

Linguistic Legislation for XXIst Century Europe¹

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Abstract

Must a just plurilingual polity content itself with granting every citizen the constitutional right to speak and write in any language (s)he chooses? No, it must not.

This is so in part because a just plurilingual polity must address the issue of language-based discrimination. This is so above all because the accomplishment of its core missions — as a collective decision-maker, an administrator, an educator and a judge — requires the official adoption of one or several languages. Which languages are adopted for such purposes has a significant impact on the preservation or erosion of linguistic diversity, as well as on the life chances of individuals with different mother tongues.

Whether at the level of a nation-state with a plurilingual population or at the level of the European Union, some principles are needed to guide legislation in this area. What should they be?

Linguistic diversity in unilingual and multilingual polities

At first sight, the task of law, as regards languages, is activated only in the presence of several languages. Law only seems to come into play in the face of the challenge posed by diversity and the concomitant claims regarding language use, which can, at times, be in conflict. If only one language is present, speaking in one's mother tongue is as self-evident as speaking with one's tongue- or so the case appears to be. The «same» language can, however, be used in many different ways, and some variants of it may become so inaccessible to the common folk, syntactically and lexically, that language becomes the medium of power relations which express themselves through the use of

¹ This paper is largely inspired by, and based on, various contributions to a conference on «European Law and Linguistic Diversity» held on 12-13 November 2001 at the European University Institute (Florence). It also

restricted codes. Codes are sets of social rules which govern speech according to the social context. A restricted code is one that is only mastered by some members of a language community. It activates specific grammatical and lexical choices which are inaccessible to most. Only those individuals who possess a shared, unspoken and implicit understanding of the relevant features of the context will be able to understand the meanings conveyed in speech patterns shaped by a restricted code.²

Arguably, therefore, one must enact legal rules which facilitate fair access to administrative or judicial procedures in order to ensure that each individual is able to realise her rights as fully as possible. The exercise of power is not exclusively a matter of deliberate coercion and persuasion. It is also the unintended result of human interactions. The shaping, control and selective dissemination of information by a society's central institutions are major instruments of power in this broad sense. Even in a unilingual society, therefore, law has a part to play, which need not be confined to the reactionary role of chastising argotic innovations. It can take on the progressive role of providing checks and balances over the hegemony of elitist jargon.

Nonetheless, it is true that law's major task begins when, in the territory it is supposed to govern, there are ways, especially native ways, of uttering sounds and arranging signs that are so deeply different from one another that they are granted the status of distinct languages. Linguistic diversity in this sense is bound to grow in both extent and significance. It is bound to grow in extent because the linguistic diversity which many nation-states owe to the incorporation of populations with distinct mother tongues keeps being amplified by world-wide transnational migration without swift assimilation, and because emerging supranational entities with their own legal systems, such as the European Union, embrace populations which are linguistically diverse. It is bound to grow in significance too, both because in a knowledge-based, communication-intensive economy, language policies have an ever more profound impact on people's life chances throughout the world and because in many parts of the world the spreading of formal democracy is enabling oppressed linguistic communities to have their voices heard.³

benefitted from the papers and discussions at the workshop on «The Public Discourse of Law and Politics in Multilingual Societies» held on 6-7 June 2002 at the International Institute for the Sociology of Law (Oñati).

² On the exercise of power through the use of restricted language codes, see B. Bernstein *Class, Codes and Control* (London: Routledge & Kegan Paul, 1971) and also generally C. Kramarae, C. Schulz and W.M. O'Barr (eds) *Language and Power* (London: Sage, 1984).

³ See for example, in March 2002, the recognition of Tamazight as a national language in Algeria, after language riots cost the lives of over 100 people in Kabylia in April-July 2001. See also the adoption and uses of the Council of Europe's Charter for Regional or Minority Languages (cf M. A. Martín Estébanez, 'Linguistic Diversity and the Council of Europe: the European Charter for Regional or Minority Languages and Council of Europe policies', In this volume: Paper presented at the Conference on Linguistic Diversity and European Law, European University Institute in Florence, 12 November 2001).

I. LANGUAGE LEGISLATION FOR PLURILINGUAL STATES

Language law in a liberal state

According to which principles, then, should language legislation be guided in a linguistically diverse society? The answer appears to be simple at first glance, providing one adopts a «liberal» perspective, defined very broadly by impartiality between a society's citizen's various conceptions of the good life, including in its expressive and communicative dimensions.⁴ The first thing to do is to grant a constitutional right to speak — whether at home or in a shop — and write — whether a love letter or an academic article — in any language one chooses, whether one's own native tongue, another language learned at a later stage, or one invented out of thin air.⁵ Of course, such a constitutional right of language choice entails no correlative right to be understood by the addressee. It does, however, protect every citizen against the endeavours of official and less official busybodies who might suffer from a tendency to be overenthusiastic about the need for everyone to use their own mother tongue or from an aversion to the sound of some languages other than their own. Is that it? No, for two reasons

(1) Language-based discrimination. One is that an impartial state arguably needs to go beyond this formal equality of rights when the effect for some people of exercising the constitutional right to speak as they wish is that they see doors slammed in their faces, when looking for a flat or applying for a job, because of the language in which, or the accent with which, they speak. It seems to make sense, therefore, to increase the list of relevant categories in anti-discrimination legislation, by adding to gender, race and religion, a person's mother tongue.⁶ This may do go some way towards reducing language-based inequality, but one should not, however, be too optimistic. Precisely in a knowledge-based, communication-intensive economy, linguistic competence is a major component of the skills legitimately required from those wishing to get a job. Hence, one cannot expect anti-discrimination legislation in the employment field to be anything like as effective along the language dimension as it may be along the racial, gender

⁴ In this sense, J. Rawls, *A Theory of Justice* (Oxford: Clarendon Press, 1971 and 1999), B.A. Ackerman, *Social Justice in the Liberal State* (New Haven: Yale University Press, 1980), R. Dworkin, *A Matter of Principle* (Oxford: Clarendon Press, 1985), B. Barry *Justice as Impartiality* (Oxford: Clarendon Press, 1995) or P. Van Parijs, *Real Freedom for All* (Oxford: Clarendon Press, 1995) are typical formulations of a «liberal» perspective.

⁵ See, for example, article 30 of the Belgian constitution, which provides that, «The use of languages current in Belgium is optional [*facultatif*]; only the law can rule on this matter, and only for acts of the public authorities and for legal matters». See also article 27 of the International Covenant on Civil and Political Rights adopted in 1966 and which entered into force on 23 May, 1976 as reproduced in *Human Rights: a Compilation of International Instruments* (New York: United Nations, 1988) at p. 28. See also Recommendation 285 (1961) of the Consultative Assembly of the Council of Europe.

