

**LANGUAGE RIGHTS  
IN CRIMINAL AND CIVIL COURT PROCEEDINGS:  
THEIR CONSTITUTIONAL PROTECTION IN  
SPAIN VS. PUERTO RICO**

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I. INTRODUCTION

Inspired by Professor Jasmine Gonzales Rose's mock faculty recruitment interview at the October 6-9, 2011, LatCrit XVI Annual Conference in San Diego, California, during which she spoke about the Puerto Rican justice system and criminal defendants' Sixth Amendment rights, this essay broadens the scope of Gonzales Rose's analysis<sup>1</sup> by drawing cross-border comparisons between the linguistic

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1. Jasmine B. Gonzales Rose, *The Exclusion of Non-English Speaking Jurors: Remediating a Century of Denial of the Sixth Amendment in the Federal Courts of Puerto Rico*, 46 HARV. C.R.-C. L. L. REV. 497, 498 (2011). Professor Gonzales Rose's article points out that the exclusion of non-English-speaking jurors—people who cannot afford English language instruction—leaves primarily middle to higher socio-economic status citizens, who tend to have sufficient income for attaining English language education in private schools, as the majority representatives of Federal District Court of Puerto Rico juries. Gonzales Rose further argues that

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failings she describes in the United States District Court for the District of Puerto Rico (Federal Court of Puerto Rico) proceedings and a variety of selected international jurisdictions in which constitutional protections are applied in theory, but which, in practice, fail to meet justice's principle objective of ensuring the accused or judged, in either criminal or civil proceedings, a fair trial or hearing.

This essay's cross-border comparisons explore the rich linguistic lessons offered in the doctrinal tenets established by Spain's Constitutional Tribunal, which defines and analyzes the viability of bilingualism in court proceedings within multilingual Spain. This essay then discusses how the federal jury selection process in Puerto Rico is affected by a predominantly English-vernacular Federal District Court system, and compares it with a relatively recent implementation of Spanish jury practice. After analyzing how linguistic compromises as well as constitutional protections are applied in multilingual Spain, this essay concludes that these same principles could be applied as a positive, forward-thinking model, adaptable to Puerto Rico and other multilingual jurisdictions.

## II. SPAIN'S JURY SYSTEM AND A DEFENDANT'S RIGHT TO A FAIR TRIAL

The jury system in Spain was implemented fairly recently and is governed by statutory law LOTJ 5, dated May 22, 1995.<sup>2</sup> The great congressional debate leading up to the statutory founding of Spanish juries largely centered on whether a judge-like figure would have a role to play in complementing the ultimate deliberations of the jury members. The final decision was to opt for a pure or independent jury, in which judge-figure influence would not intervene, even though the former judge-jury roles had been traditionally combined in the Water Tribunals of Valencia, which, in turn, had been a procedural spinoff inspired by the earlier problems arising in managing

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excluding the non-English-speaking jury candidate, who is an important representation of the Puerto Rican community, makes for a federal jury's composition which does not meet the "fair crosssection of the community" requirement under the Sixth Amendment of the United States Constitution. *Id.*

2. BEATRÍZ SANRUJO REBOLLO, LOS JURADOS EN USA Y EN ESPAÑA: DOS CONTENIDOS DISTINTOS DE UNA MISMA EXPRESION [JURIES IN THE USA AND SPAIN: TWO DISTINCT MANIFESTATIONS OF THE SAME MODEL] 66 (2004).

cultivation plots in Valencia.<sup>3</sup> The European evolution of jury choice has historically favored the intervention of a judicial figure in the jury process, unlike the pure Anglo-Saxon version of juries in which community peers, at the exclusion of any external influence, exclusively render a verdict.<sup>4</sup> Nonetheless, it is to be noted that many European countries which at first adopted the Anglo-Saxon “pure” jury model, eventually gravitated to the “mixed” version of judge-jury decision-making.<sup>5</sup>

