Linguistic human rights as a source of policy guidelines: A critical assessment

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The ‘linguistic human rights’ (LHR) perspective, though relevant to the protection and promotion of minority languages (or, more generally, of linguistic diversity), displays one major weakness, namely, its almost exclusive reliance on moral considerations. Although LHR advocates often back up their claims with other (including economic) arguments, the latter often fail to pass ‘hard’ validation tests. Hence, the actual import of LHR arguments is constrained by the extent to which the underpinning moral considerations are shared by public opinion and politicians. Even if there is broad consensus around values, arguments in favour of minority language rights can be defeated by three types of objections that have to do with feasibility, costs, and burden sharing. In order to overcome these objections, it is necessary to draw on the tools of policy evaluation, which provides strong arguments in favour of linguistic diversity.

KEYWORDS: Language policy, language planning, policy evaluation, language rights, efficiency, cost-effectiveness, fairness

INTRODUCTION

This paper is intended as a step in a progressive endeavour towards developing a public policy perspective on the management of linguistic – and also, more broadly, ethnic and cultural – diversity. What makes such an enterprise useful is the need to be able to provide convincing rejoinders to questions such as ‘Minority language maintenance? Why bother?’ – which are often heard once one ventures away from pro-linguistic human rights (LHR) circles. As we shall see, the standard, essentially normative LHR argument, though socially and politically relevant, often fails to provide an adequate response to this challenge.

Building on earlier and current work (see, in particular, Grin 2003a, 2003b, 2003c; Grin and Vaillancourt 2000; Kymlicka and Grin 2003), this paper attempts to deepen our understanding of the connections between the various conceptual elements that should be integrated in a general theory of diversity-in-society, with particular emphasis on the policy level – that is, on
the guidelines and instruments applicable by a linguistically diverse society trying to deal with this diversity in a principled and socially desirable manner.

The issues at hand are complex, and this paper does not claim to offer a comprehensive treatment. It focuses instead on one key aspect of the problem, namely, the convergence (or lack thereof) between the LHR argument and the principles of ‘efficiency’ and ‘fairness’ that should, in theory, govern public policies in general, and should arguably also guide language policies.

FOUR PROPOSITIONS AS A STARTING POINT

This paper builds on four analytical starting points. These points are discussed in detail in the references mentioned in the introduction above, and in order to move straight to the main topic of this paper, the following propositions (P1 to P4) will be taken as given:

P1 – Need for policy intervention: Ethnic, linguistic and cultural diversity is a feature of society that cannot be left to itself, because it is both conflictual and threatened. First, without endorsing all the tenets of ‘conflict linguistics’ (Nelde 1992), we may recognize, without inferring any causal direction, that ethnically, linguistically or culturally different groups are liable to compete over material and symbolic resources within a given social, political and economic space. It follows that conflict tends to develop along ‘ethnic’ divides perceived here in a broad sense, and in full recognition of the essentially constructed character of such divides (Anderson 1991; May 2001). This conflict needs to be arbitrated to prevent its potentially disruptive and almost unavoidably unfair effects – where ‘unfair’ often also means ‘contrary to human rights’. Second, diversity is threatened, as evidenced most eloquently by the fact that small languages are disappearing at a fast rate (Skutnabb-Kangas 2000). Unless diversity is considered to have no effect on the welfare of societies (and the extinction of languages is deemed to be unproblematic from perspectives other than welfare), the threatened character of diversity constitutes one more reason for society to intervene (e.g. through policy).

P2 – Objective and subjective diversity: It is useful to make a distinction between ‘objective’ and ‘subjective’ diversity. The recognition of the difference between these two levels may help us resolve an apparent paradox, namely, that manifestations of conflict linked to diversity seem to be more frequent nowadays, despite the fact that diversity is being seriously eroded. The apparent paradox may be resolved by noting that although objective diversity is unquestionably in decline, subjective diversity (that is, diversity perceived by social actors in their everyday life) is on the rise, largely as a result of four major trends: (1) international migration; (2) the reassertion of long-repressed local identities; (3) the development of supra-national bodies; and (4) the broad phenomenon of globalization, embodied in the intensification of international trade, the decline in the relative price of long-distance travel and
communications, etc. Readers will note that because these two trends operate on distinct planes, the above does not imply that subjective diversity overrides objective diversity.

