

Robert Dunbar

## **Successful cohabitation: What contribution can the law really make?**

The subject matter of EFNIL's 2009 annual conference, the relationship between official languages on the one hand and regional or minority languages on the other, is an important one, and as a speaker of Scottish Gaelic, a regional or minority language, and a threatened one at that, it is a reason for optimism that the organisation which represents organisations concerned with national or official languages has chosen this topic. This is because the “cohabitation” to which my paper, refers, that between official languages on the one hand and regional or minority languages on the other, has generally been an uneasy one, and often speakers of regional or minority languages will place blame on official languages, or at least on the state behind the decision to promote an official language, for this at-times troubled relationship. It is, however, difficult to deny that the selection and implementation of an official language (or languages) inevitably has consequences for the other languages of the state, and that frequently these consequences have been negative.

Until the nineteenth century, these consequences tended, however, to be less dramatic than they have been since. Prior to the nineteenth century, the rather limited role of the state in the day-to-day life of the population, combined with the relatively limited integration of local economies into national and trans-national ones, meant that the great majority of the population of the state which spoke regional or minority languages – or, indeed, non-standard forms of the official language – were relatively unaffected by the state's linguistic choices. As a result, great heterogeneity prevailed. As Graham Robb has pointed out in his fine 2007 book *The Discovery of France*, Abbé Henri Grégoire's linguistic survey of France in the early 1790s revealed that only about a tenth of the population of France spoke standard modern French, while over twenty percent could barely hold a conversation in it and a further twenty percent or more were completely ignorant of it (Robb 2007, 50-55). Such public administration as there was before the nineteenth century tended to be carried on by a local officialdom which was generally conversant with the local regional or minority language or non-standard dialect. Nationalist ideologies, which have generally had profoundly negative consequences for regional or minority languages, were only gaining currency at the end of the eighteenth century. Thus, the state had relatively few practical or ideological reasons for insisting upon linguistic uniformity, and even if the state did have such an agenda, it had relatively limited tools for putting it into effect. Most attempts at promoting linguistic uniformity through the cultivation of a “national language” were limited in scope, and in the impact that they had on speakers of minority languages (Wright 2007, 19-41).

Take, for example, a couple of examples from the United Kingdom. Henry VIII keenly promoted English within his kingdom, with a view to creating a uniform, English language-based legal and administrative system. Thus, section 17 of the Act of Union of 1536, the legislation which formally incorporated the Principality of Wales into Eng-

land, provided that the language of the courts in Wales would be English, that oaths, affidavits and verdicts would be given in English, that court records would be kept in English, and that no person should hold public office unless he spoke English. It is generally agreed that this legislation *did* have the effect of increasingly anglicising the Welsh aristocracy, such that they ceased, over time, to be patrons of Welsh-speaking society. However, Henry's legislation generally had relatively little impact beyond the aristocracy; the so-called 'lower orders' of Welsh society continued to be strongly monolingually Welsh-speaking (Davies 1993, 25; Davies 2000, 80).

A similar story could be told in Scotland. James the VI of Scotland and I of Britain viewed the Gaelic language of the Scottish Highlands with suspicion, and saw it as a barrier to the full integration of the Highlands into his kingdom. Much like Henry's Act of Union of 1536, the James' Statutes of Iona of 1609 sought to anglicize the Highland aristocracy, through, for example, requiring prominent West Highland clan chiefs to educate their sons in English in Lowland schools. An Act of the Privy Council in 1616 to ratify the Statutes of Iona announced as a general goal that "the vulgar Inglish tongue be universallie plantit, and the Irishe language [i.e. Scots Gaelic] [...] be abolisheit and removit". Gaelic language activists to this day point to these statutes as an important watershed in the decline of the language; however, their actual effects in terms of producing language shift seem to have been very limited, even amongst the class against which they were directed (MacKinnon 1991, 45-49).

Things changed dramatically over the course of the nineteenth and twentieth centuries, however. In the UK, census data on two of its minority languages, Welsh and Scottish Gaelic, have only been collected since 1881, and it is difficult to be certain of the demographic position of these languages before then. However, in 1891 both languages were in relatively good shape. In that year, 910,289 respondents, or 54.4% of the Welsh population, reported themselves as Welsh-speaking, and 508,036 were monoglots (Davies 2000, 89). In that year there were 254,415 Gaelic speakers – almost seven percent of the population, and about a fifth of them, or 43,738, were monoglots (MacKinnon 2000, 44; Robertson 2001, 84). Over the succeeding 110 years, numbers of speakers of both languages have declined markedly – in the 2001 Census, 582,368 people identified themselves as being able to speak Welsh, or 20.8% of the population aged three and over (Office for National Statistics 2004, 39, 7), and 58,652 people reported themselves as being able to speak Gaelic, or about 1.2% of the population (General Register Office for Scotland 2005, Table 1); aside perhaps for some very young children, there are no longer Welsh- or Gaelic-speaking monoglots.

So, what happened? A number of different factors were at work on minority languages such as Welsh and Gaelic over the last two centuries, but state language policy has played a significant role. The nineteenth century saw more concerted attempts to standardize language use throughout the UK, notably through the school system, and these efforts continued to act to the detriment of Welsh and Gaelic. The Education Act, 1870 for England and Wales and the Education (Scotland) Act, 1872 for Scotland introduced universal state-supported education, but only through the medium of English; there is general agreement that such legislation contributed significantly to the shift from the Celtic languages to English, a shift which is apparent in census returns from 1891

onwards (Davies 2000, 87; MacKinnon 1991, 74-80). The ethos which underlay such legislation continued to prevail into the twentieth century, and has been described by Viv Edwards in these terms:

Inasmuch as a language policy existed in Britain in the first half of the twentieth century, it focussed on the unacceptability of Celtic languages and non-standard dialects of English in education, and the importance of teaching the standard. British schools were monolingual, mono-cultural institutions, one of whose functions was to enlighten those who departed from received linguistic and cultural norms. (Edwards 1984, 49)

At roughly the same time that these changes were being introduced into the education system, new transportation technology, particularly the railroad, promoted greater contact between speakers of Celtic languages and English-speakers, and created greater economic opportunities for those who mastered the dominant language. The introduction of local government in the late nineteenth century, and in the twentieth the development of modern communications technology, such as radio, then television, and of a greatly enhanced state apparatus through, for example, the health care system, has all been accomplished, in the main, through the *de facto* official language, which in the UK is English. Even in the absence of nationalist ideologies – and such ideologies also tended to inform language policy – the assumption was the use of a single, common language was more efficient and should be encouraged (Wright 2004, 42-68; May 2001, 61-68).

