

Linguistic Crimes: Asian Language in the Docket

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This paper describes two American court cases concerning attempts to restrict the use of Asian languages in the Philippines and in Pomona, California. It examines language conflict, policy, rights, and diversity from a legal point of view.

この論文ではフィリピンとカリフォルニア州ポモナ市におけるアジア言語の使用を制限する試みに関する二件のアメリカの裁判について述べられています。特に法的観点からの言語の衝突、政策、権利、多様性について調査したものになっています。

English is undeniably an important tool for pan-Asian communication and will continue to spread throughout the region well into the 21st century. This will bring English into direct conflict with traditional, indigenous Asian languages. By whom will decisions concerning the choice of language be made—individuals, businesses, governments? How will language policy be formulated and interpreted?

In the United States, politically charged issues tend to get debated in the courts where they get a full and open hearing. Not only are decisions made, the circumstances surrounding the issues become a matter of public record

and the issues are evaluated in terms of a body of case law which attempts to apply principles of justice to real-life situations. Sometimes the court's opinion is published and becomes an important precedent for future cases (Farnsworth, 1983, 23-30). Indeed, several such cases involving choice of language have become part of the body of federal case law.

Three federal cases in which local governments attempted to repress foreign languages and mandate the use of English were selected as the topic for a guided discussion at the conference. The discussion continues now on-line. (Readers who wish to participate in the discussion before reading any further are directed to <http://www.aichi-gakuin.ac.jp/~jeffreyb/langpol.pac3.html>). Due to limitations of space, this paper centers on two of the three cases, both of which have strong Asian connections, with a brief mention of the third in the conclusion. To say that English was mandated in these two cases is a bit over simplified. In *Yu Cong Eng* (1925, 500-528) the Philippine government, which was a territory of the United States at the time, mandated English, Spanish, or one of the local Filipino languages for bookkeeping rather than Chinese, while in *Asian American Business Group* (1989, 1328-1333) the city of Pomona, California mandated use of the Roman alphabet over oriental forms of writing. These attempts to control linguistic behavior were not in the form of subtle political or

economic pressure that seems to characterize post-colonialist linguistic imperialism (see Phillipson 1988, 339-358 and 1992, 38-77). Choice of language was simply repressed, thus creating language crimes and linguistic violations.

The Judicial Process

Language policy is conspicuously absent from the U.S. Constitution and has only recently appeared deep in the shadows of statutory and regulatory law. Thus the judicial branch is now finding it necessary to step into the legislative void and provide legal structure to language issues. Here we will review:

- a. the judicial decisions
- b. the rationale behind them
- c. the judicial process, and
- d. the limits of that judicial process.

Judicial decisions differ from those made by legislative bodies in some important ways:

1. Each judicial decision is driven by a real context. Even when abstract principles and policy are involved, real people are before the court with real concerns about specific, concrete events and situations
2. Issues may be avoided, but a decision must be made
3. There are immediate consequences for the people

present or represented in court.

Though each decision is context specific, it may, through an inductive process, be applied as a legal precedent to other similar contexts in subsequent cases. This is what makes the factual context of court decisions of such paramount importance to their interpretations

Judicial decisions are under more restrictions than those of legislative or administrative bodies. While judges may be able to expand (or contract) legal rights through the interpretations they give legislative acts, they are not empowered to create new rights from scratch. They must have some legal foundation on which to build. The case of Yu Cong Eng sheds some light on this point. It also exemplifies the legal importance of defining legislative terms explicitly and with precision.

The Chinese Bookkeeping Act

In 1921, while the Philippines was a territory of the United States, its legislature enacted a law that made it a crime for anyone engaged in business to keep account books in any language other than the territory's official languages—English and Spanish—or a local dialect. The act, which established a maximum penalty of two years imprisonment and a fine of ten thousand pesos, went into effect on the first day of 1923. This did not sit well with the 12 thousand Chinese merchants, who

accounted for 60 percent of the business activity in the Philippines. Yu Cong Eng, a lumber merchant in Manila, was arrested and his books seized. Before trial, he and another Chinese merchant who did not read, write, or understand any of the languages that the law mandated filed suit requesting that the law be declared unconstitutional and that the charges against them be dismissed.

