Linguistic justice and justice through language

Prof. Janny Leung
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Centralization of government and the persistent ideology of linguistic nationalism in modern states have struggled to come to terms with linguistic diversity that exists within their political boundaries. Many state language policies have threatened the survival of minority languages, though in the last few decades there is an observed increase in official multilingualism and laws that offer some protection to minority and indigenous languages.

Language rights activists have been calling for universal protection of languages in international human rights instruments, but such movement has gained limited traction and has doubtful efficacy. There is limited consensus in the linguistic justice literature about what makes a language policy just, and how language policies could balance between the communicative and identity functions of language.

Bringing together interdisciplinary and international experts working in the intersections of sociolinguistics, language policy, and language and law, this invited panel will analyse how language policies and institutional language practices can lead to inequality, discrimination, and marginalization, dissect underlying language ideologies, and consider what the possible resolutions are. The papers will have a wide geographical coverage and will explore both practical and theoretical dimensions of linguistic justice.

Keywords: language rights, minority language, language policy, linguistic justice, legal language, indigenous language, language ideologies, linguistic nationalism, post-colonialism, linguistic diversity

1. Legal limitations within China's minority language rights regime: A Zhuang case study

Dr. Alexandra Grey
The University of Sydney

This paper presents 2013-2017 research on China's constitutional provision protecting the use and development of minority languages, and the legal instruments and state entities supporting it. The research takes a case study of Zhuang, the language of China's largest minority. The analysis combines complementary legal and critical sociolinguistic lenses (following Bourdieu 1987, 1991), sitting within the ethnography of language policy literature. Legal instruments and policies were collected and multi-sited, ethnographically-oriented fieldwork undertaken (following Schein 2000: 26-28).

This paper analyses the legal nature of this constitutional provision and the role of the Guangxi Zhuangzu Autonomous Region's government in elaborating and applying it. The paper analyses the limitations on the right given its nature as a 'freedom/negative right', and lack of enforcement mechanisms. A contrastive analysis of legislation protecting the national language (Putonghua) through a positive right with enforcement mechanisms highlights the unequal position in law of official minority languages.

The paper discusses the limited legal impact for Zhuang of the constitutional language freedom in light of Leung's new (2019) theory of "shallow equality" and linguistic justice. The discussion focuses on ways in which this Chinese study – which complements Leung's focus on liberal states – echoes or diverges from Leung's conclusions, and interrogates whether laws can provide 'unsettling language' which destabilises, or challenges, existing language ideologies and socio-linguistic hierarchies. This discussion is relevant to studies of language rights regimes beyond China.

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Keywords: People's Republic of China, minority languages, language rights, shallow equality, Zhuang

2. Exclusionary English: Language in Philippine legal practice

Prof. Isabel Pefianco Martin
Ateneo de Manila University

This presentation looks into the exclusionary effect of the English language in Philippine legal practice. It considers the extent to which language use in the legal domain pushes marginalized Filipinos further to the periphery. The Philippines is a multilingual country, with 191 living languages currently reported (Ethnologue, 2018); it is also one of the most linguistically diverse countries in Southeast Asia, ranking second in Asia and 24th in the world. Despite this multilingualism and linguistic diversity, Filipinos are reaping few benefits from their mother tongues since local languages remain confined to the fringes of important social domains. This presentation surveys situations where exclusionary English operates, specifically in the following aspects: (1) as a language not accessible to many Filipinos, especially in its form as a legal register; and (2) as a language used against those disadvantaged before the law.

