# 'RESISTING ARREST' IN STATUS PLANNING: STRUCTURAL AND COVERT IMPEDIMENTS TO STATUS CHANGE

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Ein Ausländer, der einer Verhandlung vor einem luxemburgischen Polizeigericht beiwohnt, wird aus dem Staunen nicht herauskommen, vor allem dann nicht, wenn er irgendwo gelesen hat, daß die Amtssprache in Luxemburg das Französische sei. Er wird nämlich feststellen, daß die Verhandlungen ausschließlich auf Lëtzebuergesch geführt werden. Der Vertreter der Staatsanwaltschaft und der Verteidiger aber sprechen beim Requisitorium und Plädoyer französisch. Wüßte er, daß das schriftliche Urteil in deutscher Sprache verfaßt wird, wäre er vollends aus dem Konzept gebracht.[1]

## 1. Introduction

The plan of this paper is to focus on one aspect of language status planning, that of the implementation of changes in status (for particular languages or varieties), to see whether impediments to status change may be *implicit* or *structural,* i.e. implied by or even built into the system (the language policy of the polity in question) rather than due to extraneous reasons of some sort. I will examine the cases of English in India and Malaysia and High German in Switzerland.[2]

There are extant in the literature numerous case studies of particular polities and/or languages, and many of them are concerned with India and other post-colonial societies that have attempted to limit (or perhaps even eliminate altogether) the status of exogenous languages (English, French, Dutch, etc.) while substituting some other indigenous language in its place by upgrading its status. Despite such attempts, one continues to see in India, for example, four decades after independence, steady demand for English as a subject as well as a medium of instruction; some reports (Annamalai, 1990) even indicate that the demand is increasing. In some other polities, in particular diglossic linguistic cultures such as Switzerland, Greece, Haiti, etc. there have been attempts[3] to restrict the status of the H variety while expanding the domains of the L variety, often without success.

Language status planning as a component or element in overall language planning has long been recognized, but is perhaps still ill-defined in terms of many of the socio-economic and linguistic factors involved. There is a tendency to separate corpus planning and status planning and act as if they are rather unrelated ('the linguists do the corpus planning and the politicians do the status planning'). Conversely, there is also a tendency to confuse them by assuming that one can displace one language by simply handing out lists of new vocabulary and then banning the exogenous language.

In general, we have only a vague notion of what status planning and implementation are all about. [See Kloss (1969), to whom most people attribute the development of these terms.] Cobarrubias (1983), stands out as an excellent more recent study of status planning in general, but more detail is lacking.[4] The purpose of this paper will be to examine some

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theoretical issues that tend to be ignored in status planning (both in the implementation of status changes and in the study of them) that may help to explain why status planning involving reassignment of domains from one language (usually H variety) to another (usually L variety) often fails in its objectives.

In the case of language status planning, there seem to be some needs that 'unwanted' languages fill that would-be substitutes are inadequate for, at least in the perceptions of those who continue to use them. To employ a metaphor of the law, attempts to 'arrest, detain and deport' these ('illegal alien') languages are met with resistance in a number of policies.

It is the thesis of this paper that the resistance to status planning that characterizes situations such as the retention of English in India or of German in Switzerland is not due to external factors (i.e. it is not an unexplainable aberration; nor the neo-colonialist attitudes of a former elite seeking to maintain a monopoly on well-paid jobs; nor is it a fault of language planners; nor an outcome of a game, etc.) but is probably a *result* of current (and past, of course) language policies *per se*. That is, we need not look for the reasons for the failure of the policy to eliminate such languages anywhere but in the policy itself. In this paper I will focus on the following factors:

(1) A distinction between **overt** and **covert** language policy; the locus of covert language policy will be shown to reside in *linguistic culture*.[5]

(2) The role of linguistic **register** and *repertoire* in both status and corpus planning.

(3) The place of 'register' within diglossic and bilingual situations, and the difference between a bilingual and a person whose linguistic repertoire contains (among other things) one or more socio-professional registers in an exogenous language.[6]

(4) The importance of the *functional load* of a register in a language policy.

(5) Other ramifications of status-change implementation which are part of chains of cause and effect, that are often overlooked, such as the role of linguistic *purism*.

I will try to show that many contradictions and difficulties in language policy are probably 'built-into' the covert language policies, but we can also find support for the retained status of exogenous languages in the *overt* policies themselves.

## 2. Overt policies and covert policies: policy in conflict with reality

It is not a difficult task to show that researchers of language policy have often failed to distinguish between the purported multilingual nature of language policies and multilingualism (as a societal characteristic) itself.[7] In the case of polities such as Switzerland, Belgium, Canada, South Africa (and some others), it is clear that people assume that if the polity of the state is one of bi- or multilingualism, then the population or citizenry itself must also be bi- or multilingual.