⁶ As is the case, for example, in the 1997 Portuguese constitution which anchors linguistic protection in the equality provision (article 13 (2) provides that «No one shall be privileged or favoured, or discriminated against, or deprived of any right or exempted from any duty, by reason of his or her ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social circumstances»); or in the German Basic Law (article 3 (3) provides that «No one may be disadvantaged or favored because of his sex, his parentage, his race, his language, his homeland and origin, his faith, or his religious or political opinions.»; or again in the Finnish Constitution (article 6 (2) provides that «No one shall, without an acceptable reason, be treated differently from other persons on the ground of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns his or her person.»). Source (as for all English translations of constitutions referred to in this article): www.uni-wuerzburg.de/law/ (International Constitutional Law site).

or religious ones. After questions were raised (and positively answered) about the discriminatory character of job adverts requiring «English mother tongue» or «English native speakers», it was easy enough for the advertisers to content themselves with requiring «English mother tongue standards» without this leading, presumably, to a sizeable expansion of the set of potentially successful applicants.⁷ Consequently, legislation against language-based discrimination will not contribute significantly to reducing inequalities of opportunities rooted in the possession of mother tongues yielding very unequal economic rents.⁸ Far more significant impacts on such inequalities can be expected from education policies that facilitate the learning of high-rent languages by children with a low-rent mother tongue — be it only by making sure the schooling system is designed so as to make them mix intensively with other children with a better command of the language to be learned. Even more dramatic, however, is the impact that can be expected from changes in the official status given to the various languages spoken within the territory of a state by the various branches of that state. This leads us to the second reason why a liberal state's language policy needs to go beyond protecting its citizens' constitutional right to speak as they wish, indeed why it cannot help doing so.

(2) The loquacious state. This second reason is simply that, whereas a state can allow itself to be godless, it cannot afford to remain speechless.⁹ In other words, whereas religious neutrality is conceivable, linguistic neutrality is not. Whether it is national, sub-national or multi-national, a politically organised community cannot avoid speaking. Its leaders and officials cannot avoid making noises and printing signs in ways governed by rules clearly recognisable as constitutive of one or more distinct languages spoken as a mother tongue by a subset — sometimes close to all-embracing, but more often than not significantly smaller — of its total membership. Collective decisions must be made — prepared, discussed, promulgated, implemented, enforced — in one or more of these languages. Moreover, given the massive importance of communication in modern societies, it is not just that the state cannot afford not to speak and write. No less important is that it cannot afford not to be massively involved in the teaching of speech and writing to its younger members, whether by organising the school system itself or by subsidising appropriate private schools. Here again, linguistic neutrality is out of the question. Even in the extreme case in which the role of the state in the educational field is strictly confined to the subsidising of private initiatives without any linguistic stipulation,

⁷ For example, on 25 January 2001, Belgium's employment minister Laurette Onkelinx replied to a question by a federal deputy that, whereas the requirement of knowledge of a foreign language is normal, the requirement of having a particular mother tongue or being a native speaker «seems excessive and is in direct conflict with the principles of non-discrimination and free circulation of workers» (www.lachambre.be/qrva/50/pdf/061.pdf). Along the same lines, on 18 April 2001, Commissioner Diamantopoulou conceded, in reply to written question E-0779/01 by Bart Staes, Green Member of the European Parliament, that «the criterion of mother tongue could be considered discriminatory and incompatible with the Community rules in matters of free circulation of workers within the Community».

⁸ See e.g. F. Grin & F. Vaillancourt («The Economics of Multilingualism», *Annual Review of Applied Linguistics* 17, 1997, 43-65) et F. Grin (*Compétences et récompenses. La valeur des langues en Suisse*. Fribourg: Eitions universitaires 1999) for empirical assessments of the «economic value» of mastering different languages.

⁹ This point is emphasised, for example, by Will Kymlicka (*Multicultural Citizenship*. Oxford: O.U.P., 1995, and *Politics in the Vernacular*. Oxford: O.U.P., 2000) and by Ruth Rubio («Language Diversity in Canada and Spain: Constitutional Accommodation», paper presented at the conference *Linguistic Diversity and European Law*, Florence, EUI, November 2001).

the dynamics of language learning can be expected to be quite different from what it would have been in the absence of public subsidies. Given the impossibility of linguistic laissez-faire, so to speak, is it not obvious that the best policy is one that requires the state to make its political, administrative, judicial, social and educational activities tightly responsive to the linguistic preferences of its citizens? We shall argue that it should not be.¹⁰ For there are a number of compelling considerations that have led uni-national states to massively deviate from such an accommodating stance. There are also a number of considerations that have led avowedly pluri-national states to take a different but equally unaccommodating stance. We shall review them, and then reflect on the weight they must be attributed as regards the legal framework of the European Union.

Five reasons not to be accommodating

The linguistic unification of nation states has been a massive operation. To give just one illustration of its scale: at the time of the unification of Italy between 1859 and 1861, the dialects used in the peninsula were so distinct that outside of Tuscany and Rome, where Italian was spoken, only 160,000 out of over 20 million individuals could be defined as Italophones.¹¹ To drive such a massive enterprise, powerful motives must be at work.

The first and most obvious consideration that has put a strong brake on nation states accommodating linguistic diversity in the easy way suggested above relates to the direct costs which attach to a multilingual operation. The expense of interpretation and translation in political life, administrative procedures and courts quickly rises with the number of languages for which a request is being made and honoured and the number of their $n(n-1)$ two-by-two combinations. Moreover, huge economies of scales in education need to be foregone as classes and schools need to be replicated with any new language added.¹²

However, a state's economic motivation for not accommodating linguistic diversity far from reduces this negative concern to the immediate budgetary cost. Of even greater weight has been the positive concern for creating a mobile working class that could relocate all over the state's territory so as to fit the needs of industrialisation with minimum adjustment costs for workers and their families. Military conscription and compulsory education in the national language have provided the modern nation state with the powerful tools it needed in order to turn its Kokoschka-like linguistic patchwork into a smooth, linguistically unified Modigliani-like surface.¹³ Linguistic diversity has been essentially bulldozed out of existence in several countries, and is still being incessantly counteracted as it is being

¹⁰ To use Alan Patten's useful distinction («Liberal Neutrality and Language Policy», paper presented at the Princeton Philosophy Colloquium, April 2002), it is not only that the state cannot be linguistically neutral in the sense of «disestablished» (whereas it can be religiously neutral in this sense); but also that it must not be linguistically neutral in the sense of «even-handed».

¹¹ See *Democracy & Constitutionalism in the European Union. Collected Essays by Judge G.F. Mancini* (Oxford: Hart, 2000) at p. 59 and also generally T. De Mauro *Storia dell' Italia unita* (3rd edn) (Rome: Laterza, 1995).

¹² The prominent French revolutionary leader Bertrand Barère eloquently formulates the problem in the passage quoted by Jacques Ziller («The constitutional protection of the French language», paper presented at the conference *Linguistic Diversity and European Law*, Florence, EUI, November 2001).

