Foreword

This presentation is based on work in progress exploring and comparing the different implementations of official language policy in three different jurisdictions – the Republic of South Africa (RSA), the European Union (EU), and the Northwest Territories (NWT) in Canada – during the period in which they shared the unusual feature of each having granted official language status to eleven languages.

All three jurisdictions had official-language policies predating this period of eleven such languages, but with a lower number of languages. The first of these three jurisdictions to reach eleven was the Republic of South Africa, drafted in its Provisional Constitution Act of 1993 following the downfall of apartheid, and confirmed in the Constitution of 1996. The second eleven-language jurisdiction was the European Union, following the accession on 1 January 1995 of three new Member States: Austria, Finland, and Sweden, with the attendant recognition of two new languages. The third jurisdiction, Canada’s Northwest Territories, had radically revised its Territorial language legislation in 1990, recognizing altogether eight languages; this was amended in October 2003, redefining the indigenous languages in question, and thus extending the total number of recognized languages from eight to eleven. Meanwhile, however, the EU was already
engaged in negotiation for the major Enlargement of May 2004, which brought the number of Member States up to 25 and the official languages to 20 (possibly soon to rise to 21). The period of synchronic overlap of these three eleven-language jurisdictions was thus very short – only half a year – but a comparison of the situations in the three regions offers an interesting basis for analyzing and contrasting some very different understandings of how multiple-language jurisdictions come into existence, and what “official language status” means, – in theory or principle and in practice.


1) The ethnolinguistic contexts

1.1) Languages in South Africa

The Republic of South Africa has come into existence, and into its present form of existence, as the outcome of a complex interplay of different processes. European expansion around the world was constructed around two radically different, but overlapping ‘projects’: *settlement*, the establishment of settler colonies, where the indigenous societies were largely overwhelmed by a neoEuropean society (such as Canada); and *conquest*, the enforcement of imperial rule over regions whose populations remained predominantly indigenous (such as India). South Africa is probably the most outstanding example of a region where both processes, of settlement and of conquest, had equally crucial impact.

The intertwining of *settlement* and *conquest* in southern African history has resulted in a very distinctive mixture of populations, in which the major fractions could be categorized as *indigenous*, *colonial*, *exogenous*, *mestizo*, and *immigrant*. Each of these fractions is composed of several distinct groups, with distinct histories, collective socio-economic status, and cultures.

The term *indigenous* (or its virtual synonym, *aboriginal*) refers to populations and languages whose ancestors were resident in the region in question prior to the European arrival. Insofar as settlers from the imperial metropolitan populations establish themselves in the country, and they and their descendants become permanent residents there, they and their language(s) can be classified as *colonial*. In South Africa (as in Canada), there were two distinct colonial components: first the Dutch, and then the British.

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1. Irish is not currently an official language of the Union; see p. 26 below.
2. The closest analogy to the demography of South Africa is perhaps that of pre-independence Algeria, where the French-origin *colons* made up something like one sixth of the population, themselves outnumbered by the *pieds-noirs* or immigrant labour from around the Mediterranean, living amongst an even larger total indigenous population itself divided between Arab and Berber.
In the course of processes of *conquest* and *settlement*, it has frequently been the case that the colonial elite have needed a supply of labour in addition to what might be available locally, and that this need has been met by systematically importing labour from elsewhere, typically from other parts of their empire. It is these resulting populations which are termed here *exogenous*. The kinds of labour needed can vary considerably: in the case of the transAtlantic slave trade, for example, African slave labour provided workers who had better immunity to tropical diseases than Europeans did, but were also cheap enough to be expendable. In the British Empire, after slavery had been abolished in the 1830s, the major source of supply was British India, on the basis of at least nominally voluntary indentures (*coolies*). In South Africa, the earliest stratum of exogenous labour were the Cape Malays imported by the Dutch (see below); later, the British brought in labour from British India to work on the sugar cane plantations in Natal, for example, and to operate the railways and harbours throughout British southern and eastern Africa.

The *mestizo* population in South Africa stems from the indigenous Khoikhoi population of the southwest. As is explained below, the Khoikhoi were enslaved as farm labour, and the use of concubinage by the Boer masters was so extensive that the Khoikhoi effectively ceased to exist within South Africa as an ethnic group, and their languages are also extinct.³ Their descendants are known as the Cape Coloured, a mestizo population who underwent total language shift to their masters’ Dutch and in doing so contributed significantly to its evolution into the distinct variant language called Afrikaans.

The term *immigrant*, finally, refers to population arriving in the country entirely of their own volition, typically in quest of economic opportunity, although also sometimes of other kinds of opportunity such as religious or political freedom. *Immigrants* enter a pre-existing society as individuals or families, attracted by economic and other opportunities, but without a colonial population’s inherent aim to reshape the society and economy on a new model (*cf* the concept of *charter nations* in Canadian history). The immigrant population of South Africa is thus analogous to immigrant populations in countries such as the United States, Canada, Argentina, etc, and has largely originated from similar sources – in earlier periods from Europe: *eg* Jewish [especially, in South Africa, from Lithuania], Greek, Italian, etc, and more recently from South and Southeast Asia, especially Hong Kong and diaspora Chinese.

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³ The Khoikhoi languages belonged to a wider grouping known as KhoiSan. Several San languages survive in the Kalahari and Namib desert and semidesert areas of the RSA and in Namibia, but all the languages from the Khoikhoi branch appear to be extinct. In addition to their probable substrate role in the development of Afrikaans from Dutch, the Khoikhoi also provided the click sounds which were imported into the western Sintu (Nguni) languages.
a) Indigenous languages

The indigenous populations in southern Africa originally comprised two very distinct African populations: the nomadic KhoiKhoi and San4 of the arid lands of the southwest, and the negroid Bantu peoples who migrated southwards from central Africa throughout the grasslands of the southeastern quarter of Africa. These populations are very distinct, not only in their cultures, economies, and languages, but also in terms of physical appearance (bone structure, skin pigmentation, etc).

Through enslavement and miscegenation following the arrival of the Dutch population, the original KhoiKhoi population has evolved into the Cape Coloured mestizo population, and its indigenous languages and cultures are today extinct.

The Bantu peoples, however, were both more numerous and more effectively organized economically and militarily into societies which the colonists could not simply annex to their own purposes. The Bantu have evidently comprised a majority of the total population living within the southern African region at all times within the past five hundred years, and their various ethnic groupings have been large enough to support language maintenance for the nine Sintu5 languages recognized today within the RSA.

The Sintu languages spoken within southern Africa fall into several sub-branches of the grouping, and most of these sub-branches can be seen either as comprising several distinct languages or as a dialect continuum. IsiXhosa and isiZulu, for example, spoken along the southeast coast littoral and up into the southern veldt region, and isiNdebele, spoken in the north, are variants within the Nguni branch, and there is considerable mutual intelligibility between them, as there also is between Sesotho, Sepedi, siSwati and Setswana.6

b) Colonial (settler) languages

The first European explorers in southern Africa were Portuguese, but the first colonists came from the Netherlands. The Verenigde Oost-Indische Compagnie (VOC) established a watering-station for their ships at Kapstad (Cape Town) in 1652, and held it for almost a hundred and fifty years, until it passed into British hands during the Napoleonic Wars

4. Previously known as Hottentot and Bushmen respectively.
5. These languages form a subgroup of the much larger Niger-Congo language family, spoken all across central and southeastern Africa. One feature of these languages is the use of prefixes in word-formation such as ba- for a single person and ma- for several, kwa- for territory and si- for language: hence baSotho, maShona, kwaZulu, or isiXhosa. The form of the prefixes varies in detail, of course, from one language to another. The name Bantu is in fact an invented form, from ba- (‘person’) + ntu (‘being’), and is widely used to refer not only to the populations but also to their cultures and languages; the form Sintu (ie, si+ntu), however, is the logical corresponding term for the languages.
6. On the question of mutual intelligibility and the recognition of distinct languages, and the impact of these factors on language policies, see the section on abstand below (1.5).
1795-1815. Dutch farmers (boeren) were brought to the Cape in order to supply the watering-station with fresh meat, fruit and vegetables. Since the Netherlands was at this time one of the relatively few Calvinist centres in western Europe, it was one of the refuges for Huguenots (French Calvinists) fleeing Catholic repression in France, and the boeren at the Cape were joined in the late 1600s and early 1700s by Huguenot families.

Even during the period of Dutch rule, the boeren had come into conflict with the authoritarian VOC régime, and moved inland to carve out a freer way of life for themselves – enslaving the indigenous Khoi-Khoi population of the region in the process. The British takeover of the Cape, and the beginnings of significant British settlement from 1820, further exacerbated relations between the Boers and the colonial authorities, triggering off a series of migrations (‘treks’) which brought the Boers into contact and conflict with the Bantu populations to the east and north, and led to the creation of a series of independent Boer republics: Natal, the Orange Free State, the Transvaal – each in turn then subsequently subjected to British rule.7

The British expansion in southern Africa came about through an extremely complex mixture of settlement and conquest initiatives. The Cape Town watering-station was a vital node in the emerging worldwide empire, remaining so until the construction of the Suez Canal opened a shorter route to the Indian Ocean (conquest), and the first British settlers were brought in with governmental support to help secure the Cape (conquest + settlement: cf the Plantation of Ulster in 1620). Subsequent arrivals were attracted by economic opportunities for large-scale agriculture, and then by the mineral wealth (diamonds and gold), as in Australia (settlement). Both political and economic motives drove the British to assert Crown authority over the Afrikaner Republics, and to establish British Protectorates in Basutoland, Swaziland, and Bechuanaland for native societies threatened by what were seen as irresponsibly racist Afrikaner policies (but also to secure potential British economic interests: conquest). The struggle between the British and the Afrikaners eventually led to the South African War of 1898-1900, a British victory in military terms, but a largely pyrrhic one in its political consequences.