**P3 – Language policy as public policy:** The development of public policy is a legitimate societal and political response, on the one hand, to the conflicts that are associated with diversity (again, without making any assumption regarding the causal directions involved) and, on the other hand, to threats on diversity. Public policies dealing with diversity may be broadly characterized as diversity management, and language policy is a very manifest type of diversity management. Language policy therefore emerges as one of the crucially important areas of policy development for the 21st century. Just like any form of public policy, the chief justification of language policy is that it aims at increasing welfare.\(^3\) Despite the difficulties associated with the operationalization of the concept of welfare (such as the question of the principles for choosing one among a potentially infinite set of Pareto-optimal policy outcomes), there seems to be no clearly superior alternative as an overarching criterion.\(^4\) It follows that, in a democratic society, proposed language policy measures must be made amenable to evaluation, if only to have a more thorough understanding of the best policy alternatives at hand.

**P4 – Function of language policy evaluation:** The chief purpose of evaluating language policies as a form of public policy is to contribute to democratic political debate by clarifying language policy options, in particular by spelling out their implications at two levels: the allocative level (that is, the relative 'efficiency' and 'cost-effectiveness' of competing options\(^5\)) and the distributive level (that is, the identification of the ‘winners’ and ‘losers’ under various policy alternatives, including the identification of the extent of the transfers involved). It clearly is no substitute to political debate, and can in no way be expected to dictate policy solutions. Despite its limitations, however, policy evaluation remains an irreplaceable tool, and the questions it raises, which are both politically and epistemologically legitimate, cannot be put to rest simply by an invocation of moral values.

These four propositions will not be discussed further here, because the gist of the argument in this paper is elsewhere. Hence, the unconvinced reader may wish to treat them as mere working hypotheses, since this will enable us to move on to the issue of the convergence (or not) of the policy analysis perspective with the LHR perspective.

**LIMITATIONS OF THE LHR CLAIMS**

Some of the limits of the LHR claims can be summarized by returning to our rhetorical question ‘Why bother?’

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Let us begin by observing that the question ‘Why bother?’ can mean rather different things – for example with respect to minority language protection and promotion, a case I will now use to illustrate my point:

- First, if a person rejects minority language protection and promotion, this rejection may be challenged through a moral argument; the latter can be formalised as an LHR discourse in the context of a rights-based debate. This point is taken up again later on in this section.
- Second, even if it is considered morally right, minority language protection and promotion may be rejected on grounds of feasibility, giving rise to a (mostly) sociolinguistic discussion about language dynamics. This point, along with the following, is discussed in the next section.
- Third, even if minority language protection and promotion are considered morally right and practically feasible, they may be rejected by some on the grounds that it constitutes a waste of scarce resources that society had better spend on other pursuits – such as free pre-school facilities, better health care for the elderly or safer public transport. This gives rise to a discussion on allocative efficiency or effectiveness.
- Fourth, even if minority language protection and promotion are considered morally right, technically feasible, and are seen as a proper allocation of scarce resources, it may not be possible to agree on the sharing of the direct costs and of the net transfers involved. This gives rise to a debate on distributive fairness, which will be addressed in the section on Distributive Justice.

All four points have to be addressed in order to make a convincing case in favour of minority language protection and promotion. Let me stress that the standards of ‘convincing-ness’ aimed at must be demanding and uncompromising. More bluntly, it is not enough to preach to the converted, and establishing the relevance of minority language protection and promotion as part of ‘diversity management’ generally requires more than the moral justifications that usually serve as a basis for the standard rights-based arguments.

What the LHR discourse does offer are some of the key arguments relevant to the debate in the first of the above four-step breakdown. It certainly makes sense to derive the proposition that ‘minority language protection and promotion are proper goals for society to pursue’ from some notion that they are part and parcel of human dignity.6 In fact, moral or rights-based arguments are those most often invoked, and the amount of literature on this type of reply to the question ‘Why bother?’ dwarfs the literature devoted to other ways of answering it.

