

Language Rights of Minority Language Speakers

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Introduction	1
Overview Until 1945	2
Overview 1945 to Present	3
Debates and Controversies	4
Conclusion	5
References	5
Legal Instruments	5

Key Points

Language rights before 1945

- Link to religious rights.
- Peace treaties.
- Bilateral agreements.

Language rights after 1945

- Limits of benign neglect.
- Language rights as human rights.
- Language rights in liberal theory.

Controversies

- Tolerance-oriented and promotion-oriented rights.
- Individual and collective rights.
- Applicability in nation-states.

Abstract

Language rights are largely defined by international law. They can refer to individual and collective rights and take the form of non-interference or active support by the state. Through language rights, minorities seek to be granted the maintenance of their culture and language, receiving state-provided services and information in their own language, including education and legal proceedings. This chapter recapitulates the developments of language rights before and after 1945 and discusses controversies and difficulties in their application.

Introduction

A quarter of a century ago, [Coulmas \(1998, p. 65\)](#) observed that “the language of human rights is notoriously vague.” This observation still holds. No agreement exists on what constitutes a language or a minority. The term speaker raises the question of what type of speaker we have in mind and, in this context, also what a mother tongue is. There is also no agreement on the relation between international or domestic laws, for whom language rights are tolerance-oriented or promotion-oriented, whether rights are individual or collective, fundamental or not, and if they apply to the public sphere.

Language rights are complex for three principal reasons. First, they are intertwined in outcomes of (unwanted) contact and domination, which is a politically sensitive issue to address. Second, rights are an instrument to alter these relations, but not everybody embraces change. Social justice and political stability are often hard to reconcile. Third, language rights principles, interpretations, and applications differ across time and place (see [Fig. 1](#)).

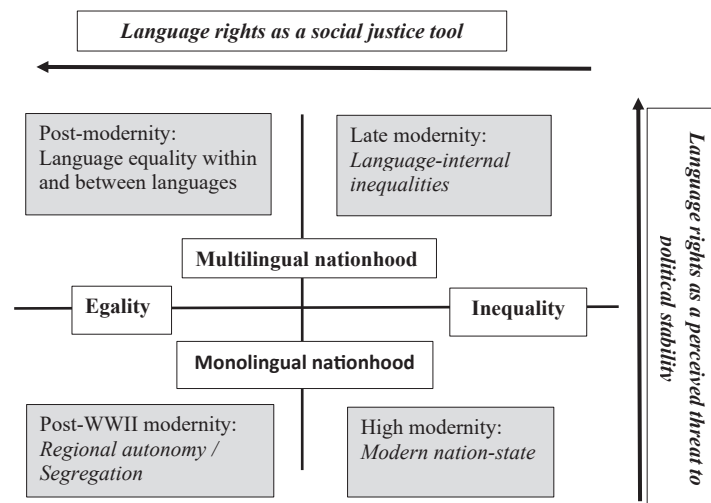


Fig. 1 A sociolinguistic model of language rights developments.

Overview Until 1945

The study of language rights is part of sociolinguistics today, but its discussion predates sociolinguistics by at least four centuries. European peace treaties from the sixteenth century already reveal considerations for language rights. Bilateral agreements primarily concerned religious minorities, as “linguistic minorities did not merit separate mentioning in international treaties” then (Skutnabb-Kangas, 2000, p. 507). In 1516, Francis I of France signed the Treaty of Perpetual Peace with the Helvetic state, which granted rights to “Swiss who speak no language other than German” (Dessemondet, 1984, p. 29). Other treaties guaranteeing religious (and linguistic) non-intervention by the state are the Peace of Westphalia from 1648, which ended the Thirty Years’ War in Europe, or the Treaty of Oliva from 1660, which incorporated Roman Catholic communities in Livonia into the Swedish state.

A new phase of language rights emerged in the early nineteenth century when language became more critical in peace treaties signed in Central Europe. Examples include the Treaty of Bucharest of 1812, which granted Serbian autonomy, or the protection of Turkish as part of the Muslim religious activities in 1881 in the Convention of Constantinople, which settled the frontier between Greece and Turkey. Reordering Europe’s political landscape following Napoleon’s defeat and the subsequent Congress of Vienna of 1814–1815 was fundamental for the development of language rights. Subsequently, several multilateral treaties and national constitutions featured clauses that can be regarded as precursors for protecting linguistic and ethnic minorities. Examples include the Treaty of Adrianople of 1829, which ended the Russo-Turkish War, and the Treaty of Paris of 1856, which made the Black Sea a neutral territory.

