PANAGANI

ESSAYS IN HONOR OF
BONIFACIO P. SIBAYAN
ON HIS SIXTY-SEVENTH BIRTHDAY

Andrew Gonzalez, FSC
Editor

Manila
Linguistic Society of the Philippines
1984

LANGUAGE PLANNING AND HUMAN RIGHTS

J. V. NEUSTUPNÝ
Monash University

1. LANGUAGE PLANNING AND HUMAN RIGHTS

The relationship between language planning [1] and human rights has failed to establish itself as a standard component of discussions in the discipline. It is obvious that any act of language planning seriously affects language rights of members of the community concerned. Yet, little has been done so far to clarify various aspects of the process in a systematic manner. Literature pertaining to the selection or exclusion of languages for certain functions, for instance that of the official language or the language of education, has been copious, and the problem of human rights in that area has been well noted (cf. Kloss 1971, Cobarrubias 1983). However, the ways in which less extensive acts of deliberate language change touch upon the rights of groups or individuals has received very little attention.

Deliberate individual changes in spelling, pronunciation, morphology, syntax or lexicon are carried out as corrective acts aiming at an improvement of the communication system. If successful, they enhance language rights of at least some individual members of the community or whole social groups. At the same time, by disturbing the existing patterning of the system, they deprive established users of their right to use previously acquired rules. Such changes correct thus certain communicative inadequacies while creating new ones. It is for the community concerned to decide which of the inadequacies will eventually be removed.

In this brief note I shall limit my discussion to one particular case of rules for naming newly born children, as established and questioned in the period of the Japanese postwar language reforms (cf. Daniels 1978, Neustupný 1983).

2. NAMING NEWLY BORN CHILDREN IN JAPAN

Until 1947 the Japanese legal system did not impose any constraints on given names of Japanese citizens. However, article 50 of the Family Registration Law (Kosekihoo), enacted in December 1947, specified that for 'names of children, common and easy (jooyoo heii) characters must be used'. The definition of the range of 'common and easy' characters was entrusted to a ministerial order. This was issued in the form of Article 60 of the Family Registration Law Enforcement Regulations on 29 December 1947 and defined the range as either kana (the Japanese syllabic writing) or the Characters for General Use (tooyoo kanji); the latter is a set of 1850 Chinese

[1]The author is grateful to Chin Liew Ten for his valuable comments on the draft of this paper. Needless to say, the author alone is reponsible for any errors or defects in the text of the paper. The model of language planning used here employs the term 'language correction' as the widest term of reference. Deliberate language correction is 'language treatment' and a highly rigorous system of language treatment is 'language planning'. For further discussion cf. Jernudd 1983, Neustupný 1983.

characters which had been approved by the Government for use in the public sphere of communication in November 1946. The restrictions imposed in this way were radical. Of course, already registered names were not affected. However, for newly registered names hundreds of characters were now excluded. Some very common names, such as boys' names ending in -hiko, could not be registered any more. Parents who were inclined to employ a wide variety of characters for names of their children lost their previous 'right' to do so.

Language rights are prone to be thought of as rights to exercise the *representative* (referential) function of language, i.e. as rights to express particular messages, to describe, make statements or explain one's thoughts and attitudes in a coherent systematic way. This function is present in the case of name giving, for instance when the order of birth of an offspring is communicated through the sue of a numeral in his name (cf. Latin Primus, Secundus . . . Japanese *Ichi*roo, Koo*ji*, Take*sabu*roo . . .).[2] However, postwar Japanese restrictions on name giving did not seem to be challenged on the ground that a certain meaning could not be communicated. Also, the necessity to discriminate one's child from other children by giving it a different name does not appear to have played an important role in the resistance to the 1947 naming regulations. It was obvious that the characters retained by the government produced sufficient combinations to fulfill the discriminative function. The basic arguments invoked considerations other than the representative function.

Among various functions of language in the naming of children, the *symbolic* and *esthetic* functions of language are very important. Parents use names as symbols of their ethnic, political, social, religious or family allegiances. In Japanese some given names are class symbols (e.g. male names in -omi normally indicate a man of the upper class), religious symbols (e.g. Soshin is normally a son of a Buddhist priest) or symbols of family continuity (e.g. when one or two characters of the father's name is used in the name of his sons). Similarly, names are selected by parents because of their esthetic qualities – either their sound or characters.