That said, the Spanish linguistic climate in selecting juror candidacy, making juror choice, and choosing the active vernacular in court proceedings is very much determined in Spain by the preference of the accused or the defendant, as the case may be.<sup>6</sup> While bilingualism in Castilian Spanish and other Iberian regional languages is highly prevalent in Spain, this adjustment to a defendant’s or an accused’s preference is easily achieved precisely because bilingualism so permeates Spanish regional culture.<sup>7</sup>

Similarly, the jury selection process in Spain is ruled by Article 40 of the LOJT 5/1995.<sup>8</sup> It is much like that of the jury system of the United States and Puerto Rico, in that the jury candidates are randomly selected from election roster lists, questioned, and selected in the presence of the accused and defense counsel, with eight permitted recusals to eliminate jury candidates without prosecution nor defense needing to give a rationale for their elimination.<sup>9</sup> A

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3. *Id.* at 66.

4. *Id.* at 67.

5. *Id.*

6. Attorneys Jacinto Romera Martínez, who specializes in representing clients in criminal and civil litigation, and Juan Munguira González, Legal Advisor, International Relations Director of the Comisión Nacional de Valores de Madrid (CNMV) and OECD-Paris Representative of the CNMV, both confirm that the defendant’s regional language bears substantial weight in the proceedings. And, where the defendant is neither fluent in Spanish nor in a regional language, Spanish courts provide interpreter services.

7. For a discussion on bilingualism and its historical evolution in Spain, see GASPAR ARIÑO ORTÍZ, *LAS NACIONALIDADES ESPAÑOLAS: EL CASO DE CATALUÑA* [SPANISH NATIONALITIES: THE CASE OF CATALUÑA] 85-93 (Thomson Reuters, 2011) (all translations are the author’s).

8. See SALVADOR ALBA MESA, *LA SELECCIÓN DEL JURADO* [THE SELECTION OF THE JURY] 31 (2008).

9. *Id.*

distinctive feature of trial by a jury composed of community peers in Spain is that juries are allowed only in cases where the commission of severe crimes is involved: varying degrees of homicide crimes, or attempted homicide, burglary, arson, conspiracy (especially among public servants), and little more.<sup>10</sup>

Supported by historical, philosophical, and jurisprudential principles, Spain's Constitutional Tribunal outlines constitutional protections in the use of a variety of co-existing regional languages on the Iberian Peninsula. The Constitutional Tribunal, after a 333-page discourse, essentially held that, without exception, basic courtesy in approaching all human relations, ostensibly leads legal practitioners, of whatever rank, to honor the right of any defendant or respondent in Spain to be tried or heard in his or her regional language, regardless of the Spanish jurisdiction in which the relevant court proceedings are to take place.<sup>11</sup>

A word of caution: when considering language use in Spain's public service sector, Dr. Ariño Ortíz thinks it is

“ridiculous” and “embarrassing on behalf of others” that the Spanish Senate, as of the Regulatory reform of a year ago (July 2010), uses vernacular and regional languages in such institutionalized fashion, to the extent that senators must understand one another with simultaneous translation services and an earphone at their ear, when they all speak Spanish.<sup>12</sup>

In addition to being “ridiculous,” Ortiz points out the costly result, equalling \$350 million Euros annually, in addition to staffing.

### III. SPAIN'S LINGUISTIC DIVERSITY

While bilingualism has always reigned in Cataluña, the Basque country, and other regions of Spain, Dr. Ariño Ortíz makes the point that, “Catalán politicians have given [their] language a symbolic value of identity, on which their culture and their ‘national’ reality is based; it is—they say—an essential manifestation of their being.”<sup>13</sup> From Spain's transition to post-Franco democracy, no one has placed

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10. *Id.* at 15.

11. *See generally* ARIÑO ORTÍZ, *supra* note 7, at 72-75, 94-95.

12. *Id.* at 93.