Alternatively, many assume that if a polity like France declares itself to be a monolingual state with a monolingual population, that this must in fact be true. Some researchers seem to assume that overt policies are an expression of linguistic reality, whereas we have ample documentation of the fallacy of this claim. Such researchers have therefore often attempted to map both multilingualism and multilingual policies onto the same symbolic representation, with the result that neither the policy nor the facts of multilingualism emerge clearly. What we have in Belgium, Switzerland, India, etc. are a few bilinguals, many monolinguals, but more importantly perhaps, many speakers whose linguistic repertoires

exhibit characteristics of extended diglossia, i.e. with varying proficiencies in the registers of different linguistic codes, usually as a result of schooling in some language other than the mother tongue. Furthermore, this feature of multilingual but limited repertoires is a feature of the linguistic culture in question. It is supported and transmitted by the culture, irrespective of the overt policy with regard to the various codes in question. Diglossia is a good example of a characteristic of language that is a *social* feature, i.e. characteristic of a linguistic *group* rather than of an individual, we can better understand how it operates at times in defiance of the explicit policy of the area. (Were it an individual feature, i.e. a set of unrelated clusters of proficiencies in various codes, we would be dealing with sets of individual bilinguals whose bilingualism was not a cultural feature.)

Perhaps the best way of looking at this problem is to consider that language policy seems to be dichotomized into *overt* (explicit, formalized, *de jure,* codified) policies and *covert* (implicit, informal, unstated, *de facto,* grass-roots) aspects of the policy; what usually gets ignored, of course, are the covert aspects of the policy.[8] That is, many researchers (and policy-makers) seem to believe, or at least have taken at face value, the overt and explicit formulations of and statements about the status of linguistic varieties, and ignore what actually happens down on the ground, in the field, at the grass-roots level, etc.

We have support, however, for the notion that covert policy can be empirically distinguished and that it has important consequences for the behavior of people within linguistic cultures. Becker and Geer (1960) posit the notions of 'latent' and 'manifest' culture as factors that must be accounted for when studying the behavior of groups. Latent culture is in some ways parallel to our notion of 'covert', and manifest culture similarly may have parallels in our notion of 'overt' policy.[9] Another researcher who has looked at language policy from somewhat the same viewpoint is Gessinger (1980), who posits a difference between explicit and implicit policy as follows:

> The narrower and broader meanings of the concept of language policy should not however be confused, since they are differentiated in one important point: language policy understood narrowly—I call it *explicit* language policy—is societal treatment that is directed immediately toward the linguistically transmitted living conditions/circumstances of speakers [i.e., affects speakers' linguistic circumstances] whereas *structural* language policy refers to that treatment of societal groups or state administrations that can be demonstrated to have incorporated linguistically transmitted life-circumstances into the total set of relationships and conditions of general political practice (Gessinger, 1980; my translation hfs).

That is, Gessinger distinguishes between *explicit* and *structural,* the latter being a kind of incorporation of linguistic conditions into the basic assumptions of the political fabric and *modus operandi* of the state.[10] This is slightly different from what I am calling linguistic culture, but certainly his *structural* language policy would be one component of what linguistic culture would entail.

## 2.1. *Overt and covert policy in the United States*

Let me illustrate this with an example from language policy in the United States. The United States, as is well known, has no overtly stated policy regarding the English language, so one might assume, as some students do, that the statement that the United States 'has no official policy' is equivalent to 'has no policy' or is 'neutral' with regard to English and/or 'tolerant' of other languages. Having no overt policy with regard to the English language (or any other language) does not mean, however, that there is not a *covert* policy with regard to the *English* language (and other languages).

It does not take sharp powers of observation to be able to perceive that English is the

dominant language in the life of the citizens of the United States (or, indeed, in North America as a whole, as our French Canadian neighbors readily note). It is the primary (in some cases exclusive) language used in schools, colleges, business, in state, federal, and local administration, in health care delivery, in the media, in sports, in entertainment, etc. Outsiders to U.S. anglophone culture (e.g. francophone Canadians) see English as an irresistible force, a vibrant, powerful linguistic culture that overpowers all other languages.[11] But the fact that English is not legally protected, guaranteed, promoted, etc. does not mean automatically that some other language might be able to mount a strong challenge to it, i.e. that there is a level playing field when it comes to competing for any of the domains now dominated by English.

To take a hypothetical example, let a politician make a political speech in some language other than English, or let some parents demand public schooling in a language other than English, for the furor to erupt. One could list many more examples of what might happen if American citizens were to attempt to carry on various kinds of public business—applying for a job, registering for unemployment, enrolling in school, applying for a driver's license—insisting all the while on the 'right' to do it in some language other than English. Then we would hear something about the (covert) policy of the United States; we would hear that 'everybody knows' that the default language is English, and attempts to use another language are illegitimate in some way. In other words, the *covert* language policy of the United States is not neutral, it *overwhelmingly favors* the English language. No statute or constitutional amendment or regulatory law is necessary to maintain this covert policy[12]—its strength lies in the basic assumptions that American society has about language. There is not room here to go further into detail about these assumptions; I refer the reader to Schiffman (1991b).

Another example of the 'cleavage' between overt and covert policy gained credence for me when I first contemplated the question of linguistic assimilation in the German-American Church (Schiffman, 1987). Gradually it became obvious to me that most previous research on the subject of language shift among German-Americans had looked only at the official documents, statistics, and policies of German-American religious bodies. They had ignored grass-roots developments of various sorts[13] that in fact laid the groundwork for the later 'abrupt' shift (or what was perceived to be an abrupt policy shift, but what was actually a *de jure* recognition of the *de facto* shift that had occurred much earlier).

