TRANSLATING FOR LINGUISTIC MINORITIES: TRANSLATION POLICY IN THE UNITED KINGDOM.

Gabriel González Núñez

Dipòsit Legal: T 1681-2015

GABRIEL GONZÁLEZ NÚÑEZ

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DOCTORAL THESIS

Supervised by Dr. Anthony Pym and Dr. Reine Meylaerts

Intercultural Studies Group

UNIVERSITAT ROVIRA I VIRGILI
Department of English and German Studies

Leuven
2014

Para mi bienamada percanta,

porque nunca me amuró

y me da lo mejor de su vida

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Acknowledgments

It is a tricky exercise to acknowledge the help of everyone who lent a hand in one way or another in my putting together this study. So many people contributed in so many different ways, that I fear despite my best efforts, someone will always be left out. Even so, I would be ungrateful not to recognize the many helpers I had along the way. So here we go:

To begin with, I wish to extend special thanks to my family. To my siblings, whose visits to Europe gave me a welcome respite from my daily tasks. To my parents, who have given me their unconditional support in all my endeavors, including this one, and who have laid the foundation upon which my house is built. To my two tireless daughters, who constantly remind me with their we-couldn't-care-less-about-your-thesis playfulness that my life's most important work happens within the walls of the home. To my wife, for being the anchor in my stormy nights and the motor behind everything that has any worth in my life, ever since that day in December 2008 until forever. And finally, I wish to thank God, whom I have learned to call *Padre*, with all that entails.

Next, I should not fail to recognize the needed contributions made here and there by support personnel at OSE, ECMI, URV, and KU Lueven. I would highlight among them the support of Inge Petré (at the Facutly of Arts' financial cell), Steven Dewallens (at CETRA and the research unit), Myriam Witvrouw (with TIME at KU Leuven's R&D), Karen Vandemeulebroucke and Lieve Behiels (back-to-back doctoral coordinators), Stefan Derouck (at the central library's Interlibrary Loan), and Ester Torres (at URV's Intercultural Studies Group).

I would also give thanks to a number of individuals who made the time I spent at KU Leuven quite amicable, especially Maud Gonne, Esmaeil Haddadian, and Nicodème Niyongabo. I also enjoyed the social and academic support of the other Marie Curie Actions fellows: Carlos Teixeira, Marta Miquel, Wine Tesseur, and Sara Ramos Pinto. And then there was my buddy Troy Munro, who single-handedly saved my bibliography despite being busy with his own doctoral work.

I am also grateful for a number of professors who offered advise along the way. Some of this happened in the context of CETRA, where I would point to Peter Flynn, José Lambert, Franz Pöchhacker, Dirk Delabastita, and Miriam Shlesinger (RIP) in particular. And some happened in the context of TIME, where I would point to Yves Gambier and Christina Schaeffner.

There were a number of individuals who read early, cumbersome drafts of parts of this thesis and offered their constructive feedback: José María Arraiza (at the OSCE), Tove Malloy (at ECMI), Federica Prina (at ECMI), Rita Baeten (at OSE), and Andrew Chesterman (who read almost the whole thing from his home in Finland). I thank them for their insights and encouragement.

I also wish to thank the three members of my doctoral committee: Fernand de Varennes, Anthony Pym, and Reine Meylaerts. Fernand de Varennes was kind enough to join without even having heard of me or this project, and his feedback was always insightful, always welcome. Anthony Pym and Reine Meylaerts are also the supervisors of this thesis, and they were a constant source of support from day one. I am particularly grateful to Anthony Pym for pointing me in the direction of KU Leuven and for sticking with me until the very end, despite having the busiest schedule in all of TS. I am especially grateful to Reine Meylaerts, who took a chance on me by choosing me for this project, advised me regularly (even weekly or more), guided me on everything from managing the university's labyrinth to the content of every page in this thesis, and is just a really cool person. A *hartelijk* thanks to her.

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I hereby certify that the present study "Translating for Linguistic Minorities: Translation Policy in the United Kingdom", presented by Gabriel González Núñez for the award of the degree of Doctor, has been carried out under the supervision of myself at the Department of English and German Studies of the Rovira i Virgili University, and by Dr.Reine Meylaerts of the KU Leuven, and that it fulfills all the requirements for the award of Doctor.

Tarragona, April 20, 2013.

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April 20, 2013

I hereby certify that the present study "Translating for Linguistic Minorities: Translation Policy in the United Kingdom", presented by Gabriel González Núñez for the award of the degree of Doctor, has been carried out under the supervision of myself at the Research Unit Translation Studies, Faculty of Arts of the KU Leuven and that it fulfills all the requirements for the award of Doctor.

Leuven, May 25, 2014.

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Abstract:

In contemporary Europe, state languages come in contact with a tapestry of immigrant languages and a set of ever more legitimized regional or minority languages. In this context, policymakers are faced with changing demographics and attitudes about rights and integration. Current research on language policies as they pertain to integration largely overlooks the role of translation. This thesis hopes to shed light on this oft-overlooked area. To do so, the thesis focuses on translation policy understood to be that which is the result of translation management, practice, and belief. Translation policy is not explored as an end unto itself, but rather, it is highlighted to stress that policy decisions regarding integration and inclusion have a translation dimension to them that ought to be considered.

To do this, the thesis begins with an interdisciplinary literature review which critically explores the writings of scholars in law, political science, economics, and translation studies as regards the rights of linguistic minorities. Then, the methodology will be described that was employed to address the question of what role, if any, is played by translation in the integration of linguistic minorities.

This will be followed by an exploration of translation obligations under international law, especially in Europe. That study will set the stage for a case study of translation policy in the public sector in the UK. Specifically, the case study will explore translation policies as found in legislative enactments that apply to all of the UK and also to specific regions in the UK. This will be further developed by chapters covering the UK's translation policies in (local) government, in healthcare settings (especially in hospitals), and in judicial settings.

The thesis will then come to a close by exploring some of the difficult questions in understanding what integration means for linguistic minorities and arguing that translation plays a role in the integration of linguistic minorities in the UK. The exact nature of that role will be explored and further questions will be raised.

Samenvatting:

In het hedendaagse Europa komen de landstalen in contact met een allegaartje van immigrantentalen en een verzameling van steeds meer erkende regionale of minderheidstalen . In dit opzicht worden beleidsmakers geconfronteerd met demografische veranderingen en opvattingen over rechten en integratie. Lopend onderzoek naar taalbeleid met betrekking tot integratie ziet de rol van vertaling grotendeels over het hoofd. Dit proefschrift hoopt licht te werpen op dit vaak over het hoofd gezien gebied . Daarom richt het proefschrift zich op het vertaalbeleid dat het resultaat is van vertaal management, praktijk en geloof . Vertaalbeleid wordt niet onderzocht als een doel op zich , maar wordt wel aangehaald om te beklemtonen dat beleidsbeslissingen over integratie en inclusie een vertaaldimensie hebben die in aanmerking dient te worden genomen.

Daarom opent het proefschrift met een interdisciplinaire literatuurstudie die kritisch publicaties onderzoekt van rechtsgeleerden, politieke wetenschappers , economisten en vertaalwetenschappers over de rechten van linguïstische minderheden. Vervolgens zal de methodologie worden beschreven die werd gebruikt om de vraag te behandelen over de – eventuele – rol van vertaling in de integratie van linguïstische minderheden.

Daarna volgt een onderzoek naar vertaalverplichtingen onder internationaal recht, vooral in Europa. Die studie zal de weg bereiden voor een case study over vertaalbeleid in de openbare sector in het Verenigd Koninkrijk. Concreet zal de case study vertaalbeleid onderzoeken in wettelijke bepalingen die van kracht zijn in het ganse Verenigd Koninkrijk en ook in specifieke regio's van het Verenigd Koninkrijk. Dit zal verder uitgewerkt worden in hoofdstukken over vertaalbeleid in de (lokale) regering , de gezondheidszorg (vooral in ziekenhuizen) en het gerecht.

Tot slot zal het proefschrift dieper ingaan op een aantal moeilijke vragen over wat integratie betekent voor linguïstische minderheden en beargumenteren dat vertaling wel degelijk een rol speelt in de integratie van linguïstische minderheden in het Verenigd Koninkrijk. De precieze aard van die rol zal nader onderzocht worden en meer vragen zullen worden opgeworpen.

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Resum:

A l'Europa actual, els idiomes de l'estat entren en contacte amb una gamma d'idiomes d'immigrants i un conjunt d'idiomes regionals o minoritaris cada vegada més legitimats. En aquest context, els encarregats d'elaborar polítiques s'enfronten a canvis en la demografia i en les actituds pel que fa als drets i la integració. Les investigacions actuals que aborden l'aspecte integrador de les polítiques lingüístiques en general passen per alt el paper exercit per la traducció en aquestes polítiques. Aquesta tesi procura aclarir aquesta funció sovint defugida. Amb aquesta finalitat, aquest estudi es concentra en la política de traducció, entesa com a suma de gestió, pràctica i idees de traducció. Aquestes polítiques de traducció no s'analitzen com un fet en si mateix, sinó per tal de recalcar que les decisions referents a la integració i la inclusió tenen un element de traducció que s'ha de tenir present.

Per fer això, la tesi comença amb una revisió bibliogràfica de caràcter interdisciplinari en la qual s'exploren de manera crítica els escrits d'acadèmics en els camps del dret, les ciències polítiques, l'economia i els estudis de traducció pel que fa als drets de les minories lingüístiques. Llavors, es descriu la metodologia emprada per abordar la qüestió de quin paper, si n'hi ha, té la traducció en la integració de les minories lingüístiques.

Seguidament es presenta una anàlisi de les obligacions al traduir en virtut del dret internacional, especialment a Europa. Aquesta anàlisi permetrà prosseguir amb un estudi de cas sobre la política de traducció en el sector públic del Regne Unit. En particular, aquest estudi examina les polítiques de traducció que es reflecteixen en certes disposicions legislatives que s'apliquen al Regne Unit en la seva totalitat i també a les seves regions de forma específica. Tot això es desenvolupa en els capítols que abasten les polítiques de traducció trobades al govern (a nivell local), els serveis de salut i el sistema judicial.

La tesi llavors conclou amb l'exploració d'alguns dels temes més complicats per a la comprensió del que significa la integració de les minories lingüístiques i argumentarà que la traducció té un paper en la integració de aquestes minories al Regne Unit. S'estudiarà la naturalesa exacta d'aquest paper i es plantejaren més qüestions de futura ressolució.

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1. Introduction

"We might as well forget about generalised unilingualism.
Too bad! It would have made things so simple"
Philippe Van Parijs, in *Just Democracy*

1. Introduction

Many years ago, I attended a meeting that had been organized to discuss a hot topic at the time—whether English should become the official language of the place in which I lived. Two undoubtedly illustrious gentlemen debated the issue on stage, and then the floor was opened for comments and questions. Another gentleman was handed the microphone, and he argued in favor of "Official English" as a way to keep the United States from becoming the European Union (EU), which spent a shocking 50% of its budget on translation. It is likely no one in that room knew exactly how much of the EU's budget went to translation—for the record, rough estimates place "the cost of all language services in all EU institutions" at "less than 1% of the annual general budget of the EU" [1] (DG Translation 2013)—but it was clear from the comment that this man considered translation, or more specifically the cost of translation, to be an effective bogeyman to scare people into supporting Official English. I did not at the time have a good counter to the argument that financial costs justify the imposition of monolingualism upon a multilingual population, other than the suspicion that in this specific instance the concern was not so much costs as it was making sure that Mexican immigrants understood they were not welcome.

This suspicion was not altogether unfounded. The debate and the discussion that followed included tropes in favor of Official English like "This is America, and in America we speak English" or "If you go to Mexico, they'll expect you to speak

[1] In their analysis of this question, Gazzola and Grin (2013, 100) highlight that this is 2.20 euros per year per person, or 0.0087% of the EU's aggregate income, and thus hardly unsustainable from a purely economic point of view.

Spanish, so why should we not expect them to speak English when they come here?" Someone who was against Official English denounced the whole thing by referring to a town hall meeting he had attended where someone said that English had to be made the official language of the town in order to avoid becoming like Los Angeles. So I was probably right to be suspicious about the motives behind Official English.

I came under the impression that the push was not really about the legalistic concern of turning a *de facto* official language into a *de jure* official language. Rather, it seemed like it was a way to decide, through linguistic criteria, who belonged and who did not. If you speak English, you belong. If you speak Spanish—or whatever other language you fancy—then you do not belong. It is no surprise, then, that translation would be mentioned in this debate. If translation is employed, the language of the other is accommodated. Because it is accommodated, it becomes visible. Translation can thus make the hidden observable: people who do not speak English live here. When this becomes observed, the message could be conveyed that perhaps there is some room for others—including people who do not speak English—to come and join in this place. Individuals who may wish to signal that there is no room for speakers of other languages would naturally struggle with the idea of financing the opposite message. There would be a knee-jerk reaction against the costs of translation and no recognition of its benefits. In essence, it seemed to me that Official English was about keeping others at bay by reducing the use and visibility of the languages they spoke. This implied, at least in that debate, less translation in order to impose monolingualism.

It has now been over ten years since that meeting, and many things have changed. The place did adopt English as its official language, but the wording of the measure made it largely symbolic. I went on to read a book or two. I moved across linguistic boundaries from time to time. I did some research. Other things have not changed: I still do not like Official English. But at least since then I have managed to come up with a better retort than simply saying: "I think, sir, that you are a racist."

This thesis is my rather long-winded reaction to the idea that the best public policy to deal with multilingual populations is institutional monolingualism. More specifically, I hope to address the notion that the use of translation by the authorities

to interact with multilingual populations is enough of a problem to warrant the imposition of monolingual regimes. I will challenge this notion by claiming that, depending on contextual factors, translation can be an important means to achieve greater inclusion or integration of linguistic minorities. But that is the conclusion, and in order to get there, we have to start here. I have opted for a descriptive paradigm that will take the reader from an overview of the role of translation for linguistic minorities under international law to a detailed case study of the use of translation in the United Kingdom (UK).

2. Acknowledgment of biases

Based on the preceding paragraphs alone, readers of this thesis might suspect some biases on my part. I admit to having them. In so doing I am not alone. Scholars are now more comfortable acknowledging their own point of view in their research than in times past, whether they think of it as engaged scholarship (e.g., Boyer 1996), a reflexive approach (e.g., Marcus 1998, 181-202) or something else. Let me stress that I tried to approach my topic dispassionately, namely by simply gathering data that could then be presented to third parties in order for them to objectively understand what I aimed to describe. In other words, I tried to approach the research objectively. However, I have learned from years of moving from one place to another that the way people understand their surroundings depends to an extent on the life experiences they have had. I have come to feel that, in many contexts (including the humanities), objectivity is an ideal that cannot really be achieved. This conclusion came from an unlikely place: years of watching, listening, and reading press both on the right and the left where journalists vehemently claimed that they were only reporting the facts. Of course, the way the facts are selected, how they are analyzed, and the manner in which they are presented all work against objectivity. So, I approached the research with the understanding that I could not be completely objective, even if it was a goal to strive for. In light of the observation that I am not completely objective, I feel I need to acknowledge my biases and let readers make of

them what they will. I must acknowledge these biases because I agree with Spolsky that in the social sciences concepts "are fuzzy and observer dependent" (2004, 41).

I came into the research having walked many paths, both personally and professionally. These professional and personal life experiences created certain feelings about the role of language that affected my research.

Professionally, I should mention that my time as a translator gave me an appreciation for translation as a generally positive thing, without being naïve about its drawbacks, including the fact that it is usually an expensive and time-consuming solution (even though this may be changing with the advent and perfecting of machine translation). My time as a court interpreter gave me an appreciation for how valuable the provision of both written translation and interpreting is for the court system, and by extension an appreciation for the crucial role of translation in the provision of public services. It also made me aware of how little people know about working with interpreters and that, when interpreters mess up, this often flies under the radar. And then there was my time as a lawyer, which helped me develop an awareness for the workings of the law—these tend to be invisible to most people but permeate everything we do, at least in the places where I have lived. This means that two areas of interest of mine were translation (including interpreting) and law. It also means that I am predisposed to seeing these two things—law and translation—in a positive light.

My personal experiences also affect my views. Without becoming too autobiographical, I will point out that I have lived in several countries. In some of them I was a majority language speaker. In one of them I was a minority language speaker who spoke the majority language with complete fluency and never needed language support. And in others I was a minority language speaker who did not speak the majority language. Because of this, I know how easy it is to take for granted being able to walk into a restaurant and communicate freely and comfortably with everyone in your own language without, in fact, giving language issues a second thought. I also understand the advantages of being able to comfortably switch from your language at home to the language of power as soon as you step out the door. And I know the intense feeling of alienation that comes from

something like needing a doctor at three a.m. without understanding so much as a street sign. I believe this makes me appreciate the claims of individuals who belong to any of these three groups: majority language speakers, bilingual minority language speakers, monolingual minority language speakers. It basically allows me to be empathetic despite the rhetoric which one sometimes comes across when reading about language policy, especially in the press. The drawback, of course, is that such a tri-empathic stance removes the passion one could feel in favor of one group or another. (Sometimes, coming from a position of passion allows individuals to see things others might miss, even if it presents us with a host of problems all its own.)

Another source of bias has to do with my choice of the UK as a case study. This choice has several implications. One is that the data I gathered was almost exclusively in English. This is to be expected because the UK is a state whose population is mostly composed of individuals who are proficient in English. But I should also disclaim that most of my secondary sources were also in English. This gives the study a certain bias by relying mostly on things said by English speakers, native or otherwise. So there may be interesting and relevant views being developed in languages other than English that are lost in the use of English as lingua franca. This is a limitation.

Finally, there are elements of bias introduced by my choosing a primarily qualitative approach for this study. Even so, I chose a qualitative approach because it seemed particularly well suited for exploring the intersection between the two areas that were of interest to me: law and translation. Additionally, I saw my own role that of answering specific call, that of Meylaerts, to engage in large-scale research of the relationship between translation policy and integration (see Meylaerts 2011a, 166). This meant that I would be dealing with issues that are complex, involve several actors, play out differently in different contexts, and are often contested. These types of issues were best approached through a qualitative approach. However, because the study involved the gathering of data which in some regards could be compared numerically, there are some quantitative elements to this research.

In essence, I recognize that due to my professional/personal experiences, selection of the UK as a case study, and choice of a qualitative approach, there is bias in this research project. But it is also important to recognize that I tried to be as objective as possible. I did not approach this project just to tell people what I thought. I did not come with answers in search of supporting evidence but with questions in search of valid answers. I aimed toward a certain degree of objectivity by being very methodical in my approach, starting with well-defined research questions (the answers of which were not obvious to me) and painstakingly gathering data that could help me formulate accurate answers to those questions. My method, which will be described in chapter 3, helped keep biases in check.

3. Brief overview of the thesis

Having introduced this study and having recognized my own biases, I can now present the reader with a bird's eye view of the thesis. To do so, this section approaches the work in the order of the chapters and provides a short summary of each. It will not say much about the current chapter:

1. Introduction. A brief introduction to the topic and overview of the thesis.

2. Literature review. This chapter will seek to explore the link between language rights and translation. To that end, the chapter draws heavily on the literature that arose out of the ongoing language rights debate. Language rights issues will be explored critically. This exploration will focus on the writings of scholars in different fields, such as law, political science, economics, and translation studies. In so doing, the chapter will address a number of theoretical propositions. Rather than listing and summarizing them chronologically or topically, the chapter will attempt to make them fit into a coherent description of a very complex and fluid debate.

3. Method and rationale. This chapter will present a detailed explanation of the method employed for this study. It will identify specific research questions and the processes to collect data that might help answer those questions. Finally, the chapter will identify and explain key terms, including a discussion on what translation policy is and why it matters in terms of linguistic minorities.

4. State obligations to translate under international law. This chapter will deal with translation obligations under general international law and European international law. International law offers a sort of legal common denominator for states, not just in their interactions with each other but also in their domestic policies. By addressing international law, especially when it comes to Europe, this chapter will give the thesis a broader European perspective.

5. Linguistic background of the United Kingdom. This chapter will signal the transition of from international or European notions to the UK as a case study. It will mostly focus on the linguistic make-up of each of its four regions: England, Wales, Northern Ireland, and Scotland. In so doing, the focus will be on old and new minority languages.

6. Legislation and policy that affect translation generally in the United Kingdom. At this point, the thesis will begin to explore translation policies in this linguistically diverse state. The chapter will begin by considering legislative enactments by Parliament as they reflect national policy and set the framework for additional regional and local policies. It will also consider policies that are specific to each region in the UK.

7. Translation in government in the United Kingdom. This chapter will continue exploring the UK's translation policies by considering communication with government, particularly in public bodies. To do this, the chapter will explore the role of translation in elections and in local governments throughout the entire UK.

8. Translation in healthcare in the United Kingdom. This chapter will continue looking at the UK's translation policies by considering translation policies as reflected in healthcare settings. In so doing, it will describe the role of translation in each of the state's four national healthcare systems. I will also consider translation policies implemented by local hospitals.

9. Translation in judicial settings in the United Kingdom. This chapter will consider legislation that affects translation in judicial settings. In so doing, the chapter will describe the role of translation when accessing criminal courts and civil and family courts.

10. Translation and the integration of linguistic minorities. This is the chapter that will bring the thesis full circle. Up to that point the thesis will have engaged translation policies from a descriptive point of view, starting at the very top. This chapter will change that approach. It will argue for a common theory to understand old and new minority languages. Then it will define integration as it is pertinent to linguistic minorities (whether old or new). This will allow for an exploration of translation's role in the integration of linguistic minorities in the UK which may also be applied to other contexts.

Before turning to these chapters, I should stress that this study addresses translation policy, understood as translation management, translation practice, and translation belief. (This view of translation policy evolved from Spolsky 2004 and will be explored in Chapter 3.) It should be clear, from the first paragraphs of this writing, that translation policy is not explored as an end unto itself. Rather, it is explored as it pertains to broader issues that arise when considering what the best approach might be in the face of linguistically diverse populations. Inasmuch as democratic societies have adopted ideals of equality in terms of the participation and recognition of citizens, it is reasonable to ask what is and what ought to be the role of translation in a government's efforts to communicate and address the needs of its citizens in a fully participatory way. Issues of language and integration,

participation, recognition, etc. have been addressed by scholars, but as the reader will see in the next chapter, translation has been at times overlooked in all the talk about language rights in multilingual democracies. Through this thesis I hope, in a very small way, to help alleviate that by highlighting that when it comes to linguistic integration and inclusion, the role of translation policy ought to be considered.

2. Literature review

"siempre la lengua fue compañera del imperio"
Antonio de Nebrija, in *Grammatica Antonii Nebrissensis*

1. Introduction

This chapter seeks to explore the link between language rights and translation. To that end, the chapter will attempt to outline the language rights debate. Out of necessity, it will look at language rights within the framework of the state. It will focus mainly on European states, but examples may occasionally come from other continents. Literature on language rights—which deals with issues such as what language rights are, whether states should grant them, to whom they should be granted, and how they should be granted—will be explored critically. This exploration will focus on the writings of scholars in different fields, such as law, political science, economics, and translation studies. In so doing, the chapter will address a number of theoretical propositions. Rather than listing and summarizing them chronologically or topically, the chapter will attempt to make them fit into a coherent description of a very complex and fluid debate. This is no simple task, especially since I will approach the writings more critically than descriptively. In so doing, the lack of thought translation has been given in the debate will be highlighted.

2. Concepts on the state, official languages, and linguistic minorities

Any discussion of language and rights must be understood in terms of the state. Even in the context of supranational entities like the EU and the United Nations (UN), language policy is handled at the level of individual member states (Extra & Gorter 2008, 38, 42). That does not mean that international organizations do not have

their own language policies. For example, the EU has a language policy, but it does not operate as a common language policy at the member-state level[1] (ibid., 38). Rather, EU member states set their own internal language policies. This is not surprising. States are the dominant political arrangement at the dawn of the 21st century. Inasmuch as there are a number of regional and supranational or international political organizations and alliances, they tend to be created by states to address the needs of states. Even when these organizations engage in the protection of individual rights, the state is the vehicle that makes the protection of those rights possible. Generally speaking, then, the state has a greater impact on the life of individuals than any of those other organizations. As Mar-Molinero puts it,

> Certain rights can be enshrined by international law, and with lengthy legal processes upheld, but the day to day structuring of communal life is normally only affected by laws and their administration at the level of sovereign states. (2000, 73)

Consequently, it is the state that administers and structures the legal framework that allows for citizens to enjoy certain rights, including language rights. In other words, it is the state that grants language rights (Freeland & Patrick 2004, 5). Naturally, the state has evolved since it first arose in centuries past, and it may not last forever, but it is likely to stay with us for a very long time. So any current considerations as to how language and rights interact in the life of individuals must be centered on the state.

[1] The EU language policy favors multilingualism. This has two obvious manifestations, one political and the other practical. The political manifestation is that institutionally the EU has 24 official languages. Every member state can designate one of its official languages as an official language of the EU. These languages are intended to have equal status (Gubbins 2002: 47), which in theory gives equal linguistic status to every member state in the EU. The practical manifestation is that the EU has encouraged citizens of Europe to learn two EU languages on top of their mother tongue ("mother tongue plus two") and provides funding for programs that promote learning additional languages (Extra & Gorter 2008: 38, 44). This does not amount to a common language policy for European states.

To understand the role the state plays in language rights, first we must understand that the evolution of the state affected language issues.[2] States have been around for a very long time, and they have taken many shapes and forms, ranging from city states to transcontinental empires. During the early 18th century, there began to rise in Europe[3] a type of state in which a centralized government strongly identified, and often pushed, the cultural identity of the dominant nation within the state's territory. Of course, these states did not have a one-to-one correspondence between state and nation. There was, nonetheless, a dominant nationality within each emerging state. Smaller nationalities became marginalized during this period of modern nation-building. This resulted in "the omission of their narratives, history, traditions and language(s) from the official discourses and structures of the state which dominated them" (McDermott 2011, 1). Thus, it was often the case that while more than one language existed within the state's boundaries only one became dominant.

At the dawn of such relatively modern states, issues of language were not deemed to be as critical for policymakers as they are now.[4] There was the obvious fact that not all inhabitants of these emerging states spoke the same language. There were at least two reasons for this. First, nationalities that were considered geographically small and backward were thought to benefit from fusing with larger, more developed nationalities into a single state (Hobsbawm 2000, 34). Second, there were many parts of Europe where a single territory was shared by many nationalities which could not be easily separated (ibid., 33-34). This posed no fundamental problem for the nation-builders—smaller languages were tolerated as long as they

[2] For an overview of the historical evolution of issues pertaining to language and government before the rise of modern states, see De Varennes 1996, 4-10.

[3] Nationalism emerged first in the Americas and later in Europe (Anderson 2006, 47-65, 191), but the discussion on nationalism found in this chapter focuses primarily on nationalism as experienced in Europe. This is the case because this study focuses on Europe in general and the UK in particular.

[4] This should not be understood to mean that language difficulties are a recent phenomenon. The challenges of linguistic diversity are as old as history and have even been immortalized in myth and discovered through archeology (Ginsburgh & Weber 2011, 16-17). However, the nature and urgency of these challenges has evolved alongside the modern state.

"accepted subordinate status to some larger unit or retired from battle to become a repository of nostalgia" (ibid., 42).

As the notion of nationality gradually became linked with the state, language began to be seen as an element of nationality (ibid., 21-22). In fact, language eventually became central "to the modern definition of nationality, and also therefore to the popular perception of it" (ibid., 59). Consequently, language management started to emerge as a way for the state to mobilize national identity (Spolsky 2009, 152). From the point of view of central governments, the advantages to homogenization were evident, particularly as each state became identified with one nation. In their homogenizing efforts, states adopted a number of policies, including, among the more benign measures, "national educational curriculums, support for national media, the adoption of national symbols and official language laws" (Kymlicka 2001, 229). Having a national language was understood as a pragmatic tool for the state to interact with its vast amount of citizens effectively (Hobsbawm 2000, 94). Furthermore, the ideal of a national language shared by all the inhabitants of the state became "part and parcel of nation-building" (Freeland & Patrick 2004, 4; see also May 2008, 91-92). In the context of nationalism that arose in 18th century Europe, policymakers increasingly saw linguistic diversity as a problem that needed solving (Peled 2012, 74-75).

States adopted policies of promotion of a single language for the state apparatus and for the inhabitants of the state. This led to linking language to ideas of inclusion and exclusion (McDermott 2011, 9). Thus, the national language was at times defended through negative perceptions of foreign languages (ibid.). For example, German was described by Germans as being superior to French, with the explicit conclusion that the Germans where therefore not only distinct from the French but also superior to them (ibid.). This type of discourse was also leveled at speakers of languages within the state that were different from the state language (ibid.:10). It was a process where a single, national languages was envisioned for a single state, and inclusion or exclusion as part of that state was articulated, in part, along language lines. This continues to be the case in many places, as evidenced by

the notion that speaking the English language is an important criterion for inclusion in the UK (ibid., 13).

This idea of a single, national language was justified on two different grounds. On the one hand, there was a "national romantic" vision that understood speakers of a single language to have a single culture so they needed to form a single state, which in practice meant suppressing minority languages within that state (Phillipson 2003, 41). This notion can be traced back to the German Romanticism of the late 18th and early 19th centuries (Extra & Gorter 2008, 7). For example, Johan Gottfried Herder argued that a common, shared language that is passed from generation to generation sustains and binds human communities by creating a common understanding (Peled 2012, 77). In light of such insights, his writings are associated with notions of the convergence of nation, language, and territory (ibid.). This type of Romantic thought gave rise to the idea of "the linguistically and ethnically homogenous nation-state as the ultimate expression of authentic community to which all fully integrated individuals belong" (Gill M. 2012, 274). But this type of idea did not confine itself to German nation-building. Denmark, a state which is not linguistically or culturally homogenous, despite claims to the contrary, provides an example of this (Phillipson 2003, 41). On the other hand, there was a "republican" vision that understood that the message of republicanism was to be given to everyone in the same language, for everyone is equal before the law (ibid., 41-42). Equal before the law implied that the states would address everyone in the same language. An example of how this played out in practice can be seen in France's perceived need after the revolution to eliminate "dialects" and universalize the so-called French language[5] (ibid., 42). A more refined version of this vision holds that integration of all citizens into the life of the state is made possible by having linguistic minorities adopt a common language, logically that of the majority (Patten 2009, 104-105). This type of idea can be seen in the writings of Jean-Jacques Rousseau, who argued that a common language is needed to allow for public deliberation, which was the means to consolidate diverse

[5] Before this push for the imposition of the French language, revolutionary authorities briefly attempted a multilingual approach to the Republic, via translation (Meylaerts 2011b, 764). For a discussion of the eventual construction of French as a national language, see May 2008,156-163.

identities through the political process (Peled 2012, 79). Thus, any individual can join the Republic, but to do so, he or she must embrace the state's language (Wright 2012, 61).

Whatever the justification, the sense was that states needed to adopt a national language, to the exclusion of others. Thus, many states have historically operated with the notion that political and national identity should be the same (May 2008, 6). Yet the matter of what the official or national language should be became contentious,[6] particularly in light of the increasing sense during the 19th century that language was "the soul of the nation" (Hobsbawm 2000, 95-96). John Stuart Mill argued during this time that a common language is needed by all co-nationals if they are to sustain a viable democratic regime (Peled 2012:80). Italy and France, for example, became very good at creating a sense of nation grounded in a common language (Kymlicka 2001, 229), which meant other languages within their respective territories had to be relegated (Barni & Bagna 2008, 295). This push for equating one *state* with one *language* was also found outside of Europe in many parts of the world. Thus, while nationalism in the Americas did not generally focus on language issues (Anderson 2006, 196-197), American states nonetheless chose to carry out their administrative and public functions in the language of their former imperial metropolises and thus relegated indigenous languages[7] (De Varennes 2012, 7).

A consequence of these two developments—the formation of states that strongly identified with the majority nation and the establishment of national

[6] The potential contention, and even outright violence, in a state's choice of language is grimly clear in the example of the many lives that were lost in Sri Lanka over the issue of Sinhalese or Tamil as the state's language (Ginsburgh & Weber 2011, 23-25). Naturally, when language issues explode into violence, they are mixed with economic, political, and nationalistic challenges.

[7] Leaders in early Latin American republics viewed linguistic differences as problematic for two reasons: it was considered a sign of backwardness and it was seen as an obstacle to communication within the new states (Hamel 1994, 289). Part of the decision to forego indigenous languages was practical: a single language made things simpler for the administrative authorities. But why was Spanish chosen instead of Quechua in, say, Argentina? This is where a prejudice, or outright hostility, was shown by many of those who were in power at the time, who looked upon the indigenous peoples of the Americas with unabashed disdain.

languages for those states—was the creation of what we would now term "linguistic minorities;" before then "there was no majority to define minority" (Wright 2004, 219; see also Freeland & Patrick 2004, 4-5; Extra & Gorter 2008, 9; May 2008, 92). The process which allows for this distinction of majority and minority languages, and consequently for the creation of linguistic minorities, can be described as linguicism[8] inasmuch as the promotion of the majority language implies the gradual erosion of the minority languages (see Nic Craith 2007, 162-163).

The ideal that political and national identity were one and the same was questioned in the late 20th century. Attempting to make all nationalities or national groups within a state conform to a single culture, often represented in a single language, has led to tensions among self-identified language groups (Mar-Molinero 2000, 11). As the 20th century wore on, many national minorities pushed to maintain their own identity, often represented through language,[9] and institutions (Kymlicka 2001, 242). As Cronin puts it,

> A feature of political radicalism in the late twentieth century was a concern with minorities in societies and with the legitimacy of their aspirations to affirm their different cultural practices which included the right to speak their language. (2006, 47)

At the beginning of the 21st century, states find it increasingly hard to ignore the fact that the preferred language of the state co-exists with old and new minority languages (Shell 2000, 685). This is in part because states have become more open to the principle of pluralism, as evidenced by the recognition of the existence of minorities (including linguistic minorities) through the application of different

[8] The term linguicism was put forth by Skutnabb-Kangas to describe the "ideologies, structures and practices which are used to legitimate, effectuate and reproduce an unequal division of power and resources (material and immaterial) between groups which are defined on the basis of language" (1998, 13).

[9] To be fair, voices against the imposition of a national language arose as early as the 19th century (De Vareness 1996, 16-17), but they became more prominent and successful as the 20th century marched on.

remedies in different situations (Oliveras Jané 2001, 3). Thus, "the triad one nation/one language/one state has given way to something closer to one world, many states, and plenty of cultures" (Arraiza 2009, 113).

A number of linguistic minorities have obtained important concessions regarding the use of their language within their respective states, as exemplified by the "success stories" of Catalan in Spain, Welsh in the UK, and French in Canada. However, many linguistic minorities continue to find themselves on the outside looking in when it comes to their language and power, [10] as is the case of the speakers of the many immigrant languages, such as Arabic, in cities like Brussels[11] and Paris. Not all autochthonous languages can claim to be a success story (consider Cornish in the UK), and not all immigrant languages are minority languages (consider that many immigrants in Spain are native speakers of Spanish). Even so, with the advances in ethnic minority rights on the one hand and transportation and mobility on the other, the presence of both old and new minority languages is a reality that states must contend with.

3. The language rights debate

Faced with this current situation, scholars and others have argued for greater protection of language rights.[12] A great deal of debate has surrounded the notion of language rights, and I will now explore the main contours of the debate. It seems to me that the best way to systematically engage in such a review is to ask four simple questions: 1) What are language rights?; 2) Should they be granted?; 3) To whom should they be granted?; 4) How should they be granted? The questions are easy to

[10] McDermott argues that as "national minorities" have become legitimized within the state, it is now immigrant minorities that present "the 'problems' of minority issues" (2011, 15). This would apply, of course, to linguistic obstacles to integration.

[11] Brussels is a city that offers no shortage of language issues. For some historical observations and a demographic description of Brussels, see Van Parijs 2013.

[12] Not everyone is convinced granting language rights to members of linguistic minorities is desirable. See, e.g., Lodares 2005, 33-59. For a criticism of the Spanish case in particular see ibid., 61-83.

formulate, but hard to answer. Nevertheless, I must attempt an answer in order to reach the object of this study: translation. In other words, once I have explored the issues surrounding these four questions, I will be better positioned to ask what all of this debate has to say about translation in general and perhaps about the role of translation in the integration or inclusion of linguistic minorities. Thus, one more question can be added to the list: 5) What does the debate say about translation?

3.1. What are language rights?

As with many terms in the language-rights debate, defining "language rights" in a way that satisfies everyone is hard (Spolsky 2004, 113-114). Instead of articulating an encompassing definition, it becomes easier and safer to simply list the rights and use that list as the point of reference for understanding what language rights are, but even this approach can result in controversy. To complicate matters, the literature on this issue employs different terms—"language rights," "linguistic rights," and "linguistic human rights"—for what seems to be the same thing (ibid., 113).

Regarding what language rights are, we may begin by pointing out that the literature at times makes reference to one or two types (e.g., Réaume & Pinto 2012, 45): positive rights and negative rights. Generally speaking, positive rights are rights to do something. In terms of language rights, the right to use your own language individually or collectively is a positive right (Belluzzi 1995, 129). Negative rights are those in which a certain action is prohibited. In terms of language rights, the right to be free from discrimination on the grounds of language is a negative right (ibid., 129). In practice, this distinction is not very helpful (certainly not for this study), so we will not touch upon it further.

Language rights often go undefined, as any attempt to define them is bound to run into deficiencies, depending on the field of inquiry. One of the challenges of writing this chapter is that I have chosen to review literature from different fields in hopes for a cross-disciplinary perspective. In the process, I found that what are major concerns in some fields are only marginal, if present at all, in other fields. For example, political philosophers may be most interested in the theoretical question of what is linguistic justice for speakers of minority languages, legal scholars may be

more concerned with how the interests of individuals speakers and the state's legitimate language preferences are best balanced, and economists may be more interested in the cost-benefit analysis of implementing language policies. This may lead to a somewhat different conceptualization of basic notions, such as what language rights are.

Perhaps that is why the more tempting approach is to simply make a list of language rights and consider it as good as a working definition. This is what Oliveras Jané has done in arguing that the following are specific language rights: the right to use one's language in public and in private (2001, 11-12); the right to education in one's mother tongue (ibid., 12-13); the right to be attended in one's language (ibid., 13-14); and a number of rights in judicial matters, such as the right to an interpreter in court or other judicial proceedings (ibid., 14). While Oliveras Jané is keen to point out this list is not exhaustive (ibid., 11), it provides a good sampling of the types of rights scholars in different fields may refer to when speaking of language rights. Even this list, however, can be contested. Do, for example, speakers of Cornish in the UK have a right to having their children be educated in Cornish? The answer could be different if one asks a political philosopher or a legal scholar.

Bearing that in mind, I will define language rights broadly for purposes of this study. This is why, as stated in chapter 3, the working definition adopted by Rodríguez is particularly well suited for this study. Here, language rights will be used to refer to "both the right to use the language of one's choice in certain contexts" and "the interpretation of non-culture-specific rights in a manner that takes into account the linguistic and cultural dimensions of those rights" (Rodríguez 2006, 697). The definition is somewhat ambiguous in terms of who enjoys such rights and what they are specifically, but some of those issues will be fleshed out in this and upcoming chapters.

Now, regarding terminology, I have been referring to "language rights" all along, but as indicated above, there are other possibilities. One is the term "linguistic human rights." I have chosen not to use that term. It is true that the term has the conceptual advantage of linking language rights to human rights. If conceptualized as human rights, rights pertaining to language would simply be the consequence of

broader, general human rights standards, such as non-discrimination and freedom of expression (De Varennes 2003:7-10). This linking of human rights to language rights is challenged by some who argue that language rights are more appropriately conceived as a matter for the political arena than as a true, universal human rights issue (e.g. Arzoz 2007; Arraiza 2011, 116-117). It is also rejected by those who find human rights insufficient to deal with "more extensive rights-claims, by both minorities and majorities, that are conditional on size, history, and national self-determination" (Patten & Kymlicka 2003, 35). In other words, linking human rights to language rights would be inadequate either because language rights are more a political matter than a human rights matter or because human rights fall short of being able to justify all the existent rights claims pertaining to language. The term "linguistic rights" avoids those pitfalls. The difference between using "language rights" and "linguistic rights" is negligible, if it exists at all. I have settled for "language rights." This, of course, reflects a personal preference before the need of uniformity, even though quoted materials may use different terms.

3.2. Should language rights be granted?

Having a general understanding of what we mean by language rights, we can now discuss a question which has generated a great deal more writing in academic circles. The question is whether language rights should be granted to linguistic minorities. In addressing this issue, we must bear in mind that states may have very compelling *political* reasons to grant language rights (see Arzoz 2007, 23-25). However, in this section I am more interested in exploring the moral justifications behind language rights; consequently, the question of whether language rights should be granted will be explored here from a theoretical point of view as presented in the relevant literature in the fields of political philosophy, law, and economics. The literature for the most part favors the granting of language rights. Thus, it is not unusual to come across studies and essays that argue in favor of language rights from different viewpoints or that simply assume these should be granted and then go on to explore the ramifications of such an assumption.

According to May (2003, 95) scholars who advocate for the granting of language rights to minority language speakers can be grouped into three different categories, depending on the type of approach they take. There is one group that takes a descriptive approach and focuses on language rights as implemented into law. Another group values the diversity of languages, taking an approach toward the protection of languages that draws parallels with ecological or biological approaches. Yet another group argues for the protection of language as a basic human right because of language's constitutive or even intrinsic value which flows from its expressive effect.

The first group is found in the "domain of academic legal discourse" (ibid.), and the authors are often legal scholars (Spolsky 2004:119). As stated earlier, this approach is more descriptive than exhortative (ibid.). Even so, it contributes to highlight "the often highly discriminatory processes that stigmatise and undermine minority languages and their speakers" (May 2003, 96). The more forceful arguments are to be found in the second and third approaches. These approaches provide broad, theoretical bases for extending language rights to minority language speakers (Dunbar 2001a, 93-94). To these two different approaches by non-legal scholars I turn next.

First I will review the diversity approach to advocating for language rights. This approach—which Dunbar calls the "ecological" approach[13]—values linguistic diversity in and of itself (ibid., 94). This ecological approach to linguistic diversity is simply a philosophical justification for the promotion of languages rooted in the understanding that languages are in a way like species, discreet objects that can die and that have their own biological environment (Freeland & Patrick 2004, 9-10). Thus, those who employ this approach establish a conceptual link between

[13] The use of the term "ecological" to describe this approach brings certain challenges. One is that it is easily confused with language ecology, linguistic ecology, or ecolinguistics, a concept explored by Skutnabb-Kangas (2011). Linguistic ecology deals with the (perhaps causational) correlation between linguistic diversity and biodiversity (ibid., 183-186). What Dunbar seems to be describing, however, is an approach where the diversity of languages is valued as such and should be preserved. There are, of course, areas of overlap between both ideas, so some may argue that they are not so far removed from each other.

linguistics and ecology by claiming languages exist in some sort of ecological system (Dunbar 2001a, 95). They find that the diversity of languages is valuable like the diversity of species in an ecosystem is valuable. Thus, the survival of languages matters in the same way that the survival of species matters.

I find the ecological approach rather inadequate to justify the granting of language rights. The counterarguments sound convincing. The ecological justification is like a lens out of focus—it distorts the real picture. And the real picture is about people, not languages.

Dunbar (ibid., 94-95) points out that because the ecological approach is grounded on the language itself and not on persons, the interest to be protected stands independent and may be at odds from those of the speakers. This raises a problem for the ecological proponents. To begin with, if we want to extend rights, we must bear in mind that rights are given to people. In other words, the debate is about the rights of people. The ecological justification for language rights moves the discussion away from people by focusing on the languages themselves. And, as pointed out, protecting a *language* could result in measures at odds with the interests and rights of *individuals*.

Another problem in the ecological justification of language rights is that languages are not living organisms, as much as we may use the metaphors of life to describe them.[14] For example, languages in close proximity influence each other in ways that living organisms cannot (Ginsburgh & Weber 2011, 31). Another problem with the metaphor is that language is not a genetic trait, thus being removed from biological concerns (Austin 2006, 7). Freeland and Patrick (2004, 9-10) stress this distance between languages and living organisms by reminding us that a language's disappearance poses no real threat to actual living organisms.

[14] For an uncompromising criticism of the view that languages are like living organisms and the attitudes associated with such a view, see De Swaan (2004). While I sympathize with the author's criticism of the languages-as-species metaphor, I cannot help but cringe when it comes to his treatment of cultures from the developing world, which he characterizes as backward and authoritarian.

Some scholars are not as interested in the parallels between biological diversity and linguistic diversity. Rather, they justify the promotion of linguistic diversity because they perceive a cultural, intellectual, or spiritual threat to humanity in the marginalization or disappearance of minority languages. This view justifies the understanding that "plurality of languages is a good and should be maintained in the face of globalization and the industrial and post-industrial society's centralizing forces"[15] (Jernudd & Nekvapil 2012, 30). In this context, Crystal argues that there are a number of intangible things lost when a language ceases to exist, such as "a unique encapsulation and interpretation of human existence" (cited by Spolsky 2004, 128-129). Thus, when a language disappears, an intangible wealth or heritage of humanity is diminished. It is then assumed that the state must step in to save these languages.

I am sympathetic to the argument that something intangible is lost when a language disappears, but this awareness alone is not enough to justify practical measures by the state to engage in the project of saving languages. While the recognition that languages carry an intangible value seems quite appropriate, it is not developed enough to justify specific policy measures. In other words, even if the principle makes sense, it is very difficult to apply. The challenge is that this justification for the promotion of language rights implies that every language is equally valid. Every language has something to offer in terms of intangible benefits, and simply understanding that provides no guidance as to how to deploy limited resources. A state that decides to save things of intangible value would face hard choices as to what to save and what to let go. This would include having to weigh the good of a language compared to a religious tradition or an archeological site. Questions like what makes language more (or less) deserving of protection than other cultural legacies would have to be resolved. And even if languages were in the end singled out for protection above all other intangible goods, the question remains as to which languages should be protected. Surely, if there is value in their diversity,

[15] For example, there is "in-depth knowledge of plan and animal species" that has been developed and is transmitted by indigenous communities whose languages are disappearing (Skutnabb-Kanagas 2011, 186).

the more the better. And yet no one seriously thinks the state should protect every language found within its borders. If such choices have to be made, the ecological approach in and of itself fails to indicate why one language should be protected while another one should not.

I believe the ecological approach to justifying language rights for minority language speakers suffers from yet one more inadequacy. In practice, the approach seems to be concerned only with languages that are autochthonous to a region. So even if someone is convinced that the loss of a single language is unacceptable, the protection of that language should take place in the territory where the language is established historically. In other words, from the point of view of the state, new minority languages spoken by immigrants deserve no protection as they do not originally belong to the state's particular linguistic ecosystem or cultural wealth or heritage. Another state can take care of protecting *that* language. Even when basing the appeal for linguistic diversity on non-biological metaphors, new minority languages are often not included in the appeal for diversity. Because of this and the previous arguments, I find the ecological approach to granting language rights to speakers of minority languages insufficient at best.

The more convincing arguments seem to be presented by those who argue that language rights should be granted because of the constitutive value of language. I will call this the constitutive approach. To understand this approach, the reader must first step back and consider that language has two functions that have been identified by scholars who deal with language rights. One is an expressive function and the other a communicative function (Mar-Molinero 2000, 70-71). Language is communicative insomuch as it is an instrument of communication, but language is expressive insomuch as it is an expression of identity[16] (ibid., 3).

Those who justify language rights for speakers of minority languages stress the expressive function of language. They argue that language is a "fundamental constitutive element of personal identity" (Dunbar 2001a, 93). Under this view, language is "inextricably intertwined" with identity (De Schutter 2007, 8). Therefore,

[16] The literature on language rights focuses on these two functions, which work as sort of umbrella concepts under which other functions may arguably be found.

a secure linguistic environment is called for in order to ensure an individual's personal development (Dunbar 2001a, 93). Bearing this in mind, the reader must remember that states in their homogenizing efforts took one of the communities in the state, generally that of the majority, and made that the community into which the others needed to assimilate (Oliveras Jané 2001, 2). Such assimilation has tended to include the adoption of the majority's language. In other words, the state is not—indeed it cannot be—neutral when it comes to language (Holt & Packer 2001, 101). This means that members of that linguistic majority are more likely to find a secure linguistic environment than those of the linguistic minorities (Dunbar 2001a, 93). Consequently, being blind to language differences cannot ensure "the same range of possibilities in life as [for] those who are members of a majority" (ibid.). It follows that in order to provide a secure linguistic environment for all, states need to accommodate the languages of minority groups, "implying, where necessary, positive measures of State support" (ibid.).

Réaume takes this argument even a step further by arguing that "if individuals are entitled to the protection of their ability to choose a life plan, the context that makes choice possible must deserve protection" (Réaume 2003, 247). This context is one's culture (ibid., 246). Additionally, people tend to value their language "intrinsically, as a cultural inheritance and as a marker of identity" (ibid., 251). So language too should be protected (ibid., 247). Most political philosophers, however, reject the idea of language having intrinsic value, arguing that language only has value inasmuch as it is valued by the speakers individually (De Schutter 2007, 10). In other words, there may be a conflict between individual choice and protecting the collective use of a language. This is an important point I will further address below. For now, suffice it to say that those who agree with Réaume's view of languages having intrinsic value will side with those who view language as having constitutive value "resolving the apparent problem that preserving languages might be opposed to individual interests by claiming that individuals have intrinsic interests in their languages" (ibid., 11).

The constitutive approach has been criticized on several grounds. One criticism has to do with the assumed link between language and identity. This link

between language and identity is crucial to the philosophical underpinnings of the entire approach. And yet, "equating language groups with cultural groups" is "risky" (Skutnabb-Kangas 2011, 179). The problem here is that there is a large consensus in some circles that "language does not define who people are, and may not be an important feature, or indeed even a necessary one, in the construction of their identities, whether at the individual or collective levels" (May 2003, 97). I agree with Haarmann (2012, 98-101) that language is one of "a range of collective features" that make up identity. Because identity is the result of several interactive features,[17] no blanket statement about the significance of language to identity can be made (ibid., 102). Even so, language is an integral part of the web we call identity, and under certain circumstances it may become prominent (ibid.:105). In essence, while language need not be the sole determining factor of identity, it can become—and often becomes—an important feature of identity, even the defining feature. In light of the observation that while it is true that the link between language and identity is not as clear-cut as proponents of language rights may wish, language can still "be a *significant* or *constitutive* factor of identity" (May 2003, 105; see also 104-109; May 2005, 327-332). The island of Puerto Rico offers a good example of this. The autochthonous languages of the island were effectively eradicated by the Spanish conquerors. The Spanish language then became the island's language. Ever since the United States (US) took Puerto Rico from Spain, the Spanish language came to be seen as an important expression of what it means to be Puerto Rican. Among some in the younger generation and among some Puerto Ricans who move to the mainland US, this perception is changing, but intellectuals and older Puerto Ricans still feel strongly that their identity cannot be separated from the Spanish language (Mar-Molinero 2000:189-191).

At the same time, even when acknowledging that there is no clear-cut correspondence between language and identity, it must also be acknowledged that language is more than an instrument of communication. In other words, speakers do

[17] Some elements of collective identity include "descent," "constituents of human ecology," "sociocultural markers of ethnicity," "communication systems" (including language), "interaction and social behavior," and "phenomenological markers of ethnicity" (Haarmann 2012:102-103).

not chose what language to employ on instrumental grounds alone,[18] as evidenced by the passion invoked over the protection of languages which are not very instrumental from a purely rational point of view (May 2005, 330-331). An example of this would be Iceland's "persistent lobbying" to get Microsoft to support Icelandic and the "astonishing number" of translations financed into Icelandic (Ginsburgh & Weber 2011, 9). In a nutshell, while language may not be determining of identity in every case, it is often significant… passionately so. And if it is significant, the logic of the constitutive approach to justifying language rights flows naturally.

A broader, more essential attack on the constitutive approach, and to the proposition of language rights for speakers of minority languages in general, is to be found in the idea that the state should treat everyone equally. Such equal treatment should come through equality before the law, so that the law should not discriminate based on traits such as race, gender, religion, or language (Oliveras Jané 2001, 3). Of course, the state must use some language to communicate with its people, and the way to assure equality is to address everyone in the same language. That way, the state is blind to any difference between its citizens, and one citizen is treated exactly the same way as any other. All deal with the state in the same language. This makes all the same.

Except all are not the same. The law may aspire at treating everyone with equal measure, but not everyone is equally situated. Thus, two powerful arguments can be presented against the assumption that by using the same language to deal with every citizen, the state treats every citizen the same.

The first is put forth by Kymlicka. His argument builds on the premise that "linguistic/territorial political communities […] are the primary forums for democratic participation in the modern world" (Kymlicka 2001, 213). Democracy within these local forums "is more genuinely participatory than at higher levels that cut across language lines" because politics are more comfortably discussed in the vernacular, except for elites that handle more than one language equally well (ibid., 213-214). So, in essence, if a state values the democratic participation of its citizens, it

[18] For an overview of the concept of instrumentalism and its implications, see Robichaud and De Schutter 2012.

cannot deal with everyone in the same language, because those who are not native speakers of the majority language may be less able to participate fully when the medium of participation is not their own language.

The second argument is that when the language of a dominant group is used as the language of all, inequalities arise (De Varennes 1999, 307). Those in the dominant group have automatic advantages over those who speak minority languages (Holt & Packer 2001, 103). These advantages may even be economic, including the following identified by Grin:

- the "privileged market effect [i.e.] native speakers of the dominant language enjoy a quasi-monopoly over the markets for translation and interpretation *into* the dominant language, the market for second language instruction […] and the market for language editing" (2005, 456)
- the "communication savings effect [i.e.] native speakers of the dominant language are spared the effort required to translate messages directed to them by speakers of other languages [and] native speakers of the dominant language do not need to translate their messages into other languages" (ibid.)
- the "language learning savings effect [i.e.] native speakers of the dominant language do not need to invest time and effort in learning other languages [which] amounts to a considerable savings" (ibid.)
- the "alternative human capital investment effect [i.e.] the money *not* invested in foreign language acquisition can be diverted to other forms of human capital investment and give native speakers of the dominant language an edge in other areas" (ibid.)
- the "legitimacy and rhetorical effect [i.e.] native speakers of the dominant language will generally have an edge in negotiations or arguments with non-native speakers" (ibid.).

In light of these inequalities and the barriers to participation presented by the state's use of only one language, the argument that equality before the law mandates everyone use the same language when interacting with the state should be rejected.

Those who oppose the granting of language rights to minorities seem to feel that, generally speaking, the state's blindness to difference promotes unity. To put it more succinctly: the politics of difference foster disunity, even among language lines. This criticism should not be easily dismissed. Advocates and critics of multiculturalism recognize that policies that stress difference could undermine social unity (Shachar 2000, 64). Such undermining may "reduce political stability and hamper economic growth, as shown by the sad and painful example of postcolonial Africa" (Ginsburgh & Weber 2011, 3). While there are examples of languages co-existing peacefully, like Guarani and Spanish in Paraguay (Even-Zohar 2005, 130-131), policymakers are well aware of the risks (Van Avermaet 2009, 16; May 2008, 93-94). In some states, the question of whether "a state can accommodate cultural diversity without undermining the sense of unity and solidarity among its members" has been central when dealing with linguistic minorities, as can be seen in Canada's history (Coulombe 2003, 275).

And history is perhaps a good teacher. Very few states, if any, have managed to make their populations purely monolingual. From the state's point of view, the process of increasing unity through one language means diminishing multilingualism. Despite past efforts to the contrary, strong ethnic identities (tied to language) have played their role in keeping minority languages alive. Consequently, many states have viable communities where minority languages are spoken. Based on that observation, Réaume concludes: "Assuming that no community is likely to agree to abandon its language, unilingualism can be accomplished only by more or less aggressively depriving one linguistic community of the use of its language" (2003, 270). Such aggressive privation has not always resulted in greater unity. History, both remote and recent, shows that suppressing languages can be an instrument of disenfranchisement that may even lead to bloodshed (Ginsburgh & Weber 2011, 1-2; De Varennes 1999, 307-308; Phillipson, R., Rannut, M., & Skutnabb-Kangas, T. 1994, 4-8). This is why the Organization for Security and Co-operation in Europe (OSCE) sees language rights as a way to avoid conflict (Holt & Packer 2001, 99). This is evidenced by the High Commissioner on National Minorities' involvement in the promotion of language rights in potential conflict areas (Spolsky

2004, 125-27). So the OSCE does suggest—and history confirms—that for many people, the suppression of certain languages is an unacceptable means for pursuing the benefits of a monolingual state. On the other hand, respecting certain fundamental rights, including language rights, has shown to lead to peaceful coexistence of people from diverse backgrounds (De Varennes 1999, 308-309). Indeed, people are more likely to be loyal to the state if it gives them fuller opportunities (Holt & Packer 2001, 101), and language rights can open the doors to such opportunities.

A closely related argument against granting language rights to minorities is to be found in the idea that such rights would in effect impede the mobility of minority language speakers and create linguistic ghettoes. And nobody likes a ghetto. In essence, the argument is that mobility of minority-language speakers is better served by learning the national language (May 2003, 96). The national language will have a wider use, so minority language speakers who fail to learn the national language will find themselves restricted to a community that employs a language that inhibits mobility and progress (ibid., 101-105). This understanding is reflected, for example, in the advocacy of educating Hispanic children in English in the US, which is justified as providing a wider range of possibilities for those children (Cardinal, L., Denault, A.-A., & Riendeau, N. 2007, 217). There is a great degree of coherence to this criticism. Even in the EU, which officially champions multilingualism, the mobility offered by speaking the national language is highlighted: "In the current context of increased mobility and migration, mastering the national language(s) is fundamental to integrating successfully and playing an active role in society"[19] (European Commission 2008, 5).

The criticism that granting language right to speakers of minority languages impedes mobility is based on the premise that when language rights are granted,

[19] Apparently, the European Commission wants to make sure everyone understands this. In a booklet aimed at outlining the EU's language policy, it reads: "In the current context of increased mobility and migration, mastering the national language(s) is fundamental to integrating successfully and playing an active role in society. The 2008 strategy is clearly conducive to the idea that non-native speakers, whether migrants or Europeans living in another Member State, should speak the language of the host country." (European Commission 2009, 7).

speakers of minority languages will fail to learn the language of the majority. In essence, this view presents the relationship of the majority and minority language as a zero-sum game: the more a people in a locality speak the minority language, the less they can speak the majority language (and vice versa). The problem with such a view is that, of course, people can speak more than one language well, and in some places they often do. Native speakers of Catalan, for example, usually speak Spanish with absolute fluency. This can happen even when the two languages are not similar, as in the case of native Welsh speakers, which generally speak fluent English.

Now, there is no question that when it comes to mobility, speaking the language of the majority can be very advantageous, particularly if such a language is an international language. Speaking the majority language can result in better opportunities in the job market and a more engaged presence in the democratic deliberative process (Patten 2009, 105). But the point here is that speaking the language of the majority does not mean that the minority must be deprived of language rights.

To be fair, there are states, such as Ecuador, where there are speakers of minority languages who do not have enough of a grasp of the majority's language to enjoy the same mobility as citizens who do speak the majority language. This lack of social mobility is not the result of language rights granted to speakers of minority languages, but rather of factors such as "the linguistic intolerance of the state, judiciary, or the workplace" (May 2003, 114). One way to increase social mobility for such persons is if their own language is given more instrumentality in a specific territory. This way, granting language rights to minority language speakers can help *alleviate* the lack of mobility for speakers of minority languages, and that is in itself a worthwhile pursuit.[20]

Of course, not all languages in a territory can be made widely instrumental. For diverse reasons, some languages will always be less instrumental than others. So, yes, speakers of minority languages will usually benefit from learning the majority's

[20] The deliberate greater instrumentality given to Welsh in Wales is an example of the fact that languages can successfully be given more instrumentality within a state (May 2003, 112-113).

language, but withholding language rights from them is not the only way to achieve acquisition of the majority language.

So, back to our initial question—"Should states grant language rights?" —the answer seems to be: "They should." When the state favors one language (or several languages) over all the others, which it must, inequalities arise. This section has highlighted some of these inequalities. To help overcome said inequalities, the state should grant language rights. In other words, language rights should be granted because they are a way to diminish, and in some cases eliminate, inequalities. Naturally, there are risks. This has the potential of undermining social cohesion, but not more so than the suppression of the languages of entire segments of the population. The devil, however, is in the details. As will be seen below, deciding that language rights should be granted is a lot easier than figuring out to whom and how.

3.3. To whom should language rights be granted?

An obvious answer to this question is: to minority language speakers. There is no need to grant them to majority language speakers since they "enjoy linguistic rights automatically by virtue of their positions of dominance and power" (Mar-Molinero 2000, 69; see also Phillipson et al. 1994, 1-2). Majority language speakers usually have their language rights enforced through social rules, common practices, and legal frameworks (Arzoz 2007, 4). Even so, for purposes of language rights, the answer "to minority language speakers" seems too ambiguous. It fails to make several important distinctions: is that to minority language speakers collectively or individually?; is that to speakers who live only in certain parts of the state or anywhere?; is that to speakers of all minority languages or to speakers of only some minority languages? These questions are closely interrelated, so I will explore them together.

These questions reveal the different ways in which minority languages are conceptualized. The literature seems to be split regarding the question of who is to receive language rights. Some scholars believe that language rights should be guaranteed "to specific language groups" while other see language rights as the means whereby "generally applicable rights" are protected "in circumstances involving language minorities" (Rodríguez 2006, 696-697). In other words, language

rights should be afforded to either specific linguistic minorities or to anyone that might need them in order to secure other, more general rights. If rights are to be granted to specific linguistic minorities, then this will bear on the question of whether these should be granted collectively or individually, in a specific region or anywhere in the state. Also, the catalog of rights can become quite extensive. If rights are to be granted to anyone who needs them to realize a more fundamental right, then they would be mostly individual rights that apply anywhere in the state. The catalog of rights in this conceptualization could be limited in many ways.

In exploring these ideas, then, I can begin by asking whether minority language speakers should be granted rights collectively or individually. Some argue language rights should be extended to entire communities, in other words, as collective rights (Mar-Molinero 2000:69). These rights are seen as a necessary for the "recognition and incorporation of ethnic, linguistic and cultural diversity within the nation-state" (May 2008, 93). As stated above, such recognition and incorporation of diversity, including linguistic diversity, is deemed a way to counter the injustices faced by minority groups (May 2008, 112; Shachar 2000, 66).

This view is compatible with an understanding which highlights the non-instrumental value of language. If language rights are meant to secure something non-instrumental, then the state should be committed to "to help a certain collectivity achieve the goals of protecting its language" (Rubio-Marín 2003, 57).

There are a number of problems with the proposal to bestow language rights collectively. The first observation would be that, if language rights are justified as deriving from other rights, including human rights such as freedom of expression and non-discrimination, they are to be grounded on the individual. This is so because international human rights law has focused mainly on the rights of individuals and on individual responsibility.[21] So even when we speak of "minority rights," in contemporary human rights standards these are generally found as individual, not

[21] The development of the legal universe of human rights can be traced back to the end of World War II. The Nuremberg Trials focused on the responsibility of individuals and their heinous acts against other individuals. They did not focus on the responsibilities of the German people or the rights of the Jews as a people.

collective, rights (Medda-Windischer 2009, 99). The focus on the rights of the individual against the state on which human rights law has historically relied stands in sharp contrast with the notion of implementing collective rights.

Even when adopting a less legalistic analysis and focusing on the philosophical argument that language rights must be granted collectively based on the observation that language constitutes a part of a collective identity, there are problems. Granting rights collectively under such a justification would only make sense if minority language speakers would be a discreet, uniform, monolithic community (May 2008, 8). It would be necessary to assume, among other things, that minority language speakers are monolingual and are clearly demarcated into separate groups (De Schutter 2007, 13). It would also be necessary to assume that minority language speakers share the desire to be identified by their language (ibid.; May 2008, 8). The problems with these assumptions are clear: states have many multilingual speakers, the linguistic and geographic boundaries of languages are not always clear, and speakers of the same language may have very different identities. Because the assumptions are faulty, the idea of collective rights based on a shared identity becomes further suspect (May 2008, 8-9).

The collective approach to granting language rights faces still another problem, which was mentioned earlier: collective rights may be at odds with individual rights. For example, "the preservation of a language often entails forcing individuals to learn or use it" (Spolsky 2004, 130). This brings to the forefront the clash between a more traditional approach of rights grounded on the interests of individuals and the more recent conceptualization of collective rights.[22]

Faced with these problems when it comes to collective language rights, I believe that language rights are something which is granted to individuals. The desirability of rights grounded on individual interests is evidenced in that the drafters of democratic constitutions framed rights with that understanding. The US Constitution, for example, protects the "person" not groups (U.S. Const.,

[22] Anaya argues that there is a move toward collective rights for "indigenous peoples" in international human rights law (2006, 111-114). So far the notion of rights for collective agents seems better suited for issues of land and resources, so it is hard to tell if it will be embraced for issues such as language.

Amendment XIV). Thus, arguments that can be made under the US Constitution for language rights derive from individual rights, such as substantive due process, equal protection, and freedom of speech (see Fife 2005, 329-342). In other words, the traditional approach supports a political regime where the person is seen "*only* as a political being with rights and duties attached to their status as *citizens*" (May 2008, 103, emphasis in the original). Thus, personal autonomy, stemming from the rights and duties of citizenship, weighs more heavily than collective identity (ibid.; Shachar 2000, 66). This conceptualization seems to leave no room for the idea of "national-minority groups [including language groups] possessing separate standing before law or government" (May 2008, 93-94). This understanding leads to the conclusion that language rights, when extended by modern states, should be extended as individual rights. That way, language rights would be grounded on personhood and not identification with a language group.

This view is compatible with an understanding which highlights the instrumental value of language. If language rights are to be grounded on the individual without concern for his or her identity, they will be largely limited to securing rights that attach to all persons. The state's commitment, thus, should "aim at ensuring that language is not an obstacle to the effective enjoyment of rights with a linguistic dimension, to the meaningful participation in public institutions and democratic process, and to the enjoyment of social and economic opportunities that require linguistic skill" (Rubio-Marín 2003, 56).

This tension between the claim that language rights are collective and should be granted to specific groups and the claim that language rights are individual and should be granted to individual persons can be resolved by a quick deconstruction of the term "collective." Réaume and Pinto do this by signaling that the "collective" in collective rights can refer to either "a collective agent" or to "a shared collective good—a participatory good—in which individuals have an interest" (2012, 56). Because language is enjoyed collectively, it can be seen as a collective good. By rejecting the notion that language rights should be granted to a collective agent while accepting that there is a collective dimension to the individual enjoyment of language, the major objections outlined in this section can be bypassed. This

acknowledges that language rights are like other individual rights, such as freedom of association, that can only be enjoyed collectively. In this sense, the term "collective" should be understood as referring to the way in which the rights are exercised and not the basis upon which they are bestowed (Medda-Windischer 2009, 100-101).

Even when there is an understanding that rights are to be granted to individuals who may enjoy them collectively, the state still faces the challenge of deciding whether to grant those rights to all individuals or only to individuals who reside in a certain region within its borders. This dilemma has to do with whether to apply the territoriality principle or the personality principle (Mar-Molinero 2000, 70).[23] The territoriality principle refers to the right of speakers to have their language used and recognized in public life inside a particular territory (see ibid.). On the other hand, the personality principle refers to an "individual's right to use his or her mother tongue in any public interaction wherever they might be within a state's jurisdiction" (ibid.).

The wisdom of the territoriality principle can be challenged on several grounds. First, the territoriality principle can be challenged on the grounds that territories are generally not 100% populated by monolingual speakers of a single language. Examples of minorities within minorities (e.g., English speakers in Quebec) abound (Rodríguez 2006, 744). In light of this, the territoriality principle can become unjust for those who do not speak the dominant language inside the minority territory (De Schutter 2011a, 201-203). In essence, it can substitute one monolingualism for another (Mar-Molinero 2000, 70). It aims at reinstating "the nation-state ideal" within a smaller territory (Réaume & Pinto 2012, 57). What this means is that territoriality does not really solve the problems raised by some of the

[23] While some may view the personality and territoriality principles as opposing principles, I agree with Grin that they are "the natural counterpart of each other" in the sense that the territoriality principle is basically a geographic limitation to the personality principle (Grin 1994, 35).

advocates of language rights.[24] Within the territory, there is now a new king. And all other languages are marginalized in the same way the new king is marginalized outside of the territory in question. This can lead to charges of so-called reverse discrimination (Mar-Molinero 2000, 70).

This raises the issue that the territoriality principle, where applied, is intended to favor speakers of old minority languages only. That does not mean that immigrants do not get some language rights. When it comes to rights derived from human rights recognized in international law, such as the right to a fair trial, immigrants do have language rights, even in strong territoriality regimes. However, the strongest protections are afforded to those who speak old minority languages. Their claims are usually deemed to be better or more worthy than those of speakers of new minority languages. (Why this is the case will be explored below in this section.)

This is starkly signaled in the literature. Van Parijs, a proponent of strong territoriality regimes, is concerned with the linguistic injustice of English being the dominant language in the world. He sees English dominance as a form of unequal dignity that can be countered by giving supremacy to the autochthonous, dominant language in each territory (2010, 182-183). There are a number of problems with this approach,[25] such as how it deals with the dignity of speakers who may not know the autochthonous, dominant language of their new territory. Van Parijs is rather blunt: they should "have the courage and the humility to learn the territory's official language" (ibid.). Apparently, if they do not learn the language it is because they are cowardly and proud. This assumption is unwarranted. There are reasons other than cowardice and pride keeping people like immigrants from learning the language of their new territory. Researchers have reported that "daily 10–12 hour shifts in

[24] All the territoriality principle does is make the linguistic domain geographically smaller (Spolsky 2009, 165). But a linguistic territory can never be broken down into enough parts so that every single group of speakers has its own territory.

[25] Peled (2012:89-92) points out the following: it assumes languages are discrete entities, it downplays its own marginalizing effect of linguistic minorities within the borders of current political communities, and it lacks a convincing justification as to why to prioritize the dignity of some co-nationals over others.

industrial or domestic settings leave migrants too tired and unmotivated to attend evening courses" (Tunger, V., Mar-Molinero, C., Paffey, D., Vigers, D., & Baróg, C. 2010, 198). There are immigrants who cannot afford the costs, such as transportation and books, of attending language classes (Alanen 2009, 95). Others, especially women, may have family responsibilities that make attending language classes particularly difficult (Edwards, Temple, & Alexander 2005, 80). Further, some immigrants may be illiterate and thus cannot learn languages as traditionally taught (Tunger et al. 2010, 198). Further differences in culture, gender, and age may hinder language acquisition for some (McDermott 2011, 117). And so forth.[26] In essence, learning the territory's official language "is only one component of the [immigrants'] epic struggle to integrate into mainstream society, feed and shelter their families, and cope with the trauma, loss and severed ties that characterize their migration" (Alanen 2009, 95). Do people in such situations not deserve language rights too?[27] Another proponent of territoriality regimes, Kymlicka is not as harsh on immigrants. Even while he acknowledges that immigrants may need "mother-tongue services," he calls for it only "on a transitional basis" (2001, 30). After all, they have uprooted themselves and rarely object to requirements such as learning the national language in order to become citizens (ibid., 29-30; see also ibid.:159-161). In other words, it is assumed that immigrants are willing to be assimilated, which is a questionable generalization. No wonder Fishman refers to new minority languages as "truly low-men on the ethnolinguistic democracy totem-pole" (1994, 55-56).

The territoriality principle favors speakers of old minority languages (e.g., through signage, medium of instruction in school, and laws drafted in their language) and generally dismisses speakers of new minority languages (except in limited circumstances such as the right to an interpreter in criminal proceedings).

[26] There may even be individuals and groups in the territory that have a real interest in immigrants not learning the national language. For example, some believe that managers in Wales restrict access to English and instead use immigrant intermediaries in order to "exercise control […] in the workplace" (Tunger et al. 2010, 200).

[27] Often this question is answered with a "no," simply because immigrants are assumed to have forfeited a number of rights when migrating, and thus their claims to rights are not seen as legitimate (Arraiza 2011, 134-135).

This is the case because promotion of the autochthonous language (i.e., the language with land) is sought through the exclusion of other languages (Tulkens 2011, 41).[28] Even in academic circles, literature surrounding minority languages has focused almost exclusively on the languages of old minorities (McDermott 2011, 27). Despite a growing acknowledgment that the issues raised by new minority languages need to be addressed, no major debates are taking place on this issue (ibid.; cf. Rodríguez 2006, 718). There are exceptions to this trend, such as Grin's (1994) suggestion that the territoriality principle can be applied less rigidly than is usually done so as to accommodate both old and new minorities. Even so, the focus continues to be placed mostly on old minority languages and their speakers.

