

**Language rights,
ethnic politics:**

A critique of the
Pan South African
Language Board

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Abbreviations

ANC - African National Congress
ATG - *Afrikaans Taalgenootskap*
ATKV - Union of South African Railways and Harbours
AZAPO - Azanian People's Organization
DA - Democratic Alliance
DAC - Department of Arts and Culture
DACST - Department of Arts, Culture, Science and Technology
DoE - Department of Education
ECCSA - Education Coordinating Council of South Africa
FAK - *Federasie van Afrikaanse Kultuurvereniginge*
GRA - *Genootskap van Regte Afrikaners*
HRC - Human Rights Commission
HSRC - Human Sciences Research Council
IFP - Inkatha Freedom Party
LANGTAG - Language Plan Task Group
LHRs - Language Human Rights
LMS - London Missionary Society
NATO - North Atlantic Treaty Organization
NEPI - National Education Policy Investigation
NLP - National Language Project
NP - National Party
NNP - New National Party
PanSALB - Pan South African Language Board
PAC - Pan Africanist Congress
SAP - South African Party
SASI - South African San Institute
SASM - South African Students' Movement
Section 185 Commission - Commission for the Promotion and
Protection of the Rights of Cultural, Religious and Linguistic
Communities
TAC - Treatment Action Campaign
UNESCO - United Nations' Economic, Social and Cultural
Organization
VOC - Dutch East India Company

Prologue

Is it important to study language policy? Exponents of the field can invoke an increasingly long and loud parade of answers in support of an emphatic *Yes*. But unfortunately to date, a scarce few outside the field can do the same. For this reason, a basic enumerative exercise—a brief review of the parade—precedes this paper. Let's ask again: *Is it important to study language policy?*

Well, yes.

(1) First, the latest writings on language policy all acknowledge that language policy is almost inevitably political, an endeavour complicit in the exercise of state control (Skutnabb-Kangas, 2000; May, 2001; Pennycook, 2002). Most significantly in this respect, language policies at the local, national and international level frequently operate as a means of social exclusion. To see the truth of such an assertion, one need look no further than the notion of linguistic “elite closure” (Myers-Scotton, 1990). Linguistic elite closure (developed in various incarnations by authors such as Alexandre, 1972 and Prah, 1995: 56) describes a system where language policy perpetuates the privileged status of an elite class, commonly by way of enshrining a minority language as the *de facto* or *de jure* official language of the state. Wherever proficiency in this (minority) official language serves as a favourable condition for success, the lucky few who speak that language as a first language will naturally have an advantage over the many who speak it as a second or third language. Members of the privileged elite, in other words, are given a head start over the disadvantaged majority. In order to fortify the bounds of this closure, the elite class additionally may attempt to make the acquisition (if not also the learning, to use the terms of psycholinguistics) of the official language especially difficult for

the majority. To such an end the elite class may, for example, underfund public schools or set in place a language-in-education policy that hampers language learning. As a result elites furnish for themselves a system of built-in advantage that perpetuates their privilege and tends to exclude all others.

Crucially, elite closure does not always occur as a result of official policy. Indeed, unofficial policies that prefer *de facto* a particular language prove as destructive as official policies that do so *de jure* (see Bamgbose, 1991, 2000: 104; Schiffman, 1996: 30). In such scenarios oftentimes the dominant language of business in a region will become the *de facto* language of a state located within that region, and give rise to all the symptoms of elite closure exhibited by *de jure* policies.

There exist a number of real-life manifestations of the phenomenon of linguistic elite closure, a few of which will here serve as examples. First, we bring our attention quite close to home. South Africa, though its progressive Constitution proclaims eleven languages and implies an admirable array of language rights, has over the nine years since liberation made little headway in implementing any national language policy “on the ground” (Heugh, 1995; Macfarlane, 2002: 5). This, abetted by what appears to be calculated neglect on the part of an identifiably, and sometimes avowedly, “anglophile” ANC (Mandela, 1995; Heugh, 2003), has allowed English to become the sole and *de facto* language of power. If we are to judge by early indications, the near future will witness the creation of a distinct black anglophone elite class that presides over a majority of South Africans who have little or no access to quality English-language instruction. Insofar as they will lack firsthand access to the elite discourses of national politics, this non-English-speaking majority will effectively become — or perhaps we should say *remain* — unable to participate meaningfully in the political life of their country.

The slide toward an English-language-based elite closure has already revealed itself in ominous ways. Debates in parliament occur mostly in English. Most government documentation appears in English only (PanSALB-MarkData, 2000). The agents of the judiciary seem to favour enshrining English as the sole language of record (Yakpo, 2000: 13). Parliamentarians and other leaders of state speak so much English — even to the Nguni-, Sotho-, Tsonga- and Venda-speaking masses — that 46% of all South Africans (67% of those in rural areas) have indicated that they do not understand to a satisfactory extent what their elected representatives are saying (PanSALB-MarkData, 2000: 142-4). To cite one other astounding barometer, some Xhosa¹-speaking schoolchildren in the Cape have voiced their innocent opinion that Nelson Mandela speaks no Xhosa — *only English* — since he is so rarely heard to speak anything else (Vesely, 1998: 19). These indications invest the notion of linguistic elite closure with real, indeed urgent, importance, since it threatens nothing less than to undermine participatory democracy in South Africa.

Notably, this linguistic elite closure only builds upon the apartheid-era policy of Bantu Education, perhaps to an extent that justifies charges of a “neo-apartheid” language policy maintained by the post-1994 governments. In the later incarnation of the Bantu Education system, black South Africans learned through the medium of their mother tongue to their fourth year of schooling, at which point they were supposed to make the abrupt transition to the parallel media of English and Afrikaans. As a result, matriculants of the post-1976 era in most cases failed to develop the most profound fluency in either their home language (because of their early exit from this medium of learning), or in English or Afrikaans (because their first language skills were lacking) (see Hartshorne, 1995). Nor did they manage to comprehend the content of the English- and Afrikaans-medium instruction as well as they might have, had they learned it through the mother tongue (Heugh, 2000). As a result,

matriculants turned out exactly as the English- and Afrikaans-speaking elite classes might have liked — unable to compete in the marketplace with the linguistic elite class, yet eminently capable of understanding the commands of their bosses (see also Chapter 3).

In this, South Africa is hardly alone. Its currently incipient *de facto* English-mainly policy reflects to some extent the English-mainly policy of the United States. On that side of the Atlantic, an English-speaking elite has for many generations presided over a teeming polyglot society of immigrants and the children of immigrants. Citing the need to foster civic unity in a country so plural, the elite class has sometimes advocated an assimilationist, straight-for-English approach to language learning. In recent years, this tendency has grown stronger, with threatened budget cuts for bilingual education at the national level, and the impoverishment of bilingual curricula at state level (Crawford, 1989; Wiley, 2002). This historical tendency and its synchronic manifestations, of course, defy the most learned recommendations that linguistic science can provide². Just as was the case with the latter stages of Bantu Education, this “subtractive”³ language learning led, and continues to lead, many first generation immigrant students to acquire neither English nor their mother tongue at the most profound levels of fluency (see Ramírez, 1992; Dolson and Myer, 1992). As a result of this lack of the profoundest fluency, and the too-early transition to an alien language, these students will also have understood the *content* of their English-language education less efficiently than their anglophone peers, thus inhibiting their competitive capacity in the (almost entirely English-speaking) formal marketplace. Consequently, many of the newly matriculated non-English-speaking immigrants are shunted into the ranks of the underpaid or sluiced into the reserve labour pools of the unemployed. Their children, of course, find themselves in a slightly more advantageous position if their parents manage to raise them from birth

to be English/Spanish, English/Hmong, or any other variety of English/home language bilingual. But their situation still falls far short of being optimal, since these children must still endure an effectively subtractive bilingual education, and the implicit, yet marked, demotion of their culture as metonymised by the demotion of their language.

An analogous “closure” describes a reality too often elided from academic and political discussions of language policy. In the same way that certain powerful languages can serve as an exclusive code of the elite to the expense of speakers of marginalised languages, so too can the medium of oral speech serve to exclude deaf users of sign language. This form of linguistic closure (though we cannot strictly define it in terms of benefiting an “elite” against “the masses”) impacts on millions of people worldwide. Consider that in China, 3 million people think of a sign language their first language; in India, 1,5 million; in the USA 500 000 and in the UK 40 000. As for South Africa, 800 000–1,2 million people call some variety of signed language their first language (extrapolated from PanSALB-MarkData, 2000: 170). Given the absence of considerations of sign language from many national language policies, these numbers imply disenfranchisement on a grand scale.

(2) Linguistic elite closure thus provides one of the strongest justifications for studying language policy. But the study of language policy can marshal additional factors in favour of its importance. A second, consonant point made by Skutnabb-Kangas concerns what I am inclined to call “Isms”.

Racism and ethnicism have sometimes predominated in the sphere of officially sanctioned oppression, serving to justify large-scale atrocities such as German aggression during World War II, slavery and colonialism. But since the second half of the 20th century, these doctrines have largely (though not totally) receded,

leaving behind the relative prominence of a lesser-known — though equally important — “-ism”, linguicism. Linguicism, according to Skutnabb-Kangas, describes “... practices which are used to legitimate, effectuate, regulate and reproduce an unequal division of power and resources (both material and immaterial) between groups which are defined on the basis of language” (2000: 30). Like elite closure, linguicism includes a structural-economic aspect; unlike elite closure, however, linguicism also applies to lower-level social, inter-group and inter-personal interactions.

Few will need to look further afield than their own neighborhood for examples of this. In South Africa, for example, civil servants can earn death threats for speaking or writing in Afrikaans,⁴ while at least one post-transition government administration has ordered the “destruction of all Afrikaans stationery” in spite of the fact that Afrikaans remains a constitutionally official language — and one for which stationery (at least!) should still exist.⁵ In the United States, English-against-Spanish linguicism has seen heated moments; currently, campaigns by Silicon Valley millionaire Ron Unz and the organisations “US English” and “English First” to eliminate bilingual education and Spanish-language government services have all the tenor of a religious crusade. As a result, linguistically and culturally assimilationist policies in the United States have grown ever more ineluctable, even as the Spanish-speaking population has grown steadily larger. In spite of their airbrushed rhetoric, any close contact with these interest groups will betray their motivations as distinctly anti-Spanish and xenophobic, rather than innocently pro-English and patriotic. In the former Yugoslavia Serbs and Bosnians claim their languages are wholly different, deserving of separate dictionaries and grammar books, in spite of the fact that the two are overwhelmingly cognate. This latter dynamic of linguistic prejudice, part and parcel of a more general ethnic hatred, has helped to foment and sustain full-blown war (Tollefson, 2002).

Two special features of linguicism make it an especially pernicious force. First, linguicism has not acquired the stigma that marks racism and ethnicism and for this reason, says Skutnabb-Kangas (2000: 30), officialdom has come to embrace linguicism as its favoured means of exclusion. Second, particular linguistic characteristics of an individual or group often co-occur with other characteristics such as ethnic, religious or class affiliation. As a result of the combination of these two factors, linguicism can be used as a kind of camouflage or pretext for the perpetration of other Isms — such as ethnicism, religious intolerance or xenophobia. For example, if a municipal council wanted to exclude from its ranks any poor individual of Zulu or Sotho ethnicity derivation, then that council might proclaim its “working languages” to be English and Afrikaans. Given that in this community few people of Zulu or Sotho ethnicity speak Afrikaans, and because only the well-heeled speak English — and, additionally, because linguicism does not invite reflexive condemnation — the council could in such a way easily and stealthily achieve its ethnicist and classist aims. Sachs (1994) notes that such a situation persists in South African universities, whose English and Afrikaans media privilege white and so-called coloured and Indian South Africans over the majority. Linguicism can undergird an inequitable language policy; language policy can promote linguicism (see Hassanpour, 1992, on Turkey). In order to eliminate linguicism, as with linguistic elite closure, one must proceed through avenues of language policy.

(3) The impact of language policy pervades whole societies, as the foregoing duly attests. But language policy also impacts on the local, the immediate, the personal — even the corporeal, in the sense that language and language policies have been known to provoke violence. Turning to the South African scene, few can forget the 1976 Soweto Uprising and its proximate cause. On June 16, school students, upset by the enforcement of Afrikaans as a

medium of instruction, staged a days-long strike and massive march through the streets. The march turned violent, as police began to fire upon the schoolchildren, igniting a conflict that would spill over into similarly disaffected black communities throughout South Africa. The conflict lasted for 18 months, between 700 and 1 260 died,⁶ and a new and decisive stage of the anti-apartheid struggle was born. Though the grievances latent in that furore certainly went beyond the linguistic, the students of Soweto seized upon Afrikaans as a symbol of their oppression — indeed, quite baldly as the “language of the oppressor”. Here, a language policy proved so unacceptable to masses of schoolchildren, and so imperative to the authorities, that the two sides clashed in a sustained bout of deadly violence (see Herbstein, 1979; Heugh, 1987; see also Chapter 3).

More recently, language-related conflict resurfaced in South Africa, only this time it appeared to be an Afrikaner minority that rose up against the policies of the black majority. In November 2002, right-wing Afrikaners detonated bombs in Soweto, in the town of Bronkhorstspuit and on a bridge in KwaZulu-Natal, leaving many to conclude that the *taalstryd* was experiencing a resurgence. Eminent journalist Max du Preez (2002: 9; cf. Malan, 2002) estimated that among factors contributing to Afrikaner alienation, anglicisation featured at the top of the list.

But South Africa is by no means the only place where language provokes such violence. In August 2000, Macedonia verged on full-blown civil war between ethnic Albanians and majority Slavs after the former demanded mother tongue-medium education and the officialisation of Albanian (Williams, 2001). Similar conflicts have erupted in India, Sri Lanka, the United States, the former Soviet Republics, Malaysia and many other countries; all were catalyzed by, and in part preventable through, language policy (Horowitz, 1985).

(4) Oftentimes, as in the cases discussed above, language conflicts arise when one linguistic community attempts to impose its language on another language community. Though the intended result, “language shift” (see Fishman, 1991), is a historically common event, it need not occur through means so ham-handed and undemocratic as witnessed in the South African and Macedonian cases. Rather, language shift frequently occurs by way of the Siren of hegemony. Consider: Throughout the world speakers of “small”, politically less powerful languages choose to learn, as a matter of course, an additional “big”, powerful language to gain greater personal economic or political advantage. This would represent a positive development insofar as *lingua francas* can promote intercultural communication and generally peaceful inter-ethnic and interstate relations. However, “big” languages have shown themselves to spread in a manner comparable to that of black holes; they expand hungrily, extinguishing the smaller languages whose domains they approach (Skutnabb-Kangas, 2000: 371). According to Krauss (1992), by the year 2100 90% of today’s 6 000–7 000 oral languages (there may exist an equal number of sign languages) will have become extinct. The most conservative estimates still place the rate of extinction at an alarming level; in a best-case scenario, 50% of today’s languages will perish over the next century unless ameliorative steps are taken.

But why concern oneself with language death? If a language dies, what should we care? The answer is as compelling as it is simple: When these languages disappear, whole volumes in the encyclopaedia of humanity’s intellectual heritage — in the realms of ecology, medicine, religion, geography and more — disappear with them. Language policies are rarely benign in this regard; language policies can either prevent or hasten this language death and, by extension, language policies have the power to preserve or destroy knowledge.

Nowhere does this take on more obvious consequence than in the post-colonial world. In many former colonies, such as those in southern Africa, though the colonists have long departed their legacy lives on in the guise of the languages they left behind. These languages — inevitably “big” — prove irresistible to ordinary people, who clamour to learn them, oftentimes subtractively, thus doing grave damage to the durability of autochthonous languages. Aside from the large-scale language death this colonial legacy has hastened, the European languages impose on post-colonial people what Ngugi (1987) calls the “colonised mind”, an abused psychology that undermines the self-confidence, self-reliance and as a result the individual and collective achievement of millions. As “Third World” people give up their languages, so too do they give up their hopes for true artistic and intellectual self-determination. This hegemonic rampage of European languages recalls Tacitus: “The language of the conqueror in the mouth of the conquered is ever the language of the slave.” The undoing of the colonised mind is also the domain of language policy.

(5) Any post-agrarian economy depends on language to lubricate the machinery of exchange (see Gellner, 1994). Needless to say, language policy can help to achieve greater economic efficiency and bad language policy can mire down economic development. The relationship between language and economy brooks no mystification: in today’s multi-polar global economy, *many different* languages serve as the media for trade and finance; English, or some other European *lingua franca*, does not always suffice. A company with a multilingual workforce, it follows, will be more efficient, and therefore more profitable, than its monolingual competitors. Magnified to the national scale, such workforce multilingualism would result in large gains indeed for national economies. In a related manner, knowing the language of a target consumer can help a company to better understand that consumer’s mindset; and if a company can understand the

consumer's mindset better than industry rivals, it will likely be more profitable. Again, if we magnify this phenomenon to national scale, we can understand how a nationally multilingual workforce can establish more ties with trading partners than can a monolingual national workforce. Australia, for example, used its national capacity for Southeast Asian languages as a means of generating gross national gains, serving not only as a direct trading partner with Southeast Asian countries, but also as the intermediary for anglophone investors in the ascendant economies of the same region (Lo Bianco 1996: 1; see Grin, 1994, 1999, for additional insights into economy and language).

Conversely, ill-considered language policies cost the state money. South Africa provides an unfortunate example in the matriculation pass rates of black students who, to this day, learn under apartheid-era language-in-education policies. In 1992 56% of all students passed matric; in 1994, 58%; in 1997, 47%; in 1998, 49%. The pass rate for black students is understood to be even lower (Heugh, 2000: 24). It only takes a moment's thought to realise the grave obstacle this poses for national economic development. Indeed, calculations made by the staff of the Project for the Study of Alternative Education in South Africa (PRAESA) have suggested that such matric failures alone cost South Africa roughly R3 billion per year.⁸ According to Alexander (1999: 6), ill-considered language-in-education policies, coupled with the manifold challenges introduced by structural adjustment, pose *the greatest obstacle* to economic development for the entire sub-Saharan region. Perhaps only the AIDS epidemic rivals the impediment wrought by bad language policy.

(6) Given the extent to which language abets everything from psychological damage and physical violence to economic underdevelopment and social exclusion, one should not be surprised that some activists have motivated for "linguistic human rights" (Skutnabb-Kangas, 2000). The execution of various

duties of the state regarding language, they argue, is imperative for the maintenance of human dignity. As such, international rights covenants ought to protect languages and their use throughout the world. To date, the United Nations' Universal Declaration on Human Rights (UDHR) includes a rudimentary clause prohibiting discrimination based on language. A Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities has been certified by the UN General Assembly, although its articles seem to have little hope of actual fulfilment. A handful of constitutions throughout the world guarantee language rights in some form; among these South Africa's is perhaps the most explicit. These all qualify as instruments of language policy, and deserve special attention because they prescriptively and proscriptively bind states to certain kinds of behaviours *vis-à-vis* language. Thus, the study of language policy bears upon the obligations of states to their human subjects, as well as on the very nature of a long-debated topic: human dignity.

(7) All of this, then, arrives at the desk of the nation builder. Since the dawn of the age of the nation-state, language has played a singularly important role. Early French nationalism, like its Western European affines, tried to engineer homogeneity, seeking to construct a single ethnicity and a single language as the foundations of a monolithic national French identity (Coulmas, 1992: 34). This homogenising endeavour — perhaps as common today among “nation-states” as it was back then — is in itself worthy of critical examination.

But in recent decades, heroes bearing social-justice pennants and multicultural sensibilities have fought to completely revise the way in which linguistic diversity relates to the nation-building project. As May (2001) notes, there are over 6 000 oral languages in the world, and only 190 states. Simple arithmetic reveals that most states are highly multilingual. While many will attempt to

steamroll the small languages spoken within their borders in an effort to create as linguistically homogeneous a population as possible, others will attempt to protect those languages, striving to foster unity without extinguishing diversity. The crucial question that arises is this: How does one ensure unity, when the people bound within a state border speak different languages? South Africa has made a constitutional vow — couched in rights-oriented language — to maintain no small degree of linguistic diversity. Leaders of the South African state seeking to build a new national identity on plural foundations cannot ignore language policy, an indispensable means for their unifying ends.

Introduction

The paper that follows maintains a very specific locus of inquiry: the enforcement of language rights by the Pan South African Language Board (PanSALB).

Famously, South Africa boasts a highly progressive Constitution, one that guarantees a panoply of rights within a liberal framework (Klaaren, 2001). These rights feature an array of language rights, which include, *inter alia*, the right to non-discrimination on the basis of language, the right to information in a language one can understand, and even the right to development of one's language. Far from the idealistic cant of the kind seen elsewhere in the sub-continent (see Bamgbose, 1991; Alexander, 2000b), these rights seem to enjoy the manifest material support of specific government institutions.⁹

PanSALB, as one of these watchdog institutions, is charged with the duty to protect the language rights of citizens.¹⁰ To this end PanSALB has the powers to receive complaints from citizens, conduct investigations, issue subpoenas, publish findings and "recommend" action to government departments, statutory bodies and even private firms.¹¹ Thus PanSALB, surely unique among democratic appurtenances throughout the world, stands as an object worthy of research in itself. In this respect we may wonder: How effective is PanSALB? What factors contribute to its effectiveness or ineffectiveness? Does PanSALB execute its mandate equitably? If not, who wins and who loses under the PanSALB regime?

But more than a unique appurtenance of democracy ripe for programme evaluation, PanSALB also serves as a conduit by which we may approach other questions concerning the role of

language in South Africa. For example, some have praised the complaint-mediation function of PanSALB as a means by which disadvantaged linguistic communities can present their grievances to higher levels of government (Crawhall, 2000: 28-29). Others, meanwhile, have warned that the mere availability of PanSALB's complaint-mediation function may serve to manufacture contentions and undermine national unity, as impoverished people make opportunistic and invidious complaints in a competition over scarce resources and political advantage (Alexander, 2002). Yet the facts of the matter remains to be researched in detail: Which one is correct?

Finally PanSALB, as one of the Constitutional bodies least enthusiastically supported by the current government, can serve as a kind of canary in the democratic mineshaft. If PanSALB proves not to work effectively because of government interference, for example, we may conclude that there exist some threats to democracy emanating from official quarters. If, on the other hand, PanSALB shows itself to be a model of bureaucratic efficacy, we may tend to conclude the opposite, namely that it augurs the best for a youthful constitutional state. Which conclusion is the correct one?

This paper pursues these questions over the course of five chapters. In the first chapter, I discuss the major legal and philosophical writings on language rights and language human rights, interrogating especially the opposition of "individual" and "group" rights. I conclude this chapter by proposing a new method by which we can distinguish group rights assertions from individual rights assertions. This method, in breaking from the canonical preoccupation with the "rights-holder" and "duty-bearer", focuses instead on the "goods" involved in a given rights-assertion.

In the second chapter I discuss theories of nationalism and

ethnicity and the part language plays in these theories. I discuss theories of ethnic conflict, and finally show how the method introduced in Chapter 1, if applied to complaints lodged with PanSALB, can help predict the ongoing risk of language-related conflict in South Africa. In Chapter 3 I sketch the history of language, nationalism and language politics in South Africa from earliest times to the present day. In Chapter 4 I survey the landscape of language law in South Africa, reviewing the Constitution's official language provisions, and assorted relevant proposed legislation, with special reference to constitutive process, and constitutive legislation of PanSALB.

In Chapter 5 I briefly discuss several of the language rights complaints lodged with PanSALB, and explain under which categories the method developed in Chapter 1 leads us to place them. Based on the application of this method to a large body of complaints (215 of them), I argue that PanSALB does not currently lead to any great degree of inter-ethnic competition. However, further analysis will show that PanSALB does not prove particularly effective with regard to the enforcement of language rights, and that indeed PanSALB, in its current form, delays more than it expedites the justice it is charged to bring about. After arguing that PanSALB also seems to deliver services irregularly, I argue that there exists strong proof, that the ANC and the IFP, acting in the offices of the state, deliberately handicapped PanSALB in an effort to centralise power. Finally, I show how the method developed in Chapter 1 can usefully inform the implementation of PanSALB's sister agency, the Commission for the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Communities (the Section 185 Commission). In particular I will urge that the Section 185 Commission does everything in its power to encourage *solidarity rights* complaints, as opposed to *specific group rights* complaints.

* * *

In South Africa, terms frequently suffer the burden of considerable political freight. At this point I would like to offer clarification, and some justification, for the terms I choose to employ. Academics, politicians and other participants in various discourses of nationalism and identity in South Africa use the term “indigenous” to refer to the “black” people of South Africa, a category that anthropologists call, with some discomfort, “Bantoid”¹² people. In international discourse, this constitutes a misuse of the term. Note the oft-cited definition proffered by the United Nations International Labour Organisation (ILO):

... peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries ...
(in Skutnabb-Kangas, 2000: 488)

By this definition, only the Khoekhoe and the Bushmen (sometimes referred to collectively as the Khoesan people) qualify as indigenous people. “Bantoid” or “black” South Africans, by comparison, are relative latecomers. I insist on maintaining this distinction because historically, indigenous people and black people have faced categorically different challenges, and continue to face separate challenges today. Moreover, to subsume both black and indigenous people under the same rubric serves to render invisible the indigenous people and the particular challenges they face in post-apartheid South Africa.¹³

Throughout this paper I use the term “group” to signal a collectivity or community. This term, “group”, and the concept of group, especially in the sense of “group rights”, has unfortunately been manipulated as a tool of oppression in South Africa (Degenaar, 1982). Throughout this paper, I deliberately use such terms, though by no means in the same sense in which the former

apartheid regime understood them. Broadly speaking, I use the term “group” to denote a collectivity that may or may not have some ethnic coherence. Additionally, when I use the term “group” I in no way imply that characteristics of the group are inherent. Nor do I mean to imply that groups are bounded entities; on the contrary, individuals can move to and from the (fuzzy and mutable) boundaries of any given “group”, and most frequently belong to several.

Chapter 1

The panoply of rights: Language, human, individual, group

In a lecture at the University of Cape Town in September 2002, renowned author Chinua Achebe recounted a modestly revelatory moment he enjoyed while watching the American talk show *Oprah*. As Achebe tells it, there appeared on his screen two unlikely interlocutors: the host Oprah Winfrey and former President of South Africa Nelson Mandela. On the topic of the anti-apartheid struggle, Mandela remarked that the transition to democracy represented the collective effort of millions, at which point Winfrey interrupted, "But you're being overly modest, Mr Mandela! Surely your individual accomplishments deserve most of the credit." But Mandela demurred; no, he did not deserve such credit. Winfrey was incredulous.

According to Achebe, this televised exchange showcased "a war game between the psychologies of the West and of Africa". Winfrey's Western perspective emphasised the achievements of the *individual* as the basic unit of human agency, while Mandela's African outlook favoured the *group*. Winfrey, for her part, seemingly could not envisage victory without a hero; and Mandela could not conceive how his long walk to freedom counted any more than that of anyone else.

Or, again according to Achebe, two pithy encapsulations of contradictory wisdom met at a cultural crossroads, with the West putting up Descartes as its spokesman: "I think, therefore I am". And Africa its own, appropriately anonymous, voice: "A person

is only a person because of other people.”

This admittedly simplistic binary of individual-versus-group asserts itself wherever questions of rights arise south of the equator or east of the Ural Mountains.¹⁴ In these places, the widely touted Western liberal notions of “Universal” human rights clash with the supposed, and oftentimes avowed, group-oriented traditions of Asian and African people. Discourse on language rights in particular has seen its fair share of the binary —no doubt because language, though the tool and the art of individuals, also serves to intertwine individual members into the net of their ethnolinguistic communities. Language, in other words, spans the divide between individual and group, while belonging exclusively to neither.

In this chapter the tension between conceptions of group and individual rights serves as a leitmotif. I begin with an elementary review of the intellectual history of (human) rights, a review which lends particular regard to how this history has led to the privileging of individual-centered conceptions of rights. Subsequently, I move on to discuss the anatomy of (human) rights and the philosophical arguments that proponents of liberalism advance against the notion of group rights. I rebut these liberal arguments and then use this rebuttal as a springboard for proposing a clear and *sufficient* method of distinguishing group rights from individual rights. This method, in breaking from the canonical preoccupation with the “rights-holder” and “duty-bearer”, will focus on the “goods” relevant to any given rights-assertion, as well as lay the groundwork for investigating the risks of ethnic conflict in South Africa in Chapter 5. Finally in this chapter, I introduce the concept of linguistic human rights and consider the critiques some have made thereof.

1.1 The rights of individuals and groups: a brief history

The concept of “right”, scholars have come to acknowledge, evolved in many places, at different times, throughout the world. According to Paul Gordon Lauren, the first anticipations of individual rights emerged in China during the third century BC. Mo Zi, founder of the moral philosophic Mohist School, wrote emphatically of the importance of all-embracing respect toward others “universally throughout the world” — and not just within the bounds of family or clan (quoted in Lauren,1998: 10). One century later, the Chinese sage Mencius wrote, “The individual is of infinite value, institutions and conventions come next ...” (1998: 10). Many have remarked how these pronouncements uncannily reflect the modern notion of consent of the governed, and seem to have anticipated by many centuries the liberal ethos of our day. But to connect the two directly would confuse coincidence with causality, for today’s globally dominant discourse of liberal rights traces its more continuous roots to medieval Western Europe.

In the banner year of 1215, the barons of England compelled King John to abide by the Magna Carta, a seminal legal document that helped establish the principle that kings have limited, not absolute, powers and that they must respect the rights of their subjects. Only decades later, the influential Thomas Aquinas posited that individuals not only had a responsibility to the divine and its earthly (royal) manifestations, but also to each other. Crucially, this idea helped to establish that every person is an individual apart from his or her membership in a given state (1998: 13). By the 17th century, Christian writers had used Aquinas as a departure point in arguing for what today is called the principle of non-discrimination; all Christian people, they contended, deserved equal treatment regardless of age, sex or class. Hugo Grotius, the founder of the field of international law, expanded on this when he argued that natural law existed independent of and above the powers of the authorities (1998: 14).

The growing understanding of humans as individuals, born equal, and responsible to a body of law that transcended earthly authority, found expression in legal documents, most notably England's 1689 Bill of Rights, which sought to guarantee freedoms of speech and religious practice, among others. During this same time, John Locke, whose writings directly influenced the authors of the American Bill of Rights and the French Declaration of the Rights of Man, proposed that every individual possessed political rights that preceded membership of any kind of group (Locke, 1947).

In the 18th century, while Enlightenment intellectuals such as Rousseau, Voltaire and David Hume further touted the concept of natural law as a discovery of human reason that transcended earthly authority, German philosopher Immanuel Kant spoke of the "categorical imperative" (Kant, 1785). This important notion, which holds that human beings should be treated as "ends in themselves", rather than as means, would come to anchor modern concepts of human rights. In other words, the rights possessed by humans required no instrumental justification, and one did not need to pray to any particular god to claim them; these rights inhered in the status of humanity itself — intrinsic at birth. Kant wrote:

Supposing, however, that there were something whose existence has in itself an absolute worth, something which, being an end in itself, could be a source of definite laws ... Now I say: man and generally any rational being exists as an end in himself, not merely as a means to be arbitrarily used by this or that will, but in all his actions, whether they concern himself or other rational beings, must be always regarded at the same time as an end. ... Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only (Kant, 1785, quoted in Larson, 2002).

This idea would subsequently multiply and diversify in a mimetic chain such that 20th century human rights advocates could argue that all human individuals possess inherent dignity simply by virtue of being humans — and require human rights to protect that dignity from abuses of the modern state. Note, additionally, that the categorical imperative took the individual, and not other social formations such as families or ethnic groups, as its basic unit of analysis.

By the time the American Bill of Rights and the French Declaration of the Rights of Man fixed the fully enforceable notion of human rights into articles on parchment, the sum of Western European philosophy had made inherent individual rights a virtual given. But aside from being individual, these rights bore other distinguishing characteristics. Importantly, for example, these rights also debuted as *negative*, reflecting “freedoms *from*” rather than “freedoms *to*” (Galtung, 1994: 11; see also Eide, 1989: 1-2, who cuts the categories somewhat differently). In other words, the state authorities in question had no duties to individuals except to refrain *from* particular abuses, like censorship or religious discrimination. Thomas Paine, an intellectual who had fought in the American War for Independence and who supported the Revolution in France, returned to Britain, his country of origin, where he published *The Rights of Man* (1791–92). This highly controversial — not to mention best-selling — work decisively established the liberal tradition as a fast-emerging political gospel in the Western world (Lauren, 1998: 20).

As a result of nation-state dominance in the West and the attendant principle of state sovereignty, all debates on human rights remained national, not international, in scope. In other words, the concept of the inalienable (negative, individual) right lived on into the 19th century, but it rarely straddled borders. This began to change, however, when a number of (what we now

call) non-governmental organisations (NGOs) initiated a civil society movement against the slave trade. In the midst of this movement was born the first such transnational organisation, The British and Foreign Anti-Slavery Society¹⁵ (Lauren, 1998: 42). Simultaneously, anti-slavery lobbies throughout the world began to make a push for their governments to address slavery at the Congress of Vienna (1814–1815), which ultimately advised the suppression of the institution (Lauren, 1998: 42). Its concluding rhetoric betrayed a rights orientation: the slave trade, the Congress voiced, was “repugnant to the principles of humanity and universal morality” (*Déclaration des 8 cours*, quoted in Lauren, 1998: 41). But not for yet another century would states actively engage the idealism latent in what was becoming the human rights movement — and by then human rights would have begun to take on slightly more varied forms.

Following the devastation of the First World War, the leaders of various European and American powers (the surviving “Great Powers”) perceived that new technologies and intellectual currents had both shrunk the world and made it more lethal. Hoping to avert the horrors witnessed during the First World War, the Great Powers founded the League of Nations. According to its charter, the League of Nations had responsibility to play the role of mediator with regard to certain human rights (Lauren, 1998: 114). In particular, the League had to oversee fulfillment of the numerous bilateral “minorities treaties” that had emerged in the wake of war. This international “Minorities Regime” bore witness to the first modern (legal) appearance of both group rights and language-related rights.¹⁶ A short discussion of this regime’s fate highlights the historical conditions under which international conceptions of ethnic group rights — a focus of this paper — first emerged.

Keenly aware that shifts in international borders had resulted in “displaced minorities”, the Great Powers imposed treaties on

weak states such as Austria, Hungary, Bulgaria, Turkey, Yugoslavia, Germany and Poland compelling them to respect those minority communities (Wolfrum, 1993; Packer, 1999).¹⁷ For example, Poland agreed to protect the German minorities living in Poland. Notably, this undertaking did not only reflect the mere negatively framed non-discrimination imperatives in the Enlightenment tradition, but also the importance of positive state support for the cultural and linguistic integrity of minority communities. States were in some cases treaty-bound to provide for mother-tongue instruction in minority schools, and to allow cultural organisations to promote minority culture (Sigler, 1983; Capotorti 1979: 47). Initially, the regime showed promise (Skutnabb-Kangas, 2000: 509), but then rapidly declined to a point where participant states flouted their obligations, partly owing to a lack of political will on the part of the League's Minorities Secretariat, and partly to interstate enmities left over from the war.

Sigler describes the collapse of the Minorities Regime as follows: In 1930, Britain made it clear that the League would not make any special efforts to address German petitions concerning the rights of German minorities. In 1933 Germany left the League of Nations. A year later Poland officially gave up on the minority provisions of its treaty. In 1938–9, national governments sent only four petitions to the Minorities Secretariat of the League (compared to 204 in 1930–31) complaining of breach of treaties. In 1939 the section of the League's Secretariat responsible for administering the treaties formally disbanded, the same year that Germany invaded Czechoslovakia, indeed citing the presence of German minorities in that country as a rationale (Sigler, 1983; also Skutnabb-Kangas, 2000: 509).

The fact that Germany used ethnic group rights as a pretext for aggression plunged them into disrepute. As a result, after the Second World War, when the victors and their allies set out the

framework for the United Nations Organisation, nary a mention of positive group rights found its way into the text. Article 27 of the Universal Declaration on Human Rights (UDHR), for example, proclaims that “[e]veryone has the right to freely participate in the cultural life of the community”, a right that amounts to nothing more than a garden-variety guarantee of non-discrimination.

By 1966, the UN member states wrote and opened for signature two new human rights covenants. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁸ supplemented the Universal Declaration on Human Rights with greater specificity. These two covenants plus the Universal Declaration comprise the Bill of Human Rights, the bedrock of seminal international human rights law. As with the UDHR, the Bill of Human Rights taken as a whole also failed to acknowledge any positive group rights, and only a modest number of language rights (Human Rights Facts Sheet 18, 1992: 3-4). It is interesting to note, however, that after the Second World War the Ad Hoc Committee charged with drafting the International Convention for the Prevention and Punishment of the Crime of Genocide considered linguistic and cultural genocide alongside physical genocide. The Committee proposed to define genocide as “any deliberate act committed with intent to destroy [a people] ... such as”:

- (1) Prohibiting the use of the language of the group in daily intercourse or in the schools, or in the printing and circulation of publications in the language of the group (quoted in Skutnabb-Kangas, 2000: 317).

