

Language Rights and their Enforcement

Abstract:

This thesis is an attempt to analyze the relationship between normative theory and the practical application of language rights. The intersection of political theory and linguistics is a recent development, and to date the vast majority of the literature focuses attention only on the concepts of linguistic human rights or minority rights. Further, these studies generally take a sociological lens. My goal is provide an example of an alternative type of analysis with a normative focus on trying to understand what a language right is, and how the theory behind language rights can help us understand the outcomes of historical attempts to assert language rights in the modern (post-Westphalian) era.

There is a question that lies underneath any analysis of language rights – namely: what is a language right? It’s a surprisingly tricky question to answer. Rights come in so many different forms, and can range from being incredibly vague (the US Declaration of Independence’s “right to life, liberty, and the pursuit of happiness”, whatever that means) to the dense legalese in part of the Indian constitution: “Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a state shall be transacted in the official language or languages of the state or in Hindi or in English.”¹ My goal is to break down rights based on critical variables that play a role in how effective a given right ends up being.

The relationship between rights and their effectiveness appears underexplored in much of the literature. In discussions of language rights, a focus is on what kinds of rights will best aid minority and indigenous language groups. This is certainly a noble goal, but in talking about what rights certain peoples should have, a peculiar fact about rights is missed. The existence of a right is intimately tied to its meaningfulness, or effectivity. Anyone can propose a right; I could shout out that I have the right to free candy at CVS. However, that won’t stop the police from arresting me for shoplifting. A right without effectiveness in essence does not exist at all. However, if I were able to convince CVS that I had a legitimate claim to free candy, and they allowed me to take it, I would have gained a new right. (This is distinguishable from privileges and favors. Privileges are conditional – I only would get my free candy if I spent a certain amount of money. Favors are one-time deals, such as if I were only allowed to take candy on that

¹ This information is downloaded from the website of the Indian Ministry of Law and Justice (Legislative Department), **The Constitution of India**, Part VI, Chapter III, Article 210

specific night.) A right only truly exists once it has been brought into action. Recently, some people have claimed that all Americans have the right to public health insurance. This is all well and good, except many Americans don't have health insurance, so clearly this claim is untrue. If a right is violated in some cases, it means that it has not been framed specifically enough. You could accurately say that Americans have the right to public health insurance in certain circumstances, such as being a military veteran. However, if those in favor of a right to health insurance are able to convince enough of the electorate that the right exists, a law may be passed stating that all Americans have the right to health insurance, and policies to ensure that would follow. So while the initial assertion is false, it becomes true by getting some body to enforce it. What I've attempted to do is identify the four most important parameters of language rights, and show how they impact enforcement.

Part I: The Parameters of Language Rights

Section One: The Source of Rights

The answer to the question of who needs to be convinced is the source of the right, which I believe is the most fundamental variable in language rights - most fundamental because the source by definition exists before the right does. There are three main sources of language rights.

The first is the state, which is a term I use interchangeably with "government". There is a distinction between the two, but most locations in our modern world work within the system of Westphalian sovereignty. That is to say, each location on Earth falls

within the purview of one and only one state, and this state is, at least in theory, the ultimate authority over this location. Further, each state has (again, in theory) one and only one government. This makes the two terms, for the purposes of my analysis, one and the same. These rights with a state-based source includes those you might find in constitutions, established through the justice system, or through legislative acts (among many other possibilities.) An example of a state based right can be found in the USA, where “in deportation hearings... undocumented persons are held to have a constitutional right to an interpreter before the Immigration and Naturalization Service.” (Piatt 1990: 97-98)

The second source is through international agreements. Strictly speaking, international rights have a state-based source, but with multiple states involved. However, the logic behind the division is based on the externality of international rights. States are, presumably, taking actions on behalf on their citizens, or in many democratic frameworks, actually taking action by the citizens (simply through proxies in republican systems). International rights are generally granted through treaties and other agreements between two or more countries (especially as conditions in peace treaties.) While the government of a people is involved in making the treaty, the negotiated aspect of any agreement means that any rights granted at least partially come from a source that doesn't, in theory, have any authority over the recipients.