The combination of education policies and these other developments produced a minority language-speaking population that generally became bilingual, and created patterns of diglossia which were distinctly disadvantageous for the minority language, in that higher domains (H domains) tended to be reserved for the official language and lower domains (L domains) for the minority language. These patterns of diglossia tended also to be unstable, in that the greater prestige and social and economic opportunities associated with the official language, together with the greater presence of non-speakers of the minority language in most domains, tended to encourage speakers of the minority languages to abandon them even in L domains. So far, so typical, and this story will be a familiar one in most European states.

This process did not always happen peacefully. The privileging of one language or one form of a language created advantages for speakers of that variety, and disadvantages for speakers of other varieties, for example in respect of economic and sometimes social opportunities (see, generally, Tollefson 1991). Nationalist ideologies, always present during this period, often had a highly chauvinist tenor, thereby sharpening popular awareness of linguistic differences, and heightening grievances and resentments of members of minority linguistic communities, particularly where the attitudes engendered in majorities by such ideologies resulted in explicit acts of discrimination and other forms of exclusion based on language or on association with a linguistic minority (Wolff 2006, 58-88, esp. 68-70).

I shall not concentrate on international law in this presentation, as relevant principles may be considered by other contributions (see, however, Dunbar 2007, for an account). However, I thought that I might start with a few words on it, because it does offer a

useful point of reference, or at least a useful point of *departure*, particularly with respect to the goals of managing linguistic diversity in a state and managing the relationship between official languages and regional or minority languages. In this, international law does form a loose framework for state policy, practice and legislation.

So, what does international law tell us? First, it has taken a relatively *laissez-faire* approach to the management of linguistic diversity within states. Generally, states are free to select whichever official language or languages they please, and where they have done so, they are generally entitled to implement such choices in the education system, public administration, legal system, broadcasting system and so forth.<sup>1</sup>

Second, international law has tended to become engaged only where state language policies have contributed to conflict which has threatened peace and stability. The first major attempt at standard-setting with regard to managing linguistic (and wider) diversity came after the First World War, with the so-called League of Nations Minorities System, and was motivated by the perceived instability in parts of central and eastern Europe. The second major attempt came with the burst of standard-setting in the 1990s, primarily within the OSCE and the Council of Europe, culminating in the Framework Convention for the Protection of National Minorities<sup>2</sup> of 1995, but also at the global level in the UN, where in 1992 the General Assembly passed its Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.<sup>3</sup> As with the post-World War One burst of standard setting, this contemporary one came in response to the threat of ethnic violence and instability, this time attendant on the fall of Communism (see, generally, Dunbar 2006).

However, even in the absence of any immediate threat to peace and security caused by domestic language policies, the so-called ‘human rights era’ ushered in by the major post-Second World War multilateral human rights treaties<sup>4</sup> has placed restrictions on the most forcefully assimilationist language regimes, through, for example, the protec-

<sup>1</sup> See, for example, the case of *Podkolzina v. Latvia*, No. 46726/99, Judgment of 9 April, 2002, in which the European Court of Human Rights observed, in the context of the designation of a language as an official language, that the choice of the working language of a national parliament “is determined by historical and political considerations specific to each country” and „is in principle one which the State alone has power to make.” (para. 34). In an EU context, the European Court of Justice found in the case of *Groener v. Ireland*, Case C-379/87, [1989] ECR 3987, that the requirement under Irish law that all teachers must demonstrate proficiency in Irish, even where the teacher was not going to be teaching through the medium of Irish, was not in violation of EU law (in particular, the right to free movement of persons). The Court stated: “The EEC Treaty does not prohibit the adoption of a policy for the protection and promotion of a language of a Member State which is both the national language and the first official language”, which Irish is under the Irish constitution (para. 19).

<sup>2</sup> CETS No. 157, 1 February 1995, available at this website: <http://conventions.coe.int/treaty/en/treaties/html/157.htm>.

<sup>3</sup> General Assembly resolution 47/135 of 18 December 1992, available at this website: <http://www2.ohchr.org/english/law/minorities.htm>.

<sup>4</sup> For example, the United Nation's *International Covenant on Civil and Political Rights*, 16 December 1966 (available at this website: <http://www2.ohchr.org/english/law/ccpr.htm>), and the Council of Europe's *Convention for the Protection of Human Rights and Fundamental Freedoms* (the ‘European Convention on Human Rights’), 4 November 1950, CETS No. 5 (available at this website: <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>).

tion of the right to freedom of expression, as well as through the application of the principle of non-discrimination. Furthermore, there are signs that paradigms other than merely a 'peace and security' paradigm are now beginning to guide the development of international law in relation to the management of linguistic diversity, or, to put it slightly differently, the 'cohabitation' of official languages and regional or minority languages.

In the most recent round of standard setting, which began, as noted, in the early 1990s, a wider approach in the law can be detected, most notably in treaties such as the Council of Europe's European Charter for Regional or Minority Languages<sup>5</sup> and in some of the recent standard-setting within UNESCO, including the Universal Declaration on Cultural Diversity of 2001,<sup>6</sup> the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003,<sup>7</sup> and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005.<sup>8</sup> Increasingly, emphasis is being placed on the positive value attached to cultural diversity, implying a greater duty to protect cultural and linguistic minorities and to preserve and promote the survival of their cultures and languages.<sup>9</sup> At the same time, there is developing in international law a broader conception of human rights in which respect for cultural and linguistic identities is increasingly understood and accepted as an important aspect of the protection of the integrity of the person.<sup>10</sup> Finally, there are also developments in the law relating to indigenous peoples, most notably the 2007 UN General Assembly Declaration on the Rights of Indigenous Peoples,<sup>11</sup> which may well have significant implications over time for the terms of cohabitation between official languages and the languages of such peoples.