From a language rights perspective, it is hard to find a rational justification for privileging an old minority language speaker over a new minority language speaker (Dunbar 2001a, 93-94). Some arguments have been put forth to justify such distinctions, but they are messy at best:

> In rationing such measures of support, factors such as the size and physical concentration of minority group members, the degree to which the minority differs from the majority, the prevalence of discrimination, the particular vulnerabilities of a minority language or cultural tradition, and the commitment of the group itself to the maintenance of its own distinctive identity are all considered to be relevant. The application of such factors to specific linguistic situations is, however, fraught with difficulties. For example, some have argued that the more concentrated and more assertive the minority, the greater the entitlement to positive measures of support should be. Yet if the provision of minority language rights is based on ensuring that all individuals enjoy a secure and supportive linguistic environment, one would have thought that the relative weakness and marginalisation of a

[28] An example of this would be modern Belgium, particularly in the Flanders region, where the community's belief is that French-speakers in Flanders (a linguistic minority there) must learn Dutch. In order to realize this belief, a number of measures that would grant rights to French speakers have been blocked (Fauconnier 2008, 154).

> minority linguistic group would justify more, not less extensive measures of positive support. (ibid., 94)

Another possible challenge to the territoriality principle is that it fails to recognize just how heterogeneous many places really are. While Iceland may not struggle to adopt a territoriality principle, places like the Baltic States, Catalonia, and Wales can pose real problems of implementation, including the impossibility of drawing linguistic boundaries or the arguably un-territorial solution of adopting more than one official language (De Schutter 2011b, 23-24). Thus, just how to apply the territoriality principle (in places where boundaries are not clearly defined) can lead to so many practical and political challenges as to make it highly problematic.

On the other side of the spectrum lies the personality principle (Kymlicka and Patten 2003, 133). An example of how the personality principle works is its application to Spanish speakers in Spain. A Spanish speaker in Spain has the right to use Spanish in public (even when dealing with the authorities) anywhere in Spain. The speaker carries their right to the Spanish language wherever they go. Consequently, they can be expected to be attended in Spanish in any government building in Barcelona. (Contrast this with native speakers of Catalan, who cannot expect to be attended in Catalan in Madrid.)

This principle can be challenged on the grounds that it is impracticable if there are many languages at play. (Notice only one language in Spain is dealt with under the personality principle.) Because few states have only one or two languages in their territory, practicability becomes an important issue. In theory, I can think of only two ways to allow every speaker of every language to use his or her language freely in interactions with the state. The first is to have the world's most prodigious staff, fluent in two, four, ten languages. In some metropolitan areas, this staff would need to be fluent in hundreds of languages. So much for that idea. The other way would be to have "extensive translation facilities amongst people and of different languages, but this can quickly become prohibitively expensive and cumbersome" (Kymlicka 2001, 226-227). So it would seem that, in light of the many languages often

brought into the state by immigrants, a personality principle for everyone at every level is out of the question.

Whether approached with a personality or territoriality focus, speakers of new minority languages are rarely championed in their usage of their minority languages. Kymlicka (2007, 506-509) critically explores three common justifications for this stark differential treatment between the two groups of languages. First, it is argued that the survival of the language depends on its protection in the historic homeland—if minority languages disappear in the homeland, they are gone, but if they disappear in the diaspora, they will presumably still exist in the homeland (ibid., 507). However, there are many old minority languages (such as German in Denmark) that are protected despite the fact that the language is quite safe in the protection of another state, which means that, in essence, protection granted upon speakers of old minority languages is given "whether or not their language is also securely protected in some other country" (ibid., 508). Second, it is argued that by voluntarily migrating, immigrants consent to giving up their languages (ibid.). Yet not all immigrants immigrate by choice, and some may choose to immigrate but not really want to give up their language (ibid.). Third, it is argued that a historic injustice has taken place and that consequently "historic linguistic minorities can plausibly claim that they have suffered some injustice at the hands of the larger state, and that their language would be in a stronger position today were it not for that injustice" (ibid., 509). Kymlicka seems to find no major fault with this justification, but it is nonetheless problematic. If there were historic injustices in weakening the position of old minority languages, then the argument can be made that states should attempt to avoid a repetition of those mistakes from the past by not implementing policies that would weaken new minority languages.

Kymlicka's important contribution to understanding why these two types of minority languages are approached so differently comes in contextualizing the language rights debate. He indicates that this systematically differential treatment is linked not just to language but also to issues such as self-government, political representation, and land claims (ibid.). As one considers this, the link between political power and claims for language rights becomes quite visible. For example, in

strong territoriality regimes, the local government is often at the hands of speakers of the old minority language favored by the regime (or at least of individuals sympathetic to the language). Thus, it is political power that helps validate the claim in practice. This consideration would give credence to the argument that language rights (broadly understood) are more a matter for the political arena.

Many historic minorities have been able to describe themselves as nations whose national homeland is incorporated into a larger state, and consequently they have begun to demand certain concessions on the basis of their nationhood (ibid.). Thus, language policies are part of a larger push for the revindication of national identities (ibid., 509-510). When old minorities are required to explain why they deserve self-government, or greater political representation, or certain land concessions, they can point to language as evidence of being more than just another province in the land (ibid., 511). This analysis successfully explains why language rights are such an important political tool for old minority groups that choose to pursue larger aims through that route. Yet one is left with the feeling that large, well-organized new minority groups could also claim specific political objectives and point to language as a distinctive feature to justify them. But, for the most part, they are not doing that. Generally speaking,[29] because they tend to have a lower status in society, a lack of financial resources, and limited political rights, immigrants are not able to push such claims. This leads to the conclusion that it is not the worthiness of the claim of old minorities that better situates them in terms of language rights but rather the political power they can exercise in arguing the claim.

So, back to the initial question—"To whom should language rights be granted?"—it seems that language rights should be granted to individuals who are

[29] There are exceptions to this trend. For example, in the Czech Republic, several minority groups that have been established through immigration have sought recognition by being included in the Government Council for National Minorities. As of this writing, fourteen national minorities are represented in the Council: Belarussian, Bulgarian, Croatian, Hungarian, German, Polish, Roma, Ruthenian, Russian, Greek, Slovak, Serbian, Ukrainian, and Vietnamese (Government of the Czech Republic 2013). The granting of national minority status to the Vietnamese is significant because not only did the Vietnamese arrive to the Czech Republic relatively recently but also because of their non-European origins.

also minority language speakers. Of course, making the state 100% multilingual in order to satisfy every speaker is impossible. The apparent alternative, making parts of the state 100% monolingual in different autochthonous languages to satisfy clusters of speakers would perpetuate the linguistic problems of nation-building by simply changing the players around. Even so, there may be a solution to this challenge. Again, the solution may be found in some sort of middle ground where both territoriality and personality norms co-exist (Arraiza 2009, 124). Some sort of accommodation—short of the full out promotion of an autochthonous language at the expense of others—can be made in order for individuals to participate fully. States do in fact offer such accommodations as part of their language policies, as will be seen throughout this thesis.

Accommodation seems, in fact, to be the only viable solution. One can conceive of linguistic regimes as taking several approaches, often simultaneously, that include accommodation. A linguistic regime may, for example, provide for one or several official languages, so that a speaker of the official language(s) may request to interact with the authorities in that language (Kymlicka and Patten 2003, 26-27). Even with several official languages, there will be people who are not proficient enough in the languages of administration. So a "norm-and-accommodation" approach can help solve the obvious problems of the situation I just described: have a language (or two) of public administration and accommodate those who lack proficiency in that language (ibid., 28). The exact type of accommodation may depend on the strength of the claim to the use of the minority speaker's language. After all, not all claims are equal, as is argued by Arraiza: "the request for an interpreter of an Aymara facing charges in court is more convincing than the request for interpretation of a Catalonian public official before addressing Spanish-speaking Nicaraguans" (2011, 115-116). Thus, when considering how to accommodate claims for language rights, states would be well advised to consider a number of contextual factors.

3.4. How should language rights be granted?

So far this chapter has concluded that language rights should be granted and that they should be granted to individual speakers (even if the rights are enjoyed collectively) of minority languages, which in practice may call for the accommodation of some speakers. Going back to some initial observations, these rights are protected—or violated—at the level of the state. So, it is the state that needs to take the necessary steps to enshrine these rights. The way the state recognizes or grants rights is through laws and regulations,[30] or in other words, through provisions that can be enforced in their respective sovereign states (Mar-Molinero 2000, 73).

Having observed that language rights should be enshrined through laws and regulations, I can now move on to what form said laws and regulations should take. This is where the literature on language rights falls somewhat flat. In essence, the language rights debate is highly idealistic and theoretical. It tends to ignore the hard realities policymakers, such as legislators, have to contend with. There are exceptions to this general rule, particularly if one moves away from the harder forms of advocacy found in the writings of some political philosophers. An example of this would be Dunbar, who has presented an analytical framework for actual minority language regimes (2001b) and addressed some of the challenges inherent in legislating for language (2003a).

Another exception of note is Grin, who acknowledges that the literature on language rights does not deal very well with principles relevant to the implementation of public policy (2005, 448-449). He signals that policymakers can reject the call for language rights for minority language speakers, but this rejection can be effectively countered with the moral arguments presented in the language rights debate (ibid., 451). The literature can make language rights morally justifiable,

[30] Language legislation can serve several functions, as described by Turi: to *officialize* by determining the language to be used by government institutions and in public discourse; to *institutionalize* by determining the language to be used in unofficial institutions, including commerce, business, and culture; to *standardize* the actual form and standard corpus of the language, and to *liberate* by enshrining language rights (in Mar-Molinero 2000, 74). It is this last function that is the means of making language rights real.

but even so, policymakers can reject them as technically unfeasible[31] (ibid.). At this Grin argues that protection of minority languages is feasible because it has been done before, as in the case of Welsh (ibid., 452-453). But even if language rights are considered morally right and feasible, they can still be rejected as not the best place to allocate scarce resources (ibid., 451). This is a very valid concern, as there is no large amount of data tending to prove that protecting minority language rights is a wise allocation of resources, and there is no theory with which to analyze this question (ibid., 453). Even so, when engaging in a rough cost-benefit analysis based on scant data, it would seem "that supporting linguistic diversity is good public policy" (ibid., 454). Finally, even if they can be considered morally right and feasible and a proper allocation of resources, language rights can still be rejected if it is not possible to agree on who will share how much of the costs (ibid., 451). Here Grin points out that denying protection of language rights places an undue burden on minority language speakers (ibid., 255). What Grin does effectively in his analysis is to highlight that the literature on language rights may be great at justifying such rights, but it does very little when it comes to the crucial question of how to implement them.

When legislators are faced with the question of how, Grin rightly reminds us that matters of efficient resource allocation are crucial. Advocates often seem to be unconcerned by this essential consideration. The notion of limits is often ignored in "linguistic human rights" discussions (Arzoz 2007, 2-3). Grin offers the insightful

[31] Just how complicated the issue of feasibility can be for legislators is shown by these technical questions: "First, to which degree will the lesser used language be recognized and promoted? Second, will the rights recognized be defined for the inhabitants of a particular territory or for those persons belonging to a certain group? Third, it must be decided to what extent, if any, will there be a delegation of competences over language to sub-state entities. Fourth, the scope of institutional use of the language must be delimited (whether and how it will cover the judiciary, schools, administration, and/or the legislative bodies). Fifth, what is the policy with respect to migrants and other newcomers in the territory of the state and/or the sub-state entity? In addition, the legislator must decide on whether the norms will regulate horizontal relations at the private sphere (i.e., commercial signs). Finally, there must be a decision on the level of legal entrenchment." (Arraiza 2011, 117-118). Of course, the answer to these questions will be different in every state depending on a number of historical, political, and cultural variables that are not easily disentangled.

suggestion that when there is a dominant language, a consequence is an imbalance in who bears the costs, so legislators face two options: 1) to redress this imbalance by engaging "in effective protection and promotion for minority languages or for linguistic diversity in general" (2005, 456); or 2) to "accept the imbalance, but to offer compensation for it" (ibid.). It is hard to see how the first option can be carried out in a way that every language in the state can be protected and promoted. So unless someone can find a way to have everyone in the state communicate effectively in every minority language, the second option seems more realistic.

I was only able to find one work that picks up where Grin leaves off. In their publication, economists Ginsburgh and Weber do not really explore language rights theory too much. Rather, they deal head on with the question of *how*. Specifically, they propose a method "to balance the will of the people and their attachment to traditions, history, and culture, with equity and efficiency considerations" (Ginsburgh & Weber 2011, 202). They argue that for any given situation, there is an ideal number of languages that can be promoted in order to keep stability, reduce inefficiencies, and avoid disenfranchisement (ibid., 4). This entails an analysis of the costs of linguistic diversity in terms of resources expended and its benefits in terms of lack of disenfranchisement. Yes, as good economists, they manage to quantify disenfranchisement (ibid., 126-139). They also measure diversity through what they call fractionalization, or the ethnolinguistic variety in a given society, taking into account not just the actual size of the linguistic groups but also how distant the groups are linguistically[32] (ibid. 2011, 109-126). What they propose in essence is that ethnographic data can be employed through specific formulas to figure out in how many languages any given government can work. Because inevitably some language groups will be disenfranchised by this, Ginsburgh and Weber suggest specific ways

[32] Pym takes issue with giving so much weight to "the structural proximity of languages" in an attempt to figure out just how many languages we do need (2012, 8). He convincingly argues that this idea that linguistic proximity between language groups can allow for one language to be used to communicate with several groups "overlook[s] the treacherous dynamics of national prestige" (2013, 673). The Portuguese may or may not understand Spanish, but even if they do, they may not be thrilled to see their language loose its official status in the EU, especially if the justification is that "well, they understand Spanish anyway!"

to calculate the compensation for that imbalance (ibid., 187-199). How the compensation is used would be left to the recipients' respective discretion (ibid., 200).

Ginsburgh and Weber, of course, build on extensive work by other economists. They do not really build on the work of political philosophers or legal scholars. This should surprise no one. The communication between these fields of study is not extensive, as the concerns are different. However, bringing their work together could be extremely beneficial for policymakers. Political philosophers admittedly do not study actual language policies or linguistic diversity (De Schutter 2007, 2). They are concerned with general principles of what justice is and work on a number of unfounded assumptions (ibid., 3). Legal scholars have taken a more descriptive approach, with less exhortation (May 2003, 95; Spolsky 2004:119). Additionally, applying the tools of economics to language problems may be very useful (Grin 2011, 30-31). As we have indicated, Ginsburgh and Weber look at how to apply language policy in a way that is practicable. Interestingly enough, when they put their formulas to the test, they chose translation in the EU as their laboratory[33] (Ginsburgh & Weber 2011, 151-200).

Thus far, I have argued that the language rights debate has offered convincing justifications for the granting of language rights to speakers of minority languages. I have concluded that these rights should be based on the protection of individual interests. Perhaps because of that, I have found no satisfactory theoretical justification for privileging speakers of old minority languages over speakers of new minority languages. I have indicated that these rights should be enshrined into law, but I also pointed out that the bulk of the literature does not address the question of how to go about making language rights a reality. From a practical standpoint, it

[33] They come up with six languages. For an optimal set of working languages, they initially suggest four: English, French or Italian, German, and Spanish (Ginsburgh & Weber 2011, 178-181). However, from a political standpoint and considering current qualified majority voting rules, a feasible optimal set of languages would be six: English, French, German, Italian, Spanish, and Polish (ibid., 181-187). The savings could then be transferred to the member states adversely affected by the new language regime (ibid., 187-199). Please note that their calculations would still include the European Parliament using the then-23 official languages and citizens communicating with EU institutions in any of those 23 languages (ibid. 2011, 200).

seems that legislators should decide on a certain number of languages to promote, and then find ways to compensate speakers of non-promoted languages. This compensation may come in different forms, including accommodation of specific linguistic needs. It is in this latter aspect that translation can play a key role. Hence, the next question...

3.5. What does the debate say about translation?

Translation is often overlooked in the debate over language rights. In a way, this is to be expected: language policy is not about translation alone. However, the opposite could also be expected; after all, policy choices about translation are an important part of language policies in multilingual societies (as this thesis will illustrate). And yet in the language rights debate translation is mentioned only incidentally, often in passing or as an example to stress a point. This is perhaps surprising since issues of translation are intractably bound up with language policy. This seems apparent in places throughout the globe. For example, in Japan, which is often regarded as a highly homogenous state, there is a recognition by some that translation services for immigrants need to be improved (e.g. Saito, S., Takagaki, T., & Kimura, M. 2013), and in Colombia, which has some 65 highly marginalized indigenous languages, the recently adopted *Ley de Lenguas Nativas*, or Law 1381 of 2010, mentions several ways of protecting the languages of indigenous peoples, including the training of translators and interpreters in an effort to strengthen the position of these languages (Todd 2013, 27-32). It is striking, then, that only a few studies directly address the role of translation in national language policy.

The following examples are fairly typical of the relative unimportance given to translation in debates on language rights and policy. Kymlicka mentions "extensive translation facilities amongst people" as an unviable way to promote a robust democracy (2001, 226-227). Oliveras Jané gives the example of "personalised translation from Finnish to Swedish" in Finland as a way to deal with multilingualism in a representative institution (2001, 10). He also mentions interpretation as a way to ensure language rights in the judicial field (ibid., 14). Dor makes a claim that, contrary to popular belief, English is not extinguishing other

languages in a global context, and he backs the claim by arguing that the economic center is releasing local markets "from the task of translation and [is] providing translation services as part of the product" (2004, 102). Dunbar describes the "growing awareness that the provision of translation services to speakers of minority languages who have insufficient command of English is important" in the UK, but he quickly points out there is no real evidence of a comprehensive translation policy (2006a, 188). He then moves on to something else. The observation, nonetheless, is important in that it recognizes there is a link between language rights and translation policy.

Not everyone who has written on language rights and policy glosses over translation issues, as the extensive treatment of translation in the EU by Ginsburgh and Weber goes to show. Note these further examples. Blackledge deals with translation when discussing the growing distrust of multiculturalism in the UK, and he mentions specifically the false opposition between translation services or English-language education as means to integration (2009, 97-101). The article, which engages in discourse analysis of political texts, is not about translation policy per se, but deals with the issue more so than most. Aspinall and Hashem, on the other hand, explicitly recognize the link between language policy and translation, a link which they explore at length by discussing the evolution of the UK's language policy as going from translation into many languages to a focus on English acquisition (2011, 145 – 162).

As one might imagine, the link between translation and language policy is obvious to scholars in Translation Studies, as the following examples illustrate. García González, in discussing why translation into and from minority languages is not often explored, underscores the role of government in providing translations, often due to legal and pragmatic considerations (2004, 106-114). Branchadell deals with issues of language rights and translation policy head on as he describes Catalan as a language for which there is partial mandatory translation in Spain (2004, 125-132). Cronin highlights the way in which "the question of translation is at the centre of one of the most important and highly contested social, cultural, political and economic phenomena on the planet, migration" (2006, 46; see 52-70). Perez and

Wilson summarize an extensive report they published on Scotland's public-sector translation practices before going on to suggest a systematic policy model (2009, 8-32). More recently, Kaufmann explores the role of translation in language policy as a way to strengthen the link between language and identity in Wales (2012). Similarly, Baxter argues that interpreting from and into old minority languages such as Galician can give those languages greater symbolic capital and enable their speakers to "exercise their language rights to the full in all situations, regardless of actual communicative necessity" (2013, 242).

A scholar who has written in depth about the role of translation in language policy is Diaz Fouces (see 1996). In doing so, he has written explicitly about translation policy. He uses the term linguistic mediation (*mediació lingüístic*) to encompass translation, interpreting, and other related activities, such as subtitling (Diaz Fouces 2002, 85). While lamenting the lack of attention given in language policy studies to linguistic mediation, he suggests that conceptually the planning of linguistic mediation should be considered as separate from language policy, even if both fit under the umbrella of cultural policy (ibid., 85-86). It should be noted that he has distinguished between translation policy per se and linguistic mediation planning, by applying the former term to the general policy decisions regarding translation and leaving the latter term for the more specific choices in carrying out those general policy decisions (Diaz Fouces 2006, 3). (I will not draw upon that distinction in this study.) In his theoretical framework, he argues that translation plays a key role in linguistic mediation planning by controlling access, execution, and impact vis-à-vis the language system (Diaz Fouces 2002, 91-107; 2006, 3-4). He broadly considers public translation policies in Catalonia and Galicia and concludes that translation plays a key role in language standardization processes (Diaz Fouces 2006, 8). This is not always properly premeditated and negotiated—sometimes translation plays a role in language management that is unplanned but nonetheless very real (ibid., 8-9). However, inasmuch as linguistic mediation activities can be programmed, they are amenable to planning (Diaz Fouces 2002, 107). How far the planning goes depends on the will and capability of those who are in a position to engage in linguistic mediation planning (ibid., 107).

While Diaz Fouces, as far as I can tell, is the first scholar to consider translation policy broadly (as manifested in "linguistic mediation planning"), Meylaerts is the first to consider how translation policy is to be addressed as part of Translation Studies. She argues that in multilingual societies "there is no *language* policy without a *translation* policy" (Meylaerts 2011b, 744). This observation calls the attention of translation scholars to matters of language policy, and some have indeed echoed her call (e.g., Chesterman 2012, 15). As will be further explored in chapter 3, in surveying the concept of policy in Translation Studies, Meylaerts concludes that the concept of translation policy has been taken to mean so many things by so many different scholars—who have only addressed policy peripherally—that it "risks however becoming an empty notion with little conceptual surplus value" (2011a, 163). She proposes that translation policy should be understood as the "legal rules that regulate translation in the public domain" (ibid., 165). With this theoretical understanding, she outlines four prototypical language regimes based on their translation policies (Meylaerts 2011b, 746-752, italics in the original).

Her concern with translation policy has to do with its implications in terms of participatory democracy. She signals that rules that affect language and translation impact citizens' "chances for participatory citizenship and integration" (ibid., 745). Yet, with the exception of some studies carried out in community interpreting, there is no large-scale research into the issue (Meylaerts 2011b, 166). One such study, by O'Rourke and Castillo, commented on the fact that "there has been surprisingly little research" on the policies that regulate translation in multilingual societies (2009, 33). Because the role of translation in helping or hindering integration in multilingual societies remains largely unexplored, Meylaerts signals the need for future research "to be more interdisciplinary, exploring the complex relations between various translation policies and linguistic justice, integration, equal opportunities" (2011b, 166). In a very real way, this thesis takes up that call.

3. Method and rationale

"For all the attractiveness of what translation scholars may choose to study,
the scientific merit and success of their efforts
crucially depends on knowing how to go about it."
Franz Pöchhacker, in *Emerging Research in Translation Studies*

1. Introduction

This chapter provides a description of the methodology and rationale behind the rest of this thesis. It begins by describing the general research question that prompted the study in the first place, and then it lists more specific research questions that flowed from the first one. This is followed by a description of how I went about collecting data to attempt answers to those questions. This description will center around the specific domains on which I centered my efforts. The chapter will conclude with a list of key terms and how they are defined for purposes of this study, including terms such as "translation policy." In a way, this chapter provides the groundwork for what is to come. Armed with an understanding of the research questions, methods, and definitions that inform this study, the reader will be ready to delve into the remainder of the thesis.

2. Research questions

At the outset of the project, I came up with a general research question that reflected what I wanted to find out:

- "What role does translation policy play in the integration of linguistic minorities?"

I decided that I would derive the answer(s) to that question from a case study. This means selecting either a region or a state on which to focus. In this study, that state is the UK. I also wanted the research to have a pan-European dimension. I knew that my resources were limited and I could not stretch across Europe looking at individual case after individual case, so I decided to give the study that European dimension by looking at international law first and then moving down to the national level. This implies a somewhat legalistic approach. In essence, I set out to focus on policy as reflected in international treaties and national laws that mandate translation (if there were any to be found). Thus, this study considers translation policy as reflected in the laws passed by government (at times as a reaction to international law) and the actions taken by public bodies as a result thereof. So the study moves from international law, to national, regional, and local law and policy. The approach is decidedly top-down, starting with the largest settings and moving down to smaller ones.

This top-down approach may be criticized by language policy scholars as being somewhat anachronistic. The current trend in language policy research is to move away "from a focus on national, official, 'top-down' policy to instead analyze local agency and resistance as these official documents are implemented in social practice" (Warhol 2012, 235). However, because this seems to be the first major study into the role of translation in language policy, I consider that a broad, top-down approach offers some worthwhile insights. At the very least, they are insights to be built upon. These insights may include an understanding of what roles policymakers envision for translation and what specific, local translation policies are adopted as a result of broader national policies and international obligations.

This top-down approach implies eventually moving beyond the purely legislative and down to a more local level. To see what policies were adopted at the local level, within the legal framework found at the UK- or devolved- government level, I decided to consider specific sectors where the government interacts with individuals. Areas where the government interacts with local populations in the UK include courts, education, healthcare, local councils, and public media. In the end I chose to focus primarily on the judiciary, the healthcare system, and local

government councils. Because I was looking for patterns in the data, I wanted to select domains that allowed for comparisons. In this regard, the judiciary, healthcare systems, and local government councils seemed like likely choices. They are, of course, not identical, but they are similar in that these are institutions where individuals come before government seeking specific services that have linguistic dimensions. Translation may or may not play a role in them. Different issues arise in the media's use of language (see e.g., Haddadian Moghaddam & Meylaerts, forthcoming), and education deals with specific issues in terms of language teaching for minors that are not present, for example, in criminal courts, state-funded hospitals, or local government.

A possible criticism may be, especially from those that prefer more sociological approaches, that my own approach is lacking because it focuses too much on the top. There is validity in the observation that one thing is what laws and policies say and another thing is what people actually do. Sociological approaches to policy have indeed much to offer (see e.g., Zavala 2014), but this is not a sociological study. To alleviate concerns that may arise in that regard, my approach does include some practice when moving to the lowest levels, specifically, when considering translation policy in the judiciary, healthcare, and local government. This is important because, as will be explained below, my view of policy includes not only rules and beliefs but also practices.

However, I stand by my decision to take an overall top-down approach. I do so for two reasons. First, many bottom-up approaches have been successfully undertaken in exploring issues of translation in public settings (e.g., De Pedro Ricoy, R., Perez, I. A., & Wilson, C. W. 2009, Martin 2006), especially when considering healthcare (e.g., Ginsburg 2007; Flores, G., Laws, M. B., Mayo, S. J., Zuckerman, B., Abreu, M., Medina, L., & Hardt, E. J. 2003; Pöchhacker & Kadric 1999). I chose to approach the issue of translation policy by taking a largely opposite strategy in hopes of adding a different viewpoint to existing scholarship. In other words, I am hoping to shed some light on the other side of the equation, for lack of a better metaphor. Second, I do not believe law to be irrelevant, either to the study of policy or to "what people actually do." It should go without saying that a large-scale study of policy

must consider law. The law is a reflection of the policies pursued by people with the authority to make large-scale, enforceable decisions for society. The law also helps shape the policies that are crafted below the national level. Additionally, "what people actually do" and the law are not two discrete categories that have little bearing on each other. In states where the rule of law is generally followed, the law and its enforcement mechanisms largely shape what people feel they can and cannot do. I am not suggesting that every institution and every individual follows the law with exactness every second of every day, but I am saying that the law is relevant to what people choose to do or not do, especially in countries where the rule of law enjoys a long tradition. As this research shows, a large-scale study that considers law is not about chimeras. In this case it is about complex interactions between individuals and institutions with different interests who are differently situated.

With that approach in mind, which is derived in part from the overall research question, I decided on other research questions:

- Under general international law, what translation must take place in domestic policies?
- Under international law in Europe, what translation must take place in domestic policies?
- Is there legislation in the UK that establishes state-wide obligations to translate?
- Is there legislation in England, Wales, Northern Ireland, or Scotland that establishes obligations to translate in each region only?
- Are there specific policies in the judiciary that lead to translation, either in England, Wales, Northern Ireland, or Scotland?
- Are there specific policies in healthcare that lead to translation, either in England, Wales, Northern Ireland, or Scotland?
- Are there specific policies in local governments that lead to translation, either in England, Wales, Northern Ireland, or Scotland?
- What do we learn from those laws and policies in terms of the role of translation in the integration of linguistic minorities?

In order to have a solid theoretical basis on which to explore those specific research questions, I rely on the writings of political philosophers on language rights and its relationship to integration. It makes sense, given my approach, to also consider the writings of legal scholars as pertaining to language rights, and because of my object of study—translation—it is important to consider also the pertinent writings of translation scholars. My research is thus informed by scholarship coming from rather different worldviews. This presents challenges. For example, the approaches are different depending on the field, and the type of concerns and questions being asked are often different, which means that the answers are not always in harmony. (My critical attempt at harmonizing these different writings appears in the previous chapter.)

Once the research questions were established and the theoretical foundations were established, I moved on to the actual data collection, which is described below.

3. Collecting data

3.1. Selecting domains for data collection

The collection of data was organized in part via the concept of domain. A domain is a sociolinguistic context that can be identified in terms of three key criteria: location, participants, and topic (Spolsky 2012, 42). I will now explore each of these three elements of domain as they pertain to my own data collection.

In terms of topic, the choice was simple: I would concentrate on matters pertaining to translation, particularly as they help shape translation policy.

Regarding location, policy may be developed in locations as large as international organizations and as small as a family. This means that there are many possible locations for a study of translation policy. These may range from the international legal order to an entire state to specific areas within the state. But in the modern world, states are the primary setting for policy making and implementation. Thus, while I acknowledge the importance of considering locations above the state,

e.g., international law, I must also address policy at the state level and below it. That explains my focus on one state—the UK—as a case study.

Regarding participants, I had to identify the participants that helped shape translation policy. Because there are a number of studies that focus on participants on the ground (e.g., De Pedro Ricoy et al. 2009; Hertog & Van Gucht 2008; Hertog 2003), I chose to examine policy from a normative standpoint, particularly regarding the government and public bodies. There are other participants, such as non-profit organizations, but governments have the authority to enforce their decisions (Spolsky 2009, 144), and this makes them very powerful shapers of policy. Consequently, I focused on gathering data regarding government policy from both national and regional governments. Because I was interested in the way linguistic minorities are integrated or not via translation policy, I considered that it was necessary to also pay attention to participants who provide services to the state's population, and this includes courts, hospitals, and local government councils. This meant that in the UK I looked at Westminster, but also at devolved governments, governmental departments, local governments, court systems, and (public) healthcare providers, all of which are involved with translation in one way or another.

Considering topic, location, and participants allowed me to identify the following domains for which to collect data:

- International law
- The UK
- The Judiciary in the UK
- Healthcare services in the UK
- Local governments in the UK

Having identified the domains, I needed to search for specific policy actions within them. Policy actions may be overt or covert. Overt policy actions are often explicitly formalized as statements to be found in the law (O'Rourke & Castillo 2009, 34). I searched for overt policy actions in the form of laws pertinent to translation as

passed by Westminster or by devolved governments. I also looked for overt action in the form of documents issued by the national government or by devolved government institutions that address translation in the judiciary, healthcare, or local government. On the other hand, there are covert policy actions, which are often informal, grassroots actions that can be inferred from other provisions and policies (ibid.; see also Spolsky 2004, 39, in the discussion about implicit policies). In order to examine covert actions, I identified those institutions where there was no overt action and presented questions regarding practice.[1] I also looked for translation practices as reported in official documents prepared for and by the Council of Europe.

This approach—identifying specific domains and then looking for overt and covert policy action in them—allows me to describe translation policies in different settings. The concept of a domain is a methodological tool that is based on generalizations derived from many specific examples (Spolsky 2009, 7). Thus, when I describe translation policy in a specific domain, I am not accounting for every single case of translation in that domain. Rather, I am describing typical features of translation policy in that specific domain.

More details on data gathering are provided below, but I wish to highlight that I went about gathering policy as found in a veritable amount of treaties, laws, policy documents, reports, and information disclosures coming from international bodies, the UK government, devolved governments, courts, healthcare providers, and local councils. In the process, a broad picture has emerged that allows for some conclusions regarding the role of translation in the integration of linguistic minorities.

I will now address specific items about my data collection in each of these domains.

[1] This study does not systematically compare and contrast management and practice. For example, there is no attempt to find and theorize the gaps between law and practice. This study aims, rather, at creating a comprehensive picture of translation policy by looking at management, practice, and belief as complementary, not competing, aspects of this thing called policy. Methodologically, it implies that some examples will refer to covert policy (e.g., reported practice) and others to overt policy (e.g., policy documents).

3.2. Data collection in international law

By addressing international law in chapter 4, I seek to answer the following questions:

- Under general international law, what translation must take place in domestic policies?
- Under European international law, what translation must take place in domestic policies?

In order to answer those questions, international law must be defined in a way that allows for the pinpointing of specific, binding instruments that states are expected to abide with. Those specific instruments were analyzed in search of provisions that pertain to translation for linguistic minorities. Where authoritative commentary from committees of experts or findings from courts exist, the commentary and findings were also consulted.[2]

This process I followed first for international law generally and then for those instruments and tribunals that pertain only to Europe. In so doing, I selected 21 legal instruments for analysis: 4 treaties of general international law, 4 treaties from the Council of Europe, and 13 legal instruments (treaties, decisions, regulations, and directives) from the EU. For a listing of these and other international documents cited in this study, see Annex I. For a listing of the 18 cases consulted as part of their analysis, see Annex II.

When a distinction needs to be made between international law in general and international law in Europe, I refer to the former as "general international law" and to the latter as "European international law." Based upon this survey of the existing international legal regime, particularly as it applies to Europe, I draw some

[2] Mention will be made of what type of enforcement mechanism is attached to the treaties. This will serve to indicate how "hard" (or enforceable) each treaty is. When individuals have recourse to a court, the enforcement mechanism is strongest, while different forms of surveillance (including self-reporting) are weaker enforcement mechanisms (see Ter Haar 2009, 8).

conclusions about what rights to translation exist and do not exist under international law.

3.3. Data collection in the United Kingdom

The case study of the UK begins in chapter 6, where I present data to answer the following questions:

- Is there legislation in the UK that establishes state-wide obligations to translate?
- Is there legislation in England, Wales, Northern Ireland, or Scotland that establishes obligations to translate in each region only?

Spolsky has highlighted how difficult it can be to determine language policy in places like the UK, where the researcher must enter "a maze of customary practices, laws, regulations and court decisions" (2004, 13). The same can be said for translation policy. I stepped into that maze by following the method I had used for international law—identify relevant legal instruments and analyze them. This is the case because at the very top, the policy agenda is set by the UK government. Legislative enactments by Parliament give shape and direction to the state's policy. They also set the framework within which regional and local policies can be pursued. The first step, consequently, was to consider laws that help set translation policies in the UK as a whole and in its regions. I did this with legal enactments out of Westminster and then out of the devolved legislatures in Wales, Northern Ireland, and Scotland. For a list of the 29 laws consulted for this study and other laws mentioned, see Annex III.

I next moved to gathering policy documents issued by the devolved governments or by government departments in the UK's four regions. In an approach similar to that used for laws, I identified relevant policy documents and then analyzed their texts for translation policy. For a list of the 17 policy documents issued by devolved governments or government departments that were consulted for this study, see Annex V.

3.3.1. Local governments in the UK

Having established what the general obligations to translate are in the UK as a whole and in its respective regions, I moved to the specific domains within the UK identified above. Data about local governments in the UK was gathered in order to answer the question addressed in chapter 7:

- Are there specific policies in local governments that lead to translation, either in England, Wales, Northern Ireland, or Scotland?

It seems important to include local authorities because they are the ones that end up developing many of the translation policies implemented to facilitate communication between linguistic minorities and government. Local authorities in the UK have different names: district councils, county councils, city councils, borough councils, and unitary authorities. They are sometimes collectively known as local councils. Strictly speaking, local councils are the elected individuals that govern local authorities, and local authorities are the government bodies in charge of providing local public services. However, the distinction is not very keenly observed in word and print. Consequently, I will use the terms local council, local authority, and local government interchangeably. A list of the 186 local governments consulted for this study appears in Annex VI, and specific details about data collection for each region are provided below:

England. Most local councils are in England, where they number 353 (as of this writing). To handle this large amount, I relied on stratified sampling to provide a cross-section of all local councils in England while ensuring that all types of councils were represented. I obtained a sample of 106 councils (30% of the population), comprised of 49 borough councils, 10 city councils, 10 county councils, 29 district councils, and 8 unitary authorities. For each council in the sample, I relied on policy documents available online or through Freedom of Information (FOI) Act requests.

One challenge that arose from searching for these overt policy actions was that policy documents were not always available. It then became incumbent to consider covert policy actions as well. These I based on self-reported practice. I obtained such reports of practice by filing FOI Act requests with specific questions regarding translation practice. The requests were tailored for local government council depending on the information that I already had obtained (for a sample FOI request, see Annex VIII). Data was collected from 106 councils (100% of the sample).

Wales. Wales has 22 local councils, all of them single-tier authorities. Here, I downloaded or requested any available copies of the local councils' translation policies and Welsh Language Schemes. As needed, I filed FOI requests to gather additional data. Welsh Language Schemes were obtained from all 22 local councils (i.e., the entire population), but one local council did not respond to two FOI requests regarding translation in combinations other than English/Welsh (thus, data was obtained from 95% of the population).

Northern Ireland. Local councils in Northern Ireland have a more limited remit; they do not deal with a number of areas that local councils in the rest of the UK regularly do. Some of the areas over which local councils in Northern Ireland are not currently responsible include social services, public housing, and police services (NIDirect 2012a). This represents a potential challenge from a methodological standpoint, as it could mean comparing entities in Northern Ireland with entities in the rest of the UK that do considerably more. However, I believe that in terms of the use of translation to integrate linguistic minorities, local councils in Northern Ireland are comparable to their counterparts in the rest of the UK. This is so because even with their limited remit, local councils in Northern Ireland are democratically elected local governments that provide a number of direct services. As such, they are not different enough in terms of evaluating translation policy when it comes to communicating with local authorities.

As of this writing, Northern Ireland has 26 local councils. This is in the process of changing—the number of local councils will be reduced to 11 and their powers

will be increased (Northern Ireland Executive 2012, 54). Even so, this study is based on the 26 local councils that are currently in place. Methodologically, I followed a similar path as in other regions. When available online or through FOI requests, I accessed policy documents pertaining to translation, and when no such documents were available, responses were elicited through FOI requests. Data regarding translation was obtained from 24 local councils (92% of the population), but only 22 of the 24 responding councils provided information regarding Irish and Ulster Scots (84% of the population).

Scotland. Scotland has 32 local councils, which are single-tier authorities. The method for gathering data was the same as in Wales and Northern Ireland: consult online resources for access to translation policies and supplement this search via FOI requests for specific information not found otherwise. Data regarding translation for new minority languages was obtained from 31 councils (97% of the population), and data regarding translation for old minority languages from 28 councils (88% of the population). In addition to this, a total of 11 Gaelic Language Plans were consulted, of which three were in draft form. This reflects the fact that, at the time of this writing, first-time Gaelic Language Plans are being drafted throughout Scotland by different organizations.

3.3.2. Healthcare in the UK

The research question addressed in chapter 8 is:

- Are there specific policies in healthcare that lead to translation, either in England, Wales, Northern Ireland, or Scotland?

A search for legislative enactments that deal specifically with translation in healthcare yielded relatively little. I looked further by searching for and analyzing specific policy documents issued by healthcare boards or trusts. (See Annex VII for a list of the 78 trusts or boards whose policies were analyzed for this study.) I gathered

these policy documents from online sources or via FOI requests. The latter were also used to gather data on practice when no documents were available.

When dealing with healthcare, there are four regions to consider. Specific comments on each region follow:

England. In England I specifically considered translation as provided in National Health Service (NHS) Trusts. NHS Trusts are public sector companies entrusted with the provision of healthcare in England. One challenge presented by said trusts is that they number in the hundreds and come in several shapes and sizes: acute trusts, ambulance trusts, and mental health trusts (National Health Service 2013). It was therefore not practical to request policy documents or FOI disclosures from the entire population. I decided to limit my research to a sample of acute trusts. Acute trusts are the organizations in charge of hospitals. I discarded ambulance trusts because they are very narrow in their focus. I discarded mental health trusts because in dealing exclusively with people that face mental problems, they regularly face some cognitive and communicative challenges that go beyond language. Thus, I was left with a specific type of healthcare setting: the hospital. This is acceptable for current purposes, because hospitals interact with all members of society and offer a wide range of services. I identified 166 trusts that deal with hospitals. From that, I chose a random sample of 57 trusts (34% of the population). Five trusts did not respond to my information requests (information was obtained from 91% of the sample).

Wales. Following the model established for England, in Wales I considered translation as provided by NHS Wales' seven Local Health Boards. However, I did not use a sample but instead studied the whole population. One difference between the provision of health in Wales and England is that in Wales there is an obligation to provide healthcare in both English and Welsh, which meant that I had to gather data concerning translation from and into Welsh. In order to do so, I not only downloaded or requested copies of the health boards' translation policies but also of their Welsh Language Schemes. Data was obtained from all seven Local Health Boards (i.e., the entire population).

Northern Ireland. For this region, I followed the model established for England, except I did not rely on sampling. There are six Health and Social Care Trusts (HSCT Trusts) in Northern Ireland. The remit of these trusts is broader than that of acute NHS Trusts in England. Even so, I analyzed HSCT Trusts because hospitals in Northern Ireland are included in their remit. This implied discarding one trust whose remit excluded hospitals (Northern Ireland Ambulance Service). Consequently, information was sought after and obtained from five HSCT Trusts (100% of the populations). I obtained data from the trusts by downloading or requesting policy documents. When necessary, I filed FOI requests with specific questions about translation. This became particularly necessary when dealing with translation to and from Irish and Ulster Scots.

Scotland. In Scotland, I followed the same method as in Northern Ireland or Wales, depending on the specific health board I was looking at. Scotland has 14 NHS Boards, each in charge of health and social care in a specific geographic area. I consulted relevant policy documents made available on the boards' websites and complimented those with FOI requests. As needed, FOI requests also included specific questions about translation to and from Gaelic and Scots. Two of these boards were approached differently when it came to Gaelic. These were boards that were required to draft Gaelic Language Plans, so information regarding translation to and from Gaelic was obtained from those policy documents. Data was obtained from 12 Boards (86% of the population), including the two boards that have drafted Gaelic Language Plans.

3.3.3.The Judiciary in the UK

The research question addressed in chapter 9 is:

- Are there specific policies in the judiciary that lead to translation, either in England, Wales, Northern Ireland, or Scotland?

At this point, I began by identifying general laws, statutory instruments, rules of court, and relevant policy documents that reflect legal requirements to translate in the UK's judiciary. I also considered translation practices in the courts of the UK.

The UK is divided into three jurisdictions, namely England/Wales, Northern Ireland, and Scotland, which meant considering the use of translation in at least three different settings. All three jurisdictions have posted on their websites information regarding their uses of translation, so I accessed these in order to gain an understanding of how translation is practiced in the different types of courts, including criminal and civil courts. My search for practices also led me to consult reports published by the Advisory Committee[3] on the Framework Convention for the Protection of National Minorities (FCNM)[4] and the Committee of Experts[5] on the European Charter for Regional or Minority Languages (ECRML).[6] These reports were valuable because they offer insights into the use of translation on the ground.

3.4. Approaching Integration

[3] The Advisory Committee is an independent committee of experts charged with monitoring the fulfillment of the duties under the FCNM.

[4] The monitoring process for the FCNM is based on five-year cycles. It begins with a state report giving the state's account of how it is fulfilling its obligations under the FCNM. This is followed by a country visit where the Advisory Committee observes conditions on the ground, after which it publishes its own opinion. The government is given an opportunity to comment on the Advisory Committee's opinion. At this point, the Committee of Ministers of the Council of Europe issues recommendations for improvement in the fulfillment of obligations. Some countries have organized follow-up seminars with the Advisory Committee after the Committee of Ministers' recommendations.

[5] The Committee of Experts is an independent committee charged with monitoring the fulfillment of the duties under the ECRML.

[6] The monitoring process for the ECRML is based on three-year cycles. It begins with a state report giving the state's account of how it is fulfilling its obligations under the ECRML. This is followed by an on-the-spot visit where the Committee of Experts observes conditions on the ground, after which it publishes its own report. The government is given an opportunity to comment on the Committee of Experts' report. Then the Committee of Experts issues findings and recommendations to the Committee of Ministers. At this point, the Committee of Ministers issues recommendations for improvement in the fulfillment of obligations.

The data gathered for chapters 5-9 allowed me to answer this question, which is addressed in chapter 10:

- What do we learn from those laws and policies in terms of the role of translation in the integration of linguistic minorities?

The description and analysis of laws, policy documents, and reported practice as pertains to translation allows for the emergence of a picture of translation policy as found in the UK. What we can learn from this data is explored in each chapter as well as in the final analysis of the broader question that prompted this study in the first place—What role does translation policy play in the integration of linguistic minorities? This is, of course, a very broad question. It is addressed in the last chapter.

4. Key Definitions

Hopefully readers have been able to follow so far despite my using a number of terms that probably warranted defining before now. Many of these terms have contested meanings. At times hotly contested. Even so, readers have a general notion of what they mean. I would be tempted, then, to omit defining them, like Justice Stewart from the U.S. Supreme Court did with hard-core pornography. He refused to exactly define it, saying simply: "I know it when I see it" (*Jacobellis v. Ohio,* 378 U.S. 184, 197). In other words, I could move forward with a general understanding of those terms and the study would still make sense; however, from a scholarly point of view, this would be a glaring shortcoming. So, based on the literature I reviewed early on, I have come up with a set of working definitions.

I choose to present these definitions here, but I do not attempt to present them as the ultimate definitions to be employed by everyone. Of course, others are more than welcome to borrow them, but they are simply the way the terms are to be understood in this study. As I explain the meanings of these terms, I again feel like

Justice Steward who conceded that "perhaps I could never succeed" (ibid.) in providing effective definitions to terms that can be notoriously hard to define. My definitions are at times based on those given by others, if not flat-out adopted, despite the entailing risk that I am perhaps using the term differently than understood by the original purveyors. Disclaimers aside, this is the meaning I ascribe to some key terms in this study:

Integration. There is no settled definition of integration in scholarly literature (see, e.g., Medda-Windischer 2004, 389-391; Entzinger & Biezeveld 2003, 6-8). In light of that, I adopt my own working definition of integration as a process that involves the individual and society where individuals are brought closer to other elements of society through increased participation in the public life of the state. (This definition is somewhat cryptic and there is much to develop here, but such comments would be so lengthy that they will be more appropriately developed in chapter 10, when integration is addressed more specifically. I thus reserve a full analysis of this definition until then.)

International law. Generally speaking, international law can be conceived as the rules and principles binding on the relationships between states. However, international law no longer limits itself to the relationships between states. In a world where states move across borders as market players and where protections for individuals are sought after in international instruments, I cannot limit international law only to state actors. Further, the rules of international law are often adopted into domestic law, blurring the distinction between international and domestic law. Because of those considerations, I adopt the definition of international law as "rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or judicial" (American Law Institute 2006, section 101).

Language. I acknowledge that for general purposes "[t]he term language is extremely imprecise," (Skutnabb-Kangas 2011, 178), but I must nonetheless venture a definition that allows some level of precision for the purposes of this study. Consequently, I define language as the symbolic, verbal code (and, when applicable, its accompanying written code) that individuals use to communicate on a daily basis. Examples are Basque, English, Hindi, Navajo, and Somali. Three observations are in order.

First, I am aware that this definition omits sign languages. This should not be interpreted as meaning that I do not believe sign languages to be languages. They are. However, in terms of the scope of this thesis, I focus on spoken languages, divided into majority languages, old minority languages, and new minority languages. These three types of languages will also be defined in this section.

Second, the examples given for this definition should not be understood to imply that languages are monolithic and have well delineated borders. The standard norms of languages are often constructed by governments or their surrogates and tend to favor one variety over the others. For example, the Spanish proclaimed by Spain's Real Academia Española is highly prescriptive—as its motto hints not so subtly by proclaiming "Limpia, fija y da esplendor"[7]—and it historically has favored varieties found in Spain over those found in Latin America. Further, some varieties of a language, like Chinese, are not mutually intelligible, while other languages are only considered different languages because of political separations (Edwards V. 2008, 256), as is the case of Serbian and Montenegrin (Lowen 2010). And then there are languages where claims of secession are common, as is the case with Catalan/Valencian (Vila i Moreno 2008, 166-167).

Third, this definition does not distinguish between dialects and languages. Such distinctions are not always coherent or helpful. They also tend to be hard to make. Is Ladino a dialect of Spanish or a language all its own? The reality is that the label of 'dialect' tends to obey political and historical, not purely linguistic, reasons

[7] Literally, "It cleans, sets, and gives splendor." The motto could also be translated as "We clean, set, and cast splendor" or "To clean, to set, and to cast splendor." All three translations are mine.

(Dunbar 2001a, 96; Freeland & Patrick 2004, 5; Ginsburgh & Weber 2011, 30). For that reason, this definition makes no distinction between dialects and languages.

Language rights. I define this term broadly for purposes of this study, because I am not interested in cataloguing each individual right or setting the exact boundaries of the term. To that end, Rodriguez's definition of language rights becomes most useful. She uses the term to encompass "both the right to use the language of one's choice in certain contexts, as well as the interpretation of non-culture-specific rights in a manner that takes into account the linguistic and cultural dimensions of those rights" (Rodriguez 2006, 697). (This terms was fully developed in chapter 2.)

Majority language. I define a majority language as a language which enjoys a dominant position in a state. This language is usually (but not always) the language spoken by the majority of the state's population. Even so, majority languages do not enjoy their dominant position simply because they are spoken by more people. Rather, majority languages become dominant because they "are legitimated through processes of hegemonic saturation in public discourse, the media and public education" (Skutnabb-Kangas 2011, 191). This means that, to a certain extent, majority languages are thrust into their dominant position, purposefully or not. For example, they are often selected as the official language of a state (Mowbray 2012, 12). It also means that a language that today is a majority language could be, with the passage of time, displaced from its position and become a minority language. In the UK, the majority language is English.

Minority. In general terms, a minority can be thought of as a subset of a population which is differentiated by one or several characteristics which are not present in the majority of the population. Of course, under such a broad definition, fans of FC Bayern Munich could be considered a minority of Germany's population. So there has to be more to it. However, finding a consensus for defining the term minority is rather hard, at least for states, because a) states fail to agree on all the elements of a definition and b) states are reluctant to recognize minorities and their rights

(Letschert 2007, 46-47). Despite the lack of consensus, for this study I will adopt the helpful definition proposed by Medda-Windischer:

any group of persons, (i) resident within a sovereign state on a temporary or permanent basis, (ii) smaller in number than the rest of the population of that state or of a region of that state, (iii) whose members share a common characteristics of an ethnic, cultural, religious or linguistic nature that distinguish them from the rest of the population and (iv) manifest, even only implicitly, the desire to be treated as a distinct group. (2009, 63)

Because this study focuses on translation, I am not concerned with minorities whose ethnicity, culture, or religion may be different than the majority's. The minority groups that are of immediate concern are those whose members speak a language that is not that of the majority. Consequently, I use the terms *minority* and *linguistic minority* interchangeably. Two clarifications must now be made:

First, groups that do not speak the language of the majority can either be historically linked to the state or they can be the result of (newer) immigration from other states. In principle, I do not distinguish between the two types of linguistic minorities. However, there are times when a distinction becomes necessary because both types of minorities are often not treated the same way in law and in fact. In those cases, I use the term *old minority* for the former and *new minority* for the latter. In the UK, an old minority would be the Welsh and a new minority would be the Poles.

Second, there is a type of ethnic minority that deserves special mention. I am speaking of *indigenous peoples*. Conceptually it is hard to distinguish between an indigenous people and an old minority (ibid., 40). From a normative standpoint, however, indigenous peoples are treated differently from old minorities, as can be seen in international law. Indigenous peoples are known by different names in different places, ranging from aborigines to Native Americans. Very few groups in Europe are considered indigenous peoples, and they generally live in the peripheries, such as the Sami in the Artic. Inasmuch as they speak languages other than the

majority language, they fit under my definition of minorities (i.e., linguistic minorities); however, when it becomes necessary to distinguish them from old minorities, the term *indigenous peoples* is used.

Minority language. I define a minority language as a language that is spoken in a state and that is in a subordinate position to the majority language. It is usually spoken by a number of individuals that is less than that of speakers of the majority language, even though there are exceptions. As defined, a language is a minority language not because of any inherent quality in the language itself but rather because of its less privileged position vis-à-vis the majority language (Mowbray 2012, 12). This means that any language, including English, can be a minority language somewhere, and that most, if not all, languages in the world are minority languages somewhere. This definition is broader than others that have been proposed (see, e.g., Branchadell 2011, 97) because it covers the languages of both old minorities and new minorities. I will now explain the difference between these two types of languages.

I use the term *old minority language* to describe the languages of old minorities. The term then refers to a minority language that has been in a region for a very long time. The language may have developed in that region from a previous language or may have entered through migration, but the key is that it has been in the place for so long that people traditionally associate it with a specific region within a state and may comfortably apply words like autochthonous or indigenous to it. The word minority stresses that the language is not in a dominant position in the state. Examples of such old minority languages include Basque, Catalan, and Galician in Spain, and Cornish, Irish, Scottish Gaelic, Scots, Ulster Scots, and Welsh in the UK. (For a listing of the many terms used to describe this type of languages, see Extra & Gorter 2008, 10; see also Nic Craith 2007, 161.)

I use the term *new minority language* to describe the languages of new minorities. The term refers to a minority language that has entered a state through migration in relatively recent times, generally after the achievement of statehood. The key here is that the language is not associated with the state in the same way that old minority languages are. Examples of new minority languages include Berber and

Russian in Spain, and Bengali and Portuguese in the UK. I reject the "migrant or immigrant language" label. I do so for two reasons. First, not all immigrants speak minority languages. For example, many Latin American immigrants in Spain speak Spanish as their native language. Second, I find V. Edwards's argument convincing that many speakers of these new minority languages are not themselves immigrants or migrants because they were born in the country that hosted their parents or grandparents as immigrants (2008, 253-254). Her argument is so persuasive, I decided to borrow the term she opts for. (For a listing of the many terms used to describe this type of languages, see Extra & Gorter 2008, 10.)

Translation. The term translation is notoriously difficult to define in a way that satisfies everyone. Translation can refer to a process (the act of translating) or a product (e.g., the printed result of the process). Further, translation can be written or oral (generally known as "interpretation"), or a mixture of the two (such as when someone picks up a text in language A and reads it out loud in language B). To complicate matters, translation can happen between languages or even within a language. The distinctions can go on. Thus, I cannot help but agree with Chesterman and Arrojo: "there is no such thing as a totally objective definition of 'translation' […] as there will never be any definition of translation that will be all-inclusive" (2000, 152). But for this study I have to make some working decisions. Consequently, I define translation broadly to mean the instrument through which a message is transferred from one language to another. I understand this definition is riddled with pitfalls, but it works for the scope of this study:

First, my definition of translation uses the word "instrument" to refer to both process and product. Thus, if I speak about a "right to translation," I do not need to distinguish between a right to having someone engage in the *process* of translating a message and the right to receiving that message as a finished *product*.

Second, my definition of translation does not distinguish between written and oral ways to translate. Thus, if I speak about a "right to translation," that can mean both the right to having a written translation or an interpreter. However, whenever a distinction must be made, I use the terms *written translation* for that which involves

writing and *oral translation* or *interpretation/interpreting* for that which does not involve writing.

Third, my definition of translation is limited to translation between different languages, what can be referred to as "interlingual translation" (Jakobson 2000, 114). It purposefully avoids the forms of translation that have been termed "intralingual translation" and "intersemiotic translation" (ibid.).

One final observation, this definition says nothing about whether the act of translating is carried out by a professional or a lay person. This definition considers translation to be what professional interpreters do when they begin interpreting for a non-Spanish speaker in a Madrid criminal court but also what a bilingual employee does when he or she jots down in English a voicemail message left in Irish for a monolingual, English-speaking supervisor. (Therefore, quality and accuracy are of no concern in this definition.)

Translation policy. This term could be broadly defined as the policy that applies to translation, but that would be less than helpful. One of the challenges inherent in studying any type of *policy* is that there is no generally agreed upon understanding of what the word means. Part of the problem is that policy analysts tend to take for granted what policy is and assume everyone more or less knows what it is (Jenkins 2007, 23). In a survey of introductory texts that define policy, Jenkins (ibid: 23-25) traces an understanding that ranges from a 1968 definition that amounts to a very complex set of decisions and actions which have very wide ramifications and which require much thought and time to a 2005 definition that envisions a complex, broad-ranging, implicit and explicit phenomenon found in on-going processes throughout many different contexts that can change over time and can be as much about action as about inaction, often resulting from an on-going range of uncoordinated actions. He observes "that 'whatever it is that we call policy' is a diverse phenomenon, encompassing a variety of institutional forms and practices, in a range of settings" (ibid., 26). This broad understanding of policy is helpful in that it makes visible many actors and settings. For that reason alone, it is a helpful starting point for this study. Even so, such an approach toward policy can become in fact too broad to work with.

It calls for further refinement.

In terms of policy, broadly understood, it seems that translation flows to a certain extent from language policy. Language policy is a form of policy in which many institutions engage, from families to supranational organizations. Among them we find states (Phillipson 2003, 13). When states engage in language policy, they do it as a form of public policy (Grin 2005, 250). Language policy is worthy of study because it aims at managing diversity so as to increase public welfare (ibid.).

As important as language policy is, it is hard to define—no single definition carries universal approval (O'Rourke & Castillo 2009, 34). The term itself competes with other terms such as language planning, language management, language engineering, and language governance (Walsh 2012, 324). While each of these terms reflects a welcome level of nuance, they overlap and are fuzzy around the edges. Consequently, a term like "language policy" is messy because it may mean different things in different circles (Phillipson 2003, 17-18). To illustrate some of the lack of uniformity, I will point to Mar-Molinero (2000, 74) who complains that language policy is often confused with language planning. She argues that language policy has to do with the explicit and implicit decisions regarding language use, while language planning is restricted to the explicit means whereby that policy is put into practice (ibid., 74-75). Tonkin also bemoans that authors cannot tell language policy apart from language planning, but he sees the distinction as more one of "codification" for language policy and "implementation" for language planning (2008, 1). While a distinction between policy and planning can be methodologically helpful (e.g., Diaz Fouces 2006:1), the fact that so many authors fail to make the distinction suggests that such a distinction ends up drawing somewhat arbitrary lines between two concepts that are not mutually exclusive.

There are concepts of language policy that try to take a broader view in order to account for the ideological aspects of language policy. For example, Tollefson takes a critical approach and argues that language policy can be understood as "the institutionalization of language as a basis for distinctions among social groups (classes)" (Tollefson 1991, 16). In turn, Schiffman argues for a broad notion of language policy that recognizes it as decision-making "grounded in *linguistic culture*,

that is, the set of behaviours, assumptions, cultural forms, prejudices, folk belief systems, attitudes, stereotypes, ways of thinking about language, and religio-historical circumstances associated with a particular language" (Schiffman 1996, 5; see also ibid. 2006, 112).

In this medley of understandings,[8] one definition that has become influential is Spolsky's. While admitting that word policy is ambiguous (Spolsky 2009, 5), as illustrated in the preceding paragraphs, he attempts to theorize language policy by trying to identify its nature (Spolsky 2004, 223). He does this by identifying its component parts, taking an inclusive approach. In so doing, he includes concern for the "policy" side and the "planning" side as well as for the ideological underpinnings of it all. He proposes that language policy is a concept that encompasses language practices, language beliefs, and language management (ibid., 5). The term "language practices" refers to "the actual language practices of the members of a speech community"[9] (Spolsky 2012, 5). An example of language practice might be the practice by Americans of referring to the path along a road as a sidewalk (Spolsky 2004, 9). The term "language beliefs" refers to "the values assigned by members of a speech community to each variety and variant and their beliefs about the importance of these values" (Spolsky 2012, 5). An example of language beliefs might be the idea that a language such as Spanish is corrupted by the adoption of indigenous words from Latin America (ibid., 23). And the term "language management" refers to "efforts by some members of a speech community who have or believe they have authority over other members to modify their language practice" (ibid., 5). This last element of his definition is what some prefer to call language planning (ibid.). An example of language management might be the writing of a national constitution that names Albanian as the official language of the Republic of Albania (Spolsky 2004, 12). The interrelationship between the three is

[8] For a detailed outline of how the field of language policy has evolved in its understanding of what "language policy" is, see Jernudd and Nekvapil 2012.

[9] The term "speech community," as used by Spolsky, refers to "those who share a communication network" (2009, 2). He uses another term, "language community", to refer to "all those who speak a specific variety of language" (ibid.). The distinction between the two is not always clear cut.

stressed by this observation: language management must be consistent with language practice and beliefs in order to have real effects (ibid., 222).

Spolsky's definition is useful for at least four reasons. First, it serves to highlight that language policy exists in "highly complex, interactive and dynamic contexts, the modification of any part of which may have correlated effects (and causes) on any other part" (ibid., 6). Second, from a methodological standpoint, this definition allows researchers to focus more on one or another of these three broad and interrelated areas of language policy while at the same time acknowledging the existence and relevance of the others. Third, it allows for the exploration of management, practice, and beliefs without being forced to draw bright lines between them. This helps overcome the tricky distinctions posed by more restrictive understandings. The uneasiness over the distinction between policy and planning thus becomes less of a problem. Fourth, it is wide enough to allow the exploration of many different types of concerns which are validly raised by authors such as Tollefson and Schiffman, including power relations and linguistic culture. For these four reasons, on this study I will lean on Spolsky's understanding of language policy.

This understanding of language policy is the center piece of a theory which has as key notions not only language policy as language beliefs, management, and practice but also the notion that language policy applies to "all levels that make up language" (e.g., pronunciation, spelling, grammar, and style), the notion that language policy functions in a complex and wide environment "of linguistic and non-linguistic elements, variable and factors", and the notion that language policy operates in specific domains (ibid., 39-41). This last notion is quite relevant for this study. Spolsky borrows the concept of domain from Fishman, who argues that research into language choices is best approached in specific domains (ibid., 42). The list of possible domains is very long and can include families, churches, neighborhoods, schools, activist groups, court systems, healthcare institutions, armed forces, governments, international organizations, etc. For example, in the family domain, the location is the home, the participants are the family members, and the topic is that which is related to the family's activity (ibid., 42).

Bearing this in mind, we should remember that in today's complex, multilingual democracies, language policy must involve the use or non-use of translation, especially when it comes to choices about communication with individuals who speak a language other than that of the state.[10] Translation in this context manifests itself as a diverse phenomenon which encompasses a number of values, decisions, and practices in different domains. This implies that translation policies arise alongside language policies (Krouglov 1997, 35; Diaz Fouces 2002, 85). There is, as Meylaerts keenly puts it, "no *language* policy without a *translation* policy" (2011b, 744, italics in the original).

And yet the term *translation policy* has become problematic for the field of translation studies. The idea of translation policy has meant so many things to so many authors that its meaning cannot be unanimously understood. Meylaerts (2011a, 163-166) indicates that policy has been understood by translation scholars to mean the strategies employed by translators while translating; scholarly advice on the role of translation and translators in society; the factors that govern the type, timing, and extent of texts to be translated; the conduct of the government or administrative authorities vis-à-vis translation; the legal rules that govern translation in the public sphere; and the behavior of non-official institutions to promote (or not) translation in specific settings. Thus, in translation studies the term policy has become a sort of "umbrella term" that risks "becoming an empty notion with little conceptual surplus value" (ibid., 163). Thus, if I am to move forward with a study of translation policy, I need to shed past definitions that are unhelpful and settle on something that is methodologically and conceptually useful.

Meylaerts herself has attempted to do this. She has proposed a definition of translation policy as "a set of legal rules that regulate language use for purposes of education and communication, the latter covering the language of legal affairs, of political institutions, of the media, and of administration" (2011b, 744). She further acknowledges that "relatively informal situations too have a policy dimension, albeit

[10] Translation policy is also an issue for non-democratic societies. For example, totalitarian regimes impose strict controls on the choice of texts to be translated (Krouglov 1997, 37). This thesis, however, focuses on translation in multilingual, democratic societies.

in a less structured and often far more complicated manner" and that consequently there is a place for the study of translation policy in non-official settings (ibid. 2011a, 167). This definition is a welcome step forward, but it may be too narrow for the purposes of this thesis.

In essence, for this study, I take Meylaerts' definition of translation policy as a starting point and build upon it. To do so, I first recognize that in multilingual societies there is a relationship between translation policy and language policy. Language policy, in the end, is about language choices (Spolsky 2004, 217). And in multilingual societies, these choices result in communication networks which imply "una pràctica continuada de traducció" [a continuous practice of translation] (Diaz Fouces 2002, 85). In a way, translation policy exists side by side with language policy. Translation policy, like language policy, is a type of cultural policy aimed at goals which include managing the flow of communications among the masses, establishing certain types of relationships between groups and their surroundings, or attributing a particular symbolic value to specific kinds of cultural products (ibid., 86). This implies that translation policy works in conjunction with language policy in different settings and at different levels. If we recognize this, we can rely on concepts from language policy to help us theorize translation policy. We can lean on Spolsky's understanding of language policy as language practices, beliefs, and management, to conclude that translation policy can be helpfully understood as more than a set of legal rules that bear on the use of translation. Meylaerts' definition can be conceptually linked to language management, and then even be referred to as a form of translation management. Yet translation policy can also be understood to cover matters of practice and belief. As one considers the relationship between translation policy and language policy, it becomes evident that translation plays a role in each of Spolsky's three general areas.

I should point out that it is not my intention to say that language and translation are to be understood as being the same thing! As explained above, however, in multilingual societies the two are closely linked and fit within broader cultural policies. Because of this, approaches that are helpful for language policy

conceptualization may also help conceptualize translation policy. In essence, we *can* talk about translation practices, translation beliefs, and translation management.

Therefore, I work with the understanding that translation policy indeed encompasses management, practice, and beliefs. "Translation management" refers to the decisions regarding translation made by people in authority to decide a domain's use or non-use of translation. These decisions may be made by anyone from legislators to local site managers, so that the decision may be made from outside the domain as well as inside. The decisions may be attempts to influence not just the choices of the people who actually do the translating but also those of individuals who engage translators and interpreters. Translation management may be thought of as explicit or overt policy. When decisions are explicit, they are to be found as codified or written in various documents, ranging from national legislation to a local branch's in-house guidelines.

Looking only at translation management, however, would yield an incomplete picture of translation policy, because a great deal of policy is to be found in translation practice. "Translation practice" refers to the actual translation practices of a given community. These practices may come in the footsteps of explicit policy decisions, i.e., of translation management, but they may also be the result of implicit or covert policy (which may or may not be codified via translation management at a later point). In other words, translation practices help create policy in a very real way, even if this practice is not always explicitly mandated through legal rules. Translation practice is to be found within each domain, and it involves questions such as what texts get translated, what mode of interpreting is used, into and out of what languages, and where it takes place.

Translation practice, of course, is linked to the ideas that participants in a given domain may have about translation. Consequently, a look at translation policy must also consider translation beliefs. "Translation beliefs" refers to the beliefs that members of a community hold about the value of translation. This involves issues such as what the value is or is not of offering translation in certain contexts for certain groups or to achieve certain ends. Such beliefs are to be found in each specific domain, but they need not originate within the domain. Translation beliefs are at

times spoken, but often remain unspoken, in which case they can be inferred from practice. This is not to say that there is only one translation belief that informs practice in every domain. There may in fact be several beliefs operating at the same time in a domain, even conflicting ones. Additionally, there may also be tension between management, practice, and belief, and the relationship between each of these three aspects is complex, as they affect each other in continuous, dynamic ways that are hard to measure

Be that as it may, I find this definition of translation policy to be methodologically and conceptually useful. Thus, translation policy in this light can be used to study the way translation is managed by a religious organization, the way translation is practiced in a government institution, and the beliefs regarding translation in a given transnational organization, or it can be used for a comprehensive study that considers all three elements in any given domain.

The definition is methodologically useful because it allows researchers to deal with distinct areas without having to draw a bright line between them. This thesis attempts to systematically gather data regarding translation policy. It does so first by searching for translation policy as found in the management of translation. Translation management is approached through binding law and its attendant policy documents.[11] These laws and documents can be conceptualized as explicit policy in translation management. The study also addresses translation practice by referring to reported practice of the institutions that provide translation in specific domains where government interacts with citizens. These reported practices can be conceptualized as implicit policy. Finally, beliefs pertinent to translation are explored as part of the analysis of translation management and practice. Because the domains in this thesis are official domains, the study will explore the beliefs of those in authority to make translation choices for management and practice.

Additionally, the definition is conceptually useful because is it neither too broad nor too narrow. By setting the boundaries at management, practice, and belief,

[11] The term "policy document" is used broadly to mean any document that describes the way translation is to be managed. The documents themselves may have the word "policy" in the title, but they may also be described as guides, guidelines, guidances, and even instructions.

the definition avoids the pitfall of becoming so broad that it morphs into what could be seen as "an empty notion with little conceptual surplus value" (Meylaerts 2011a, 163). By moving beyond legal rules, the definition is not so narrow as to limit itself to one specific element of what is understood as policy and consequently avoids what could be seen as "a very incomplete and biased view" (Spolsky 2004, 40).

4. State obligation to translate under international law

"Si él no sabe nuestro idioma,
el Gobierno tampoco está en obligación
de saber el suyo."
- El Supremo, in Augusto Roa Bastos, *Yo el Supremo*

1. Introduction

This chapter will address state obligations to translate as found in international law. By addressing this topic, the chapter will deal mostly with a form of translation management—it will consider overt policy decisions, as codified in international law, regarding the use of translation at the national level. To be clear, the chapter will not deal with translation decisions within supranational organizations,[1] but rather with the obligations to translate imposed on states by supranational organizations that help shape international law. It will begin with some relevant observations regarding the nature of international law and its relationship to language issues. Then it will explore translation obligations under general international law. This will necessitate that the general principles of freedom of expression and equality/non-discrimination be addressed, after which treaty provisions relating to language and translation will be analyzed. The chapter will then move to translation obligations under international law in Europe, where language issues are more developed through Council of Europe (CoE) treaties as well as different forms of EU law. These will be explored as well as recommendations by the Organization for Security and Co-operation in Europe (OSCE).

[1] Organizations such as the EU or the International Criminal Court have their own rules regarding translation, which will not be addressed in this study. Such research can be found elsewhere. For example, Koskinen (2008) offers an ethnographic study of translation in the EU. In turn, Namakula (2012) offers an overview of the linguistic and translational dimensions of the right to a fair trial in international criminal justice.

1.1. Why international law?

The issue of language rights has come to the forefront in the last decades, as evidenced by the literature on the subject and the political changes that have taken place granting greater rights to minorities (many of which speak languages other than the majority language). As countries adjust their language policies, many social, political, economic, and legal forces have come into play. Of particular interest for the scope of this study are the legal forces that have helped language policy evolve, especially when it comes to translation for linguistic minorities. Legal developments within each state are affected by many factors, including what they see their neighbors doing. Modern European states, for example, often compare their social policies, including language and translation policies, against those of other states or seek to adopt what they see as European social policies (Lendvai & Stubbs 2007, 174). Those common policies help drive international law, which in turn fosters developments in domestic law. Indeed, international law permeates domestic law more and more. Consequently, when trying to understand domestic legal developments, some aspects of international law may need to be taken into account. This is so because international law offers a sort of legal common denominator for states, not just in their interactions with each other but also in their domestic policies. Therefore, this chapter sets out to answer a question that must be asked when going from the top down: *Under general international law, what translation must take place in domestic policies?* Because the thesis focuses on Europe, the chapter addresses also this question: *Under European international law, what translation must take place in domestic policies?* Seeking to answer those questions will give this study a broader European perspective. Because one of the aims of this study is to understand if translation policies are intended to integrate linguistic minorities, I will be on the lookout for any links between translation as mandated under international law and issues of integration.

1.2. Language rights under international law

The questions posed above are relevant because they are linked to language rights, a topic that has not gone unnoticed in international law. The right to translation, to the extent there is one, derives from rights that have linguistic dimensions. And yet, inasmuch as there are translation obligations under international law, they usually do not derive from a concern for the integration of linguistic minorities. This is so because the main objectives of instruments that address language issues in international law generally lie elsewhere.

De Varennes indicates that there are three major approaches to dealing with language issues under international law[2] (De Varennes 2012, 24). The first is by drafting instruments aimed at the "[p]rotection of endangered languages" (ibid.). These instruments, despite stressing the importance of the survival of cultural heritages, create no rights for individuals and no real obligations for states (ibid.). The second approach is the "[p]rotection or promotion of linguistic diversity" (ibid.). International instruments that fall under this approach seek to protect linguistic diversity by creating obligations upon states, even if no individual rights are created (ibid., 24-25). Finally, there are "[h]uman rights instruments" that deal with matters that have linguistic dimensions (ibid., 24). These treaties apply "basic human rights standards such as freedom of expression, the right to private life or non-discrimination and other human rights" to areas involving language, either by protecting individuals in general or individuals who belong to vulnerable groups (ibid., 25). This approach is anchored on the recognition of human rights.

In essence, when international law addresses language issues, it is concerned primarily with protecting endangered languages, promoting linguistic diversity, or recognizing basic human rights. What this implies for this study is that it is highly unlikely that the issue of integrating linguistic minorities will arise as a central concern under international law. Of course, the international provisions that affect language and translation may indirectly affect matters of integration, but the connection will generally not be very explicit.

[2] For a critical analysis of the way international law deals with language issues, especially when it comes to justice between speakers of different languages, see Mowbray (2012).

