

Challenges of Linguistic Human Rights in Relation to Language Education

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| Article information | Abstract |
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| <p>Article history: Received: 10 Apr 2023 Revised: 26 Aug 2023 Accepted: 8 Nov 2023</p> <p>Keywords: Linguistic human rights Language rights History of bilingualism Law and bilingualism Culture and bilingualism</p> | <p><i>Linguistic human rights (LHRs) envelop many questions and ambiguous areas of language pedagogy and sociolinguistics. Difficulties arise as one must understand, due to the demands of linguistic rights, what treatment is owed to whom while balancing the sensitivities of a culture and the linguistic demands of individuals. Further, linguistic concerns themselves are highly complex, as one language may be endangered while another is privileged—complicating LHRs as one navigates the many interests and differences found in language use and acquisition in any given culture or community. Through secondary research, this paper will work toward identifying the difficulties they face, in part by looking at historical developments of LHRs and language education in the West. This secondary research primarily focused on peer-review publications within the last ten years, with key terms including “linguistic human rights,” “language rights,” “culture and language,” and “bilingualism and court decisions.” This approach to linguistic human rights will help reveal the differences in value individuals hold toward language education depending on various factors (e.g., immigration, political conflict, cultural identity) and the interplay between linguistic rights and language education. Additionally, it is through this approach that one sees the variety of responses and proposed solutions to the issues surrounding LHRs, but disagreement on how best to address the issue of LHRs remains. Ultimately, both researchers and instructors would benefit from being aware of linguistic human rights and historical interactions between cultures and language rights, as both shape the education—and therefore the lives—of students.</i></p> |

INTRODUCTION

Linguistic human rights (LHRs) encompass many areas of language acquisition and use. Specifically, they touch upon questions of language pedagogy, federal and state laws, and normative questions surrounding minority languages. The reach of language rights can be seen in that they encompass “a set of ideas and principles that are ascribed universal validity, and interlinked with democracy, freedom, and popular representation in the political process” (Phillipson, 1998, p. 102). Equally large in scope as their conceptual range is their place throughout history, even if formal terminology fails to capture them in the moment. For

example, Benjamin Franklin had concerns that an increased presence of the German language would make the newly founded American government “precarious” (Stanton, 2005, p. 65). More recently, the United Nations General Assembly’s “Declaration of Human Rights” has an explicit “statement referring to LHRs as one of the basic human rights” (Ishida et al., 2006, p. 1937). The political and ethical issues of language have continuously drawn attention, with LHRs being defined as “a concept that encompasses the language-related elements of other human rights . . .” (Szoszkiewicz, 2017, p. 105).

With this concept, too, is its close association with education. For example, when discussing linguistic minorities, there are concerns about the quality of education that they are able to receive when their first language is not used in instruction. For example, instructors may worry that, if students are deprived of their L1, then there is a missed opportunity in “developing literacy [since] the home language significantly facilitates learning a second language” (Montoya, 2021, p. 140). The omission of students’ L1 may admit to the limitations of the instructor, but depriving students of the most intelligible instruction could arguably be considered a form of “language deprivation [which] has been used as a tool of oppression. . .” (Zhang, 2021, p. 341). LHRs, then, importantly overlap with issues of politics and pedagogy.

Purpose of the study and research question

The purpose of this study is to develop a better understanding of the nature of LHRs, which will be benefited by looking at the ways in which they have been differently viewed, as well as turning toward their subsequent impact on educational policies. More specifically, this will look to categorize the conflicting responses LHRs have invoked, as well as the progression of attempted solutions to these conflicts. Through this research, themes in challenges raised by LHRs will be observed as taking place across the literature on LHRs. The research question(s) that this study explores and attempts to answer will be the following:

- How have LHRs been historically viewed in competing, differing ways?
- What is the relation, if any, between LHRs and attitudes toward educational policies on either an individual, state, or a federal level?
- In what ways have these competing responses to LHRs and their corresponding issues invoked solutions?

Significance

LHRs, and perhaps increasingly so, hold currency in political debates surrounding educational policies. Their importance stems, at least in part, from their influence on bilingual education, with such education going beyond mere linguistic concerns and is, additionally, “deeply rooted in a philosophy of critical pedagogy that seeks to actively empower the learners and their communities” (Panda & Mohanty, 2009, p. 301). Following this, the concerns brought about by LHRs raise questions at many levels of bilingual education. LHRs have found a place in the role of language education and related policies, regardless if it is as an influencing factor in these decisions or posited as a worthwhile concern for future, similar cases. This can be gleaned from an individual school in Berlin that introduces a “German only” policy for its classrooms and field trips (Martin, 2008) to the U.S. Supreme Court’s ruling in *Lau v. Nichols* (1974).