I would like now to turn to some general propositions with regard to the role of the law in promoting successful cohabitation that seem to me to flow from these more recent developments in international law. The first is that successful cohabitation requires forms of integration of linguistic minorities that will tend to reduce or eliminate conflict or potential conflict. The second is that successful cohabitation requires the protection and, indeed, the promotion of regional or minority languages. I take it as a given that the achievement of some form of stable diglossia, together with a stabilising of

<sup>5</sup> CETS No. 148, 5 November 1993, available at this website: <http://conventions.coe.int/treaty/en/treaties/html/148.htm>.

<sup>6</sup> Available at this website: <http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>.

<sup>7</sup> 17 October 2003, available at this website: <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>.

<sup>8</sup> 20 October 2005, available at this website: <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

<sup>9</sup> In the preamble to the European Charter for Regional or Minority Languages, for example, reference is made to the contribution to "the maintenance and development of Europe's cultural wealth and traditions" that is made by the "protection of the historical regional or minority languages of Europe", and to the contribution that the protection and promotion of such languages can make to the building of a "Europe based on the principles of democracy and *cultural diversity*" (emphasis added).

<sup>10</sup> See, for example, Henrard 2008, 343-345, in the context of the European Convention on Human Rights jurisprudence.

<sup>11</sup> UN General Assembly Resolution 61/295 of 13 September 2007, available at this website: <http://www.un.org/esa/socdev/unpfii/en/drip.html>. See also the very important International Labour Organization Convention No. 169 on Indigenous and Tribal Peoples, 27 June 1989, available at this website: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>.

demographic patterns which, I think, stable diglossia generally implies, is a necessary minimum condition for the achievement of this second proposition.<sup>12</sup> My final proposition is that achieving the first, the reduction of conflict or potential conflict, is more easily accomplished than the second, the achievement of some form of stable diglossia.

With regard to the second of these propositions, I would also suggest that it is most understandable that we should look to the law to assist us. There is a certain logic to this. After all, as we have seen earlier in this contribution, the law generally played an important role in destabilising regional or minority languages. As we have seen, by introducing universal public education through the majority language alone, the state created a powerful dynamic working against the maintenance of the regional or minority languages. Thus, logic would seem to dictate that if we wish to preserve and promote those languages, we should, for example, legislate to ensure the provision of minority-language education rights. The appearance of state-regulated or, often, state-controlled mass media such as radio and television generally brought the official language into the most intimate of language domains, the homes of speakers of regional or minority languages. A Gaelic-speaking informant in rural Newfoundland once captured perfectly the effects of this on the Gaelic oral tradition, and by implication the language that supported it, in speaking to the Scottish Folklorist Margaret Bennett: “When the television came in the front door[,] the old stories went out the back” (Bennett 1993, 80). Again, the seemingly logical response is to legislate to place obligations on states with respect to minority language broadcasting. And, as discussed earlier, the greater the presence of the state in the daily lives of speakers of regional or minority languages, through, for example, the public administration and the provision of public services, has naturally led to calls for the creation of “language rights” for speakers of the regional or minority languages or, sometimes, calls for “official status” for those minority language, in order to allow them to use their language more widely in dealing with the state.

Though there is an understandable logic to these responses, that logic is not a failsafe. For example, while it is undeniable that the historic exclusion of regional or minority languages from the education system has weakened those languages, it does not necessarily follow that their reintroduction into the school system will, by itself, reverse the effects. In his fundamentally important 1991 book *Reversing Language Shift*, Joshua Fishman has emphasised that what happens in the home is the single most crucial factor in efforts to preserve and promote regional or minority languages. All efforts should be directed at encouraging intergenerational transmission of the language in the home, literally, the passing of the language from parents to their children (Stage 6 in Fishman's analytical framework) (Fishman 1991, 92-95, 111-114). He notes that the school has an important role to play in reinforcing the acquisition of the language that has begun in the home, but he has cautioned that the school cannot be expected to

---

<sup>12</sup> In this regard, in 2007, the UNESCO Ad Hoc Expert Group on Endangered Languages developed a methodology for assessing language vitality and endangerment, entitled “Language Vitality and Endangerment”, submitted to the International Expert Meeting on UNESCO Programme Safeguarding of Endangered Languages, Paris, 10–12 March 2003, available at this website: <http://www.unesco.org/culture/ich/doc/src/00120-EN.pdf>.

replace intergenerational transmission in the home or make up for weaknesses in intergenerational transmission (Fishman 1991, 368-380). While more research remains to be done, there is at least some evidence to support Fishman's assertions. In Canada, for example, where immersion education for children from non-French-speaking homes is now well-established, there have been impressive increases in the numbers of English-speaking Canadians who now claim to be bilingual. However, because learning in the schools tends not to get reinforced outside of the schools, once students graduate, their linguistic ability almost immediately begins to decline. Even at the end of their immersion experience, their actual linguistic abilities in spoken and written French tend to vary wildly. Most significantly, for the purposes of preserving and promoting French, the actual use made by most graduates of immersion programmes tends to be minimal (Fraser 2006, 183-210). Minority language education – both the teaching of the language as a subject and teaching through the medium of the language – can produce ‘census effects’, a phenomenon with which our Irish hosts will be familiar: impressive numbers of people who claim bilingual abilities, but whose true abilities in the minoritised language are limited, and whose use of it is also extremely minimal, thereby creating the illusion that all is well with the minoritised language.<sup>13</sup> I am not suggesting for a moment that minority language education is unimportant in the preservation and promotion of regional or minority languages; I am merely emphasising that it is no panacea.