While we can find essential predecessors to language rights in the premodern period, language rights as we understand them today emerged as a result of modern nation-building (Ruiz Veytez, 2001). Skutnabb-Kangas (2000, pp. 507–508) regards the Austrian Constitution of 1867 as an “early example of the recognition of linguistic rights [...], which contrasts strongly with the monolingualism which other powers were attempting to impose at the same time.” The Austrian Constitution stipulates that all ethnicities of the empire are granted “the inviolable right to preserve and maintain one’s nationality and language” (Staatsgrundgesetz, 1867, Article 19, translation mine).

A watershed moment for language rights was the establishment of the League of Nations, the world’s first intergovernmental institution tasked to solve conflicts between its member states through arbitration. The protection of minority rights became a significant concern for the work of the League of Nations, which drafted several bilateral treaties between victorious and defeated states of WWI. While the main legal instrument was the prohibition against discrimination in general, protection often “included rights relating to the use of the minority language, particularly in the private sphere, but partly also in court and within the system of education” (Scheu, 2020, p. 358). Several multilateral conventions were ratified in the framework of the League of Nations that contained provisions to protect minorities in defeated or newly created states. Examples include Poland, Yugoslavia, Czechoslovakia, and Romania in 1919, Greece in 1920, Albania and Finland in 1921, Lithuania in 1922, and Estonia and Latvia in 1923. The signatory states agreed that all state nationals, including members of minorities, could use any language “in private, in business, in religion, in the press or any publications or at public meetings” (Spolsky, 2004, pp. 115–116) and that they had the right to interpretation and translation in court proceedings. Whether these rights could be practiced proved to be an entirely different matter. Member states did not file complaints if states failed to maintain their obligations. Also, any steps against such violations would have required unanimous consent from all member states of the League of Nations, including that of the offender. Another weakness was that language rights were not universal but limited to impositions on defeated nation-states. Such flaws notwithstanding, these agreements gained importance as models for framing language rights henceforth as they emphasized “spelling out what the state should not do” (Bruthiaux, 2009, p. 75). In this period, legislation protecting minorities was also passed in several European

states. Notable examples are clauses protecting the rights of Swedish speakers in Finland in 1919 and 1922, the recognition of Irish and English as official languages in Ireland in 1937, and the recognition of French and Flemish in Belgium in 1921.

These developments should not obscure the fact that the rise of the modern state led to new language regimes where the languages of linguistic minorities did not fare well. National languages were established and standardized, and compulsory education and conscription accelerated their spread. Being a linguistic minority often meant forced assimilation, marginalization, or exclusion. Therefore, [Coulmas \(1998, pp. 67–68\)](#) points out that the “nation state as it has evolved since the French Revolution is the natural enemy of minorities.” New attempts were made to change this after WWII.

Overview 1945 to Present

The steps taken within the League of Nations were developed into new initiatives under the patronage of the United Nations after 1945. The Charter of the United Nations (1945, Article 1) lists language as a ground for individuals not to be discriminated against. Language is recognized as an essential characteristic and indicator of human rights and appears frequently in key UN documents, typically in the preamble. With the [Universal Declaration of Human Rights \(1948\)](#), discussions about language rights shift to the legally more clearly context of human rights. Human rights protection, which “had been conceived as an internal affair of sovereign states, was now understood as a new element or even a revolutionary change in international law” ([Scheu, 2020, p. 363](#)). The concept of human rights maintains that they are so fundamental that every individual possesses them simply by being human. These rights are perceived as inviolable, meaning that no person or state can violate them.

The new attention on human rights paradoxically resulted in less attention on language rights, as these were now thought to be protected through human rights. We can observe the trend that ethnicity was treated analogously to religion in the secular state. Accordingly, just as religious issues, all matters related to ethnicity were treated along the principle of benign neglect ([Kymlicka, 1995, p. 3](#)). However, benign neglect did not end linguistic oppression nor interferences on language rights because state services need to be conducted in some language, at the expense of the other languages used in the state. A second trend that emerged in the post-war era was a shift from personality rights to territoriality rights regimes. Language rights are shifted onto territories where minorities predominantly or traditionally settle. Well-known examples are the Italian post-war constitution of 1947, which grants regional autonomy to the minority-language-speaking regions, and Canada, where the Official Languages Act of 1969 grants French and English official status and seeks to maintain the French-speaking character of Quebec.