Keywords: Philippines, English, legal language, linguistic disadvantage, access to justice

3. Shallow supremacy? The political and judicial discourses of linguistic justice in Malaysia

Prof. Richard Powell
Nihon University

A major impetus behind Malaysian language planning is the Malay speech community's self-perception as economically disadvantaged and culturally threatened, even though it constitutes the largest group of both L1 and L2 speakers and has had the strongest voice in national politics since independence. A handful of key judgments, including Merdeka University v Government (1982) and Dato' Seri Anwar Ibrahim (2010), vigorously uphold the constitutional supremacy of Malay over significant minority languages like Chinese and English. While there are a number of examples (e.g. Slovak, Latvian) of minority positioning outlasting political events that shifted languages into majority positions, Malaysia's half a century of political and judicial discourse situating Malay in a struggle to achieve its rightful place calls for reappraisal of the paradigm of reparative linguistic justice, which has tended to focus on numerically weak languages. Expanding on Leung's concept of shallow equality (2019), there may be a case for proposing a construct of shallow supremacy.

Leung, Janny (2019) Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders. OUP.

Powell, Richard (in press 2019) Language choice in postcolonial law: lessons from Malaysia. Springer Nature.

Keywords: language planning, Malaysia, minority language, linguistic justice, post-colonialism

4. Legislative waves on both sides of the Pacific: Making laws about indigenous languages

Dr. Brett Todd
The University of Technology Sydney

On both the American and Asian shores of the Pacific Ocean, recent years have seen settler colonial states legislating to recognise the status and significance of indigenous languages, acknowledge the rights of indigenous communities to use them, and allocate responsibilities to state institutions to respect those rights and take action to protect the languages themselves. Whereas only the USA and New Zealand had this kind of legislation when the 21st century began, nine Latin American countries promulgated indigenous languages laws between 2003 and 2017: Mexico, Peru, Guatemala, Venezuela, Colombia, Panama, Paraguay, Bolivia and Ecuador. Since then, Taiwan, Canada and the Australian state of New South Wales have passed enactments on indigenous languages. These laws vary considerably with respect to such matters as the language-related rights accorded to individuals and communities, the obligations imposed on state institutions, the nature of any regulatory or advisory entity created, the role allotted to indigenous communities and organisations, the allocation of funding, and the presence of any guarantees of sustained implementation. This presentation will consider the implications of these new legal frameworks for indigenous communities striving to maintain or revitalize their languages.

Keywords: post-colonialism, indigenous language, language rights, linguistic revitalization, language and law

5. Language rights and trial rights: Applying the insights of linguistic research

Dr. Mel Greenlee
California Appellate Project

In United States criminal practice, language serves as a critical source of bias, with inequities in the larger society reflected in the pages of trial transcripts as well as in the demographics of the prison population.

Linguists have repeatedly shown that in everyday criminal practice, the legal system may rely on foundational assumptions about language that are in fact, inaccurate, assuming for example: jurors fully understand certain complex instructions (G. Stygall 2014), that silence in the face of accusation indicates an "adoptive admission" of guilt (J. Ainsworth 2012) or that court reporters' renditions of witnesses' testimony are accurate for appeal (T. Jones et al 2019). Similarly, a lack of attention to pragmatic context may lead courts to elevate form over content in accepting defendants' dubious waivers of rights, even in the most serious cases. (M. Greenlee 2015)

In individual cases, linguistic experts have provided invaluable assistance in debunking some of these erroneous ideas. However, as Solan & Tiersma (2002) pointed out some years ago, linguists' role as experts may be limited where judges determine that linguistic questions at issue are capable of resolution by lay persons. And the larger political context may narrow the impact of linguistic insights to individual cases, despite clearly larger implications for both language and trial rights.

This paper addresses instances of such false linguistic assumptions based on criminal case data (from trial transcripts and appellate briefing) with a view toward the wider application of linguistic expertise in assuring equitable criminal process.