One of the other contributors to this collection, Miquel Strubell, has developed a very useful model, the ‘Catherine Wheel’ model, to guide the promotion of minoritised languages (see, for example, Strubell 1998, 2001). This model suggests how various legislative initiatives of the sort with which we are concerned here – legislation to guarantee minority language education, minority language broadcasting, minority language public services, and so forth – can create a virtuous and self-reinforcing cycle of language acquisition and use. Let us start with the provision of enhanced levels of minority language medium education. Strubell posits that greater numbers of people with competence in the language will create a greater demand for public services through the medium of the language. This, in turn, will require the employment of greater numbers of people in the public sector with the minority language competences necessary to deliver such services. This will enhance the perceived utility of the language, leading to greater demand to acquire it, and so forth. As Strubell himself has noted, though, the linkages between acquisition, use, demand for services, supply of services, and enhanced desire for acquisition are complex and far from automatic. For example, increased acquisition may not, as we have just seen in respect of the Canadian experience of French immersion education, necessarily lead to greater use or, with it, greater demand for minority language services. Increased employment opportunities for those

---

<sup>13</sup> The 2002 Irish census indicated that some 1.57 million people, or 42.85% of the population of Ireland, reported some competence in Irish; however, only 339,541 used the language on a daily basis, and over three quarters of those, 76.78%, were in the school-going population (where they would be receiving instruction in the language); 78.38% of the 1.57 million who claimed some competence in Irish also claimed either never to have used Irish, or used in infrequently, or did not make any claims about their use of Irish (Ó Murchú 2008, 41). So, universal exposure to some Irish through the education system has produced a large number of people claiming some competence, but this is not matched by actual levels of use.

with the minority language may not lead to significantly higher levels of acquisition: for most speakers of regional or minority languages, there are still far more jobs in which the language is irrelevant than those in which it is necessary, and therefore some expansion in the number of jobs requiring the regional or minority language may not have a dramatic effect on the desire to learn the language. As we shall see, the broader context is enormously important here. Strubell recognises that these sorts of problems will exist, and has observed that the role of the language planner is to intervene to address problems in strengthening the linkages that the model anticipates.

To summarise, I do not mean to suggest that the law is irrelevant to our efforts to preserve and promote regional or minority languages, to achieve at a minimum some form of stable diglossia. I do mean to suggest, however, that the precise effects of the law on sociolinguistic realities, the actual impact on things like the perceived status and perceived utility of the language, and the impact of such perceptions on actual language behaviour, such as the decision to acquire or to use the language, are not yet well understood, and require much more research. In the last part of this paper, I will suggest that both the form of the legislative intervention and the broader context within which such intervention operates will have a profound effect on the actual contribution that the law can make, and that this should be considered carefully by activists who make a priority of engaging in some campaign for some form of legislative recognition, or some form of 'official' status for one's language. I also make a plea for much more research on these complex, difficult, but ultimately very important issues.

In the final part of this contribution, I would like to turn to a consideration of how we might group different types of language legislation, with a view to outlining a typology of such legislation. The aim of this exercise is to better address the ways in which the law can contribute, first to the reduction or elimination of conflict in societies in which an official language (or languages) and regional or minority languages cohabit, and second to the protection and promotion of those regional or minority languages.

The first type of legal regime for language which I would like to consider is what could be called a regime of linguistic tolerance. What does a **tolerance regime** involve? Essentially, such a regime is based on certain core civil and political rights which are now generally accepted in international and domestic human rights standards. I am thinking here of freedoms such as the freedom of expression and the freedom of association: these are freedoms which allow members of linguistic minorities to deal with each other in their own language, to communicate with their customers through the medium of their own language in advertisements and signage, to form their own cultural organisations, their own schools, even their own representative organisations such as political parties, and to develop their own media such as radio stations and newspapers and journals. I am also thinking of the prohibition on discrimination based on language or the association with or membership in a linguistic minority, which helps to ensure against various forms of social exclusion. In a sense, a tolerance regime, understood in these terms, does not need to involve language-specific legislation at all; certain general human rights standards of relevance to language but not explicitly directed at language will suffice.

A tolerance regime is a particularly useful defence against coercive or strongly assimilationist language policies, and such policies are still followed in some places or have been employed to at least some extent in some European states fairly recently. A tolerance regime will guarantee for speakers of regional or minority languages the possibility of creating social spaces – essentially, linguistic domains – in which their languages can be freely used.

Tolerance regimes usually contribute significantly to reductions in conflict or threats of conflict, as they minimise acts of direct interference with language use, something that tends to provoke the greatest resentment and resistance on the part of the linguistic minority. However, tolerance regimes tend to do little to address the various forces which contribute to the unstable diglossia which were described earlier in this presentation, as they do not address the majority-language dominant educational policies which affect, the limited social and economic opportunities that are available through the medium of, and the generally lower levels of prestige associated with regional or minority languages. As a result, linguistic minorities often aspire to a language policy and associated legislative regime that will assist in preserving and promoting their languages by addressing these issues, and that goes well beyond simply ensuring the ability to get on in their private relationships free from interference, as is typical of a tolerance regime.

A second type of legal regime is what could be described as an **accommodation regime**. Under such a regime, the state will provide a service to users of minority languages where language is a barrier because such users have an insufficient command of the official language, thereby effectively limiting their access to the public service being provided. There is a legal argument that provision of minority language services in these circumstances may be implicit in the non-discrimination principle common to most human rights regimes of the equal protection of the law. Under this principle, if a class of citizens are disadvantaged in access to a service, the state is obliged to take steps to address this. Thusfar, however, this principle has not been widely applied in a linguistic context, although in a 1974 American Supreme Court decision in the case of *Lau v. Nichols* ((1974) 414 US 563), the court applied this principle in deciding that the city of San Francisco was under an obligation to make some accommodation for a large number of schoolchildren from Chinese speaking households who had insufficient English to benefit from the English-medium education which they had been forced to receive. The failure of the city to provide some special educational programming – at very least, transitional bilingual education – meant that the Chinese-speaking students were in a disadvantageous position as compared with schoolchildren coming from English-speaking homes.