2. International law and its sources

2.1. Binding international law

A word is in order regarding what I mean when I speak of international law. The last twenty years or so have seen an increase in the production of many kinds of international documents that have to do with minority rights, including language rights. They tend to bear impressive names that suggest great advances in international law: the Declaration on the Rights of Indigenous Peoples, the Universal Declaration on Cultural Diversity, the Universal Declaration of Linguistic Rights, and so forth. As grandiose as they sound, these documents are not very relevant for current purposes. First of all, because they are not treaties, they are not binding. Consequently states can—and often do—ignore them at will. Second, they are not descriptive per se, so they are of little help as a reflection of the real world. (If they were descriptive, this could be enlightening from a scholarly perspective, but they are not intended to be.) Therefore, when looking at national translation policies as guided by international law, it is helpful to understand what "hard" international law really is. In that regard, consideration must be given to the sources of international law and to the role of international and regional tribunals in the understanding of international law.

Generally speaking, international law can be conceived of as the rules and principles binding on the relationships between states. However, as will be explained in the next two paragraphs, international law no longer limits itself to the relationships between states. Because of that, I lean on a definition of international law as the "rules and principles of general application dealing with the conduct of states and of international organizations and with their relations *inter se*, as well as with some of their relations with persons, whether natural or judicial" (American Law Institute,[3] section 101, italics in the original).

[3] The American Law Institute is an independent, non-profit organization that engages in several activities, including the production of scholarly work to help legal practitioners better understand the law. I rely on the American Law Institute's definition of international law because it is particularly

A word on terminology. Traditionally speaking, there have been two types of international law. There is public international law, which deals with the way nations interact with each other (Carter, B. E., Trimble, P. R., & Weiner, A. S. 2007, 1). Dispute resolution between nations and the law of the sea are examples of public international law. There is also private international law, which deals with the activities of individuals, corporations, and other private organizations as they move across borders (ibid., 1-2). This often takes the form of conflict-of-law rules to be applied when there is a commercial conflict (ibid., 2). For our purposes, we are concerned with public international law, inasmuch as public international law deals with the conduct of states. For example, human rights' instruments, with their implications for language, deal with the conduct of states toward individuals. Thus, in this study the term "international law" refers to public international law.

2.2. The sources of international law

In order to know where to look for the rules of principles of international law, one must understand the sources of such a type of law. An important statement on the sources of international law is to be found in the Statute of the International Court of Justice (ICJ) (see Slomanson 2011, 27). The Statute is the part of the Charter of the United Nations that creates the ICJ. Article 38 recognizes the following sources of norms: "a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. […] judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law" (ICJ Article 38). The order of Article 38 seems to suggest a hierarchy of sources (Slomanson 2011, 27). This hierarchy, while not undisputed, should be borne in mind when looking for rules of international law.

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well suited to the purposes of this chapter. (It should go without saying that this definition is not the interpretation of the US government of what international law is. The interpretation of the US government may or may not coincide with this one, but I do not know what it is nor find it relevant for this discussion.)

A little more needs to be said about these sources of international law. Regarding international conventions, they are simply multilateral agreements or treaties. These treaties create international legal obligations, and they may even create domestic obligations. Precisely because of that fact, treaties are important for purposes of this writing. Regarding customary international law or international custom, it is the practice of States, which creates a sense of duty, in matters of international concern (Carter et al.: 152; Buergenthal & Murphy 2006, 22-23). Because much of customary international law has been codified in the treaties, I will not consider it further in this study.

When looking at Europe specifically, there are some further sources that need to be explored. The rise of the EU has resulted in very specific sources of international law that apply to EU member states only. Of course, the treaties that have gradually created the legal, political, and institutional framework of the EU are a source of international law for the states party to those treaties. These treaties have higher status than legislation made through normal legislative procedures (Nugent 2006, 284). They are, consequently, the primary legislation for the EU. They often deal with, among other things, broad policy principles (ibid.).

Below them sit the specific enactments that implement the general principles found in the treaties, which can therefore be conceived of as secondary legislation (ibid., 285). According to the treaties, secondary legislation can take the following forms in the EU: regulations, directives, decisions, and recommendations and opinions (ibid.). Recommendations and opinions are not binding, so they are not law in the sense that states do not have to abide by them (ibid., 287). Therefore, the three types of EU secondary legislation which can be a source of international law throughout all of the EU are decisions, regulations, and directives. These will be briefly described now.

Regulations are binding, generally applicable, and directly effective, i.e., they become effective in all member states without any national measures of implementation (ibid., 285). This means that regulations become the law of each member state upon issuance even if the regulations contradict national law (Folsom 2011, 97). Directives, on the other hand, are binding as to results but not method

(Nugent 2006, 285). Directives are usually concerned "with the laying down of policy principles that member states must seek to achieve but can pursue by the appropriate means under their respective national constitutional and legal systems" (ibid., 286). Appropriate means to implement directives at the national level include new statutes, presidential decrees, administrative acts, or even constitutional amendments (Folsom 2011, 55). In practice, the line between directives and regulations is sometimes blurred[4] (Nugent 2006, 286). Decisions are addressed to specific member states, and are only binding to those to whom they are addressed (ibid., 287). However, "framework decisions" are used by the EU to implement common policies across the Union, and member states have relatively short periods of time to implement the decisions into national law (Peers 2006, 384), thus being similar to directives. The result is that these three types of EU legislation can have a powerful impact in shaping national policies.

When dealing with international law, national policies may be affected by the judicial decisions of international and regional tribunals. Besides the ICJ, there are a number of international courts, including the International Criminal Court, the Inter-American Court of Human Rights, the European Court of Human Rights (ECtHR), and several ad hoc tribunals. For this study I need to highlight those tribunals that have a more direct effect in European states.

The ECtHR, established by the CoE, is a unique enforcement mechanism for some elements of international law in Europe (Wästfelt 2010, 31). All states party to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) "have submitted to the compulsory jurisdiction of the court [ECtHR] and have agreed to abide by its decisions, which have normally been accepted and implemented" (Carter et al. 2007, 19). Every state in the EU plus other European states, such as Turkey, are party to the Convention (Folsom 2011:1).

[4] For example, because directives are in essence instructions for implementation of policies, they come with specified time periods for compliance. If the time period runs out, individuals in the EU may ask the ECJ in a given member state to give direct effect to the directive, which basically turns the directive into a regulation (Folsom 2011, 97-98).

Another important tribunal in Europe is the European Court of Justice (ECJ), established by the EU. The ECJ deals in practice with issues considered of major importance to the EU's legal order (Nugent 2006, 298)[5]. Case law in the EU usually arises out of the ECJ, making the ECJ's interpretations a source of law for the EU (ibid.). This happens in part due to the fact that EU legislation is often vague or incomplete, so in interpreting the legislation, the ECJ fills in gaps, clarifies, and extends the law[6] (ibid.). Thus, international jurisprudential activity can also have a hand in shaping domestic policies.[7]

Such jurisprudential activity often focuses on general principles of law. We will briefly mention two of them in this study, so it makes sense to explain what they are. They come up when judges in an international court find a situation where there is no apparent legislation (through treaty or otherwise) to provide rules that govern that situation. This situation would be very unusual, due to the high volume of treaties. However, if it does come up, judges can resort to general principles of law (Carter et al. 2007, 152). While general principles of law can be somewhat uncertain (Wouters, J., Coppens, D., & Geraets, D. 2011, 4-5), it is generally understood that they refer to principles shared—"recognized" in the parlance of Article 38—by states or legal traditions (Carter et al. 2007, 152).

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[5] The EU has also created the General Court, known as Court of First Instance before 2009, which deals with more routine matters, such as employment and non-contractual liability disputes, and some of its judgments can be appealed to the ECJ (Nugent 2006, 298; Folsom 2011, 126-127). Additionally, there is an EU Civil Service Tribunal that deals with staff cases (Nugent 2006, 305). Collectively, these three courts are known as the Court of Justice of the European Union. As far as this study is concerned, the ECJ is the most important court of the EU because it helps shape domestic policies.

[6] That a court makes law is taken for granted by legal professionals in the common-law tradition, but may make their civil-law counterparts flinch. Even so, the ECJ "emerged […] as a powerful law-maker" from the beginning (Folsom 2011, 82). Thus, while its procedures and methods are firmly grounded in the French, civil-law tradition, the ECJ has embraced the law-making role of common-law courts (ibid.).

[7] The process, of course goes both ways. States (which have their own domestic interests) participate in the construction of new rules which are then interpreted and edited by domestic actors for the domestic context (see Mörth 2003, 159-178). These two process are not at odds with each other; rather, they are complimentary.

Having established the parameters about what the most relevant sources of international law are for current purposes, I can now list the following places where I will look for rules that affect translation policy in Europe (not strictly in this order): international treaties; EU decisions, regulations, and directives; judicial decisions by the ECtHR and ECJ;[8] and general principles of law.

3. Translation obligations under general international law

3.1. Two general principles: freedom of expression and equality/non-discrimination

Language rights that are pertinent to translation, in order to be meaningful to individuals, must be realized through state policy. As explained above, that policy may be constrained by international law. What we understand to be language rights under international law, as found in the relevant instruments, often derives from freedom of expression as well as equality and non-discrimination. These two principles are frequently present in the texts of international legal instruments.

Regarding translation, the argument could be made that freedom of expression on the one hand and equality and non-discrimination on the other would surely imply that a minority language speaker can use the language of his or her choosing (and then the government would have to translate) or that in order for the government to communicate with a minority language speaker without discriminating against him or her, the government would have to use that speaker's language (if needs be, through translation). Except that is not really what freedom of expression and equality/non-discrimination imply in international law.

As De Varennes points out (1996, 44-49), freedom of expression guarantees the right to choice of language in private matters only (i.e., in the non-governmental

[8] Cases that deal with alleged state violations of human rights are dealt with at the ECtHR, but cases of language discrimination seem to be handled by the ECJ (Phillipson 2003, 160). Consequently, the ECtHR has provided more guidance regarding different rights to language. That is not to say that the ECJ has not dealt with the issue, albeit in a different context.

realm), and even that can be restricted if the restriction is predicated upon a rational need and proportional to the aim that needs to be achieved (such as public order, health, or morals). Therefore, under international law, freedom of expression does not guarantee the right to have the authorities translate materials into one's own language.[9] In essence, this freedom does not impose a restriction upon the government's choice of language for interacting with individuals.[10]

When international law talks about equality and non-discrimination, it refers to being equal before the law. Legal equality does not mean that everyone has to be treated exactly the same. There may indeed be a rational basis for a proportional, differential treatment. Under legal equality, however, differential treatment cannot be based upon certain grounds, which are restricted by law. It is common-place for human rights instruments, both general and regional, to cite language as such an impermissible grounds for discrimination. Thus, "the exclusive use of a single language constitutes differential treatment which may in some cases be discriminatory" (ibid., 77-78). As indicated above, a government can discriminate on the basis of language if there is a rational basis for such discrimination and that discrimination is proportionate (ibid., 79-80). De Varennes (ibid., 90-105) identifies the following grounds that make it permissible for a government to have language preferences: national unity, number of speakers and their concentration, whether the language is spoken by citizens or non-citizens, practical considerations related to limited resources, compensatory means to eliminate the effects of historically

[9] This is evident when considering that the European Commission of Human Rights (which monitored compliance with the ECHR) found no violation of freedom of expression when individuals under different circumstances were asked to use the state's language in the following cases: *Inhabitants of Leeuw – St. Pierre v. Belgium*, *X v. Ireland*, and *Fryske Nasjonale Partij v. Netherlands* (Ulasiuk 2011, 97).

[10] This goes to show how weak a protection freedom of expression is when it comes to language rights. For example, the UN HRC (which monitors compliance with the ICCPR) has indicated that a government may require the use of an additional language besides the individual's language of choice since the individual is still free to express the ideas in his or her own language *alongside* another language (De Varennes 1996, 51). Of course, if an individual is forced to use a language other than his or her own to communicate with the government, the usefulness of the non-governmental language is curtailed. This could in the long run have a chilling effect that could lead individuals to gradually stop using the less-useful language, which arguably curtails their freedom of expression!

oppressive practices, socio-cultural and religious considerations, legitimacy of the goal sought after, and proportionality of the goal to the means employed. What this means is that based on equality and non-discrimination, a government has a very wide range of discretion (or margin of appreciation) when selecting its language preferences, which is to say, when implementing its language policy.[11]

As the two preceding paragraphs show, the many calls for freedom of expression and equality/non-discrimination that are found in international instruments do not per se mean that governments must translate for linguistic minorities. Therefore, we need to look at provisions that more specifically call for translation. Narrow provisions that call upon governments to translate for linguistic minorities are found in the Geneva Conventions, ILO Convention No. 169, the International Covenant on Civil and Political Rights, and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. We will now look at each one in turn.

3.2. International treaties

3.2.1. Geneva Conventions

The 1949 Geneva Conventions[12] are among the first instruments in international human rights law to address the issue of translation for speakers of a language other than the government's, albeit in a very narrow context. The drafters of these documents were concerned with ameliorating the horrors of war, not with integrating linguistic minorities, so the narrowness of the context should not be

[11] This should not be understood to infer states have carte blanche when it comes to their language policies. In *Diergaardt et al. v. Namibia*, the HRC held that the right to non-discrimination under Art. 27 of the ICCPR was violated in a situation where a community of Afrikaans speakers was targeted by public officials through their refusal to use Afrikaans in oral or written communications. Even then, the decision was controversial, as evidenced by the "dissents of numerous Committee members" (Morawa 2002, 8).

[12] The current versions of the Geneva Conventions were drafted in 1949, when the first three Geneva Conventions were updated from the previous versions (1864, 1906, and 1929, respectively) and a fourth convention was added. (Two additional protocols were added in 1977, and a third protocol was added in 2005.)

surprising. Even though the Geneva Conventions apply to times of war and occupation, they are interesting because they are high-profile treaties that include some concern for translation. Further, some of the translation provisions found in these conventions were later echoed in other, unrelated treaties and therefore expanded to situations of non-belligerence.

The Geneva Convention Relative to the Treatment of Prisoners of War (Third[13] Geneva Convention) very much concerns fairness in the treatment of prisoners of war. It is rather conservative, however, when weighing in as to whether a fair treatment means providing translations when needed. Translation is potentially called for in Articles 17, 41, 96, 105, and 107.

Article 17 reads simply: "The questioning of prisoners of war shall be carried out in a language which they understand." This article, which deals with the beginning of the prisoner's captivity, implies the use of an interpreter if the prisoner does not understand the language of his or her captors. The Commentary to the Convention signals that the questioning need not take place in the prisoner's first language, only in a language that he or she will understand (De Preux, J., Siordet, F., Pilloud, C., Wilhelm, R.-J., Uhler, O., Schoenholzer, J.-P., & Coursier, H. 1960, 157). Thus, there is no real concern for whether the prisoner has a right to use his or her own language, but merely the practical consideration of being able to communicate with the prisoner.

Article 41 in turn deals with measures during the internment of the prisoners. It calls for the text of the Convention to be posted or distributed in the "the prisoners' own language." This implies translation, but into what languages? The Commentary defines "the prisoner's own language" as "the official language of the prisoners' country of origin" (ibid., 244). Where more than one language is official in a country

[13] The Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, or First Geneva Convention, does not really address translation issues. The Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, or Second Geneva Convention, implies translation in a very specific circumstance. Article 31 reads in part: "As far as possible, the Parties to the conflict shall enter in the log of the hospital ship in a language he can understand, the orders they have given the captain of the vessel." This narrow obligation is hedged ("As far as possible") so as to make it easily dismissed.

of origin, the Convention should be posted "in the language actually used by the prisoners concerned" if that language also happens to be an official language in the prisoners' country (ibid.). The assumption seems to be that most, if not all, prisoners will have enough of a grasp of their state's official language(s) to read an international treaty in that language. No thought seems to be given to prisoners who do not meet that expectation. One must conclude that they either do not exist or do not matter.

Article 41 further calls for "[r]egulations, orders, notices and publications of every kind relating to the conduct of prisoners of war" as well as "[e]very order and command" to be issued in a language the prisoners understand.[14] If the prisoners do not speak the language of the captors, this can imply either an on-going language teaching effort or a sustained, regular translation effort. For at least one delegate present at the drafting conference, the implication was translation. During a committee meeting, a Turkish representative objected to having to provide translations into many languages, particularly if the languages were lesser used languages (Federal Political Department 1950, 265).

The next three articles of interest deal with disciplinary and penal procedures. Article 96 deals specifically with disciplinary actions against prisoners of war. It calls for a prisoner of war accused of indiscipline to be informed of the accusation and to be allowed to defend him or herself. In this process, the prisoner is "to have recourse, if necessary, to the services of a qualified interpreter." Article 105, which deals with the prisoner's right of defense in a trial setting, indicates that the accused "if he deems necessary" may have the assistance "of a competent interpreter"[15] during the trail. The "Particulars of the charge" and the "documents which are generally

[14] A Dutch delegate to the diplomatic conference that drafted the convention proposed an amendment to have the translations into the prisoner's "mother tongue" (Federal Political Department 1950, 265). The proposal did not prosper.

[15] What exactly the difference is between a "competent" (Art. 105) and a "qualified" (Art. 96) interpreter is hard to tell. The Commentary points out that qualified is a stronger adjective than competent, yet a competent interpreter will do for higher-stake proceedings (trials) but for lower-stake proceedings (disciplinary actions) the interpreter must merely be "qualified" (De Preux et al. 1960, 460-461, 487). Perhaps there is no real distinction between the two in this treaty.

communicated to the accused" must be communicated to the prisoner "in a language which he understands." This implies translation in some situations, even though not necessarily into the prisoner's native language. Finally, Article 107 concerns itself with the communicating of the sentence. It states that if the sentence was not pronounced in the accused's presence, it must be sent to him "in a language he understands." These three articles together reflect a concern with a general principle of law, that of a fair trial for the accused. If the prisoner is going to have further limitations imposed upon his or her liberty, then the prisoner needs to know what the accusation is, to have the ability to defend him or herself, and to understand the outcome of the proceedings.

The Third Geneva Convention indicates that nations should have a policy of linguistic fairness toward captured enemies, particularly in disciplinary and trial settings, and in certain circumstances, that policy can only be achieved through the use of translation. A similar linguistic policy should be adopted toward civilians under military occupation, according to articles 65, 71, 72, and 99 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

Article 65 mandates that the "penal provisions" of the occupying power must be "published and brought to the knowledge of the inhabitants in their own language." Here again, the Commentary indicates that "their own language" is really the official language of the occupied country, not necessarily the language spoken by the local populations (De Preux et al. 1960, 338). If the country has several official languages, the publication should follow whatever was customary in that place regarding the publication of laws before the occupation (ibid.). The idea is that people should not be judged according to unknown laws. Limiting translation activities to official languages may be more than likely due to practical concerns. Indeed, concern was expressed during the drafting conference that too much translation would be burdensome. Even so, there seems to be also an assumption in this article that everyone that lives in a specific place speaks the official language of that place (ibid., 430). This may not always be the case, particularly in some rural communities and among immigrants.

Articles 71 and 72 deal with judicial procedures, and they both mirror Article 105 of the Third Geneva Convention in regards to translation. Article 71 calls for prosecuted individuals to be made aware of the charges "in a language which they understand." Article 72 indicates that accused individuals will be assisted by an interpreter during preliminary investigations and the actual hearings, unless such individuals "freely waive such assistance." They may also object to a particular interpreter and ask that he or she be replaced.

Article 99 deals with the treatment of internees and it mirrors Article 41 of the Third Geneva Convention. Among other provisions, Article 99 calls for "[r]egulations, orders, notices and publications […] to be communicated to the internees and posted inside the places of internment, in a language which they understand." Similarly, orders to individual internees must be issued "in a language which they understand." When there are language differences, this calls for bilingual staff or translation, or a mixture of both. This article stresses that "internees" must have access to a copy of the Convention in a language they can understand. The Commentary indicates that in this context, internees usually will understand the official language of the country where they are detained, but if not, translations into "foreign" languages must be provided as needed (ibid., 430-431).

Because they deal with conduct in times of war, the Geneva Conventions are narrow in their linguistic applications. Even so, they reflect principles of fairness, particularly when it comes to judicial and penal procedures. The drafters of the Geneva Conventions understood that if someone stood before a tribunal who did not speak the language of the tribunal, proceeding without some form of translation would be unfair. Thus, linguistic protections are called for. These are not triggered by the defendant's nationality or linguistic preference, but rather by his or her inability to understand the proceedings (or laws/rules and orders). The linguistic protections found in the Geneva Conventions, which at times can only be achieved through translation, are so obvious that they are found under international law in areas far removed from the horrors of war.

3.2.2. International Covenant on Civil and Political Rights

The 1966 International Covenant on Civil and Political Rights (ICCPR) is one of three documents that are considered to be the International Bill of Rights.[16] The obligations set forth in the ICCPR are monitored by the Human Rights Committee (HRC), to which all parties are required to self-report. States are permitted to file complaints before the HRC, and individuals from states parties to the first Optional Protocol can also file complaints. Thus, the HRC serves as a forum of redress, even though it is not strictly speaking a tribunal. Even so, the HRC's General Comments to the ICCPR are authoritative interpretations (Scheinin 2008, 24).

The ICCPR reflects the same concern for fairness in judicial proceedings as the Geneva Conventions, particularly as seen in Articles 105 and 106 of the Third Geneva Convention. The ICCPR's Article 14 refers to criminal proceedings. Among the "minimum guarantees" outlined in 14(3), everyone is entitled "(a) [t]o be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." It should be noted that, much like with the Geneva Conventions, "a language which he understands" is not necessarily the accused person's native language. This was settled in *Guesdon v. France*, where the HRC signaled that the requirement for the assistance of an interpreter in court proceedings applies only when the accused is not "capable of expressing himself adequately in the official language" and should not be construed as a right to choose the accused's native language if he or she can speak the "official language." Regarding interpreting, Article 14(3) further indicates that everyone is entitled "(f) [t]o have the free assistance of an interpreter if he cannot understand or speak the language used in court." The HCR has clarified that this right to a free interpreter applies to nationals and non-nationals and is not contingent upon the trial's outcome (United Nations 2008a, 187). This right, however, does not extend to non-criminal court proceedings (ibid., 209).

At most, that is all the ICCPR stands for: the right to translation in criminal proceedings. As will be seen below, subsequent instruments will expand this, but not

[16] The International Bill of Rights is comprised on the Universal Declaration of Human Rights, the ICCPR, and the International Covenant on Economic, Social, and Cultural Rights. Of these three, translation appears as a right only in the ICCPR.

very broadly. Basically, very few international instruments call for translation beyond the context of criminal proceedings (Alanen 2009, 102). In fact, several of the instruments that followed the ICCPR limited themselves to reiterating this narrow right to translation.[17]

3.2.3. ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries

The 1989 International Labor Organization Convention (No. 169)[18] concerning Indigenous and Tribal Peoples in Independent Countries (Convention 169) is the major international instrument dealing with the rights of indigenous peoples.[19] Compared to the ICCPR, the rights to translation found in Convention 169 are both narrower in applicability and broader in scope. They are narrower in terms of who they apply to. Convention 169 applies to "indigenous peoples," a term that is vaguely defined in Article 1, thus leaving the task of identifying specific groups to

[17] A good example of this is the 1989 Convention on the Rights of Child (CRC). In a lot of ways, the CRC is an ICCPR aimed specifically at protecting persons under 18. The minimum guarantees that the CRC sets out in Article 40 for a child accused of criminal violations include being "informed promptly and directly of the charges against him or her." This could mean translation, both interlingual and intralingual, as explained in the General Comments: "The child should be informed in a language he/she understands. This may require a presentation of the information in a foreign language but also a 'translation' of the formal legal jargon often used in criminal/juvenile charges into a language that the child can understand" (United Nations 2008b, 531). Further, this article explicitly says that when the child does not speak the language of the court, he or she is entitled to "the free assistance of an interpreter." This assistance is to be available at all stages of the judicial process (ibid., 534). (The General Comments are issued by the Committee on the Rights of Child, the body charged with monitoring the obligations set forth in the CRC. All state parties are required to self-report to this Committee.) With the exception of the notion of intralingual translation, the rights here are very similar to those in the ICCPR.

[18] Convention 169 updates the 1957 ILO Convention (No. 107) Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries, which is no longer in force in most of the world.

[19] Only four European states have ratified this convention: Denmark, the Netherlands, Norway, and Spain. Thus, while it is an important aspect of international law for indigenous peoples (particularly in the Americas, where 14 states have ratified it), its influence in Europe is rather limited.

each state party to Convention 169. Article 1 clearly indicates that the protections in the Convention apply only to individuals who belong to an indigenous group. To those who do belong to such groups, the right to translation is broader than under the ICCPR.

Articles 12 deals with proceedings where the protection of the peoples' rights may be at issue: "Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means." At first brush this may seem to echo the rights in the ICCPR, but this is much broader. Article 12 effectively refers to all legal proceedings, not just criminal proceedings. Under this Article, the availability of interpreting in legal proceedings is not merely a matter of fairness. It is specifically a tool to allow indigenous peoples to protect their rights by being able to effectively "take legal proceedings." The assumption behind this right to translation is that indigenous peoples are often unable to communicate in the language of their state's legal system (International Labour Office 2003, 28). Thus, if they are to stand before a tribunal to look for the protection of their rights, they may need translation.

Article 30 calls for letting indigenous peoples know what their rights are under Convention 169. According to this article, the right should be made known in a culturally sensitive way, and if needed, "by means of written translations" and mass communication in indigenous languages.

Thus, when taking Articles 12 and 30 into account, Convention 169 views translation as a means to securing rights—not specifically language rights, but a much broader set of rights regarding "labour, economic opportunities, education and health matters [and] social welfare" (Art. 30). Translation is intended to play a role in informing indigenous peoples regarding their rights but also in granting access to those rights. Consequently, translation is viewed as a means to obtaining greater rights in society without forsaking any cultural distinctiveness, including language. This is a much broader approach than that found in the ICCPR.

3.2.4. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

The 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW) is a UN treaty aimed at protecting the rights of migrants.[20] The ICRMW affords no new rights to migrant workers (McDermott 2011, 35). Consequently, its linguistic protections may seem redundant, especially in light of other treaties. However, they exist because they are intended to put migrant workers and their families on equal footing with citizens on several grounds, including the administration of justice.

Specifically, Article 16 calls for the reasons behind a migrant's arrest to be communicated "in a language they [the workers] understand." That article also indicates an interpreter should be present during the subsequent, preliminary court proceedings "if they [the workers] cannot understand or speak the language used" by the tribunal. In the case of further criminal proceedings, migrant workers are guaranteed "the free assistance of an interpreter if they cannot understand or speak the language used in court" under Article 18. Finally, if a decision is made to remove the migrant from the receiving country, that decision must be communicated "in a language they [the workers] understand," according to Article 22. The decision to remove a migrant worker from the host state is not necessarily a determination in a criminal proceeding, so this right to notice of removal (which may imply translation) may go beyond the ICCPR.

3.2.5. Summary of translation obligations found in general international treaties

As can be seen from the brief look at the preceding instruments, general international law imposes on states very few obligations to translate. Thus, many states throughout the world can conclude their domestic translation policies are in compliance with international law if they offer translation: 1) to prisoners of war and occupied civilian populations, under specific circumstances mostly related to penal

[20] The ICRMW is in force as an instrument of international law, yet it has been ratified primarily by migrant-sending countries. Migrant-receiving nations in North America, Western Europe, and the Persian Gulf have not ratified it. This is problematic because it means the IRCMW is not a significant instrument for the protection of migrants. While the treaty is really not in force in Europe, some of its linguistic protections can be found in European law nonetheless.

or disciplinary issues; 2) to nationals and non-nationals, during criminal proceedings (from the time when charges are presented to the sentencing), free of charge; 3) to indigenous peoples, during all legal proceedings in order to help them safeguard a broad set of rights; 4) to migrant workers, during criminal proceedings and removal notification. These are rather specific instances. Except for the broader rights to be secured for indigenous peoples, these obligations to translate are mostly grounded on notions of fairness and not as a means to integrate linguistic minorities.

4. Translation obligations under European international law

4.1. A "common European umbrella"

European states are bound by general international law. They also have to comply with an ever-growing body of law that is specific to Europe, most notably through the CoE and the EU.

The CoE was the first institution founded with the ideal of carrying out European unification (Schwimmer 2010, 16). Because of its efforts to create a common European policy on certain non-economic areas, the CoE has championed important instruments for the protection of minorities, including linguistic minorities. This work takes place alongside that of the EU.

The EU, which grew out of the European Steel and Coal Community, came about as a supranational organization originally founded to bring competing powers together through close economic cooperation (Folsom 2011, 3-6). Its nature is such, that the economic life of the EU's member states is deeply affected by EU policies. As the EU has grown in size and scope, it has taken on social issues as well. Thus, EU law often deals with socio-economic inclusion (Schmidt 2008, 6).

There is one more organization in Europe that ought to be mentioned: the OSCE. The OSCE seeks to prevent conflict in Europe. While the OSCE does not create binding law, it has issued a number of Recommendations that provide guidance on how to implement international law (High Commissioner on National Minorities

1999, 7). The Recommendations, while not binding themselves, are considered persuasive interpretations for member states (ibid.).

Taken together, the CoE, the EU, and the OSCE provide "a common European umbrella with a set of values […] that work towards protecting [the] identity of ethnic groups and their cultures" (Schmidt 2008, 6). This "common European umbrella" covers issues relating to language, including translation. Thus, in order to understand what is mandated by European international law, we need to look at legal instruments advanced by the CoE and the EU, always in the light of any relevant judicial decisions. The OSCE's understanding of these obligations can shed further light on the role of translation in Europe when it comes to linguistic minorities. Consequently, we will explore international law that is specific to Europe in the following order: CoE treaties;[21] EU treaties, regulations, directives, and (framework) decisions; and OSCE recommendations.

4.2. CoE Treaties

4.2.1. Convention for the Protection of Human Rights and Fundamental Freedoms

The 1950 ECHR is a CoE treaty that seeks to protect the human rights of individuals in Europe. Any individual who feels his or her rights under the convention have been violated in one of the CoE's member states can look for a remedy before the ECtHR. The ECtHR, by adjudicating the matters before it, helps define and evolve the ECHR.

Article 5 of the ECHR guarantees freedom from arbitrary arrest and detention (Dunbar 2001a, 104). In that context, Article 5 calls for an individual who has been arrested to "be informed promptly, in a language which he understands" of the reason for the arrest or any charges against him or her. This implies translation if the person does not speak the language of the arresting authority. While the language of Article 5 seems to imply this right applies only for arrests of suspected criminals, the ECtHR in *Van der Leer v. Netherlands* extended the right to be informed of reasons for

[21] When looking at European legislation, the conventions pushed by the CoE are the obvious starting point. The CoE has been more "energetic in framing legislation for minority protection" (including linguistic minorities) than the EU, or the OSCE (Schmidt 2008, 7).

arrest beyond the criminal law realm into other types of detention, including that of the mentally ill. *Čonka v. Belgium*'s finding is consistent in that individuals arrested with the aim of removal from the state also have this right.

Article 6 of the ECHR guarantees the right to a fair trial (ibid., 105). Article 6 states that when there is a criminal charge, the accused has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him" and "to have the free[22] assistance of an interpreter if he cannot understand or speak the language used in court." This right should not be read too broadly. Here is where the case law of the ECtHR helps define the limits of the right. While in *Kamasinski v. Austria*, the HCtHR concluded that the right to the assistance of an interpreter includes written material, not just oral statements, the same case signals this is not an unlimited right to translation—an oral explanation of the contents of a document will suffice if the explanation allows for the effective participation of the accused. In *Uçak v. United Kingdom*, the court further clarified that not all materials have to be translated, only those necessary for the accused to be able to defend him or herself. *Uçak* also stands for the proposition that the interpreter is not formally required to be independent (e.g., the interpreter could be related to the accused) but must nonetheless provide services that are not an obstacle to the fairness of the procedures. That is not to say that any interpreter will do. According to *Coban v. Spain*, what matters is that the accused understand the nature of the proceedings in a way that he or she can participate in his or her defense. So an interpreter will do (regardless of formal qualifications) if he or she can accomplish linguistic fairness in the proceedings. *Cuscani v. United Kingdom* signals, however, that ultimately the judge must guard the fairness of the proceedings in terms of language assistance. Naturally, the judge must have a reason to think the language assistance is inadequate, and the assumption seems to be that language assistance is adequate unless otherwise indicated. Indeed, *Kamasinski* signals that the parties must put the judge on notice when there are problems with the adequacy of the interpreting if the judge is to exercise some control over its quality. But even if the

[22] In *Luedicke, Belkacem and Koç v. Germany*, the ECtHR indicated that Article 6's guarantee of free assistance of an interpreter applies regardless of the outcome of the case.

court is put on notice that there are problems with the interpreting, according to *Panasenko v. Portugal*, this duty to translate is fulfilled if the problems are not serious enough to jeopardize the fairness of the procedure. Thus, the key concern is not the accused's language rights but rather fairness. This principle was declared in *Isop v. Austria*, when the European Commission of Human Rights found that Article 6's right to a fair trial does not imply the right of the accused to choose his or her language but simply to be able to put forth his or her case. *Brozicek v. Italy*'s conclusion that there is no need for translation if the government can establish that the accused understands the information being given him or her therefore should come as no surprise.

As in other international instruments, translation is seen in Article 6 as an indispensable element when the accused does not speak the language of the court, because fairness demands that he or she "understand and participate effectively in the proceedings" (Brazta 2010, 1). This does not mean that the accused gets to *choose* the language (Nic Shuibhne 2002, 224). It is clear from the jurisprudence that the general principle from which these rights emanate is not non-discrimination or freedom of expression but rather procedural fairness. Thus, the ECHR cannot be read to guarantee a right to communicate with public authorities in the language of one's choice (Henrard 2001, 49).

In essence, like the ICCPR and similar instruments of general international law, the ECHR contains very limited language rights (ibid., 48). In terms of translation, those rights are limited to 1) the assistance of an interpreter at the time of arrest in order to explain the reasons for the detention and 2) translation once trial proceedings have begun in order to permit the participation of the accused in his or her defense. The next treaty we will consider breaks away from this general tendency of imposing very narrow translation obligations on states.

4.2.2. European Charter for Regional or Minority Languages

The 1992 ECRML is rather unique. The first of its kind, it deals solely with the question of language (Dunbar 2001a, 90). It calls for language measures "in areas where universal instruments are very deficient" (Arzoz 2007, 16). In so doing, the

ECRML focuses on languages, not people, whether individually or collectively (Henrard 2001, 56). This means that the ECRML places obligations upon the states but recognizes no "legally enforceable rights[23] for the minority language communities or for individual speakers of the protected languages" (Dunbar 2001a, 100; see also Blair 2003:39). This does not mean the ECRML is not binding. The charter provides for a monitoring system based partially on self-reporting, but there are no judicial or quasi-judicial remedies that can be sought after by individuals (De Varennes 2007, 122), because, as stated above, the ECRML does not create rights as such. Because of its self-reporting mechanism, the ECRML depends to a great extent on the willingness of each state to comply.

Another feature of the ECRML worth mentioning is that it explicitly offers no protection to new minority languages (Phillipson 2003, 154). Thus, the charter not only "distinguishes between languages which have a territorial basis and those which are not territorial" (Castellà Surribas 2002, 3) but also favors languages that have "become an accepted feature of the state" (Woehrling 2005, 58). According to the Explanatory Report, speakers of new minority languages face unique challenges that are not addressed by the charter, so their languages (usually non-European languages) are excluded from the ECRML (para. 11). This explanation is rather ironic, since the ECRML is not aimed at dealing with the challenges of *speakers* but rather with issues pertaining to non-majority *languages*. The ECRML's preamble states that the protection of regional or minority languages "contributes to the maintenance and development of Europe's cultural wealth and traditions." Thus, what is clearly implied by the exclusion of new minority languages is that non-European languages have nothing to bring to the table in terms of "Europe's cultural wealth and traditions." Thus, the charter promotes a "nostalgic view" of European culture that excludes the languages brought by more recent waves of immigration (Mowbray 2012, 156). By excluding new minority languages and protecting languages instead of

[23] Naturally, the creation of a legal framework at the national level to fulfill the obligations under the charter can conceivably result in certain rights (Dunbar 2008, 155). Nonetheless, these would be rights under national law, not directly under the charter.

people, the ECRML imposes state obligations that are derived from the desire to protect specific minority languages while excluding others.[24]

Another striking feature is the ECRML's structure as a menu of options that states can sign on to (Henrard 2001, 56). The advantage of offering such options is that the ECRML thus recognizes that each European state has its own unique linguistic and historic landscape (Oeter 2007, 1-2). The disadvantage is that these options in some cases are very hedged, which has permitted "states to meet the requirements in a minimalist way, often legitimated by claiming that a provision was not appropriate or that numbers did not justify a provision" (Schmidt 2008, 7). This possibility of a minimalist approach has been criticized as having the potential to make the charter "ineffectual in practice" (Nic Shuibhne 2002, 228-229).

Part I includes some general provisions regarding definitions and practical considerations, such as information to be included in the instrument of ratification. Part II outlines the charter's general objectives and principles. This part applies to *all* regional or minority languages, as objectively defined in the ECRML itself, so the state does not get to pick and choose which languages will benefit from this protection (Dunbar 2008, 167). Part III is a menu of specific measures that can be implemented. These measures are divided into specific areas: education, judicial authorities, administrative authorities and public service, media, cultural activities and facilities, economic and social life, and exchanges across borders (ibid., 168). Each state that ratifies the charter[25] must specify *one or several languages* for protection and then choose a minimum of 35 paragraphs and subparagraphs from Part III for each such language (ibid.). Thus, the specific obligations in Part III of the charter do not apply across the board to all old minority languages. Rather, the governments get

[24] In theory, new minority languages could at some point become protected by the European Charter for Regional or Minority Languages. Right now, the charter only covers "languages that are 'traditionally used within a given territory,'" but as new minority languages become traditional in a territory, they could be covered in the future (Blair 2003, 41). Even so, there is no current inclination to protect languages such as Urdu.

[25] For a study on the United Kingdom's ratification of this charter, see Dunbar 2003b. Additional issues are raised in Ó Riagáin 2001. For a study on Spain's ratification of this charter, see Castellà Surribas 2002.

to pick and choose which language will be afforded what protections. In the ECRML, translation becomes relevant in the articles dealing with judicial authorities (Article 9) and administrative authorities and public service (Article 10). I will now address each of these two articles.

Article 9, paragraph 1 applies to situations where an individual is brought before a court whose language is not the individual's first language. Like most obligations in the charter, those found in Article 9(1) are heavily hedged—they only apply to courts in regions where there are sufficient number of speakers of the non-official language and as long as they do not "hamper the proper administration of justice." The article's first paragraph has separate subparagraphs for each of three types of courts: criminal courts, civil courts, and administrative courts. In the case of criminal courts, the accused may choose to use his or her language, present evidence in that language, and produce "on request" relevant documentation in the language of the accused. To accomplish all of this, the charter stipulates "the use of interpreters and translations involving no extra expense for the persons concerned" (Art. 9(1)(a)). In the case of civil and administrative courts, the litigant may choose to use his or her language (at no additional expense) and present documents and evidence in that language, "if necessary by the use of interpreters and translations" (Arts. 9(1)(b) & 9(1)(c)). This obligation to translate in judicial matters is much broader than that imposed by the right to translation in criminal matters only as found in the ECHR and the ICCPR. The latter is based on the principle of fairness, which sees translation a practical necessity. The former is based upon the notion that individuals should be permitted to use their own language, if they choose to, before any court, including civil and administrative courts.

Article 9, paragraph 2 indicates that legal documents drafted in an autochthonous minority language cannot be invalidated only because they are not drafted in the state's majority language. These documents can be invoked against third parties that do not speak the language of the document, as long as "the contents of the document are made known" to that third party. There is no way to achieve this without some sort of translation, even though Article 9(2) does not mandate that the full document be translated, only that its contents be made known to relevant parties

who do not understand them.

Article 9, paragraph 3 places on states the obligation "to make available in the regional or minority languages the most important national statutory texts and those relating particularly to users of these languages" unless they have already been translated. According to the Explanatory Report, this is to be achieved through "the translation of legislative texts into regional or minority languages" (para. 99).

Article 10 is hedged by applying to areas where there is a sufficient number of speakers of the minority language. The article has different subparagraphs, including one that applies to administrative authorities, one that applies to local and regional authorities, and one that applies to public services.[26] Regarding administrative authorities, the state should allow for the use of old minority languages in communicating with the authorities, both orally and in writing, and for the dissemination of the more widely used administrative texts and forms in old minority languages. Regarding local and regional authorities, the state should allow for the use of the old minority language of the local or regional population both within the local or regional government and to communicate with the population. Regarding "public services provided by the administrative authorities or other persons acting on their behalf" (Art. 10.(3)), the state should allow for the provision of those services in the minority language. All of the above obligations may be fulfilled, among other measures including the use of bilingual staff, through "translation or interpretation as may be required" (Art. 10(4)).

For speakers of languages that benefit from the full protection of the ECRML, translation can become an important tool in facilitating their use of their language in administrative, civil, and criminal proceedings, in drafting legally valid documents against third parties, in having access to legislative and administrative texts, and in

[26] For purposes of Article 10, the ECRML's Explanatory Report distinguishes between three different types of action: 1) "by administrative authorities of the state: that is to say the traditional acts of the public authorities, especially in the form of the exercise of public prerogatives or powers under ordinary law", 2) "by local and regional authorities, that is general sub-national territorial authorities with powers of self-government," and 3) "by bodies providing public services, whether under public or private law, where they remain under public control: postal services, hospitals, electricity, transport, and so on" (para. 102).

communicating with public authorities, local and regional governments, and public service providers, such as hospitals. However, one should remember that not all protections will be given to all languages, and that even in the case of languages specified for protection, the obligations are heavily hedged by considerations such as the number and concentration of speakers and the practicality of implementing specific measures. In other words, the charter usually will only benefit speakers of languages that are linked to a territory in sufficient numbers and, quite candidly, with sufficient political power. Even so, the ECRML's call for translation as a means to ensure the use of old minority languages in a wide range of activities involving the state is far broader than that found in other instruments, including those that came after this charter.

4.2.3. Framework Convention for the Protection of National Minorities

The 1995 FCNM "is the first modern pan-European convention aimed specifically at the protection of persons belonging to national minorities and contains a number of articles related to linguistic rights" (High Commissioner on National Minorities 1999, 6). It belongs to a newer type of international treaties generally known as "framework conventions." While there is no one technical definition for a framework agreement, these are generally treaties that tackle a problem by creating a framework of principles and procedures and then delegating much of the actual regulating (Matz-Lück 2009, 441). However, the FCNM itself provides "legally binding guidance … [that] serves as an umbrella setting the general objectives and main principles while allowing each party sufficient room to take national particularities into account" (ibid., 449). Further, the FCNM is monitored mainly through self-reporting before an Advisory Committee made up of independent experts (Eide 2008, 145-146). This means the implementation of the FCNM depends squarely upon each state, and individuals have very little recourse if they feel their rights under the convention have been violated.

In terms of content, the FCNM parallels the ICCPR in many aspects (High Commissioner on National Minorities 1999, 5-6). But it has a different scope than the

ICCPR (and the ECHR) in that its obligations look specifically to the protection of minorities, including linguistic minorities (Dunbar 2001a, 103).

One aspect where the FCNM parallels the ICCPR and the ECHR is in that in Article 10, paragraph 3, it binds states to ensure that individuals (belonging to minorities) in criminal proceedings be informed of the charges against them in their own language, through the free assistance of an interpreter if necessary (High Commissioner on National Minorities 1999, 13). Article 10(3) also includes the right to free assistance of an interpreter to situations where such assistance may be necessary to inform someone (from a minority) of the reasons behind his or her arrest in a language that he or she understands. The Explanatory Report candidly points out the limitations of this protection: Article 10(3) "is based on certain provisions contained in Articles 5 and 6 of the European Convention on Human Rights. It does not go beyond the safeguards contained in those articles" (para. 67).

Where the FCNM does seem to reach beyond the ICCPR and the ECHR is in Article 10, paragraph 2. This paragraph calls for "the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities." In other words, the FCNM calls upon states to allow communication with administrative authorities in minority languages, something that could necessitate translation.[27] The obligation is heavily hedged, even for an international instrument:

> In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible … (Art. 10(2))

The result is that once again there is a limited obligation, that is linked to specific territories and sufficient number of speakers and the state's political will. In essence, this means very little in terms of persuasion for a state to adopt a policy of allowing

[27] For example, the use of translation as one of several means to fulfill this obligation was explicitly mentioned by the FCNM's Advisory Committee in an opinion on Denmark (Ulasiuk 2011, 101).

communication with the authorities in a language other than the state's language. Despite appearances to the contrary, the FCNM really goes no further in this regard than other binding international instruments.

4.2.4. Convention on Preventing and Combating Violence against Women and Domestic Violence

On May 11, 2011, the Council of Europe opened for signature a convention to prevent violence against women and to prevent domestic violence. This treaty, which has not yet entered into force,[28] calls for translation in an area not mentioned in other treaties. If the convention enters into force, its provisions will become part of European international law, including articles 19 and 56.

Article 19 reads: "Parties shall take the necessary legislative or other measures to ensure that victims [of violence against women or domestic violence] receive adequate and timely information on available support services and legal measures in a language they understand." Here, translation is seen as a means to allow victims access to information regarding legal and support services. This goes beyond the use of translation as a means to ensure procedural fairness or to promote the use of specific languages in public spheres. However, according to the Explanatory Report, the obligation in Article 19 could have its limitations: it "does not oblige Parties to the Convention to offer information in any language but to concentrate on the languages most widely spoken in their country." The "languages most widely spoken" in a particular state may include new minority languages, so that on its face, the obligation is not tied to territorial languages. The Explanatory Report seems to suggest that the obligation could be connected to the frequency of a language's use. Of course, this is a matter of interpretation that will have to be played out in individual states, at least until further guidance is provided.

Article 56 echoes the ICCPR and ECHR in its concern for translation during judicial proceedings. However, the focus in this convention is not on the accused but

[28] As of this writing, this convention has been signed by 33 member states and ratified by nine. In order for the convention to enter into force, it must be ratified by ten nations, including eight member states. Thus, the convention is currently one ratification away from entering into force.

rather on the victim. Article 56, paragraph 1, subparagraph h, calls for "providing victims with independent and competent interpreters when victims are parties to proceedings or when they are supplying evidence." This article would turn the tables of the general fairness-in-court-for-the-accused approach and ask states to consider the rights of the victim. Translation, when needed, would be a way to secure those rights.

4.3. EU Treaties

From consideration of CoE treaties, this chapter now moves on to EU law. As it does so, I note that this study is moving into more and more restricted geographical areas. It began with international law from a general perspective and moved to international law in Europe, as legislated by the CoE. It now moves into EU law, which only applies to European states that are members of the EU. The thesis is moving from the top down, from the more general legal regimes to the more specific ones. In other words, the states that belong to the EU are bound by general international law plus CoE treaties plus EU law, and I analyze accordingly.

As I venture into the EU, I first must point out that the treaties, the EU's highest law, do not concern themselves with the language regime or translation practices of member states, not even in the Charter of Fundamental Rights of the European Union,[29] which under the Treaty of Lisbon has "the same legal value as the Treaties." (Art. 8).

However, they do deal with language issues as they pertain to fundamental Community freedoms, which of course can impact translation policies. The Treaty on the Functioning of the European Union contains several fundamental freedoms, including free movement of persons (Arts. 45-48), the right of establishment (Arts. 49-54), the freedom to provide services (Arts. 55-62), and free movement of goods (Arts. 28-37). The first three fundamental freedoms have language components but

[29] While the Charter of Fundamental Rights of the EU does have general provisions regarding equality before the law, non-discrimination, and even the right to a fair trial, translation is not mentioned in any of them. Consequently, this Charter offers no rights in terms of translation that are not already settled in instruments such as the ICCPR or the ECHR.

do not directly deal with translation issues. Regarding the free movement of persons, the EU has adopted a policy of official language education (Nic Shuibhne 2002, 22-23), which does not necessarily mean that EU member states should not translate. In fact, under EU law language rights extended to nationals, including nationals who belong to a linguistic minority, must be extended to speakers from other member states (ibid., 23). This does impact translation more directly, as will be seen below. Regarding the right of establishment and freedom to provide services, member states may impose language competence conditions on trades and professions, but these must be non-discriminatory and proportionate to the desired ends (ibid., 24). Again, translating for minorities does not come across as an important issue in this regard.

Where translation issues are more readily apparent is in the free movement of goods. This freedom implies a balancing act between facilitating trade among members states and safeguarding consumer protection (ibid., 25-27). In that context, EU law often touches on translation issues when it comes to the free movement of goods. This is evidenced in a number of ECJ cases (e.g., *Colim and Bigg's*) and directives (e.g., Directive 2000/13/EC). However, the focus of this chapter is on translation as a way to grant language rights to linguistic minorities. Consequently, I will exclude EU law dealing with translation issues that do not focus on the rights of linguistic minorities, such as such as cross-border product labeling or the book trade.

What becomes apparent from this very brief discussion of language issues in the treaties of the EU is that, at the treaty level, the translation policies of the member states are not a major area of concern. This is so despite the fact that the EU has a much stronger say in the policies of its member states than other international institutions. In essence, member states are more or less free to implement their own language policies, but the policies must be compatible with EU law (ibid., 105). To know exactly what that EU law is, we must look at secondary EU legislation, which is subject to judicial review by the ECJ. There we find some guidelines on translation for linguistic minorities. We will begin with framework decisions, where we find scant calls for translation.

4.4. EU Framework Decisions

The 2002 *Framework Decision on the European arrest warrant and the surrender procedures between Member States* touches upon translation, this time out of concern for the rights of the accused. The Framework Decision came about as a consequence of the free movement of persons within the Union. It grew out of the perceived need to have a uniform procedure for arresting individuals in another member state, in lieu of a patchwork of onerous extradition procedures. Thus, it is concerned with establishing a level playing field in Europe, and not necessarily a linguistically diverse playing field. As becomes clear when looking at Article 11, linguistic diversity is taken as a given and no concern is expressed for promoting it.

Article 11, which deals with the rights of the person sought for arrest, involves translation. The Article indicates that the requested person "shall have a right to be assisted […] by an interpreter in accordance with the national law of the executing Member State." The obligation to offer translation via an interpreter is hedged so as to be fulfilled according to the laws already in existence in the state that will actually execute the arrest. The assumption seems to be that such a right is already granted at the national level. Obligations certainly exist under other instruments of international law, such as the obligation to inform the person being arrested of the charges against him or her in a language that the person can understand.

4.5. EU Regulations

Another binding form of EU law is to be found in regulations. Due to the Union's competences focusing mainly on economic integration, EU regulations generally do not concern themselves with translation issues, unless it has an EU institutional dimension[30] or is meant to facilitate cross-border cooperation.[31] There are times, however, when economic concerns and the language rights of individuals interact, as will be seen in the regulations below.

[30] See e.g., Regulation (EC) No. 40/94 on the Community trade mark.

[31] See e.g., Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations.

4.5.1. Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community.

On its face, the Regulation itself does not seem to address issues of language and translation. However, case law from the ECJ shows that there is a relationship between the free movement of workers, as legislated, and translation. Specifically, Article 7, paragraph 2, reads: "He [a worker who is a national of another member state] shall enjoy the same social and tax advantages as national workers." In *Ministère Public v. Mutsch*, the ECJ clarified that language rights asserted before a court are a social advantage for purposes of the application of this Regulation. More specifically,

> a worker who is a national of one member state and habitually resides in another member state be entitled to require that criminal proceedings against him take place in a language other than the language normally used in proceedings before the court which tries him *if workers who are nationals of the host member state have that right in the same circumstances* (para. 18, italics added).

In essence, this decision means that any language right given to workers who speak an old minority language should be extended to foreign workers from another EU member state that speak that same minority language (De Varennes 1996, 74). In *Bickel and Franz*, the ECJ expanded *Mutsch* by clarifying that such language rights must also be extended to citizens of other EU member states in general, even if they are just passing by the locality. Taken together, *Mutsch* and *Bickel and Franz* stand for the proposition that language rights provided domestically to speakers of a specific language "must be extended on a non-discriminatory basis to nationals of other EC Member States" (Nic Shuibhne 2001, 72). For example, whatever language rights a German-speaking Italian has in South Tyrol are to be extended to a German-speaking Austrian who happens to be in South Tyrol. The guiding principle here seems to be non-discrimination, not necessarily the integration of linguistic minorities.

4.5.2. Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self employed persons, to self-employed persons and to their families moving within the Community

This regulation deals at length with the specific procedures to be implemented in situations where workers move from one member state to another and claim social security benefits. Article 48 indicates that when an institution makes a decision regarding social security claims, the claimant must be made aware of the decisions "in his own language by means of a summarized statement to which the aforesaid decisions shall be appended." This requirement that a summary of the decisions be provided in the claimant's own language in some cases can only be satisfied through translation. The requirement is congruent with a larger issue that is relevant to translation, as is made clear in *Farrauto v. Bau-Berufsgenossenschaft*. Even though Regulation 574/72 is no at issue in *Farrauto*, the court does mention that regulation as an example of the principle that legal certainty requires that courts see to it that the worker is able to understand the notifications of the decisions taken by the court. Thus, when dealing with workers from other member states, some form of translation may be necessary for court decisions outside of the criminal realm. Otherwise, a climate of legal uncertainty would follow. Note that the concern here is legal certainty, not necessarily the language rights of minorities.

4.5.3. Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters

The growing concern for victims under international law is also reflected in EU law, through the 2001 Framework Decision on the standing of victims in criminal proceedings and, more recently, through this regulation and other directives.[32] This regulation aims at protecting persons who are deemed by civil tribunals to be at risk of becoming victims of some form of violence. The regulation seeks such an aim by

[32] Directives that deal with the rights of victims include Directives 2011/36/EU, Directive 2011/99/EU, and Directive 2012/29/EU. They are analyzed in terms of translation below, in this chapter.

providing for legal certainty in respect to protection measures issued by civil courts. Specifically, any protection order issued by a member state of the EU is to be recognized and enforced in other members states. Regarding translation, the protection measure is to be translated "into the official language or one of the official languages of the Member State addressed or into any other official language of the institutions of the Union which that Member State has indicated it can accept" (Art. 16(a)). This is to be achieved through a multilingual standard form to be provided by the issuing authority, but any further costs would be assigned based on national legislation (recitals 22-23). These multilingual forms, which imply translation, are a necessary tool for providing legal certainty to potential victims.

4.6. EU Directives

4.6.1. Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

This directive is one of several legislative measures adopted in the march toward a common EU asylum system. Instruments pertaining to asylum would expectedly include obligations to translate in the interest of fairness. Directive 2001/55/EC concerns measures and procedures to grant temporary protection to individuals who enter an EU country as part of a massive influx of displaced persons (such those displaced by the conflict in the former Yugoslavia). Individuals granted such temporary protection must be given "a document, in a language likely to be understood by them, in which the provisions relating to temporary protection and which are relevant to them are clearly set out" (Art. 9). This could imply some sort of translation effort, except that states are not required to provide the document in a language the person *actually* understands. Consequently, the obligation to translate in this instrument is weak in that the state is left with wide discretion as to what languages the documents should be in.

4.6.2. Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status

This directive is also part of the effort to create a common EU asylum system. Under it, individuals applying for asylum status are guaranteed that they will "be informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities" (Art. 10(a)). When the applicant is before the competent authorities, the free assistance of an interpreter must be provided if "appropriate communication cannot be ensured without such [interpreting] services" (Art. 10(1)(b)). This interpreter must be competent, but he or she need not interpret into the applicant's preferred language if there is another language in which the applicant can communicate appropriately (Art. 13(3)(b)). States, additionally, may provide written translations of documents relevant to the application for asylum (Art. 8). Thus, the directive shows a strong concern for fairness in legal settings, a trait derived from instruments of general international law, such as the Geneva Conventions and the ICCPR.

4.6.3. Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals

Directive 2008/115/EC is also part of the effort to create a common EU asylum system. The directive focuses on the removal of "illegal migrants" (Art. 12(3)) from non-EU countries. Among the procedural safeguards called for in the directive, decisions regarding the entry, removal, and return of the non-EU national must be issued, if requested, through "a written or oral translation" into a language he or she "understands or may reasonably be presumed to understand" (Art. 12(2)). Member states are also required to "make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned" (Art. 12(3)). The concern here is once again fairness, specifically, procedural fairness.

4.6.4. Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

The EU is concerned with fairness in trial settings and is consequently moving toward a set of minimum standards in criminal proceedings (Council of the European Union 2009, 1-3). Of course, there are a number of general international instruments and European instruments that establish such minimum standards (see above), but the EU seeks to provide common rules for its member states in implementing those and other standards. To that end, three directives have been adopted. The first such directive, is discussed here, and the second directive, Directive 2012/13/EU, is discussed below.[33]

The issue of translation features rather prominently in Directive 2010/64/EU, which deals specifically with translation in criminal proceedings.[34] The drafters of this Directive sought to facilitate a common implementation of translation as a tool to secure the right to a fair trial, especially as found in the ECHR and the ECtHR's interpretations of that right (Directive, Preamble, recital 15). In essence, the directive "to some extent" consolidates the findings of the ECtHR regarding this right (Brannan 2010, 1). Articles 2, 3, and 4 are of particular interest.

Article 2 deals with the right to interpreting. It calls for interpreting, if needed, "during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings" (para. 1). Interpreting must also be provided between the accused and his or her attorney "in direct connection with any questioning or hearing during the

[33] The third directive is *Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.* Matters of translation are not contemplated in this directive.

[34] This directive is groundbreaking for several reasons, which Hertog has outlined: "This is the first Directive passed after the 2009 Lisbon Treaty, which *inter alia* radically altered the remit of the decision making power of Commission, Council and Parliament in matters of Justice; it was therefore also the first 'Directive' passed in the area of the Directorate General of Justice, Freedom and Security and, interestingly enough, also the first Directive on an issue of language since the foundation treaties of the European Unions" (2013, 33).

proceedings or with the lodging of an appeal or other procedural applications" (para. 2). Article 2 also deals with the right to challenge the decision by the court that no interpreter is needed (para. 4) or to challenge the effectiveness of an interpreter once one has been assigned, if the interpreting jeopardizes "the fairness of the proceedings" (para. 5). Paragraphs 4 and 5 do not challenge the ECtHR notion that the judge is the ultimate guardian of the fairness of the proceedings, including linguistic fairness. However, the paragraphs do request the implementation of procedures to challenge a situation where the accused feels at such a linguistic disadvantage that the right to a fair trial is jeopardized.

Article 3 deals with the right to written translation of essential documents. Article 3 requires EU members to provide "written translation of all documents which are essential to ensure that they [the accused] are able to exercise their right of defence and to safeguard the fairness of the proceedings" (para. 1). Such "written translations," however, need not be in writing. An oral summary may suffice (para. 7). Authorities in the proceeding are to decide which documents are essential (para. 3) based on specific criteria (para. 2). Even in documents deemed essential, passages "which are not relevant for the purposes of enabling suspected or accused persons to have knowledge of the case against them" need not be translated (para. 4). Much like in the previous article, Article 3 deals with the right to challenge the decision by the court that no translation of a specific document or passage is needed or to challenge the effectiveness of a translation that jeopardizes "the fairness of the proceedings" (para. 5). The right to written translation differs from the right to interpreting in that the right to translation can be waived "subject to the requirements that suspected or accused persons have received prior legal advice or have otherwise obtained full knowledge of the consequences of such a waiver, and that the waiver was unequivocal and given voluntarily" (para. 8). The fact that written translation can be waived on very specific grounds while interpreting apparently cannot be waived falls in line with the understanding that, when there is a language barrier in judicial settings, an interpreter plays a more important role in the proceedings than translators do.

Articles 2 and 3 also deal with the European arrest warrant. Article 2 calls for the services of an interpreter when people subject to the execution of a European warrant "do not speak or understand the language of the proceedings" (para. 7). Article 3 calls for the warrant to be translated if the person subject to the proceedings "does not understand the language in which the European arrest warrant is drawn up, or into which it has been translated by the issuing Member State" (para. 8). This makes the obligation to translate in the context of a European warrant stronger than had been mandated by the 2002 Framework Decision on the European arrest warrant.

Finally, Article 4 states that the translation (including interpreting) is free to the accused, regardless of the proceeding's outcome.

4.6.5. Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

This directive is a legal instrument aimed at furthering the EU's commitment to the rights of the victims of crime. It aims to do so, in part, by protecting the victims of such trafficking. Victims of human trafficking are particularly vulnerable for several reasons, including the fact that they are far from home and at times in places where the language spoken by the majority is not their own. The directive addresses that point by calling for measures of support that go beyond providing translation if they are party to a trial. Article 10 calls upon member states to support the victims through measures "such as […] translation and interpreting services where appropriate" (para. 5). Here, a duty to translate is imposed upon member states in order to help strengthen the victim. The goal is not necessarily to integrate the victim, but rather to allow her (victims of human trafficking are very often female) to heal by giving her access to a number of services, including counseling and information.

4.6.6. Directive 2011/99/EU on the European protection order

This directive is part of the EU's efforts to create a minimum level of protection for victims of crime across the Union. While Regulation 606/2013 deals with protection measures in civil matters, this directive applies to protection orders that arise in

criminal procedures. The directive's goal is that a protection order issued in one member state will be enforced in all other member states. Such an EU protection order is to be "translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State" (Art. 17). States have until 11 January 2015 to bring their national legislation in line with this directive.

4.6.7. Directive 2012/13/EU on the right to information in criminal proceedings

This directive is part of the effort to provide common rules for EU member states in implementing minimum standards in criminal proceedings. The directive calls for accused persons to have the right to information in criminal proceedings and in the execution of a European arrest warrant. Article 3 indicates that "suspects or accused persons" (para. 1) must be given prompt information regarding their procedural rights, including "the right to interpretation and translation" (para. 1(d)). Article 4 states that anyone who is arrested or detained must promptly receive a letter of rights,[35] listing specific rights (para. 1). This letter of rights must be provided in a language the suspected or accused person understands (para. 5). If there is no written translation available, an oral explanation must be provided in a language the person understands, but even so, a written translation must be provided "without undue delay" (para. 4). In practice, this will mean that arresting agencies will have to obtain translations of their letters of rights, either before or after the arrest.

This directive and Directive 2010/64/EU are presented as part of a broader strategy "to achieve a full set of procedural rights and establish a solid common level

[35] The directive includes a "model Letter of Rights," which is not binding but it is meant to provide guidance to national authorities in drafting their own letters of rights. The model letter includes the following paragraph on the right to translation: "If you do not speak or understand the language spoken by the police or other competent authorities, you have the right to be assisted by an interpreter, free of charge. The interpreter may help you to talk to your lawyer and must keep the content of that communication confidential. You have the right to translation of at least the relevant passages of essential documents, including any order by a judge allowing your arrest or keeping you in custody, any charge or indictment and any judgment. You may in some circumstances be provided with an oral translation or summary."

playing field throughout the European judicial area" (Reding 2012). As is the case with other international instruments, the concern here is not a desire to integrate minorities into the institutional life of the state as it is to make sure that all citizens, regardless of what languages they speak, are afforded full procedural rights.

4.6.8. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

This directive, alongside the yet-to-be ratified Convention on Preventing and Combating Violence against Women and Domestic Violence and some other EU instruments, is evidence of a growing commitment under international law in Europe for the use of translation as a means to strengthen the position of victims of crimes, particularly violent crimes. Reflective of this concern, Directive 2012/29/EU seeks to strengthen the rights of victims in the EU by laying out a set of minimum standards for the rights, support, and protection of said victims. The directive replaces the 2001 Framework Decision on the standing of victims in criminal proceedings.[36]

[36] The 2001 Framework Decision on the standing of victims in criminal proceedings was the first binding instrument to deal with victims' rights (regardless of their nationality). It was a milestone that was born out of the perceived disadvantages faced by victims in states other than their own, including difficulties with the local language (Groenhuijsen & Pemberton 2009, 43). With regards to translation for victims, Articles 4 and 5 were particularly meaningful. Article 4 called for EU member states to ensure that victims had access "as from their first contact with law enforcement agencies […] to information of relevance for the protection of their interests," and then it went on to list some ten types of information that should have been made available. Article 4 limited the translation responsibility with the following qualifier: "as far as possible in languages commonly understood." It was unclear what the "languages commonly understood" were. Article 5, on the other hand, did call for a major translation undertaking. It read, in part: "Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, *to an extent comparable with the measures of this type which it takes in respect of defendants*" (italics added). In terms of translation, member states should have provided a "comparable" level of translation to victims as compared to the accused. It was hard to gauge what a "comparable" level of translation meant, but at the very least, it meant translation during the questioning of the victim and of all relevant documents (ibid., 52).

Regarding translation, the directive calls for translation to be provided during the victim's questioning and in certain aspects of the pertinent judicial proceedings. The victim must be provided with free translation

> during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights. (recital 34).

More specifically, Article 3 calls on member states to "take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings" (para. 1). When the victim cannot understand or speak the language of the state, translation becomes a tool to enable compliance with this article. Further, under Article 4, victims are to be offered information regarding how to access their rights under this directive, including "how and under what conditions they are entitled to interpretation and translation" (para. 1(e)).

Article 5 allows victims who do not speak or understand the language of the authorities to make a complaint of a criminal offense "in a language that they understand or by receiving the necessary linguistic assistance" (para. 2) and to receive "written acknowledgement of their complaint" through free translation (para. 3). This is true to the directive's indication that victims who do not speak the language of the authorities, in order to fully enjoy their rights in the redress of the crime, must be provided with language assistance, which often takes the form of translation.

Article 7 in its entirety deals with the issue of translation for victims that may need it. The article indicates generally that victims who do not speak the language of the authorities must be provided with interpretation, if they request it and

> in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings. (para. 1).

They must also be provided with (written) translation of documents "essential to the exercise of their rights in criminal proceedings" if requested, including at least "decision[s] ending the criminal proceedings […] and upon the victim's request, reasons or a brief summary of reasons for such decision" (para. 3). Additionally, "victims who are entitled to information about the time and place of the trial" must receive that information through translation, if needed (para. 4).

Under certain circumstances, this translation may take the form of an "oral translation or oral summary of essential documents" (para. 6). Essential documents are those that are "relevant for the purpose of enabling victims to actively participate in the criminal proceedings" (para. 5). If the victim is denied translation, the draft calls for a mechanism to challenge the decision (para. 7). There is a hedge to all this translation for victims: "Interpretation and translation […] shall not unreasonably prolong the criminal proceedings" (para. 8).

This use of translation is intended to allow the victim to exercise his or her rights. In this regard, the right to translation becomes more than a way to assure procedural fairness for the accused in a trial setting. In expanding the role of translation in judicial proceedings, it follows in the footsteps of the Framework Decision on the standing of victims in criminal proceedings and the Directive on preventing and combating trafficking in human beings and protecting its victims.

4.7. The OSCE's HCNM Recommendations

Having concluded this survey of binding international instruments that have a bearing on European states' obligation to translate, I now turn to the OSCE's High Commissioner on National Minorities' thematic recommendations. As stated above, even though the recommendations are not themselves binding, they are considered by some to be persuasive interpretations of international obligations vis-à-vis minorities, including linguistic minorities, for Europe. When looking at the obligation to translate, the 1998 Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Oslo Recommendations) are most relevant.

The Oslo Recommendations come as the result of two expert consultations regarding the linguistic rights of national minorities (Bloed & Letschert 2008, 104). The Recommendations draw on general principles of law found, inter alias, in non-binding documents, such as the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Oslo Recommendations, p. 12). They are also derived from international instruments that are legally binding on most OSCE participating states (Eide 1999, 324). Because such instruments are often vague and general, the Oslo Recommendations attempt "to develop these […] elements of international law into more precise and detailed provisions which can guide language policies better than the general international standards on which they are based" (ibid.). This means that the Oslo Recommendations become more than an interpretation of international law regarding linguistic minorities. They "draw progressive inferences" (Henrard 2001, 46) in an attempt to move forward the linguistic protection of minorities.[37] In this regard, we can think of the recommendations as a view of what European law should be.

The Oslo Recommendations touch upon the right to communicate with administrative authorities in a language other than the national or official language.

[37] For example, when making a recommendation about economic life, the Explanatory Report acknowledges that there is "little reference to the rights of persons belonging to national minorities in the field of economic activity" in the relevant instruments, but nonetheless the Oslo Recommendations extrapolate a specific right derived from the oft-recognized right to use one's language in private and in public (Explanatory Report, p. 24).

Recommendations 13 and 14 indicate that such a right should be granted where there are enough speakers of a minority language and these speakers express their desire for such a right. Recommendation 13 suggests that "persons belonging to this national minority shall have the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions." In turn, Recommendation 14 suggests that linguistic minorities should have the possibility of communicating with the administrative authorities and of receiving public services in their own language. The broad proposition found in these two recommendations, and also in Recommendation 15,[38] is that the language of the minorities may be a vehicle for communication with public authorities (Morawa 2002, 9). It should be noted that translation is not mentioned as a way to carry out Recommendations 13 and 14. Yet if the state's primary language is one other than the language of the minority, translation becomes one of several tools[39] to achieving the stated aim.

Recommendations 17 and 18 focus on language rights when dealing with judicial authorities. Article 17 echoes the very obvious international obligation to offer all persons the free assistance of an interpreter when faced with arrest and detention, as well as "before trial, during trial and on appeal" in order to mount a defense. Article 17 makes it clear that this is not necessarily a right to interpreting into the accused person's own language but rather a right to interpreting into a language the accused understands. However, Article 18 signals that if there are enough speakers in a certain locality and these speakers express such a desire, accused persons "have the right to express themselves in their own language in judicial proceedings, if necessary with the free assistance of an interpreter and/or translator."

[38] Recommendation 15 reads: "In regions and localities where persons belonging to a national minority are present in significant numbers, the State shall take measures to ensure that elected members of regional and local governmental bodies can use also the language of the national minority during activities relating to these bodies."

[39] Other tools may include the hiring and training of bilingual staff. But even here, said staff would presumably engage in translation activities from time to time.

Recommendation 20 turns to the penal phase. It suggests that the staff working at penal institutions should speak a language that the majority of the prisoners understand. If needed, "the services of an interpreter shall be used." This recommendation views translation as a tool for effective communication between individuals deprived of liberty and their captors. Much like in the Geneva Conventions, a concern for the principle of fairness is evidenced in this Recommendation.

5. Conclusion

At this point, I have concluded this survey of binding instruments (and their authoritative interpretations) regarding the obligation to translate under international law. Having an idea of what these international obligations are, I can now draw some conclusions regarding when European states are required and are not required to translate under international law. I return to the initial questions regarding what translation must take place under international law in Europe's domestic policies. Broadly speaking, European states are required to translate in four types of situations: 1) in times of war; 2) in judicial matters; 3) for communications with the authorities; and 4) during the provision of public services. Enough has been said about the duty to translate during times of war (see above), so I will address the other three categories.

The most explicit obligations to translate under international law are to be found in judicial matters, at least compared to other situations. This is particularly true in criminal proceedings, from the time of the initial arrest all the way to the issuing of the sentence. International law is quite influential in shaping this aspect of national translation policy, particularly in Europe (see Hertog 2003, 8-9). Thus, the right of the accused to translation is found in most major human rights instruments, such as the ICCPR, Convention 169, the ICPRMW, the FCNM. It is also found in EU legislation, including Directive 2010/64/EU. Some level of translation is also contemplated for victims in instruments such as the EU's Regulation 606/2013 and

Directive 2012/29/EU. It should be noted there is no right to translation into an individual's native language per se, but only into a language the person can understand. Most international instruments shy away from extending these protections to other types of judicial proceedings, including civil and administrative proceedings. However little this international obligation extends beyond the criminal realm is the result of duties imposed by courts. As we analyze these obligations, it seems apparent that the duty to translate in criminal proceedings is a procedural safeguard aimed at securing the right to a fair trial, which includes the right to mounting a defense (on this point, see Cardi 2007, 4-5). This same concern for procedural fairness is reflected in the obligations to translate in proceedings that affect refugees, asylum seekers, and illegal migrants.

There are two major exceptions to the general observations in the previous paragraphs. One is the rather exceptional ECRML. This charter calls for translation during criminal proceedings into a limited amount of old minority languages, which languages are specified by each ratifying state. It also provides for translation in non-criminal proceedings. The charter is unusual in that it is not aimed at securing rights for individuals but rather at protecting a certain category of languages, namely the so-called "regional minority languages."

The other instrument that extends the right to translation in judicial matters beyond the criminal realms is Convention 169. Unlike the ECRML, the drafters of this convention were indeed concerned with the rights of individuals, in this case those of indigenous peoples. By extending the right to translation into non-criminal proceedings, Convention 169 foresees a role for translation as a means to secure a broader set of rights. When the rights of indigenous peoples are threatened by the majority, those peoples can rely on translation for their day in court. In this light, translation becomes a tool for empowerment against assimilation into the majority.

It is also appropriate to note an increasing[40] awareness in international law of the role that translation may play for victims of crimes, not just during criminal

[40] The increasing role of translation in victim's rights under international law can be seen by comparing the Framework Decision on combating trafficking in human beings with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims. The

proceedings but also in other situations that are a result of their victimization. For victims, translation becomes a tool for fairness in judicial proceedings and a way to secure other rights pertinent to the proceedings. It also becomes a tool for access to services that may be necessary to make the victim whole.