A pattern thus emerged where the towns in southern Africa were under strong British influence, and English was dominant, but Dutch was predominantly spoken in the rural areas. Over time, having been cut off from on-going contacts with the Netherlands, the Dutch-speakers came to regard themselves no longer as expatriates, but as a distinct African-based Dutch-speaking people, and therefore began to call themselves Afrikaner, and their variety of the Dutch language Afrikaans. Both Afrikaans and English thus functioned as the languages of imperial control and of colonial settlement in southern Africa, and were eventually given legal status as the twin official languages of the state.

7. The Afrikaner population thus responded strikingly differently than the French in Canada to British conquest: francophone Canada remains very heavily concentrated within or adjacent to its original geographical area of the St Lawrence Valley, whereas throughout South Africa the Afrikaner arrival predates a subsequent British takeover. Consequently, the two colonial fractions in the present-day population are distributed much more evenly in South Africa than in Canada.
It should be noted that the normal name used for the anglophone white population within South Africa is *English*, irrespective of their family origins.

c) *Exogenous languages*

The earliest exogenous labour imported into South Africa were slaves brought in by the Dutch from the Dutch East Indies, as domestic servants and for other similar kinds of work. This population is still almost exclusively concentrated in Cape Town, and are known as Cape Malays. Under the racial separation policies of apartheid, their racial status was ‘Coloured’, *ie* the same as that of the Cape Coloured population, and like the Cape Coloured they underwent language shift and became Afrikaans-speakers. They have however retained other aspects of their original culture, most notably their religion – the majority are Muslim – and their cuisine.

As the British extended their hegemony over the southern and eastern regions of Africa, they introduced various economic innovations which required labour not easily recruited locally: most notably, sugarcane plantation agriculture in Natal, and an infrastructure of rail and sea transport. From the 1860s onwards, exogenous workers were recruited for these purposes from British India, mainly as indentured labour. The resultant migration established an Asian population relatively better skilled than the indigenous Africans, and over subsequent generations these ‘African Asians’ came to form a significant clerical, business, and professional class in all the British colonial societies of the eastern and southern African littoral from Kenya to the Cape.\(^8\) Within South Africa, they are largely concentrated in the Natal littoral.

Like the Cape Malays, these Asians to a large extent adopted their masters’ language – in this case, English; but many families also continued to use their language of origin within their ethnic communities. The main South Asian languages which have survived to the present day in the RSA are Gujarati, Hindi, Urdu and Telegu.

d) *Immigrant languages*

The majority of the immigrant population in South Africa lives in urban areas, and has largely integrated into English-speaking white society. As in other countries of immigration, however, where a large enough ‘white ethnic’ community has developed, the language of origin may survive as a heritage or community language. Different sources list somewhat differing languages in this category, including Portuguese, Dutch, German, Greek, and Italian. There is also a Chinese community, mainly Cantonese-speaking.

\(^8\) Mahatma Gandhi’s early career as a lawyer was among the Asian population in Natal.
Current South African language policies treat both exogenous and immigrant languages as heritage languages.

1.2) The European Union: languages

The ethnolinguistic situations in the various Member States of the European Union vary enormously, as a consequence of the complexity of political, ethnic and linguistic history in Europe. Every Member State includes linguistic minorities, of various kinds, but different Member States follow quite strikingly differing language policies, ranging from far-reaching statutory or constitutional safeguards for specified linguistic minorities to the attempted denial of their existence.

Within the EU, there are relatively few populations or minority languages which qualify for description as indigenous: the Sámi of northern FennoScandinavia; the Celtic languages of Britain, Ireland and Brittany; and Basque. Most other minority languages exist either because the political boundaries of States do not match the cultural boundaries of language communities (eg the German-speaking population of eastern Belgium), or because of regional varieties distinct from, but historically fairly closely related to the dominant/official language of the country (eg Catalan and Galician in Spain; Languedoc in France; Scots in the UK; Plattdeutsch (Low German) in Germany; Frisian in the Netherlands). In the latter cases, it may be a matter of controversy to what extent the language variety in question adequately meets the criteria to be classified as a distinct language.

The concept of exogenous languages, as used here, is not relevant within Europe. Many European States have recruited labour from outside their borders, but usually not as deliberately and systematically as has been true for exogenous labour elsewhere; these populations’ status is more appropriately analyzed in terms of immigrant communities, cultures, and languages. Several of the Member States were major imperial and colonial powers until relatively recently in their history, and have attracted significant immigrant-worker communities from their former empire or spheres of influence; thus France has a large immigrant population from its former colonies in northern Africa, the UK from the British Caribbean and South Asia, Spain and Portugal from Latin America, and Germany from Turkey and the Balkans.

9. For example, Finland, where the language rights of the Swedish-speaking minority –around 5% of the population – are entrenched in the Constitution. The most comprehensive recognition of minority language rights within the EU is in Belgium and Spain, where regions with extensive constitutional autonomy have been established for the Flemish and Wallon, and the Basque, Catalan, and Galician communities respectively. Both Flemish (Dutch) and French are co-equal official languages in Belgium, but at national level Spain recognizes only standard Spanish (Castilian): hence Basque, Catalan, and Galician are not recognized as official languages of the EU.

10. “Some states’ concepts of nationality also resulted in severe restrictions of minority rights, even to the extent of denying minorities official recognition or restricting the use of their language. In February [2002], Sotiris Blatsas of the Society for Aromanian (Vlach) Culture was tried in Greece and convicted of ‘disseminating false information’ because he had published a list of minority languages spoken in Greece. He had distributed a publication of the E.U.’s European Bureau for Lesser Used Languages (EBUL) at an Aromanian festival in July 1995. He was sentenced to fifteen months in prison.” Human Rights World Watch 2002, p. 64.
Within Europe, the more relevant concept is that of *regional and minority languages*, which is the term used in the 1992 Council of Europe’s *Charter for Regional or Minority Languages*.

However, the focus in the present investigation is specifically on the three polities which shared the characteristic of having eleven official languages. It is thus the language policies of the EU, during the period 1995–2004, and not those of the various Member States, which are the concern here. Due essentially to its nature as a polity constituted by treaty between the Member States, which is discussed in the following section, the EU’s core language policy questions relate only to those languages recognized as official by its Member States. In 1958, the Council of Ministers set up under the treaties establishing the initial European Communities recognized the four official languages of the six original Member States as “official and working languages”. By 1995, successive enlargements raised the number of Member States to fifteen, with eleven official languages, and in 2004 to 25, with twenty official languages. This extraordinary situation is thus not the result of the deliberate adoption of a new policy initiative (as was the case both in the Republic of South Africa after the fall of apartheid, and in the Northwest Territories in the 1990s and early 2000s), but rather of the extension by default of a policy originally formulated in radically different conditions.

The languages of the EU relevant for the present comparison are therefore the official languages of the fifteen Member States after 1995. They are listed here in chronological order by the date of accession of the relevant States:

<table>
<thead>
<tr>
<th>Year</th>
<th>Languages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1952</td>
<td>French, German, Italian, Dutch</td>
</tr>
<tr>
<td>+1973</td>
<td>Danish, English</td>
</tr>
<tr>
<td>+1981</td>
<td>Greek</td>
</tr>
<tr>
<td>+1985</td>
<td>Spanish, Portuguese</td>
</tr>
<tr>
<td>+1995</td>
<td>Finnish, Swedish</td>
</tr>
</tbody>
</table>

1.3) **The Northwest Territories: languages**

Both the demography and the ethnolinguistic development in the area nowadays belonging to the Northwest Territories bear much more similarity to the situation of the Republic of South Africa than they do to that of the European Union. The concept of *indigenous* populations, cultures and languages is highly relevant, as is also the fact that they came under the hegemonic domination not of one but of two languages of European *colonial* (i.e. settler) and *imperial* expansion. Moreover, both in southern Africa and in northern Canada this neoEuropean hegemony lasted from approximately the mid-nineteenth century until the last decade of the twentieth before being effectively challenged and changed by new political and cultural awarenesses.
Like southern Africa, the indigenous populations of the present-day NWT include two distinct fractions, differentiated by physical characteristics, forms of economic activity and social organization, and language: Amerindian peoples in the southern region, and Inuit in the north. Traditionally, these two populations treated each other with extreme suspicion and hostility. All the native peoples were dependent upon hunting and gathering, but primarily addressed different environments: subArctic forest and tundra for the Indians, and the waters and coast of the Arctic littoral for the Inuit. One major difference between the African and Canadian situations, however, concerns population size: in southeastern Africa the grasslands of the veldt, and the subtropical to temperate Indian Ocean littoral, could sustain populations measured in thousands, and permit the emergence of societies and polities with complex and sophisticated large-scale organization, whereas the harshness of the northern environments, like that of the arid semideserts and deserts of southwestern Africa, could support only small populations and small-scale social organization.

The languages of the Canadian north fall almost entirely within two language families, Eskimoan (Inupiaq / Inuktitut) and Athapaskan (Na-Dene), extremely different from each other, each family forming a dialect continuum stretching across thousands of kilometres. In addition, Cree (belonging to the Algonquian language family) is spoken in a relatively small area in the southeastern corner of the NWT around Fort Smith. Prior to the impact of the Europeans, none of these languages had a written form.