However, as we have just noted, moral arguments often fail to impress those who do not share the same moral convictions. Furthermore, dismissing off-hand the views of opponents of LHRs is not only tactically inadequate – at least for anyone who is genuinely concerned about such rights – it is also philosophically weak, since it would imply a belief in the *a priori* (as opposed to an
explicitly argued) superiority of the arguments of anyone who happens to agree with us. This is not to say that rights-based arguments are useless. However, it may be that the traditional exercise of commentary on international legal instruments, which often amounts to a somewhat exegetic, and circular, discourse on normativity, has partly run its course, and that the most useful contributions of the rights-based perspective now lie elsewhere. Promising avenues include, in my view, a progressive absorption of some aspects of the rights-based discourse into the policy analysis perspective. In the same way, the critique, in LHR perspective (May 2003; Skutnabb-Kangas 2004), of the generally unquestioned assumption that majority discourses are per se legitimate (implying that only minority discourses need justification) (see, e.g., Laitin and Reich 2003), deserves more consideration in legal theory. The questioning of majority privilege carries implications for the analysis, using rights-based considerations, of the distributive problem.

One may also choose to sidestep the discourse of rights entirely, and to posit minority language protection and promotion as a valid policy goal from a purely welfare standpoint. This, however, raises matters of resource allocation in language policy, which are addressed in the following section.

RESOURCE ALLOCATION IN LANGUAGE POLICY

Matters of resource allocation are central to steps 2 and 3 of the above four-step breakdown of the challenges that language policy must face. They also lie at the core of a policy analysis exercise, in the sense that the emphasis is placed on standard policy analysis issues, namely ‘what?’ – that is, ‘what (precisely) should be done?’ – and even more on the question ‘how?’, that is, how goals set through political debate upstream from the policy work should be implemented.

One of the problems of minority language protection and promotion is one of feasibility. Many authors, including noted commentators on minority languages, have dismissed efforts to preserve them on the grounds that such efforts are ultimately ineffective, not to mention the fact that they may even run contrary to the wishes of the communities whose languages are at stake (see May 2001: Ch. 4 for examples of this type of rationale; see also May this issue). What I call the internal effectiveness argument against minority language protection and promotion actually focuses only on the first issue, and claims that no matter what we do, languages come and go: some are doomed to extinction, and language revitalisation is simply not feasible.

This is largely an empirical sociolinguistic question, which will not be discussed here. It would also be of limited relevance to call upon the frequently mentioned (and somewhat contrived) example of the rebirth of Hebrew. Let us simply observe that in recent years, languages that had been summarily dismissed as moribund have been doing rather well for dying languages (consider, for example, the case of Welsh), and that the conditions are more favourable.
now than they have been for a long time. This is the result of the increased legitimacy of minority languages, which can indeed be credited in large part to the LHR argument. In fact, there seems to be no overwhelming reason why language revitalisation is intrinsically impossible (Fishman 1991; Grin and Vaillancourt 1999). Even some aspects of the process of globalization arguably strengthen the long-term prospects for small languages (Grin and Rossiaud 1999).

Suppose that this issue has been settled in favour of minority language protection and promotion, and that it is seen as practically feasible in addition to being morally right. Many, however, may contend that minority language protection and promotion represents an inappropriate use of scarce resources. This view has been the object of a recent restatement by Jones (2000), who starts out by claiming that mankind needs a ‘common language’ (in itself a legitimate starting assumption for a scientific debate) but then progressively slips into a dismissal of minority language protection and promotion, even though this is a logically unrelated question.8

The argument is well known and cannot be satisfactorily countered on moral grounds. Put differently, moral or rights-based considerations are simply not relevant, not just because persons who consider minority language protection and promotion an ill-advised policy do not consider that there is any such thing as a ‘right’ to the survival of one’s language, but also because they locate the question on a different plane, namely, they reject the notion that it makes sense, from a welfare theory perspective, to engage resources in minority language protection and promotion.

To a large extent, this also remains an empirical question. Not only do we lack a body of incontrovertible empirical evidence that would prove that protecting and promoting minority languages (conceivably as part of a broader policy in favour of overall diversity, of which each minority language is a component) is a wise allocation of resources; we also do not yet have a general theory to deal with this question in analytical terms. Only the most general organizing principles of such an approach are available, along with a respectable body of circumstantial evidence. However, both suggest (though they do not prove) that from a welfare theory perspective, it is generally beneficial for society to protect and promote linguistic diversity. The main reason behind this is that linguistic diversity carries both costs and benefits, and that whereas benefits increase at a decreasing rate, costs increase at an increasing rate, yielding the apparently innocuous, but politically far-reaching implication that there exists such a thing as ‘optimal diversity’, and that this optimum is neither zero nor infinite (Grin 2003a, 2003c).

