Accommodating Linguistic Difference: Five Normative Models of Language Rights

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Five language rights models: human rights model, 'old' minority rights model, 'new' minority rights model, indigenous peoples rights model, and official-language rights model – Different philosophical and legal foundations and very different concerns: personal autonomy and development, social integration and cohesion, ethnocultural preservation, and political integration – Sociological and historical context of each state is key factor in the type of linguistic accommodation sought by minorities

Introduction[1]

In the past few years, the theme of linguistic justice has started to receive some academic interest from the perspective of political theory. This movement has been preceded and accompanied by the rise of the linguistic human rights approach in sociolinguistics.[2]

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[1] An earlier draft of this article was presented at the 5th European Consortium for Political Research General Conference in Potsdam, 10-12 Sept. 2009, in a panel on Linguistic Justice chaired by Helder de Schutter.

[2] The linguistic human rights approach understands its study as a multidisciplinary task, but it is driven mostly by sociolinguists. *See* R. Phillipson et al., 'Introduction', and T. Skutnabb-Kangas and R. Phillipson, 'Linguistic Human Rights, Past and Present', both in T. Skutnabb-Kangas and R. Phillipson (eds.), *Linguistic Human Rights: Overcoming Linguistic Discrimination* (Berlin, Walter de Gruyter 1994) p. 1 et seq. and p. 71 et seq.; T. Skutnabb-Kangas, 'Language Policy and Linguistic Human Rights', in T. Ricento (ed.), *An Introduction to Language Policy: Theory and Method* (Oxford, Blackwell 2006) p. 273 et seq.; R.E. Hamel, 'Introduction: linguistic human rights in a sociolinguistic perspective', 127 *International Journal of the Sociology of Language* (1997), p. 1 et seq.; M. Kontra et al. (eds.), *Language: A Right and a Resource. Approaching Linguistic Human Rights* (Budapest, Central European University 1999). But *see* the criticisms of C.B. Paulston, 'Epilogue: some concluding thoughts on linguistic human rights', 127 *International Journal of the Sociology of Language* (1997) p. 187 et seq. For a more balanced approach on (minority) language rights, *see* S. May, *Language and Minority Rights* (Harlow, Longman 2001), and *idem*, 'Language rights: Moving the debate forward', 9 *Journal of Sociolinguistics* (2005) p. 319 et seq. For a critical analysis, *see* X. Arzoz, 'Language Rights as Legal Norms', 15 *European Public Law* (2009) p. 541 et seq.

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The focus of linguistic justice scholarship has been rather specific, either in their thematic purpose or in their factual constraints. A good part of the research done or at least disseminated within an international audience is, explicitly or implicitly, devoted to, or originated by circumstances and issues arising from a very particular historical context, such as Canada.[3] Another branch analyses more specifically and, often very vehemently, the conformity with liberal principles of certain strong methods of language protection, such as those of Québec, the Baltic states or Catalonia.[4] A third group of pieces of research deals with the linguistic foundations of a supranational entity such as the European Union.[5] By contrast, interesting linguistic models of some European states, such as Finland or Switzerland, appear to be less considered by the relevant bibliography, although the bilingual or multilingual solutions developed there have come to be a powerful factor in those countries' internal cohesion.

The expression 'linguistic justice' sounds rather vague. In some multilingual settings, it is equality of status which has been constitutionally entrenched, explic-

[3] A. Patten and W. Kymlicka, 'Introduction: Language Rights and Political Theory: Context, Issues, and Approaches', in W. Kymlicka and A. Patten (eds.), *Language Rights and Political Theory* (Oxford, Oxford University Press 2003) p. 1 et seq.; L. Green, 'Are Language Rights Fundamental?', 25 *Osgoode Hall Law Journal* (1987) p. 639 et seq.; P.A. Coulombe, *Language Rights in French Canada*, 2nd edn. (New York, Peter Lang 1997); D.G. Réaume, 'Official-Language Rights: Intrinsic Value and the Protection of Difference', and P. Coulombe, 'Citizenship and Official Bilingualism in Canada', both in W. Kymlicka and W. Norman (eds.), *Citizenship in diverse societies* (Oxford, Oxford University Press 2000) p. 245 et seq. and p. 273 et seq. Most of the chapters of the following books deal specifically with Canada: A. Braën et al. (eds.), *Language, Constitutionalism and Minorities* (Ontario, LexisNexis Canada 2006); C.H. Williams (ed.), *Language and Governance* (Cardiff, University of Wales Press 2007).

[4] On Catalonia, *see* J. Costa, 'Catalan linguistic policy: liberal or illiberal?', 9 *Nations and Nationalism* (2003) p. 413 et seq.; A. Branchadell, *La moralitat de la política lingüística* [The Morality of Language Policy] (Barcelona, Institut d'Estudis Catalans 2005); T.J. Miley, *Nacionalismo y política lingüística: el caso de Cataluña* [Nationalism and Language Policy: The Case of Catalonia] (Madrid, Centro de Estudios Políticos y Constitucionales 2006). For a critical assessment of the methods and mechanisms that were employed in the process of reviving and protecting Hebrew in Israel, *see* E. Shohamy, 'At What Cost? Methods of Language Revival and Protection', in K.A. King et al. (eds.), *Sustaining Linguistic Diversity – Endangered and Minority Languages and Language Varieties* (Washington, Georgetown University Press 2008) p. 205 et seq.

[5] *See* A. Milian-Massana, 'Le régime juridique du multilinguisme dans l'Union européenne. Le mythe ou la réalite du principe d'égalité des langues', 38 *Revue juridique Thémis* (2004) p. 211 et seq.; A. Milian-Massana, 'L'émergence du nouveau droit linguistique dans l'Unión européenne', 31 *The Supreme Court Law Review* (2006) p. 29 et seq.; T. van Els, 'Multilingualism in the European Union', 15 *International Journal of Applied Linguistics* (2005) p. 263 et seq.; F.C. Mayer, 'Europäisches Sprachenverfassungsrecht', *Der Staat* (2005) p. 368; U. Ammon, 'Language conflicts in the European Union', 16 *International Journal of Applied Linguistics* (2006) p. 319 et seq.; D. Castiglione and C. Longman (eds.), *The language question in Europe and diverse societies* (Oxford, Hart 2007); X. Arzoz (ed.), *Respecting linguistic diversity in the European Union* (Amsterdam, John Benjamins 2008); P.A. Kraus, *A Union of Diversity. Language, Identity and Polity-building in Europe* (Cambridge, Cambridge University Press 2008); T. Schilling, 'Language Rights in the European Union', 9 *German Law Journal* (2008) p. 1219 et seq.

itly or implicitly; and, therefore, equality is the substantive criterion against which language policies and practices should be constitutionally checked.[6] As equality is not always a constitutional obligation, nor does it include all languages within the state, it is advisable to start from a more modest basis and speak about accommodating linguistic difference.