In the far north, the impact of English was prior to and has consistently been stronger than that of French, due to the role of the Hudson’s Bay Company (see below). Further to the south, the spheres of influence overlapped between the HBC and its rival, the North-West Company operating out of Montreal; there was a marked francophone dimension in the southern fur trade, with its heavy dependence on the Métis voyageurs to operate its waterborne transport systems. Few voyageurs ventured to the north, however, except on exceptional occasions like the Franklin expeditions; it was not until after the transfer of the HBC’s territorial authority to the Canadian government in 1870 that a significant French impact occurred, with the spread of Roman Catholic missions and the establishment, with government support, of residential schools for Indian children. All across the north and west of Canada, both French-speaking and English-speaking residential schools followed largely similar policies towards their aboriginal pupils, aiming to eradicate the native culture and acculturate the children to the norms of neoEuropean Canadian society. One of the prime means for achieving this aim was to enforce the use of the European languages in the schools, often penalizing the children for speaking their mother tongues.

In consequence, there has been a massive process of language shift from the Dene languages, perhaps most intensively across the middle of the twentieth century. Moreover, for some it has been a two-phase shift: first, as children, from their indigenous language to French, but then, as young adults, into English, since outside the schools there have been relatively few francophone opportunities in the north, except in the Federal sector.
The Inuit were more scattered and isolated and were not targeted for residential education in the same way as the Indian children. As a result, the process of language shift has not affected them so acutely, and this is mirrored in the establishment of the Territory of Nunavut in 1999, where a major effort is being maintained to provide services and functions in Inuktitut as well as in English and French.

Both for the Inuit and for the Dene languages, however, there are major problems for aboriginal language maintenance, arising from the dispersion of relatively small populations across vast distances, and the fragmentation into differentiated dialects. These problems are accentuated by the cumulative and intensifying impact of modernization. The residential schools have mostly been closed down, especially following the revelations of widespread abuse of the children; but the expectations of access to education have risen for the aboriginal populations just as they have for the whites, and there are few locations where a school operating in a native language would be viable. In the towns, the problems of mutual nonintelligibility between different dialects/languages, coupled with the scarcity of adequately trained aboriginal teachers, leaves little realistic scope in most areas for schools to function except in English.

The concept of exogenous population is not immediately relevant to the history of northern Canada, unless it were to be applied to the Scots recruited to work for the Hudson’s Bay Company.

In the late twentieth century, implementation of the Federal commitment to bilingualism and preparation for the 1985 Official Languages Act led to French being reinstated in the Territories, at Federal insistence, in 1984.

By the late 1980s, however, awareness was growing of the disprivileging of the traditional languages of approximately half the Territories’ population, and in 1990 the Government of the NWT passed legislation awarding official status to six of the region’s aboriginal languages. Pressure quickly emerged for a review of this legislation, since the differences between different regional varieties within the languages so defined (abstand) were so great as to invalidate the definition as a single ‘language’; and in 2003, the list of official languages in the NWT was amended to eleven.

<table>
<thead>
<tr>
<th>Year</th>
<th>Languages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1875</td>
<td>English + French</td>
</tr>
<tr>
<td>1892 – 1984</td>
<td>English only</td>
</tr>
<tr>
<td>1984</td>
<td>English + French</td>
</tr>
<tr>
<td>1990</td>
<td>+ Chipewyan, Slavey, Dogrib, Gwich’in; Inuktitut; Cree</td>
</tr>
<tr>
<td>2003</td>
<td>+ Inuvialuktun, Inuinnaqtun; North &amp; South Slavey differentiated;</td>
</tr>
<tr>
<td></td>
<td>+ Dogrib renamed/also referred to as TliCho¹¹</td>
</tr>
</tbody>
</table>

¹¹. The Latin alphabet script adopted for Dogrib makes use of diacritical marks which I am unable to reproduce on my computer. The name is sometimes written as one, and sometimes as two words. I have here adopted the form TliCho as a compromise.
In addition to these languages, there are also small *immigrant* populations in the towns: in Yellowknife, for example, it is estimated that there are around 600 speakers of Pilipino.

### 1.4) Summary comparison of the three polities’ official languages

#### Republic of South Africa 1993 –
- 2 colonial (settler) languages: Afrikaans, English
- 9 indigenous languages:
  - Nguni group: isiNdebele, isiXhosa, isiZulu
  - Sotho group: Sepedi, Sesotho, siSwati, Setswana
  - other: Xitsonga; Tshivenda

No heritage / community languages with official status, but some listed as targets for supplementary support

#### European Union 1995 – 2004
- 11 Members States’ official languages:
  - Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish

No other languages during this period with official status at EU level

#### Northwest Territories 2003 –
- 2 colonial languages: English, French
- 9 indigenous languages:
  - Inupiaq (Eskimoan): Inuktut, Inuvialuktun, Inuinnaqtun
  - Na-Dene (Athapaskan): Chipewyan, TliCho (Dogrib), Gwich’in, North & South Slavey

  - Algonquian: Cree

No heritage / community (immigrant) languages with official status

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12. In the 1993 Provisional Constitution, Sepedi is labeled Sesotho na Lebowa.
1.5) **Note: When is a language a dialect, and vice versa?**

Languages, or dialects (subsets of superordinate languages), can differ from each other on four basic parameters: lexis, grammar, phonology, and script.

Lexis: they can use different words (or different forms of the ‘same’ word) to express the same meaning; or use the ‘same’ word to convey different meanings; they often are lacking in the vocabulary to express a meaning readily conveyed in the other.

Grammar: they can use different structural means (across any of the extraordinarily wide range of structuring devices which human languages have) for putting meanings (words) together to make meaningful utterances (sentences).

Phonology: the human mouth and throat are capable of producing an extraordinarily wide range of distinct sounds, and the human ear and brain can make an extraordinarily wide range of distinctions. No human language uses all the sounds which would be available; in fact part of the language acquisition process in children can be seen as learning which sounds not to use, as well as which ones should be used. Different languages and dialects can pronounce the ‘same word’ in radically different ways.

Script (in those languages or dialects for which a writing system has been adopted): differences can range from divergent spellings through the use of completely different scripts. Among the languages in question in this study, Greek uses a different, but relatively closely related script to almost all of the others; among the Inuit languages, Inuvialuktun uses a roman alphabet, Inuinnaqtun uses a roman alphabet but only in UPPER CASE, whereas although Inuktitut can be written in a roman alphabet it is more usually written in a syllabary script. The Dene languages are all written in a roman alphabet, but making extensive use of diacritical marks [which I cannot currently reproduce on my computer].

A term used by some linguists to refer to the differentiation between languages or dialects is *abstand* (the German for ‘distance’). Linguistics thus gives us tools to describe how languages and dialects can differ from each other, but these parameters of variation cannot be quantified on a cross-language basis, and linguistics therefore does not enable us to measure objectively how much they differ.

This issue becomes particularly acute in dealing with the drafting of language policies relating to languages with no earlier written form or other mode of standardization. In this study, this issue applies to the indigenous languages both of the NWT and the RSA. Decisions have to be taken whether to treat closely related language-forms as distinct languages or as dialects. If it is possible to treat related languages as dialects, this can enable real savings in effort and resources. On the other hand, if no superordinate norms have previously been in use, the users of different ‘dialects’ may well be unable, or unwilling, to acknowledge the new ‘standard’.

This is clearly what happened in the Northwest Territories between 1990 and 2003: whereas the 1990 NWT *Official Languages Act* treated all the Inuit languages, and
the language(s) of the Slavey Dene, as two single entities, in 2003 North Slavey and South Slavey were redefined as two distinct languages, and Inuktutit, Inuvialuktun, and Inuinnaqtun as three. To some taxpayers in the NWT, this was unconvincing; but presumably the preceding agglomeration had also been unconvincing to the language communities in question, or those responsible for protecting their interests.

Similarly, in southern Africa the various Sintu languages in the Nguni group, and those in the Sotho group, support considerable mutual comprehensibility, but are treated as distinct languages. This fact has been utilized by the South African government when publishing official documents in the official languages: for documents of lesser importance, a translation will be made into only one of the languages within a major Sintu grouping.

2) The polities

2.1) The Republic of South Africa

The origins of the present-day polity covering the southern end of the African continent arise from the rival colonialismand / imperialist efforts of the Dutch and the British. The subsequent discovery of first diamonds and then gold in the hills further north repeatedly brought the British to extend their claim to authority over the Boers in a leapfrog process which eventually led to the South African War of 1898-1900 and the consolidation of South Africa as a British Dominion in 1910.

Whereas the indigenous Khoikhoi societies of the southwest had by this time been eradicated, and their descendants transformed into the mixed-race and effectively enslaved population known as the [Cape] Coloured, the (significantly larger) Bantu populations further east and north resisted conquest for much longer. They were themselves in widespread ferment in the period immediately preceding European subjection, in consequence of the rise of the powerful military empire of the Zulu under Shaka in the 1820s-1830s, which ended with many other groups being forcibly assimilated into the Zulu, and others either retaining a precarious independence on the outskirts of Shaka’s empire (such as the Xhosa), or setting off on long-distance migrations in search of peace and quiet elsewhere (such as the Ndebele).

Unlike the Khoikhoi societies of the western Cape, which totally disappeared as distinct entities, many of the various Bantu polities (‘kingdoms’ and ‘chieftainships’) of the southeast and inland regions (the Natal littoral and the dry veldt grasslands and Drakensberg mountains) survived under Afrikaner and British rule, with forms of limited autonomy ranging from the three British Protectorates (now independent Commonwealth states) of Botswana, Lesotho13 and Swaziland, to fragmented and encapsulated enclaves such as KwaZulu, the various Xhosa groupings, or KwaNdebele.