An example of international language rights can be found in the Treaty of Lausanne, signed between six of the allied powers in WWI and Turkey to end the Turkish War of Independence. The allies were concerned about how the non-Muslim population of Turkey might be treated, resulting in a few articles in the treaty dealing with language

rights. Article 39 states in part, “No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, in religion...” etc. Article 40 gives non-Muslim minorities the right to establish and control certain institutions and use their own language freely within them, and Article 41 asserts that “where a considerable proportion of non-Moslem nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language.” (De Varennes 1996: 356)

Now, these provisions are definitely rights of citizens, but they aren't exactly granted by their state. I would actually expect that, left to their own devices, the Turkish government would probably not have granted those rights, at the very least not explicitly. This indicates a certain level of imposition that does not exist with regard to state-sourced rights. Even after a war they decisively won, the Turks had to give up some concessions. This is the case for nearly all international treaties, even those that come about through peaceful means. If both sides agreed on a topic already, there would be no need to create a treaty about it. The result is that parties may be forced to protect rights that they have no interest in protecting. And while the source is international, execution is almost always done on a purely national level. International rights (and policies) are extremely difficult for foreign bodies to enforce; (there are countless examples of this – in a Fox News interview from May 29, 2009 where US Army General David Petraeus says, “we have taken steps that have violated the Geneva Conventions”). Despite such open and continuous flouting of international law, there is no real way for the international community to effectively respond short of extreme measures (embargoes and/or military

action). And if a nation has the economic or military strength to ignore these measures (as the US would), they are above reproach. In this way, enforcement of international law often resembles the classic concept of ‘might equals right’. As such, I suspect a close examination of cases would show that rights with an international source are less effective at achieving their goals than national rights and policies, especially where the party in violation is more powerful than the enforcing body.

The final source of rights is through transnational institutions. These are from sources that are above the level of the state, and can be seen as bridging two or more peoples, essentially by breaking the sovereignty of the state to a degree. As stated before, in the Westphalian system, states are supposed to have total autonomy. International agreements work within this structure, as they are between nations, carrying the implicit assumption that the governments involved have legitimate authority to take action affecting the lives of the people within their borders. On the other hand, transnational rights and institutions undermine that by claiming that even the nation-state must obey certain rules external to it. Ropp and Sikkink write (using ‘international’ where I would say ‘transnational’), “because international human rights norms challenge state rule over society and national sovereignty, any impact on domestic change would be counter-intuitive.”² (1999: 4) Examples of these rights would be those granted by organizations such as the European Union, African Union, and United Nations, although it should be noted that these organizations are transnational as opposed to international to varying degrees. For example, The EU is split between these two structures, with half of its legislature – The Council of the European Union - being composed of government

² from chapter 1 of **The Power of Human Rights: International Norms and Domestic Change**, ed. Risse, Ropp, and Sikkink

representatives from member states, and the other half – the European Parliament – being directly elected by EU citizens.

The European Parliament would make up the transnational element of the EU, in that it can make decisions affecting citizens of the various EU nations without the direct consent of the nations themselves. An example of this is in deciding upon the EU budget. According to the official EU website, the majority (two-thirds) of the EU budget comes directly from “the gross national income of each member country.”³ The budgeting decision is made by both the Council and the Parliament. If there is disagreement between the two, a committee is formed to agree on a final text. However, as per a 2009 press release, “if the Council does not approve the joint text, the European Parliament can go ahead and adopt the budget definitively.”⁴ Putting it simply, the Parliament has final say on what to do with money provided directly from member states, even if the representatives of those states disapprove. It is not that the Parliament takes an action that binds member nations so much as it can take action affecting their constituents without the consent of the nation. If the Parliament makes a non-binding resolution, it is still transnational in nature, because it proposes policy affecting people without the involvement of representatives of their national governments. In comparison, because the Council is composed of national representatives, their actions are international.

Human rights are essentially a subdivision of transnational rights (where they intersect with the most extreme application of individual rights, which is a group that will be looked at later). In 1947, the American Anthropological Association submitted to the UN a “statement on human rights” for the UN to take into account when writing up their

³ http://europa.eu/about-eu/basic-information/money/revenue-income/index_en.htm

⁴ <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/531>

“Declaration on the Rights of Man” (which we know as the Universal Declaration of Human Rights.). The statement asserts that the “primary task confronting those who would draw up a Declaration.... is thus, in essence, to resolve the following problem: How can the proposed Declaration be applicable to all human beings...” (539) This suggests that the primary characteristic of a human right is simply that it must apply to all people, regardless of culture, religion, government, language, or any other characteristic.