This ignorance was made possible by the diglossic nature (Ferguson, 1959) of German at the time of emigration as well as by the extended diglossic relationship (Fishman, 1967) between German and English in the Church bodies. As we shall see, diglossic linguistic situations often mask the true nature of linguistic repertoires (and therefore of language policies) by presenting a view of language that is skewed in favor of the 'high' language, ignoring the actual domains of the 'low' language. As was evident in the German-American case, this had disastrous results for the German language in America, since policy-makers in the German-American Church were blind to the reality of actual (multilingual) linguistic use within the (monolingual) policy they had established.

## 3. Register and repertoire

Another distinction that is often missing in language policy studies is the recognition that there is a difference between 'linguistic register(s)'[14] (based on functional differentiation of different linguistic codes) and linguistic repertoire (based on the

proficiencies of language users), and the *functional load*[15] of a register in the linguistic culture in question.

This can again be illustrated by comparing official language policy in India with the actual linguistic behavior of groups, especially socio-professional groups, and individuals' proficiencies to use different codes. As is well known, despite the paucity of officially sanctioned domains for English in post-Independence India, use of this language continues to predominate in business, higher education, Western professions (law, medicine, science, technology), and some other domains. Attempts to legislate the use of indigenous languages in these domains fails for a number of reasons. The primary one is that there are no *indigenous* registers for Marathi, Tamil, Bengali, etc. in these domains, despite attempts to create them artificially by translating English terminology into these languages.[16]

This failure persists because of the following factors:

(1) Registers are not simply lists of vocabulary, but also involve certain preferred rhetorical devices, abbreviatory conventions, and even particular syntactic patterns (passive constructions, etc.).

(2) Registers are developed primarily by a community of language *users* interactively employing them to solve a particular task; they are essentially *constructed in use,* by their users, and cannot be developed by bureaucrats or outsiders to the register. A good example of this in our time is the evolution and development of a register for computer science. The English version of this register has developed along with the evolution and development of computing hardware, software, and computer science as they themselves have evolved.[17]

(3) The notion that a register can be developed by translating another language's vocabulary is erroneous. Even in French, a linguistic community that considers itself the second most important language in the world after English, the task of developing and maintaining a scientific and technical register independent of English is found to be overwhelmingly difficult. In an attempt to deal with the flood of English borrowings, various francophone communities, following the French-Canadian example, have started a linguistic data-bank that is accessible by satellite from France (and the plan is to have it accessible in every francophone country that wants it) in order to have instantly available French equivalents for English terms. What is obvious, of course, is that were these registers not being elaborated and constructed by English-speakers, the French would not be in this predicament.[18]

(4) Registers must be an integral yet specialized part of a recognized standard language, most of which already have registers for literature, philosophy, *belles-lettres* and some other humanistic disciplines, but are often monopolized and controlled by pundits whose priorities (e.g. purism) are often *counterproductive* when it comes to the development of other registers.[19]

(5) People knowing English are loath to cut themselves off from international developments in their fields, which flourish primarily in English; that is, there is an internationally recognized English *register* for these disciplines and one cannot participate in the work of the discipline without doing so in English.[20]

(6) Professionals who have a linguistic repertoire that consists of proficiency in English in a professional register do not see the utility of adding to their repertoire knowledge of a register whose usefulness has not been proven. Essentially they see this as coming about only through extra *cost* (Pool, 1990), i.e. there is a stick, but no carrot.

(7) Professionals with exogenous linguistic repertoires see themselves as part of a potential international job market; their skills are portable, and therefore worth more, only if they are based in an international language.

(8) Polities that try to indigenize Western-based professions by requiring professionals to function in a non-Western language in most cases result in the flight of these elites to more friendly environments. The constant tinkering with higher education and non-English registers in Sri Lanka, for example, has resulted in the flight of many members of the health care profession to other English-speaking countries, rather than the indigenization of the professions.

(9) Policy-makers often act as if status-change implementation needs only an adequate corpus; provide the corpus (the new list of translated vocabulary), ban the exogenous language, and the rest will take care of itself. In effect, the planners take the path of least resistance—they do a bit of corpus planning, and hope that the implementation will take care of itself.[21]

(10) A register, such as that of law, may have a number of sub-registers, i.e. there may be a kind of diglossia operative even within the register. The quote from the use of language in Luxembourg's police courts at the introduction to this paper illustrates this quite graphically, but even when the register for law is supposedly totally within a particular language, there may be differences of sub-register. The Malaysian example will show how this has been an impediment to shift in that polity (Mead, 1988, Ch. 4 ff).

Researchers who fail to distinguish the importance of these factors also fail to understand how policy decisions made at the central level in India tend to have no appreciable effect on the use of English.[22] That is, policy-makers have assumed that a legal register is just like some other register, and does not have some special problems associated with it; they assume that providing a written translation of legal English will also suffice for the spoken portions (the L variety) of the legal register; and they fail to assess the functional load of English in a complex linguistic culture like that of India or Malaysia, or the functional load of German (*Schriftdeutsch*) in Swiss linguistic culture.