13. Known in the colonial period as Bechuanaland and Basutoland respectively.
Although the term ‘native reservation’ is not usually deployed in southern African historiography, the reservation model is a useful tool for interpreting their status. Eventually, under full apartheid, ten of these were instituted as ‘Bantustans’ or ‘homelands’ and four of them recognized in South African law (although not by any other country) as independent (ie foreign) states. Following the collapse of apartheid and the passing of the new, democratic Constitution, all of these – but not the former Protectorates – became integrated into the revamped Republic, but the kingdom of KwaZulu continues as a distinct ethnic jurisdiction within the province of KwaZulu-Natal.

As a consequence of this history, there are today three polities which are sovereign states constitutionally external to the Republic of South Africa but which are in practice intimately involved with its society and economy: Botswana, Lesotho, and Swaziland, whereas the other predominantly indigenous polities which were set up under apartheid as Bantustans have been fully incorporated into South Africa. The ethnic groups which dominate each of the three sovereign states (Tswana, Sotho and Swazi) all also extend into the RSA as well. The four sovereign polities thus in some respects jointly constitute a common ethnolinguistic region.

Although the British were victorious in the South African War, it soon became clear that they could not rule the vast country without obtaining the consent of the Boers, who considerably outnumbered the British settlers.

The numerical superiority of Afrikaners in the white electorate led eventually to the victory in 1948 of the National Party. There was a clear difference between the prevailing social attitudes in the Afrikaner and ‘English South African’ populations: whereas the neoBritish were predominantly conservative in their racism – hierarchical, broadly benevolent – the Afrikaners tended to support a more aggressive, ideological and separatist racism. In 1960 the Nationalist government introduced a republican constitution, and over the next thirty years steadily implemented policies of apartheid or ‘separate development’, enforcing strict separation of the four recognized racial categories (White/European, Coloured, Asian, and Black/African) in more and more domains of social and cultural existence.

Despite the very high tensions which apartheid generated, the frequent brutality with which it was enforced, and the formation of a military wing by the major resistance organization, the African National Congress (ANC), civil war never broke out in South Africa. By the late 1980s, while simultaneously enforcing a national State of Emergency, the Afrikaner Nationalist government had started clandestine talks with the imprisoned ANC leader Nelson Mandela to explore the possibilities of a managed transition to majority-rule democracy, and in 1990-1993 the mechanisms of apartheid were dismantled one after another, leading in 1994 to the country’s first democratic elections open to the entire adult population.
2.2) The European Union

In the perspective of European political history, the European Union has evolved extremely rapidly. In half a century, the initial agreement between six European states to adopt common economic policies in very specific areas has become a supranational/confederal polity with twenty-five Member States covering most of the core European peninsula and a complex and comprehensive political and economic agenda.

To some extent, this development had already been anticipated in the negotiations that led to the three initial Treaties establishing common market regions first for coal and steel (1951), and then for atomic energy and trade (the Treaty, or more precisely Treaties of Rome, 1957) between the six founding members. Sir Winston Churchill, famously, had called for a “kind of United States of Europe” in a speech in Zürich in 1946, and although the initial Treaties were purely economic in focus, there is no doubt about the underlying purpose of binding together France and Germany, specifically, in such a way as to drastically reduce the scope for serious conflict between them and thus to diminish the risk of a third major conflict like the First and Second World Wars breaking out again in Western/Central Europe.

Nevertheless, the initial Treaties started out from carefully limited objectives, and were not yet widely seen as substantially changing the nature of the signatory nations. The Treaties were international agreements between sovereign polities, and the executive machinery set up – three distinct High Authorities – had only specific and precisely-defined tasks to fulfil. Ten years after the 1957 Treaties of Rome, the separate High Authorities were merged into a single executive organization, the Commission, matched by a single Council of Ministers representing the Member States’ own national governments, and the European Parliament, also initially representing the Member States’ national parliaments. At this stage in its development, the European (Economic) Community had taken on clearly supranational characteristics, and had for example powers to overrule national legislation or executive policies, but was still essentially constituted through the mutual interaction of the Member States’ own political institutions.

The shift from that stage to the situation following the 2004 enlargement is therefore very striking. The European Union is now without question at least a confederal polity, and already has many features associated with fully federal systems: a directly elected central Parliament, the concept of a common citizenship (though this still rests on citizenship of a specific Member State), a vast budget funding a very complex range of executive activities, a judicial branch with steadily expanding powers of judicial review, etc. The draft Constitution currently under debate in the Member States is unlikely to achieve ratification in its present form, but there can be no doubt about the force and dynamism of the drive towards greater federal integration.

14. Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany.
Nonetheless, the EU continues in constitutional terms to be constituted through a series of agreements between its Member States. Although there has been a very significant transfer of authority from Member States to the central institutions, the residual powers clearly remain with the Member states. Consequently, there are many aspects of EU policies and practices where the various national traditions remain distinct and even contradictory. These include, for instance, many aspects of welfare and pensions policy, educational policies (with a very striking variation in the organization of educational institutions at all levels), and – crucially for the present investigation – also of official language policies.

2.3) The Northwest Territories

As in the case of South Africa, the origins of the present-day polity in the Northwest Territory (or Territories) of Canada can be traced back to a chartered Company. The Hudson’s Bay Company (HBC), chartered in 1670 to provide English investors with an entrée into the lucrative North American fur trade, was granted under English law monopoly rights of access – and control – for the northern route to the interior via Hudson Bay. In the course of time, a vast area of northern present-day Canada, stretching from the Bay to the Continental Divide in the west and with uncertain and contested boundaries to the south, became organized as Rupert’s Land. The factors (local agents) of the Company exercised a dual role: their primary purpose was to engage in profitable trade, gathering furs for export back to Europe and selling a variety of goods to the local populations; but in order to ensure the maintenance and continuity of the trade routes, they inevitably came to acquire significant influence and civil authority. (Similar territorial privileges were typically written into the rights of many other of the western-European early-modern chartered Companies, eg in western Africa and India; and there are significant parallels in the subsequent development of the dual commercial-civil role of the English chartered East India Company in India, like that of the VOC in South Africa and the Dutch East Indies, present-day Indonesia).

In 1870, two hundred years after the issue of its original charter, and three years after Canadian Confederation, the HBC surrendered its civil role in Rupert’s Land to the Government of Canada. Looking partly to the models created in the Northwest Ordinance of 1787 by the early post-Revolutionary United States for the regulation of territories outside the boundaries of its constituent States, Canada established a system of Territorial and District civil government under Federal jurisdiction, with the possibility, and expectation, that eventually the expansion of settler population and the develop-

15. The civil powers of the East India Company had also finally been abolished, and the Company itself dissolved, just over ten years earlier, following the 1857 Indian Mutiny. The East India Company, however, had already effectively ceased to function as a commercial organization some time earlier, whereas the HBC was able to successfully revert to its commercial role and survive as one of the major trading corporations in the Canadian economy.
ment of economic and civil society would form the basis for a transition to full Provincial status. The Province of Manitoba was established in the same year as the transfer of powers, 1870; as neoEuropean settlement spread further west across the prairies, the network of district government gradually evolved toward viable autonomy, and the creation of the southern swathe of Provinces was completed in 1905 with the establishment of Saskatchewan and Alberta.

The language policies of the NWT were for a long time simply the local implementation of Federal policies and practices. The North-West Territories Act of 1875 defined English and French as co-official languages, but in the 1890s the Territorial administration effectively dis-recognized French. This decision was approximately contemporaneous with the abolition of the official status of French by the Manitoba Provincial Assembly in 1890.\(^\text{16}\) The disrecognition of French across the prairies is a reflection of the relative stagnation of French settlement in the west, in contrast to the rapid expansion of settlement by anglophone Canadians and anglo-assimilating Central European immigrants.

It needs to be borne in mind that the area covered by the term “the North-West Territories” during the nineteenth century was vastly different than it is today, including as it did the entire area from the western borders of Ontario to the Continental Divide, other than the Province of Manitoba (still considerably smaller than Manitoba today). Down to 1905, most references to the North-West Territories are really concerned with the region which was then to become the Provinces of Saskatchewan and Alberta. There was relatively little interest in the north: indeed, despite the continuity of the name of the Territory, in many ways the NWT today should be seen more specifically as the successor polity not to the NWT as a whole, but to the District of Mackenzie.

Further to the north, neither climate nor soils permitted the agricultural development which was so crucial to the political and constitutional evolution of the prairie Provinces. The overwhelming majority of the population continued to consist of the various indigenous peoples; the only economic resource capable of attracting European immigration in large numbers was minerals. The discovery of gold in the far northwest in 1896 led to very sudden and drastic changes in the economy and demography both of the Northwest Territories and of Alaska. As in the south, this surge in non-aboriginal population led to the upgrading of areas from District to Territorial status, and the far northwestern region was constituted as the Yukon Territory. A century later, in 1999, the northeast of the region was also separated from the NWT, to form the new Territory of Nunavut.

In contrast to the prairies, where Territorial status was an interim stage in the constitutional evolution, in the far north the conditions for promotion to full Provincial

\(^{16}\) Subsequently declared unlawful in the Supreme Court of Canada in 1985, but not challenged at the time.
autonomy were never considered to have been met,¹⁷ and the entire region has remained under Federal tutelage and responsibility. The form of government has remained Territorial, although parliamentary self-government was introduced in 1980. In contrast to the other two polities under examination here, South Africa and the European Union, the Northwest Territory has undergone not an expansion but a reduction in geographical size, with the separation of the Yukon and Nunavut.