There is no form of right that could more completely ignore the sovereignty of states. Who you are, or what government presumes authority over you, is irrelevant; human rights are granted regardless, and cannot be rescinded. However, transnational rights have the same problem as international rights: enforcement. In fact, this problem is even stronger for transnational rights, because there are no official state bodies to do the regulating. In international cases, the source is the state (perhaps reluctantly) in concert with a foreign state, or group of foreign states. For transnational rights, the source is more nebulous, granted by bodies with questionable authority, and without the institutional structures necessary to be effective. In particular, human rights don't clearly make an appeal to any body at all. One possible interpretation could be that human rights appeal to each individual person, and are successful when enough people internalize the human right in question to the point where they will not violate it, even at the request of the state. I think this is certainly the most difficult way to create effective rights, although if it works, the effectiveness will be far more complete than for any other tactic.

On Rachel Maddow's September 30th, 2011 show, she said, while talking about minority rights, "... part of the whole concept of rights: they're not supposed to be up for a vote. They're supposed to be unalienable, even by majority vote... When you vote on

rights anywhere in this country, generally you get reminded on why there was a need to call some things rights, and to protect those rights from a vote, from majority rule.” She’s absolutely correct in her interpretation of rights; the nature of rights in normative theory is that generally they are not supposed to be something voted on – they just are. This is critical to their functioning, because we generally discuss rights when talking about people we believe to be disenfranchised – those who are most likely to be oppressed and in need of protection. The United States Bill of Rights is an example of this. The fourth through eighth amendments (literally half of the Bill of Rights) are all guarantees of the rights of criminals and the accused. Why were the founders so concerned with criminal justice? The basic reason is that no politician was ever hurt by being too “tough on crime.” Criminals and the accused are a group that no one is eager to defend, so the founders made sure that certain principles wouldn’t have to be defended.⁵

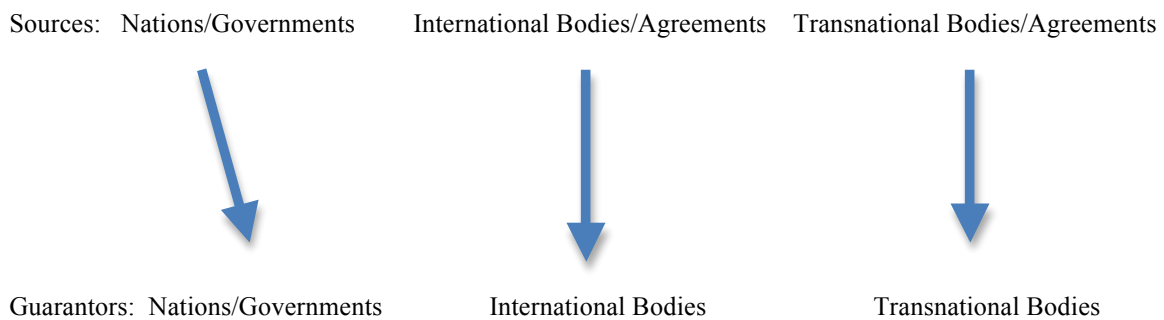
However, what Maddow misses is that initial acceptance must come from some source of “voting”, either explicit or implicit. The ratification of the Constitution (including the Bill of Rights) by the states was by explicit voting. I would argue that even linguistic human rights, to exist, must be “voted” on. This form of voting is through action – when each person accepts a given linguistic human right, and acts in accordance with that acceptance, the right has essentially undergone a vote inside each person’s mind, and comes into being when enough people “vote” yes.

Section Two: The Enforcement of Rights

⁵ This line of reasoning is derived from arguments made by Professor Elkins of Bryn Mawr College in POLS 220 Constitutional Law, Fall 2010

The second way of categorizing rights is by the enforcer of the right. This is where the normative concept of rights smashes against the practical, and thus is where many “declarations” of rights fall apart. It is very easy for a group to say that so-and-so has a right to something; it is something else altogether to actually get someone a specific right.