Though this Article did not appear in the final version of the convention, it does hint at the strong international legal enforcement (negative) group language rights might have enjoyed in the Post-War dispensation.

Turning back to a closer reading of the ICCPR, its Article 27 speaks explicitly of language and communities of languages, and in this sense qualifies as a language-related human right, but the framing of the article clearly implicates it as both negative, and individual, in character. The variously interpreted right to self-determination in the ICCPR (see Article 1) presents a possible exception to the rule of otherwise exclusively negative and individual human rights. However, UN member states almost unanimously regarded — and continue to regard — this right as a threat to sovereignty and territorial integrity, rationalising it as largely a referent to the era of colonisation long passed. As one might expect, the right has not been enforced since the end of colonisation, certainly with regard to national minorities such as the Kurds and Basques.

Notably, the ICESCR enshrined an array of positive rights promoted by the Soviet Union, such as the right of access to affordable health care, which rights-holders can assert *against* the state for positive action. Yet these rights, too, emanating from a socialist understanding of the good life, regard the individual, and not the group, as the holder of a right. Since the dissolution of the Soviet Union, however, even these “Second Generation” rights have wanted for a national standard-bearer. In the wake of the neo-liberal “Washington” consensus, international enforcement mechanisms have clearly favoured political and civil human rights over social, economic and cultural human rights.¹⁹ As a result, the emerging vision of human rights has privileged negative, individual (civil and political or “first generation”) human rights, and marginalised, though not completely sunk, positive (social, economic and cultural “second generation”) human rights. The traditional liberal conception of human rights, in other words, has begun to penetrate deeper into the political culture of all states throughout the world.

Yet it has not done so without being challenged. Recently, earnest debate from Third World states on the necessity of a “third generation” of “solidarity” rights entered its 30th year (Baxi, 1998). Simultaneously, the homogenising pressures of globalisation have provoked the (re)assertion of ethnic group identities and group rights throughout the world (Castells 1998:52; Rassool, 1998: 97).²⁰ These “solidarity” or “third generation” rights were voiced by a unified coalition of Third World states, through the non-aligned movement and the Group of 77 (G-77) in the United Nations General Assembly (Spero and Hart, 1997). Unsurprisingly, the First World states upon which the duties of these solidarity rights would fall (see theoretical debate below) have chosen to ignore solidarity rights, denouncing them as “conjured” rights that have no standing in international law. Solidarity rights do, however, continue to hold out promise as a radical tool for achieving global social justice; and they also, I believe, have a significant role to play in domestic arenas, as I will discuss later, in Chapter 5.

One final event in the evolution of human rights bears mention: in 1992 the United Nations General Assembly opened for signature the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. In contrast to earlier formulations of language rights and group rights, this document frames language rights as *positive* rights that perhaps also pertain to *groups*, as opposed to individuals. Article 4.2, for example, proclaims:

States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs ...

The fragment “shall takes measures” betrays this right as a positive one; that is, states have a responsibility to implement changes proactively. Although the right formally applies to

individuals in true liberal tradition (“persons”), the measures implied by “develop[ment]” of culture and language would certainly benefit groups in a way that colours the right as a group right, as I will make substantially clear by way of a theoretical argument below. However, this Declaration also includes many glaring “opt-out” clauses that would allow states to skirt the fiats of the Declaration. Additionally, the Declaration constitutes international soft law. It is not a binding covenant; states comply with its provisions on a voluntary basis only. For this reason, few expect the Declaration to greatly affect the fulfilment of language rights in the world (Skutnabb-Kangas, 2000: 534-5; Thornberry, 1997: 356).

1.2 Individual and group (language) rights: theoretical debate

Since the promulgation of the Bill of Human Rights, the rhetoric and the study, if not always the exercise, of rights have become commonplace. Over the past half-century theorists have established canonical legal and scholarly frameworks that explain the anatomy of a right. Jack Donnelly (see also Howard, 1983; Waldron, 1999), a prominent scholar in this field, summarises in his 1989 book *Universal Human Rights in Theory and Practice* the traditional liberal view of human rights. I will use his work as a springboard for presenting a method of classifying whether a right is an “individual”, “group” or “solidarity” right. Upon establishing this method I will contrast it briefly with relevant aspects of a theory of group rights put forward by a dissident liberal, Will Kymlicka. This method that I put forth will later help us to gauge the degree to which PanSALB stirs ethnic divisiveness in South Africa.

Rights do not exist in a vacuum. Someone, to begin with, holds the right; we call this person the “rights-holder” (also known as the “subject”). Beyond the rights-holder, there exists the object of the right, otherwise known as a “good”; the rights-holder is

entitled to this good. Beyond the rights-holder and the good to which she is entitled, there is another agent — the “duty-bearer”. The duty-bearer has the duty to devolve the appropriate good to the rights-holder, whenever this rights-holder properly asserts her right (Donnelly, 1989: 11-12). This sums up the mechanism of a right, whether it be a human right or simply a legal right.²¹

With regard to human rights, Donnelly insists that only individuals can be rights-holders (1989: 19; cf. Alston, 2000). He substantiates this by noting that human rights are predicated on the idea that humans are born equal and with an intrinsic human dignity. People have human rights, in other words, simply by merit of being human. Were particular groups to have human rights, then individual members of the group would be understood to have human rights by merit of specific group membership. But this, argues Donnelly, flies in the face of human rights’ epistemology: “Human rights, as they have heretofore been understood, rest on the view that the individual person is separate from and endowed with inalienable rights held primarily in relation to society, and especially the state” (1989: 145).

But Donnelly’s argument encounters fatal difficulties when it tries to cope with one undeniable collective human right: the right of peoples or nations to self-determination. According to the Universal Bill of Rights (see Article 1 of the ICCPR), “All peoples have the right to self-determination ... [to] freely determine their political status and freely pursue their economic, social and cultural development.” Critics of the traditional liberal view of human rights ask: How can an individual assert his right of national self-determination? Indeed, the right to self-determination of individuals appears an oxymoron.

Yet Donnelly’s answer to this conundrum has convinced many. He contends that any situated assertion of the right to self-determination represents, effectively, the simultaneous and

unanimous assertion, by individuals, of their right to self-determination (in addition to the other individual rights, like freedom of speech, which the denial of self-determination very often implies). “But if we must speak of ... people’s rights,” writes Donnelly, “they should be interpreted merely as rights of individuals acting as members of social groups” (Donnelly, 1989: 147).

I disagree with Donnelly insofar as his analysis ignores one-third of the mechanics of the right; it focuses on the rights-holders and the duty-bearers at the expense of the goods. To Donnelly’s minor credit, surely, at the moment of rights assertion, it can be plausibly argued that the rights-holders are merely individuals acting in concert. But importantly, at the level of *goods-devolution*, where the duty-bearer devolves a good onto the rights-holders, we witness that Donnelly’s “individuals acting as members of social groups” argument is confused. This is because individuals cannot, on their own, enjoy self-determination; only groups — “peoples” — can enjoy such a good.²² Self-determination, in other words, is an *indivisible good*; and only in an absurdist farce could individuals, upon collectively asserting their right to self-determination, abscond with their own “piece” of self-determination and sit down and enjoy it alone. Only the *group* can enjoy the goods; thus only the *group* effectively asserts the right.

Consider the following example, taken from a non-South African context. The historically Portuguese-American Fox Point community in Providence, Rhode Island has over the past decades begun to dissolve. Portuguese-Americans do not choose to leave as a matter of free choice; rather, Brown University students have encroached on the area, pushing the rents to heights unaffordable to Portuguese-Americans. In order to preserve the Portuguese-American community, Fox Point residents may claim their human right to minority self-

determination. Again, at this level of rights-assertion, we can see how rights-holding Portuguese-American individuals are asserting their individual rights to self-determination, in concert. But now imagine that the Mayor of Providence acknowledges their right by making Fox Point a Portuguese-only area (or by subsidising housing for Portuguese-Americans, or some other, more plausible, measure). Here, at the level of goods-devolution, it becomes clear that the *group* enjoys the right since the good is indivisible. The Santos family cannot take their “piece” of self-determination and move to Massachusetts; and the Pereira family can’t take their “piece” of territorial cohesion and move to California. Since only the *group* can enjoy the indivisible good of self-determination, the *group* effectively asserts the right.

But the right to self-determination is not the only group right. Indeed, these group rights need not always involve territory. Take, for example, Article 4.2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. It urges states to take positive measures to help minority communities maintain their traditions. These measures, presumably, could include, among others, the creation of a school where the medium of instruction is the mother tongue of the minority community. Unless each pupil were to have his or her own school, it is hard to see how, at the level of goods-devolution, this right can be construed as an individual right. When one inspects not only the rights-holders, but also the goods-to-be-devolved, this right reveals itself as plainly a group right. In fact, whenever the maintenance of a culture, religion or language is the object — the good — of a right, this right must be a group right, insofar as the goods are indivisible and cannot conceivably be enjoyed by individuals, at least not without taking a farcically reductive view of culture, religion or language.

This analysis leads me to an important conclusion. I argue that when classifying a given situated rights-assertion (there are

moments when doing so is useful), one should, first of all, not adopt Donnelly's method of seeing only individual rights where sometimes there are group rights. Nor should one naively count the numbers of rights-holders per rights-assertion, since individuals can assert rights on behalf of groups (as in a class action lawsuit with one lawyer, for example), and groups can comprise a loose agglomeration of individuals (imagine a protest rally for free speech). Nor, further, should one look for vaguely religious or ethnic components to a right and by simple virtue of this call it a group right (imagine an individual Amish man refusing military conscription). Indeed, to use a naive "counting" method or a simple method of divining for religious or ethnic content, would lead one to err just as often as would adherence to Donnelly's method. Rather, one should consider the goods latent in the rights-assertion. If these goods are divisible, one can safely conclude that the right is "individual" in character. If these goods are indivisible, one can conclude the opposite, that the right is "group" in character. This method, moreover, constitutes a *sufficient means* of distinguishing individual rights from group rights.

At this point, a critical reader will become aware of a handful of possible exceptions. For example, how many individuals comprise a group?²³ Consider a single Xhosa-speaking university student who asserts to her professor that she has a right to take Xhosa-medium exams. The professor responds that, as a matter of university policy, she would only have such a right if a certain threshold number of students made the same assertion. At this particular university, that threshold number is three. Accordingly, the student seeks out two more Xhosa-speaking students in her class who would like to have Xhosa-medium exams. The professor then has a Xhosa-medium exam drawn up for them. By the above method, this case should be considered a group right. But is it really? Intuitively speaking, do three people really make a group? I argue that even this case represents a group right,

since a lone individual cannot enjoy the goods (Cf. MacMillan, 1986: 1). Yet, of course, when making a close reading of situated rights abuses, it is eminently desirable to note such salient details as the remarkably small number that comprises a right-asserting group (see MacMillan, 1986: 4-5 for a parallel discussion of numbers and the Canadian context).

Critics will also ask: Are non-ethnic rights group rights? Consider a situation rather reminiscent of the one above, where two Xhosa-speaking, one Swati-speaking, one Tsonga-speaking, one Setswana-speaking and two Sotho-speaking students petition their professor at the University of Natal for Zulu-medium exams. Their number — seven — reaches the threshold number at that university, and the professor agrees to make a Zulu-medium exam available. The goods are indivisible, but is this a group right? Despite the fact that the goods devolve onto members of different ethnic groups, this remains a group right. Group rights, under my method, need not be *ethnic* group rights. Consider a second example, where factory workers, organised as a union, assert their right to have sufficient, clearly marked, accessible and functional emergency exits in all of their factory buildings. This assertion clearly features an indivisible good (unless all workers get their own emergency exit), and yet we need not remark upon the ethnicity of the workers in order to make sense of the right as a group right. Of course, it is still useful to note salient details such as the ethnic-, class-, gender- and age-affiliations of a rights-asserting group.

We should note a fact to which I have thus far only alluded: This method applies to *situated rights-assertions only*. This is because a given human or legal right, as written, can manifest itself as a group right in one instance, and an individual right in the next instance. Take, once again for example, Article 4.2 of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. I have already

demonstrated how it can be a group right. Now imagine the following situation: A Tsonga-speaking woman wants to make a speech in her mother tongue on a busy street corner in Alexandra. The municipal authorities responsible, to her annoyance, agree to grant her a permit, but only if she agrees to use a different language. She takes the authorities to court, asserting her right to free speech, in the language of her choice, since, according to Article 4.2, “States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs.” Since the goods devolve onto this individual woman, the right, as asserted, reveals itself to be an individual right. The reader with an especially sharp eye will notice that this “duality” of Article 4.2 stems from the fact that it is a compound sentence with two variant verbs: “express” and “develop”. In short, Article 4.2, *as written*, allows rights-holders to make claims for various kinds of goods, depending on how they frame their assertion. This kind of ambiguity leads me to urge readers to restrict the method to situated rights-assertions only. This, I contend, will allow us to avoid pointlessly messy abstract debate.

Finally, although Donnelly’s argument and my refutation pertain to human rights, the implications apply to all sorts of rights — including constitutional and statutory rights. This is simply because all rights-assertions have the same basic anatomy of rights-holder, duty-bearer and goods. Thus, we can apply the above method not only to complaints of linguistic human rights violations, but also to complaints of constitutional and statutory language rights, as I do in Chapter 5.

1.3 Contrast with a dissident liberal

We can now briefly contrast this method with relevant aspects of the theory of group rights put forward by the dissident liberal, Will Kymlicka. In Kymlicka's approach, group rights (in Kymlicka's terms they are "collective" or "group differentiated" rights) emerge whenever a group or individual makes a claim based on ethnicity or religion. These include a number of rights-assertions embraced by my method, as well as many that my method deems individual rights-assertions. Of the latter, Kymlicka lists an assortment of religion-related rights-assertions. They include Jews and Muslims in Britain who seek exemption from Sunday closing laws; Sikh men in Canada and elsewhere who seek exemption from motorcycle helmet laws; Amish in the United States who decline military service on religious grounds and Muslim girls in France who petition to wear chadors in school (1995: 31).

According to my method these assertions all constitute individual rights-assertions because they reflect claims on divisible goods; and yet Kymlicka categorises them as "group differentiated". Do these pose a theoretical challenge to my method? I contend that they do not — and it is easy to see why.

Kymlicka seems to identify as a group right any right that has some connection with the characteristic of ethnicity or religion. But one may become aware of an assortment of rights that similarly accrue only to individuals with particular affiliations or status. Take, for instance, the right to private property. One can only assert the right to private property by virtue of being a member of the landowning class. Likewise, one can only assert the right to a state-appointed defence if one has already been charged with a crime (or, to wit, has already gained entrance to the "criminally charged class"). Just imagine a non-landowner asserting the right to private property, or a citizen not charged with a crime asserting her right to a state-appointed attorney.

Both scenarios are absurd; only a member of a certain group — the landowning group, the criminally charged group — can assert the rights to private property and state-appointed defence. Both rights require group affiliation, and yet both rights are widely and uncontestedly regarded as individual, civil rights.

All of this would not warrant a second glance except that the rights-assertions that Kymlicka cites have an identical structure. In the case of the Muslim shopkeepers asking for exemption from Sunday closing legislation, or the case of the Amish rejecting military service, an individual member of a certain group asserts the right to a particular (divisible) good on the basis of membership. I contend that because both Kymlicka's examples and my analogous examples share an identical structure, both ought to have identical status as either group rights or individual rights. To consider all of them group rights would make an absurdity of the rights to private property and a state-appointed defence, among hundreds of other conceivable examples. But to consider them all individual rights — along the lines of my method — would provide us with an unproblematic classificatory approach.

In addition to its unproblematic classificatory efficiency, my method also helps to dispel a well-known bugbear in the practice and study of group rights. Many, Kymlicka among them, seem to believe that group rights must have an ethnic or religious component. Indeed, Kymlicka's expedient logic contends that any rights-assertion that has an ethnic or religious component must be a "group differentiated" right. But, as I have shown above, group rights need not — are not — so narrow. Whereas Kymlicka's theory summons the ethnicity bugbear, my method helps to banish it.

In Kymlicka's writings, we find another argument that contrasts usefully with my contentions. Kymlicka writes:

The fact that certain minority language rights are exercised by individuals has led to a large (and largely sterile) debate about whether they are really 'collective rights' or not. This debate is sterile because the question of whether the right is (or is not) collective is morally unimportant (1995: 45).

In arguing thus, I believe Kymlicka is attempting to show that "group differentiated" rights are compatible with the laws of liberal states. Overall, I find this to be a worthwhile rhetorical endeavour, since liberal regimes inevitably fail many minority groups, and some formations of group rights can conceivably make right this structural wrong. I also agree that without a practical aim, debates over the group or individual character of assorted rights do remain "sterile".

However, my method does have a practical aim, and that is why I have given it such lengthy treatment. More than an exercise in abstraction, my method will help us to discern which language rights are truly group rights, and which are individual rights — and by extension to evaluate the degree to which PanSALB invites ethnic divisiveness. I elaborate on how we may so apply this method in the next chapter.

1.4 A special case: solidarity rights

Now that we have established this method, we are able to make distinctions between *situated* "group" and "individual" rights-assertions. But before proceeding, we must add a necessary nuance to our understanding of diverse classes of rights. For when classifying rights-assertions, whether in South Africa or internationally, one cannot neglect to account for a subset of group rights, mentioned earlier, called "solidarity" or "third generation" rights. I now discuss this sub-category.

The concept of solidarity rights perhaps first debuted in official

circles when Senegalese jurist Keba M'Baye, in his first speech as chairperson of the UN Human Rights Committee,²⁴ argued for a "human right to development". Taken up by the non-aligned movement and the UN General Assembly's Third World voting block, the G-77, the human right to development shook traditional notions of human rights, in addition to challenging the established neo-liberal economic order and the dependency relations it held in place (Spero and Hart, 1997: 162). Though intended as a tool for securing economic justice in a world of immense regional disparities of wealth, some world leaders seized upon the right as a cynical means of consolidating their own personal political power. Eide (2000: 36; cf. Alexander, 2000b: 20) cites, for example, how certain African dictators touted second generation human rights not out of genuine concern for the economic, social or cultural wellbeing of their people, but in order to exclude the first generation rights — such as freedom of speech and of association — that potentially threaten their hold on power. Other regimes seem poised to use the "rights of states" dimension of the human right to development in order to eclipse the rights of individuals.²⁵

But the human right to development²⁶ concerns us not so much for its content or historical-political moment, as for its theoretical significance — in particular the kinds of subjects it allows as rights-holders. The beneficiaries of a human right to development — as is the case with its counterparts, the human rights to peace and a clean environment — comprise not individuals or groups, but all people residing within a state, or across states (Abi-Saab, 1980: 163). Bedjaoui describes it as "much more a right of the State or of the people, than a right of the individual" (1991: 1182). Consider, for the sake of example, a Third World state which, citing the Declaration on the Human Right to Development, asserts that the international community must disarm and use the assets liquidated thereby to facilitate Third-World development. In this case, the goods — i.e., the

liquid funds — devolves, in theory, not to an individual, but to a group. And yet this is not just any group, but a very large and very precise one: namely, everybody in the country. The notional human rights to peace and to a clean environment also provide illuminative examples (see UNESCO, 1997; United Nations, 1994). Imagine that all the users of the world's oceans (or an NGO acting on their behalf) assert that in order to satisfy the right to a clean environment, UN member states must draft a treaty prohibiting oil companies from shipping crude in any ship that has fewer than four hulls. Here, the goods — a treaty banning a dangerous shipping practice — devolve to no individual, but to a group. And yet not just any group, but, again, a very large and specific one: Everybody on Earth.

Certainly solidarity rights such as these invite much valid criticism from legal scholars, but the fact remains that as a sub-class of rights, they do exist — both in theory and in international soft law. In fact, as we will see in Chapter 5, not a few individuals have asserted solidarity language rights in South Africa, and furthermore that these solidarity rights assertions have distinct political implications apart from those of other group rights or individual rights.

In brief, then, one can usefully classify rights in one of two ways: as individual rights or as group rights. The latter classification has a sub-class called the solidarity right. One can sufficiently distinguish a situated *individual* rights-assertion from a situated *group* rights-assertion by ascertaining whether the goods, or object, of the right are divisible or indivisible. If divisible, the right is individual in character. If indivisible, the right is group in character. If the goods are both indivisible and, indeed, devolve to an entire state populace or to all people in the world, that right is a solidarity right. This method, further, serves as a *sufficient* means of making such classifications, and will help us to determine whether PanSALB stirs ethnic divisiveness, later in Chapter 5.

1.5 Language rights and linguistic human rights

The notion of language rights has received acclaim from academic quarters. Pastoors has listed exhaustively the economic, political, social and cultural domains in which language plays a pivotal role. In order to ensure dignity and equality in these domains, many scholars concur, one must uphold a standard of linguistic human rights (cited in Desai, 1991: 2-3). May (2000: 163-4), for example, has expressed his support for language rights protections, especially with regard to the rights of indigenous peoples; as have Kontra, Phillipson et. al. (1999); and Maffi (2000) among many others. Yet none is a more vocal spokesperson for language rights than the Roskilde-based scholar and activist Tove Skutnabb-Kangas. She has enumerated what she believes ought to comprise the list of universal “linguistic human rights”; first, with regard to the mother tongue:

[1] that everybody can identify with their mother tongue(s) and have this identification accepted and respected by others; learn the mother tongue(s) fully, orally (when physiologically possible) and in writing (which presupposes that minorities are educated through the medium of their mother tongue(s)); use the mother tongue in most official situations (including schools) (Skutnabb-Kangas, 1998: 1).

In relation to languages other the mother tongue:

[2] that everybody whose mother tongue is not an official language in the country where s/he is resident, can become bilingual (or trilingual, if s/he has two mother tongues) in the mother tongue(s) and (one of) the official language(s) (according to her own choice) (Skutnabb-Kangas, 1998: 1).

In relation to the relationship between languages:

[3] “that any change of mother tongue is voluntary (includes knowledge of long-term consequences), not

imposed”.

This right relates to the contention that the transfer of children from one linguistic group to another constitutes an instance of “linguistic genocide” (2002: 314). Finally, in relation to profit from education:

[4] “that everybody can profit from education, regardless of what her mother tongue is” (Skutnabb-Kangas, 1998: 1; all number-brackets mine).

By employing the term linguistic *human* rights, Skutnabb-Kangas implies that these rights do not need justification, that they are inherent and absolutely imperative for the maintenance of human dignity. From where does Skutnabb-Kangas derive these rights? Sets [1] and [3] derive from the proposition that language is entwined with identity, a connection that draws its legitimacy from the writings of the German Romantics of the 18th century, and 19th-century American anthropologists Sapir and Whorf. The German Romantics (seminally, Herder, Humboldt and Fichte; see also linguistically focused synthesis in May, 2000: 57-8), stressed the connection between language and the identity of both individuals and “nations”. Benjamin Whorf, drawing heavily on the work of his mentor Edward Sapir, emphasised the link between language and the perception of reality in the Sapir-Whorf Hypothesis (Carroll 1956). The “strong version” of the hypothesis says that any given language actually prevents its speakers from engaging a particular reality that another language would allow. The “weak version” of the hypothesis, which most scholars favour, says that any given language will only constrain the range of realities a speaker of that language can experience. The imperative or intrinsic nature of linguistic human rights, then, finds its roots in the importance of the mother tongue for an individual’s identity and perception of reality. The syllogism runs like this: To violate a person’s identity or fundamental relationship to reality would unavoidably undermine that person’s

human dignity. One's identity and one's mother tongue are inextricably linked. Thus violating a person's mother tongue implies the violation of that person's identity and fundamental relationship to reality. As a result, the mother tongue ought to be protected through human rights.

Sets [2] and [4] by contrast, while they earn the same imperative status as sets [1] and [3], only do so by way of a longer chain of reasoning that connects ultimately to pre-existing civil and political rights. This represents what Roodt (2002: 8) has called the "threshold rights" facet of language rights and what Annamalai (1998: 3) has termed the "contingency" of language rights upon certain civil and political, social and economic human rights. In other words, what are sometimes understood as "language rights" — and what I will insist on calling "language-related rights" — are actually righteous derivatives of various pre-existing human rights.

Consider the following example: Individual persons have the right to participate in the governing of the state to which they belong. But one cannot participate in such activities if one does not know the official language of the state. Thus, by way of syllogism, one has the right to learn the official language of the state. Or, by way of alternative example, American constitutional law stipulates that an accused person has the right to be present at his or her trial. If the accused cannot understand the language in which the trial takes place, that person is not in any real sense "present" at the trial. Thus, accused persons have a constitutional (language) right to either a trial in their own language or (more likely) an interpreter. Another example: One has the right to maintain one's culture. One cannot maintain one's culture without also maintaining the mother tongue. Thus, one has a right to maintain the mother tongue.

1.6 Problematising language rights

Many laud the idea of language rights and language-related rights, whether they be human rights or legal rights. Language rights, these proponents argue, will protect linguistic minorities against oppression, and enable them to participate more fully in economic and political arenas. At the same time, critics decry language rights on the grounds that in some of their many incarnations they may cause more harm than good.

Florian Coulmas begins the critical assault by pointing out that many language rights, in accordance with the idea of “threshold rights”, already exist, implied by and derivable from other human rights. To open up more space for the assertion of language rights, he warns, would not only be superfluous, but could also invite ethnic mobilisation. “Such conflicts are rarely about language alone” (Coulmas, 1998: 72. See also Ross, 1979; Horowitz, 1985, 1992; Alexander, 2000b, 2002). De Varennes, adopting an apparently instrumentalist perspective (see Chapter 2), concurs:

...the denial of these [language] rights is contested politically or legally only by minorities who are politically conscious and economically resourceful. Even among these minorities, it is the interests of their elite that is served (De Varennes, 1993: 41).

Coulmas proffers a second criticism pertaining to the expense implicit in the right to preserve minority languages. Whereas such a language right may be feasible in wealthy states of relative linguistic homogeneity, they are totally unrealistic in poorer states of relatively great linguistic diversity. Coulmas suggests that a strictly enforced language right to minority language preservation may, while saving languages, help to perpetuate the disparities of wealth between First World and Third World states. Such preservation efforts will prove expensive, after all, and it seems a distinct injustice for Third World states to spend *more* on

language preservation in absolute terms, and *far more* in relative terms, than First World states, most of which have historically reduced their linguistic diversity through means that would be seen as rights abuses today. Perhaps, Coulmas earnestly implies, Third World states should be allowed a period of economically beneficent linguistic assimilation so as to produce a manageable homogeneity such that the state could then affordably abide language rights. For until that homogeneity is attained, the right to preservation of minority languages remains a ridiculously Eurocentric notion that is destructively uneconomical and totally unworkable in most Third World states (Coulmas, 1998: 72; cf. Pennycook, 1998: 77).

Writing in this same vein, Pennycook notes that the notion of a neatly circumscribed “language” is a European concept. In most states, discrete “languages” do not exist so much as do continua of dialects with varying degrees of mutual intelligibility. If one applies the Eurocentric concept of “language” in a context of language rights, one will automatically need to privilege a chosen dialect above the alternative dialects along the continuum. After choosing one of these dialects as the “standard”, one hastens the death of the “non-standard” dialects, effectively decreasing the variation within the bounds of the overall dialect continuum — an outcome that certainly defeats linguistic-ecological intentions of language rights to promote the preservation of minority languages (Harries, 1987; Pennycook, 1998: 80; Mühlhausler, 1996).

Pennycook goes even further, challenging the assumption that enforcement of the right to learn the official language of the state, in both its written and oral forms, actually empowers linguistic minorities. Does bilingualism of this sort truly provide a conduit for economic and political advancement? Or do linguistic minorities who learn the official language merely construct the vehicle of their own co-optation and manipulation? He writes:

... it is not sufficient to simply assume that the bestowal of language or literacy is inherently in the interests of the recipients, since the educational processes and contexts of use of languages are bound up with the range of cultural and political ways of doing and thinking (Pennycook, 1998: 81).

Quoting Postman, cited in Hoyles, Pennycook argues that literacy may provide a model by which language rights can ultimately *disempower*:

If you cannot read, you cannot be an obedient citizen. An important function of the teaching of reading is to make students accessible to political and historical myth (Postman, cited in Pennycook, 1998: 82).

Pennycook asks compellingly, *Do language rights not lead us down an analogous path?* Could acquisition of the official language of a state — even if it happens on an additive basis — not subjugate the minority to the controllers of hegemonic officialdom? It is important to note here that language death always begins with a stage of bilingualism (Fishman, 1991). Learning the official language of the state may impel whole linguistic communities, by way of structural pressures, to abandon their language, thus accelerating the loss of linguistic diversity — again a result opposite of what language rights intend.

Stroud (2000; 2001) has presented perhaps the most organised critique of language rights — specifically in this case linguistic human rights. Uniquely, Stroud transcends the flatly destructive critiques made by the authors above by proposing an alternative. For this reason, I discuss his work separately.

Stroud cites four deficiencies of the rights-based approach. First, most configurations of linguistic human rights violate the principle of equality. As with many rights-based approaches to

empowerment, linguistic human rights must single out disadvantaged groups that merit special treatment. This, says Stroud, exercising a liberal rights perspective, “is often done at the felt cost of the majority of mainstream sectors of society” (2000: 273), a fact that makes linguistic human rights politically untenable. Second, by focusing on particular groups, and acknowledging and thus reinforcing their linguistic identity, linguistic human rights run the risk of deepening ethnic division (cf. de Varennes, 1993, et al. above). Third, in keeping with the eurocentricity also noted above, linguistic human rights treat “language” as “an essentially unproblematic construct — an identifiable ontological entity” (2001: 348). Linguistic human rights thus fail to take account of highly multilingual settings, codeswitching and varying levels of proficiency in a given community of speakers. Relatedly, national rights-based policies tend to legitimise, through officialisation, only a limited set of languages, thus further entrenching the marginalisation of the most-marginalised linguistic communities. Fourth, linguistic human rights presuppose the existence of a modern national state that can dispense the goods associated with a given language right. This is a dubious assumption, especially while many commentators have begun to question the durability of the nation-state paradigm in the current era of globalisation (2001: 348).

In the wake of his critique, Stroud argues that a transformative concept of “linguistic citizenship” may usefully replace that of linguistic human rights. In contradistinction to the deficiencies of linguistic human rights, linguistic citizenship

denotes the situation where speakers themselves exercise control over their language, deciding what languages are, and what they may mean, and where language issues (especially in educational sites) are discursively tied to a range of social issues — policy issues and questions of equity (2001: 353).

In short, linguistic citizenship emphasises *local* initiatives and *local* control over language policy. Local linguistic communities, rather than asserting their language rights against a not-always-heedful state, resolve to create language policies that are appropriate to the local context.

1.7 Are language rights individual or group rights?

This chapter began with an anecdote describing the tension between group rights and individual rights. This tension has duly reproduced itself on the South African scene, with a progressive constitution that, while espousing a broad liberal framework, has yet also seemed to acknowledge a handful of group rights. This paper is concerned with language rights in South Africa, of course, and so poses the question: Do the language rights enshrined in the South African Constitution and in international legal instruments represent individual rights or group rights — and if the latter, are some solidarity rights?

Some scholars have attempted an answer; MacMillan, undoubtedly echoing the views of many, wrote, “There is an ineradicable core of group rights in the idea of language rights, stemming from the fact that language itself presupposes community” (1986: 5). At the same time, individual language rights must also exist, owing to the fact that existing international rights documents have overwhelmingly expressed them as such: “Most language-related rights are to be found in articles on minority rights, and these have so far also been individual” (Skutnabb-Kangas, 2000: 483).

The correct answer, of course, cannot be reduced to zero-sum simplicity. Using the above-articulated method of ascertaining whether the good, or object, of a right is indivisible or divisible will lead a reader to different conclusions depending on the particular situated language rights-assertion. Sometimes, language rights (and language-related rights) reveal themselves

as individual rights, as in the case of the right to learn the official language of the state in which one lives. At other times, language rights are specific group rights, as in the case of the right to state-supported mother tongue schools or the right to not be transferred from one linguistic community to another. One can even witness the kind of group right called solidarity language rights, such as the right, in South Africa, to the promotion of multilingualism — a right whose goods obviously devolve onto all South Africans.

Chapter 2

Ethnicity and (dis)unity in South Africa

“And the Gileadites took the passages of Jordan ... and it was so that when those Ephramites, which were escaped said, Let me go over; that the men of Gilead said unto him, Art thou an Ephramite? If he said, Nay; then said they unto him, Say Shibboleth: and he said Sibboleth: for he could not frame or pronounce it right. Then they took him, and slew him at the passages of Jordan: and there fell at that time the Ephramites forty and two thousand.”

– The Bible, Judges, Chap. 12, verses 5-6

“...[S]omeone had shown him a one-rand coin and he had identified it as “iLandi”, betraying the rural Zulu dialect that characteristically changed ‘r’ to ‘l’. ... I saw a young man with a wisp of a beard step forward and ... thrust a knife into the Zulu’s chest.”

– Greg Marinovich, *Bang Bang Club*, p. 25

To borrow a phrase from Shashi Tharoor, the singular thing about South Africa is you have to talk about it in the plural. South Africa boasts a religiously, ethnically, linguistically and racially diverse population; South Africa, in the oft-repeated catch-phrases, is a “plural society” (Furnivall, 1939), a “divided society” (Horowitz, 1992). This fact, cultural commentators avow, has proved to be as much a blessing as it has a curse.

Blessing or curse: In this paper, I explicitly address the conundrum, by investigating whether the ethnolinguistic diversity of South Africa could threaten its integrity as a unified

political entity. Particularly, I investigate complaints of language rights lodged with the Pan South African Language Board (PanSALB), and determine whether these complaints signal any incipient ethnic mobilisation on the basis of language (Chapter 5).

This aim, of course, requires that we first establish some understanding of the foundational concepts — of ethnicity, and the “national unity” to which ethnic groups ostensibly pose a threat. Thus, in this chapter I present some necessary background on the interrelated subjects of ethnicity, national unity and ethnic conflict. I begin first with ethnicity, outlining the major schools of analysis commonly applied to the concept of ethnicity, and discussing with some specificity the role of language in ethnic identity, as well as some peculiarities of the experience of ethnicity in South Africa. Secondly, I review the leading research on ethnic conflict and provide a theoretical skeleton for considering the questions: When and why do ethnic groups mobilise to make claims on the state; and in the case that ethnic groups compete, over *what*, exactly, do they compete? Finally, I reintroduce and complete the presentation of my method of distinguishing group rights complaints from individual rights complaints, and explain how this method conforms particularly well to established theories of ethnicity and ethnic conflict.

2.1 Some definitions

But before delving into theories of ethnicity, it will greatly ease our task to consider a few definitions, and at least one caveat. What does “ethnicity” mean? Its contemporary English sense of “the essence of an ethnic group” seems to go back to the middle of the 20th century (Hutchinson and Smith, 1996: 4). The Britannica Dictionary dates the meaning of “an ethnic quality or affiliation” to 1950, while a much earlier (1896) French equivalent states:

ETHNIE n. f. du grec *ethnos* <peuple, nation> Ensemble d’individus que rapprochent un certain nombre de

caractères de civilisation, notamment la communauté de langue et de culture (alors que la *race* dépend de caractères anatomiques). On trouve aussi *ethnos* (taken from Sollors, 1996).

In spite of the fact, however, that ethnicity seems to be a relatively new term — especially in English — and ethnic groups, a lately-come object of academic inquiry, “the sense of kinship, group solidarity and common culture to which [the term] refers is as old as the historical record” (Hutchinson and Smith, 1996: 3). For its very pan-historical consequence, academics have sought definitions that go beyond the vernacular recorded in dictionaries. In an often-cited passage, Schermerhorn gives the following, somewhat more extended, interpretation:

An ethnic group is defined here as a collectivity within a larger society having real or putative common ancestry, memories of a shared historical past, and a cultural focus on one or more symbolic elements defined as the epitome of their peoplehood. Examples of such symbolic systems are: Kinship patterns, physical contiguity (as in localism or sectionalism), religious affiliation, language or dialect forms, tribal affiliation, nationality, phenotypical features, or any combination of these. A necessary accompaniment is some consciousness of kind among members of the group (1970: 12).