Another example of inappropriate (and in fact counterproductive) tinkering with registers by controlling domains of favored languages is illustrated by the German-American Church (Schiffman, 1987). It was the policy of the German-American Church to regulate the status of which language would be used for religious subjects (i.e. German for the religious register), but it allowed English *de facto* to dominate other school subjects. Their thought was that this policy would produce stable bilinguals who would remain loyal to German in religious domains; they were oblivious to the fact that what they were actually producing was compartmentalized bilinguals with different repertoires, but in particular English competence in the practical registers such as business, etc. No attention was or is given in these polities to the *functional load* of English in the repertoires in question, nor to the fact that English dominated the L domains (non-prestigious, usually spoken language domains) of the younger and better-educated generations. That is, the policy-makers of the German-American Church ignored the fact that its pupils were predominantly English speakers, as if this could have no effect on the outcome of the policy; steeped deeply in their own loyalty to German, they could not see how attached these so-called bilinguals (actually English-dominant bilinguals at best) had become to the English language, and the appropriateness of certain codes for certain tasks. Policies that ignore such aspects of language *use* 'down the road' as it were, that are not specified in their overt policies,

do so at their peril.[23] When transplanted to American soil, where an overtly 'laissez-faire' policy prevails (within a covertly assimilationist linguistic culture),[24] such policies are doomed to failure.

## 4. The congruence of policy and polity

While policy and reality must be kept separate (since they do not represent the same thing) attempts to typologize language policy necessarily reflect many of the same dimensions and factors used to symbolize users' competencies. The closer the representation of policy comes to the representation of users' competencies, the better the congruence or 'fit' of the policy to the linguistic reality, and the less tension (and social strife) we should be able to predict there will be between the two. That is, if users have diglossic or triglossic repertoires, a policy that takes these into account and legitimizes the status of these varieties will be more congruent with the reality than one that ignores these repertoires. As we shall see, except for polities such as Luxembourg (Hoffman, 1981) and Malta, few policies ever explicitly mirror the multiglossic reality; in particular, few policies ever take any cognizance of the existence of L variety language, let alone establish guarantees of its domains and registers.[25]

### 4.1. *Overt and covert policy in Switzerland*

Another example of a lack of fit between the overt and covert policy is that of Switzerland, i.e. Swiss language policy and linguistic reality. In the Swiss Federal Constitution of 1874 (revised to 1953), Article 116 specifies which languages are official and national:

> German, French, Italian and Romanche are the national languages of Switzerland.
> German, French and Italian shall be deemed the official languages of the Confederation (Hughes, 1954, p. 128).[26]

This is the text of the Swiss Federal Constitution that refers to language, *in its entirety*. From this statement it is quite difficult to visualize what Swiss citizens actually *do* with language, since it totally ignores the reality of language use or of the repertoires of language users in Switzerland—the constitutional language says nothing about the extensive domains of *Schwyzertüütsch* and the very restricted domains of *Schriftdeutsch* among 'German' Swiss; if fails to recognize that Italian has few if any domains at the federal level, and it fails to recognize the extensive *extended* (Fishman, 1967) diglossic relationship between Romansch and German (of various varieties).[27] One must look to cantonal regulations of various sorts, as well as at decisions of the Swiss Supreme Court, to see what local conditions (policies) are imposed on language. And when one does[28] it becomes clear that language policy in Switzerland is totally dependent on educational policy, which is exclusively a cantonal responsibility, and on Supreme Court decisions (such as that mentioned in Falch, 1953) which have been based on an *unwritten* principle (*un principe non écrit*).[29] This is in fact a problem in many federated polities—in India, in Switzerland, and in the Soviet Union the federal policies are explicit to varying degrees, but what happens at local levels, e.g. in various states of India, the Soviet republics, or Swiss cantons often is severely at variance with federal regulations.

4.1.1. *Challenging the status of High German in Alemannic Switzerland.* In German-speaking Switzerland, High German is used as a written language but all Alemannic Swiss use only their local dialects for spoken purposes.[30] In recent years the old stable diglossic relationship between *Schriftdeutsch* ('written German') and Swiss dialects has broken down,

and one now hears some discussion of the possibility that *Schriftdeutsch* could be abandoned, and Swiss-German dialects could be used in the H domains in Switzerland. This is unlikely to occur, in my opinion, for the reasons discussed below.

As is typical of diglossic linguistic cultures, official mentions of language in Switzerland (e.g. in the Federal Constitution) tend to be both *in* the H version of the language and *about* the H version (in this case *Schriftdeutsch*), and give no mention of rights for the L variety.[31] That is, 'German' here means *Hochdeutsch,* particularly since the text itself is in *Hochdeutsch.* This follows the general practice of presuming that the H variety *is* the language, and a legal challenge to this would have to be made by one of the methods available (under the Constitution) to Swiss citizens, i.e. the initiative or the referendum. The referendum process (*Abstimmung*) is initiated at the federal level, i.e. it is a *Volksbefragung* whereby the federal authorities request a confirmation of a particular action by the citizenry. The initiative (*Volksanregung*), on the other hand, originates at the sub-federal level (cantonal) and seeks to change the law or the Constitution. Revisions to the Constitution are provided for in Articles 118–123; upon demand of 50,000 voters wishing to change the Constitution partially, an initiative must be provided. If, however, cantonal councils are not in agreement with the goals of an initiative, there must be a referendum (*Abstimmung*) on the subject, and if it passes, the Federal Legislature must undertake a revision (Article 121).