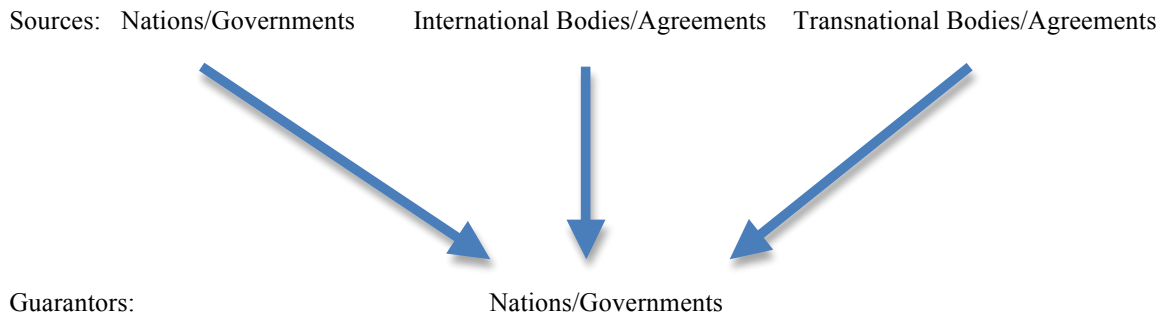
It would seem to make sense that for maximal effectiveness, enforcement of a given right should be up to the same group that is the source of the right. After all, if the right is to exist, it must have been accepted by the source, and having a group that has accepted a given right defend it is vastly preferable to a situation when a group that doesn’t necessarily recognize the legitimacy of the right enforces it. In the latter situation, enforcement is prone to be lax, and if it fails, the right ceases to be a right. So the ideal relationship between source and guarantor would be:



Unfortunately, as previously mentioned, enforcement is, in the end, almost always left up to the nation governing the location where the right in question is to be enforced. This means that that all three forms of rights are to a large extent only as effective as a given nation wants them to be. The problem here is due to a lack of effective international and

transnational institutions for enforcement. Even where those institutions exist, they aren't seen as having legitimate authority, or have only a very limited authority. If we do want to make appeals to international or transnational sources (and I believe each source is appropriate for certain circumstances), these sources must have structures in place to effectively enforce the rights granted - otherwise they are meaningless. This means that the transnational or international body in question must be accepted as a legitimate source of authority. This can be done in two ways. One is through an assertion of power. This is what the UN or NATO does on the rare occasions that they feel it necessary to take physical action to protect a group. While this can work for short-term projects, it is not a practical method of generating authority for enforcing rights. As soon as the assertion of power is gone (the physical threat is removed), the legitimacy of the agency is gone as well. Only a permanent police force would be able to provide consistent enforcement, and this isn't really a feasible or desirable solution. The other option is simply through a change in public perception of international and transnational bodies. This is much more difficult, but the only real permanent solution. It requires the consistent, positive involvement of said bodies into the daily lives of individuals, something that is quite far from the way these institutions currently function on the whole. Right now, the nation-state is generally seen as the only legitimate source of sovereignty by the people of a given state. While government generated laws are generally accepted and followed (and sometimes even enforced by citizens without or against state encouragement, as in the case of vigilante groups trying to keep out illegal immigrants in the US), international and transnational institutions are often perceived as somewhat of a joke. Their bylaws are totally ignored in the day-to-day lives of most people. The only way to bring

legitimacy to them is to change public perception. The Westphalian system is strongly ingrained in our understanding of the political world, but so long as its key framework of location-based state dominance is intact, international and transnational organizations, even where they do currently exist, will be unable to generate the legitimacy to be seen as a source of authority. Thus, our relationship in current practice is:



Section Three: The Recipient of Rights

The third important parameter for describing a specific language right is the recipient of the right. There are two main options here: the individual, and the group. Individual rights are simply rights directed towards individuals at a discrete level. The Universal Declaration of Linguistics rights is a non-binding document signed by UNESCO (United Nations Educational, Scientific and Cultural Organization) in 1996, along with various non-governmental groups, to support various language rights. Article 34 of the UDLR provides an example of an individual right: “Everyone has the right to the use of his/her own name in his/her own language in all spheres, as well as the right, only when necessary, to the most accurate possible phonetic transcription of his/her name

in another writing system.” While the people involved are undoubtedly members of various groups, the rights are only relevant and enforceable on an individual level.

Group-oriented rights are also somewhat self-explanatory. These are rights directed at groups. “Group rights” has also been used to describe rights given to individuals of a particular group, but I won’t be using it in that sense. The reason for this is that, at a certain level, all rights are “group” rights, making that distinction somewhat useless. Human rights are about as individualistic in nature as any right could possibly be (as the whole idea is that every human is born with certain rights that are completely inalienable no matter the particular situation), and yet even these rights are only triggered for the “group” composed of human beings. This makes even more sense when you take into account that different species and organisms have very different rights, both in general morality and in our laws.