Regarding translation as a means to communicate with the authorities, only the ECRML calls for those communications with the authorities to take place in a minority language. The FCNM apparently does the same thing, but the obligation is heavily hedged. The right to communicate with the authorities is rather weak in international law (Ulasiuk 2011, 96). Even so, experts such as those who drafted the OSLO Recommendations feel this is a direction states should move toward, albeit with important limitations (such as number of speakers and expressed desire), based on principles such as non-discrimination. Despite some consensus among European states that members of minority groups should enjoy some rights to communicate with the public authorities in their own language, the application of that consensus is vague and weak at best (Morawa 2002, 15-16). Translation would be one of several ways to apply that weak consensus (Ulasiuk 2011, 113). However, what limited translation does currently take place in public institutions, especially when it comes to new minority languages, is not always mandated by international instruments (Dunbar 2001b, 233).

Regarding translation in many types of public services, there is very little to make states feel bound to engage in such a work. Both Convention 169 and the Framework Decision on the standing of victims in criminal proceedings call for translating certain documents for the benefit of different groups. But these obligations are rather narrow, and the more common services, such as healthcare, are largely unaffected by any obligation to translate. Only the ECRML and the FCNM call for language policies in the public service sector to include the use of languages other than the central state's language.

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latter updated and replaced the former. In the framework decision no mention is made of translation as a tool to help victims. In the directive's Article 10 translation is specifically mentioned as a way to assist victims.

This does not mean that states are not employing translation as a tool in their public service provision. Out of necessity, they must to a certain extent.[41] However, they are under no explicit international law obligation to do so. Take, for example, Directive 2011/24/EU on the application of patients' rights in cross-border healthcare. While it is expected that cross-border health care issues include translation, Directive 2011/24/EU largely does not concern itself with that. Article 4, which deals with the responsibilities of member states for treatment, reads in paragraph 5, "This Directive shall not affect laws and regulations in Member States on the use of languages. Member States may choose to deliver information in other languages than those which are official languages in the Member State concerned." This blunt statement in Directive 2011/24/EU simply reinforces the notion that issues of language in healthcare are the competence of national or local authorities. They are generally not contemplated in international law.[42]

The fact that states are under no specific international obligation to provide translation in healthcare settings is particularly problematic. It is problematic because language barriers can have a real impact on healthcare provision. There is evidence to indicate that language barriers can limit access to healthcare (Bowen 2001). This linguistic challenge should not be underestimated. Spolsky points to mistreatment, misdiagnosis, misprescriptions, and other challenges as examples of the scope of the problem (2009, 126). Doctors and nurses are like lawyers, judges, and police officers in that they tend to be majority language speakers while their patients are often in a high proportion speakers of minority languages (Spolsky 2009, 115). Even so, doctors frequently expect friends or family (including children) of the patient to provide translation when it is needed (Committee of Experts on Health Services in a Multicultural Society 2006, 15). The difficulties can have lethal consequences: it is

[41] For example, in the US, Executive Order 13166 sought to improve access to services for persons who did not speak English by requesting federal agencies and agencies funded by the federal government to find ways to provide services to people who have limited English proficiencies (Spolsky 2009, 121). No doubt, translation is one way to achieve the aims of this executive order.

[42] The way this plays out in Europe specifically is explored in González Núñez 2013.

estimated that in the US, 98,000 deaths could be avoided each year if labels on prescription medication were translated from English (ibid., 126).

It is also problematic because states have generally not been keen to put the issue of translation in healthcare on their legislative agendas. Of course, some states pressure healthcare providers into using translation to address the issues mentioned in the previous paragraph. As we will see in the coming chapters, in the UK there is extensive non-discrimination legislation that healthcare providers often see as triggering translation. But not all states have legislated in a way that healthcare providers feel the need to translate. At that point, the level of translation provision becomes a matter of policy for each institution. Some healthcare providers deal with the problems of multilingualism in structured, systematic ways. For example, Intermountain Healthcare, a non-profit hospital and medical services provider in the US, employs 14 full-time interpreters, a host of contract interpreters, and multilingual staff to provide medical services in over eighty languages (Leonard 2011, A1, A5). Even so, in many places, provision of language support measures is not nearly as responsible. For example, in hospitals in countries like Germany, Hungary, Ireland, Italy and Spain, it has been reported that staff interpreters are not always available, and in some cases translation is improvised by bringing in bilingual cleaning staff or even security personnel (European Union Agency for Fundamental Rights 2011, 49). Again, part of the reason that no translation policies are adopted by these healthcare providers is the lack of national legislation to compel the use of translation in healthcare settings (Bowen 2001). And international law does next to nothing to pressure governments into taking action.[43] Perhaps the time has come for

[43] This is also true when it comes to speakers of old minority languages who also speak the majority language, but in a very different way. In their case, states that apply Article 13(2)(c) of the FCNM to at least one of their old minority languages ought to "ensure that social care facilities such as hospitals […] offer the possibility of receiving and treating in their own language persons using a regional or minority language." According to the Committee of Experts, this provision is *not* to be fulfilled via translation alone, because translation is understood to be an insufficient means of communication between speakers of old minority languages and healthcare staff, i.e., communication should take place in the old minority language sans intermediaries (Urrutia Libarona 2012, 474).

international law to take up the issue of translation in non-judicial settings more forcefully. After all, one is more likely to walk into a hospital than a courthouse.

5. Linguistic background of the United Kingdom

1. Introduction

Having identified state obligations to translate under international law, this thesis will now move into the UK as a case study of the use (or non-use) of translation by the authorities to communicate with linguistic minorities. The first step in this case study follows after Spolsky's suggestion that "[i]n looking at the language policy of a state or other unit, it is appropriate to start off with an effort to capture the complex language situation" (2004, 218). While remembering that this study is not about language policy but about translation policy, I find it necessary to provide a glimpse of "the complex language situation" in the UK. This will provide insights into the context in which translation policies exist. Even so, any "effort to capture" a complex linguistic context will be found lacking. It will be nothing but a snapshot that will inevitably present a non-exhaustive picture. Bearing that in mind, this chapter is designed to give the reader sufficient context regarding the languages of the inhabitants of the UK so that the following chapters will make sense.

For purposes of this study, the UK is understood to be the state that encompasses the regions of England, Wales, Scotland, and Northern Ireland. As needed, the two major islands on which the UK sits will be referred to as Great Britain (shared by England, Wales, and Scotland) and Ireland (shared by Northern Ireland and the Republic of Ireland). This study will refer to these two islands collectively as the British Isles.

The case study, including this chapter, will focus on the regions of the UK. Each region will be described in terms of its linguistic composition. The chapter will begin with England, mostly because England is the center of the state, and then move to the three regions in the periphery, which will be addressed in clockwise order: Wales, Northern Ireland, Scotland.

Crown Dependencies and British Overseas Territories are not included in this study. I purposely avoid these for three reasons. First of all, because they are not

technically speaking part of the UK. Second, because they have rather unique arrangements with the Crown that give rise to other issues that are not found in the UK. Third, if included, the sheer number of them (three Crown Dependencies and 14 British Overseas Territories) would make the study largely unfeasible.

For each region, the chapter will broadly provide linguistic background by focusing on the languages spoken there. Old minority languages will be addressed individually, and new minority languages will be bundled in each region. As will be seen, this approach reflects the general policy approach toward languages in the UK. It is also a practical decision based on how little information there is regarding specific allochthonous languages in the UK.

English presents a unique case among the UK's autochthonous languages. It is the de facto language of the state. Not only is it in a dominant position in the state as a whole, it is in a dominant position in every region individually. For that reason, a description of the linguistic background of every region would imply an analysis of English in every region. I will not do this for two reasons. First, this chapter will discuss English extensively when describing the linguistic background of England. Second, English will come up in the other regions in terms of the contraction of other languages, which means it will also be acknowledged. Third, the study focuses on speakers of minority languages, and consequently, the reader's attention will be mostly drawn to minority languages.

2. Linguistic background for England

As stated above, this survey of the linguistic background of the UK will begin in England, a region which linguistically and politically has exerted varying degrees of control and influence over the other three. In so doing, I will discuss two autochthonous languages, English and Cornish, which stand in sharp contrast one to another. I will also discuss the languages spoken by immigrants in England.

2.1. English

England is like every other region of the UK in that, in all likelihood, the first Indo-European language to be spoken there was Celtic (Baugh and Cable 2002, 39). In the first century AD, the Romans conquered what is now England, and Latin became the language of the elites, but it was not widespread enough among the masses to displace the Celtic language(s) they spoke (ibid., 41). More importantly for this discussion, Germanic tribes eventually invaded England in the 5th century and brought their language with them. The language spoken by these tribes came to have the following varieties: Northumbrian, Mercian, West Saxon, and Kentish (Gilbert 2003, 85). Mercian would eventually evolve into what we now call English (ibid.). In its first 700 years, English was influenced in its development by the languages of Celts, Romans, and Scandinavians (Baugh and Cable 2002, 67).

A major development in the on-going evolution of the language was the Norman conquest in 1066. The Normans, like all conquerors, brought their language to their new possession. The Norman conquerors maintained strong ties with their original homeland across the English channel, often having land on both sides. After their arrival to England, for 200 years French was the language of the upper classes as a matter of policy (ibid., 103). In this period, French became the dominant language in England. Looking back, England could have permanently become a French-speaking country. However, after 1200, the links between Normandy and England were gradually severed, and animosity between the French and the English arose (ibid., 116).

One of the consequences of this political development was that English, which had been relegated for centuries, returned to general use in England in the 14th century (ibid.). Other factors included social and legislative development. For example, the rise to prominence of the middle class in England helped generalize the use of the English language (ibid., 130-131). It was then that the language began to have legislative support as well. For instance, in 1362 Parliament passed the Statute of Pleading, which decreed that English was to become the language of lawsuits (ibid., 138). English began to be used in schools after 1349, replacing French (ibid., 139), and French virtually disappeared by the 15th century (ibid., 116).

The position of English being secure at home by political developments, social evolution, and legislative action, the language expanded beyond England with success. As England came to dominate the regions around it—namely, Cornwall, Wales, Ireland, and Scotland—its language displaced the autochthonous languages of those regions (more on this below). English became the language of power and advancement in the British Isles. Indeed, by the 18th century, "many Welsh, Irish and Scots embraced English as a means of access to metropolitan and, increasingly, imperial opportunity" (Clark 1989, 226). The expansion of the British Empire led to English spreading beyond the British Isles (Baugh and Cable 2002, 272-274), but that expansion into America, Africa, Asia, and Oceania is beyond the scope of this section, as is its current growth on the world stage.[1]

What matters for the current discussion is that English could have become a minority language in its homeland, yet it managed to ascend to a very secure position. This "institutional and legal ascendancy of the English language as the sole medium of public and societal discourse […] marginalized and consequently weakened all other languages" in the British Isles (Dunbar 2004, 96). And as English became the dominant language of said islands, the English began associating good character and citizenship with speaking English "correctly" (Mitchell 2012, 123). This idea can be traced at least back to the 17th and 18th century, and it has prevailed to this day (see Gill M. 2012). The legal, institutional, and social supremacy of English in England and, to a lesser extent, in the rest of the UK has important implications for those who either cannot speak English properly or wish to live out their lives in a language other than English. To a great extent, the research presented from this point onward is very much related to the question of what role translation is intended to play in this situation where, on the whole, English has come to have a strong, dominant position leaving non-English speakers or those who wish to speak other languages in an arguably disadvantaged position.

[1] For a discussion of factors leading to the diffusion of English as a global language, see Spolsky (2004:76-91) and Ferguson (2012, 475-480).

To illustrate how entrenched English is, some data from the 2011 Census will suffice. In that year, 92% of the population of England aged three and over[2] reported that English was their main language (Office for National Statistics 2013a, 4). Within England, the area with the highest percentage of individuals whose main language is English was the North East, at 97% (ibid.). Meanwhile, the area with the lowest percentage was London, at 78% (ibid.). What these data show is that English is by far the most spoken language in England, but it is not alone. Even so, there is a lack of awareness among "the English-speaking majority population in England about the UK's regional or minority languages as an integral part of the UK's heritage" (Committee of Experts 2010, 59). This chapter now turns to other languages spoken in England (and later in the rest of the UK).

2.2. Cornish

Cornish is one of several Celtic languages spoken in the UK. It is unlike all other Celtic languages, however, in that it is a sort of Lazarus language. It was once pronounced dead and yet is now back, even if very modestly. Thus, it is fair to say that to speak of Cornish is to speak a tale of two languages: traditional Cornish and reconstructed Cornish.

Traditional Cornish arose in the South West tip of Great Britain. It was historically spoken in Cornwall, but as Ellis points out "Cornwall was the first Celtic country to be conquered and annexed by England and, therefore, the Cornish became the first Celtic people to 'lose' their language" (1974, 1).

Cornwall came under Saxon rule around 900, which made the language of the Saxons the language of the ruling classes and Cornish the language of the masses (George 2009, 489). During the following centuries, Cornwall would undergo many of the same Anglicanization processes that were seen in Wales (Dunbar 2003b, 9). Cornish began its westward retreat around 1300 (George 2009, 490). Even so, the language's heyday was roughly from 1300 to 1500 (ibid.). It is estimated the language had 30,000 - 40,000 speakers during this period (ibid., 492). After 1500, however, the language began to decline also in the West of Cornwall, in great part due to the

[2] All data obtained from the 2011 Census refers to the population aged three and over.

Reformation (ibid., 491). One of the effects of the Reformation was that it severed the links with Brittany, where Breton, a language similar to Cornish, was spoken (Dunbar 2003b, 9). By 1650 some people began to realize that Cornish was doomed and attempted to collect as many samples of the language as they could (in the form of poems, songs, letters, etc.) (George 2009, 491). By the late 1600s it was increasingly unusual to find monolingual speakers of Cornish (Ellis 1974, 80). It is commonly reported that the last recorded native speaker of Cornish died in 1777 (Sayers 2012, 99), even though the last person to have traditional knowledge of Cornish likely died around 1890 (Dunbar 2003b, 9). Whatever the case may be, by 1800, Cornish had "ceased to exist as a living community language" (George 2009, 488), and by the end of the 19th century it was extinct (Sayers 2012, 99). Except, as we know, that was not the end of the story.

Cornish was reconstructed in the early 20th century (George 2009:488). During the first sixty years of the reconstructed Cornish, the language existed mostly in written form (George & Broderick 2009, 753). It became more of a spoken language starting in the 1970s, where infrastructure and advancements in communication technologies allowed for individuals who wished to speak the language to meet with each other (ibid., 755). Visits to Wales also inspired some people to believe in the possibility of living out their lives in Cornish (ibid.). This reconstructed Cornish has "attracted enthusiasts, in small privately run evening classes and correspondence courses" (Sayers 2012, 101). On this point, Dunbar indicates that the movement to revive Cornish has never been a mass movement, and at its core it has probably never exceeded 100 people (2003b, 9).

Not surprisingly, then, Cornish is the least privileged of the UK's autochthonous languages, both in terms of speakers and state support (ibid.). While the language has merited Part II protection under the ECHR, matters that deal with implementation of the ECHR have been left to the local government council (Sayers 2012, 109-110). Cornwall Council has neither the power nor the resources to promote the language the way Welsh is promoted in Wales. Much of the work to promote Cornish is done by the Cornish Language Partnership. This Partnership, led by Cornwall Council, has been charged with implementing a *Cornish Language*

Development Strategy (Cornish Language Partnership 2013a). As part of this strategy, the Partnership "has offered a translation service which has assisted organisations and events throughout Cornwall to engage with Cornish" (United Kingdom 2009, 53).

The *Cornish Language Development Strategy* is modest if compared with developments in nearby Wales. This should not be a surprise, given that few people actually speak Cornish. According to the 2011 Census, English is very secure as the main language of Cornwall, with 98% of the population aged 16 and over indicating they use English as their main language at home (Cornwall Council 2013, 6[3]). In 2007, it was estimated that there were about 300 people with knowledge of the language and about 100 fluent speakers (Sayers 2012, 101). However, in the 2011 Census, 600 people in England and Wales reported Cornish as their main language (Office for National Statistics 2013a, 7). Five hundred of those people live in Cornwall (ibid.). This is about 0.01% of Cornwall's population. Despite having a low number of speakers, Cornish is considered to be important as a symbol of Cornish identity (Sayers 2012, 102).

Sidebar 1. Bringing Cornish back. Traditional Cornish came into existence around 600 AD and disappeared by 1800 (George 2009, 488). Its life cycle can be divided into Primitive Cornish (600-800), Old Cornish (800-1200), Middle Cornish (1200-1575), and Late Cornish (157-1800) (George 2009, 488). Modern Cornish is the result of extensive reconstruction, a process much more extensive than revival (Sayers 2012, 100). The process is at times dated to have begun in 1904 with Henry Jenner's publication of *Handbook of the Cornish Language* (George & Broderick 2009, 753). The reconstructed language was based, originally at least, mostly on Middle Cornish (George and Broderick 2009, 754). Because the record of traditional Cornish is incomplete, gaps had to be filled. These were filled in by analogizing from within Cornish but also from Breton and Welsh, and even from Middle English (ibid.). This type of work was championed by individuals and societies that formed around the language (ibid., 754). But it was not always harmonious. Practical and ideological disagreements about what shape the movement should take riveted it (Dunbar 2003b, 10). Indeed, different groups arose, and their relationship at times became less than cooperative (Sayers 2012, 104). This is reflected, for example, in

[3] The publication cited here gives the 98% figure as applying to "people aged 16 and over." More detailed information is further provided by the Office for National Statistics which indicates that 98,4% of "usual residents aged 3 and over" report English as their main language (2013b).

the creation of the five competing orthographies for Cornish (ibid., 100). The clash eventually came to an end when a Standard Written Form was adopted via vote and after much work and negotiation on 19 May 2008 (ibid., 113). Besides filling in the gaps and standardizing the orthography, efforts are made to teach the language. However, Cornish is not taught in public schools in Cornwall, so people who wish to learn the language generally do it in evening classes or independently (George & Broderick 2009, 759). Translation of literature into Cornish is also a part of the effort to strengthen the language (ibid., 758). Titles that have been translated include *Alice in Wonderland, Around the World in Eighty Days*, *The Little Prince*, and *Treasure Island* (Cornish Language Partnership 2013b). Religious titles, such as the full New Testament, have also been translated (Cornwall County Council 2004, 6).

2.3. New minority languages

While English is unquestionably England's major language, immigrants have brought other languages into this region. Just how much immigration has been a part of England's history is debatable (see, e.g., Winder 2004; Conway 2007). For purposes of this study, let it suffice to say that immigration into England has increased a great deal starting in the 1990s. The newer immigrants are not exclusively from the Commonwealth, but come also from the EU. Thus, immigrants in England come from places like India but also from places like Poland. While not all immigrants speak a language other than English, many do. All in all, 8% of the population of England have a language other than English as their main language (Office for National Statistics 2013a, 4). These languages include Polish, Panjabi, Urdu, Bengali, Gujarati, Arabic, French, Portuguese, and Spanish (ibid.).

The area with the lowest percentage of speakers of languages other than English is the North East of England, where only 3% of the population report their main language is not English (ibid., 3). On the other side of the spectrum lies London. This is not unexpected, since it is the area of England that has attracted the most immigrants. This has contributed to making London the most ethnically-diverse city in all of the UK. According to the 2011 census, 22% of the inhabitants of the London area have a language other than English as their main language (ibid., 4). In some parts of London, the number of people whose main language is not English is much higher. For example, in Newham borough, 41% of the population reported their main language to be a language other than English. The most common new minority language in London is Polish, with 2% of the population identifying it as their main

language (ibid.). Other languages spoken in London include Arabic, Bengali, French, Guajarati, Panjabi, Portuguese, Spanish, Tamil, Turkish, and Urdu, all at roughly 1% (Office for National Statistics 2013b).

3. Linguistic background for Wales

When discussing the region of Wales, the presence of English is taken for granted. "[N]early three quarters of the population in Wales" has no Welsh language skills (Office for National Statistics 2013a, 8) and communicates, for the most part, in English. But in Wales English is not the uncontested language of power the way it is in England. This is the case in part due to the fact that Welsh has a great deal of state support as well as committed activism in its favor.[4] While the relationship between English and Welsh monopolizes the conversation in terms of languages in Wales, this chapter helps to highlight that there are also a number of new minority languages spoken by immigrants to be taken into account.

3.1. Welsh

Welsh is a Celtic language that predates English in Wales. The development of the linguistic context in Wales is closely shaped by the relationship between Wales and England. Wales was incorporated into England early on. Some estimate that English was rolling back Welsh as early as the 11th century[5] (May 2008, 256). As part of this process, the passage of the *Laws of Wales Act 1535* and *1542*, commonly known as Acts of Union, "made English the only language of the courts in Wales, and banned all use of Welsh from public office" (Grin & Vaillancourt 1999, 15). Under such circumstances, local elites gradually moved from Welsh to English (ibid.). The Industrial Revolution brought English migrants into Wales and the Great Depression

[4] In the case of Wales, there is a relationship between state policies of support for the Welsh language and activism in favor of said language at the grassroots level. This chapter does not attempt to theorize, or even describe, that relationship.

[5] Perhaps not coincidentally, Welsh identity began to be linked to the Welsh language as early as the beginning of the 12th century (Phillips J. 2012, 87-88).

took Welsh migrants out of Wales (ibid.). This continued to weaken the position of Welsh.

By the mid-19th century there were debates as to whether Welsh speakers should continue to use their language or fully embrace English (Williams R. 2000, 318-319). These debates were spurred, in part, "by an 1847 government-sponsored study that held the language accountable for moral degeneration and cultural backwardness" (ibid., 319). The study came at a time of efforts at Anglicization and of "clear hostility to the Celtic languages, which were perceived to be backward, barbaric, inferior, and generally opposed to the spirit of 'progress' of the day" (Dunbar 2003a, 140). Not surprisingly in this context, when the 1870s saw the beginning of an educational system, it was in English (Morgan 2007, 44). The trend of hostile policy toward Welsh continued through further legislative enactments such as the *Local Government Act 1888*, which made English the sole language of the local governments in Wales and England (Dunbar 2004, 99).

It should be noted that the weakening of Welsh came through a number of non-linguistic factors, prominent among which were acts of parliament (Roddick 2007, 270). Parliament's actions resulted in a decline in the percentage of Welsh-speakers, as evidenced from the 1891 census onwards (Dunbar 2003a, 141-142). This decline continued rapidly throughout the twentieth century (Morgan 2007, 44). Other factors to take into account for the decline of Welsh include an influx of English and Irish workers, the emigration of Welsh speakers with the increased mobility provided by railroads, and a decrease in religious observance (Spolsky 2004, 82).

Policy toward Welsh began changing around the middle of the twentieth century (Grin & Vaillancourt 1999, 16). Acts of parliament started reversing the trend. The first step in the direction of reversal was the *Welsh Courts Act 1942*, which reaffirmed English as the language of record for the courts in Wales but allowed parties or witnesses who would be disadvantaged by the use of English in court to use Welsh (Roddick 2007, 271). Other steps followed. These included the *Welsh Language Act 1967*, the *Broadcasting Acts 1980* and *1981*, and the *Education Reform Act 1988* (Dunbar 2003a, 147). Improvements for Welsh under the *Welsh Language Act 1967* "were still rather modest, being essentially confined to making the use of Welsh

in the courts a legal right" (Grin & Vaillancourt 1999, 16). However, wider changes in favor of Welsh came about with the *Welsh Language Act 1993*, which turned the newly created Welsh Language Board into a statutory body and placed "a duty on the public sector to treat Welsh and English on an 'equal basis', when providing services to the public in Wales" (Örücü 2006, 4). As a result of the *Welsh Language Act 1993*, the language became more visible in public buildings and institutions (Huws 2006, 150). A very important step in the push in favor of Welsh was the *Government of Wales Act 1998* (Kaufmann 2012:328). The Act created a limited form of devolution which gave a degree of freedom to the devolved government so it could act in any appropriate way to support the Welsh language (Dunbar 2003b, 26). Indeed, the most recent legislative enactment in favor of Welsh comes from the Welsh Assembly. The *Welsh Language Measure 2011* updated the legal framework for the promotion of Welsh, including the granting of official language status to Welsh. That status is to be given legal effect through enactments regarding duties on public bodies to provide services in Welsh, the no-less-favorable treatment of Welsh in comparison to English, the promotion of Welsh, etc. What some of these legislative actions mean in terms of translation will be discussed below.

All in all, "[o]f all the UK's autochthonous [minority] languages, Welsh has benefited most from supportive State policies" (Dunbar 2003b, 21). Supportive policies include not only those from Westminster, but also those advanced by the Welsh Assembly, including several policy documents which aim at creating a fully bilingual (meaning, English-Welsh) Wales (ibid., 26-28). Because in Wales as a whole English has become the dominant language, a fully bilingual Wales cannot be achieved without strengthening the position of the Welsh language. Not coincidentally, then, the strongest minority language regime in the UK is found in Wales with respect to Welsh (Dunbar 2007, 119). The Welsh language is supported also by a strong grass-roots network of campaigners.[6]

[6] This is evidenced by the flurry of activity on the ground level that followed the release of the 2011 Census, which showed roughly a 2% decline in speakers of Welsh in Wales over the last ten years. For example, the organization Cymdeithas yr Iaith Gymraeg (Welsh Language Society) met with representatives from Carmarthenshire Council to propose a plan to promote the language, organized

Results of this policy in favor of Welsh seemed encouraging. A decade ago it seemed that Welsh no longer was a language in contraction before English (Dunbar 2003a, 142). However, census figures released in December 2012 give reason to doubt previous appearances. The number of individuals who reported they could speak Welsh was reduced from 21% in 2001 to 19% in 2011 (Statistics for Wales 2012, 1). According to the census (StatsWales 2013), the unitary authority with the highest percentage of speakers is Gwynedd, where 65% of the population report they can speak Welsh, and the unitary authority with the highest number of reported speakers is Carmarthenshire, with 78,048 Welsh speakers. Conversely the authority with the lowest percentage of Welsh speakers is Blaenau Gwent at 8%, and Merthyr Tydfil is, with 5,028 speakers, the unitary authority with the least number of speakers. One should bear in mind, when considering these statistics, that they represent bilingual speakers, as there seem to be no monolingual speakers of Welsh, at least over the age of three[7] (Dunbar 2007, 106-107). It is currently not possible to know what percentage of those speakers use Welsh as their main language.[8]

3.2. New minority languages

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rallies attended by hundreds in favor of the language, and gathered around 1,500 signatures in support of the language (Misstear 2013). Cymdeithas yr Iaith has been active in campaigning for the Welsh language since 1962, when it garnered national attention by organizing a sit-in at Trefechan Bridge in the town of Aberystwyth. Other organizations that are active in promoting the language in different ways are Mentrau Iaith Cymru (Language Initiative Wales) and Dyfodol I'r Iaith (Future of the Language).

[7] Besides some young children, there may also be some old individuals who speak only Welsh. According to a spokesperson for Plaid Cymru, a political party committed to eventually obtaining the independence of Wales as a member of the European Union, some "elderly people suffering from memory loss" may only be able to communicate in Welsh (Shipton 2012). There may also be bilingual speakers in the rural areas of western and northern Wales who speak better Welsh than English (Kaufmann 2012, 331).

[8] The 2011 Census asked respondents in Wales to identify whether their main language was English or Welsh but did not allow them to indicate which of the two was their main language. It also asked about Welsh language skills but not in relation to English. Consequently, the census can tell us how many people speak Welsh but now how many speak it as their main language.

As stated above, the linguistic landscape of Wales is not limited to the English-Welsh dichotomy, even when discourse on language in the region is largely dominated by it. Throughout the UK, two major trends have been identified regarding languages not autochthonous to the British Isles.

The first is that many languages are in use (Edwards V. 2008, 265). This is also true in Wales, where an influx of non-UK immigrants into Wales has added diversity to the linguistic landscape. For example, according to estimates by CILT, the National Center for Languages, the Wrexham unitary authority had only a few speakers of new minority languages in 2005, but by 2008 there were "at least 25 languages spoken in schools" (CILT 2008, 3). This is especially the case in large urban centers, such as Cardiff. This is not surprising, as Cardiff was one of the first cities to receive Indian and African immigrants as early as the 1800s (Phillips D. 1998, 1681). Immigration into the city has continued. In this regard, Cardiff "has long received migrant workers from various destinations, and differs little from other large UK cities in its multi-ethnic population" (Tunger et al. 2010, 194).

The second overall trend indicates that multilingualism is no longer only an urban phenomenon (Edwards V. 2008, 265). Even if places other than Cardiff have lower percentages of speakers of new minority languages, there are very few places with no speakers of new minority languages.

The exact number of speakers of new minority languages in Wales had been difficult to ascertain before the 2011 census, but even then, there was no doubt that there were many languages in Wales which were not autochthonous to the British Isles (ibid.). In the 2011 census, 3% of the households in Wales reported their main language to be one other than English or Welsh (Office for National Statistics 2013a, 4). The area of Wales with the least percentage of speakers of new minority languages was Caerphilly, a little less than 1% of the population reporting that their main language was a non-UK language (Office for National Statistics 2013b). The place where less speakers reported their main language to be a non-UK language is Isle of Anglesey, with 690 such speakers (ibid.). The area with the highest percentage and number was Cardiff, where 8% of respondents, that is, 17,392 individuals, indicated that their main language was a non-UK language (ibid.). All in all, these

speakers of languages other than Welsh or English are largely overlooked when it comes to language policy in Wales (May 2008, 269).

4. Linguistic background for Northern Ireland

There is no question that English is uncontested as the main language of Northern Ireland. It has been reported as the main language of 97% of the population (Northern Ireland Statistics and Research Agency 2013d). However, languages in the region cannot be discussed without discussing Irish. Additionally, Ulster Scots must also be considered given Northern Ireland's particular history. As if that were not complex enough, in the last decades, immigrants have started to come into Northern Ireland, bringing with them their languages as well.

4.1. Irish

Irish is another one of the surviving Celtic languages of the British Isles. In Ireland, the language has a history of centuries of contraction as English spread and became well rooted (Grin & Vaillancourt 1999, 73). As was the case in other parts of the British Isles, the encroachment of English was linked to political power shifts. In the 12th century, deposed king Diarmait Mac Murchada from Leinster (in the East of Ireland) requested help from England's king to recover his throne. In exchange, he would give his allegiance to the English king. As a result, in 1169, Norman knights landed in Ireland, who "carved out some land for themselves and stayed in Ireland, while also remaining vassals to the king of England" (Grin & Vaillancourt 1999, 73). A second, larger Norman invasion followed in 1171 that took Dublin and eventually led to parts of Ireland coming under loose English rule.

This state of affairs changed by the 16th century when king Henry VII imposed direct rule and sought to destroy Irish cultural distinctiveness (Dunbar 2003b, 15). Beginning in the early 1600s, Protestants from Scotland and England were sent to colonize the province of Ulster, in the North of Ireland, in order to weaken the oneness of Ireland (ibid.). The Scottish settlement of Ulster (as part of the Plantation

of Ulster) and religious wars led to a Protestant, British domination that prevailed until most of the island became independent from British control in 1922 (Grin & Vaillancourt 1999, 73).

British domination in Ireland meant systematic discrimination against Irish Catholics, which helped make English the dominant language in the island and continued to weaken the position of Irish. In essence, Irish became the language of the colonized, and its uses became more and more restricted (Mac Giolla Chríost 2011a, 112). Discriminatory legislation was enacted, and then it was progressively removed in the 19th century, but the 1846-1851 famine continued to diminish the number of speakers of Irish (Grin & Vaillancourt 1999, 73). Despite a renewed interest in the 19th century for "Irish culture and identity" (MacDermott 2011:54), by the early 20th century, Irish was seen as the marginal language of rural peasants (Mac Giolla Chríost 2011a, 112). By the time the Republic of Ireland became independent following the 1922 Articles of Agreement for a Treaty Between Great Britain and Ireland, the island was heavily Anglicized (Grin & Vaillancourt 1999, 74). At that point, Irish "had all but died out as the native tongue of people in what is now Northern Ireland" (Dunbar 2003b, 15).

In Northern Ireland, the Irish language became highly politicized as a symbol in the struggle between nationalists and unionists. Generally speaking, unionists are Protestants and see Northern Ireland as part of the UK, while nationalists are Catholics who would prefer that Northern Ireland sever its links with the UK (McDermott 2011, 51). From 1922 to 1972, Northern Ireland was under unionist majority rule in the form of the Stormont Parliament. The Irish language was seen by some in power with suspicion, as it was associated with anti-British sentiment and even paramilitary activities (ibid., 56). The result was hostile treatment by the government of Northern Ireland toward the Irish language (Dunbar 2004, 122). Under such unionist rule, Irish was effectively restricted to the private domain and Catholic schools (McCoy 2001, 206). In 1972, due to the Stormont Parliament's inability to deal with the violence surrounding the Catholic, nationalist campaign for increased recognition, Westminster imposed direct rule on Northern Ireland (Mac Giolla Chríost 2011b, 195).

During this period Irish was thought to no longer exist as a first language in Northern Ireland (ibid., 199). Revivalist efforts began to take shape. One effort was the setting up of an Irish-speaking community around Belfast's Shaw's Road in the late 1960s and early 1970s (ibid.). Another revivalist effort started in the 1970s, when political prisoners learned and developed a form of Irish in order to communicate without the prison wardens and the non-Irish prisoners understanding them (ibid., 200). In the context of direct rule, the Irish language became strongly linked with a republican, Catholic ideology (McCoy 2001, 207). Thus, efforts by activists to revitalize the Irish language were viewed with suspicion by the government and mostly took place at the community, not institutional, level (ibid., 209-210). This began to change slowly in the 1980s when small measures of government support were adopted, such as some radio and television programming in Irish (Dunbar 2003b, 36). This coincided with the gradual release of political prisoners who, during the second half of the 1980s and the 1990s, were freed and went on to become active in promoting the Irish language in their own communities (Mac Giolla Chríost 2011b, 204).

Important changes to the position of Irish, however, did not come until the 1998 Belfast or Good Friday Agreement. The Good Friday Agreement was a multi-party, international agreement between political parties in Northern Ireland and the governments of Ireland and the United Kingdom. The agreement set up devolution in Northern Ireland, which would end up giving the Northern Ireland Assembly authority over the Irish language. Under the Good Friday Agreement, which has a section devoted to language issues, the Irish language was to be promoted (McCoy 2001, 211). Pursuant to the Agreement, a North/South Language Body was created. This Body includes Foras na Gaeilge, an agency charged with promoting Irish in the whole island (Dunbar 2003b:38).

While language issues are still highly political in Northern Ireland, as far as the Irish language is concerned, it "has undergone a rapid transformation from counterculture to officialdom" (McCoy 2001, 213). Even so, state measures in support of Irish in Northern Ireland are weaker than those in favor of Welsh in Wales and Gaelic in Scotland (Dunbar 2004, 96). In that sense, legislation in support of Irish is

considered an unresolved, controversial issue (McEvoy 2011:62-64). For example, despite a commitment to an Irish Language Act being included in the 2006 St. Andrew's Agreement and despite an ongoing campaign for such an Act, the government has not yet passed one (Mac Giolla Chríost 2012:17).

According to the 2011 census, 11% of the population of Northern Ireland has "some ability in Irish" (Northern Ireland Statistics and Research Agency 2012, 18). The percentage of fluent speakers, however, seems to be around 4% (ibid.), with 64,847 individuals claiming they can speak, read, write, and understand Irish (Northern Ireland Statistics and Research Agency 2013a). Only 0.24% of the population claim that Irish is their main language (Northern Ireland Statistics and Research Agency 2012, 17). Dungannon is the area with the highest percentage of fluent speakers, at roughly 7% (Northern Ireland Statistics and Research Agency 2014), and Belfast has the highest actual number of such speakers, with 14,141 individuals reporting they can speak, read, write, and understand Irish (ibid.). Carrickfergus is the area with the lowest percentage and number of fluent speakers of Irish, at 0,67% or 253 persons who report they can speak, read, write, and understand the language (ibid.). In Northern Ireland, 4,130 individuals report Irish is their main language (Northern Ireland Statistics and Research Agency 2013d). The relatively low amount of speakers of Irish in the region may be related in part to the fact that only "a very small percentage of Irish-speakers in Northern Ireland are native speakers" (Dunbar 2004, 102). Even so, a "substantial section of the population" seem to see it as an important part of their identity (Dickson B. 2003, 19). Due to Northern Ireland's complicated history, a consensus regarding identity may not be simple to reach.

4.2. Ulster Scots

Northern Ireland has another old minority language, namely, Ulster Scots or Ullans. The language dates back to the Plantation of Ulster, when many Scots migrated from the lowland areas of Scotland and brought with them their speech, which "has been preserved to the present day as Ulster Scots" (Dunbar 2003b, 101).

Like all things pertaining to language in Northern Ireland, Ulster Scots has seen its share of controversy. Part of the controversy has to do with the very nature of the language. Some argue that Ulster Scots is in reality a variety of Irish English (Smyth & Montgomery 2005, 60). Some argue that Ulster Scots is a variety of Scots (Gilbert 2003, 78). Others argue that Ulster Scots is a language in its own right, like other old minority languages in Europe,[9] fighting a similar battle for recognition in the political, academic, and legislative arenas (Laird 2001, 37). Even if Ulster Scots and Scots are the same language (see Falconer 2005, 48), the fact remains that they are treated differently in the UK because they are found in different jurisdictions (Kirk & Ó Baoill 2001, 11). Since the treatment is different, for purposes of this study Ulster Scots in Northern Ireland and Scots in Scotland will be considered as two different languages. This should not be interpreted as a linguistic or political statement regarding Ulster Scots but rather as an observation of different policy approaches.

The controversy regarding Ulster Scots goes beyond whether it should be considered a stand-alone language. The controversy is linked to Northern Ireland's difficult political history. In this political context, the perception is that unionists have championed Ulster Scots in opposition to nationalist support for Irish (Dunbar 2003b, 40). The development of Ulster Scots, then, has become politically contentious (McEvoy 2011, 60). For example, unionists see the right to communicate with the authorities in Irish as a threat to their Britishness and thus argue that any measures taken in support of the Irish language should be coupled with measures in support of Ulster Scots[10] (ibid., 61). In essence, Ulster Scots "has been set up as a direct

[9] The line between a stand-alone language and a variety of language can be hard to draw in some instances. Other languages in Europe that are contested include Frisian (seen by some as a variety of Dutch) and Kashubian (seen by some as a variety of Polish) (McDermott 2011, 61).

[10] To illustrate just how sensitive this topic can be, one example will suffice. In late 2012, Fermanagh District Council placed the name of the council in the back of council vehicles. The name appeared both in English and Irish. Rather quickly some controversy followed when an assembly member of the Ulster Unionist Party complained to the council that the use of Irish on district vehicles was discriminatory (Edwards R. 2013).

political counterweight to Irish"[11] (Mac Giolla Chríost 2011b, 206; see also McDermott 2012, 187-188). Dunbar summarizes the situation this way:

> Language issues in Northern Ireland are highly political,[12] and given that Irish has come to be closely associated with the Nationalist, Catholic community and Ulster-Scots has increasingly been championed by members of the Unionist, Protestant community, it is likely that progress on one of the languages will have to be made in conjunction with at least some progress in respect of the other. (2003b, 107)

In this politically charged context, the movement favoring Ulster Scots is relatively new, at least compared to other linguistic movements in the UK (McAlister 2001, 47). Government support for Ulster Scots dates back to the Good Friday Agreement. The Agreement sets out the government promotion of linguistic diversity (Rooney 2001, 55), including Ulster Scots. As stated above, a North/South Language Implementation Body was created as a result of the Agreement. This Body has two agencies, one dedicated to Irish and the other, Tha Boord o Ulstèr-Scotch, dedicated to the development of the Ulster Scots language and culture (Laird 2001, 38-39; Dunbar 2003b, 38). Even so, government support for Ulster Scots is relatively low (Dunbar 2003b, 40).

According to the 2011 census, 9% of the population of Northern Ireland has "some ability in Ulster-Scots" (Northern Ireland Statistics and Research Agency

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[11] This has led to authorities in Northern Ireland signaling that they intend "to promote the Irish and Ulster Scots languages and cultures on an equal footing" (Committee of Experts 2010, 17). What this means in practice is that measures in favor of Irish are at times not taken because it is impractical to take equal measures in favor of Ulster Scots (ibid.). The Committee of Experts finds this to be "inappropriate" because each language should be treated "in accordance with its specific situation", and in this case "the situation of the two languages is quite different [so] language measures specifically directed towards each language" should be taken (ibid., 6).

[12] This may be slowly changing. For example, a community center in East Belfast is teaching the Irish language to Protestants, something that would have been very unlikely ten years ago (Schrank 2013, Gemma 2014).

2012a, 18). The number of fluent speakers, however, seems to be around 1% (ibid.), with 16,373 persons claiming they can speak, read, write, and understand Ulster Scots (Northern Ireland Statistics and Research Agency 2013b). Most fluent speakers are found in Belfast, with 2,215 persons reporting the ability to speak, read, write, and understand Ulster Scots (Northern Ireland Statistics and Research Agency 2013c). Cookstown, on the other hand, is reported as having only 277 people with those same abilities, making it the area with the least number of speakers (Northern Ireland Statistics and Research Agency 2013b). Overall, 65 persons, or 0.004% of the population, report Ulster Scots as their main language (Northern Ireland Statistics and Research Agency 2013d). Some believe that the number of speakers of the language has been in decline for at least three decades (Gilbert 2003, 79). Language abilities aside, support for Ulster-Scots appears to be strongest in rural areas in the north east (McDermott 2011, 60).

4.3. New minority languages

Subsequent waves of immigration that date back to the 1930s[13] have brought a number of new minority languages into Northern Ireland. Over 70 non-UK languages have been identified as spoken by members of minority ethnic communities in Northern Ireland (Holder 2003, 27), including immigrants from China, the Indian sub-continent, Lithuania, Poland, Portugal, etc. Polish is, after English, the second most spoken language in Northern Ireland, with 1% of the population, or 17,731 individuals, claiming it as its main language (Northern Ireland Statistics and Research Agency 2012, 18; 2013d). Polish, in number of speakers who claim it as a first language, is followed by Lithuanian (6,250) and Portuguese (2,293) (Northern Ireland Statistics and Research Agency 2013d). Other communities stand out as well. The Chinese community has a size that has been estimated anywhere

[13] McDermott (2008, 10-17) identifies the following immigration patters into Northern Ireland: from China, in large numbers in the 1960s, but as early as the 1930s; from India, from the 1920s to the 1940s; from what is now Pakistan, in the 1940s; from Bangladesh, from the 1970s to the 1990s; from Portuguese-speaking countries in three continents, starting in the 2000s; from Portugual and Lithuania, starting in 2004.

from 3,300 to 8,000 individuals (McDermott 2008, 6-7). The languages spoken by the Chinese community include Cantonese and Mandarin, among others (ibid., 7-8). Another significant immigrant community comes from the Indian subcontinent (namely from Bangladesh, India, and Pakistan). They speak many languages, including Hindi, Kannada, Malayalam, Marathi, Pashto, Punjabi, Tamil, Telugu, and Urdu. (ibid., 11). Immigrants from these language communities speak English to different levels, if at all. For example, language is not as much a barrier to some immigrants from the Indian subcontinent as it is to many immigrants from China (ibid., 12).

In the linguistic context of Northern Ireland, new minority languages are recognized as part of a diverse society. This too, like many things related to language in Northern Ireland, has something to do with the Good Friday Agreement. The Agreement recognizes

> the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots *and the languages of the various ethnic communities*, all of which are part of the cultural wealth of the island of Ireland. (Italics added.)

Despite this nod in the Agreement, policy for new minority languages has been largely under-developed (McDermott 2012, 189). Consequently, there is no provision for the creation of government bodies to protect or promote these new minority languages. At best, native speakers of these languages who cannot speak English are provided with translations and interpreting upon request. Not surprisingly, even this can be seen in light of the struggle between nationalists and unionists. Some see efforts to translate materials into new minority languages as a way to appease unionists in their distrust of measures in favor of Irish. McCoy claims that "[i]mmigrant languages are catered for in the effort to introduce multi-lingualism, a context for Irish which does not disturb unionists" (2001, 215).

5. Linguistic background for Scotland

Like everywhere else in the UK, English has a privileged position in Scotland, only 1% of the population over the age of three claim they cannot speak English well (National Records of Scotland 2013a, 27). Further, English is the language of the home for 90% of Scotland's population (ibid., 28). However, there are two old minority languages in this region, namely Scottish Gaelic and Scots, that also help define the region's linguistic background. And, like everywhere else in the UK, there are immigrants who speak a number of new minority languages.

5.1. Scots

Scots is part of a continuum that is present in Scotland, Northern Ireland, and the Republic of Ireland (Kirk & Ó Baoill 2001, 2). In the latter two jurisdictions, the language is known as Ulster Scots. As stated above, however, I will not treat Scots and Ulster Scots as one language, because they are in different regions and subjected to different policy measures even within the UK. Scots in Scotland is known by a number of names, some which refer to specific varieties (e.g., Orkney, Mearns, Doric, Caitness, Gallowa, the Patter) and some which refer collectively to all of these (e.g., Lowland Scots, Scotch) (see Scots Language Centre 2014).

Like English, Scots is a Germanic language that developed in the British Isles after the Anglo-Saxons emigrated from continental Europe. It evolved from the Northumbrian varieties of Anglo-Saxon that were spoken in what is now Northern England and South-Eastern Scotland[14] (Gilbert 2003, 85). By the Middle Ages, it had become the language of the Lowlands and of urban centers (Dunbar 2003b, 12). Eventually, anyone who did not speak Gaelic spoke Scots (McGugal 2001, 29). Scots displaced Latin as the language of public administration and became a literary

[14] As is likely the case with all languages, the development of Scots was influenced by contact with other languages. For example, trading with the Flemish from the 12th century on brought about influences from their language (Gilbert 2003, 85). Other languages that influences the development of Scots include Anglo Danish, Norman French, and Gaelic (Dunbar 2003b, 12).

language (Dunbar 2004, 101). It came to have a strong position as the language of the Court, the Parliament, and the state in general (McGugal 2001, 29).

The status of Scots, however, began to change following the union of the crowns in 1603 (Gilbert 2003, 86). A consequence of the increasing political union of Scotland and England was an increasing Anglicization of Scotland (Dunbar 2003b, 13). At the time of the union of the crowns, the nobility followed King James VI to London, where they abandoned Scots in favor of English (Gilbert 2003, 86). In 1707, the union of the two parliaments made English the language of administration in Scotland (Dunbar 2003b, 13). After Scotland fully lost its independence that year, "Scots came to be represented in education and in public life as a corrupt form of English" (McGugal 2001:29). By the end of the 18th century, some expected Scots to disappear within a few generations (ibid., 29). The language did not disappear, but by the end of the 20th century, the distinction between Scots and colloquial English in some parts of Scotland had been blurred (Millar 2006, 64).

One of the ironies in the history of Scots is that it rose to be the language of a state and then fell to a situation characterized by an almost complete lack of state support. Devolution in 1998 provided an opportunity for the government of Scotland to change this situation, as authority over most matters pertaining to language was delegated to the newly created regional government (Dunbar 2004, 105-106). But even after devolution, the push for the promotion and protection of Scots has been weak (Kirk & Ó Baoill 2001, 2). The Scottish Parliament did not take up the cause of Scots (McGugal 2001, 30-31). Neither did the Scottish Government,[15] despite its comparatively strong support for Gaelic (ibid., 32). Thus, it is fair to say that Scots has been largely neglected, at least in terms of legislative and administrative support (Dunbar 2001, 241). Arguably, even Ulster Scots in Northern Ireland receives more state support than Scots in Scotland (Dunbar 2003b, 40). The relative lack of support

[15] The *Scotland Act 1998* created a legislature and an executive for the new government of Scotland. In the Act, they are known respectively as the Scottish Parliament (sec. 1) and the Scottish Executive (sec. 44). Under the *Scotland Act 2012*, the executive was rebranded Scottish Government (sec. 12). I will refer to the devolved government as "the government of Scotland" and to the executive specifically as the Scottish Government.

for Scots can be seen, for example, in that the 2000 National Cultural Strategy was published in English and Gaelic but not in Scots (McGugal 2001, 33).

Part of the reason there is a general lack of state support for Scots may be that Scots is not well defined as a language. Even among those who speak it, there is no consensus as to what exactly Scots is (Social Research 2010, 2). It may be anything between "a full-blooded Scots" on the one side and "Scottish Standard English" on the other[16] (Russell 2001, 27). In that context, the general assumption is that those who speak English understand Scots (Millar 2006, 76) and those who speak Scots also speak English. In addition, Scots is envisioned more as a tool for cultural expression than as a viable language for politics, administration, business, the law, etc. (Social Research 2010, 3). There seems to be no coherent government strategy regarding the language, and unlike what happened in Wales with Welsh, there is no popular movement pressuring legislators to act on this regard (Millar 2006, 83).

Because of the situation described in the previous paragraph, there is very little data on how many people speak Scots in Scotland. It is believed to be "the second most widely spoken indigenous language in the UK" (Social Research 2009, 4). The exact number of speakers, however, is hard to gauge. The 2011 census indicates that 1.5 million people, or 30% of the population, claim to speak Scots, while the number who claims they can speak, read, or understand Scots is 1.9 million or 38% of the population (National Records of Scotland 2013a, 28). According to the census, Scots is the language of the home for 1% of Scotland's population (ibid.). However, when addressing the issue of Scots the census offers this disclaimer:

> The census data on language skills in Scots needs to be carefully qualified. The question on language skills in the census questionnaire was relatively poorly answered. For example, a significant number of respondents provided information on their skills in Scots but did not indicate any corresponding abilities in relation to English, perhaps suggesting they considered Scots and English as inter-changeable in this context. Research carried out prior to the

[16] Unlike what happens with, for example, Welsh, different varieties of Scots have been identified, including Glaswegian, Doric, Ayrshire, Shetland, and Border Scots (Social Research 2009, 4).

> census also suggests that people vary considerably in their interpretation of what is meant by "Scots" as a language, resulting in the potential for inconsistencies in the data collected. (ibid.)

With that disclaimer in mind, the council areas where most people report being able speak Scots are Aberdeenshire and Shetland Islands, at 49% each (ibid., 27). The council area where the least percentage of people claim to be able to speak Scots (7%) is Eilean Siar (ibid.), where Gaelic is strongest.

5.2. Gaelic

The other old minority language in Scotland is Gaelic. Scottish Gaelic is part of a language continuum that extends to Northern Ireland and the Republic of Ireland in the form of Irish, a continuum that has been termed "Gaeltacht" (Kirk & Ó Baoill 2001, 2). From a linguistic standpoint, the argument can be made that Gaelic and Irish are the same language; however, because Irish Gaelic in Northern Ireland and Scottish Gaelic in Scotland are treated differently in terms of policy, in this study they will be considered two different languages. I will apply the term Irish for Irish Gaelic and reserve the term Gaelic for the Scottish Gaelic spoken in Scotland.

Gaelic is, like Welsh and Cornish, a Celtic language that predates the arrival of English. Settlers from the North East of Ireland brought an early form of Gaelic into Scotland in the 5th century (Dunbar 2003b, 10). Eventually, Gaelic become widespread enough that it became the language of the Scottish court (ibid.).

However, the "erosion of the Gaelic language" began to take place as early as the 11th century, when Scots replaced Gaelic as the language of the court (ibid.). By the 14th century, Gaelic was to be found mostly in the Highlands and islands off the west coast (ibid., 11). Starting in the 15th century, the position of Gaelic was further weakened through a process of Anglicization (ibid.). This process included legal measures aimed at strengthening the position of English. For example, the 1609 Statutes of Iona required children of the Scottish Highlands' clan chiefs to send their children to the Lowlands to obtain an education in English, instead of Gaelic (Dunbar 2003a, 139). Similar government policies continued to be applied in the coming

centuries, as can be seen by the passing of the *Education (Scotland) Act 1872*, which established compulsory English-medium education (Dunbar 2003b, 11).

Advocacy in favor of the language began about three decades ago (ibid.). Government support for Gaelic started off modestly, in the mid-1980s, when initiatives in education and broadcasting began to take shape (Dunbar 2003a, 156). Even then, there was "little legislative intervention and little sustained planning for Gaelic" (ibid., 162). This state of affairs would change after devolution.

As stated earlier, devolution placed responsibility for most language matters in the hands of the Scottish government. This gave the local parliament "the power to make significant advances in the legislative protection of Gaelic" (Dunbar 2006, 181-182). Despite some initial reluctance, the Scottish parliament eventually took steps to protect Gaelic by passing the *Gaelic Language Act 2005*. This act is based on the *Welsh Language Act 1993* and the Republic of Ireland's *Official Languages Act 2003* but is "distinctly less vigorous" than the other two (McLeod 2005, 46). Even so, the *Gaelic Language Act 2005* is aimed at "securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language" (intro). The Act itself does not grant Gaelic official-language status, but rather takes for granted that such status exists (Dunbar 2006, 17).

All in all, however, the use of Gaelic has been declining at different rates for quite some time, as evidence from the 1891 census onward (Dunbar 2003a, 143). According to the 2011 census, 58,000 people or 1% of the population report they speak Gaelic, and the percentage of the population who report they can speak, read, write, or understand Gaelic is 2% or 87,000 people (National Records of Scotland 2013a, 27). Gaelic is the language of the home for 0.5% of Scotland's population (ibid., 28). There are parishes, particularly in the Western Isles, where the majority of inhabitants speak Gaelic, but these seem to be shrinking steadily[17] (Dunbar 2006, 2-3). The council area of Eilean Siar (Western Isles) has the highest percentage of Gaelic speakers in Scotland, at 52% of the population (National Records of Scotland 2013a, 27) and also the highest amount of speakers, at 14,092 individuals (National Records

[17] Several studies carried out between 1972 and 2001 shows an undeniable retraction of Gaelic before English in the Western Isles (MacKinnon 2005).

of Scotland 2013c). Where Gaelic speakers are found outside the Highlands, they generally are there in very low concentrations (Dunbar 2006, 3). Gaelic is least spoken in the Orkney and Shetland isles, where a total of 226 persons, or 0.005% of the population, report the ability to speak Gaelic (National Records of Scotland 2013c). Whatever the demographic distribution of its speakers, all indications are that Gaelic "continues its apparently inexorable and possibly terminal decline"[18] (Mac Giolla Chríost 2012, 17), even if the latest census suggests a slowing in the rate of attrition. Most Gaelic speakers also speak English, with possible exceptions among the elderly and some individuals with mental illness (Social Research 2006).

5.3. New minority languages

In part due to Great Britain's imperial ventures, Scotland has received immigrants for a long time, even if weather and topography would intuitively suggest otherwise. Some immigrant communities are well established, even if relatively small, and among them languages from the Indian sub-continent are spoken, including Bengali, Gujarati, Hindi, Punjabi, and Urdu (O'Rourke & Castillo 2009, 38). Other long-established languages include Cantonese, Italian, and Polish (Social Research 2006, 14). The trend of immigrants coming to Scotland has not let up in recent years. Quite the contrary, there has been an increase in immigration in the past few decades, and Glasgow has become "the second city in the UK for the dispersal of asylum seekers" (Perez & Wilson 2009, 9). This brought about the use of languages such as Russian, Shona, and Tagalog (O'Rourke & Castillo 2009, 38). Additionally, with the expansions of the EU, languages like Romanian are now part of the linguistic background in Scotland (Social Research 2006, 228).

According to the 2011 Census, there are more than 170 languages spoken in Scotland other than English, Gaelic, and Scots (National Records of Scotland 2013b). The new minority language with the most speakers is Polish, with 54,186 individuals claiming it as their main language at home (ibid., 1), which amounts to 1% of Scotland's population (National Records of Scotland 2013a, 28). Other new minority

[18] This trend seems to be confirmed by the 2011 census, which records a slight decrease (0.1%) in speakers of Gaelic since 2001.

languages spoken at home by at least 10,000 people include Urdu, Punjabi, Chinese, French, German, and Spanish (National Records of Scotland 2013b). On the other end, a number of languages reported less than ten speakers (ibid., 5). The census further reports Glasgow to have the most persons who use a language other than English, Gaelic, or Scots at home, at 69,758 individuals or slightly over 1% of Scotland's population (National Records of Scotland 2013c).

Regarding the many languages spoken in Scotland, there were indications in 2007 that a comprehensive language policy would be developed which would have taken into account new minority languages. At the time, the coalition government (Scottish Labour Party and Scottish Liberal Democrat Party) proposed a "strategy for a multilingual Scotland", but when the Scottish National Party took over in that same year, the focus switched from all languages to autochthonous languages, especially Gaelic (O'Rourke & Castillo 2009, 40-41).

6. Conclusion

This chapter has described the linguistic background of the UK as a way to give the reader some sense of the history, degree of state support, and demographics of the many languages in question. In so doing, a few conclusions can be drawn regarding the context of this research in terms of the integration of linguistic minorities. Before doing so, however, some limitations must be acknowledged.

The chapter has attempted to paint a broad picture of language, especially minority languages, which implies a number of limitations. The first limitation is that because the focus has been on minority languages, old and new, to a certain extent English was not fully explored. Nonetheless, I hope to have signaled clearly English's dominant position, which is important in terms of the coming chapters. Another limitation is that the linguistic context of a state is always fluid (Mowbray 2012, 181), and, as stated in the introduction, this chapter is only a snapshot. I have nonetheless attempted to give this writing a sense of fluidity by referring to some of the historical factors that have weighed on the current situation of the languages described here.

Of course, the situation is ever-changing, and a description set on paper is bound to not do justice to this fluidity. Another limitation is that this chapter is organized according to the four regions of the UK, and then by languages or language groups within each region. One problem that arises as a result is that not all speakers of a specific old minority language live in the region where I describe the language; for example, there are Welsh speakers in England, and my description does not explore that. Another problem is that grouping new minority languages into a single category is problematic. Speakers of different new minority languages are differently situated, with varying economic and community infrastructures. Thus, what may be true regarding the Bangladeshi population in Manchester may not apply to the Kurdish population in London, etc. (Edwards et al. 2005, 82-83). However, there is value in organizing the description the way I did. As will be seen in the coming chapters, this crude division roughly corresponds with the broad policy approach toward languages in the UK.

Despite those limitations, the chapter is nonetheless valuable because it helps set up the context in which translation policies are developed. This context has to do with languages, but also with integration. The UK is a democratic state which is composed mainly of English speakers, but also of speakers of other languages. These languages are in minority positions in the state as a whole. They have varying degrees of official recognition and support, and their speakers are not evenly distributed or appear everywhere in the same concentration. Inasmuch as this linguistic diversity is a reality, authorities are faced with the questions of how to integrate speakers of these different languages while at the same time guaranteeing full democratic participation to everyone. There is a perceived tension between linguistic diversity and democratic participation (Mowbray 2012, 84-85). On the one hand, a fully democratic society is one where everyone has a voice that is heard, which may imply the use of a common language. In the UK, that language would have to English. On the other hand, a truly democratic society would not force everyone to conform to a specific form of speech because this could, under certain circumstances, be discriminatory and effectively leave people outside the conversation. In the UK, speakers of old minority languages often find themselves

having to argue for the recognition of the right to express themselves in their own language if they so choose to. Additionally, speakers of new minority languages at times cannot even participate in the conversation because they do not speak the dominant language. Allowing speakers of old and new minority languages full inclusion in the democratic conversation without sacrificing the ability to hold that debate is a challenge faced by policymakers in the UK. This is no easy task, particularly in light of the observation that the "institutional recognition of some linguistic minorities will always involve marginalizing and disadvantaging others" (Mowbray 2012, 180-181). How can linguistic minorities be recognized as an equal part of society? How can individuals who speak minority languages be afforded the same rights and opportunities as those who are native speakers of the dominant language? How should linguistic minorities be integrated in the life of the state? There are no simple solutions to these questions, in part because every group of speakers is situated differently. Concerns about integrating linguistic minorities will be different in a region like England, which is the center of power and has a rather homogenous self-image, than they will be in Northern Ireland, which sits on the periphery and is keenly aware of the potential for violent conflict within its borders.

And what does translation have to do with it all? Is there a place for translation in attempting to ensure a place for linguistic minorities in the life of the state? If so, what should it be? These are questions that authorities in the UK have grappled with in one way or another. In the next few chapters, I will describe what translation policies have been developed in this context. By describing them, I hope to highlight the role of translation, if there is one, in attempting to help bring about the integration of linguistic minorities.

6. Legislation and policy that affect translation generally in the United Kingdom

1. Introduction

The foregoing description of the linguistic background of the UK aims at highlighting the fact that the UK is by no means a one-language country. With that background in mind, this thesis now begins to explore translation policies in this linguistically diverse state. It will do so by describing and analyzing legislation and, where applicable, related policy documents that have translation implications. This description and analysis are necessary before heading into narrower domains. Such domains do not exist in a vacuum. Many of the choices, in terms of translation, that are made in those domains are the result of either UK-wide or regional legislation that applies to more than one domain. This chapter will explore what those cross-domain laws are. It will provide the legal context to understand translation policy in the domains of healthcare, the judiciary, and government. When the linguistic background and the wider legal framework are understood, translation policy begins to make sense. Translation policy starts becoming less an abstract object of study and more a combination of management, practice, and beliefs that respond to pressures from below (e.g., linguistic context) and from above (e.g., legal framework).

The discussion will begin with the UK as a whole and then move in the same geographical direction as the previous chapter: England, Wales, Northern Ireland, and Scotland. It will, therefore, address two levels of government: the central government and the devolved governments. A word on this may be helpful. The UK is a constitutional monarchy. This means that even though a king or queen is the head of state, when it comes to the ultimate law-making power, one must look to Parliament (often referred to as Westminster, after the area where it is located). Parliament has the ultimate power to make laws for all of the UK. This makes sense, since the UK is a unitary state. For this reason, this chapter will begin by addressing laws passed by Parliament for the whole state. However, Parliament has created

legislative bodies for Wales, Northern Ireland, and Scotland and devolved some legislative powers to them. This devolution of power should not be confused with federalism. Parliament has kept authority over the devolved bodies themselves, which means that at any time, it can revoke one or all devolved powers.[1] The devolved legislatures are the National Assembly for Wales, the Northern Ireland Assembly, and the Scottish Parliament. Devolution has not been systematically carried out, which means that not all the same powers were devolved in every case (see Williams 2013, 181-182). For example, no powers have been devolved to England, and devolved powers in Wales, Scotland, and Northern Ireland vary. Despite the fact that different devolved legislative bodies have different powers, language is a devolved matter in all three legislatures. It makes sense, therefore, to explore measures adopted by these devolved assemblies and parliament.

It should be stated from the outset that there are no laws in the UK, whether from Parliament or the devolved legislatures, that deal exclusively with translation. Further, very few laws are explicit about translation obligations. Translation policy, then, flows from laws that deal with other matters, including human rights legislation and language laws. These laws are broad-scale management decisions which in turn trigger other decisions and practices that include translation. In other words, translation management and practice become necessary in fulfilling broader policies regarding language and human rights. This chapter, as well as the three that follow it, will focus on the translation implications of the law. This should not be misunderstood as implying that translation is the only way to fulfill these laws or

[1] This has been starkly demonstrated in Northern Ireland. Some level of self-government existed in Northern Ireland in the form of the Parliament of Northern Ireland. This parliament was created by Westminster in 1921 under the *Government of Ireland Act 1920*. In the early years of The Troubles, Westminster dissolved this parliament through the *Northern Ireland Constitution Act 1973*. Attempts to re-establish devolution did not prove fruitful until 1999, following the Good Friday Agreement. The Northern Ireland Assembly was created under Westminster's *Northern Ireland Act 1998*. Then, difficulties in the peace process led to the suspension of the Northern Ireland Assembly by Westminster. The suspension was not lifted until 2007, following the St Andrews Agreement. The Northern Ireland Assembly has not been suspended or abolished since then. In every instance, Westminster has retained ultimate power over the legislature in Northern Ireland.

that managers and practitioners engage only in translation efforts when attempting to fulfill their legal obligations. Thus, translation exists alongside a number of other measures including the hiring of bilingual staff and cultural advocates. Because this thesis focuses on translation, those other measures will not be explored.

2. UK-wide legislation that affects translation

Legislative enactments by Parliament should be considered as they reflect national policy and set the framework for additional regional and local policies. Therefore, it becomes incumbent upon us to consider what Acts of Parliament[2] set translation policies in the UK's regions.

The first observation is that Parliament has not as of yet issued very many explicit calls for translation, and when these are found, as will be discussed in chapter 9, they tend to be in the criminal justice realm. However, the lack of explicitness does not mean that Parliament has not in fact set a UK-wide translation agenda. It has done so, perhaps unwittingly, through its anti-discrimination legislation. The degree to which translation must take place under anti-discrimination laws is uncertain and depends on a number of factors, but there is no question that under current circumstances, in order to comply with such laws, translation must take place to a certain degree.

The government's general obligation to translate for those who do not speak the language of the state is found in the *Equality Act 2010*, which is part of the law of Great Britain but not of Northern Ireland. This Act affects a very broad spectrum of institutions, including the healthcare systems and local governments. It was drafted

[2] An Act of Parliament is primary legislation in the UK. As primary legislation, such acts create broad frameworks. Further details of the frameworks are developed through secondary legislation, which in the UK mostly takes the form of Statutory Instruments.

in order to harmonize[3] and modernize[4] the complex and scattered set of enactments that comprised the UK's anti-discrimination law.

The Act seeks to promote equality by protecting individuals who exhibit certain characteristics. The characteristics are as follows: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation (section 4). Individuals who exhibit these characteristics, as defined in the Act, are protected from being discriminated, harassed, or victimized by certain authorities because of such characteristics. The Act thus aims at reducing inequalities in a broad range of contexts, including public services and functions.

A glance at the protected characteristics is enough to see that they do not include language. They do include race, however, which in turn includes color, nationality, and ethnic or national origin (section 9(1)). While the concept of race is notoriously complicated, the idea of "ethnic origin" has been defined in the UK under the leading case of *Mandla v. Dowell Lee* ([1983] 2 A.C. 548) in the main judgment penned by Lord Fraser.[5] He took a broad approach in his construction of the term, finding that people share an ethnic origin because of "factors as a shared history, religion, language and literature, family, social and personal customs and manners, so that they have a separate ethnic or communal identity" ([1983] 2 A.C.

[3] Namely, the following, as amended: *Equal Pay Act 1970*; *Sex Discrimination Act 1975*; *Race Relations Act 1976*; *Disability Discrimination Act 1995*; *Employment Equality (Religion or Belief) Regulations 2003*; *Employment Equality (Sexual Orientation) Regulations 2003*; *Employment Equality (Age) Regulations 2006*; *Equality Act 2006*, Part 2; and *Equality Act (Sexual Orientation) Regulations 2007*.

[4] The following equal-treatment directives came into play, even though they were already implemented into UK law: *Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin*; *Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation*; *Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services*; and *Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)*.

[5] To be precise, *Mandla v Dowell Lee* defined "ethnic" under the *Race Relations Act 1976*; however, unless the term is redefined for purposes of the *Equality Act 2010*, there is no reason to believe the term should be understood differently.

548, at 551). The opinion identifies two prongs to ethnic origin: a separate identity plus other "factors" that are shared by the group, which may include language. It is unclear to what extent language alone can serve as a shared factor in order to claim a separate ethnicity. Dunbar points to *Gwynedd County Council v. Jones* ([1986] ICR 833) as evidence that language alone may not be enough, where Welsh speakers were not deemed to be a different ethnic group from English speakers (2001b, 238). Taken together, these cases seem to indicate that language alone is not determinative of a different ethnicity, but it is an important factor that should be taken into account. This is important for purposes of this study, which is concerned with the linguistic implications of the Act. In practice, speakers of new minority languages are perceived as being from a different ethnic origin. In this regard, they would be protected from direct discrimination through the *Equality Act 2010*. It is not so clear that speakers of old minority languages can receive such protection based on race.

It is hard to imagine a sign outside a government building barring the entrance to individuals from a specific ethnic group. A more realistic concern would be indirect discrimination. Under the Act, indirect discrimination takes place whenever a provision puts individuals of a specific race at a particular disadvantage compared to others (section 19(1)-(2)). Thus, in terms of our immediate concerns, if a service is provided only in one language, and there are members of an ethnic group that do not speak that language, they would be victims of indirect discrimination because they would be disadvantaged in their limited access to the service. Since indirect discrimination is also prohibited under the Act, many public bodies find themselves obligated to find ways to communicate effectively with those seeking their services. Put more succinctly: many public bodies have a statutory duty to ensure non-discrimination[6] through, among other things, equal access to services and information; when language becomes a barrier to such equal access, translation can

[6] This duty is not new. It hails back to the *Race Relations (Amendment) Act 2000*, which barred most public authorities "carrying out any functions of the authority" from doing "any act which constitutes discrimination" (section 19B). As explained in this chapter, the duty to not discriminate has been incorporated into the *Equality Act 2010*.

play a role in overcoming the language barrier and securing equality of access. This is how Parliament has put translation on the to-do list of many public institutions.

This has resulted in translation being provided at different levels in many domains where public authorities have non-discrimination obligations under the *Equality Act 2010* and its predecessors. However, this does not amount to a coherent, uniform approach to translation throughout the UK. For example, Edwards et al. studied the use of interpreters to gain access to a wide range of services in the UK and concluded that organizations which use interpreters

> use a variety of delivery models and management arrangements […] Depending on the source of provision, interpreters are employed either on full- or part-time contracts, or by session, and are either free to users or provided at a charge. Interpreting services often have ad hoc and uncertain funding. (2005, 78)

This is a consequence of the fact that, despite the professionalization of interpreting, "[t]here are no clearly established, nationally recognised guidelines or standards for interpreting provision in the UK" (ibid.) This implies a situation where translation, including through the use of interpreters, lacks a comprehensive policy approach. In fact, as we will see below and in the coming chapters, much depends on the domain, the language one speaks (or, perhaps more precisely, does *not* speak), and the region where the service is provided.

Translation policy therefore has developed piecemeal. Translation management and practice has evolved in part from pragmatic attempts at dealing with non-discrimination obligations in increasingly multilingual settings. However, in the last decade, policies documents and statement have been made that move away from valuing multiculturalism and stress the achievement of a single type of "Britishness." According to Aspinall and Hashem (2011, 148), this shift began slowly in 2001, following riots in Bradford, Burnley, and Oldham, gradually continued as immigration increased with the expansion of the EU in 2004, and saw a "tipping point" after the terrorist attacks in London on 7 July 2005. This shift in policy away

from multiculturalism has affected translation policy to an extent. The view has been commonly expressed that current efforts and expenditures on translation should be diverted toward the acquisition of English by immigrants (ibid., 149-150).This policy shift has been felt differently in each region, with the strongest evidence of it being found in England's local governments. Nonetheless, translation continues to take place in a number of domains as a way to ensure non-discrimination of individuals who do not speak English.

It should be observed that non-discrimination legislation does very little to protect people who *do* speak English. This has particular implications for speakers of old minority languages, who for the most part speak English well. This may be specially striking in light of the fact that the UK has ratified the ECRML and consequently has assumed certain responsibilities to promote the languages of old minorities. It may be enlightening to remember that binding obligations under general international law are not immediately incorporated into UK law. Consequently, in order for international agreements to become incorporated into UK law, acts of Parliament become necessary. For example, the *Geneva Conventions Act 1957* incorporated the Geneva Conventions into UK law, with its specific translation obligations as discussed in chapter 4. The ECRML has not been incorporated into UK law. This means that it lacks the force of law inside the UK. It is nonetheless influential, as will be seen below and in the coming chapters. This influence comes through political pressure and other mechanisms, such a monitoring by the Committee of Experts. Further, as stated above (section 1), Parliament has devolved language matters. In other words, the implementation of the ECRML has been delegated to the devolved governments (Committee of Experts 2004, 57). For purposes of this study, the extent to which translation is carried out in order to fulfill the political commitments under the ECRML is best considered in each region.

Despite a gradual policy shift away from multiculturalism, non-discrimination legislation continues to be a far-reaching way in which Parliament brings about the development of translation policies. It has put translation on the to-do lists of specific organizations in other ways as well. For example, translation in criminal proceedings flows from the rights granted in the *Human Rights Act 1998*. These other ways are

domain-specific, however, and will not be addressed in this chapter. The rest of the chapter will address legislation and policy documents that are applicable to individual regions of the UK.

3. England-specific legislation that affects translation

There is no legislative enactment that provides for translation in England only. As explained in section 2 above, obligations under non-discrimination legislation apply not only to England but to other parts of the UK as well. Thus, the government's policy in England is one of allowing "non-English speakers" to access public services in their own languages (United Kingdom 1999, 30) under certain circumstances. This is achieved through translation. How exactly this plays out in specific domains will be discussed in the next three chapters. For now, let it suffice to say public service organizations in England can get materials translated into different languages, often via private companies. Further, the government partially funded the creation of a National Register of Public Service Interpreters (NRPSI) to serve as "a directory of public service interpreters across the United Kingdom [that] includes interpreters familiar with the terminology, structure and procedures in the fields of law, health and local government" (ibid.). Initially, public service organizations were "strongly encouraged" to use NRPSI interpreters (ibid., 31). Despite this initial vision for the NRPSI, use of NRPSI interpreters is not mandatory. Further, in domains such as the judiciary, interpreters are hired via a private company (as will be explained in chapter 9), and they may or may not be in the NRPSI. This register, as well as those interpreters that are hired through private agencies, make interpreting available in England. Through interpreting and written translation, England carries out its policy of allowing those who do not speak English to communicate with institutions involved in the provision of law, health, and local government services.

