

WHAT CONSTITUTES GOOD LANGUAGE LEGISLATION?

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Context of Language Legislation

- Widespread concern about increasing volume, complexity of legislation (esp., but not limited to fiscal measures), and the challenges this poses for application and compliance
- Much language legislation is relatively recent, inspired by relatively diffuse and often insufficiently articulated policy goals, implicates other policy areas and goals (e.g. regional development, a variety of competing rights) and interacts with highly complex social processes

Better Regulation Executive, Department for Business, Innovation and Skills

- transparent
- accountable
- proportionate
- consistent
- targeted – only applies to cases where action is needed

Legislation Advisory Committee, New Zealand Ministry of Justice

- Terms of reference (1986) include: ‘to help improve the quality of law-making by attempting to ensure that legislation gives clear effect to government policy’
- ‘Guidelines on Process and Content of Legislation’ (2001)
- Ch. 1: Means of Achieving the Policy Objective (e.g. Has policy objective been clearly defined, have alternative means been considered, including non-statutory ones?)
- Ch. 2: Understandable and accessible legislation
- Also, compliance with fundamental laws, international obligations, the question of need for remedies, appeals, and review

General Principles: 5 Es

- Effective
- Efficient
- Equitable
- Evident
- Enforceable

1. Effective

- Legislation gives legal effect to policy decisions
- So, is (are) policy goal(s) clearly defined?
- If goals include social/behavioural change, what are the key drivers, and how will they be regulated?
- Particular complexity related to language legislation for minority languages, due to demography, ideologies, weight of past policies

2. Efficient

- Efficient in the sense of ‘proportional’
- A legitimate aim (see 1)
- The measure must be suitable to achieve the aim (see 1: Are the means adopted sufficient to affect the drivers of social/behavioural change?)
- Measure must be ‘necessary’ to achieve the aim (i.e. there is no less onerous way of achieving the aim)
- It must be reasonable, considering the competing policy goals that may be involved

3. Equitable

- Equitable in the sense of ‘equal protection of the law’
- Those in similar conditions and circumstances are treated similarly; those in dissimilar conditions and circumstances are treated appropriately differently
- In a sense, the ‘sliding scale’ of obligations which is often applied in language law is consistent with equitable treatment
- Are individuals treated differently depending on the nature of the body which serves them?

4. Evident

- Evident in the sense of ‘understandable’, ‘transparent’, ‘accessible’
- Complex, and dynamic legislative context: requires both precision and flexibility
- Where administrative discretion is necessary, how is it to be regulated?
- Legislation must be implemented, applied by non-lawyers (generally) and used by the public
- Are obligations and duties clear?: Complexity of legislation; ambiguous or overly technical language; mandatory v. permissive/aspirational; conditional language, qualifications
- Do people know that the legislation exists, or what its content is?

5. Enforceable

- Is implementation of legislation monitored?
- Is impact of the legislation monitored?
- Is monitoring done impartially/at arm's length?
- What are the consequences of failure to implement the legislation?
- What role do the beneficiaries have? What recourse do they have? Is recourse effective/real?

Thinking about this in the context of language legislation

- Policy goals
- Legislation in support of maintenance, revitalisation

Policy goals expressed in language laws

- Nation-building—standardisation: can work against minority language maintenance
- Language maintenance and revitalisation
- Equality considerations
- Maintenance of social harmony/political unity
- Appeasement

Contribution of legislation to maintenance, revitalisation?

- More evidence required: we're at an early stage
- J. Fishman, *Reversing Language Shift* (1991): sceptical of role of 'higher order props'
- Yet law is frequently a feature of language revitalisation efforts.
- European Charter for Regional or Minority Languages: legislation is crucial
- F. Grin, (2003): 3 essential elements in revitalisation: **capacity, opportunity, desire**

