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Contents

Language conflict and language shift: a sociolinguistic framework for linguistic human rights

RAINER ENRIQUE HAMEL

Abstract

Based on ongoing research in an indigenous area of Mexico, this article will analyze how language conflict between Spanish and indigenous languages and minority language shift operate on the levels of cultural models, discourse, and language use. It will show in which ways these processes affect linguistic human rights in two key areas of social organization: bilingual education and the administration of justice. This broad sociolinguistic perspective will allow the author to relate the Mexican experience to other cases, and to draft a list of minimal criteria for the evaluation and defence of linguistic human rights.

As a conclusion the article maintains that a sociolinguistic framework that broadens the concepts of language and communication underlying existing models for language planning will be best suited to describe language conflict situations, and to establish an adequate basis for the definition and implementation of linguistic human rights. Such a framework will have to take into account at least three levels of sociolinguistic analysis: (1) linguistic structure, (2) discourse structure, and (3) cultural models.

Sociolinguistic analysis and linguistic legislation: a point of departure

In the Mexican Hñähñú (Otomí)[1] community of Santa Teresa Daboxtha, the indigenous teacher Julio addresses his third graders in Spanish every morning, a language his students are just in the process of learning. The Anglo educators in the elementary school of Redwood City, California, carry out their instruction in Spanish, too, the mother tongue of some 90 per cent of their student population, in a courageous effort to root the fundamental cognitive skills of literacy and math in the children's first language.

In his electoral campaign a state party congressman of ethnic background appeals to his fellow Indians in Hñähñú, performing the traditional populist speech of promises. Near San Cristóbal de las Casas in the Mexican Southeast, indigenous *comandantes* representing various native peoples from Chiapas eloquently defend their people's indigenous rights in Spanish, their interethnic lingua franca, at the peace negotiations between the Mexican government and the Zapatist Army of National Liberation (EZLN).

In both school cases the teachers employ a language of instruction that is not their mother tongue. In both cases they perform their classroom activities based on discourse patterns and cultural frames from the "other" culture, or in a hybrid synthesis of both. The Anglo teachers, whose Spanish is fluent but certainly not native, use discourse tags such as *¿están conmigo?* "are you with me?" which are typical of US American English, perhaps of Chicano, but not of standard Spanish or Hispano-American discourse. And the social, interactive relationship between Julio and his students in the Hñähñú village is marked by a discourse style of deference and indirectness characteristic of the ethnic Indian culture. The cases of public discourse disclose the strategic use of the "other" language to achieve specific political objectives for the group represented by the speakers.

These flashes from different speech situations reveal the great complexity of cross-cultural, bilingual contact situations where linguistic human rights are involved. They have in common that in each case no clear boundaries can be established, as presupposed in classical models of language contact such as *diglossia* in US American (Fishman 1967, 1980) or *language conflict* in Catalan sociolinguistics (Aracil 1969; Vallverdú 1973; see Boyer 1991). Cultural patterns, discourse practices, and language choice cross frontiers and combine in a range of different ways in various cultures, which are by no means exceptional, but rather typical instances of language-contact situations in a modern, globalizing world. In order to understand the functioning of linguistic human rights and to design policies and legal frameworks to defend them efficiently we have to understand first of all the complex situations of languages in contact and often in conflict.

My claim is that linguistic human rights can only be appropriately identified on the basis of a broad sociolinguistic framework and a discourse concept of language that takes into account the pragmatic, metalinguistic, and ideological relationships between speakers and their languages. In addition, such an approach implies that certain conditions of context, infrastructure, and institutions must be given in order to use a minority language successfully and to warrant their speakers' linguistic

human rights. Therefore we have to relate linguistic human rights to sociolinguistic analysis, language policies, and planning.

Given their macro-sociological orientation, however, models of language shift and language planning are commonly based on a decontextualized, structuralist view of language and lack a differentiated insight into the discursive and linguistic complexity of language-conflict situations.[2] Similarly, a highly idealized concept of language prevails in juridical debates (see several articles in Pupier and Woehrling 1989) or in economic policy approaches to language status and rights, which often treat language like any other commodity and do not take into account the social construction and embeddedness of language in social interaction. Yet it appears to me that a language can hardly be defended or protected appropriately as an abstract system or commodity, but only as a specific communicative resource and referent of identity related to a given linguistic community.

Another line of thought relates linguistic human rights and, more generally, minority rights to the prevention of conflict and the development of democracy. Although it is certainly difficult to establish causal relationships between ethnic and linguistic diversity and open conflicts, it is assumed that depriving minorities of cultural and other human rights may lead to conflict (Phillipson and Skutnabb-Kangas 1995). Recognizing linguistic rights among others may therefore reduce potential or actual interethnic conflicts, and at the same time help to protect subordinate languages. To the extent that international law and human rights in particular have developed their potential and effectiveness as instruments of political pressure, it seems to make sense to formulate and establish certain criteria for the defense of endangered languages in terms of linguistic human rights.

Political dynamics in many parts of the world have also increased the centrality of a human-rights perspective. In Latin American history, for instance, we can identify at least three different ideological formations (Comaroff 1993) or orientations (Ruíz 1984) toward Indian peoples. After independence at the beginning of the nineteenth century, most states promoted a policy of *monoculturalism*, which denied any space to cultural, ethnic, or linguistic diversity and even negated the existence of indigenous peoples in some cases. Orlandi (1990, 1993) shows how in Brazil the process of constructing a national identity, which started way back during colonization, systematically excluded the indigenous peoples and "erased" them step by step from the ideological construction of *Brasilianidade*. Based on positivist and liberal principles of equality, most Latin American constitutions did not recognize any specific category of citizens, hence no reference appeared to aboriginal groups.

A second ideological formation, which in part replaced the previous one in many states, acknowledged the existence of indigenous populations but considered their persistence as a barrier to progress. Mainly during the twentieth century, many governments developed indigenist policies of assimilation (usually called "integration"), including educational programs of submersion or rapid transition. I have called this orientation *multiculturalism*, that is, a recognition of the existence of indigenous populations as a factual state that needs remedy, usually oriented toward assimilation (Hamel 1993a, 1993b). This perspective may include both a language-as-a-problem and a language-as-a-right orientation (Ruíz 1984).