¹³ To use Ernst Gellner's (*Nations and Nationalism*. Oxford: Blackwell, 1983) telling metaphors. See further F. O. Ramirez and J. Boli, «The political construction of mass schooling: European origins and worldwide institutionalization» (1987) 60 *Sociology of Education* 2-24, on the nation-building role of compulsory education and Rogers Brubaker (*Citizenship and Nationhood in France and Germany*. Cambridge (Mass.): Harvard University Press, 1992) on the role of conscription.

recreated through immigration. When this second consideration prevails, the fundamental reason why the state does not yield to its inhabitants' linguistic preferences is not that it would cost too much in translation, interpretation and educational duplication, but that it would seriously hamper the smooth functioning of an industrial economy. As we move into a linguistically more demanding service-oriented economy, this concern can only gain in relevance.

A third — distinct, though historically closely related¹⁴ — consideration is of a political nature. Unlike a despotic state, which may conceivably work better with linguistically divided subjects, a smoothly running democracy needs citizens who can actively interact with each other, by formulating demands, arguments and objections and listening to those formulated by others. Top-down Modiglianisation found another powerful motive and justification in this concern. It is not just a thriving industrial economy but also a lively modern democracy that has been regarded as being inimical to pre-existing or immigration-induced linguistic diversity, indeed as demanding the active propagation of a common national language. Arguably, in an era of cable and satellite TV, in which the linguistic assimilation of immigrant groups has slowed down, nation states can rely far less than they did in the past on the spontaneous linguistic absorption of large linguistically homogeneous and geographically concentrated immigrant groups.¹⁵ This is especially the case in relatively small countries whose language is not widely used outside its borders and whose language may not seem worth learning for immigrants who may be able to get away with using English. More voluntaristic policies will be needed if these are to join swiftly the circle of competent participants in democratic life.

Fourth, considerations of social justice have also been repeatedly appealed to in order to justify a hostile attitude to the accommodation of linguistic diversity. Given the overwhelming importance of mastering the nation's national language, it is argued, encouraging, or even simply tolerating, education in local or immigrant languages amounts to deliberately inflicting a serious additional handicap on minority groups which usually already suffer from other social and economic disadvantages. Among the ideals of the French Revolution, for example, it was definitely *égalité* that drove unitary linguistic standards, while *liberté* was pulling the other way. Thus, the universal spread of French was intimately tied to the concept of equality among all French citizens.¹⁶

Fifth but not least, linguistic unification has been practiced and defended in the name of spreading throughout society a common dominant culture or *Leitkultur*.¹⁷ The underlying motive was no doubt often rooted in the professed superiority of the civilisation thereby instilled into marginal or immigrant populations.¹⁸ It was, however, also closely linked to the determination to construct or reconstruct a strong sense of national identity, a sense of belonging to the same people, the same ethnos, which can only sit uncomfortably with linguistic diversity. It is to this sense of

¹⁴ The connection was well made by Gabriel Toggenburg («Free Movement of Persons and Linguistic Diversity», paper presented at the conference *Linguistic Diversity and European Law*, Florence, EUI, November 2001)

¹⁵ See for example, on the growing difficulty of assimilating Hispanic immigrants into the US language community, Barry Chiswick & Paul Miller, «Ethnic Networks and Language Proficiency Among Immigrants», *Journal of Population Economics* 7 (1994); and, for a formal model, Edward P. Lazear, «Culture and Language», in *Journal of Political Economy* 1998.

¹⁶ See G. Weill, *L'éveil des nationalités et le mouvement libéral 1815-1848* (Paris: Librairie Félix Alcan, 1930). [

¹⁷ See J. Joffe, «How is My 'Leitkultur' Doing? Multiculturalism Meets Germany, Unleashing Angst, Ideological Reflexes and a Long-Overdue Debate» reproduced at http://www.zeit.de/2000/45/Politik/200044_josefjoffe_1103

¹⁸ In addition to considerations of administrative convenience, this conviction is probably most aggressively present when language spread accompanies the building of an empire. As Antonio de Nebrija put it, «siempre la lengua fue compañera del imperio» (*Gramática de la lengua Castellana*, Madrid, 1492).

belonging that rulers, whether democratically chosen or not, can appeal, in order to elicit from all citizens the sacrifice of part of their self-interest for the common good, whether to fight off foreign threats or vindicate the country's honour, to display solidarity for those hit by collective disasters or individual bad luck, or to serve the public interest in any other way. Linguistic unity may not be a necessary condition for such patriotism. However, the easy communication and mutual identification it allows, the convenience of being able to shout slogans or say «we» in the same voice are clearly of great help. Would the massive material solidarity mustered by the West German population since reunification have been possible, had the «Wir sind ein Volk» of the Leipzig demonstrations that helped prompt it been shouted in a language other than German?¹⁹

Four reasons for selective accommodation

Voluntaristic state intervention, however, has not invariably been on the side of linguistic homogenisation. As countries with a multilingual population enter an era of increased-mobility and high-communication, a tendency towards the spread of the dominant language develops, even in the absence of any voluntaristic, top-down, Gellner-type process. There is a distinct, no less relevant process that has been well described, among others, by Jean Laponce. The kinder people are with one another — the more intensively and intimately they communicate —, the more savagely languages behave towards each other, with the dominant language — the most widely spoken, or the most prestigious, or for some other reason the one that people are keenest to learn — gradually invading contexts previously occupied by the other language(s).²⁰ Needless to say, a national state that is keen, for any of the reasons mentioned in the previous section, to achieve linguistic uniformity, can only rejoice at the help graciously offered by this spontaneous, bottom-up, Laponce-type process, which makes its own effort, if not redundant, certainly far easier than would otherwise be the case. Nonetheless, a number of pluri-lingual states have introduced legislation that

¹⁹ See B. Zanetti *Der Weg zur deutschen Einheit*. (München: Goldmann, 1991) at p. 31. This illustrates the complex relation between 'civic' identity and 'cultural' identity. See also, in connection with European identity, M. Bruyter, 'Civic and Cultural Components of a European Identity: A Pilot Model of Measurement of Citizens Levels of European Identity' EUR/101. Paper given at the IDNET Workshop *Europeanization: Institutions and the Evolution of Social Identities* as part of the European Forum 2000-2001 *Between Europe and the Nation State* of the Robert Schuman Centre for Advanced Studies, European University Institute, Florence.