As theory and practice show, various forms and levels of accommodation are conceivable. It is clear that some form of linguistic justice, whatever it should mean, cannot be sought or achieved outside a given society. Linguistic justice decisions are always both political and distributive decisions, and a huge discretion needs to be granted the relevant authorities concerning the choice of the form, timing and methods in order to achieve the objective of linguistic justice, taking account of the existing social conditions and of the availability of organisational and financial resources for its implementation.

This article will address what appears to be a methodological omission in the discussion on linguistic justice/accommodation/equality. Language rights tend to be presented as a well-established category, as a collection of rights that are clearly distinguishable and can be fully operative by themselves.[7] However, as Patten and Kymlicka have rightly pointed, '[a]ny attempt to define a set of rights that applies to all linguistic groups, no matter how small and dispersed, is likely to end up focusing on relatively modest claims.'[8]

The recognition of language rights may serve different objectives and the notion may cover different things in different contexts. From the perspective of the social sciences (political theory, sociolinguistics, and law) it seems relevant to clarify the nature, content and foundations of language rights in different social and legal contexts. On the other hand, it must be noted that language justice, equality or accommodation also require legal norms other than language rights, strictly speaking. This policy area is bound up with broader questions of constitutional accommodation of ethnic groups and nations within a multilingual and/or multinational polity.

[6] *See* K.D. McRae, 'Towards language equality: four democracies compared', 187/188 *International Journal for the Sociology of Language* (2007) p. 13 et seq. For a good account of the principle of linguistic equality in comparative constitutional law, *see* B. de Witte, 'Linguistic Equality: A Study in Comparative Constitutional Law', 6 *Revista de Llengua i Dret* (1985) p. 43 et seq.

[7] In particular, the so-called linguistic human rights approach argues that a rather extensive notion of linguistic human rights need to be implemented in all states. *See* the references mentioned in n. 2 *supra*.

[8] Patten and Kymlicka, *supra* n. 3, at p. 35. On the 'variety of linguistic situations' argument, see L. Mälksoo, 'Language rights in international law: Why the phoenix is still in the ashes?', 12 *Florida Journal of International Law* (1998-2000) p. 431 at p. 448 et seq.; J.P. Gromacki, 'The Protection of Language Rights in International Human Rights Law: A Proposed Draft Declaration of Linguistic Rights', 32 *Virginia Journal of International Law* (1992) p. 515 at p. 574 et seq.; E. Lagerspetz, 'On Language Rights', 1 *Ethical Theory and Moral Practice* (1998) p. 195 at p. 198.

In this article, I will categorise language rights recognised around the world into five normative models: the human rights model, the 'new' minority rights model, the indigenous peoples rights model, the 'old' minority rights model, and the official-language rights model. I will argue that, although these normative models are in practice contextually inspired by convoluted considerations, including to some extent the notion of linguistic justice, in principle they rely on different philosophical and legal foundations and they express very different concerns: personal autonomy and development, social integration and cohesion, ethnocultural preservation, or political integration. Language rights recognised on behalf of linguistically diverse social segments within various political units may seem similar in their legal content (e.g., the right to obtain mother tongue education or the right to use one's language with the authorities), but the underlying rationale will not necessarily always be the same.

The human rights model

Although a great number of international human rights instruments have come to light since the Universal Declaration of Human Rights in 1948, the nature and extent of language rights granted by them all prove to be very limited.[9] Of course, new standards of human rights could emerge in this field, but this seems unlikely in the near future.

International human rights instruments provide a basic regime of linguistic tolerance, that is, protection against discrimination and various forms of assimilation, such as forced and degrading assimilation. This protection is not granted through specific *language* rights, but through *general* human rights that have an implied linguistic dimension, such as a right to antidiscrimination measures, freedom of expression, of assembly and association and rights to respect for private and family life.[10] These protections are granted to any individual, whether s/he is a member of a minority or not.

[9] *See* M. Tabory, 'Language rights as human rights', 10 *Israel Yearbook on Human Rights* (1980) p. 167 et seq.; P. Thornberry, *International law and the rights of minorities* (Oxford, Clarendon Press 1991); F. de Varennes, *Languages, minorities and human rights* (The Hague, Martinus Nijhoff 1996); P. Vandernoot, 'Les aspects linguistiques du droit de minorités', 46 *Revue trimestrielle des droits de l'homme* (1997) p. 309 et seq.; C.R. Fernández Liesa, *Derechos lingüísticos y derecho internacional* [Language Rights and International Law] (Madrid, Dykinson 1999); X. Deop Madinabeitia, 'Los derechos lingüísticos en el derecho internacional', 33 *Revista de Llengua i Dret* (2000) p. 23 et seq.; Mälksoo, *supra* n. 8, at p. 432; R. Dunbar, 'Minority Language Rights in International Law', 50 *International and Comparative Law Quarterly* (2001) p. 90 et seq.; J. Woehrling, 'L'évolution du cadre juridique et conceptuel de la législation linguistique du Québec', in A. Stefanescu and P. Georgeault (eds.), *Le français au Québec: Les nouveaux defies* (Montréal, Fides-Conseil Supérieur de la Langue Française 2005) p. 253 at section 2.

[10] Schilling, *supra* n. 5, at p. 1225 et seq.

The moral foundation of human rights is human dignity, and their purpose is personal autonomy and development. Below, I will explain further this idea with the help of two human rights which often appear in the context of language rights.

a) Freedom of speech includes freedom to choose the language of speech. In a case dealing with the right to commercial advertising in English language in francophone Quebec, the treaty body assigned with the supervision of the states' compliance with the International Covenant for Civil and Political Rights [ICCPR] (1966) – the Human Rights Committee – declared:

> A state may choose one or more official languages, but it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one's choice.

For the Human Rights Committee, English-speaking citizens of Canada could not be considered a linguistic minority, as they constitute a majority in the state. However, this does not mean that their linguistic behaviour is not protected by general human rights. In the aforementioned case, the Human Rights Committee included outdoor commercial advertising in the scope of protection of freedom of expression.[11] It must be noted that freedom of expression was protected on behalf of both French- and non-French-speaking individuals living in francophone Quebec.

b) Often, the right to an interpreter in legal proceedings is presented as a language right. The right to have free assistance of an interpreter if one cannot understand or speak the language used in court is a well-established human right which applies to anyone facing a criminal charge.[12] The right to an interpreter does not aim to afford tolerance, protection or promotion for any language or any linguistic identity. Its rationale lies somewhere else: in securing trial fairness.[13] The sole objective of the right is effective communication for the purpose of legal justice; it does not independently value the language of the accused: if the accused can understand and be understood by using the court's language, even if it is not her mother tongue or preferred language of expression, the law will hold that effective communication is adequately served by using the court's language.[14] The guarantee of a minority language differs from accommodation insofar as

[11] Communications nos. 359/1989 and 385/1989, *John Ballantyne, Elizabeth Davidson and Gordon Mcintyre* v. *Canada*, para. 11.1 and 11.2.