Translation is provided to communicate with speakers of new minority languages who may lack the necessary English proficiency. When dealing with speakers of old minority languages, authorities proceed on the assumption that they speak English sufficiently well. For them, everything then is done through the

medium of English. This is true even for speakers of Cornish, the only minority language autochthonous to England.

4. Wales-specific legislation that affects translation[7]

As stated in chapter 5, developments relating to language in Wales are mostly related to the relationship between English and Welsh. Legislation plays a key role in this respect. Parliament weakened the position of Welsh, and Parliament strengthened it, at least until devolution, when competence was granted to the Welsh government over matters pertaining to the Welsh language. Thus, when considering language legislation in Wales, this is mostly legislation regarding Welsh. These pieces of legislation, whether from Westminster or the devolved legislature, are not about translation per se—laws rarely are—but nonetheless have translation policy implications.

Currently, the *Welsh Language Act 1993* has important implications for translation in Wales. The Act is an example of a policy that supports the maintenance of the Welsh language. It focuses on providing a wide range of public services through that minority language, including education, healthcare, social welfare, and in communication with public authorities, including the executive, judicial, and legislative branches (Dunbar 2001b, 234-235). As stated in chapter 5, the *Welsh Language Act 1993* generally establishes "the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality" (introduction). Under the Act, the Welsh Language Board is established (an Advisory Welsh Language Board was in existence between 1988 and 1993) to promote the use of Welsh by approving Welsh Language Schemes created by certain public bodies. Welsh Language Schemes are documents that spell out how each public body will put in practice the principle of equality between English and Welsh. These documents therefore become the vehicle to

[7] This section on Wales does not cover obligations under the ECRML. The UK accepted the treaty's obligations when it ratified the treaty. However, instead of creating new legislation, the UK chose to ratify the treaty provisions (under Part III) that were *already* in effect for Welsh (Dunbar 2003b, 43-44).

promote Welsh in public spaces (Dunbar 2003a, 151). In other words, while the legal principle of equality is set forth in the Act, it is the Welsh Language Schemes that implement the principle (Morgan 2007, 44).

It is worth noting that under the *Welsh Language Act 1993* no individual rights to "public services through the medium of Welsh" were created (Dunbar 2003a, 151). An individual right to use the Welsh language in court was created via the *Welsh Language Act 1967* (also present in the latter Welsh Language Act). While much translation takes place in efforts to fulfill the *Welsh Language Act 1993*, it does not create individual rights but rather administrative obligations. Dunbar indicates the system created by the *Welsh Language Act 1993* is based on "administrative enabling" or a "planning-based" model (ibid., 150).

Neither the 1967 or 1993 acts explicitly require that translation *must* take place. They are, after all, not laws about translation but rather about strengthening the position of the Welsh language. Treating English and Welsh "on a basis of equality" requires a broad set of strategies, including Welsh-medium education. More pertinently for current purposes, these strategies also include comprehensive translation efforts. This is reflected in the Welsh Language Schemes, which address an array of issues, among them the use of translation as a tool to meet the obligations imposed by the Act[8] (Huws 2006, 150). The Welsh Language Schemes address matters such as dealing with the public in writing, over the phone, and in person. In so doing, issues of translation into and from Welsh come up recurrently. Thus, while the Act is not framed in terms of translation policy, its implementation results in policies of on-going translation between English and Welsh for public bodies. This is particularly true when it comes to written translations, since the schemes often call for bilingual documents or sister documents (one in each language). If there are bilingual or sister documents, translation has to take place in order to produce the

[8] Understanding the need for translators in order to strengthen the position of Welsh, the Welsh Language Board became active in promoting translation, including giving substantial funding to Cymdeithas Cyfieithwyr Cymru/The Association of Welsh Translators and Interpreters (United Kingdom 2002, 34). While membership in the association "is not obligatory for translators and interpreters working in Wales," institutions and organizations are encouraged to use translators/interpreters who have been accredited by the association (ibid. 2009, 185).

texts in both languages. Regarding interpreting, logic would dictate that the need for interpreters should decline as a greater percentage of the staff in public bodies and the general population becomes bilingual in Welsh and English. As more staff can communicate directly in both Welsh and English, less interpreting would need to take place.

Another Parliamentary enactment that has important implications for translation in Wales is the *Government of Wales Act 2006*. The Act updates and expands the *Government of Wales Act 1998*, which had created the National Assembly for Wales. The 2006 act created an executive body in Wales (known as the Welsh Government), which includes Welsh Ministers who "may do anything which they consider appropriate to support […] the Welsh language" (section 61). In doing this, the Welsh Ministers are to adopt "a strategy to promote and facilitate" the use of Welsh (section 78). This Act reaffirms the policy of supporting/promoting/facilitating the use of the Welsh language, which implies, among other things, a translation effort in order to strengthen the position of Welsh as compared to English.

Under the 2006 act, the Assembly could pass "Measures" in the areas where the devolved government has competence.[9] One of the Measures that is significant for Welsh language policy and may affect translation is the *Welsh Language Measure 2011*. The Measure was adopted in order to modernize the *Welsh Language Act 1993*. Among the most significant provisions in the Measure is that of the abolishment of the Welsh Language Board and the establishment of a Welsh Language Commissioner "to promote and facilitate the use of the Welsh language" (section 3(1)). The Welsh Language Commissioner understands the key role of translation in promoting and facilitating the use of Welsh. This is evidenced in her public support of the Coleg Cymraeg Cenedlaethol's (a public body set up to further Welsh-medium education in Wales' universities) decision to move forward with the creation of a

[9] Pursuant to sections 103-105 of the *Government of Wales Act 2006*, a referendum was held on 3 March 2011 which gave the Assembly power to enact Acts as opposed to Measures (National Assembly for Wales 2011). This means, among other things, that the Assembly can no longer pass Measures, but the validity of any Measure passed before the referendum is unaffected by the change.

school of translation and interpreting studies (James 2014). Further, the Welsh Language Commissioner has asked Cymdeithas Cyfieithwyr Cymru (The Association of Welsh Translators and Interpreters) to regulate the English/Welsh translation profession and partially funds some of Cymdeithas Cyfieithwyr Cymru's activities (ibid.). These pushes are linked to ensuring quality in translation between the English and Welsh languages (ibid.).

Another important change brought about by the *Welsh Language Measure 2011* is that of the abolishment of the Welsh Language Schemes in favor of Welsh Language Standards. The Standards are to be applied across specified areas (service delivery, policy making, record keeping, etc.) and will gradually replace the Schemes. The Standards are intended to provide clear, consistent guidelines across organizations regarding the use of the Welsh language in providing services. For example, the standard for service delivery should promote the use of the Welsh language when organizations deliver services. How these Standards will affect translation in Wales remains to be seen, but it is hard to imagine they will not have translation implications. These implications are likely to be significant because the standards will apply to a broad array of organizations, including the police, local health boards, local government councils, and some tribunals. The Welsh Language Commissioner proposed Standards in late 2012, after public consultation, to the minister with responsibility for Welsh. In early 2013, these standards were rejected by said minister, and the Welsh Government issued a consultation document on a new set of Standards in early 2014 (which will be addressed in chapter 7). As of this writing, the policy to place the Welsh language on parity with English continues to be applied through the Schemes.

Until such a time as the Standards fully replace the Welsh Language Schemes, the Welsh Language Commissioner has issued an advice document on drafting, translating and interpreting (Welsh Language Commissioner 2012b, 1). The document provides guidelines on how to arrange a translation in house, how to use language technology for translation, how to commission a translation to an external provider, how to provide interpreting for bilingual meetings, and how to best draft bilingual documents. The advice document is guided by the principles that "[i]n

Wales, the Welsh language should be treated no less favourably than the English language" and that "[p]ersons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so" (ibid., i).

Within the legal framework described above, the Welsh Government has issued a policy document called *A Living Language: A Language for Living* (2011). It supersedes the previous policy document (*Iaith Pawb: A National Action Plan for a Bilingual Wales*) and will be in effect until the end of 2017. The document indicates the Welsh Government's desire to make Welsh a strong, everyday language (ibid., 14). This is to be achieved through a long list of actions aimed at acquisition and use of Welsh in Wales.

Translation plays a role in achieving these policy objectives. Thus, the Welsh Government indicates it will "[e]xplore the possibility of improving access to translation services for community groups and third sector organisations" in order have more Welsh used at the community level (ibid., 36). The implication is that in many parts of Wales, community groups and non-profit organizations operate mostly in English and may lack the resources to translate into Welsh.[10] Further, in accordance with this policy, the Welsh Minister responsible for the language awarded £35,000 for the year 2012/2013 in order to continue funding a service that provides free translations into Welsh for private and third-sector organizations (ibid. 2012).

What can be gleaned from this is that the Welsh Government understands that Welsh needs a strong dose of governmental support in order to grow, and that translation is an important part of that support. In other words, translation is a tool for promoting the use of the language at the community level. Naturally, it is not the only tool. Education and the media are two other important tools, and this is reflected in the policy document, but translation is also part of the picture. In efforts

[10] In this scenario in particular, the Welsh Government wishes to explore specifically the use of translation *from* English *into* Welsh by "community groups and third sector organisations." Even so, generally speaking, in Wales translation between English and Welsh moves *in both directions*: from English into Welsh and from Welsh into English. I cannot ascertain at this point whether there is more translation into English or into Welsh. This is a question that can be answered through large-scale, quantitative research that, to the best of my knowledge, is yet to take place.

to promote a language, education through the medium of that language is important because it teaches children in the language; the media, in turn, affords the opportunity to be exposed to the language in a very powerful, continuous way. However, when the language being promoted is not the dominant language, translation becomes a tool that helps create the conditions for learners and speakers of the promoted language to use it in a meaningful way. This is especially true when policy aims at a bilingual society. The importance of translation is stressed in *A Living Language* —it calls for public organizations and professional translators (including interpreters) "to cooperate in exploiting opportunities for improved efficiencies, and for making more effective use of scarce resources, in the provision of Welsh-/English-language translation and interpretation services" (ibid. 2011, 36).

If the promotion of Welsh is successful enough, Welsh will eventually close the gap with English in terms of fluent speakers. At that point, bilingual staff will be able to take over many of the tasks that are now the province of professional translators (ibid.). As suggested earlier, a staff that is fully bilingual would not need interpreters to communicate with speakers of Welsh or English. Further, a staff that is fully bilingual would be able to do some tasks (such as receiving letters in both languages) without translation and would also be able to carry out the roles of translators in other tasks (such as producing bilingual documentation). Notice that even in a situation of full bilingualism by the staff, translation would still take place—it would simply not be carried out by external translators. In a nutshell, fully bilingual institutions cannot exist without some translation.

5. Northern-Ireland-specific legislation that affects translation

In Northern Ireland, translation is produced in part as a result of the constitutional structure of the region as well as non-discrimination legislation specific to this region of the UK. Neither foresee an explicit role for translation, but as is the case in other parts of the UK, translation becomes a tool for achieving broader aims.

One of the key documents that contributes to the constitutional structure of Northern Ireland is the Good Friday Agreement, which was an important milestone

in the region's peace process. As explained in chapter 5, the Agreement is a power-sharing agreement that makes provision for respecting linguistic diversity. This is not surprising given that in Northern Ireland, Irish and Ulster Scots have become powerful political symbols (Nic Craith 2001, 4–9). The Agreement and the agencies that were created as a result were meant "to incorporate culture, identity and minority language concerns within the wider framework of conflict resolution, facets of life in the region which had previously been absent from official policy" (McDermott 2012, 188). In terms of language, the Agreement ushered in a new era (Kirk & Ó Baoill 2001, 16). It did so by setting out linguistic promotion as a policy objective for the devolved government (Rooney 2001, 55). As regards obligations toward linguistic minorities, however, the agreement is quite vague (ibid., 58–59).

The Good Friday Agreement was an important development in the creation of a new devolved government in Northern Ireland. The Agreement is given the force of law mainly through the *Northern Ireland Act 1998*, as amended by the *Northern Ireland Act (St Andrews Agreement) 2006*. Parts of the Act required further legislation for implementation, such as the *North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999*. This Order created the North/South Language Body (Schedule 1, Article 1(e)), which is charged with the "promotion of the Irish language" and with the "promotion of greater awareness and use of Ullans" (Schedule 1, Annex 1, Part 5). This is to take place in a region where English is the main language of administration and society (see chapter 5).

Such promotion is mainly carried out by two agencies: Foras na Gaeilge and Tha Boord o Ulstèr-Scotch (or Ulster-Scots Agency), respectively (Dunbar 2003b, 38). While neither of these agencies is explicitly charged with translating, they both have engaged translation to some extent as a way to fulfill their policy aims of promoting Irish or Ulster Scots. For example, Foras na Gaeilge has an accreditation system for translators working with Irish (Northern Ireland Assembly 2008). This and other efforts in the translation sector, such as providing translation tools that include memory-assisted software and a terminology database, are considered by Foras na Gaeilge to be "key achievements" in promoting the Irish language (Houses of the Oireachtas 2010). Tha Boord o Ulstèr-Scotch, in turn, has handled translation work

for Ulster Scots (Rooney 2001, 57). It should be noted, however, that translation of public documents into Ulster-Scots is not a priority for Tha Boord o Ulstèr-Scotch and similar organizations, who feel that the efforts in promoting the language should focus on families and social settings (Crozier 2013). Also involved in the promotion of Irish and Ulster Scots is the Department of Culture, Arts, and Leisure (DCAL).

Translation is not a main focus of DCAL's cultural strategy to promote these old minority languages, but there is room for it. In a consultation on a draft *Strategy for Protecting and Enhancing the Development of the Irish Language*, DCAL proposed that "Irish speakers should have the right to conduct their business through Irish with all local government, Executive and other state departments, and the legal system and public sector bodies should facilitate the use of Irish by citizens" (Department of Culture, Arts, and Leisure 2012a, 25). If this is implemented, it will require a number of tools, including translation. This was picked up by the respondents to the consultation. Most agreed that public services should be a means to promote the Irish language, but some felt "that resources spent on Irish language public services (for example in relation to translation services) would be better devoted to other priority Irish language areas such as education or family transmission of the language" (ibid. 2013a, 10).

Similarly, in a consultation on a draft *Strategy for Ulster Scots Language, Heritage and Culture*, DCAL proposed that "[w]here demand has been demonstrated," some public services should be provided in Ulster Scots (ibid. 2012b, 24). This measure would also imply translation, as evidenced by the proposal to "[d]evelop translation standards for Ulster Scots language" in this context of delivering public services (ibid.). Reaction to this proposal came down strongly against the delivery of public services in Ulster Scots, because it was deemed as unjustifiable due to the limited resources available to the public sector (ibid., 24-25). There were other reasons for opposing the proposal, including the view that the development of translation services for Ulster Scots is "a task for the community not the civil service" (ibid., 25).

As of this writing, neither draft strategy has been adopted by DCAL. Regarding new minority languages, while the Good Friday Agreement does call for tolerance and understanding of "the languages of the various ethnic communities,"

there is no agency such as Foras na Gaeilge or Tha Boord o Ulstèr-Scotch charged with responsibilities vis-à-vis such languages (Kymlicka 2007, 506–507).

As stated above, the *Northern Ireland Act 1998* was an important vehicle for the implementation of the Good Friday Agreement. The Act helped bring about devolution in Northern Ireland. It created the Northern Ireland Assembly and, among other things, specifies obligations in terms of human rights[11] and equal opportunity. In this regard, the Act places a duty on public authorities to "have due regard to the need to promote equality of opportunity" between specific groups, including people of different racial groups[12] (Section 75(1)(a)). The link between race and language is not explicit, but legally speaking, ethnicity is linked to race, and language is an element of ethnicity (Dunbar 2001b, 238). Even so, at first glance this Act seems to say nothing regarding languages or, by extension, translation. However, in trying to fulfill this statutory duty to promote equality of opportunities, public bodies find themselves engaging in translation. If someone who lacks the needed English proficiency approaches a public body, it is that public body's responsibility to bridge the language gap so as to make sure the non- or limited-English speaker has the same opportunities as those who do speak English. In this context, bridging the language gap implies translation. This translation approach can arguably help build good relations by helping bridge language barriers. Under the Act, public authorities in Northern Ireland are to carry out their functions having

[11] The *Northern Ireland Act 1998* resulted in the creation of a Northern Ireland Human Rights Commission (NIHRC) which provided advice regarding the introduction of a Bill of Rights that would be specific to Northern Ireland and its complex society (McDermott 2011, 72-75). The NIHRC's advise included the introduction of language rights in the Bill. For example, the Bill should provide for the following: "2. Everyone has the right to access services essential to life, health or security through communication with a public authority, assisted by interpretation or other help where necessary, in a language (including sign language) and a medium that they understand" and "3. Public authorities must, as a minimum, act compatibly with the obligations undertaken by the UK Government under the European Charter for Regional or Minority Languages in respect of the support and development of Irish and Ulster-Scots" (Northern Ireland Human Rights Commission 2008, 42). If such provisions were included in a Bill of Rights, they would have translation implications, both for old minority languages and new minority languages. As of this writing, no bill of rights has been approved.

[12] For the link between race and language in the UK, see the comments on *Mandla v. Dowell Lee* above.

"regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group" (Section 75(2)).

This brings us to anti-discrimination legislation, which is the other way in which policymakers have put translation on the agenda in Northern Ireland. Anti-discrimination legislation in Northern Ireland is somewhat different than in Great Britain, as there is no single equality legislation (i.e., *Equality Act 2010*) that applies to Northern Ireland. Nonetheless, there are anti-discrimination laws, which to a great extent were introduced as part of the peace process (McDermott 2012, 193). As regards translation, we should consider the *Race Relations (Northern Ireland) Order 1997*.[13] The Order bans direct and indirect discrimination (understood in the same way as in the *Equality Act 2010*), in specific areas, including the provision of services "to the public or a section of the public" (section 21). Because under the Order there can be no racial discrimination in accessing services among racial groups, including those of different ethnic or national origin, the Order can be understood to have created a duty to not discriminate between users of different languages (Dickson 2003, 21). The same logic that leads to translation to satisfy the *Equality Act 2010* applies, mutatis mutandis, in this situation: if users of a specific language cannot access a service because of their limited English proficiency, this would be discriminatory. In order to avoid this, providers of public services at times turn to translation as a practical solution to achieve a broader statutory aim. Translation in this context is provided mainly through models that rely on different types of community organizations and largely avoid "commercial, profit-making companies," especially when it comes to interpreters (Phelan 2010, 99).

Thus, the statutory framework in Northern Ireland indicates that languages should be respected and valued in a climate that fosters equality of opportunity and good relations and does not discriminate based on racial grounds. It is in this context that certain policy documents that impact translation have been produced. For

[13] This piece of legislation follows the provisions found in the *Race Relations Act 1976*, which applied to Great Britain only. The Act enshrined the principle of non-discrimination in Great Britain (Dunbar 2001b, 238).

example, *A Shared Future*[14] is a policy document that recognizes language diversity to include English, old minority languages, sign languages, and new minority languages as "an intrinsic part of our cultural capital" (Community Relations Unit 2005, 35). The policy supports specific steps in favor of each of the language clusters, including the work of a "thematic group on language" working under the Northern Ireland Racial Equality Forum (ibid., 36). The Racial Equality Forum has issued guidelines on the use of translation and interpreting in the public and private sectors. While these guidelines are not binding, they are designed to help service providers make decisions about how to bridge the language barrier in a way that is true to the statutory duties described above. These guidelines refer to written translation and interpreting for those who do not have a sufficient command of English.

The *Best Practice Guidelines on the Use of Translation* document emphasizes "the need to adopt a selective approach" when it comes to written translation (Racial Equality Forum 2009, 3). The Guidelines stress that an explicit obligation to translate is found only in criminal proceedings (this will be addressed in chapter 9). It is therefore recommended that translation be "reduced," except in two types of situations (ibid., 4). One is situations where translation "builds integration and cohesion" (ibid.). The Guidelines do not explain how translation can build integration and cohesion. The second is situations where translation enables "specific individuals to access essential services" (ibid.). Thus, public service providers should not translate as a matter of course, adopting instead a selective approach, which includes considerations such as the following: 1) is there evidence of a need for translation?, 2) is there data to support that particular languages should be targeted for translation?, 3) is there a previous translation of the needed text, or a similar one, that can be reproduced?, 4) will translation of a text result in resources being drained from other vulnerable groups?, and 5) has a cost-benefit analysis been carried out?

[14] *A Shared Future* was an initiative of the Northern Ireland Office during the 2002-2007 direct rule. The devolved government is currently in the process of adopting another policy document that will be called *Cohesion, Sharing and Integration*. As of this writing, the new policy has not been adopted, mostly due to contention among the political parties (McDermott 2012, 193-194). Because no final shape has yet been given to the policy, it remains to be seen how much translation will be a part of it.

Even if the decision is made to translate, consideration should be given to whether a summary or "alternative media" could be used (ibid., 6). If possible, translation should encourage readers "to learn English as soon as possible", through methods such as bilingual documents (ibid.). It is unclear how the production of bilingual documents encourages people to learn English without delay, or for that matter whether it has any effect whatsoever on the acquisition of English, but the recommendation is nonetheless included. The Guidelines also indicate that certain texts should not be translated, such as reference materials not in widespread circulation or complex materials that contain information that can be conveyed by an interpreter. The Guidelines encourage the use of qualified translators to ensure quality assurance, which "should be applied to both translation and proof-reading" (ibid., 7). This document seems to echo the approach found in a similar document issued for local governments in England: *Guidance for Local Authorities on Translation of Publications* (see chapter 7).

In Northern Ireland another document deals with interpreting. The *Best Practice Guidelines on the Use of Interpreters* document points out that "[c]ompetent interpreting makes a major contribution to effective and efficient conversations/discussions and good service provision" (ibid. 2008, 3). Thus, instead of telling service providers to really consider whether they need to interpret, the document aims at helping them "in the development of good practice when using interpreters" (ibid.). In that spirit, the Guidelines discourage simultaneous interpreting because it requires specialized equipment and interpreters qualified to do this "command significant fees" (ibid., 5). The Guidelines also discourage chuchotage interpreting whenever "it is paramount that the detail conveyed is understood" (ibid.). The Guidelines describe consecutive interpreting as "the one [mode of interpreting] most frequently used in current service provision" (ibid., 6). Besides the mode of interpreting, the Guidelines address cultural sensitivities and stresses that interpreters must be qualified. Bilingual children should be avoided in favor of contracted interpretation providers.

In analyzing the legislative framework in Northern Ireland for its effect on how translation is used to deal with linguistic minorities, note should be made of the

ECRML. Westminster has charged the devolved government of Northern Ireland with the implementation of the ECRML for Irish and Ulster Scots in its respective jurisdiction. Thus, while there is no legislation mandating the use of Irish or Ulster Scots, government agencies in Northern Ireland seek to comply with the ECRML in the conduct of official business. The ECRML has been ratified by the UK in Part II for Ulster Scots and Parts II and III for Irish. This means that the general commitments of the Charter's Part II apply to both languages, but Irish benefits also from specific commitments under Part III. In order to help each government organization fulfill these Part II and Part III obligations, an Interdepartmental Charter Implementation Group was set up in 2001 to "oversee and monitor the implementation of the Charter by Government Departments in Northern Ireland" (Northern Ireland Assembly 2009).

The ICG has issued a *Guidance on Meeting UK Government Commitments in Respect of Irish and Ulster Scots*. In this document, all departments in Northern Ireland are instructed to "develop and circulate to their staff their own tailored Code of Courtesy" for handling everyday situations when interacting with members of the public who wish to transact their business in Irish or Ulster Scots (Interdepartmental Charter Implementation Group 2005, 9). These Codes of Courtesy are no Welsh Language Schemes (or, for that matter, Gaelic Language Plans). They are not statutorily mandated. There is no equivalent to the Welsh Language Commissioner to investigate non-compliance. And they are not meant to create any "equality of esteem" between English, Irish, and Ulster Scots. Additionally, awareness of the Codes of Courtesy is not as widespread as awareness of the Welsh Language Schemes (Committee of Experts 2007, 11). While some organizations have drafted them and made them available to their staff members, their impact is very modest as they are not systematically adopted or followed (ibid. 2014, 31).

Overall, the approach toward Irish and Ulster Scots in Northern Ireland seems minimalistic. This is the case, as suggested in chapter 5, due to how politicized both languages have become, causing politicians to often deadlock on issues pertaining to these old minority languages. Nowhere can this be seen more clearly than in Northern Ireland's devolved government's 2013 failing to submit a report to the

central government on the fulfilment of its ECRML commitments for Irish and Ulster Scots. The Irish Executive could not come to an agreement on the content of the submission and the way forward, which resulted in in the UK submitting a late, incomplete report to the Council of Europe (Meredith 2014).

6. Scotland-specific legislation that affects translation

In Scotland, translation has taken place first and foremost in terms of non-discrimination in order to grant equality of access to those who have limited English proficiency, but in the last decade a legislative push in favor of Gaelic has also resulted in some translation measures being adopted in regards to that Celtic language.

Under the *Scotland Act 1998*, a devolved government was created for Scotland in the form of a parliament and an executive body. In this context, strong powers were given to the Scottish Parliament in most matters pertaining to languages (Dunbar 2003a, 145). However, anyone who might have been expecting a Wales-like push in favor of Gaelic or Scots was probably disappointed, particularly in regards to Scots. The Scottish Parliament was relatively slow to legislate regarding its old minority languages, and when it did, the focus was on only one of the two languages: Gaelic.

The Scottish Parliament's focus on Gaelic as opposed to Scots mirrors the UK's approach under the ECRML to these two languages. The UK ratified the treaty with general Part II commitments for Scots and more specific Part III commitments for Gaelic. As with Welsh, the approach toward ratification for Gaelic was minimalistic: except for a minor change in the use of Gaelic in some courts (see chapter 9), the UK assumed no responsibilities beyond what was already in effect (Dunbar 2003b, 44-45). The devolved government of Scotland is expected to fulfill these obligations, even if the treaty lacks the force of law in the UK. When it comes to Scots, there is an extremely low provision of Scots-language support in public services (Social Research 2009, 43).

The *Gaelic Language Act 2005* was the result of many efforts, including those of activists that began a campaign for language legislation following the passage of the *Welsh Language Act 1993* (Dunbar 2006b, 13). In terms of translation, certain measures in the Act are worth highlighting. While the Act itself does not explicitly call for translation to take place, it does create certain conditions where translation needs to take place. The Act created the Bòrd na Gàidhlig, a language body charged with promoting the Gaelic language.[15] It was also charged with certain advisory and monitoring capabilities related to bodies "exercising functions of a public nature" (sec. 1(2)). The Bòrd na Gàidhlig is responsible for preparing, and later updating, a National Gaelic Language Plan to promote "the use and understanding of the Gaelic language" (sec. 2). Additionally, the Bòrd na Gàidhlig may require some public authorities to prepare their own Gaelic Language Plans.

This all sounds very similar to measures found in the *Welsh Language Act 1993*. That should come as no surprise, since the Welsh act served as a model for this particular act, but the Scottish act is not nearly as strong. For example, the Bòrd na Gàidhlig's discretion in requiring Gaelic Language Plans is limited by statutory criteria, and the requirement itself can be appealed by the public body in question (Dunbar 2006b, 18). Further, there is no requirement that Gaelic and English be treated on a basis of equality (ibid., 19). Nonetheless, the Scottish act does require that public bodies which are tapped for drafting Gaelic Language Plans spell out how they will use Gaelic in the fulfillment of their functions (ibid.). The concern, however, does not seem to be so much the creation of a bilingual Scotland as it is stopping the decline of Gaelic.

A further point of similarity with the *Welsh Language Act 1993* is that the *Gaelic Language Act 2005* does not bestow legally enforceable rights. Rather, it creates some obligations on public bodies, but grants no rights to individual speakers (ibid.). But even here, the obligations are not as broad as in Wales. In part, this is the result of a demographic situation in Scotland that cannot fairly be equated to that of Wales (see

[15] Translation plays an important role in promoting the Gaelic language, as recognized by the Bòrd na Gàidhlig's involvement in several translation fronts, including the funding of the "translation of Microsoft office platforms" (United Kingdom 2009, 160).

chapter 5). Among other things, Scotland does not have nearly as high a percentage of Gaelic speakers as Wales has Welsh speakers. In many places, low concentrations of Gaelic speakers would make it impossible to offer comprehensive services in that language. The Act accounts for such situations by not placing an obligation to provide services in Gaelic upon bodies that would find themselves struggling to do so (Huws 2006, 149). The obligation to provide services in Gaelic is reflected in the adoption of a National Gaelic Language Plan. The current plan, *Growth and Improvement*, aims to "secure an increase in the number of people learning, speaking and using Gaelic in Scotland" while valuing "the linguistic traditions of all parts of Scotland, including lowland Scots, Shetland and Orkney"[16] (Bòrd na Gàidhlig 2012, 4). The specifics of this Plan have translation implications, especially for local communities. The Plan calls for an "increased use of the language in community activities and services" (ibid., 30). In communities where at least 20% of the population "have Gaelic abilities," public services should be offered bilingually (ibid.). Whenever there is an effort to offer bilingual services, translation would logically need to take place. Thus, the Gaelic National Plan has to rely on translation, among other tools, for reaching some of its objectives.

This raised concern over allocation of resources. It became apparent as the Gaelic Language Bill was being prepared, that such an act would imply, in practice, translation. This translation would be necessary as a means to fulfill obligations set forth in the Gaelic Language Plans. However, the Scottish office of the Commission for Racial Equality[17] (CRE) signaled that its resources were not unlimited and that the "allocation of resources for translation and interpretation 'should be made on the basis of meeting needs in an equal way', and that 'the development of Gaelic services should not be prioritised over other minority language needs'" (Dunbar 2006a:196). The CRE saw translation as a means to ensure participation in society by people who

[16] "Lowland Scots" refers to Scots generally, "Shetland" to the variety of Scots spoken in the Shetland archipelago, and "Orkney" to the variety of Scots spoken in the Orkney Islands. See chapter 5.

[17] The Commission for Racial Equality was created under the *Race Relations Act 1976* to help eliminate discrimination and promote equality of opportunity and good relations. It was replaced, under the *Equality Act 2006*, by a Commission for Equality and Human Rights.

did not speak the languages of Scotland, assuming, of course, that those who spoke Gaelic also spoke English (ibid.). While in the end supporting the passage of the Act, the CRE continued to stress that, as a matter of allowing equal participation in society, there must be measures of support for the other linguistic minorities (ibid.). These measures of support include translation for those who cannot fully access governmental institutions otherwise.

What is clear from the CRE's concerns is that translation in Scotland does not flow only from concern for the Gaelic language. As stated above, it is also a matter of equality. In this regard, the *Equality Act 2010* comes into play. The way this Act brings about translation as a matter of non-discrimination was explained at the beginning of this chapter. For the most part, matters of equality and non-discrimination have not been devolved, so the *Equality Act 2010* reigns supreme in Scotland.

Even so, under the *Scotland Act 1998*, the devolved government is responsible for seeing that "Scottish functions are carried out with due regard to the need to meet the equal opportunity requirements" (schedule 5, section L2). Equal opportunity is to be understood in terms of preventing discrimination based on certain enumerated grounds, including language (schedule 5, section L2). Therefore, it is in the context of the *Equality Act 2010* (or its predecessors) and the *Scotland Act 1998* that the government of Scotland has adopted non-discrimination and equality policies that are important from a translation standpoint.

In this context of promoting equality in Scotland, the Scottish Government understood there was a role for translation; after all, it could not be taken for granted that everyone in Scotland could speak English. With this understanding, the executive established a Translation, Interpreting and Communication Support Services Framework Group (Advisory Committee 2007, 67-68). This Group included the Scottish Translation, Interpreting and Communication Forum, which drafted Good Practice Guidelines to set translation standards aimed at promoting "equality and social inclusion by removing barriers to communication" (Scottish Translation, Interpreting and Communication Forum 2004, 6). The Guidelines were published by the Scottish executive and stress that every individual in Scotland has a right to

access information and services provided at the community level (ibid., 9). To ensure that everyone is equal in this regard, organizations are urged to adopt strategies that include written translation and interpreting (ibid., 17-23). Thus, public organizations should be committed to ensuring interpreting and written translation (ibid., 10). Interpreters should be impartial, aware of their limitations, and culturally aware (ibid., 19-20). Translators and interpreters who are hired to engage in this kind of work should be checked for the proper qualifications (ibid., 14). The Guidelines further indicate that each public authority should have its own translation policy (ibid., 22-23). Under this policy, interpreting would be the most common option for bridging the language barrier, with written translations as a supplement to interpreting efforts (ibid., 22). This reflects practice in Scotland, where there is greater provision of interpreting than written translation (Social Research 2006, 1). Further, the benefits of commissioning the written translation, as opposed to using an interpreter should be assessed, as well as the costs of said written translation (Scottish Translation, Interpreting and Communication Forum 2004, 23).

Even so, there is no sense in the Guidelines that translation should be avoided because of its expenses or because it might keep people from learning English. This makes them rather unique when compared to similar documents in Northern Ireland and England (see above, in this chapter, and chapter 7). There is no think-twice-before-you-translate warning and no mention of translation as a tool for helping people learn English. In this regard, the Scottish Government seemed to recognize early on the positive role that translation can play in the integration of linguistic minorities who do not speak the language of the state.

The work of the Scottish Translation, Interpreting and Communication Forum highlights a national policy of providing services for speakers of languages other than English. In a letter from the Scottish Executive, local authorities and public bodies were instructed to take into account this policy and all related legislation. They were invited to develop language plans to grant equal access to their services to speakers of languages other than English (Scottish Executive 2005). Under this policy, translation would not be a problem but a solution to ensure equality of access to all

people in Scotland. Translation is seen as a key element of equitable provision of services (Social Research 2006, 19).

When it comes to speakers of Gaelic, the *Gaelic Language Act 2005* helps recognize the value of the Gaelic language as part of Scotland's heritage. One measure in this regard is the provision of services in that language. As argued above, this implies some translation. Here, translation is one of several tools that can be deployed in order to recognize the value of speakers of Gaelic as an important part of Scotland. In this way, translation is also not so much a problem as part of a solution. It is a way to ensure the recognition of a particular group in Scotland.

7. Conclusion

This chapter has outlined legislation and policy documents with translation implications that cut across domains in the UK. To do this, it has addressed general UK legislation and region-specific laws and policies. The resulting conclusion is that equality/non-discrimination legislation provides the basis on which translation takes place in order to overcome language barriers when attempting to access services. This applies mostly to speakers of new minority languages. Based on non-discrimination/equality, translation can flow from two different premises: service provision or social inclusion. These two premises from which translation flows were identified in Scotland by McPake and Johnstone (2002). They identify the "service provision" perspective as one where translation is provided by public bodies "for the benefit of the client/customer" in order to help the individual successfully carry out his or her encounter with the public body (ibid., 14). This perspective eventually evolved to one of social inclusion. The "social inclusion perspective" is one where "everyone in […] society is entitled to participate in all aspects of social life," and consequently individuals "should be able to expect other forms of communication to be available whenever they require them" (ibid., 14-15). It is worth noticing that whether translation flows from a service provision perspective or social inclusion perspective does not seem to have a measurable effect on how much translation is

offered, in what forms, by whom, etc. Rather, these questions are resolved by public bodies on the ground level, depending on a number of factors. It does, however, affect the reasoning justifying the provision of translation. Those who have the first perspective, provide translation strictly to overcome language barriers, while those who have the second perspective, provide translation to allow for fuller participation in society. Thus, what is identified here, at least in Scotland, are two different aims of translation policy, not a difference in translation practice.

Despite this non-discrimination/equality pressure toward translation, this chapter has also identified pressure against translation. This pressure comes from a policy move away from multiculturalism, a policy move prompted from concerns over racial tensions, increased immigration, Islamic terrorism, and increasing translation expenditures (Aspinall & Hashem 2011, 148-151). In this context, a sense of Britishness becomes more important than "pragmatic multiculturalism" (ibid., 149). In order to pursue this sense of cohesiveness and integration, some have focused on translation in public services as something that should be cut back (ibid., 151). Even so, translation continues to exist in the UK as demand on the ground for language support services, including written translations and interpreting, has continued to increase (ibid.).

This chapter has further indicated that when translation occurs, it is not always as a result of non-discrimination/equality policies. It also takes place as a result of regional policies toward old minority languages. And the chapter has shown that old minority languages are treated rather differently in each region. Because of this, carrying out policies in favor of a language like Welsh, which has strong institutional support and a relatively high number of speakers, requires a number of tools that may not be deemed helpful for a language like Ulster Scots, which lacks institutionalization and is spoken mostly in the home and similar settings. Thus, while an in-house translation unit became necessary early on to support the fulfillment of Gwynedd Council's Welsh language policy (Kaufmann 2012, 333), speakers of Ulster Scots are not clamoring for the translation of public documents into their language. Even so, when devolved governments have policies for the promotion of old minority languages, there seems to be a common

recognition perspective. Namely, the perspective that adopting such promotional policies is a way to recognize the value of the speakers of that language within their respective regions. The focus for authorities in these regions includes providing, at different levels, services through the medium of the old minority language. Translation plays a role in such service provision. Consequently, translation into and out of old minority languages is one way in which old minorities are recognized as a valid part of the UK.

In the coming chapters, I will explore how these general policies affect translation in specific domains. I will also consider domain-specific legislation and policy documents that help shape translation policy. Doing so will help further develop this large-scale study into translation policies and their relationship with the integration of linguistic minorities.

7. Translation in government in the United Kingdom

1. Introduction

This study has been moving from the top down. It began with an analysis of translation obligations under international law, followed by a description and analysis of UK legislation that applies to translation across different domains, first throughout the UK and then in specific regions. Continuing in that direction, this study will now move down a further step by analyzing translation policies in specific domains. In this chapter, the domain of government will be described and analyzed.

I should clarify that the term government is to be understood in a broad sense, as the system through which communities, including the state, are organized in order to carry out an array of functions, including the provision of social services. In this sense, "government" should not be confused with the UK's central (capital-g) Government, which is composed of the Prime Minister and the other Ministers. Because government, as understood in this study, is such a broad concept, an entire thesis could be dedicated to this only. Therefore, in order to explore the role of translation policies in the integration of linguistic minorities, it becomes necessary to focus on one aspect of government. This aspect will be the way in which government communicates with linguistic minorities and vice versa. By analyzing translation policy as it pertains to the communication between government and individuals, a sense can be obtained of how these policies relate to integrating linguistic minorities. Most communications between government and individuals takes place in the context of local service provision, so this chapter will focus on communication with local governments. However, because one of the most emblematic ways in which individuals communicate their will to government is by participating in elections, the chapter will first consider the role of translation policy in elections.

From the onset it can be said that there is no legal framework to make explicit the need for translation in communicating with government, which means that "the linguistic needs of persons having an inadequate command of English […] are

simply not being met in a comprehensive and equitable manner" (Dunbar 2006a, 198). Even so, there are legislative enactments that point to some translation policy when it comes to specific areas of communication with government. For example, as discussed in chapter 6, a great deal of translation happens at the local level as a way to comply with the *Equality Act 2010* in Great Britain and the *Race Relations Order 1997* in Northern Ireland. With this observation in mind, we now turn to translation policy in elections and in local governments in the UK's four regions.

2. Elections

In a democratic society, voting is a considered an essential element of participating in the state's political life. There are other ways to participate, of course, such as running for office, but in terms of translation policy, the use or non-use of translation in elections provides interesting perspectives. By voting, individuals signal that they have a stake in the direction of the community and the state. By voting, they indicate that they want to be heard just like everyone else who votes. Thus, voting becomes a marker of integration. The person who votes is more closely integrated, at least in political terms, than the person who is barred from voting. The person who is permitted to vote is allowed to communicate to the authorities his or her views as to who should be in power, with all that implies in terms of policy direction. Of course, even when someone is allowed to vote, if that person cannot understand the language of the state, he or she might be discouraged from heading to the polls. After all, voting can become a monumental task if one does not understand the signs at the polling station or the instructions for casting the ballot. So there can be a place for translation as a means to facilitate inclusion of linguistic minorities in the voting process. Consequently, when considering translations policies in the UK, one should look at the extent to which policymakers have enacted laws that call for translation in electoral processes.

To make sense of the relevant legislation, an understanding of some aspects of the way elections are held in the UK is helpful. There are several types of elections.

The general elections are held to vote for Parliament at Westminster. Generally, those eligible to vote are legally capable adults who reside in the UK and are UK citizens,[1] Irish citizens, or Commonwealth citizens (Sear 2005, 2). Other elections held in the UK are devolved legislature elections (Northern Ireland Assembly, Scottish Parliament, and Welsh Assembly), local and mayoral elections, as well as European Parliament elections. Generally, those people that can vote in the general election can also vote in these other types of elections (ibid., 2-4). Additionally, EU citizens residing in the UK can vote in elections for their local and mayoral governments, devolved legislatures, and the European Parliament (ibid., 2). Some British citizens who are overseas can vote in the general elections and in the European Parliament elections (ibid., 2-3). As to the manner of voting, people can vote by attending a polling station, by post, or by proxy (particularly useful for citizens abroad). The elections are run by local officers known as Returning Officers.

This very brief overview of some aspects of how elections are organized in the UK indicates that Returning Officers may have to deal with voters who speak old minority languages or new minority languages. In the case of the former, it is assumed they also speak English, but in the case of the latter, they may not necessarily have enough of a grasp of the language of the majority to figure out their way around a polling station. This chapter now turns to the question of what role the law assigns to translation in dealing with these language issues.

2.1. *Representation of the People Act 1983* and related rules and orders

The *Representation of the People Act 1983* consolidates a number of previous acts[2] and provides rules that affect the electoral process. Some of the rules that were

[1] Individuals become citizens of the UK through several means, including naturalization. Under the *British Nationality Act 1981*, as amended, those seeking to be naturalized as UK citizens must meet a number of requirements, including having "a sufficient knowledge of the English, Welsh or Scottish Gaelic language" (Schedule 1, section 1(1)(c)). Thus, the expectation is that UK citizens be able to communicate in either English, Welsh, or Gaelic.

[2] These previous acts include several Representation of the People Acts, the *Electoral Registers Acts 1949* and *1953*, the *Elections (Welsh Forms) Act 1964*, the *Representation of the People (Armed Forces) Act*

introduced in the Act by way of amendment aims at increasing accessibility for people who do not speak the majority's language (Electoral Commission 2007:25). These rules, which also appear in *The Local Elections (Northern Ireland) Order 2010*,[3] seek to increase accessibility, in part by allowing for translation to play a role at polling stations. The Act authorizes Returning Officers to "give or display or otherwise make available" documents in languages other than English (sections 199B(2), 199C(2)) or Welsh.[4] This includes, under the *Local Elections (Principal Areas) (England and Wales) Rules 2006*, documents with "directions for the guidance of voters" (Rule 26(7)). This rule indicates a pragmatic approach to the use of translation in the electoral process.

An example of this type of pragmatic attitude toward translation in practice is found in how the Electoral Commission is approaching the transition into Individual Electoral Registration (IER) in 2014. Under the IER system, each individual must register to vote him or herself. In the old system, each head of the household registered individuals who lived in his or her house. Moving from one system to another requires the production of documents to effectively communicate a number of messages to a wide range of individuals. Foreseeing this, the Electoral Commission has these instructions for electoral administrators:

> Near to the start of the transition, the Commission will provide some public information materials in a variety of languages. In developing your public engagement strategy, you will need to ensure you have an understanding of the most commonly spoken languages in your area and make cost/benefit decisions over the extent to which you provide translated materials in

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1976, the *Returning Officers (Scotland) Act 1977*, and parts of the *Local Government Act 1972*, the *Local Government (Scotland) Act 1973*, and the *Mental Health (Amendment) Act 1982*.

[3] **The *Local Elections (Northern Ireland) Order 2010*, in article 41 of schedule 1 amends the *Electoral Law Act (Northern Ireland) 1962* to include the translation provisions described in this paragraph.**

[4] Under section 16 of the *Welsh Language Act 1993*. The Act places responsibility upon Returning Officers in Wales to provide bilingual election materials, which implies translation.

> addition to what the Commission provides, and whether you will print them or supply them online only. Understanding the level of demand for particular languages may involve actively contacting community groups to assess their interest – although you should also take into consideration the extent to which they will actively use the translated materials. You will also need to consider how the alternative language materials will reach the intended audiences, whether through community organisations, council distribution or available on request (2013, 2)

These type of instructions indicate that translation is believed to be a tool to help more people become registered to vote. Translation allows the Electoral Commission to communicate with as wide a range of individuals as possible in order to invite them to make themselves heard through voting.

However, this view has its limits, and they need not be purely pragmatic: the actual ballot must be in English (sections 199B(4), 199C(4)) or Welsh. Thus, while voters may be engaged through translation if necessary, including the translation of documents to guide voters, when they cast the actual ballot, they must do so in English or Welsh. Even so, a sample copy of the ballot paper with translation into one or several languages may be put up at the polling station (section 199B(6)). This means that some translation can take place, always at the discretion of the Returning Officer, as a means to create greater equality for qualifying members of linguistic minorities in accessing the democratic process. Interestingly enough, the actual ballot, which is the instrument whereby the act of voting is realized, can only be translated into Welsh in Wales. This is the result of concerns that an obligation to translate the actual ballot would give rise to practical difficulties and, perhaps more to the point, to "issues of principle about whether it is appropriate to provide ballot papers in many different languages, and how to determine which languages would need to be provided for" (Electoral Commission 2003, 22). Providing translation to accompany sample ballots is a way to grant greater access to linguistic minorities without engaging in the difficult and politically sensitive act of translating the actual ballot. Here is a situation where translation of some electoral documents is permitted,

but at the same time translation of the key electoral document, the ballot, is not permitted, except into Welsh.

The Act also deals with those who will vote by post, as does *The Local Elections (Northern Ireland) Order 2010*.[5] According to the Act's Schedule 1, the returning officer is authorized to send to those voting by post "such information as he thinks appropriate about how to obtain […] translations into languages other than English of any directions to or guidance for voters sent with the ballot paper" (Rule 24(2) and (2)(a)).[6] According to the Explanatory Notes that accompany the *Electoral Administration Act 2006* (the Act that introduced the power to provide translated explanatory election materials), this requirement can be fulfilled by providing things such as "an internet address to a web page containing foreign language or audio versions of the instructions, or a phone number for contacting the local electoral services department" (Explanatory Notes, s. 37). This Explanatory Note thus points to a translation effort. The fact that the actual translated materials are not provided until requested seems to respond to the practical challenge of trying to figure out which addressees need or do not need translated materials. The default assumption is that they do not need such materials, but if they do, they are given information on how to receive the relevant information.

As with polling stations, a great deal of discretion is given to the Returning Officer. This makes sense when one considers that local communities in the UK vary greatly in ethnic composition, which implies different language needs. Presumably, local Returning Officers are in a better position to determine what those local needs are than legislators at Westminster.

2.2. *European Parliamentary Elections Regulations 2004*

The use of translation described above applies to local and parliamentary elections. The rules for elections to the European Parliament are determined by the *European*

[5] The *Local Elections (Northern Ireland) Order 2010*, in article 58 of schedule 1 amends the *Electoral Law Act (Northern Ireland) 1962* to include the translation provisions described in this paragraph.

[6] To the same effect, but limited in geographical scope to England and Wales, see *Local Elections (Principal Areas) (England and Wales) Rules 2006*, Rule 22(2).

Parliamentary Elections Regulations 2004, as amended. Under those Regulations, local polling stations must display notices with voting instructions. These must be in English or Welsh, but the Returning Officer may provide them in "accurate translation" in other languages (Regulation 30(6)). Further, Regulation 122A[7] has the effect of extending the translation rules from local and parliamentary elections to elections for the European Parliament: the actual ballot can only be in English or Welsh; a sample copy of the ballot may be posted with translated instructions; other documents displayed or provided to voters may be translated. The guidance document provided for managing these elections makes it clear that this use of translation is prompted by a concern for equal access to elections (Electoral Commission 2009, 18).

2.3. Translation at elections

To help fulfill the duties under *Representation of the People Act 1983* and the *European Parliamentary Elections Regulations 2004*, the Electoral Commission translates information for voters into the following twelve languages: Arabic, Bengali, Chinese, French, Guajarati, Hindi, Latvian, Lithuanian, Polish, Portuguese, Punjabi, and Urdu (Calderwood 2012). Translation of specific documents into other languages is considered case by case upon request (ibid.). Corporate publications (such as the Annual Report) are generally not translated, except for some that are regularly translated into Welsh (ibid.).

The extent to which these and other translations are used depends, to a great extent, on the discretion of local Returning Officers. For example, 18% of responding Returning Officers surveyed[8] in England indicated they had provided documents translated into languages other than English (Electoral Commission 2007:25). The type of documents that were translated included guidance for voters at the polling

[7] This Regulation was introduced through the *European Parliamentary Elections (Amendment) Regulations 2009.*

[8] The survey was conducted by the Electoral Commission following the local government elections held in England on 3 May 2007. A total of 182 surveys were returned, a 58% response rate (Electoral Commission 2007, 4).

stations, guidance for postal voters, and application forms (ibid.). Common languages for translation were Polish, several Indian subcontinent languages, and Portuguese (ibid.).

Throughout the UK a rather uniform policy exists regarding translation in elections. It is regularly seen as a means to grant greater access to the electoral process. As legislatively enacted, the policy is to *allow* the translation of all documents provided or displayed at the polling station in order to help the voters cast their ballot. Likewise, in the case of postal voters, the provision of information on how to request such translations is *allowed*. In making the decision as to what languages to offer translations for, the Returning Officer is granted discretion (except for Welsh, which is mandatory). In other words, legislation merely acknowledges that translation of most electoral materials is lawful, but it is Returning Officers who in practice make sure that translation is provided as needed to ensure that everyone who is eligible can have the needed information to vote. The actual ballot, however, *cannot* be translated, even if a sample copy *can* be displayed with accompanying translated instructions. As suggested above, this drawing of the line for translation at the ballot has been explained as justifiable due to practical difficulties. These practical difficulties may include having to decide what languages to translate the ballot into recurrently, for every election, and additional costs from printing additional ballots in other languages. Of course, these same challenges are faced when translating other materials, so from a purely practical standpoint, it is hard to see what makes the ballot so different from any other document that would be translated for elections. The difference may not be so much practical as ideological. By not translating the ballot, the message is symbolically conveyed that English in all of the UK, plus Welsh in Wales, is the language in which democracy takes place. The actual preparations for casting the ballot may happen with the help of translation, but the act of casting the ballot must occur only in English or Welsh. Thus, while pursuing a policy of equal access to democratic processes, policymakers send the message that in the UK English stands on a category all its own for democracy and that speakers of other languages would do well to acquire it. The same can be said of Welsh in Wales.

3. Local governments

As important as elections are, communication with governmental authorities is, for most people, a local affair. Communication with government more often than not is communication with *local* government, whether that be discussing the pickup of refuse or finding out about city-sponsored activities for children. Consequently, it makes sense to consider the translation policies of local governments in the UK.

There is, as is probably obvious by now, no legislation dealing with translation at the local council level, even though the equality/non-discrimination legislation mentioned above and discussed in chapter 6 does put these local governments in a position to translate. This translation is needed to fulfill policy objectives in terms of equal access and participation.

3.1. Policies that affect translation when communicating with local governments in England

Due to a lack of national guidance, for a long time local governments developed their translation policies independently of anyone else, resulting in rather disparate policies and duplicated efforts (Commission on Integration and Cohesion 2007a, 6). A more uniform and trimmed-down approach is advocated by the Department for Communities and Local Government, which has issued translation guidelines for local governments. These guidelines are relevant because they provide guidance for the development of individual translation policies at the local level. To them we now turn.

3.1.1. Department for Communities and Local Government

The Communities and Local Government Department is a ministerial department in charge of implementing policy (mainly in England) in a number of areas, including local government. It is in that role that it issued the 2007 *Guidance for Local Authorities on Translation of Publications*. This guidance document must be placed in context. In the wake of the 7 July 2005 terrorist attacks in London, a Commission on Integration

and Cohesion (CIC) was launched by the government in order to consider "how communities across the country can be empowered to improve cohesion and tackle extremism" (Carnegie UK Trust & National Council for Voluntary Organisations 2009). In its final report, *Our Shared Future*, the CIC made several recommendations specific to the written translation efforts of local authorities. Two observations are in order regarding these recommendations. First, while acknowledging that "language barriers can perpetuate inequalities," the report claims that systematic translation into languages other than English is not the answer to the challenges posed by multilingual communities (Commission on Integration and Cohesion 2007b, 167). It recommends that translation "be reduced except where it builds integration and cohesion" (ibid., 168). As is the case with similar instructions in Northern Ireland (see chapter 6), there is no indication of how translation is expected to build integration and cohesion. Second, recognizing the lack of a national policy to guide the translation efforts of local governments, the report calls upon the Communities and Local Government Department to assume the responsibility of offering guidance to implement the principles outlined in the report (ibid., 170).

The Communities and Local Government Department responded through the prompt publication of a *Guidance for Local Authorities on Translation of Publications*.[9] The document was drafted for written translation, but apparently the principles espoused in it should be applied to the use of interpreters (Department for Communities and Local Government 2007a, 10), even though no light is shed on how to do this. The Department acknowledges that "the evidence for translation acting as a crutch for people who don't speak English is patchy" (ibid., 11), and yet the underlying assumption is that it does. The Department uses the guidance document to instruct local governments to rely on English, juxtaposed to translation, as "as a binding agent in communities" and as a way to "promote equality of opportunity" (ibid.). To that end, the translation policy espoused by the Department is summed up in these words: local authorities should "consider whether translation is necessary,

[9] The translation guidance was published six months after the CIC's final report. The need to provide local governments with translation guidance was seen as one of "a number of areas which needed immediate action" (Department for Communities and Local Government 2007a, 5).

for which documents it is appropriate, whether it should be available on demand, and whether it can be done in a way that helps people learn English" (ibid., 10). Systematic translation of documents, even if "well-meaning," is decried as a counterproductive use of resources (ibid., 9). A more detailed explanation of how local authorities are encouraged to proceed regarding new translations includes the following:

1) Local governments should "think twice" before commissioning a new translation. They should consider how the target community would be affected by the translation. Further, they should consider whether translating in support of "vulnerable communities" could be perceived as coming "at the expense of others" (ibid., 10). In other words, if translation is provided for those who need it, those who do not need it may resent that that money was not spent on *them* instead. Local governments should specifically consider how monolingual English speakers would feel upon seeing documents that they cannot understand (ibid.). If monolingual English speakers see written translations, they may resent the expenditure, so that the expenditure becomes divisive. What is implied by this instruction is that translation should be approached judiciously because it has the potential of dis-integrating communities.

2) When translation is indeed needed (e.g., "for safety or health reasons"), it should be provided in a way that helps teach English. Two ways to do this are suggested: placing pictures along English texts or providing translations side-by-side to the English texts (ibid.). How these two strategies can help teach English is unclear. What is clear is the implication that whatever purpose a translated text may have (e.g., notifying workers in a kitchen regarding new health regulations), it must be accommodated so that the text also serves as an English teaching aid. In reality, this serves as a reinforcement of the idea that "[t]ranslation can never be a substitute for learning English" (ibid., 11). So translation should be avoided, but when it cannot be avoided, it should be "a stepping stone to speaking English" (ibid., 5).

3) Plain English should be promoted as a way to better communicate with everyone. (ibid., 10). This should benefit not only speakers of minority languages but English speakers as well.

The previous paragraphs indicate that the translation policy that local governments should adopt is one where translation is approached in a minimalist fashion. Some translation must be provided by law (e.g., in court, as explained in chapter 9), and some translation needs to be done in order to allow those who do not speak English to realize other rights (e.g., in hospitals, as explained in chapter 8), but in all other instances, thought should be given to ways to avoid translation. And if translation is still the most desirable option under the specific local circumstances, it should be approached in a way that is not divisive and helps teach English.

This policy of thinking twice before commissioning new translations became even more discouraging of translation in a statement by the Secretary of State for Communities and Local Government released in 2013. The statement approaches the topic of integration with this recommendation: "Stop translating documents into foreign languages: only publish documents in English. Translation undermines community cohesion by encouraging segregation" (Pickles 2013). This recommendation was originally presented in *50 Ways to Save* (Department for Communities and Local Government 2012), a document with guidance for local governments on how to reduce expenditures. The Secretary goes on to clarify that he believes that while translation may be "entirely necessary" on "rare occasions," it is ultimately something to be avoided because of its "adverse impact on integration by reducing the incentive for some migrant communities to learn English" and its wastefulness (Pickles 2013). He goes so far as to argue: "Even if publishing only in English could put some people at a particular disadvantage, such a policy may be justified if local authorities can demonstrate that the integration and cost concerns pursue a legitimate aim and outweigh any disadvantage" (ibid.). In other words, translation is so damaging to integration and so expensive, that putting "some people at a particular disadvantage" may be a small price to pay. This is a bold statement, which directly opposes the belief that translation is a way to bring about

social inclusion (see chapter 10). It presents the opposite belief, that translation brings about social dis-integration, and that the exclusion of "some people" is justifiable if it leads to society not becoming fragmented (or bankrupt).

The Secretary fails to explain how exactly translation by local governments in England would bring about segregation. One must then read between the lines. Two ways can be inferred from the guidance documents. The first is related to resource allocation and how that is perceived by the majority. As stated above, monolingual English speakers may resent the allocation of funds to texts that they cannot understand. For example, measures such as always having an English summary or the English original next to the translation are stressed. The second concern seems to be that translation in public service provision is a barrier to learning English. For example, the end goal of translation under the *Guidance for Local Authorities on Translation of Publications* is to help people learn English. No evidence is presented that offering translation removes the ability or desire to learn English, but the assumption is nonetheless found throughout the documents. This idea that translation is a barrier to English-language acquisition has profound policy implications when coupled with the stress on the use of English as a binding agent in society. *If* English is an important binding agent for society *and* translation keeps people from learning English, *then* translation should be avoided *because* it keeps society from becoming bound together.

Thus, local governments in England face three types of pressure. First, there is an increasing demand for translation in order to access services that are deemed essential to participation in society (Aspinall & Hashem 2011, 152-155). This is an on-the-ground reality that local governments feel the need to address. Second, there are legislative pressures to promote equality and non-discrimination. This, coupled with demographic pressure, leads to translation taking place at the local government level (both through written documents and interpreted speech). Third, there is pressure found in policy documents and statements that local governments should translate only what is absolutely essential, always with the aim of promoting the use and acquisition of English as a binding agent.

Therefore, translation is expected to play two different roles. First, translation

can help achieve policy aims in terms of equality and non-discrimination. In this sense, translation should be carried out. It would fit well in a context of institutional monolingualism and limited translation for well-defined circumstances (see Meylaerts 2011b, 750-751). Second, translation should promote the use of the majority language as a tool for social integration. In this sense, translation should be curtailed. It may in fact be better to pursue a policy of institutional monolingualism and *non*-translation, which is a type of translation policy in and of itself (see ibid., 747-750). The two roles reflect competing beliefs about translation. Not surprisingly then, these two roles can at times be at odds, and the general policy direction seems to increasingly favor the second role.

These competing beliefs inform management and practice of translation for local governments. Local governments develop the translation policies that result from the pressures mentioned above. They have no option but to develop translation policies in such a situation, because it is local governments that most often engage individuals on the ground level. This is explored next.

3.1.2. Local Councils

Because England has over 350 local councils, I found it desirable to work with a representative random sample of councils (for methodological details here and elsewhere, see chapter 3). These local councils are of several types, but collectively they end up with the same responsibilities. In general terms, local councils in England rely on interpreting and translating to communicate with individuals who are unable to do so in English. Many of these councils have explicit documents outlining the use of translation for this purpose. In those documents and in responses to FOI requests, the influence of *Guidance for Local Authorities on Translation of Publications* can be seen. In some documents, reference to that Guidance is even made explicit. Even so, a few councils engage in some limited, proactive, written translation, i.e., they may translate a document in anticipation of a need. On the other side of the scale, some councils actively seek to reduce translation.[10]

[10] The most notable case is Newham London Borough Council, which was reported in the media as having reduced translation expenditures by 72% from 2010 to 2013 (Nye 2013). Translation was cut

Regarding written translation, all 103 councils in the sample offer it upon request, but before it is provided, staff are to consider to what extent it is really necessary. Some documents offer specific guidance in this regard by reproducing a checklist found in *Guidance for Local Authorities on Translation of Publications*. Council staff are encouraged to reuse translations, and to consider the possibility of offering summaries of longer documents. Translated documents may include leaflets, forms, reports, and personal correspondence. Brief announcements, known as a straplines, are frequently placed on documents in order to notify individuals that they can request written translations (for an example, see Sidebar 2). While there are some in-house translators, the work of translating usually falls on private providers such as Alphaplus Training and Translation Service, Applied Language Solutions, Bostico International, Cintra, Language Is Everything, Language Empire, Lifeline Language Services, Pearl Linguistics, Premier Language Service, and The Big Word. Some community organizations also provide written translations, such as Language Shop.[11] Generally, councils work independently of each other, but some councils may supply their translation through others. For example, Cherwell District Council works through Oxfordshire County Council and a private company.

Regarding interpreting, most councils rely on it, either through face-to-face interactions or over-the-phone services. Most offer both, with a few relying solely on one or the other. As is the case with written translation, a few local councils work in tandem with others, and even with NHS Trusts, to arrange interpreting for the

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back among other expenditures that were deemed to foster segregation among people in the community, including things like ethnic street parties (ibid.). Newham Council continues to offer some translation (see note 10 below), but the cut-back has been drastic enough for the Council to draw criticism from those who feel that the Mayor is attempting to impose "sameness" on its diverse population (ibid.).

[11] Language Shop is an organization in Newham (one of Greater London's 32 boroughs) that hopes to help improve communication with speakers of languages other than English. It offers charts to help identify many new minority languages, and it provides access through the Internet to translations of documents in 28 languages (as of this writing). It also provides face-to-face and over-the-telephone interpreting, as well as a number of language-related services. It is funded in part by Tower Hamlets London Borough Council, Hackney London Borough Council, and Newham London Borough Council.

benefit of individuals that may require it. Face-to-face interpreters are supplied by the same private companies that provide written translation. Many of these companies also provide over-the-phone interpreting, but in this latter type of interpreting the most common provider is Language Line. Interpreters also come from community organizations, such as Herts Interpreting and Translation Service[12] and Language Shop. There are some in-house interpreters, but their work is complimented by outside providers or freelancers as needed. Councils generally permit staff to do some interpreting, but the rules vary from council to council. Some councils permit it for simple interactions, others for emergencies only, etc. The use of friends or family as interpreters is generally discouraged, but it is permitted under certain circumstances, including when the client insists upon it. The use of children for interpreting is strongly discouraged. These written translation and interpreting efforts are complimented with the use of several tools, whether in personal or in online interactions. For personal interactions, tools include language identification charts (see Sidebar 1) and cards with useful phrases in languages other than English. For online interactions, raw (i.e., non-post-edited) machine translation is a common option. By far the most popular service provider for this is Google Translate, but some local councils also use Bing Translator. At times, materials translated by humans are put online for direct access by minority language speakers. Also, a small number of websites offer links to translations provided by others, including by organizations like The Language Shop.

It should be noted that all of this translation is aimed at individuals who do not speak sufficient English, which in practice means that it is speakers of new minority languages who benefit from it. As stated in chapter 6, there is no translation contemplated for speakers of old minority languages from the rest of the UK. Thus, speakers of Gaelic or Welsh have no expectation to receive translation or interpreting

[12] According to its website, this organization "is one of the largest and most successful independent, non-commercial services in the UK […] provid[ing] language support services (telephone and face-to-face interpreting, translation, audio recordings, language assessments) for Health Trusts, Local Authorities, non-statutory sector organisations, commercial and private clients throughout Hertfordshire, Bedfordshire, Buckinghamshire, Milton Keynes, Oxfordshire and beyond" (Herts Interpreting and Translation Service 2013).

Sidebar 1. Language Identification Chart.

This chart is provided by The Language Shop for local councils in England. Public bodies throughout the UK use this and similar charts.

in England. The only limited exception to this is Cornish in Cornwall: some documents have their foreword translated into Cornish. This translation takes place through the Cornish Language Partnership's translation service (United Kingdom 2009, 67-68). Full documents, however, are only translated at the requesting costumer's expense. What limited translation is offered into Cornish is the result of the Council's commitment "to safeguard and promote the language in accordance with the principles laid down in [the European] Charter [for Regional or Minority Languages]" (Cornwall Council 2009, 1). Overall, however, translation in England's local governments is almost universally geared toward speakers of new minority languages. This is not meant to promote such languages. Rather, it is intended to avoid discrimination by providing equal access. The effort is mostly envisioned as remedial, for the ultimate goal is that immigrants be able to communicate in English.

3.2. Policies that affect translation when communicating with local governments in Wales

There is no Wales-specific legislation mandating the need for translation in communicating with the government. However, in order to comply with the *Equality Act 2010* and the *Welsh Language Act 1993*,

government bodies often adopt policies that result in translation. Thus, local officials translate (or not) mostly as a result of local policies, often dictated by local councils in order to fulfill legislative obligations that do not impose an explicit obligation to translate. For current purposes, this section will address the translation policies of the 22 local councils in Wales.

For languages other than Welsh, only two (out of 21)[13] local councils had written translation policies. That is not to say that no translation is contemplated. All 21 engaged in translation, both via writing and interpreting. Regarding written translation, the type of documents translated include booklets, information packets, letters, and banners. All 21 local councils report they do not engage in translation systematically, but at least one council translates certain types of documents into certain languages as a matter of course due to identified needs (e.g., official letters into Polish for parents of some school children, trading standards information into Chinese for some restaurants). Twenty local councils report they contract out translation services, with one reporting it also does some limited translation work in house. Local councils have contracts with private

Sidebar 2. A tale of two Councils.
Gwynedd Council and Merthyr Tydfil County Borough Council stand on opposite ends of a spectrum. Gwynedd Council has 77,000 Welsh speakers, which is 65.4% of its population (StatsWales 2013). Merthyr Tydfil Council has 5,028 Welsh speakers, which is 8.9% of its population (StatsWales 2013). These two councils serve to illustrate just how different Welsh Language Schemes can be in their approaches to translation. Gwynedd Council's Welsh Language Scheme places the responsibility on "all Council staff and Council Members to promote the Welsh language" in its stated goal "to be an anchor for the language in its resurgence throughout Wales" (Gwynedd Council 2010, 2, 3). To this end, it has its own full-time translation unit that engages in interpreting of meetings and translation of technical material, leaving things like handling correspondence to bilingual staff. It encourages staff to draft documents in Welsh (which will be translated into English) and to make Welsh a working language in the Council. On the other hand, Merthyr Tydfil Council deals with its legal obligations regarding Welsh in a more minimalist fashion. Merthyr Tydfil Council does not expect its staff to translate, and it has no in-house translation services, meaning that interpreting and written translation are contracted out. This leads to less translation (e.g., technical documents are not translated into Welsh) and delayed translation (e.g., news on the website may not be translated into Welsh until external translators can get the job done). In August 2012, the Welsh Language Board released a report into the implementation of the Council's Welsh Language Scheme, finding several breaches. Among the recommendations for solving the breaches was that the Council "ensure appropriate procedures for accessing translation services" so that more written materials could be presented bilingually or in Welsh (Welsh Language Board 2012).

[13] One local council did not respond to my repeated FOI requests.

companies like Language Line and The Big Word to provide written translations, but the Wales Interpretation and Translation Service (WITS) is an important provider of written translations for local councils.

WITS is a service that was established with funding from the Welsh government, Cardiff Council, and Gwent Police (Welsh Government 2010). It is intended to be a "one-stop-shop" for the translation needs of public bodies in Wales as they go about trying to bridge the language gap in communicating with immigrants who do not speak English or Welsh sufficiently well (ibid.). WITS was created with the aim of saving public bodies time and money in their translation efforts (ibid.). Public bodies are billed for the service, but WITS streamlines the process by offering a single monthly invoice and negotiating contracts with private companies, such as The Big Word. The creation of WITS in and of itself seems to indicate an awareness by Welsh authorities that translation is a tool for fulfilling obligations under existing UK legislation.

Regarding interpreting, all 21 local councils report contracting out interpreting services, but at least three authorities indicate the use of staff for certain languages and circumstances along with professional interpreters. WITS, Language Line, and The Big Word are also important providers of interpreting services, but there are other organizations as well, such as the Neville Street Interpreter Service. These companies offer either face-to-face or over-the-phone interpreting.

Generally, translation into new minority languages is offered via traditional means such as those described above. However, some local councils also use more technologically innovative approaches. Five of the 22 local councils offer the option of using raw machine translation to translate their websites into anywhere from six to 15 languages. Another interesting use of technology is online written and read-aloud translation. Newport City Council has contracted the technology from EMAS UK, an organization that provides tools and services for schools with non-English speaking children. The council has contracted an automatic translator service that has a database from which it draws to translate simple sentences into other languages. Via mobile devices, the tool can also read aloud the translation so that

those who are unable to read may hear it. Newport City Council offers this tool to its schools and face-to-face centers (Newport City Council 2011, 13).

Translation into and from Welsh is governed by the Welsh Language Schemes adopted by the local councils. These Welsh Language Schemes detail local councils' policies to enact the principle that Welsh and English will be treated equally in public dealings (see chapter 5). As stated earlier, the Welsh Language Schemes are not primarily documents on translation, but their full implementation requires the use of translation in practice. Not all Welsh Language Schemes are the same (see Sidebar 2), but there is a great deal of common ground among them, even if their application shows inconsistencies (Advisory Committee 2011, 30). All 22 councils indicate that they will correspond with individuals in the preferred language of each individual, and all indicate that general correspondence (such as circulars) will be bilingual. Bilingual correspondence implies translation, and different councils handle its translation differently. Some councils encourage staff to handle the translation of correspondence, others require that in-house translators handle the correspondence, either by translating it or revising the translations done by staff, and others handle the correspondence through outside translators. When communicating over the phone with the councils, all 22 aim at having bilingual staff answering the telephones, but only two councils will provide interpreters when this is not feasible. Similarly, all 22 aim at having bilingual staff at the point of contact for personal visits to the councils' buildings, and 11 of them will offer interpreters when no bilingual staff member is available to handle personal meetings in Welsh. Public meetings may be in English only, bilingual, or in Welsh, depending on the locality, attendees, and subject matter, but all councils indicate they can provide interpreting for those who wish to participate in Welsh (or in English, in some cases). Eleven of the councils require prior notice so that arrangements can be made for simultaneous interpreting. All 22 councils indicate they have bilingual signage and publications. However, not all publications are to be translated, and councils have developed classification systems to decide which documents are to be published in English only all the time,

at times bilingually, and always bilingually. Regarding council websites, 21 councils give users the option to access their websites in English or Welsh.[14]

These actions require different translation efforts. Understanding the role of translation in fulfilling some of the obligations set out in the Welsh Language Schemes, 15 local councils set up their own in-house translation services, with two of those councils also using external translators. At least five councils indicate they only use external translators. At least one council has hired the translation services of another council. Whatever the strategy, all local councils exhibit a commitment to translation as a way to facilitate the use of Welsh in their respective jurisdictions.

In all instances, the commitment to translation in the English-Welsh pair seems to be stronger than that of translation involving other languages. This can be explained by considering that the purpose of translation for languages other than Welsh is different than for translation involving Welsh—the former is designed to comply with general non-discrimination policies and the latter is designed to comply with the language promotion policies needed to create a bilingual Wales (see chapter 6). This difference is quite notable, for example, in the concern for quality translation when dealing with Welsh. The Welsh Language Schemes call for the use of technologies such as CySill (a Welsh-language grammar and spell checker), the involvement of translators in editing and proofreading texts translated into Welsh or drafted in Welsh by staff, and the requirement that translators that work for the councils be members of Cymdeithas Cyfieithwyr Cymru (The Association of Welsh Translators and Interpreters). On the other hand, the issue of quality does not come up very often when dealing with languages other than Welsh. This may be a reflection of the different purposes behind the policies that lead to translating for Welsh and for languages other than Welsh.

[14] Newport City Council currently has an English-language website only. After protests by activist groups and the threat of investigation by the Welsh Language Commissioner, the Newport City Council announced it will contract Cardiff Council's in-house translation unit to translate the website, and then new content would be drafted in English and translated into Welsh as needed (South Wales Angus 2014). Raw machine translation of the website is available via Google Translate into Welsh and these other languages: Arabic, Chinese (simplified and traditional), French, German, Italian, Korean, Japanese, Polish, Portuguese, Russian, and Spanish.

This analysis was carried out under current Welsh Language Schemes. As stated in chapter 6, these will be gradually phased out. It is unlikely, however, that the general conclusions found here will change under the Welsh Language Standards, at least not in the early years. This is evidenced in the current consultation being undertaken in Wales regarding standards proposed for a number of public bodies, including local authorities. The consultation document proposes 134 standards that cover a very broad range of activities, including those related to service delivery, general policy making, record keeping, internal operations, and the promotion of the Welsh language. While the exact outcome of the consultation is unknown as of this writing, the proposed standards can be considered in terms of the role that translation would play if they were approved as they currently stand.