a. Capacity

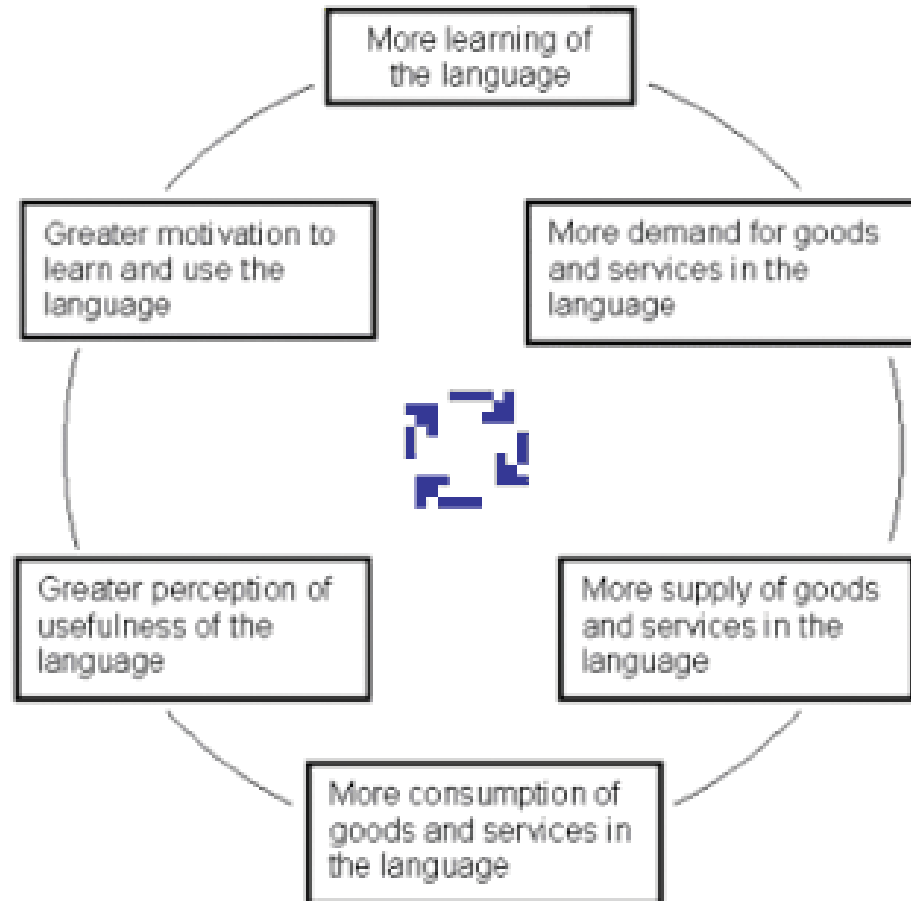
- Law can place obligations on the school system
- Compulsory teaching of the language as a subject: Wales
- Rights to minority language medium education: Canada
- Language as the medium of education for all: Quebec, Catalonia, certain parts of Wales, etc.
- Indirect effects on acquisition through increased prestige, perceived utility of the language: see Miquel Strubell

b. Opportunity

- Law can extend use of the language to new domains
- Minority language as an official language (effectively), with rights for use with the public administration: Canada, Catalonia, Basque Autonomous Community, Finland, etc.?
- Some other more limited form of some bilingualism in the public administration: Scotland, Ireland, Wales?
- One key effect can be the creation of jobs: Miquel Strubell's 'Catherine Wheel'

Strubell's 'Catherine Wheel'

(http://www.euskara.euskadi.net/r59-3693/en/contenidos/informacion/artik3_1_strubell_05_10/en_10616/artik3_1_strubell_05_10.html)



b. Opportunities (cont'd)

- Language Legislation can affect directly 'supply' of the language; *may* affect indirectly demand, perceptions of prestige and, as mentioned earlier, acquisition
- Possible problems include: (1) implementation; (2) actual take up of opportunities created by legislation (a response: 'Active Offer'); (3) limited scope of application: what about private, voluntary sector (a response: further legal regulation: Quebec, Catalonia, but also Canadian territory of Nunavut (Inuit Language Protection Act 2008))

c. Desire

- Linguistic Landscape: positive impact on attitudes, ideologies
- Domain expansion, job creation: perception of greater utility, instrumental value of the language
- However, does legislation always increase prestige, status of the language? And if so, to what effect: how quickly and effectively does behaviour change?
- What difference does form and content of legislation make?

Analysing impact of legal instruments

- Critical assessment of policy development and content
- Critical assessment of actual implementation
- Scrutiny of behavioural and attitudinal changes effected: changes in culture of providers; do users, in fact, take advantage of opportunities created; are attitudes towards minority language, patterns of use generally affected; what is the broader attitudinal impact on the general public?

Concluding Thoughts

- Critical assessment of policy development and legislative history; content
- Need for more evidence on impact of legislation (behaviour/attitudes): regulated bodies, users, wider public
- Design issues: regulation of private, voluntary sector?; to what extent are language 'rights' necessary?
- Implementation: political will, proactive public sector leadership
- Uptake: active offer necessary but sufficient?
- Enforcement/remedies?
- Legislation and holistic language planning: mainstreaming language planning in other policy areas (e.g. Socio-economic development)