[12] *See* Art. 14(3)(f) of the International Covenant on Civil and Political Rights.

[13] *See* Réaume, *supra* n. 3, at p. 255-258.

[14] Réaume, *supra* n. 3, at p. 256.

knowledge of the major language is not a bar to the provision of minority language services.

Although not formally recognised by international human rights instruments, freedom of language can be derived from a complex of fundamental rights (freedom of expression, right to respect for private and family life, prohibition of discrimination, and so on). Freedom of language as a universal right is not territorially circumscribed and everyone is entitled to it, whatever the language s/he speaks. Freedom of language includes the right to use one's mother tongue or any other language, both in speech and writing. Linguistic intolerance and repression of non-dominant languages is regarded to be inconsistent with fundamental rights.[15] Freedom of language only guarantees the right to freely determine one's linguistic behaviour. Its scope is the private sphere. It does not deal with a particular need of freedom of minorities but a general and abstract freedom: individuals are regarded in their abstract nature, not as members of the majority or of the minority.

Certainly these are weak language rights. We can also call them negative language rights. Few are those who will deny them. First, they derive from universal human rights. Second, they are consistent with liberal tradition and its emphasis on personal autonomy and equality of citizens. Advocates of linguistic laissez-faire will insist that these language rights are quite sufficient, and that surely no one could reasonably assert additional language rights by virtue of being members of a particular community.[16]

But linguistic communities who need or wish to protect their languages have little to rejoice if their only acceptable recourse is an appeal to the right against interference and discrimination. Therefore, particular communities make stronger claims, namely positive language rights. These stronger language rights vary widely in scope. At the minimum, they include educational rights and services; at the maximum, the right to live in one's language.

However, international human rights law changes when we move from tolerance to language use and promotion by public authorities. Authorities have no obligations under international human rights to foster or promote the use of individuals' mother tongue or otherwise preferred languages. Nevertheless, certain obligations do exist regarding specifically the members of linguistic minorities.

The 'old' minority rights model

There may be three kinds of legal foundations for ('old') minority rights: international law obligations (both universal and regional), international bilateral agree-

[15] P. Kirchhof, 'Deutsche Sprache', in J. Isensee and P. Kirchhof (eds.), *Handbuch des Staatsrechts der Bundesrepublik Deutschland*, Vol. 1 (Heidelberg, C.F. Müller 1995) p. 764.

[16] Coulombe, *supra* n. 3, at p. 92.

ments, and domestic legislation. I will comment on them in some detail, as they follow different motivations.

a) At the level of international law, legal obligations imposed on states are scarce and lack legal bite. As a matter of fact, there is no cogent obligation to positively support minority language maintenance or revitalisation.[17] The key – and isolated – provision in this regard is Article 27 ICCPR:

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

These few words constitute the only specific provision of binding international law with regard to the protection of speakers of minority languages.[18] It is obvious that this clause leaves many issues unresolved. For instance, there is some controversy on the extent of the rights granted by Article 27 ICCPR: whether they are exclusively of a negative character (protection against interference)[19] or they include a state obligation to take positive measures on behalf of the members of minority groups.[20] Even authors who interpret the provision as imposing

[17] A different position is adopted by F. de Varennes, 'Linguistic Identity and Language Rights', in M. Weller (ed.), *Universal Minority Rights – A Commentary on the Jurisprudence of International Courts and Treaty Bodies* (Oxford, Oxford University Press 2007) p. 253 et seq.

[18] Art. 30 of the Convention on the Rights of the Child reiterates the provision with regard to children, without added legal value. For an account of the omission of a special minority rights article in the Universal Declaration of Human Rights, *see* J. Morsink, *The Universal Declaration of Human Rights. Origins, drafting and intent* (Philadelphia, University of Pennsylvania Press 1999) p. 269 et seq.

[19] *See* Tabory, *supra* n. 9, at p. 183 and 221; de Varennes 1996, *supra* n. 9, at p. 151 et seq.; C. Tomuschat, 'Protection of Minorities under Article 27 of the International Covenant of Civil and Political Rights', in R. Bernhard et al. (eds), *Völkerrecht als Rechtsordnung, Internationale Gerichtsbarkeit, Menschenrechte* (Berlin, Springer 1983) p. 970 et seq.; I. Brownlie, 'Rights of Peoples in International Law', in J. Crawford (ed.), *The rights of peoples* (Oxford, Clarendon Press 1988) p. 3 et seq.; S. Karagiannis, 'La protection des langues minoritaires au titre de l'article 27 du Pacte international relative aux droits civils et politiques', 43 *Revue trimestrielle des droits de l'homme* (1994) p. 203 et seq., with many references supporting the same position; S. Ramu, 'Le statut des minorités au regard du Pacte international relatif aux droits civils et politiques', 51 *Revue trimestrielle des droits de l'homme* (2002) p. 612 et seq.

[20] *See* General Comment 23 of the UN Human Rights Committee (15th session, 1994, at para. 6.2); Thornberry 1991, *supra* n. 9, at p. 141-247, and P. Thornberry, 'The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: Background, Analysis, Observations, and an Update', in A. Phillips and A. Rosas (eds.), *Universal minority rights* (London/Åbo, Minority Rights Group/Åbo Akademi 1995) p. 13 at p. 24; K. Hailbronner, 'The Legal Status of Population Groups in a Multinational State under Public International Law',

on states the obligation to take positive measures have to acknowledge that states are not obliged to give effect to any *specific* activity or measure:[21]

> Article 27 of the Covenant on Civil and Political Rights is a weak article (…). Its lack of specificity means that, even though it may impose positive obligations on states to support minority identity, the article leaves a wide discretion to states on the modalities of its application.

Nevertheless, if it is true that Article 27 ICCPR does not specify what it entails, it does not follow that it is without consequence. Article 27 is not a programmatic provision or a statement of principle without mandatory force. As usual in international law, it is up to States to specify the measures necessary to comply with it. Article 27 identifies only the priority – respect and accommodation of the minorities' characteristics: language, culture and religion – but it requires signatory states to articulate a policy to fulfil that obligation. To that effect, the number of linguistic minorities existing within the State's boundaries cannot be irrelevant.[22]

b) The Framework Convention for the Protection of National Minorities (1995)[23] and the European Charter for Regional or Minority Languages (1992),[24] both prepared under the auspices of the Council of Europe, represent the most advanced notion of international minority protection today available in the world. As the first international legal instrument devoted to the protection of minority languages, the European Charter has pioneering attainments. It considerably advances the standards of protection in areas where universal instruments are extremely deficient. The Charter 'goes beyond other instruments in interlacing the public space with a complex of language requirements.'[25] Unlike many recommendations, declarations or resolutions, it is a binding instrument; and there is an Advisory Committee to monitor its enforcement.