Smith distills this definition to a list of six necessary and sufficient features of ethnic groups or, as he calls them, “ethnies”. First, he excises Schermerhorn’s requirement that ethnic groups only reside “within a larger society”. Second, he exchanges his enumerated examples of “symbolic elements” for the concise and inclusive term “elements of common culture” (Hutchinson and Smith, 1996: 6-7), and arrives at the following list of properties possessed by ethnic groups or ethnies:

1. a common *proper name*, to identify and express the “essence” of the community;
2. a myth of *common ancestry*, a myth rather than a fact, a myth that includes the idea of a common origin in time and place ...
3. shared *historical memories*, or better, shared memories of a common past or pasts, including heroes, events and their commemoration;
4. one or more *elements of common culture*, which need to be specified but normally include religion, customs or language;
5. a *link* with a *homeland*, not necessarily its physical occupation by the ethnies, only its symbolic attachment ...
6. a *sense of solidarity* on the part of at least some sections of the ethnies’ population.

This academic elaboration of the vernacular notion of “ethnic group” represents a reasonably wide consensus within the discipline, and the core understanding of “ethnic group” on which I will operate throughout this paper.

On the heels of this, I hasten to add a caveat. This paper concerns itself with South Africa, a country where the concept of ethnicity served as a cynical political weapon in the early stages of colonial divide-and-rule strategy, and later with the consonant Bantustan policy of the apartheid regime. Understandably, ethnicity bears the burden of considerable political freight. Reagan explains the consequent perils of discussing ethnicity: “Ethnicity in the South African context ... is rather a normative term, and to defend ethnicity as a legitimate manifestation of human experience and awareness has for many become synonymous with defending apartheid” (2002: 429).

I, however, do assume ethnicity to be a legitimate manifestation of human experience, while of course also rejecting its

manipulation for sinister ends. Specifically, I insist on the crucial distinction between the “primordial” sense of mere *ethnicity* and the “instrumentalist” conception of a politically *mobilised ethnicity*. Mere or “primordial” ethnicity, I assume, poses no sinister threat. Indeed, so long as it is never used to exclude outsiders from privilege, ethnic identification must be regarded as a valuable and unproblematic facet of social life in the post-apartheid regime. But when ethnicity becomes mobilised, as in the case of the Afrikaner nationalism that begot apartheid, it can, and often does, turn pernicious. Maré, himself a South African who has studied both Zulu and Afrikaner nationalism in depth, puts it this way:

Ethnicity can meet real needs of security, or it can tip insecurity into exclusivist mobilisation and fuel antagonistic organisations and violence. It can express cultural variety within a larger commonality, or it can serve to demarcate insular social groupings fearful [for their continued] existence (1993: 106).

This distinction will not only allow us to avoid controversy. By understanding ethnicity in its benign and more politically aggressive forms, we can obtain crucial insights into how the panoply of ethnic identities in South Africa may or may not threaten the maintenance of some kind of national unity.

Variability of definition similarly bedevils the terms “nation” and “national unity”, with everything from normative to postmodern viewpoints problematising the notion at its core. It does not benefit us to repeat any of these debates here, since we are concerned less with the philosophy of nationalism than with its politics—indeed, its implementation by nation-building politicians. Thus we need only accept some basic assumptions about what the broad array of nationalist rhetoricians mean when they use terms like “nation” and “nation building”. For the purposes of this discussion we may regard a “nation” as “a social

group which shares ... common institutions and customs, and a sense of homogeneity" (Connor, 1978: 380), and also aspires to some measure of political autonomy (Edwards, 1977: 225).

Eriksen helpfully defines a related concept — nationalism — in relation to ethnicity:

Like ethnic ideologies, nationalism stresses the cultural similarity of its adherents and, by implication, it draws boundaries vis-à-vis others, who thereby become outsiders. The distinguishing mark of nationalism is by definition its relationship to the state. *A nationalist holds that the political boundaries should be coterminous with cultural boundaries, whereas many ethnic groups do not demand command over a state* (1993: 3; my emphasis).

In other words, a nation is an ethnically defined group that seeks political autonomy; nationalism denotes the aspirational spirit of such a nation. The sought-after political autonomy is oftentimes in the form of a "state", a term that no doubt also deserves clarification. I will use Weber's definition: "the state is a political unit with a monopoly on the legitimate use of force within its territory" (1997:124–135). Common usage often conflates the term "nation" with "state", as in the much-abused term "nation-state" (quite a rare animal, by strict definition), or in political overtures that speak of "national interest" and "national unity". These latter two terms actually intend to denote "state interest" and "political unity within the state". Thus, throughout this paper, I assume that the "South African nation" actually means the "South African state" and "South African national unity" actually means "political unity within the South African state".²⁷ I will take some liberty in interchanging these terms, since the distinction does not have relevance in this context.

2.2 Ethnicity

We now turn to theories of ethnicity. There exist a number of approaches to the study of this phenomenon, the variety of which reflects differing explanations for its existence, persistence and at times vigorous reassertion, from earliest times to our contemporary industrialising and globalising world. These theoretical approaches customarily fall into three categories, namely the primordialist, instrumentalist and (the closely-allied) constructivist approaches. I consider each in turn.

Primordialism

May (2001: 29) dates the incipience of the primordialist perspective to the German Romantics, Herder, Humboldt and Fichte, who posited ethnic identity to be natural and immutable; in this perspective, ethnic communities are fixed, and some are superior to others. This stream of primordialism lost legitimacy decades ago and for that reason expositors of ethnicity theory tend to begin by citing Clifford Geertz (1963), who followed Shils (1957) in formulating a somewhat less deterministic and certainly less chauvinistic approach. Geertz claimed that ethnicity reflected a timeless essence that inhered in the bonds of kinship and created a deeply felt sense of affinity between members of the same ethnic group (Young, 2002: 28). According to Geertz, the culture of any group, which developed at some distant point in the mists of prehistory, manifests itself as a kind of inheritance, passed down from generation to generation. As a result of culture's close association with kinship, ethnic affinities came to seem like "givens" and accumulated a special kind of power. So powerful and deeply felt did these affinities become that Geertz considered them to hold "ineffable", "overpowering" and compelling force for those bound by them. In Geertz' words:

These congruities of blood, speech, custom and so on, are seen to have an ineffable, and at times overpowering, coerciveness in and of themselves. One is bound to one's kinsman, one's neighbour, one's fellow

believer, ipso facto; as the result not merely of personal affection, practical necessity, common interest, or incurred obligation, but at least in great part by virtue of some unaccountable absolute import attributed to the very tie itself (1963: 110).

Geertz insisted that ethnicity reflected the custom, and not the genes, of an ethnic group. But others who fall under the primordialist category do link ethnicity to biology in an attempt to explain the compelling force of ethnic ties. Shaw and Wong (1989; cf. van den Berghe, 1978), for example, contend that the tendency to group solidarity is encoded in the human genome. Surely, the argument goes, evolution has favoured those humanoids who bound themselves together in community, and who each maintained strict loyalty to that community. As those lone wolves without such beneficial loyalty died out (in Darwinian terms, their individualism was “selected-against”), the genetic feature of loyalty to one’s kin duly reproduced itself. This, what we may call the “ethnicity gene”, persists today, and explains the deeply felt and compelling strength of ethnic ties that primordialists cite (Young, 2002: 28).

The primordialist approach has attracted its share of criticism, some of it searing. Grosby, for example, in one characteristic attack, commented that “... a more unintelligible and unsociological concept would be hard to imagine” (1993: 188). Chief among Grosby’s and other critic’s arguments is that primordialism obscures rather than illuminates the phenomenon of ethnicity. By casting ethnic affinities as “ineffable ... primordial givens”, Geertz and others engage in the height of question-begging. Ethnic affinities may be ineffable, say the critics, but an effective theory of ethnicity must explain why they are so. Moreover, the primordialist approach seems to reify a given ethnic group by failing to account for the cultural innovation in which each subsequent generation of a given ethnic group

indulges. Empirical studies show that ethnicity is dynamic, while primordialism risks turning each ethnic group into a “museum piece” (Hutchinson and Smith, 1996: 8).

In spite of the criticism, dogged primordialists do continue to make use of variations of their theory, maintaining that other approaches to ethnicity — especially instrumentalism (see below) — cannot capture the profound feelings of group solidarity members of ethnies feel. In particular, late revisions of primordialism have turned to psychology; for example, some claim that the basic human need for “social anchoring” impels people to cohere in ethnic groupings that in turn supervene on kinship structures that stretch backward beyond earliest memory (Young, 2002: 28).

Instrumentalism and Constructivism

Instrumentalist analysis of ethnicity gained momentum during the 1970s and quickly became the favoured perspective. Young points out that the success of instrumentalism owes much to the prevailing intellectual climate. During the 1970s, Marxist perspectives held sway in university departments, as did rational choice theory. Though oftentimes opposed, Marxism and rational choice theory found something to agree on in the instrumentalist approach to ethnicity, insofar as instrumentalism proffered a material basis for the existence and persistence of ethnic groups (2002: 29-30).

According to instrumentalist theories, ethnic groups were nothing more than material interest groups in cultural clothing. Though members of ethnic groups may truly share common cultural traits, sheer “rent seeking” and clientalism motivate the recognition of such commonalities. Ross approaches ethnicity in a decisively instrumentalist manner:

I am defining an ethnic group as a politically mobilised collectivity whose members share a perceived

distinctive self-identity. Ethnicity is a group option in which resources are mobilised for the purposes of pressuring the political system to allocate values for the benefit of the members of a self-differentiating collectivity. Ethnic groups are most likely to exist in situations in which there is a high level of intergroup competition and where multiple access points into the political system are available. Ethnic groups are a form of interest group, and, as such, are not quaint leftovers from a primordial past but a form of collective identity and organization that is well suited to a modern, structurally differentiated polity (1979: 9).

Cohen, often cited as the standard-bearer of instrumentalism, pointed out that ethnic groups often behave in a manner that suggests that they have material interests, rather than primordial kinship ties, at heart:

... ethnicity is essentially a political phenomenon, as traditional customs are used only as idioms, and as mechanisms for political alignment. People do not kill each other because their customs are different. ... If men do actually quarrel seriously on the grounds of cultural difference it is only because these cultural differences are associated with serious political cleavages (1969: 199).

The great Weber espoused a similar perspective nearly a century earlier, when he wrote, "The fact that tribal consciousness was primarily formed by common political experiences and not by common descent appears to be a frequent source of belief in common ethnicity" (1978: 392). Barth contributed to the instrumentalist approach when he argued that the content of a culture has little import for the integrity of an ethnic group; indeed, contrary to the implications of primordialism, each generation of an ethnic group makes changes to the prevailing culture. Rather, it is the boundaries separating groups that matter

most (Barth, 1969: 17); the mists of history have nothing to do with it.

Whereas many primordialist theories implied that ethnicity was anachronistic, a vestige of a tribal prehistory doomed to obsolescence in an industrialising world, instrumentalism sought to expose ethnicity as a purely modern phenomenon — as a special kind of political mobilisation (Maré, 1993: 36-7). Marxists approved of instrumentalism because it supported their contention that ethnicity reflected nothing but “false consciousness”, a muddling agency of inchoate class struggle. Rational choice theorists, meanwhile, perceived that instrumentalism supported their view: individuals always acted so as to maximise their material gains. Individuals would act as collectivities where it furthered their individual self-interest, and ethnicity offered advantages along these lines: If an ethnic group managed to secure political power, it could guarantee material returns for all members of the group. As a marked and visible identity, ethnicity allows no cheaters; communal leadership can monitor who participates in furthering the group interest and who does not, and distribute rewards accordingly (Young, 2002: 29).

According to Young, a scholar of ethnicity in Africa, the decades following Third-World decolonisation offered ready proof of the instrumentalist theories. Tanzania, Uganda and the former Zaire, among others, played host to ethnically mobilised political parties whose primary goals seemed to be “kleptocracy” and enriching loyal ethnic brothers (2002: ch. 2, 3 and 4; cf. Davidson, 1992: 205).

In the 1980s, an allied approach to ethnicity, constructivism, grew out of instrumentalism. Constructivism, drawing from postmodern analyses that rejected master narratives in favour of recognising instability and fragmentation, insisted that ethnicity was above all situational; ethnic mobilisation depends on the

cultural and historical context, as do the individual's perceptions — and invocations — of ethnicity (Yeros, 1999: 3). Summarising the constructivist position Hendricks writes, "... ethnicity is socially constructed — how, why and when it arises is contingent, and thus ethnic identity itself is in a continual state of flux" (1999: 107; cf. Anderson, 1983: 46; Vail, 1993: 3).

The instrumentalist and constructivist approaches attract equal doses of criticism. Critics of instrumentalism deride its single-minded emphasis on material interests. Instrumentalism, the critique goes, fails to account for the empirical permanence of many ethnicities, and at the very least cannot explain the strong affective force that ethnic ties can hold for members of ethnic groups (Hutchinson and Smith, 1996: 9). Instrumentalism also arguably neglects to say why, if ethnicity is a vehicle for political mobilisation, people choose *it* over other forms of mobilisation such as political parties or issue-based interest groups. Likewise, constructivism ignores the centuries-long persistence of many ethnic groups, and the real kinship on which ethnicity often supervenes (1996: 9). Others criticise constructivism for its outright irrelevance. May (2001) trenchantly points out that constructivism seems to say less about the experiences of ordinary people and much more about the purely academic enthusing of its expositors (42).

Young gives one example from the African continent that neatly exemplifies these kinds of inadequacies. In the Great Lakes region, the Hutu and Tutsi derive from ethnies constructed during the colonial regime, but which also have roots that predate the arrival of Europeans. In Rwanda, politics during the early 1990s may have gone according to every instrumentalist expectation, but the subsequent genocide revealed that affective qualities, which by far surpassed any drive after simple material interest, played a significant part (Young, 2002: 31). In this and other concrete examples, purely primordialist or purely

instrumentalist-constructivist theories are shown to lack full explanatory power.

Towards a Synthesis

Perhaps needless to say, the vastly separate poles of primordialism and instrumentalism-constructivism have little value on their own. Only when one combines elements of both perspectives — as most respected social scientists do nowadays — can one acquire a clearer, though still imperfect, lens through which to view ethnic phenomena. Surely ethnic identities are not relics of a primordial past; but surely, too, they are not wispy social constructs or mere self-interested rent seeking. May (2001), searching for some middle ground, quotes Roosen, who addresses the gulf between primordialists and constructivists in particular:

Ethnic groups and their cultures are not merely completely arbitrary. There is always a minimum of incontestable and noninterpretable facts necessary to win something from the opponent ... The reality [of ethnicity] is very elastic but not totally arbitrary (1989: 156).

May himself advocates for a merging of both poles: “Given this I want to suggest that primordial and situational views do not form mutually exclusive conceptualisations of ethnicity but that each represents a *partial* representation of the underlying social and cultural movements which they seek to describe” (2001: 44). If primordialism and instrumentalism-constructivism are not mutually exclusive, then a responsible theorist can simply facilitate a rapprochement of the poles. Such a merged approach succeeds in accounting both for the strong, deeply felt affective ties that ethnies bestow, and the reality that these real and deeply felt affinities depend on socially constructed “imagined communities” and also sometimes become the pretext for political mobilisation.

2.3 The importance of language

This paper concerns itself with ethnolinguistic identities, which we might consider a sub-type of ethnic identity. Put simply, an ethnolinguistic identity is an ethnic identity that attaches importance to language, and holds language as a salient feature of the ethnies in question (see Smolicz, 1981). A number of ethnic groups in the world today invite the term “ethnolinguistic”, such as French-speakers in Canada, Tamils in Sri Lanka, and Afrikaners in South Africa. What features of language might these ethnies regard as so important?

Scholars marshal a flurry of answers to this question. The first is that language is a symbol of ethnicity — but a unique and special kind of symbol. Unlike some symbols such as national colours, a flag, music or food, language, first of all, does not lend itself to acquisition after the critical period of pre-pubescence. While a person in mid-life may manage to adopt the sartorial and prandial habits of an ethnies into which she was not born, language poses a separate, more daunting challenge. Nash writes:

Language is a marker akin to dress ... [But l]anguage as a group marker has more social and psychological weight than dress does. Successful mastery of language implies learning it from birth, in the context of kinship or primary group. Learning a language as an adult ... is not the same ... (Nash, 1989: 13).

Put bluntly, those who learn languages as adults will be likely to have accents that mark them as outsiders; language is, in this sense, the marker of ethnicity most resistant to cross-cultural exchange. For that reason, language is the strongest marker of cultural difference, and thus in myriad cases the feature most deeply held.

Fishman notes that cultural symbols like dress and song stand in a metonymic or “part-whole” relationship to culture at large. But

unlike all other cultural symbols, language can also be said to stand in part-whole relationship to reality, by virtue of the fact that language serves as the interface through which people experience their entire reality. Phrased more succinctly, language is part of reality, but it is also the means for experiencing reality. Thus if language links people with reality — and if particular languages promote a particular perception of reality — then needless to say language bears immense importance for a given cultural, i.e. ethnic, group. On this Fishman writes, “All language stands in this very [metonymic] relation to the rest of reality ... The link between language and ethnicity is thus one of sanctity-by-association” (1989: 32). Ross concurs, equating the reality-interface function of language as a kind of “shorthand”: “Language is probably the most powerful single symbol of ethnicity because it serves as shorthand for all that makes a group special and unique” (1979: 9). Language is thus “the quint-essential symbol, the symbol *par excellence*” (Fishman, 1989: 32).

Closely related to the role of language in parsing reality lies its affective potential. Language, says Fishman, is often regarded as having been “acquired with mother’s milk” — as in “the mother tongue” — the cultural symbol that a member of an ethnic first encounters (1989: 27). As a notion juxtaposed with metaphoric and, oftentimes, actual motherhood, it attains great affective powers akin to those of which primordialists speak.

In addition to its affective “primordial” qualities, language also plays a prominent role in ethnic mobilisation. Ross, writing from a more instrumentalist perspective, notes that ethnic revivals frequently begin with the “discovery” or creation of a literary or philological tradition, which in turn serves as a link to a glorious past (1979: 9). When leaders of ethnic groups seek to stir the emotions of group members, the communication inevitably transpires in the purported distinct language of that group, if such a thing is available for use (Fishman, 1989: 27). Weber

noticed this and singled out language as a crucial ingredient in mobilised ethnicity:

Groups ... can engender sentiments of likeness ... [that] will have an 'ethnic' connotation. The political community in particular can produce such an effect. But most directly, such an effect is created by the *language group*, which is the bearer of specific 'cultural possession of the masses' (*Massenkulturgut*) and makes mutual understanding (*Verstehen*) possible or easier (1978: 390).

Horowitz, writing from his research experience with the ethnic politics of language policy, observes that "language is the quintessential entitlement issue" (1985: 220). Ethnic groups realise that the institutionalisation (often, though not always, by means of officialisation) of a given language will privilege those who speak it as a first language, and disadvantage those who do not. The privileged will find themselves at pole position in the materialist race for jobs as teachers, clerks and for other bureaucratic postings, while the linguistically disadvantaged will find that they require extra effort just to keep up, if such structures do not shut them out of elite occupations altogether. Language thus holds importance for an ethnic by virtue of the role of language in material acquisition. Sometimes, the tensions governing these most-valued facets of ethnolinguistic identity will unfold into inter-ethnic contentions, or erupt into violent conflict.

Writing in the same vein, Gellner (1994), the eminent scholar of nationalism, underlines how language represents what others (see especially Bourdieu, 1993) call cultural capital. As cultural capital, the language of the state proves indispensable to those who wish to succeed within the margins of state-sanctioned power:

The High Culture which, for the very first time in human history, pervades entire societies, is not simply made up of formal skills such as literacy as such, the capacity to operate computers, read manuals, observe technical instructions. It has to be articulated in some definite language, such as Russian or English or Arabic, and it must also contain rules for comportment in life; in other words, it must contain a 'culture' in the sense in which ethnographers use the term. Nineteenth- and twentieth-century man does not merely industrialize, he industrializes *as* a German or Russian or Japanese (1994: 42).

Those who acquire the skills, but not the entire idiomatic cultural package, will not succeed in the High Culture. This implicates language in almost all contentions, both past and future, between the dominant and minority ethnies inhabiting a state. The question of what language(s) will undergird the "High Culture" will consume all ethnies seeking to commandeer that "High Culture".

2.4 The experience of ethnicity in South Africa: conceptual wrinkles

The southern African region differs from broad global norms in its experience of ethnicity; South Africa, in turn departs from a number of regional trends. It is worth considering some of the peculiarities of both region and state. To begin with, we must note that colonisation has impacted overwhelmingly on the conceptualisation of ethnic and other identities in the southern African region (Mazrui, 2001: 253). In particular, the very concept seems to have been an imported one. When Africans first encountered the encroaching Europeans, the latter, and not the former, conceptualised ethnic identities in the discrete and compartmentalised way common to today's ethnopolitical discourses (see Vail, 1993: 7, 14 for a review; also Harries, 1993).

At the very least, Davidson argues, Europeans were the ones to introduce the notion of a connection between ethnicity and nationalism (1992: 205).

Yet in spite of the impact of European intellectual traditions “[w]ith few exceptions, ethnicity in Africa is distinct from nationalism” (2002: 79); or, in Scarrit’s terminology, southern Africa lacks “ethnonationalists”, though it may exhibit a number of politically less ambitious “communal contenders” (Scarrit, 1993: 255). It is true, Scarrit continues, that surveys have shown that ethnic groups in southern Africa have a stronger sense of group identity than groups found in other world regions and that they also tend to exist in geographical pockets of high concentration. Yet ethnic groups in Africa also demonstrate relatively low levels of “grievance” and clash relatively infrequently with the state (Scarrit, 1993: 259-60). This may in part stem from the fact that the region boasts a relatively large number of politically organised ethnic groups — too many for all to make legitimate claims for national autonomy. Additionally, these ethnies often find themselves distributed across national borders, a demographic situation that complicates nationalist claims (Scarrit, 1993: 254). Finally, Hendricks points out that the ideological currents of the period of decolonisation held ethnicity to be primitive, antithetical to the modern state. With reference to Africa’s first postcolonial leaders, she writes, “The generation of statesmen of the 1960s were assisted by scholars who adopted a unilinear model of development — deemed modernisation — and therefore decried ethnic affiliation as outmoded forms of political association” (1999: 107; Davidson, 1992: 205). In other words, ethnicity, at the genesis of independent Africa, was not *de rigueur*. Bekker (2001: 3-4) observes that the attitudes of these earliest modernist nationalists have carried through to today. Contemporary African leaders continue to eschew ethnicity as “primitive”, and espouse more distinctly European ideals of statism and “progress”; they have opposed the traditionalists,

who prefer “mixing African experience with foreign thought” (2001: 4). The modernists, Bekker says, so far seem to have won the day, and in so doing have narrowed the political space available for assertion of ethnic identity.

Notably, all the evidence coalesces to depict a region where the experience of ethnicity manifests as low in intensity and significantly “diffuse” — an image that starkly contradicts the “folklore” of ethnicity (see Crawford and Lipschutz, 1998; see also the Introduction, above). Young (2002) speculates further on some potential reasons for this. The first is that “[e]thnicity in Africa for the most part lacks the hard chauvinist edge encountered in zones of intense ethnonational conflict, such as the Balkans or the Caucasus” (Young, 2002: 81). Second, the widespread multilingualism of southern Africa effectively denies would-be ethnic entrepreneurs one emotionally potent basis for ethnic mobilisation — linguisticism. Thus instead of the zero-sum battles over what should be *the* language of public expression, in southern Africa two- and three-tiered hierarchies of language allow each mother tongue to have a respectable context for use. The most high-status languages — the African lingua franca or the European language of economic might — conveniently and unobjectionably belong to both everyone and no one (ibid.). As a result of this supposedly neat state of affairs, language, as an issue, does not stir controversy. Beyond this, Bekker cites the relatively short “imagined historical time” that southern African ethnies have had at their disposal, since in many, though not all cases, ethnic self-awareness in the region dates only as far back as the arrival of Europeans (2001: 4). Thus, while the relatively more politically strident ethnies of Europe may cite 1 000-year-old injuries of pride captured in written histories, many African ethnies are more hard-pressed to uncover such unifying and mobilising historical referents.

* * *

But South Africa, as an exceptional country within an exceptional region, belies many of these characterisations. To begin with, unlike the situation in the southern African region at large, the ethnic diversity of South Africa falls somewhere between relative heterogeneity and relative homogeneity — diverse, but not too diverse. South Africa may also differ in terms of the intensity of ethnic contention. If the rest of the region has seen low levels of grievance, historically South Africa has high levels of grievance, and veritable conflagrations of violence. Violence, according to some, has become endemic to the ethnic experience in South Africa; Maré writes:

Ethnic social identities and ethnic group consciousness ... have ... been tied inextricably to violence in South Africa. The racism of colonial conquest and slavery and the years of segregation in the Union of South Africa; the sacred history of the Afrikaner volk with its claims to a God-given mission in Africa; and the vicious consequences of the implementation of apartheid, a policy based on separation — all these repressively enforced 'group politics' have involved violence (1993: 106).

Yet, though “clashes with the state” in South Africa formerly assumed both high intensity and great frequency, since 1993 they have apparently subsided, perhaps to levels in line with the rest of the region.

Furthermore, whereas language may be uncontroversial for its African neighbours to the north, South Africa's language politics has proven to be a perennially vivid political issue. Language matters most to the white Afrikaans-speaking community (Du Preez, 2002), but its importance also resonates with Zulu-speakers, as well as with speakers of some of the smaller languages such as Venda and Ndebele. Tswana-speakers also seem to harbour a relatively greater number of grievances, and marginal groups seem to have made language an issue of

material opportunity (see Schlemmer, 1999: 241; PanSALB-MarkData, 2000: 113). No language in South Africa can claim to enjoy political neutrality; some, most notably Afrikaans, remain the object of passionate debate.

Additionally, ethnicity in South Africa distinguishes itself by its peculiar history as the object of social constructions not just by Christian missionaries and European historians, but also by apartheid-era bureaucrats who sought to separate the ten different “tribes” for whom claims of distinctness were oftentimes dubious (see Vail, 1993: 3; Harries, 1993). In time, the black South Africans victimised by these imposed ethnic identities began to question their legitimacy — and even their relevance. Yet imposed or not, these identities still bear importance to the millions who claim them. The continued assertion of ethnic identity in the post-apartheid era is regarded as evidence of this:

... it is clear that the ethnic and racial identities of the apartheid era cannot be attributed solely to the previous state’s social engineering programme and that the resilience of these identities and their new forms are going to pose challenges to the emergence of a broader South African national identity (Carrim, 1999: 257).

Finally, the experience of ethnicity in South Africa is notable for the legal appurtenances and politics it has spawned in the post-apartheid dispensation. As palliative to organisations comprising the white right wing, the framers of the Constitution saw fit to include cultural institutions that, controversially, may provide incentives for ethnic mobilisation.²⁸ In a country where ethnic politics has often shown just how volatile it can be, many look toward the future of a new democracy with caution. Maré echoed the views of many (such as Horowitz, 1991) when he doubted the prudence of such institutions:

Ethnic groups should, therefore, not be constitutionally rewarded for their group identity.... The ethnic

identities held by individuals should be protected in a bill of rights based on individual rights and freedoms. Religious groups, language groups and so on, should not be rewarded with a special group dispensation, other than the rights of individuals to practice and be protected in these areas (1993: 107).

The well-regarded South African researcher Lawrence Schlemmer, taking note of the emergent political culture and how it might catalyse with the current constitutional regime, sums up a mood of apprehension:

The tough question, however, is whether or not it [voluntary affiliation to non-racial cultural groupings coexisting with a consensus on national unity] can survive in a system of ranked ethnicity, and in systems in which demographic imbalances correlate with voting trends and executive power to exclude minorities from effective political participation on a long-term basis? (1999: 358)

Meanwhile, some remain decidedly sceptical of the supposed perils latent in South Africa's multicultural populace. Butler, for example, considers discussions of a divided South Africa as a "red herring" irresponsibly encouraged by "visiting international comparativists" who "smiled upon the Cape's 'integrated' beaches by day, but peered gloomily through the burglar bars of White suburbia by night" (2000: 192). Notably, some of Gurr's (1993) insights, such as that of the mollifying effect a "strong state" has on inter-ethnic tensions, support the sceptics (see below).

2.5 (Dis)unity in the South African state: three theses

South Africa is often termed a “plural society” or a “divided society” (see Furnivall, 1939; Horowitz, 1991; again, Butler, 2000, doubts the severity, as per above). Arguably, this label applies today as much as it applied during the apartheid years, when the state, controlled by a white, and especially an Afrikaans-speaking, elite, attempted to subordinate “non-whites” in part by dividing them into three “races”. Of these three “races” — “Coloured”, “Asian” and “Black” — the last was further divided into ten separate tribes. At its ideological height, apartheid sought to relocate members of each of these separate tribes into their respective self-governing homelands or “Bantustans”. To accomplish this the state created and enforced a series of laws such as the Population Registration Act (1950), which gave legal racial classification to everyone in South Africa, the Group Areas Act (1950), which designated the geographic areas that a race could exclusively inhabit, and the Bantu Self-Government Act (1959), which established the Bantustans. The ideological justification for such elaborate social engineering formally found its root in the theorising of the Afrikaner sociologist (and later Prime Minister) H. F. Verwoerd, that the peoples inhabiting South Africa constituted ten separate nations, with rights to national autonomy, if not self-determination.

If conceptually flawed, this “Groot Apartheid” was also risibly impractical in design. “Black” or “African” people were to inhabit 13% of the land even though they comprised 73% of the total population; millions of those directed to their “homelands” in fact had never been there. For this and many other reasons, the apartheid masters never achieved their Groot Apartheid solution; in the late 1980s the “petty apartheid” of separate beaches and drinking fountains and the like began to crumble. The entire system finally dissolved when in 1993 a new constitution abolished discriminatory laws and a new “Government of National Unity” both embodied and enjoined reconciliation

among members of the formerly divided South African populace.

For many, the dawn of a new regime promised the dissolution of strictly separate ethnic identities. After all, these had not existed as bounded ethnies before missionary and state agencies constructed them as such (see Vail, 1993: 3, 7; Harries, 1993), and no racist laws would exist to separate one from the other in both public and private life. Others warned that the ethnic categories imposed by apartheid would persist, because they did have some pre-apartheid historical basis, and many had come to accept the constructed elaborations of ethnic identity as their own. Not only that, but the “mass democratic movement” could be expected to fragment, as revolutionary movements characteristically do once they believe they have achieved their goal (Horowitz, 1985). In the end, the latter view proved to be more correct.

In the lead-up to the first democratic elections in 1994, some significant elite political players — we can unapologetically say that they acted as “ethnic entrepreneurs” here — threatened the integrity of the poll. Chief Buthelezi, head of the Zulu-based Inkatha Freedom Party, only reluctantly agreed to participate in the elections, while Inkatha supporters blocked the ANC from campaigning in the predominantly Zulu and Inkatha-influenced rural areas of the province of Natal. Meanwhile, Lucas Mangope, President of the Bophuthatswana “independent homeland” refused to allow the election to run in his territory, a lost cause and rearguard gambit for which he mustered the help of a white right-wing militia. Eventually, Buthelezi agreed to cooperate and Mangope’s own army staged a coup that subsequently allowed the national election to proceed there, as everywhere else.

These actions of elite political players may not reflect any actual ethnic sentiment among the mass of South Africans. Voting patterns, however, give a better indication. Black South Africans did for the most part overwhelmingly vote for the ANC,

regardless of their ethnic identification — except for Zulus who voted for Inkatha in the main. Meanwhile, white and so-called “coloured” South Africans opted for parties opposed to the ANC. These patterns repeated themselves in the subsequent 1999 elections, although some argue that in the case of whites, Indians and so-called “coloured” South Africans, voting patterns in fact conform to class affiliation. Fearing that affirmative action programs favour the black majority at their expense, poor, non-“black” South Africans vote for the opposition (Habib, 2002: 26).

Perhaps the most reliable measure of ethnic identification has come by way of demographic surveys. Mattes (1997) has synthesised a number of such surveys and concludes:

A wide range of empirical studies conducted in South Africa since 1994 demonstrates that people do actively use racial and ethnic categories in thinking about their identity, and that they identify primarily with racial and ethnic groups much more frequently than with South Africa (ii).

Mattes cites Boorman, who conducted a survey called “Patterns of Group Identification” for the Human Sciences Research Council (HSRC): “most groups give preference to their ethnic group over a South African identity” (in Mattes, 1997: 21). In 2000 Mattes followed up these polls, and found that little had changed: “substantial portions of South Africans still primarily identify themselves in terms of apartheid-type categories 6 years into their new democracy” (Mattes, 2002: 85). Yet, both the 1995 and 2000 surveys found approximately 96% of South Africans are “proud” or “quite proud” to be called South African, a statistic that suggests manifold identification — primarily with one’s racial or ethnic group and secondarily with the South African state.

The order of priority concerns those involved in fostering national unity in a country marked by conflict, both ethnic and

racial. As the most influential mass organisation since at least the early 1950s, the ANC has striven to find viable narratives for facilitating political unity within the South African state. Since adopting the Freedom Charter on June 26th, 1955, the ANC has espoused a “nonracial” nationalistic aim; according to the Charter’s preamble, “South Africa belongs to all those who live in it, black and white”. By 1969 the ANC had also rejected any notion of separate institutions for the “separate” races and ethnic groups in a post-apartheid South Africa (Horowitz, 1992: 4). Both planks in their revolutionary platform developed as explicit rejections of the stringent race- and ethnicity-based nationalist project adopted by the National Party in its apartheid policies.

Closely allied to the ANC’s espoused position of nonracialism is the relatively newer vision of a “Rainbow Nation” or South Africans as a “rainbow people of God” in the words of Archbishop Desmond Tutu. This vision draws its evocative imagery from Christian and Xhosa mythology. According to the Old Testament, the rainbow symbolises God’s promise never again to flood the earth, a reference that no doubt appeals to the never-again-apartheid spirit of the new South Africa. In Xhosa mythology, rainbows are associated with hope and assurance and the promise of a bright future (Baines, 1998: 1). Secondly, the image of a rainbow conjures the spectrum of South African peoples, who, though once separate, now merge into a unified, yet colourfully diverse, swathe. Overall, “Rainbowism” intends to exhort South Africans toward a unity based on diversity — a unity based on mutual respect for cultural difference. The South African motto, a /Xam phrase transcribed on the national crest — one of the most ubiquitous official national symbols — dovetails with Rainbowism; “!ke E: /xarra //ke:” translated as “unity in diversity” or “diverse people unite”.

Interestingly, some commentators insist that today, the ANC does not truly abide by its Rainbowist nonracial pretensions. Accord-

ing to Maré (1997), the governing “élite” continues to think in terms of the four racial categories dictated by the apartheid system — what Alexander (2002: 35) calls the “four-nations thesis”. In other words, South Africans come in four national kinds: black, coloured, white and Indian; blacks comprise the majority, the rest are national minorities, and policies ought to be formed accordingly. In particular, because blacks comprise the majority, government should permit a hegemony of their social, cultural and economic interests (Venter A, 1998: 10). Baines (1998: 3) quotes Filatova, who in an ANC discussion document, “Nation-Formation and Nation-Building”, wrote that the ANC should “assert African hegemony in the context of a multicultural and multiracial society”. In a related manner, the ANC “African leadership principle” insists that only black South Africans — as in non-coloured, non-Indian and non-white — should hold the highest positions of executive authority.²⁹ Thus it would seem that “nonracialism” has lost much of its substance, and is currently in the process of being overtaken by a “*multiracialism*” wherein all races deserve (mostly) equal regard.

In slight contrast, the current President of South Africa, ANC leader Thabo Mbeki, frequently invokes a “two-nations thesis” (Alexander, 2002: 37), wherein South Africa consists of two nations — one predominantly black (presumably in the most inclusive sense of “blacks”, “coloureds” and “Indians”) and poor, the other predominantly white and wealthy. Lacking a theoretical approach to South African nationalism, this view finds its expression mostly as political rhetoric (Alexander, 2002: 38). The overall implication is, however, that once South Africa rids itself of massive material inequalities, social stratification will melt away, yielding a single unified nation (Neethling, 2001: 3-4).

This sums up the nation-building orientation of the ANC. Some, however, chafe at the mention of a central, state-sponsored nation-building project, insofar as it may jeopardise the integrity

of minority groups. Among these Degenaar (1991) features prominently. He distinguishes between nationalism and civic unity, and prefers the latter to the former. If building a unified South African nation is not impossible, he contends, it is at least dangerous for the would-be victims of African hegemony. South Africa should instead strive to build what Mattes construes as a less affective unity, a “civic nation: based on liberal values of citizenship, not national myths; on the praxis of exercising citizens rights, not ethnic or cultural properties” (1997: 8). Degenaar writes:

At this stage of our history my advice to my fellow South Africans is the following: instead of wasting energy in trying to build a South African nation, rather accept the shared responsibility for creating a democratic culture (1991: 15, quoted in Baines, 1998).