2.4) Summary comparison of the three polities with regard to the formulation of language policies

Whereas the RSA is defined in the 1996 Constitution as “one, sovereign, democratic state”, whose Provinces are units of democratic regional government subordinated to the authority of the central State, the EU is a supranational authority established by treaty between its Member States for the pursuance of their mutual interests and common goals, and the NWT is one of three regional units of democratic representative government covering Canada’s far north, subordinate to Federal supervision and law.

- As a sovereign state, the Republic of South Africa is free to formulate whatever language policies it sees fit, and to implement them as it sees fit.
- The European Union only has such powers as have been delegated to it by treaty, and any radical change in current official-language policies – including their non-extension to apply to future Member States on the same basis as at present – would require renegotiation of the Treaty of Rome with all its subsequent protocols; both the executive and the legislative branches of EU government, however – the Commission and Parliament – have considerable scope for initiatives addressing non-official language questions, eg through implementations of the “Europe of the Regions” policy or through support for the EU-funded but politically independent European Bureau for Lesser Used Languages (EBLUL).

In point of fact, the most significant recent European initiative in this field, the 1992 Charter for Regional and Minority Languages, originated not in the European Union, but in the completely separate body the Council of Europe, which is a non-executive organization primarily devoted to promoting cultural collaboration and human rights among its 44 members.

¹⁷. Today, as a result of significant long-term in-migration, the population of the NWT has grown to around 41 000, of whom approximately half are aboriginal. By comparison, the population of the Province of Manitoba, when it was first established in 1870 and consisted only of a much smaller area than today, concentrated around the Red River settlement (present-day Winnipeg) came to only just under 12 000.
The autonomy of the Northwest Territories is subject to the constraints of Canadian Federal law in ways which do not apply to the Provinces, but does have the freedom to enact subsidiary or complementary legislation. Thus the NWT cannot disenfranchise either English or French from official-language status, but does have the liberty to extend official status to other languages as well.

3) Comparing official-language policies

So far, the three polities under discussion have been compared as if ‘official language’ meant effectively the same thing in all three jurisdictions. This is in fact not the case, and the following analysis constitutes an attempt to unravel what the real implications of ‘official language’ status are in these three different contexts.

In passing, one might note that the assumption is very often made that the statutory specification of one or more ‘official languages’ is a universal practice: people who live in jurisdictions with language legislation often find it difficult to realize (or believe) that this is not necessarily the case elsewhere. Examples of states which do not currently have national official-language legislation, however, include not only several English-speaking countries (the United Kingdom, the United States, Australia) but also, during the period under scrutiny, Denmark, the Netherlands, Sweden\(^\text{18}\), and Uruguay.

- The three polities examined here, however, all have official-language statutes of one kind or another: in South Africa, the 1996 Constitution; in the Northwest Territories, the Official Languages Act as amended in 2003; and in the European Union, the Treaty of Rome as amended on the accession of each new Member State or States. But what does ‘official’ status mean?

It is a characteristic implicature of the enactment of statute law that it will either grant rights, or impose obligations; and that it will either prescribe or proscribe particular activities. Language legislation, therefore, may be expected to permit, or to require, the use of a specified language, or languages, possibly for specified purposes or in specified contexts. The one piece of parliamentary legislation relating to language use specifically in England, for instance, is the *Statute of Pleading* from 1362, which laid down that the lawcourts must function in English.

Language legislation can therefore be analyzed in terms of its implications: What rights does it grant? and to whom? What obligations does it impose? and on whom? What sanctions does it specify, if any?

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18. With the Language Act of 200xx, Sweden has now for the first time statutorily defined the official language status of Swedish.
3.1.) Language rights and obligations in the Republic of South Africa

The Constitution specifies eleven languages as “the official languages of the Republic”, and immediately continues to specify a series of obligations: on “the state”, “the national government and provincial governments”, and “municipalities”:

(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usage and preferences of their residents.

…

(5) A Pan South African Language Board established by national legislation must—

(a) promote, and create conditions for, the development and use of—

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language; and

(b) promote and ensure respect for—

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.

This is explicitly redressive legislation, acknowledging the “historically diminished use and status of the indigenous languages of our people”, and requiring the state to “take practical and positive measures.” No obligations are here imposed on citizens, nor on the private sector; on the other hand, neither are any specific rights granted. Governments, whether national, provincial, or local, are explicitly required to take into account the “needs and preferences” or “language usage and preferences of the relevant population”, but citizens are given no guarantees of the right to use a particular official language of their personal preference.
(In Finnish legislation, for example, if a language minority makes up a specified proportion of the population of a municipality, then members of that minority acquire a statutory right to deal with that municipality in that language. This procedure, however, presupposes that each citizen’s language affiliation must be registered, and that the official statistics should be accessible. – South Africa, however, had just rid itself of the racial classification of the entire population; quite apart from the procedural nightmare which the compilation of such a register would have meant for the demographers, it would probably have been politically unacceptable.)

All in all, the general obligations established by this Chapter of the Constitution are therefore very limited. No one language is privileged above the rest; but the right of addressing the state in a citizen’s own or preferred language is not mentioned. The obligations on the various levels of elected government are, in the end, discretionary – and explicitly take into account the cost factor. The mission of the Pan South African Language Board is set out in some detail, yet here, too, there is a discretionary subtext: to “promote and ensure respect for (i) all languages commonly used by communities in South Africa, including…” certainly requires the named languages to be addressed, but leaves the Board the freedom to include others as well as necessary.

The South African official language legislation is thus strikingly, and wisely, cautious. The reference to the “historically diminished use and status of the indigenous languages of our people” implies, sotto voce, the recognition of the need for extensive language planning before the Sintu languages would be fully able to function as languages of a modern state; and the reference to cost-consciousness reflects an awareness of the enormity of the social and economic task ahead as the country reconstrued and reconstructed itself after apartheid, and that there would be little money available for expensive extensive symbolic multilingualism.

The RSA has therefore proceeded forward but slowly. Since the Constitution’s official-language provisions do not include the right to receive all government documents in all the official languages, they quite often make two or three translations, into one language from each of the language subfamilies (Nguni and Sotho) and one other language, on the grounds of the high level of mutual intelligibility.

Similarly, there has been no large-scale attempt to establish full school systems functioning in all of the languages. In any case, many Sintu-speakers, like the Asians, are happy for their children to go to English-medium schools and thus also to acquire better skills in English; for although English as a mother tongue is a rather small minority language in the South African context (just over 8 % of the population), over most of the country and certainly in the cities and larger towns English is the prevailing lingua franca (only in the Western Cape and Northern Cape is this role taken by Afrikaans, which is in any case the absolute majority language in those two Provinces).
3.2) Language rights and obligations in the European Union

When the treaties establishing the initial European Communities were drawn up in the 1950s, it must have seemed very innocuous to state that the four official languages of the original six Member States would all be “official languages and working languages” (see Annex 3, Regulation No 1 determining the languages to be used by the European Economic Community, 1958). It is perhaps worth noting that the key statutory document laying down official language policy for the European Communities was not a clause in one of the founding treaties, but a resolution of the Council of Ministers, subsequently confirmed by an allusion to this in the Treaty of Rome.

There is no cause to presume that the Ministers who approved this Regulation expected that they were formulating a basis for official language policies in the vastly changed European Union of half a century later. The scope of the original resolution was extremely limited: it applied to only four languages, rather then eleven, or now twenty; and even more importantly, it applied to a much narrower range of activities.

Over the following decades, as more and more States joined the Community, they were required to sign the Treaty of Rome, including its reference to the Regulation, which therefore needed correspondingly to be retro-amended at each enlargement to list the revised list of languages: thus the lengthening list is actually represented in the accession documentation. Perhaps much more importantly, the enormously expanded scope of application of the Regulation is not shown; textually, it does not need to be, since all the affected institutions and activities are covered by the bland phrase: “institutions of the Community”. The expansion of four languages to six, and then seven, then nine, then eleven – and now twenty – has implied a vast increase in language-management; but there has been an even greater expansion of Community institutions over the same period, with a steadily expanding mandate carried out by the Commission, and a much greater role for the democratically-elected European Parliament.

The consequences implicated by the original Regulation were of very limited probable impact. Initially, the interaction generated by the Communities was between the Member States’ governments and the High Authorities (the predecessors of the united Commission set up in 1967), on the one hand, and – presumably – between the High Authorities and corporate management in the affected branches of industry and trade, on the other. The references to “persons” in Articles 2 and 3 of Council Regulation No 1 most probably then related to “legal persons”, ie incorporated commercial enterprises; private individuals were in those days unlikely to have any reason to address the Communities.

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19. In principle, the EU’s translators should always work directly from one language to another, not through the medium of a third language. This principle has now had to be abandoned, and both in the translation of written texts and in the interpretation of conferences, etc, ‘relay translation’ has now been introduced, usually through English or French. The formula to calculate the number of two-way links without using relays is \( x^2-x \): for four languages, therefore, \( 4^2-4=12 \); for eleven, \( 11^2-11=110 \); for twenty, \( 20^2-20=380 \).
Article 2
Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.

Article 3
Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.

Today, many EU agencies make a conscious effort to reach out and make contact with ordinary citizens.

The Regulation established both rights and obligations. The requirement in Articles 4 and 5 of all four languages for “documents of general application” and the Official Journal constituted a principle of right of access to information for interested parties in a language which they could be presumed to know fluently, since they must be using it in their dealings with their own State. This principle has subsequently become very central in the practices of the Communities and Union:

Article 4
Regulations and other documents of general application shall be drafted in the four official languages.

Article 5
The Official Journal of the Community shall be published in the four official languages.