An example of a group right can be found in Article 8, section 1 of the UDLR, which states, “All language communities have the right to organize and manage their own resources so as to ensure the use of their language in all functions within society.” What this example makes clear is that negative group rights are a form of political independence. The nature of a negative right is that of non-interference – when applied to individuals, this results in the elevation of the individual above the state. This limits governmental power, but it doesn’t really elevate a threat to sovereignty. However, negative group rights emphasize that the state is not allowed to interfere with the decision of some subgroup. This essentially gives the subgroup greater autonomy and subverts the sovereignty of the nation. This is generally undesirable for nations, who like to maintain internal sovereignty as strongly as possible. Positive group rights have the opposite

effect. These essentially call for aid when necessary from the government, implying that the government has an obligation to help the group in question. We generally only think of governments as having obligations to their own citizens, so positive group rights both assert the larger national identity over the subgroup and place the subgroup in a position of dependence.

There are also two important subdivisions in the group category – indigenous and minority (not that they're mutually exclusive). Both of these fall under the “group” label, but they are special cases, as to generate and protect rights for these groups properly, extra care must be taken. Indigenous and minority groups are generally in sensitive political situations at the national level (which is the level at which they can even have the terms “indigenous” and “minority” sensibly apply.) Indigenous groups usually want to assert independence from the nation(s) they are located within, so working towards a positive group right from a national or transnational source would probably be a mistake. If there is absolutely a need for a positive group right, the goal should really be to gain it from a transnational body, as that would least subvert indigenous claims to autonomy.

Section Four: Negative and Positive Rights

The fourth parameter is a standard dichotomy in rights discourse – that between negative and positive rights. Positive rights are focused around action; something must be done. An example can be found in a treaty between the Lithuania and Poland:

“The Contracting Parties shall, each in its own territory, preserve the ethnic, cultural, linguistic and religious identity of the persons referred to in article 13, paragraph 2, and create conditions for its development. In particular, the Parties

shall... Ensure appropriate opportunities for teaching the language of the ethnic minority, and for instruction in that language in pre-school institutions and elementary and secondary schools.”⁶

The critical element here is that it doesn't simply require the nations in question to allow ethnic minorities to teach in their own language, but rather that they “assure appropriate opportunities”. This would mean that, if for some reason (such as poverty) a minority group did not have appropriate opportunities, the state would be required to step in and take action – perhaps by doing something like paying for teachers who speak the minority language in question.

In contrast, negative rights are about forced inaction. Article 15 of the Draft Declaration on the Rights of Indigenous Peoples states in part, “All indigenous peoples also have... the right to establish and control their education systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.” (De Varennes 1996: 268-269) This UN document is meant to be a restriction on what states can do in relation to indigenous groups. It is a right to non-interference with indigenous education. This can be contrasted with a positive right in the next two lines (which is very similar to the example above), “Indigenous children living outside their communities have the right to be provided access to education in their own culture and language. States shall take effective measures to provide appropriate resources for these purposes.” In other words, states must provide for indigenous people the things they need to properly educate their children.

⁶ Article 15, **Treaty between the Republic of Lithuania and the Republic of Poland on Friendly Relations and Good-Neighbourly Cooperation**, 26 September 1994

Final notes

The concepts of natural and legal rights are commonly discussed in rights discourse. I have chosen not to make these features I discuss in detail, as I believe them to be fairly useless distinctions for the purposes of this analysis. Natural rights are derived from the concept of natural law, where natural laws are “laws laid down by God for human beings in general, just as ‘civil’ laws were laid down by rulers for the governance of particular bodies of citizens... Thus any particular individual was typically subject to two laws – the laws of nature and the laws of the particular state to which he belonged.” (Jones 1994: 75) Jones then elaborates on the linkage between natural law and natural rights. “Natural law bestows natural rights and imposes natural duties. Locke... gave us the fundamental law of nature that ‘no-one ought to harm another in his Life, Health, Liberty, or Possessions’... He then restated that law in terms of the rights it bestowed and the duties it imposed: each individual had a natural right to his life, liberty and property...” (1994: 75-76)

Part II: Enforcement of Language Rights

Introductory Note

Having introduced the important parameters by which rights may be classified, my goal is to use case studies to examine how these parameters effect the enforcement of language rights. Rights are not necessarily specifically referred to as such, but can often be derived from laws. Jones’ statement that “natural law bestows natural rights” is just as

true without the word “natural”. The Jamaican constitution states, “Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which he understands, of the reasons for his arrest or detention.”⁷ This can be taken to mean that Jamaicans have the right to be informed of the reason for their arrested in a language that they can understand.

Section One: The Church v. John Wycliffe

As touched upon in Part I, the dominance of the nation-state in our modern political environment means that the most effective rights and regulations involving language are those enforced by the nation-state. A look at the transitional period from the feudal era to our modern system in England may help highlight this.