From the foregoing, it appears conceivable that if a large number of Alemannic Swiss were to attempt to change the status of *Hochdeutsch* as stated in the Constitution, it would be necessary that not only the popular will be in favor of it, but also the individual cantonal councils would have to agree. Cantonal councils are responsible for education, including higher education, under the Constitution. It is *conceivable* that as a first step, all Alemannic-speaking cantons could agree to depose *Hochdeutsch* from its legal status as the language of education, and substitute *Schweizerdeutsch* as the medium of instruction in all the schools and universities of the Alemannic cantons, but it is highly improbable. Were this to come about, however, they could then proceed to mount an initiative to change the status of *Hochdeutsch* at the federal level as well. But as various writers have pointed out, the Swiss are conservative when it comes to passing referenda and initiatives, and conservatism in this case would probably work in favor of retention of *Hochdeutsch.*

There is also the factor that non-Alemannic cantons would be required to vote on any measures affecting language at the federal level, even if the change in the status of *Hochdeutsch* would technically not directly affect the status of French or other languages. But in fact the non-Alemannic cantons do not wish to see *Hochdeutsch* removed from its current status, since it is the only form of German they care to learn, and the Alemannic cantons are aware, as mentioned earlier, that the removal of *Hochdeutsch* would drive a wedge between them and the non-Alemannic cantons. I would predict, therefore, that an attempt to change the status of *Hochdeutsch* at the federal level would fail in any national referendum or initiative. This means that even if cantonally *Hochdeutsch* were removed from its present domains,[32] it would still retain rights at the federal level. (But, in fact, some writers report that it is *forbidden* to speak SD in the *Bundesversammlung.* It is not clear whether this is an administrative rule or common custom, but since speeches are translated simultaneously from one language into another in the federal parliament, current practice favors translation from standard forms of German into French and Italian and vice versa; substituting *Schweizerdeutsch* for *Hochdeutsch* in these proceedings would tax

the abilities of the simultaneous interpreters, whose training is totally oriented toward *Hochdeutsch*.)

4.1.2. *Challenging English in India*. Comparison of the Swiss situation with that of India, where changes were made in the status of English after Independence, may also shed some light on the difficulties of deposing certain languages from their dominance of certain domains. One of the most resistant segments of society in India to any change in the status of English has been the legal profession. Trained during the British period totally through English medium, Indian lawyers had no intention of giving up their privileged status after Independence and allowing another language to become the language of the law. English-educated lawyers would have had to undergo training in Hindi, including legal training, and Supreme Court justices in particular resisted this (to them preposterous) idea. As a result English remains the language of the Supreme Court in India, although Hindi versions of various laws are given lip-service as well, but beyond this, the English version of the Indian Constitution also remains the definitive one. Law schools at Indian universities continue to operate in English medium, even if laws at the state level are written in Tamil or Gujarati or whatever. Thus here, as in Switzerland, there is what one might call a 'back-up' effect, meaning that in order for there to be continuity in the preparation of judges, there need to be law schools that teach in English, secondary schools that prepare students in English for law school, and so on down. Since English is guaranteed a small niche (but with a high functional load!), there is a need to maintain an infrastructure to preserve English that essentially negates the attempts to replace it gradually.

One can imagine the Swiss judiciary reacting in a similar way. If all the laws of Switzerland including its Constitution, are written in *Hochdeutsch*, and this is to be changed to allow, or even require, a *Schweizerdeutsch* version, in which dialect shall this be done? Which schools of law will take the first step to train lawyers through dialect medium? Which cantons will be the first to translate all their laws, administrative regulations, etc. into dialect? Which lawyers or judges will volunteer to help develop a legal register for SD? (As we have already noted, professional registers do not spring *ex nihilo*; they are developed through use by their users, on the job, as it were.) But this is not only not a trivial undertaking, it is *particularly* anathema to lawyers, because for them, the language of the law *is* the law. Translating laws into some other language is opening a pandora's box that would have grave consequences (in the minds of most members of the legal profession), not only for their monopolies over the law, but even thinking altruistically, for the welfare of India or Switzerland and their citizenry. It therefore follows that if *Hochdeutsch* retains control of the domain of legal language, it must retain the domain of law school education, which then requires educational domains at lower levels as well. The conclusion that one must draw is that for all the problems that the retention of *Hochdeutsch* engenders for Switzerland, removing it from those domains by the legal means currently available under Swiss law is not likely to occur. Similarly, for India, we are not likely to see any change, particularly since in the Indian Constitution, it is still the *English* version of laws that is definitive.[33]

4.1.3. *Problems in the implementation of language policy status change in Malaysia*. In a recent monograph, the attempts of Malaysia to force a change from English to Malay (*Bahasa Malaysia*) in Malaysian courts has been documented (Mead, 1988). What emerges from this study corroborates my own conclusions about the lack of understanding of the

parameters of what constitutes a linguistic register such as that of the law. As Mead shows, Malaysian policy-makers have followed the usual route of setting deadlines for the changeover from English to Malay (then advancing the deadline); providing the vocabulary by translating English terms into Malay; then sitting back and expecting change to happen. While there are also social reasons that are not primarily socio-linguistic ones for the reluctance of the courts and legal profession to switch to Malay, he also shows for the first time, that I am aware of, that there are different traditions of *usage* of legal language, what I am calling sub-registers, that have their own problems when switch to Malay is called for.