20 *Israel Yearbook on Human Rights* (1991) p. 144; Dunbar, *supra* n. 9, at p. 107; S. van den Bogaert, 'State Duty Towards Minorities: Positive or Negative?', 64 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2004), p. 63.

21 Thornberry 1991, *supra* n. 9, at p. 387.

22 D. Kugelmann, 'Minderheitenschutz als Menschenrechtsschutz', 39 *Archiv des Völkerrechts* (2001) p. 242.

23 *See* M. Weller (ed.), *The Rights of Minorities – A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford, Oxford University Press 2005).

24 *See* J.-M. Woehrling, *The European Charter for Regional or Minority Languages* (Strasbourg, Council of Europe Publishing 2005); P. Thornberry and M.A. Martín Estébanez, 'Minority rights in Europe' (Strasbourg, Council of Europe Publishing, 2004) chapter 3; Council of Europe, *The European Charter for Regional or Minority Languages: Legal Challenges and Opportunities* (Strasbourg, Council of Europe Publishing 2008).

25 Thornberry and Martín Estébanez, *supra* n. 24, at p. 159.

The aim of the Charter is not to guarantee human rights *per se*, but the protection of regional and minority languages as an integral part of the European cultural heritage. The Charter does not aspire beyond defining 'the' rights of linguistic minorities, but rather limits itself to providing the rudiments for developing context-based standards of protection of regional or minority languages: the context-based varying standards established by the Charter should be adjusted by the states to the needs of each particular language, taking account of the needs and wishes expressed by the group of people who speak it. The Charter, on the one hand, allows each state which ratifies the Charter to specify which minority or regional languages it wants to include within the scope of the Charter. On the other hand, states can choose which paragraphs or subparagraphs they want to apply: they have to choose a minimum number of 35 paragraphs or subparagraphs out of 65 options (a kind of signature *à la carte*). Moreover, obligations are accompanied by many caveats (as far as possible, where necessary, if the number of users justifies it) allowing states a considerable margin of leeway.

c) Language rights on behalf of linguistic minorities may also be recognised by specific international or inter-state agreements.[26] This model refers to border territories that, in recent times, mostly in the 20th century, have changed from one state's hands to another's (Åland Islands, border areas between Germany and Denmark, South Tyrol, and the Slovenian minority in Italy), or to states that, in order to gain or regain sovereignty, had to subscribe to a set of international obligations, including provisions for the protection of minorities (Austria, Cyprus).[27] The extension of language rights is limited to a relatively small part of the state's territory: the international/inter-state basis of this model of recognition of rights has a limited scope, a given ethnic group in a certain territory; it does not prevent the respective state from denying language rights to other linguistic communities

[26] *See* P. Van Houten, 'The role of a minority's reference state in ethnic relations', 31 *Archives européennes de sociologi*e (1998) p. 110 et seq.; P. Hilpold and C. Perathoner, *Die Schutzfunktion des Mutterstaates im Minderheitenrecht (The 'kin-state')* (Vienna, Neuer Wissenschaftlicher Verlag 2006) and the works mentioned in n. 28 *infra*.

[27] For an overview of the international treaties on the protection of minorities after the Second World War, *see* Hailbronner, *supra* n. 20, at p. 135-140. For the content and extent of the legal provisions on minority protection in 36 European states, *see* C. Pan and B.S. Pfeil, *Minderheitenrechte in Europa*, (Vienna/New York, Springer 2006); for an earlier assessment, *see* J.A. Frowein et al. (eds.), *Das Minderheitenrecht europäischer Staaten*, 2 vols. (Berlin/Heidelberg/New York, Springer 1994) and, focusing on language rights, T. Veiter, 'Die sprachenrechtliche Situation in den Staaten in der Mitte Europas', 28 *Archiv des Völkerrechts* (1990) p. 17 et seq. For a recent analysis of comparative constitutional law concerning minority protection in both European and American perspective, *see* J. Woehrling, 'Les trois dimensions de la protection des minorités en droit constitutionnel comparé', 34 *Revue de droit de l'Université de Sherbrooke* (2003-2004) p. 93 et seq. For a complete account on Austrian language law, *see* D. Kolonovits, *Sprachenrecht in Österreich* (Vienna, Manz 1999).

settled in other territories. For a long time, minorities protected by specific international treaties or bilateral agreements of this kind were considered relatively secure and privileged in comparison to other minorities. More recently, in the last decade of the 20th century, some states such as Germany, Hungary and Romania have produced a range of bilateral agreements with selected Central and East European countries, which oblige the contracting parties to protect or to adopt measures in favour of specific minorities. These bilateral agreements contain relatively modest obligations in comparison with other international instruments.[28]

d) Finally, the most relevant legal basis for minority rights is still domestic legislation. Most of modern Central and Eastern European constitutions recognise minority rights, including some positive language rights. The right to be educated in a minority language or in one's mother tongue is granted in Albania (Article 20(2)), Azerbaijan (Article 45), Belarus (Article 50), Hungary (Article 68(2)), Macedonia (Article 48(2), with regard only to primary and secondary education), Moldova (Article 35(2)), Romania (Article 32(3)), Russia (Article 26(2),[29] Slovakia (Article 34(2)) and Ukraine (Article 53); the Bulgarian Constitution simply recognises the right to study one's own language (Article 36(2)). The Estonian Constitution only expressly recognises the right of educational institutions established for ethnic minorities to choose their own language of instruction (Article 37(4)). Other European states recognise minority protection on a statutory basis (Germany, Czech Republic, the Netherlands).

The moral foundation for minority rights is the idea that members of minorities (linguistic, religious and cultural) have special protection needs compared with members of an ethnic, linguistic or religious majority. They want to be protected against assimilation and acculturation. At the same time, there may be instrumental considerations. In Europe, a school of thought has traditionally advocated the protection of minorities for the sake of peace and the prevention of internal and regional conflicts. This school of thought managed to influence the international agenda after the First World War[30] and after the collapse of communism in the

[28] For a none too favourable balance of those treaties, *see* K. Gál, 'Bilateral Agreements in Central and Eastern Europe: A New Inter-State Framework for Minority Protection?', 4 *European Centre for Minority Issues Working Paper* (1999). *See also* A. Bloed and P. van Dijk (eds.), *Protection of minority rights through bilateral treaties: The case of Central and Eastern Europe* (The Hague, Kluwer Law International 1999).