Language rights are perceived by speakers as including the right to perform the symbolic and esthetic functions (and other functions – cf. Robinson 1972) of language. Resistance to language reforms is frequently based on the feeling that one's right of symbolic and esthetic, rather than 'representative', expression have been negatively affected. In the case of the Japanese name-giving reforms of 1947 one of the basic problems was that many characters serving these two functions were excluded.

In 1950 a decision of the Mayor of the City of Chigasaki (Kanagawa Prefecture) not to register names of two children was contested in the Yokohama Family Court. The complainant was K. Matsubara, who insisted on registering the names of his two daughters born in September 1948 and December 1949 as 瑛美 (Emi) and 玖美 (Kumi) respectively. This selection of characters had little to do with the meaning of the characters. The names are not words of the Japanese language. The sound shape Emi is used as a

[2]As Fujio Minami has pointed out (Iwabuchi-Shibata 1964:159), contemporary Japanese parents sometimes consciously avoid names with particular meanings.

hint to the Western name Emily and is often used for mixed blood children. The shape Kumi is traditionally used for girls' names, but has no single clear meaning. It is true that the second character selected by the parents, mi 美, means 'beautiful', but apart from this meaning the repeated use in both names is used as a symbol of both girls belonging to the same family. Anyway, this character was an 'approved' one. The problem was in the characters selected for 'e' and 'ku'. In Japan these characters were hardly ever used except phonetically in given names. Other characters are available for the same purpose, but the two seem to have been selected because their left side element hints at the meaning 'precious stone', and as such are the most 'exotic', 'beautiful' ones. The mixture of some representative function with the symbolic and esthetic functions in this naming act is obvious.

The registration was refused by the City Office on the grounds that the first of the two characters used for each of the two names was not a Character for General Use, and was therefore outside the range of characters approved. The case was decided against the complainant, who subsequently appealed to the Tokyo High Court. The appeal was dismissed in a decision handed down on 9 April 1951. The following account of arguments involved relies on the text of the High Court decision (Tokyo High Court, Showa 26, RA, No. 7).

The complainant's argument was based on the following points:

1) Restrictions on name-giving violate basic human rights and in particular article 21 of the Constitution which guarantees freedom of expression. Hence, article 50 of the Family Registration Law is unconstitutional.
2) Even should this not be the case, the use of the General Use Characters stipulated in article 60 of the Enforcement Regulations issued by the Ministry of Justice is inappropriate. The preamble of the List of General Use Characters states explicitly that 'since many legal and other problems are connected with the writing of proper names, the question will be considered separately'. Hence, the List should not be used to specify the range of approved characters.
3) Naming of children is decided by parents and only 'reported' (todokeru) to the City Office. Since the names 瑛美 and 玖美 have been decided upon by the parents, any other reporting would be a case of 'false reporting' and should be punishable under article 157 of the Penal Code.

When justifying their decision the three judges of the Tokyo High Court admitted that restrictions on the use of characters for given names constituted a restriction of freedom. They noted, however, that the Japanese Constitution was not based on the principle of unrestricted freedom. Freedom can be constrained because of public welfare interests (kookyoo no fukushi; cf. article 13 of the Constitution). Of course, the judges said, the question is whether restricting the number of characters for name-giving can be established as a matter of public welfare.

The judges argued that names are given for social use. Should people live separately on remote islands there would be no need for names. Within

a modern society in which transport and means of communication have greatly advanced and where interaction between individuals has assumed a multiplicity of forms, 'the use of rare and difficult names negatively affects the interests of others'. For instance, the printing of newspapers and official announcements requires keeping or instantaneous making of a large number of characters, rendering almost impossible or at least strongly impaired the use of monotype or linotype, printing in general, and the use of typewriters. Besides, the use of such characters downgrades the efficiency of office work, public as well as private use of telegraph, telephone and the radio, and becomes the source of many errors on these occasions.

Name is thus not merely a matter of the person concerned. It must be admitted that it is an issue of public welfare. Hence, neither article 50 of the Family Registration Law nor article 60 of the Ministry of Justice Enforcement Regulations can be considered as unconstitutional.

Moreover, the Court upheld the right of the Ministry of Justice to define the range of approved characters by quoting the List of General Use Characters, rather than enumerating them one by one. The question whether the selection involved was correct or does not affect the binding force of the law. The third argument of the complainant, concerning the problem of 'false reporting', was also rejected by the Court.