Early in the judicial proceedings it became apparent that the act had been too broadly constructed. It prohibited individuals and businesses from keeping their “account books” in Chinese and other languages, but did not specify precisely what that term was to include. The Philippine Supreme Court suggested three possible constructions: (a) all account books, including any duplicate sets, whether necessary for tax purposes or not, (b) a single set of all account books kept, or (c) a single set of only such books as would be needed to determine tax liability. In order to make the law conform to the territorial constitution, the judges imposed the last, and narrowest, definition. They then declared the law to be legally valid and allowed the charges against Eng to stand.

Yu Cong Eng and Co Liam appealed the decision to the U.S. Supreme Court for a final review as to whether the Chinese Bookkeeping Act violated the due process and equal protection clauses of the Territorial Constitution of the Philippines. It should be noted here

that Filipino territorial laws at that time, like state laws, were American laws subject to review by the federal court system, because the Philippines were a part of the United States.

The Supreme Court Justices found a clear distinction between the territorial court's interpretation and the statute enacted. The legislative act had been a blanket prohibition against keeping any and all account books, including duplicates. The judicial interpretation had transformed the prohibition into a mandate requiring the use of certain languages for narrowly defined regulatory purposes. The territorial court had, in effect, usurped the legislative function and created a new law. The U.S. Supreme Court reinstated the broad terms it deemed the legislature had originally intended, declared the law invalid, and dismissed the charges against Yu Cong Eng.

Discussion of Findings

This case illustrates the more extensive legal restrictions that the U.S. Constitution places on judicial, as opposed to legislative, bodies. The judiciary is only supposed to interpret laws, not create them. Thus courts are legally prohibited from creating policy. They have to find it in the Constitution, statutes, or executive regulations. Sometimes judges have to look very hard to find anything they can point to as an expression of legislative or executive policy, and then the line between creation

and discovery can become extremely fuzzy. With very few exceptions, the formulation of a language policy has not been considered a necessary or proper government activity. This has left the courts little policy on which to base their interpretations. The line is indeed fuzzy, but it still exists. The justices refused to cross the line and make a substantive change in the guise of judicial interpretation.

The Yu Cong Eng case also demonstrates the constitutional limits placed even on legislative policy. Lawmakers must confine themselves to the exercise of those powers specified in the Constitution, such as the power to tax. The power to tax, in turn, implies the power to inspect certain business records and to mandate that they be in a form, including linguistic form, that will facilitate inspection. Because the Constitution lacks any provisions that would give Congress a specific power to regulate language use, however, any linguistic restrictions must be justified by tying them to some explicitly designated powers.

Lurking in the background of these rather delicate legal points is the demographic evidence concerning language use that was presented to the court. It showed two things about the local Chinese community: (a) an overwhelming rate of monolingualism and (b) the extent of its economic power. Both factors seem to have favored Eng and Liam. The message was that the Chinese community could not switch linguistic codes

without incurring a great burden. Even the government, after all, pleaded inability to procure enough bilingual investigators, so how could small, private businesses be expected to find and support an army of bilingual bookkeepers? Placing such an unbearable burden on the Chinese business community would likely have dire consequences for the Philippine economy.

Inscrutable Signs

The Yu Cong Eng case shows how the federal judiciary has protected individuals from repressive language policies enacted at the local level of government. Though the policy challenged focused on language use, it also had dire consequences for an individual's business. As a result, the issues were treated strictly in terms of due process and equal protection of the law, rather than speech rights.

In contrast, this next case, Asian American Business Group (1989, 1328-1333), challenged a local ordinance that neither deprived individuals of a livelihood nor placed an unbearable burden on their businesses. By the 1980's, however, individual citizens and minority groups had developed such a conscientious awareness of and sensitivity to their legal rights that language restrictions were perceived as discriminatory and offensive on their own account, so that the city's attempt to regulate the choice of written language was challenged on the basis of the First Amendment right to freedom of speech as well

as Fourteenth Amendment rights to due process and equal protection. In addition, this case further illustrates the importance of giving a precise definition to all legislative terms.

Arguments and Findings

The City of Pomona, California passed a law that required commercial and manufacturing establishments which had "advertising copy in foreign alphabetical characters" to display their addresses in Arabic numerals and to devote half the sign area to "advertising copy in English [sic] alphabetical characters". In response, the Asian American Business Group filed suit against the city, claiming violations of their members' freedom of speech, due process, and equal protection of the law. Federal Judge Takasugi agreed.

