

Freedom from Discrimination in Choice Of Language and International Human Rights*

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I. FACTUAL BACKGROUND

The conception of human dignity is fundamentally linked to the life of the mind which in turn is closely linked to language as a basic means of communication. Language is a rudiment of consciousness and close to the core of personality; deprivations in relation to language deeply affect identity. At this point we are concerned with the deprivations imposed upon an individual because he is a member of a group with a special language. Language is broadly understood to include all the means (signs and symbols), phonetic and phonemic, by which people communicate with each other.¹ So conceived, language is a

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This article is one of a series designed to document the emergence of a general norm of nondiscrimination in the allocation of access to important value processes for reasons irrelevant to individual capabilities and potentialities. The first of these articles is McDougal, Lasswell, & Chen, *The Protection of Respect and Human Rights: Freedom of Choice and World Public Order*, 24 AM. U. L. REV. 919 (1975). For further illustration with regard to different grounds of discrimination, see McDougal, Lasswell, & Chen, *Human Rights for Women and World Public Order: The Outlawing of Sex-Based Discrimination*, 69 AM. J. INT'L L. 497 (1975); McDougal, Lasswell, & Chen, *Non-Conforming Political Opinion and Human Rights: Transnational Protection against Discrimination*, 2 YALE STUDIES IN WORLD PUBLIC ORDER 1 (1975).

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1. Sapir, *Language*, 9 ENCYC. SOC. SCI. 155 (E. Seligman ed. 1933). On the concept and functions of language, see generally ADVANCES IN THE SOCIOLOGY OF LANGUAGE (J. Fishman ed. in two volumes 1971, 1972); L. BLOOMFIELD, A LEONARD BLOOMFIELD ANTHOLOGY (1970); L. BLOOMFIELD, LANGUAGE (1933); N. CHOMSKY,

most important instrument of enlightenment and skill and also a significant base value for the performance of many different social roles. Further, language is commonly taken as a prime indicator of an individual's group identifications.² In the words of Dr. Joshua A. Fishman,

[L]anguage is not merely a *means* of interpersonal communication and influence. It is not merely a *carrier* of content, whether latent or manifest. Language itself *is* content, a referent for loyalties and animosities, an indicator of social statuses and personal relationships, a marker of situations and topics as well as of the societal goals and the large-scale value-laden arenas of interaction that typify every speech community.³

Deprivations imposed in relation to language may be manifested in a variety of modes, notably: denial of opportunity to acquire and employ the mother tongue,⁴ the language of the national elite,⁵ or world languages;⁶ deprivations imposed upon individuals through group identifi-

LANGUAGE AND MIND (enlarged ed. 1972); N. CHOMSKY, PROBLEMS OF KNOWLEDGE AND FREEDOM (1971); J. FISHMAN, THE SOCIOLOGY OF LANGUAGE (1972); H. GOAD, LANGUAGE IN HISTORY (1958); J. H. GREENBERG, LANGUAGE, CULTURE, AND COMMUNICATION; ESSAYS BY JOSEPH H. GREENBERG (1971); P. HENLE, LANGUAGE, THOUGHT, AND CULTURE (1958); O. JESPERSEN, LANGUAGE; ITS NATURE, DEVELOPMENT AND ORIGIN (1922); J. KATZ, THE PHILOSOPHY OF LANGUAGE (1966); LANGUAGE: AN INQUIRY INTO ITS MEANING AND FUNCTION (R. Anshen ed. 1957); LANGUAGE AND SOCIAL CONTEXT (P. Giglioli ed. 1972); LANGUAGE IN CULTURE AND SOCIETY; A READER IN LINGUISTICS AND ANTHROPOLOGY (D. Hymes ed. 1964); J. MALSTROM, LANGUAGE IN SOCIETY (1965); NEW HORIZONS IN LINGUISTICS (J. Lyons ed. 1970); H. PAUL, PRINCIPLES OF THE HISTORY OF LANGUAGE (H. Strong transl. 1890; 1970); M. PEI, THE STORY OF LANGUAGE (rev. ed. 1965); READINGS IN THE PSYCHOLOGY OF LANGUAGE (L. Jakobovits & M. Miron eds. 1967); E. SAPIR, CULTURE, LANGUAGE AND PERSONALITY (1957); SOCIAL ANTHROPOLOGY AND LANGUAGE (E. Ardener ed. 1971); UNIVERSALS OF LANGUAGE (2d ed. J. Greenberg ed. 1966); J. WHATMOUGH, LANGUAGE: A MODERN SYNTHESIS (1956); B. L. WHORF, LANGUAGE, THOUGHT, AND REALITY; SELECTED WRITINGS OF BENJAMIN LEE WHORF (1956).

2. For the importance of language as an index of group identification, especially national groups, see K. DEUTSCH, NATIONALISM AND SOCIAL COMMUNICATION (2d ed. 1966); R. EMERSON, FROM EMPIRE TO NATION 132-48 (1962); J. FISHMAN, LANGUAGE AND NATIONALISM (1973); KUNIO TOYODA, MINZOKU TO GENGO NO MONDAI (The Question of Nation and Language) (1964); Deutch, *The Trend of European Nationalism—The Language Aspect*, in READINGS IN THE SOCIOLOGY OF LANGUAGE 598-606 (J. Fishman ed. 1968); Jakobson, *The Beginning of National Self-Determination in Europe*, *id.*, at 585-97; Kloss, *Bilingualism and Nationalism*, 23 J. SOCIAL ISSUES, April 1967, at 39-47.

3. J. FISHMAN, THE SOCIOLOGY OF LANGUAGE 4 (1972).

4. A "mother tongue" as used in this article is one's native tongue, ordinarily the language of the home.

5. The "language of the national elite" means the language of the majority or dominant group in a country.

6. The term "world languages" is used to denote languages of relatively wide transnational use.

cations and differentiations effected by language; deprivations resulting from arbitrary requirements of specified languages for access to different value processes (as for employment); the conduct of community processes and enterprises, especially of enlightenment and power, in languages alien to members of the community; and, finally, the coerced learning of specified languages other than the home language.⁷

Deprivations associated with language have deep historical roots and are more widespread than is commonly assumed. In the words of Dr. J. J. Lador-Lederer:

[T]he language barrier problem goes very deep and far back in history. The culture of a group depends on the reality and appropriateness of its language. Suffocation of language has always been part of policies of domination and the struggle for its maintenance was always a precondition for any political movement of liberation, whenever it might become possible.⁸

Sustained conflict between different language groups in the contemporary world continues to dramatize widespread deprivations.⁹

Deprivations in relation to language are, most importantly, deprivations of enlightenment and skill. When the processes of enlightenment (schools, other educational institutions, the mass media, etc.) are conducted exclusively in a language alien to significant numbers of the

7. Private groups often attempt to impose language loyalty upon their members. Thus, it is sometimes difficult to accommodate demands of an individual with demands of a group which insists upon representing all its members. For instance, in the United States, some Black Power groups are said to have insisted upon teaching Swahili in certain schools while other blacks were strongly opposed to it.

8. J. LADOR-LEDERER, *INTERNATIONAL GROUP PROTECTION* 25 (1968).

9. Linguistic conflicts have taken place in a wide variety of states, including Belgium, Canada, China, Switzerland, the U.S.S.R., and Yugoslavia. For concise, global surveys, see 2 A. OSTROWER, *LANGUAGE, LAW AND DIPLOMACY* 596-664 (1965); Inglehart & Woodward, *Language Conflicts and Political Community*, in *LANGUAGE AND SOCIAL CONTEXT* 358-77 (P. Giglioli ed. 1972). See also Medina, *Spain: Regional, Linguistic and Ideological Conflict*, in 1 *CASE STUDIES ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: A WORLD SURVEY* 133 (W. Veehoven ed. 1975); Van Haegendoren, *Ethno-Linguistic Cleavage in Belgium*, in 2 *id.* at 1.