Much of the work to be done has to do with identifying and measuring the benefits and costs of language policies, or of the protection and promotion of a particular language, or of linguistic diversity. The conceptual difficulties of the enterprise are considerable. Distinctions need to be made between ‘market’ and ‘non-market’ benefits and costs, both at the ‘private’ and ‘social’ level, the
latter being an aggregation, but certainly not a simple sum, of the former. The public good character of linguistic diversity undoubtedly strengthens the case for state intervention, but raises conceptual problems of another order, which may be studied, for example, using game theory or network theory. However, many of the theoretical problems involved remain, at this time, only partly identified. Shortcuts towards the estimation of the net social value of different linguistic environments (that is, more or less diverse ones) are theoretically possible by importing methods from environmental economics, particularly the 'contingent valuation' method. This strategy rests on the observation that there are strong similarities between the policy evaluation problems raised by environmental and those raised by linguistic variables.  

To the extent that the approach requires the identification and measurement of both benefits and costs, only estimations of net value (that is, 'benefits minus costs' – including both 'market' and 'non-market' benefits and costs) are conclusive. Nevertheless, it is not without relevance to point out that costs (about which a little more is known) are generally lower than is commonly believed (Grin 2004a). Let us quote three examples:

- independent estimations, on the Basque country and Guatemala, of the cost of moving from a monolingual to a bilingual education system (that is, one offering a choice between a majority-language and a minority-language stream) show that this move entails an additional expenditure in the region of four to five percent of average per-capita spending in the system, tapering off after a few years and stabilizing at less than two percent;
- the total cost of the far-reaching Charter of the French language in Québec (including estimates of output loss generated by the implementation of the Charter) ranges, depending on the assumptions made, from 0.28 percent to 0.48 percent of provincial GDP – that is, less than half a percentage point;
- even the supposedly horrendous cost, to the European Union, of having 11 official languages, amounted to 0.8 percent of the EU's budget, or 1.82 Euros per resident and per year. Even pessimistic projections for the post-enlargement European Union with 20 official languages (and potentially 380 translation directions) yield cost estimates well below six Euros per resident and per year.  

Summing up our brief excursus into the allocative dimensions of the problem, we can conclude, pending further examination, that the argument for the protection and promotion of minority languages (or for linguistic diversity in general) looks stronger, in terms of welfare theory, than the argument against. Putting it differently, the analytical results and the empirical information currently at hand suggest that supporting linguistic diversity is good public policy. Although many LHR advocates would consider this a self-evident truth, it must be remembered that not everyone shares this view, and that the importance of the above result is that it obtains independently of any moral or rights-based considerations. Much remains to be done, however, at both the theoretical and
the empirical level, to develop a general approach that could also be used to assess specific policy proposals in specific contexts.\textsuperscript{11}

**DISTRIBUTIVE JUSTICE**

Even if the protection and promotion of minority languages (or of diversity in general) is seen as morally justified, technically feasible, and is considered a wise allocation of scarce resources, the question will still arise of the sharing of the cost of the policy measures. This question needs to be addressed even if one has established beyond doubt the result that the policy would be beneficial to society as a whole. The reason is that some members of society are likely to lose while others win from the policy; and even if all win, some will win more than others, and not all transfers are considered socially acceptable. The same problem arises, for example, in education. Non-parents as well as parents subsidize the public education system through their taxes, although parents are its primary beneficiaries. In this case, the transfer occurs between two categories of population defined along lines other than socio-economic status. In other cases, transfers take place between socio-economic groups. For example, free or low-tuition university education (attended mainly by middle-class young adults) may be rejected on the grounds that it implies a subsidization of the middle class by the entire mass of taxpayers, and hence a transfer from the relatively poor to the relatively rich.

As it turns out, distributive considerations contain strong arguments in favour of protecting and promoting minority languages, because denying such protection amounts to a transfer from the dominated to the dominant. This type of transfer is difficult to justify from the standpoint of normative political theory, whose business it is precisely to assess the conformity of societal arrangements with a body of norms.