13. *Id.* at 88.

difficulties on the use of Catalán; “the liberty to use it has been complete.”<sup>14</sup>

“However, after the ‘normalization’ policies, politicians, in recent years, have proposed its obligatory, imperative and excluding use in various forms.”<sup>15</sup> This has been manifested most particularly in two ways: (1) “in the world of official education, especially in primary and middle school education, imposing the use of Catalán as the only vernacular language (the university is somewhat more open, but not entirely);”<sup>16</sup> and (2) Catalán has become a requirement in order to gain access to public service positions. “The obligation to speak Catalán has recently been amplified in all sorts of commercial activity (advertisements at commercial establishments, product labelling, publicity, etc.), as well as in cultural activities, film, professional life, and relations with the government administration, a service everyone needs at some point in time.”<sup>17</sup> The statute, Dr. Ariño continues, “aspired to establish the Catalán language as the *only* official language in Cataluña, which is manifested in the statutory text of Article 6.1 as follows:”<sup>18</sup>

Cataluña’s language is Catalán. As such, Catalán is the language of normal and preferred use in public administration, public broadcasting, and it is also the language which is normally used as the principle vehicle of communication and learning in education.<sup>19</sup>

Dr. Ariño, quoting the Spanish Congress representative, Manuel Azaña Díaz, in his 1932 discourse on Cataluña’s Statutory Project, emphasizes that

[t]he expansion of Castillian Spanish in regional areas has never been subject to Royal Decree; nor has the diminishment of the use of Catalán, when in past historical periods, that diminishment in its usage may have been attributed to the King’s orders, it was instead

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14. *Id.*

15. *Id.*

16. *Id.* at 88-89.

17. *Id.* at 89.

18. *Id.* (emphasis in original).

19. *Id.* (“La lengua propia de Cataluña es el Catalán. Como tal, el Catalán es la lengua de uso normal y preferente de las Administraciones públicas y de los medios de comunicación públicos de Cataluña, y es también la lengua normalmente utilizada como vehicular y de aprendizaje en la enseñanza.”).

an expansion or diminishment movement of the respective cultures, together with the respective prestige of each cultural orientation within the State. When the Castillian State was in its splendor, at its greatest strength and Castillian literature proliferated throughout the world, Catalán writers would write Castillian, and one of the first Renaissance Castillian Spanish writers was Catalán, as you all well know. And when expansion of Castillian diminished in Cataluña, was it because someone prohibited its use? The contrary, is also true? It is a competency, not only the vital competence of a linguistic frontier, but rather the competence of a culture, the expansion of a culture, of a prestige, if you will, and what must be done to maintain that prestige, to heighten it; moreover, if we wish our Castillian [Spanish] to continue being the common language of Spain, it is not by enforcing laws that we will come to its defense, but rather through our work, with the authority of the Spanish State and with the potent efforts of Castillian culture. The rest is just talk.<sup>20</sup>

Historical context changes our perspective substantially. And Manuel Azaña's view can be fairly counterbalanced with the historical fact that, during Francisco Franco's governance from 1936 until 1975, all regional languages in Spain were, for a span of almost forty years, excluded from school instruction. During that same time, the use of regional languages was also generally prohibited in official circles. This was a part of Franco's policy to unite rather than fragment Spain as a nation. One could argue that, while for some, Franco's applied policy might appear to be justifiable, the practice of prohibiting the use of any language (that does not slander or threaten to injure person nor reputation), cuts at the root of the liberty professed by Ortega y Gasset. As a result, the "backlash" in reaction to Franco's national unification under one language policy<sup>21</sup> has been one of almost

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20. ARIÑO ORTIZ, *supra* note 7, at 89-90 (quoting Manuel Azaña Díaz's discourse in front of the Spanish Congress in 1932).

21. Wikipedia informs as follows: "Franco abolished the official statute and recognition for the Basque, Galician, and Catalan languages that the Second Spanish Republic had granted for the first time in the history of Spain. He returned to Castilian as the only official language of the State and education. The Franco era corresponded with the popularisation of the compulsory national educational system and the development of modern mass media, both controlled by the State and in the Castilian language, and heavily reduced the number of speakers of Basque, Catalan and Galician, as happened during the second half of the 20th century with other

visceral and passionate promotion of the influence and use of regional vernacular, whether Catalán, Euskera, Valencian, or other regional languages in Spain. One may also give thought to the fact that Cataluña is one of the most economically self-sufficient and successful regions of Spain. Hence, Cataluña's proclivity to promote the use of its language, in both business activities and leisure, is a reflection of the high, collective self-esteem among the Catalán people, who are traditionally highly boosted in morale by the relative economic success of the northeastern region.