Additionally, instructors themselves may face dilemmas in which they believe their responsibilities as educators to their students and their LHRs will conflict with legal mandates. For example, Gloria Rodriguez Zamora recalls, at a time in Texas when non-English instruction could be a misdemeanor, that “I used a language other than English to . . . teach in the classroom that I could lose my teaching certificate, and I could be fined. So, I remember I had to close my door and break the law” (BilingualEducationTX, 2013). That is, a state may prohibit the teaching of English language learners (ELLs) in their L1, but instructors may seemingly consider LHRs—whether implicitly or explicitly—as a justification to override certain educational policies of the school district or state, seeing that students deserve certain treatment irrespective of administrative or legal mandates.

Theoretical framework

In discussing the theoretical framework for this research, the following will be assumed:

- LHRs are universal and impartial. That is, the same protections offered to majority language users are also protections due to minority language users. In essence, this is captured by the Universal Declaration of Human Rights, where “all members of the human family” have “equal and inalienable rights.” This is in contrast to researchers who view LHRs as “emic rights, which is to say culture-language-context-specific rights, rather than to consider linguistic human rights from a universal rights perspective . . .” (Paulston, 1997, p. 73).
- Further, due to their universality and impartiality, LHRs exist independently of legal decisions. Instead, legal decisions should take into consideration LHRs, just as they should take into consideration other human rights. This would also entail that LHRs are not synonymous or reducible to legal rights, although legal rights can certainly enshrine LHRs.

LITERATURE REVIEW

LHRs have been defined as being “so fundamental that every individual has them because that individual is a human being, so inalienable that no state is allowed to violate them, and which are necessary for individuals and groups to live a dignified life” (Skutnabb-Kangas, 2018, p. 39). In particular, the relation between LHRs and education can be gleaned from struggles of minority language users and their communities in securing “empowerment” and retaining “survival and continued development” (Szozkiewicz, 2017, p. 105). Researchers largely agree that the rights of ELLs in the United States to an equitable education were, in part, enshrined by the U.S. Supreme Court in *Lau v. Nichols* (1974) while drawing off the decision of *Brown v. Board of Education* (1954). For example, Callahan et al. (2019) cites this decision and its lineage as a ruling for the “meaningful education” of ELLs. Meanwhile, Miller and Katsiyannis (2013, p. 122) concur and state that,

... legal precedence has established that providing students with LEP with the same materials, teachers, and facilities does not in itself constitute 'equal opportunity' to learn ... [and] ... districts must develop and implement programs designed to address the needs of this population ... and must show that the English language development programs are effective.

In addition to legal considerations with regard to students' LHRs, there are social concerns that bring the issue into the realm of sociolinguistics. That is, devaluation of some languages and dialects (and, of course, their speakers) can stem from "racial and gender dynamics," which may "call for the promotion of 'linguistic human rights' [to] protect minority language speakers" (Baugh, 2020, p. 59). However, there are disputes among linguists as to "whether discrete language communities ... actually exist" (MacSwan, 2020, p. 322), with such position that denies the existence of these distinctive language communities being labeled as "deconstructivism." MacSwan (2020) argues that deconstructivism, as defended by linguists such as Makoni and Pennycook (2007), threatens to undermine the LHRs of ELLs "as there can be no rights associated with nonexistence language communities, and no multilingualism in a world where languages, per se, do not exist" (p. 323). Therefore, as MacSwan posits, not only are the legal rights of ELLs undermined by this understanding of bilingualism, but the social standing of bilinguals is placed on seemingly unstable ground.

Next, the importance concerning the status of LHRs can be seen in the wording of the European Convention on Human Rights. For example, articles in the convention make reference to receiving protections as a "national minority" to "not be denied the right ... to use their own language, to establish their own schools and receive teaching in the language of their choice" (Doliwa-Klepcka, 2019, p. 61). Reasons for formally recognizing LHRs in European law rests on LHRs being, as argued by its proponents, a fundamental human right, and, further, being a necessity for preserving other rights. That is, absent LHRs, many people may find that

... their fundamental human rights are violated on the basis of language, such as the freedom of speech, the right to a fair hearing by an independent and impartial tribunal, the right to political participation, [and] the possibility to enter the education system (Gorjanc & Morel, 2012, p. 102).