During the feudal era, the dominant force was the Catholic Church, and the Church was very strongly opposed to translations of the Bible into vernacular languages. To put it into terms of rights, the Church vehemently denied to the English the right to have religious texts in their own language. This was firmly established at the Synod of Toulouse in 1229, “lay people shall not have books of scripture, except the psalter and the divine office; and they shall not have these in the vulgar.” (De Varennes 1996: 8) ‘Vulgar’ here refers to all vernacular languages; so in practice the only Roman Catholic Bible generally available was the Vulgate, in Latin. This policy, according to De Varennes, was built upon a declaration of Pope Innocent III, “the secret mysteries of the faith ought not... be explained to all men in all places.” (9) As might be expected, many

⁷ Chapter 2, Article 15, **The Constitution of Jamaica**, 6 August 1962

pious Englishmen found this policy horribly oppressive, but until the late 1300's, no full English translation was available.

The man first able to translate the Bible into English was John Wycliffe, a theologian. According to Frederick Bruce, "Wycliffe propounded the theory of "dominion by grace", according to which each man was God's direct tenant-in-chief, immediately responsible to God" (1979: 12) Further, being responsible to God meant knowing the Bible, not Church teachings. As such, each person needed to be able to understand the Bible itself. "Wycliffe's theory of dominion meant that the Bible as a whole was applicable to the whole of human life, and should therefore be available in the vernacular." (1979: 13) Wycliffe trained preachers with his English Bible and sent them around England, with his new order becoming known as the 'Lollards'. Wycliffe may have always believed in the right to have a Bible in one's own language, but he understood that that right would only exist if it was put into practice. We can here attempt to look at the full composition of Wycliffe's proposed right. He wanted the Church to be the body who recognized the legitimacy of the right (or more precisely, a church, as he was willing to commit heresy and essentially create his own order to spread the Bible). As such, ideally the Church would be both the source and the guarantor. Almost any church or religious group is, in theory, a transnational organization, as one's spiritual beliefs are not bound by any nation-state, or subservient to any secular authority. The recipients were to be individuals, as each person would be afforded the ability to read the Bible themselves. Wycliffe's goal seems to have been to secure a negative right, as opposed to a positive right. The evidence for this is that he was perfectly willing to do the translation himself. As such, he wanted only for the Church not to prohibit

vernacular Bibles, as opposed to wanting the Church to provide Bibles in the vernacular. That would have been much more difficult a right to gain, as positive rights always are.

Even though 150 years had passed since the Synod of Toulouse, the Church's stance had not changed. "The established Church... abhorred [the Lollard's] views, although in the beginning they were able to evangelize with relative impunity." (Bobrick 2001: 59) That changed after a peasant's revolt in 1381, four years after Wycliffe's preachers started traveling around England. The revolt was in part blamed on Wycliffe, and so "on May 17, 1382, a special council, made up of... bishops... masters of theology..." and other religious leaders formed in London, "to examine to orthodoxy of twenty-four "conclusions" drawn from Wycliffe's works... [The council] found fourteen of Wycliffe's conclusions "erroneous" and ten heretical." (Bobrick 2001: 62-63) Soon after, an Archbishop on the council "sponsored a parliamentary statute (confirmed by the King)... authorizing the arrest and prosecution of itinerant preachers." (Bobrick 2001: 63) Eventually, the Church secured a Parliamentary ban on all English language Bibles. Church law can be seen as a form of transnational law – and the Catholic Church in its heyday was likely the most powerful transnational institution the world has ever seen. It cut across all borders and boundaries, claiming the allegiance of all Catholics, and demanding of them that being a Catholic meant following their rules, regardless of local authorities. And yet even here, before the rise of the secular nation-state, we see that local governments were seen by the Church as important enough that it felt it necessary to lobby for Parliamentary action. Bobrick quotes the Archbishop of Canterbury at the time as having "learnt by bitter experience that unless the King's arm is stretched against the heretic, the Bishop curses but in vain." (Bobrick 2001: 63)