#### IV. PUERTO RICO'S FEDERAL JURY SYSTEM AND A DEFENDANT'S RIGHT TO A FAIR TRIAL

In her research, Professor Gonzales Rose emphasizes that excluding non-English speaking jury candidates from the Federal Court of Puerto Rico jury candidate pool has the discriminatory effect of not meeting the "fair crosssection of the community" standards which are statutorily required and constitutionally protected.<sup>22</sup> What results from excluding non-English speaking candidates from Federal Court of Puerto Rico jury pools, however, is that the resulting community representation turns out to be imbalanced, with the disproportionate inclusion of persons who largely are from a relatively high socio-economic status, permitted by their exclusive access to private English language education. This is hugely different from the disadvantaged socio-economic circumstances of the majority of the Spanish-speaking population.

It is remarkable, at this point in our discussion, to highlight the justifications or "significant interest" with which an all-English language Federal Court in Puerto Rico system was founded, in spite of

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European minority languages which were not officially protected such as Scottish Gaelic or French Breton. By the 1970s the majority of the population in the urban areas could not speak the minority language or, as in some Catalan towns, their use had been abandoned. The most endangered case was the Basque language. By the 1970s Basque had reached the point where the language was close to extinction and it is now recognised that the language would have disappeared in a few decades. This was the main reason that drove the Francoist provincial government of Alava to create a network of Basque medium schools (Ikastola) in 1973 which were State-financed." *Francisco Franco*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Francisco\\_Franco](http://en.wikipedia.org/wiki/Francisco_Franco) (last visited Mar. 20, 2012).

22. Gonzales Rose, *supra* note 1, at 498, 519-20.

the existence of Puerto Rico's predominantly Spanish-speaking community. The judicial and legislative justifications are: (1) "providing venue alternatives;"<sup>23</sup> (2) "providing uniformity expected in national [U.S. mainland] courts, which are different from local courts;"<sup>24</sup> (3) "providing nonresident non-Spanish speaking citizens use of the district court;"<sup>25</sup> (4) "providing easy access for members of the Attorney General's staff;"<sup>26</sup> (5) "allowing easy transfer of judges;"<sup>27</sup> and (6) "avoiding 'translation distortions.'"<sup>28</sup>

While all of these "significant interest[s]" are convenient for the outsider "guest-citizen," they have the effect of not only resulting as inconvenient, but also as outright unjust for the local Spanish-speaking citizen in Puerto Rico.

As Professor Gonzales Rose mentions in her article,

[u]se of English [in the Federal Court of Puerto Rico] is at times absurd, as when attorneys, parties, jurors and the judge are all native Spanish speakers, and yet all is translated back and forth between English and Spanish for no other reason than to comply with a statutory mandate, for no one pays any attention to the English translations.<sup>29</sup>

The author of this essay would add that, while "no one pays any attention to the English translations"<sup>30</sup> in the proceedings at hand, Federal Appellate practice requires the English translations, out of courtesy, as the Spanish Constitutional Tribunal would require, to the non-Spanish speaking appellate judges. This is not to dismiss that, as Professor Gonzales Rose confirms,

[i]n Puerto Rico all the federal judges and most of the counsel are fully bilingual. The defendants in criminal proceedings are usually monolingual Spanish speakers or otherwise do not have sufficient English language ability to understand the proceedings. Accordingly, most defendants are provided simultaneous

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23. Gonzales Rose, *supra* note 1, at 523.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* (citing *United States v. Benmuhar*, 658 F.2d 14, 19 (1st Cir. 1981)).