Translation is explicitly included in the standards when it comes to personal meetings, either with the public or in the operations of the councils. Under the current proposal, people would be able to participate in meetings, whether these be one-on-one meetings or meetings that involve several individuals, in Welsh. Specifically, if a person were to indicate the desire to meet with someone from a council in Welsh, the meeting would be in Welsh or would take place through simultaneous or consecutive interpreting [27-29; numbers in brackets signal specific standards]. For meetings where individuals are specifically invited to confirm their attendance, these individuals would be asked to indicate their desire to use Welsh [31]. If either of the following conditions is met, simultaneous interpreting would be provided: "more than five persons have indicated that they wish to use Welsh," "more than five per cent of persons proposing to attend have indicated that they wish to use Welsh," or "Welsh will be used by any person making a presentation, or giving a speech, at the meeting, or chairing or hosting the meeting" [33].

Translation is also explicitly incorporated as a means to secure specific standards regarding the internal operations of local councils. The standards would not mandate that councils operate in Welsh—they are certainly free to do so— but upon request, certain documents would have to be provided to employees in Welsh [95-96]. If these documents exist only in English, the implication is that they would have to be translated. Further, if an employee is to meet with the organization over a

grievance or disciplinary procedure, he or she would be able to request that the meeting take place in Welsh and "the organisation must offer to provide simultaneous translation from English to Welsh and Welsh to English" [99-100]. Translation could also play a part in the hiring of new employees. If someone applying for a position in the organization would wish to be interviewed in Welsh, "the organisation must offer to arrange simultaneous translation from English to Welsh and Welsh to English" [115].

Translation is also implied, even if not explicitly mentioned, in standards relating to the production of texts for the public. For example, correspondence to persons would have to be either only in Welsh or at least bilingual [1-5]. (English-only correspondence is not contemplated.) As stated above, bilingual correspondence requires that someone engage in translation. Under the standards, a great deal of publications would have to be made available in Welsh, ranging from minutes of open meetings to press releases. Further, certain types of forms would always have to be available in Welsh, and others would be made available based on a case-by-case assessment [46-47]. Online, all webpages would have to be made available in Welsh [50-51], except for content provided by third parties. What is assumed here is that all these publications also exist in English, as evidenced by the repetition of standards which call for the Welsh version to be treated "no less favourably than English" [39-40, 50-51]. Translation would also be necessary to comply with the proposed standard for audible messages: these would be made at least in Welsh, and the Welsh language would be heard first [82-83].

In essence, the proposed standards aim at strengthening the position of Welsh in Wales by creating the same level of responsibility for some public bodies, including local authorities, that would allow individuals to have more interactions in Welsh. Such an effort would, in some cases, necessitate the use of interpreters and a great deal of written translation. Thus, the commitment to translation will not diminish once Welsh language standards are adopted.

3.3. Policies that affect translation when communicating with local governments in Northern Ireland

In Northern Ireland, there is no legislation explicitly mandating translation in local government. However, under the constitutional and equality/non-discrimination legislation described in chapter 6, translation takes place as a tool for other institutional objectives pertaining to linguistic minorities. These objectives are the result of a fragmented past and the desire to create a more inclusive region. This is especially true in terms of Irish, where there are some specific approaches that are provided for by departments that stand above local governments but that work with them. In this section, policy efforts of the department in charge of linguistic diversity will be considered. Then the translation policies, either explicit or implicit, of local councils will also be addressed.

3.3.1. Department of Culture, Arts and Leisure

The Department of Culture, Arts and Leisure (DCAL) is a devolved government department in charge of specific policy areas in Northern Ireland, including linguistic diversity. DCAL's approach to linguistic diversity includes a number of efforts. For example, it has provided funding for Irish-language broadcasting and is working toward the development of a statutory Ulster Scots Academy[15] to foster research pertaining to the Ulster Scots language and culture (Department of Culture, Arts, and Leisure 2012a). Translation also plays a role in DCAL's efforts to handle linguistic diversity in an inclusive fashion. In terms of translation only, DCAL has done the most when it comes to the Irish language. Three measures are worth noting. First, DCAL has prepared a set of guidelines for translators working for the Northern Ireland Civil Service. This effort reflects the work of an advisory committee of experts on translation, which was set up by DCAL (ibid. 2012b, 62). The guidelines

[15] The creation of an Ulster Scots Academy is, as of this writing, a work in progress. In 2011, a Ministerial Advisory Group Ulster-Scots Academy was created in order to develop such an Ulster Scots Academy. This statutory academy that has yet to effectively materialize should not be confused with the Ullans Academy, also known as the Ulster Scots Academy or the Ullans (Ulster Scots) Academy, which is a volunteer organization that has been working to "study, conserve, promote, and develop Ulster-Scots" for roughly two decades (Smyth & Montgomery 2005, 61).

are intended to help improve the translation quality of correspondence, press releases, reports, etc. (ibid. 2009, 10). Second, DCAL has contracted with Central Translations for provision of Irish-language translation in the Northern Ireland Civil Service (ibid. 2012a). As we will see below, local governments work in this fashion as well. Third, DCAL has put forward a draft Strategy for Protecting and Enhancing the Development of the Irish Language, which has some translation implications discussed in chapter 6.

While weak compared to Welsh-language policy, the policy in favor of Irish is ample when compared to policies for other languages in Northern Ireland. Regarding Ulster Scots and translation, DCAL will search for translators as needed but does not provide the same level of service as for Irish (ibid. 2012b). As stated in chapter 6, translation into and out of Ulster Scots is not considered a priority by the stakeholders. Regarding new minority languages, DCAL seems to have no specific policy regarding that set of languages. This is so despite the wording of the Good Friday Agreement, which includes "the language of the various ethnic minority communities" as part of linguistic diversity. This would be the only set of languages not contemplated in DCAL's linguistic diversity efforts.[16]

That does not mean that government in Northern Ireland is unaware of new minority language communities that wish to communicate with it and access services. This is evidenced in NIDirect, a devolved government website intended to bring together information that is valuable for citizens seeking to access services. Some of the information at NIDirect is provided in languages other than English, namely in Irish, Arabic, Bulgarian, Chinese, German, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian, Slovak, Spanish, and Tetum[17] (NIDirect 2012b). For

[16] DCAL has engaged in some efforts for British and Irish Sign Language, such as the creation and distribution of good practice guides for those providing public services (Department of Culture, Arts, and Leisure 2012c)

[17] As of this writing, the tally of available documents on the website is: 4 in Arabic, 2 in Bulgarian, 16 in Chinese (7 simplified, 9 in traditional), 1 in German, 12 in Irish, 10 in Latvian, 12 in Lithuanian, 15 in Polish, 13 in Portuguese, 2 in Romanian, 6 in Russian, 6 in Slovak, 4 in Spanish, and 1 in Tetum. While NIDirect lists Ulster Scots as one of its "alternative languages," it provides no actual translated documents into said language.

translation of other documents and pages on the site, a link is provided to Google Translate.

3.3.2. Local Councils

When translation policy is analyzed in local councils, a differential treatment can be observed in the way these councils approach translation pertaining to new minority languages and old minority languages. And even in the latter category, there is a distinct difference between the treatment of Irish and the treatment of Ulster Scots. This section will explore these differences in Northern Ireland's 26 local councils.

Regarding new minority languages, eight local councils report having a policy document to address issues pertaining to this type of languages. Eleven of the local councils have made their websites translatable via machine translation. In all cases this is achieved through Google Translate (see Sidebar 3). The number of languages that are available for machine translation varies from seven to 79. As far as the provision of written translations goes, 20 councils report they do this. The type of documents translated include welcome packs,[18] information leaflets, legal notices, and incoming correspondence. In some situations, the reply to incoming correspondence in a new minority language may be translated out of English into that language. None of the councils handle this translation in house, and the organizations hired to do this work include private companies such as The Big Word but also non-profit community organizations such as South Tyrone Empowerment Program (STEP).[19] Local councils do not seem to collaborate with each other in the provision of written translation, even though the Belfast council offers links to organizations that have translated helpful materials.

Regarding the provision of interpreting, 19 councils report they provide it. Interpreting may take place over the telephone or face to face, depending on the

[18] Welcome packs contain general information regarding community life, including libraries, churches, hospitals, and other local services (McDermott 2011:151).

[19] STEP is an NGO that provides translation (and interpreting) services for housing, policing, and educational-related matters, among other support initiatives (McDermott 2008, 12-13). STEP has been involved in interpreter and translator provision since 2001, when it became involved with the rights of works in the food and agriculture industry (Phelan 2010, 105-106).

council and the circumstances. STEP is also an important provider of interpreters, as are private companies like Language Line and The Big Word. These translation services are demand-driven, and two councils explicitly report not offering any written translation or interpreting services for speakers of new minority languages based on the perception by local authorities that there is no need for it.

When approaching Irish and Ulster Scots, local councils usually take different paths. The areas where they may provide written translation or interpreting are the same, but the level of provision differs. Specifically, this section will describe translation of correspondence, translation of documents, interpreting when communicating over the telephone, and interpreting for meetings with staff. One should bear in mind that most local councils claim some sort of commitment to these two languages, often in vague terms that make it difficult to ascertain whether there is a policy to translate.

Only two local councils state unequivocally that they do not provide any written translation or interpreting into either of these two languages. Regarding correspondence, 11 councils indicate they accept correspondence in Irish, and then have it translated if necessary. Eight of these 11 councils will also respond in Irish, through the use of translation as needed. Only three councils report that they will accept correspondence in Ulster Scots, but all three report they will reply in that same language. Fourteen of the local councils report they translate written documents for public consumption into Irish, and only one of them reports doing this in house. The outside providers that are hired to do this translation work are local, such as I Need Translations or Central Translations. This latter company, as was mentioned earlier, has a contract with DCAL for providing Irish-language translation for local governments, which makes it an important local provider. The commitment to translate documents into Ulster Scots is much weaker. Local councils express a willingness to do so if the need should arise, but they also report much difficulty trying to find qualified translators to do the job. In fact, five of the local councils specifically report they do not engage in any written translation for Ulster Scots.

As regards interpreting, when people call into the council, staff members who can handle calls in Irish or Ulster Scots are encouraged to do so, but no council reports a policy of using interpreters to handle telephone calls in Irish. If the person calling wishes to use Irish and no staff member can handle such a call, three councils offer the option of writing in while six also offer the option of leaving a voicemail in Irish. Translation would then be employed to handle the request or inquiry. Irish speakers have not found the voicemail system to be satisfactory, "partly because the public is uncomfortable with the service, partly because there is a certain delay before receiving a response to the messages" (Committee of Experts 2004, 50). For Ulster Scots, only three councils view writing in as an alternative to telephone calls in Ulster Scots and only one reports an Ulster Scots voicemail service. Like their Irish-speaking counter-parts, speakers of Ulster Scots have found the voicemail system to be inconvenient, particularly for the older generation (ibid. 2007, 11). Should individuals want to communicate with staff or in meetings in Irish, seven councils will provide interpreters for Irish, with certain provisos such as advanced notice. Two councils report the use of interpreters for Ulster Scots for interacting with staff or for meetings. Finally, some councils allow the use of Irish, through interpreting, in their public meetings (ibid. 2010, 52-53). Two councils offer simultaneous interpreting and one offers consecutive interpreting in order to facilitate substantive participation in Irish at their meetings, but the use of Irish in meetings held in most councils is limited to "greetings or titles rather than […] as a regular part of substantive discussion or proceedings" (ibid. 2014, 32).

The preceding paragraphs paint a picture of how written translation and interpreting for Northern Ireland's old minority languages, if offered, is prioritized for Irish over Ulster Scots. This preference is further evidenced by the observation that several councils (six as of 2010) have employed Irish Language Officers, some of whom work for more than one council, "whose duties are to promote Irish in their respective councils, and to translate council documentation into Irish" (ibid. 2010, 52). No such officers have been reported for Ulster Scots. The differential treatment of the two languages is a result of a number of factors. One is purely demographic: there are more speakers of Irish than Ulster Scots in Northern Ireland (see chapter 5).

Another is historical: the grassroots movement in favor of promoting Ulster Scots is newer than that in favor of Irish (see chapter 5). Another factor has to do with the influence of the ECRML. As previously explalined, in ratifying the Charter, the UK states it will provide Part II protection for Ulster Scots and Part III protection for Irish. The protection afforded under Part III is much more specific than the general statements of Part II, thus making Part II not very helpful "as a blueprint for action" (Millar 2006, 66). While the ECRML is not incorporated into law in the UK, the devolved government in Northern Ireland has a policy to follow its principles, and this is reflected in the differential translation commitments of local governments for these two languages. Evidence of this can be seen in that more Codes of Courtesy have been drafted for Irish than for Ulster Scots, at least as reported by local councils either on their websites or following FOI requests. Despite this, it should be noted that while each council's commitment to Irish varies, in general terms, "the possibilities to use [Irish] in relations with local administrative authorities remain limited" (Advisory Committee 2011, 29). Even so, the issue is contentious, as measures in favor of Irish are interpreted by some as attacks on Unionists and/or Protestants.[20] Consequently, measures to promote Irish or Ulster Scots, including translation measures, cannot really garnish the type of support that measures favoring Welsh obtain in Wales.

Even when there is almost no translation into/from Ulster Scots, and some limited translation into/from Irish, there is no general feeling in the policy

[20] Presumably the treatment would be even more divergent were it not for the political situation in Northern Ireland, where any action for one or the other of the two old minority languages can be perceived as a political concession to either unionists or nationalists (see chapter 5). An example of how this can play out is the controversy that broke out in the Dungannon and South Tyrone council when a receptionist answered the telephone in Irish. This was interpreted by some as a sign that the council was becoming hostile to Protestants (often thought of as unionists). The council had to clarify that while it has a policy to promote the Irish language, the "custom and practice" is to answer the telephones in English and arrange for communication in other languages, including Irish, if requested (Mid-Ulster Mail 2013). The Councils' own Linguistic Diversity and Communications policy document does not clarify what language the phones should be answered in, hence the reference to "custom and practice." The document does indicate that languages other than English should be accommodated in different ways.

documents that translation should be restricted or should be used as a stepping-stone for funneling people into English. In this respect, Northern Ireland seems to be more willing to embrace translation at the local government as a matter of promoting good relations. This should not be surprising, given the constitutional framework of Northern Ireland, which was designed with the idea that the region was fractured and needed to be brought together through the fostering of good relations. In England, the opposite seems to be true: there is a concern that a once bonded society is becoming fractured due to the influx of those who are different. In that context, pushing everyone toward speaking the same language makes it clear that the old mantra of one language, one nation, one state is still strong. In places like Northern Ireland and Wales, however, pushing one language (i.e., English) over the rest has created historical resentments, and translation is perceived as having a role to play in overcoming such historical difficulties.

3.4. Policies that affect translation when communicating with local governments in Scotland

The translation policies of Scotland's 32 local government councils will now be considered through a description of translation policies first for new minority languages and then for old minority languages. Eighteen councils report actual policy documents to guide their translation efforts. For eight councils, these efforts include raw machine translation of the pages in their websites. Such machine translation is available through Google Translate in seven councils, offered in as little as three languages and as many as 63 languages. One council uses Microsoft Translator, which can translate the webpage into 44 languages, including Klingon![21] Regarding written translation, all responding councils indicate they offer some form of written translation for speakers of new minority languages. This type of translation is mostly reactive, offered upon request in order to overcome a language

[21] For the uninitiated, Klingon is an artificial language developed for "Klingons," an extra-terrestrial race in the science fiction franchise Star Trek.

Sidebar 3. Google Translate

Most websites that provide raw machine translation offer it by inserting a Google Translate plugin. The plugin currently supports 80 languages, including three from the UK: English, Irish, and Welsh. It also includes two languages that are less likely to be anyone's first language: Esperanto and Latin. It supports simplified and traditional Chinese as two different languages. The number of languages in which Google Translate is available for each website depends on the languages selected when adding the plugin. Google allows webmasters, when adding the translation plugin, to select all languages supported by the service or any user-created subset of those languages. Thus, the choice of which languages into which to provide raw machine translation for has technical limitations (79 in the case of Google Translate, not counting the source language, which in the UK is usually English) but is also a choice made by the organization that is adding the plugin. Once the plugin is added, it will display a button from which a pull-down menu opens. Users can then select the language of their choice for translation. This button is often in the home page, either at the bottom or at the top, but in some cases is placed in a different page. The image below is shows a fully open Google Translate button found on Belfast City Council's homepage. The button appears at the bottom right-hand corner of the webpage and is easy to miss unless someone is specifically looking for it.

barrier. However, five councils indicate they will translate some materials before a request is made if the need is identified beforehand. The type of materials that are translated include forms, leaflets, letters, notices, and welcome packs. At times, translation may take the form of a summary in the new minority language. Written

translation is rarely handled in house (only two councils indicate they have in-house translators for at least one language), as it is mostly outsourced.

Regarding interpreting, all councils report they do this, and most offer both over-the-phone and face-to-face interpreting. Over-the-phone interpreting tends to be reserved for shorter appointments, walk-ins, or phone calls. A raising trend seems to be the use of over-the-phone interpreting when face-to-face suppliers cannot meet specific requests (Perez & Wilson 2009, 15). Further, there are councils that rely only on over-the-phone interpreting. Face-to-face interpreting tends to be reserved for longer or planned interactions, particularly if they are of a sensitive nature. Interpreting, in whatever form, is always reactive, based on the need to communicate across language barriers. Most councils contract interpreting out, but five report having in-house interpreters, whether assigned to a translation unit or simply bilingual staff with regular, non-linguistic duties. At least six councils require the use of professional interpreters, and two explicitly discourage the use of family and friends.

In these efforts to provide written translation and interpreting, councils often rely on private companies that "tend to emply freelancers (sessional workers) who are listed on the books of several agencies" (Perez & Wilson 2009, 12). These are companies such as Alpha Translating and Interpreting, Applied Language Solutions, Elite Linguists, Global Connects, Global Voices, Language Line, Linguassist, The Big Word, and The Translation People. But they do not rely exclusively on the private sector. Some councils rely on the translation services offered by other councils. For example, Aberdeenshire Council obtains translation via Aberdeen City Council's Translation, Interpreting, and Communication Support Service, while Clackmannanshire Council does the same via Dundee City Council, and in turn East Renfrewshire Council turns to Glasgow City Council. Additionally, some councils not only work with private companies or other councils but may also turn to organizations such as Forth Valley Language Support[22] or Fife Community Interpreting Service.[23]

[22] Forth Valley Language Support is a community interest company. Community interest companies are businesses whose objectives are primarily social. In this case, the social objectives are described as

When it comes to old minority languages, divergent approaches can be observed. More than half of the councils that provided information regarding translation for speakers of old minority languages indicate they will treat Gaelic and Scots like any language that is not English: translation and interpreting may be provided if there is a request which corresponds to a need to overcome a language barrier. The likelihood of that scenario becoming a reality is extremely low. Perhaps because of this, three councils report they do not offer translation for speakers of Gaelic and four councils report the same for speakers of Scots. To these councils, the distinctiveness of speakers of Gaelic or Scots becomes invisible. They are simply English speakers.

For reasons briefly explored in chapter 5, Scots is in a state of neglect when it comes to translation policies. Not one council indicates any written translation or interpreting actually being carried out in the Scots language. This is not surprisingly in light of the lack of legislative support for Scots in Scotland.

Such legislation does exist, as stated in chapters 5 and 6, for Gaelic. The *Gaelic Language Act 2005* gives the Bòrd na Gàidhlig authority to require that certain public bodies create Gaelic Language Plans. These plans outline the ways in which the bodies will use the Gaelic language in the fulfillment of their functions. Thus, they become Gaelic language policies for their respective bodies, and it is in those documents that we find policies for translation. Translation mostly shows up when considering correspondence, documents directed toward the public, telephone communications, and public meetings.

Regarding written translation, seven of the 11 Gaelic Language Plans consulted indicate that their respective councils will respond to correspondence in Gaelic by using the same language, most often through the service of translators. All 11 councils indicate they will proactively translate at least some documents for public

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"giv[ing] voice to those who do not have ready access and understanding of structures and processes in society" and thus help alleviate "inequalities and discrimination" (Forth Valley Language Support 2013).

[23] *Fife Community Interpreting Service is a charity that not only provides interpreters but also translators across Fife County.*

consumption into Gaelic, while two indicate they will also do so upon request. These documents include complaint procedures, forms, leaflets, corporate plans, and information regarding the Gaelic language. Full translations into Gaelic of every document are not contemplated. Some documents are to be translated in full (especially if they have to do with Gaelic-language issues), while others are to be partially bilingual (often in the form of a foreword in English and Gaelic), and many are not to be translated into Gaelic. Regarding interpreting, three councils indicate that if someone telephones in and wishes to speak in Gaelic, the council will use interpreters to accommodate the caller. Other ways of accommodating the caller include, of course, the use of bilingual employees. In public meetings, four councils signal they will provide simultaneous interpreting, and three of these will do so without a requirement of previous notice. Thus, the Gaelic Language Plans cannot be fulfilled without translation. Or, to be more precise, providing services in Gaelic requires, in part, the service of translators and interpreters. Seven councils contract this service to outside providers, but two have set up their own in-house translation services. For example, Comhairle nan Eilean Siar, the local government council at the Western Isles, has set up Sgioba na Gàidhlig, an implementation group for its Gaelic Language Plan. The group, among other responsibilities, handles Gaelic-language translation requests at no charge for the council. At this early stage in the development of Gaelic Language Plans there seems to be no cooperation among councils in their translation efforts. Glasgow City Council does recognize there is the potential to do this: "Where translations of general forms become available through Bòrd na Gàidhlig or other councils, we will consider whether to introduce them" (Glasgow City Council 2010, 47). As of this writing, there is no indication that such cooperation is taking place.

As the preceding paragraphs indicate, translation in Scotland's local government is mostly seen as a way to bring about equality and ensure non-discrimination by granting equal access to services. As a general rule, when speakers of any language approach their local governments, if they can do so in English, there is no perceived role for translation: all interactions take place in English. The exception is to be found for speakers of Gaelic in areas where local councils have

implemented their own Gaelic Language Plans. In order for communication to take place in Gaelic, translation may become necessary. Gaelic, as explained in chapter 5, is in a highly weakened position in Scotland, and there is a perceived need to revitalize it. The Gaelic Language Plans are part of the strategy to fulfill that need. In this context, translation also seems to arise as a way to bring about language revitalization, and thus symbolically recognize the value of the individuals who speak the weakened language. If these approaches are taken together, translation helps to highlight the needs of those who either do not speak the dominant language with proficiency or who have a main language whose position in society needs to be strengthened. The flip side of this in Scotland is that, when no translation is provided, speakers of minority languages become largely invisible as such to local authorities.

4. Conclusion

In this chapter I have described and analyzed translation policies in the domain of government by focusing on translation in elections and in local government. In so doing, I have reaffirmed some of the conclusions that were drawn in the last chapter. Specifically, translation policy in the UK is again the result of legislative and policy pressures that play out differently in places with different historical and demographic realities. Additionally, this chapter raises questions about the quality of translation. I will now deal with each of those two topics.

First, I have indicated that local governments rely on written translations and interpreting in order to facilitate access to their services by those who would have difficulty doing it in English. This reflects the belief that translation can help alleviate inequalities and be an instrument for the inclusion of certain vulnerable groups. At the same time, the belief that translation for speakers of new minority languages can actually hinder integration is also felt at the local government level, especially in England. This belief is based on the assumption that English is one of the main binding agents of English society, if not the main one. It is also assumed that the

provision of public services through translation will result in segments of the population not speaking English. Thus, translation can dilute that binding agent. This somewhat dichotomous view of translation is reflected in translation policy for elections, which allows for most things to be translated except for the ballot. This is a powerful symbolic statement. Democracy too is a binding agent of the UK. It *must* take place in English, even if some translation *may* be provided to ensure access to democratic procedures.

This idea that English is what holds society together is a harder sell in regions outside of England. The ballot can, and is, translated into Welsh. Some level of service provision is contemplated in Welsh, Irish, or Gaelic by local governments, and there are some modest official efforts to promote Ulster Scots. Thus, in Wales, Northern Ireland, and Scotland, the English language loses some of its symbolic value, even if it is still the language of the majority and has been overwhelmingly institutionalized over the centuries. In Wales translation from and into Welsh becomes a way to help institutionalize Welsh and pull it closer to the position of English, at least in service provision at the local government level. In Northern Ireland policies favoring social cohesion result in translation as a tool to help recognize speakers of Irish by providing the possibility to carry out some interaction with local government in Irish. Similarly, translation for speakers of Gaelic in Scotland is envisioned as a way to recognize speakers of the language and to promote the use of the language in official settings, at least in some local governments. Ulster Scots and Scots do not enjoy much translation in official settings, and are generally neglected in terms of policy. The different translation activities into and out of old minority languages help stress the point that English does not have the same symbolic weight as it does in England. They also hint at translation as a way to recognize speakers of old minority languages, even when they speak English proficiently.

The second issue worth highlighting in these conclusions has to do with the reliance of local governments on raw machine translation for their websites. The use of machine translation in council websites is an effort to comply with non-discrimination legislation. The ability to translate an entire website into several

languages on demand in theory provides for more equality between those who speak English and those who do not. As of this writing, machine translation in local government websites is provided by 31 (out of a sample of 103) councils in England, 5 (out of a population of 22) councils in Wales, 11 (out of a population of 26) councils in Northern Ireland, and 8 (out of a population of 32 councils) in Scotland. This use of machine translation is somewhat problematic. It is so because the translation output is not post-edited by humans. This means that the translations tend to be low quality. For example, Wrexham County Borough Council provides links to Google Translate so that the website can be accessed in 13 languages other than English or Welsh. (The English and Welsh websites are sister sites that can be accessed from a splash page. New content is generally created in English and translated into Welsh, and translations are carried out by human translators.) The page where these links are available has the following disclaimer: "Wrexham County Borough Council does not guarantee the accuracy of the translations provided by Google or Alta Vista." The disclaimer is puzzling in that no links to Alta Vista are provided, only to Google Translate. It is also a recognition that the translations, as raw machine translations, are not fully reliable. For example, when clicking on the link to Spanish, Google Translate generates the home page in Spanish. Some short sentences are correctly translated: "Estacionamiento y Viajes" / "Parking & Travel." Other sentences are rather confusing: "Fechas de plazo School" / "School term dates." The reliance on this type of non-post-edited machine translation is an attractive option for councils: it is free. But it is also an indicator that quality is problematic: reliable, quality translation is expensive, while free translation is unreliable and lacks quality. Even so, for individuals who lack the language skills to access council websites in English (or Welsh), some local councils seem to believe that raw machine translation, while deficient enough to merit disclaimers, may be better than nothing. And users who simply want to assimilate information may in some contexts be satisfied with raw machine translation (see Bowker 2009), especially if the other option is no translation at all. There is, of course, another way to approach granting language access in council websites: hire humans. These humans could translate the website from scratch or post-edit the machine's translation output, the latter being cheaper than

the former. The option of using humans, either as translators or post-editors, is not currently contemplated for new minority languages.

With these observations in mind, now turns to two other domains where translation policy in the UK can be analyzed: the healthcare system and the judiciary. These will reaffirm some of the conclusions drawn so far and also add new insights.

8. Translation in healthcare in the United Kingdom

1. Introduction

This study will now continue with its description and analysis of translation policy in specific domains in the UK where there is direct interaction between public institutions and individuals. The first such domain that was studied was arguably the broadest, at least in term of the extent of services provided and possible points of interaction: government, especially at the local level. Now I will turn to another very important public domain: healthcare. This domain is worth considering because of the high stakes that are involved. In the UK this is a *public* domain in that the healthcare system is "financed by general taxation and free at the point of use" (Harker 2012, 3). This system, sometimes referred to as National Health Service (NHS), is actually four independent healthcare systems, one for each region (ibid.). This chapter will address legislation and policy that affects translation in all of the UK but also in each of the four regions: England, Wales, Northern Ireland, and Scotland.

This chapter follows from the premise that good communication is crucial in providing healthcare. Where good communication exists, a number of health benefits are made available. Where good communication is lacking, individuals are excluded from those benefits and a number of negative consequences follow. This means that the stakes are very high for linguistic minorities in this domain. Specifically, when healthcare professionals and patients are unable to speak in the same language, a communication barrier arises. This barrier may have more adverse effects in initial access to healthcare than any other factor (Committee of Experts on Health Services in a Multicultural Society 2006, 13). Further, a failure to communicate properly once in a healthcare situation can have adverse effects such as mistreatment, misdiagnosis, misprescription of doses, non-performance of follow-up care, adverse complications, and even death (David & Rhee 1998; Hampers, L. C., Cha, S., Gutglass, D. J., Binns, H. J., & Krug, S. E. 1999; Flores et al. 2003; Goldman, R. D., Amin, P., & McPherson,

A. 2006; Spolsky 2009, 45-46, 126). These adverse effects are not to be taken lightly. In a study carried out in the United States, 35 medical malpractice cases were analyzed where there had been a failure to provide proper language support to overcome language barriers:

> The cases resulted in many patients suffering death and irreparable harm. Two children and three adults died. In one case, the deceased child was used as an interpreter before suffering respiratory arrest. In another, the deceased child's 16-year-old sibling was used as the interpreter. One patient was rendered comatose, one underwent a leg amputation, and a child suffered major organ damage. (Quan & Lynch 2010, 3)

Other adverse effects of language barriers in healthcare include lack of patient satisfaction, lack of provider satisfaction and effectiveness, failure to meet standards of care, increased risk of professional liability, and so forth (Committee of Experts on Health Services in a Multicultural Society 2006, 14; for a survey of academic literature of the effects of language barriers in healthcare provision, see Pöchhacker 2006, 140, 149-150). All of these adverse effects, when they are felt more commonly by one segment of the population, signal exclusion. Evidence indicates that individuals who lack proficiency in the language of the state "have lowered access to primary and preventive care" (Sperling 2012, 322). Inasmuch as lack of access indicates exclusion, language barriers in healthcare are an impediment to integration.

If linguistic minorities are to be integrated into the full range of healthcare provision offered to those who speak the majority language, this barrier must be torn down. One way to tear it down is through translation (see Advisory Committee 2012, 28). However, in many states, including the UK, there is no coordinated policy to employ translation as a way to overcome the challenges posed by multilingualism in healthcare settings where the providers are largely monolingual. This could be related to the fact that, unlike what happens in judicial settings, there are no major international instruments explicitly calling on governments to employ translation in healthcare settings as a way to ensure other rights (see chapter 4).

2. UK-wide legislation that affects translation in healthcare settings

When considering the UK specifically, translation in healthcare has historically been a bit of an Achilles heel in what is otherwise a seemingly comprehensive, well-planned healthcare system. While there are many Acts of Parliament dealing with a host of healthcare issues,[1] the matter of how to deal with patients who do not speak the language of the healthcare system does not explicitly come up in the relevant legislative enactments.

This lack of direction from legislators may help account for the conditions that led to the 2001 criticism of the Advisory Committee[2] which expressed awareness of "particular problems in relation to the availability of interpretation in health care with particular concern that children are on occasions, having to interpret sensitive medical matters for their parents" (2002a, 16). The UK took note, and indicated a number of measures would be taken to address this issue (ibid. 2002b, 32-33). A few years can make a difference, and by 2007, the Advisory Committee recognized that there were efforts being made by most providers in the UK to offer free "interpretation and translation services in delivering health services" (2007:16-17). Even so, language barriers continued "to be one of the obstacles preventing equal access to health" (ibid.). By 2011, the Advisory Committee had no further comments on the evolution of translation in UK healthcare settings (e.g., Advisory Committee 2011, 28-30).

There is now in the UK a fairly wide approach to translation in healthcare, but it is not explicitly mandated by legislative enactments, even though some Acts can be interpreted as requiring the use of translation in such settings. These are the *Human*

[1] See, e.g., *Personal Care at Home Act 2010*, *Health Act 2009*, *Health and Social Care Act 2008*, *Local Government and Public Involvement in Health Act 2007*, *Mental Health Act 2007*, *Disability Discrimination Act 1995*.

[2] While the FCNM does not explicitly call for the use of translation in healthcare settings, the Advisory Committee has taken its evaluation of duties under Article 10 (which deals with the use of minority languages in private and in public) to comment on translation in accessing healthcare.

Rights Act 1998 and the *Equality Act 2010*. While they do not directly address the issue of language differences in healthcare settings, their significance in pressuring healthcare providers to translate should not be understated. A few words follow about how each of these acts pressures healthcare providers into developing a translation policy.

The *Human Rights Act 1998* is the statutory instrument whereby Parliament incorporates the ECHR into UK law. Thus, the Act incorporates Article 2, as found in Schedule 1, into UK law. Article 2 deals with the right to life. The wording of the article is very general,[3] and on its face it does not suggest that healthcare providers should translate. However, if patients are unable to properly communicate with their healthcare providers, this could in some situations place the lives of patients at risk. Seen in this light, there will be situations when translation will be a tool for not violating the right to life. Thus, when healthcare providers arrange for interpreters to ensure that proper care is given, they can be said to be complying with the *Human Rights Act 1998*. To be clear, this reasoning leads to the conclusion that translation is a way to secure a right, namely, the right to life. However, not all interactions with the healthcare system are about keeping someone alive. Back pain can be miserable, but it is not often deadly. Consequently, the *Human Rights Act 1998* as a legal basis for translation in healthcare is limited but not inexistent.

Translation in healthcare situations where lives are not in jeopardy is a way to comply with obligations under the *Equality Act 2010* in Great Britain. The way the *Equality Act 2010* creates a sense of duty to translate has been addressed in chapter 6, in the discussion regarding anti-discrimination on grounds of race. The same has been done regarding the *Race Relations Order 1997* in Northern Ireland. Those observations extend also to the healthcare sector in their respective regions. It is this

[3] The full text of the article reads: "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

type of understanding that leads to healthcare providers feeling they have a duty to provide translation in order to ensure equality and thereby avoid discrimination. In other words, the main legal basis for translation in healthcare is found in the *Equality Act 2010* for Great Britain and the *Race Relations Order 1997* for Northern Ireland

Even so, none of the laws mentioned above makes an explicit call for the use of translation. It is only after giving some thought to the consequences of failure to translate that these pieces of legislation can be construed to mean there is a duty to translate. Basically, in healthcare Westminster has not dictated a translation policy per se, but it has dictated a human rights and equality policy that in practice can only be accomplished through some translation efforts. Thus, when trying to answer the question of what is the translation policy in the UK's healthcare domain, we need to look below Westminster to get a clearer picture.

There, we find several health departments in charge of implementing health policy throughout the regions of the UK: the Department of Health (in England, and to a lesser extent the rest of the UK), the Scottish Government Health and Social Care Directorates, the Department of Health, Social Services and Public Safety (in Northern Ireland), and the National Assembly for Wales. As a means of implementing policy, these organizations work with their respective National Healthcare Systems.

3. England-specific policies that affect translation in healthcare settings

As indicated above, there is no England-specific legislation regarding translation in healthcare settings. Thus, to get an idea of what healthcare translation policies there may be that are specific to England, the policies of the bodies in charge of healthcare provision must be considered. Because the Department of Health operates more fully in England, this search for an understanding of the role of translation in healthcare in England will begin by considering the translation policies of the Department of Health.

The Department of Health indicates that "[p]roviding communications support to service users is not an optional extra" but rather an obligation based on legislative imperatives to avoid discrimination and respect human rights (2005, 23).

In other words, translation is a mechanism by which other rights are ensured. Based on these legal obligations, National Health Service Trusts (NHS Trusts) have been given specific guidance on how to set their own translation policies according to local needs (see ibid.: 23-24). NHS Trusts are England's local organizations that handle healthcare provision on the ground (there are similar organizations in the UK's other regions). Their translation policies should focus on aiding individuals who "genuinely need to communicate in languages other than English" (ibid.: 24). The Department of Health discourages relying on family members or friends to help fulfill those language needs, meaning that NHS Trusts may need to "call for professional translation and interpretation services or support" (ibid.: 23). Thus the Department of Health indicates that translation should be provided, and by professionals, but specific questions regarding things such as what to translate and into which languages are left for the more local NHS Trusts to deal with.

The Department of Health also helps implement this translation policy. It does so in two ways. First, it provides its own translations of documents for public consumption. For example, the Department of Health's website has almost 50 publications translated into different languages.[4] More are available in hard copy. Second, it provides interpreter support through NHS Direct, the Department of Health's telephone and internet information service. Patients who struggle with English during a consultation can call an NHS Direct hotline that provides over-the-phone interpreters twenty-four hours a day, every day (ibid.: 25). These interpreters can also interpret written information that is read to them over the phone (ibid.). Additionally, callers can request materials "in languages other than English, and if relevant information does not already exist, NHS Direct will have it translated in

[4] In total 60 languages are available: Albanian, Amharic, Arabic, Belarusian, Bengali, Bosnian, Bulgarian, Burmese, Chechen, Chinese, Croatian, Czech, Dari, Dutch, Estonian, Farsi, French, German, Greek, Gujarati, Hausa, Hungarian, Indonesian, Italian, Japanese, Kinyarwanda, Korean, Krio, Kurdish (Kurmanji), Kurdish (Soranî), Latvian, Lingala, Lithuanian, Luganda, Malay, Macedonian, Mongolian, Ndebele, Pashto, Polish, Portuguese, Punjabi, Romanian, Russian, Serbian, Sinhalese, Shona, Slovak, Somali, Spanish, Swahili, Tamil, Tigrinya, Turkish, Ukrainian, Urdu, Vietnamese, Yoruba, and Welsh. Not every document is translated into every language, with some documents translated into only one language and others into as many as thirty-six languages.

order to meet the caller's specific needs" (Department for Communities and Local Government 2007b, 68). NHS Trusts and organizations rely on this service, as well as face-to-face interpreters contracted from the private sector (ibid.: 67). As of this writing, NHS Direct is in the process of being shut down and its services are being transferred to different NHS bodies. A new telephone hotline, NHS 111, has been introduced, and it too, provides interpreters for those who may need to access the service in a language other than English (National Health Service 2013).

It is at the NHS Trust level, however, were the policies are mostly implemented. As explained in chapter 3, a sample of 51 acute trusts was selected for analysis of their policy documents or reported policies. Based on that sample, the following generalizations can be made:

First, all hospitals use translation in one way or another. The specific way translation is used depends on the hospital, and it is usually a combination of several approaches. The use of translation is found in the following ways: raw machine translation of the trust's website, multilingual phrasebooks, written translations of patient leaflets and other documents, professional interpreting over the phone or face to face (including the use of "advocates"), and non-professional interpreting through bilingual staff, friends, relatives, and occasionally children. Not all of these are used with the same frequency or for the same purposes, so a few words regarding each use of translation are in order.

Regarding machine translation, most hospital trust websites do not as of this writing use this tool. Those that do usually have a button on the homepage with a pull-down menu in which a large number of languages are listed. Selecting one of the languages redirects the website to Google Translate, where it is displayed in the language of choice. The result is raw machine translation of the website's pages. Sometimes trusts place a disclaimer that this type of translation may not be very accurate. Indeed, the quality of these translations tends to be very rough. The product is free to both the trust and the end user. The problems of this approach to translation are discussed in chapter 7, in the context of local council websites. The concerns that arise in that context can only be echoed and even magnified when dealing with websites that are accessed in order to obtain information regarding

one's healthcare. One thing is to misunderstand a local school's schedule for the fall, and another is to misunderstand instructions regarding oncological services. In this regard, it should also be pointed out that not all translated content on the websites is raw machine translation. For example, Great Osmond Street Hospital provides no machine translation and instead has posted a number of documents translated by humans into four core languages: Arabic, Bengali, Greek, and Turkish.[5]

Regarding the use of multilingual phrasebooks, the Emergency Multilingual Phrasebook is produced by the British Red Cross in conjunction with the Department of Health. The phrasebook contains over 60 basic questions and terms in English translated into 36 different languages, and it is intended to help staff at the point of first contact make an initial assessment while an interpreter is located (Department for Communities and Local Government 2007b, 68). The phrasebook is not designed for communications beyond "basic communication between first contact carers and patients in some emergency situations" (British Red Cross 2004, i). The phrasebook works by having the medical professional and the patient communicate by pointing to simple phrases. In this regard, complex interactions cannot be carried out with the phrasebook. For these, an interpreter would need to be located.

Regarding written translation, what hospitals generally translate is patient leaflets and personal patient information. The use of translated leaflets for patients is seen as a way to supplement, not replace, communication via interpreters. Some hospitals encourage the use of interpreters to sight-translate documents. In general, translated patient leaflets are provided upon request, and they are not translated systematically but rather on a case-by-case basis. Hospitals have their own procedures to determine what documents to translate into what languages. For example, Calderdale and Huddersfield NHS Foundation Trust has assessed this through patient surveys, ad hoc discussions with patients and relatives, evidence gathered by internal departments, and reports by the private company it hires to provide professional translation. The actual work of translation is either done in-

[5] These documents include follow-up instructions on leaving the hospital after a heart operation, instructions on how to make a complaint, a poster on the importance of washing one's hands often, and dietary precautions for bone marrow transplants.

house or through external providers. The external provider often is a private company, such as Applied Language Solutions, The Big Word, or STAIS UK. Some hospitals also use material that has been translated by others, such as the Department of Health or specialized organizations like the Obstetric Anaesthetists' Association. The way hospitals let patients know they can request translations is by placing somewhere in the document in question a short notice or strapline that says that translations can be provided upon request (see Sidebar 2). This notice often appears translated into several languages. The number of languages will depend upon the hospital and its own assessment procedures. Some hospitals will also display translated information on posters regarding how to request translation or interpreting.

Regarding the use of interpreters, in the sample this is the preferred method for bridging the language barrier. Because interpreting is the primary method for overcoming language barriers when wanting to access vital services such as healthcare (McDermott 2011, 115), written translations amount to a relatively minor undertaking in comparison with the effort and cost invested in interpreting. The two preferred forms of interpreting are over the phone and face to face. Hospitals generally offer both of these interpreting services, but the specific use of each type of interpreting will depend on the policies developed by the NHS Trust in charge.

Because over-the-phone interpreting does not require the physical presence of an interpreter in the room, it allows hospitals to provide interpreting into a vast array of languages (in the sample, from as little as 23 to as many as 250). Some hospitals prefer over-the-phone interpreting because of its lower cost, but others limit it to specific situations, such as shorter calls or situations where sensitive information (e.g., a terminal diagnosis) is not conveyed. Over-the-phone interpreting is supplied by providers from the private sector, such as Language Line,[6] Applied Language Solutions, and The Big Word.

[6] Language Line was established in the early 1990s to help patients communicate with staff in a London hospital, but "it has grown from its initial charitable status into a commercial business, dealing not only with interpreting in the public service but also with numerous multinational companies" (McDermott 2011, 122).

Other hospitals, however, prefer the use of face-to-face interpreters for most situations. Even so, most hospitals do not have in-house, full-time interpreters. They tend to work with outside interpreters. These interpreters largely come from private-sector companies (e.g., Applied Language Solutions, CINTRA, Essex Interpreting, The Big Word). Like over-the-phone interpreters, face-to-face interpreters are expected to be professionals and play only the role of transferring a message from English to another language and vice versa.

However, a few hospitals have hired bilingual individuals to work in-house as "advocates." These advocates are expected to act as interpreters, but they are to offer more than language support. Advocates are also expected to provide information and support to patients in a culturally sensitive manner. One challenge faced by this system is that only so many people can be hired in-house to do this, so the language selection is limited. (Twenty-four languages was the highest number of languages served by advocates in this study's sample, and the lowest was seven.) When an advocate is engaged elsewhere or the language of the patient is not spoken by any of the advocates, regular over-the-phone or face-to-face interpreters are brought into play.

Regarding the use of untrained interpreters, this can happen through bilingual staff, friends, relatives, and children. Some hospitals rely on bilingual staff to communicate with non-English speaking patients in specific situations. Staff are not expected to set aside other duties in order to help interpret for patients. In some cases, bilingual staff have to be authorized by the hospital administration in order to be allowed to act as interpreters. To be fair, the use of staff for interpreting is largely discouraged, and when it is permitted, it is only for emergency situations or routine, non-clinical, simple communications.

Most hospitals in the sample openly discourage the use of friends or relatives as interpreters. Hospital staff are generally encouraged to offer patients the use of professional interpreters. Some hospitals, however, will allow communication through friends or relatives in routine, non-clinical, simple situations. A few will even allow the use of friends or relatives as interpreters in clinical situations, but only if the patient objects to a professional interpreter, and the patient's insistence must be

logged. Most hospitals will not allow communication through friends or relatives in clinical situations. Similarly, most hospitals will not allow the use of children under 16 as interpreters. Even so, emergency situations in which no other option is presented may justify the use of children as interpreters.

Sidebar 1. Translation at Northampton General Hospital NHS Trust.

According to its translation policy, Northampton General Hospital NHS Trust believes that individuals who do not speak English have a right to "professional language support" under the *Equality Act 2010* and the *Human Rights Act 1998* (Northampton General Hospital NHS Trust 2010, 3). In non-clinical situations, such as when giving directions, "bilingual staff, carers or family members" may be used as interpreters (ibid.: 7). Regarding individuals under the age of 16, they "must not be used as interpreters in clinical situations" (ibid.: 8). They can only be used as interpreters when basic information must be obtained "in the case of an emergency" (ibid.). Professional interpreters should be used "where an assessment is being completed and a diagnosis made or in legal or complex scenarios" (ibid.: 7). The preferred method of interpreting is via the telephone (ibid.: 8). However, in situations such as those where "there is an issue of communicating bad news, if there is a high risk consensual issue, where there are safeguarding issues or where the interaction is likely to take more than 30 minutes," face-to-face interpreters are to be used (ibid.). Both forms of interpreting are provided through The Big Word (ibid.: App. 5). Additionally, written translations can be arranged, upon request, for non-confidential information and for confidential/patient information (ibid.: App. 1). The translation will be provided via The Big Word, and copies of all non-confidential translation are kept for use throughout the trust (ibid.: App. 1). A strapline is placed on documents in order to notify patients that they can request translation.

The uses of translation described above cover most of what is done by hospitals, in different combinations with varying frequency. There may be other strategies as well, but they would not be widespread enough to represent a policy pattern. For example, the Central Manchester University Hospitals allow foreign doctors to hold consultations in a language other than English, if that language is the doctor's native language. However, when several health professionals are involved, the language of the communication should be English, unless all the professionals also speak that language other than English. Another interesting approach is that of the Liverpool Women's NHS Foundation Trust. The trust provides a number of specialized antenatal clinics for women whose pregnancies follow "a more complicated route" than "straightforward, low-risk" pregnancies (Liverpool Women's NHS Foundation Trust 2010). The clinic offers weekly services to women

who struggle with English or with cultural differences. This is achieved in part through written translation and face-to-face and over-the-phone interpreters that facilitate activities such as parenting classes. Thus, while there is a limited number of ways in which translation is used, trusts figure out their own approaches to translation in hospitals. (For an example of what this means, see Sidebar 1.)

4. Wales-specific policies that affect translation in healthcare settings

There is no Wales-specific legislation regarding translation in healthcare settings. Just as was done for England, in order to get an idea of what healthcare translation policies may be specific to Wales, one must consider the policies of the bodies in charge of providing healthcare. In Wales, that is the National Health Service of Wales (NHS Wales). NHS Wales is the institution that provides healthcare to the inhabitants of Wales, and this is done in part through seven Local Health Boards.[7]

As stated in chapter 3, this was achieved this by consulting policy documents and eliciting FOI responses. Based on these documents and responses, it was found that all seven Local Health Boards have the policy to translate for those who do not speak English well enough to communicate with their healthcare providers, particularly in hospital settings. This is not surprising, given the legislative provisions described above for all of the UK. For languages other than English or Welsh, all seven Local Health Boards report a policy of providing written translations and interpreting based on demand. Regarding interpreting, six Local Health Boards report they offer face-to-face interpreting, and four report they offer

[7] Other ways NHS Wales provides healthcare include NHS Direct Wales, an information and advice service available 24 hours a day, seven days a week via telephone. For those who do not speak English well enough, the NHS Direct Wales service provides telephone interpreting in over 120 languages (NHS Direct Wales 2014). A PDF document with basic information about NHS Wales is provided in the NHS Direct Wales website in several languages, including Arabic, Bengali, Cantonese, Czech, French, Mandarin, Polish, Punjabi, Portuguese, Russian, Somali, and Urdu. The website can be viewed in English or Welsh. The different treatment given to Welsh as compared to other languages (other than English) reflects the general approach toward Welsh and other minority languages.

over-the-phone interpreting. The translation and interpreting is contracted from outside providers. Over-the-phone interpreting is provided by companies such as Language Line. Six Local Health Boards report they offer face-to-face interpreting (and also written translation) through a contract with WITS. Even though the use of WITS is voluntary for public bodies, Local Health Boards have recognized its value and sought its services.

Even so, translation for speakers of languages other than Welsh is a far cry from translation between English and Welsh. This is evidenced in two observations. The first is that not one of the seven Local Health Boards offers the option to translate its website into languages other than Welsh. By contrast, all seven websites can be accessed in Welsh and English. Translation between those two languages is carried out by human beings, as the quality of Welsh-language texts is valued in the Welsh Language Schemes. In fact, the use of raw machine translation for the Welsh language is frowned upon, not only in healthcare settings but in general. Regarding this, the Welsh Language Commissioner warns: "Automatic translation software should not be used via a web link to provide a Welsh version of a website or other documents […] This would mean that the Welsh and English languages are not treated equally" (2012b, 3).

Another aspect where the approach toward languages other than Welsh is markedly different has to do with the adoption of policy documents itself. Only two Local Health Boards report having policy documents regarding translation into languages other than Welsh, and one reports being in the process of drafting such a document. The advantages of putting policy down on paper is that the objectives become explicit in one place, and with proper training, staff learn how to engage translation needs. In terms of Welsh, just how to treat the Welsh language is made clear through the Welsh Language Schemes, which cannot be fully implemented without translation.

The Welsh Language Schemes of the Local Health Boards are in many respects quite similar to those of local councils. However, the Health Boards' Welsh Language Schemes have a narrower range because they deal specifically with the provision of healthcare and not the wider remit found in local governments. There are many

commonalities in these Welsh Language Schemes, sometimes right down to the wording of certain sections. All seven Local Health Boards state they will correspond with individual members of the public in the language preferred by each person (English or Welsh). If the incoming correspondence is in Welsh, it may need to be translated. Likewise, outgoing correspondence that is not drafted in Welsh may need to be translated. All circulars and general correspondence will be bilingual, in Welsh and English. All seven Local Health Boards state they will give individuals communicating via phone the opportunity to proceed in Welsh by talking to a bilingual staff member. One of those seven reports that if no bilingual staff member is located, the option to continue via a phone interpreter is available.[8] When communicating in person with staff, all seven boards have as their first option for those who wish to use Welsh the possibility of talking with a bilingual person; however, if no such individual can be found, the option of an interpreter is provided as a backup solution.[9] Communication with the Local Health Board may also take place at public meetings. When individuals wish to speak at such meetings in Welsh, all seven boards state this can be achieved through simultaneous interpreting. Five of the boards require notice, while two provide simultaneous interpreting at all public meetings by default.[10] All seven Local Health Boards state that their documents for public consumption, including leaflets and corporate reports, will be bilingual.

Translation plays a role in carrying out most, if not all, of the measures above. Naturally, bilingual staff may draft letters and documents in Welsh, and they may self-translate as needed, but the fact remains that if there is a bilingual version of a document, translation takes place. To deal with the high volume of translation implicit in these Welsh Language Schemes, all seven Local Health Boards have set up their own in-house translation units. Two of the Local Health Boards state they also

[8] The other six state they will give the option to get a call back in Welsh when a bilingual staff member is located, to continue in English, or to present the concern in writing (in Welsh).

[9] A Welsh speaker always has the choice to switch into English, of course.

[10] One health board also contemplates the possibility of holding the meeting in Welsh, if all present have the language skills necessary.

contract out some translations, particularly when they are very technical or lengthy projects.

The above description of the use of translation as a tool to carry out Welsh Language Schemes should not be understood to mean that service provision in Welsh is more or less equal in healthcare throughout Wales. The Committee of Experts has, in fact, expressed concern over the limited use of Welsh in social care and healthcare (2010, 67). It is unclear to what extent the concerns about social care are different from those in healthcare, perhaps because they are overlapping sectors. The Welsh Government has also taken note of the issue, and it has responded with a policy document titled *More than Just Words*. The policy comes along after the appointment of the Welsh Language Commissioner and before the drafting of Welsh Language Standards, so it represents a step in a broader movement of policy toward stronger protections for the Welsh language.

The document reflects the concern that Welsh-language provision in healthcare is appropriate in some parts of Wales but lacking in others, and it reacts by asking NHS Wales organizations (and others) to integrate Welsh-language service provision more fully into their operations. It indicates that users should not have the responsibility of requesting services in Welsh; but rather, these services should be actively provided (Welsh Government 2012, 12). The idea behind this is that some Welsh speakers, feeling particularly vulnerable when approaching health (or social) care providers, may not feel "confident to ask for services in Welsh" (ibid.: 17). In bringing about this active provision of Welsh-language services, several elements are highlighted. Translation is not one of them. On the other hand, increasing the number of Welsh speakers in the workforce, as well as "awareness amongst all staff", is (ibid.: 31). Even so, in practice, when creating a fully bilingual healthcare system, translation will play a role. True, the more bilingual staff that are present, the less interpreting may be necessary, but at the very least, many documents will still need to be translated into one language or the other.

In considering the role currently played by translation in healthcare in Wales, one finds that there is translation for those who lack the requisite English proficiency. This happens as a way to ensure compliance with the *Equality Act 2010* and the

Human Rights Act 1998. It is reactive and is only meant to ensure the needed communication between healthcare providers and patients. This type of translation tends to be into (and out of) new minority languages.

Some of the translation that takes place into and out of Welsh may be linked to notions of effective communication in healthcare as well. The Welsh Government has stressed that "many people can only communicate their care needs effectively through the medium of Welsh" (ibid.: 6). The following groups are identified: "children and young people," "older people," "people with learning disabilities," and "people with mental health problems" (ibid.: 11). For them, translation becomes one of several tools to allow full communication with their healthcare providers.

Yet the vision of policymakers for Welsh goes well beyond reactive translation for vulnerable groups (as takes place under the *Human Rights Act 1998* and the *Equality Act 2010*). The policy is intended to move provision of healthcare in Welsh decidedly into the proactive camp, not only for those four groups who may struggle in communicating in English but for any Welsh speaker, irrespective of his or her English proficiency. This concern to make sure that healthcare services are provided in Welsh is evidenced by the current inquiry of the Welsh Language Commissioner into primary care services.[11] The inquiry aims at the creation of recommendations that can improve the provision of Welsh-language primary care services, and no doubt these recommendations will have translation implications.[12]

Efforts to improve in the provision of healthcare through the medium of Welsh are specifically linked to the idea of effective communication in healthcare,

[11] Primary care services are to be understood in this context as those provided at the "first point of contact […] in the community by GP [general practice] practices (this can include practice nurses and health visitors for instance), dental practices, community and high street optometrists and pharmacies, multidisciplinary teams within the community and NHS Direct Wales" (Welsh Language Commissioner 2013).

[12] As part of this official inquiry, evidenced was gathered between May and October 2013. Based on that evidence, a report will be published in the summer of 2014. The report will include recommendations for the Welsh Ministers and others regarding possible changes "in the provision or commissioning of primary care services through the medium of Welsh in Wales" (Welsh Language Commissioner 2013).

and they are also linked to a broader policy of permitting Welsh speakers to live out their lives through the medium of Welsh if they so choose. In this sense, they are linked to "[t]he Welsh Government's vision of seeing the Welsh language flourish" (Welsh Government 2012, 22). Thus, whatever translation happens into and out of Welsh is also a way to ensure the aims of the policy to promote Welsh, as enacted in national legislation and pursued in local policies.

5. Northern-Ireland-specific policies that affect translation in healthcare settings

Because there is no legislation specific to Northern Ireland regarding translation in healthcare settings, here too one must look at the policies implemented by the local health department, particularly, by the Department of Health, Social Services and Public Safety (DHSSPS). As the name indicates, this government department is charged with ensuring the provision of healthcare, social care, and public safety. For current purposes, the focus will be placed on the policy direction given by the DHSSPS regarding healthcare, which is provided locally by six Health and Social Care Trusts (HSC Trusts). Thus, policy documents issued by the DHSSPS will be considered alongside the translation policies of the HSC Trusts. (For a description of method, see chapter 3.)

The DHSSPS's view of translation can be found in *Racial Equality in Health and Social Care: A Short Guide to Good Practice in Service Provision*.[13] Regarding language,

[13] This "short guide" was produced in 2011 as an updated, slimmed-down version of 2003's *Racial Equality in Health and Social Care: Good Practice Guide*. The 2011 short guide does not replace, but rather compliments, the 2003 guide. As regards translation, there are three differences worthy of note between these two documents. First, the 2003 guide was published before the launch of the NIHSSIS, so references to what would eventually become NIHSSIS are tentative. Second, the 2013 guide contains a relatively long section on the proper use of interpreters which is not present in the 2011 short guide. This section includes, for example, instructions that children, relatives, friends, and staff should not be used as interpreters (Equality Commission for Northern Ireland 2003, 54-56). Third, the 2003 guide begins with two summaries which are then reproduced in Chinese, Urdu, and Portuguese.

the guide is informed by the understanding that "[s]ervice users whose first language is not English can be at a major disadvantage in accessing health care" (Equality Commission for Northern Ireland 2011, 6). To help overcome this "major disadvantage," the guide presents a list of best practices, including:

1) the use of trained interpreters, especially "for important discussions such as taking a medical history, discussing treatment options and obtaining informed consent;"

2) the use of a hospital register of staff bilingual in "less frequently spoken languages" for emergency situations;

3) the use of language identification cards; and

4) the use of translated leaflets "on important health topics and on topics of special relevance to people who are unfamiliar with NHS provision" (ibid.: 6).

The DHSSPS's policy of using translation as a tool for promoting racial equality can be seen in two efforts it has helped fund: the Northern Ireland Health and Social Services Interpreting Service (NIHSSIS) and the Accessible Formats Project. The former focuses on interpreting and the latter on written translation. These two projects are intended to complement each other toward the promotion of racial equality in access to healthcare (Department for Communities and Local Government 2007b, 86). Each one will be briefly discussed, and in so doing, a review carried out by Northern Ireland's Health and Social Care Board (a public body that is subordinate to DHSSPS) into the provision of translation in healthcare settings will also be addressed.

NIHSSIS was launched in June 2004 to help healthcare providers and others obtain access to interpreters when communicating with people who lack English proficiency (Department of Health, Social Services and Public Safety 2008, 23-24).

The 2011 short guide does not. Both guides, however, indicate that the guide can be provided in other languages upon request.

While there are many language service providers in the market, NIHSSIS is intended to act as a regional interpreting provision service for all healthcare providers in Northern Ireland.[14] It does not have its own interpreters but rather has a registry of interpreters in the commercial sector (McDermott 2011, 135). This way it can provide face-to-face interpreters every day, 24 hours a day, in 36 languages, and it additionally provides training and certification in community interpreting for those going into the healthcare sector (Working with Diversity 2012). NIHSSIS does not offer over-the-phone interpreting, which is provided through a contract with The Big Word (Phelan 2010, 100). NIHSSIS does not deal with written translation (ibid.; see also Department of Health, Social Services and Public Safety 2008, 24).

In addition to the NIHSSIS, Northern Ireland's Health and Social Care Board has contracted as of 2009 with a number of private-sector organizations to offer further translation support. With this contract, over-the-phone interpreting can be obtained from the The Big Word, and written translation can currently be accessed from eTeams, Language Connect, Prime Productions, and The Big Word (Health and Social Care Board 2013, 7). This same contract can be used to obtain face-to-face interpreters, from companies such as Flex Language Services, when NIHSSIS is unable to fill the request (ibid.). Written translation, over-the-phone interpreting, and any backup face-to-face interpreting obtained this way is to be paid for by the body requesting the service, not by the Health and Social Care Board (ibid.).

NIHSSIS, on the other hand, is funded by the Health and Social Care Board (ibid.). In its 2013 *Review of Regional Language and Interpretation and Translation Services*, the Board found that NIHSSIS consistently exceeds its budget, likely because "potential need" seems to be "above what the service is currently delivering" (ibid.). To deal with the constantly increasing demand for language support, the Review suggests several actions, including the following: that 50% of all interpreting be

[14] Many healthcare providers have come to rely on the NIHSSISS service. When it first started operating in 2005, it received 7,707 requests for medical interpreters, yet the requests increased gradually, and in 2009 it received over 40,000 requests (McDermott 2011, 136-137). The trend has continued, and in the year 2012-2013 it received over 70,000 requests (Health and Social Care Board 2013, 9).

provided via over-the-phone interpreters (as opposed to the current 7%), that written translation continue to be provided as currently is, and that NIHSSIS be transferred from its current location at Belfast HSC Trust to a location within the Health and Social Care Board itself (ibid.: 3). These recommendations are intended to provide more cost-effective provision of translation without sacrificing quality (ibid.: 27). The main translation expenditure for the Health and Social Care Board, as of this writing, is face-to-face interpreting, and by asking HSC Trusts to rely more heavily on over-the-telephone interpreting, the cost would be transferred to them. As of this writing, a public consultation by the Health and Social Care Board is open to gather views on the recommendations found in the Review.

To further help healthcare providers with their needs for written translation, the Accessible Formats Project was launched (Department of Health, Social Services and Public Safety 2008, 24). The Accessible Formats Project had two outcomes. First, it provided translation of an information booklet titled "Health and Social Care in Northern Ireland" into several languages[15] (ibid.). The booklet gives an overview of how the healthcare (and social care) system works in Northern Ireland along with practical information such as local contact numbers. Second, as mentioned above, it has provided a list of written translation providers in the form of a regional translations contract (ibid.).

HSC Trusts rely on these efforts by DHSSPS in their own translation efforts. As stated above, HSC Trusts provide local healthcare and social care. Based on the documents pertinent to translation policy and the responses to my FOI requests, I found that the five trusts analyzed are in step in considering translation as a way to help fulfill legislative duties regarding racial equality, good relations, and non-discrimination. Their translation policies, while not identical, are remarkably similar in terms of what type of translation support they indicate should be offered for non- or limited-English speakers.

[15] As of these writing, the fourteen languages are Arabic, Bulgarian, Chinese (simplified and traditional), Czech, Hindi, Hungarian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Russian, Slovak, and Urdu.

There are a number of measures for bridging the gap with those who cannot communicate in English, i.e., for speakers of new minority languages who have not obtained sufficient proficiency in English. Regarding written translation, all five HSC Trusts indicated they will translate upon request. Such translation is outsourced to companies through the regional contract mentioned above. At least two of the HSC Trusts reuse translations and rely on translations done by other organizations. Two of the HSC Trusts offer the option of translating their website via Google Translate, into the same 79 languages. The disadvantages (and advantages) of using raw machine translation have been explored above and in chapter 7.

Regarding interpreting, all five HSC Trusts offer over-the-phone interpreting, usually for shorter, simpler matters, such as setting up appointments, or for emergencies. All five use The Big Word for this service, as per the contract described above, but at least one of the trusts works with local minority organizations as well. Face-to-face interpreting is generally reserved for longer, complex, or more delicate matters. For this type of situation, the policy is to not use staff unless it is an emergency. (In two HSC Trusts, staff are instructed that they can handle short, routine matters, if they consider they have the language skills.) Children, family, and friends are not recommended, but in practice family and friends continue to be used (Health and Social Care Board 2013, 15). All five trusts have NIHSSIS as their first option for finding face-to-face interpreters. When NIHSSIS is unable to provide interpreters, they use the providers contracted through the Health and Social Care Board, as well as local community organizations such as STEP and the Chinese Welfare Association.[16]

Translation efforts by HSC Trusts focus on individuals who lack enough knowledge of English to enjoy equal access to healthcare services. According to the responses given to FOI requests, four of the five trusts see Irish and Ulster Scots provision just as provision into any new minority language. In other words, they are

[16] The Chinese Welfare Association is set up to help Chinese immigrants and the Chinese community in Northern Ireland (McDermott 2008, 8). As part of their efforts, they offer interpreting to help in accessing different community services, including healthcare as requested (ibid.: 8-9). Specifically, they provide interpreting for healthcare services into Mandarin and Cantonese.

willing to provide translation and interpreting if the individual requesting it cannot effectively communicate in English. As this is highly unlikely, in practice interpreting and translation is not provided into those two languages. One trust indicates willingness to translate into Irish and Ulster Scots if requested, as opposed to if necessary, but also clarifies there seem to be no requests.

The role of translation in healthcare in Northern Ireland, therefore, is strongly oriented toward fulfilling obligations under non-discrimination legislation, particularly under the *Race Relations (Northern Ireland) Order 1997*. Section 75 of the *Northern Ireland Act 1998* provides additional pressure in terms of the obligation it imposes on public bodies to promote good relations and equality of opportunity (see chapter 6). The right to life under the *Human Rights Act 1998* also bears on translation efforts in healthcare in Northern Ireland, as in the rest of the UK (see above). This means that translation in healthcare in Northern Ireland is very much oriented toward removing barriers to equality of opportunity in accessing services. Because speakers of Irish or Ulster Scots also speak English, HSC Trusts are not obliged to translate for them. There is no legislation in Northern Ireland that would create an obligation to offer services in old minority languages (i.e., no Irish or Ulster Scots Language Act), and consequently HSC Trusts generally do not feel obligated to engage in translation for speakers of Irish or Ulster Scots.

6. Scotland-specific policies that affect translation in healthcare settings

Scotland has a number of specific legislative enactments that deal with healthcare. Two of these are important in terms of translation. They share a concern for the rights of patients in terms of access and of being able to fully participate in the care of their own health. These two enactments, as well as policies that exist below them, provide a role for translation in Scotland's healthcare settings.

The broader of these two enactments is the *Patient Rights (Scotland) Act 2011*. The Act spells out a number of rights for patients as well as obligations for healthcare providers. The Act itself makes no explicit mention of translation as a patient's right

Sidebar 2. Straplines.

Straplines are brief announcements placed on documents in order to notify individuals that they can request written translations of the document on which the strapline is placed. Some are monolingual in English, and others include more than two languages. Examples of both types of straplines appear below.

1) Monolingual strapline, found on the Equality Commission for Northern Ireland's *Race equality in health and social care: A short guide to good practice in service provision*:

This guide can be provided in alternative formats and languages upon request

2) Multilingual strapline, found on NHS Shetland's *Accessible Information Strategy*. (This is a partial strapline. The actual strapline has twice as many languages, but this is enough as an example.)

To get this information in another language or format please phone NHS Shetland on 01595 743064.

Albanian Për ta marrë këtë informacion në një gjuhë ose në një format tjetër, ju lutemi telefononi te NHS Shetland në numrin 01595 743064.	**Korean** 다른 언어나 형식으로 정보를 받으려면 국민건강보험 셰틀랜드(NHS Shetland)01595 743064 번으로 전화해주시기 바랍니다.
Arabic للحصول على هذه المعلومات في لغة أخرى أو تنسيق آخر، يرجى طلب NHS Shetland عبر الهاتف على رقم 01595 743064	**Lithuanian** Norėdami gauti šią informaciją kita kalba ar formatu, skambinkite NHS Shetland telefonu 01595 743064.
Bengali এই তথ্য অন্য ভাষা অথবা ফরমাটে পাওয়ার জন্য অনুগ্রহ করে 01595 743064 নম্বরে NHS শেটল্যান্ডড-এ ফোন করুন।	**Mandarin** 如如如如如语如如如如语如如如如，敬请敬请 01595 743064 联系 NHS Shetland。
Cantonese 如需以其他語言或格式獲得此資訊，敬請致電 01595 743064 聯繫 NHS Shetland。	**Polish** W celu uzyskania tej informacji w innym języku lub formacie proszę skontaktować się z NHS Shetland pod numerem telefonu: 01595 743064.
Croatian Za dobivanje ovih informacija na nekom drugom jeziku ili u drugom formatu, molimo nazovite broj NHS Shetlanda 01595 743064.	**Portuguese** Para obter esta informação em outro idioma ou formato deve telefonar para NHS Shetland, tel. 01595 743064.
Czech Chcete-li obdržet tuto informaci v jiném jazyce nebo formátu, volejte, prosím, NHS Shetland na 01595 743064	**Punjabi** ÇÂÅ ÜÅäÕÅðÆ ù çÈÃðÆ íÅôÅ Ü» øÅðîËà Çò¼Ú êÅÅ°ä ñÂÆ ÇÕðêÅ ÕðÕ¶ 01595 743064 óå¶ NHS ô¶àñË°â ù ø¯é Õð¯Í
Farsi لطفاً برای دریافت این اطلاعات به زبان یا قرمتی دیگر به ان اچ اس شتلند (NHS Shetland) در شماره 01595 743064 تلفن کنید.	**Romanian** Pentru a obține aceste informatii în alte limbi sau în alt format, contactați NHS Shetland la numărul de telefon 01595 743064.

or a provider's obligation, but even so, it contains provisions that in some cases can only be fulfilled through translation.

As regards rights, the Act states the patient has a right to receive healthcare with due regard for the provision of information and support that is appropriate for the patient's needs (sec. 3). Whenever language barriers arise, translation can play an important role in ensuring this right.

As regards obligations, the Act sets out a number of principles that NHS bodies in Scotland are bound to fulfill (sec. 5). These principles, when properly applied, should place the patient at the center of the healthcare interaction, making sure that he or she has all the necessary support in making decisions. Two principles are particularly relevant for our current purposes. One is patient participation, which means that patients are to be "provided with such information and support" as needed to ensure their participation in all healthcare decisions (schedule). Another principle is communication, which means that all communication about the patient's health and the provider's services is to be "clear, accessible and understood" (schedule). Whenever healthcare providers deal with patients who do not speak the language of the provider, these two principles place an obligation upon the healthcare provider to offer language support as may be necessary for such patients who cannot otherwise communicate well enough to participate in their own healthcare provision. Such language support includes, as will be seen in practice below, translation.

The Patient Rights Act also charges the Scottish Government with the drafting of a *Charter of Patient Rights and Responsibilities* (sec. 1(1)). The charter lists six general rights (NHS Scotland 2012, 5-21), of which two have clear translation implications. First, the charter indicates there is a general right of access to healthcare services in Scotland. This includes "the right to request support to access NHS services" (ibid.: 6). Because of this right, if a person needs "an interpreter […] or other communication support," he or she should ask the relevant staff to arrange for this (ibid.: 6). Second, the charter indicates there is a right to communicate with providers and participate in healthcare decisions. This includes "the right to be given the information you need to make informed choices about your health care and

treatment options" (ibid.: 9). This means that, as a matter of right, patients should be given information in a way they understand (ibid.: 9). This applies not only to alternative formats (such as braille) but also to other languages. Consequently, language support, including "an interpreter […] or other communication support" and the provision of documents "in a format or language that meets [the patient's] needs" can be arranged as needed and requested (ibid.: 10).

Thus, through the right to access healthcare and the right to be informed and participate in healthcare decisions, patients can request translation, either in written form or thorough interpreting, in healthcare settings in Scotland. However, the underlying assumption is that such services are available whenever they are needed to ensure access or information and participation. If patients can access healthcare competently or become informed and participate satisfactorily through the medium of English, then translation would no longer be required.

Under the *Mental Health (Care and Treatment) (Scotland) Act 2003*, the right to access healthcare information is granted to patients with mental health difficulties. The Act confers such patients the right to the assistance of an independent advocate in situations where compulsory measures are taken against them. (These are not the same in-house advocates that deal with cultural difference in some hospitals.) If the patient has difficulties communicating or "generally communicates in a language other than English," the advocate should take all necessary steps to ensure communication (sec. 260-261). This may include the use of interpreters or translations.

As evidenced by these two pieces of legislation, healthcare providers in Scotland are under statutory duties to ensure access and full communication, including through the use of interpreters and translations. But even before the passing of these statutes, the Scottish Government Health and Social Care Directorates (SGHSCD) had considered that the provision of translation was a key part of properly providing healthcare. SGHSCD are collectively in charge of health and social care in Scotland, playing the role of a health department. They are responsible for NHS Scotland and other bodies that deal with health and social care. SGHSCD's concern for translation can be seen in documents issued by NHS

Scotland. In *Fair for All*, NHS Scotland provides recommendations to better meet the healthcare needs of "ethnic minorities."[17] The document highlights "the translation of patient information" as an important way of overcoming problems of access faced by some "people from ethnic minority backgrounds" (NHS Scotland 2001, 3). While recognizing that many NHS organizations provide interpreting and written translation as a way to ensure access, the document asks for greater "cultural competence and sensitivity" in dealing with members of ethnic minorities (ibid.).