India, as well-known, is a prime example. For the communal tension exacerbated by the language problem in India, see D. BAYLEY, *PUBLIC LIBERTIES IN THE NEW STATES* 95-99 (1964); P. MASON, *PATTERNS OF DOMINANCE* 168-71 (1970). See also R. GOPAL, *LINGUISTIC AFFAIRS OF INDIA* (1966); R. HASHMI, *BRIEF FOR BAHAWALPUR PROVINCE* (1972); INDIA (REPUBLIC) PUNJAB BOUNDARY COMMISSION, *REPORT PRESENTED ON THE 31ST MAY, 1966* (1966); K. JOHN, *THE ONLY SOLUTION TO INDIA'S LANGUAGE PROBLEM* (undated); S. MAZUMDAR, *MARXISM AND THE LANGUAGE PROBLEM IN INDIA* (1970); C. RAJAGOPALACHARI, *THE QUESTION OF ENGLISH* (1962); M. RAM, *HINDI AGAINST INDIA: THE MEANING OF DMK* (1968); A. WADIA, *THE FUTURE OF ENGLISH IN INDIA* (1954); R. YADAV, *THE INDIAN LANGUAGE PROBLEM* (1966); Gupta, *Ethnicity, Language Demands, and National Development in India*, in *ETHNICITY: THEORY AND EXPERIENCE* 466-88 (N. Glazer & D. Moynihan eds. 1975).

community members, the difficulties created for such members are pervasive and enduring. Denial of access to a person's mother tongue, especially at an early stage, has been shown to have an accumulative retarding effect upon the development of a child.¹⁰ A "conscious or unconscious policy of linguistic and cultural exclusion and alienation"¹¹ has often led to an "educational disaster"¹² and "dismal performance" of "bilingual" children,¹³ as characterized by "low attendance, poor achievement, and high dropout rates."¹⁴ The "difficulties encountered with being tested and given instruction in an unfamiliar language"¹⁵ are best appreciated when experienced. Hence, in the words of Mr. Charles D. Ammoun:

[C]ompulsory teaching in a single language, and *a priori*, prohibition of the teaching of the language and cultural heritage of a distinct group, have in some cases constituted a formidable instrument of oppression and discrimination, especially where the schools possessed by the group are closed, or transferred to the dominant group against the will of the members of the distinct group.¹⁶

Discrimination which takes the form of preventing members of a distinct group from acquiring proficiency in the language of the elite, knowledge of which may be essential for access to higher education and official position, may equally deprive the individual of effective participation in

10. In this connection, see an important study: UNESCO, *THE USE OF VERNACULAR LANGUAGE IN EDUCATION* (1953). The importance of educating children in the mother tongue is underscored in these words:

It is axiomatic that the best medium for teaching a child is his mother tongue. Psychologically, it is the system of meaningful signs that in his mind works automatically for expression and understanding. Sociologically, it is a means of identification among the members of the community to which he belongs. Educationally, he learns more quickly through it than through an unfamiliar linguistic medium.

Id. at 11. Cf. T. ANDERSON & M. BOYER, *BILINGUAL SCHOOLING IN THE UNITED STATES* (1970); *Hearings on Equal Educational Opportunity Before the Senate Select Comm. on Equal Educational Opportunity*, 91st Cong., 2d Sess., pt. 8 (1970); Kobrick, *A Model Act Providing for Transitional Bilingual Education Programs in Public Schools*, 9 HARV. J. LEGIS. 260 (1972); Macnamara, *The Bilingual's Linguistic Performance—A Psychological Overview*, 23 J. SOCIAL ISSUES, April 1967, at 58-77; Macnamara, *The Effects of Instruction in a Weaker Language*, *id.* at 121-35; Note, *Linguistic Minorities and the Right to an Effective Education*, 3 CALIF. W. INT'L L.J. 112, 120-23 (1972).

11. SELECT SENATE COMM. ON EQUAL EDUCATIONAL OPPORTUNITY, 92d CONG., 2d SESS., REPORT TOWARD EQUAL EDUCATIONAL OPPORTUNITY 277 (Comm. Print 1972).

12. Kobrick, *supra* note 10, at 261.

13. Note, *The Constitutional Right of Bilingual Children to an Equal Educational Opportunity*, 47 S. CAL. L. REV. 943, 953 (1974).

14. *Id.* at 950.

15. *Id.* at 953.

16. C. AMMOUN, *STUDY OF DISCRIMINATION IN EDUCATION* 90, U.N. Doc. E/CN.4/Sub.2/181/Rev.1 (1957).

other value processes of the larger community.¹⁷ Another manifestation of language deprivation may be to deny individuals the opportunity to acquire and utilize one or more of the world languages. Measures of this kind, whatever their motivation (for the perpetuation of a self-fulfilling caste-like society for a chosen few or otherwise), may have profound, long-term deprivatory effects upon excluded individuals.

So interdependent are enlightenment and the acquisition and exercise of skill that deprivations resulting from language discrimination may be devastating for skill acquisition. Language barriers have all too often worked to frustrate and stifle the full development of latent capabilities. When people are deprived of enlightenment and skill, their capabilities for effective participation in all other value processes are correspondingly diminished.¹⁸

Deprivations in access to language commonly entail deprivation in access to power, both authoritative and effective. A person may be denied the right to vote for failing to "pass a literacy test in a language which is not [his] mother tongue,"¹⁹ even though he is "highly literate in his mother tongue."²⁰ Handicap in a particular language is thus confused with illiteracy.²¹ While "knowledge of a particular language, or even of several languages" may be reasonably "regarded as an inherent requirement of a public office,"²² where such knowledge is not truly an inherent requirement, there does exist a certain amount of discrimination.²³ Typically, civil service examinations are given in an official language without consideration for individuals whose native tongue is other than the official language. A person may be denied

17. In the words of Dr. David H. Bayley:

Discrimination may be the product of impersonal circumstances and effectuated quite without human malice. In many of the new states large sections of the populace are unable to compete for positions in government service or even to compete effectively for national office because they have language skill only in a local, restricted dialect. This may be called "structural discrimination." It is discrimination in the sense that opportunities are uniformly limited for a group by circumstances beyond their control.

D. BAYLEY, *supra* note 9, at 94.

18. Even when minority languages are given some recognition, discrimination may still occur. For example, a language is taught in the school, but the school board does not maintain adequate standards, or does not enforce competent training. This has upon occasion been alleged to be the case with the teaching of the Spanish language in this country.

19. H. SANTA CRUZ, *STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS* 33, U.N. Doc. E/CN.4/Sub.2/213/Rev.1 (1962).

20. *Id.*

21. See Leibowitz, *English Literacy: Legal Sanction for Discrimination*, 45 *NOTRE DAME LAWYER* 7 (1969), reprinted in 39 *REVISTA JURIDICA DE LA UNIVERSIDAD DE PUERTO RICO* 313 (1970).

22. H. SANTA CRUZ, *supra* note 19, at 33.

23. *Id.* at 34.

naturalization for lack of proficiency in the required language.²⁴ Upon occasion an individual may be denied a passport to travel abroad, or be kept out of certain regions, if he "does not speak a widely-spoken language, or the language of the country where he intends to travel."²⁵ When "deprived of public enjoyment of their language,"²⁶ members of a language group "may feel compelled to migrate to another country (if they possess a motherland),"²⁷ and, hence, become refugees.

When judicial and administrative proceedings are held exclusively in an official language, deprivations may multiply. To nonspeakers of the official language, judicial and administrative notices, given in the official language, are more formalistic than real.²⁸ Victims of such hollow due process may extend from accused persons to witnesses.²⁹ Although "most legal systems attempt to provide for interpretation, free or otherwise, for persons without a sufficient knowledge of the language of the court,"³⁰ a litigant is sometimes required to "make his own arrangements for interpretation."³¹ Linguistic difficulties arise not only in court but also out of court, for instance, in the translation of relevant documents.³²

Handicapped by language barriers, nonspeakers of the dominant language often experience psychological difficulties, and may be subjected to severe deprivations of well-being.³³ In extreme cases, a person unable to make himself intelligible in the prevailing language of the community may even be forced to endure torture comparable to that of "the mentally retarded."³⁴ Such persons may upon occasion be made

24. For instance, in the United States, naturalization is as a rule denied to those who lack proficiency in the English language.

No person . . . shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language
8 U.S.C. § 1423 (1970).

25. J. Ingles, *STUDY OF DISCRIMINATION IN RESPECT OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY* 25, U.N. Doc. E/CN.4/Sub.2/220/Rev.1 (1963).

26. T. MODEEN, *THE INTERNATIONAL PROTECTION OF NATIONAL MINORITIES IN EUROPE* 42 (1969).

27. *Id.*

28. *See Note, El Derecho de Aviso: Due Process and Bilingual Notice*, 83 *YALE L.J.* 385 (1973).