Since Stavenhagen's (1988) comprehensive summary of indigenous rights in Latin America, impressive legal changes have taken place that recognize a range of specific ethnic rights but maintain in most cases a "problem" orientation. The decisive step is the transition from multiculturalism to *pluriculturalism* (and plurilingualism), an ideological formation that not only recognizes cultural diversity but assesses it positively as a resource of enrichment for the whole nation and the state (cf. the enrichment perspective in Ruíz 1984 and Skutnabb-Kangas 1984, 1990). This perspective emerges only slowly in Latin America as the outcome of indigenous movements and continued struggles fighting for the recognition of indigenous peoples and nations, and as a basis for the construction of pluriethnic states. Although to a certain degree these ideological formations reflect a historical process, it is important to notice that in most Latin American countries with indigenous population all three formations coexist at present in a more or less conflicting way and show varying degrees of saliency.

Over the past two decades, Latin America has experienced the upsurge of new indigenous movements that are increasingly questioning the prevailing European concept of homogeneous nation states, and the governments' prerogative to decide the fate of ethnic minorities. At the turn of the twenty-first century, the "indigenous question" has achieved such a centrality in many Latin American countries (certainly in Mexico) that the way governments and majorities treat their minorities or subordinate peoples has become a touchstone to evaluate the quality and depth of democracy in these nations.

The most advanced movements have developed strategies that integrate specific claims (territory, resources, justice, education, language) into the overreaching striving for local and regional autonomy. Autonomy in turn is conceptualized as the specific modality to exercise the right of self-determination as indigenous peoples and nations. Accordingly, language-related policies and legal regulations have the best prospects of success

if they are incorporated into that general framework and attempt to create the necessary conditions (including resources) for language maintenance and growth.

From the viewpoint of both sociolinguistics and political anthropology it seems therefore reasonable to investigate cases where linguistic human rights may be involved in a broad, holistic perspective to understand how specific aspects of language problems integrate into global societal concerns.

Based on research in indigenous areas of Mexico and other Latin American countries, I will sketch a sociolinguistic approach designed to understand how language conflicts and shift processes between a dominant and a subordinate language operate as ongoing social processes that are constituted and reproduced in verbal interaction. I will then show how these processes affect linguistic human rights in two key areas of social organization: education and the administration of justice for indigenous peoples. In the light of these findings I will finally refer to some central issues in the current debate on linguistic human rights and discuss some minimal criteria that should be taken into account in the definition and evaluation of linguistic human rights.

Cultural models, discourse, and linguistic structure in language shift and maintenance

From a macro-sociological perspective, the relationship between Spanish and the indigenous languages in Mexico and elsewhere in Latin America could be characterized in most cases as an *asymmetric language conflict*,[3] where Spanish or Portuguese is serving the classical "high" and the Indian languages (ILs) the "low" functions. Different from diglossia, in both Ferguson's (1959) and Fishman's (1967) sense, forms and functions are not neatly separated; on the contrary, domain invasion and language mixing occur as part of a process of socially motivated language change.

This process can be conceptualized as a relationship between two conflicting historical tendencies: one tendency articulates all aspects of language shift or dominant language expansion, including the speakers' linguistic consciousness, ideologies, and attitudes; Spanish or Portuguese displaces the ILs in their geographic extension and their functional use in discourse domains and events and affect their linguistic structure. In all cases where language shift actually takes place this will be the dominant tendency. The other tendency expresses all instances of language maintenance and resistance: the reproduction of communicative patterns and identity functions in the family and neighbourhood networks, the

preservation of ILs in certain domains of production, community work, and administration; and the ensemble of attitudes and ideologies that counteract language shift. This tendency will be in a subordinate position in cases of language shift. Under certain circumstances the relationship between the two tendencies may be reversed; accordingly, the subordinate language may recover certain domains and functions, that is, the tendency of maintenance or revival may become dominant. What is important to keep in mind is the fact that both tendencies, that is, social forces that work in both directions of the process, will probably always be present in a range of differentiated modalities. Therefore, the alternative is not to fix on either language shift or maintenance; the tendencies are usually copresent to varying degrees. This view allows us to understand language conflict or contact in a historical and dynamic perspective, and to locate specific phenomena (e.g. code switching, concrete expressions of attitudes) as elements that both articulate and reproduce the main tendencies.

As soon as we focus our research on intermediate levels such as communities or micro-levels of speech events, it becomes clear that a binary opposition between the two languages, as in classical Catalan macro-sociolinguistics (*llengua dominante–llengua dominada*), is too simple to serve as an appropriate framework.

Extensive ethnography and detailed discourse analysis of a series of speech events in the Mezquital Valley, the main Hñähñú region located in central Mexico (Hamel 1988a, 1995; Sierra 1992), have allowed us to identify at least three levels of relevant discourse constitution that can be distinguished analytically; they encompass cultural models and patterns (CM), discourse structures (DS), and the linguistic structures (LS) themselves, such as they appear on the surface of speech (Figure 1).

Traditionally language shift or loss is investigated only on the third level of analysis, the object of systemic linguistics. The process of language displacement in our research, however, has proven to be much too complex to allow a reduction of analysis to linguistic form. Changes on the linguistic surface can very often only be explained if levels of discourse and cultural organization that underlie surface structure are taken into account.

One of the significant characteristics of a process of language shift frequently consists in ruptures or breaches between various components of the bilingual discursive universe. Such dislocations transform the interpretative basis of the group, that is, the cultural patterns of interaction and interpretation of the world. They interfere with their cultural models (cf. Holland and Quinn 1987) and modify the link between the language in use and the historical experience the group has accumulated over time in its own language (cf. Lang 1980). Since language policies prescribe

CULTURAL PATTERNS AND MODELS (CM)
Components of cultural models: concepts and definitions of speech events, procedures (such as procedures of politeness, of problem solving, etc.), conflict or conciliation management (e.g. discourse styles of bureaucratic procedure vs. ethnic styles in intercultural communication), overreaching **discourse styles, habitus**.

DISCOURSE STRUCTURES (DS)
Techniques for the organization of interaction (turn taking, sequencing, etc.), pragmatic categories such as verbal action schemes, techniques for argumentation, narration, etc., **discourse strategies.**

LINGUISTIC CODES AND STRUCTURES (LS)
Units on all levels of systemic linguistic analysis: phonology, morphology, syntax, semantics.