While it is increasingly common for some public authorities, such as local councils, transport, and health care providers, in linguistically mixed urban environments to provide at least some services through the medium of at least some of the more commonly-spoken non-official languages of the community, this is generally not done in response to or as part of a legislative framework, but as a matter of administrative practice. These accommodation regimes can, of course, be extremely important to many

users of many languages associated with immigrant communities; however, they tend to be less important to users of autochthonous regional or minority languages, as these users tend to be bilingual (at least in a European context they do), due to the historical forces described earlier, and are therefore not seriously disadvantaged by any failure to provide service through the medium of their language. Thus, in practice, accommodation regimes have relatively little impact on the protection and promotion of regional or minority languages; they can, however, promote the reduction of conflict to the extent that they can reduce the social exclusion of non-speakers of the official language or languages, and to the extent that they constitute, and are perceived to be, a recognition and acceptance of linguistic diversity within the society.

One of the most important types of legal regime for the management of linguistic diversity is one which involves constitutional or quasi-constitutional recognition and validation of the minority linguistic community and its claims. This accommodation can take a number of forms. At one extreme is the option of full independence, which is an option that was exercised by most of the republics of the former Soviet Union, and is one that is regularly considered by Quebec nationalists in Canada. Obviously, this provides the opportunity to the linguistic community to select its own language as the official language of the new state, and to promote its generalised use through many of the same techniques that were described above and that have been employed on behalf of official languages in most states. Other constitutional options fall short of independent statehood, but range from significant regional autonomy regimes of the sort that we find, for example, in the Åland Islands, to various forms of federalism, such as exist in Canada, Switzerland and Belgium, to devolution arrangements of the sort we see in the UK and, arguably, Spain (although its regime also has elements of a federal arrangement), to more limited forms such as local self-government regimes. In all these cases, however, there is a recognition that the linguistic minority tends to be associated with a particular region within the state, and some measure of legislative, administrative and sometimes judicial authority is turned over to the relevant regional institutions. The relevance for language policy is that these institutions can choose to promote the use of the regional or minority language in those policy areas for which they have competence under the constitutional settlement, and I shall return to the types of promotional regimes that have been employed by such regional institutions.

Where there are regionally concentrated linguistic minorities, these forms of constitutional accommodation can go a considerable way towards reducing potential conflict, although it must also be recognised that there is disagreement in the now-extensive literature on autonomy regimes as to whether they do indeed promote stable integration (see, for example, McGarry/O'Leary/Simeon 2008, 41-88). With respect to protecting and promoting regional or minority languages, the precise linguistic impact of the constitutional arrangements will depend on a number of factors, including the strength of the promotional regime which, as mentioned, I shall return to shortly. It must be remembered, though, that competence with respect to certain policy areas will be retained by the central or national authorities, and the language policy that those authorities pursue can have a considerable sociolinguistic impact on the regional or minority languages. Where, for example, the central or national authorities have shown

little or no inclination to mirror the linguistic policy followed by the regional authorities, the potentially supportive linguistic impact of constitutional accommodation can be blunted. Indeed, where the range of legislative, administrative and judicial powers allocated to the regional authorities under the constitutional arrangements are limited, existing linguistic hierarchies will not be overturned, meaning that existing diglossic patterns may not be significantly altered, in spite of the supportive policy and legislative approach taken at the regional level.

The next type of legal regime is one in which explicit **language rights** are created. These can, as in the Canadian case, supplement the form of constitutional accommodation chosen, by effectively guaranteeing certain key language rights against both the national/central government and against sub-national (e.g. regional/provincial/state/territorial) governments, or they can, as in the Finnish case, apply in a unitary state in which (outside of the special status of the Åland Islands), no sub-national strata of government exists (except municipal or local governments, which are found in virtually all states). Language rights regimes typically provide to users of the regional or minority language the right to obtain services in their language in a variety of contexts, which often include the right to education in or through the medium of their language, the right to obtain at least some public services through the language, and the right to use the language in the courts and before administrative tribunals.<sup>14</sup> In some cases, such as the Canadian federal regime, the language rights regime can include the right for employees of public institutions to use their language as the language of work.<sup>15</sup> Finally, these sorts of rights regimes often provide for the right to use the regional or minority language within deliberative bodies, such as national, regional or local legislatures.<sup>16</sup>

Advocates of regional or minority languages often place great emphasis on language rights, and seek the establishment of a language rights regime. This is unsurprising. We now live in a 'rights culture' and rights claims are easy to understand. A right generally promises a remedy; where a government is reluctant to recognise a claim, the existence of a right usually allows for a legal recourse in the courts against the state. A right generally creates an unavoidable obligation for the state.

The existence of a language right can certainly contribute to peace and security by giving the minority a mechanism for redressing perceived failures of the state to address seriously their linguistic needs. However, it must also be remembered that language rights regimes are not a panacea, and in particular with regard to the protection and promotion of the regional or minority language, they have their limitations. First, a rights regime is a useful weapon in addressing a failure in policy, but it is probably an imperfect substitute for good policy: most users of regional or minority languages

<sup>14</sup> See, for example, sections 19, 20 and 23, the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, and Parts III and IV, the Official Languages Act 1988, R.S. 1985, c. 31 (4<sup>th</sup> Supp.).

<sup>15</sup> Part V, the Official Languages Act 1988, R.S. 1985, c. 31 (4<sup>th</sup> Supp.).