All the other Articles in the Regulation are directed towards the Member States or the Community institutions themselves.

Article 1
The official languages and the working languages of the institutions of the Community shall be Dutch, French, German and Italian.

…

Article 6
The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.

Article 7
The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure.
Article 8

If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law.

Article 1 groups the “official languages and working languages” into a single definition, although it must have been obvious even then that not all of the languages were equally likely to occur as working languages. Among the six initial Member States, Italian was unique to Italy, whereas Dutch, French, and German were all languages used in more than one of the Six. Articles 6 and 7 in fact work counter to the unitary definition in Article 1, and introduce a distinction between working and official languages, by authorizing the Court of Justice (specificaly) and any other “institutions of the Community” (unspecified) to restrict their working languages, by requiring them to explicitly specify any such restrictions in their rules of procedure.

The result of the wording of this Regulation is that a distinction between ‘working’ and ‘official’ languages is simultaneously introduced, and obscured. During the 1970s and 1980s, it became a commonplace in debate about the European Community to assert the distinction, usually with the specification that the working languages were French, English and, to a lesser extent, German; more recently, many commentators have focused on the fact that Article 1 list the same names for both concepts.

3.3) Official language rights and obligations in the Northwest Territories

Of the three legal documents examined here, the Official Languages Act 2003 (Official Languages Act) of the Northwest Territories (see Annex 3) is by far the longest, most complex, and most detailed.

In origin, this is the 1988 Act with its various subsequent amendments. That legislation was brought in at the insistence of the Federal Government to ensure (re)implementation of the rights of francophones. The demographic reasons underlying the disrecognition of French in the then NWT after 1890 have been discussed earlier; the reinstatement of French was not driven by demography, but by Federal policy concerns. Both the 1990 and 2003 Acts thus ‘rode on the back’ of a wider Canadian discourse to do with official language status, and of policies originally relating to English and French only.

Building on this Canadian discourse about the status of official languages, the Official Languages Act establishes very specific rights and obligations, which go far beyond those created by the European or South African legislation.

20. Dutch is common to Belgium and the Netherlands; French, to Belgium, France, and Luxembourg; German, to Belgium (very marginally), Germany, and Luxembourg. – Following subsequent expansions, German is common to Austria and Germany, and with the reunification of Germany, this is now the largest first-language community within the EU. Other official languages common to more than one Member State today are English (Ireland, Cyprus, Malta, the UK), Greek (Cyprus, Greece), and Swedish (Finland, Sweden).
11. Subject to this Act, all instruments in writing directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of the Legislature or Government of the Northwest Territories or any judicial, quasi-judicial or administrative body or Crown corporation established by or under an Act, shall be promulgated in English and French and in such other Official Languages as may be prescribed by regulation.

12. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature.

(2) Chipewyan, Cree, Gwich’in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and Tłı̨ch’o may be used by any person in any court established by the Legislature.

""

Article 11 is in principle comparable to Articles 4 and 5 in the EU Regulation; it focuses on the right of access to information, but is far more specific as to the kinds of information covered by the law. Articles 12 and 14, in turn, are parallel to the EU Article 2, in addressing (private) citizens’ rights to use the language of their choice;

14. (1) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where

(a) there is a significant demand for communications with and services from the office in that language; or

(b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French.

(2) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any regional, area or community office of a government institution in an Official Language other than English or French spoken in that region or community, where

(a) there is a significant demand for communications with and services from the office in that language; or

(b) it is reasonable, given the nature of the office, that communications with and services from it be available in that language.

For the aboriginal languages, the NWT legislation does not create absolute rights throughout the jurisdiction, but subjects them to discretionary determination of what is locally ‘reasonable’ (§14: 2). Nonetheless, the rights granted here to minority-language speakers impose a major obligation on the polity to provide the information and facilities necessary to exercise their rights.
4) **Official language rights and obligations in the three polities:**

4.1) **A comparison and commentary**

As the task of comparing these three polities proceeded, I have been surprised to discover how many points of parallel and similarity have emerged between South Africa on the one hand and northern Canada on the other. While some of these are relatively unimportant for the present-day situation, such as the central role of a chartered Company in the early formation of the structures which have eventually evolved into the polity of today, there are many others which are of central significance.

Absolutely crucial to both regions is the interweaving of *conquest* and *settlement:* of the extension and superimposition of political, economic and military control by and on behalf of a far-away centre, including a historical transition in the identity of that centre; and the penetration and settlement of the region by population from both of those imperialist-colonialist centres; yet with the demographic composition of the region continuing to be dominated by a continuing indigenous population, itself divided into two major fractions and several subsidiary ones both in terms of ethnic identity and culture and their traditional economy, and also, specifically for this investigation, of their languages. The settler populations have for the most part enjoyed a strikingly higher standard of living than the aboriginal populations; and with the transition to a modern and late-modern economy, many groups in the indigenous populations in both regions are in moderate to acute poverty. Both regions have been transformed within relatively recent history from at least partial dependence on a hunter-gatherer economy and nomadic lifestyle, and in both cases the exploitation of mineral resources (specifically, gold and diamonds) has exercised and continues to exercise a powerful impact.

Despite equally striking contrasts between the two regions, these structural parallels are absolutely central to their history and to the construction of their present situation. The most crucial of these contrasts that differentiate them relates to their geoclimatic location, with its consequences for the possible forms of economic activity and sustainable population. The Republic of South Africa today has a population of 45 million, and the adjacent and historically associated polities of Botswana, Lesotho and Swaziland a further 5 million between them, giving a total overall regional human population of 50 million. The Northwest Territories present population comes to only 37 thousand, and the adjacent and historically associated polities of Nunavut and Yukon add a further 56 thousand, between them, giving a total overall regional human population of just over 90 thousand.

Both regions thus now have populations with proportionally large indigenous and settler+exogenous+immigrant fractions (in proportions of very approximately 60:40 in the NWT, and 80:20 in the RSA). In terms of official language policies, each polity has recognized eleven languages, two of which are (neo)European languages derived from the combined impact of *conquest* and *settlement,* and nine are indigenous languages. In both cases, the question of the distinct linguistic identity of all of the indigenous lan-
guages (ie as language vs as dialect) is somewhat ambivalent. The neoEuropean languages in each region are highly adapted to the needs of a modern/late-modern society, economy and polity; the indigenous languages are at a much less developed level in terms of this adaptation, and have only acquired written forms relatively recently.

One major contrast for language policy debate, however, is that the indigenous languages of southern Africa are not currently at risk of survival. With even the smallest language communities, Tshivenda and Xitsonga, supported by geographically compact populations numbering between one and two million, and the largest, isiXhosa and isiZulu, spoken by 8 and 12 millions respectively and currently increasing, the challenge is one of asserting these languages’ civil dignity. The steady strengthening of the role of English as a lingua publica is dependent on diglossia with the indigenous languages rather than on on-going language shift, which primarily applies to the exogenous and immigrant populations.

In northern Canada, on the other hand, the small sizes of each ethnolinguistic community, and (in the case of the Inuit languages) their scattered distribution, would already be serious risk factors for their continued survival; but their vulnerability has been additionally radically compromised by the massive process of language shift with, in many cases, virtually total loss of the heritage language. For the language policies of the NWT, therefore, the challenge is a more radical one: Can these languages survive?

Compared with these two regions, the case of the European Union displays fundamentally different features on just about every relevant parameter. The nature of the EU polity is radically different, consisting of a supranational umbrella authority in process of evolving into a more confederal entity. Neither conquest nor settlement are relevant principles in its immediate history, although it could be argued that one of its central motivations – the avoidance of a third major military conflict akin to the First and Second World Wars – is driven by the quest to eliminate the conquest principle from the European theatre. The very rapid growth which the European Communities have experienced from the Treaty of Paris in 1952 to the 2004 Enlargement has been driven not by conquest but by voluntary accession – indeed, the accession negotiations for potential new member states are dominated by strict conditions imposed for admission to membership.

Similarly, many of the other demographic and sociolinguistic questions crucial for the debates in northern Canada or southern Africa are rendered irrelevant for the EU’s official languages policy by the fact that its official languages policies are derived from a treaty relationship between sovereign States, and therefore are constructed upon the basis of national policy outcomes over which the EU has no right of control.

The question of the language rights of minorities was one of the difficult topics in the accession negotiations for some of the new Member States in 2004, particularly Estonia and Latvia, but this remains unresolved in both countries and did not hinder their membership. Within the EU, the most repressive national language policies are
found in Greece, but the EU has by its nature no authority to interfere or even exercise direct influence: the small but active European Bureau for the Lesser Used Languages (EBLUL) is not an official EU agency, despite its dependence on funding from the Commission.

The problems facing the EU over questions of official language policy are thus for the most part quite different in nature than those facing the RSA or the NWT. All of the EU official languages during the period in question met the criteria of being a fully-fledged language of state, since they were such, by definition, before accession to the Union. (In the post-2004 situation Enlargement, there are two languages which have official status within a Member State but which are not currently operational as official languages of the Union: Irish, and Maltese. Significantly, both countries are in fact diglossic, with the indigenous language identified in the Constitution as having prime status but with English as a dominant *lingua publica*. In each case, the decision not to apply for EU official status [Irish] or to apply for its temporary suspension [Maltese]) was an initiative by the national government concerned.) (Spolsky 2004 also cites the case of Letzeburgesch in Luxembourg, but I believe that the statutory official languages of Luxembourg are French and German, and that Letzeburgesch – the local Germanic ‘language’ using a modern, liberal definition, or ‘dialect’ in older perception – does not have official status in the Grand Duchy.)