29. Gonzales Rose, *supra* note 1, at 532 [internal citations omitted].

30. *Id.*



interpretation throughout the proceedings pursuant to their rights under the Sixth Amendment Confrontation Clause. Testimony of witnesses, except federal officers, is usually in Spanish. . . . It is a well-known local litigation strategy to have a witness or party speak in Spanish, even if he or she is fully bilingual, because it is perceived that the jurors will be more receptive to information presented in their native language. Audio or video recording or correspondence evidence is often in Spanish. It is a common occurrence for everyone in the courtroom (from the judge, counsel, defendant, jurors, court staff, and witnesses) to be fluent in Spanish and hours of Spanish testimony to be heard, with English used only to dutifully translate the proceedings into an English record.<sup>31</sup>

But there is more controversy than meets the eye on this point, and that controversy will be described at a later section in this essay. Let us first examine what happens in Spain with respect to interpreting.

#### V. THE ROLE OF JUDICIAL INTERPRETERS IN DIFFERENCE CULTURES AND THE INTERPLAY OF DOMINANT VS. SUBORDINATE VALUES

To further illustrate the judicial limitations of coupling the use of dominant (e.g., English) versus subordinate (e.g., Spanish) languages, let us consider the following example: when assisting the late Judge Gilberto Gierbolini-Ortiz as Law Clerk in criminal and civil proceedings at the Federal Court of Puerto Rico, the author remembers listening to the English-interpreted court testimony (while on occasion, she interpreted testimony of a Spanish-speaking criminal defendant herself). The author observed that, in spite of the existence of simultaneous interpreters, the defendant was at an insurmountable disadvantage in not being able to readily and spontaneously comprehend what was being stated in court by the prosecution, defense counsel, the judge, as well as the jury foreperson. The defendant, moreover, appeared to settle for a superficial understanding of what the precise legal implications of the proceedings might be for him.<sup>32</sup>

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31. Gonzales Rose, *supra* note 1, at 531-32 [internal citations omitted].

32. For an analysis of “English only” statutes, see Keith Aoki, *Anti-Subordination and the Legal Struggle Over Control of the “Means of Communication:” Technology, Language and Communicative Power Introduction:*

Shifting to Colombia's linguistic context, the word "colaboremos," made all the difference in the author's welcome to Bogotá, Colombia in October 2011. Varying conjugations of the verb "collaborate" are consistently used by Colombian hospitality staff, taxi drivers, and phone receptionists to connote a willingness to imminently, if not immediately, help the listener, with the added caveat of making a newcomer to the country feel like she is already part of their team. That is the difference *one word* can make to give the newcomer the sense of inclusion, as opposed to exclusion, from a given partnership, community, society, or culture.

In yet another context, compare the above example with that of a Spanish-speaking criminal defendant up for a possible life-term sentencing, who is hardly to feel linguistically included as a member of his own Puerto Rican, Spanish-speaking community when he is obliged to offer testimony translated to English before a jury. In such an incongruent scenario, he is more likely to feel like a foreigner in his own land.<sup>33</sup> Moreover, in Puerto Rico's Federal Court context, the same defendant can potentially suffer the consequences of being judged by a jury which represents an unfair cross-section of his community.<sup>34</sup>

In Colombia,<sup>35</sup> the role of the court interpreter tends to supplement the role of defense counsel, and the interpreters volunteer

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*Language is a Virus*, 53 U. MIAMI L. REV. 961, 962-68 (1999).

33. For a discussion on the interplay of supremacy between two sovereign bodies as compared to global citizenship, see Berta Esperanza Hernández-Truyol & Matthew Hawk, *Traveling the Boundaries of Statelessness: Global Passports and Citizenship*, 52 CLEV. ST. L. REV. 97 (2005).