<sup>16</sup> In Canada, this right applies within the federal Parliament, as well as those of two provinces, New Brunswick and Quebec: sections 17 and 18, the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, and Parts I and II, the Official Languages Act 1988, R.S. 1985, c. 31 (4<sup>th</sup> Supp.), as well as section 133, The Constitution Act 1867 (U.K.), 30 & 31 Victoria, c. 3.

would rather have the state simply provide the services they desire without having to go to the trouble and expense of resorting to the courts. Second, at best, rights create the possibility of linguistic choice: where people are bilingual – the usual situation, as noted, for most users of regional or minority languages in Europe – a language right allows them to use their own language, or the official one. However, speakers of minority languages do not always take advantage of this right to choose to use their own language, something which has been noted in Canada, Wales and many other jurisdictions with some form of rights regime. Often, users of minority languages simply do not know that they have language rights, or what those rights imply, and public institutions may do little to bring the option of using the regional or minority language to the attention of its users. In Canada and elsewhere, the concept of ‘active offer’ has been developed to address this issue;<sup>17</sup> under this concept, the public institution which is under the obligation created by the right to serve the public bilingually must inform the public of their language rights, and must take positive steps to encourage rights holders to make use of their rights. Other reasons for the failure to take full advantage of a language right can be complex. Users of the language are accustomed, through long practice, to using the official language in dealing with the public sector, and may simply feel more comfortable to continue to do so. Because of the historical exclusion of the minority language from the education system, many users of regional or minority languages may simply feel uncomfortable or unable to use their language in more formal settings or in respect of more formal types of subject matter. Sometimes users of such languages actually doubt the quality of the service that they might receive through their language. And, finally, many users of regional or minority languages are reluctant to use their language rights because they fear being perceived as ‘trouble makers’, a theme that comes up frequently in the reports of international treaty monitoring bodies such as the Committee of Experts under the European Charter for Regional or Minority Languages.

Another problem with language rights regimes is that they generally apply only to the state sector; this is problematic because most of our daily communication is with the non-State sector, and outside of the school system, the individual has relatively little daily engagement with the public sector. Thus, a rights regime tends not to have any direct effect on language patterns in a large number of domains, thereby limiting its ability to alter broader patterns of language use.

I shall conclude this contribution by turning back to the types of legal regimes that can be introduced to promote the regional or minority language, particularly by sub-national levels of government created under one of the forms of constitutional accommodation referred to above. The most important of these, in my view, in terms of their

---

<sup>17</sup> Section 28, in Part IV, the Official Languages Act 1988, R.S. 1985, c. 31 (4<sup>th</sup> Supp.), which provides as follows: “Every federal institution that is required under this Part to ensure that any member of the public can communicate with and obtain available services from an office or facility of that institution, or of another person or organization on behalf of that institution, in either official language shall ensure that appropriate measures are taken, including the provision of signs, notices and other information on services and the initiation of communication with the public, to make it known to members of the public that those services are available in either official language at the choice of any member of the public.”

ability to effect significant change in language use, are legal regimes which could be described as **strong promotional regimes**. The best examples of these are from Quebec (specifically, the 1977 Law 101, the Charter of the French Language<sup>18</sup>), from Catalonia (specifically, the 1998 Act on Linguistic Policy<sup>19</sup> and the 2006 Statute of Autonomy of Catalonia<sup>20</sup>), and from many of the newly-independent republics of the former Soviet Union. These various regimes share a certain similarity in terms of content. First, in addition to providing significant guarantees for the use of the minority language in public institutions,<sup>21</sup> in the receipt of public services,<sup>22</sup> and in the court system,<sup>23</sup> they also contain an element of compulsion with regard to education, by making education through the regional or minority language the norm for all students, even those for whom that language is not the language of the home.<sup>24</sup> Second, and crucially, such regimes often seek to create obligations in respect of the use of the language in the private and voluntary sector, the very sectors that are usually overlooked in a language rights regime and, as we shall see, in less strong promotional models. For example, these regimes contain a right to receive services from private and voluntary sector enterprises (as well as from the state sector) in the relevant language<sup>25</sup> and, in some cases, a right to work in that language. They require all signage and advertising to be in the relevant language, although other languages, including (in the case of Quebec and Catalonia) the official language of the state, can also appear.<sup>26</sup> A special feature of the Quebec model are the so-called ‘francisation’ plans which all organisations which employ more than 100 staff must prepare; such plans must describe how French will become the normal operating language in all aspects and at all levels of the organisation.<sup>27</sup> Furthermore, these regimes tend to create fairly powerful enforcement mechanisms, including significant sanctions for non-compliance, and, as in Quebec, a special body which can engage in investigations of compliance failures.

---

<sup>18</sup> R.S.Q. c. C-11.

<sup>19</sup> Act No. 1, of 7th January 1998, on linguistic policy (DOGC N°. 2553, of 9th January 1998).

<sup>20</sup> Organic Act 6/2006, (of 19 July 2006).

<sup>21</sup> Art. 1 of Law 101 makes French the sole official language of Quebec and Article 7 provides that French is the language of the legislature of Quebec, although section 133 of the Constitution Act 1867, Canada's fundamental constitutional document, creates a right to use English as well; under Article 6(2) of the 2006 Statute of Autonomy, Catalan, together with Castilian Spanish, is the official language of Catalonia.

<sup>22</sup> Article 2 of Law 101 provides that every person has the right to have the civil administration and the health and social services, among others, communicate with him or her in French; Article 33 of the 2006 Statute of Autonomy provides that each individual has the right to be served orally or in writing in the official language, Catalan or Castilian Spanish, of his or her choice.

<sup>23</sup> Article 7 of Law 101 makes French the language of the courts of Quebec, although section 133 of the Constitution Act of 1867, provides a right to use English in the Quebec courts.

<sup>24</sup> In Quebec, however, English-speakers and others who were themselves educated in Canada in English are entitled, as a result of section 23 of the 1982 Canadian Charter of Rights and Freedoms, to have their children educated in English.

<sup>25</sup> Article 2 of Law 101; Article 5 also provides that consumers of goods and services have a right to be informed and served in French. In Catalonia, Article 34 of the 2006 Statute of Autonomy provides that each individual, as a user of consumer of goods, products and services, has the right to be served orally or in writing in the official language of his or her choice, Catalan or Castilian Spanish.

<sup>26</sup> See, for example, Title I, Chapter VII of Law 101, particularly Article 58; see Articles 35 and 36 of the 2006 Statute of Autonomy.

<sup>27</sup> Title II, Chapter V, Law 101.