29. M. RANNAT, *STUDY OF EQUALITY IN THE ADMINISTRATION OF JUSTICE* 39, U.N. Doc. E/CN.4/Sub.2/296/Rev.1 (1972).

30. *Id.* at 40.

31. *Id.*

32. *Id.*

33. T. MODEEN, *supra* note 26, at 42.

34. Leary, *Children Who Are Tested in an Alien Language: Mentally Retarded?*, 162 *THE NEW REPUBLIC*, May 30, 1970, at 17-18.

targets of mob violence, especially when communal conflicts are generated or exacerbated by language controversies.³⁵ In the wealth sector, proficiency in a particular language may be made—arbitrarily as well as reasonably—a prerequisite for employment and for promotion.³⁶ In terms of affection, it is not uncommon that language barriers become equally barriers to establishing and cultivating congenial personal relationships. People may be prevented from making friends with, or marrying, members of an outside language group. The effort to foster “religious loyalty” by according prominence to a particular vernacular is by no means a thing of the past. Historically, “religions have rendered various languages holy or have declared them to be particularly appropriate for the expression and preservation of religious attachments.”³⁷ Hence, unfamiliarity with a particular sacred tongue may mean a constant need to appreciate the revealed truth and receive the Divine blessing through intermediaries.

For purposes of social identification—distinguishing the self from others by the self and others—language has long served as a potent factor in social stratification, an important index for according or withholding respect.³⁸ In a society highly conscious of “the prestige of

35. “The intensity of linguistic antagonisms was amply demonstrated in India during the convulsive agitation for the formation of linguistic states during 1952-56. During the agitation hundreds of people lost their lives in fierce rioting between different language communities.” D. BAYLEY, *supra* note 9, at 96.

One form of discrimination against individuals on the basis of language relates to failure to provide individuals with public services, such as medical service, from technical personnel capable in the relevant language. For example, in the United States, physicians from Latin American and other countries are discouraged from getting accreditation even though their linguistic skills are essential to serve some segments of the community.

36. See Leibowitz, *English Literacy: Legal Sanction for Discrimination*, 45 NOTRE DAME LAWYER 7, 38-41 (1969).

37. J. FISHMAN, *LANGUAGE IN SOCIOCULTURAL CHANGE: ESSAYS BY JOSHUA A. FISHMAN* 67 (1972).

38. It has been sharply put: “To the naive monoglot, objects and ideas are identical with and inseparable from the particular words used to describe them in the one language he knows; hence he is inclined to consider speakers of other languages as something less than human, or at least foreign and hostile to the world of his own experience.” M. PEI, *supra* note 1, at 259.

Regarding language as an important indicator of social stratification, see 1 B. BERNSTEIN, *CLASS, CODES AND CONTROL* (1971); 2 *CLASS, CODES AND CONTROL* (B. Bernstein ed. 1973); J. FISHMAN, *supra* note 3, at 64-68; O. JESPERSEN, *MANKIND, NATION AND INDIVIDUAL* 141-48 (1946); Bernstein, *Social Class, Language and Socialization*, in *LANGUAGE AND SOCIAL CONTEXT*, *supra* note 1, at 157-78; Bernstein & Henderson, *Social Class Differences in the Relevance of Language to Socialization*, in 2 *ADVANCES IN THE SOCIOLOGY OF LANGUAGE* 126-49 (J. Fishman ed. 1972).

For “the phonological correlates of social stratification,” see a series of studies by Labov: W. LABOV, *THE SOCIAL STRATIFICATION OF ENGLISH IN NEW YORK CITY* (1966);

languages," what matters is not only the kind of language a person employs, but even the very accent of the speaker.³⁹ "The vocabulary of social intolerance," in the words of Dr. Mario Pei, "is the vocabulary of class distinction: the 'helots' of ancient Sparta, the 'plebeians' of Rome, the *eta* or 'outcasts' of Japan, the *pariah* or 'untouchables' of India."⁴⁰ Nonspeakers of the dominant language are often made to suffer a deep sense of inferiority, and all associated syndromes, because of the inadequacy in "coping" in the dominant language.⁴¹

II. BASIC COMMUNITY POLICIES

A rational conception of shared respect will include freedom of choice in regard to language. Such freedom is essential to the maturing and exercising of an individual's capabilities both for self-development and for contribution to the aggregate common interest. As a key to enlightenment and skill, language not only transmits and expresses culture but also aids overwhelmingly in the development of latent human capabilities. The fact that language is an extraordinarily important index of identities makes it equally important that no discriminations be imposed upon individuals because of such identifications. Blanket differentiations of individuals in terms of language can only be invidious and arbitrary.

In this dynamically complex and interdependent world, in which rational choice is so dependent upon intelligence and enlightenment, it is vital that individuals be accorded full protection in access to all pertinent languages, including the mother tongue, the established elite language, and world languages. Modern educational and linguistic inquiry has

W. LABOV, *SOCIOLINGUISTIC PATTERNS* (1972); Labov, *Hypercorrection by the Lower Middle Class as a Factor in Linguistic Change*, in *SOCIOLINGUISTICS* 84-101 (W. Bright ed. 1966); Labov, *Phonological Correlates of Social Stratification*, 66 *AM. ANTHROPOLOGIST*, no. 6, pt. 2, at 164 (1964); Labov, *The Effect of Social Mobility on Linguistic Behavior*, 36 *SOCIOLOGICAL INQUIRY* 186 (1966); Labov, *The Reflection of Social Processes in Linguistic Structures*, in *READINGS IN THE SOCIOLOGY OF LANGUAGE*, *supra* note 2, at 240-51.

39. For example, "'Brooklynese' and 'Cockney' English within New York and London, respectively, do not connote foreignness or even a particular section of the city so much as lower-class status in term of income, education, or ethnicity." J. FISHMAN, *SOCIOLINGUISTICS: A BRIEF INTRODUCTION* 2 (1970).

40. M. PEI, *supra* note 1, at 268.

41. See Grubb, *Breaking the Language Barrier: The Right to Bilingual Education*, 9 *HARV. CIV. RIGHTS-CIV. LIB. L. REV.* 52, 55-56 (1974):

Growing up in a family that has inherited the cycles of poverty, living in an environment that includes failures, being rejected by society, and being confronted with his own inadequacies in the school [especially because of the language barrier]—in other words, possessing all the "bad things" of our society—the disadvantaged pupil learns to look upon himself with contempt. Furthermore, his negative attitude of himself is continually reinforced. *Id.*

established the critical importance to the child of acquiring knowledge (especially at an early stage) by means of its mother tongue. Forcing children to be educated in a strange nonnative language—and denying them the opportunity to be instructed in the mother tongue—tends to retard development.⁴² Similarly, access to the elite language is essential for exposure to the larger culture and for effective participation in the power and other value processes of the national community. Denial of such access may generate a self-perpetuating caste-like society, with benefits for a chosen few and utterly repugnant to human dignity values. The importance, finally, of having knowledge of at least one of the world languages increases concomitantly with the accelerating interdependence of the world community. Such knowledge is indispensable for giving the individual access to the cultural heritage of mankind—for orienting him to the past, present, and future of human society, and for enabling him to relate the self, the local community, and the national community, to the global community and the universe. Further, knowledge of world languages is an important base for removing the artificial barriers of isolation erected by “national boundaries.”⁴³

Some requirements of proficiency in particular languages for participation in community value processes may of course have rational relation to the aggregate common interest. All exclusive language requirements should, however, be subjected to careful scrutiny for insuring that they do not comprise arbitrary differentiation. All such requirements should be attended by procedures assuring and facilitating the acquisition of the mandatory languages. This caution applies espe-

42. See *id.* at 53-57. When the language in the home (the mother tongue) is not coterminous with the language of a particular community we are not recommending that the language of the home be taught against the wishes of individuals if such teaching would be disadvantageous. We emphasize both freedom of choice and taking context into account.

43. In sum, to maintain a pluralistic society of rich culture, people should be afforded ample opportunity for expression in the languages of sub-cultures as well as in the language of the large culture, and have access to world languages as well as parochial languages. There must be no interference with private activities in cultivating any of these languages. It is recognized that community resources may be so limited as to preclude supplying alternative languages to the established languages prevailing in the community.