²⁰ See Jean Laponce, *Langue et Territoire*, Quebec: Presse Universitaires de Laval, 1984 (English translation: *Languages and their Territories*, Toronto, University of Toronto Press, 1987).

protects its weaker languages against this process by entrenching their hold on a subset of the state's territory.²¹ There are four major considerations that have been and can be used to justify such a move.²²

The first one is pacification. When a language group is sufficiently concentrated and feels sufficiently strong, it may vigorously push for its language to be given official status on part of the country's territory. To use Benedict Anderson's metaphor, its elite may discover that it is in its interest to make people from other parts of the country pay «linguistic customs tariffs» (in the form of learning and using their language) when doing business, standing in court or participating in politics on its part of the territory, instead of having to pay tariffs on its own soil by having to learn and use the dominant language of the country as whole.²³ Accommodating these claims, once democracy has allowed them to form and gain strength, has proved crucial for keeping potentially violent secessionist tendencies at bay, from Flanders and Catalonia to Québec and Tamil Nadu. Failing to accommodate them has been a major factor of violence in countless other places, from Kosovo to East Timor and in many of those cases of civic unrest in which «soils of the son» have resorted to terrorist action in order to stem the inflow of immigrants from other ethnic groups²⁴. In some cases, such as Québec or Flanders, protective legislation has been introduced in response to rising tensions. In other cases, as in Switzerland, it happened to be essentially present from the start as a gift of history. No linguistic territoriality principle is explicitly provided by the new Federal Swiss constitution.²⁵ It has rather been

²¹ The link that is thereby being officialised and stiffened generates difficulties of a sort exemplified by Catalonia. What is a Catalan? The 1983 Linguistic Normalisation Law suggested that it was someone whose mother tongue is Catalan. But the Linguistic Policy Law of January 7th, 1998 insists that Catalan culture is not synonymous with the Catalan language and refers to people whose mother tongue is Castilian as also being «Catalans». In other words, a territorial definition of national identity replaces a linguistic one. Yet, article 3 of the Catalan Statute of Autonomy (<http://www.catalunya-lliure.com/estatut.html>) provides that the language proper to Catalonia is Catalan, and that Catalan is the official language of Catalonia, as is Castilian, by virtue of being the official language of the whole of the Spanish State. For a translation of the key passages of the 1998 Law see S. Gore and J. MacInnes, 'The Politics of Language in Catalunya' (Edinburgh Working Papers in Sociology No. 13, Department of Sociology, University of Edinburgh, 1998). See also J. Flaquer «Catalan Nationalism: Cultural Plurality and Political Ambiguity» in H. Graham, J. Labanyi (eds), *Spanish Cultural Studies. An Introduction. The Struggle for Modernity* (Oxford:University Press, 1995) pps. 144-151.

²² Alan Patten (op. cit.) distinguishes from the «even-handedness» approach he (presumptively) favours two opposed outcome-oriented approaches, which respectively minimise and maximise linguistic diversity. The first set of considerations listed here does correspond to the former of these two outcome-oriented approaches. However, the second set of considerations does not coincide with the latter. It should rather be viewed as a disaggregated version of the former.

²³ See Anderson, Benedict, "Nationalism", in *The Oxford Companion to the Politics of the World* (Joel Krieger ed.), Oxford: Oxford University Press, 614-619.

²⁴ See Fearon, James D. & Laitin, David D., « Sons of the Soil, Immigrants and the State », Stanford University : Department of Political Science, 2001, 27p.. It is not being claimed that all cases of such erosion through peaceful invasion generate violent resistance. On the contrary, the huge majority of cases of language death, in the past and in the present, are placid agonies, sometimes even with no one noticing that anything is dying.

²⁵ The general legal framework governing the status of languages in Switzerland is governed by articles 4 and 70 of the new Federal Constitution (which entered into force in January 2000), by the Constitutions of the Cantons, by the Federal Law on Financial Assistance for the Protection and Promotion of the Romansh and Italian Languages and Cultures, by the Federal Law on Radio and Television, by the Federal Law on Official Publications and by several sectoral laws and regulations at cantonal level in the fields of education, justice, culture, media etc. Article 4 of the Federal Constitution provides that German, French, Italian and Romansh are the national languages. Article 70 makes quadrilingualism an essential feature of Switzerland and determines the status of the four languages, the interpretation of the territorial principle and the distribution of competences between the Confederation and

developed on a case by case basis by the courts, on the background of cantonal autonomy that made the bulk of its territory, and all its cities of any size, unilingual. Hence there is no Germanisation of Geneva analogous to the Anglicisation of Montreal or the Frenchisation of Brussels, for example, and a level of language conflict far lower, on the whole, than in Canada or in Belgium.²⁶

The second major reason is respect. Resorting to a linguistic sub-territoriality principle in order to protect weaker languages against Laponce-type erosion may not be viewed only as a sound policy for the sake of forestalling violence, but also as a just policy required to prevent unfairness, the perception of which is precisely part of what drives violence, but which also exists in the absence of violence. What unfairness? Who pays the «linguistic tariffs» is of course of some consequence for the distribution of material benefits among different language groups. But there are some cases, such as Flanders or Catalonia, where those who managed to shift the burden of the tariffs were already, or were soon to become, better off than the rest of the country. Indeed, the fact that they succeeded has something to do with their relative affluence and the power that goes with it. Moreover, especially for smaller language groups, success in shifting the burden entails a major competitive handicap, precisely because the obligation imposed on prospective settlers to learn a less common language makes the territory less attractive for at least some economic activities. Therefore, if there is any unfairness which can be systematically corrected, or reduced, by the territoriality principle, it must not concern the distribution of material benefits. It must have to do with the protection of the self-esteem of the various language communities that make up the population of a plurinational state. Even if lip service is being paid to it through giving it some form of official recognition, it is not until its language is firmly protected against erosion by linguistic sub-territoriality that a community feels its identity is properly respected by the population of the country at large. There may be reasons for not protecting a language that those using it may be willing to accept without feeling diminished — too small a group, or too dispersed, or voluntary immigration on terms that unambiguously precluded language protection —, but if such reasons are not at hand, and even if no risk of violence is lurking, the mutual respect and recognition of different cultures provides a plurinational state with a second reason for diversity-preserving intervention.

The third major reason, in some cases at any rate, is the observation that schooling can be more effectively provided if it operates in the local vernacular rather than in a language with which children can gain no familiarity through their home or street environment. In many cases, accommodating parents' linguistic preferences may achieve exactly this, and no voluntaristic language policy is needed. But in others, the widespread belief in the superiority of some language different from the vernacular — typically a former colonial language — will tend to perpetuate a situation in which most are denied a decent level of education, owing to the blatant inadequacy of the resources available to educated children without relying on their native linguistic competence or on strong reinforcement by the environment. This spontaneous tendency to opt for a hegemonic language, often fostered by the self-interest of the

theCantons. See the Report on the Application of the Charter for Regional or Minority Languages in Switzerland prepared for the Council of Europe (Strasbourg: ECRML (2001) 7).