There is no doubt that the Quebec model, arguably the strongest of these strong promotional models, has had a significant sociolinguistic impact, and has observably reversed long-standing patterns of English dominance in certain crucial sociolinguistic domains (see, for example, Levine 1990, and Fraser 2006, 133-160). Command of French has become an essential skill for virtually all employments, and an increasing social necessity for any Quebec citizen interested in integrating socially. The recognition of the importance of effecting change in linguistic practices outside of the state sector is a lesson that is being grasped in other jurisdictions whose regimes formerly were not as strong as those of Quebec, and I would refer you to recent proposals in Wales which will allow the imposition of some limited obligations with respect to the use of Welsh on at least some private sector organisations such as utilities.<sup>28</sup> Reference could also be made to recent legislation in the Canadian territory of Nunavut, a region of the Canadian Arctic that is almost half the size of the European Union but with a population of only about 32,000, about seventy percent of whom speak indigenous Inuit languages; the legislation is in many respects very similar to Quebec's language laws.<sup>29</sup>

It is important to note, though, that there are a number of contextual similarities between most of the jurisdictions which have enacted strong legislative regimes for the promotion of regional or minority languages. The language in question is usually spoken by a majority of the population, although it is vulnerable in certain respects.<sup>30</sup> It is also considered by many to be more than a 'minority' language; it is considered to be the language of a 'nation' centred on the particular territory. Furthermore, languages which benefit from significant promotional measures, including the imposition of duties beyond the state sector, are official languages of the region in question, and are the sole or preferred language of the sub-national unit public institutions. Also, there tends to be broad political consensus on language issues, including the desirability of promoting the use of the language of the sub-state unit in the non-state sector. Additionally, as a result of the form of constitutional accommodation that has been arrived at, all these jurisdictions have at very least strong sub-national governmental structures with very significant legislative power over a wide range of policy areas. Also important is that there is a high level of preparedness for an extension of the linguistic regime into the private and voluntary sector, in the sense that use of the language has already been heavily institutionalised in the State sector, usually by virtue of some form of official status, is present in the education system at all levels, and enjoys a well-developed linguistic corpus, often supported by a powerful corpus planning body.

---

<sup>28</sup> The Proposed Welsh Language (Wales) Measure 2010, available on the internet at this website: [www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-wl.htm](http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-wl.htm).

<sup>29</sup> Inuit Language Protection Act 2008, S. Nu. 2008, c. 17.

<sup>30</sup> In Quebec, while about 83 percent of the population is French-speaking, French-speakers are a minority in Canada as a whole; until the enactment of The Charter of the French Language in 1977, English was the dominant language in some important linguistic domains, including amongst the managerial classes of major enterprises, and immigrants tended to have their children educated in English. In Catalonia, over three-quarters of the population now speaks Catalan, but under the Franco dictatorship, it was largely excluded from all aspects of public life, and most Catalan speakers are also fully fluent in Spanish. In most of the former Soviet Republics, the national language of the newly-independent state is spoken by a majority of the population, but owing to Soviet-era policies, most of the population is also fluent in Russian, which historically had a privileged position.

Where all or a significant number of these conditions does not hold, the creation of a strong promotional regime is less likely, and outside of the cases I have mentioned, these strong promotional regimes are rare. Many regional or minority languages are in a minoritised position even within the territories with which they are historically associated and to which significant autonomy has been given. This means that there is often less consensus on the extension of the language regime beyond the public sector. While the language is often still considered the language of a 'nation' centred on the particular territory, its sociolinguistic and demographic position tends to be weaker than in the cases just mentioned. In these circumstances, we tend to find a more limited or moderate model of linguistic promotion. Good examples are Wales with its Welsh Language Act 1993,<sup>31</sup> the Basque Autonomous Community with its Basic Law on the Normalization of the use of Basque of 1982,<sup>32</sup> and, arguably Ireland, with its Constitution<sup>33</sup> and its Official Languages Act 2003.<sup>34</sup> Unlike the other two examples, Ireland is, of course, an independent state, but one whose historical indigenous national language, Irish, has been significantly minoritised, in a similar way to Basque and Welsh. In all these jurisdictions, legislation generally makes the relevant regional or minority language at least a *de facto* official language, by providing for its use within deliberative bodies, in the provision of at least some public services, and within the courts, although it should be noted that both the Welsh and Irish legislative frameworks rely quite heavily on language schemes developed by public bodies in conjunction with a language planning body, rather than on explicit language rights. In practice, there is usually a lack of substantive equality between the language in question and the official language of the state in many public bodies. The language regime in these moderate legislative models often requires the relevant language to be taught at least as a subject throughout the school curriculum; however they tend not to require students to enrol in minority-language medium education, nor do they even create a right for parents to access such education. Finally, these regimes tend to say little or nothing about the non-state sector. This, in particular, is a major gap, and raises serious questions about the long-term potential of these moderate regimes to effect profound change in existing linguistic hierarchies and therefore in existing generally unstable diglossic patterns.

Beyond these cases, a number of additional examples could be offered of language legislation which represents an even more modest and therefore weaker model of minority language promotion. Recently-passed legislation in support of Gaelic in Scotland is one example;<sup>35</sup> legislation making Maori an official language of New Zealand is another example.<sup>36</sup> Space does not permit me to say much about these various models, of which there are many. However, the scope of such legislation is generally fairly limited: neither the Gaelic or the Maori legislation says very much, for example, about minority language education, and although it makes some reference to the 'official'

---

<sup>31</sup> 1993, c. 38.

<sup>32</sup> Basic Law 10/1982.

<sup>33</sup> The Constitution of Ireland, enacted by the People 1<sup>st</sup> July 1937.

<sup>34</sup> Act No. 32 of 2003.

<sup>35</sup> Gaelic Language (Scotland) Act 2005, 2005 asp 7.

<sup>36</sup> Maori Language Act 1987.

status of the language, it contains little detail on what such status actually means, suggesting that such recognition is more symbolic or rhetorical than substantive. In this context, it is difficult to see how the legislative regime can challenge existing linguistic hierarchies or dramatically affect established diglossic patterns.