SGHSCD's policy of overcoming access barriers caused by language differences can be seen in its multiple online pages. Translation appears in different forms in these websites. Three examples will suffice. NHS 24 offers an introductory leaflet in 14 new minority languages.[18] Another website, related to NHS 24 and called "Health Rights Information Scotland," offers translated documents into 18 new minority languages[19] plus Gaelic. It also offers an audio version of a factsheet in nine languages.[20] Another website, "How to use the health service in Scotland," offers a set of introductory videos in 14 new minority languages,[21] plus Gaelic. Each language has its own dubbed videos. The videos provide general information about different healthcare services, including general practitioners, dentists, and pharmacies. The videos themselves are embedded in different languages from a YouTube channel set up by NHS Scotland, and each video can be played with closed captions (in the language of the video). Additionally, there are links to download the videos as WMV or MP4 files, and the script of each video can be accessed in those

[17] Ethnic minorities are understood in this policy document to be "all subgroups of the population not indigenous to the UK who hold cultural traditions and values derived, at least in part, from their countries of origin" (Scottish Executive 2001, 1).

[18] As of this writing, these are Bulgarian, French, Hindi, Japanese, Latvian, Mandarin, Nepalese, Polish, Punjabi, Romanian, Russian, Slovak, Spanish, and Urdu.

[19] As of this writing, these are Amharic, Arabic, Bengali, Chinese, Croatian, Farsi, French, Hindi, Latvian, Lithuanian, Pashto, Polish, Portuguese, Russian, Serbian, Kurdish (Soranî), Tigrinya, and Urdu.

[20] As of this writing, these are Amharic, Arabic, Chinese, Farsi, French, Pashto, Kurdish (Soranî), Tigrinya, and Urdu.

[21] As of this writing, these are Arabic, Bengali, Cantonese, Mandarin, Farsi, French, Korean, Kurdish (Soranî), Polish, Punjabi, Somali, Tigrinya, Turkish, and Urdu.

languages. Another website, "Health in my language," reflects a different approach to translation. The website gathers in PDF files a vast amount of translated materials that deal with health services in Scotland and health generally. The site is divided into eight categories, including NHS services, immunizations, mental health, and patient's rights. Each category contains translated booklets, factsheets, and leaflets in at most 14 new minority languages.[22] These three websites reflect how Scotland's health department uses translation and online technologies as a way to fulfill equality-of-access and informed-communication duties. It also reflects the idea of pooling resources, which will also be seen in the work of the health boards described below.

NHS 24 not only provides translation through its online presence, as seen in the previous paragraph, but it also offers a service like that of NHS Direct or NHS Wales. It can provide advice in 107 languages via the private-sector services of Language Line (Department for Communities and Local Government 2007b, 69). Ethnic minority groups also help facilitate the work of NHS 24 by helping "ensure that the service is culturally competent" (ibid.).

The policy of employing translation in healthcare can also be seen on the ground, in the work of Scotland's NHS Boards. These NHS Boards are primarily responsible for the provision of healthcare in the region. There are 14 of them, all of which were consulted for this study. Information regarding translation was obtained from 12 of them.[23] The use of translation for new minority languages will be considered first, followed by its use for old minority languages.

Regarding new minority languages, twelve NHS Boards indicate the use of translation, in both written and oral form. While only one NHS Board provides machine translation of its website (through Microsoft Translator), all indicate they

[22] As of this writing, these are Arabic, Bengali, Chinese, Farsi, French, Hindi, Latvian, Lithuanian, Polish, Portuguese, Punjabi, Russian, Spanish, and Urdu.

[23] No information was accessible from NHS Ayrshire and Arran or NHS Grampian, either through its website or FOI requests. Thus, the information presented in this section of necessity excludes them. However, the Department for Communities and Local Government reports that all NHS Boards in Scotland "have a policy of ensuring the provision of translating and interpreting services, ensuring adequate coverage and quality" for those unable to communicate in English (2007b, 68).

provide written translations on request. Eleven NHS Boards contract out their written translation requirements. Here, private-sector companies such as Language Line come into play, but there are also a number of collaborations with other public bodies. Thus, NHS Boards turn to the services provided through local councils: Fife Council, City of Edinburgh Council, Dundee Council, etc. One NHS Board handles written translation through in-house staff, as much as practicable. Generally, NHS Board staff are encouraged to consult previously translated materials as well as materials translated by other public bodies (see e.g., the "Health in my language" website).

All twelve NHS boards offer over-the-phone interpreting. By far the most common provider is Language Line, but other companies like The Big Word, Global Connects, and Global Language Services are also contracted. Three NHS Boards offer telephone interpreting only, while nine also have face-to-face interpreters available. These interpreters are contracted out from private companies, including Alpha Translating & Interpreting Services, Integrated Language Services, and Global Language Solutions. As is the case with written translations, some turn to other public bodies, including the local councils in Edinburgh and Dundee. Some community organizations, such as Fife Community Interpretation Service, are also involved. Bilingual staff are usually discouraged from interpreting, but some NHS Boards permit it, albeit with restrictions such as that it be a routine matter or that it be an emergency situation. Generally, the use of friends and family, including children under 16, as interpreters is discouraged.

NHS Boards also employ other tools to carry out translation into new minority languages. These include emergency multilingual phrasebooks, language cards and language posters (for identifying the language of the patient), and in one case, the use of video link for remote interpreting.

All of the translation efforts described above flow from a broader policy to allow equal access and to communicate with patients in a way such that they may fully participate in the care of their health. It follows, then, that this type of written translation and interpreting is intended for speakers of new minority languages who do not have enough of a mastery of English. For the most part, no such provisions

exist for speakers of old minority languages, in this case, speakers of Gaelic or Scots. The assumption here is that such speakers can in most, if not all, cases handle themselves in English comfortably. This assumption is especially strong when it comes to Scots. In fact, three of the NHS Boards indicated that they will not provide written translation or interpreting for Scots. Others indicated a willingness to treat Scots as any language other than English, that is, to provide translation if it is necessary and requested. In practice, this means translation into Scots is non-existent in Scotland's health boards. This is the case for at least two reasons. One of them is Scot's closeness to English, a trait discussed in chapter 5. The other is that Scots lacks any type of legislative support. In terms of translation in healthcare, Scots is at a distinct disadvantage compared to Gaelic.

Indeed, in terms of legislative support, Gaelic fares better. Consequently, there is room for Gaelic translation in Scotland's healthcare sector. To be sure, most NHS Boards treat Gaelic the way they treat Scots or any other minority language—through a need-and-request approach. Because most or all Gaelic speakers can speak English well enough, this means in practice very little translation in the pair English-Gaelic. Two NHS Boards, one in the Lowlands and one in the Northeast, report that they do not offer translation into Gaelic. However, there are two NHS Boards that have been required to draft Gaelic Language Plans: NHS Eileanan Siar / Western Isles and NHS Highland. These Gaelic Language Plans, while not identical, have translation implications.

The Gaelic Language Plans deal, among other things, with the use of Gaelic in correspondence, over the telephone, when meeting with staff, and at public meetings. Overall, written translation plays a bigger role than interpreting. For example, bilingual staff are expected to answer the telephones, but depending on their schedule, there may be no one to take calls in Gaelic. If that is the case, there is as of this writing no Gaelic voicemail and the use of interpreters is not contemplated. Interpreters, however, are relied on for some public meetings, particularly in areas where there is a high concentration of Gaelic speakers or in high-profile meetings. Written translation is used for producing things such as complaint forms, information leaflets, and disclaimers. These documents will ideally be bilingual, but

in some cases sister documents may be produced. Translation may also be used for some correspondence. The two councils state the desirability of handling most of the translation in-house, but they also acknowledge that some documents may require contracted translators and editors or proofreaders.

In sum, translation in Scotland's healthcare sector is focused on granting equal access and on allowing individuals to be fully informed and participate in their own healthcare. Thus, it is driven by the lack of command of English. This means that, like translation in England and Northern Ireland, it is mostly for the benefit of speakers of old minority languages. Thus, Scots and Gaelic are not frequently languages of translation, except in areas where Gaelic Language Plans are in effect. In those cases, translation is not so much about overcoming language barriers as it is about strengthening the Gaelic language (see Sidebar 3).

Sidebar 3. Gaelic translation at NHS Eileanan Siar.

The aim of NHS Eileanan Siar's Gaelic Language Plan is "to increase the number of speakers and users, and to secure [its] status" (2012, 3). The Plan consequently "sets out how we will use Gaelic in the operation of our functions, how we will enable the use of Gaelic when communicating with the public and key partners, and how we will promote and develop Gaelic" (ibid.: 6). While much of what the Plan describes is not about translation, the entire plan cannot be implemented without translation. Translation in necessary from a logistical standpoint. For example, under the Plan, high-profile public meetings as well as meeting related to the Gaelic language should permit "contributions to be made through the medium of Gaelic for those in attendance […] who would prefer to do so" (ibid.: 22). The Plan suggests using NHS Eileanan Siar's mobile simultaneous interpreting equipment in conjunction "with Comhairle nan Eilean Siar's Gaelic translators and interpreters in order to hold agreed meetings bilingually, free of charge" (ibid.). (Comhairle nan Eilean Siar is the area's local government council.) But translation is also important as a symbolic statement regarding the status of Gaelic: "The translation of important documents, publications, medical terms, staff bulletins and press releases into Gaelic, so that vital information pertaining to NHS Eileanan Siar is available bilingually, is a statement that the Gaelic is valued as a vital and inalienable aspect of the organisation's workings and procedures. It enhances the status of the language, puts it on an equal footing to English, and allows, in conjunction with translation experts amongst our Community Planning Partners, for the development of the language in terms of creating new vocabulary relating to new medical procedures or treatments" (ibid.).

7. Conclusions

This chapter has continued to explore translation policy in the UK by focusing on the domain of healthcare. It has shown that in the UK as a whole there is no single coordinated translation policy aimed at greater access for minorities or inclusiveness in the healthcare system. Even so, some patters have emerged. I have shown that each region has its own set of translation policies, often developed at the local level by hospitals and healthcare providers. These translation policies have developed as a result of non-discrimination and even human rights legislation coming out of Westminster, but also as a result of regional laws and policies set by devolved governments and health departments. Faced with an increasingly linguistically diverse demographics, local trusts and health boards have turned to translation as one of several tools to fulfill legal obligations to give everyone equal access to healthcare. In Scotland, translation in healthcare settings has been also linked to the idea that patients have a right to participate in their own treatment, for which informed consent becomes crucial.

Another pattern is that translation policy in healthcare settings seems more resistant to the use of staff to interpret than in local government settings (see chapter 7). Policy documents are more likely to indicate that professional interpreters are to be used in this domain than in the previous one. Thus, translation management is strongly oriented toward the professional use of translation. However, there is some tension with translation practice: situations where family and friends are used as interpreters have been consistently reported in different regions. This is particularly concerning when one considers that patients may be embarrassed to say certain things in front of family or friends or may doubt their ability to keep confidences (Edwards et al. 2005, 89). There are also justifiable concerns regarding a lack of knowledge of medical terminology, if family or friends are used for clinical interactions, which can have profound implications for both patient and medical professional because it can result in "severe medical errors" and "reduced patient satisfaction" (Sperling 2012, 323). When the interpreter is a child, the interaction is damaging to both the child and the parent (Sperling 2012, 321, 323-324; see also

McQuillan & Tse 1995). While some use of family and friends may be the result of staff at the point of contact either not providing interpreting or even asking family and friends to interpret (Health and Social Care Board 2013, 15), it may also be the result of patients having more trust on their family and friends than in interpreters assigned by the healthcare provider (Edwards et al. 2005, 89-90). Even so, lack of qualified interpreters is more likely to result in patients not being understood by doctors and doctors not being understood by patients, "thereby decreasing the quality of received and self-administered care" (Sperling 2012, 324). The stakes in communicating with the healthcare system seem higher than those in communicating with local governments, and thus the concern over quality should be correspondingly higher.

The lack of a comprehensive, UK-wide translation policy in the healthcare has not kept some providers from pooling resources. This is seen to a certain extent when trusts or boards rely on the translation made available through other trusts or boards or even outside of the domain through local government councils. This leads to some level of commonality in the approaches, but nowhere is the approach more clearly streamlined than in Northern Ireland. Here, a regional registry and regional contracts have helped in setting a more uniform translation policy.

A final observation that needs to be made is that the policy to translate applies almost exclusively to speakers of new minority languages, because the aim of translation is to bridge language barriers between patients and healthcare providers. Thus, offering healthcare services bilingually in old minority languages is not a priority, except for Welsh in Wales, as described in the Welsh Language Schemes. Other than in situations where Welsh Language Schemes apply, or to a lesser extent, where Gaelic Language Plans apply, speakers of old minority languages approach the healthcare system in English. As will be seen, this pattern is similar in some respects to that observed in the final domain to be analyzed. To that domain, the judiciary, this thesis turns next.

9. Translation in judicial settings in the United Kingdom

1. Introduction

This chapter will cover translation policy in the judiciary domain. The judiciary, or court system, is a very important domain in terms of allowing everyone to fully enjoy their rights in society. On this point, the High Commissioner on National Minorities has indicated: "Equal access to effective and impartial justice is essential for the integration of society" (2012, 59). Indeed, if individuals or groups of individuals are denied "equal access to effective and impartial justice," they are in essence excluded from enjoying a basic element of a just and democratic society. The issue of equal access is of particular importance when dealing with linguistic minorities, especially if their main language is not that of the court. Alanen correctly points out that "[w]ithout plenary language access, courts are unable to make accurate findings, laws go unenforced, children and families suffer, and society loses faith in the justice system" (2009, 96). In essence, the stakes of equal access to courts affect not only the members of linguistic minorities that may come before the judiciary, but also society as a whole. If society is to rely on its court system, the courts must be relied upon to consistently make accurate findings in order to better administer the law. This means that society as a whole benefits from allowing linguistic minorities full integration into the court system. Thus, in order for linguistic minorities to be integrated, linguistic barriers to accessing justice should be identified and removed (High Commissioner on National Minorities 2012, 59). Translation is one way, albeit not the only one, to help remove those barriers.

Because of the stakes of integrating linguistic minorities into the court system, this study will now address translation in the courts of the UK. A few words about how the UK's judicial system works may be helpful to understand the rest of the chapter, especially since this affects the chapter's organization. Courts in the UK may be found in three jurisdictions, namely England/Wales, Northern Ireland, and Scotland. (There are some areas of law, such as immigration, where all of the UK is

treated as a single jurisdiction.) Despite there being separate jurisdictions, the substantive law is very much the same (Reynolds & Flores 2011). Regarding their use of language, they have followed similar paths toward a clear dominance of English. While English law was at some point multilingual, it has gradually become fiercely monolingual in English[1] (Morris 1995, 263), despite some relatively recent changes with regards to allowing the use of Welsh in Wales (Cardi 2007, 16). Thus, courts in the UK are part of a monolingual legal culture (Dunbar 2004, 96), which reflects the Anglicanization of society as well as legislation and case law that have moved the courts in that direction (see, e.g., the section on Northern Ireland below). Yet not everyone that comes before a court in the UK speaks English well enough to follow legal proceedings in that language, and this makes granting language access necessary.

As stated above, this is done to a great extent through translation, especially in the form of interpreting. There is a great deal of interpreting taking place in courts in the UK. In fact, the strongest interpreting provisions are found in police and courts (see O'Rouke and Castillo 2009, 44), that is, in matters related to criminal justice. It will be shown below that legislative enactments are quite explicit regarding translation in criminal courts.

This chapter will continue considering the UK's translation policy by looking at legislation that affects translation in judicial settings, first for the UK as a whole and then for the three jurisdictions mentioned above: England/Wales, Northern Ireland, and Scotland. In so doing, it will assess the role of translation when accessing criminal courts and civil and family courts.

2. UK-wide legislation that affects translation in judicial settings

UK-wide legislation that affects translation in judicial settings applies specifically to criminal courts. This is the result of the *Human Rights Act 1998*, which incorporates

[1] For a study on how English law went from a Latin-French-English regime to a monolingual English regime, see Morris 2005:263-270.

the ECHR into UK law. Specifically for current purposes, the *Human Rights Act 1998* incorporates Articles 5 and 6 of the ECHR into the UK's legal framework. As stated in chapter 4, Article 5(2) indicates that upon arrest, the person arrested must be informed in a language that he or she understands what the charges are that prompted the arrest. When there is a language barrier, this can be achieved through translation. Article 6 guarantees the right to "the free assistance of an interpreter" in a trail setting. According to section 2(1) of the *Human Rights Act 1998*, courts in all of the UK must take into account, inter alia, any "judgment, decision, declaration or advisory opinion of the European Court of Human Rights." This effectively incorporates into UK law a right to translation when the accused or detained person does not speak the language of the court or the detaining officer, with its pertinent Strasbourg glosses (see chapter 4).

Not all uses of translation in UK courts are aimed at securing rights under the ECHR, however. Some of them are the result of other international obligations. Thus, the *Criminal Procedure Rules 2011* reflect the obligations to translate found in the *Crime (International Co-operation) Act 2003*. This act, in turn, was passed to give statutory force to the UK's obligations to cooperate in international criminal matters.[2] International cooperation often implies interlingual cooperation. The Act, not surprisingly, calls for translation. For example, if an individual requests service of process on someone abroad and that someone does not understand English, the individual requesting service of process must have the "material" parts of the process "translated into an appropriate language" (section 3(3)(b)) and provide the court with a copy. What constitutes "an appropriate language" is uncertain from the legislative texts,[3] and courts have not weighed in. This is less certain than a formulation such as "into a language he understands."

[2] These obligations include provisions from the 1985 *Convention implementing the Schengen Agreement*, the 2000 *European Convention on Mutual Assistance in Criminal Matters*, and the 2003 *Framework Decision on the Execution in the European Union of Orders Freezing Property or Evidence*.

[3] By way of contrast, when dealing with procedures for issuing freezing orders, the Act indicates that a certificate must be issued, and such certificate must be translated "into an appropriate language *of the participating country* (if that language is not English)" (section 11(5), emphasis added). In this provision at least, it is clear the appropriate language is an official or de facto official language.

Translation as mandated under the Act also deals with witnesses, and a concern for a fair trial becomes apparent at that point. Whenever witnesses in the UK are testifying via television or telephone for a court abroad, provision must be made "for the use of interpreters" (Schedule 2, Part 1, sections 8 and 17). There are rules of court implemented for such situations. According to the *Criminal Procedure Rules 2012*, if testimony is given in a language that is not the language of the foreign court, interpreters must be provided for that court, or if testimony is given in a language other than English, interpreters must be provided for the UK court (Rule 32.6(2)-(3)). Note also that if the language other than English is Welsh, and the court can understand Welsh and it is situated in Wales, the court need not engage in translation (Rule 32.6(5)). The translation requirement is intended to allow the UK court to protect "the rights and privileges of the witness"[4] and "intervene where necessary to safeguard the rights of the witness" (Explanatory Notes to *Crime (International Co-operation) Act*, para. 90). Thus, the translation requirements here assume that the proceedings will take place in English, with exceptions being made for Welsh in courts found in Wales (as will be explained below). The translation requirement is meant to benefit both the court and the witnesses. It is seen as an instrument for helping the court ensure other rights, such as the right of the accused to participate in their own defense.

3. England/Wales-specific legislation that affects translation in court settings

3.1. Criminal Courts in England and Wales

The *Human Rights Act 1998* affects all criminal courts in England and Wales. This is evident in the National Agreement on Arrangements for the use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System. The National Agreement was drafted by the

[4] This is to be taken seriously. If no interpreter is available, which would curtail the court's ability to intervene in safeguarding the rights of the witnesses, everyone is to pack and leave until an interpreter is available (Criminal Procedure Rules 2011, rule 32.6(4)).

Office for Criminal Justice Reform[5] to provide guidance in the use of translation in judicial and police settings throughout England and Wales—except for Welsh translation in Wales, which does not flow from the ECHR (Office for Criminal Justice Reform 2007, 2; on this point, see section below on Wales). The legal framework on which the National Agreement is built can be found in Articles 5 and 6 of the ECHR as well as relevant ECtHR case law (ibid., 3).

While the National Agreement is not a legal instrument granting rights to individuals, it is useful as a reflection of how translation is employed in judicial settings as a means for providing the rights incorporated through the *Human Rights Act 1998*. It applies to the use of translation in criminal investigations and proceedings. In essence, the police are to arrange for interpreters for witnesses and suspects during criminal investigations (ibid., 5). Interpreters for witnesses and defendants during criminal proceedings are to be arranged for by courts, the prosecution, and the defense (at times with the police's help) depending on the circumstances (ibid., 5-6). As of 2011, this is to be done via a contract with Capital Translation and Interpreting, a private company (see Sidebar 1). Translation of written documents is also necessary to enact the rights found in Articles 5 and 6 of the ECHR. It too is to be obtained through the contract with Capita Translation and Interpreting.

Sidebar 1. Interpreting in courts: From a National Agreement to a private-sector contract

Translation and interpreting for new minority languages in courts found in England and Wales took place according to the parameters set forth in the National Agreement. Under the agreement, these interpreters were booked directly by the courts. They were to be selected from the NRPSI as a way to ensure that "that interpreters used in criminal proceedings […] be competent to meet the ECHR obligations" (Office for Criminal Justice Reform 2007, 4). The NRPSI "gave [court] staff access to qualified, accredited specialists, who were expected to have Criminal Records Bureau disclosures. Sometimes officials failed to find interpreters through this route and sometimes chose not to. In those cases, other, local, arrangements applied" (National Audit Office 2012, 8).

[5] Housed in the Ministry of Justice, the Office for Criminal Justice Reform was established in 2004 as a "cross-departmental body that supports all criminal justice agencies in working together to provide an improved service to the public" (Office for Criminal Justice Reform 2009).

This changed after an October 2011 contract between the Ministry of Justice and Applied Language Solutions which privatized the supply of translators and interpreters for criminal courts in England and Wales. Applied Language Solutions was sold to Capita Group Pcl. and rebranded as Capita Translation and Interpreting (Capita TI) before the switch from the National Agreement to the new contract (Language Technology World 2012). Troubles began as soon as the private company took over the provision of interpreters and translation.

Even before the contract was signed, warning signs of the difficulties to come were present. To begin with, the Ministry of Justice was somewhat lax in carrying out its due diligence, as expressed in this media report:

> On 1 February 2012 a small company from Oldham took over the national provision of interpreters. In keeping with government's desire to encourage small and medium-sized enterprises the contract went to a small company whose financial standing was described in the credit check obtained by the Ministry of Justice before awarding the contract as having sufficient financial stability to undertake contracts to a value of £1m. The company, Applied Language Solutions […], was awarded a contract which at that time government thought had a value of £42m. (Kaye 2012)

Further, the Ministry of Justice ignored warnings from the interpreting community: Interpreters had warned as early as 2010 that they would not work under the new contract (Hyde 2012a). In addition, the Ministry of Justice seemed to not be paying attention to the lessons that could be learned from others, such as Spain, who had similarly moved to private supply of court interpreters (see Del Pozo Triviño 2013, 62-63).

If the company lacked the financial stability for such a large contract and interpreters warned they would not work for it, why did the Ministry of Justice push the contract along? Part of it was simple economics: the contract was expected to cut the Ministry of Justice's £60 million spent annually in language support to £42 million. (Baksi 2012a). This should be nuanced by the observation that the Ministry of Justice was unsatisfied with the previous system on several fronts, not only as regards expenses. Because the system was decentralized, each court had its own procedures for booking interpreters, payments were handled differently everywhere, security arrangements were at times considered insufficient, and interpreters for some languages were very difficult to find, which occasionally became an obstacle to carrying out proceedings (National Audit Office 2012, 9-10). It seems that while the Ministry of Justice may have had good reasons to be unsatisfied with the previous system, the solution it found (and how it went about finding it) was less than satisfactory.

Given the warning signs, the debacle that followed should have come as no surprise. Capita TI was simply unprepared for the volume of demand: it had only 280 interpreters to supply a demand that should have been met by some 1,200 interpreters (Public Accounts Committee 2012). The

problems that followed because Capita TI was unable to fulfill its contractual obligations included having people remanded to jail or having their trials postponed due to interpreters not showing as requested (Baksi 2012b). One case that was reported in the media is particularly illustrative:

> [T]he clerk at Ipswich Magistrates' Court was […] forced to handwrite in Lithuanian details of a defendant's next hearing after finding the words with Google Translate. […] [T]he court had been unable to get a Lithuanian interpreter via the central service run by contractor Applied Language Solutions to translate proceedings for [the accused] who had been charged with shoplifting. (ibid.).

Other situations were more troubling, especially when individuals were incarcerated longer than necessary because hearings could not proceed due to interpreters not showing (Public Accounts Committee 2012). Further, because Capita TI did not have the requisite number of interpreters, it "used interpreters who had not been properly assessed as required by the contract and this impacted on the quality of service and the quality of justice in the courts" (ibid.).

One of the reasons the company was unable to deliver is that many interpreters who had worked under the National Agreement refused to work for Capita TI due to the lower fees paid by the company (Baksi 2012a). The private company's plan all along "involved a cut in interpreter pay and benefits in real terms" (National Audit Office 2012, 11). Some were quick to pounce on the interpreters. Soon after the switch, a justice minister blamed "grossly overpaid" interpreters and their public protests for the problems that ensued the switch to Capita TI (Hyde 2012b). In this somewhat hostile climate that followed the transition to the private company, a number of professional organizations began campaigning to return to the former system (see Unite 2012).

The Ministry of Justice also blasted Capita TI for not being able to provide the requested services as agreed (Hyde 2012c). Due to the initial difficulties of implementing the contract, the Ministry of Justice allowed courts to find interpreters under the former system if "ALS could not guarantee supply at least 48 hours in advance and for all short-notice work" (National Audit Office 2012, 25). A year after the switch form the National Agreement to the new contract, it was decided to give interpreters working for Capita IT a 22% increase in fees, but it was the Ministry of Justice, not Capita IT, that provided the additional funds (Baksi 2013a). Organizations in the Professional Interpreters for Justice campaign indicated that their interpreters rejected the deal and would continue to boycott the new contract (ibid. 2013b). However, by November 2013, the number of interpreters that were working under the contract had raised to 2,705 (ibid. 2014). Not all of them had been interpreters under the National Agreement. Off-contract bookings and complaints have decreased since the increase in pay fees and mileage reimbursements (ibid.).

The savings were not as large as expected. After the first year of the contract, the Ministry of Justice claimed £15 million in savings (ibid. 2013c). The Ministry of Justice expects £14 million in

savings for 2013-2014, but these figures do not "quantify and take into account the opportunity costs of delayed court cases or additional work" (National Audit Office 2013:16).

The House of Commons opened a parliamentary inquiry into the matter, including two hearings held in October 2012. The resulting report grimly concluded that "[t]he Ministry [of Justice] was not an intelligent customer in procuring language services, despite the risks posed to the administration of justice and to the Ministry's reputation" (Public Accounts Committee 2012). Around the same time, the National Audit Office published a report on the contract, which highlighted a number of failings by both the Ministry of Justice and Capita TI but also indicated that "for those parts of the justice system now using it, the new contract has reduced costs now the initial level of disruption has gone down" (National Audit Office 2012, 6). However, the report finds it was too early to tell whether "savings to taxpayers outweighed the costs of disruption" and only when "the Ministry and Capita/ALS have addressed quality concerns will it be possible to reach a conclusion on value for money" (ibid.).

In late 2013, the National Audit Office issued a follow-up report in which it indicated that a the situation overall has improved, but there are still problems, one of which is that Capita TI still has not reached its projected 98% fulfillment of all requests:

> [B]y the end of 2012, Capita estimated that it would lose £14 million over the life of the contract and recognised it as an 'onerous contract' in its annual accounts for 2012 (meaning the contract is unlikely to be profitable). Capita told us that it considered the increased mileage payment was encouraging interpreters to travel and reducing the incentive to work locally. It chose to reduce the mileage payments to interpreters at the start of 2013 to the original amount. Following this decision, fulfilment rates dropped rapidly, until in May 2013 the Ministry and Capita agreed a variation of contract that resulted in an improved package for interpreters […] To date, however, Capita has yet to meet the target of fulfilling 98 per cent of all bookings, but has broadly returned to levels of performance achieved in September 2012, when we last reported. Of a total of 267,928 bookings made since the contract began in February 2012, Capita has not fulfilled 23,183 (9 per cent). (ibid.).

3.2. Civil and Family Courts in England and Wales

While the *Courts Act 2003* mostly deals with the procedures of criminal courts, it also has important provisions that affect civil and family courts. This is an important Act, yet when it comes to the role of translation in the judiciary, it is silent. Even so, as primary legislation, it opens the door for further legislation. Specifically, it addresses the authority to revise the Civil Procedure Rules (section 85) and calls for the drafting of Family Procedure Rules (section 75) in England and Wales. It is these rules that

help provide an understanding of what lawmakers expect in terms of translation in non-criminal judicial settings in this jurisdiction.

Regarding civil courts, the Civil Procedure Rules 1998 are an extensive procedural code, which extends to courts in England and Wales, undergoing constant revision. Translation is expressly addressed, for example, when dealing with service of certain documents abroad (rule 6.45), with the enforcement of European Enforcement Orders (rules 74.4 and 74.21), and with taking of evidence abroad (rule 34.13). These calls for translation often correspond to international obligations,[6] and consequently they deal with cases that have some international dimension. There are also rules for translation in purely domestic cases, such as the instruction that documents in foreign languages that are presented during appeals must be translated (practice direction 52, para. 15.4(4)(d)). In this situation, translation is a way to solve a practical problem while assuring procedural fairness to the parties in the proceedings.

The translation rule for appeals applies to family proceedings as well. Regarding family court specifically, the *Family Procedure Rules 2010* provide a single set of rules for all types of family proceedings in different types of courts in England and Wales. Translation is also part of these rules, but mostly when dealing with the technical requirements of cross-border proceedings. For example, there are instructions regarding translation when someone wishes to serve certain documents on persons abroad (rules 6.45 and 6.47), when someone wishes to adopt a child internationally (rule 14.9), or when someone needs to be deposed abroad (rules 24.12 and 24.16). Generally, these rules that call for translation are there to ensure implementation of international obligations.[7] In other words, the legislated rules that

[6] See, e.g., *Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims*; several civil procedure conventions.

[7] See, e.g., *Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters*; 1965 *Convention on the service abroad of judicial and extra-judicial documents*

concern themselves with translation in family courts are all about international cases, not domestic cases.

In most of these mandated uses of translation in civil and family courts, the translation is not done by the government. Thus, the general translation policy for civil and family courts, as evidenced in the relevant enactments and rules, is that translation should be provided by the parties. Even when the type of translation that is necessary requires an interpreter, if the case is privately funded, parties need to provide their own interpreters (Judicial College 2013, 148). There are exceptions: in civil committal proceedings or in family cases involving children and domestic violence, interpreters will be provided by the government (ibid., 147). Further, the government will also provide interpreters if someone does not speak the language of the court and does not qualify for public funding and cannot afford an interpreter and has no relatives or friends who could interpret and "who [are] acceptable to the court" (ibid., 147-148). No guidance is provided to judges as to what qualification make a friend or relative "acceptable to the court," other than the general notion that they may want "to check whether the interpreter and the accused or witness are indeed able to communicate, and to confirm that there are no cultural dialect or language difficulties that would preclude the interpreter from interpreting" (ibid., 146). This seems to imply that as long as the interpreter can communicate and there are no cultural or linguistic barriers between the interpreter and the witnesses or the accused, said interpreter would be acceptable. In the end, this is the judge's call to make. The exceptions mentioned in this paragraph are meant to comply with the *Human Rights Act 1998* and to protect children's privacy. Nonetheless, except in the specific situations mentioned above, translation in civil or family proceedings is legislatively the responsibility of the parties involved.

3.3. Observations about courts in Wales

There are some matters of translation that apply specifically to Wales and not to England, even though England and Wales are one jurisdiction. As stated in chapter 5,

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in civil or commercial matters; 1993 *Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption*.

through parliamentary action English became the language of the courts in Wales, and this status went untouched until the *Welsh Courts Act 1942*, which permitted some use of Welsh in the courts through the aid of an interpreter (Roddick 2007, 271). Further barriers to the use of Welsh in courts were removed by the *Welsh Courts Act 1967* (Dunbar 2004, 109).

The *Welsh Language Act 1993*, in turn, mandates that

> the Welsh language may be spoken by any party, witness or other person who desires to use it, subject in the case of proceedings in a court other than a magistrates' court to such prior notice as may be required by rules of court; and any necessary provision for interpretation shall be made accordingly. (section 22)

This means that parties, witnesses, and others in Wales can speak in Welsh, whether in criminal or civil proceedings. As needed, interpreting of oral communications or translation of forms is provided by the government (Dunbar 2003, 25; Cardi 2007, 16). While the Act does not create a right to trial through the medium of Welsh, it does place a number of obligations on the courts regarding the use of the Welsh language (Dunbar 2004, 112).

To fulfill those obligations, Her Majesty's Court Service in Wales implemented its own Welsh Language Scheme (ibid.; see also Huws 2006, 144) that applies in Wales, but generally not in England.[8] Under the Welsh Language Scheme, written translation is carried out by the Court Service's own Welsh Language Unit that "translates material from English into Welsh and Welsh into English" at no charge (HM Court Service 2010, 8). Regarding the materials that need to be translated, there

[8] In 2011, Her Majesty's Court Service and the Tribunal Service were merged into Her Majesty's Courts and Tribunals Service. HM Court Service had adopted its latest Welsh Language Scheme in 2010 and the Tribunal Service had adopted a Welsh Language Scheme in 2007. Both are currently in effect in HM Courts and Tribunals Service, but a single scheme has been developed with the help of the Welsh Language Commissioner. As of this writing, that single scheme is open for public consultation. The information presented in this paragraph comes from the 2010 Welsh Language Scheme adopted by HM Court Service.

are two general situations: correspondence and documents. Translation takes place when corresponding with individuals who are known to prefer Welsh or when drafting bilingual circular correspondence. It also takes place for documents to be used in court, including court orders and other documents to be used in hearings.

Interpreting may take place during hearings as a way to make sure that services run smoothly when at least one of the parties wishes to proceed in Welsh. Costs for interpreting are usually borne by the government, but under the Consolidated Criminal Practice Direction, if insufficient notice is given, costs for interpreting or translating may be recouped from the party that failed to give sufficient notice[9] (ibid., 29). Interpreting in court hearings is carried out by interpreters who have "successfully sat the Association of Welsh Interpreters examination assessing the competency of interpreting from English into Welsh and Welsh into English" (ibid., 8). Interpreting also takes place, in the simultaneous mode, in public meetings where individuals may wish to speak in Welsh.

From the preceding paragraphs a view emerges of translation serving two different broad purposes. The first, as evidenced in national legislation reflective of international obligations, is to help ensure the right to a fair trial, particularly in criminal settings. Thus, translation here is a procedural element to ensure substantive rights. This makes sense, because procedure in court settings is linked to substance. What triggers this type of translation is a party's inability to participate in the proceedings due to a language barrier. This is the type of translation that is offered to speakers of new minority languages, should they need it.

The second broad purpose is not specifically about ensuring the right to a fair trial by removing linguistic barriers. In Wales, Welsh speakers may use Welsh in court through proceedings in Welsh, if everyone can participate, or through translation. As Huws points out, "the right to speak Welsh in legal proceedings does not depend on an inability to speak English, and one may choose to speak Welsh in court even though English may be one's mother tongue" (2006, 146). This use of

[9] Notice is only necessary if translation will be needed. Hearings "may be conducted entirely in Welsh on an ad hoc basis and without notice when all parties and witnesses directly involved at the time consent" (United Kingdom 2013, 43).

translation is linked to legislation aimed at placing the Welsh and English languages on equal footing. Thus, it goes beyond overcoming linguistic barriers for people who cannot communicate efficiently with the court in English. Rather, it is a tool for promoting the use of the Welsh language in Wales. Ultimately, this promotion aims at allowing those who wish to live out their lives in Welsh to do so. This confirms what has already been observed when addressing translation in government and in healthcare, namely, that translation policy in Wales serves two different purposes, one linked to equality of access and the other linked to the recognition of Welsh speakers.

4. Northern-Ireland-specific legislation that affects translation in court settings

4.1. General observations about courts in Northern Ireland

As stated earlier, there are three main jurisdictions in the UK, and one of them is Northern Ireland. A number of laws apply to courts in Northern Ireland as part of the UK. As pertains translation in court settings, these include the *Human Rights Act 1998* and the *Crime (International Co-operation) Act 2003*. This section, however, will focus on laws that are specific to Northern Ireland, as the impact of those two general laws vis-à-vis translation has been explored above.

The *Administration of Justice (Language) Act (Ireland) of 1737* should be addressed first. This act was part of a process across Great Britain and Ireland to have the courts become monolingual in English (Dunbar 2007b,96-97). The Act mandates that "[a]ll proceedings in courts of justice, patents, charters, pardons, commissions, etc. shall be in English" (section I) except for "names of writs, process or technical words" (section II). This effectively bars the use of old minority languages in the courts of Northern Ireland. Such an effect is ironic, as the languages that were actually targeted by the Act in 1737 were French and Latin (Larkin 2010, 9). The Act was meant to protect "the subjects of this kingdom" from "the peril of being ensnared, and brought into danger, by forms and proceedings in courts of justice in an unknown language" (section I). So while the Act was meant in part to benefit

those wishing to access courts by making sure "unknown languages" were not used, for speakers of Irish and Ulster Scots, the effect has been negative because they cannot use their preferred language in court (unless that language is English). When one considers the historical context of Anglicanization in which the Act took place, less benign motivations become apparent (Holder 2010, 15). In terms of consequences, Ó Flannagáin states: "Many Irish speakers […] are reluctant, embarrassed or even frightened to use Irish with the State, and this is particularly true in relation to the law" (2010, 11). A similar law existed and was repealed for Great Britain, but this Act remains in force for Northern Ireland.

The validity of the *Administration of Justice (Language) Act (Ireland) of 1737* was challenged in *Mac Giolla Cathain* ([2010] NICA 24). In this case, the applicant wished to apply to court for a liquor license to sell at a concert. He was advised by the Northern Ireland Court Service[10] that the application had to be submitted in English. In the ensuing lawsuit, the Court of Appeal in Northern Ireland found that there is no incompatibility between the Act and the ECHR. In the opinion of the court, because "the overwhelming majority of the population" in Northern Ireland speak English, the use of English "as the working language of the court is a practical necessity in the interests of fairness." As there was no demonstrated incompatibility between the Act and ECHR, the court observed that "[a]t common law English is the working language of the court and this will remain so unless and until the matter is changed by statute."[11]

As we will see below, the only way for Irish or Ulster Scots to be used in court is if the person coming before the court can only communicate in one of those languages. This is highly unlikely, but even so, in keeping with the ECRML, the Northern Ireland Courts and Tribunals Service has adopted Codes of Courtesy for Irish and Ulster Scots. In light of the *Administration of Justice (Language) Act (Ireland) of*

[10] Now the Northern Ireland Courts and Tribunals Service, this agency is charged with running the courts of Northern Ireland.

[11] The holding was a narrow holding on the question of whether requiring that an occasional liquor license be filed in English is a violation of rights under the ECHR as incorporated thought the *Human Rights Act 1998*. The statutory and common-law usage of English as the language of the courts in Northern Ireland remains untouched.

1737, all court proceedings and business transacted in court offices or buildings must be in English; however, business transacted in other places, such as the Fixed Penalty Office and the Court Funds Office, is to be transacted according to the Codes of Courtesy. These Codes of Courtesy rely on translation for their proper functioning.

The Codes of Courtesy for Irish and Ulster Scots are similar in several regards when it comes to translation. When communicating over the phone, if a person who wishes to use Irish or Ulster Scots is helped by someone who cannot communicate in those languages, the caller may continue in English, submit the concern in writing (for translation) or leave a message in an Irish or Ulster Scots voicemail service (the message will then be translated). As for written communications, correspondence (including e-mails) will be accepted in Irish or Ulster Scots, and then translated. The response does not have to be in Irish or Ulster Scots, but it may if the person drafting the response so chooses. A Communications Group has been set up which translated correspondence into English from Irish and Ulster Scots and provides some form letters in both languages. Additionally, "[t]he central provision [of translation] offered by DCAL can be called upon if required" for Irish (United Kingdom 2002, 51).

The Codes of Courtesy for Irish and Ulster Scots, however, are not identical. The Code of Courtesy for Irish indicates that if someone wishing to speak Irish meets with a staff member who cannot do so, the principle is that an interpreter will be arranged for if advanced notice is given. If no advance notice is given, the member of the public should be instructed of the possibility of returning for an appointment with an interpreter. Other options here include switching into English or presenting the concern in writing in Irish, which could then be translated into English. (When the service is being offered over the counter, only the last two options are available.) As far as Ulster Scots is concerned, face-to-face meetings must take place in English, as no arrangements are made for Ulster Scots interpreting. The Communications Group arranges interpreters for Irish, as requested. This indicates lesser institutionalization of Ulster Scots, as compared to Irish, which reflects the approach taken by the UK in ratifying the ECRML for these two languages (see chapter 6).

Besides the Codes of Courtesy, courts in Northern Ireland will provide translation of the court service's publications upon request, including into Irish, but such requests are unusual (United Kingdom 2009, 119). For example, there were no requests for translation into Irish between 2007 and 2009 (ibid.). A slight increase was observed between 2010 and 2012, when eight requests for translation into Irish were made (Courts and Tribunals Service 2013).

4.2. Criminal Courts in Northern Ireland

As stated earlier, the validity of the exclusive use of English in courts was upheld by *Mac Giolla Cathain*. What clearly helped shape the court's opinion was the fact that the applicant could interact with the court in English. Absent a statute that grants the right to use Irish or Ulster Scots or any other language in Northern Ireland, those who can speak English must use English in their interactions with court. This means that translation of forms and interpreting of proceedings does not take place between English and Irish or Ulster Scots. The picture is different if the person coming before the court does not speak English well enough. When such is the situation, the *Human Rights Act 1998* applies, and translation, including interpreting, takes place as needed to overcome the language barrier, at least in criminal matters. Precisely because of the *Human Rights Act 1998*, mechanisms have been instituted for translation whenever those involved with the justice system in criminal matters are unable to speak English. For example, the Police Service of Northern Ireland has face-to-face and over-the-phone interpreters that are available 24/7 in case of hate crimes that involve non-English speakers (Department for Communities and Local Government 2010, 57). Interpreters for the police and for courts are provided through contracts with CONNECT-NICEM, a charitable organization in the Northern Ireland Council for Ethnic Minorities[12] (Phelan 2010, 101-103). The organization has a register of certified interpreters and "endeavours to provide the highest qualified interpreter at the nearest geographical location" (Phelan 2010, 102).

[12] Set up in 2002, CONNECT-NICEM "is operated as a social enterprise on a 'not for individual profit' basis," which means that profits are sunk back into the work with members of "Black and Minority Ethnic Communities" and into the development of interpreters (Phelan 2010, 101-102).

Another relevant enactment is the *Criminal Evidence (Northern Ireland) Order 1999*. This order, as amended by the *Justice Act (Northern Ireland) 2011*, reinforces the use of translation in criminal proceedings. The Order mandates that when dealing with vulnerable defendants (i.e., defendants under 18 years of age or over that age but who suffer from some mental impairment), interpreters are to be used for directions related to examinations in order to ensure a fair trial. As is the case under the *Human Rights Act 1998*, a concern for procedural fairness drives the use of translation in criminal settings, even when dealing with individuals who are vulnerable for reasons that extend beyond a lack of English proficiency.

In essence, when it comes to criminal proceedings, the justification for translation does not differ very much from that provided in Great Britain to those with no- or limited-English proficiency. Given that there seem to be no monolingual speakers of Irish or Ulster Scots in Northern Ireland, no translation will be provided to allow them to use their language other than English. Those who speak English must use it. This is the result of a translation policy governed by two very different statutes—the *Human Rights Act 1998*, which mandates translation in certain instances, and the *Administration of Justice (Language) Act (Ireland) of 1737*, which bans translation in all others.

4.3. Civil and Family Courts in Northern Ireland

There may, of course, be language barriers in non-criminal courts in Northern Ireland. This is dealt with, in part, according to the procedural rules that apply in civil and family courts. For civil courts, these rules can be found in the Rules of the Court of Judicature (Northern Ireland) 1980, as amended. To a great extent, when translation is mandated in these rules, it has to do with fulfilling international procedural obligations, as found in specific treaties.[13] Thus, these rules have to do

13 For example, several civil procedure conventions (including the 1965 *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*), the 1968 *Convention on jurisdiction and the enforcement of judgments in civil and commercial matters* (Brussels Convention), the 2007 *Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters* (Lugano Convention), etc.

with things such as translation for service of process abroad (order 11; order 69), translation for depositions abroad (order 39), and translation for applications of enforcement of judgments from abroad (order 71). For family courts, there are rules that were drafted under the *Family Law (Northern Ireland) Order 1993* (section 12). These rules, called *The Family Proceedings Rules (Northern Ireland) 1996*, as amended, include rules such as that marriage or civil partnership certificates from abroad must be translated (Rules 2.42, 3.10A). Thus, procedural rules that apply to civil and family courts only deal with translation as a tool to manage proceedings that have some sort of international component where a language other than English involved.

This only deals with one aspect of language barriers in in civil, family, and other non-criminal proceedings. When a party comes before the court who does not speak English, the expectation is that such parties will pay for their own interpreters (Northern Ireland Courts and Tribunals Service 2012a). However, if the case involves children, domestic abuse, or committal of an individual who does not speak English, the court will provide its own interpreters (ibid.). Similarly, if an individual cannot speak English, is unable to afford an interpreter, and does not otherwise qualify for publicly funded interpreters, the judge will request a court interpreter (ibid.). Regarding written translation in non-criminal proceedings, translation of documents will be provided by the courts if they are in a foreign language, such as may be the case in child abduction cases (ibid. 2012b,8). Additionally, all courthouses now have a telephone interpreting service at their counters via The Big Word, which allows court personnel to interact with members of the public who may not be able to communicate in English (ibid.).

Thus, the policy for translation in non-criminal judicial settings in Northern Ireland is very much like that of non-criminal judicial settings in England. With the exception of places where the Codes of Courtesy might apply, the judicial system is strongly monolingual in English. Translation comes in to deal with cases that have some international dimension (e.g., foreign documents not in English) or for those unable to speak English, but parties in this latter situation are usually responsible for their own interpreters.

5. Scotland-specific legislation that affects translation in court settings

5.1. General observations about courts in Scotland

The third jurisdiction in the UK is Scotland, and the language of the courts in Scotland is English. This was not always the case, but the same process that Anglicized the courts of Wales and Northern Ireland took place in Scotland. For example, the same *Proceedings in Courts of Justice Act 1730* that made English the only language of the courts in England and Wales made English the language of the Court of Exchequer[14] in Scotland (Dunbar 2003, 139). The Act has now been repealed, but in the absence of legislation mandating the use of other languages, the culture of English monolingualism remains.

This does not mean that courts are oblivious to the linguistic needs of those who do not speak English. Judges are encouraged to be aware of the linguistic needs of witnesses and the accused (Judicial Institute 2013, 53, 56). Outside the court rooms, Language Line has been contracted to offer over-the-phone interpreting into 140 languages in offices of the Supreme Courts, sheriff clerks, and procurator fiscals (ibid., 56). For proceedings where interpreters are brought in, these should be qualified through specific certificates or diplomas (ibid., 55). Compared to other areas of interaction between individuals and state institutions in Scotland, the strongest provision of public interpreting services is to be found in the judiciary and the police (O'Rourke & Castillo 2009, 44). As will be seen below, these services focus mostly on new minority languages. While there is a very limited role for translation into Gaelic, there is no provision of Scots in the judiciary, either by means of translation of court documents or the presence of interpreters (Social Research 2009, 22).

5.2. Criminal Courts in Scotland

[14] This court carried out a number of judicial functions, many of which are now carried out by the Court of Session, Scotland's highest civil court.

As explained above in relationship to the *Human Rights Act 1998*, if a person who does not speak English appears before a Scottish criminal court, that person is entitled to translation (Dunbar 2001, 239). In such cases, it is the Scottish Court Service that is responsible for arranging interpreting for accused persons (Judicial Institute 2013, 54). The Service is put on notice by the police. On the Standard Prosecution Report that is submitted by the police to the procurator fiscal, information is to be presented regarding the need for translation (for the accused or the witnesses) and into what languages (Department for Communities and Local Government 2007b,50). If the police does not put the Court Service on notice, others along the way may (Judicial Institute 2013, 57).

This right to translation is only triggered by the inability to communicate in English. Thus, if someone speaks English well enough to appear before court but his or her first language is Gaelic or Scots, that person is not entitled to translation (Dunbar 2001, 239). This is confirmed by *Taylor v. Haughney* (1982 Scottish Criminal Case Reports 360), according to which Gaelic speakers only have a right to use Gaelic in criminal court if their command of English is insufficient[15] (Dunbar 2006b,11). The Gaelic Language Act has not changed this, as it "does not grant Gaelic-speakers any right to use their language in court" (Committee of Experts 2006, 39). Because the scenario of a Gaelic speaker not being able to communicate in English is highly unlikely, in practice no Gaelic translation is offered in criminal courts. The same is also true with regards to Scots.

5.3. Civil Courts in Scotland

In civil courts, under the *Act of Sederunt (Rules of the Court of Session 1994) 1994*, as amended, there are a number of rules that deal with civil proceedings. The rules foresee proceedings where more than one language may be in play. Like similar rules in the other jurisdictions of the UK, these rules deal with service by post to countries where English is not an official language (chapter 16), the recognition and enforcement of foreign judgments not in English (chapter 62), requesting evidence

[15] Presumably, whether a Gaelic speaker lacks the needed English skills would be determined by the same channels that would determine whether a speaker of a new minority language needs translation.

from non-English-speaking countries (chapter 66), dealing with international child abductions (chapter 70), and so forth. Rules are set out in all of these matters for the parties to provide translation as needed to fulfill international obligations and to handle the inevitable challenges posed by dealing with individuals or institutions in a non-English-speaking state. Thus, these rules apply to cases that have some sort of international dimension. They are not about two local parties approaching the court over a purely local dispute. Such a scenario is covered next.

Civil proceedings, which include family proceedings, are private matters, so the expectation is that if translation is needed, it will be provided by the parties. In practice, it is usually the litigants' legal representatives that arrange for it. When a party cannot afford legal representation, the Scottish Legal Aid Board can help cover the costs of legal assistance, including the costs of any necessary translation. To help deal with the challenges that legal representatives face when attempting to secure translators and interpreters, the Scottish Legal Aid Board has created a database of suppliers (Scottish Legal Aid Board 2011). Additionally, the Scottish Legal Aid Board produces leaflets that are available in ten languages (Department for Communities and Local Government 2010, 38).

Regarding Scotland's old minority languages, these are generally not used in civil courts. The use of Scots, in particular, is not contemplated in management or practice. Gaelic does a little better, but it is generally not used in civil courts, because Gaelic speakers are treated like speakers of any other minority language. The overall picture is that proceedings are carried out exclusively in English, except for a minor exception (Dunbar 2001, 246). The exception comes as a result of the adoption of the ECRML. The UK needed some use of Gaelic in courts in order to be in line with Article 9 of the ECRML (ibid. 2006, 15). Thus, by an Act of Court, the Sheriff Principal of Grampian, Highland and Islands ordered that witnesses in civil proceedings could testify in Gaelic in sheriff courts[16] found in Portree, Lochmaddy, and Stornoway, and

[16] Sheriff courts have broad jurisdiction, and they deal with both criminal and civil matters. Consequently, most cases are handled by sheriff's courts. Scotland's sheriff courts are organized into six sheriffdoms. Each sheriffdom is headed by a Sheriff Principal. The Grampian, Highland and Islands sheriffdom covers the North of Scotland, including Skye and the Western Isles.

in appeals from those three courts (ibid. 2004, 120). However, two-weeks' notice must be given so that translation can be arranged (MacQueen & Wortley 1999). This should not be interpreted as a major inroad in the use of Gaelic in courts. Because of the geographic extent to which the order applies, only a small number of Gaelic speakers are affected (Dunbar 2001, 246). Consequently, the use of Gaelic interpreters remains minimal and geographically limited.

Thus, the use of translation in Scotland is observed to be similar in some respects to much of the rest of the UK. Scottish courts are similar to courts in England and Northern Ireland in that they are very much monolingual, but translation is contemplated under legislation that incorporates international obligations. This is especially important in criminal proceedings, where substantive rights are preserved through translation. Translation in civil courts, when needed, is to be provided by the parties, unless they are receiving legal aid. The one exception are the three courts in Portree, Lochmaddy, and Stornoway, where Gaelic testimony may be given and interpreted into English. What this amounts to is that most translation takes place for speakers of new minority languages, while some provision can be made in specific settings. Scots in the judiciary does not benefit from any translation measures (Social Research 2009, 22-23).

6. Conclusions

This chapter has explored translation policy in the judiciary. The legal system is somewhat of a unique domain in that the obligation to translate for those who do not speak the language of the court, usually English, is explicitly found in UK-wide legislation which incorporates international commitments, particularly under the ECHR. While translation offered in other domains is a practice that flows from management decisions based on beliefs which see translation as a way to grant equal access or to bring bout greater participation, in the judiciary translation occurs because the law specifically indicates that in criminal proceedings, the defendant has a right to an interpreter. This right is meant to guarantee a fair trial for the defendant

who could otherwise not participate in his or her own case. It does not extend to civil and family proceedings, except in specific situations mentioned above. The actual management of all this translation varies from jurisdiction to jurisdiction, with particular difficulties observed in England and Wales as that jurisdiction has moved to a contract with a single, private supplier.

Except for Welsh in courts in Wales and Gaelic in a few civil courts in Scotland, old minority languages are not used in court. Speakers of Welsh have the right to use their language in court proceedings in Wales, but there is generally no right to use Cornish, Irish, Ulster Scots, Gaelic, or Scots in the UK's courts, unless the defendant or witness can show the inability to participate in the proceedings in English. To facilitate the use of Welsh in courts in Wales, translation is to be provided, unless everyone involved in the proceedings speaks Welsh. In the courts that allow testimony to be given in Gaelic, interpreting is provided. Consequently, in terms of translation, speakers of the UK's old minority languages are treated as speakers of new minority languages (with the two exceptions mentioned in this paragraph): if they can proceed in English, they must.

Once again we see a two-tier approach to translation in the judiciary. One approach applies to people who lack the needed English skills, and another approach applies to people who speak English but may wish to proceed in Welsh or, in some courts, in Gaelic. The difference between the permitted usage of Welsh (potentially the entire proceedings in any court) and the permitted usage of Gaelic (testimony in three courts) indicates a further division. Not all old minority languages are approached the same way. Those that have managed to get a greater level of legislative or judicial recognition can be used, while those that have not managed such recognition, cannot. And the level of recognition varies: the stronger the legal measures in favor of the language, the more the language can be used in courts.

So the two-tier approach is fairly uniform in one tier and quite varied on the other. The more uniform of the two tiers is linked to the idea of allowing individuals access to a fair judicial system, while the other of the two tiers is linked to the level of recognition of specific languages in the judicial system. This concept will be further explored in the next chapter, which moves away from the description and analysis of

translation policy in the UK to weigh the role of translation policy in the integration of linguistic minorities.

10. Translation and the integration of linguistic minorities

"In the moral sphere, every act of justice or charity involves putting ourselves in the other person's place, thus transcending our own competitive particularity."
– C.S. Lewis, in *An Experiment in Criticism*

1. Introduction

So far in this study I have engaged the analysis of translation policies from a descriptive point of view, starting at the very top. After critically reviewing a number of perspectives from the language rights debate and trying to assess the place of translation in that debate, this study considered whether there is, under international law, a set of obligations to translate on which minimum standards for translation policy could be set. This was done under general international law, but the focus was also placed on European international law. Having concluded that state obligations to translate as found in international legal orders are rather narrow, I homed in on the UK as a case study of how states approach translation policy. I considered legislation that affects all of the UK, as well as legislation at the regional level. Relevant policy documents were also considered, and I conducted the search by focusing on translation policies in government, healthcare, and the judiciary. The information gathered came from analyses of legal texts and policy documents, and also from reported practice. In so doing, I was able to describe and analyze a broad range of translation policies, whether implicit or explicit, across different public domains in the UK.

To the best of my knowledge, this is the first time such a study has been carried out in terms of translation. In so doing, the question of the role of translation in the integration of linguistic minorities has been raised in terms of access to services, increased participation, and the recognition of specific minority groups.

This chapter will now address this issue more centrally. In order to do so, first it will present a common theory for minority languages, and then build on that in order to consider what integration is, the role language plays in it, and how translation is involved in the integration of linguistic minorities.

2. A common theory for minority languages

In this study I have pointed to different legal frameworks for dealing with languages spoken by old minorities and languages spoken by new minorities. Because of this, the question might rightly be asked whether the study should not instead have focused on one group of languages or the other. In other words, if these languages are not equal in terms of translation, why deal with both groups? It would certainly be simpler to focus on either one or the other, and not the least bit dishonorable, yet I have chosen not to do so because the distinction between old minority languages and new minority languages, while helpful, is also problematic. This study draws on the theoretical understanding that minority integration can be understood as encompassing both old minorities and new minorities. In terms of language, this means that old minority languages and new minority languages can be included in one theoretical framework. This idea can be traced back to Grin's (1994) proposal for combining the language rights of old and new minorities through the application of an expanded territoriality principle. As Williams puts it, "[t]he clearest difference between RM [regional minority] and IM [immigrant minority] languages is their history, but the needs of the speakers to be recognized and treated with dignity is exactly the same" (2013, 362).

When speaking of a common theoretical understanding of policy for old and new minority languages, I do not mean to say that these two groups of languages are indistinguishable. There *are* differences between the way the languages are handled. In the following paragraphs, I will explore those differences in terms of policy, and then I will indicate that despite those differences, both groups of languages have common traits that allow for them to be grouped together. I will then argue that,

because of this, decisions about translation should not be made based upon on broad language categories but rather on contextual factors that vary from one set of language speakers to another.

It is an inescapable conclusion from the previous chapters that policy approaches toward old minority languages and new minority languages are different. This is the case under international law. As has been seen, old minority languages benefit from a specific convention in Europe, the ECRML, and speakers of these languages also benefit from a number of clauses that impact language policy in treaties such as the FCNM. Even if some of the protections found in the FCNM can extend to new minorities, there are no international treaties dedicated exclusively to languages spoken by new minority groups, even if there are conventions that deal with migrants, such as the ICRMW. Usually, the linguistic protections afforded to migrants in general international law are the same that are afforded to anyone under any human rights instrument. These protections tend to be linked to procedural fairness in judicial (usually criminal) settings.

A difference in approach toward old minority languages and new minority languages is also observed in the UK as a whole and in its constituent regions. Thus, language policy differs when dealing with old minority languages or with new minority languages. Protection of old minority languages in the UK is handled by the devolved governments (plus a local government, in the case of Cornish). The extent to which each government passes laws or adopts policies for promotion of their own old minority languages depends on a number of factors, including, of course, local politics, as is illustrated by the inability in Northern Ireland to approve an Irish Language Act or the ongoing push in Wales for mobilizing resources to secure a bright future for Welsh. On the other hand, matters relating to new minority languages generally lack either a national policy or even regional policies, at least if one speaks about policies designed specifically to deal with those languages. Thus, the extent to which new minority languages are used in official settings is the result of local efforts to comply with non-discrimination and human rights legislation more so than efforts aimed at the protection of specific languages. In this sense, the UK follows the general trend in international law where old minorities benefit from some

sort of minority rights regime, while new minorities benefit from general international rules regarding migrant workers and immigrant communities (Letschert 2007, 46-47). As explained in chapter 2, this differential treatment is usually justified on the observation that new minorities have chosen to uproot themselves while old minorities were already in the territory when it became a state (ibid., 48), but such an understanding "is difficult to sustain" when taking a full account of human rights law (Eide 2004, 367).

Such differential treatment for languages has implications for translation policy, even though translation policy is not simply a function of language policy but rather interacts with it and with other policies in order to achieve certain ends, linguistic or otherwise. If one thinks of translation policy in terms of translation management, translation practice, and translation beliefs, this differential treatment becomes apparent.

Regarding translation management, it was observed that the legal obligations by which such management takes place tend to be different for the two types of minority languages, with a more or less single set of rules for new minority languages and a different sets of rules for each old minority language. For example, the right to translation for individuals who do not have sufficient command of English and are placed in criminal proceedings applies equally throughout the whole of the UK. On the other hand, the extent to which local governments have to communicate in old minority languages, with all the translation that implies, depends on the language and the region—an annual report by a local council in Wales will be published in both English and Welsh, but an Irish speaker wishing to apply for a liquor license in Northern Ireland will not be provided with a form translated into Irish.

Regarding translation practices, it was indicated that translation involving old minority languages can take place in different ways for different languages in different places—thus bilingual staff in a local council in Scotland may handle requests to translate incoming correspondence in Gaelic, while the local council in Cornwall may choose to contract an outside translator for the translation of a report's foreword into Cornish. When it comes to translation involving new minority

languages, translation practices were reported as more uniform. For example, hospitals in England and in Wales can generally communicate with their patients who lack English proficiency via over-the-phone or face-to-face interpreting, and hospitals in Scotland and Northern Ireland have reported that they discourage the use of staff or family as interpreters. Of course, practice varies from hospital to hospital, but translation is practiced generally in a reactive matter, and the type of tools available (e.g., telephone interpreters) for such reactive translation are not limited to specific regions.

Regarding translation beliefs, different beliefs about translation can be inferred from the translation management and practice explored in the previous chapters. In some regards, translation beliefs as part of translation policy are comparable to motives in language policy. Ager asserts that "[t]he motives for language planning are not always clear, nor openly stated, nor always understandable" (2001, 7). Similarly, beliefs in translation policy are not always clear, nor openly stated, nor always understandable. Faced with this challenge, I will arrive at conclusions regarding the value that translation is believed to have in a given setting by observing the ends pursued through translation. As I do this based on the information presented in the previous chapters regarding translation in the UK, it becomes apparent there are specific beliefs that arise in specific contexts. It also becomes apparent that other beliefs are shared across the state's regions. To illustrate this point, I will briefly consider translation beliefs that can be derived from findings regarding Northern Ireland and Wales. Then the reader will be reminded of two beliefs that are shared across the regions.

In Northern Ireland, translation is seen as one of several tools to help foster good relations. To understand this belief, one should remember that Northern Ireland's not-so-distant past is one of conflict that saw the region divided among cultural, religious, and political lines. Language became a dimension of that struggle. In order to help the region's communities deal peacefully with their differences, policymakers created a constitutional structure that has resulted in Irish and Ulster Scots being promoted to varying degrees. This structure links respect for those languages to the promotion of good relations between Northern Ireland's

communities. Similarly, non-discrimination as a policy also became linked to the idea of establishing good relations, particularly in terms of the need to promote civil rights in order to grant equality for Catholics (Darby 1995, 17-18). Translation has become one of several tools to further the ultimate aims of helping society overcome past inequalities and thus foster good relations now and in the future. Efforts to overcome segregation and conflict have led to seeing public recognition of ethnic minorities as a way to increasing participation in society and the life of the state, more so than in other places (McDermott 2012, 193). Thus, inasmuch as translation is understood to be a tool for the recognition of Irish and, to a lesser extent, Ulster Scots and a way to increase the participation of migrants, it is understood to be a tool for fostering good relations between nationalists, unionists, and immigrants. This means that there is a belief, even if not always explicitly enunciated, that translation can help bring about a degree of inclusion that fosters good relations among communities and can eventually help build a more united society. This belief about translation applies to speakers of any language in Northern Ireland, whether old or new.

In Wales, translation is seen as a tool for strengthening intragroup bonds, specifically among speakers of Welsh. To understand this belief, one should recall that the promotion of the Welsh language is an important priority for the devolved government. As stated in chapter 6, the aim of the devolved government is to create a fully bilingual society where individuals may be free to choose to live out their lives through the medium of Welsh. One requirement for this to become a reality is that services must be offered in both English and Welsh, which implies a great deal of translation in both directions. As was seen in the previous chapters, much of this translation happens in house, which means that it is often hidden from the public's eye. In the end, these efforts to promote the Welsh language, including translation, would ideally result in an increasing number of speakers. The creation or growth of a compact, regional group of speakers that can all speak a language that outsiders generally do not understand results in a ready distinctiveness to that group. That distinctiveness, based on language, serves as a way to distinguish "us" from "them." In this light, a belief can be seen that translation is one of several tools to help create

or strengthen a sense of distinctiveness for a regional group. This sense of distinctiveness surrounding language can be great social glue within the group.

The fact that different translation beliefs are at play in different regions of the UK does not mean that there is no commonality in translation beliefs. In fact, there are some that can be found all across the state's territory. One such belief it that translation is a tool to remove discrimination of speakers of new minority languages. As discussed earlier, a great deal of translation takes place in compliance with non-discrimination laws. When it comes to granting access to services, for example, healthcare providers and local governments are under a legal obligation to avoid direct and indirect discrimination. In order to comply with this obligation, local decision makers often turn to translation whenever they are faced with individuals for whom the lack of English becomes a barrier to accessing services. This points to a widespread understanding that translation can play a role in granting non-discriminatory access.

This belief has implications for the role of translation in helping to integrate linguistic minorities, as does the belief that providing translation has a negative side effect, namely, keeping immigrants from learning English. This belief is implicit in documents like *Guidance for Local Authorities on Translation of Publications*, where the provision of written translations (and presumably interpreting) is viewed as discouraging the learning of English. There is some tension between these two beliefs—that translation helps avoid discrimination and that translation hinders the learning of English—and this tension will be explored later in terms of the integration of linguistic minorities. Nonetheless, both are translation beliefs that exist throughout the UK. These beliefs are applicable to translation between new minority languages and English. On the other hand, there are translation beliefs that vary somewhat from region to region depending on the specific context that translation is employed for. Such beliefs usually, but not always, have to do with translation between old minority languages and English.

Based on the preceding observations about translation management, practices, and beliefs, this study leads to the conclusion that there is a difference in policy between old and new minority languages in the UK. The translation policy toward

new minority languages is fairly similar throughout the state, and this is the result of translation policies that are derived from the interaction of rather uniform human rights and non-discrimination legislation. On the other hand, old minority languages are treated differently from new minority languages, as translation policy for old minority languages is generally not derived from general human rights and non-discrimination legislation. Further, in terms of translation, old minority languages are also different one from another. It would not be correct to say that translation policies for Welsh are similar to those for Cornish. In fact, quite the opposite is true. A major divide is therefore observed between the two types of languages, where there is a bundling together of all new minority languages on the one hand and on the other a differentiation among old minority languages.

At this point a visual illustration might help. In essence, in the UK translation policy in the public sector can be represented by a bag and a shelf-case (see Illustration 1). Translation policy for new minority languages is fairly uniform, and thus can be represented by a bag. The bag symbolizes a human rights/non-discrimination approach that is applied to every language placed in its contours. No matter what the language is, as long as it is not an old minority language, it goes in the bag—mostly reactive translation in order to overcome language barriers to accessing services and so forth. While there are questions about how much translation to offer and for how long, no one seems to question that new minority languages should all be treated according to a uniform policy. On the other hand, translation policy for the six old minority languages varies from language to language, and thus can be represented by a piece of furniture, a shelf-case made of six compartments, each of a different size. Each compartment symbolizes a tailor-made approach to the specific language that will be placed there. Thus, each language gets its own shelf space. The shape and size of the space is determined by contextual factors. Despite this major policy divide, what this chapter argues is that translation policy for both types of languages can be analyzed with a single theoretical understanding.

Illustration 1. A bag for new minority languages and a shelf-case for old minority languages.

This theoretical understanding draws heavily on Medda-Windischer's (2009) study that proposes a model for reconciling diversity and cohesion applicable to both old and new minorities. I am not so much interested in the broader question of how to reconcile diversity and cohesion in ethnically diverse societies as I am in her claim that old minorities and new minorities can be considered as one for purposes of analysis. At this point, a closer look at her work becomes necessary. What follows is not so much a summary of her work as a highlighting of important concepts that inform the present study.

Medda-Windischer deals with a question that is at the heart of many policy debates: can cohesion and diversity be truly reconciled (ibid., 18). She does this by discussing issues pertaining to the integration of old minorities and new minorities. Old minorities are defined as "ethnic groups which, for various reasons, did not achieve statehood of their own and instead form part of a larger country or several countries" (ibid., 40). New minorities, on the other hand, are defined as "migrants and refugees and their descendants who are living, on a more than merely transitional basis, in another country than that of their origin" (ibid., 41). She argues that there is a common trait among them that opens the door for a single definition of minorities that encompasses both types of groups. This trait is the manifestation, at times implicit, of the desire to maintain a collective identity that is somehow different than that of the majority (ibid., 62). Based on this common trait, she proposes the following:

> a minority is any group of persons, (i) resident within a sovereign state on a temporary or permanent basis , (ii) smaller in number than the rest of the population of that state or of a region of that state, (iii) whose members share common characteristics of an ethnic, cultural, religious or linguistic nature that distinguish them from the rest of the population and (iv) manifest, even only implicitly, the desire to be treated as a distinct group. (2009, 63)

This definition is very close to that proposed in 1997 by Capotorti, the Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, who defined a minority group as:

> A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State—possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language. (Office of the United Nations High Commissioner for Human Rights 2010, 2)

There are two major differences between Capotori and Medda-Windischer's definitions. The first is that Medda-Windischer does not explicitly define minorities as being in a non-dominant position. She defines them as numerically inferior, which nonetheless implies a non-dominant position. This non-dominance criterion is important in terms of understanding what minorities are, and this study assumes that the languages of minorities are not the dominant language, i.e., are not English. The second difference is that Medda-Windischer does not consider nationality to be a criterion for defining minorities. The nationality criterion does not seem to aptly describe all linguistic minorities in this study, because some linguistic minorities are UK citizens, either by birth or naturalization, while others are not. For this reason, the Capotorti definition would be problematic if adopted for this study. Adopting Capotorti's definition for this study would leave out a Portuguese national who has not obtained UK citizenship but include her sister who is also from Portugal but has

recently obtained UK citizenship. This would be a rather arbitrary way to conceptualize a linguistic minority, so Medda-Windischer's definition is more appropriate for the purposes of this study.

Her definition does not mean that every minority group would be treated the same, because not every minority group is equally situated[1] (Medda-Windischer 2009, 64-65), but this common definition, applied via a group-by-group approach, would result in a common yet differentiated protection of minorities (ibid., 94-95).[2]

Because of their common trait, she argues there are also common claims, and she identifies four broad claims in common: "right to existence," "equal treatment and non-discrimination," "right to identity and diversity," and "effective participation in public life whilst maintaining one's identity" (ibid., 95-98). Each of those four claims will now be explored.

The first common claim, the right to existence, refers to the right to exist physically, as in, for example, avoiding genocide (ibid., 95). The second common claim, equal treatment and non-discrimination, refers to the broad principle of

[1] Other authors have also argued that groups who are situated differently need some form of differential treatment. Kymlicka, for example, calls for different types of "group-differentiated rights" (1995, 26-33). May also defends group-differentiated rights, as long as "they retain within them the protection of individual liberties" (2008, 13).

[2] An example of how this would be applied is to be found in considering whether protection of minorities should include publicly funded education in minority languages (Medda-Windischer 2009, 240-241): For each minority language, the question would be asked whether the language is spoken by a minority group, and if the answer is positive, the question would then be asked whether the use of the language in education amounts to an enforceable right (i.e., a right that can be enforced in court) or a legitimate claim (i.e., not a right per se but something that ought to be negotiated with the majority based on contextual factors such as the concentration of speakers). Regarding this specific issue, Medda-Windischer concludes that there is no enforceable right to publicly funded education in (old or new) minority languages, unless it is being provided for other groups, but there may be a legitimate claim for it depending on a number of factors (ibid., 240). In this case, the outcome of the analysis is the same for both types of minority groups, but it need not be. For example, when considering whether minority protection should include territorial autonomy, neither old nor new minority groups have an enforceable right to autonomy, but old minorities may have a legitimate claim if certain factors are considered, while no such legitimate claim can be made by new minorities (ibid., 241).

equality, which is achieved specifically through measures of non-discrimination (ibid., 96). Medda-Windischer does not discuss the role of language in terms of equality and non-discrimination, and this is perhaps a weakness in her analysis, because language should be a consideration in terms of equality. This is the case when a given language becomes a requisite for equal participation in the life of the state. For those who lack proficiency in that language, equality cannot be taken for granted. Where Medda-Windischer does address language is in the third claim, that is, in the right to identity and diversity. This claim is derived from the belief that minorities are often prevented from preserving their identity (ibid.). The claim may vary in importance from group to group (ibid.) and may go beyond protection to promotion in some instances (ibid., 97). In Medda-Windischer's view, a component of the right to identity of minorities "is centered around language rights" (ibid., 183). Here, the tension is to be found between the state's obligation to protect or even promote certain groups, including their language, and the practical observation that, in order to "participate in the wider national society," individuals may have to develop "a proper knowledge of the official language" (ibid., 97). As regards the resolution of this tension, according to observations found in chapter 4, contextual factors such as numerical strength and geographic concentration of speakers are important. Territory matters as well, and old minorities that are politically powerful are better situated to negotiate, if they so choose, linguistic concessions from the majority culture in a state. The fourth claim is effective participation in public life without having to sacrifice one's identity. Effective participation is a claim put forth by both old and new minority groups, but the measures to create it are different for both groups (ibid., 97-98). For example, when dealing with political participation, new minorities generally claim some form of representation but not autonomy (ibid.) while old minorities in high concentrations in a territory may wish to negotiate some form of autonomy (ibid.). Medda-Windischer focuses her analysis of participation on two aspects: participation in the decision-making process and participation through different measures of self-governance (ibid., 213-216). In so doing she does not deal at all with the role of language in participation. Yet participation presupposes the use of language in order for communication to take place between the participating

parties. Once a language for participation has been settled on, a barrier arises for those who are less proficient in that language. This results in a number of difficulties. One such difficulty is dealing with the question of what is the best way to handle language barriers to equal participation. Another question that arises is, given that for some individuals language is an important part of identity, to what extent can full participation take place without sacrificing identity. In this light, matters of equality and identity become closely linked to issues of participation. What creates the link between equality, identity, and participation is language, if the minority group has a language other than the majority's.