No further appeal was lodged and the case was thus closed. However, the incident is considered to have contributed to the increased speed with which National Language Council finalized its List of Given Name Characters, containing an additional 92 characters, which was accepted by the Ministry of Justice only a month after the Court decision discussed above.

It is necessary to realize that the significance of the case was overwhelming. No other postwar language reform was challenged in the Court; should the complainant have won, the consequences for the postwar Japanese language treatment may have been far reaching.

3. SIGNIFICANCE OF THE JAPANESE CASE FOR HUMAN RIGHTS

The case described above is of interest to the question of human rights from at least three points of view.

3.1. Language rights and freedom of expression

The complainant claimed that the name-giving restrictions of the Family Registration Law violate the principle of free expression. Indeed, when language rights are discussed, the category *freedom of expression* seems to be closest at hand.

Some language rights can certainly be identified as specific cases of the freedom of expression. Through making available or unavailable a particular language or its part (words, letters, etc.), language users may be affected positively or negatively in their ability to 'express' certain content. However, it is important to realize that the content of what is expressed is not necessarily 'representative'. As mentioned above, given names not only 'represent' some particular concepts, but also 'symbolize' social relationship (ethnic, political, class, religion, family, etc.) and carry esthetic values. In many cases – and this also appears to be the case with Japanese name-giving

– these symbolic and esthetic considerations are equally strong, if not stronger, than the question of representation of concepts or ideas.

It is interesting to note that when the Tokyo High Court considered the above-mentioned case, it tacitly accepted this right (without naming it), but posited against it the concept of public welfare. However, the judges did not argue that this public welfare would consist of the freedom of expression of the community at large. They conceived of the 'public welfare' as the right of the media, communications services and administrative bodies to operate smoothly and economically, without the necessity to handle unusual names. Let us call this the *minimum-effort right.* In the area of communication this implies the right of language users to receive and produce messages (for further transmission) which are processed with the minimum amount of effort.

In modern societies in particular the right of minimum effort[3] is highly valued in language treatment. It underlies all those language reforms and regulations which aim at the 'rationalization' of language: script reforms, removal of classical standards, regulations concerning the use of the national language in courts, administration and public life, and many other areas.

Apart from the expression right and the right of minimum effort, language rights are obviously also *property* rights. Language is a tool of communication and as a tool it is owned by its speakers. However, the tool only exists in particular speech acts. Thus, any action towards depriving a speaker of participating in speech acts using the language in question, de facto takes away from him the tool. This is true of changes affecting whole languages (such as deposing a variety of languages from the position of an official language) as well as of partial changes (such as removal or addition of new lexical items, orthography rules etc.).

In the case Marubara vs. Mayor of Chigasaki the question of the language property right was not directly raised. However, it is my contention that it played a role in the attitude of the public to the 1947 naming reform. The existing rules being changed, users were deprived of the right to apply the established rules of naming, which were their 'property'. The state of confusion which followed the reforms (cf. Nishio 1964:122) meant that parents were refused registration of names unless they agreed with the new 'naming language'. Some of the parents (such as Matsubara) took this as a violation of their right of free expression. Other parents may not have felt that they wanted to express a particular message but felt inconvenienced (i.e. deprived of their right of minimum effort) when forced to reselect the name. Still others probably gave a negative evaluation simply because they detested the fact that they were deprived of the rules which were their established property and were forced to alter these.[4]

[3]Note that for some jurists what I call the 'right of minimum effort' is not a right but a matter of policy or simple convenience. For such scholars 'public welfare' is not a right (cf. Dworkin 1977:90). The distinction may be important, but I am not in a position to discuss it here.

[4]It could be asserted that normally a violation of the property right leads to the violation of free expression as well as violation of the right of minimum effort. However, as the above example shows, this is not necessarily true. Another case of a similar nature obtains when property rights to a speaker's second language are affected.

The lesson we can learn here for a future theory of language rights is that the right of free expression is not the only one – a fuller list of rights must be identified and discussed.

3.2. Whose rights are violated?

An important question is who is the subject of the various language rights mentioned above.

Human rights are frequently considered as ideal entities which are owned by all community members, unless overridden by specific considerations. Another possible approach is to assume a descriptive stance and suppose that a right is what individuals or groups are actually entitled to. The latter approach necessarily leads to the conclusion that language rights are distributed unevenly.