It was not until the 1970s that discussions on language rights gained traction again. A key event was the [International Covenant on Civil and Political Rights \(1976, Article 27\)](#), which states: “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.” The covenant led to a survey by a newly appointed UN Special Rapporteur on Minorities, [Francesco Capotorti \(1979\)](#). The Capotorti report explored juridical and conceptual aspects of minority protection for the UN. It resulted in a proposal to draft a general declaration on the rights of members of autochthonous minority groups. Migrant groups were excluded from these discussions of language rights since individuals who move to another state have some choice in the matter—a choice that autochthonous groups do not have. This distinct treatment of autochthonous and allochthonous language minorities is not undisputed among language rights experts, though ([Coulmas, 1998, p. 68](#)).

Since the 1990s, several international legal instruments have defined language rights in new detail, and assumptions that language rights are part of fundamental human rights have become more influential in Europe and the US. The most consequential of these legal instruments is the [European Charter for Regional or Minority Languages \(1992\)](#). Ratified by 33 states, it seeks to protect selected autochthonous minority languages in Europe ([Hult, 2004](#)). However, just as with other international legal instruments, individuals “whose language rights are violated by governments have no direct recourse available to them” ([De Varennes, 2001, p. 24](#)). The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992, Article 2.1) is an initiative by the United Nations to ensure that minorities have the right “to use their own language, in private and in public, freely and without interference or any form of discrimination.” Since 2005, a Special Rapporteur on minority issues compiles annual reports to the Commission on Human Rights about national legislation on minorities and monitors to what extent their rights are guaranteed. The Framework Convention for the Protection of National Minorities (1998) protects the rights of national minorities. It requires the states that ratified the framework to report to the Council of Europe about their protective measures. The Convention on the Rights of Persons with Disabilities (2006) expands the notion of language to include sign language and non-verbal means of communication. The Declaration on the Rights of Indigenous Peoples (2007) is a legally non-binding instrument that defines Indigenous peoples’ rights and cultural ownership while focusing on individual rights over collective rights ([Engle, 2011](#)). Finally, the Draft Universal Declaration of Linguistic Rights (1996) or “Barcelona Declaration” is an initiative by linguists that seeks to rally more support for endangered languages. Numerous non-governmental organizations have signed this declaration, but there is no official support from the United Nations to date. The Barcelona Declaration seeks to include minorities’ right to the necessary funding to maintain their languages ([UDLRFC 1996: Article 25](#)). Still, while the declaration “lists no fewer than 52 specific language rights [...], only at the very end under the heading of “Additional Dispositions” and almost as an afterthought does it note that: “International funds must be set up to foster the exercise of Linguistic Rights in communities which are demonstrably lacking in resources” ([Bruthiaux, 2009, p. 80](#)).

Debates and Controversies

As can be expected from legal instruments, conflicting views exist about their interpretation and consequences. A fundamental difference in language rights is whether rights are tolerance-oriented or promotion-oriented (Kloss, 1977). In this context, tolerance means free from state interference, while promotion refers to the state actively supporting the use of minority languages in public institutions. This distinction leads to deliberations on which languages should only have tolerance rights and which should enjoy both. Usually, migrant languages are seen to meet only the requirements for tolerance rights, as immigrants “know before they arrive that the public institutions of their new society operate in a particular language, and do not generally seek to challenge that” (Kymlicka & Patten, 2003, p. 7). Other distinctions are made between fundamental rights and enrichment rights. Skutnabb-Kangas (2000, p. 485) suggests that linguistic human rights, i.e., language rights as human rights, should refer to inalienable human rights only and not include enrichment-oriented rights such as the right to learn foreign languages in school. Accordingly, linguistic human rights should relate solely to the mother tongue and the official language(s) of a state. Mother tongue-related rights include identifying with, learning, and using one’s mother tongue. Under this definition, linguistic human rights imply a right for linguistic minorities to become bilingual. However, it has been noted that linguistic human rights suffer from the same problem as the benign neglect approach in that “both fail to confront the fact that language policies inevitably involve privileging a limited set of languages” (Kymlicka & Patten, 2003, p. 36).