²⁶ See Arrêts du Tribunal Fédéral 106 Ia 299, *Brunner* dated April 25, 1980. See also generally M. Rossinelli, «Le Droit des langues en Suisse» in H. Giordan (ed) *Les Minorités en Europe* (Paris: Kimé, 1992) at pp. 179 et seq; Papaux, Alexandre. "Droit des langues en Suisse: Etat des lieux", *Revue suisse de science politique* 3 (2), 1997, 131-134; Labrie, Normand. "Le principe de territorialité: l'expérience suisse à la lumière du Québec/Canada", *Revue suisse de science politique* 3 (2), 1997, 140-47.

ruling elite, which monopolises fluency in that language and the ability to transmit it to their offspring, may therefore need to be voluntaristically counteracted.²⁷ This may be achieved directly by implementing some linguistic territoriality principle in schooling or indirectly by organising the territory's administration and public life in the vernacular and hence requiring literacy in that language, rather than in the hegemonic one, for access to public jobs in the territory concerned.

A fourth and final reason relates to the value language diversity may have for the country's population — or indeed mankind — as a whole. This value can hardly ever lie in the direct linguistic or cultural interest of preserving a thriving plurality of diverse languages, as the most important languages to preserve for this reason, because they are very different from the others and exist nowhere else, tend to be spoken by such small communities that the cost of preserving them would be prohibitive. To make a case for this fourth ground for diversity-preserving policy, one needs to appeal to more indirect, and inevitably speculative considerations.²⁸ For example, in a world in which communication is dominated by television and the internet, linguistic diversity is the only robust basis for territory-linked cultural diversity, and hence for a diversity of collective experiments which can be of benefit to all. Or in a world in which geographical mobility tends to dislocate communities and undermine informal and formal solidarity, linguistic diversity puts a welcome brake on migration, at least if a dense community life and a generous solidarity are encompassed by the general interest to be legitimately pursued by public policy.

Of course, from the fact that these four types of arguments have been used, and can legitimately be used, in favour of diversity-preserving legislation, it does not follow that they invariably outweigh, even taken jointly, the various arguments listed above on behalf of linguistic unification. What the conjunction of these two sets of considerations establishes is that language legislation cannot be sensibly guided by either a simplistic liberal laissez-faire notion of individual linguistic rights, nor by an equally simplistic republican principle of assimilation into the one language of each nation-state. No sensible guidance can be provided without an explicit conception of social justice and analysis of the conditions for achieving it, that should integrate concerns for the economic and political sustainability of generous material solidarity among the population as whole and for an effective cultural solidarity that secures mutual respect and recognition across language groups.²⁹

II. LANGUAGE LEGISLATION FOR THE EUROPEAN UNION

Linguistic territoriality by default

²⁷ See Abram de Swaan, *Words of the World*, Cambridge: Polity Press, 2001, chapters 6-7, for an insightful analysis of the linguistic situation in various African countries.

²⁸ See Idil Boran, «Linguistic Diversity and Global Ethics» (paper presented at the workshop on «The Public Discourse of Law and Politics in Multilingual Societies», Oñati, June 2002), for a comprehensive discussion of various ways in which linguistic diversity could be regarded as a global public good.

²⁹ No attempt is here made to sketch such a general conception. See Van Parijs, *Real Freedom for All*, Oxford: O.U.P., 1995.

As we turn from the country level to that of the European Union, it is useful to bear in mind the more familiar area — in practice more than in theory — of state language policy, in order to ask whether they retain any relevance there. At the European level, the by-default policy is of course something quite close to the selective accommodation achieved in a number of plurinational countries, in some cases as an incidental by-product of the way these countries were born, in other cases as the outcome of decades of struggles. Just as Switzerland was naturally driven to the linguistic territoriality principle as a by-product of cantonal autonomy combined with very parsimonious policy centralisation, the development of the European Union out of a conglomerate of nation-states leads to the natural endorsement of a territoriality principle protecting all those languages, and only those languages, that have been adopted as the national languages of member states.

In many cases, however, the linguistic territoriality principle was more implicit than explicit, as the relatively low volume of trans-national (relative to intra-national) mobility and the relatively low socio-economic status of most trans-national migrants combined to inhibit any serious threat there might have been to the natural process of linguistic assimilation.³⁰ In this respect, things are changing rapidly, however, at any rate in the continental part of the European Union, partly as a result of increased contact and mobility generated by European integration itself, partly as a result of a broader process of globalisation. At the core of the unprecedented threat is the irreversible spreading of English as a lingua franca both within and outwith Europe. The problem is not the alleged «corruption» of all languages by lexical imports from English. Languages have a seemingly unlimited capacity to digest such imports and creatively subject them to their phonological, morphological, syntactic and semantic rules in a way that strengthens rather than kills them. Were this not the case, English itself would have died from monstrous indigestion centuries ago, owing to the immoderate swallowing of big chunks of the French lexicon. The problem is not the invasion of words unfamiliar to the local people. It is the invasion of people unfamiliar with the local language and insufficiently motivated to learn it, precisely because they will increasingly be able to get away with communicating in the lingua franca, whether or not it is their own mother tongue.³¹

If, for any of the reasons mentioned in the previous section, one wishes to forestall, throughout continental Europe, the sort of snowballing erosion of the weaker languages that went on in such places as Montreal, Catalonia or Flanders before the (sub)territoriality principle was put into place, the expectation that the local language is to be learned will have to be conveyed more firmly, indeed more toughly, than has been needed so far. Those who intend to settle must be humbled into learning the local language. They must be duly warned that this quite heavy tax in kind is part of the price to be paid for the right to settle. Administration and courts, publicly organised or subsidised education and health care, political discussion and decision-making cannot be expected to be provided in anything but the local language.

³⁰ In France, for example, it is only in 1992 that reference to the French language made its way into the Constitution. Article 2 now states: «The language of the Republic shall be French.»

³¹ See, for example, the fears expressed by the Swedish Language Council (cited by Sue Wright («Language Issues and Democracy in the European Union», paper presented at the workshop on «The Public Discourse of Law and Politics in Multilingual Societies», Oñati, June 2002).

The budgetary cost of multilingual operation

Powerfully driven by the same sort of consideration as the sub-territoriality principle in plurilingual states, it may seem that the by-default option of maintaining linguistic diversity through the firm assertion of the right and duty of each member state to impose the official use of its national language(s) on its territory — with the possible exception of Europe's capital³² — has no real contender. But let us not rush to conclusions. One may wonder to what extent, if at all, as European integration proceeds, the same five reasons which national states have had for promoting linguistic unification may become relevant for the EU as such.