[29] For a recent account of Russian linguistic legislation, *see* U. Köhler, *Sprachengesetzgebung in Russland* (Vienna, Wilhelm Braumüller 2005).

[30] *See* the words of P. de Azcárate, *League of Nations and national minorities* (Washington, Carnegie Endowment for International Peace 1945) p. 14: 'The protection of minorities instituted by the treaties of 1919 and 1920, whose application was entrusted to the League of Nations, was not …

1990s. The OSCE High Commissioner on National Minorities, established in 1992, was mandated to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The exercise of this duty can influence the extent of language rights in domestic law.[31]

In principle, in continental Europe there is less distrust than in Anglo-American constitutional systems towards the very idea of positive minority rights.[32] By contrast, Anglo-American constitutional systems seem less reluctant to afford rights to immigrants or members of new minorities.

The 'new' minority rights model

Although some international standards have been developed,[33] in principle the variety of accommodations already existing or still to be developed for migrant workers, new citizens or members of so-called 'new' minorities will be founded on domestic law, mostly on a piecemeal policy basis.[34] For our purposes, these

humanitarian, but purely political. The object … was to avoid the many inter-state frictions and conflicts which had occurred in the past, as a result of the frequent ill-treatment or oppression of national minorities.'

[31] At the time of writing this article, the High Commissioner received delegations from Slovakia (on 21 July 2009) and Hungary (on 22 July 2009) to discuss the amendments to the 'Law on the State Language of the Slovak Republic'.

[32] For the causes of this different approach *see* W. Sadurski, 'Constitutional Courts in the Process of Articulating Constitutional Rights in the Post-Communist States of Central and Eastern Europe, Part III: Equality and Minority Rights', *European University Institute Working Paper Law* (2003) p. 23 et seq.; for an account of those rights *see*, e.g., J.A. Frowein and R. Bank, 'The Participation of Minorities in Decision-Making Processes', 61 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* (2001) p. 1 et seq. and G. Sasse, 'The Political Rights of National Minorities: Lessons from Central and Eastern Europe', in W. Sadurski (ed.), *Political Rights under Stress in 21st Century Europe* (Oxford, Oxford University Press 2006) p. 239 et seq.

[33] *See* the 1955 Recommendation of the International Labour Organisation on the Protection of Migrant Workers (Underdeveloped Countries). Point no. 49, on the material, intellectual and moral welfare of migrant workers, establishes that measures shall be adopted for 'wherever practicable, the maintenance in immigration areas of welfare officers who are familiar with the languages and customs of the migrant workers to facilitate the adaptation of these workers and their families to their new way of living.' The more recent UNO Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (date of coming into force: July 2003) focuses on general human rights and on equality of treatment with nationals of the host State, rather on the protection of migrant workers' identity. Art. 30 states that 'Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned.' The only provision regarding their culture is Art. 31(1): 'States Parties shall ensure respect for the cultural identity of migrant workers and members of their families and shall not prevent them from maintaining their cultural links with their State of origin.'

[34] For some academic attempts to develop a comprehensive theory of language rights as forms of accommodation for non-English speakers in United States, *see* C.M. Rodríguez, 'Accommodating

accommodations should be included in the list of services that count as rights, regardless of their lack of constitutional or legal recognition.

In some jurisdictions, rights or advantages are granted to immigrants and their relatives or, more generally, to members of new minorities to ensure that language does not stand in the way of receiving an effective education and that membership in a linguistic community is no obstacle to integration into the mainstream state life. These measures, which can be as positive and substantial in character as promotion-oriented rights granted to 'old' minorities, are accorded for public convenience, regardless of the demands or the wishes expressed by the adult members of the linguistic minority. The state can have a public interest in that minority children of school age are, at least at the primary school level, properly educated, if necessary with the help of provisional mother tongue instruction; or in making available and accessible to all citizens statutory and administrative texts, administrative forms and other public services, regardless of the language they speak. This can imply translating widely used statutory and administrative texts and administrative forms and recruiting bilingual personnel for relevant services (municipality, education, social and medical services, etc.).

These measures are the expression of a public policy that takes into account not only the special accommodation needs of 'new' immigrants, but also the state's ultimate objective of achieving integration and cohesion of the state community. Obviously, as a public policy decision, it is both a political and a distributive decision. Therefore, policy makers may legitimately introduce some qualifiers: advantages in form of linguistic services will be granted if there is a significant demand, or it is reasonable in the circumstances, or where the number of immigrants living in a municipality or using a public service so warrants.

Some may argue that linguistic accommodation for immigrants are not a duty of justice, but a duty of benevolence. However, in the United States this type of measures have been founded on equality considerations. The constitutional principle of equality requires the different treatment of what is different. Immigrants have special needs regarding the language of primary education and basic social services. In *Lau v. Nichols*, the United States Supreme Court's only direct treatment of language to date, the Court held that at a school district's failure to provide programmes for non-English-speaking students to assist them in overcoming their language barriers constituted a violation of Title VI of the Civil Rights Act of 1964.[35]

Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States', 36 *Harvard Civil Rights-Civil Liberties Review* (2001) p. 133 et seq. and S. Del Valle, *Language Rights and the Law in the United States* (Clevedon, Multilingual Matters 2003); T.W. Pogge, 'Accommodation Rights for Hispanics in the United States', in W. Kymlicka and A. Patten (eds.), *Language Rights and Political Theory* (Oxford, Oxford University Press 2003) p. 105 et seq.

[35] 414 U.S. 563 (1974), quoted by Rodríguez, *supra* n. 34, at p. 209.

In principle, integrationist accommodations are temporary in character. As long as immigrants are sufficiently integrated and have a sufficient command of the local language, many of the positive measures appear to lose their justification (the addressees of the measures could even oppose them since they are not fully regarded as equal members). As it has been said, 'migrants can become new minorities, new minorities can become old minorities, and non-citizens can become citizens'.[36] Of course, in states of strong immigration such as the United States or Canada, the flux of new immigrants is continuous. But second-generation immigrants do not need any more mother tongue instruction or public forms drafted in their mother tongue if they have already sufficient command of the language of the host society. Otherwise, if immigrant groups, such as the Latin-Americans, maintain a strong group identity, they might aspire to preserve a separate status within society and they may claim minority rights as such. Then, they would be expressing not social needs of accommodation but an ethnocultural aspiration of preservation of their minority characteristics such as their language or culture.

In the earliest years of European integration there was what can be called an indirect attempt to harmonise the educational language rights of children of migrant workers who are nationals of an EU member state. According to Article 2 of the Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers, 'Member States shall, in accordance with their national circumstances and legal systems, take appropriate measures to ensure that free tuition to facilitate initial reception is offered in their territory to the children [of migrant workers], including, in particular, the teaching – adapted to the specific needs of such children – of the official language or one of the official languages of the host State.' At the same time, host states and member states of origin are asked to cooperate and 'take appropriate measures to promote, in coordination with normal education, teaching of the mother tongue and culture of the country of origin for the children [of migrant workers]' in Article 3. According to the preamble of the Directive, the promotion of mother tongue education of children of migrant workers purports to facilitate 'their possible reintegration into the Member State of origin.'