This view, which I am inclined to call the “no-nations thesis”, contends that there exists no sub-national identity that an overarching civic patriotism cannot supercede. In any case, this view bleakly portends, any attempt to construct a unified national identity would prove more dangerous than leaving the various ethnic and racial sub-national identities unmolested.

Finally, some scholars dissent from both the two-/four-nations thesis and the no-nations thesis. They argue that in contradistinction to the “no-nations thesis”, nation-building in South Africa *does* require active efforts on the part of the state, but the state, contrary to the “two-“ and “four-nations” theses, must approach such a project with plain nonracialism — and must take due account of existing *ethnic* identities. Advocates of this view — what one might call, for convenience’s sake, the “multi-ethnic-nations thesis” — base their exhortations on the notion that ethnicity makes for hazardous fault lines in South Africa, and ought not to remain invisible because of the official fixation on race. On this point Bekker admonishes that in South Africa,

scholarly and political discourses have tended to ignore ethnicity, or at least downplay its importance — a tradition of silence that shows little sign of abating (1993: 97-8).³⁰ Nzimande, now Secretary-General of the South African Communist Party, reflecting on his own role in the latter stages of the struggle, points out that the ANC's historical and contemporary focus on non-racialism (where black Africans reserve the leadership positions) erred in ignoring ethnicity:

... founded principally to overcome the 'demon of tribalism' as well as to challenge the usage of ethnicity and tribalism by the colonial and apartheid system, our movement tended to focus on the nation at the expense of a sound theorisation of ethnicity, a key component of the national question (1997: 1).

As the most elaborated analyst of the "multi-ethnic-nations thesis", Alexander warns that inattention to (mobilised) ethnic identities — especially ethnolinguistic identities — could undermine national unity, quite apart from the question of any racial rapprochements. He criticises the "glacial tempo" of the Rainbowist nation-building project, and points out that certain aspects of the 1996 Constitution, such as the Section 185 Commission, could serve as incentives for ethnic groups to mobilise and engage in political rent seeking (2002: 82; see also Carrim, 1999: 281). These ethnies, with their potential for political mobilisation, pose a major threat to national unity in South Africa. Thus any nation-building project must first of all avoid giving economic incentives to ethnic mobilisation:

In numerous essays and books, my colleagues and I have explained how important the promotion of multilingual awareness and multilingual proficiency as well as of lingua francas is in a state as ethnically diverse as South Africa. Sub-national identities ... constitute part and parcel of the patchwork which is framed by national identity. While the degree of, and even the potential for, the development of a sense of

national unity varies from one territory to the next, the crucial task of political leadership, and other members of the ruling elite, is to ensure through democratic means that no intersection of economic interests and ethnic consciousness takes place (2002: 88; cf. 1989).

On the constructive obverse of this caveat, Alexander conceives of the paradigmatic South African citizen as one who, first can “speak three South African languages ... [and second, will] be able to communicate effortlessly with any other South African in the language of their choice, depending on the overlap in their respective linguistic repertoires ...” (2002: 109). Thus, the “multi-ethnic-nations thesis” approach to (dis)unity in the South African state differs from the four- and two-nations thesis primarily in that it gives substantial weight to the problem of ethnic contentions, and contrasts with the no-nations thesis in that it advocates state-led efforts at nation-building.

2.6 Theories of group conflict

The two- and four-nations theses present an important analysis of the historically most tumultuous fault line in South African society; certainly racial tensions still haunt South Africa, and certainly material wealth (or lack thereof) overlaps with citizens’ would-be racial classifications. These tensions are such that the no-nations thesis has no chance of successful implementation, though it rightly alerts us to the dangers of an exclusive state-imposed identity. However, the “multi-ethnic-nations thesis” provides the most obvious departure point for this paper, insofar as it alone takes note of the dangers of ethnic mobilisation. I thus assume that mobilised ethnies — specifically those that mobilise around language — may pose a threat to national unity in South Africa, and thus will favour the theoretical standpoint of the multi-ethnic-nations thesis.

For concerned souls, this assumption leads logically to at least

two subsequent questions: How much of a threat do these groups pose? How do we measure the potential for ethnic competition and ethnic conflict? Numerous scholars have attempted to understand the bases for ethnic mobilisation, some even deriving flow-chart oracles of inter-ethnic violence. I will review some of the most relevant literature below with a view to using these researches, in addition to my own method outlined in Chapter 1, to divine the degree of danger that ethnolinguistic groups in South Africa pose to national unity.

Crawford and Lipschutz (1998), in their book *The Myth of Ethnic Conflict*, review two academic approaches to explaining ethnic conflict, which, perhaps unsurprisingly, correspond to the primordialist versus instrumentalist-constructivist dichotomy popularised by ethnicity theorists. The primordialist approach “invokes the centuries of ‘accumulated hatreds’ between ‘nations’ with primordial origins” and maintains that all people have a natural urge, with bases in our animal past, to reject members of kinship structures as alien, and to conflict, even war, with them (op. cit.: 6). The instrumentalist approach, by contrast, contends that ethnic groups arise from the calculated material interests of their members. According to this perspective, violence erupts when separate ethnic groups perceive violent means to be the most expedient way of securing the material goods they covet. The motivational “engine” behind such violent strategic choices lies in what international relations scholars call a “security dilemma”: groups see themselves as under threat from competing groups. In response, they take steps to protect themselves, in turn applying similar competitive pressures to the other groups, who themselves take their own defensive actions. This competitive behaviour escalates, and culminates in violence (op. cit.: 13-14).

These two approaches, however, lack full explanatory power. Crawford and Lipschutz point out that primordialism fails to distinguish between mere ethnicity and mobilised ethnicity,

falsely assuming in the end that all ethnicities are sanguinary, when in fact most ethnies are non-competitive and certainly non-violent. The “age-old enmities” and “accumulated hatreds” of popular imagination are often just that: imaginary. Instrumentalism, meanwhile, presupposes that ethnicity arises in response to material incentives, and that all ethnic groups readily accede to a state of perpetual competition over resources. In fact, many groups, such as Afrikaners in South Africa, avowedly, and apparently, mobilise in pursuit of affective non-material goods like pride, respect or esteem, all of which reflect the primordialist perspective more than anything else. Finally, say Crawford and Lipschutz (op. cit.: 21), both the primordialist and instrumentalist approaches to ethnic conflict err by neglecting the role of the state as an actor that provokes and calms (purposely or not) ethnic divisiveness (1998: 4; cf. Alexander, 2002; Sartori, 1997; Horowitz, 1985).

Crawford then goes on to propound a third way that combines many insights into the incentives of structures of governance. Most importantly, some government structures effectively provide incentives for ethnic mobilisation:

Where state institutions structure political membership and resource distribution according to ascriptive criteria, rewarding and punishing particular ethnic or religious groups, politicized cultural divisions become legitimate in the political arena, thus intensifying their political relevance. This means that the preferential political institutions themselves can have the effect of intensifying and even actively creating political groups that legitimate identity-based political struggles and the allocation of benefits (1989: 21).

Crawford does not give examples of such incentive-giving structures, but a little imagination will quickly bring some general examples to light. Consociational democracy, where

oppositionally-defined ethnic groups are allowed, say, veto powers through a three-part executive, exemplifies one such incentive. Reserved seats in parliament exemplifies another, and bureaucratic agencies that “protect minority rights” a third. Of course, if state structures can sometimes provide incentives for ethnic mobilisation, they can also do the opposite; by refraining from implementing “preferential” structures, governments can perhaps attenuate ethnic mobilisation.

Related to this point, Crawford and Lipschutz argue that the relative strength of the state influences the likelihood of conflict once ethnic constituencies have managed to mobilise (1998: 32; cf. Gurr, 1993: 293). Strong states — especially strong authoritarian states — can more easily suppress ethnic mobilisation, whereas weak states, especially those whose law proscribes clampdowns on free speech, freedom of association, etc., can do significantly less to dampen such mobilisation. This relates closely to the point made by Williams (1994) that ethnic groups weigh their option to mobilise against the “opportunity structures”, or potential benefits, available to them. Finally, according to Crawford and Lipschutz, disorder seems to suborn ethnic mobilisation; in the event of a power vacuum, or the breakdown of traditional modes of resource allocation, ethnic entrepreneurs emerge (1998: 5). In short,

[c]ultural violence erupts most vociferously where secular economic decline, neoliberal economic reforms, [and/or] institutional transformation have broken old ‘social contracts’ — that is, where they have broken the rules and norms by which access to political and economic resources was once granted (Crawford and Lipschutz, 1998: 5).

Yet in spite of some combinations of the above factors, ethnic groups frequently remain placid, unmobilised. On this point Horowitz has described the crucial difference between societies

with “ranked” and those with “unranked” ethnicity (1985). A society of “ranked” ethnicity bears witness to widely systematic differentials of privilege on an ethnic basis. That is, ethnic groups each have economic, social, cultural and political rankings in society, with members of some groups clearly more privileged than members of other groups. Societies with “unranked” ethnicity, meanwhile, are those that do not exhibit any such ethnically-based differentials of economic, social, cultural or political privilege. Empirical evidence instructs us that ranked ethnies are more likely to engage in violent conflicts than are unranked ethnies. Thus when evaluating the chances of ethnic competition or ethnic conflict in a given society, one crucially must ascertain whether the ethnies are ranked or unranked.

Finally, we must address an obvious qualitative point researched in some quantitative detail by Gurr (1989; 1993; cf. Williams, 1994): adverse objective social conditions for minority groups lead in greater and lesser degrees to ethnic contentions. For example, groups that suffer economic discrimination are more likely to “rebel”, as are groups that suffer conditions of “demographic and ecological stress”. Indeed, these two factors have been revealed as the two most likely, in cases throughout the world, to precede ethnic conflict; in general they bear significantly more on the chances of conflict than do political discrimination and the historical loss of autonomy (Gurr, 1993: 83). Overall, however, as Gurr concedes (cf. Schermerhorn, 1970), even these statistical correlations lack the predictive strength needed to augur and defuse incipient violence.

Finally, it must be mentioned that in his own crunching of Gurr’s data, Fishman found that the objective condition of “linguistic heterogeneity” in a state does not correlate in a statistically significant way with ethnic conflict (Fishman, 1989: 623).

2.7 The goods: what groups fight over

In Chapter 1 I put forward the argument that in investigating the extent to which the Pan South African Language Board gives incentives for ethnic competition and ethnic conflict, we can usefully consider what sorts of rights-assertions it receives. If PanSALB receives mostly individual rights-assertions, we may conclude that it does not give incentives for ethnic competition, while if it receives mostly group rights-assertions, we may conclude that PanSALB does indeed invite such dangers. In order to distinguish individual rights complaints from group rights complaints we need only consider the goods to be delivered upon successful assertion of a right. If the goods are divisible, the right in question is an individual right; if indivisible, it is a group right.

This method conforms to Crawford and Lipschutz' arguments about the role of the state apparatus in giving incentives for ethnic conflict, as well as aspects of both the instrumentalist and primordialist explications of ethnic conflict. Consider, with regard to Crawford and Lipschutz' arguments, that PanSALB includes a rights-mediation function, which invites aggrieved parties to complain of language rights violations. In addition to receiving complaints, PanSALB also holds out the promise of furnishing remedies, which may come in the form of material or non-material goods. As a result, PanSALB may plausibly be said to provide incentives for ethnically-based complaints, although such is not a necessary outcome. PanSALB represents, in other words, the kind of state agency that invites (it certainly does not attenuate) ethnic complaints by holding out the promise of potential *goods*.

Now recall that, according to instrumentalism, ethnic groups mobilise in pursuit of some kind of reward — in other words, a *good*. Since PanSALB does indeed promise to provide goods to those groups and individuals that successfully prosecute their grievances, PanSALB can be regarded as a magnet for what

instrumentalists conceive of as mobilised ethnies. Yet at the same time, we can also apply the primordialist perspective since, as will become evident in Chapter 5, complainants do indeed make explicit and implicit claims for non-material goods such as pride, respect and esteem.

Thus from these three perspectives, my method of distinguishing group rights from individual rights, and subsequently using the results to determine the degree to which PanSALB invites ethnic conflict, seems plausible, because it (1) recognises that state agencies oftentimes do invite ethnic conflict and (2) interrogates the very thing that mobilised ethnies pursue — material and non-material *goods*.

This method contains one frailty, however, which I will now address; it concerns the nature of goods. When one undertakes the practical endeavour of distinguishing between the divisible and indivisible goods sought in the situated act of a rights-assertion, one typically confronts no distinct challenge. This is especially so in the case of *material* goods, since material goods accrue obviously and identifiably — even visibly — to one or more discrete subjects. Most complaints to PanSALB seek, implicitly or explicitly, *material* goods — whether such goods are actual physical objects or simply that officialdom performs a certain service in a certain way.

However, many complaints, whether explicitly or by implication, seek *non-material* goods along the lines of the Constitution's exhortation to "parity of esteem" for the 11 official languages. "Esteem" cannot be dropped on one's foot; one cannot witness the transfer of esteem; esteem is naturally an indeterminate, invisible, yet socially and psychologically important good. But even this immateriality of goods such as "esteem" does not pose any particular challenge when complainants make specific claims to "esteem" or "respect" when making their complaint. In these

unproblematic cases, it is easy to see to whom the good accrues; complainants simply seek an indivisible good that accrues to all speakers of the language in question — a straightforward case of a group right complaint.

The only problem arises in instances where an individual ostensibly complains for a divisible good, such as a letter from the compensation commissioner in a language they understand, but simultaneously manages to make a *de facto* symbolic claim to an indivisible good, such as increased esteem for their language. In other words, some complainants make individual rights-assertions, which by implication become group rights-assertions as well.

In cases such as these, a researcher can only use his or her discretion to distinguish between apparent individual rights-assertions that obviously will *not* engender any widely shared good of increased esteem for a language, and individual rights-assertions that *will* engender such a widespread and shared good. In exercising discretion, the symbolic significance of the good, and the likelihood that it will attract national news media attention, are the most important factors. Aside from this minor, manageable frailty, I must conclude that my method will succeed in measuring whether PanSALB gives incentives for ethnic competition (see Chapter 5 for the application of the method).

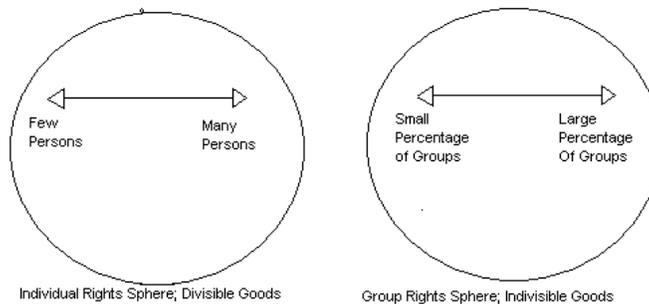
2.8 A visual corollary

In closing this chapter, and admittedly at the risk of belabouring the point, I must emphasise that this discretionary space that I have discussed does *not* imply a *spectrum* between individual rights and group rights. Rather, there exists a clear and distinguishable gap between individual and group rights, based on the assumption of a clear and distinguishable difference between divisible and indivisible goods. Nor would this method imply two rigid *loci*, with no room for relevant qualifications.

The most appropriate graphic model, I contend, would be something more akin to two spheres, which can be used to represent the clear and distinguishable separation of two types or rights on the one hand, and the negotiable space within each sphere on the other. Within each sphere there is a spectrum; for the individual rights sphere this spectrum indicates the possible variance of the number of individuals to whom goods would accrue, while for the group rights sphere this spectrum indicates the possible variance of the percentage of relevant groups for which goods would accrue.

From the perspective of my method, any move along the spectrum in the individual rights sphere will do nothing to change the character of the individual right. A move along the spectrum in the group rights sphere, meanwhile, may change the character of a group right from a “specific group right” to a “solidarity” right, depending on whether or not 100%, or practically 100%, of the relevant groups are goods-beneficiaries of a successful rights-assertion.

Figure 1:
Graphical representation of the method used to distinguish group rights from individual rights



Chapter 3

Language politics in South Africa (AD100 – 2003)

In South Africa, language politics is momentous. Language politics pervades the lives of ordinary people, features as a subject of partisan political debate and has supplied at least two of the most important plot points in the narrative of the country's history. Today, six years after the ratification of the 1996 Constitution, which anointed eleven official languages, such a politics has as much currency as ever. Many in the Afrikaans community decry the "Anglicisation of South Africa", while all ethnolinguistic affiliations will likely become increasingly salient poles of identification as the emphasis on racial groupings naturally wanes (or transforms) in a new, non-racist dispensation. Indeed, there is some indication that this has already begun to happen. The Northern AmaNdebele National Organisation (NANO) has recently laid claims against the state, asking that theirs be recognised as the twelfth official language. Some commentators regard this as "ethnic entrepreneurship" — part of an opportunistic clamour for economic and political advantage on the part of impoverished people who see no route better than ethnically-based protest (see Carrim, 1999: 281; Alexander, 2002: 82). The Siputhi, Khelovedo and Khomani San language communities have all positioned themselves such that they could make similar plaints.

This phenomenon could vanish in the ever faster-flowing stream of the nation-building project. Or, it could seriously disrupt this stream, blocking efforts to strengthen national unity and perhaps even undermining the stability of a nascent democracy. A number of ethnies have begun to mobilise, as evidenced by

complaints lodged with PanSALB, while the recent bombings by right-wing extremists, emblematic of a wider sentiment of a very language-oriented Afrikaner alienation, may portend the worst.

In addition to evaluating the efficacy of PanSALB, this paper aims to measure the degree of ethnic divisiveness in South Africa and the potential for language-based conflict. In this endeavour, historical context is indispensable:

In periods of heightened social conflict, the historical consciousness of individuals involved in such conflict is necessarily intensified. This is so because all social conflict is the result of processes, structures, dispositions and practices deriving from the immediate or distant past (Alexander, 2002: 111; cf. Fairclough, 1989).

The purveyors of linguistic divisiveness and language-based conflict will themselves have a heightened awareness of the history of language politics. They may very likely also use particular narratives of history as justification for their divisive and conflictual acts. In order to understand language conflict in the South Africa of today, we must take account of South Africa's history with regard to the politics of language.

3.1 Khoekhoe, San and Bantu language groups

The life of Khoekhoe and San³¹ peoples dates back over 25 000 years (SASI, 1999: 2). Culturally and phenotypically distinct from the "black" or "Bantoid" Africans, the Khoesan lived in central Africa for some millennia before arriving in the land now known as South Africa approximately 2 000 years ago. This means that the Khoesan were the first human inhabitants of South Africa; today they retain the status of "first" or "indigenous" peoples. Some historians claim that the distinction between Khoekhoe and San peoples was a permeable, economic one; the Khoekhoe herded cattle while the San, who lacked cattle, hunted and gathered (Elphick, 1977: 176). Yet the linguist Traill (1995: 12)

maintains that the two groups spoke mutually unintelligible languages of different families, a fact which implies a more than economic separation. The Khoesan spread throughout South Africa, eventually coming to inhabit, by the 17th century, the highveld, the Karoo and the Cape (Traill, 1995:1). At some point during this time, the /Xam language became a quite wide-ranging *lingua franca*, in currency from the Drakensberg Mountains to the Northern Cape.³² It is perhaps appropriate, then, that this language would centuries later find itself on the national coat of arms for the first democratic regime. After the Khoesan came speakers of Bantu³³ languages.

Bantu speakers arrived in South Africa about eight hundred years after the Khoekhoe and San, between 100 and 400 AD, migrating south from eastern Africa in two separate thrusts (Shillington, 1995: 54). One thrust of this southward migration led to settlement in the low alluvial plains to the east and south of the Drakensberg escarpment, progressing as far as the Kei River by the mid-17th century. These people spoke mutually intelligible Nguni languages of which Xhosa, Zulu, Ndebele and Swati are today's examples. The second thrust of the migration split to the north and west of the Drakensberg, remaining on the highveld plains that stretch across modern-day Gauteng. These people spoke mutually intelligible Sotho languages, of which Tswana, Sotho sa Leboa, and Sotho are the modern (official) examples (Shillington, 1995: 155). Along with the Nguni and Sotho language groups, two other Bantu languages entered South Africa, presumably at about the same time. Tsonga appears to be most closely related to the Nguni group; Venda's affinities are obscure (Bailey, 1995: 45).

We cannot exactly determine the degree of contact these Bantu languages had with the indigenous Khoekhoe and San, yet linguistic evidence suggests that Nguni speakers and Sotho speakers did have at least some friendly interaction with them.

We infer this from the fact that both the Nguni and the Sotho languages exhibit clicks—phonological phenomena otherwise unique to Khoesan languages. Most likely, Nguni and Sotho speakers traded with, and probably married, members of the Khoekhoe and San, a form of close contact that resulted in the former borrowing click consonants from the latter (see Finlayson, 1995 for a discussion of the mechanism). Nguni and Sotho speakers almost certainly would not have adopted such a marked class of phonemes if Bantu-Khoesan relations were unfriendly; thus the first instances of contact among different linguistic communities appear to have been at least partly amicable.

By the 17th century, Europeans had begun to settle at the Cape. Though Europeans had little destructive effect on Bantu languages, they did nearly exterminate all Khoesan languages. Traill, the foremost expert on the subject, has written that since the 17th century the story of Khoesan languages is a story of language death (1995: 1). Epidemic disease, outright war and cultural assimilation combined to all but extinguish traditional Khoekhoe and San lifestyles and languages (Traill, 1995: 12).

3.2 The ascendance of Afrikaans

Portuguese explorers had touched land at Table Bay in the Cape, Natal Bay near present-day Durban, and various other places along the coast of southern Africa since the 15th century. But it was the Dutch East India Company (VOC) that first decided to plant a permanent settlement in the form of a victualling station at the Cape — and thus it was the Dutch, not Portuguese, language that left a lasting impact on South African society. In 1652, Jan van Riebeeck and servants of the VOC built a fortress and began growing vegetables in the heart of what today is central Cape Town. The Dutch instigated a trading relationship with the Khoekhoe, exchanging copper for cattle, while also importing slaves from Madagascar and other colonies of the Dutch East Indies. Such confluence of diverse peoples resulted in

an instance of remarkable language contact that eventually gave rise to the *taal*, Afrikaans.

The social history of the formation of Afrikaans has preoccupied South African linguists for decades, and the shelves of literature on the topic attest to what a momentous role Afrikaans has played, and continues to play, in South African life. A short description of its roots will help to put its consequent social significance into perspective.

While historical linguists quarrel, sometimes fiercely, over the details, general consensus holds that Afrikaans descended from Dutch not directly, but in a line that tends toward, yet does not fully attain, the status of a creole — “bent but not broken,” as the slogan goes. The first whites to live at the Cape — the Dutch, German and French servants of the VOC — commonly spoke Dutch, the latter two groups being obliged to do so. But since the indigenous Khoekhoe and the VOC-owned slaves all spoke their own (non-Dutch) languages, communication across groups necessitated some sort of *lingua franca*. A Cape Dutch Pidgin, most linguists agree, emerged at the Cape, and served as the substrate to which features from Khoesan languages, Malayo-Portuguese and various slave languages later accrued (Roberge, 1995: 81). This marked the genesis of Afrikaans.

This colonial Cape Town pidgin bore only a basic resemblance to the Afrikaans of today. The modern variety of Afrikaans did not evolve until given room to grow on the open frontier. Under Simon van der Stel, the VOC encouraged farmers to settle farms further and further to north and east of Cape Town. Out on the ever-expanding frontier, Afrikaans became for the first time a first language — a “mother tongue” — although up until the mid-19th century it was widely considered as “mere prattle,” decidedly low in status (February, 1991: 88). In fact, when the British finally took over the Cape Colony in 1806 and Governor Somerset

named English the official language, hardly an Afrikaans-language voice was raised in dissent (February, 1991: 88). The British incursion did, however, lead to the development of Afrikaans by prompting Boers to leave the bounds of Cape Colonial control.

At first, liberalization of labour laws induced some Boers to migrate to the north and east of the Cape. But the last straw came when the British army withdrew from land across the Keiskamma River that it had previously annexed; this concession to the Xhosa exasperated the Boers, and spurred a great many to leave for the African interior in what is called "The Great Trek" (Shillington, 1995: 270).

Through the 1830s and 1840s several uncoordinated expeditions of Boers conquered and occupied land and established settlements that would, by 1870, declare themselves autonomous states. There, in the Transvaal and Orange Free State (the Boers also founded a Natal Republic but it was short-lived), the Afrikaans language changed in one pivotal way. It accrued status as an important language — a *national* language — and as a symbol of the new Boer republics. In constructing their nascent nationalism around their language, the Boers set a precedent that would reverberate down through the decades, influencing apartheid language policies, and the 1996 Constitution that replaced them.

How did such a linguistically defined nationalism get started? In large part Afrikaans' status stemmed from the fact that it was not English. De Lange explains:

For a long time it was only a spoken language... it was considered a bastard language, but it became increasingly important in the nineteenth century both in reaction to the increasing power of English speaking settler and to decreasing contact with the Netherlands.

Under increasing pressure from the English, the Afrikaners felt the need to define themselves as “African” people as opposed to a group of colonists with strong ties to the motherland (1997: 40).

But the Boers would not so easily escape the British Empire by abandoning the Cape Colony on their Great Trek. In the 1870s and 1880s, discoveries of massive diamond and gold deposits in the Boer lands lured British, Scottish, American, Australian, Canadian and other anglophone prospectors and venture capitalists to the area. Foreign speculators spilled across the borders. Support industries exploded into overnight urbanization, and this “mineral revolution,” initially a blessing, ultimately led the British Crown to instigate a war with the Boer republics (Shillington, 1995: 274).

Between 1899 and 1902 the British Army fought running battles with Boer commandos in what has been alternately termed the “Anglo-Boer” or “South African” War, a bitter conflict that would all but define relations among whites for the next one hundred years. Despite their dogged guerrilla resistance, the Boers were forced to surrender in the face of Britain’s devastating scorched-earth policy, which left many farms as charred ruins and thousands of Afrikaner women and children dead from rampant disease contracted in crowded concentration camps (Shillington, 1995: 330).

If the war left the Boers with a resentment for all things British — not least of all the English language — then the period of reconstruction following the war elevated resentment to the level of rank embitterment. The British Crown appointed Lord Milner as the High Commissioner for South Africa and charged him with administering the region until a National Convention could frame a constitution for a Union of South Africa that would fuse Boer republic with British colony.

Lord Milner harboured supremacist views with regard to language. Although the Treaty of Vereeniging stated that “[t]he Dutch [or Afrikaans] language will be taught in the public schools in the Transvaal and the Orange River Colony where the parents and the children desire it,” Milner unilaterally implemented the opposite as his policy. He dictated that English would supplant Afrikaans and that Afrikaans “should only be used to teach English” (Thompson, 1960: 7). To this day the Afrikaans community recalls Milner as the man who tried to kill Afrikaans through subtractive bilingual education.³⁴ Such a reputation, though deserved, is something of a red herring; in the post-war years Afrikaans-language literature flourished to such an extent that any official effort to kill it would not have succeeded.³⁵

After the war, the British recognized the need to appease the Boers and facilitate a transition to a “normal” democratic state. To this end in 1908, delegates from all the former southern African colonies and the Boer republics convened a National Convention, which would decide matters concerning the “Union of South Africa.” When debating the constitution of this new unified state of Anglos and Boers, the “language question” loomed large. What would be the official language, or languages, of the Union of South Africa?

Many of the British delegates from the Cape and Natal especially “despised” Afrikaans (or as it was still often called then, “Dutch”) and few could speak or understand it (Thompson, 1960: 135). This faction sought to write English into the new constitution as the sole official language. Afrikaner delegates, on the other hand, led by J.B.M. Hertzog, a former judge and accomplished general during the war, fiercely lobbied to include Afrikaans (Dutch) as an official language fully equal to English (Thompson, 1960: 135). To the distaste of the British delegates, moreover, Hertzog railed not only for symbolic equality, but substantive equality. He wanted a section in the constitution that absolutely ensured the

survival of the threatened “Dutch” language and its attendant cultural patrimony. In order to accomplish this goal of substantive equality the jurist furnished a cultural theory of Briton-Boer relations, one whose “touchstone ... was the language question” and which he also hoped would preserve the peace between the two contentious “races” (Thompson, 1960: 35).

Krugerism, [Hertzog] considered, had erred in allowing no place for the British ... Milnerism had erred outrageously in repressing the Afrikaners. The proper policy was to foster the creation of a white South African nation composed of two sections, Afrikaner and British, each maintaining its own distinctive culture and group identity ... Once the Dutch language had the position of absolute equality with English, especially in the schools, Boer and Briton would grow to trust and respect each other ... (1960: 37).

As the lynchpin of this language equality, Hertzog envisioned a constitutional mechanism that compelled civil servants to be fluent in both English and “Dutch” (Thompson, 1960: 193). At a climactic point in the Convention, Hertzog stood and gave a stirring speech to secure language rights for Afrikaans-speakers. Thompson quotes him:

A simple expression of equality would not be enough; it was necessary “to make it compulsory throughout the public service of the country”. Only then could the Union become “a union of hearts, a union in which no section of the people felt themselves to be unjustly treated” (1960: 196).

Ultimately, the Convention adapted a section in the constitution that fell just short of Hertzog’s hopes. While the constitution did not explicitly compel any citizens to know both languages, it did require the Union to publish in bilingual form “all records, journals and proceedings ... Bills, Acts and notices of general importance” (Thompson, 1960:197). Thus real substance

undergirded the constitutional ideal of the equality of English and “Dutch” as official languages of the Union. This compromise at the 1910 National Convention would frame South African language policy for the next 80 years, setting a precedent for the Verwoerdian theory of Separate Development that subsequently led to the policy of Bantu Education.

The 1910 Constitution proposed a bilingual (whites-only) nationalism not unlike the plurilingual nationalism that would succeed it in 1993. Like the 1993 and 1996 Constitutions, this 1910 Constitution affirmed the need for English and Afrikaans linguistic communities to enjoy equal footing *while yet preserving* their distinctive community identities. In this regard the 1910 Constitution seems almost ahead of its time. But of course it bore a flaw that would in time prove fatal. The National Convention, comprised solely of white male delegates, neglected to extend language rights — indeed most rights — to the vast majority of South Africans, ignoring all indigenous, autochthonous and Indian language communities. This omission would later inspire a more inclusive ethos for the post-apartheid dispensation, embodied in the 1993 and 1996 Constitutions.

Nineteenth- and twentieth-century imperial politics helps to account for the ascendance of Afrikaans. But the awakening of an Afrikaner national culture played an equally significant role both before and long after the 1910 National Convention.

As I have already argued, the Afrikaans language went a long way in legitimizing Afrikaners’ “African-ness,” as well as their concerted non-Englishness. In what was later to be dubbed “the First Language Movement,” Afrikaners established several cultural organizations with the explicit goal of supporting the Afrikaans language. In the vanguard of the movement in 1876, for example, the *Genootskap van Regte Afrikaners* (GRA) pledged to “stand for our language, our nation, and our country” and began

publishing the first Afrikaans-language newspaper, *Die Afrikaanse Patriot* (De Lange, 1997: 41). Later, in 1905, the *Afrikaanse Taalgenootskap* (ATG) was founded with the express goal of developing “a pure Afrikaner national consciousness”; future National Party (NP) Prime Minister Dr D.F. Malan served on its board (February, 1991: 88). Both the *Afrikaanse Taalunie* and the *Afrikaanse Taalvereniging* popped up in 1906, followed by *De Zuid-Afrikaanse Akademie Voor Taal, Letteren en Kunst*, which (now known as Die Suidafrikaanse Akademie vir Kuns en Wetenskap) still administers a prestigious annual prize for Afrikaans-language literature (Hofmeyer, 1986: 105). In 1914 an Oudtshoorn newspaper called *Het Zuid-Western* successfully lobbied to make Afrikaans the medium of instruction in local schools, an example which the Orange Free State and the Transvaal emulated in the same year.

When J.B.M. Hertzog, erstwhile champion of national bilingualism, broke from the South Africa Party (SAP) in 1914 to form the more populist National Party, the “Second Language Movement” burst from the cocoon of the First. The Hertzog government openly played the language card, while a fervent array of benefactors continued to cultivate Afrikaans. In 1918 Afrikaans became a subject in two universities, and, as its status surged, replaced “Dutch” (which at the grassroots level had ceased being Dutch a century earlier) as co-official language alongside English in 1925 (Hofmeyer, 1986: 108).

Around this time, a new Afrikaans literature emerged, contributing to the language’s rise in status. Magazines such as *Brandwag* and *Die Huisgenoot* specialized in historical fiction, while *Die Boervrou* targeted Afrikaner women specifically, and went a long way towards entrenching Afrikaans usage in the home (Hofmeyer, 1986: 109-113). The Afrikaner Broederbond emerged in 1919, admitting only Afrikaans-speaking Calvinists; later often described as “shadowy,” this nationalist cabal would

clandestinely serve the interests of the Afrikaner elite for decades to come (February, 1991: 87-93). The Broederbond's founding roughly coincided with that of several other nationalist bodies predicated (in part at least) on pride in Afrikaans. These included such *Kultuurpolitiek* instruments as the *Federasie van Afrikaanse Kultuurovereniginge* (FAK) and the Afrikaans Language and Cultural Union of the South African Railways and Harbours (ATKV), in addition to innumerable banks, sports clubs and dance unions (Moodie, 1975: 176).

Indeed, Afrikaner nationalism intertwined with language so much as to make Afrikaans the foremost element in an Afrikaner identity. Impinged upon by British hegemony, "the preservation of Afrikaans was seen as the *sine qua non* of Afrikaner survival" (De Lange, 1997: 41). De Lange argues that National Party and the entire apartheid enterprise find their deepest roots in 19th-century language-culture politics. She writes, "The Afrikaners' rise to power did not start with the foundation of a political party, but with the First Language Movement in 1875." By 1948, Afrikaans had accrued the political, cultural and literary status to rival English. It had come into its own as a modern, national language. But it would soon also become an object of great resentment among black South Africans.

White Afrikaners by no means represent the whole of the Afrikaans-speaking community. Apartheid laws placed every South African under one of four racial classifications; a person could be either "White," "Black," "Indian" or "Coloured." The latter term described those who, put roughly, fell somewhere in between the poles of "White" and "Black" (Stone, 1995: 277). The descendants of Afrikaners and their slaves or employees, "Coloured" South Africans inherited Afrikaans as their first language; today as many as one million of these Afrikaans-speaking so-called "Coloureds" live in the Western Cape (Stone, 1995: 277). While the Afrikaans language has accrued highly

negative associations (as the “language of the oppressor”; see below), the “Cape Coloured” community tends to retain pride in its distinct dialect of Afrikaans (Stone, 1995: 277).

3.3 Autochthonous languages and missionary influence

But the vast majority of those inhabiting the several South African colonies spoke neither Afrikaans nor English. Most spoke a Bantu language such as Zulu or Tswana as their first language. How did these linguistic communities fit into the wider landscape of language politics? By all evidence, these communities did not participate in any language politics on a scale that could rival the English and Afrikaans constituencies. No black South Africans at the time — except for a very small number of wealthy landed males in the Cape — had the legal right to vote, and so no linguistic communities could realistically militate for any sort of language rights. If any, these communities probably saw the provision of basic needs as an objective more effort-worthy than language rights.

Nineteenth-century Christian religious missions in South Africa, meanwhile, undertook the task of developing these languages, originally for the purpose of translating the Bible. To this end, missionaries created orthographies, and helped to build a lexicon that could reflect terms current in European languages. But this wave of missionary linguistic activity had a divisive effect on the black population. Competing missions, not wanting to duplicate the efforts of other missions, and perhaps operating with Eurocentric preconceptions of discrete language communities, “selected different language varieties out of the continuum of African dialects, codified them in different ways and developed them into separate languages” (LANGTAG, 1996: 71). As a result, the missionaries managed to initiate a process of separating black South Africans along linguistic lines, a process that would later be taken up by the apartheid governments. During the first half of the 20th century, linguists would attempt to reverse this artificial

linguistic division, to little avail (LANGTAG, 1996: 76).

Subsequent to their work with African languages and Bible translations, some of these same Christian missions, such as the London Missionary Society (LMS) and the Free Church of Scotland, proceeded to task themselves with educating black South Africans (Hlatshwayo, 2000: 29). Significantly, these mission schools provided nearly the only outlet for the education of black people; in 1926, the ratio of mission schools to government schools was very large: 2 702 : 68. Excluding the province of Natal, the ratio was 2 215 : 2 (Hlatshwayo, 2000: 36). While these mission schools ultimately sought to evangelize blacks, they also served an indirect revolutionary purpose in that most of black South Africa's leaders got their start with a missionary education. Nelson Mandela and Sol Plaatje, for example, both benefited from such evangelistic schooling (Hlatshwayo, 2000: 26). In terms of media of instruction, each began with their first language, subsequently making the transition to English, the language they would all later employ to articulate the grievances of the black underclass (Hlatshwayo, 2000: 53).