Figure 1. *Discourse levels of language conflict*

what discursive patterns (e.g. an agenda for a meeting) should be used in a particular situation, they intercede in the forms of perception and acceptance of sociocultural experiences.

Our research[4] has identified at least two distinct modalities of language shift and maintenance; both operate through three phases of language dislocation and ruptures between levels of discourse organization, as shown in an idealized form in Figure 2.

Modality 1

Phase 1.   Before the national language and culture break into a certain domain at a given point in history, the three levels coincide within the indigenous universe.

Phase 2.   In some cases changing conditions will at first force the speakers to adopt new linguistic codes and discourse structures from the dominant language. This typically happens in three domains of central relevance for the social organization and the language conflict: in bilingual education, in local and regional administration, and in a series of contact situations between the communities and external agents (bureaucracy, service institutions, banks). The new linguistic codes and discourse struc-

Figure 2.   *Modalities of language shift*

tures remain inherently incomprehensible in the first instance, because the Indian speakers cannot establish a relationship between them and their own historical and biographical experience.

Phase 3.   It is only in the third phase that the breach is overcome, reunifying cultural patterns, discourse structures, and linguistic codes in the realm of dominant language and mainstream culture. Language and discourse phenomena that used to be incomprehensible now become accessible, since at this stage indigenous speakers have acquired the modes of appropriation of social experience from the dominant society, that is, the cultural basis of interpretation for the linguistic codes and discourse patterns.

Modality 2

The second kind of shift starts with a transformation of the ethnic group's interpretative basis, that is, with a change of cultural schemes, of patterns of verbal interaction, and of interpretative procedures, while the indigenous language remains on the surface.

Once the cultural and pragmatic basis of the indigenous is eroded (phase 2), the substitution of the language as such can occur much more easily. Such processes can be observed in a series of institutional, intraethnic events like meetings and assemblies that are conducted in the indigenous language. The leaders themselves, especially the teachers, introduce new discourse structures (calling the roster, minutes, protocols, reports) or argumentation techniques originating in the national society. As soon as these new patterns are solidly rooted, having caused a transformation of the conceptual universe of the indigenous group, it is easier to take the step to switch to Spanish altogether (phase 3).

The third phase is no doubt the most idealized in this framework. Very often it is never reached in terms of imposing cultural models belonging to mainstream society homogeneously on a large scale. Frequently new syncretic models emerge and stabilize over time in a hybrid area somewhere in between language fields H and L, as is maintained by researchers in sociolinguistics (Hill and Hill 1986) and anthropology (Bonfil Batalla 1990). Nevertheless, in many cases it can be shown that the cycle of language shift is completed when a new coherence is established between cultural models, discourse structure, and linguistic surface structure in the realm of the dominant language. This new coherence is often foreshadowed by the leaders' and cultural brokers' cultural and discursive activities oriented toward the national society.

We have found that in both kinds of intervention a rupture ([R], see Figure 2) occurs between the basic components of discourse. This breach can be interpreted as a contradiction between the social production of collective experiences and their linguistic-discursive appropriation. It is overcome once the cycle is closed, which is to say, when through the process of shift the experiences and discourse modalities converge once again with the modalities of appropriation and organization, but this time in the realm of the dominant language and culture.

In sum, the Indian language and its discourse structures and cultural models are gradually excluded in a complex process consisting of three phases, in which one or two discourse levels are replaced at a time. In the long run, this process leads to a situation where the indigenous language is abandoned and, according to Mexican ethnicity ideology, a

given community is no longer considered indigenous, but rural (*campesina*) in generic terms.

As we have seen, the main interventions of language policies do not manifest themselves necessarily on the linguistic surface; they are channelled most efficiently on the level of discourse structures and underlying cultural logic, as has been shown in the analyzed shift. It becomes evident this way that a restrictive concept of language that incorporates only the surface of linguistic forms, (presence vs. absence of a language) and separates status and corpus cannot fully account for the real processes of intervention on language since it misses the most fundamental underlying procedures.

These results have important implications for the formulation of linguistic policies and legislation. A partial analysis of language distribution over a range of social domains (political organization, work, religion) could lead us to the conclusion that a specific subordinate language is still spoken in a series of vital domains. Therefore it could be considered as not threatened and not requiring any specific protection or reinforcement, when in fact its cultural basis may already be eroded and the speakers at the verge of shift. This example of research, which includes, but is not limited to, the micro-level of verbal interaction, shows the need to formulate integrative concepts, of both language and politics, in order to be able to analyze the objects of language policies in all their dimensions. To be more exact, we should consider language policies as intrinsic parts of overreaching discourse and cultural policies, rather than taking them in isolation and relating them exclusively to educational policies and the more technical field of language planning.

Indigenous education: a domain of cultural conflict and struggle for linguistic rights

The domain of education for subordinate — indigenous or immigrant — groups is considered to be one of the central battlefields for linguistic human rights. Although in recent years we can find very encouraging pilot projects of bilingual intercultural education for indigenous peoples in different areas of Latin America, in the vast majority of educational programs assimilationist curricula prevail, which range from total submersion to relatively fast transition. Generally speaking, low levels of proficiency and achievement obtain (von Gleich 1989; Chiodi 1990); and a systematic mismatch can be observed between the sociocultural, linguistic, and educational needs of the student population on the one hand, and the curriculum, materials, and language use at school on the other.

From the point of view of both the individual and the community, those modalities of schooling tend to reproduce subordination, very often accompanied by traumatic effects for the psychological and cultural development of the students. As a matter of fact, the inappropriateness of the school system as such severely violates the indigenous students' educational and linguistic rights (Hamel 1993a, 1994a).

Mexico is one of the few countries in Latin America that has developed an extended educational system for its native population.[5] Indigenous education in the Hñähñú (Otomi) area of central Mexico may serve as an example.[6] Although most rural primary schools in the region belong to the Department of Indigenous Education and have been labelled "bilingual" since their foundation some 40 years ago, it is arguable whether their program satisfies the criteria for a truly bilingual and bicultural curriculum. The most significant component that distinguishes the system from other public elementary schools is the important fact that all teachers are bilingual Indians who speak their native language, although some of them are dominant in Spanish. However, the high degree of centralization that characterizes the Mexican political system leaves little room for an independent and diversified curriculum in indigenous education. Since education has been considered a central instrument for the homogenization of the nation and the building of a nation-state after the Mexican Revolution (1910–1920), the federal government has kept a tight control over all domains of public elementary and secondary education.[7] Thus the curriculum and teaching materials for the 56 native peoples are established by the Federal Department of Indigenous Education, although an important tendency toward decentralization can be observed since 1992.