Lastly, LHRs cover highly specific (and sometimes overlooked) areas of language pedagogy and politics, as in the case of special needs students and the linguistic needs or rights of indigenous people. For an example of the former, we have the linguistic demands of special needs students who are deaf. These students require education in sign language so that they do not find themselves "either unemployed or underemployed" (Murray, 2015, p. 380), as is more common for the hearing impaired due to a lack of support from educational systems, so we find that "sign language rights comprise linguistic rights, disability rights, human rights, and minority rights" (Murray, 2015, p. 384). For the latter, the close connection between culture and language is seen as worthy of protection and consideration in the 2007 United Nations Declaration on the Rights of Indigenous Peoples, which "[affirms] the diversity and richness of Indigenous cultures globally and [identifies] the significant role of education in supporting and maintaining Indigenous children's human rights in relation to obtaining an education in their own culture and taught in their own language" (Lee-Hammond & Jackson-Barrett, 2019, p. 303).

Data collection and analysis

Data collection

This topic was investigated through secondary research that looked for key terms such as “linguistic human rights,” “language rights,” “culture and language,” and “bilingualism and court decisions” through peer-review collections in the databases of the University of Texas Permian Basin’s J. Conrad Dunagan Library. Journal articles were largely restricted to being published within the last ten years, although some topics admitted of older citations, such as the deconstructivist camp in linguistics. In carrying out secondary research, this paper aims toward “[facilitating] consolidation and transfer of knowledge” (Chong & Plonsky, 2021, p. 1024). In total, 23 peer-reviewed publications were reviewed in relation to the topic.

To make the scope of the project more manageable, research on the legal decisions and some of the historical facts were largely limited to the following geographical locations:

- Western countries, such as the United States and Canada.

Next, the approach to the research questions in this paper will attempt to offer worthwhile answers by taking the following approach:

- Comparing and contrasting the attitudes of educators, courts, and linguists on the extent of LHRs. Additionally, examining how LHRs have been invoked during cultural shifts in treatment toward bilinguals and bilingual education.

Analysis

The secondary research method can be defined by its application “In the field of TESOL, [where] the majority of secondary research is conducted in the form of narrative reviews, which rely on the researchers’ selection and interpretation of primary studies and findings” (Chong & Plonsky, 2021, p. 1024). Papers were compared for their insight into legal, cultural, and moral attitudes, decisions, and beliefs concerning LHRs across differing periods of time and geographical locations that mostly concerned the West in the 20th century to the present.

RESULTS

This section will outline some of the challenges LHRs have historically posed or faced, as outlined so far in this paper, with special attention given to four cases for brevity while still highlighting the diversity of the challenges. In addition, various positions that have developed in response to these challenges will be defined. Next, solutions to particular challenges of LHRs will be explained. These solutions may come in the form of addressing the LHRs challenges directly themselves or counteracting previously stated positions that have arisen in response to LHRs. At times, there may be difficulties distinguishing the “positions in response” from “proposed solutions” in themselves, but the layout here is to demonstrate the progression or

synthesis of policies and attitudes toward LHRs after being faced with certain LHRs challenges. After, these findings will be examined as a whole to better understand the scope of LHRs in light of the varied responses they have garnered.

Table 1
Challenges and solutions concerning linguistic human rights

| LHRs Challenges | Positions in Response | Proposed Solutions | Theme of the Challenge |
|--|---|--|---|
| <p>During the 1970s, Chinese-speaking students in San Francisco schools were not supplied an equitable education as their English-speaking peers, as they could not meaningfully understand the content and were not granted supplemental, necessary help to learn English.</p> | <p>The San Francisco School Board and district courts would not agree with the Chinese-speaking students' parents' requests to provide ESL instruction. As the school board and district court argued, students were already treated fairly and lawfully by being provided equal access to the same facilities and services of the school as the native English speakers.</p> | <p>In the case of <i>Lau v. Nichols</i> (1974), the U.S. Supreme Court ruled in favor of the plaintiffs represented under <i>Lau</i>. That is, the San Francisco School Board had a responsibility to its Chinese-speaking student population to provide them adequate support in English education until they developed sufficient proficiency. The reasoning was multifaceted, but can be summed up as follows:</p> <ol style="list-style-type: none"> 1. Without a sufficient understanding of English, ELLs are effectively barred from gaining access to the same level of education as their native English-speaking peers. 2. Denying these ELLs a sufficient English education violates the Civil Right Act, on similar discriminatory grounds as <i>Brown v. Board of Education</i> (1954). | <p><i>Lau v. Nichols</i> (1974) represents one of the most notable legal cases involving LHRs, finding roots in the civil rights movement and the earlier <i>Brown v. Board</i> concerning educational segregation. Namely, "The court's recognition of students' linguistic civil rights . . . was predicated on 1954 decision in <i>Brown v Board</i>, which ensured equal educational access" (Callahan et al., 2019, p. 282).</p> |
| <p>Students from bilingual families may be discouraged or not placed in environments that promote translanguaging. Instead, they may be encouraged to replace their L1 with English (for example, early-exit and submersion programs).</p> | <p>A bilingual student should be understood as "linguistically unique language user whose languages reflect the differential experience a bilingual may have with each language" (MacSwan, 2020, p. 322). This is the deconstructivist view of language.</p> | <p>By making language unique to each user, the deconstructivist undermines the invoking of Civil Rights protections of language users. That is, unique language users are not ontologically equivalent to the group meant to be safeguarded by Civil Rights protections, which can serve to protect the LHRs of individuals from discrimination that is in reference to a collective identity or background.</p> | <p>Here we have a general problem that ELLs may encounter, but how we best address the problem depends on the status of language users and communities, as exemplified by a seemingly philosophical debate around the deconstructivist view of language.</p> |