The problems faced by the EU with regard to the implementation of its official-language policies therefore have little or nothing in common with the problems relating to indigenous languages. (The temporary suspension of official status for Maltese has been motivated by the acute lack of trained translators and interpreters, rather than by questions about the language’s capacity to function as a language of state. The decision not to apply for official status for Irish dates from Ireland’s accession to the Community in 1973, and was seen as a sensible pragmatic move; a decision in principle to apply for recognition for Irish was taken by the Irish Cabinet in June 2004, immediately following the Enlargement, but so far as can be determined, has not yet been acted upon. Both cases, Irish and Maltese, are in any case clearly covered by Article 8 of Council Regulation No 1 from 1958.)

Two quite distinct patterns seem to emerge from this kind of comparative analysis. One has to do with the accommodation in language-policy questions of major interest groups within the population of the polity. In the case of the EU, the interest groups are the Member States themselves – and not, for example, language communities, as can be seen in the fact that Catalan is spoken by a larger population (estimates range from 8 to 12 million) than several of the Union’s official languages such as (during the period under scrutiny) Finnish or Danish (*ca* 5m each).

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21. “If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law.”
The South African case represents a transition from a bipolar power base under white minority rule – the two neoEuropean fractions, Afrikaner and English – to a multiple ethnic-community base following the end of apartheid. (The term *ethnic* is used here, as is prevalent practice in South Africa, to refer to the different fractions of the Bantu population,) The constitutional empowerment of the indigenous population (the only populations who under apartheid had no constitutional rights within the polity) is given expression in the symbolic empowerment of their languages.

The Northwest Territories case is broadly similar to that of the RSA, except that no clear threshold can be identified which would be even remotely comparable with the end of apartheid. The motivation leading to the first official-status recognition of the indigenous languages in 1990 therefore has to be sought for elsewhere.

It seems entirely plausible that the reintroduction of official status for French in the 1980s, imposed on the NWT by the Federal government and therefore causing some irritation, triggered awareness of the nonrecognition of the heritage languages historically associated with approximately half of the population, although by this time no longer spoken by so many. This process would be analogous to the evolution of the debate at national level in Canada in the 1960s, with the deliberations of the Royal Commission on Bilingualism and Biculturalism leading to the adoption of government policies promoting *bi-*lingualism but *multi-*culturalism.

Both in South Africa and in the Northwest Territories, the change can also be seen as a local instantiation of a much broader phenomenon: the *Great Values Shift* – the pervasive re-evaluation of discriminatory attitudes towards disprivileged groups and populations, which for the past half-century has been steadily and profoundly changing moral and political expectations and judgments across all the Western societies. This term implies a perspective in which the effective completion of a major upgrading in political, social and cultural status of the working classes, leading in part to the establishment of welfare-state institutions (which could be termed the *social democratic* project) then triggered off or at least significantly contributed to an analogous political, social and cultural upgrading of other previously disprivileged human populations: women, nonwhite races, and, most recently, sexual minorities. The impact of the Great Values Shift, I suggest, is what underlies a lot of contemporary discourse about ‘postmodern society’ (and it is a rather more readily-definable and operationalizable concept than ‘postmodern’).

5) Official Languages: Clients, Rights and Obligations

This section (*which was distributed as a handout at the conference*) aims to answer an initial set of questions in a preliminary tabular comparative analysis of the three polities. The questions addressed here for each polity are:
• Who are the ‘clients’ to whom the impact of ‘official language’ status is addressed?

• What statutory obligations are imposed, either explicitly or by clear implication? – and on whom? – specifically, ‘collective-institutional’ obligations on the polity’s own institutions, and individual obligations on clients or on individual officials?

5.1) The Republic of South Africa (RSA)

clients = individual official language-speakers / residents of the Republic

Obligations: collective-institutional

<table>
<thead>
<tr>
<th>The State at national level</th>
<th>must take practical and positive measures to elevate the status and advance the use of the (9) indigenous official languages</th>
</tr>
</thead>
<tbody>
<tr>
<td>The State at national level + provincial level</td>
<td>must use at least two official languages (unspecified; ?? Afrikaans &amp; English)</td>
</tr>
<tr>
<td></td>
<td>may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population</td>
</tr>
<tr>
<td>At municipal level</td>
<td>must take into account the language usage and preferences of their residents</td>
</tr>
</tbody>
</table>

Obligations: individual

<table>
<thead>
<tr>
<th>Citizens/residents</th>
<th>none</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officials</td>
<td>none</td>
</tr>
</tbody>
</table>
RSA

Obligations: PanSALB (a constitutionally established quango)

the Pan South African Languages Board must

\(\text{aufbau}\)

(a) promote, and create conditions for, the development and use of—

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language

(b) promote and ensure respect for—

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa

5.2) The European Union (EU)

aka (earlier) THE EUROPEAN COMMUNITY or COMMUNITIES

hence the term ‘Community institutions’

clients = Member States (= collectives)

+ “persons subject to the jurisdiction of a Member State”

(= individuals or collectives if legal persons)

Obligations: collective-institutional

Community institutions

must supply clients with official documents in the nationally relevant official language

must draft (=draw up) / publish all regulations, documents of general application, & the Official Journal in all official languages

may stipulate which official language is to be used “in specific cases”

? ‘working language(s)’

cf (mentioned separately) the Court of Justice (French)
Obligations: individual / collective

<table>
<thead>
<tr>
<th>citizens</th>
<th>none*</th>
</tr>
</thead>
<tbody>
<tr>
<td>officials</td>
<td>none*</td>
</tr>
<tr>
<td>Member States</td>
<td>none*</td>
</tr>
</tbody>
</table>

* other than the statutory obligation to use (any) one of the official languages in dealings with Community institutions

Rights

<table>
<thead>
<tr>
<th>all clients</th>
<th>have the explicit right to use any official language of their choice and must receive a reply in the same language</th>
</tr>
</thead>
<tbody>
<tr>
<td>for multilingual Member States</td>
<td>their “general rules of law” should determine which of their official languages is relevant; in practice, MS governments can request a divergent solution (Ireland, Malta)</td>
</tr>
</tbody>
</table>

5.3) The Northen Territories (NWT)

clients =

- residents of the Territories (= individuals)
- Aboriginal communities (collectives)

(§14(3): precise implications unclear from statutory text)

Obligations: collective-institutional

<table>
<thead>
<tr>
<th>Territorial institutions</th>
<th>must issue all statutes, official documents etc in English &amp; French</th>
</tr>
</thead>
<tbody>
<tr>
<td>at central level</td>
<td>must serve clients &amp; supply official documents in English &amp; French – subject to discretion about reasonable need</td>
</tr>
<tr>
<td>at other levels</td>
<td>must serve clients in other= Aboriginal official languages – subject to discretion about reasonable local need</td>
</tr>
<tr>
<td>municipal institutions</td>
<td>not subject to the NWT Official Languages Act</td>
</tr>
</tbody>
</table>
Obligations: individual

<table>
<thead>
<tr>
<th>citizens</th>
<th>none</th>
</tr>
</thead>
<tbody>
<tr>
<td>officials</td>
<td>? command of the 2 national official languages English &amp; French?</td>
</tr>
<tr>
<td></td>
<td>but no individual obligations re indigenous official languages</td>
</tr>
</tbody>
</table>

Rights:

all clients have the explicit right to use any official language of their choice
and receive a reply in the same language
subject to discretion about reasonable need

6) Concluding comments for the time being

The value of the comparison of the official-language policies of the Northwest Territories and the Republic of South Africa with those of the European Union, therefore, is not on the level of parallels, but rather, of differences. Specifically, it helps us to tease out the problematic nature of what is actually meant by official-language status. The question of its statutory or nonstatutory basis, although interesting and sometimes paradoxical, is of less real import than an analysis of its implications. The following questions are preliminarily addressed in the foregoing pages:

- What rights are granted, and to whom?
- What obligations are imposed, and on whom?
- Conversely, what rights are denied, or obligations withheld?

The next set of questions to be addressed will be:

- What functions of state are in fact carried out in each official language?
- Where not, to what extent is this a question of sociolinguistic preferential practice among the population concerned, or of the state of development of the language concerned?
ANNEX 1: Extract from the RSA 1996 Constitution:
provisions concerning official languages


CHAPTER 1 - FOUNDING PROVISIONS

6. LANGUAGES

(1) The official languages of the Republic are Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.

(2) Recognising the historically diminished use and status of the indigenous languages of our people, the state must take practical and positive measures to elevate the status and advance the use of these languages.

(3) (a) The national government and provincial governments may use any particular official languages for the purposes of government, taking into account usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population as a whole or in the province concerned; but the national government and each provincial government must use at least two official languages.

(b) Municipalities must take into account the language usage and preferences of their residents.

(4) The national government and provincial governments, by legislative and other measures, must regulate and monitor their use of official languages. Without detracting from the provisions of subsection (2), all official languages must enjoy parity of esteem and must be treated equitably.

(5) A Pan South African Language Board established by national legislation must—

(a) promote, and create conditions for, the development and use of—

(i) all official languages;

(ii) the Khoi, Nama and San languages; and

(iii) sign language; and

(b) promote and ensure respect for—

(i) all languages commonly used by communities in South Africa, including German, Greek, Gujarati, Hindi, Portuguese, Tamil, Telugu and Urdu; and

(ii) Arabic, Hebrew, Sanskrit and other languages used for religious purposes in South Africa.
ANNEX 2

EEC Council [of Ministers]: Regulation No 1
determining the languages to be used by the European Economic Community [1958]

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to Article 217 of the Treaty which provides that the rules governing the languages of the institutions of the Community shall, without prejudice to the provisions contained in the rules of procedure of the Court of Justice, be determined by the Council, acting unanimously;

Whereas each of the four languages in which the Treaty is drafted is recognised as an official language in one or more of the Member States of the Community;

HAS ADOPTED THIS REGULATION:

Article 1

The official languages and the working languages of the institutions of the Community shall be Dutch, French, German and Italian.