So with help from the crown, the Church was able to marginalize Wycliffe's campaign. He died two years later, and the Church continued burning his Bibles and persecuting the Lollards, who, "were at constant risk of their lives" (Bobrick 2001: 67). This left his fight incomplete; his teachings were still secretly taught, but access to the English Bible was very limited. From here, it would be another hundred years before there was a significant change in access to the Bible in English. The man who took up the cause was William Tyndale. Martin Luther's vernacular translation made the prospect of an English Bible at the time all the more difficult to imagine. "The idea of a vernacular version of the Scriptures was now tainted by association with Luther's rebellious ire." (Bobrick 2001: 91) The state was still in full support of the church, as in the beginning of his reign, Henry VIII was an ally of the pope. This made finding a way to translate in England impossible, so Tyndale made his way to Cologne to try and publish a translation of the New Testament he had written in Wittenberg. His attempt was successful, and in 1526, copies "concealed in cases of dry goods, began to make their way in vessels toward the English coast." (Bobrick 2001: 99) The Church and state did their best to capture every copy, but of course some survived. Of the "at least eighteen thousand copies" printed between 1525 and 1528, "a substantial number still found their way through clandestine cells of sympathetic reformers into more appreciative hands." (Bobrick 2001: 107) Even outside the country, Tyndale was still hounded, and although in the time between he managed to translate and publish a full Bible. In 1535, he was finally captured, and in October of 1536 was executed.

The king at the time was Henry VIII, who in 1534 established himself as the head of the Church of England. With the break from the Roman Catholic Church, the

Anglican Church needed an English Bible, and in 1535 Henry allowed a translation to be made, and by the end of 1537 there were two full editions of the Bible in English. The combination of the Church and state had been devastatingly effective at dismissing claims to a right for a Bible in the vernacular, but as soon as state support swayed the other way, the Catholic Church was nearly powerless to stop England from asserting the right Wycliffe and Tyndale had fought for so vigorously. To put it another way, Pope Paul III and Henry III made competing claims for authority over English subjects, and Henry's claim is the one that was accepted as more legitimate. While at one point it may have been muddled, in our modern world national-level forces are much stronger than transnational ones in almost every case. The implication is that enforcement of transnationally-sourced rights, and thus their very existence, are entirely up to the whim of the nation-state enforcing the right.

Section Two: Effectiveness of Positive and Negative Rights

Let's consider here for a moment the theoretical positive right mentioned before. What if Wycliffe had wanted the Church to provide a translation of the Bible (we'll say, to each English-speaking parish)? If the Church had provided one single translated Bible to the entire English speaking world, it would have been unclear as to whether they had fulfilled their obligation under the positive right. Positive rights are more complex to satisfy than negative rights, making enforcement a trickier proposition. However, because Bibles are a finite, tangible item, they provide a comparatively simpler case than most modern examples. Slovakia's constitution states in Article 47, "Everyone has the right to legal assistance in court proceedings... Anyone who declares that he does not

have a command of the language in which the proceedings... are conducted has the right to an interpreter.”⁸ The trouble with positive rights is that the onus for what defining the exact nature of legal assistance ends up falling upon the state, but the person meant to be assisted may well disagree. A negative right version in a similar vein might be “the state may not prevent someone without command of the language in which proceedings are conducted from using an interpreter.” In this case,

In 1974, the United States Supreme Court reached a decision on an important case in education law, *Lau v. Nichols*. *Lau* was a case involving Chinese-speaking public school students in San Francisco who claimed that the school system “denied them an education because the only classes offered were in the English language.” (Piatt 1990: 45) It’s important to note that they were not literally banned from the schools. On the contrary, they attended classes in the same classrooms that provided their fellow students with an education. Despite what appears to be equal treatment, the Supreme Court found:

‘Basic English skills are at the very core of what these public schools teach.

Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education... we... reverse the Court of Appeals. [The Civil Rights Act of 1964] bans discrimination based "on the ground of race, color, or national origin," in "any program or activity receiving Federal financial assistance.”⁹

⁸ Article 47, Sections 2 and 4, **The Constitution of the Slovak Republic**, 3 September 1991

⁹ from the Douglas opinion, **Lau v. Nichols**. US Supreme Court, decided 21 January 1974

Interestingly here, as occurs in many cases both in the US and abroad, ethnic status and linguistic status are equated (an equivocation never explicitly stated in the court's decision.) Regardless, the aftermath of the case is that the courts asserted, "Title VI [a section of the Civil Rights Act]... requires districts to take 'affirmative steps to rectify the language deficiency in order to open its instructional program.' (*Lau v. Nichols*)." (Piatt 1990: 47) In other words, all students have the positive right to an effective education, regardless of their native language. However, the exact remedy to the problem of non-English speaking students was left up to individual districts. "In the 1960s... bilingual education – with assimilation into English mediated education as its goal – was adopted as an *expediency* measure to promote greater educational access." (Wiley 2002: 61) For Wiley, "expediency-oriented laws" are "typically used only for short-term accommodations." (Wiley 2002: 48)¹⁰ In other words, the general solution in the US has been to teach non-English speaking students English as quickly as possible, with other instruction occurring in the native tongue, and then switching them over to English for all courses as soon as possible.