By and large, the most widely accepted body of norms in democratic society is rooted in liberal political theory (Kymlicka 1995), which rejects, following Rawls's theory of justice (1971), inequalities that are not intended to improve the lot of society's worst-off members. If so, it is difficult to see what would justify the marginalization of most of the world's small languages for the benefit of the larger languages and the native speakers of the latter. This line of argument is in agreement with May (2001) who reasons that majorities have no greater \textit{a priori} legitimacy than minorities in matters of language and culture. Putting it differently, being a native Welsh speaker in Cardiff or a Maori speaker in Auckland (instead of a native speaker of English)\textsuperscript{12} cannot, in a liberal society, be construed as a failing for which one should have to atone through a lifetime of denial of one's identity, culture – and language.

The imposition of a dominant or majority language on others gives rise to potentially major inequalities. Their actual magnitude depends on the type and context of language dominance considered. In general, five main types of effects (also discussed in Grin 2004a) can be distinguished:
the ‘privileged market effect’: native speakers of the dominant language enjoy a quasi-monopoly over the markets for translation and interpretation into the dominant language, the market for second language instruction above a certain level, and the market for language editing – all of which are tasks in which native-level skills are typically required;

the ‘communication savings effect’: native speakers of the dominant language are spared the effort required to translate messages directed to them by speakers of other languages, since the latter will have made the effort to utter them in the dominant language in the first place; reciprocally, native speakers of the dominant language do not need to translate their messages into other languages;

the ‘language learning savings effect’: native speakers of the dominant language do not need to invest time and effort in learning other languages; this amounts to a considerable savings. Despite massive spending in countries that do teach foreign languages, foreign language education represents a total, over one’s pre-university school-years, of about 1500 to 2000 hours of instruction and exposure (including homework); the results achieved are accordingly modest, since an estimated minimum of 12,000 hours of instruction and exposure would be needed, on average, to reach native-like (though still not perfect) fluency in a foreign language such as English (Piron 1994);

the ‘alternative human capital investment effect’: the money not invested in foreign language acquisition can be diverted to other forms of human capital investment and give native speakers of the dominant language an edge in other areas;

the ‘legitimacy and rhetorical effect’: native speakers of the dominant language will generally have an edge in negotiations or arguments with non-native speakers, because these always take place in their language.

At this time, these various effects have not been estimated empirically; consequently, the effects in terms of net transfers are barely known, and only partly identified. Rough estimates suggest, however, that these effects are significant and extend, mutatis mutandis, to any kind of linguistic dominance. From a public policy standpoint, therefore, the matter cannot be considered settled, and two avenues should, in principle, be explored:

The first is that of redressing the imbalance and reducing or even eliminating the injustice that stems from the privileged treatment accorded to some languages, to the detriment of others. This amounts to engaging in effective protection and promotion for minority languages or for linguistic diversity in general.

The second is to accept the imbalance, but to offer compensation for it. This question has been identified some 20 years ago (Carr 1985; see also more recent examinations by Pool 1991, and van Parijs 2001), and its examination may yet yield novel solutions – for example, in the form of compensatory transfers from the language-dominant to the language-dominated community,
enabling the latter, among other options, to finance other (possibly non-
governmental) schemes for the protection and promotion of its language.

Let us now, in conclusion, return to the matter of the relevance of the LHR
discourse.

CONCLUSION

This paper has attempted to show that the discourse of rights, including of
linguistic human rights, is a necessary but far from sufficient argument for
advocating the protection and promotion of minority languages and/or of
linguistic diversity. Its chief limitations are that it cuts almost no ice among
those who are not already convinced of the legitimacy of those claims, and
that even among those who would be sympathetic to such rights on moral
grounds, doubts may arise from a policy analysis standpoint. These doubts can-
not be put to rest by merely resorting to legal or subjectivist arguments. Thus,
it may be that some of the most important work to be done now falls under the
heading of policy evaluation in the broadest sense, rather than in restatements
of the LHR discourse, or further commentary about international Covenants,
Declarations or other legal instruments.