Mead lists a number of elements of what he calls 'discourse control' that are involved in language use in the legal profession.

> In this chapter we see how factors in [the lawyer's] professional environment encouraged or discouraged the use of Malay. His purposes in communicating are distinguished here in terms of the degree of discourse control that he wished to exercise. By discourse control is meant the addressor's enforcing upon the addressee his choice of topic, criteria of relevancy, and the choice of the linguistic structure of the interaction. The balance of control varies in different types of discourse and at different points within a discourse. The term 'negotiation' is employed here to indicate the process by which the balance of control is determined. As a simple example, the speaker who asks the most questions gets the most answers and thus considerable control. But as soon as he allows the other participant to take a questioning role, the balance of control is shifted (Mead, 1988, p. 58).

What Mead is getting at is that the technical language of a legal text is one thing; the lawyer's choice of language (discourse style) may vary dramatically, depending on whether s/he is consulting with a client in chambers, cross-examining a (hostile) witness, making a summation for the jury, making an objection to the court, etc.

Mead illustrates this with a number of examples from actual Magistrate's Court proceedings, then concludes that

> [i]t was one thing for policy-makers to dictate those fields in which Malay should be used and to specify the appropriate terminology and grammatical structures. It was quite another to enforce rules of language use on the individual. The professional's attitude towards the language policy depended on a number of factors that included his audience and accountability to them, and the nature of his professional activity. . . .
>
> [T]he management of a successful examination or cross-examination that both elicits appropriate evidence and persuades the court requires considerable forensic and linguistic skills. The lawyer would naturally choose to conduct it in the language which seemed most likely to maximize his control of the witness and to minimize the element of negotiation. In the confines of the courtroom, the intentions of the language planning authorities counted for less than did the language of the witness, the lawyer's own language, and the decision of the court (Mead, 1988, pp. 57–58).

Another difficulty arising in the Malaysian situation stems from the necessity of simultaneous translation of court proceedings. Since witnesses, defendants, and other lay persons may have linguistic backgrounds involving a range of Chinese dialects, Indian languages, and other Malay dialects, court interpreters must be able to translate technical questions into and from these lects into and from both Malay and English, since the language(s) used officially in the court may be either or both of these. The switch to Malay has confounded the ability of many interpreters, since the kind of Malay they know is typically a colloquial variety. Mead does not document the professional training required to become a court interpreter in Malaysia ('he may have been trained in legal procedures for only two months') but given the demands of knowing non-standard Chinese, Malay and Indian lects, the likelihood that these interpreters are skilled in either legal English or legal Malay is probably not high. Also, community loyalty demanded that he focus on the needs of the witness, rather than the needs of the legal system. When the interpreter mediates between the witness/accused and the court such that proceedings are shortened,

the niceties of exact legal interpretation may be ignored by the court (Mead, 1988, p. 70).

Another complication of the Malaysian situation is attributed by Mead to an underlyingly Islamic notion of the meanings of words. The policy-makers in translating English legal terminology into Malay assumed that legal terminology is like terminology for chemistry or for anatomy—if the word 'atom' can be unambiguously translated into Malay, then so can the word for 'tort'.[34]

> The reformers appeared to hold, first, that meaning was fixed by the linguistic item that carried it, and second, that an equivalent item could be formulated in a second language and be applicable to precisely the same range of referents. We may hypothesize that the reformers' backgrounds reinforced this view. Islamic culture teaches that language has divine origins, is precise, and hence no useful distinction can be drawn between the dictionary definition of a word and its significance. . . . Secondly, Malay schools relied heavily on rote learning . . . and pupils were not encouraged to question the conventional meaning of a text. The lawyer, on the other hand, had learnt to distinguish meaning as object (or artifact) and meaning as act. . . . Meaning is created by the interactional process, and the appropriate connotation denoted by a specific term derives from the situational and linguistic contexts within which it is used.

Although I would agree with Mead that the notion that language has divine origins is found in Islam, I would be surprised to find that any language other than Arabic is thought to have this status, though it may be the case that Muslims in Malaysia have transferred this notion to Malay as well. Furthermore there certainly exist complex kinds of legal argumentation within the corpus of Arabic law. I would say that this simplistic notion of what words mean is a common one in many parts of the world and in many linguistic traditions; but Mead is on the mark in his conclusion that the meaning of linguistic terms is *interactional*. I would conclude that legal Malay will become an operative register when the legal system in Malaysia is allowed to interactively *develop* the register, not when it is handed down from on high.