On the importance of access to world languages, see generally A. GUERARD, *A SHORT HISTORY OF THE INTERNATIONAL LANGUAGE MOVEMENT* (1922); O. JESPERSEN, *AN INTERNATIONAL LANGUAGE* (1928); M. PEI, *ONE LANGUAGE FOR THE WORLD* (1958); I. RICHARDS, *SO MUCH NEARER; ESSAYS TOWARD A WORLD ENGLISH* (1968); *STUDY OF THE ROLE OF SECOND LANGUAGES IN ASIA, AFRICA, AND LATIN AMERICA* (F. Rice ed. 1962); J. WHATMOUGH, *supra* note 1, at 51-65; Goodman, *World State and World Language*, in *READINGS IN THE SOCIOLOGY OF LANGUAGE*, *supra* note 2, at 717-36; Samarin, *Lingua Francas of the World*, in *READINGS IN THE SOCIOLOGY OF LANGUAGE* 660-72 (J. Fishman ed. 1968).

cially to language requirements in the conduct of a community's established power processes. It is, as we have noted, all too easy to discriminate against individuals by arbitrary language requirements in processes of authoritative decision.⁴⁴ The only rational limits which a community should be able to place upon its deference to a minority language is the community's ability to finance a multi-lingual system within available resources.

The elements of shared respect suggest a minimum of coercion upon individuals for the compulsory learning of languages. It must be recognized, however, that community interest may upon occasion require compulsory instruction in languages other than an individual's mother tongue. The need for such instruction is sometimes justified in terms of the unity and efficient functioning of a community. "Language," in the words of Dr. Edward Sapir, "is a great force of socialization, probably the greatest that exists," and "the mere fact of a common speech serves as a peculiarly potent symbol of the social solidarity of those who speak the language."⁴⁵ Dr. Herbert C. Kelman's summary postulation that "language is a uniquely powerful instrument in unifying a diverse population and in involving individuals and subgroups in the national system"⁴⁶ is widely shared. Nevertheless, as Kelman himself has cautioned, "some of the very features of language that give it this power under some circumstances may, under other circumstances, become major sources of disintegration and internal conflict within a national system."⁴⁷ It must require a strong case to overcome the presumption in favor of persuasion and enlightenment.

III. TRENDS IN DECISION

A. *Pre-United Nations Protections*

The transnational community has, historically, accorded individuals scant protection against discrimination on the ground of language. As Dr. Alexander Ostrower has observed,

44. See notes 19-32 *supra* and accompanying text.

45. E. SAPIR, *CULTURE, LANGUAGE AND PERSONALITY* 159 (1957).

46. Kelman, *Language as Aid and Barrier to Involvement in the National System*, in *CAN LANGUAGE BE PLANNED?* 21 (J. Rubin & B. Jernudd eds. 1971), reprinted in *2 ADVANCES IN THE SOCIOLOGY OF LANGUAGE* 185 (J. Fishman ed. 1972).

47. *Id.* On the language problems confronting the territorial communities engaged in the task of nation-building, see generally *CAN LANGUAGE BE PLANNED?* 46 (J. Rubin & B. Jernudd eds. 1971); *LANGUAGE PROBLEMS OF DEVELOPING NATIONS* (J. Fishman, C. Ferguson, & J. Das Gupta eds. 1968); R. LE PAGE, *THE NATIONAL LANGUAGE QUESTION; LINGUISTIC PROBLEMS OF NEWLY INDEPENDENT STATES* (1964); M. RAMOS, *LANGUAGE POLICY IN CERTAIN NEWLY INDEPENDENT STATES* (PCLS Monograph Series No. 2, 1961).

Persecution of minorities by way of elimination of minorities' languages from courts, compulsory instruction in the language of the dominant political power, licensing minorities' schools on condition that the minority language be subordinated to the official form of state expression, etc., had continued in Europe until the First World War.⁴⁸

The first significant protection came with the establishment of the League of Nations which was empowered to protect "linguistic minorities," along with "racial, religious minorities."⁴⁹ Under the auspices of the League a network of minorities protection came into being with the League acting as the ultimate guarantor.⁵⁰ A number of states, including Poland, Czechoslovakia, the Serb-Croat-Slovene State (Yugoslavia), Romania, Greece, Austria, Bulgaria, Hungary, Turkey, Albania, Estonia, Latvia, Lithuania, and Iraq, assumed special obligations to protect human rights under this international regime.⁵¹ They undertook to "assure full and complete protection of life and liberty" to all their inhabitants "without distinction" of "language,"⁵² and to assure all their nationals equality before the law and enjoyment of "the same civil and political rights" without distinction as to "language."⁵³

48. 2 A. OSTROWER, *supra* note 9, at 667.

49. See McDougal, Lasswell, & Chen, *The Protection of Respect and Human Rights: Freedom of Choice and World Public Order*, 24 AM. U. L. REV. 919, 1055-56 (1975).

50. *See id.*

51. *See id.*

52. The Treaty with Poland, June 28, 1919, art. 2, S. Doc. No. 348, 67th Cong., 4th Sess. 3717 (1923), as reprinted in LEAGUE OF NATIONS, PROTECTION OF LINGUISTIC, RACIAL AND RELIGIOUS MINORITIES BY THE LEAGUE OF NATIONS, 1927.I.B.2 at 43 (1927) [hereinafter cited as PROTECTION OF MINORITIES BY THE LEAGUE]. The treaty with Poland was the prototype of other comparable arrangements. *See also* The Treaty of Peace with Turkey, July 24, 1923, art. 38, 28 L.N.T.S. 12 at 31, PROTECTION OF MINORITIES BY THE LEAGUE at 97; Declaration concerning the Protection of Minorities in Lithuania, May 12, 1922, art. 2, 22 L.N.T.S. 394 at 397, PROTECTION OF MINORITIES BY THE LEAGUE at 34; Declaration concerning the Protection of Minorities in Albania, October 2, 1921, art. 2, 9 L.N.T.S. 174 at 175, PROTECTION OF MINORITIES BY THE LEAGUE at 4; Treaty concerning the Protection of Minorities in Greece, August 10, 1920, art. 2, 28 L.N.T.S. 244 at 254, PROTECTION OF MINORITIES BY THE LEAGUE at 22; The Peace Treaty with Hungary, June 4, 1920, art. 55, S. Doc. No. 348 at 3563, PROTECTION OF MINORITIES BY THE LEAGUE at 29; The Treaty with Rumania, December 9, 1919, art. 2, *id.* at 3726, 5 L.N.T.S. 337 at 339, PROTECTION OF MINORITIES BY THE LEAGUE at 51; The Peace Treaty with Bulgaria, November 27, 1919, art. 50, PROTECTION OF MINORITIES BY THE LEAGUE at 11; The Peace Treaty with Austria, September 10, 1919, art. 63, S. Doc. No. 348 at 3176, PROTECTION OF MINORITIES BY THE LEAGUE at 8; The Treaty with Czechoslovakia, September 10, 1919, art. 2, *id.* at 3701, PROTECTION OF MINORITIES BY THE LEAGUE at 92; The Treaty with the Serb-Croat-Slovene State, September 10, 1919, art. 2, *id.* at 3733, PROTECTION OF MINORITIES BY THE LEAGUE at 61; PROTECTION OF MINORITIES BY THE LEAGUE at 14 (Estonia); *id.* at 32 (Latvia).

53. The Treaty with Poland, *supra* note 52, art. 7, S. Doc. No. 348 at 3718, PROTECTION OF MINORITIES BY THE LEAGUE at 43. *See also* Treaty concerning the

In clear recognition that freedom from discrimination on account of language is practicable only when freedom of access to languages is assured, these states were made to assume special undertakings in regard to freedom of access to languages. These states explicitly agreed not to impose any restriction on "the free use" by their nationals of "any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings."⁵⁴ Where "an official language" was established, "adequate facilities" were to be accorded nationals of the nonofficial speech "for the use of their language, either orally or in writing, before the courts."⁵⁵ Further, members of linguistic minorities were guaranteed "an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools or other educational establishments, with the right to use their own language."⁵⁶ In areas where significant numbers of nonofficial language speakers lived, the states were obligated to provide "adequate facilities" to ensure that "in the primary schools" the instruction be given to the children of such language background "through the medium of their own language,"⁵⁷ though making the teaching of the official language obligatory was not precluded.⁵⁸ As the Permanent Court of International Justice observed in *Advisory Opinion on Minority Schools in Albania*,⁵⁹ the policy underlying this detailed protection was to ensure that nationals belonging to "linguistic minorities" be "placed in every respect on a footing of perfect equality with the other

Protection of Minorities in Greece, *supra* note 52, art. 7, 28 L.N.T.S. 244 at 255, PROTECTION OF MINORITIES BY THE LEAGUE at 22; The Peace Treaty with Hungary, *supra* note 52, art. 58, S. Doc. No. 348 at 3564, PROTECTION OF MINORITIES BY THE LEAGUE at 29; The Treaty with Rumania, *supra* note 52, art. 8, *id.* at 3727, 5 L.N.T.S. 337 at 341, PROTECTION OF MINORITIES BY THE LEAGUE at 52; The Peace Treaty with Bulgaria, *supra* note 52, art. 53, PROTECTION OF MINORITIES BY THE LEAGUE at 11; The Peace Treaty with Austria, September 10, 1919, art. 63, S. Doc. No. 348 at 3176, PROTECTION OF MINORITIES BY THE LEAGUE at 8; The Treaty with Czechoslovakia, *supra* note 52, art. 7, *id.* at 3703, PROTECTION OF MINORITIES BY THE LEAGUE at 93; The Treaty with the Serb-Croat-Slovene State, *supra* note 52, art. 7, *id.* at 3735, PROTECTION OF MINORITIES BY THE LEAGUE at 62.