The first reason was the sheer cost of administering an officially multilingual territory. In order to allow for direct applicability, the whole corpus of European law must be available in all the eleven official languages.³³ In order to insure equality before the law, European Court of Justice (ECJ) submissions and decisions must be available in any of the official EU languages.³⁴ And similarly, in order to avoid discrimination between economic operators from different countries, the European Commission directorate in charge of competition (DG IV), for example, must be able to communicate in any of the EU official languages.³⁵ In some sectors, however, notable restrictions have been introduced in order to contain costs. Thus, in the case of the Office for Harmonisation in the Internal Market (OHIM), which deals with trademarks and designs, it was decided to save some money by sticking to five languages, namely English, French, German, Italian and Spanish.³⁶ In the same spirit, the European Parliament approved a resolution restricting to five the official languages to be used in the adoption of Community patents.³⁷ But even such modest restrictions were the outcomes of laborious negotiations and led to vigorous protest on the part of some of those whose mother tongue had been excluded. The cost — in resources, inaccuracies and delays — of operating

³² At the Nice European Summit of June 2000, the region of Brussels-Capital was turned from a de facto into a de jure European capital by the decision to hold all European summits there from 2004 onwards. Whether Eurocrats or Euro-lobbyists, people working in Brussels as the European Capital cannot reasonably be expected to all master, in addition to the ever more dominant working language — English — at least one of the two official local languages — Dutch and French. But this should not extend to the neighbouring regions of Flanders and Wallonia, and crucial decisions affecting where the cosmopolitan community will choose to live, for example about the location of the EU-funded European Schools, must take this into account.

³³ See article 314 EC in conjunction with Regulation 1/58, [1952-1958] OJ Special Edition 59.

³⁴ See Arts. 29-31 of the Rules of Procedure. This rule has led some commentators to criticise the court's decisions for being inelegant and obscure. See T. Koopmans, «The Future of the Court of Justice of the European Communities (1991) 11 Yearbook of European Law 15 and also G. F. Mancini and D. Keeling, «Legal Culture and Politics in the Life of the European Court of Justice» (1995) 1 Columbia Journal of European Law 397.

³⁵ See Regulation 1/58, [1952-1958] OJ Special Edition 59. More generally, the legal provisions governing European Union citizenship provide *inter alia* that «...every citizen may write to any of the institutions or bodies referred to in this article or in article 7 in one of the languages mentioned in article 314 and have an answer in the same language.» (see the third paragraph of article 21 of the EC Treaty). Note, however, that this right is confined to EU citizens only and does not include third country nationals. The EU Charter of Fundamental Rights, however, extends the scope of the right beyond citizenship in the sense that article 41 (4) refers to «any person». See N. Nic Shuibhne *EC Law and Minority Language Policy* (Forthcoming, The Hague: Kluwer, 2002) at Chapter Five.

³⁶ Note that an application may be filed in any of the eleven official EC languages but applicants must specify a second language, which must be an OHIM working language, in which the Office may send written communications. See generally N. Nic Shuibhne («Language Rules, Language Rights and the EC Administration», paper presented at the conference *Linguistic Diversity and European Law*, Florence, EUI, November 2001).

³⁷ The vote took place on April 10, 2002 with 256 votes to 187 (with 95 abstentions). See the report in *El Mundo* on April 11, 2002.

multilingually at all these levels is huge — it is currently estimated at EUR 800 million for all the EU institutions together³⁸ —, and may accordingly affect the perceived legitimacy of the European administration, when compared, say, to the U.S. administration and that of each member state. Worse still, the planned EU enlargement will potentially account for up to ten new languages as of 2004, leading to a further explosion of translation and interpretation costs. At the same time, as long as linguistic diversity persists in the population, institutional unilingualism would simply shift the cost of linguistic diversity to the users, and undermine legitimacy through some other channel, as people would resent having to address, and be addressed by, the European administration, courts, etc. in a language they do not master.³⁹

However, this cost-based argument for linguistic unification on a European scale must not be overstated. First, it is far weaker than at the national level, since one of the consequences of «subsidiarity» is that most of the legislation, administration, public discussion and political decision-making can and must remain located at a national or subnational level that operates directly in the language of the majority of the population concerned. Secondly, even when the European level is involved, the cost is not as high as might be expected at first sight, and should in fact be diminishing.

On the one hand, routine work and informal meetings inside the European Commission, the European Parliament and the European Council already take place in whatever language seems most convenient which tends to be increasingly in English, decreasingly in French and on occasion in German. However, as the number of member states and official languages increases and as one keeps making sure that civil servants from the various member states are mixed together in services and teams, this will ever more tend to be just one. Moreover, as competence in English increases amongst EU employees and politicians, whether as a result of self-selection or by design, these «internal uses», quietly governed by pragmatic unilingualism, may soon include the official meetings of the Council and the Commission, as well as of the committees of the European Parliament. This would not only be a way of shrinking the huge interpreting bill, but it would also reduce the hidden cost of multilingual decision-making by making it easier to build a climate of intimacy and trust amongst European decision-makers.

On the other hand, even as regards unambiguously «external» uses, such as official correspondence or the publication of official texts, the cost will gradually shrink as a result of the spread of competence in English, thereby gradually reducing the impact of anti-discrimination concerns. For example, in order to permit competent refereeing, it is common practice to require applications for the funding of research projects by the EU to be submitted in English. This implies a significant additional cost and/or handicap for many applicants whose mother tongue is not English, but the legitimacy of such a practice no longer seems seriously challenged. As the knowledge of English keeps spreading in business and other spheres of life, expecting the users concerned to understand, if not speak or write, the type of English the administration uses, may soon seem no more (nor less) innocuous than nation states expecting their immigrant minorities to understand the national language. Self-selected bilingualism inside EU

³⁸ See Press Release, ‘Commission Prepares its Language Services for Enlargement’ on 20 December, 2001 (IP/01/1869).

³⁹ Consistent with the general point we made in the first section, it must be borne in mind that even in a unilingual context, a large proportion of the population does not master these languages anyway and need to heavily rely on elites, such as lawyers and administrative officials, to both formulate and press their claims.

institutions and specialised bilingualism among users of specific EU services therefore hold the potential of reducing considerably the administrative cost of maintaining linguistic diversity.⁴⁰

The economic cost of linguistic hurdles

There is, however, a different type of cost consideration, which is less immediately observable and therefore less easily noticed but is likely, in the long run, to weigh far more heavily than translation costs. It is closely linked to the second argument mentioned above to justify linguistic unification by the nation state, namely the argument based on the conjecture that linguistic uniformity fosters internal mobility, and thereby economic efficiency. When framed on a European scale, this concern obviously creates a tension with the linguistic territoriality principle applied at a national or a sub-national level. By imposing high linguistic demands on any settler, the latter unavoidably discourages transnational mobility. This tension is neatly illustrated by secondary legislation relating to the linguistic conditions to be fulfilled for exercising *inter alia* legal and medical professions.⁴¹ Thus, in the *Groener*⁴² case, which concerned a Dutch national working in Ireland as a part-time teacher, whose application for a full time post was rejected in view of insufficient knowledge of the Irish language, the ECJ held that the implementation of a policy for the protection and promotion of a language of a Member State is not prohibited by the EC Treaty, as long as it does not encroach on one of the four fundamental freedoms, in this case the freedom of movement of workers. More recently, the European Court of Justice similarly held that the authorities of a member state are entitled to make the appointment of a dental practitioner operating within the framework of the social security system conditional upon his having the linguistic knowledge necessary for the exercise of his profession in the Member State of establishment.⁴³ The measures adopted by the Member State must not be disproportionate as regards the aim pursued and the manner in which it is applied and they must not result in discrimination against nationals of other Member States.⁴⁴ Even in cases such as these, in which the ECJ was unwilling to interfere with something which remains, after all, a central element of a state's sovereignty, a considerable burden is placed on administrative authorities to

⁴⁰ In this bilingual functioning even more than in a standard «unilingual» functioning, however, it will be important to keep minding the gap that tends to develop between the language of administrative or judicial practice and the language actually mastered by ordinary citizens. This gap constantly tends to develop both through the natural development of the spoken language practiced daily by citizens and through lexical innovation by the administrative bodies in order to handle new problems or situations.