The central question is, then, to what extent is the government prepared to grant relative autonomy to the system of Indian education, and who will control it? Since the end of the 1980s there has been an increased disposition to grant the teaching of literacy and other content matters in the native languages where appropriate; but *content* as such had to be kept homogeneous and to follow the national compulsory curriculum for Spanish-speaking children. In other words, bilingualism was accepted to a certain extent, yet biculturalism, that is, real diversity, was not.[8] In sum,

–   Schools have to apply the general curriculum, which is compulsory for public primary education as to its objectives and content in the four main subject matters.
–   The national compulsory primers and textbooks, which are used as the main pedagogical tool, are designed to teach literacy in Spanish as L1; they are in no way appropriate for learning Spanish as L2.

- Although most students have little or no knowledge of Spanish at entrance level, there is no specific place in the curriculum for the Indian language and culture. No systematic teaching of Spanish as L2 is provided.
- The indigenous language serves a subordinate function as a language of instruction as long as necessary. Depending on the general language-distribution patterns and specific proficiency in Spanish, instruction in L1 may cease by grade 4 or 5.
- No culture domain separation (compartmentalization) is practised or envisaged. Thus the dominant culture (in its material, social, linguistic, and cognitive dimensions) invades the domains of the indigenous culture and contributes to the general culture and language shift.

Cummins (1984, 1989, etc.) and others have argued from a psychological and educational perspective that the central question of an appropriate education for minority children (e.g. the relation between language proficiency and academic achievement) could not be reduced to the opposition between L1 and L2 medium instruction, as folk theories ("maximum exposure," "mismatch") often suggest. This argument converges with a sociolinguistic perspective in education that maintains that the language conflict cannot be reduced to an opposition between Spanish and the indigenous languages.

Generally speaking, the schools observed in the Hñähñú area reproduce the language and cultural conflict on the three levels of discourse organization mentioned before. Detailed analysis of classroom interaction in the Hñähñú schools (Hamel 1988b, 1992) reveals patterns of language shift and ruptures between dimensions of discourse similar to those encountered in other domains and events. Even in the schools and grades where L1 is chosen as a medium of instruction (LS), the discourse structures (DS) in the primers and the pedagogical routines in teacher–student interaction are to a large extent imported from the dominant culture. Cultural patterns and models (CM) very often show syncretic mergers and contradictions between ethnic styles of interpersonal relations and teaching models belonging to the dominant society. Certainly no "pure" system prevails. Figure 3[9] represents two poles, an assimilationist pole and a maintenance pole, which exist as conflicting referents. Although the features of an assimilationist model dominate in the observed educational practices, some traits of a (virtual) maintenance model surface occasionally.

Given the complex conflict situation it is not enough to look at the language used on the surface. We have to include discourse structures and cultural models if we want to provide the necessary structural provis-

ASSIMILATIONIST POLE (typical curriculum in Latin America)	**MAINTENANCE POLE** (indigenous cultural base)
CULTURAL MODEL (CM) - western models of teaching-learning: e.g. verbal, decontextualized, lineal progression, group work	**CULTURAL MODEL (CM)** - culture based models of teaching-learning: e.g. learning by imitation, non-lineal progression
DISCOURSE STRUCTURES (DS) - formal school register	**DISCOURSE STRUCTURES (DS)** - formal ritual register or: appropriate register of ethnic socialization
- Mexican school discourse patterns: calling the roster, minutes, protocols, reports, exercises,	- ethnic socialization discourse patterns: "silence", "reciprocity"
- e.g. triadic interaction: Q-A-E	- ethnic interaction patterns, e.g. no immediate evaluation
- Spanish literacy mode written text structures in Spanish	- IL literacy mode written text structures in IL
LINGUISTIC STRUCTURES (LS) - predominant use of Spanish (=L2) - reading, writing, orthography in Sp.	**LINGUISTIC STRUCTURES (LS)** - predominant use of IL (=L1)- - reading, writing, orthography in IL

Figure 3. *Alternative models of indigenous education*

ions for linguistic human rights to be granted. Hence, educational linguistic rights will have to be defined in terms of the cultural, educational, and discursive context that allows minority languages to develop and to serve as enrichment tools for their speakers if they choose to receive education through the medium of their mother tongue. In addition, student empowerment (Cummins 1986) and the communities' control over resources and management play a central role for granting both the indigenous student's individual right to receive an appropriate education (cf. Skutnabb-Kangas and Phillipson 1989, 1994a), and the group's collective right to define and control their own culture-based education (Bullivant 1984; Stairs 1988).

Cultural diversity and the administration of justice

There could hardly be a more dramatic example for the constant violation of all kinds of human rights than the administration of justice to members of subordinate minorities (or majorities) in many countries. According to our research (Sierra 1990, 1995a, 1995b; Hamel 1990), indigenous citizens in Mexico typically suffer from systematic disadvantages through-

out the whole legal process and have but a remote opportunity of a fair defence. The discursive nature of the juridical institutions (O'Barr 1982; Berk-Seligson 1990) clearly reveals in which ways the transgression of these rights implies the infringement of linguistic rights as well. The analysis of juridical events provides us with the necessary clues to formulate minimal conditions for the protection of those rights.

Juridical institutions may play a major role for language maintenance and shift. Whereas the internal conciliations based on ethnic styles, discourse, and language usually strengthen ethnic identity and empower community institutions as a basis for maintenance, the imposition of the state law with its apparatuses typically reproduces the hegemony of Spanish and the dominant juridical discourse of the state.

Again, the linguistic dimension of the conflict cannot be reduced to a simple opposition between Spanish and the Indian language. Three discourse-based aspects usually aggravate the inherent structural asymmetry of the juridical institutions (Figure 4).