54. *See* note 53 *supra*.

55. *See* note 53 *supra*.

56. The Treaty with Poland, *supra* note 52, art. 8, S. Doc. No. 348 at 3718, PROTECTION OF MINORITIES BY THE LEAGUE at 44. *See also* The Peace Treaty with Bulgaria, *supra* note 52, art. 54, PROTECTION OF MINORITIES BY THE LEAGUE at 11-12.

57. *E.g.*, The Treaty with Rumania, *supra* note 52, art. 10, S. Doc. No. 348 at 3727-28, 5 L.N.T.S. 337 at 343, PROTECTION OF MINORITIES BY THE LEAGUE at 53; The Treaty with Poland, *supra* note 52, art. 9, *id.* at 3718, PROTECTION OF MINORITIES BY THE LEAGUE at 44.

58. *See* note 57 *supra*.

59. [1935] P.C.I.J., ser. A/B, No. 64.

nationals of the State,"⁶⁰ and to secure for the linguistic minorities "the possibility of living peaceably alongside . . . and co-operating amicably with" the population that spoke the majority language, while "preserving the characteristics which distinguish them from the majority"⁶¹

B. *Protections Under the United Nations*

The contemporary prescription against discrimination on the ground of language was established by the Charter of the United Nations, and its ancillary expressions. In projecting the general norm of nondiscrimination, the Charter consistently enumerates "language," along with "race, sex, religion," as an impermissible ground of differentiation.⁶² This broad policy was given concrete expression in the peace treaties concluded after World War II between the Allied Powers and, respectively, Italy, Bulgaria, Hungary, Romania, and Finland.⁶³ These states were obligated to "take all measures necessary to secure to all persons" under their respective jurisdiction, without distinction as to "language" or other grounds, "the enjoyment of human rights and of the fundamental freedoms."⁶⁴ They further pledged to "repeal discriminatory legislation and restrictions imposed."⁶⁵

In its further specification of the broad norm projected by the

60. *Id.* at 17.

61. *Id.*

62. U.N. CHARTER, art. 1, para. 3; art. 13, para. 1(b); art. 55(c); art. 76(c).

63. Treaty of Peace with Italy, February 10, 1947, 61 Stat. 1245 (1947), T.I.A.S. No. 1648, 49 U.N.T.S. 3; Treaty with Bulgaria, February 10, 1947, 61 Stat. 1915 (1947), T.I.A.S. No. 1650, 41 U.N.T.S. 21; Treaty of Peace with Hungary, February 10, 1947, 61 Stat. 2065 (1947), T.I.A.S. No. 1651, 41 U.N.T.S. 135; Treaty of Peace with Rumania, February 10, 1947, 61 Stat. 1757 (1947), T.I.A.S. No. 1649, 42 U.N.T.S. 3; Treaty of Peace with Finland, February 10, 1947, 48 U.N.T.S. 203. *Note*, all of the above treaties have been compiled in 4 MAJOR PEACE TREATIES OF MODERN HISTORY, 1648-1967 (F. Israel ed. 1967).

64. Treaty of Peace with Italy, *supra* note 63, art. 15, art. 19, para. 4, 61 Stat. at 1378, 1379, 49 U.N.T.S. at 135, 136; Treaty of Peace with Bulgaria, *supra* note 63, art. 2, *id.* at 1955, 41 U.N.T.S. at 52; Treaty of Peace with Hungary, *supra* note 63, art. 2, para. 1, *id.* at 2112, 41 U.N.T.S. at 172, 174; Treaty of Peace with Roumania, *supra* note 63, art. 3, para. 1, *id.* at 1801, 42 U.N.T.S. at 36, 38; Treaty of Peace with Finland, *supra* note 63, art. 6, 48 U.N.T.S. at 232.

65. *Cf.* Treaty of Peace with Bulgaria, *supra* note 63, art. 3, 61 Stat. at 1955, 41 U.N.T.S. at 52; Treaty of Peace with Roumania, *supra* note 63, art. 4, *id.* at 1801, 42 U.N.T.S. at 38, which provided that the parties to the treaty would enact legislation to prevent imprisonment of persons due to racial origin. Since one of the predominant characteristics of racial origin is its impact upon language, these treaty requirements offer protection for minority languages. *See* the text accompanying notes 96-98, *infra*.

Charter, the Universal Declaration of Human Rights⁶⁶ enumerates "language" as an impermissible ground of differentiation in Article 2,⁶⁷ which is fortified by the equal protection clause of Article 7.⁶⁸ Though the Universal Declaration of Human Rights makes no explicit reference to freedom of access to languages, such freedom would appear inherent in the policy of fundamental freedom of choice which pervades the entire Declaration, especially in those prescriptions bearing upon the right to effective remedy (Article 8),⁶⁹ the right to due process of law (Article 10),⁷⁰ the right to "privacy, family, home or correspondence" (Article 12),⁷¹ the right to freedom of religion (Article 18),⁷² the right to "freedom of opinion and expression" (Article 19),⁷³ the right to education (Article 26),⁷⁴ and the right to participate in the cultural life of the community (Article 27).⁷⁵ The right to education and of freedom of expression, in particular, are intimately linked to freedom of access to language. Thus, Lador-Lederer has observed that "the right of any group to use its own language is anchored in Art. 19 of the Universal Declaration"⁷⁶ (freedom of expression) and Article 26 governing the right to education would be "non-sensical were it to exclude development of the vernacular features of the community."⁷⁷

In the two International Covenants on Human Rights, "language" is again specified as among the impermissible grounds of differentiation in both the nondiscrimination and the equal protection clauses.⁷⁸ Ad-

66. G.A. Res. 217A, U.N. Doc. A/810 at 71 (1948), *reprinted in* UNITED NATIONS, HUMAN RIGHTS: A COMPILATION OF INTERNATIONAL INSTRUMENTS OF THE UNITED NATIONS 1, U.N. Doc. ST/HR/1 (1973) [hereinafter cited as U.N. HUMAN RIGHTS INSTRUMENTS].

67. Article 2 reads in part: "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." *Id.* at 72, U.N. HUMAN RIGHTS INSTRUMENTS at 1.

68. Article 7 reads: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination." *Id.* at 73, U.N. HUMAN RIGHTS INSTRUMENTS at 1.

69. *Id.*

70. *Id.*

71. *Id.* at 73-74, U.N. HUMAN RIGHTS INSTRUMENTS at 2.

72. *Id.* at 74, U.N. HUMAN RIGHTS INSTRUMENTS at 2.

73. *Id.* at 74-75, U.N. HUMAN RIGHTS INSTRUMENTS at 2.

74. *Id.* at 76, U.N. HUMAN RIGHTS INSTRUMENTS at 3.

75. *Id.*

76. J. LADOR-LEDERER, *supra* note 5, at 25.

77. *Id.*

78. Article 2, para. 1 of the International Covenant of Civil and Political Rights reads:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights

addressing the question of rights for minority groups, the International Covenant on Civil and Political Rights stipulates, in Article 27, that

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.⁷⁹

Recognizing the importance of language in due process of law, the same Covenant provides, in Article 14, paragraphs 3(a) and (f), that in connection with "any criminal charge" an accused is to be "informed promptly and in detail in a language which he understands of the nature and cause of the charge against him" and is to "have the free assistance of an interpreter if he cannot understand or speak the language used in court."⁸⁰ Beyond this, general freedom of access to languages can be inferred from a wide range of protections provided in the two Covenants, especially from the protections relating to the right of freedom of inquiry and expression,⁸¹ the right to education,⁸² and the right to participate in the cultural life of the community.⁸³ To achieve "the full

recognized in the present Covenant, 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.