Until 1948, this private system worked well for elite blacks, but its success earned it enemies. Afrikaners especially resented the liberal products of missionary education, deriding the "Red Kaffirs" and the "Black Englishmen" who received "Royal Education" (Hlatshwayo, 2000: 40). And when the National Party came to power, it took steps to wipe the mission schools off the map. In time, the NP articulated a form of "Bantu Education," whose cynical language policy would raise ire in the black communities.

3.4 Language-in-education policy for black South Africans: Part 1

In 1948 the National Party came to power in South Africa, elected by a plurality of exclusively white voters. Prime Minister D.F. Malan and his cabinet immediately began to implement an overarching policy of apartheid, or “apartness.” Apartheid’s proponents deepened the already existing racial segregation in South Africa by enacting laws such as the Population Registration Act of 1949, which classified each South African as belonging to one of four possible “races” — “white”, “coloured”, “Indian” or “Bantu”. This same year also witnessed the Prohibition of Mixed Marriages Act, which cemented the matrimonial division of races and the Immorality Act of 1950, which outlawed sex across the color line. The Group Areas Act dictated which race could live where, thus necessitating a series of rending forced removals, where the NP government uprooted entire non-white communities to make way for white habitation. These laws constituted the core legal structure for “separate development,” the Verwoerdian philosophy that presumed to preserve South African cultures by keeping them apart. Crucial to this racist project was a language-in-education policy for black South Africans.

In one of its first official actions, the NP government appointed the Eiselen Commission to discover how “Native Education” might best support the ideology of separate development. The Commission sought

[t]he formulation of the principles and aims of education for Natives as an independent race ... in which their inherent racial qualities, their distinctive characteristics and aptitudes ... are taken into consideration (Rose and Turner, 1975: 249-50).

These assumptions presaged an inevitable set of conclusions. In 1951 the Commission found

[t]hat the teaching and education of the Native must be grounded in the life and the worldview of Whites, most especially the Boer nation as the senior trustee of the Native ... We believe that the mother tongue must be the basis of the native education and teaching but that the official languages [English and Afrikaans] must be taught as subjects because ... they are the keys to the cultural loans that are necessary for his own progress ... the mother tongue should be used as the medium of instruction for at least the duration of the primary school (Rose and Turner, 1975: 250).

The National Party government acted on the Eiselen Commission's recommendations in 1953 when the Parliament passed the Bantu Education Act, nationalizing the system of Native education by establishing a separate ministry of Bantu Education (Hlatshwayo, 2000: 62). Dr. Verwoerd, to whom the reputation "Architect of Apartheid" would accrue, was appointed Minister. His beliefs on the purpose of Bantu Education were unequivocal: "I will reform it [black education] so that Natives will be taught from childhood to realize that equality with Europeans is not for them" (Parsons, 1979: 291-93).

One of Dr. Verwoerd's first acts was to defund all of the missionary primary schools in the land whose curricula did not conform to the apartheid visions of the Ministry.³⁶ This proved a very tumultuous event. At the time, missions provided most of the basic education in South Africa; various churches, subsidized by the government, ran 4 360 out of the 4 590 primary schools (Hlatshwayo, 2000: 39).

By bringing education under a national umbrella, the National Party could purge liberal British influences from its black populace, and stop the elite education of so-called "Black Englishmen." The apartheid government could now control the

quality of education provided for whites and blacks respectively. After the advent of Bantu Education, whites benefited from the finest educational resources of South Africa's First-World economy; black South Africans, by contrast, had to content themselves with a third-rate education.

We can glimpse the iniquities of Bantu Education in the funding allocated to each group. In 1975, for example, schools serving the white population received R816 million, while Bantu schools received only R191 million; and this, despite the fact that more than four times as many blacks were enrolled as compared to whites in the same year (Hlatshwayo, 2000: table 4.11; table 4.5). These numbers, of course, do not sufficiently reveal the extent of Bantu education's inadequacy. The teachers lacked qualifications; and the curriculum emphasized agricultural and other vocational training, in addition to a healthy dose of apartheid mythological pseudo-history (Hlatshwayo, 2000:70). Indeed, Bantu education served to insulate white labour interests by shunting away competition from blacks early on. Or, as Hlatshwayo puts it, Bantu education sought to "miseducate the Africans so that their academic certificates became irrelevant for the labour market" (Hlatshwayo, 2000: 65).

Perhaps one of the most significant means by which Bantu education sought to "miseducate" was by way of a language policy. Hoping to isolate blacks from the English- and Afrikaans-medium formal economy, the Ministry of Bantu Education ruled that black students must learn through the medium of their respective mother tongues up until Standard 6 (Hartshorne, 1995: 310). Only after this level could the students then begin English and Afrikaans as media of learning. The Ministry had envisaged that by restricting black students' access to the languages of power, they might in equal measure restrict their access to better-paying jobs, and arrest the production of (the oftentimes politically restive) "Black Englishmen".

But not only was this policy intended to separate blacks from a whites-only formal economy, it was also meant to separate black people from each other, cleaving them along ethnolinguistic lines. As part of a rather blatant divide-and-rule strategy, the Ministry ruled that each black schoolchild should learn initially in the language of his or her tribe. This, the Ministry anticipated, would discourage the use of Pan-African lingua francas and interdict the chance of inter-tribal unity. But, as discussed later in this chapter, many of the mother tongues were already part of the same dialect continuums, and thus mutually intelligible. So the Ministry, following a recommendation of the Eiselen Commission, additionally sought to engineer a divergence in the phonologic, syntactic and orthographic fundamentals of these languages by way of separate Language Boards.

By 1959, the Ministry had created a language board for each of nine government-recognised tribal languages, a development which in turn coincided with the inauguration of nine “Bantustans” — separate “states”, which could become “independent homelands” for separate black ethnolinguistic groups. At the inception of each new “independent homeland”, the corresponding language would become the official language of the “state”, along with English and Afrikaans. Peoples, as well as languages, from this point on would develop separately and, as Brown (1992: 82) notes, “the vernaculars became the defining feature of state nationalism” (quoted in LANGTAG, 1996: 78), marking what Msimang called “the complete linguistic balkanisation of South Africa” (quoted in LANGTAG, 1996: 78).

Much of this divisive approach proved to be as destructive as its executors had intended. But, in one of the astounding ironies of South African history, the initial *language policy* of Bantu Education was one that today’s cognitive scientists now regard as having followed — quite accidentally — the most sound principles (Heugh, 2002b). In particular, Bantu Education allowed

school students to learn through the medium of their mother tongue for precisely the interval most ideal for fostering cognitive development — 7 years (see Ramírez, 1991; Dolson, 1995). Yet even though it constituted what educationists now approvingly term “additive bilingual education”, the black community opposed it vigorously from the time of its inception, calling instead for the early introduction of English (Hartshorne, 1995: 311). Opposition gained momentum over the following two decades. Indeed, some of the ANC’s first organised boycotts (in 1954) were in response to the policy, and by 1974, all but two of the “independent homelands” had opted for the early introduction of English (after the first four years) in their schools, much to the irritation of Pretoria (ibid.).

The same Bantu Education policy mandated that students learning beyond Standard 6 must learn through English and Afrikaans on a “50-50” basis — General Science and Practical Studies in English, Mathematics and Social Studies in Afrikaans (Heugh, 1987: 144). But in time, actual practice came to favour English at the expense of Afrikaans, owing certainly to the perception of Afrikaans as the language of the oppressor, but also to the paucity of Afrikaans-proficient teachers and a shortage of Afrikaans textbooks. In addition, writes Heugh, “the department itself allowed that it might be in the best interests of the students to use only one of the official languages” (1987: 140).

But in 1974 there came a turning point when Dr Hennie van Zyl, Secretary for Bantu Education, under whose “tolerant” watch the English-language tendencies were allowed, died. The then-Minister of Bantu Education, M.C. Botha “found an inflexible replacement”, Mr Rousseau, who insisted on enforcing the 50-50 aspect of the Bantu Education policy (Heugh, 1987: 144). His decision proved politically fatal, directly provoking the Soweto Uprising, a prolonged conflict that would initiate a new and decisive generation into the anti-apartheid struggle.

3.5 The Soweto Uprising

The demonstration in Soweto on June 16, 1976 began with seeming calm. Earlier that week, an Afrikaner circuit inspector had ordered another six schools to adapt to the regulations that required an Afrikaans medium. In response to this event in particular, various student factions, led by the Black Consciousness-aligned South African Students Movement (SASM), called for a boycott. Later that week, approximately 1 600 students amassed in Orlando, Meadowlands, Dube, and Naledi among other places, and began to march, converging on the Orlando football stadium, where they had planned to rally together. At that time, the police deployed on Vilikazi Street to monitor the protest began to grow anxious at the teeming and taunting crowds. In what was avowedly an act of self-defence, they threw teargas canisters at the protestors. The crowds retaliated with stones and taunts. The police unleashed dogs on the crowd; the dogs were promptly killed. The police subsequently opened fire, and within moments 12-year-old Hector Zolile Peterson, mortally wounded, was carried away from the skirmish in the arms of a friend. A photographer on the scene took a photo, creating an image of this limp and bloodied first martyr of the Soweto Uprising that would find itself reproduced in countless journals and news magazines throughout the world. Peterson gave a face to the struggle, dead in a conflagration born of South Africa's divisive language politics (Herbstein, 1979: 6).

The violence of Soweto would spill over into more than one hundred urban areas in South Africa, and last for another eighteen months (Herbstein, 1979: 69). Between 700 and 1 260 would die. According to many, the Uprising initiated a new and decisive phase of the anti-apartheid struggle. Recollections of the conflict would endure in the minds of South Africans — and for none more vividly than for those committed to inventing alternatives to the language policies of the National Party. Soweto

stands as an important founding myth, often invoked by language activists and political rhetoricians as a clarion call to the cause of language rights-fulfilment.³⁷

3.6 Language-in-education policy for black South Africans: Part 2

After Soweto the language struggle, having banished Afrikaans from black students' classrooms, shifted its emphasis to rolling back mother tongue-medium education to the first four years (Hartshorne, 1995: 312). In 1982 government acceded to what was in practice already happening in the homelands and elsewhere, officially introducing English-medium education in Standard 3 (i.e 5th grade). The government regarded this as a defeat, while the black communities who abhorred the language lauded it as a victory. In fact, both were wrong. Unbeknownst to almost all involved, the policy change successfully transformed the accidentally advantageous *additive* bilingual approach of the apartheid planners to an unintendedly disadvantageous *subtractive* bilingual approach promoted by black teachers and students.

This new generation — the “Children of '76” — found themselves disadvantaged in three ways. First, linguistic science has shown that students will have difficulty retaining knowledge first learnt in their mother tongue after a switch in the medium of learning if that switch occurs too early — before, say, the sixth year of school. Students studying after the late 1970s thus in all likelihood experienced greater difficulty in learning their subjects. Second, students who switch to a second language too early in their education — again, before the sixth year — have been shown to learn that second language less efficiently. Thus, students educated after 1976 were actually *disadvantaged* in the learning of English and Afrikaans as compared to students before 1976. Third, the “early exit” of the mother tongue also posed a danger in that such a transition would serve to impute negative

values to the first language and the cultural features for which it stood. Students would see English and Afrikaans as languages of power, and their own mother tongues, and the cultures they stood for, as inferior.

In the end, students emerged from this latter stage of Bantu education speaking two languages, but neither of them very well – certainly not at a level of proficiency that would render them competitive in a skilled labour market. In this way Bantu Education after 1976 helped to create, more so than did its earlier incarnation, a racial elite closure propped up in part by language; only whites spoke English and Afrikaans well, and so they had a decided linguistic advantage in procuring jobs.³⁸ This well suited the original preferences of elite Afrikaners. In a secret circular entitled “Afrikaans as a Second Language for the Bantu” the Broederbond expounded:

Most right-thinking Afrikaners address the Bantu in Afrikaans whenever they meet ... As the national economy requires the Bantu to be in contact with white employers and co-workers, instruction in one of the official languages must take place ... through instruction at school ... (1968).³⁹

Today, this very language-in-education policy continues, owing to the excusable ignorance of parents concerning the findings of linguistic science, and the substantially less excusable intransigence of government. Its legacy tomorrow, as today, is expected to cost South Africa untold millions in matriculation examination failures and students denied the realisation of their potential by a policy that disadvantages them (see, for example, Heugh, 2000).

3.7 On the verge of democracy

In 1983 a number of radical educationists united to form the Education Coordinating Council of South Africa (ECCSA). ECCSA generated several initiatives, including, in 1986, the National Language Project (NLP), a community-based project under the leadership of Neville Alexander. From its inception, the NLP sought to popularize language policy issues, presumably in anticipation of the transition to majority rule one decade later. Their particular policy positions hinged on a pluralist model. The NLP advocated cultivation of the many African languages, democratic language planning “from below,” and the integration of the language plan with the national economic development plan (Heugh, 2000: 237). The Pan-Africanist Congress (PAC) and the Azanian People’s Organization (AZAPO) to varying extents endorsed the nascent NLP language plan. The ANC, meanwhile, considered the NLP somewhat too radical an organization, and disagreed with the NLP’s multilingual precepts, preferring instead to emphasize the use of English. The ANC commissioned the National Education Policy Investigation (NEPI); NEPI, however, ultimately joined with the NLP in favoring bilingual or multilingual education. This notion of additive bilingual education stayed alive up until the ANC’s negotiations with the National Party in the early 1990s. Simultaneously, Alexander promoted the notion of “harmonisation”, by which the cognate languages of the Sotho group and the Nguni group, respectively, could be brought into orthographical agreement, thus (re)unifying these African languages that had been dialectically cleaved by missionaries and the apartheid government. The early 1990s also witnessed an intensified campaign on the part of the Afrikaans-speaking population, who sought a constitutional regime favourable to their language (Kriel, 2002).

In 1989 President P.W. Botha suffered a stroke and F.W. de Klerk took over as president and leader of the National Party (Shillington, 1995:431). While known as a particularly *verkramp*

(reactionary) Afrikaner, external forces as well as internal political developments compelled De Klerk to begin negotiations with the ANC. Nelson Mandela, released from prison in 1990, joined with negotiators from the ANC and engaged De Klerk and the NP in closed negotiations concerning the shape of a new, democratic dispensation. These negotiations subsequently led to the multi-party Conference for a Democratic South Africa (CODESA). Just as it had at the National Convention following the South African War in 1908, the language question loomed large.

While the negotiations were closed, we know very well their results as they pertained to language: negotiating parties agreed to anoint the now-famous eleven official languages. Yet, we know that the ANC largely supported English as the natural choice for sole official language of a new South Africa. And De Klerk, certainly, was no more inclined to an eleven-language policy than the ANC. So how did this record-breaking lineup of official languages come to be?

The ANC had always regarded English as the language of liberation, for a number of obvious reasons. First, it was not Afrikaans. Too many black South Africans had chafed under Afrikaans' imperatives, and regarded it unforgivingly as the "language of the oppressor" — the language of the enemy. Second, English was not an African language like Xhosa or Pedi, and so did not threaten to ignite internecine quarrels among African ethnolinguistic groups. In other words, English seemed politically neutral. Third, English could boast economic might; it was, at least in international terms, a tool for individual economic advancement. By all analyses, English stood out as a relatively acceptable *lingua franca* for a new South Africa.⁴⁰

The National Party, meanwhile, had equally strong preferences in the opposite direction. The Afrikaans language stood as a pillar — a core value — of Afrikaner identity; the Afrikaans community

could not tolerate a decrease in status — especially not in comparison to English, the centuries-old symbol of the hated Englishmen (Hartshorne, 1995: 314). Gerrit Viljoen, the then Minister of Constitutional Affairs went so far as to declare the official status of Afrikaans to be non-negotiable (Du Plessis, 2000: 104). Thus at CODESA two language ideologies were at loggerheads. One wanted to get rid of Afrikaans, and the other wanted desperately to preserve it. So how did these two obdurately monolingual stances lead to the world's most multilingual constitution?

Crawhall (1999) describes it as a politically expedient compromise. If neither major negotiating party would relent on their own preferred official language, then they could obviously have anointed two official languages — English and Afrikaans. But this would have been untenable for the simple reason that it would have extended the apartheid-era policy. As a second option, the Constitution could enshrine English and Afrikaans plus an African language; but to choose one or two such languages would inevitably offend the speakers of languages not chosen, and perhaps invite dissension along ethnolinguistic lines. The only course of action, both parties understood, was to make English, Afrikaans, and all the autochthonous languages acknowledged under apartheid, official languages. Thus, eleven.

But the enumeration of eleven official languages did not comprise the sum of language-related clauses in the Constitution. Both the 1993 and the 1996 Constitutions mandated the creation of a Pan South African Language Board (PanSALB) as well as a Commission for the Promotion and Protection of Rights Belonging to Cultural, Linguistic and Religious Communities (Section 185 Commission). Both arose during CODESA as means of accommodating the Afrikaans community which, fearing inundation by the black masses, and bereft of the chance for consociational democracy, sought protection in such independent

constitutional instruments (Alexander, 2002: 82).

In 1995, national legislation created PanSALB. This body only existed on paper, however, until April 1996, when a CEO was finally appointed. Only in July 1999 did the PanSALB manage to acquire a sufficient number of staff to enable it to carry out the day-to-day responsibilities of the Board. The legal section of PanSALB began receiving complaints around this time; by the end of 2001 retrospective analysis revealed most of these complaints to have issued from (white) Afrikaans-speaking individuals.⁴¹ In the meantime, the Minister of Arts, Culture, Science and Technology, Ben Ngubane, appointed a Language Plan Task Group (LANGTAG), an advisory panel charged with developing legislation that would animate the language clause of the Constitution. This panel eventually produced a draft South African Languages Bill, by the end of 2000; one-and-a-half years later the Department of Finance had completed a costing exercise, and concluded that the Bill would require an encouragingly minimal amount of funds. But at the time of this writing (April 2003), the Cabinet had yet to refer the Bill to Parliament. In 2002 Parliament finally passed the Act that would establish the Section 185 Commission, although, again, at the time of this writing the Commission had not yet become functional.

Meanwhile, the intense language lobbying that characterised the years immediately prior to, and during, the constitutional negotiations, continued with almost equal intensity among Afrikaans-speakers, as new Afrikaans associations sprang up, and old ones reinvented themselves. In most cases, this process of reinvention involved a shift from a unilingual, exclusively Afrikaans, thrust, to a (perhaps purely strategic) multilingual and ostensibly inclusive approach. Kriel (2002), for example, notes that the Afrikaner-Broederbond changed its name to the Afrikanerbond, and began admitting members of all racial origins. In much the same way, the Rapportryers, the Federasie

van Afrikaanse Kultuurvereniging (FAK), the Afrikaans Taal- en Kultuurvereniging (ATKV) and the Mynwerkersunie merged to become MWU-Solidariteit, opening their doors to all South Africans (Kriel, 2002). The cause of such intense lobbying, even after the ratification of the 1996 “final” Constitution, inhered in the perception that “the government’s constitutional commitment to a philosophy of multilingualism and cultural pluralism was lip service only, as was the commitment to the promotion of the African languages, including Afrikaans” (Kriel, 2002: 13). Instead of cultural pluralism, many feared, the government aimed to create an officially monolingual English South Africa. August Cluver anticipated these fears neatly in 1993; in relation to the official language clause he wrote:

Everyone recognises that we have two agendas here. I think the long term agenda is that English will become the language of registration, and in effect, become the high status language. This is going to be, or rather remain, a problem for other languages ... Initially there will continue to be poor service in black languages and eventually there will also be poor service in Afrikaans (Cluver, 1993: 29).

Certainly by the end of the decade the tendency towards anglicisation had become a fact of life in South Africa. In the absence of a South African Languages Act or other legislation to animate the language clause of the Constitution, government departments responded chiefly by reducing their erstwhile bilingualism to anglophone unilingualism (Heugh, 2002: 461). In a gambit of some small renown, the Department of Home Affairs, noting that it could not afford signposts in eleven languages, removed all Afrikaans signposts from its buildings. In the economic sphere, neither the Reconstruction and Development Programme nor the Growth, Employment and Redistribution strategy incorporated language policy as part of their aims (Heugh, *ibid.*). Parliamentarians not affiliated with the New

National Party (NNP) address their constituencies primarily in English; government departments have decreased their use of Afrikaans, increased their use of English and largely ignored their obligations to use autochthonous languages; television broadcasts are primarily in English. Further, Strydom and Pretorius (1999) write that 60,8% of municipal governments report that they lack a written language policy, and 95,8% of these indicate that no steps are being taken to create one; 93,7% of municipalities have no policy to promote African languages. Yet only about 13% of South Africans report dissatisfaction with language policy (PanSALB-MarkData: Graph 21), while approximately 50% of South Africans see language policy as an issue of at least some priority (PanSALB-MarkData, 2000: 113).

Disturbingly, the headlong process of anglicisation arguably met, for the first time, violent opposition from Afrikaner extremists. In November 2002 a series of bombings in Soweto and KwaZulu-Natal laid waste to homes and transport infrastructure, killing at least one and injuring a score more. According to some, such as the informal coterie of Afrikaner intellectuals, Groep van 63 (Group of 63), this indicated a wider sentiment of Afrikaner alienation, of which the main grievance was a *de facto* language policy of anglicisation (Du Preez, 2002).

Political parties have responded variably to the language question. The ANC, in a discussion document circulated before the party's national conference in Stellenbosch in 2002, had little to say about language policy, except to acknowledge the existence of PanSALB and tout the Telephone Interpreting Service of South Africa (TISSA) and to identify language-in-education policy as an important issue. The NNP has appointed a language ombudsman, who has recently proposed two pieces of legislation that reveal the NNP's position on language issues as one that favours the promotion of multilingualism and the strengthening of PanSALB. The Democratic Alliance (DA) criticises the ANC for

not adopting a national language policy quickly enough, and proposes specific “mechanisms for promoting multilingualism”, which include making PanSALB a functionally independent institution (www.da.org.za).

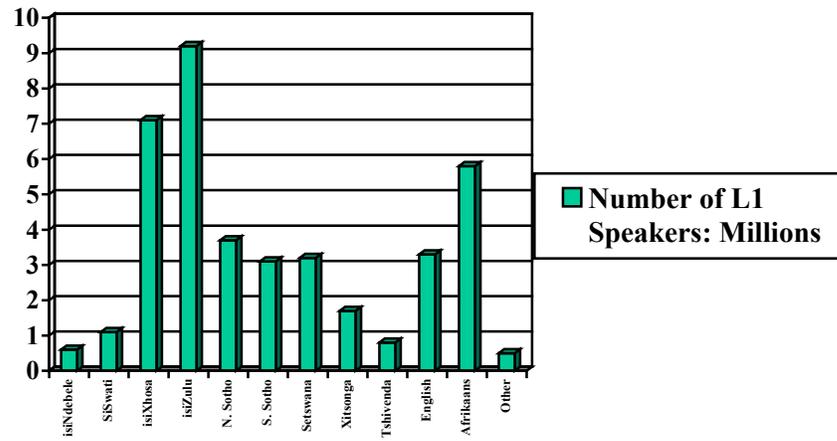
In the next chapter I discuss the developments of PanSALB and other components of the national language law in more detail.

3.8 Demographics

Some statistics will help to profile South Africa’s contemporary language demographics. Stated briefly, Khoekhoe and San languages are very close to extinction. Bantu languages, led by Zulu and Xhosa, enjoy the most usage as first languages, followed by Afrikaans and then English. A rising number of legal and undocumented immigrants from other parts of Africa speak other colonial languages — Portuguese and French — in addition to hundreds of other first languages, while somewhat smaller numbers of European immigrants speak Polish, Dutch and Italian among others. Indo-European languages from India (Hindi and Gujarati primarily) enjoy limited currency, especially in KwaZulu-Natal, as do the Dravidian languages Tamil and Telegu. Chinese languages, led by Cantonese, are also represented in small numbers (Mesthrie 1995: xvi).

South Africa boasts several so-called “religious” languages; Sanskrit, Hebrew, Greek and Latin echo in the halls of temples, synagogues and churches. Arabic plays an important part in the “religio-cultural” life of Cape Muslims (Mesthrie 1995: xvi). Some South African languages receive no official sanction; though unaccounted for in the census, many people speak the urban *lingua francas* of Tsotsitaal, Flaaitaal and isiCamtho and the pidgin Fanakalo. The census in any case only crudely discerns the reality of language use in South Africa, largely ignoring the widespread multilingualism in the country (Mesthrie 1995: xvi).

Figure 2:
Graph of number of L1 speakers of major languages
(adapted from Mesthrie, 2002; units in millions)



Chapter 4

Language law in South Africa

In enshrining eleven official languages, the South African Constitutions of 1993 and 1996 provoked a varying mix of reactions. The English-language press, for example, mocked “unodecimalingualism” as absurd, excessive, or even impossible (Desai, 1994: 11; Heugh, 2003). Language activists and other actors greeted the new official language regime with praise and optimism (Sachs, 1994: 4). Scholars of legal and political studies, meanwhile — as one can readily infer from their exegeses of the language clause — responded with a combination of bewilderment and heedfulness. What, they wondered, does having eleven official languages and a Pan South African Language Board imply?

This chapter seeks to answer that question through a comprehensive survey of the landscape of nationally applicable language rights law. I begin with interpretations of the Constitution itself, followed by a discussion of LANGTAG and related legislative initiatives such as the South African Languages Bill. Next, I review the consultative conferences held in preparation for the creation of PanSALB, the constitutive PanSALB Act, its amendments, and the current structures of PanSALB. Finally, I review those few extant indications of the judiciary’s tendencies with regard to interpreting language-related legislation and, using two established frameworks, attempt to characterise South African language legislation as it is written.

4.1 International language law

In the broadest terms, the 1996 Constitution is a highly progressive one. Commentators have lavished praise on its text, and cited its innovations as the reason “South Africa has transformed itself from the reigning nightmare case of modern government to perhaps the most promising site for reinventing democracy in the world today” (Simon, 1995, quoted in Klaaren, 2001: 304). Though most will acknowledge that its deepest roots lie in the liberal tradition, the 1996 Constitution equally reflects the wider democratic conceptions of the human rights movement (for a world-historical perspective see Janoski, cited in McGroarty, 2002: 25). That human rights law suffuses the Constitution has become a most commonplace assumption within the legal profession (Klaaren, 2001: 304). Makua wa Mutua (1997), in expressing the relationship between the Constitution and its philosophical antecedents, wrote:

“The new South Africa is the first state that is the virtual product of the age and the norm it represents. Indeed, the dramatic rebirth of the South African state, marked by the 1994 democratic elections, has arguably been the most historic event in the human rights movement since its emergence some fifty years ago. Never has the recreation of a state been so singularly the product of such focused and relentless advocacy of human rights norms” (quoted in Klaaren, 2001: 304).

It is eminently appropriate, then, that the Constitution does not regard itself and national legislation as the only relevant sources of law. The Constitution recognises the legitimacy of international law — indeed, in such a way that both the “hard” binding law of signed covenants and international custom, as well as the “soft” non-binding law of international courts and commissions and United Nations declarations, apply. Justice Chaskalson, President of the Constitutional Court, made this abundantly clear in a seminal opinion in the case *State v. Makwanyane and Another*

(Constitutional Court, 1995):

Customary international law ... is dealt with in section 231 of the Constitution which sets the requirements for such law to be binding within South Africa. In the context of section 35(1) [of the Constitution], public international binding law would include non-binding as well as binding law. They may both be used under the section as tools of interpretation. International agreements and customary international law accordingly provide a framework ... (1995: 686).

Chaskalson then goes on to cite the decisions and reports of the United Nations Committee on Human Rights, the Inter-American Court of Human Rights, and the International Labour Organisation, among others, as possible lenses through which the South African Constitutional Court may interpret relevant international law. Thus in order to understand the totality of language law in South Africa, we must first, before leaping into the national constitutional arena, consider language rights under international customary law.

In this global realm, we find that language rights have relatively limited scope. Most basically, the Universal Bill of Rights extols a non-discrimination principle; no one can be discriminated against on the basis of language (See Art. 26 of the International Covenant on Civil and Political Rights [ICCPR]). This prohibition of discrimination on the basis of language allows us to derive a number of other language-related rights, many of which impose positive responsibilities on states. For example, in certain settings, the state must provide a range of services to speakers of "minority"⁴² languages, depending on a "sliding scale" that takes into account three conditions: 1) the number of speakers in a given area, 2) their concentration, and 3) the seriousness of the service involved. Thus, where the numbers of speakers in a certain area is sufficiently great, or sufficiently concentrated (or

both), the state must make services available in the minority language. If the service is a particularly serious one, such as health care or election ballots, a relatively small number or concentration of speakers will be deemed “sufficient”. If the service is not particularly serious, such as the official approval of topographical names in a minority language, only a relatively high number or concentration of speakers will be “sufficient” (De Varennes, 1999).⁴³ The services in question include state support for public schools that use a minority language as the medium of instruction; the use of minority languages during civil ceremonies; the official use of personal names and toponymy in the minority language; access to minority-language ballots; the permitted use of minority languages in government and in political parties; and the use of the minority language as the working language of local government, among many others.

At least two other rights find their justification in the principle of non-discrimination; they are the right to a trial in one’s own language, and the right to be informed of charges against one, in a language one can understand — typically in the language of the individual accused. But these two rights, unlike those enumerated above, are not subject to the “sliding scale”; rather, these rights are absolute, and states must respond to any assertions thereof, regardless of the number or concentration of speakers. Put another way, these “services” are so serious that a threshold number of one person instantiates the right. South Africans enjoy all these rights by virtue of international customary law, if not by national constitutional law.

According to the ICCPR, all people have the right to private and family life (Article 23). This right allows us to derive additional language-related rights in international law. For example, everyone has the right to use his or her language at home or in public. Likewise, everyone has the right to correspond and communicate in his or her language. Nor can the state prevent

anyone from making musical expression, applying names to local geographical features, publishing books and articles, broadcasting via television or radio, or conducting economic or political activities, in their language (De Varennes, 1999).

All of these rights appear to be positive language-related rights, although they are predicated not on any linguistic grounds *per se*, but on the principle of non-discrimination (De Varennes, 1999). At least one instrument, however, proclaims an article that specifically concerns language. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by the General Assembly in 1992, urges states, including South Africa, to:

... take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national and contrary to international standards (Art. 2.2, quoted in Skutnabb-Kangas, 2000).

This means that the people of South Africa have a right such that their state should make some kind of positive effort to ensure the integrity of linguistic communities. That positive effort could conceivably comprise anything from linguistic cantonisation (admittedly a measure impractical in the South African context) to the funding of status and corpus development projects such as monolingual dictionaries (a measure already proceeding). Characteristic of international instruments, this clause includes an “opt-out” clause insofar as the South African state could not be compelled to do anything “in violation of national standards”, which, remarkably, are defined by the state (Skutnabb-Kangas, 2000: 542). Technically, and often in effect, the duty-bearer decides what its duties do, and do not, include.

Other international language rights remain in a similar state of flux. For example, De Varennes notes that there is a “growing legal acceptance in treaties that states have a positive obligation” to provide public services in minority languages, as enumerated above, especially where the number and concentration of the speakers of those languages reach a certain threshold (1999: 127). But De Varennes also acknowledges that legal scholars disagree as to whether some of these “positive obligations” are well established, or merely “emerging”, strands in international law (1999: 127). In other words, such rights teeter between acceptance and inchoate development, and so for the meantime, De Varennes is left to equate declarations of international language rights with “moral or political principles”:

Moral or political principles, even if they are sometimes described as ‘human rights’, are not necessarily part of international law. They are things that governments ‘should’ do, if they are nice, not something they ‘must’ do. Being nice is not a very convincing argument and is less persuasive than rights and freedoms that have the weight of the law behind them (1999: 117).

The paramount challenge to hefting such rights out of the ambivalent and murky realm of moral principles and onto the *terra firma* of international law inheres in the lack of judicial authority over such discrepancies. An international court of human rights could in theory rule that particular articles in international declarations compel states to perform certain duties with regard to language, but unfortunately, no such international jurisdiction exists. And in the absence of such a jurisdiction, states effectively make the relevant rulings for themselves, again deciding what their own duties do, and do not, include.

South Africa’s Constitutional Court presents a possible exception. It is empowered to take due regard of international law — both “soft” and “hard” kinds — and instruct the South African

government accordingly. So, for example, a citizen of South Africa may petition the Constitutional Court, arguing that the government, in outlawing all Ronga-language radio broadcasts, violates her rights in international law. The Court, then, could take regard of international common law, and instruct the government to conform to it — to allow Ronga-language radio broadcasts. South Africa's Constitutional Court could in other words, interpret discrepancies in international language law and compel the state to uphold international language rights standards. Perhaps needless to say, this depends on the willingness of the government to comply with instructions of the Constitutional Court — a willingness that has lately come into doubt (see Chapter 5).

In the same breath as international customary law, we shall mention the "Language Plan of Action for Africa", a hortatory statement promulgated by the Organisation of African Unity on July 30, 1986. This plan cited

the imperative need for each OAU Member State to consider it necessary and primary that it formulates with the minimum of delay a language policy that places an indigenous language or languages spoken and in active use by its peoples at the centre of its socio-economic development (quoted in Strydom, 2003).

Though widely flouted throughout the continent, the Plan has helped shape government language initiatives in South Africa (such as the South African Languages Bill; see below) (Strydom, 2003).

But this and many of the above-mentioned language rights in international law pose nothing more than a moot point, since South Africa's 1996 Constitution makes similar guarantees — which are all the stronger for having judicial authority (at least in theory) to enforce them.

4.2 The language clause of the South African Constitution

Perhaps befitting the product of compromise, Section 6 of the 1996 Constitution, which names the state's obligations with regard to language, strikes many as a confused legal bramble. Albie Sachs, currently a judge in the Constitutional Court, in reference to a section of the 1994 Constitution that carried through to the 1996 version, wrote "[t]he new constitutional provisions relating to language are messy, inelegant and contradictory" (Sachs, 1994: 1). Du Plessis and Pretorius (2000: 507) call Section 6 ambiguous, and suggest that it bears some of the responsibility for the delays in implementation of multilingual policies in South Africa. Nevertheless, in order to proceed with a discussion of PanSALB, we must try to make some sense of it.

Section 6, according to Du Plessis and Pretorius, is composed of three distinct parts (for comparison, see Strydom and Pretorius, 1999). The first, s6(1), declares the eleven official languages, in alphabetical order from English to Zulu. The second part, comprising s6(2) and s6(4), sets out some normative guidelines for language policy. The third part, s6(3), instructs the national, provincial and municipal governments on how to select the appropriate official languages for a given purpose (2000: 507). Notably, these three parts lack any "clear indication of how these parts are supposed to interrelate" (2000: 507). Some have suggested that cardinal ordering of clauses suggests a hierarchy⁴⁴, where s6(2) would override s6(3) in case of a conflict, s6(3) would override s6(4) and so on. But in fact, section 6 is most often interpreted as "nothing more than the sum of its disconnected parts" (2000: 507). As a result, human subjectivity lends a great amount of influence when weighing practical considerations such as "usage, practicality and expense" against competing rights-oriented considerations such as the "parity of esteem" and equitable treatment the eleven languages purportedly must enjoy.

Those who give emphasis to practical considerations will tend to view the language clause as a “directive ultimately requiring only a symbolic gesture” (2000: 508). Meanwhile, those who prefer a tighter rights-oriented dispensation will see the unequal treatment of languages on the part of the government as a clear breach of its constitutional duties.

Indeed, a closer inspection of s6(1) reveals that a simple declaration of official languages means little; comparative studies of constitutionally official language demonstrate that “[t]he common opinion seems to be that no fixed practical legal consequences ensue from the fact that language is attributed official status” (2000: 508). Indeed, read alone, s6(1) allows the government to regard its eleven official languages as symbolic official languages only, and to argue that minimal, decorative use of them would fulfil all constitutional duties with regard to official language. According to Davis, Cheadle and Haysom in their influential volume *Fundamental Rights in the Constitution*:

The creation of 11 official languages inevitably means that the assertions of language rights will always be hedged by qualifications. It will be plainly impossible to accord to each language a right to equal usage and it is anticipated that South Africa will have a more limited number of languages for official purposes and the day to day functioning but will allow for rights to use other official languages [under specific circumstances] ... (1997: 288).

But of course, one cannot read s6(1) alone. Sections 6(2) and 6(4) provide normative guidelines that will not allow the government to reduce the official languages to mere decorative symbolism. S6(2) says “the state must take practical and positive measures to elevate the status and advance the use of [the previously marginalised ... indigenous languages].” As a result of this instruction, which as a part of the Founding Provisions has the

force of binding law, the government cannot ignore the autochthonous languages, or (notwithstanding Davis, et al.) merely parade them in gratuitous symbolic and ceremonial roles. On the contrary, the government must cultivate these languages.