So, what conclusions can be drawn from all of this? In some respects, it is too early to tell, because, as I have suggested earlier, we do not yet have a sufficient understanding of the behavioural and other impacts of different legislative regimes. How, and to what extent, do they alter ideologies and attitudes about the value and utility of languages? How do they create greater opportunities to use regional or minority languages? How do they develop the aptitude and the willingness of users of such languages to take advantage of such opportunities? In spite of our knowledge gap, I would still be prepared to argue that language law does matter, and can affect at least some change in patterns of language use. If the goal is to preserve and promote a regional or minority language, a supportive legal regime is a necessary though not necessarily sufficient requirement. The presence of even a weak promotional regime clearly matters to speakers of the regional or minority languages, even if such a regime does not fundamentally or even significantly alter linguistic hierarchies, and with them, beliefs and practices. And, as noted above, even the relatively limited protection offered by a regime of toleration or of accommodation can be of great practical importance to speakers of regional or minority languages which are subject to assimilationist state language policies. There is also increasing recognition that an appropriate legal regime can reduce social tensions and promote peace and stability. However, outside the cases of strong promotional regimes, such as those found in Quebec, Catalonia and many of the former Soviet Republics, even under a regime that is clearly supportive of the regional or minority language, the actual impact of that regime on the preservation and promotion of the minority language is unclear. More research is needed, and a better understanding of the interaction with and impact of other, non-legal factors at play must be developed. This, I fear, is a rather unsatisfactory ending to my story; the only redeeming feature is that it is a story that is still being written.

## Bibliography

- Bennett, M. (1993): Musical traditions of the Scots of Newfoundland. In: *London Journal of Canadian Studies* 9, 63-86.
- Davies, J. (1993): *The Welsh language*. Cardiff: University of Wales Press.
- Davies, J. (2000): Welsh. In: Glanville, P. (ed.): *Languages in Britain and Ireland*. Oxford: Blackwell, 78-108.
- Dunbar, R. (2007): European traditional linguistic diversity and human rights: A critical assessment of international instruments. In: Ruiz Vieytez, E.J./Dunbar, R. (eds.): *Human rights and diversity: New challenges for plural societies*. Bilbao: Humanitarian Net, University of Deusto, 85-110.
- Dunbar, R. (2006): Preserving and promoting linguistic diversity: Perspectives from international and European law. In: Braën, A./Foucher, P./Le Bouthillier, Y. (eds.): *Languages, constitutionalism and minorities/Langues, constitutionnalisme et minorités*. Markham, ONT: LexisNexis Canada/Butterworth's, 65-81.

- Edwards, V. (1984): Language policy in multicultural Britain. In: Edwards, J. (ed.): *Linguistic minorities: Policies and pluralism*. London: Academic Press, 49-80.
- Fishman, J.A. (1991): *Reversing language shift*. (= Multilingual Matters 76). Clevedon: Multilingual Matters.
- Fraser, G. (2006): *Sorry, I don't speak French: Confronting the Canadian crisis that won't go away*. Toronto: Douglas Gibson.
- General Register Office for Scotland (2005): *Scotland's census 2001: Gaelic report*. Edinburgh: General Register Office for Scotland. Available on-line at: <http://www.gro-scotland.gov.uk/files1/stats/gaelic-rep-english-commentary.pdf> (commentary), <http://www.gro-scotland.gov.uk/files1/stats/gaelic-rep-english-tables.pdf> (tables).
- Henrard, K. (2008): A patchwork of 'successful' and 'missed' synergies in the jurisprudence of the ECHR. In: Henrard, K./Dunbar, R. (eds.): *Synergies in minority protection: European and international law perspectives*. Cambridge: Cambridge University Press, 314-364.
- Levine, M.V. (1990): *The reconquest of Montreal: Language policy and social change in a bilingual city*. Philadelphia: Temple University Press.
- McGarry, J./O'Leary, B./Simeon, R. (2008): Integration or accommodation: The enduring debate in conflict regulation. In: Choudhry, S. (ed.): *Constitutional design for divided societies: Integration or accommodation?* Oxford: Oxford University Press, 41-88.
- MacKinnon, K. (1991): *Gaelic: A past & future prospect*. Edinburgh: Saltire Society.
- MacKinnon, K. (2000): Scottish Gaelic. In: Price, G. (ed.): *Languages in Britain and Ireland*. Oxford: Blackwell, 44-57.
- May, S. (2001): *Language and minority rights: Ethnicity, nationalism and the politics of language*. Harlow: Pearson Education.
- Office for National Statistics (2004): *Census 2001: Report on the Welsh Language*. London: The Stationery Office. Available on-line at: [http://www.statistics.gov.uk/downloads/census2001/Report\\_on\\_the\\_Welsh\\_language.pdf](http://www.statistics.gov.uk/downloads/census2001/Report_on_the_Welsh_language.pdf).
- Ó Murchú, H. (2008): *More facts about Irish*. Baile Átha Cliath: Coiste na hÉireann den Bhiúró Eorpach do Theangacha Neamhfhorleathana Teoranta.
- Robb, G. (2007): *The discovery of France*. London: Picador.
- Robertson, B. (2001): Gaelic in Scotland. In: Extra, G./Gorter, D. (eds.): *The other languages of Europe: Demographic, sociolinguistic and educational perspectives*. (= Multilingual Matters 118). Clevedon: Multilingual Matters, 83-102.
- Strubell, M. (1998): Can sociolinguistic change be planned? In: *Proceedings of the 1<sup>st</sup> European Conference 'Private Foreign Language Education in Europe. Its Contribution to the Multilingual and Multicultural Aspect of the European Union'*. Thessaloniki, November 1997. Thessaloniki: Palso, 23-31.
- Strubell, M. (2001): Catalan a decade later. In: Fishman, J.A. (ed.): *Can threatened languages be saved? Reversing language shift, revisited: A 21<sup>st</sup> century perspective*. (= Multilingual Matters 116). Clevedon: Multilingual Matters, 260-283.
- Tollefson, J.W. (1991): *Planning language, planning inequality: Language policy in the community*. London: Longman.

Wolff, S. (2006): *Ethnic conflict: A global perspective*. Oxford: Oxford University Press.

Wright, S. (2004): *Language policy and language planning: From nationalism to globalisation*. Basingstoke: Palgrave Macmillan.