EU member states seem to have regarded Article 3 of Directive 77/486/EEC as a recommendation rather than as an obligation to act. They never transposed it.[37] It is clear that the aforementioned provision does not give directly effective

[36] G.N. Toggenburg, 'Who is Managing Ethnic and Cultural Diversity in the European Condominium? The Moments of Entry, Integration and Preservation', 43 *Journal of Common Market Studies* (2005) p. 720 et seq.

[37] It is the unique case of direct regulatory involvement of the EU in the educational systems of the member states. The Directive appears to be rather intrusive in an area that belongs to the competence of member states: Art. 149 EC excludes any harmonisation of the laws and regulations of

rights to individuals, but it does oblige: for instance, if a member state wants to organise the teaching of its national language to their nationals' children residing in another member state, the latter would have to cooperate with the former; otherwise, a lack of cooperation might be regarded as an infringement of obligations deriving from EU law.

For some commentators, the purpose of Article 3 of Directive 77/486/EEC would not be the extension of educational language rights, but both fostering the free movement of workers and improving the linguistic skills of migrants' children.[38] As it happens with EU citizenship since the Treaty of Amsterdam, the teaching of the mother tongue and culture of the country of origin shall complement and not replace the instruction given in the language of the host state. In any event, this illustrates that the teaching of the mother tongue of migrant workers' children may serve different public objectives. Whereas the United States measures aim at guaranteeing an effective education for the benefit of the host society, the Directive fosters a twofold mobility of workers and explicitly mentions the objective of possible reintegration into the member state of origin.

As a matter of fact, cooperation has been developed in this field on a bilateral basis. EU member states with an important number of migrant workers, such as Spain or Greece, have traditionally organised supplementary mother tongue education for the children of their *nationals* residing abroad in those places where there is a significant demand. To the same effect, some European states have traditionally organised and subsidised a network of primary and secondary schools operating abroad (France, Germany, and, to a lesser level, Italy and Spain), to which the respective nationals are prioritised on entry.

In Europe the differentiation between 'new' and 'old' minorities seems to be deeply rooted (*see* the Framework Convention for the Protection of National Minorities). However, there is much academic discussion on the philosophical underpinnings of that differentiation, at least in English-speaking milieus.[39] It cannot be excluded that, in the future, this differentiation might disappear or blur to some extent.

Indigenous peoples rights model

Another line of development of language rights concerns indigenous peoples. Indigenous peoples have special needs of protection not only against the state

the member states. *See* in this regard G.N. Toggenburg, 'The EU's "Linguistic Diversity": Fuel or Brake to the Mobility of Workers', in A.P. Morris and S. Estreicher (eds.), *Cross-Border Human Resources, Labor and Employment Issues* (Leiden, Kluwer Law 2005) p. 683 et seq.

[38] A. Milian-Massana, *Derechos lingüísticos y derecho fundamental a la educación* [Language Rights and Fundamental Right to Education] (Madrid, Civitas 1994) p. 94.

[39] *See* Toggenburg, *supra* n. 36, at p. 719 et seq.; Woehrling, *supra* n. 27, at p. 107 et seq.

powers and development projects affecting their lives, but also against individuals and transnational firms invading their homeland. They rarely have substantial voting power and influence or lack the support necessary to compel the state to pass laws protecting indigenous cultures. The international law of indigenous peoples is still emerging.[40] There are two basic instruments. The newest one is a non-binding document: the Declaration on the Rights of Indigenous Peoples, approved in 2007 by the UN General Assembly. The other instrument is the 1989 International Labour Organisation Convention concerning Indigenous and Tribal Peoples in Independent Countries.

The 1989 ILO Convention on Indigenous and Tribal Peoples (date of coming into force: 5 September 1991) deals basically with land rights, employment and social security conditions, but also includes provisions on education. Children belonging to indigenous peoples shall, 'wherever practicable', be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong (Article 28(1)). Measures shall be taken to preserve and promote the development and practice of the indigenous languages of the peoples concerned (Article 28(3)). If necessary, government shall make known to indigenous peoples their rights and duties, especially in regard to labour, economic opportunities, education and health matters, social welfare and their Convention rights, by means of written translations and through the use of mass communications in the languages of these peoples (Article 30(2)).

Unfortunately, only a limited number of states have ratified this Convention, among them some Central and South American states, Denmark, the Netherlands, Norway and Spain. Even if more European states were to ratify the Convention, there is widespread consensus that, in Europe, only the Sámi people (living in Norway, Sweden, Finland and Russia) could qualify as an indigenous people. In fact, Sámi people have for a long time been integrated into their surrounding societies.

In some jurisdictions, indigenous peoples hold special advantages (for instance, an exclusive right of reindeer farming or other economic benefits from exclusive rights). In these cases, membership of an indigenous people may be a disputed issue. In Finland, the recognition of the Sámi identity for official purposes (e.g., entitlement to vote in the election of the Sámi Parliament) is rather strict. According to the Act on the Sámi Parliament, speaking Sámi as a second language is not enough: a Sámi is defined as an individual who considers himself a Sámi notwithstanding his mother tongue and, in addition, he is required that he himself or at least one of his parents or grandparents has learnt the Sámi language as his first

[40] *See* R. Torres, 'The Rights of Indigenous Populations: The Emerging International Norm', 16 *The Yale Journal of International Law* (1991) p. 127 et seq.

language or that he is a descendant of a person who has been entered in a land, taxation or population register as a Lapp or that at least one of his parents has or could have been registered as an elector in an election to the Sámi Delegation or Sámi Parliament. Domestic law concerning the ethnic status of people might violate international law (Article 27 ICCPR) if it unreasonably excluded members of an ethnic group from the benefit of international minority protection.[41]

In some respects, the legal framework concerning indigenous peoples, as flowing from the mentioned international instruments, is more advanced than the one for national or linguistic minorities: for instance, with regard to land rights and the right to self-determination. The huge economic implications of those rights are, at the same time, one of the reasons why many states hosting indigenous peoples oppose international documents (United States, Canada, Russia, China, etc.). By contrast, language rights do not appear always to be at the forefront of indigenous peoples' claims and, therefore, international instruments tend to stay behind European minority standards. As a consequence, in cultural and linguistic issues international instruments recognising language rights to indigenous peoples will be relevant in the main for those indigenous peoples living outside Europe. In any case, it must be noted that criticism has been expressed with regard to the limitations of rights discourses and the obstacles that remain for the maintenance of smaller, less-used languages of indigenous peoples.[42]

The official-language rights model

Most states declare a language as the official, state or national language: in this sense, it can be said that all states follow the official-language rights model. However, in the following discussion this distinction will be reserved for the group of states recognising more than one official language.