The question arises: Which languages are the indigenous languages? According to international discourse, the term “indigenous” would correctly apply only to the Khoe and San languages. One can easily deduce from the context, however, that the framers of the Constitution did not intend any such thing. The term “indigenous” must refer at least to the nine Bantu languages enumerated as official languages. Afrikaans has an equal claim to “indigenous” status here since it originated in South Africa, and has suffered a share of marginalisation, in both the first and last decades of the 20th century (Venter, 1998: 452). English, no doubt, is not indigenous, and has not suffered historical marginalisation, and therefore does not merit any of the developmental measures enjoined by s6(2). Nor do the languages of South Africans of Indian descent deserve such measures, as established by a Constitutional Court judgment⁴⁵ that also suggested the European “religious and community languages” listed in 6(5)bi-ii do not count as “indigenous” here. Whether or not s6(2) encompasses the Khoe and San and sign languages remains a subject of conjecture; if Yakpo correctly identifies the Constitutional Court’s attitudes toward language as “conservative”, the Khoe and San languages may very well not deserve the measures enjoined by s6(2).

To what extent must the government cultivate these languages? S6(4) gives us some idea in its instruction that “all official languages must enjoy parity of esteem and must be treated equitably”. “Equitable treatment” has an important historical referent in “gelykberegtiging”, or “equal treatment”, the principle that chaperoned the legally enforced equality between English and Afrikaans from the time of Union through to the 1961 and

1983 Constitutions, and up until 1993. According to Du Plessis, “In practice, this led to the well-known 50/50 language dispensation, where in essence every freedom, right and privilege accorded to one language had to be granted to the other” (2000: 519). But the 1996 Constitution, by contrast, calls for “parity of esteem and *equitable* treatment”, a term that is arguably less demanding than “*equal* treatment” or “*gelykberegtiging*”, and – most importantly – lacking in any guiding legal precedent. Thus when s6(4) commands government to achieve and uphold equitable treatment and ensure parity of esteem, it appears to allow some space for interpretation. Three conceivable factors appear to govern the interpretive space.

First, read with s6(2), s6(4) clearly regards the “historically diminished” “indigenous” languages as more needful of official attention – in order to repair legacies of linguistic inequality. Second, 6(3)a-b allow that some circumstances may limit the promotion of multilingual constitutional ideals. “Usage, practicality, expense, regional circumstances and the needs and preferences of the population as a whole or the province concerned” may provide justification for a more restrained fulfillment of s6(2) on the national and provincial scene. In municipalities, residents’ “language usage and preference” may similarly impact on complete fulfillment of the clause. Roodt, however, notes that these “opt-outs” in (a) and (b) do not have the same legal status as a norm and cannot trump the overall spirit of the section; the exceptions cannot override the rules.⁴⁶ Notwithstanding, of course, “government and provincial government must use at least two official languages”. Third, “parity of esteem” and “equitable treatment” will take some time. In the words of Du Plessis and Pretorius, “In the light of the marked differences in historical privilege and levels of development, parity of esteem is not a state of affairs needing to be affirmed, but a distant goal to be achieved” (2000: 520).

How many languages must the national and provincial governments use? Section 6(3)a clearly states that both the national and provincial governments must use “at least two official languages”. Realistically speaking, this will invite the neo-apartheid solution of English and Afrikaans as the only official languages of any currency. But this, of course, would amount to a reactionary assault on the spirit of Section 6 and the Constitution more broadly. This is because s6(2) compels governments to elevate the status and advance the use of historically marginalised languages — an endeavour, needless to say, that would fail if only English and Afrikaans were used in official circles. Moreover, the Constitution, in its preamble, enjoins the government to help heal the wounds of the past, again an unachievable goal were the government to pursue neo-apartheid policies. Thus, three languages would appear to be the realistic minimum for both the provincial and national governments.

In s6(5), the Constitution introduces the concept of “a Pan South African Language Board”, which parliament must create through legislation. This section distinguishes itself from the foregoing four sections in that it boasts a relatively high degree of clarity. It therefore requires little explication; we may note in passing that the Board has differential duties with regard to the languages mentioned in s6(5)a and those mentioned in s6(5)b. The official languages, the “Khoi, Nama and San languages” and South African Sign Language all merit the promotion of their development and use, while the so-called religious and community languages only merit the ensurance of respect. I consider the PanSALB legislation below.

Other articles in the Constitution make mention of language. Most salient of these, s185(1) mandates that Parliament create a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (the Section 185 Commission). Conceded during the Constitutional negotiations

to leader of the Freedom Front General Constand Viljoen and others (Alexander, 2002: 82), and signed into law in July 2002,⁴⁷ the Commission has the power to, *inter alia*, establish “community councils” and to investigate rights abuses presumably reported by these councils. Overall, the constitutional section and the legislative Act that establish the Section 185 Commission bathe in the rhetoric of reconciliation. The first object of the Commission (s185(1)a) is to promote respect for cultural, linguistic and religious communities, while the second object is to “promote and develop peace, friendship, humanity and national unity” among those communities. Though neither the Constitution nor the Act specify what kind of councils it ought to establish, many predict that the Section 185 Commission will reproduce the separate ethnolinguistic groupings of apartheid, which may “represent no less than the constitutionalisation of ethnic politics in the post-apartheid dispensation” (Alexander, 2002: 82; cf. Carrim, 1999). This ethnic politics, some fear, may subsequently evolve into violent ethnic conflict.

We may also note that because its duties include raising awareness, maintaining databases, investigating rights abuses and making recommendations to organs of state where appropriate, the Section 185 Commission seems to have some overlap with the rights-mediation duties of PanSALB (see below). However, unlike PanSALB, the Section 185 Commission seems to give more explicit regard to communities — to groups — and we may therefore expect that the Commission would engage more closely with assertions of group rights than would PanSALB. Continuing along this chain of reasoning, the Section 185 Commission would also appear to be a constitutional organ that could stir ethnic divisiveness more readily than could PanSALB. Yet the Section 185 Commission thus far exists only on paper, and if the experiences of PanSALB are predictive, the Commission will have to wait years before finding its bureaucratic feet. I contend that by looking at the complaints mediated by PanSALB,

we may gain some general indication of what sorts of complaints, and complainants, may end up at the door of the Section 185 Commission. This in turn may help us to foresee something of the danger for ethnic conflict the Section 185 Commission does, or does not, portend (see Chapter 6).

Much in the same vein as Section 185, the carefully worded Section 235 of the Constitution says that

[t]he right of the South African people as a whole to self-determination ... does not preclude ... recognition of the notion of the right of self-determination of any community sharing a common cultural and language heritage, within a territorial entity in the Republic or in any other way.

Though any community may assert the right to self-determination, “national legislation” will determine the response, rather than any unconditional legal guarantee. Success of a would-be self-determining group in this respect would seem doubtful; the Constitution only agrees not to ignore the idea of self-determination (“does not preclude ... recognition of the notion”), and parliament as a whole would be unlikely to do anything to undermine national unity or territorial integrity. But the ray of hope projected by Section 235 may spur aggrieved groups within South Africa to vigorously claim their right to self-determination. Facilitated by the Section 185 Commission, such grievances may attain national attention, thus inspiring similarly aggrieved groups to make similar assertions (again, see Chapter 5, and Chapter 2 on the ethnic “security dilemma”).

Three additional sections of the Constitution merit brief mention. In Section 29(2), the Constitution sets out the right to education in the official language of one’s choice. This right has certain limitations — of reasonable practicability — as decisively established by the Constitutional Court in a ruling⁴⁸ pertaining to

a similar section of the 1993 Constitution:

It is a clear constitutional right of every person to be instructed in the language of his or her choice ... The only qualification is that it must be 'reasonably practicable'. If it is, it can be demanded from the state. The parents of the children who demand it do not have to rely on any executive policy or discretion (Constitutional Court ruling, quoted in Venter 1998: 554-555).

In Section 30, the Constitution guarantees the right to use the language of one's choice. This right is not limited to the private sphere; one may exercise it in public, too, including during interactions with state agencies.⁴⁹ This right will, however, in all likelihood accrue standard limitations along the lines of practicability and expense — as long as those limitations encompass all that is "reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom" (Venter 1998: 555).

Finally, Section 35 guarantees the right of arrested, detained and accused persons to be informed of the charges against them, and to be tried, in a language they can understand. If the state cannot reasonably do so in a language the subject can understand, it must provide an interpreter.

Overall, then, the 1996 Constitution adds a number of language rights to those already existing in international customary law. These include a number of group rights, such as the right of a community to have its language developed (status elevated and use advanced);⁵⁰ the right to have its language held in equal esteem to others; the right to have its language promoted and developed by PanSALB. The internationally recognised right of "minority language" or mother-tongue education finds reinforcement in the Constitution, as do other rights to public service in "minority" languages, such as access to government

publications in the appropriate “minority” language. Perhaps needless to say, individuals and communities have the right to participate in the formation of the language policies that affect them.

4.3 Impending language-related legislation

Though the Constitution stands as the supreme law of the land, it admittedly (and deliberately) leaves many details up to the collective imagination of parliament. Shortly after the ratification of the 1996 Constitution, various parliamentary and departmental committees set about creating legislation meant to give greater practical meaning to the broad guidelines of the Constitution. One prominent committee, an Advisory Panel to the Department of Arts, Culture, Science and Technology (DACST)⁵¹ set about writing a South African Languages Bill, in order to animate Section 6 and the other language provisions of the Constitution. On November 23, 2000 the Panel completed its “revised final draft” of the South African Languages Bill, which was then sent to the Department of Finance for a costing exercise. In early 2002 the Department of Finance published its findings, revealing to the Cabinet that the Bill implied favourably low budget expense. The drafting committee subsequently revised the Bill and the Cabinet scheduled the Bill for delivery to Parliament in late 2003.

We may surmise that the Bill will pass in some form, and will subsequently impact on the landscape of language rights. Specifically with regard to the mediation function of PanSALB, the Languages Act will have two effects: (1) It will manifest detailed statute that specifies the language rights South Africans have, thus providing ample grounds for more numerous, and more successful, language rights complaints; and (2) the Act will lay out the specific practices to which government agencies must adhere, thus eliminating the last remaining pretext these agencies have for not writing and implementing a new language policy. A brief review of the Bill follows.

In brief, the Bill consists of six sections: introduction, implementation structures, implementation mechanisms, financial implications and staff establishment, concluding remarks and summary. Through these six sections, the Bill first of all proclaims itself as the highest authority — save for Provision 6 of the Constitution — on language law in South Africa. The Bill also establishes itself as an instrument that “binds the state” — in other words, it requires the government to act on its policy prescriptions. As national legislation, the Bill allows for citizens of South Africa to take the government to court wherever the government fails to fulfill its obligations with regard to the Bill. This would significantly extend the number of enforceable language rights, as well as give added weight to the language rights already established by the Constitution (Strydom, 2003).

After proclaiming its authority, the Languages Bill sets out two significant policy requirements. The first policy requirement, prescribed in Section 5, deals with the languages to be used in national government documents. According to Section 1.2.2, the national government will publish all its documents according to a set rotation, based on six⁵² categories of official languages. In Section 1.2.2, the Languages Bill reads:

Selection of Languages will be made as follows:

- (a) At least one from the Nguni group (isiNdebele, isiXhosa, isiZulu and siSwati);
- (b) At least one from the Sotho group (Sepedi, Sesotho and Setswana);
- (c) Tshivenda;
- (d) Xitsonga;
- (e) English; and
- (f) Afrikaans.

A principle of rotation will have to be applied when selecting languages in the Nguni and Sotho groups. The minimum requirement for national government departments is therefore to publish official documents

in six languages.

For each document the national government publishes, it must issue translations in at least one language of each category. For example, the government may issue regulations for a new law in Ndebele (from group a), Pedi (from group b), then the obligatory Venda, Tsonga, Afrikaans and English (from groups c-f). But for the next promulgation, the government must choose to use a different language from the first two lists; for example, the government would publish the document in Xhosa, Sotho, then the obligatory Tsonga, Venda, Afrikaans and English.

Notably, this section proffers a practical solution to a perennially vexing problem. Whether the assumption is correct or not, commonsense holds that an eleven official language policy poses a potentially crippling financial obligation (see, for example, Sachs, 1994, for an iteration). Yet at the same time, legal experts recognise that to exclude some of the official languages from official use would violate the Constitution. By providing a rotational scheme, the Bill achieves a tenable compromise — an arrangement that is affordable, relatively politically palatable and constitutional. Additionally, the rotational scheme, in grouping the cognate Nguni and Sotho languages, perhaps anticipates a gradual process of harmonisation of the cognate languages within these groups. Thus, s1.2.2 hopes to lay a small stone on the foundation of (re)unification of linguistic communities in South Africa.

In s2.3, the Languages Bill prescribes a second significant policy requirement, mandating the creation of “language units” for “all national and provincial government departments ...”. These language units, as empowered by the Bill, would presumably serve as the institutionalised hubs for language policy; they would facilitate, broadly, the multilingualism within and between government agencies. As set forth in Section 7, language units

have the responsibility to *implement* language policy, especially with regard to intra- and inter-departmental communication (both oral and written), inter-governmental communication, and communication with the public. The language units, moreover, have the duty to “entrench” the language policy in all departments and provinces; “raise ... awareness of the Language Policy and the Language Code of Conduct ...”, manage translation and proofreading, advise on policy, develop terminology and liaise with the Department of Arts and Culture (DAC) and PanSALB on language issues (see Section 2.3.3).

Notably, by providing for the language units, the Languages Bill attempts to overcome the challenge of an apparent official reluctance to implement changes in language policy. Many authors have noted the ANC’s lack of interest when it comes to issues of language (see Heugh, 2003; Crawhall, 1996, among others). From the beginning of the constitutional negotiations, the ANC probably preferred to have English as the sole official language of South Africa; subsequent to the anointing of eleven official language in 1996, the ANC sought to ghettoise (the word is not too strong) language issues by locating language policy within DACST, subsuming the formerly independent PanSALB under bureaucratic control (see below) and delaying initiatives such as the Languages Bill. The language units, by dint of their pervasive influence throughout the executive, would institutionalise a multilingual policy in a way that government would find hard to suppress or ignore.

This Bill, as I have indicated above, does not enjoy any particular favour with the ANC. Impatient with their dilatory tactics, Adriaan van Niekerk, a New National Party parliamentarian and language ombudsman, has proposed a second language-concerned bill — the Promotion of Multilingualism Bill. Not intended as a rival to the Languages Bill, the Promotion of Multilingualism Bill aspires to hurry the legislative process and

catalyse the enactment of the Languages Bill. The Promotion of Multilingualism Bill espouses many of the same goals as the Languages Bill and even goes so far as to call for the same language units as does the Languages Bill. However, the Promotion of Multilingualism Bill does not name any kind of rotational scheme, thus perhaps giving government more leeway in the realm of official documentation. But with regard to educational policy, the Promotion of Multilingualism Bill is more assertive, proposing to bind all providers of public education to investigate the possibility of mother-tongue and multilingual education. As it has little chance of passing, the Promotion of Multilingualism Bill merits no more comment than this.

Alongside the rights set forth by international customary law and the 1996 Constitution, a Languages Bill would add the legal right of individuals and communities to have a specific bureaucratic infrastructure working to implement a legislatively, and also executively, prescribed language policy. Individuals and communities would also have the right to sue and secure remedies in the case of non-implementation of the prescribed language policy.

4.4 The Pan South African Language Board — foundations

According to Heugh (2003) the idea of an independent language body first emerged as part of Alexander's proposal for "language planning from below", an approach that could be understood as emphasising governance over government (see Alexander, 1992). "Ordinary people", in terms of this approach, would propose local language policies that most closely met their specific preferences and needs. This grassroots emphasis did not, however, deny the need for some kind of body or "central agency" to facilitate local endeavours (Chumbow, 1987: 21).

In 1991 the National Language Project initiated a conference at

which the idea of an independent language body garnered interest (Heugh, 2003). Since it promised, by its very unitary structure, to “arrest [the] linguistic balkanisation” perpetrated by the apartheid-era language boards, the idea of an independent language body appealed to members of the ANC. Additionally, because it would actively engage the promotion of multilingualism, the body would offer protection for Afrikaans, and thus also appealed to many constituents of the NP (Heugh, 2003).

As discussed in Chapter 3, the NP, fearing the hegemony of English, lobbied hardest for such a body. The ANC, also sympathetic to an independent language body, assented, and in the 1993 Constitution there appeared in s3(10) the mandate for the creation of a Pan South African Language Board. While the word “board” suggested some continuity with the language boards of the former regime, “pan” declared the Board as having a unifying perspective — one of multilingualism, rather than of multiple monolingualism. During the May 1994 “Language For All” Conference Zubeida Desai encapsulated the significance of this change:

The name of the board is the Pan South Africa Language Board, not languages board. ... What it implies is a move away from the rigid compartmentalisation of the different African languages that existed in apartheid South Africa, a compartmentalisation evident in the functioning of the different boards. What I call an ‘across languages’ approach is needed (cited in Beukes and Barnard, 1994: 19).

Another delegate wrote elsewhere:

The term Pan South African indicates that it is to function in a holistic and integrated way, seeking balanced overall language development. Instead of each language being left to fend for itself, there is to be across-the-board defence of all language rights. The

objective is to promote language solidarity rather than language conflict, to develop a language garden rather than a language snake pit (Sachs, 1994: 14).

In addition to having conciliatory multilingualism as an objective, the Board was at first also independent, accountable only to the Senate. Section 3(10)a of the 1994 Constitution said, "Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board." Sachs spoke at the time:

Notice it is an independent board. It is not party political, it is not part of the Government, it is not even part of the Government of National Unity, it is not subject to caucuses ... it is an independent board. I would see that instead of the [Pan South African] Language Board being subordinate to the Deputy Minister or the Minister of Arts and culture ... a strong case could be made out for it to be a really autonomous body working under the Senate and through the President's office ... (cited in Beukes and Barnard, 1994: 13, 145).

Language interest groups, including the Linguistics Society of South Africa, the English Academy, the NLP and a coalition of members of the former language boards, praised the independence of PanSALB. Optimism abounded.

But from this point on, the brief history of PanSALB followed a trajectory of decreasing independence, and increasing subordination to governmental, and effectively party-political, control. Following the "Languages For All" Conference, and after some early delays, Roelf Meyer, then the Minister of Provincial and Constitutional Development, intervened to fast-track the PanSALB legislation. Soon after, the State Language Service (and not the Senate, which had constitutional responsibility for PanSALB) began the process of establishing PanSALB.

Significantly, not only did this subordinate PanSALB to a government department, but the subordination was to the Department of Arts, Culture, Science and Technology (DACST), a rather peripheral government function “far away from the heart of educational, economic and developmental planning” (Heugh, 2003).

Constitutive legislation was passed in 1995,⁵³ but the Board did not acquire funding or board members until 1996 (Heugh, 2002: 465; Heugh, 2003). When funding did arrive, it came, rather improvidentially, through DACST, and amounted to the modest sum of R11 million per year (for the first five-year term). Owing to the fact that PanSALB is responsible for the eleven official languages, Khoe and San and sign languages, and the various community and religious languages, this implied that each language would receive less than one million rands⁵⁴ per year. In 1996, the fortunes of PanSALB took a decided turn for the worse when Lionel Mtshali, who has a reputation for administrative authoritarianism, took over as the Minister of ACST. Mtshali, in turn, assigned the like-minded Musa Xulu to oversee cultural and language policy.

Under the authority of Xulu, between 1996 and 1999, three major developments significantly compromised the independence of PanSALB. First, the new 1996 Constitution⁵⁵ altered the mandate of PanSALB, eliminating its independent status and nullifying its relationship to the Senate. Second, in 1997, DACST announced that it would hand over responsibility for the expensive National Lexicography Units (NLUs), including the ongoing English and Afrikaans dictionary projects, to PanSALB (Heugh, 2002: 466). Though at first it resisted, PanSALB ultimately accepted responsibility for the NLUs, although on the basis of verbal undertakings that DACST later violated. In the end, PanSALB was stuck with eleven unwieldy dictionary projects, and only R4,6 million in funding to support them. Remarkably, R2 million

was earmarked for the Afrikaans dictionary, R2 million for the nine remaining African languages and R600 000 for English. Not only did this constitute a highly actionable instance of inequitable treatment (each African language could expect R222 000 per year), but the added responsibilities, which outpaced the added funding, further impaired PanSALB's ability to function (Heugh, 2003). Third and finally, in 1999, an amendment to the PanSALB Act⁵⁶ formally subordinated PanSALB to DACST, reducing the formerly independent body to the status of — in most respects, at least — nothing more than a sub-department of government. These contretemps resulted in a certain ill-will among PanSALB staff, and the Deputy Chair, Neville Alexander, even resigned in protest.

Simultaneously, the Amendment turned PanSALB's erstwhile obligations into mere options, by replacing in several sections the imperative term "shall" with the legally weaker term "may". For example, Section 8(1)c(5) of the principal Act directed: "The Board *shall* initiate or investigate legislation ... dealing ... with language". But after amendment, the same article read "the Board *may* initiate or investigate legislation ..." (my emphasis). Considered alongside the departmental subsumption of PanSALB, this change can be seen as a serious weakening of the Board's powers. In this one case, no longer was investigation of legislation an obligation of an independent board, but rather an optional activity subject to injunction by the whims of government. PanSALB's independent powers had by this point indeed been "successfully eroded" (Heugh, 2002: 466).

Yet in the meantime, PanSALB did manage to get some work accomplished. In 1998, PanSALB finally hired a core staff, and began to undertake several projects, in areas from research and orthography to translation and advocacy. Around this time PanSALB began receiving complaints of language rights abuses, primarily from individual citizens against government

departments (Roodt, unpublished transparencies). The legal staff at PanSALB published its first finding in the *Government Gazette* in September 1999. These and subsequent findings, however, failed to have an effect with regard to ongoing abuses; by 2000 the Board had begun to consider taking a test case to court, perhaps against the state telephone company, Telkom, or the particularly recalcitrant Compensation Commissioner. But the Chief Executive Officer and the Chair of the Board resisted such proposals, fearing countersuits.

In November of that same year PanSALB launched the Provincial Language Committees (in essence, provincial avatars of PanSALB) and the National Language Boards (one for each official language, plus sign language, heritage languages and Xhosa and San languages) by way of declaration in the *Government Gazette*. Establishment of these structures continues today. The term of the first Board expired in 2001; it was replaced by a new Board in February 2002.

4.5 PanSALB — structures and representation

During the “Languages For All” Conference, much debate centered on the structural and human constituents of PanSALB. Should it consist of language experts or politicians? Should its members represent the linguistic communities of South Africa, or not? Should PanSALB be large, with substructures and expert in-house staff, or should it be small, focusing mainly on the outsourcing of projects it deemed important?

With regard to the human element, both the then-Deputy Minister of Arts, Culture, Science and Technology, Winnie Mandela, and prominent ANC member Dr Wally Serote endorsed linguistic representivity. That is, both wanted the membership of PanSALB to broadly reflect the linguistic demographics of South Africa. Mandela said, “I hope that it will not merely consist of academics and language experts” (Beukes

and Barnard, 1994: 4). Serote agreed: “The Board must not be the domain of experts and academics only” (1994: 53). The members of the former language boards concurred with the ANC on this point.

This outcome contrasted with what some at the “Languages For All” Conference seemed to advocate — namely, an *absence of representivity*. Representivity, in their view, would legitimise and perpetuate the separate ethnolinguistic categories of the apartheid era, foster division and perhaps ultimately promote ethnic conflict. The NLP and the Linguistics Society of South Africa both lobbied for this approach (Beukes and Barnard, 1994: 111-125; Heugh, 2003). Professor Keith Chick pointed out that representivity would most likely serve to continue the marginalisation of those language communities that were not acknowledged under apartheid, and consequently only weakly regarded by the post-apartheid regime (Beukes and Barnard, 1994: 94).

In the first version of the PanSALB Act, a widely interpretable entry made no reference to representivity. After requiring that certain professional and sociolinguistic skills find their way onto the Board, in s5(2)b the Act stated: “[the members of the Board shall] be broadly representative of the diversity of the South African community.” But after being amended in 1999, the Act required the Board to include “not fewer than 11 but not more than 15 persons who, when viewed collectively, are as representative as possible, of the official languages ...” (s5(3)a).

When it came to the structure and sub-structures of PanSALB, diverse interest groups offered diverse proposals, the assortment of which we may note briefly. The first of these proposals distinguished itself by its small size, and incidentally most closely resembled Alexander’s original idea of an independent language body. This small PanSALB would include a handful of members

who would work part-time and focus their energies on commissioning studies and projects they deemed beneficial. Proposals for a larger PanSALB assumed a small central board, and then permuted three kinds of substructures: namely, a pool of linguistic and legal experts; language-specific committees or boards, reminiscent of the apartheid-era language boards; and provincial language boards. A proposal from the English Academy, submitted at the “Languages For All” Conference, included all of these together (Beukes and Barnard, 1994: 120). A central Board would liaise with nine provincial language boards, eleven language committees and a pool of appointed linguistic and legal experts. The Linguistics Society of Southern Africa put forward a number of possibilities, including a central board, plus a provincially-based substructure; and a central board composed of representatives from each official language. By and large, those who voiced their opinion on the matter at the “Languages For All” Conference agreed that PanSALB should be large enough to handle some work in-house, but not so large as to be unwieldy. Many present at the conference advised that the new PanSALB make a decisive split from the language boards of the past (see Serote in Beukes and Barnard, 1994: 53), on the now-familiar grounds that to reproduce the eleven language boards would legitimise and perpetuate the separate ethnolinguistic categories of the apartheid era, foster division and perhaps ultimately promote ethnic conflict (see the comment by the Linguistics Society of Southern Africa in Beukes and Barnard, 1994: 115).

The PanSALB Act of 1996, and its amendment in 1999, legislated the largest possible of these proposals. In s8(8)a-b the Act mandated the creation of “a provincial language committee in each province” and “a national language body to advise it on any particular language, sign language or augmentative and alternative communication”. Section 8(8)c added another set of structure not anticipated by the “Languages For All” Conference, lexicographic units for each official language. The central board,

meanwhile, was to have between eleven and fifteen members, and as many auxiliary staff as the board saw fit and could afford.

To date, PanSALB has managed to implement, in liaison with the respective provincial administrations, three provincial language committees (PLCs) while the other six “have not functioned according to the stipulated requirements” (PanSALB Annual Report, 2001/2002: 30). All National Language Bodies (NLBs) have come into existence, although PanSALB has yet to train the members of these bodies (ibid: 31). Seven of the National Lexicographic Units (NLUs) remain in a planning stage, while the Afrikaans, Zulu, Xhosa, and South African English dictionaries have been in operation since before the PanSALB Act’s promulgation. The Afrikaans dictionary already has status as a Section 21 (not-for-profit) company, while the latter three have yet to make such a transition, as is required by the PanSALB Act. In addition to its substructures, PanSALB maintains various “focus areas”, which have achieved notable results. The Development of Literature and Previously Marginalised Languages focus area has created competitions and celebrations to encourage writing in the autochthonous languages. The Language in Education focus area has produced some useful studies, as well as funded promising projects, especially in the field of mother-tongue education. PanSALB has also maintained an electronic database on language policy, and has commissioned a wide-ranging study on language use in South Africa.

Most significantly for this paper, PanSALB also created a language rights focus area, which we shall now examine in detail. Section 11 of the PanSALB Act says that any “person, body of persons or institution acting on behalf of its members or members of a language group or any organ of state” may lodge with PanSALB complaints of (alleged) language rights abuses. The Board, according to the section, then “may on its own initiative and shall on receipt of a written complaint investigate the alleged

violation of any language right, language policy or language practice” (s11(4)a). If the Board subsequently finds that there “is substance to the allegation”, it must “by mediation or conciliation or negotiation, endeavour — (i) to resolve and settle any dispute ...” (s11(5)a). To facilitate such conciliation, PanSALB can subpoena “any person, body or state organ to appear before it, to give evidence and produce any relevant records or documents” (s11(4)b). In the case that mediation fails, PanSALB can then “recommend” to the offending organ of state a course of action as PanSALB sees fit, a purview that does not exclude exacting financial relief. PanSALB can also then provide the complainant with financial assistance so that the complainant can pursue his or her complaint through a court of law. Though complaints may most intuitively be lodged against the state, nothing prevents complaints being made against private companies (Mishke, 2000: 16).

At first glance, all of this may make PanSALB sound like a judicial or quasi-judicial institution. In fact, it is neither. Importantly, PanSALB can only operate by “mediation, conciliation or negotiation” and *cannot* “instruct” — it can only “recommend”. This conciliatory and negotiative approach to justice is meant to have its advantages. In a February 2, 2001 memorandum to the Board, the legal advisor Dr Christa Roodt wrote, “mediation works to achieve a balance (a middle way) between parties’ positional demands. The mediator has to make persuasive interventions and move both parties off their respective positions and towards a common position” (2001: 1). In the same memorandum, Roodt contrasted litigation with mediation; whereas a litigative approach embodies “value claiming” and “norm imposing”, and is “coercive and binding” with a focus on the past, a mediative approach embodies “value and norm creating”, is “voluntary and consensual” and focuses on the future. PanSALB’s mediative approach, in other words, is meant to avert the expensive, time-consuming and combative spectacle of litigation in favour of collaboration and compromise

— it seeks to achieve a negotiated justice that suits all parties. Only after mediation fails should complainants have to resort to litigation.

According to this proposition of mediation, PanSALB follows the following flexible procedure with regard to language rights complaints: after receiving a complaint, the legal department of PanSALB acknowledges its receipt, and informs the party-complained-against of the complaint. The legal staff establishes facts of the case and then makes a finding. Then, the legal staff invites all parties involved to meet for mediation. The Board makes a recommendation and publishes the recommendation in the *Government Gazette* (Roodt, 2002: 8).

However, according to Roodt in the February 2001 memorandum, and as one can readily conclude from a brief survey of the outcomes of PanSALB cases, mediation has seldom worked as well as hoped. While some, such as the Bloemfontein City Council and its accusers, have reportedly responded well to mediation, most have taken advantage of mediation by simply ignoring invitations to negotiate a settlement, or by neglecting the recommendations of PanSALB. Thus in spite of PanSALB's efforts, most complainants have not found relief: language rights violations — even after PanSALB has investigated them and recommended a remedy — continue.

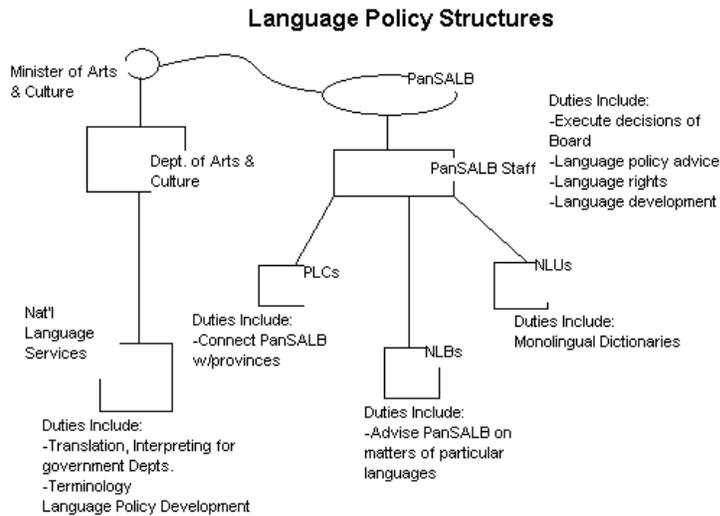
In view of the failure of mediation, MP Adriaan van Niekerk (2002) has proposed an amendment to the Pan South African Language Board Act that would legislate some teeth for PanSALB's recommendations. The amendment proposes that

if within a reasonable time after a finding by the Board that a language right, policy or practice has been violated, adequate and appropriate action has not, in the opinion of the Board, been taken thereon, the Board may ... (c) with the consent of the complainant, apply

to a Court for an appropriate remedy ...

These remedies include an order to comply with the recommendations of PanSALB, an order for payment of damages and an order to undergo an audit of language policies and practices. This amendment, though it has little chance of passing, may pressurise the ANC- and IFP-controlled DACST to propose its own amendment, out of fear of losing on the political issue of language. Indeed, this was the intent of the amendment's author.

Figure 3:
Depiction of language policy structures



In addition to PanSALB, there exists a National Language Service (NLS), formerly located in the apartheid government's Department of Education. Note that there appear to be some overlaps in the duties of PanSALB and the NLS, especially when PanSALB is seen as subordinate to the Department of Arts and Culture (formerly DACST).

4.6 The courts

The courts play a role of considerable importance for language law in South Africa, insofar as the courts will, in time, interpret the ambiguities in current legislation and the Constitution. The courts will, to use an apposite phrase, “legislate in the interstices of the law”. Until now, the Constitutional Court has not had an opportunity to rule on the “content and enforceability” of section six of the Constitution (Du Plessis and Pretorius, 2000: 506). According to some, lower court rulings on aspects of language have betrayed conservative or reductive tendencies (Yakpo, 2000). One high court judgment, for example, ruled that Section 3 of the interim Constitution did not give the right to address a municipal council in any of the official languages.⁵⁷ In another, a high court judge gave the opinion that “practical reasons” ought to impel the judiciary to adopt a single language of record, namely English⁵⁸ (both cited in Du Plessis and Pretorius, 2000: 506). Yet at least one judge of the Constitutional Court has expressed sympathy for the cause of language rights⁵⁹ and in *S v Pienaar*⁶⁰ the presiding Supreme Court Justice drew liberally from Canadian precedent⁶¹ – which generally considers its language provisions very extensively and substantially, as opposed to narrowly and symbolically – in a paean to language rights. The judge referenced the importance that language holds for individual and community identity and, without making reference to the Constitution, wrote:

As I will endeavour to illustrate, anyone, including the government and those in positions of authority, who demeans, ignores, or disparages someone else’s home language, violates that person’s human dignity, i.e. a fundamental human right (2000: 10).

This rhetoric, righteous as it is, has encouraged many language rights advocates. But the ruling in the Pienaar Case lacks any interpretation of Section 6 of the Constitution, and represents the views of but one judge. The tendency of the judiciary with regard

to language rights must thus be regarded as unclear.

4.7 Characterisation of South African language rights law

There exist two relevant frameworks for characterising language policies *as written*. I will apply both in an effort to synthesise to some degree the foregoing survey of national language law.

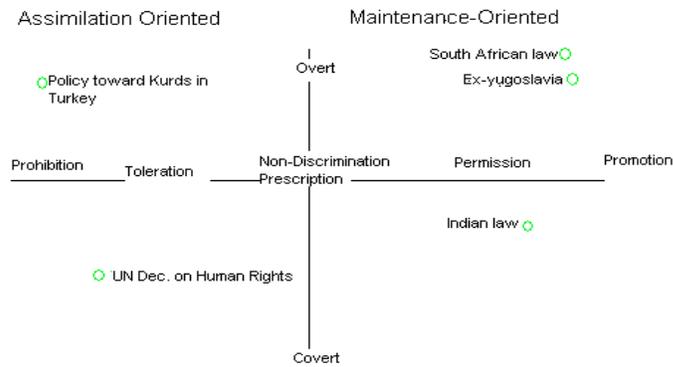
Richard Ruíz (1984) argues that one can have any combination of three perspectives or “orientations” on language. These orientations include 1) language as a right 2) language as a resource and 3) language as a problem. In the first, language is something of intrinsic value; language is an end in itself, a facet of human life that merits protection because the abuse of one’s mother tongue inevitably debases one’s human dignity. In the second, language has value by virtue of its uses; language is a means, a kind of cultural capital, in other words, that can beget other monetary or symbolic capital (see Bourdieu, 1993). In the last, language is considered an impediment, an obstacle to be overcome; linguistic diversity hinders communication and thus ought to be eliminated.

As written, the language law of South Africa plainly reveals itself as one that espouses both the first and the second orientations on language; language, according to the law, is both a right and a resource. The Constitution, by officialising eleven languages and calling for their equitable treatment, implies that citizens have the right to interact (in many, if not most, cases) with government in the official language of their choice, in addition to many other conceivable rights. The PanSALB legislation, in creating an official node where citizens may direct complaints of language rights abuses, reinforces this rights-orientation. The Constitution likewise evinces a resource-orientation when it calls on government to elevate the status and “advance the *use*” of

historically diminished languages. The out-clause that allows “usage, practicality, expense, regional circumstances and the needs and preferences of the population as a whole or the province concerned” also reveals a language-as-means resource orientation, though it does so in a negative way.