Article 2

Documents which a Member State or a person subject to the jurisdiction of a Member State sends to institutions of the Community may be drafted in any one of the official languages selected by the sender. The reply shall be drafted in the same language.

Article 3

Documents which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State.

Article 4

Regulations and other documents of general application shall be drafted in the four official languages.

Article 5

The Official Journal of the Community shall be published in the four official languages.

Article 6

The institutions of the Community may stipulate in their rules of procedure which of the languages are to be used in specific cases.

Article 7

The languages to be used in the proceedings of the Court of Justice shall be laid down in its rules of procedure.
Article 8

If a Member State has more than one official language, the language to be used shall, at the request of such State, be governed by the general rules of its law.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 15 April 1958.
For the Council
The President
V. LAROCK
Official Journal B 017, 06/10/1958 P. 0385 - 0386

Annex 3

OFFICIAL LANGUAGES ACT, NORTHWEST TERRITORIES 2003
R.S.N.W.T. 1988,c.56 (Supp.),s.2,21; S.N.W.T. 2003,c.23,s.2.1
http://www.canlii.org/nt/laws/sta/o-1/20040512/whole.html

Recognizing that the existence of Aboriginal peoples, centred in the Northwest Territories from time immemorial, but also present elsewhere in Canada, constitutes a fundamental characteristic of Canada;

Recognizing that the existence of Aboriginal peoples, speaking Aboriginal languages constitutes the Northwest Territories a distinct society within Canada;

Recognizing that many languages are spoken and used by the people of the Northwest Territories;

Being committed to the preservation, development and enhancement of the Aboriginal languages;

Recognizing that the Aboriginal languages, being the languages of the Aboriginal peoples of the Northwest Territories, should be given recognition in law;

Desiring to provide in law for the use of the Aboriginal languages in the Northwest Territories including the use of the Aboriginal languages for all or any of the official purposes of the Northwest Territories at the time and in the manner that is appropriate;

Expressing the wish that the Aboriginal languages will be entrenched in the Constitution of Canada as Official Languages of the Northwest Territories;

Desiring to establish English and French as Official Languages of the Northwest Territories having equality of status and equal rights and privileges as Official Languages;

Believing that the legal protection of languages will assist in preserving the culture of the people as expressed through their language;

Desiring that all linguistic groups in the Northwest Territories should, without regard to their first language learned, have equal opportunities to obtain employment and participate in the institutions of the Legislative Assembly and Government of the Northwest Territories, with due regard to the principle of selection of personnel according to merit;
Believing that preserving the use of Official Languages, and enhancing those languages, is a shared responsibility of language communities, the Legislative Assembly and the Government of the Northwest Territories;

The Commissioner of the Northwest Territories, by and with the advice and consent of the Legislative Assembly, enacts as follows:

**INTERPRETATION**

1. In this Act,

“government institution” means a department or ministry of the Government of the Northwest Territories, the Office of the Legislative Assembly, and an agency, board, commission, corporation, office or other body designated in the regulations; (institution gouvernementale)

“Minister” means the Minister responsible for Official Languages; (ministre)

“Official Languages” means the languages referred to in section 4. (langues officielles)

2. Nothing in this Act abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Act with respect to any language that is not English or French.

3. For the purposes of this Act, a municipality or settlement or the council of a municipality or settlement shall not be construed to be a government institution.

**PART I**

**OFFICIAL LANGUAGES**

4. Chipewyan, Cree, English, French, Gwich’in, Inuinnaqtun, Inuktut, Inuvialuktun, North Slavey, South Slavey and Tlicho are the Official Languages of the Northwest Territories.

…[repealed]

8. (1) To the extent and in the manner provided in this Act and any regulations under this Act, the Official Languages of the Territories have equality of status and equal rights and privileges as to their use in all government institutions.

…[repealed]

10. (1) Acts of the Legislature and records and journals of the Legislative Assembly shall be printed and published in English and French and both language versions are equally authoritative.

(2) The Commissioner in Executive Council may prescribe that a translation of any Act shall be made after enactment and be printed and published in one or more of the Official Languages in addition to English and French.
(3) Copies of the sound recordings of the public debates of the Legislative Assembly, in their original and interpreted versions, shall be provided to any person on reasonable request.

11. Subject to this Act, all instruments in writing directed to or intended for the notice of the public, purporting to be made or issued by or under the authority of the Legislature or Government of the Northwest Territories or any judicial, quasi-judicial or administrative body or Crown corporation established by or under an Act, shall be promulgated in English and French and in such other Official Languages as may be prescribed by regulation.

12. (1) Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by the Legislature.

(2) Chipewyan, Cree, Gwich’in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slavey and TliCho may be used by any person in any court established by the Legislature.

(3) A court may, in any proceedings conducted before it, cause facilities to be made available for the simultaneous interpretation of the proceedings, including evidence given and taken, from one Official Language into another where it considers the proceedings to be of general public interest or importance or where it otherwise considers it desirable to do so for members of the public in attendance at the proceedings.

13. (1) All final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be issued in both English and French where

(a) the decision, order or judgment determines a question of law of general public interest or importance; or

(b) the proceedings leading to the issue of the decision, order or judgment were conducted in whole or in part in both English and French.

(2) Where a body by which a final decision, order or judgment including any reasons given for it is to be issued in both English and French under subsection (1) is of the opinion that to issue it in both English and French would occasion a delay

(a) prejudicial to the public interest, or

(b) resulting in injustice or hardship to any party to the proceedings leading to its issue,

the decision, order or judgment, including any reasons given for it, shall be issued in the first instance in its version in one of English or French and after that, within the time that is reasonable in the circumstances, in its version in the other language, each version to be effective from the time the first version is effective.

(3) Nothing in subsection (1) or (2) shall be construed as prohibiting the oral rendition or delivery, in one only of the Official Languages, of any decision, order or judgment or any reasons given for it.
(4) A sound recording of all final decisions, orders and judgments, including any reasons given for them, issued by any judicial or quasi-judicial body established by or under an Act shall be made in one or more of the Official Languages other than English or French and copies of the sound recording shall be made available to any person on reasonable request, where

(a) the decision, order or judgment determines a question of law or general public interest or importance, and

(b) it is practicable to make available that version or versions, and it will advance the general public knowledge of the decision, order or judgment.

(5) Nothing in subsection (4) shall be construed as affecting the validity of a decision, order or judgment, referred to in subsection (1), (2) or (3).

14. (1) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any head or central office of a government institution in English or French, and has the same right with respect to any other office of that institution where

(a) there is a significant demand for communications with and services from the office in that language; or

(b) it is reasonable, given the nature of the office, that communications with and services from it be available in both English and French.

(2) Any member of the public in the Northwest Territories has the right to communicate with, and to receive available services from, any regional, area or community office of a government institution in an Official Language other than English or French spoken in that region or community, where

(a) there is a significant demand for communications with and services from the office in that language; or

(b) it is reasonable, given the nature of the office, that communications with and services from it be available in that language.

(3) In interpreting subsection (2), consideration shall be given to collective rights of Aboriginal peoples pertaining to Aboriginal languages and exercised within the traditional homelands of those peoples, consistent with any applicable lands, resources and self-government agreements, including land claim and treaty land entitlement agreements, and any other sources or expressions of those collective rights.

15. (1) Any Act, and any rule, order, regulation, by-law or proclamation required by or under the authority of an Act to be published in the Northwest Territories Gazette is of no force or effect if it is not printed and published in both English and French.

...
of, or providing services in, any Official Language in addition to the rights and services provided in this Act and the regulations.

**PART II
LANGUAGES COMMISSIONER**

18. (1) There shall be a Languages Commissioner who shall be appointed by the Commissioner under the Seal of the Territories after approval of the appointment by resolution of the Legislative Assembly.

(2) The Languages Commissioner holds office during good behaviour for a term of four years, but may be removed by the Commissioner at any time on address of the Legislative Assembly.

20. (1) It is the duty of the Languages Commissioner to take all actions and measures within the authority of the Languages Commissioner with a view to ensuring recognition of the rights, status and privileges of each of the Official Languages and compliance with the spirit and intent of this Act in the administration of the affairs of government institutions, including any of their activities relating to the advancement of the aboriginal languages in the Territories.

(2) In carrying out the duties set out in subsection (1), the Languages Commissioner may conduct and carry out investigations either on his or her own initiative or pursuant to any complaint made to the Languages Commissioner and report and make recommendations with respect thereto as provided in this Act.

(3) For the purposes of soliciting the advice of representatives of each Official Language, the Languages Commissioner shall meet not less than once a year with the representatives of such organizations as may be prescribed.

21. (1) The Languages Commissioner shall investigate any reasonable complaint made to the Languages Commissioner arising from any act or omission to the effect that, in any particular instance or case, in the administration of the affairs of any government institution

(a) the status of an Official Language was not or is not being recognized;

(b) any provision of any Act or regulation relating to the status or use of the Official Languages was not or is not being complied with; or

(c) the spirit and intent of this Act was not or is not being complied with.

(2) The Languages Commissioner may refuse to investigate or cease to investigate any complaint if in the opinion of the Languages Commissioner it is reasonable to do so, in which case the Languages Commissioner shall inform the complainant of that decision and the reasons for it.

[etc]