| LHRs Challenges | Positions in Response | Proposed Solutions | Theme of the Challenge |
|--|---|---|---|
| <p>Many deaf children do not have access to education (or, at least, an equitable one). Additionally, language rights for the hearing-impaired lag behind other LHRs initiatives as “current legislation has not brought about legally codified sign language rights for deaf children” (Murray, 2015, p. 379).</p> | <p>Some organizations that advocate for the rights of the hearing impaired have included linguistic rights (for example, access to sign language as a form of bilingualism) under their platform.</p> | <p>The aims of these organizations are worthwhile, but their effectiveness is called into question. In response, sign language and the LHRs of the hearing impaired must have a clearly established “cultural and linguistic identity” (Murray, 2015, p. 383) in order to gain a hold in LHRs movements.</p> | <p>As we see with other LHRs challenges, there is a connection between linguistic challenges (in the form of educational access) as well as political concerns. For the latter, we have here advocacy for people who are deaf. By extension, there can be “usage of ‘Deaf rights’ [as] a strategic choice that aims to reframe human rights discourse to speak of rights applicable specifically to deaf peoples” (Mazique, 2021, p. 737)</p> |
| <p>Indigenous populations have to contend with the threat of a “loss of cultural practices, knowledge and loss of languages” (Lee-Hammond & Jackson-Barrett, 2019, p. 301).</p> | <p>The UN Convention on the Rights of the Child (UNCRC) has articles that recognize the right of indigenous children to be able to retain and use the indigenous language.</p> | <p>While the UNCRC articles are a step in the right direction, their indigenous rights still face vulnerabilities, as “a comprehensive framework of support for Indigenous language acquisition” (Lee-Hammond & Jackson-Barrett, 2019, p. 303) must be developed to better protect the LHRs of indigenous children.</p> | <p>Indigenous populations contend with challenges of linguistic autonomy and cultural preservation. That is, the absence of an indigenous language in educational settings is not merely a matter of denying students an equitable education, but it may have deleterious effects on their culture.</p> |

The above table highlights the disparity between the challenges LHRs initially pose as well as the responses and proposed solutions to these challenges. Additionally, the variety in initial challenges is also made more apparent, as some challenges to LHRs seemingly stem from basic educational needs while others find motivation in the preservation of cultural identity. Notably, there is a potential for LHRs concerns to not immediately overlap, suggesting a broad scope for LHRs and perhaps a loose association between concrete cases involving LHRs. For example, the LHRs concerns of indigenous populations may not perfectly mirror those of the deaf community, with the latter not being an “ethnic minority and which has never put forward any claims to self-determination that could represent a threat to a nation state” (Muzsnai, 1999, p. 279).

That said, the results compiled, though limited and brief, suggest some common thread between LHRs issues. Namely, LHRs invoke the paradigmatic concerns of moral rights, as opposed to legal rights or mere social customs. Moral rights here may be understood as the possession of a “claim against someone whose recognition as valid is called for by some set of governing rules or moral principles. To have a *claim* in turn, is to have a case meriting consideration . . .” (Feinberg & Narveson, 1970, p. 257). In the limited examples explored, each shows the characteristic of invoking a case that merits consideration.

Specifically, we see the merits of consideration with, first, Chinese-speaking students having a claim to an equitable education, just as their English-speaking peers have such a claim. Second, students of a bilingual background, leaving aside concerns if we understand these students as being linguistically unique (as in the deconstructivist view) or a part of a linguistic collective, have some claim to linguistic autonomy. Third, given its integral role in the identity of the hearing impaired, sign language should have a protected status similar to other languages that fall under bilingual concerns. Fourth, indigenous students have a claim to the use of the indigenous language, which may intersect both LHRs and broader sensitivities of cultural preservation.