It is controversial whether language rights can be derived from existing civil or human rights or whether they should be distinct from them. Individual language rights are based on individual rights rooted in Western civil or human rights. Some argue that language rights can mainly be derived from the principles of freedom of speech and non-discrimination, and that these rights are “individual human rights as generally recognised in international law” (De Varennes, 2001, p. 16). Others argue for language rights to be collective, although this view can be seen “to be running contrary to traditional liberal-democratic principles which enshrine rights of individuals rather than collectives” (Edwards, 2001, p. 5). Chen (1998, p. 49) defines collective rights as “the right of a linguistic group to ensure the survival of its language and transmit it to future generations.” Note that collective rights are not defined beyond the fact that they are not individual. It has also been observed that the call for language rights as group rights has “not really received much traction in international law [...] partly because different groups have completely different needs” (Piller, 2016, p. 206). A third position is that collective rights do not per se conflict with individual liberty. Kymlicka (1995, p. 7, italics in the original), for example, argues that “what distinguishes a *liberal* theory of minority rights is precisely that it accepts some external protections for ethnic groups and national minorities, but is very skeptical of [group P.H.] internal restrictions.” A final position is that a strict or sterile juxtaposition between individual and collective rights is problematic because individuals inevitably belong to and identify with collectives. Communication, states Wright (2001, p. 49), “always involves at least two people,” which raises the question of whether language rights mean “that I have the right to make a public utterance in any language I wish without fear of sanction. Or does it imply more? Does it mean that I have the right to be understood?”

A third widely discussed issue is the applicability of international law in nation-states. Within states, language rights are “subordinate to the structure of power and domination” which means that even language policies that seek to protect minority rights are ultimately “a form of covert state control” (Tollefson, 1991, p. 170). It is also questionable whether all language and immigration policy issues can be derived from or be based on human rights (see above). This implies that decisions are left to states, making it likely that language minorities will suffer from injustice. Directly related to this is a second problem, namely, the almost complete absence of means to contest language rights violations at the state level. In practice, the absence of protective language legislation implies no means to secure one’s language rights. Note also in this context that the frequent omission of minority languages in education systems worldwide is a reminder that the dominant part of society controls the education system (May 2001, p. 128). Faingold’s (2004) analysis of 187 constitutions shows that states are more prone to grant rights and official status to minority groups strong enough to seek autonomy or secession (e.g., Belgium, Canada) while those who have, or claim to have, a strong identification with one language refrain from granting constitutional rights to other language or do not mention language at all (e.g., the US). Debates on language rights are often dodged to maintain the current political stability, and this is done at the expense of minority interests and rights.

The fact that granting language rights to minority groups entails that the dominant part of society loses some of its privileges represents a veritable obstacle to new language rights legislation. Furthermore, conceptual problems about language impede new legislation. There exists no universally acknowledged definition of minority. Likewise, linguists have no agreement on defining language, speech community, or mother tongue. The latter tends to be defined as the language that has been first acquired, the language one identifies with (or is being identified with), the language one knows best, the language one uses most, or the language of one’s ancestors (Skutnabb-Kangas, 2000, p. 106), but Grenoble and Whaley (2006, p. 118) warn that in endangered language communities the mother tongue and the first language, the most often used language, etc. is usually not the same for a sizable part of the community. Given such uncertainties and contestations, language rights do not readily provide hands-on solutions to minority language problems. It takes considerable expertise in international law and state legislation to make a case, making language rights unlikely to be adopted by most minority language activists.

A final issue that warrants discussion is that language rights as we know them today have emerged entirely from a European (or Western) context. At the same time, its outcome has been framed as universal. At a time when knowledge from the South (Connell, 2007) has become an epistemological imperative for the humanities and social sciences and we discuss the conditions under which knowledge in linguistics has been created (Deumert et al., 2021), a reflection on what parts of the European perspectives should be universal and what contributions from outside Europe should be made universal becomes increasingly pressing.

Conclusion

Language is an arena in which larger conflicts are fought out. These include issues such as nationhood, power distribution, tolerance and solidarity, or a transformation from monolingual to multilingual language policies in states (May 2001, pp. 15–16). Conflicts call for solutions, but Coulmas (1998, p. 72) points out that “[l]egalistic solutions of social problems are not necessarily the best solutions.” There are also practical problems that stand in the way of legalistic solutions. If language rights are not specified in domestic laws, individuals cannot (easily) claim these rights, and communities even less so. Since language rights are inexorably enmeshed in a range of large-scale social debates, it seems desirable to expand the field of study. The study of language rights could seek closer connections to other parts of contemporary sociolinguistic discussions, such as decolonization, ideologies of communication, or the sociolinguistics of mobile and situated resources.

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