⁴¹ See generally directive 89/48 on the mutual recognition of higher level education diplomas (1989 OJ L 19/16) as supplemented by directive 92/51 See also the Lawyers Directive 77/249 which was overtaken by Directive 98/5 [1998] OJ L77/36.

⁴² See C-379/87 *Groener v. Minister for Education* [1989] ECR 3967, [1990] 1 CMLR 401 at para. 19.

⁴³ See C-424/97 *Salomone Haim v. Kassenärztliche Vereinigung Nordrhein* (Judgment of July 4, 2000, as yet unreported) addressed also by N. Nic Shuibhne, «Language Rules, Language Rights and the EC Administration» (Contribution in this volume).

⁴⁴ Proportionality is a well established principle of European Community law. It is based on an assessment of a balance between means and ends. In the *Groener* case, the court's decision was based on an evaluation of whether a less restrictive measure could have been adopted in the circumstances. In this case, it was deemed questionable whether the requirement could have been waived for Ms Groener, even though she did not need a command of the Irish language to carry out her duties, given that the aim of the requirement was to promote the use of Irish as a means of expressing national identity and culture

justify their actions and evaluate possible alternatives.⁴⁵ Such evaluation can lead to imaginative solutions that soften the tension between linguistic territoriality and workers' mobility, but it will not abolish this tension.⁴⁶

Note that sheer second language convergence will not make the tension melt away. It should not make mobility significantly higher — except asymmetrically towards countries which happen to have the lingua franca as a mother tongue —, precisely because the territoriality principle wants it to be far from sufficient for permanent dwellers. All things being equal, it is no doubt an advantage for an economy to be able to handle shortages and a plethora of various types of labour by moving them across long distances. With the deepening of the single market, the economies of the Member States are slowly becoming more specialised, and therefore more prone to asymmetric shocks or trends. With the advent of the Euro, most member states have relinquished the option of adjusting to these through currency adjustments. This makes labour migration ever more important as an adjustment mechanism (the only other mechanism consists of transnational transfers), and its being hindered by linguistic diversity an ever greater economic handicap — relative, for example, to the sort of cross-state mobility possible in the U.S. —, both because of a lesser ability to deal with local labour shortages and because of the deadweight losses generated by the need for heavier cross-border transfers.

One must, moreover, bear in mind, a distinct but related cost increasingly generated by the application of the territoriality principle, whether or not it contributes to linguistic diversity. In a knowledge-based, human-capital-dependent world economy, those countries whose official language is the world lingua franca — the «ground floor of the world» — enjoy an ever greater competitive advantage. For when moving there, sometimes first in order to study, the highly skilled of the world and their families need not pay the heavy cost of learning a new language from scratch, since they increasingly master it to some extent before going and are quite keen to improve it anyway. In the fight to retain and attract human capital, therefore, the countries with a distinct, less widely known language — the «linguistic hills» of the world — are at a competitive disadvantage.⁴⁷ The root of the challenge, here, is not linguistic diversity, but the fact that the local official language is not the worldwide lingua franca. Linguistic unification through the general adoption of a language other than English would make the challenge less acute, by turning the current fragmented situation into a far more robust linguistic block. But it would only go a small part of the way if English remains the world-wide lingua franca — which it will.⁴⁸ Of course, part of the ground floor — including the «room» in which the lingua franca was conceived and spent its long childhood! — happens to fall within the borders of the European Union. But while creating problems of its own through the deep internal imbalances it will tend to

⁴⁵ See C-11/70 *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratstelle f_r Getreide und Futtermittel* [1970] ECR 1125, [1972] CMLR 255.

⁴⁶ See C-379/87 *Groener v. Minister for Education* [1989] ECR 3967, [1990] 1 CMLR 401 at para. 18.

⁴⁷ See Van Parijs ("The Ground Floor of the World. On the Socio-Economic Consequences of Linguistic Globalisation", in *International Political Science Review* 21 (2), 2000, 217-233) and the references cited there.

⁴⁸ See the Immigration Commission convened by the Minister of the Interior, Otto Schilly SPD on July 12, 2000, and catalysed by the Green Card scheme introduced on February 23, 2000 in order to establish a system of recruiting computer specialists from abroad. *Zuwanderung Gestalten, Integration F_rdern* (Bericht der Unabhängigen Kommission «Zuwanderung» (Berlin: July 4, 2001), reproduced at <http://www.spiegel.de/politik/deutschland/0,1518,143295,00.html>.

generate,⁴⁹ this fact mitigates only very partially the advantage which the United States owe to being, for this linguistic reason, an easy receptacle for the high-skilled of the world.

Let us face it: there *is* a high cost involved in the effective preservation of linguistic diversity, but in the long term it consists only to a very minor extent in the obvious expense involved in translation and interpreting. The costs of reduced internal worker mobility and of net outflows of human capital are bound to become far more significant as both EU-wide economic integration and economic globalisation proceed. Most of us would not dream of finding them so high that they would justify selling our «soul» — through the gradual spread of English at mother tongue level —, but it is important to anticipate them early enough in order to be able to both soften and resist the pressure when it will come.