The indigenous peoples' own system of justice administration based on customary law operates through local conciliations and dispute resolutions. As a cultural event rooted in the Indian language, discourse, and culture, it stands in sharp contrast to the repressive state institutions and their procedures. Although there is considerable intra- and interethnic variation in the use of legal systems as ethnic resources, and despite the fact that the two systems are nowadays interwoven in complex ways,

DOMINANT SOCIETY POLE THE LEGAL INSTITUTION	INDIGENOUS SOCIETY POLE THE INDIGENOUS CITIZEN

CULTURAL MODELS (CM)
- models, procedures, "logics" of the
  Mexican legal system, trial type
	CULTURAL MODELS (CM)
	- models, procedures related to customs
	  "conciliation" type
	- little or no knowledge of/ competence in
	  Mexican legal system

DISCOURSE STRUCTURES (DS) - regional standard Spanish (RSS) - formal register (FR) of public events - legal discourse (LD) - written mode	**DISCOURSE STRUCTURES (DS)** - little if any competence in RSS (poss. competence in informal L2-Spanish) - little if any competence in FR - no competence in LD - little if any literacy

LINGUISTIC STRUCTURES (LS)
- exclusive use of Spanish (poss. help
  of interpreter)
	LINGUISTIC STRUCTURES (LS)
	- medium, little or no competence in
	  Spanish as L2

Figure 4.   *Administration of justice*

indigenous conciliations[10] could still serve as an important point of reference for the protection of indigenous and linguistic rights. Recent debate on legal pluralism (Merry 1988), however, takes the discussion a step further. It criticizes the traditional dualistic view of two different legal systems (positive state law vs. customary law) so common in legal research as being an idealized abstraction that runs counter to the real complexity of legal practices and conceptualizations. Sierra (1993, 1995a, 1995b) presents research on the state administration of justice and indigenous conflict resolution in a Nahuatl area of central Mexico that gives clear evidence of this assumption. One of the most revealing findings in her longitudinal case study is that these procedures can hardly be understood as independent systems and kept separate from each other. Rather, they are interrelated in multiple syncretic ways. Indigenous citizens make a strategic use of either or both procedures, depending on their evaluation of gains and losses. Accordingly, individuals and groups activate a broad range of linguistic and discursive resources, which reach from Nahuatl and its discourse styles to the use of their, albeit limited, Spanish competence. Such evidence is in line with a sociolinguistic perspective that opposes the reduction of the underlying cultural and linguistic conflict to a mere opposition between the two languages.

Our analysis demonstrates that the Indian's right to be assisted by an interpreter, as important as it may be, will hardly suffice to fully grant indigenous linguistic rights. At best it may protect the defendant's *individual* right to understand at least the semantic content of the utterances in a trial that belongs, however, to the realm of the dominant society. Yet the intervention of an interpreter will certainly not satisfy the indigenous people's *collective* linguistic right to carry out the whole process of justice administration within their own language, discourse, and culture, or in a combination of legal and institutional resources they choose to include.

A policy that envisages true pluriculturalism and at least partial autonomy for indigenous peoples will only be able to grant linguistic rights satisfactorily within the legal institutions if it grants at the same time the necessary institutional conditions for these rights to be enacted. Such a policy would have to allocate a space for an autochtonous legal system under the control of the ethnie, based on, but not necessary limited to, indigenous traditions, customary law, ethnic discourse and language.

Shift, maintenance, and revitalization

The fact that different components of the semiotic systems (cultural models, discourse, language) are dislocated and may shift at different

rates in a process of language displacement is not limited to the cases mentioned above.

In Latin America and elsewhere we find indigenous peoples who have lost their language but still exist and identify themselves as Indian ethnies. The Tembé in Brazil live in indigenous communities in the Amazonian basin and preserve their ethnic organization, as well as many of their traditional discourse structures, whereas their language has practically disappeared. The Lencas in Honduras gave up their language at least three generations ago (Herranz 1996). At present, however, they are fighting for their rights as one of the most militant indigenous organizations in the country. Some of these ethnies are included in indigenous education programs where they receive culture-based indigenous education in the dominant language (Monte 1993); in some cases language-restoration curricula are being applied.

In the Summer Institute of Linguistics' methodology of catechization and Bible translation into indigenous languages, a kind of language policy emerges that would traditionally be identified with language maintenance, since "high" status and functions are assigned to the indigenous languages. However, Barros's (1993) detailed analysis allows us to identify this procedure as yet another case where ruptures and phase shifts occur between levels of semiotic organization: although the native language remains on the surface as the legitimate language of religious activity, the relevant discourse structures (pragmatic patterns of catechization, argumentation, written texts) and cultural models (belief system, monotheism) are imposed from the dominant Western culture. Given asymmetric power relations — it is always the evangelist who controls the translation and religious discourse in the Indian language — the Summer Institute of Linguistics' missionary and linguistic policy can be characterized as contributing to cultural and, ultimately, language displacement (cf. also Mühlhäusler 1990).

In the industrialized world we find similar processes of dislocation between semiotic levels of language-in-culture. Although language shift is doubtless taking place among Spanish speakers in the USA despite large numbers and dense residence patterns in their main areas of living (cf. Veltman 1983, 1989, 1990; Bills et al. 1995), we encounter cultural resistance and revival at the same time, as well as efforts to reverse language shift. Thus, Mexican descendants and immigrants in Southern California preserve and exhibit their cultural models in many ways; they develop their literature and "cultural citizenship" (Rosaldo 1994) via Spanish, English, or both, sometimes resorting to Latino, Mexican, or US American discourse patterns. Gibson (1988) described the case of a Sikh community in California that managed to accommodate to certain

necessities of American life without assimilating in central cultural core values.

The question arises, then, in which ways are linguistic human rights affected or implied in each case? How can linguistic and other cultural rights be established in terms that support the efforts of the actors who attempt to reverse language shift? And what happens when resistance and revitalization strategies become salient?

In his eight-stage model of reversing language shift, Fishman (1991: 92–95, 398–399) identifies the intergenerational transmission of a threatened language as a mother tongue in everyday contexts (home, family, neighborhood) as the single most crucial condition of language maintenance and shift reversal. He argues that any further efforts of language-status planning and legislation will hardly be successful in anchoring the language in public domains, unless the basic condition of mother-tongue transmission in the family is granted and unless other measures feed back to this core domain. Fishman's description of each stage reflecting a specific degree of language-in-culture dislocation relates to the question of cultural context. To what extent, then, can the speakers recover cultural models if they are lost, or discourse structures including culture-specific procedures of contextualization and inferencing that have been shown to be so central for both communication and identity construction in verbal interaction (Gumperz 1982)?

