

Language and the Law

Language policy is a topic of growing importance around the world, as issues such as the recognition of linguistic diversity, the establishment of official languages, the status of languages in educational systems, the status of heritage and minority languages, and speakers' legal rights have come increasingly to the forefront. One-fifth of the American population does not speak English as their first language. While race, gender, and religious discrimination are recognized as illegal, the United States does not currently accord the same protections regarding language; discrimination on the basis of language is accepted, and even promoted, in the name of unity and efficiency. Setting language within the context of America's history, this book explores the diverse range of linguistic inequalities, covering voting, criminal and civil justice, education, government and public services, and the workplace, and considers how linguistic differences challenge our fundamental ideals of democracy, justice, and fairness.

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Language and the Law

Linguistic Inequality in America

Douglas A. Kibbee



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Preface

The cover of this book represents the Pledge of Allegiance, recited by school-children across the country, in its Arabic form. In January of 2013 the Cultural Arms Club of Rocky Mountain High School (Fort Collins, CO) read the pledge of allegiance in Arabic, one of many languages it used in an effort to break down cultural barriers. In March of 2015 a student at the Pine Bush High School in New York State recited this version. Both readings unleashed a firestorm of protest, with many websites and media outlets claiming that saying the pledge in Arabic forced students to embrace Islam. Christian Arabs as well as Muslims would use the same word, “Allah,” in the translation of the phrase “one nation under God.”

By design of the founding fathers of the United States, America does not have a national religion or a national language. Religious difference is explicitly protected in constitutional law, but linguistic difference is not. Linguistic inequalities affect an increasing number of Americans, from hundreds of linguistic backgrounds. Language and power are inextricably interconnected, with great potential for conflict and abuse, as the pages below will document.

The relation of language and power has been a focus of my work throughout my career. This research has explored how the preparation of grammars and dictionaries is related to political and social power, the relationship between French and English in England, and the elaboration and imposition of a standard language in France.

Most of my career has been devoted to studying this relationship between power and language relating to the use of French. In the early 1990s, I spent two summers in Quebec, at a time of great tension based largely on language. In 1994, I was teaching in France when the “Loi Toubon,” designed to protect the French language against English encroachment, was debated, passed, and in part declared in part unconstitutional. These experiences led me to wonder how linguistic difference was treated in my native United States, which in turn led to the organization of a conference, “Language Legislation and Linguistic Rights,” held at the University of Illinois in 1996 (selected papers published by John Benjamins, 1998). Subsequently, a series of reading groups with faculty

and graduate students at the University of Illinois revealed the ubiquity of linguistic conflict and the variety of responses to it.

While ubiquitous, language conflict differs greatly from country to country, each with its own history and mixture of immigrants and indigenous peoples. The responses also vary according to the legal system and the political structures of each country. To cite only the other country I know best, France is a country of relatively recent immigration, which has never threatened the dominance and the legal position of the French language. The imposition of French on local languages (Basque, Breton, etc.) took centuries to complete; the survival and revival of local languages does not change their secondary and unofficial role in contemporary France. The creation of a standard language was part of a strong centralization of power that continues to this day. The local control that marks much of American-language conflict has far less impact in France. The protection of the national language from a foreign influence based on world economy and geopolitics is not a concern in the United States. The French legal code is based on very different principles that accord less influence to judicial precedent. Where some American cases we will consider took decades to be resolved in the courts, the political system in France includes a Constitutional Council that can overturn laws before they are enacted, a procedure invoked to reverse parts of the original *Loi Toubon*.

Eager to explore such differences and similarities, beginning in 2000, I offered a course on language and the law in the United States, and a few years later on language policies in the countries of the European Union. These opportunities deepened my understanding and my concern for the effects of linguistic inequality in a democratic society.

The philosophical issues are related through case law to individual experiences. These individual stories need to be remembered as the law seeks general solutions to particular problems:

- In 1919, August Bartels, in Bremer County, Iowa, and in 1920 Robert Meyer, in Hampton, Nebraska, gave their students religious instruction in the German language, in direct violation of their states' statutes forbidding instruction in any language except English.
- In 1965, Maria Lopez, a 21-year-old hotel worker in Rochester, NY, sought to register to vote; when she was denied registration based on an English-language literacy test, she filed a suit under the newly passed Voting Rights Act.
- In 1970, Kam Wai Lau complained to the Chinatown Neighborhood Legal Services in San Francisco that her son Kinney Kinmon Lau was not receiving meaningful education because it was all in English, a language he did not understand.