G.A. Res. 2200A, 21 U.N. GAOR Supp. 16 at 53, U.N. Doc. A/6316 (1966), *reprinted in* U.N. HUMAN RIGHTS INSTRUMENTS at 8.

Article 26 of the Covenant provides:

All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Id. at 55-6, U.N. HUMAN RIGHTS INSTRUMENTS at 11.

Article 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights stipulates:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

G.A. Res. 2200A, 21 U.N. GAOR Supp. 16 at 49, U.N. Doc. A/6316 (1966), *reprinted in* U.N. HUMAN RIGHTS INSTRUMENTS at 8.

79. *Id.* at 56, U.N. HUMAN RIGHTS INSTRUMENTS at 12.

80. *Id.* at 54, U.N. HUMAN RIGHTS INSTRUMENTS at 10.

81. The International Covenant on Civil and Political Rights, art. 19, *id.* at 55, U.N. HUMAN RIGHTS INSTRUMENTS at 11.

82. The International Covenant on Economic, Social and Cultural Rights, *supra* note 77, art. 13, 21 U.N. GAOR Supp. 16 at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 5.

83. The International Covenant on Economics, Social and Cultural Rights, art. 15, *id.* at 53, U.N. HUMAN RIGHTS INSTRUMENTS at 6.

development of the human personality,"⁸⁴ to "enable all persons to participate effectively in a free society,"⁸⁵ to facilitate participation in "cultural life"⁸⁶ and enjoyment of "the benefits of scientific progress and its applications,"⁸⁷ and to ensure "the freedom indispensable for scientific research and creative activity,"⁸⁸ as stressed by both the Universal Declaration and the International Covenant on Economic, Social and Cultural Rights, would appear to require all that freedom of access to language, including the mother tongue, the elite language, and world languages, outlined above.⁸⁹

In more explicit prescription the Convention against Discrimination in Education of 1960 prohibits, under Article 1, "any distinction, exclusion, limitation or preference," on "language" or other grounds, which "has the purpose or effect of nullifying or impairing equality of treatment in education"⁹⁰ of "all types and levels."⁹¹ Education includes "access to education, the standard and quality of education, and the conditions under which it is given."⁹² In deference to the needs and wishes of different language groups, the Convention makes clear, in Article 2(b), that it would not constitute discrimination to establish or maintain, for "linguistic reasons,"

separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent au-

84. The Universal Declaration of Human Rights, *supra* note 66, art. 26, para. 2, U.N. Doc. A/810 at 76, U.N. HUMAN RIGHTS INSTRUMENTS at 3; The International Covenant on Economic, Social and Cultural Rights, *supra* note 77, art. 13, para. 1, 21 U.N. GAOR Supp. 16 at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 5.

85. The International Covenant on Economic, Social and Cultural Rights, *supra* note 77, art. 13, para. 1, *id.* at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 5.

86. The Universal Declaration of Human Rights, *supra* note 66, art. 27, para. 1, U.N. Doc. A/810 at 76, U.N. HUMAN RIGHTS INSTRUMENTS at 3; The International Covenant on Economic, Social and Cultural Rights, *supra* note 77, art. 15, para. 1(a), 21 U.N. GAOR Supp. 16 at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 6.

87. The International Covenant on Economic, Social and Cultural Rights, *supra* note 77, art. 15, para. 1(b), 21 U.N. GAOR Supp. 16 at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 6.

88. *Id.*, art. 15, para. 3, 21 U.N. GAOR Supp. 16 at 51, U.N. HUMAN RIGHTS INSTRUMENTS at 6.

89. See text accompanying notes 40-41 *supra*.

90. The Convention against Discrimination in Education, art. 1, para. 1, U.N. E.S.C.O. Res. 119, 11 U.N. E.S.C.O., U.N. Doc. CL/1462 at 1 (1960), *reprinted in* UN HUMAN RIGHTS INSTRUMENTS at 31.

91. *Id.*, art. 1, para. 2, U.N. Doc. CL/1462 at 1, U.N. HUMAN RIGHTS INSTRUMENTS at 31.

92. *Id.*

thorities, in particular for education of the same level.⁹³

Emphasizing the importance of "the full development of the human personality,"⁹⁴ the Convention states, in Article 5, paragraph 1(c), it is "essential" to "recognize the right of members of national minorities to carry on their own educational activities, including the maintenance of schools and, depending on the educational policy of each State, the use or the teaching of their own language," provided "this right is not exercised in a manner which prevents the members of these minorities from understanding the culture and language of the community as a whole and from participating in its activities, or which prejudices national sovereignty."⁹⁵

In addition to all these explicit transnational prescriptions about language, it would appear, since language is often a prime indicator of a "national, ethnical or racial" group, that the various prescriptions designed for the protection of ethnic or racial groups, such as the Genocide Convention⁹⁶ and the Convention for the Elimination of Racial Discrimination,⁹⁷ might on occasion be invoked to protect groups in the enjoyment of their home language.⁹⁸

C. *Regional Protections: The Belgian Linguistic Cases*

The two important regional prescriptions, the European Convention on Human Rights and the American Convention on Human Rights both expressly forbid discrimination on the basis of language. The European Convention, in Article 14, recites:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, *language*, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.⁹⁹

93. *Id.*, art. 2, para. b, U.N. Doc. CL/1462 at 1, U.N. HUMAN RIGHTS INSTRUMENTS at 31.

94. *Id.*, art. 5, para. 1(a), U.N. Doc. CL/1462 at 1, U.N. HUMAN RIGHTS INSTRUMENTS at 32.

95. *Id.*, art. 5, para. 1(c), U.N. Doc. CL/1462 at 1, U.N. HUMAN RIGHTS INSTRUMENTS at 32.

96. Convention on the Prevention and Punishment of the Crime of Genocide, G.A. Res. 260A, 3 U.N. GAOR 174-77, U.N. Doc. A/810 (1948). Its text is reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, *supra* note 66, at 41-42.

97. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106A, 20 U.N. GAOR Supp. 14, at 47-51, U.N. Doc. A/6014 (1965). Its text is reprinted in U.N. HUMAN RIGHTS INSTRUMENTS, *supra* note 66, at 23-29.

98. *Cf.* McDougal, Lasswell, & Chen, *supra* note 49, at 1056-86.

99. BASIC DOCUMENTS ON INTERNATIONAL PROTECTION OF HUMAN RIGHTS 130 (L. Sohn & T. Buergenthal eds. 1973).

Article 1 of the American Convention obliges the contracting states to "respect the rights and freedoms recognized" in the Convention and to "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination" for "language" or other reasons.¹⁰⁰

The meaning of Article 14 of the European Convention was tested in the famous *Belgian Linguistic Cases*.¹⁰¹ During 1962 to 1964, the European Commission on Human Rights received a number of complaints ("applications") alleging that the linguistic system for education in Belgium under 1932 and 1963 Acts was in violation of the European Convention.¹⁰² The petitioners ("applicants"), French-speaking Belgians living in predominantly Flemish (Dutch) speaking communities in the periphery of Brussels, were compelled under the Belgian law to enroll their children in the local schools where they received instruction in Dutch, a language different from that of their parents. If these parents wished their children to be educated in their mother tongue—French—the children would have to be sent, with considerable hardship, to French-speaking schools some distance from their homes. Hence, unlike the Flemish children of the community who received education in their mother tongue—Dutch—the children of the petitioners were alleged to have suffered discrimination in being denied education at the local schools in their mother tongue—French. Six of these petitions (with reference to more than 400 families) were declared admissible by the Commission and the cases were joined.¹⁰³ In June 1965, the Commission filed a lengthy report concluding that the 1963 Acts of Belgium were in various respects incompatible with the stipulation that "[n]o person shall be denied the right to education," in Article 2 of the First Protocol, read in conjunction with the nondiscrimination clause of Article 14.¹⁰⁴

Subsequently, the Commission, in view of its divided opinions on some of the complex issues involved, brought the case before the European Court on Human Rights.¹⁰⁵ Having dismissed a preliminary objection raised by the Belgian government, the Court rendered its judg-

100. *Id.* at 210.