In the Tokyo court case, the judges could have pointed out that the right of expression based on the pre-1947 free range of naming characters was a right that could be effectively exercised only by members of the upper and middle classes of the society. Of course not all members of these classes exercised that right, but their education made it possible for them to find other than 'common and easy' characters for the names of their children. Members of the basic (working) classes were unable to exercise the right either to encode or to decode the difficult names allowed by the old Family Registration Law, because such difficult language was the property of the educated class and remained beyond the reach of the basic classes. We must not forget that in the 1948 survey of literacy in Japan only 6.2 per cent of the population scored 100 points on the administered competence test. The average performance of university graduates was 97 points whereas those who completed no more than 6 years of compulsory schooling scored the average of only 64 points (Ishiguro 1951, Nomoto 1977).

The Tokyo High Court could have based its argument concerning 'public welfare' on the necessity to defend the rights of the majority against the rights of the educated minority. However, it did not take this position. Instead, in support of its decision it chose the right of 'the society' to communicate with minimum effort. However, the examples given in the verdict make it clear that what the judges had in mind was not the rights of the average users of language but the rights of the bureaucracy and mass media for a simple and economical communication system.

It is perhaps of interest to note here that the postwar reforms of the Japanese language in general were strongly motivated by a trend to satisfy the interests of the bureaucracy, industry and other sections of the establishment and not by a wish to support the language rights of the underprivileged sections of the society. It was a coincidence that by simplifying the language, the reforms also unintentionally increased the expression, minimum effort and property rights of the basic classes of Japanese society.

On the whole we can see, in the Tokyo case, a strong insensitivity of the court to the problem of who owns language rights. The establishment's rights are declared, without further discussion, to coincide with the rights

of the 'society' in general. This is an attitude which might emerge in future studies of language rights and certainly one that should be avoided.

3.3 Rights in principle and in particular

Finally, it is interesting to note that the court, while discussing the case, remained at the level of a general argument and de facto refused to consider the relationship between language rights and any particular rules of naming. It was asserted that the restriction on naming characters *in general* was in the interest of the society, but there was no discussion concerning the effect of the *particular* restrictions as defined by article 60 of the Law Enforcement Regulations.

In fact the decision, expressed in article 60 of the Enforcement Regulations, seems to have been taken in haste and without proper consideration. It contained a number of contradictions. On the one hand it showed no hesitation in disallowing such frequent characters as -hiko 彦, -ya, nari 也 or -yuki 之 (for the first of which there was practically no possible replacement); on the other hand it unwittingly allowed the use of some pre-war kana and shapes of characters, abolished in the post-war reforms. These features were as much a nuisance in printing, communications and office work as the unapproved characters which the court ruled to be against 'public welfare'.

On March 30, 1951, partly as a consequence of the Matsubara vs. Mayor of Chigasaki case (which was then in the appeal stage), a revision of article 50 of the Family Registration Law was submitted by a group of members to the House of Representatives of the Japanese Parliament and approved by the House. The revision effectively would have resulted in returning to the prereform practice. It was passed on to the House of Councilors whose Judicial-Education Committee called on 22 May nine specialist witnesses and on the basis of the information that the National Language Council (Kokugo Shingikai) had already adopted an alternative proposal on name-giving, refrained from accepting the revision referred to it by the House of Representatives (cf. Mombushoo 1951).

The recommendation of the National Language Council resulted from the work of a special committee (established on 9 March 1951) which selected 92 additional characters. The report of the committee was accepted at a general meeting of the Council on 14 May 1951 and published by the government as Cabinet Notification No. 1 on 25 May 1951. On the same day the Justice Ministry revised the Enforcement Regulation No. 60 to include the additional 92 characters. Note that the appeal decision in the Matsubara vs. Mayor of Chigasaki was dated 9 April of the same year. Anyway the two characters disputed in the case were not among the 92 newly approved.

After this revision the public opinion against the reform calmed down for some time. Nevertheless, in 1976 an additional 28 characters were approved by the Justice Ministry. Furthermore, in 1981 the Characters for General Use were replaced by Common Use Characters (jooyoo kanji) which added 95 new characters to the list and these, together with 166 naming characters were approved for name-giving by the Justice Ministry on 1 October 1981 (Bunkachoo 1982:138-41). As a consequence, 2111

characters can now be used, an increase of 261 over the 1947 situation. The first character in the name Emi 瑛美 has now become an 'approved character', while 'ku' 玖美 in Kumi remains disallowed.