Skutnabb-Kangas (2000: 512) proposes a framework, originally proposed by Skutnabb-Kangas and Phillipson, in the form of a grid. According to Skutnabb-Kangas, language policies may be judged along two axes. The x-axis proceeds from “prohibition” and “toleration” on the negative side, to “non-discrimination prescription” at zero, to “permission” and finally “promotion” on the positive side. (Kloss (1971: 259) preceded this framework with his dichotomy of accommodation- and promotion-oriented rights; he also has problematised frameworks for their inability to encompass many linguistic variables (1977).) The y-axis extends from “covert” on the negative end to “overt” on the positive end. She has positioned a number of legal regimes on these grids, including that of India (covert promotion), the Freedom Charter of the ANC (somewhat overt; between permission and promotion, and the former Yugoslavia (overt promotion). On this same grid, South African language law *as written* would certainly fall near the former Yugoslavia, as an exemplar of overt promotion. One may conclude this by glancing quickly at the by-now-familiar Section 6 of the Constitution, if not also the whole of the PanSALB legislation.

Figure 4:
Graphical characterisation of South African language rights law
 (adapted from Skutnabb-Kangas (2000: 512; cf. Wiley, 2000))



These two frameworks, then, give some formal expression to what is otherwise obvious: the landscape of South African language law has both a rights- and a resource-orientation, and overtly promotes language rights. Pending language statutes, such as the PanSALB amendment proposed by Adriaan van Niekerk and the South African Languages Bill, would only strengthen such a conclusion.

Chapter 5

A critique of PanSALB

In this chapter I venture some criticisms of PanSALB's efficacy as a protector and promoter of language rights. Needless to say, of all the imperfections PanSALB may exhibit, a tendency to give incentives for ethnic competition that threatens to undermine national unity stands as the direst. Thus, I begin my critique by applying the method discussed in Chapters 1 and 2 in order to discern whether or not PanSALB has received a preponderance of group rights complaints or individual rights complaints. In respect of this, I conclude that PanSALB has received mostly individual rights complaints, and as a result cannot be seen as a structure that stirs ethnic contentions. This conclusion will not be shown to imply, however, that PanSALB, as a structure, is free of fault. Indeed, other aspects of PanSALB require critical inspection. To this end I consider PanSALB's lack of independence and the effects thereof. I conclude that this lack of independence renders PanSALB's complaint mediation function largely ineffective as a promoter and protector of language rights, yet as a structure complicit in creating docile bodies (Foucault, 1974; Pennycook, 2002) by delaying justice and co-opting civil society organisations. This avenue of inquiry in turn leads on to an examination of whether or not PanSALB provides evidence of the ANC's possible incipient authoritarianism. Here I conclude that an examination of the tribulations of PanSALB does provide persuasive (though inferential) evidence of the ANC's incipient authoritarianism. Subsequently, I criticise PanSALB's uneven service delivery, and then offer a qualification of the overall critique by discussing some of the positive reforms in which current PanSALB staff are engaged. Finally, I expand upon the method outlined in Chapters 1 and 2, discussing how the conclusions derived from its application in this study could

inform the implementation of the Section 185 Commission. In this respect I conclude that the Section 185 Commission may avoid giving incentives for ethnic competition and ethnic conflict by encouraging aggrieved groups to frame their complaints as solidarity rights complaints — i.e. to ask for goods that accrue to all South Africans, not just a specific group.

It is important to recognise what this critique does not do. First, it does not lay blame for PanSALB's weaknesses at the door of any individual actor; rather, I offer structural criticisms. Second, this critique does not cover the technical aspects of implementation, such as PanSALB's budget, topics for which public policy scholars are far better suited than I. Third, this critique focuses on the rights mediation function of PanSALB, to the exclusion of its other "focus areas" such as language development, and its auxiliary structures, such as the PLCs, NLBs and NLU's (see Heugh, 2003, for a broader inquiry).

5.1 Does PanSALB give rise to ethnic competition?

Scholars of ethnic conflict have long recognised that government authority plays a role in the aggravation or attenuation of ethnic conflict (see, for example, Sartori, 1997; Crawford and Lipschutz, 1998). Observers of the South African scene have warned accordingly that if government agencies were to dispense benefits on an ethnic basis, they would run the risk of inviting inter-ethnic competition over scarce resources (Maré, 1993; Carrim, 1999; Alexander, 2002). Indeed, on the verge of South Africa's democratic transition Horowitz predicted that a constitutional system that falls short of consociational democracy — yet allows "some complex institutions" to accommodate ethnic concerns — may invite enough divisiveness as to make a democratic future tenuous (1991: 7). In this view, there lies serious peril even in a system where ethnies have nothing more than some bureaucratically located recourse for resolving group-related grievances. Clearly PanSALB exemplifies such an arrangement; it is a

bureaucratic structure that provides ethnies with recourse for accommodating the (ethno)linguistic grievances of groups and individuals. Specifically, PanSALB promises to furnish goods – whether material or purely symbolic – to those complainants who successfully challenge an abuse of their language rights, through a “rights mediation” function.

So, following Horowitz and others, I therefore ask: does PanSALB invite ethnic entrepreneurs to make opportunistic complaints that may ultimately foster inter-ethnic competition and threaten national unity? In Chapters 1 and 2 I established a method by which one can effectively answer this question. In short, I contend that, in the case of PanSALB, one can roughly measure the risk of ethnic competition and ethnic conflict by discerning whether the rights assertions lodged with PanSALB consist predominantly of individual rights assertions or group rights assertions. If group rights complaints predominate, then one may worry that PanSALB does indeed invite ethnic competition; if individual rights predominate, one may rest assured that (at least thus far) the complaints remain unthreatening.

In applying my method, I drew information on the complaints lodged with PanSALB from three principal sources. First, I used thumbnail sketches of rights assertions adumbrated by the first head of legal staff at PanSALB, Advocate Christa Roodt. These covered a period from February 1998 to September 2000. Second, I used similar thumbnails set out in the “PanSALB Annual Report, 2001/2002”; these cover the complaints lodged during the year 2001. Third, I used the comprehensive files of the complainants’ original letters, to which I had access on two separate occasions. Overall, this yielded a corpus of data comprising 215⁶² complaints.⁶³

To date, the few comments made on rights assertions lodged with PanSALB have emphasised the overwhelming salience of

Afrikaans-related assertions (Roodt, 2001; Heugh, 2003). According to my latest counts, Afrikaans-related assertions comprise 88% of the total, even though Afrikaans-speakers comprise 17% of the total population of South Africa. Moreover, according to Adriaan van Niekerk, an MP and “language ombudsman” for the New National Party (NNP), the vast majority of the Afrikaans-language complaints most probably derive from white Afrikaans-speakers, who comprise 8% of the population. Additionally, these researchers (Roodt, 2001; Heugh, 2003) have noted that most assertions (about 85% by 2001) make claims against the state — whether it is represented by a government department, statutory body or provincial government (Roodt, n.d.). I believe that these evaluations neglect a very important aspect of the anatomy of rights assertions; while they take due account of the *rights-holder* and the *duty-bearer*, they make no mention of the goods to be delivered on successful assertion of a right. I now provide my own statistics on these goods.

Of the 215 relevant rights assertions, 166 — about 77% — are individual rights assertions, i.e. the goods sought are divisible. The remainder — 49 complaints, i.e. 33% — are group rights assertions, i.e., the goods sought are indivisible. We can further divide the group rights, however, into two categories; 26 of these assertions seek (indivisible) goods that would accrue to a specific language group, while 23 of these assertions seek (indivisible) goods that would accrue to all language groups. In other words, in the most articulated form, the results of my inquiry into the goods sought by complainants to PanSALB, reveal the following: 77% of the complaints are individual rights complaints; 12% of the complaints are *specific group rights* complaints; and 10% of the complaints are *solidarity rights* complaints. I provide a few examples so as to animate these statistics for the reader.

Individual rights complaints

I begin with the most common of all types of complaints: individual rights complaints. Writing to PanSALB on April 26 2000, an accused man wrote:

I, <NAME>, an accused suspect in the <BLANK> Trial, presently being heard in the Pretoria High Court ... have a dispute which I need to present it. On the question of my right to have my docket in my preferred language which is Setswana as I am representing myself. The judge ruled that parts of the docket that would be dealt with on any day of the trial should be interpreted to me, i.e. "read to me before the trial begins on a daily basis ... This arrangement prejudices me as it is impractical to commit the whole statement of witnesses to memorised them and be expected for preparations. Whereas if I had a docket in Setswana language I would have enough time to prepare during the time when being in holding cells in prison ... I also not understanding the Afrikaner language, which is all written in all statements of the docket which render an unfair trial according to the Constitution.

In this passage, the complainant asserts the language-related human and constitutional right to a trial in a language he can understand, a right predicated on the very basic right to a fair trial. The goods in this complaint are unmistakably divisible; they would accrue solely to the complainant, and to no one else. The assertion is, thus, an individual right assertion. We may note, as a matter of interest, that this assertion illustrates well the notion of language rights as frequently having a "threshold rights" character (Roodt, 2002; see Chapter 1). At base, the complainant is asking the state to respect the apparently non-linguistic right to a fair trial, but since this cannot be accomplished without some arrangement as to language, the right in question effectively becomes a language right, or language-related right.

Most of the individual rights reflect another kind of threshold language right: the right to information in a language one can understand. For example, on August 12, 2000 a health practitioner wrote simply, "We receive referrals from the courts in PTA + Mpumalanga + North West regions for psychiatric observations. Important and detailed information lies in the ... transcripts — and these are in Afrikaans!" The implication being, of course, that the health practitioners at this particular institution do not understand Afrikaans.

One particular recalcitrant offender with regard to freedom of information rights has proven to be the Compensation Commission, which processes claims to disability disbursements. Although most of its customers reputedly speak Afrikaans, the Commission decided, in the late 1990s, that its sole working language would be English. This provoked some distinctly angry responses from disaffected Afrikaans-speakers. On April 12, 1999 one complainant wrote:

For the 19 years I have completed forms from the Compensation Commissioner in Afrikaans. Suddenly, this year I have received forms in English. I wrote a letter to them requesting Afrikaans forms ... The heart of my complaint is that I love my language and I do almost everything in Afrikaans. Could you ask the Commissioner to accept Afrikaans forms.

Many of these complaints have filtered through unions, such as the Mineworkers Union (MWU) and the Transvaal Agricultural Union (TAU). On February 29, 1999 the TAU sent a sheaf of letters from its members to PanSALB. A covering letter read, "To this moment the Union is inundated with complaints from members of the union ... about the Compensation Commission." Within, a handwritten testimony read, "All correspondence used to be sent to me in Afrikaans. I asked them if they could please do so now [also]. I have not heard back from them" (11 March 1999).

And: "I now wish to make a formal complaint that the Compensation Commissioner is not accepting Afrikaans forms sent to them ..." (31 March 1999). Taken alone, each complainant's assertion presents itself as an individual complaint since the *goods* — invariably information or correspondence in Afrikaans — *are divisible*.

One factor complicates these otherwise straightforward complaints, however. In Chapter 2 I discussed how ostensible individual rights assertions might make implicit claims to non-material, *indivisible* goods such as esteem, status and respect for the language of a particular group. It is as yet unclear whether the complaints by Afrikaans-speakers against the Compensation Commission have achieved the symbolic significance and/or publicity necessary to make them clear cases of effective group rights complaints. If the Compensation Commission continues to fail to live up to its customers' expectations, then these complaints may very well come to constitute effective group rights complaints. In such a case, we may note, as a matter of interest, that these complaints would exemplify a phenomenon identified by Horowitz (1985); namely, that trade unions often play a vanguard role in the mobilisation of ethnic grievance.

Group rights complaints

In March of 1999, the leader of the Northern AmaNdebele National Organisation (NANO) wrote:

We realise that there is a need for the Northern AmaNdebele to be recognised as a nation existing within South Africa and as South Africans. The fact that the Northern AmaNdebele are a nation like all other nations in South Africa is ... indisputable. ... Let me start by saying that we are at the beginning of an arduous and protracted struggle to engage the state not only to recognize the diminished status of our language as the Northern AmaNdebeles but also to take practical

and positive [steps] to [elevate] the status and advancement of our language and finally to have our language recognised as the 12th official language of the Republic of South Africa. ... Our endeavours, initiatives and moves to have the language of the Sindebele accorded formal recognition as the 12th official language of the Republic is not something of the recent past. It dates back to the days of CODESA 1 and CODESA 2. Our submission to the Constitutional Assembly have been largely ignored.

In this submission, NANO seeks indivisible goods. NANO firstly asserts the right to have the language of its members developed and elevated in status. As discussed in Chapter 1, goods such as these cannot be divided in a way such that one Northern Ndebele person can have her piece of language-development, and her brother can have his own piece, and so on. Indeed, these goods accrue to all Northern Ndebele people ("Sindebele-" or "Northern Ndebele-"speakers), and only Northern Ndebele people; the right in question is, thus, a specific group right. Though I will resist making judgments as to the legitimacy of this grievance and others, it is interesting to note that for many observers this complaint represents an "opportunistic" or "rent-seeking" complaint that may not have found expression were it not for the incentives PanSALB implicitly holds out to groups that do complain. Note also that NANO bolsters the group-character of their rights assertion by using the rhetoric of ethnic nationalism.

Tsonga-speakers have asserted their right to have their language used on SABC, the state television network. In a letter to President Mbeki dated June 13 2000, the VaTsonga TV Committee wrote, "The VaTsonga Committee is bringing Xitsonga language TV coverage complaint before you for your intervention and assistance. The SABC which is national is discriminating,

violating our rights to Xitsonga language TV coverage ...". Evidently, this right to Tsonga television coverage predicates itself on Section 6 of the Constitution, which exhorts the state to elevate the status and advance the use of previously marginalised languages, and calls for parity of esteem between official languages. Since many other official languages boast national programming, Tsonga should, too. The VaTsonga TV Committee continues this line of complaint in a letter to PanSALB (received on October 16, 2002):

We would like to put to your attention that the people, the Tsonga and the Venda speakers have come to a conclusion that having noted the continued marginalisation of their languages on television, the time of taking action is overdue ... We have come to the decision to request the Board to go to the Constitutional Court against SABC on behalf of the above mentioned population groups, for discriminating against their language in the television.

On October 28, 2000 an independent Tsonga-speaker complained to PanSALB:

The reason for me writing this letter is that the SABC wants me to pay my TV license when my language, which is TSONGA, is not included on the TV... I still do not understand why I have to pay my TV license when my language is not included on TV. I suggest that you sit down and try to make changes by including the Tsonga language.

In this complaint, and the VaTsonga TV Committee complaints that precede it, all the sought goods are indivisible, and moreover all would accrue to a specific group — the Tsonga-speakers (and, in the case of the October 16, 2002 complaint, Venda-speakers). This betrays the assertion as a specific group rights-assertion. In another example of a group rights complaint, an Investigating Officer from the Human Rights Commission (HRC) relayed a

complaint to PanSALB:

The school in Jan Kempdorp at which complainant teaches does not make provision for Xhosa-speaking pupils; the school's medium as Setswana has resulted in prejudice against Xhosa-speaking pupils, because of this situation, some of these pupils were forced to drop out of school (October 20, 2000).

In this, an apparent case of linguisticism, the complainants seek an end to discrimination against Xhosa-speaking school children. This good would accrue to Xhosa people only, and thus indicates a specific group right. Media of instruction in schools often serve as the locus of contention in language rights complaints lodged with PanSALB. On November 22, 1999 a parent in the Temba District of Hammanskraal complained about the school censuses in his area:

We are particularly surprised by the fact that whilst the Southern Ndebele were the major propagators of this language issue, and who respectfully requested compliance with our constitutional rights pertaining thereto, Southern Ndebele has been left out and as is the case in some instances, combined with Zulu in your questionnaires. We fail to understand why this was done and why such discrimination had to go unchecked ... You will realise ... Southern Ndebele was completely excluded from the choices parents could make for an instruction at this particular school.

Plainly, the (indivisible) goods sought by this complainant would accrue to speakers of Southern Ndebele only; this represents an assertion of a specific group right.

Solidarity rights complaints

On March 17 1999, PanSALB received a complaint from an officer stationed with the Bethlehem precinct of the South African Police Service (SAPS). He took issue with a standing station order that

required all officers to speak English or Afrikaans if one officer in a given situation could not speak an autochthonous language.

The officer wrote:

We are of the view that the Station Commander of Bethlehem had violated our language right of promoting and developing the previously marginalised languages by introducing Station Order 3/1999 as per copy annexed ... Members are being charged for misconduct whenever they are trying to develop their own previously disadvantaged language in view of the fact that police are doing nothing about it. I mean upgrading the marginalised languages.

As discussed in Chapter 1, solidarity rights constitute a subset of group rights; while the goods in the case of solidarity rights are indivisible, they accrue not to a *specific* group, but to practically *all people* regardless of their ethnic affiliation. This officer clearly appeals for goods that would accrue to all speakers of “previously disadvantaged” languages – an overwhelming majority of the population of South Africa. His complaint may exclude English- and Afrikaans-speakers as potential recipients of the good of “promoting and developing” languages, but the assertion is still unequivocally a solidarity rights assertion. It is certainly not an individual right, and neither is it a group right; note that we do not even know the home language of the complainant.

In a fax dated February 22 1999 the law firm of Bowman Gilfillan Inc. complained of the Gauteng Radio Licence Authority’s refusal to hear applications in languages other than English:

It is alleged by Radio Pretoria and Radio Riemland that the Authority’s decision to use English at its public hearings violated their Constitutional rights in that it elevates the status of English over other official languages ... it reduces the status of Afrikaans and other official languages other than English...

Although the interest of the complainants lies primarily in the accommodation of Afrikaans, they deliberately choose to employ the rhetoric of solidarity rights. They assert their constitutional right for all languages to have equal status; these goods obviously accrue to all South Africans, and thus the assertion is one of solidarity rights.

In early 1998 an NNP MP made a similar complaint. From the PanSALB finding published on May 31, 2000 it emerged that the MP had argued that the Premier of the Northern Cape discriminated “against all official languages except English at its opening ceremony on 20 February 1998 by (1) sending only English invitations to the official opening of the 6th session of the 1st Legislature of the Northern Cape Province and (2) conducting his speech in English ... and (3) welcoming guests primarily in English”. This complaint also seeks goods that accrue not to individuals, not to any specific group, but to (practically) *all* South Africans.

One final example of a solidarity rights assertion presents an interesting regional twist. On April 21, 1999, a citizen of the Western Cape wrote:

I have helped with legislation concerning voter registration. In [my] area, where less than 5% of the people speak English we are expected to be happy with English registration forms. Afrikaans is not available. Sometimes there are costs for acquiring Afrikaans forms. There are no forms available in Xhosa. ...We ask PanSALB to look into getting these language attention.

The official languages of the Western Cape are Afrikaans, English and Xhosa. Most residents of the Western Cape speak at least one of these three languages. Thus, from a governmental and social perspective, these three are the only languages that matter. In asserting the right to access voter registration forms in a language

one can understand, this complainant conspicuously seeks goods that would accrue to (practically) *everyone* in the Western Cape. This assertion thus presents itself as a kind of solidarity right assertion.

* * *

Now that we have perused some actual language rights assertions, we can venture some conclusions concerning the degree to which PanSALB has so far proven to be an agency that invites ethnically divisive complaints. Interestingly, only a small percentage of the rights assertions lodged with PanSALB (12%) can be regarded as divisive. Only this small fraction of the complaints features indivisible goods that would accrue to a specific ethnic group. The balance, meanwhile, consists of unthreatening individual rights (77%) complaints and solidarity rights complaints (10%, thus yielding a total of 87%). Individual rights complaints do not pose any threat of ethnic divisiveness simply because the goods sought accrue to atomised individuals, quite apart from whatever group membership they espouse. Solidarity rights assertions similarly present no threat because they feature goods that presumably accrue to all South Africans, thus obviating inter-ethnic competition. Indeed, solidarity rights assertions, by their very nature, may be regarded as having the power of *enhancing* national unity, since they bind all ethnolinguistic groups together as stakeholders in a single complaint.

As a final note, let us recall that some of the ostensible individual rights complaints lodged by Afrikaans-speakers (in particular those concerning the Compensation Commission) seemed to verge on becoming effective group rights complaints by implicitly seeking the indivisible goods of esteem and respect for Afrikaans. We must bear in mind this pocket of complaints, and regard it with caution, especially given the Afrikaans-speakers' history of language struggle.

Thus in conclusion, because PanSALB has so far invited few potentially divisive complaints, we must regard it as a government agency that does not promote any great degree of ethnic divisiveness. In fact, the surprising percentage of solidarity rights complaints (10%) suggests that PanSALB unites as much as it potentially serves to divide. This, however, does not mean that PanSALB will inevitably remain an innocuous mechanism of “modified consociationalism” into the near, let alone distant, future. Indeed, the reader should take note that even a small number of South Africans, harbouring specific, insular grievances, can come to threaten national unity. The truth of this becomes especially evident when one considers the “security dilemma” theory of ethnic conflict (Crawford and Lipshutz, 1998): if one ethnies mobilises, any other ethnies that subsequently feel threatened will mobilise in response, thus begetting a vicious spiral. Though notably innocuous now, PanSALB still has the potential to prime the pump of ethnic competition.

5.2 PanSALB is not independent

PanSALB does not presently appear to offer incentives for ethnic competition. This does not mean it is free of fault. The short history of PanSALB has been one of decreasing independence and increasing subordination to government control. This has hampered its efficacy, most notably so with regard to its rights mediation function. Indeed, in the following paragraphs I argue that PanSALB’s lack of independence is so serious a handicap as to render its rights mediation function, in its current form at least, fatally flawed.

Section 3(10)a of the 1994 Constitution said, “Provision shall be made by an Act of Parliament for the establishment by the Senate of an independent Pan South African Language Board.”

Professor Albie Sachs, who would later become a Constitutional Court Judge, emphasised that the need for independence inhered in PanSALB’s duty to act as a check on government:

While the courts must always be there in the background to ensure that constitutional rights in relation to language are not violated ... The separation of powers ensures that although courts are obliged to be wise, Governments retain the right to be stupid (provided they are not so stupid as to behave illegally or improperly violate fundamental rights). It is the PASALB that should ensure wise action by the Government (Sachs, 1994: 7).

Until 1996, PanSALB did in fact boast such independent status. But the fortunes of PanSALB took a decided turn for the worse in 1996 when Lionel Mtshali took over as the Minister of DACST and instigated the series of blows to PanSALB's independence discussed in Chapter 4.

In light of the alterations of its mandate, we must consider one other factor: PanSALB cannot "instruct"; it can only "recommend". As a result, PanSALB on its own has no power to enforce its decisions; recalcitrant duty-bearers can freely flout PanSALB's findings. Exactly this has been PanSALB's experience; many of the complained-against government departments have simply ignored PanSALB's recommendations. Those departments that do engage with PanSALB seem intent on moving toward adopting recommendations, but only at a glacial pace, giving all the requisite signs of compliance whilst skirting the task of implementation. Edward Sambo, head of the legal staff at PanSALB, laments that in the cases of the especially defiant Compensation Commission and the Justice Department, both of which blatantly violate Section 6(3) of the Constitution with their openly-avowed English-only policies, there does not remain much PanSALB can do.⁶⁴

Several other statutory bodies and government departments signal a comparable degree of defiance. The South African

National Defence Force, the Revenue Service, Home Affairs, Eskom, Medscheme, the University of South Africa and the Post Office, for example, have each allegedly violated language rights by way of their English-only or English-mainly policies. In response to the complaints, each has “submitted something”⁶⁵ to PanSALB detailing their respective language policies and the steps they plan to take to make these policies conform to the constitutional provisions. Yet it is clear that none will be likely to yield to PanSALB’s pressure⁶⁶ as long as PanSALB lacks enforcement powers — as long as it remains, in the phrase so often invoked by those familiar with PanSALB, “a watchdog that cannot bite, only bark”.⁶⁷

In theory, PanSALB does have teeth at the limited level of last-resort. PanSALB can aid an aggrieved party by providing funding for legal action against a duty-bearer. A court of law, in such an instance, could then make some kind of binding, enforceable judgment on the matter. But in fact PanSALB has either failed to find a case ripe for justiciability, or failed to find the courage to undertake such action (it is also constrained by funding). All of this leads us to ask the question: why should complainants use PanSALB’s mediation function at all? If PanSALB is toothless and ineffectual in so many cases, then why not bypass it and simply approach the Human Rights Commission — or better, the Public Protector — directly? The answer is this: the justice system in South Africa is overburdened, and so any given judge may exercise the prerogative to compel a complainant “to exhaust all possible remedies”⁶⁸ before approaching the court. Indeed, both the Public Protector and the HRC have appeared to operate on this principle, referring language-related complaints to PanSALB rather than engaging with them themselves.

This poses a significant barrier to those who wish to assert their language rights, but it is not the only barrier. Consider that even

if a complainant managed, with or without the aid of PanSALB, to secure a favourable judgment against, say, a government department for non-fulfillment of constitutional obligations, there remains some doubt as to whether the government department would comply with the court order. The ANC, acting in the office of state, has already shown a precocious talent for skirting court-ordered obligations it does not fancy. Provincial executive committees, acting without apparent hindrance from the national executive, have openly defied Constitutional Court orders in the Grootboom and Treatment Action Campaign (TAC) cases (see Anonymous, 2003: 27-7; TAC, 200: 374, 85, 27-31, esp. 27.4) and equivocated on their exact responsibilities to the Court on others. Given the ANC's apparent commitment to *de facto* English monolingualism (Heugh, 2003), we must assume that any government department could willfully defy an order concerning multilingualism.

These many several procedural barriers, taken together, make for a potentially very dizzying and frustrating wild goose chase. Picture the following narrative flow-chart: A complainant whose grievance hinges on language may or may not need to begin by appealing to PanSALB. If the complainant appeals directly to the HRC, or the Public Protector, or the courts themselves, she runs the risk of being referred back to PanSALB in order to "exhaust available remedies". If she complains to the toothless PanSALB, she is unlikely to find remedy. If not frustrated by this, she will move on to seek justice through another channel such as the courts. If the complainant receives a favourable judgement through a lower court, the government is likely to appeal.⁶⁹ Even if the Constitutional Court finally rules in favour of the complainant, one may legitimately doubt whether the government will comply with the Court's instructions. This tortured dynamic suggests that PanSALB delays as much as it facilitates a justice which, overall, appears to have only slight probability of realisation.⁷⁰ This conforms to a long-acknowledged

pattern in southern Africa of failure to implement human rights in independent African countries (Alexander, 2000b: 20; cf. An’Naim, 2002).

* * *

At the suggestion of Pennycook (2002) we may borrow a page from Foucault to gain insight into PanSALB as a “technology of government” intended to create “docile bodies” among the South Africa populace.⁷¹ In his book *Discipline and Punish* (1974),⁷² Foucault demonstrated how a supposedly humane liberalism has apparently improved the lot of convicted criminals. In times past, those in Western Europe considered by the authorities to be guilty of crimes such as parricide or treason could expect, among other equally dire destinies, to be quartered — a gruesome punishment involving horses, chains attached to limbs and excesses of agony. In time, however, reformers proscribed corporal punishment in favour of imprisonment.

But this, says Foucault, made for a punishment just as sinister, if not more so. For whereas corporal punishment afflicted the body, imprisonment assailed the psyche and the soul. Foucault depicts this evolution of punishment as culminating in the true-to-life ekistical monster, the Panopticon — a prison where the transparent side of each cell faces the opaque windows of a central guard tower. As a result, the prisoners will forever regulate their own behaviour; significantly, they will do so even if the guard tower is empty, since they, being confined to their cells, cannot know if someone is manning the central tower, or not. In this way the prisoners become, in Foucault’s terminology, “docile bodies” — pliant, obedient, “manipulable” subjects nearly devoid of agency. The irony, of course, is that the authorities accomplished this coup of social control under pretence of liberalising the treatment of prisoners. Foucault and his exegetes have applied this metaphor of the Panopticon to many situations. I will

use it here to criticise PanSALB's mediation function.

Consider that PanSALB's mediation function pretends to be, and indeed in its earlier years held out promise as, an innovative empowering gadget that CODESA 2 had welded onto the basic machinery of equitable government. But it has, over time, proved to be less than the democracy-enhancing agency it once promised to be. Rather than protecting and promoting language rights, PanSALB's mediation function acts as an obstacle to the realisation of justice. More than this, the mediation function has seemingly created an illusory sense of security among parties concerned with their language rights. These parties no doubt have declined to energetically organise proactive civil society movements (or will in the future decline to organise them), quiescent in the misguided expectation that PanSALB could effectively champion their rights for them, if ever their rights were threatened. It is in this respect that PanSALB has created "docile bodies". It has encouraged the belief that a constitutionally mandated language rights watchdog protects their language rights to a degree much greater now than in the past, when in fact PanSALB does not do so. Put another way, PanSALB threatens to suffocate vigilance on the question of language rights protection by lulling civil society into a false sense of security (cf. Bratton, 1989, on the co-option of civil society).

With all due apology, I would at this point like to employ a somewhat impolite, though certainly instructive, complementary metaphor: the mediation function of PanSALB is like a benign tumour. Consider that PanSALB itself, like a tumour, is an unusual bulge — an added feature — on the standard body of the democratic state. Like a tumour that is benign, the mediation function of PanSALB does not seem to pose any immediate threat to the integrity of this democratic body (it does not, as I have shown, currently lead to divisive ethnic complaints). Yet nor does this mediation function appear to do much good — at least,

nothing that could not be accomplished more efficiently through alternative channels. Thus, the mediation function of PanSALB behaves, purely by dint of the bureaucratic encumbrance it imposes, mostly as a burden on democratic systems and processes. Though it is not cancerous, nor is it useful. It is, simply, there, consuming resources.

5.3 Canary in the constitutional mineshaft: does PanSALB evince an authoritarian ANC?

If PanSALB has lost so much of its once-touted independence, and in the process has become a component of covert authoritarian control, the question arises: is anyone to blame? Here, we can use PanSALB as a test of the strength of constitutional democracy in a “youthful” South Africa. For if PanSALB has lost a degree of its independence by way of executive interference, surely this bodes ill; below I examine this canary in the constitutional mineshaft.

There exists a certain amount of evidence suggesting that the ANC and the IFP, acting in the offices of the state, deliberately curtailed the power of PanSALB. Since its ascendance to office in 1994, and again in 1999, the ANC, many commentators aver, has betrayed a tendency towards authoritarian behaviour. Many, for example, cite the ANC’s hand in the abolition of mandatory coalition government when rewriting the interim Constitution, and the many attempts to contain parliamentary authority structures (see Southall, 1998: 443) as evidence of an overly-determined centralist orientation. The conservative scholars, Giliomee and Simkins, contended as much in their 1999 book *The Awkward Embrace*. Relying on the assumption that opposition is a necessary condition of democracy, they conclude:

Largely to contain the pressures which managing the syncretic state produces, the ANC leadership has tended to concentrate as much power as possible in its own hands both in its control of the party and on

governmental level (1999: 345).

In 1999, the similarly conservative *Economist* magazine warned against the possibility of an authoritarian ANC. Citing a Congress discussion document that said the party's "most urgent task is to gain control over 'all the levers of power: the army... the judiciary... regulatory bodies'"⁷³ (47) the author warned that it had truly become "party time" for the ANC (ibid.). *The Economist* further interpreted then-President Nelson Mandela's disdain for the opposition of "Mickey Mouse parties" as perhaps a denial of the democratic right to dissent (1999: 47). Of course, a reader may find these contentions unsurprising; after all, even the most pious political parties would seek pervasive control, and the ideological opponents of the ANC are the most likely Chicken Littles. But authors who locate themselves further to the left make equally dismal assertions. Habib (2000:1) says:

Democratic institutions have also been weakened since 1994. As a result of intra-party conflict and tensions within the tripartite alliance, the leadership of the ANC is centralizing power and bypassing representative party and state structures in the formulation of policy.

Southall (2001:1), employing an academic register perhaps too polite for the gravity of his argument, says that there remains a "continuing weakness of the structural correlates of democratic endurance". Vally, in a wide-ranging article in the *Mail and Guardian* (2002: 24-25; cf. Southall, 1998, and Habib, 1997; see also *Mail and Guardian*, 2001) condemns the ANC for "accelerating" a "shift to authoritarianism". He observes that the ANC has retained the powers granted it by apartheid-era security-related legislation, and arrogated to itself somewhat more.⁷⁴ Vally contends that the ANC regime promises to be no less authoritarian than the apartheid regime (for investigations of this unholy continuity see also Bond, 2000; Alexander, 2002).

Finally, Butler cites a notable synthesis of voices from the liberal right and the communist left. Strange bedfellows:

The spectre of authoritarianism was raised by Democratic Party (DP) leader Tony Leon's 1999 campaign, which lambasted the 'centralisation, arrogance, authoritarianism and abuse of power the ANC is already displaying in copious quantities'. Leon argued that the ANC, with the two-thirds majority that would allow it to remake the constitution alone, might expropriate property, curtail press freedom, limit the independence of the Auditor General, Public Protector and Constitutional Court, strangle provincial autonomy, and override judicial independence ... Even Communist Party (SACP) deputy general secretary Jeremy Cronin denounced 'swings between demagoguery and managerialism', warning of 'terrible perils for democracy' and suggesting that 'Mugabe epitomises where we could end up' (2000: 189-90).

In spite of the political rhetoric he cites, Butler remains sceptical of imputations of authoritarianism. In answer to Giliomee and Simkins above all, he writes, "The mere 'preponderance' of ANC political power, however, will not necessarily lead to 'unilateral and even arbitrary decision making that undermines the integrity of democratic institutions. ...'" (2000: 190).⁷⁵ Butler argues that many of the "causal mechanisms" by which a "new authoritarianism" is being created have been "assumed rather than demonstrated", and that "[t]heir identification and elaboration could provide much needed intellectual support ..." (2000: 190).

Into this discourse we can now introduce the example of PanSALB, on whose "containment" a strong, though inferential, case can be made in favour of the ANC's authoritarianism. The case is uncomplicated. In the 1994 Constitution, PanSALB appeared as an independent agency, bound by law to investigate

and make findings on alleged language rights violations, and answerable to the Senate. After the Constitutional Assembly had finished revising the interim Constitution, PanSALB was no longer independent; subsequent legislation subordinated PanSALB to DACST, which then proceeded to charge PanSALB with the financially debilitating responsibility of managing the NLUs.

We can clearly discern the actors who wrote and enacted the PanSALB Amendment Bill of 1999; they were the ANC, the party with executive power, in cooperation with the IFP custodians of DACST. With regard to the change to the Constitution, we only have inference on which to rely, although the appropriate conclusion here still appears rather obvious. Recall that the inclusion of PanSALB in the Constitution resulted mainly from a concession to Afrikaner interest groups concerned about the status of their language (Alexander, 2002; Heugh, 2003). Most major parties in South Africa today have policies specifically endorsing an independent PanSALB, including the NNP⁷⁶ and the DA (as discussed in Chapter 4).

Only the ANC had contravening interests. Since its founding, the ANC has regarded autochthonous languages as indicators of divisive tribalism, and the leadership thus may very well look askance at PanSALB, which supports autochthonous languages (Nzimande, 1997). Additionally, the “mostly English” policy employed by the Zambian government influenced the ANC leadership in exile (Heugh, 2003), and a similar policy would clearly help to perpetuate the elite status and advantages enjoyed by ANC party members today (in the style of linguistic elite closure; see Introduction). As an admittedly unwieldy concern, a multilingual policy as mandated by the 1996 Constitution poses considerable logistical challenges, and thus significant short-term political vulnerability, to any party occupying office.

Finally, at least one leading member of the ANC, Cheryl Carolus, who worked on the party's exclusive Committee on the Transition headed by then-President Mandela, seems to have betrayed that it was the early and explicit intention of the ANC to subordinate PanSALB to DACST. In response to the question "Do you see a link between the work your department [the Human Resources Department of the ANC, which included Arts and Culture] is doing and the Pan South African Language Board?", Carolus replied, "Well, in fact, this [PanSALB] is going to be part of formal governance" (Crawhall, 1994: 10; see Heugh, 2003 for interpretations of Carolus' comment). This comment by Carolus seems to plainly suggest that the Committee on the Transition had planned to demote PanSALB to "part of formal governance" – to subordinate it to "[her] department", Arts and Culture, if not also eliminate its independence. Overall, this collected evidence strongly indicates that among the influential actors in the Constitutional Assembly, only the ANC could have harboured enough apprehension over an independent PanSALB to actively curtail its powers through a change in the Constitution, and subsequently, with the aid of the IFP, to amend the PanSALB legislation in 1999.

As a concluding note I must caution the reader to take due regard of a certain nuance: no one can pretend that the *diminution* of PanSALB's independence was an accident; but nor does it appear to be the result of conspiracy. Certainly the ANC did not agree to PanSALB at CODESA with the intention of transforming it into a covert means of authoritarian control. Rather, the ANC, in this respect, seems to have operated in an intermediate pattern described by Howard Zinn (1980: 386). Opportunities to curb PanSALB's independence dawned gradually on the ANC, and the ANC, in response, took advantage of these opportunities as they arose. Put another way, the ANC did not so much seek and destroy the independence of PanSALB as it did serendipitously take a shot whenever PanSALB drifted into range. We must

conclude, then, that as an ailing canary in the constitutional mineshaft, PanSALB bodes some ill for the future of South African democracy.