For the courts, this seems to be enough to satisfy the right to effective education. But parents could well disagree, as 'effective participation' is a term that is very vague. Being able to speak English and having true fluency are different things, so native speakers will always be at an advantage in an English-only classroom. For those with this viewpoint, the courts (and schools) are failing to enforce a right they have granted. Rights are also applied based upon how reasonable enforcement would be. If one student at a school speaks an obscure language, the 'affirmative steps' available to be taken by a

¹⁰ Both quotes are from chapter 3 of **Language Policies in Education**, ed. Tollefson

district are much smaller – it may simply not be possible to get an instructor for a given language. The size of the language group and the availability of instructors in that language both play a role in what the exact right to effective education is. A parent who believes their child isn't having their right to education fulfilled must then prove both a lack of education and that the steps they want taken in response are reasonable. A determination of reasonableness has many smaller questions embedded, and so each person will likely interpret the exact meaning of the right to an 'effective education' in a different way.

So positive rights are, on a conceptual level, more difficult to enforce than negative rights, as it is more difficult to know when a violation is occurring. To provide an example that shows the comparative ease with negative rights, imagine that the right in question was "the government must allow education in a child's native tongue to take place." If a language community had the resources to put their own English as a Second Language teacher into place, and the school in question consented to it, a violation of the right would be clear as day. As soon as the government takes any action interfering with the program, one can begin to allege a violation.

There is also a second factor that makes positive rights more difficult to enforce, which related to the nature of enforcement itself – namely, it is dramatically easier to stop someone from doing something than to force them to do something. Compare two of our examples from before: the negative right to create and possess a translation of the Bible in the vernacular, and the positive right to be provided a Bible by the Church. Which of these would have been easier to obtain? The former would involve making sure the Church could not take away the Bible(s) in question. Tricky to do, to be sure (without

state help), but what has to be done to enforce the right is clear. The steps to obtain the latter right are far more elusive. Would you physically guide the hand of an unwilling theologian?

It's simply not feasible to force someone to actively provide something. For a positive right to work, the provider of the right must consent to it. That is to say, the enforcer and the provider must be the same, otherwise a positive right will have little to no effectiveness. This has broad consequences for transnational organizations, such as the UN.

Conclusions

I believe the most important conclusion reached in this paper is one asserted early on and (hopefully) supported throughout – namely, that language rights only can be said to exist in so far as they are enforced. This is the foundation for all the other conclusions hinted at or explicitly stated throughout this paper, and the most important question that can be asked when normatively studying the components of language rights is, “How does this affect enforcement?”

The first two parameters I identify (source and guarantor) don't independently have much of a specific impact on enforcement, but the relationship between the two is absolutely important. In theory, there's no reason all three sources couldn't be equally effective, so long as the body acting as the source is also the body guaranteeing the right. However, modern society is still dominated by the Westphalian system, making nation-states the only true guarantor. The claim to total sovereignty of citizens by their national governments is so generally well accepted that international and transnational bodies

seem illegitimate in comparison. Without legitimacy, an attempt to guarantee a right against the will of the nation-state would be seen as a foreign invasion, an attempt by external forces to take over control of the lives of citizens.

The third factor, group or individual rights, is mostly important in how the former interacts with positive or negative rights, the fourth parameter. Positive group rights tend to grant additional authority to the source of the right. If, as is the case in many situations, the group calling for the right wants to maintain their own sovereignty, they risk losing the war to win a specific battle. Negative group rights tend to have the opposite effect, making them particularly desirable for indigenous groups, but much more limited in potential scope, and less likely to be enforced.

Finally, in general circumstances, positive rights are much less likely to be enforced than negative rights. This is simply due to the nature of action versus prevention. It is much easier to identify when a right to non-interference is not being enforced than when a right to some sort of state support is not. Further, it is easier to take action to stop someone from doing something (enforcing the negative right) than it is to force someone to do something (enforcing a positive right).

In general, this paper provides just a taste of how linguistics can interact more strongly with the normative aspect of political science. Current work seems to often be focused on trying to put rights into place that will protect the people who are most vulnerable culturally and linguistically, an important sociological goal. However, providing a stronger normative background would allow linguists to more closely tie certain claims to language rights with established principles of justice, giving increased legitimacy, and perhaps increasing the effectiveness of the work done in the field.

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