In successful cases of language-shift reversal such as Quebec or Catalonia, the actors could rely not only on the vitality of the subordinate language itself but also on a significant continuity of native cultural models and discourse structures in core areas, although specific domains in industry and commerce (Quebec), as well as government and education (Catalonia) had been dominated by the hegemonic culture of the state. And, no doubt, Quebec always had a significant degree of political power, whereas Catalonia possessed considerable economic power. Research on the "francization" process in Quebec and "normalization" in Catalonia reveals to a certain degree the problems these language policy and planning efforts encountered. In many cases, new syncretic discourse structures and cultural patterns developed over time.

In indigenous Latin America the struggle of the most advanced indigenous movements centers more and more on integrated, holistic vindications (Iturralde 1994; Díaz-Polanco 1991, 1995; Hamel 1994b). From centuries of subordination they have learned that specific, sectional claims (infrastructure, economic development, education), despite their legitimacy, have contributed more to their assimilation than to their preservation as distinct ethnolinguistic peoples, since they did not alter the power relations. During the ongoing peace talks (1995–1996) between the

Mexican federal government and the indigenous Zapatist rebels,[11] for instance, the Indian leadership focused their claims more and more on the question of indigenous *autonomy*[12] as the centerpiece of their negotiations. Territorial, economic, administrative, and cultural autonomy within the national state is considered to be the fundamental framework for all other more specific claims including education, language use, and jurisdiction.

Apparently, the strategy behind this procedure of gaining space for autonomy starts with the defence and development of indigenous cultural models (self-government, customary law, ethnic education), that is, ethnic ways of doing things, possibly as a necessary condition for the defence, reconquest, and extension of discourse structures and the languages as such. In a similar way, as I have stated, large and powerful minorities in industrialized states such as the Latinos in California have focused their defense on their own syncretic cultural models (in its broadest sense, including ethnically salient racial attributes: *la raza*).[13]

Linguistic human rights: individual and collective dimensions

So far I have discussed a specific sociolinguistic setting in which linguistic human rights can be granted, denied, or enforced. My argument, as I stated at the beginning, is as follows:

1. We need a well-developed sociolinguistic framework to analyze language contact and conflict situations in all their complex dimensions. Different from what happens habitually in the field of language planning and other areas in the sociology of language, such a framework will have to include both macro- and micro-sociological perspectives; and it must be able to cope with language structure, discourse, and culture in order to serve as a basis to establish criteria for linguistic human rights. Linguistic rights cannot be defended in isolation since language or speech as such cannot be protected directly. What we hope can be protected are the social conditions of production and reception of speech and of a cultural mode of symbolic (re)production. Therefore we might speak of discourse rights and discourse policies and not only of language rights and policies or planning.

2. The framework should be able to relate sociolinguistic analysis (in its broadest sense) with language policy, language planning, and linguistic legislation.

The sociolinguistic contextualization of language in discourse and culture finds its correlate in the juridical debate in the fact that linguistic human rights encompass both the fundamental right of expression and the cultural right to communicate in a specific language, which confers an ambiguous status to them (cf. my introduction to this issue). While fundamental rights can be enjoyed by the individual and only have to be granted by the state, the cultural right to use a specific language requires the existence of a community (Braën 1987; Turi 1993). If a linguistic minority wants to have their linguistic rights extended beyond the level of tolerance in private domains, a specific initiative or intervention of the state is necessary in order to create the conditions for this right to be exercised in certain institutional contexts, such as education.

One of the main controversies in the field of minority rights in general focuses on the subject of these rights; individuals or collectivities. The legislation and ideology of monoculturalism in many nation-states in Latin America and elsewhere has always been strongly opposed to admitting the existence of *collective* rights, since such a step could open the door to the recognition of ethnolinguistic minorities as — at least partially — autonomous groups or peoples inside the state.

De Witte (1989) and other lawyers maintain that the opposition between individual and collective rights has lost its *raison d'être* with the refinement of fundamental rights, and that collective rights could be protected *through* individual rights. It could be argued, however, that linguistic human rights demonstrate perhaps more clearly than others the fundamentally collective character of most human rights for minorities.[14] Our examples of language conflicts in the domains of education and the administration of justice clearly reveal that ethnic organization and its communicative (discursive) foundation could only function on the basis of a principle of collectivity.

In both fields individual and collective rights are at stake. The recognition of collective rights for minorities becomes crucial when the minority itself envisages its own cultural, ethnic, and linguistic preservation. In indigenous education we observe that the acquisition of literacy in Spanish might satisfy the *individual's* aspiration to literacy that corresponds to a fundamental right of education. Only the acquisition of literacy in the indigenous language, however, could content the *collective* objective of an ethnic people to become literate, that is, to develop a writing system of their own, if they choose to become a literate culture in their native language. The individual's freedom of choice, that is, the radical observance of the principle of personality, normally favors the dominant cultures and languages, as many cases, such as the history of Quebec (Corbeil 1980; Maurais 1991, 1993), have shown.

Something similar occurs in the administration of justice, where the dilemma of assimilationist policies becomes evident. As I had stated before, the access of Indian citizens to the juridical institutions of the state — and a fair trial, taking into account certain ethnic customs[15] — may solve at best an *individual* claim for justice, but only within the legal framework of the dominant society. In no case could it replace the *collective* needs of an indigenous people to organize their own legal system based on their history, beliefs, customs, and languages, within a concept of legal pluralism of the state (cf. Merry 1988; Sierra 1995a).

Basic (minimal) criteria for linguistic human rights: sociolinguistic arguments for the evaluation and formulation of linguistic rights

Since Kloss's (1969a, 1969b, 1977) monumental work on language, ethnicity, policies, and law there have been several attempts to classify language legislation.[16] Many of them are grounded in *basic definitions* of linguistic human rights, such as the right to identify oneself with one's mother (principal) language and to receive education and other public services through the medium of that language (Skutnabb-Kangas and Phillipson 1994a); and in a series of *conditions* of their implementation and defense.