34. Gonzales Rose, *supra* note 1, at 498.

35. The many languages of Colombia's ethnic groups are constitutionally recognized as official languages in their territories. In places with non-Spanish linguistic traditions, bilingual education is obligatory. Constitución Política de Colombia [C.P.] art. 10. More than sixty aboriginal languages exist today, and they include, but are not limited to: Bora, Cocama-Cocamilla, Cocoma, Cofán, Cuiba, Guahibo, Guayabero, Kuna, Macaguán, Minica Huitoto, Murui Huitoto, Paezan languages, Playero, Páez, San Andrés-Providencia Creole, Ticuna, Uw Cuwa, and Wayuu. *21 de Febrero, Día Municipal de la Lengua Materna y Día Nacional de las Lenguas Nativas*, MINISTERIO DE CULTURA, <http://www.mincultura.gov.co/?idcategoria=42641>. Columbia's Constitution recognizes the legitimacy of these languages, and Article 10 specifically states, "Spanish is the official language of Colombia. The languages and dialects of ethnic groups are also official languages of

informal explanations in order to help the defendant understand what to anticipate in the course of the court proceedings at hand.<sup>36</sup> However, in the Federal Court of Puerto Rico, the role of the interpreter in court proceedings is strictly limited to interpreting testimony, court instructions, judge's findings, the jury's verdict, and nothing more. In the former context, however, defense counsel is expected to inform the defendant about the implications of the court proceedings in which he or she may be accused.

Keeping in mind the Colombia "colaboradores" sense of *inclusion*, contrasted by the criminal trial defendant's sense of *exclusion* in the Federal Court of Puerto Rico, let us consider for a moment two other linguistic contexts across our globe: the mandarin-speaking defendant tried in pre-1987 British-ruled Hong Kong courts of law, coupled with the Bengali- and Hindi-speaking respondents in English-speaking court proceedings in India. These are just a few added illustrations of how pre- and post-colonial legal history<sup>37</sup> reveals that the imposition of language and religion were the first colonizing strategies to enable control over indigenous peoples.<sup>38</sup>

Hence, through prohibiting the use of indigenous languages and inflicting fear of practicing or expressing their variations of indigenous faith, colonization strategies succeeded in exerting pan-geographical influences and ultimate control, under the guise of

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their territories. Education imparted in territories possessing their own linguistic traditions will be bilingual." ("El castellano es el idioma oficial de Colombia. Las lenguas y dialectos de los grupos étnicos son también oficiales en sus territorios. La enseñanza que se imparta en las comunidades con tradiciones lingüísticas propias será bilingüe."). Constitución Política de Colombia [C.P.] art. 10.

36. For this assertion, the author relied on observations made and shared in November 2011, by Dr. Isabel Londoño Polo, Ed. D. Harvard University, International Education Consultant and Certified Coach based in Bogotá.

37. For excellent overviews of the power play colonizers exercised—at the expense of the then outnumbering indigenous population—at an institutional, legal, and economic level in Mesoamerica, see CHARLES C. MANN, 1491 (2005) and CHARLES C. MANN, 1493 (2011). While other historians have heretofore been afraid to admit to their pandemic massacre, much less put that historical admission in print, Charles C. Mann's pre- and post-colonial accounts explain what, historically, really happened to indigenous peoples.

38. See Charles R. Venator Santiago, *Countering Kulturkampf Politics Through Critique and Justice Pedagogy*, 50 VILL. L. REV. 749 (2005), for a discussion on forms of inequality and forms of subordination.

“unification” by faith and “common expression” by language.<sup>39</sup> This is not to acknowledge the great institutional contributions and, ultimately, “blended cultural values”<sup>40</sup> in formal education, justice, and general government administration on the part of colonial powers. Nonetheless, certain highly refined and sophisticated artistic, scientific, technological, and governmental advancements among groups of certain ethnic origins (African, Aztec, Chinese, East Indian, Inca, Mayan, Navajo, as well as the Sioux), must be acknowledged as ones which were on expansion mode and deeply rooted centuries before colonizing powers happened to sail to shores unknown.

This is quite a contrast to general hypothesizing the author has heard among primary and secondary school teachers who allege that learning more than one language in the early years simply leads the developing child to linguistic confusion. This is, by far, an underestimation of the tremendous language acquisition powers of the human brain, especially true from birth through the “critical period” (age twelve) described earlier.<sup>41</sup>

How could multilingualism, for both the individual and society at large, not benefit our greater community? Moreover, like Professor Gonzales Rose and many scholars (especially those who are bilingual Puerto Ricans), the author acknowledges the economic advantages of not only acquiring English as a second language, but learning *any* language potentially leads to an economically benefitted skill-base gain in any labor market. By analogy, take developing a varied language repertoire as having that many more variously-sized hooks and nets with which to fish—if we can fish bass, salmon, and trout as easily as sardines and anchovies, our banquet gets all the richer and

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39. See Margaret Montoya, Christine Zuni Cruz & Gene Grant, *Narrative Braids: Performing Racial Literacy*, 153 AM. INDIAN L. REV. 153 (2009).