These four broad claims are shared by old and new minorities. Identifying such claims allows Medda-Windischer to propose a single model that applies to both old and new minorities for reconciling the tension between diversity and cohesion. I am interested not so much in her model, which is far too broad for this study, as in the conceptual advantage she offers by providing a common understanding of minorities, regardless of their origin. Her common definition of minorities does not mean that no distinctions should ever be made between minority groups, but rather that protection measures for minorities should be handled on a case-by-case basis. Her proposal is in line with Eide's, who proposes acknowledging that there are many different types of minorities with varying needs and then "focus[ing] on which rights should be held by which type of minority under particular circumstances" (2004, 379). Likewise, Medda-Windischer's proposal is for a common but differentiated system of protection for minorities. If I borrow her understanding of what minorities are and their broad common claims, and then apply that to the use of minority languages, I too can conclude that the measures of support afforded to speakers of minority languages in the use of those languages should not be based on a broad categorization of languages as "regional minority" or "immigrant" but rather on a case-by-case analysis (see, e.g., Grin 1995). Indeed, it is helpful to think of groups of speakers of old and new minorities as "elements within a language continuum which is dominated by hegemonic languages" (Williams 2013, 362).

It is true, however, that because of this study's descriptive approach, it has retained that broad distinction between old and new minority languages. This is a

reflection of actual policies. Even so, the fact that the study refers broadly to policies for two different types of languages does not mean that it considers every language to be identically situated. In fact, as is stated above, in terms of translation policy, every old minority language is treated differently, and this type of approach would also be helpful when dealing with new minority languages. It would be helpful because it would allow for translation policies to be tailored to each group of speakers depending on contextual factors unique to each group. Thus, instead of adopting a translation policy for all "immigrant languages," policymakers could consider different translation policies for different groups of immigrants, depending on contextual factors. Some policies could be developed for a specific language while others could be developed for groups of similarly situated languages.

To put this in terms of the illustration presented above, the bag-and-shelf-case model would have to be altered so that there would be a larger piece of furniture composed of many shelves. Each shelf would be assigned to one language in particular, and the size and shape of each compartment would be the result of the context that is specific to that language. Of course, it would be rather cumbersome to design a piece of furniture with over 300 individual compartments. (This would be the case if there were a specific translation policy for each language spoken in the UK.) So out of practical necessity, some languages will have to be placed in smaller bags, but what I am claiming in this chapter is that the decision of which languages to place in a bag need not be based strictly on the broad categorization of languages as old or new minority languages. Considerations such as the concentration of speakers in a region or the overall amount of speakers in a city may come to bear. In other words, similarly situated languages could be placed in different bags and then be put on the shelf. Thus, the piece of furniture could potentially have shelves for the old minority languages, shelves for specific new minority languages that are more widely spoken, and several shelves for smaller bags of languages (see Illustration 2).

In essence, for the current analysis, I lean on Medda-Windischer's claim that old and new minorities have claims in common (2009, 94). I highlight that some of these claims are closely linked to issues of language. I then conclude that inasmuch as language issues are handled through language policy, translation plays a role.

This conclusion is based on Meylaerts' claim that, in any multilingual society, the adoption of a language policy implies the adoption of a translation policy (2011, 744). I complement Meylaerts' claim by adding that it is not the existence of a language policy in and of itself that results in translation policy but rather the interaction of that language policy with other policies, including policies that are related to notions of integration, inclusion, or participation.

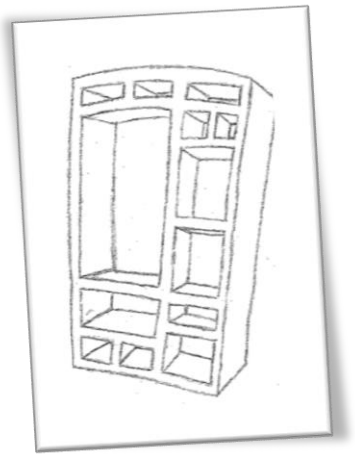

Illustration 2. A shelf-case for all minority languages.

This complement is based on data gathered from the UK for this study, where the dominant language has been English for some time. That dominant position is the result of language policies adopted and imposed over centuries by the English across the British Isles. Historically, these language policies worked in tandem with policies of colonization and assimilation, which meant a general policy of non-translation. As the British state gradually adopted policies that were more tolerant of diversity, language policies in certain regions shifted to favor varying degrees of bilingualism between English and other autochthonous (usually Celtic) languages. This has resulted in different translation policies springing up to favor those degrees of bilingualism. Additionally, human rights and non-discrimination policies have resulted in translation policies for new minority languages.

With this theoretical understanding that old and new minorities have common claims, some of which center around language, and that those claims involve, to a certain degree, translation, I can consider more specifically the research question at the heart of this study: What role does translation policy play in the integration of linguistic minorities?

3. Integration, language, and translation

3.1. What is integration?

In order to consider whether translation plays a role in the integration of linguistic minorities, the term "integration" must first be clarified. The term is tricky, in part because, like other concepts in this study, no universal definition has been agreed upon (Muus 1997, 38). Part of the reason why there is no settled definition is that integration refers to a very broad phenomenon that "takes place at every level and in every sector of society" and involves many individuals and institutions (Medda-Windischer 2009, 247). Thus, it is hard to find a consensus on what exactly is meant by it. This lack of consensus also applies to terms such as inclusion and assimilation (ibid., 389), which can be interpreted to be synonymous with integration.

Matters are complicated even further in that integration can be seen as operating from four different viewpoints, which are distinguishable conceptually but hard to tell apart in a practical sense due to their overlapping natures. Integration may be considered from the individual's point of view as a process in which the individual becomes more fully included. Seen this way, a conceptual distinction can be made between immigrants and individuals belonging to old minorities. The former are generally assumed to be less integrated than the latter. Integration can also be considered from society's point of view. In this case, concerns over integration would be concerns about how to have different groups become more fully included in society. Here, again, a conceptual distinction could be made between measures for integration of new minority groups and old minority groups. In practice, making these distinctions may be very hard, but what becomes apparent from the literature is that concerns over integration are more often expressed with regards to immigrants, who tend to be culturally quite distinct from the receiving state. Below I will present some examples of how integration has been defined in studies dealing with the challenges posed by migration.

Entzinger and Biezeveld attempt to define integration in the context of immigration. They define integration from a sociological perspective, as a characteristic of a social system (such as society) where "[t]he more a society is

integrated, the more closely and the more intensely its constituent parts (groups or individuals) relate to one another" (Entzinger & Biezeveld 2003, 6). This process requires the effort of both the recipient society and the migrants (ibid.). Integration from the society's point of view is a question of how closely the parts of society relate to each other, which is simply another way of saying "social cohesion" (ibid.). From the individual point of view, however, integration can been understood as the incidence of ties or contacts with society and the identification with the larger society (ibid.). Entzinger and Biezeveld lean on Granovetter to indicate that incidence is comprised of frequency ("the number of ties with their surroundings that an individual or a group maintains, as well as to the number of actual contacts with others") and intensity ("the nature of these contacts, and therefore to feelings of belonging and familiarity") (ibid.). Incidence is really a structural element, one which allows "an increase in immigrant participation in the major institutions of a society (e.g. labour market, education, and health care system)" (ibid., 8). On the other hand, there is identity, which is cultural, because it refers to "changes in the immigrants' cultural orientation and identification" (ibid.). They thus distinguish between integration (the structural element) and acculturation (the cultural element) (ibid.) as two different processes.[3] Their definition moves away from acculturation, which implies that immigrants need not necessarily give up their culture in order to become integrated. That is not to say that Entzinger and Biezeveld argue that there is no need for cultural adaptation. They believe that "a certain common basis is deemed necessary to create an atmosphere of mutual understanding in a society" (ibid., 22), again stressing the two-way process. However, this "does not automatically entail a call for full assimilation" (Entzinger & Biezeveld 2003, 22). This definition of integration, then, is one that focuses on a structural process where immigrants have more frequent and meaningful contacts with society's major institutions.

[3] The assumption existed in the past that integration, as a participatory process, and acculturation, as a cultural process, were "two sides of the same coin", but currently it is believed that the relationship between integration and acculturation is "much more complex" than that (Entzinger & Biezeveld 2003, 9).

Also in the contexts of migration, Medda-Windischer offers a working definition of integration. Integration is understood to be "a process of mutual accommodation between immigrants and the majority population, implying a two-way process of adaptation in which minority and majority groups learn from each other and borrow aspects of each other's culture" (2004, 390). Despite the presence of culture in the definition, mutual accommodation is understood to take place, at least in part, through the concept of "civic integration," or "bringing immigrants' rights and duties, as well as access to goods, services and means of civic participation, progressively into line with those of the nationals of the host state, under conditions of equal opportunities and treatment" (Medda-Windischer 2004, 391). Thus, this definition, like the one in the previous paragraph, focuses on a process. This process is one where access to services, including those that facilitate civic participation, leads to a more integrated society. One might also observe that this definition takes into account that integration can be analyzed from the individual's point of view or from society's point of view (ibid., 390). By focusing on adaptation by both the individual and society, this definition distances itself from assimilation, which is understood as "a one-sided process of adaptation to the lifestyle and value systems of the host society" (ibid.). Like the definition in the previous paragraph, there is a sense here that immigrants need not give up their full culture in order for integration to take place.

There are other definitions of integration (e.g., Díaz 1995, 202; Kallen 2010, 160-161), and even helpful non-definitions,[4] but these two definitions are particularly

[4] It is possible to work on integration without actually defining it. Such is the approach often taken by two prominent European institutions that have considered issues of migrant integration, namely the EU and the CoE. For example, the CoE issued a document entitled *Measurement and Indicators of Integration*, which is the result of a three-day conference where nearly 60 delegates from over 20 states evaluated just how to measure migrant integration (Directorate of Social and Economic Affairs 1997, 5). Expectedly, these delegates had different understandings of what integration entails. Instead of attempting to harmonize a number of competing definitions of integration, the CoE highlights the "three basic dimensions" that make up integration—social, economic, and cultural—and suggests that a fourth—the political dimension—also exists in some member states (ibid., 9). In these three or four dimensions, integration is the process of "joining parts (in) to an entity" (ibid.). This is arguably not so

relevant in informing the current study's defining of integration. First, they focus on the structural aspect of integration. In so doing, they stress that integration is a process that involves the individual and the larger society. They also link integration to the concept of participation, where structurally speaking, greater integration means greater participation in public life, e.g., greater interaction with local governments. They acknowledge there is a social aspect to integration as well, but the authors shy away from explicitly linking integration to the concept of assimilation or acculturation.[5] This is not surprising, if assimilation is understood as "making persons with a different culture and tradition shed the essential aspects of that identity and to absorb the culture and tradition of the majority as their new

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much a definition as some broad observations about the concept. After these broad observations, the document goes on to present a number of papers on migrant integration. In turn, the EU has issued a set of *Common Basic Principles for Immigrant Integration Policy in the European Union*. The principles in this document were agreed upon by the justice and home ministers of the EU's member states, so they provide a "unique window on the general direction and content of integration policies across Europe" (Joppke 2007, 3). What they do not provide is a definition of integration. Rather, 19 common principles are offered to policymakers across the EU to assist "in formulating integration policies" (Council of the European Union 2004, 16). Both institutions are faced with the challenge that immigrant integration is understood differently by their member states. Faced with this reality, no definition is explicitly provided in these documents, so in the end the actual definition of the term is left to national policymakers, if they choose to engage in such an activity. Despite the lack of official, or at least uniform, definitions, both institutions are able to work with integration in the contexts of those documents, which seems to mean that, for some purposes, a general notion of what integration is may suffice. The current study, however, chooses to work with a more defined understanding of the concept.

[5] Not everyone agrees that integration and acculturation can be so neatly separated. For example, Kallen defines "ethnic integration" as "the entire set of social processes whereby continuing interaction among members of different ethnic groups within a society leads to changes in the cultural content, structural form, and ethnic identities of those individuals or groups" (2010, 160). She further indicates that as a result of these processes, "some participants may become self-identified, accepted, and socially recognized as full-fledged members of an ethnic group or a society other than the one into which they were born or raised" (ibid.). This study acknowledges that the relationship between what she calls "structural integration" and what she calls "cultural integration" is complex and difficult to parcel but will nonetheless focus on "structural integration," which is presently labeled simply as "integration."

identity" (Eide 2008, 136). While assimilation was seen as acceptable and desirable in the early stages of nation building, the trend now is to move away from espousing assimilation (ibid.), at least publicly. Perhaps because of that, in many European countries, the word integration seems to simply have become a politically acceptable synonym for assimilation (Van Avermaet 2009:17). This study, however, follows after the authors cited above and does not use integration as a synonym for assimilation (or acculturation).

So far this study has attempted to understand what integration is by looking at the integration of immigrants. While the literature on integration often uses the terms immigrant or migrant, it should be stressed that integration problems for "immigrants" can sometimes be seen even in the second and third generation (Gogolin & Oeter 2012, 172), particularly when they can be easily labeled as different, e.g., when they have a different skin color or religion than that of the majority. Integration is, after all, "a difficult and long-term process that operates inter-generationally" (Kymlicka 2001, 30).[6] Consequently, integration cannot simply be restricted, as a concept, to someone who moved from one state to another. This is one of the reasons the term "new minorities" may be more appropriate than "immigrant communities" or simply "immigrants."

Not only is integration a concept that is applicable to some of the descendants of immigrants, it also is applicable to individuals belonging to old minorities. This is so because the definitions of integration explored above contain a focus on increased participation without sacrificing one's cultural identity, a process to be achieved by individuals and society together. This focus can be applied also to old minorities inasmuch as they wish to retain some of the elements that make them unique within the state, without being marginalized for it. Of course, if they wish to become indistinctive from the rest of the state, then they can become fully assimilated. This is a valid choice, but one that is not always desired. It has been observed—quite correctly, I presume—that "many minorities, while aspiring to fuller integration in the societies to which they belong, do not want to lose completely their cultural and

[6] The CoE document mentioned in footnote 4 acknowledges the concern that the integration of immigrants expands beyond the first generation (Directorate of Social and Economic Affairs 1997, 5).

linguistic identity as the price of full admission" (Dunbar 2006a, 191). Like new minorities, there are old minorities who are marginalized, even to the point of having limited access to services, as happens with some Roma communities in Eastern Europe. It is unlikely these old minorities want to lose their identity in order to become fully integrated. In light of past assimilationist tendencies in European states, the concern for old minorities is "the achievement of full participation without the loss of linguistic and cultural identities" (ibid., 192). The concept of participation becomes important in terms of a way to gain greater integration without sacrificing key elements of identity. How to achieve greater participation for old minorities, and thus fuller integration, is a question that should be addressed on a case-by-case basis depending on contextual factors.

The idea presented in the previous paragraph—that the concept of integration applies to old minorities as well—is not original. The OSCE High Commissioner on National Minorities has published the *Ljubljana Guidelines on Integration of Diverse Societies* as a set of recommendations "to provide guidance on how States can work towards increasing integration and social cohesion" (2012, 4). For the guidelines, integration is seen from a societal point of view (integration *of* a society and not integration *into* a society) and is defined as "a dynamic, multi-actor process of mutual engagement that facilitates effective participation by all members of a diverse society in the economic, political, social and cultural life, and fosters a shared and inclusive sense of belonging at national and local levels" (ibid.).

Seen in this light, the idea that integration is a matter that concerns both old and new minorities makes sense. Thus, I will work with a definition of integration that applies to both old and new minorities if integration is understood generally to mean a process that involves the individual and society where individuals are brought closer to other elements of society through increased participation in the public life of the state. This definition stresses that the responsibility lies with the individual and the rest of society. It makes no distinction between individuals belonging to old minorities or new minorities. It focuses on the structural side of integration by concerning itself with greater participation. While the definition does not explicitly rule out assimilation or acculturation, it does not require it. Indeed,

under this definition, integration is brought about by increased participation and not necessarily by increased similarity. I believe this definition sees integration as a way of "taking them [differences] into account and accommodating them to the extent possible and practicable so that individuals may be able to participate in the life of the linguistic or cultural community to which they belong as well as in the life of the wider society of the State as a whole" (De Varennes 1999, 309).

3.2. The role of language in integration

Having first established that, from a theoretical perspective, issues of old and new minorities can be considered together, I have presented a definition of integration that applies to both old and new minorities. With this understanding of integration in hand, this study can now move toward considering the role language plays in the integration of minorities. As it does so, one should remember that, ultimately, "the integrative challenge" is to permit everyone to participate actively in the democratic state (Williams 2013, 79). In this sense, integration is not exclusively about language, but because this study has focused on translation policies, which are developed in specific linguistic contexts, this section will focus on the role of language in integration.

In that light, the consensus seems to be that in order for integration truly to take place, everyone should learn the language of the state, which is usually the majority's language (Van Avermaet 2009, 37; Limbach 2012, 153). This is especially the case when it comes to adult migrants (Kluzer, S., Ferrari, A., & Centeno, C. 2011, 9, 22). It is believed that facilitating "people's learning of the dominant language" is the best way to ensure the protection of rights that have linguistic dimensions (Rubio-Marín 2003, 68). Such consensus is reflected, for example, in the fourth principle of the *Common Basic Principles for Immigrant Integration Policy in the European Union*, which stresses knowledge of the language of the state (Joppke 2007, 5). This is hardly surprising when one considers that the state must choose a language (or a few) to communicate with its inhabitants. In the end, this is a matter of limitations—no human institution as large as a state can possibly be neutral in terms of language. To achieve such neutrality would require the ability to communicate with perfect

fluency in all languages at the same time. As this is out of the question, the state must use one language (or a few, at most) in official capacities (Mowbray 2012, 135). This process, despite being necessary, is neither neutral nor innocent, and consequently has "winners and losers" in terms of access to resources (ibid., 134). Those who can use the language(s) of the state, have greater access to the state and its resources, while those who do not, are left at the margins. In other words, once the state has made such a choice, there are advantages, in terms of integration, to having everyone be able to communicate in the same language. These advantages include increased equality through access to mainstream institutions and greater democratic participation through the capacity to communicate with anyone along the state's territory (Kymlicka 2001, 26). Further advantages to speaking the language of the state include greater access to "economic, social, political, and other opportunities" (Dunbar 2006a, 184). It is no surprise, then, that knowledge of the language of the state is "increasingly seen as conditional for a successful integration" (Entzinger & Biezeveld 2003). This is reflected in international law via instruments such as the FCNM, whose Explanatory Notes indicate that "knowledge of the official language is a factor of social cohesion and integration" (para. 78). It is also reflected in policies adopted locally in places like in the UK, Spain, and Switzerland, where "acquisition of the *dominant official language* is seen as a basic prerequisite for integration"[7] (Tunger et al. 2010, 202).

While it is "widely acknowledged that L2 acquisition is a crucial factor for integration," integration does not hinge on language learning alone (Kluzer et al. 2011, 22). Further, integration "does not necessarily imply full linguistic competence" (ibid.). By extension, integration does not have to result in linguistic assimilation. For some minorities, language is an important element of identity. So while they may be asked to learn the language of the majority to a certain extent, they should not be

[7] States walk a bit of tight rope in terms of language and integration. The assertion that language acquisition is important in order to facilitate integration is assumed to be true. Yet, language should not be imposed in a way that is divisive. In some European countries language acquisition is promoted via punitive measures (Advisory Committee 2012, 13). While this is justified in the name of integration, it ends up becoming "an instrument for exclusion or a gate-keeping mechanism" (Van Avermaet 2009, 36-37; see also High Commissioner on National Minorities 2012, 22).

forced to give up their own language in order to be integrated. Along these lines, international law "has clearly set boundaries to integration policies in that they cannot lead to forced assimilation and abandoning one's own specific identity" (Letschert 2007, 49). This applies to both old and new minorities, which cannot be forced to abandon key elements of their identity (such as their language), even if they are expected to become integrated into the state's economic, social, cultural and political life (ibid., 49-50). Basically, language acquisition is considered an important step in integration, with the caveat that it need not imply full linguistic assimilation of individuals who wish to retain other languages.

In this context, policies aimed at integration should deal with reality, and the reality is that at any given time not everyone in a state will speak the majority's language (McDermott 2011, 117). Even when a person has made the investment and effort to learn a language, they may still lack the necessary skills to interact in some settings. For example, someone who can hold an everyday conversation in the language of the state may find themselves struggling to communicate properly in healthcare situations, due to either a lack of the proper vocabulary or to the stress of the situation, both of which may hamper their communicating in a second language (ibid., 128). Individuals who are unable to communicate in the language of the state find themselves excluded, either in general or in specific situations. Because conflict can arise "when persons or groups feel that they are being excluded from certain processes or opportunities in the public sphere […] derived from their lack of knowledge of the State language(s)" (Holt & Packer 2001, 101), the provision of some services in languages other than the state's can help bring about some degree of integration and thereby help alleviate tensions.

So far this discussion on language and integration has focused on those who do not speak the language of the state—they are expected to learn it, even if not perfectly, without having to lose their own identity in the process, but even then, those who lack the needed proficiency in that language should be given some degree of service in a language that they can understand. Those who lack language proficiency tend to be immigrants. However, some immigrants may speak the language of the state before entering it, and some individuals from old minorities

may struggle to communicate in the language of the state. So these concerns should not be thought of as strictly a challenge with immigrants, but rather a challenge with people who lack proficiency in the state's language, no matter what their origin is.

Inasmuch as individuals belonging to old minorities usually speak the language of the state,[8] the question should rightly be asked as to whether language is an issue at all when addressing the integration of old minorities. The answer is yes, but the issues raised are not exactly the same (at least for bilingual minorities). Because immigrants usually accept that they need to learn the host state's language and interact with it in that language, their primary demands are geared toward allowing their increased integration in the host country despite language differences (Medda-Windischer 2009, 41-42). Old minorities, on the other hand, may demand some degree of autonomy, including in language matters (ibid., 42). That is to say, while they do not necessarily challenge the need to learn the state language, they may wish to grant their own language some level of official recognition. This is where language and integration come face to face. The use of old minority languages in some settings (i.e., language protection) can be a tool for integration in two ways. First, it can help bring about integration because it is a way of fostering good relations among different groups in society. Where one group has been marginalized, the public recognition of its language provides some measure of validation for that group. Northern Ireland has been presented in this study as an example of that. How far to recognize and use one group's language without creating a divide with other groups is a matter that can only be resolved locally, on a case-by-case basis.[9] Second,

[8] The pictured is muddled somewhat in areas where old minorities do not speak the language of the state or where immigrants who do not speak the language of the state formally belong to a well-established old minority in the receiving state. For example, the Romani people have been in Germany since at least the Middle Ages, and they are now joined by Romanis that have more recently immigrated from Hungary, Romania, Slovakia, etc. While these new Romani immigrants belong to the same ethnic group as those already in Germany, language is an issue mainly for the newer Romani and not the well-established Romani in Germany.

[9] One strategy for integrating multilingual societies is "[p]romoting multilingualism for all members of society" (High Commissioner on National Minorities 2012, 54). Encouraging members of the minority to learn the majority's language (which is often already a fact) as well as members of the

the use of the old minority language in official settings can create additional channels for the participation of individuals who speak those languages. Canada and Italy are examples of states were language measures that led to "job opportunities in the civil service and other areas" for linguistic minorities resulted in a "dramatic reduction in education, employment and revenue disparities between a linguistic minority and members of the majority" (De Varennes 2012, 37). This view is consistent with sociolinguistic research that sees recognition and acceptance of society's multilingualism as "an important requirement for the realization of meaningful democracy" because "the constituent groups of the state are better positioned to participate as equals when their cultures and languages are respected and afforded legitimacy through institutional recognition and support" (Ricento 2006, 15).

In this section, then, I have argued that language pertains to integration in two different ways. First, for those who do not speak the language of the state, learning the state's language is essential. They need not learn it perfectly, but at least well enough to be able to communicate in specific settings. This will foster their integration by removing language barriers to participation. Before they are able to learn the language of the state, or if they are unable to for different reasons, their integration is facilitated by allowing them to access the necessary institutions via their own language, or at least via a language they can use to communicate in specific settings. Second, for those who do speak the language of the state but their own language is another, some level of recognition and use of their language in institutional settings allows for greater integration by providing a sense of recognition and by increasing opportunities for participation. The conclusion that follows from these observations is that measures aimed at integrating linguistic minorities cannot be uniform. There is no one-size-fits-all solution for the challenges to integration posed by multilingual populations. Thus, measures for integration of linguistic minorities should be different for individuals who are differently situated. This applies to minority groups as well. Because minority groups are differently

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majority to learn minority languages (especially if they are languages spoken by people with whom one interacts often) can be "collectively enriching and a tool for enhancing mutual understanding and tolerance" (ibid.).

situated in every place, measures for their linguistic integration should be different in every place for every group.

This approach implies a major challenge for policymakers, because these things are hard to quantify. There is no common unit of integration, and there is no formula to be applied. Policymakers cannot hope to add three units of language learning, two units of language support, and four units of minority language recognition in order to gain nine units of integration. Rather, decisions have to be made according to the local needs of each group. Where language classes may be needed in some circumstances, the provision of interpreters might be needed in others, and specific services in a minority language may be needed in yet others. This implies, but does not prove, that translation plays a role in the integration of linguistic minorities. Exactly what that role is will depend on the specifics of each group of speakers.

3.3. The role of translation in the integration of linguistic minorities

Having identified the learning of the state language, the provision of some services through the use of non-state languages, and the protection or promotion of minority languages as possible measures of integration depending on the context, the role that translation plays in each of these areas will now be considered. In so doing, this section will rely on the data regarding the UK presented in the previous chapters.

When individuals in a society can speak the same language, the conditions are created for them to come closer to each other. Because a common language helps foster integration in this way, the conclusion is that people must be encouraged to learn that common language if they do not speak it already. Rubio-Marín (2003) argues, on this point, that learning society's majority language is both a duty and a privilege. This seems to be the general understanding in the UK, where language policies have focused on speakers of new minority languages acquiring English, and also Welsh in Wales (Aspinall & Hashem 2011, 145-146). Whether translation plays a role in second-language acquisition can be approached from a pedagogical standpoint, i.e., from a concern about the use of translation in the classroom, or from a policy standpoint, i.e., from a concern about the effects of translation on language

learning in society. Pedagogically, translation was at one point shunned by educators but more recent empirical studies suggest that some translation activities can be an effective tool for language learning in the classroom (Pym, A., Malmkjær, K., & Gutiérrez-Colón Plana., M. D. M. 2013, 12-33; see also Malmkjær 2010). As interesting as this observation is, I am more concerned with the policy perspective. From a policy perspective, the question is whether the provision of translation results in immigrants not learning the language of the state.

In the UK, where "popular discourse" on the issue "views the ability to speak English as the foundation of 'Britishness'" (Tunger et al. 2010, 196), the question has garnered some controversy. Specifically, the issue has centered on costs, where "the case for spending on interpretation and translation has been juxtaposed against that on ESOL [English for speakers of other languages] […] spawning arguments around whether translation is a barrier to English language acquisition" (Aspinall & Hashem 2011, 146). Costs, especially when they are billed to the public treasure, become political. As tends to happen with all things political, the media has stepped into the debate. It has generally lined up against the use of translation, often focusing on translation as being too expensive and as hindering integration (McDermott 2011, 115-116). In a study of how the British media represented public service interpreting from January 2006 to January 2008, Tipton notes several tendencies in media coverage, including "a tendency to polarise the debate between English language learning and access to translation and interpreting services in terms of an 'either or' choice" (Tipton 2012, 188). A specific example is telling: a recent editorializing piece—suggestively titled "How can you be British without speaking English?"—claims that too many immigrants find ways to avoid learning English precisely because of translation and the use of new minority languages in public services (Buckley 2012). In this media context, where translation and English-language acquisition are presented as opposites, the concern naturally becomes that providing translation services to individuals hinders the learning of English and is an unjustifiable expense. The two objections to translation in public spaces—that translation is too expensive and that it hinders integration—are closely related and will now be addressed.

Costs are usually decried without much context, with headlines that sound something like this: "NHS translation bill tops £23m" (BBC News 2012). Articles tend to include data on how many languages translation takes place into and sound the bell with quotes like: "The organisation [a think tank] described the amount of money spent as 'truly staggering'" (ibid.). What is often lacking is an explanation of why this money is being spent, other than the passing mention that translation is carried out to fulfill legislative obligations. This type of discourse is not surprising in times of austerity, where cutbacks in different types of interpreting have been observed throughout Europe (see Baxter 2013, 242). Yet the rhetoric fails to take into account a demonstrable principle, namely, that multilingualism means costs. In other words, inasmuch as there is a multilingual society, there will be a figurative bill to pay.

Part of the reasons this often goes unacknowledged is that when people think of costs, they tend to think only of money spent. Translation, which comes with an easily identifiable price tag, is easy to be seen in terms of the price paid by public authorities. But there are other costs, not so easily identified. To better understand this, it is helpful to think of costs along the lines outlined by Gazzola and Grin: "primary, secondary, and implicit costs" (2013, 99). Primary costs include written translation and interpreting services as well as their overhead (ibid.). Secondary costs include a wide arrange of costs such as "possible misunderstandings, delays or errors" in the translation process (ibid.). Secondary costs are also to be found in monolingual language regimes due to factors such as reduced productivity stemming from a lack of language skills (ibid.). Implicit costs include costs "borne by […] persons […] who cannot interact in their first language with a public authority" (ibid., 100). Examples of this type of costs include translation and interpreting carried out by these persons, time and money devoted to learning the public authority's language, and the opportunity costs of the resources spent on either translation or language acquisition (ibid.). What is implicit in this description of different type of costs is that any multilingual society will bear costs, whether these be direct, indirect, or implicit.

In the context of the UK, complaints that translation is too costly refer only to primary costs. Secondary and implicit costs are not explored. I am not aware, as of this writing, of any study in the UK that takes into account all three types of costs. Even if such a study did exist, it would not be very helpful if there is nothing to compare it against. In other words, the only way to know if the provision of translation is in fact too costly is to line up the costs of the current translation policies against the costs of a policy of non-translation.[10] If the public authorities were to stop covering the primary costs of translation, these would not disappear; rather, they would be transferred to persons wishing to interact with public authorities. They would become implicit costs. For example, these persons would have to find their own interpreters to attend appointments and sight translate documents. Primary costs would also become secondary costs due to the potential increase in miscommunications flowing from the diminished use of professional interpreters (the drawbacks of non-professional interpreters have been explored by several scholars, cited in chapter 8). Among the secondary costs to be addressed would be health problems that would have to be treated later on as more acute illnesses (due to the increased lack of primary and preventive care stemming from diminished language access, see chapter 8) and also matters like problems linked to workplace and consumer safety. More specific data to help quantify these costs is needed. The lesson here is that multilingualism means costs.[11] The question is then not how to do

[10] Gazzola and Grin have carried out such a study for the EU's multilingual regime and concluded as follows: "Hence, an English-centred language regime would not only be less effective than the current one. It would also probably be much more expensive, once its implicit costs are duly taken into account, as they should be for any proper comparison of costs. In other words, reducing the primary costs of European multilingualism through an English-centred language regime would essentially amount to a shifting of costs to those European citizens whose native language is not English" (2013, 104). While these conclusions apply only to the EU's specific circumstances, they serve to highlight that the issue is not as simple as seeing what the bill was for translation by a certain public body and then declaring that amount to be far too much.

[11] Multilingualism also means benefits. For example, there is clear link between languages and export success (CILT and InterAct International 2006). Here, however, I am not exploring the benefits of multilingualism but rather its costs. Multilingualism seems to be the norm in many places around the

away with these costs, but rather who will bear them. Questions about primary, secondary, and implicit costs are the type of questions policymakers should ask themselves when considering their budgets. For example, a study in the US found that the use of professional interpreters in one hospital had the effect of "reducing length of stay and 30-day readmission rates for LEP [limited English profficiency] patients" (Lindholm, M., Hargraves, J. L., Ferguson, W. J., & Reed, G. 2012, 1299). Another study, which looked at medical malpractice claims against a single insurer in four US states, identified 35 claims as being related to "the failure to provide appropriate language services," and these 35 claims resulted in payments of USD 2,289,000 in damages or settlements and USD 2,793,800 in legal fees (Quan & Lynch 2010, 3). The study concludes that in hospital settings, "[t]he investment in language services is far less than the direct and indirect costs of not providing language services" (ibid., 15). This is the type of data about costs that policymakers would do well to gather and consider.

The main conclusion regarding the concern that translation is too costly is that such a concern seems to be based on an incomplete understanding of what costs really are, including the observation that they cannot be really avoided. Some arrangements are more costly than others, of course, but the way to calculate the cost is not through a simple tally of how much translation or interpreting companies bill a certain public body. Another conclusion is that further research is needed to be able to understand the full costs of translation and the full costs of non-translation. More informed policy choices could be made based on such detailed data.

Ultimately, however, budgetary concerns for translation are a problem depending on the value attributed to the service by the observer (Gazzola 2006, 400). Thus, even once all the computations are worked out by economists, it is in the end a decision of whether society values the benefits of translation enough to pay for them. When considering whether society should pay for these benefits, perhaps some thought should also be given to non-quantifiable considerations, such as the type of society people want to live in. Here, new questions should be asked, including

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world, and what I wish to stress is that given that reality, the costs cannot be made to disappear; rather, they must be managed in the best possible way.

whether we are willing to manage a hospital, a court, a local government, or any local body that systematically places at a disadvantage those who lack proficiency in the main language of the hospital, court, etc. The argument surrounding costs implies that whatever benefits do come out of paying for translation, they are ultimately not worth it.

This is made clear in the oft-stated idea that providing translation to individuals who do not speak the majority's language hinders integration. This is the belief, for example, informing the Communities and Local Government Department's *Guidance for Local Authorities on Translation of Publications* (see chapter 7). Such a belief is not based on empirical data or scientific studies, as acknowledged by said Department (2007a, 11). Rather it is based on the idea that interpreting and written translation provide immigrants with the option of avoiding integration by allowing them to "fall-back" to their native language throughout their lives (Tipton 2012, 199). The reasoning here is that if immigrants are allowed to receive translation, they will always rely only on their native language skills and thus not develop English-language skills. The underlying thinking seems to assume that access to public institutions is the only or the most important incentive to learning English, and if that access is granted to non-English speakers, they will have no compelling reason to develop their English, and if they have no reason to develop it, it follows they will not learn it, and thus they will never become fully integrated.

This logic is problematic for two reasons. The first is that the argument takes a questionable punitive stance. The reasoning that you should "push" people into learning English by making services less accessible is punitive because it in fact considers it acceptable to punish individuals for their lack of English skills. The specific punishment would be exclusion. In essence, the argument is that integration can be brought about by triggering exclusion of those to be integrated. This reasoning is rather questionable, because those who do not speak English are already marginalized, and often the failure to learn English is a consequence of that marginalization; failure to provide translation for those who are seeking access to the state and its resources would further aggravate the exclusion (see Rubio-Marín 2003, 73). The second reason the logic is problematic is that the "fall-back" fear is grounded

on assumptions that create a questionable either-or mentality: either translation or integration. These assumptions, however, can be easily challenged. One need not assume that people who do not speak English in the UK will only (or mainly) learn it to be able to access public institutions. While accessing such institutions in English can indeed be an incentive, there are other incentives to consider, such as being able to carry day-to-day interactions with individuals in the greater society, including neighbors, store clerks, and even strangers on the street as needed. Another powerful incentive is gaining the ability to enter the job market, for which English is essential. True, not all individuals who receive translation can or do learn society's dominant language, but no causal link has been established or disproven between translation and the inability or unwillingness to learn a language. In fact, a number of interpreter are immigrants who did eventually learn the language of the host society (see, e.g., Hlavac 2011, 7). This signals that the either-or dichotomy is not to be relied upon. No wonder Tipton refers to this idea that translation is a route away from integration as "one of the more pervasive fictions generated by the media representations" of translation in the public sphere (Tipton 2012, 199).

It should be noted that despite the pervasiveness of this "fiction," not everyone sees language acquisition and translation in public services as opposites. For example, the CoE's European Commission against Racism and Intolerance considers both "the provision of language courses *and* translation/interpretation services" to be "positive measures to foster integration" (Little 2010, 31-32; emphasis added). My conclusion, then, is that providing translation in public institutions such as hospitals, courts, and local government offices need not be assumed to be a barrier to individuals' learning English. Societies can effectively do both, ensure access to critical services through translation and teach the dominant language as needed (Alanen 2009, 95). Consequently, I do not consider translation in principle to stand at odds with the process of integration. In fact, in some circumstances, translation can be seen as facilitating integration. This is especially the case when dealing with individuals who do not speak the language of the state. When a person does not speak the state's language, certain resources have to be devoted to the task of acquiring that language, including time, money, and effort. Some individuals do not

have one or several of those resources, which can cause them to not be able to develop linguistic proficiency in the language favored by the state. Other factors like lack of literacy, gender differences (especially in the case of women whose responsibilities at home are culturally deemed to be at odds with their taking language classes), and advanced age may limit the ability to acquire that language. In the case of immigrants, length of time in the country can also be a factor, as the less time the immigrant has spent in-country the less likely he or she would be to speak the dominant language (unless the immigrant comes from a country with the same dominant language). I mention this to highlight the point that not everyone speaks the language of the state, and the reasons for that may be very different from person to person.

Whatever the reasons for each individual to lack proficiency in the dominant language, the state, if it aims to be an inclusive state, must find ways to process this linguistically diverse reality so that everyone is included in public life. The key here is to be able to grant such speakers access to public institutions. Granting access to services across a language divide is one way of helping people interact with public institutions, and consequently, of bringing closer together elements of society that would otherwise not interact, or at least, not very successfully. The interaction with these public institutions is important in terms of integration because such interaction provides access to opportunities for increased socio-economic well-being. Without translation, these individuals are excluded not only from the institutions but also from many of the benefits provided by such institutions, benefits that others in society can enjoy due to their language competences. This is not a purely intellectual concern: speakers of Polish and Chinese in Northern Ireland report that some in their communities do not seek out healthcare and other public services because of their embarrassment at not being able to communicate properly in English (McDermott 2011, 127). When the inability to communicate in the dominant language (here: English) keeps people from accessing services that others readily access, exclusion takes place. Thus, ways must be sought to remedy such lack of participation. For people who lack the language skills to use the official language(s), such participation can happen through translation. In this light, it is "important to ensure that minority

communities are provided with the necessary interpretation or translation services" in their interactions with the state (Advisory Committee 2012, 29). In the UK this means that a wide arrange of institutions—including hospitals, courts, and local governments—should be able to accommodate individuals who lack English proficiency. Despite the Department for Communities and Local Government instruction to "think twice" before commissioning a new translation (2007a, 10), there is a "recognition at government level that a degree of commitment to language service provision is needed in the processes of cohesion" or integration (Tipton 2012, 199).

This recognition is especially true among "public authorities operating in areas with significant ethnic minority populations, and is reflected in language policies that those authorities are developing," even if "clear legal obligations" are lacking (Dunbar 2006a, 188). In some of the policy documents adopted by local councils a link between translation and integration is established. All local council policy documents consulted for this study that deal with translation into new minority languages reflect a concern for making services accessible to members of the community who do not speak sufficient English, and in some cases this accessibility is linked to equality and non-discrimination. Additionally, there are policy documents where the connection between translation and integration (or inclusion) is rather obvious. For example, in England, Camden Council's *Accessible Communications Guidance* reads: "Local people and communities in Camden have the right to accurate and timely information that is easy for them to understand. This will enable them to be included in, and to benefit on an equal basis from, all the opportunities and services offered in their local communities" (2010, 2). For those lacking English-language skills, this implies translation. In Wales, Caerphilly County Borough Council's *Strategies Equalities Plan* establishes that in order to "continue to be an inclusive organisation that does not tolerate discrimination" (2012, 3), several strategies are in order, including "written, face-to-face or over-the-phone translations in Welsh and other spoken languages" (ibid., 12). In Northern Ireland, Strabane District Council's *Linguistic Diversity Policy, Procedures and Code of Courtesy* indicates that one of the principles informing the council's translation practices is

"inclusiveness," which is to be achieved through a "commitment to the principles of equality and fostering good relations" as manifested in "events, facilities and programmes [that] are accessible to all" (2011, 3-4). Granting such access may at times require translation. In Scotland, Fife Council's *Access to Information Policy* specifies that one of the Council's aims is to "[p]romote equality and social inclusion by removing barriers to communication and understanding," including through translation (2010, 3).

This understanding of translation as a tool for integration assumes that translation acts as a remedial measure for the short term, not a strategy for communicating in the long term (see Pym 2012, 8). This does not necessarily mean that translation will at some point become unnecessary in society. In other words, specific individuals will move from interacting via translation to interacting in the dominant language, but there will always be individuals who will lack proficiency in the language of the state or who may be proficient in some situations but feel the need to interact through translation in other situations, especially high-risk ones like a deposition or a consultation with an oncologist. Thus, if society is not 100% proficient in the state's language for every situation, then translation services will remain a part of society in order to foster integration. However, they would generally not be for the same people, as individual proficiency in the dominant language would increase over time for many if not most speakers of other languages. So, while translation should be designed for the short term, it would need to be always available for people in special categories or circumstances, such as new arrivals or individuals lacking some level of proficiency in the dominant language. In practice this implies that unless migration diminishes drastically, the UK will continue to have to offer translation for people in such categories, if it wishes to help them integrate into British society.

The discussion has so far focused on translation as a tool for integration across language barriers, a concern that mostly, but not exclusively, applies to individuals belonging to new minorities. In a situation where there is a language barrier, translation in the UK is rooted in instruments such as the *Human Rights Act 1998* and the *Equality Act 2010*. There is a very low threshold to be met in terms of translating

to satisfy these Acts—as long as communication is achieved, the law is abided by. In other words, it is enough to have reactive and ad hoc translation based on need. But translation may play another role in terms of the integration of linguistic minorities, a role that is not about enabling basic communication. To understand what this role is, it is necessary to consider speakers of minority languages who also speak English. In the UK this refers mostly to speakers of old minority languages, but we should not forget that there are also a number of speakers of new minority languages who speak English well. Neither of these groups need rely on translation to communicate. Even so, policies for bilingual speakers of old minority languages and bilingual speakers of new minority languages are not the same. While the latter are expected to communicate in English in their public dealings, some efforts are made to allow the former to communicate with public institutions to some degree in their own languages. As shown throughout this study, the degree varies from language to language, but with every old minority language, translation is involved. In bilingual areas such as those found in the UK, where old minority languages co-exist in official spaces with English, the provision of services in more than one language cannot be carried out without some level of translation, to be done either by outside professionals, in-house employees, or even volunteers. The promotion of some languages through their use in public institutions is meant to signal recognition of the value of those languages, and consequently, of their speakers. This is another way of fostering integration in society—by allowing those who wish to participate to do so in the language of their choice.

This link between translation and the promotion of a language through the provision of services is reflected in some of the policy documents dealing with old minority languages, but it is not as clear as was the case with policy documents dealing with new minority languages. In the case of Welsh, Denbighshire County Council's *Welsh Language Scheme* states: "Our aim is to provide an inclusive and relevant Welsh language service that meets the needs of our residents whether they are fluent Welsh speakers or who are learning the language" (2009, n.p.). Here, services in Welsh are a means to bring about greater inclusion (and, again, to an extent, such service require translation efforts). Why exactly services in a minority

language for a bilingual population bring about inclusion is not addressed. The link is more clearly explained for Gaelic, in Perth and Kinross Council's *Gaelic Language Plan*, which reads: "The number of Gaelic speakers resident in our area form a small but important part of the social fabric of the communities which we serve. Our Gaelic Language Plan recognises their place in our communities and will seek to take Gaelic forward in a way that is both pro-active and proportionate" (2012, 2). What this Gaelic Language Plan says explicitly is what is implied in the Welsh Language Schemes, that the provision of services in a minority language (even when those services could also be accessed in the language of the majority) is a way to recognize that speakers of that minority language are an important part of society. Consequently, efforts to provide services in languages like Gaelic, Irish, or Welsh (with all the translation that implies) signal inclusion of speakers of those languages as a worthwhile part of society in the UK.

What this implies is that translation can play a role in the integration of linguistic minorities who do and who do not speak the language of the state. To understand how this can be, non-discrimination and language promotion are best seen not as two different things but rather as the ends of a spectrum. On one end (let us say, the left side) there are basic non-discrimination measures as they pertain to language and on the other end (let us say the right end) there is full-scale minority language promotion. This spectrum exists against the backdrop of a dominant language. Where there is a dominant language, translation appears at both ends of the spectrum: to help achieve basic linguistic non-discrimination by providing access to services and to help achieve full-fledged linguistic promotion by creating truly bilingual services. If one begins at one side of the spectrum, where translation is intended to create equality of access, one will find occasional, reactive translation only. However, as translation increases and it becomes less occasional and more proactive, it eventually moves into the side of language promotion. When exactly translation moves from one side of the spectrum to the other is hard to tell. There is no precise cut-off point where one ceases to exist and only the other is present. Even the most basic non-discrimination translation measures have a kernel of linguistic promotion in the sense that they allow, for a limited time and in a limited context, the

other language to be used where it would otherwise not be. Likewise, even the most straight forward translation measures to promote a language have some element of non-discrimination because they signal to bilingual speakers of that minority language that their choice to use their language is as valid as the choice to use the majority's language. The point is that there are elements of non-discrimination and language promotion at both ends of the spectrum, and consequently, translating for linguistic minorities can be an element of inclusion at both sides of the spectrum.

This view of a spectrum for minority languages against a backdrop of a dominant language, where on one end there is minimalist non-discrimination and on the other there is full linguistic promotion, is derived from the translation policies observed in this study for the UK. Translation policies for granting increased access and participation for speakers of new minority languages can be placed on one side of the spectrum and translation policies for supporting service provision in old minority languages can be placed on the other side of the spectrum. The UK offers nothing to put in the middle of the spectrum. This is because, in practice, translation policies are aimed at either side of the spectrum, based on whether the language in question is an old or new minority language. In other words, in the UK, this model can only theorize about a middle ground, not point to it. What would such a middle ground look like then? If one begins at the non-discrimination side and starts moving to the right, translation is viewed not so much as simply a way to grant access but also a way to allow for the full participation of speakers. Further movement in that direction would lead to translation as being offered in more or less equal measures for allowing equal, full participation and for recognizing the value of the group of speakers in that particular place. Further movements would finally lead to translation measures aimed mostly at recognition of a linguistic minority. This middle zone would most likely apply to a group of minority language speakers who are non-transient, highly concentrated in that particular area, who speak the dominant language to one degree or another but have a different first language, and (quite bluntly) who have some political clout. This would more than likely be a group that has been established in the state for centuries but continues to receive

newcomers through immigration. No such group exists in the UK, to the best of my knowledge, but the spectrum allows for middle-ground translation policies for them.

Be that as it may, by considering translation policy in the UK as it applies to both old and new minority languages, this thesis has looked at many policy objectives, legal instruments, policy documents, public bodies, and institutions that are pertinent to translation management, practice, and beliefs. The picture that emerges is messy, but even so some general contours become apparent. These broadly outline two approaches: a one-size-fits all approach for speakers of new minority languages, and a regional, custom-made approach for each of the UK's old minority languages. In a way, the treatment of new minority languages represents the minimum non-discrimination/human-rights standard that flows from legislation. The different treatments of old minority languages vary from practically non-existent translation to robust translation efforts in support of linguistic promotion. The distance between the minimum non-discrimination standards and robust language promotion can easily lead one to forget that linguistic non-discrimination for those who do not speak English has a kernel of language promotion, while robust minority language promotion includes an element of non-discrimination even for bilingual speakers. Seen in this light, the distinction between translation policies involving old minority languages and translation policies involving new minority languages becomes harder to justify.

Based on that realization, one can conceive of a more just system for dealing with translation. Such a system would not be so much based upon broad old-vs-new categorizations but rather on the best interests of the speakers involved and society in the specific settings for which the translation policies are developed. Of course, there would always be a need for a lowest-common denominator based on human rights, including the right to non-discrimination, but institutions would benefit from the leeway to adopt translation policies for specific languages without considering the category the language belongs to. Criteria to consider in developing policies around specific languages could include number of speakers, concentration of speakers, practicality of translating, the need to correct current marginalization or exclusion, etc. This would require that the authorities that are closest to the

population invest in assessing the language needs of all linguistic minorities in their respective jurisdictions, regardless of origin. So far in the UK this has only been the case for speakers of old minority languages, and "little effort has been made to identify the language needs of the main minority ethnic communities, notably, South Asians, Black Africans, and Chinese" (Aspinall & Hashem 2011, 146). An approach like this could conceivably result, for example, in the adoption of translation policies specific to Polish in some of the UK's local councils. The extent to which such policies would focus more on non-discrimination or on language promotion would depend on specific contextual factors. Inevitably, some languages would have to be bundled together, but others would receive their own custom-made translation approach. The result would be translation policies that would vary much from one place to another, but always above a minimum threshold. While the thought of it may give some planners a headache, the result would be a more just system where translation is provided in a tailor-made fashion according to the specific needs of each linguistic community.

4. Conclusion

As stated early on in this thesis, little has been said by scholars in terms of the policies that regulate translation in multilingual societies. To help better understand the role of translation policies in such societies, this interdisciplinary study has attempted to map out such policies in the UK, with particular concern for their complex relationship with issues of integration. This process began with an overview of translation obligations under international law. The influence of these can be seen in the UK, where this study explored translation policies as a result of general UK legislation and policy, as well as domain-specific legislation and policy in the four constituent regions of this European state. What arose was not a uniform picture but an uneven development of translation policies based on non-discrimination, equality, and human rights legislation as well as specific language acts and policies. These policies developed also as a result of demographic pressures and historical

considerations. In so doing, I signaled that translation for speakers of new minority languages and for speakers of old minority languages developed along two largely different lines, and in this chapter I have proposed that it need not be so, that translation policies could be developed for different groups of speakers based on their specific local circumstances and not so much on whether the language is autochthonous to the UK or the level of political support it can get.

Seeing languages through this common yet differentiated lens allows for the analysis of the role of translation policies developed in different domains either for speakers of new minority languages generally or for speakers of specific old minority languages. What I have argued is that depending on the particular group's circumstances, translation can be a tool for integration either by providing access to the state's institutions that would otherwise not be provided, by allowing greater participation in the state's institutions by those who lack the language skills to do it in the majority's language, or by facilitating the use of a specific language in public settings so as to recognize the choice by speakers of that language as a valid lifestyle choice. To what extent each of these uses of translation is desirable will depend on a number of contextual factors that need to be taken into account by the authorities closest to the group in question. Thus, having accurate knowledge not only of the number of speakers of different languages, but also of their proficiency in the majority's language and of their specific needs becomes of paramount importance in making wise policy decisions.

This should not be understood to mean that I am advocating that governments should not invest in facilitating the acquisition of the majority language. There is a wide consensus that language acquisition is an important tool for integration, and so governments would do well to spend on it. This chapter has highlighted, however, that in the UK English-language acquisition is often presented as being locked in a zero-sum game with translation in public services for speakers of new minority languages. There is no data to support this either-or mentality. Further, the arguments that pit translation against language-learning seem flawed on several fronts, as explored above, and the concerns over budgetary allotments for translation reflect a value judgment that denies or minimizes the benefits that translation brings

to society. These benefits include the integrative mechanisms described in this thesis. Inasmuch as there is a budgetary concern, it is because of the understanding that priority should be given to those areas of spending that will bring the most benefits combined with the belief that translation does not offer much in terms of benefit or, worse yet, is detrimental, as specified in the thinking that it leads to a lack of integration.

One thing that this chapter helps to highlight is that there is a lack of hard data regarding some of these issues. In essence, there is a need for empirical research pertinent to the translation beliefs that inform the development of policy. New research questions thus arise. Two majors ones are as follows: 1) Do people who receive access to services through translation fail to learn the majority's language?, and 2) Is the full cost of not providing translation lower than that of providing translation? To the best of my knowledge, those studies have not been carried out. In this chapter those questions have not been explored empirically but rather through careful reasoning based on the data gathered regarding translation policies. In the end, these are the types of questions policymakers should be asking themselves, along with others such as: How many speakers of language a, b, and c do we serve? In what concentration are they found and where? How many of them can access our services through English? How many of them need to access our services in another language? Which languages? What specific services can be provided in what languages and for whom? What would be the benefits of providing these services in language a, b, or c? Are any of these groups particularly vulnerable? And so forth. The answers will vary depending on the location, the public body, the services, etc.

Ultimately, what I am saying is that there is no one-size-fits-all solution. There is no one-size-fits-all way to manage multilingualism (Gazzola and Grin 2013, 94), and there is no one-size-fits-all translation policy. This study, consequently, does not aim at creating a template for translation policies, but it does hope to help develop a more complete understanding of how translation is managed and practiced and according to what beliefs, in one particular case. It hopes to highlight the complexity of factors that help shape translation policy, including apparently conflicting pressures. It hopes to point out areas where further research would be needed. But

more importantly, it hopes to indicate that translation can play a role on the integration of linguistic minority groups, whether they speak the language of the state or not.

Because of what this thesis has hopefully shown and argued, I do not believe the best public policy to deal with multilingual populations is institutional monolingualism. In order to allow those positioned as linguistic minorities to integrate as part of the whole of society, varying levels of access, participation, and even recognition have to be negotiated. In short, depending on contextual factors, translation can be an important means to achieve greater inclusion or integration of linguistic minorities. And *that* is all I really wanted to say.

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Annexes

Annex I

List of international instruments referred to in this study

General International Treaties

Charter of the United Nations and Statute of the International Court of Justice

Convention concerning Indigenous and Tribal Peoples in Independent Countries(ILO Convention No. 169)

Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO Convention No. 107)

Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Geneva Convention)

Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Geneva Convention)

Convention on jurisdiction and the enforcement of judgments in civil and commercial matters (Brussels Convention)

Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention)

Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

Convention on the Rights of Child

Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)

Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention)

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

International Covenant on Civil and Political Rights

International Covenant on Economic, Social, and Cultural Rights

European Treaties

Charter of Fundamental Rights of the European Union

Convention for the Protection of Human Rights and Fundamental Freedoms

Convention implementing the Schengen Agreement

Convention on Preventing and Combating Violence against Women and Domestic Violence

European Charter for Regional or Minority Languages

European Convention on Mutual Assistance in Criminal Matters

Framework Convention for the Protection of National Minorities

Treaty on the Functioning of the European Union

EU Framework Decisions

Framework Decision on the European arrest warrant and the surrender procedures between Member States

Framework Decision on the execution in the European Union of orders freezing property or evidence

Framework Decision on the standing of victims in criminal proceedings

EU Regulations

Regulation (EEC) No. 1612/68 on freedom of movement for workers within the Community Regulation (EC) No. 40/94 on the Community trade mark

Regulation (EEC) No. 574/72 laying down the procedure for implementing Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self employed persons, to self-employed persons and to their families moving within the Community

Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims

Regulation (EC) No. 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No. 1348/2000, as amended from time to time and as applied by the Agreement made on 19 October 2005 between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil and commercial matters

Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations

Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters

EU Directives

Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof

Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status

Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

Directive 2011/99/EU on the European protection order

Directive 2012/13/EU on the right to information in criminal proceedings

Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

Annex II

List of international cases referred to in this study

Human Rights Committee

Diergaardt (late Captain of the Rehoboth Baster Community) et al. v. Namibia, Communication No. 760/1997, U.N. Doc. CCPR/C/69/D/760/1997 (2000)

Guesdon v. France, Communication No. 219/1986, U.N. Doc. CCPR/C/39/D/219/1986 (1990)

European Commission of Human Rights

Fryske Nasjonale Partij v. Netherlands, 45 Decisions and Reports (E. Commission of HR) (1986) p. 240

Inhabitants of Leeuw – St. Pierre v. Belgium, 8 Yearbook of the European Convention on Human Rights (1965) p. 338

Isop v. Austria, 5 Yearbook of the European Convention on Human Rights (1962), p. 108

X v. Ireland, 13 Yearbook of the European Convention on Human Rights (1970) p. 792

European Court of Human Rights

Brozicek v. Italy, (Application no. 10964/84) Judgment of 19 December 1989

Coban (Asim Babuscum) v. Spain, (Application no. 17060/02) decisions of 06 May 2003 and 25 september 2006

Čonka v. Belgium, (Application no. 51564/99) Judgment of 5 February 2002

Cuscani v. United Kingdom, (Application no. 32771/96) Judgment of 24 September 2002

Kamasinski v. Austria, (Application no. 9783/82) Judgment of 19 December 1989

Luedicke, Belkacem and Koç v. Germany, (Application no. 6210/73; 6877/75; 7132/75) Judgment 28 November 1978

Panasenko v. Portugal, (Application no. 10418/03) Judgment of 22 August 2008

Uçak v. United Kingdom, (Application no. 44234/98) Decision of 24 January 2002

Van der Leer v. Netherlands, (Application no. 11509/85) Decision of 21 February 1990

Court of Justice of the European Union

Criminal Proceedings against Horst Otto Bickel and Ulrich Franz [1998] ECR I-07637

Farrauto v. Bau-Berufsgenossenschaft [1975] ECR 157

Ministère Public v. Mutsch [1985] ECR 2681

Annex III

List of laws in the United Kingdom referred to in this study

Act of Sederunt (Rules of the Court of Session 1994) 1994 (S.I. 1994/1443)

Administration of Justice (Language) Act (Ireland) of 1737 (11 Geo. 2 c. 6[I])

British Nationality Act 1981 (c. 61)

Broadcasting Act 1980 (c. 64)

Broadcasting Act 1981 (c. 68)

Court of Justice Act 1731 (4 Geo. 2 c. 26)

Courts Act 2003 (c. 39)

Crime (International Co-operation) Act 2003 (c. 32)

Criminal Evidence (Northern Ireland) Order 1999 (S.I. 1999/2789) (N.I. 8)

Criminal Procedure Rules 2011 (S.I. 2011/1709)

Criminal Procedure Rules 2012 (S.I. 2012/1726)

Disability Discrimination Act 1995 (c. 50)

Education (Scotland) Act 1872 (35 and 36 Vict. c. 62)

Education Reform Act 1988 (c. 40)

Electoral Administration Act 2006 (c. 22)

Electoral Law Act (Northern Ireland) 1962 (c. 14)

Electoral Registers Act 1949 (c. 86)

Electoral Registers Act 1953 (c. 8)

Employment Equality (Age) Regulations 2006 (S.I. 2006/1031)

Employment Equality (Religion or Belief) Regulations 2003 (S.I. 2003/1660)

Employment Equality (Sexual Orientation) Regulations 2003 (S.I. 2003/1661)

Equal Pay Act 1970 (c. 41)

Equality Act (Sexual Orientation) Regulations 2007 (S.I. 2007/1263)

Equality Act 2006 (c. 3)

Equality Act 2010 (c. 15)

European Parliamentary Elections Regulations 2004 (S.I. 2004/293)

Family Law (Northern Ireland) Order 1993 (S.I. 1993/1576) (N.I. 6)

Family Procedure Rules 2010 (S.I. 2010/2955)

Family Proceedings Rules (Northern Ireland) 1996 (S.R. 1996/322)

Gaelic Language Act 2005 (asp 7)

Geneva Conventions Act 1957 (c. 52)

Government of Ireland Act 1920 (c. 67)

Government of Wales Act 1998 (c. 38)

Government of Wales Act 2006 (c. 32)

Health Act 2009 (c. 21)

Health and Social Care Act 2008 (c. 14)

Human Rights Act 1998 (c. 42)

Justice Act (Northern Ireland) 2011 (c. 24)

Laws in Wales Act 1535 (27 Hen. 8 c. 26)

Laws in Wales Act 1542 (34 and 35 Hen. 8 c. 26)

Local Elections (Northern Ireland) Order 2010 (S.I. 2010/2977)

Local Elections (Principal Areas) (England and Wales) Rules 2006 (S.I. 2006/3304)

Local Government (Scotland) Act 1973 (c. 65)

Local Government Act 1888 (51 & 52 Vict. c. 41)

Local Government Act 1972 (c. 70)

Local Government and Public Involvement in Health Act 2007 (c. 28)

Mental Health (Amendment) Act 1982 (c. 51)

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

Mental Health Act 2007 (c. 12)

North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 (S.I. 1999/859)

Northern Ireland Act (St Andrews Agreement) 2006 (c. 53)

Northern Ireland Act 1998 (c. 47)

Northern Ireland Constitution Act 1973 (c. 36)

Patient Rights (Scotland) Act 2011 (asp 5)

Personal Care at Home Act 2010 (c. 18)

Proceedings in Courts of Justice Act 1730 (4 Geo. 2 c. 26)

Race Relations Act 1976 (c. 74)

Race Relations (Amendment) Act 2000 (c. 34)

Race Relations Order (Northern Ireland) 1997 (S.I. 1997/869) (N.I. 6)

Representation of the People (Armed Forces) Act 1976 (c. 29)

Representation of the People Act 1983 (c. 2)

Returning Officers (Scotland) Act 1977 (c. 14)

Scotland Act 1998 (c. 46)

Scotland Act 2012 (c. 11)

Sex Discrimination Act 1975 (c. 65)

Welsh Courts Act 1942 (c. 40)

Welsh Language Act 1967 (c. 66)

Welsh Language Act 1993 (c. 38)

Welsh Language Measure 2011 (nawm 1)

Annex IV

List of cases in the United Kingdom referred to in this study

Gwynedd County Council v. Jones ([1986] ICR 833)

Mac Giolla Cathain ([2010] NICA 24)

Mandla v. Dowell Lee ([1983] 2 A.C. 548)

Taylor v. Haughney (1982 Scottish Criminal Case Reports 360)

Annex V

List of policy documents in each region of the United Kingdom referred to in this study

England

50 Ways to Save
Guidance for Local Authorities on Translation of Publications

Cornwall only

Cornish Language Development Strategy

Northern Ireland

A Shared Future
Best Practice Guidelines on the Use of Interpreters
Best Practice Guidelines on the Use of Translation
draft Strategy for Protecting and Enhancing the Development of the Irish Language
draft Strategy for Ulster Scots Language, Heritage and Culture
Guidance on Meeting UK Government Commitments in Respect of Irish and Ulster Scots
Racial Equality in Health and Social Care: A Short Guide to Good Practice in Service Provision
Racial Equality in Health and Social Care: Good Practice Guide

Scotland

Charter of Patient Rights and Responsibilities

Fair for All

Growth and Improvement

Wales

A Living Language: A Language for Living

Iaith Pawb: A National Action Plan for a Bilingual Wales

More than Just Words

Annex VI

List of local government councils in the United Kingdom whose translation policies were analyzed for this study

England

Adur District Council
Allerdale Borough Council
Ashford Borough Council
Aylesbury Vale District Council
Barrow in Furness Borough Council
Basildon Borough Council
Bath and North East Somerset Council
Bournemouth Borough Council
Bracknell Forest Borough Council
Brent London Borough Council
Bristol City Council
Bromley London Borough Council
Bury Borough Council
Calderdale Metropolitan Borough Council
Camden London Borough Council
Cherwell District Council
Cheshire East Council
City of London
Corby Borough Council
Cornwall Council
Coventry City Council
Crawley Borough Council
Croydon London Borough Council
Cumbria County Council

Darlington Borough Council

Daventry District Council

Derbyshire Dales District Council

Doncaster Metropolitan Borough Council

Dudley Metropolitan Borough Council

Durham County Council

Ealing London Borough Council

East Devon District Council

East Lindsey District Council

Eastbourne Borough Council

Enfield London Borough Council

Erewash Borough Council

Essex County Council

Exeter City Council

Fenland District Council

Fylde Borough Council

Gateshead Metropolitan Borough Council

Gedling Borough Council

Hampshire County Council

Havant Borough Council

Havering London Borough Council

Hertfordshire County Council

Hinckley and Bosworth Borough Council

Hounslow London Borough Council

Islington London Borough Council

Kettering Borough Council

King's Lynn and West Norfolk Borough Council

Lambeth London Borough Council

Lancashire County Council

Leicestershire County Council

Lincolnshire County Council

Liverpool City Council

Mansfield District Council

Medway Council

Mid Devon District Council

Mid Suffolk District Council

New Forest District Council

North Devon District Council

North East Derbyshire District Council

North Kesteven District Council

North Somerset District Council

North Tyneside Metropolitan Borough Council

Northampton Borough Council

Northumberland County Council

Norwich City Council

Nuneaton and Bedworth Borough Council

Oadby and Wigston Borough Council

Oxfordshire County Council

Pendle Borough Council

Peterborough City Council

Plymouth City Council

Reading Borough Council

Ribble Valley Borough Council

Richmond upon Thames London Borough Council

Rotherham Metropolitan Borough Council

Runnymede Borough Council

Ryedale District Council

Scarborough Borough Council

Sefton Council

Selby District Council

Shepway District Council

Shropshire Council

Slough Borough Council

South Bucks District Council

South Cambridgeshire District Council

South Gloucestershire Council

South Hams District Council

South Holland District Council

South Ribble Borough Council

South Tyneside Metropolitan Borough Council

Spelthorne Borough Council

Staffordshire Moorlands District Council

Sunderland City Council

Tamworth Borough Council

Tendring District Council

Thanet District Council

Thurrock Council

Trafford Metropolitan Borough

Waveney District Council

West Dorset District Council

West Lindsey District Council

Wolverhampton City Council

Northern Ireland

Antrim Borough Council

Ards Borough Council

Armagh City and District Council

Ballymena Borough Council

Ballymoney Borough Council

Banbridge District Council

Belfast City Council

Carrickfergus Borough Council

Castlereagh Borough Council

Coleraine Borough Council

Cookstown District Council

Craigavon Borough Council

Derry City Council

Down District Council

Dungannon and South Tyrone Borough Council

Fermanagh District Council

Larne Borough Council

Limavady Borough Council

Lisburn City Council

Magherafelt District Council

Moyle District Council

Newry and Mourne District Council

Newtownabbey Borough Council

North Down Borough Council

Omagh District Council

Strabane District Council

Scotland

Aberdeen City Council

Aberdeenshire Council

Angus Council

Argyll and Bute Council

City of Edinburgh Council

Clackmannanshire Council

Comhairle nan Eilean Siar

Dumfries and Galloway Council

Dundee City Council

East Ayrshire Council

East Dunbartonshire Council

East Lothian Council

East Renfrewshire Council

Falkirk Council

Fife Council

Glasgow City Council

Highland Council

Inverclyde Council

Midlothian Council

Moray Council

North Ayrshire Council

North Lanarkshire Council

Orkney Islands Council

Perth and Kinross Council

Renfrewshire Council

Scottish Borders Council

Shetland Islands Council

South Ayrshire Council

South Lanarkshire Council

Stirling Council

West Dunbartonshire Council

West Lothian Council

Wales

Blaenau Gwent County Borough Council

Bridgend County Borough Council

Caerphilly County Borough Council

Cardiff Council

Carmarthenshire County Council

Ceredigion County Council

Conwy County Borough Council

Denbighshire County Council

Flintshire County Council

Gwynedd Council

Isle of Anglesey County Council

Merthyr Tydfil County Borough Council

Monmouthshire County Council

Neath Port Talbot County Borough Council

Newport City Council

Pembrokeshire County Council

Powys County Council

Rhondda Cynon Taf County Borough Council

City and County of Swansea

Torfaen County Borough Council

Vale of Glamorgan Council

Wrexham County Borough Council

Annex VII

List of healthcare trusts or boards in the United Kingdom whose translation policies were analyzed for this study

England - NHS Trusts

Airedale NHS Foundation Trust
Alder Hey Children's NHS Foundation Trust
Ashford and St Peter's Hospitals NHS Foundation Trust
Barnet and Chase Farm Hospitals NHS Trust
Barts and The London NHS Trust
Birmingham Women's NHS Foundation Trust
Brighton and Sussex University Hospitals NHS Trust
Buckinghamshire Healthcare NHS Trust
Calderdale and Huddersfield NHS Foundation Trust
Cambridge University Hospitals NHS Foundation Trust
Central Manchester University Hospitals NHS Foundation Trust
Chesterfield Royal Hospital NHS Foundation Trust
City Hospitals Sunderland NHS Foundation Trust
Clatterbridge Centre For Oncology NHS Foundation Trust
Croydon Health Services NHS Trust
Dartford and Gravesham NHS Trust
Ealing Hospital NHS Trust
East and North Hertfordshire NHS Trust
East Cheshire NHS Trust
East Lancashire Hospitals NHS Trust
Gloucestershire Hospitals NHS Foundation Trust
Great Western Hospitals NHS Foundation Trust
Heart Of England NHS Foundation Trust
Heatherwood and Wexham Park Hospitals NHS Foundation Trust

Homerton University Hospital NHS Foundation Trust

Ipswich Hospital NHS Trust

King's College Hospital NHS Foundation Trust

Liverpool Women's NHS Foundation Trust

Luton and Dunstable Hospital NHS Foundation Trust

Maidstone and Tunbridge Wells NHS Trust

Mid Essex Hospital Services NHS Trust

Northampton General Hospital NHS Trust

Northern Lincolnshire and Goole Hospitals NHS Foundation Trust

Pennine Acute Hospitals NHS Trust

Royal Cornwall Hospitals NHS Trust

Scarborough and North East Yorkshire Health Care NHS Trust

St George's Healthcare NHS Trust

The Christie NHS Foundation Trust

The Princess Alexandra Hospital NHS Trust

The Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust

The Royal Wolverhampton Hospitals NHS Trust

The Walton Centre NHS Foundation Trust

University College London Hospitals NHS Foundation Trust

University Hospital Birmingham NHS Foundation Trust

University Hospital Of North Staffordshire NHS Trust

University Hospitals Bristol NHS Foundation Trust

University Hospitals Coventry and Warwickshire NHS Trust

Warrington and Halton Hospitals NHS Foundation Trust

Weston Area Health NHS Trust

Wirral University Teaching Hospital NHS Foundation Trust

Worcestershire Acute Hospitals NHS Trust

Wrightington, Wigan and Leigh NHS Foundation Trust

York Hospitals NHS Foundation Trust

Northern Ireland – Health and Social Care Trusts

Belfast Health and Social Care Trust

Northern Health and Social Care Trust

South Eastern Health and Social Care Trust

Southern Health and Social Care Trust

Western Health and Social Care Trust

Scotland - NHS Boards

NHS Ayrshire and Arran

NHS Borders

NHS Dumfries and Galloway

NHS Fife

NHS Forth Valley

NHS Grampian

NHS Greater Glasgow and Clyde

NHS Highland

NHS Lothian

NHS Lanarkshire

NHS Orkney

NHS Shetland

NHS Tayside

NHS Western Isles

Wales - Local Health Boards

Abertawe Bro Morgannwg University Health Board

Aneurin Bevan University Health Board

Betsi Cadwaladr University Health Board

Cardiff and Vale University Health Board

Cwm Taf University Health Board

Hywel Dda University Health Board

Powys Teaching Health Board

Annex VIII

Sample Freedom of Information Request

Note: Every FOI request was slightly different, depending on the information I already had available regarding the institution the request was addressed to. This is a sample request that was made to a specific public body, but any identifying information has been removed.

1. Could you please forward to me (via e-mail) a copy of [your] current interpretation and/or translation policies, if available?

2. I prefer the actual policy (or guidance) documents, but if there are no such documents, could you please forward to me the following information:

A. Regarding immigrant languages:

i. What translation services does [your organization] offer for speakers of community languages? Are these translations done in-house or contracted out?

ii. What interpreting services does the council offer? Is there a language line? Are there face-to-face interpreters? If so, are these interpreters in-house employees or outside contractors or something else?

B. Regarding minority languages:

i. Does the council offer written translation into [old minority language A] or [old minority language B]? If so, are translations done in-house or contracted out?

ii. Does the council offer interpreting into [old minority language A] or [old minority language B]? If so, are interpreters in-house employees or outside contractors or something else?

C. Generally, does the council automatically translate into any languages? If so, which ones?

Annex IX

Acronyms used in this study

CIC	Commission on Integration and Cohesion
CoE	Council of Europe
CRC	Convention on the Rights of Child
DCAL	Department of Culture, Arts, and Leisure
DHSSPS	Department of Health, Social Services and Public Safety
IER	Individual Electoral Registration
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECRML	European Charter for Regional or Minority Languages
ECtHR	European Court of Human Rights
EU	European Union
FCNM	Framework Convention for the Protection of National Minorities
HRC	Human Rights Committee
HSC	Health and Social Care
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
NHS	National Health Service
NIHRC	Northern Ireland Human Rights Commission
NIHSSIS	Northern Ireland Health and Social Services Interpreting Service
NRPSI	National Register of Public Service Interpreters
OSCE	Organization for Security and Co-operation in Europe

SGHSCD	Scottish Government Health and Social Care Directorates
STEP	South Tyrone Empowerment Program
UK	United Kingdom
UN	United Nations
US	United States
WITS	Wales Interpretation and Translation Service