaft* – I will refrain from entering into a discussion here of whether the invocation of the purported solidarity of the *Gemeinschaft* within the debate over orthography is in any way "typically German."

[17] It is important to note here that German schoolteachers and university professors, when taking up civil servant status, are required to sign a declaration of loyalty to the constitution (see note 11).

[18] Two further petitions for temporary injunctions against the reform were also rejected by the Federal Constitutional Court in December 1997 (see *1 BvR 2368/97* and *1 BvR 2264/97*). For a survey of the regional rulings, see Menzel 1998.

[19] In an added twist, the couple actually withdrew their case two weeks before the release of the Court's ruling, arguing that the decision was already known to the press. The Court, however, justified its decision to go ahead with the ruling given the "general relevance" of the case for the public (*Bundesverfassungsgericht*, 14 July 1998:242–43).

[20] The 1998 ruling did not in fact signal the end of the legal dispute. In September 1998, voters in the state of Schleswig-Holstein elected in a referendum to opt out of the reform (see Johnson 1999 for discussion). This was followed in July 1999 by an unsuccessful petition to halt the implementation of the referendum result, brought before the Constitutional Court by parents who claimed that their children would be disadvantaged by being taught the old rules when pupils elsewhere in the German-speaking areas were learning the new ones (see *Bundesverfassungsgericht* 1 BVQ 10/99). In September 1999, the result of the referendum was overturned by the regional parliament of Schleswig-Holstein, and pupils once again began learning the new orthographic rules. Despite an unsuccessful constitutional challenge by anti-reform groups in November 1999 (see *Bundesverfassungsgericht* 2 BVR 1958/99), at the time of this writing the constitutional legitimacy of the decision to overturn the referendum result remains unclear (see Rivers & Young 2001:176).

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