Given the complex relationship between language, discourse, culture, and socioeconomic context, it seems difficult to establish criteria for language rights that are at the same time general and sufficient. I had argued that legislation dealing with specific languages is to a large extent based on an idealized, mainly structuralist concept of language. Any formal processing such as in legislation, however, needs a certain level of abstraction from its object in order to be operational. At present, the social scientist's modest contribution might consist in improving our ways of understanding how minority languages function in a given context; and developing minimal criteria to establish basic shelters and frameworks for language use, discourse, identification, maintenance, or revitalization.

These criteria serve to point out some necessary conditions, but as in most research on language maintenance and shift, it is difficult to believe that that they will constitute a fixed set of sufficient conditions for an efficacious legal protection of minority linguistic rights. In each case they will have to be chosen and applied creatively and certainly complemented with other considerations.

The following provisional criteria stem from my own experience and analysis of minority-language situations, mostly with indigenous peoples

in Latin America, and may not always apply to other and different situations.

1. *Concepts of language: restricted to a structural system ("langue") or ample, including discourse and cultural patterns*

Probably most legal texts related to language topics are based on a restricted concept of language. Our analysis has shown that language shift is a differentiated process, where ruptures between the language structure on the surface, discourse, and cultural patterns typically occur. A language may still remain on the surface in a given domain but be eroded in its discourse patterns and the related cultural models. In that case it may need — perhaps urgent — protection in terms of a reinforcement of the group's organizational structure and/or its capacity for language and discourse appropriation. On the other hand, there may be situations where ethnic activists or the local leadership want to introduce a specific language of instruction, such as the indigenous language, when the sociolinguistic conditions of its use including attitudes and a favorable linguistic consciousness do not prevail (cf. Hamel and Muñoz Cruz 1988; Hamel 1988b).

2. *Language status and domains of official use*

This is the classical topic in language planning and legislation. In certain multiethnic or predominantly native regions in countries like Mexico, a combination of the principles of territoriality and personality could create an appropriate space where indigenous languages including their discourse structures would have a coofficial status and could gain strength. Here, as in other contexts, the question is to what degree it would be possible (a) to make the relevant institutions really function in the subordinate language; and (b) to create at least a significant individual bilingualism among the dominant ethnolinguistic population (see the problems in the Baltic states; Druviete, this issue).

3. *Degree of promotion vs. degree of prohibition, and degree of explicitness*

These concepts are fundamental as criteria for linguistic human rights. Based on Kloss's (1977) classical distinction, Skutnabb-Kangas and

Phillipson (1989, 1994b) developed a grid with two axes that cover two continua: one of promotion/prohibition, the other of explicitness/implicitness. Language laws and regulations should be analyzed as to what extent they really promote minority-language development in an explicit way. As Skutnabb-Kangas and Phillipson argue convincingly, only clearly promotion-oriented, explicit laws can be considered to function as useful tools for the defense of minority languages.

4.   *Explicit obligations for the state to adopt measures to protect and promote minority languages*

This criterion derives from the previous one. Insofar as linguistic human rights are part of the group of economic, social, and cultural rights, they depend on explicit interventions or initiatives undertaken by the state. Different from fundamental individual rights such as freedom of expression, which is considered a natural attribute of the individual, the state must create, for example, the right to use a minority language in education or in court through an act of legislation. Many experiences have shown that discretionality or vague formulations do not protect minority rights efficiently.

5.   *Specific and appropriate education for linguistic minorities*

Once a political decision has been reached that in a given society minority education should serve the societal (above all the minority's) objective of language maintenance (revitalization, etc.), the controversial question arises about the appropriate curriculum to achieve this aim. In the view of an increasing number of scholars (Cummins 1986, 1994; Paulston 1992; Fishman 1991; etc.), more important than certain methodological technicalities that have been emphasized in psycholinguistics is the concern of minority involvement in and control over the program, teachers, resources, and institutions. I understand that for this reason Fishman (1991) considers private minority-administrated schools as more appropriate for language maintenance than public schools in many contexts. In many countries and for many economically disadvantaged minorities, however, there is little if any hope of being able to create and finance their own education.

6.   *Individual and collective rights*

As I have argued before, the question of collective rights has become a touchstone for societal pluralism in many debates of minority rights.

Linguistic human rights are perhaps the best group of rights to demonstrate that minority languages cannot be defended adequately if the corresponding community is not granted certain collective linguistic rights. The explicit recognition of collective linguistic human rights should therefore be a central criterion for the evaluation and formulation of legal texts.

7. *Coordination of linguistic human rights with measures directed to the dominant population*

In many contexts such as that of indigenous populations it is difficult to imagine how a program of language maintenance, revitalization, or bilingual education could be successful in the long run if it is not inserted in or accompanied by legal dispositions and programs directed to the majority population in order to achieve a pluralistic attitude. Examples are the programs of antiracist education in Great Britain since the late 1970s, or the provisions of the Indian Law in Chile of 1993. Similarly, the new curriculum for elementary education in Bolivia (ETARE 1992) is defined as *intercultural* for the whole country. In areas with a high density of indigenous population it is defined as *bilingual* for the whole student population. Such a necessity could not conceal the fact, however, that educational or media campaigns alone have hardly ever caused fundamental changes in deeply rooted attitudes and prejudices.

8. *Relation and co-ordination with other rights*

We have seen that linguistic human rights cannot be defended independently from other rights. In most cases linguistic human rights have to be coordinated with educational rights and territorial and/or organizational control, as well as the control over the necessary resources.

9. *Definition and status of the language users: groups, minorities, peoples, nations*

It is not irrelevant how a legal text defines the bearer of a given right: as individuals or as collectivities; in the latter case, whether as a group, minority, ethnie, people, or nation. This question refers to the juridical and anthropological debate about the attributes of each concept. As is known, only peoples and nations are considered to have the right of self-

determination (Wildhaber 1989). At present, there is an ongoing debate concerning to what extent local and regional autonomy could be granted to indigenous peoples without conveying attributes of independent nations to them.

The sociolinguistic perspective

Throughout this text I have argued that we need to base our efforts to identify, establish, and defend linguistic human rights both on the dynamics and initiatives developed by the ethnolinguistic minorities and peoples themselves and on detailed sociolinguistic analysis of each language situation. No doubt the language movements should be part of that analysis. It seems to me that language policies, planning, and legislation in support of minority languages have little prospect of achieving their goals if they limit their scope to languages as structural objectivations (the "langue") and fall short of considering discourse and cultural models as fundamental aspects of policy decisions.