## 5. Conclusion

In Switzerland, in India, in Malaysia and in many other polities, attempts to change the status of particular languages that dominate certain domains has often met with resistance. I have tried to show that this resistance may actually be built into the policy in question, often in ways that are not terribly obvious to language planners. In two cases mentioned here it may seem somewhat paradoxical that *Hochdeutsch* and English, respectively, are explicitly guaranteed very little in the three constitutions in question. But as I have tried to show, the structural ramifications of these particular domains are fraught with considerations beyond the narrow considerations of status planners, made particularly complex by the existence of registers (in these two cases, legal registers) for which there are no substitutes, and perhaps never will be, if planners continue to ignore just how it is that registers come into existence, as well as ignoring what the *functional load* of these registers is—in both cases the load of legal, judicial and constitutional law and its practice.

Beyond this, it also can be shown that resistance to status change may also lie in the non-explicit, covert part of language policy, so that even if changes are written into federal constitutions, grass-roots attitudes to the change may thwart actual implementation of the change, as seems often to be the case in Canada, for instance, or in the United States in attempts to implement bilingual education at local and state level. For our increased understanding of status change and implementation, the greatest desideratum may turn out to be the study of covert language policy.

## NOTES

[1]'A foreigner who observes the proceedings of a Luxembourg police court will be profoundly shocked, especially if he has read somewhere that the official language in Luxembourg is French. He will note that the proceedings are conducted exclusively in *Lëtzebuergesch*. For the *requisitorium* and the plea, however, the Counsels for the prosecution and for the defense speak French. To then learn that the written sentencing is done in German would leave him completely confused' (Hoffmann, 1979, p. ix).

[2]I will also draw upon some other examples such as the legal status of various languages in Luxembourg.

[3]Or at least desires, however vaguely expressed.

[4]Cobarrubias makes some useful distinctions, not the least of which is one between status (dynamics) selection, and status implementation. Kloss (1968) and (1969) are also useful, but there are problems with his formulations, such as those noted by Cobarrubias, e.g. his leaving out 'specific language functions related to status, such as education, religion, court proceedings' (Cobarrubias, 1983, p. 45) etc.

[5]Roughly, the summation of beliefs, attitudes, myths, etc. **about** language held by a linguistic group, forming their culture about language.

[6]There is a tendency to subsume registers under various kinds of diglossias; I would like to make the case that they are not the same.

[7]For example, see Kloss (1966), Stewart (1968), and Falch (1973).

[8]I borrow this distinction from Benjamin Lee Whorf (1964, p. 131), who used it to describe distinctions between overt and covert classes or categories in the grammar of a language; but I refrain here from psychologizing about 'world views' or language 'defining experience'. The notion of *covert prestige* of non-standard varieties of language, and its operation as a factor in the retention and persistence of these varieties in the face of massive educational efforts to eradicate them has also been noted by sociolinguistics (Trudgill, 1974, pp. 89–90). One might also find a parallel in Chomsky's notions (1965) of deep and surface structure.

[9]Furthermore, Becker and Geer note that '[t]he use of the terms 'manifest' and 'latent' connotes nothing about whether the cultural items operate with or against the opening expressed aims of the organization'. This lends support to my distinction between 'subversive' covert policies and 'collusive' covert polities.

[10]The German text is as follows:

> Die engere und weitere Bedeutung des Begriffs Sprachpolitik sollte aber nicht vermischt werden, denn sie unterscheiden sich in einem wesentlichen Punkt: Sprachpolitik im engeren Verständnis—ich nenne sie *explizite* Sprachpolitik—ist gesellschaftliches Handeln, das *unmittelbar* auf die sprachlich vermittelten Lebenszusammenhänge der Sprecher gerichtet ist, während *strukturelle* Sprachpolitik dasjenige Handeln gesellschaftlicher Gruppen oder staatlicher Administrationen bezeichnet, das nachweislich sprachlich vermittelte Lebenszusammenhänge in die Gesamtzusammenhang als allgemeiner politischer Praxis einbezieht (Gessinger, 1980, pp. 22–23).

Gessinger's goal is to show how language policy in eighteenth-century Germany, and especially in Prussia, not only had explicit aspects but had built into it assumptions about language and its role in the transmission of culture, and in particular the expansion of German *Kultur* into the areas of Poland recently acquired by the partition of that nation, assumptions that are tacit in the policy but built-into the culture.

[11]Veltman (1983, p. 211) refers to the 'power of the English language in the United States to subordinate and eradicate the languages of immigrants to that country'.

[12]Despite the shrill cries and claims of such movements as *U.S. English* and *English First*.

[13]For example, the requests for support of English-speaking congregations, indicative of the existence already by that time of many English-dominant members that began in the 1880s from the Indiana and other synods, but were not acted upon until much later.

[14]Halliday *et al.* (1964, pp. 87–99); Trudgill (1974, pp. 101–106).

[15]I borrow this term from Prague School linguistics, where it was used to refer to the fact that a minor distinction such as phonemic contrast between English [ð] and [z], (which is probably used only to distinguish 'then' and 'Zen') and [θ] and [s] (which would distinguish a few more pairs, such as 'sink' and 'think'), i.e. dental fricatives contrasting with alveolar fricatives are not used to distinguish very many words, but where the phonemic contrast *is* used, i.e. in deictics and demonstratives such as 'the, this, that, there, then' its functional load is high. For further discussion see Matesius (1931).