The linguistic conditions for a Europe-wide political forum

Not all the arguments mentioned above in the national context, however, were of an economic nature. The third argument invoked in favour of unilingualism at the national level concerned the preconditions for a viable political forum, in which individuals and groups from the various parts of the polity can talk directly and efficiently to one another, listen directly to public officials and opinion leaders, discuss platforms and shout slogans together. There is no reason to believe that democracy cannot work in the absence of a culturally and linguistically homogeneous ethnos. But there is no doubt that a plurilingual democracy is more complicated to run than a unilingual one, precisely because democratic forums set up in different languages tend to develop separately from one another. This gives rise to parallel channels of political discussion and mobilisation, places more of a burden on policy-makers/negotiators, and consequently makes the legitimacy of the exercise of political power more fragile than it would otherwise be. In democracies with only two main languages, such as Canada, Belgium and Switzerland, this can be overcome to some extent thanks to a sufficiently large pool of competent bilingual people. In putative democracies with a larger number of languages, no analogous assumption can realistically be made.⁵⁰

However, since what is needed is not a homogeneous ethnos but a demos made up of people who can talk and listen to each other, resolute convergence towards a single common second language, for all those who do not have that language as their mother tongue, can do the trick.⁵¹ After all, this is already the pattern at work in Spain, where Catalan, Basque and Galician are given an official regional role, while everyone is expected to perform in Spanish at

⁴⁹ For a start, about 9.000 British students study in the continental member states of the EU, while nearly 90.000 students from these countries study in the UK (Eurostat figures: for 1998-99 Non-national students in tertiary education.) One way of alleviating — without ever hoping to cancel — this imbalance as far as student flows are concerned is by organising programmes in English throughout the European Union — a process already well on its way, (predictably) earlier and faster in countries with less widely spread languages. To deal with the similar and more serious imbalance in the flows of high-skilled workers, one might think of creating, in addition to the European capital, a number of linguistic *zones franches* — or, to use our metaphor, to let strictly circumscribed portions of the continent sink to the ground floor — by waiving the territoriality principle and allowing those settling there, even permanently, to get away with knowing nothing but the lingua franca.

⁵⁰ For a discussion of this set of issues, see Peter Kraus, Peter. «Political Unity and Linguistic Diversity in Europe», *Archives européennes de sociologie* 41 (1), 2000, 138-164.

⁵¹ Along the same line, see Jurgen Habermas's reply to Dieter Grimm ("Remarks on Dieter Grimm's 'Does Europe Need a Constitution?'", *European Law Journal* 1 (3), 1995, 303-307).

the national level, or indeed in the Russian Federation, where the equality of national languages and of minority languages proclaimed in the 1917 Declaration of the Rights of the Peoples of Russia, and the official recognition of 101 ethno-linguistic groups at the time of the 1989 census go hand in hand with the ubiquity of Russian in the functioning of the Federation.⁵² Of course, eloquence and great bargaining skills in a foreign language are an elite feature, but so are they in the national language. With improved language learning and ever increasing opportunities for practicing, second language fluency will be far more widespread in the middle of the 21st century than prestige-variant first language fluency was in the middle of the 20th. Effective democratic politics need not be confined to the vernacular, or rather in a high-mobility, high-communication world, the inhabitants of the non-anglophone part of the world will gradually get used to functioning with a two-tier vernacular. Moreover, conducting or following politics at the European level in a language different from one's national language will soon sound no stranger than conducting and following national politics in an idiom quite remote from the dialect of one's native village.⁵³

Equalizing the Europeans' linguistic opportunities

The fourth argument invoked in favour of uniformity at the national level is its direct contribution to social justice in terms of equality of opportunity. If anything, sheer second-language convergence to the mother tongue of a subset of the population concerned seems to make things worse in this respect. The advantage of the native speakers of that tongue further swells as a result, whether regarding access to public and private jobs with a significant international component or in the context of all sorts of economic, political and other interactions.⁵⁴ This advantage, however, must be qualified in at least two ways. First, as long as the territoriality principle is in place, there is at least one geographical area in which the native speakers of the other official languages have a significant advantage over others. Secondly, as the knowledge of English spreads to most of the non-English native speakers who are likely to have international contacts, it becomes ever more difficult for English native speakers to find themselves in contexts in which they are naturally helped to improve their competence in other languages. This constitutes a handicap that can become significant. For although being fluent in the top language is a considerable advantage as compared to being fluent in a lesser language, being fluent in both, which is far more accessible to native speaker of the latter, is a sizeable advantage as compared to being fluent in either.

The main long-term direct problem for social justice, in the two-tier linguistic functioning that is here being envisaged, may therefore not be so much that some people have been luckier with their mother tongue, but rather that

⁵² See, for example, J. Hughes, «Managing Secession Potential in the Russian Federation» in J. Hughes and G. Sasse (eds) *Ethnicity and Territory in the Former Soviet Union. Regions in Conflict* (London: Frank Cass, 2002) at pp. 26-68.

⁵³ There are many circumstances in which it is correct to say, as does Will Kymlicka (2000), that democratic politics can only be conducted in the vernacular language. But «globalisation» will soon produce throughout the (non-anglophone) world a non-elite-restricted bilingualism (or plurilingualism) that has so far been confined to a (not so small) number of local situations.

⁵⁴ For a discussion of justice criteria compatible with convergence to a common medium that is the native language of some, see Jonathan Pool, "The Official Language Problem", *American Political Science Review* 85, 1991, 495-514; and Philippe Van Parijs, *Philosophy, Politics & Economics* 1 (1), 2002, 59-74.

among people with the «wrong» mother tongue, some people may be far better placed than others to learn the lingua franca — in terms of schooling conditions, prior knowledge of the local vernacular which is still to be learned, easy access to English-language media, opportunities for travelling and studying abroad, etc. Class divisions will thereby be given a novel linguistic dimension, and unjust inequalities may deepen, unless ingenious ways of spreading competence in the lingua franca are explored and implemented.⁵⁵

Europe's multilingual identity

Finally, there is the fifth argument that emphasizes the potential of linguistic unification for the sake of creating a single people with a common identity, as a precondition for the sort of patriotic feeling which is an essential resource in adversity and a welcome contribution to the smooth running of the polity at any time. For example, a far more favourable trade off between solidarity and efficiency could be achieved, if Europe's high-skilled workers were at the same time prepared to move around within Europe in response to demand for their skills and unprepared to move to North America despite their incomes being taxed at a higher rate in Europe for the benefit of the less skilled. To make such a combination conceivable, widespread, and viable, one needs some sort of allegiance to the European Union as a whole, to what it stands for, to the type of life in common it permits and promotes, to a people of Europe to which one feels one belongs. Drawing from analogies with the national level, this allegiance is no doubt easier to create among people whose identities are moulded through growing up in the same language. But effective second language convergence increasingly enables European citizens to communicate with one another and to participate, in addition to their national debates, in a shared European forum. There is therefore no reason why a distinctive common European identity could not form, with fellow-feeling and mutual understanding being fed by the tough challenge of combining throughout the continent the effective respect for linguistic diversity and the demands of efficient economic and political operation with one another.

Thus, the framework for European language legislation that emerges from our discussion — firm linguistic territoriality principle to protect national and subnational linguistic diversity, combined with second-language convergence intended to cut costs and permit a common forum of discussion — generates a serious challenge that cannot be dreamt out of existence. But the challenge itself can and must squarely be made part of our identities — of what makes us Europeans. This will put us in a better position to address the various problems we face as a result of our linguistic diversity, and also to provide a more relevant model for many parts of the world, and for the world as a whole, than a linguistically homogeneous polity.

⁵⁵ Judging by the difference in average fluency in English between children in «dubbing» and «subtitling» countries, there is at least a strong prima facie case, from this perspective, in favour of a tough ban on TV dubbing throughout the European Union.