One of the more important characteristics gleaned from the above is that LHRs share a seemingly fundamental status as rights—whether this be traced to people’s moral claims to identity, autonomy, or simple necessities to live a decent life. In other words, the LHRs examined across these four distinct issues, point toward a very fundamental or basic consideration owed. Specifically, LHRs are a necessary condition for other, perhaps less fundamental, rights. This is one feature of basic rights that philosopher Henry Shue (1996) identifies, stating that “basic rights need to be established securely before other rights can be secured” (p. 20).

Perhaps most notably, *Lau v. Nichols* exemplifies the “basic rights” aspect that may be posited for LHRs. Namely, part of the legal reasoning invoked the requirement of having a proficient understanding of English to be afforded an equitable education—similar to what English-speaking students enjoy. If Chinese-speaking students are deprived of a proficient understanding of English, then they are deprived of an equitable education in an English-speaking educational system. Shue (1996) makes a parallel point when discussing rights to security or subsistence by saying that “It is not possible to enjoy full rights to security or to subsistence without also having rights to participate effectively in the control of security and subsistence” (p. 75). Likewise, many Chinese-speaking students in San Francisco school districts found themselves unable to enjoy the rights to an adequate education without their LHRs being respected. If one’s LHRs are not respected, then one cannot fully participate in the educational system.

DISCUSSION

LHRs raise complex issues that intersect at various topics within language pedagogy and politics. Regardless of subject matter pertaining to bilingualism, time, or geographical location, this finding coincides with the primary research. Yet, some unexpected results did occur during secondary research, and this included 1) the varied responses and solutions when faced with LHRs and 2) the critiques of already established legal articles, activist groups, and philosophical camps that work toward protecting the LHRs of minority groups, as partially examined by some proposed solutions to the existing responses to LHRs.

In this way, LHRs issues, regardless of whose LHRs are under consideration, share in common the prolonged challenges and ever-changing responses to LHRs, and, as a result, the historical course of LHRs resembles social and political movements similar to that of feminist and civil rights movements. As in feminist and civil rights movements, we see initial challenges being



recognized, responses to these challenges being made, and, ultimately, proposed solutions being articulated. Similar to LHRs as well, we see internal and external critiques of proposed solutions for both feminist and civil rights movements. Such critiques may be exemplified by continued shifts into new waves of feminism or, say, the disputes between Martin Luther King Jr. and Malcolm X on the permissibility of certain means to reach political goals. LHRs, then, share a common characteristic with other human rights movements by inviting a constant and evolving dialogue.

LIMITATIONS AND RECOMMENDATIONS

On the limitations of this paper's research, there is a restricted scope on both historical and geographical grounds. Namely, it focuses on some modern day LHRs issues within Western countries without examining non-Western LHRs issues or how Western countries have affected LHRs in non-Western countries. Additionally, charting the evolution (or perhaps regression in some areas) of LHRs would benefit the aims of this research. One way to rectify the Western scope limitation is by expanding the research to include non-Western LHRs issues and compare the two. This would place the progression (or regression) of LHRs for both Western and non-Western countries in a clearer and more cohesive perspective. The same exercise for comparing, say, earlier America's attitudes on LHRs with contemporary America's attitudes on LHRs would potentially yield closely related results. In conjunction with these follow-up steps in future research, the complexities of LHRs and its places of intersection with other areas of bilingualism will be made clearer.

CONCLUSION

LHRs have seen and continue to raise various challenges with many appearing in bilingual education. Not only is there a difficulty in identifying the nature and scope of LHRs, but the attitudes of individuals and cultures shape the policies and practices in which LHRs can be respected or violated—raising further difficulties. The examples discussed, while not exhaustive, illustrate the breadth of LHRs, their implications, and the competing, changing attitudes toward them. All of these points can be gleaned from the U.S. Supreme Court's decisions for bilingual students, the debates concerning the ontological status of languages and their respective communities, the demand for respecting special needs students in areas of language as in the case of deaf students, and, lastly, indigenous populations and their right to acquiring, using, and preserving their culture's language. Of course, the issues raised by LHRs go beyond these examples as well. While daunting, researchers and instructors can and should work toward being cognizant of both the theoretical and practical challenges posed by LHRs for the benefit of students.

Declaration of interests

The author declares no competing or conflicting interests.

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