101. "Belgium Linguistic" Cases, 11 Y.B. EUR. CONV. ON HUMAN RIGHTS 832 (1968) (merits).

102. "Belgium Linguistic" Cases, 7 Y.B. EUR. CONV. ON HUMAN RIGHTS 140-62, 252-60 (1964) (applications).

103. *See id.*

104. European Commission of Human Rights, Applications Nos. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63 and 2126/64 against the Government of Belgium by Six Groups of Belgian Citizens ("Linguistic Cases"): REPORT OF THE COMMISSION (adopted on 25th June, 1965).

105. 8 Y.B. EUR. CONV. ON HUMAN RIGHTS 46 (1965).

ment on the merits in July, 1968.¹⁰⁶ The Court first addressed itself to the general question of "the meaning and scope of Article 2 of the Protocol and of Articles 8 and 14 of the Convention."¹⁰⁷ The Court observed that

Article 14, even when read in conjunction with Article 2 of the [First] Protocol, does not have the effect of guaranteeing to a child or to his parent the right to obtain instruction in a language of his choice. The object of these two Articles, read in conjunction, is more limited: it is to ensure that the right to education shall be secured by each Contracting Party to everyone within its jurisdiction without discrimination on the ground, for instance, of language. This is the natural and ordinary meaning of Article 14 read in conjunction with Article 2.¹⁰⁸

Only on one account did the Court come to the conclusion that there had been discrimination because of language, in violation of Article 14 of the Convention.¹⁰⁹ The Court found that this Article, when read in conjunction with Article 2 of Protocol No. 1, established that the Belgian Act of 1963 "prevented certain children, solely on the basis of the residence of their parents, from having access to the French language schools in the six communes on the periphery of Brussels."¹¹⁰

The region covering these special communes, once a Dutch unilingual district, had seen significant influx of the French-speaking population at the turn of the 1960's. The French-speaking population in one of the six communes, for example, increased from 47% in 1947 to 61% in 1961. Consequently, a new law was enacted in 1963 to accord the six communes a special administrative status, making them bilingual in all administrative matters except in education. Instruction in the public schools remained in Dutch, while a second language was permitted at the primary level when requested by a specified number of residents. The Court voiced objection, not to the retention of Dutch as a medium of instruction in the public schools, but to the residence requirements which would automatically exclude from French classes all nonresident French-speaking Belgians.

In contrast, there was no such residence requirement for enrollment in the Dutch classes. "Such a measure," the Court held, "is not justified in the light of the requirements of the Convention in that it involves elements of discriminatory treatment of certain individuals,

106. *Case "Relating to certain aspects of the laws on the use of languages in education in Belgium" (Merits)*, 11 Y.B. EUR. CONV. ON HUMAN RIGHTS 832 (1968).

107. *Id.* at 834.

108. *Id.* at 866.

109. *Id.* at 922-42.

110. A. DEL RUSSO, *INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 140 (1971).

founded even more on language than on residence.”¹¹¹ “First,” the Court spelled out, “this measure is not applied uniformly to families speaking one or the other national language.”¹¹² The “residence condition,” the Court further observed, “is not imposed in the interest of schools, for administrative or financial reasons: it proceeds solely, in the case of the Applicants, from considerations relating to language.”¹¹³

Accordingly, the Court concluded:

The enjoyment of the right to education as the Court conceives it, and more precisely that of the right of access to existing schools, is not therefore on the point under consideration secured to everyone without discrimination on the ground, in particular, of language. In other words the measure in question is, in this respect, incompatible with the first sentence of Article 2 of the Protocol, read in conjunction with Article 14 of the Convention.¹¹⁴

D. *National Protections*

The important contribution to transnational expectation in national constitutional developments, though many “linguistic guarantees” are relatively recent,¹¹⁵ has been in the achievement of a remarkable flexibility in institutions and practices designed to protect freedom of choice in regard to language and to preclude discrimination because of language. These national developments have been aptly described by Professor K. D. McRae as featured by “the diversity of means employed for implementing language rights.”¹¹⁶ He adds:

Constitutional protection may be detailed and explicit, or it may be stated only in general terms or—as in the Belgian case—scarcely at all. Detailed language legislation may exist, or it may not. Language rights may be implemented through local autonomy, decentralization, and federalism, or through the pressure of a central government imposing a policy on the whole country.¹¹⁷

Professor Frank R. Scott notes that “every country that has a language problem, attempts to solve it in its own way,”¹¹⁸ and summarizes that

111. 11 Y.B. EUR. CONV. ON HUMAN RIGHTS 832, 940 (1968).

112. *Id.*

113. *Id.* at 942.

114. *Id.* For the aftermath of this decision, see *id.* at 1045-77; 12 Y.B. EUR. CONV. ON HUMAN RIGHTS 498 (1969). For a detailed analysis of the case, see A. DEL RUSSO, *supra* note 109, at 134-41. See also McKean, *The Meaning of Discrimination in International and Municipal Law*, 44 BRIT. Y.B. INT'L L. 177, 185-86 (1970).

115. McRae, *The Constitutional Protection of Linguistic Rights in Bilingual and Multilingual States*, in HUMAN RIGHTS, FEDERALISM AND MINORITIES 211, 212 (A. Gotlieb ed. 1970).

116. *Id.* at 226.

117. *Id.*

118. Scott, *Language Rights and Language Policy in Canada*, 4 MANITOBA L.J. 243, 247 (1971).

"[t]here are no universal rules, except perhaps the rule that language rights must be respected if you wish to have domestic peace."¹¹⁹

This basic flexibility has been fully documented by Ostrower in his comprehensive study on *Language, Law, and Diplomacy*.¹²⁰ The following "six general patterns,"¹²¹ he finds, have been developed by national communities to cope with "linguistic diversity in modern heterogeneous societies."¹²²

(1) "Legal equality of national languages for all practical and official purposes."¹²³ e.g., Canada, Finland, and South Africa;¹²⁴

(2) "Legal equality of all national languages, some of which are designated as official."¹²⁵ e.g., Switzerland and Belgium;¹²⁶

(3) "Formal equality of national languages (of the U.S.S.R.) conditioned upon doctrinal considerations and changing official policies;"¹²⁷

(4) "Supremacy of the language of the dominant national grouping, considered as the official state language, within a system of constitutional protection of linguistic minorities."¹²⁸ e.g., Yugoslavia, Rumania, and China;¹²⁹

119. *Id.* at 247-48.

120. 2 A. OSTROWER, *supra* note 9, at 589-664.

121. *Id.* at 597.

122. *Id.* at 596.

123. *Id.* at 597.

124. *See id.* at 597-605. On the language problem in Canada, *see generally* CANADIAN CONSTITUTIONAL LAW IN A MODERN PERSPECTIVE 590-633 (J. Lyon & R. Atkey eds. 1970); COMMUNITIES AND CULTURE IN FRENCH CANADA (G. Gold & M. Tremblay eds. 1973); R. COOK, CANADA AND THE FRENCH CANADIAN QUESTION (1966); R. JONES, COMMUNITY IN CRISIS; FRENCH CANADIAN NATIONALISM IN PERSPECTIVE (1967); S. LIEBERSON, LANGUAGE AND ETHNIC RELATIONS IN CANADA (1970); LINGUISTIC DIVERSITY IN CANADA (R. Darnell ed. 1971); REPORT OF THE COMMISSION OF INQUIRY ON THE POSITION OF THE FRENCH LANGUAGE AND ON LANGUAGE RIGHTS IN QUEBEC: BOOK II, LANGUAGE RIGHTS (1972); REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM [Canada] (1967-69); C. SHEPPARD, THE LAW OF LANGUAGES IN CANADA (1971); P. TRUDEAU, FEDERALISM AND THE FRENCH CANADIANS (1968); De Mestral & Fraiberg, *Language Guarantees and the Power to Amend the Canadian Constitution*, 12 MCGILL L.J. 502 (1967); Kerr, *The Official Languages of New Brunswick Act*, 20 U. TORONTO L.J. 478 (1970); McRae, *supra* note 115; Paradis, *Language Rights in Multicultural States: A Comparative Study*, 48 CAN. B. REV. 651 (1970); Scott, *supra* note 118.

125. 2 A. OSTROWER, *supra* note 9, at 605.