[16]There are, of course, counterexamples of languages where registers have developed to displace exogenous ones; Alisjahbana (1974) documents the successful switch to Indonesian and the development of educated, technical and administrative registers that have displaced Dutch in Indonesia. But as he notes, this was made possible by the banning of Dutch during the Japanese occupation, with the assumption that the Japanese language would

fill the gap. But since there was inadequate training available to teach Indonesians Japanese, the occupiers themselves had to resort to Indonesian in many cases i.e., the Japanese occupiers made the same mistake other language planners often make—they assumed they could ban Dutch and that Japanese would take its place, automatically, without resistance. Since Indonesian was already a lingua franca in the area, it was the obvious candidate to become the national language of independent Indonesia, and to function in educated registers where Dutch had previously been used. Note also that what was being banned was *Dutch*, not English, and it was being done during a period of war under a military occupation. In neighboring Malaysia, the ousting of English has taken much longer, and is still not complete.

[17]Consider, e.g., such terms as 'hardware', with analogous 'software, shareware, vaporware, liveware'; the development of verbs such as 'input, output, download, uplink' rather than the usual Greco-Latinate sources; the proliferation of acronyms, abbreviations, and blends, such as RAM, ROM, LAN, DOS, WYSIWYG, meg (for megabyte), modem (for modulator–demodulator), etc. just from the sub-register of personal computing.

[18]For a description of this, see Haut Comité de la langue française (1975, pp. 128–129).

[19]See Krishnamurti (1988) for some discussion of standardization problems in Indian languages.

[20]Even in France many scientists and technologists publish their results in English *in French journals,* in order to be more widely read.

[21]'The question of the terminology used in the courts should not arise at all as the Dewan Bahasa dan Pustaka had already prepared the necessary terminology' (quoted in Mead, 1988, p. 54).

[22]A thorough review of the problems of developing scientific and technological registers for Tamil within the context of developing a register for other Indian languages is provided by Andronov (1975). He concurs with me in concluding that most of this kind of planning in India has been wrong-headed and counterproductive; in fact he concludes that unless languages are willing to borrow massive amounts of vocabulary (which they already do in their spoken versions) they will not be able to assimilate the massive numbers of neologisms they must create in order to function in parallel to other languages.

[23]As I have tried to show (Schiffman, 1987) such policies as those employed for the German-American Church are actually but unwittingly *covertly assimilationist*; Kloss (1977) states that it is an 'axiom' of the American linguistic scene that a loss to English (by or from another language) is never regained. We must see this axiom as a part of American linguistic culture, since it is not a part of U.S. overt language policy.

[24]Nathan Glazer calls this the 'enormous assimilative power of American civilization' (Glazer, 1966, p. 360).

[25]In Paraguay, for example, there is little or no recognition of the proficiency and status that Paraguayans have in Guaraní despite the great compartmentalization of domains described in Rubin (1968).

[26]The German text is as follows:

> Das Deutsche, Französische, Italienische und Rätoromanische sind die Nationalsprachen der Schweiz. Als Amtssprachen des Bundes werden das Deutsche, Französische und Italienische erklärt.

[27]See also Weinreich (1953) for a description of language use and language contact in the Confederation, especially in the Romansch/German diglossia.

[28]Compare, for example, the cantonal examples enumerated in Falch (1973, pp. 38–40).

> Les écoles communales ne sont pas obligées de donner un enseignement à des enfants qui proviennent d'autres cantons et qui parlent une autre langue. Cela provient du fait que la langue de l'administration et de l'école est fixée une fois pour toutes. Ce principe non écrit a été consacré par un jugement du Tribunal fédéral de 1931: les frontières linguistiques du pays doivent être considérées comme intangibles. . . .

[29]See also McRae (1983) for other examples of how linguistic rights are managed cantonally.

[30]A review of this situation can be found in Schiffman (1991a).

[31]The Swiss always refer to formal or written German as *Schriftdeutsch* rather than *Hochdeutsch,* which is what the Germans would call it.

[32]This is highly unlikely for the domain of higher education, for reasons already mentioned, and if it were to be retained for higher education, it would also have to be retained at secondary and primary levels, so that students could prepare for higher education.

[33]For a summary of India's language policy as expressed in the 1950 Constitution, see Watts (1970, pp. 152–154). The Eighth Schedule (Articles 344(1) and 351) is the article that lists the legitimized languages, whose rights are mentioned elsewhere. A careful reading of these portions of the Constitution reveals that although many clauses protect various languages and the rights of their speakers to *promote* their own languages, and prohibit restrictions on individual initiatives, very little is stated about domains that are reserved for languages, except to mention Hindi, or the right of a speaker to use hsr. language in certain situations. But most importantly, in Article 348 there are guarantees for English, including that the English version of the Constitution is definitive, that can be changed only with difficulty.

[34]One wonders, also, what the Malay translation of such Latin terms as habeas corpus would be—something like 'you have the body'?

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