Yet the LHR discourse retains its usefulness, in part because it has
already been moving in the direction of policy analysis. This is first evi-
denced by a progressive shift from ‘negative’ to ‘positive’ rights, a shift that
has been going on for some time, and is exemplified, among other events,
by the adoption of the United Nations’ Declaration on the rights of persons
belonging to national or ethnic, religious and linguistic minorities (1992).
Instead of just having to abstain from certain types of behaviour (like dis-
crimination), states have to positively engage in the protection of minorities.
This trend from negative to positive rights currently seems to be proceed-
ing further, with an obligation for states not only to take certain positive
measures, but to ensure that these measures actually achieve results. The
prime example of this evolution is the European Charter for Regional or
Minority Languages, whose subjects are not the speakers of the languages
concerned, but the languages themselves. In fact, the Charter does not even
contain the word ‘rights’ outside of its preamble and a technical reference to
another international instrument. Parties to the Charter commit themselves
to ensuring the long-term survival of these languages. This focus on results,
reached more or less effectively, at a given cost and with given distributive
implications is, in essence, a policy analysis perspective. In this sense, the
LHR discourse can be said to dovetail, if only to some extent, with the dis-
course of policy analysis.

The discourse of linguistic human rights also has an important contribution
to make, in conjunction with normative political theory, with respect to the
issue addressed in the preceding section of this paper. The case in point is that
of the distributive dimensions involved, and of the possibility of offering compensation in exchange for the privileged treatment accorded to some languages – particularly, nowadays, the English language, whose native speakers are the chief beneficiaries of linguistic inequality.

The appropriateness of compensation crucially hinges on whether it makes sense to ‘compensate’ a language’s second-rank status (or even lower) through various forms of compensatory transfers. Many important aspects of this question can be examined in a policy analysis perspective. These aspects include in particular the identification and measurement of transfers, the assessment of the extent of the injustice that these may entail, and the amount and uses of possible compensations. However, a key dimension remains outside the grasp of policy analysis, namely, whether the symbolic and material manifestations of inequality can be appropriately compensated on a plane other than that on which such manifestations occur. The treatment of this issue, which is one of commensurability, must call on many disciplines, but political philosophers and sociolinguists are probably well placed to provide some of the key elements of a conceptual framework for combining these various inputs. Among the latter, the LHR discourse certainly has an important role to play.

NOTES

1. A similar wording is found in the title of a paper by Thieberger (1990).
2. This expression is intended to hark back to Joshua Fishman’s ‘language-in-society’.
3. Accordingly, the definition of language policy used here (adapted from Cooper 1989) reflects the rationale of policy analysis: ‘Language policy is a systematic, rational, theory-based effort at the societal level to modify the linguistic environment with a view to increasing aggregate welfare. It is typically conducted by official bodies or their surrogates and aimed at part or all of the population living under their jurisdiction’ (Grin 1996: 31).
4. In particular, despite its alleged ‘reductionism’, it usually proves difficult to replace this approach by demonstrably less reductionist approaches.
5. In this paper, I deliberately eschew any formal discussion of the concepts of effectiveness, cost-effectiveness and efficiency; see Grin (2003b).
6. I am, however, leaving aside the debate on the ‘individual’ versus ‘collective’ nature of those rights. In line with lawyers like de Varennes (1999), I believe that provisions for the protection of language rights can be derived from the notion of individual rights, without invoking the contentious notion of collective rights (Grin 2003b).
7. For a political philosophy perspective on language policy, see for example, Patten (2002).
8. One may wonder about the existence of a (possibly inadvertent or even unconscious) link between the occurrence of such logical leaps and the fact that many supporters of a world language happen to advocate the supremacy of their own mother tongue.
9. However, we should steer clear of any biologizing analogy. The parallel is not between ‘languages’ and (living) ‘species’, but between the analytical concepts with which they may be analyzed in a policy context.
10. Estimates by the author; see Grin (2004b). More optimistic estimates by the European Commission stand at a little over three Euros per resident and per year (Gazzola 2003).

11. Interestingly, the burden of proof might be reversed: let the opponents of linguistic diversity be held to a similar standard of proof, and demonstrate that supporting linguistic diversity would be bad public policy.

12. The fact that both cities are predominantly English speaking reinforces the argument.


For a discussion, see for example Dunbar (2001).

REFERENCES


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