What do these multiple revisions of the name-giving legislature mean? Two points should be made here.

Firstly, the need for the revision demonstrates that unlike the Tokyo High Court the society at large did not see the 1947 naming regulations as wholly valid. The forces which pushed through the revisions made a distinction between the reform in general, which they did not attack, and the particular restriction. The latter were seen as violating the rights of citizens and thus liable to change. The lesson for language planning is that even if a general strategy for a language reform is accepted as adequate, its specification in lower level rules may be rejected. The assertion or violation of rights takes place in individual concrete acts, and rules for these acts (article 60 of the Enforcement Regulations) must be as acceptable as the general strategy (article 50 of the Family Registration Law).

A second point can be raised to connect the argument of this section with the argument of sections 1 and 2. The revisions reflect clearly a shift in the importance of certain groups of right possessors. With the transition of Japan from the Early Modern into the truly Modern period during the 1950s and 1960s, the power of the administration (supporting their own right to minimum effort) had to yield to the power of the middle class (supporting the right of free expression). However, neither were the technocrats fully defeated, nor was the middle class interested in returning to the pre-modern unregulated systems. Hence a compromise solution in changing the rules, while retaining the general strategy.

4. CONCLUSIONS

As far as the Japanese case is concerned I have tried to refrain from value judgements. My aim is to show that the Japanese court elected to support one right over the other, that the typical possessors of this right were the administration, communications services and media, and that only the general strategy but not details of the rules were tested.

My own preference would of course clearly go for reinforcing the rights of the majority of the population. However, the naming reform, and indeed the post-war language reforms, were not conducted in the name of equalization of rights of various social groups. Yet, in practice they did strengthen the language rights of the less educated strata of the society. This may be a general feature of the development of human rights in the modernization period.

With regard to any general argument, I hope to have shown that language rights are not an exclusive domain of language treatment or planning that aims at whole varieties of language. It also applies in the case of deliberate changes induced in parts of varieties, individual expressions, words or elements of writing. In the jargon of language planning one would say that language rights are a relevant issue not merely for 'status planning' but also for 'corpus planning' (Kloss 1969, Cobarrubias 1983).

I have also observed that the right of free expression is not necessarily the only or most basic one, from which all individual language rights might be traced. The question 'whose rights' is basic for language planning. So is the attention to individual rules in actual language use, rather than looking simply at relatively abstract strategies.

REFERENCES

BUNKACHOO. 1982. Genkoo no kokugo hyooki no kijun. Tokyo: Gyoosei.

COBARRUBIAS, J. 1983. Ethical issues in status planning. Progress in language planning, ed. by J. Cobarrubias and J.A. Fishman, 41-85. Berlin: Mouton.

DANIEL, F.J. 1978. Japanese officialdom and the language. Journal of the Association of Teachers of Japanese 13.1. 52-70;

DWORKIN, R. 1977. Taking rights seriously. London: Duckworth.

ISHIGURO, Y. 1951. Nihonjin no kokugo seikatsu. Tokyo: Tookyoo daigaku shuppankai.

IWABUCHI, ETSUTAROO and SHIBATA, TAKESHI, eds. 1964. Nazuke. Tokyo: Chikuma Shoboo.

JERNUDD, B.H. 1983. Evaluation of language planning – what has the last decade accomplished? Progress in language planning, ed. by J. Cobarrubias and J.A. Fishman, 347-378. Berlin:Mouton.

KLOSS, H. 1971. Language rights of immigrant groups. International Migration Review 5.2. 250-268.

MONBUSHOO. 1951. 'Jinmeiyoo kanji beppyoo' ni tsuite. Namae to sono moji (Kokugo shiriizu 5). Reprinted in 1974 in Fukkoku bunkachoo kokugo shiriizu 6. 176-192. Tokyo: Kyooiku shuppan.

NEUSTUPNÝ, J.V. 1983. Japanese language reforms. Encyclopedia of Japan 4.29-30. Tokyo: Koodansha.

NISHIO, T. 1964. Ko no na no hooritsu. In Nazuke, ed. by Etsutaroo Iwabuchi and Takeshi Shibata, 118-131.

NOMOTO, K. 1977. Nihonjin no yomikaki nooryoku. Iwanami Kooza Nihongo 3.39-69.

ROBINSON, W.P. 1972. Language and social behaviour. London: Penguin Books.