He found two reasons to subject the city ordinance to strict scrutiny. First, choice of language is a noncommercial aspect of speech, a form of cultural expression protected by the First Amendment. Secondly, choice of language is directly related to national origin, which is a "suspect classification". Strict scrutiny under the law specifically requires (a) not only substantial, but a compelling state interest and (b) that the law be narrowly tailored. The city claimed its compelling interest was to facilitate the reporting of emergencies by requiring the posting of the names of business establishments in English and their addresses in Arabic

numerals. The fact, however, that neither the ordinance in question nor any other city ordinance compelled any business to post such names or addresses cast serious doubt upon the effectiveness of the law for the stated purpose and thus on the sincerity of the government in claiming that purpose as a compelling interest.

The law also failed the test of being narrowly tailored. The posting of street addresses, which the business group did not oppose, should have been sufficient, even without a business name, for the purposes stated. Nor would half of each sign, regardless of location and size, be necessary to identify buildings. In short, the ordinance was found to be ineffective and discriminatory.

Finally, the ordinance violated Constitutional provisions for due process of law which compel every law to clearly state what it requires. The ordinance failed to define the term “advertising copy”, which might apply to promotions in commercial and noncommercial contexts. Without an unambiguous definition, those to whom the law might be applied had not been given fair warning, and those to whom it did not apply might have felt inhibited when they should not have. The law was not only discriminatory and an infringement of freedom of speech, it was also unconstitutionally vague.

Application of Legal Principles to Language Choice

In America the laws enacted by government at any level must fall within the powers granted government in its constitution, and traditionally the regulation of language is not among them. Thus it is axiomatic that any attempt to regulate language must be tied to some other regulatory power. In *Yu Cong Eng and Asian American Business Group* the governments were unable to justify the language restrictions imposed in terms of their proper regulatory powers.

Choice of language is an essential aspect of speech and is protected by the First Amendment, but not absolutely. An individual’s rights must be balanced against government’s legitimate interests. Because it is a protected right, however, and because the choice of language is closely related to national origin—a suspect classification, (a) there must be a compelling state interest and (b) prohibitive language laws must be as narrowly tailored as possible.

In addition, the definition of the prohibited activity must be explicit and precise in order to give clear and fair warning of the prohibition. Both cases above illustrate problems with the definitions of even minor terms. Thus one should expect similar problems in defining the boundaries between languages. Languages change constantly and, in a shrinking world, are influenced from an increasing number of linguistic

sources. Vocabulary crosses borders effortlessly, sometimes on a massive scale. Wasn't English originally a variety of German? What percentage of English vocabulary comes from French? How are linguistic hybrids such as pidgins, creoles, and interlanguages to be categorized? Although these issues have yet to appear in court, they could easily present a major stumbling block to any laws dealing with choice of language.

Conclusions

In a third federal language case, *Meyer v. Nebraska* (1922, 390-403), the Supreme Court considered the argument that a knowledge of German could reasonably be regarded as harmful to American youths, preventing them from absorbing American ideals of democracy. The court was being asked to legally recognize what would later come to be known as the *Sapir-Whorf Hypothesis of Linguistic Determinism* (Whorf, 1939) and continues today in the work of ecolinguistics (Farb, 1973, 56-80 and Fill, 1998, 3-16). This hypothesis reverses the common sense notion that thought shapes language and speculates instead that human thought is constrained by the language that a person speaks. The justices rejected the contention that culture is significantly constrained by language and voided a law that would have greatly restricted the teaching of foreign languages.

English will probably not impact Asian culture as

much as Asian culture will impact English. Yet, in this dynamic and increasingly crowded world, cultural conflict—from former Yugoslavia to Indonesia, to Afghanistan and the Middle East—has become an unavoidable fact of life. Language conflict, diversity, and rights are and will continue to be a part of it. Nations and ethnic groups must learn how to deal with their differences openly, honestly, and in a constructive manner. International dialog and the rule of law will have to replace military force and terrorism in deciding these issues. Across Asia and throughout the world collaboration in the gathering of information about language conflict, policy, and law will play an important role in achieving linguistic justice for all.

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