- In 1970, Jose Negrón, a Puerto-Rican farmworker in Suffolk County, NY, challenged his murder conviction because inadequate interpretation made him “not present at his own trial.”
- In 1981, Manuel Fragante, a Pilipino-American, had the highest score on a civil service test for a position at the Honolulu Department of Motor Vehicles; he was denied the job because of the interviewers’ perception of his accent.
- In 1991, Dionisio Hernandez challenged his felony conviction on the grounds that the prosecution had unlawfully used its preemptory challenges to exclude all Spanish-speaking potential jurors.

These are just a few of the stories that we will explore in the pages that follow. The picture that emerges is one of linguistic privilege and linguistic disadvantage. Long ignored in the American tradition, the power of language is one of the most intractable of inequalities in our society. The dominance of English, and of a particular variety of English, is taken for granted. Because language can be learned, there has been little sympathy for those disadvantaged by their limited knowledge of the dominant language.

Empathy is, however, a crucial factor in social cohesion. Political correctness is derided for its excesses, but the alternative lack of empathy is an invocation of privilege that destroys the social fabric. Accommodating those who do not speak English is a first step toward the realization of a true meritocracy and toward the needs of our society in its interactions with the broader world. The first act respecting the diversity of cultures is reaching across linguistic barriers, a “burden sharing” (to borrow from Rodriguez 2006) that must be equal if it is to be effective.

In my desire to present the full spectrum of language-related issues, I have been obliged to move quickly through complex matters that deserve fuller development. Many issues dealt with here in a paragraph merit a full book, and where possible I have referred the reader to more detailed sources. The bibliography is an invitation to explore these topics in all their complexity. There remain many areas deserving of fuller treatment. I hope future scholars will take up those challenges as we strive toward a more perfect union.

Acknowledgments

In a work covering so many areas, my first debt is to all the scholars who have delved deeply into specific parts of the study that follows. Access to their work has been greatly enhanced by the availability of materials online, through legal and other digital subscriptions of the University of Illinois Library. The interlibrary loan service of the University of Illinois and the Washington Island branch of the Door County Library has filled gaps in the digital record. I am eternally grateful to Kathy Danner and her fantastic staff at the University of Illinois and to Marcia Carr at the Washington Island Library.

Early explorations of this topic were developed in the context of a course designed for the Campus Honors Program at the University of Illinois. I am thankful to Director Bruce Michelson for this opportunity and to the students who suffered through the elaboration of the ideas presented in this volume. Thank you for your patience and your insights.

Language policy reading groups at the University of Illinois provided another forum to examine language policy issues. Zsuzsanna Fagyal, Braj Kachru, Rakesh Bhatt, Dennis Baron, Anna Maria Escobar, Marina Terkourafi, Eda Derhemi, and many graduate students participated in these meetings, enlightening me on the great diversity of problems and solutions in the politics of language. Similarly, participants in the conference “Language Legislation and Linguistic Rights,” held at the University of Illinois in 1996, and in subsequent meetings on linguistic prescriptivism have shed much light on conflict between languages and between varieties of individual languages. John Joseph has been a constant inspiration for questioning issues of language, politics, and power.

More recently, a number of people have read parts of this volume, suggesting improvements and providing insights. Luis and Patricia Rivas read an early version of the chapter on bilingual education and shared their experiences in this domain. James Barrett and Robert Kibbee read other chapters, saving me from many errors of fact and logic. Throughout the elaboration of this book, Helen Barton, Editor at Cambridge University Press, and her staff have been extremely helpful; the comments of external reviewers contacted by the Press

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have helped me to clarify issues in my own mind, and in their expression in the pages that follow.

All errors that remain are strictly my responsibility. I hope that readers will help correct remaining mistakes and misconceptions as we all pursue a greater understanding of the linguistic issues that hinder the pursuit of our national ideals.

The first reader, to whom I owe everything, is Jo Kibbee. Her family's story is incorporated in this work: the strength and courage of immigrants to overcome the challenges of a new world. This work is dedicated to her, with deepest gratitude, and to her forebears, who made our encounter possible.