126. *See id.* at 605-09. *See also* BELGIAN INFORMATION AND DOCUMENTATION INSTITUTE, THE LANGUAGE PROBLEM IN BELGIUM (1967); C. HUGHES, THE FEDERAL CONSTITUTION OF SWITZERLAND (1954); K. McRAE, SWITZERLAND: EXAMPLE OF CULTURAL COEXISTENCE (1964); Lewis, *The Belgian Linguistic Crisis*, 208 CONTEMP. REV. 296 (1966); McRae, *supra* note 115, at 217-20; Paradis, *supra* note 124, at 652-73.

127. 2 A. OSTROWER, *supra* note 9, at 609-23.

128. *Id.* at 623.

129. *See id.* at 623-30.

(5) "Recognition of a foreign idiom as an auxiliary official state language:"¹³⁰ e.g., Ireland, The Philippines, and many newly independent states of Asia and Africa;¹³¹ and

(6) "Designation of one or more native tongues as the official form of state expression:"¹³² notably the countries in South and South-east Asia.¹³³

The continuing national concern for freedom from discrimination on account of language has been vividly illustrated by the reforms toward bilingualism in Canada and, with a more limited focus, the United States.

In Canada, the drive toward language reforms culminated in the adoption by the Federal Parliament in 1969 of the Official Languages Act,¹³⁴ prescribing "comprehensively for the first time in the field of public language usage."¹³⁵ The Act proclaims that "[t]he English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada, and possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada."¹³⁶ The concluding words "all the institutions of . . . Government of Canada," are highly significant, because they encompass all federal offices and agencies throughout the country.¹³⁷ All official acts, legislative, administrative, or judicial, are required to be promulgated in both languages.¹³⁸

Combining "territorial bilingualism" (language "tied to the land")¹³⁹ with "personal bilingualism" (language travelling "with the person"),¹⁴⁰ as recommended by the Royal Commission on Bilingualism and Biculturalism,¹⁴¹ the Canadian Act provides for the establishment of "federal bilingual districts" wherever the official-language minority of a "census district" or its equivalent constitutes "at least ten per cent" of the total population in the district.¹⁴² Federal services within these districts will, hence, be made available either in English or French at the

130. 2 A. OSTROWER, *supra* note 9, at 630.

131. *See id.* at 630-32. *Cf.* note 47 *supra*.

132. 2 A. OSTROWER, *supra* note 9, at 632.

133. *See id.* at 632-64. *See also*, note 9 *supra*.

134. An Act respecting the Status of the Official Language of Canada, c.54 [hereinafter cited as the Official Languages Act].

135. McRae, *supra* note 115, at 225.

136. The Official Languages Act, *supra* note 134, § 2.

137. *Id.*, §§ 9-11.

138. *Id.*, §§ 3-7.

139. Scott, *supra* note 118, at 248.

140. *Id.*

141. 1 REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, [Canada] (1967-69), at 71-150.

142. The Official Languages Act, *supra* note 134, §§ 12 and 1.

option of a citizen.¹⁴³ The Act, further, provides for the appointment of a "Commissioner of Official Languages for Canada" to oversee its implementation.¹⁴⁴ The net effect of the 1969 Act, as noted by McRae, "points towards a widening of the principle of personality, an enlargement of the right of the citizen to obtain federal governmental services in the official language of his choice."¹⁴⁵

In the United States, the Bilingual Education Act,¹⁴⁶ "a landmark in education legislation,"¹⁴⁷ was adopted in 1967 to meet "the special educational needs of the large numbers of children of limited English-speaking ability."¹⁴⁸ To this end, the Act, through federal financial aid, seeks to encourage local educational agencies to undertake (1) bilingual educational programs; (2) programs designed to impart to students a knowledge of the history and culture associated with their languages; (3) efforts to establish closer cooperation between the school and the home.¹⁴⁹ The general trend of developments within particular nation-

143. *Id.*, §§ 9-11.

144. *See id.*, §§ 19-34.

145. McRae, *supra* note 115, at 226. It may be noted that compulsory bilingualism may under certain conditions violate freedom of choice as much as compulsory unilingualism.

The Official Languages Act in its restricted application to federal purposes and agencies leaves to each province a wide area of linguistic "sovereignty." On April 6, 1976, the Superior Court of Quebec, in a 90-page judgment, rejected the complaint by the Protestant (i.e., English-language) School Boards of Quebec against Quebec's Official Language Act (Bill 22), declaring French as the sole official language of the Province. *See The Gazette (Montreal)*, Apr. 7, 1976, at 1, col. 1. For the background concerning the controversy, *see The Globe and Mail (Toronto)*, Sept. 2, 1975, at 6, col. 5; *id.*, Sept. 16, 1975, at 1, col. 1. For the text of Quebec's Official Language Act (Bill 22, adopted on July 31, 1974), *see Gazette Officielle du Québec (Québec Official Gazette)*, Aug. 21, 1974, Vol. 106, No. 22, pt. 2, at 3889-3913.

146. 20 U.S.C. §§ 880b to 880b-6 (1970).

147. Kobrick, *supra* note 10, at 268.

148. 20 U.S.C. § 880b (1970). "Children of limited English-speaking ability" refer to "children who come from environments where the dominant language is other than English." *Id.*

149. T. ANDERSON & M. BOYER, *supra* note 10; T. CARTER, *MEXICAN AMERICANS IN SCHOOL: A HISTORY OF EDUCATIONAL NEGLECT* (1970); *LANGUAGE AND POVERTY: PERSPECTIVE ON A THEME* (F. Willaims ed. 1970); U.S. COMM'N ON CIVIL RIGHTS, *MEXICAN AMERICAN EDUCATION STUDY* (1971); *Hearings on H.R. 9840 and H.R. 10224 Before the General Subcomm. on Education of the House Comm. on Education and Labor*, 90th Cong., 1st Sess. (1967); *Hearings on S. 428 Before the Special Subcomm. on Bilingual Education of the Senate Comm. on Labor and Public Welfare*, 90th Cong., 1st Sess., ser. 18, pt. 1 (1967); Fedynskyj, *State Session Laws in Non-English Languages: A Chapter of American Legal History*, 46 *IND. L.J.* 463 (1971); Grubb, *supra* note 41; Montoya, *Bilingual-Bicultural Education: Making Equal Educational Opportunities Available to National Origin Minority Students*, 61 *GEO. L.J.* 991 (1973); Sugarman & Widess, *Equal Protection for Non-English-Speaking School Children: Lau v. Nichols*, 62 *CALIF. L. REV.* 157 (1974); Note, *The Constitutional Right of Bilingual Children to an Equal Educational Opportunity*, 47 *S. CAL. L. REV.* 943 (1974).

al communities would, thus, appear to confirm and reflect the strong expectations against discrimination on account of language observed to be emerging at the transnational level.¹⁵⁰

IV. FUTURE DEVELOPMENTS

The future of language discrimination depends on the relative strength of the factors that condition the demands affecting the formation and execution of language policy. The analysis of trend has demonstrated the linkage between political, economic, and other value goals and the demands for discriminatory or nondiscriminatory policies. The break-up of colonial empires brought into power the members of elites many of whose members had fought language discrimination all their lives, and who were willing to support a world public order in which ancient wrongs were divested of legal support. Protests against such forms of oppression were among the strategies by which moral and other modes of assistance had been obtained from foreign allies during years of revolutionary agitation. While it is true that newly established elites were not always consistent with their professed principles, they could scarcely so quickly disavow the principle of free choice of language.

In future years it is to be expected that the world arena will be characterized by contradictory tendencies. One tendency will be for established polities to grow larger; the other will be for microstates to multiply. The result will elevate minor languages and reinstate a new set of struggles for and against language freedom. Presumably the principle of anti-discrimination will benefit. Since the economic base in microstates may be small, it may be common to plead lack of material resources to justify limits on language policy.

Technological factors have already begun to affect language access and use. Electronic instruments make it possible to expedite learning; and automatic translation and interpretation are making headway, though at a slower pace than predicted a few years ago. It is often suggested that "the languages of sentiment" (the mother tongues) will proliferate indefinitely as they are coupled with a limited number of major tongues which are acquired in aid of participation in the larger world. Motives for insisting on anti-discrimination will presumably increase. Happily, the necessary fundamental prescriptions are today reasonably well accepted in the world community. Further progress must depend on mobilizing more effective procedures of invocation and application in the global process of decision.

150. For a detailed documentation, see 2 A. OSTROWER, *supra* note 9, at 596-66.