5.4 PanSALB delivers services irregularly

Conspicuously, the overwhelming majority of language rights complaints received by PanSALB (88%) come from (white)⁷⁷ Afrikaans-speakers,⁷⁸ even though this segment of the population amounts to no more than 8% of South Africans. Meanwhile, a mere 11% of the language rights complaints emanate from speakers of “previously marginalised” autochthonous languages (PanSALB, 2001/2002: 20, and by my own count). Surely Afrikaans-speakers suffer language rights violations, but no reasonable observer could conclude that they do so more than do speakers of “the other nine”. Indeed, a brief acquaintance with the official-linguistic environment of South Africa will strongly suggest to any observer that autochthonous-language-speakers suffer far more rights violations than do Afrikaans-speakers. Moreover, given the superior numbers of autochthonous-language-speakers, one may reasonably assume that the volume of their complaints would by far outweigh that of Afrikaans-speakers, and not *vice versa*. On the surface this appears to be, in the terminology of policy studies, a case of irregular service delivery: PanSALB does not seem to serve its target customers in the desired proportions.

Why is this? Some commentators point out that Afrikaans speakers have a long tradition of intense language rights concerns, dating at least as far back as the aftermath of the Anglo-Boer War. For a complex of reasons (see Sparks, 1990: 91-119) Afrikaners have a “laager” or “almond hedge” mentality, which foregrounds perceived cultural threat and impels the kind of remarkably defensive behaviour witnessed by the body of complaints lodged with PanSALB. Black South Africans do not have such a mentality and in any case feel that the democratic

transition of 1994 has inevitably elevated their rights; in other words they perceive no cultural threat (see also Williams, 1994). Indeed, I would guess that black South Africans generally speaking see complaining as putting oneself in the undesirable position of victim, and thus hesitate to complain. Another related possibility lies in the contention that, historically, most black South Africans have preferred political parties to ethnic groups in choosing their vehicle of activism. These habits of struggle fade only slowly; thus language rights complaints remain a rarity.

Edward Sambo of PanSALB opines⁷⁹ that black South Africans have more pressing matters to attend to than language rights.

Professor Cynthia Marivate, CEO of PanSALB, concurred:

The weaker focus area is ... language rights and mediation. It is weak, maybe because of the needs from the nine African languages speakers' communities. Language is not one of their top priorities. They have problems in terms of housing health, jobs ...⁸⁰

But a 2000 sociolinguistic survey conducted by MarkData at the behest of PanSALB suggests that Marivate may overstate the case. MarkData found that approximately half of South Africans considered language to be worthy of the state's attention:

The broad view emerging among 50% of the public is that the Government should spend its funds on priorities other than language issues. Exceptions are speakers of Setswana, Sepedi, Siswati, isiNdebele and Tshivenda, who feel language issues should be a priority. IsiNdebele and Tshivenda speaking people in particular appear to favour considerable public spending on language development (MarkData-PanSALB, 2000: 113).⁸¹

Perhaps responding to this conclusion, Marivate does concede that PanSALB has not adequately publicised the cause of language rights.⁸² The PanSALB-MarkData survey additionally

suggests that not only do South Africans have little idea of their language rights, they have hardly heard of PanSALB (2000: 113). Indeed, one may assume that many black South Africans, even if they harboured a language-related grievance, would not have the capital (economic or social) to pursue it with PanSALB.

To this end, PanSALB has attempted to raise awareness of language rights by educating the PLCs on language rights and on PanSALB's complaint procedure. It appears that these PLCs — not all of which, as discussed in Chapter 4, yet exist — bear the responsibility of taking the message to the grassroots (PanSALB, 2001: 27). While the number of complaints received from speakers of autochthonous languages has not noticeably increased since the implementation of the awareness campaign, Professor Hennie Strydom rightly points out that awareness-raising is a long-term project; PanSALB may need to wait a decade before its efforts bear fruit.⁸³

Nevertheless, PanSALB, as a structure, warrants criticism for failing to reach all its intended beneficiaries. It is perhaps unnecessary to say that PanSALB has a responsibility to facilitate complaints from South Africans in proportion to their grievance. Its failure to do so thus far imperils attempts to elevate the autochthonous languages and, more than this, may create the impression that PanSALB is a tool for the white right wing,⁸⁴ which would somewhat endanger its own levels of funding and regard among governmental peers.

But examined closely, PanSALB's failure to provide its mediation services equitably is not merely a question of black versus Afrikaner South African. Though anecdotal, some evidence suggests that black South Africans of differential political capital also receive differential treatment. To illustrate, I will briefly contrast the experiences of the Lovedu- and the Northern-Ndebele speakers.

The 1994 interim Constitution numbered among the official languages “Sotho sa Leboa” — Sotho of the North or Northern Sotho. This did not make for any controversy, since “Sotho sa Leboa” is an impartial term, encompassing a wide swathe of mutually intelligible speech varieties. But when the 1996 Constitution inexplicably changed this appellation to “Sepedi”, which exclusively signifies a particular dialect spoken by a discrete group, hackles were raised. One speaker of Lovedu, a neighbouring speech variety, commenced writing letters to the Department of Justice and Constitutional Development, to PanSALB and to the President, insisting that Lovedu, as a dialect of the original Sotho sa Leboa, ought to have equal status to Pedi. On 24 February 1999, *The Sowetan* reported that the Rain Queen Modjadji V, a Lovedu-speaker, opposed the switch and had asked then-President Mandela to make Lovedu a 12th official language. As a woman with great influence over crop yields, and, thus, over people, the Rain Queen (see Krige, 1947) managed to secure a speedy compromise solution for the aggrieved Lovedu speakers. Stopping short of a constitutional amendment, PanSALB agreed thenceforth to refer to “Sotho sa Leboa” and never “Sepedi” as an official language.

This episode⁸⁵ contrasts with the service accorded to the Northern AmaNdebele National Organisation (NANO). At about the same time as the Lovedu complaint arose, NANO put their notable history to PanSALB in asking for recognition of their language as an official language. During the apartheid years, the language of the Northern AmaNdebele, like the nine autochthonous languages that enjoy official status, attracted the official acknowledgement of the Bantu Administration authorities, and, according to the recollection of their leader, Rev. Molomo, they were offered their own Bantustan. But unlike the speakers of the other nine autochthonous languages, the Northern AmaNdebele resisted Bantustanisation — a fact that history is likely to record with approval. As a result, Northern Ndebele did not become an

official language in apartheid-era South Africa, and so the 1994 and 1996 Constitutions, in turn, did not accord it official status (see Calteaux, 2002 and Matlala, 1999 together). Thus, in return for their resistance to apartheid's divide-and-rule strategies, the Northern AmaNdebele were left without a status symbol that erstwhile apartheid collaborators attained: namely, their language as an official language (see Stroud and Heugh, forthcoming).

In response to the historically argued demands of NANO, PanSALB initially accorded funds for development of the corpus of Northern Ndebele, but soon ceased dealings with NANO. Some members of the PanSALB staff allege that the abrasive personalities of NANO's leadership precipitated PanSALB's decision to cut NANO off; others claim that NANO became less interested in fulfilling their language rights and more interested in receiving funds for fringe purposes, and that this was an unacceptable use of funds.⁸⁶ NANO, meanwhile, claims that the staff of PanSALB, many of whom hail from the Limpopo Province but are not Northern AmaNdebele in derivation, acted on the basis of ethnic chauvinism.

If one compares at face value the Northern Ndebele- and Lovedu-speakers' requests for officialisation of their languages, it becomes clear that neither had a superior legal claim, although, if anything, the Northern Ndebele-speakers perhaps had a superior *moral* claim, owing to what they claim to have been their resistance to co-optation by the apartheid regime. Yet in the end, the Lovedu-speakers found almost instant relief, while the Northern Ndebele-speakers, though initially allocated some money for corpus development, soon lost the support of PanSALB, and remain frustrated in their pursuit of a resolution to their officialisation grievance.

What explains the disparity of service delivery between the Northern Ndebele- and Lovedu-speakers? Why did the Lovedu-

speakers enjoy swift accommodation, while the Northern Ndebele-speakers endured service both irregular and incomplete? On the surface, the answer may appear to be that the differential treatment resulted from a variance in the difficulty of solving the two grievances. The existence of the uncontroversial compromise term “Sotho sa Leboa” expedited the Lovedu-speakers’ grievance, whereas the lack of such a compromise for the AmaNdebele mired theirs. In other words, Lovedu shared cognate status with Pedi, and so the two (and others) could be subsumed under a common umbrella linguonym; Northern Ndebele, meanwhile, shared no such cognate status with an official language, and so its speakers could not be so easily accommodated.

But this explanation belies the fact that Northern Ndebele itself *does* share cognate status with at least two official languages (either Sotho sa Leboa or Southern Ndebele, although a more in-depth project of harmonisation (see Alexander, 1993) may be needed to bring it into line with either of these). Thus the linguistic facts of each case are very similar, if not essentially the same, and cannot alone explain the disparities of service provided by PanSALB.

One suspects instead that the disparity had nothing to do with the linguistic facts of the two cases and rather more to do with a difference in political clout. Whereas the Lovedu-speakers boasted a powerful advocate in the person of the Rain Queen, the Northern Ndebele-speakers did not. Needless to say, the relative political power of complainants is an inappropriate basis on which to calibrate the quality of service delivery. Hopefully, it, like the preponderance of Afrikaans-speaker complaints, will not become routine.

5.5 Hopeful signs

PanSALB's mediation function does not, of course, bode total gloom. Before concluding this chapter, I would like to train my attention on its more hopeful aspects. To begin with, the mediation function bases itself on a sound and noble idea: namely, mediation as a means to justice (see Roodt, 2002, or Chapter 4 above, for an explication of the advantages). In a South Africa without PanSALB, parties who perceived themselves to have suffered a language rights violation would have two basic options; first, they could remonstrate with the duty-bearer which has wronged them, or second, they could litigate. This first option may work in some cases, but in many others the recalcitrance of a duty-bearer would necessitate the latter course of legal action.

Yet litigation poses two main difficulties, one for individual litigants and one for South African society at large. To begin with, litigation is expensive, something the average South African cannot afford. Further, South Africa's justice system is overburdened with work; language rights litigation would only add to the system's caseload.

The mediation function potentially eliminates these two difficulties, on the one hand by assisting complainants free of charge, and on the other by attempting to resolve conflicts before they reach the courts. Commendably, PanSALB seeks to accomplish this through a kind of arbitration, through refereed negotiations, which avoids judicial winner-take-all judgments in favour of possible compromise solutions that would suit all parties involved. PanSALB deserves credit for adopting such an exemplary process of accomplishing justice.

Additionally, we should note that PanSALB's mediation function appears to be more efficient in terms of structure than some have perhaps intimated. While some have argued that the Board has too many members (Alexander, 2002: 124) or too many sub-

structures (Heugh, 2003), the “probability of program success” model developed by Pressman and Wildavsky (1984: 102-7) predicts relative efficiency for PanSALB, since very few “decision points” stand in the way of action. In fact, once we establish, in contradistinction to the contentions of one respondent, the telephone parastatal Telkom, that PanSALB need *not* necessarily seek agreement with PLCs on matters of language rights mediation, we see that PanSALB can generate findings and publish recommendations with due swiftness and considerable resolution. Indeed, only external factors, such as the uncooperativeness of duty-bearers and the erstwhile irrational chain of funding through the bureaucracy of DACST, have hampered the action of PanSALB’s mediation function.

In an interview on February 18, 2003 Edward Sambo, a member of PanSALB’s legal staff, argued that the mediation function has, in its five years of existence, seen a disadvantageously rapid turnover of staff. The first legal staff member, Professor Christa Roodt, after constructing the mediation function’s capacity from the ground up, left PanSALB in 2001. Unfortunately, new legal staff were not appointed until months after Roodt’s exit, thus preventing the sharing of expertise, upsetting a continuity of method and leaving a months-long silence of the Board on matters of language rights. Sambo cites this last effect as one that significantly undermined PanSALB’s credibility in the eyes of duty-bearers. With time, Sambo asserts, PanSALB will regain its footing and attain greater efficacy; we must conclude that certainly a continuity of staff and persistence of efforts would, in time, only strengthen PanSALB’s mediation function.

Finally, PanSALB’s mediation function, in the absence of its own enforcement mechanism, has begun to sublet the jaws of other, more toothy agencies. Sambo claims to have initiated contact with both the HRC and the Public Protector in the hopes that they and PanSALB could establish a formal process of referral, whereby

PanSALB could refer cases of recalcitrant duty-bearers to either one of them. If implemented, this formal cooperation could signal to duty-bearers (such as the Compensation Commission and Eskom) that PanSALB does have indirect powers of enforcement, and its recommendations are therefore ignored at the respondent's own peril. If this cooperative arrangement fails to establish itself, or fails to prove effective, there remains the hope that the South African Languages Bill will pass through Parliament with its enforcement provision intact. PanSALB's mediation function could rely on this clause to litigate against a wide variety of duty-bearers — not just those who clearly defy constitutional obligations — and thereby attain powers of enforcement. Likewise, the PanSALB Amendment Bill, proffered by NNP MP Adriaan van Niekerk, may spur the ANC into pushing a similar bill forward to enactment. These two latter possibilities, however, must be understood as significantly less likely than the first one endorsed by Sambo.

5.6 Other lessons learnt

A final insight involves the role of yet-to-be-established government agencies in inviting or attenuating ethnic conflict. PanSALB was not the only innovative democratic appurtenance mandated by the 1996 Constitution. Indeed, it made provision for more than six similar organs, some of which may, like PanSALB, ultimately stir ethnic conflict by giving incentives for ethnically based grievance.

Among these, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (the Section 185 Commission) stands out as the most controversial. As I noted in Chapter 4, the Commission originated as a compromise between mainstream negotiators and right-wing Afrikaners during the constitutional negotiations (Alexander, 2002: 82) and has the power to, *inter alia*, establish "community councils" and to investigate rights abuses presumably reported

by these councils. Though the legislation closely adheres to the rosiest rhetoric of reconciliation and inter-ethnic unity, some predict that the Section 185 Commission will “constitutionalis[e] ... ethnic politics in the post-apartheid dispensation” (Alexander, 2002: 82; cf. the theoretical approach of Horowitz, 1991: 7, and Sartori, 1997), or in the words of Carrim (1999: 261), “it [might] disunite people and corrode a sense of South Africanness”. As the Section 185 Commission finally found itself enacted in late 2002, it is thus now an opportune time for discussing how the experiences of PanSALB could inform the creation of the Section 185 Commission.

Can my research into PanSALB help to predict whether the Section 185 Commission will stir ethnic conflict that ultimately threatens national unity? Certainly PanSALB and the Commission share a couple of important similarities. Both boast a constitutional mandate, and both are empowered to accept complaints, the former solely on linguistic issues alone, the latter on religious, and cultural, in addition to linguistic, issues. However, unlike PanSALB, the Section 185 Commission seems to give more explicit regard to communities — to groups — and we may therefore expect that the Commission would engage more closely with assertions of group rights than would PanSALB. Continuing along this chain of reasoning, the Section 185 Commission would also appear to be a constitutional organ that could stir ethnic divisiveness more readily than could PanSALB.

My research into complaints lodged with PanSALB suggests that there do exist mobilised ethnies that would seize upon the Section 185 Commission as a channel for furthering their ethnically based interests. Judging from Afrikaans-speakers’ relative economic advantage, historical role in creating the Commission, and general awareness of statutory bodies, in addition to their pursuit of language rights enforcement through PanSALB, one would expect them to comprise a large percentage of the complainants.

Other groups who find themselves at the bottom of ethnic rankings in South Africa, and who have complained to PanSALB, such as Ndebele, Tsonga and Venda people, could also be expected to feature prominently. Though they have not applied to PanSALB very frequently at all, past experience (see Maré, 1993) suggests that the sizeable force of a mobilised Zulu ethnics could also join those using the Section 185 Commission as a site for the expression of grievances — especially if the IFP were to leave national government. In short, the Section 185 Commission promises to be slightly more problematic for the project of maintaining national unity than PanSALB has been.

The exact magnitude of the threat would depend on the precise rules and protocol established by staff members of the first commission. In this regard, lessons learnt from my examination of PanSALB would be eminently helpful. Put simply, if the Commission wanted to minimise divisive specific group complaints, it could frame its rules so as to encourage complainants to frame their assertions as solidarity rights complaints. Particularly, the Commission could declare that any complainant must show not merely how a government action or policy affects his or her ethnics, but how that action or policy threatens all ethnic groups, inter-ethnic harmony or national unity. In other words, the Commission could force complainants to pursue goods that would accrue to all ethnic communities in South Africa, not just their own. By way of example, imagine for a moment a South Africa where streams of Zulu traditionalism are active:

The national government fails to promote the traditional culture of the Zulu. The youth are forgetting the old ways. We thus request government funding for adding Zulu cultural emphasis to history classes in the KwaZulu area.

This complaint seeks goods that would accrue exclusively to one group, the Zulu. If the Section 185 Commission ruled that

complainants must show not merely how government policies (or lack thereof) affect the complainant group, but all groups or the harmony of all groups involved, a complaint could emerge looking somewhat different:

The national government fails to promote the traditional culture of the Zulu, the Tswana and other peoples. The youth are forgetting the old ways. We thus request government funding for adding cultural emphasis to history class in the nation's schools.

The difference is subtle, but significant. In the first version of the complaint, a Zulu interest group seeks a kind of economic advantage for Zulu people — an exclusivist stance that, especially if successful, could trigger a competitive clamour for similar goods throughout the country. In the second version, a Zulu interest group is constrained to seek benefits for all South Africans — an inclusivist stance that would generate no inter-ethnic enmity, only goodwill (save, perhaps, for a non-ethnic debate between modernists and traditionalists).

A critical reader may object that this approach merely serves to “correct” or “sanitise” the rhetoric of complainant groups whose underlying competitive or ethnicist goals remain unchanged. But this is mistaken. In fact, though it may serve to cool rhetoric (a not undesirable effect), this approach also *changes the goods on which complainants make claims*. By definition the aggrieved groups seek something altogether different, something altogether less threatening to national unity. A simple change in rhetoric though it may seem, the material difference is large — large enough to douse ethnic competition, without suffocating legitimate ethnic grievance.

Conclusion

In Chapters 1 and 2 of this paper I established a new method for distinguishing between individual rights- and group rights-assertions — a method that departs from the canonical preoccupation with the rights-holder and duty-bearer to focus on the *goods* of a given assertion. This method has leveraged itself against the philosophical works of Donnelly, and has argued that it is possible to roughly categorise any given rights-assertion as “individual”, “group” or “solidarity” in character. One may doubt the intrinsic merit of classificatory exercises, but one cannot deny this method’s usefulness in determining the risks of inter-ethnic competition, and inter-ethnic conflict. For in pursuit of what, other than the *goods*, do ethnies mobilise?

Utilising this method, I have found that 77% of the complaints are individual rights complaints; 12% of the complaints are *specific group rights* complaints; and 10% of the complaints are *solidarity rights* complaints. This suggests that PanSALB currently does not lead to very much inter-ethnic competition, let alone conflict. Indeed, the notable percentage of solidarity rights complaints suggests that PanSALB holds some potential for promoting unity. But this, of course, does not mean that PanSALB is a fault-free organisation; indeed, it has shown itself to be largely ineffective, primarily as a result of its inability to enforce recommendations against recalcitrant duty-bearers. It must be said, however, that government bears some of the blame for its very resistance to the spirit of PanSALB’s mandate. PanSALB also shows itself to be a manufacturer of docile bodies, in that it has encouraged the belief that language rights are protected to a degree much greater now than in the past, when in fact they are not. PanSALB thus threatens to suffocate vigilance on the question of language rights protection by lulling civil society organisations into a false sense

of security, co-opting their purpose without effectuating their ends. Even so, the reader will note that my conclusions strike a distinctly less dire note than do predictions offered elsewhere (Horowitz, 1992; Maré, 1993; Carrim, 1999; Alexander, 2002).

What of the future? Scholars concur that the landscape of ethnic conflict is a dynamic one; relationships can change overnight, and the peculiar “security dilemma” that ethnies sometimes confront can lead to rapid escalation of ethnic-entrepreneurial aspirations. The material and non-material incentives that PanSALB implicitly promises may yet furnish the spark for an ethnic conflagration. Likewise, the Section 185 Commission, if and when it is implemented, may distinctly invite rent-seeking complaints from mobilised ethnies. The probability of both these scenarios increases with each degree by which the poor become poorer and more disenchanting, or face “ecological stress” (Gurr, 1993). Other latent aggravating factors lie in the dormant juggernaut of Inkatha; if the IFP is divorced from national government, then ethnic plaints, hitherto mild, may grow to become a clamour that feeds on itself.

But then, perhaps the threat is not so great. Perhaps the fears of inter-ethnic conflict are unjustified — nothing more than jitters, a latter-day incarnation of a post-transition “Black Peril” (see Butler, 2000). Indeed, many facets of South African society suggest that the ethnic threat is sometimes overstated. South Africa has a strong centralised state (maybe too central, as Chapter 5 suggested), a merely moderate level of diversity and citizens who identify strongly (though secondarily) as members of a single nation. Finally, a consensus concerning the “unassailability” of English may result in a viable national *lingua franca*, which would render many instances of inter-ethnic competition moot.

How does one fortify such a sentiment of unity, while also

accommodating the legitimate ethnic grievances of assorted ethnicities? The question has vexed scholars of government for millennia, to meagre avail. This paper does not pretend to propound a definitive solution, but it may hold a key to progress. In introducing the method in Chapter 1, we came to understand the material basis (in terms of *goods*), and the consequent non-divisive character, of solidarity rights. If put into practice, as a rule in the Section 185 Commission or elsewhere, a solidarity rights regime, if it excludes specific group rights, can douse ethnic rent-seeking and ethnic competitiveness — crucially, without suffocating legitimate ethnic grievance.

It is, I believe, a compromise worth investigating further. In particular, further academic inquiries may seek to fortify the philosophical argument that underlies the method put forward in Chapters 1 and 2. But most importantly, future research ought to investigate the feasibility of a “solidarity rights regime” for South Africa, in addition to the applicability of such a concept to other “plural” or “divided” societies.

Notes

1. A number of South African languages take prefixes. In this paper I will not use prefixes, except when quoting others who do, or when otherwise relevant.
2. See UNESCO's exhortation, going as far back as 1951 and 1953.
3. In additive language learning, one learns a second language while maintaining the mother tongue at an equal level of proficiency. In subtractive language learning, one learns a second language at the expense of, or even to the exclusion of, the mother tongue. Related terms of nuance include submersion vs. immersion.
4. *Mail and Guardian*, November 15, Letters to the Editor.
5. Roodt, C. Unpublished printout of thumbnails of PanSALB language rights complaints.
6. Hector Peterson Soweto Uprising Museum, Soweto
7. Quoted in May, 2001.
8. At least \$300 million.
9. Other than PanSALB, these include the Commission for the Promotion and Protection of the Rights of Cultural, Linguistic and Religious Communities (Section 185 Commission) and the Human Rights Commission (HRC).
10. Constitution of the Republic of South Africa (1996), 6(5).
11. PanSALB Act No 59, 1995 and PanSALB Amendment Act No 10, 1999.
12. Meaning "people". For the people the term identified, "Bantu" acquired pejorative connotations after it was adopted as a classificatory term by the apartheid era authorities.
13. Alexander (personal communication) proposes that, in order to deal with the peculiarities of the South African case, we do away with the term "indigenous people" and use instead two terms: a) "first people", which will signify indigenous people in the ILO's sense; and b) "indigenous language", which will denote any language that attained its written form in South Africa. Thus the Tswana, though not a "first people" do speak an "indigenous language"; Afrikaners, likewise, speak an "indigenous language" but are not a "first

people". English speakers are neither a "first people" nor do they speak an "indigenous language", while Khoekhoe and San people are a "first people" and (some) speak an "indigenous language". This advantages of this approach are that it would 1) better reflect a distinction South Africans intuitively make, and 2) make Section 6 of the Constitution intelligible. The disadvantage of this approach is that it would aggravate, not eliminate, the contradictions between South African and international terminology.

14. As noted in the introduction, this contentious notion of African group-orientedness has been used as a political weapon in South Africa; see Degenaar, 1982 and 1987. But beyond cynical politics, the tension between individual and group is very real; see An-Na'im (2002). The African Charter (see Arts. 27, 28, 29 and 45) seems to seek a kind of reconciliation of the tension.
15. It later became the Anti-Slavery International for the Protection of Human Rights (Lauren, 1998: 42)
16. In terms of law, rights of national minorities had previously found their way into bilateral treaties. Macartney (1934) notes that when one monarch ceded land to another (such as when Poland ceded Livonia and Pomerania to Sweden in 1660, and when France ceded territory to Holland in 1678 and 1697) he had a well-regarded standing to make stipulations as to protections of its former nationals. For example, when Belgium ceded land to Holland in 1814 it commemorated in a treaty that, "[Holland should] assure to all the [formerly Belgian] religious cults equal protection and privileges ...". In the late 19th and early 20th centuries, the Great Powers, for "reasons of Christianity and Humanity" used a growing body of minority-protections treaty law to regulate (or try to regulate) minority affairs in other countries on a grander scale. Thus in the 1880s Britain and Russia led a "naval display" in order to convince Turkey to treat its Armenian minority with less violence, more tolerance.
17. That strong states did not enter into any such treaties may have contributed to an appearance of illegitimacy and the collapse of the Minorities Regime.
18. Both promulgated in 1966.

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19. Kymlicka (1995: 57-63) posits three reasons for liberalism's continued rejection of group rights in the post-World War II years. These are 1) the disrepute of the minority regime; 2) the seminal American case, *Brown v. Board of Education*, which held that "separate" educational facilities were not "equal"; and 3) the fact that American intellectuals, disaffected by the mounting demands of ethnic (mostly immigrant) minorities in the United States, reinforced their anti-group rights stance. As the main expositors of liberalism, the Americans managed to broadcast their view widely.
 20. Both these tendencies found expression in the African [Banjul] Charter on Human and Peoples' Rights, adopted on June 27, 1981, (OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)). Article 18.1, for example, seems to prioritise community and family: "The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community." Articles 22, 23 and 24, meanwhile, assert the (solidarity) human rights to development, peace and a clean environment.
 21. In Donnelly's formulation, the duty-bearer can only be the state of which the concerned rights-holder is a citizen.
 22. May (2001: 132) seems to have a nascent grasp of this, at least with regard to language.
 23. I thank Adriaan van Niekerk for suggesting this exception.
 24. See UN Doc. E/CN.4/SR1389, 1392-98 (1977).
 25. I thank Professor Nina Tannenwald for this insight.
 26. See the Declaration on the Human Right to Development, resolution 41/128, Dec. 4 1986.
 27. In this sense my approach – as with the generic practical approach of interstate politics – owes much to the Austro-Marxist distinction between "national" and "cultural" communities. According to the Austro-Marxists, the nation (the state) "is the totality of men bound together through a common destiny into a community of character" (Bauer, 1995: 183), whereas ethnic groups ("nations") are merely "particular" "cultural communities" bound into that common destiny by the forces of history (see also Renner, 1978: 123-4).
 28. Specifically the Section 185 Commission and PanSALB.

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29. Venter relates the example of Cheryl Carolus, a “coloured” South Africa who, in spite of her seniority and capability declined (according to ANC member Rhoda Kadalie) to stand for the slot of full-time Secretary General in December of 1997 because her candidacy would not befit the “African leadership principle”.
 30. Bekker attributes this in part to the belief, illuminated by Horowitz (1992: 29), that in plural societies such as South Africa “talking about ethnicity creates or reinforces ethnic divisions ... even when the talk is directed at how to prevent such divisions from overwhelming a future democratic state.”
 31. Also known as the Hottentots and the Bushmen.
 32. Crawhall, personal communication, based on accounts of early European travellers. /Xam almost certainly existed in a dialect continuum.
 33. This term acquired quite negative connotations during the apartheid era. It is, however, an accepted, and benign, term in anthropology. I use it in this latter sense.
 34. Subtractive bilingual education, also known as “early exit” or “transitional” bilingual education, employs both first-language and second-language media of instruction for a brief interval, increasing the classroom use of the second language up until the first language is phased out and the second language becomes the sole medium of instruction. Hence the first language is said to be “subtracted” from the child’s schoolroom repertoire. In the Milnerist case, Afrikaans is subtracted, leaving English only.
 35. Hector Peterson Museum, Soweto
 36. All churches, save for the Dutch Reformed Church and the Lutheran mission, opposed the Act. Only the Roman Catholic and Seventh Day Adventist churches and the United Jewish Reformed Congregation ultimately resisted it (Mandela, 1994: 155)
 37. With information from the Hector Peterson Soweto Uprising Museum.
 38. The policy fitted in well with the oppressive ideals of other contemporary pieces of legislation, including the 1953 Native Labour Act and the 1956 Industrial Conciliation Act, which also racialised the

labour market (Hlatshwayo, 2000: 65).

39. Hector Peterson Soweto Uprising Museum.
40. See, for example, *Mayibuye*, 1993.
41. Roodt, unpublished report to PanSALB; Van Niekerk, personal communication.
42. The term “minority” often makes little sense outside the European context. For example in South Africa, if one were to promulgate “minority” protection on a racial basis, one would only manage to protect white people. If one sought to protect linguistic minorities, one would only manage to provide protection for everyone against the dominance of a vacuum, since no language group constitutes a majority. Both approaches fail to do justice to the need for protection of non-minority marginalised peoples. Yet I retain the term “minority” in this section in order to reflect the dominant international discourse. The reader can imagine the word “community” in place of “minority” when considering the South African context.
43. Compare the United States’ Executive Order 13166 concerning minority language services.
44. Nigel Crawhall, personal communication.
45. Paragraph 209-210 of the First Certification Judgment.
46. Personal communication, 6 November 2002.
47. Act No. 19, 2002, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act
48. *Ex Parte Gauteng Provincial Legislature: in re: Dispute Concerning the Constitutionality of certain Provisions of the Gauteng School Education Bill of 1995* 1996 3 SA 165 (CC) at 176F-G.
49. See paragraph 213 of the First Certification Judgment.
50. As alluded to earlier in the chapter, it is not yet clear whether this right belongs to all linguistic communities, or simply to those whose language has official status.
51. In late 2002 “DACST” split to become the separate Departments of Arts and Culture (DAC), and Science and Technology (DST), respectively. Since most of the developments discussed in the chapter occurred during the “DACST” tenure, I use that same term

in nearly all instances.

52. Interestingly, the bulk of the Bill's drafts maintained *four* categories of official languages, combining Venda and Tsonga in the third category, and English and Afrikaans in the fourth — two pairings that take advantage of the widespread English/Afrikaans bilingualism, and the similar widespread multilingualism of speakers of the (small) languages Venda and Tsonga. The eleventh-hour decision to change the number of rotational categories from four to six strikes many in the language policy community as a government-instigated attempt to undermine the Bill's implementation, by edging it toward a state of impracticality.
53. Act No. 59 of 1995: Pan South African Language Board Act.
54. Less than \$90 000.
55. Act No. 108 of 1996: The Constitution of the Republic of South Africa Act.
56. Pan South African Language Board Amendment Act, 1999.
57. *Louw v Transitional Local Council of Greater Germiston* 1997 8 BCLR 1062 (W).
58. *S v Matomela* 1998 3 BCLR 339 (Ck).
59. Albie Sachs; see above.
60. 18/5/2000 Rev. No. 77/00.
61. *R v Beaulac* 1999(1) SCR 768; Reference re Public Schools Act (Man), s.79 (3), (4) and (7); *Ford v Quebec (Attorney General)*, [1988]2 SCR 712; Reference re Manitoba Language Rights [1985] 1 SCR 721.
62. The legal staff claims to have "300" complaints on their files, a number I was unable to verify. I have elided a portion of the rights complaints available to me because they pose problems of interpretation. For example, some complaint letters do not state a discernible grievance.
63. I assume readers will be aware that these statistics somewhat simplify what are otherwise the frequently complex and confused expressions of complex actors. Consequently my figures should not be understood as a mathematically precise representation of ethnolinguistic grievance. Rather, they provide a useful impression of a dynamic phenomenon.

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64. In interviews on February 18, 2003; November 4, 2002
 65. Interview with Edward Sambo, February 18, 2003
 66. In its Annual Report (June 2001) PanSALB takes on a tellingly exasperated tone when documenting its (lack of) success in executing its statutory duty of advising the Department of Education: "The work of this [education] focus area would have been greatly enhanced by a good working relationship with the Department of Education ... The Board has made numerous attempts to meet both the former Minister of Education, Dr Bengu, and the current Minister, Prof. Asmal, as well as senior members of the department. Regrettably, PanSALB is one of the few stakeholders the Minister of Education and his Director-General have not met." This imparts some sense of the regard PanSALB enjoys in government circles.
 67. Most recently, Byran Arumugam, one of two members of PanSALB's legal staff, in an interview on February 18, 2003.
 68. Professor Hennie Strydom claims that there exists sufficient precedent of PanSALB's inefficacy such that a plaintiff could convince a judge that PanSALB bears no potential for bringing about a remedy (Interview, 6 November, 2002).
 69. This will be expensive and time-consuming for a complainant. Constitutional attorney fees hover around R40 000,00 per day. A case could take years to rise to the Constitutional Court.
 70. To give some perspective, I would conservatively assess PanSALB, given its current powers, to have the potential for a mediation success rate of less than 15%.
 71. I owe this lead to Kathleen Heugh.
 72. In this context the reader may compare Giliomee, et. al. (1999), who argue that the ANC has "appropriate[d] the rituals of democracy without the substance" and Zakaria, who examines the phenomenon as the "rise of illiberal democracy".
 73. The Cape Town-based democracy watchdog IDASA has documented some undemocratic exertions of control. See, for example, its report on corruption and the arms deal (2001).
 74. "In addition to the apartheid-era laws such as the Regulation of Gatherings Act, a smorgasbord of Bills, which give the security and

intelligence agencies additional powers, is in the offing. These include the Interception and Monitoring Bill, the Intelligence Services Bill, the Electronic Services Bill, the Electronic Communications (Pty) Ltd Bill, the National Strategic Intelligence Amendment Bill and the Anti-Terrorism Bill.

75. One may briefly note the words of the ever-prophetic Tocqueville, who anticipated that even small localised pockets of political opposition could hold the “tyranny of the majority” in check: “The townships [!], municipal bodies and counties form so many concealed breakwaters, which check or part the tide of popular determination. If an oppressive law were passed, liberty would still be protected by the mode of executing that law; the majority cannot descend to the details and what may be called the puerilities of administrative tyranny (1954: 282).
76. The NNP advocates an independent PanSALB because it realises that much of its constituency values Afrikaans, and that the multilingual mission of an (independent) PanSALB would best accomplish that. The DA, meanwhile, perceives the language question as an issue on which the ANC is vulnerable, and so endorses an independent PanSALB. The IFP did not participate in the Constitutional Assembly.
77. As reported earlier, Adriaan van Niekerk, language ombudsman for the NNP, makes this estimation.
78. Schlemmer (1999: 241) reports that in a February 1997 survey he conducted with MarkData, 83% of Afrikaans-speakers (“both white and brown”) were “unhappy or very unhappy about the official treatment of their cultural values and language”.
79. Interview, 4 November 2002.
80. In transcript of “Presentation from PanSALB” to Sports, Recreation, Arts and Culture Committee of Gauteng Provincial Legislature, Monday 21 May 2001.
81. The survey found that Venda- and Northern Ndebele-speakers show high “summed levels of frustration regarding the unavailability of visual communication in own language” (2000: 80) while Zulu-speakers reported the most frustration with not being able to use their language in public interactions (2000: 47).

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82. In transcript of "Presentation from PanSALB" to Sports, Recreation, Arts and Culture Committee of Gauteng Provincial Legislature, Monday 21 May 2001.
 83. Interview, November 6, 2002.
 84. Professor Marivate notes this possibility in transcript of "Presentation from PanSALB" to Sports, Recreation, Arts and Culture Committee of Gauteng Provincial Legislature, Monday 21 May 2001.
 85. These narratives are based on interviews with Dr. Peter Boshego and Mr. Silas Lemakwana (February 24, 2002), both close to the Lovedu issue, and on an interview with the executive board of NANO (November 3, 2002) and subsequent correspondence with Rev. Lesiba Molomo of NANO.
 86. Interviews, Nov 4. Some staff asked for anonymity. The amount spent on NANO is disputed; the highest estimate is R150 000, or less than \$15 000.