Some constitutions proclaim a number of languages as being state, official, or national languages (Belgium, Canada, Finland, South Africa, Switzerland, India, etc.). Some constitutions even explicitly establish the equality between the officially recognised languages. The recognition of official-language rights is always a fundamental political decision. It is bound up with broader questions of constitutional accommodation of linguistic or ethnocultural communities within a multinational and/or multilingual state.

[41] *See* the Lovelace case of the Human Rights Committee: Communication no. 24/1977, *Sandra Lovelace* v. *Canada*.

[42] *See* D. Patrick, 'Language rights in Indigenous communities: The case of the Inuit of Arctic Québec', 9 *Journal of Sociolinguistics* (2005), p. 369 et seq. For similar concerns on behalf of small non-standardised languages, *see also* S. Wright, 'The right to speak one's own language: Reflections on theory and practice', 6 *Language Policy* (2007) p. 203 et seq.

The official-language rights model can apply to the federal and/or the substate levels of government. In federal states such as Switzerland, Belgium and Canada and in unitary states such as Finland, the federal or all-state administration is constitutionally obliged to equally employ all official languages; to that effect, institutions are often divided into separate linguistic sections. By contrast, Basque, Catalan, Galician, Frisian and Welsh enjoy *de jure* or *de facto* official status only on a regional basis within their respective territories in Spain, the Netherlands and United Kingdom.

The official-language rights model is consistent with the circumstance of part or even most state territory having only one official language. As a matter of fact, it basically follows the principle of territoriality: territories are preferably unilingual or otherwise bilingual, and all citizens must conform to that. Finland, Switzerland, Belgium and Canada all have a majority of administrative districts, regions, cantons or provinces in which only one official language is recognised. In principle, there is a recognised public interest in the preservation of the integrity of inherited linguistic territories. Nevertheless, concessions may be introduced to the benefit of small official-language minorities residing within the territory of another official language, especially at the borders of linguistic territories (so-called *facilités* granted in certain municipalities of Belgium and, similarly, official minority language services provided in some provinces of Canada and in some cantons of Switzerland).[43]

The official-language rights model does not imply that all languages are treated equally. The number of official languages is both a political and a distributive decision. Even the most advanced models have not enforced a policy of equal treatment of all autochthonous linguistic groups (e.g., Romansh in Switzerland, Sámi in Finland, German in Belgium, Inuktitut in Canada, Asturian in Spain, the many indigenous languages not granted official status in South Africa), although recent constitutional amendments, at least in some cases, provide the smallest linguistic groups with better legal recognition and accommodation.

The decision to adopt an official-language rights model is dependent on the size[44] and on the number of candidate official languages[45] and on the extent of

[43] In Finland, a municipality is bilingual if the share of the Finnish-speaking or the Swedish-speaking minority is at least 8% of the population or at least 3,000 people; in the Swiss canton of Grisons (the only trilingual canton of Switzerland), a municipality is bilingual if the share of the Romansh-speaking minority is at least 20% of the population; in Canada, official minority language education and other public services are constitutionally granted 'where the numbers so warrant'.

[44] On the relevance of size, *see* Green, *supra* n. 3, at p. 664 et seq. ('the *realpolitik* of numbers is relevant to fundamental language rights'), Lagerspetz, *supra* n. 8, at p. 194 et seq.; Réaume, *supra* n. 3, at p. 266 et seq.; and Coulombe, *supra* n. 3, at p. 100 ('territorially based communities which have a certain critical mass').

[45] Drawing from the Indian constitutional experience, S. Choudhry, 'Managing linguistic nationalism through constitutional design: Lessons from South Asia', 7 *International Constitutional Law*

existing linguistic communities' capacity to influence state-building or re-building, nationalist demands from existing linguistic communities, or a mixture of both. When states confront a sort of competing nationalism, 'the best way to promote a common identity and to encourage the practice of deliberative democracy may be to adopt policies that recognise and institutionalise a degree of national and linguistic difference.'[46] In this sense, language rights are special guarantees accorded to citizens as a 'natural' part of state-building or re-building arrangements, or as part of legitimacy bargaining a post-dictatorial (Spain) or post-racist state (South Africa) needs to make: if the state wants to build citizens' trust, it has to provide for language rights.[47]

Thus, language rights are compromise rights of a fundamental sort.[48] This characterisation needs two precisions. First, that constitutional language rights may result from a political compromise is not a characteristic that uniquely applies to such rights.[49] Second, that language rights are created as a result of a constitutional bargain does not mean that they do not have a distinctive moral justification.[50] In any event, here, the role of language rights is *internal* peace-keeping: avoiding political struggles that can lead to disintegration of the state. This is the case of, for instance, Finland, Switzerland, Canada, Belgium, Spain and South Africa.[51]

Review (2009), p. 577 at p. 605 argues that 'how official-language policy should be framed in a any particular country will be a highly contextualized decision, depending on a number of factors, such as the number of candidate official languages, how developed the vocabularies of those languages are, fiscal constraints, the availability of translation, and so on.'

[46] Patten and Kymlicka, *supra* n. 3, at p. 41. More generally, O'Leary has argued that 'a democratic federation without a clear *Staatsvolk* must adopt (some) consociational practices if it is to survive'. *See* B. O'Leary, 'An iron law of nationalism and federation?', 3 *Nations and Nationalism* (2001) p. 291 et seq.

[47] On the compensatory justice argument, *see* Coulombe, *supra* n. 3, at p. 105.

[48] Green, *supra* n. 3, at p. 669; Coulombe, *supra* n. 3, at p. 103 ('Far-reaching language rights in French Canada largely arise out of an historical transaction between communities'); Choudhry, *supra* n. 45, at p. 585.

[49] *R.* v. *Beaulac*, [1999] 1 S.C.R. 768.

[50] For some scholars, the moral foundation of language rights is linguistic security. The security justification would have two aspects: 'First, speaking a certain language should not be a ground of social liability; and second, one's language group should flourish.' (Green, *supra* n. 3, at p. 658-660; *see also* Réaume, *supra* n. 3, at p. 252 and Coulombe, *supra* n. 3, at p. 124).