Keywords: criminal trial, language ideology, language myth, pragmatics, language and law

6. Linguistic justice as an instrument of conflict resolution: New sociolinguistics directions

Prof. Joseph Lo Bianco
University of Melbourne

This talk reports on 7-year research and intervention activity in sub-national multi-ethnic conflict zones in Myanmar, Thailand and Malaysia. The focus of the work is the relationship between the sociological phenomenon of multilingualism, public policy, and bottom-up efforts for conflict mitigation (Lo Bianco, 2017). The momentum in the public policy area is the effort to claim or deny legal protection for the distinctive languages and cultures of indigenous minority populations. The instrument through which conflict mitigation efforts was pursued included 45 facilitated dialogues involving participation from public officials, community and civil society representatives and expert researchers. In these facilitated dialogues notions of linguistic justice formed a major part of the discussion and a substantial component of the grievances of minorities. In South and Southeast Asia some 26 violent and chronic sub-national conflicts have a language dimension which however is broadly misunderstood by national authorities and frequently misrepresented by academic scholars as a mere proxy for essentially ethnicity-based cleavages. Language grievances are connected to violent conflict in particular ways and need to be researched and addressed according to their distinctive features.

Lo Bianco, J. (2017) Resolving ethnolinguistic conflict in multi-ethnic societies. Nature Human Behaviour 1, 0085 (2017) | DOI: 10.1038/s41562-017-0085 | www.nature.com/nathumbehav

Keywords: multilingualism, public policy, conflict mitigation, linguistic justice, linguistic minorities

7. Linguistic equality vs. linguistic justice

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In my recent book (2019) I present data which show that linguistic equality is increasingly asserted in bilingual and multilingual jurisdictions around the world. In this talk, I will explore the meaning and significance of such linguistic equality as claimed and practiced in the world today. Such equality is often shallow in that some languages are treated more equally than others, and that it tends to be highly formalistic. I argue that linguistic equality that is shallow can still be just, but shallow equality must not be conflated with deep equality that forms the basis of human rights instruments, traditional liberal philosophies, and the doctrine of state equality.

By calling the existing conception of linguistic equality shallow, I expose the frequent mismatch between what it is and what it appears to be, but I do not wish to suggest that an even broader, or universalist conception of linguistic equality is necessarily socially desirable. It is rational for polities to limit the number of languages they recognize officially. At the other extreme, linguistic equality for all is not only politically and economic untenable, it is also a sociolinguistic impossibility, for language simply does not fall into discrete units that one can treat equally.

Leung, Janny (2019) Shallow Equality and Symbolic Jurisprudence in Multilingual Legal Orders. OUP.

Keywords: legal multilingualism, linguistic equality, linguistic justice, language and law, shallow equality

8. The right to speak nonsense? bullshit, discourse equality and epistemic injustice

Dr. Chris Heffer
Cardiff University, UK

Language policies and institutional language practices can lead to inequality, discrimination, and marginalization, not only in relation to languages but types of language use. Drawing on the TRUST framework for analyzing untruthfulness in discourse (Heffer 2020), this paper will argue that while we have a universal ethical right to express opinions we sincerely believe, however distasteful others might find them, we only have a qualified right to produce bullshit.

In pursuing this argument, I begin by distinguishing the nominal product of bullshit from the verbal strategy of bullshitting and the entirely different discourse strategy of lying. While lying involves intentionally conveying a claim you believe to be false, bullshitting involves conveying a claim when you neither know nor care whether or not it is true. Bullshit can be the epistemic nonsense that results from bullshitting but it can also be the 'sincere nonsense' produced by a genuinely sincere but epistemically irresponsible speaker. I argue that we have a right to emit bullshit in contexts where our commitment to truthfulness is 'suspended' because, for example, it is not in play or because there is an overriding greater good.

We do not have a right to speak nonsense, on the other hand, when we have a duty of epistemic care. Possessing such a duty, if we also fail to investigate sufficiently according to our role and we fail to hedge our claims in accordance with the available evidence, then we are being epistemically negligent. I tease out the notion of epistemic negligence with regard to 'anti-vaxxer' discourse, which is mostly produced sincerely but with potentially devastating consequences. I conclude that equality in discourse, and the right to be heard that underlies epistemic justice, cannot extend to the right to speak nonsense while warranting the truth of our claims.

Keywords: bullshit, discourse strategy, epistemic negligence, truth, discourse ethics