This is particularly evident in the fields of education and the administration of justice for ethnolinguistic minorities. According to international experience there is little hope of contributing to the preservation, shelter, or revival of a minority language through education if policy efforts are reduced to the languages as a surface phenomenon (e.g. literacy education and primers in the minority language based on discourse patterns and pedagogy from the dominant society). Discourse and cultural models of ethnic education will have to be taken into account. The same applies in the field of justice. To translate the Constitution or other legal texts into indigenous languages will not suffice; nor will it do to carry out trials and legal processes in the Indian language, as long as they are based on the dominant state laws and their procedures. Rather, a pluralistic legal system will have to take into account ethnic practices of conflict resolution (cultural models), the corresponding discursive procedures and strategies (discourse structures), and the indigenous languages themselves (linguistic structure). And an integrated view is called for that is capable of relating institutional efforts to the sociolinguistic core issue of intergenerational language transmission.

The passage from sociolinguistic analysis to the fields of language planning and legislation has proved to be a difficult enterprise, since social research and legislative practice belong to distinct fields of action and obey different logics. Many of the heterogeneous, highly variable linguistic practices and needs are difficult to accommodate to laws and regulations. Certainly, this is not unique to linguistic legislation.

Therefore, it can be no surprise that many scholars and experienced practitioners express their doubts about the measurable effects of linguistic legislation altogether (e.g. Fishman 1991; Mackey 1989;[17] Paulston this issue). This is particularly the case where legislation did not develop in tune with ethnolinguistic grassroot movements, or where activists attempted to replace intergenerational mother-tongue transmission as the core element of language maintenance with institutional language development.

There can be no doubt, however, that international law and a growing awareness of human rights have developed their potential as tools for political pressure. Insofar as they have served to support language movements it makes sense to conceptualize certain aspects of the defense of endangered languages in terms of linguistic human rights.

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Notes

1. In the literature the Hñähñú are known as "Otomí," meaning "bird arrow" or "bird hunter", a Nahuatl name imposed during Aztec domination before Spanish colonization. Today the group is recovering its name "Hñähñú" in its own language, meaning "sons of the people *hñú*". Hñähñú has now become the official name of the sixth largest indigenous people in Mexico, with some 280,000 members according to the 1990 census.

2. See however Jernudd's (1991) proposal, which includes a micro-level of verbal interaction.

3. This situation is typical for the redefinition of diglossia *as* language conflict in early Catalan sociolinguistics (cf. Aracil 1969; Vallverdú 1973).

4. A detailed, multilayer approach of discourse analysis — which cannot be exemplified here — shows how the participants in a range of communicative events enact, reproduce, and transform discourse patterns in verbal interaction itself (cf. Hamel 1988a, 1992, 1995; Sierra 1992, for detailed analysis).

5. In 1995, some 36,000 Indian elementary and preschool teachers served over 880,000 pupils (Hernández 1995: 13).

6. The following observations are based on two subsequent research projects carried out in the early 1980s and 1990s (Hamel 1984, 1988b; Francis and Hamel 1992). A detailed account of the educational process and classroom interaction themselves, which is impossible to develop here, reveals how teachers and students creatively develop their educational resources and funds of knowledge (Moll 1992) in many ways. In the context of a debate on linguistic rights I must emphasize the structural provisions of the curriculum as elements of language and educational policies, provisions that are predominantly adverse to linguistic and cultural maintenance.

7. Only in 1992 was the administration (not the content and curriculum) of public education transferred from the federal government to the state governments.

8. As we shall see later, this state opposition to recognition of true cultural diversity is under fire at the time of writing (1995/96), since one of the central, and very controversial, claims in recent demands of the indigenous movements in Mexico is that of autonomy, which implies the acceptance of diversity (see note 11).

9. A caveat is necessary to avoid a misinterpretation of Figures 3 and 4. They do not represent a dichotomy of two neatly separate systems of education or justice administration, but rather two poles on a conflicting continuum.

10. Conciliations and similar events were studied in detail in the research project mentioned in note 6 (Sierra 1990, 1992; Hamel 1988a, 1990).

11. On January 1, 1994, the Zapatist Army of National Liberation (EZLN), a predominantly indigenous guerrilla movement, whose members belong to at least five different language groups, staged an insurrection in Chiapas in the southeast of Mexico. After only 12 days of military conflict, the EZLN and the Mexican government agreed on a cease-fire. Since then, the EZLN has had a tremendous impact on political life in Mexico through the national and international mass media. Not only did they denounce the oppression of indigenous peoples in Chiapas, they also called upon the Mexican civil society as a whole to promote fundamental socioeconomic, political, and cultural changes in Mexico's transition to democracy (cf. Collier 1994 for background information).

12. Autonomy is not understood here as segregation, separatism, or the return to some ethnic, premodern past. Rather, the indigenous peoples claim communal and regional self-government, control over the necessary resources, and the recognition of their own culture in terms of their political organization, customary law, education, and use of their languages.

13. An interesting desideratum for sociolinguistic research would be to analyze cases of both language shift and successful shift reversal within a framework that combines language (structure and use), discourse structures and strategies, and cultural models in a systematic way. Research could show to which extent similar ruptures and phase dislocations occur in other cases of language shift, and what kind of discourse structures and cultural models are recovered, (re)created, and referred to in cases of language revitalization.

14. On the general debate over collective minority rights, see Stavenhagen and Iturralde (1990), Skutnabb-Kangas (1990), Skutnabb-Kangas and Phillipson (1989, 1994a), Coulombe (1993).

15. This is exactly the content of the amendment to the Mexican Constitution passed in 1992, which in 1995 was already considered absolutely insufficient; many other constitutions in Latin America have undergone similar or more advanced reforms over the past 15 years (Hamel 1994b; Maurais 1992).

16. Some of them are closely related to classifications of language policies (cf. Cobarrubias 1983; see Skutnabb-Kangas and Phillipson 1989 for a debate).

17. "Au cours de la longue histoire des politiques linguistiques, de la fin du Moyen Age à aujourd'hui, les lois linguistiques n'ont pas réussi à changer le comportement qu'elles étaient censées modifier" (Mackey 1989: 45).

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