[51] For the view of language rights as peace-keeping mechanisms *see* D.A. Kibbee, 'Presentation: Realism and Idealism in Language Conflicts and Their Resolution', in D.A. Kibbee (ed.), *Language legislation and linguistic rights* (Amsterdam/Philadelphia, John Benjamins 1996) p. xv; D. Rousseau, 'La philosophie du droit', in H. Giordan (ed.), *Les minorités en Europe : droits linguistiques et droits de l'homme* (Paris, Kimé 1992) p. 81 et seq. An important series of case studies stress from its very title the idea that language arrangements in multilingual settings tend to be the product of a fundamental compromise: *see* K.D. McRae, *Conflict and compromise in multilingual societies*, with volumes devoted to Switzerland, Belgium and Finland (Wilfried Laurier University Press 1983, 1986 and 1997); a sort of an

The official-language rights model purports to protect specific linguistic minorities, not every linguistic minority, or to secure equal status to specific languages, not to every language.[52] Even if formulated as fundamental rights, constitutional language rights are not accorded for the sake of freedom and equality of all individuals and groups living in the state, but for the sake of basically protecting certain language communities (for instance, Swedish- and French-speaking citizens in Finland and Canada respectively). Using a phrase from the *Beaulac* ruling of the Canadian Supreme Court, it can be said that constitutional language rights are 'a fundamental tool for the preservation and protection of [an always limited number of] official language communities'.[53] Language rights cease to be universal individual rights and make up a different category of rights if the group which is entitled to such privileges has to be identified.[54]

Conclusions

Five normative models of language rights have been analysed in this article. These models are not based on speculation, but have been derived from legal norms and governmental practices. In the real world of politics, these models are not simple choices but broad categories allowing space for combinations, exceptions, and varieties of special status. For instance, in South Tyrol there is an official-language rights model, since equality of status between German and Italian is devised on the territory of that province, and, at the same time, a particularly strong minority rights model, as the regulation of the ethnic proportion in the public administration shows.[55] Similarly, Canada combines an official-language rights model on behalf of the two big linguistic communities, special rights for indigenous peoples and certain linguistic accommodations for individuals not pertaining to official-language communities. The point is that these normative models of language rights do not exclude, but rather supplement each other.

updated overview of this monumental research can be found in McRae, *supra* n. 6. Similarly, the subtitle of D. Richter's very detailed analysis of Switzerland's language legislation and case-law, *Sprachenordnung und Minderheitenschutz im schweizerischen Bundesstaat* (Berlin, Springer 2005), 1315 p., is 'relativity of language law and safeguarding language peace' (*Relativität des Sprachenrechts und Sicherung des Sprachenfriedens*).

[52] P. Foucher, 'Le droit et les langues en contact: du droit linguistique aux droits des minorités linguistiques', in A. Boudreau et al. (eds.), *L'écologie des langues / Ecology of languages* (Paris, L'Harmattan 2002) p. 51.

[53] *R.* v. *Beaulac* [1999] 1 S.C.R. 768.

[54] Sadurski, *supra* n. 32, at p. 24.

[55] On the dual nature of South Tyrol autonomy, between the original minority-related interpretation based on ethnicity and an evolutionary territory-related interpretation based on language, *see* F. Palermo, 'Alto Adige: verso nuovi modelli di convivenza', 6 *Le istituzioni del federalismo* (1998) p. 1101 et seq.

The legal framework of these models may still evolve to higher levels of protection. However, some conclusions regarding their nature and moral foundations can already be drawn.

Although the normative models here presented are in practice contextually inspired by convoluted considerations, including to some extent the notion of linguistic justice, in principle they rely on different moral and legal foundations and they express very different concerns: for personal autonomy and development, for social integration and cohesion, for ethnocultural preservation, or for political integration. The language rights being recognised on behalf of linguistically diverse social segments within various political units may seem similar in their legal content (e.g., the right to use one's language with the authorities or the right to receive education in one's language), but the underlying rationale will not necessarily always be the same. The strongest claim, the right to live in one's language, can only be feasible for territorially based communities which have a certain critical mass in addition to historical claims.

'New' minority rights, 'old' minority rights and indigenous peoples rights models share some common characteristics: all are morally grounded on special needs of the respective groups, although the concrete needs may not be the same (e.g., reindeer farmers in Sámi homeland, immigrants or citizens of Asian origin in San Francisco, or members of the Hungarian national minority in Slovakia). In the three cases legal norms (both international and domestic) and administrative practices make language rights or accommodations dependent on certain qualifiers: the size of the group, a significant demand, proportionality and reasonableness in the circumstances. In addition, the belonging to a minority needs to be defined to legal effects. By contrast, human rights and official-language rights are not subject to any qualifiers: human rights are accorded to any person anywhere; after their proclamation, official-language rights are to the benefit (or the constraint) of anyone subject to the relevant jurisdiction.

One could argue that language rights granted old minorities, new minorities and indigenous peoples belong to the same normative model: their holders would consist of different types of minorities, and the normative justification for those rights would appear to be the same, the existence of special protection needs. However, international and domestic law currently differentiate between the status of the three groups. And it is not obvious that they have exactly the same needs and that they always make the same claims: language rights either invoked by them or granted them vary widely in scope. Old minorities make communal claims to language rights that are stronger than those to which new minorities strive for.

In the end, it is the sociological and historical context of each state which shapes the kind of linguistic accommodation that linguistically diverse social segments strive after and the kind of linguistic accommodation that the state as a whole will be willing to adopt.

APPENDIX

SUMMARY TABLE OF LANGUAGE RIGHTS NORMATIVE MODELS

	HUMAN RIGHTS	'NEW' MINORITY RIGHTS	INDIGENOUS PEOPLES RIGHTS	MINORITY RIGHTS	OFFICIAL-LANGUAGE RIGHTS
Examples	freedom of language; right to a fair trial which includes, if necessary, the right to an interpreter	linguistic accommodations granted in some countries or municipalities (public forms, public signs, public information, etc.)	education in the mother tongue (although the focus is rather on land rights)	schemes developed in Central and Eastern Europe including mother tongue education, right to use one's language with authorities, etc.	federal level in Canada, Belgium, Finland and Switzerland; Swiss bi- or trilingual cantons; Finnish bilingual communes; region of Brussels; Spanish bilingual autonomous Communities
Legal foundation	international treaties	a piecemeal policy basis	a few international standards + domestic legislation	some international standards + bilateral agreements + domestic legislation	domestic legislation
Moral foundation	human dignity	special accommodation needs / in U.S. equality considerations	special needs of indigenous peoples	special needs of national and linguistic minorities	constitutional compromise between linguistic communities
Main purpose	personal autonomy and development	social: integration and cohesion	ethnocultural: preservation of indigenous peoples and traditional cultures	ethnocultural (preservation of minority language community); also international peace-keeping	political: internal peace-keeping (linguistic peace) through security for linguistic communities
Qualifiers	No	explicitly or implicitly considered: 'significant demand', 'reasonable in the circumstances', etc.	'wherever practicable'	'significant demand', 'reasonable in the circumstances', 'where number (…) so warrants'	not at federal level, but sometimes at regional/municipal level to protect official-language minorities