40. Where would we culturally be, for example, without the evolved, multicultural blending found in jazz, gospel, and Afro-Cuban music?

41. See Brian Claybrook & Jeff Andrews, Presentation at W. Wash. Univ., Neurological Connection to Language Acquisition (Dec. 2009), available at <http://www.wce.wvu.edu/Resources/CIRCLE/Lectures/Neurological%20Connection%20to%20Language%20Acquisition.pdf>; Paola Uccelli & Mariela M. Páez, *Narrative and Vocabulary Development of Bilingual Children From Kindergarten to First Grade: Developmental Changes and Associations Among English and Spanish Skills*, 38 LANGUAGE, SPEECH, AND HEARING SERV. IN SCH. 225, 225-36 (2007).

more jovial. Our communication tools become polyvalent in helping us develop the ability to work with people of all trades, professions, and cultures within, for example, e-commerce, international financial markets, diplomatic relations worldwide, public services, the publishing industry, broadcasting media, artistic expression, and the performing arts.

That said, Professor Gonzales Rose cites bilingualism theorists, Erwin H. Epstein and William C. Schweers, to support a “prevalent belief in Puerto Rico that bilingualism can be a serious threat to one’s *puertorriqueñidad* or ‘Puertoricanness,’ and that learning English can result in the unlearning of Spanish, which is synonymous with loss of culture.”<sup>42</sup> The author of this essay ventures to point out that language acquisition processes can only be positive in whatever direction they may develop. In fact, it is more stimulating for brain-synapse-neurotransmitter development when multiple languages are acquired simultaneously at the so called “critical period.”<sup>43</sup>

Annette R. Appell, moreover, indicates that children, as the primary receivers and transmitters of language, have an important role in perpetuating and enriching culture, moral value, and political power.<sup>44</sup>

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42. Gonzales Rose, *supra* note 1, at 507 (citing Erwin H. Epstein, *National Identity and the Language Issue in Puerto Rico*, 11 COMP. EDUC. REV. 133, 137 (1967)).

43. In 1967, Eric Lenneberg applied the Critical Period Hypothesis to human language, and he hypothesized that there is a biologically-determined period in which humans are able to acquire language more easily. With other researchers, Lenneberg determined that after the age of twelve, the critical period for language acquisition ends. Lenneberg concluded that, after the Critical Period, language can never be learned in a normal, fully-functional sense with native like pronunciation. Claybrook & Andrews, *supra* note 41; Bora Lee, *The Biological Foundations of Language: Does Empirical Evidence Support Innateness of Language?*, DUKE.EDU (1997), <http://www.duke.edu/~pk10/language/neuro.htm> (“Snow found that vocal imitation at 14 months was related to the number of nouns and verbs produced, the total productive vocabulary, and the ratio of words produced to words comprehended at 20 months. Such evidence supports Chomsky’s view of the existence of deep [neurological] internal structures associated with language acquisition.”).

44. Annette R. Appell, *Immigration: “Bad” Mothers and Spanish-Speaking Caregivers*, 7 NEV. L. J. 759 (2007).

What do other, more updated researchers say about becoming bilingual? Uccelli and Páez's 2007 study on incipient bilingualism<sup>45</sup> suggests

[a] positive relationship between early Spanish storytelling skills and English narrative skills. This means that the practice that young children have in telling well-organized stories in Spanish, in or out of school, might carry over to corresponding storytelling skills in English. More research is needed to know whether this represents a causal relationship; does practice in Spanish narrative actually improve these same skills in English? While we do not yet know the answer to this question, these promising results suggest that narrative structure skills across languages support, rather than conflict, with each other.<sup>46</sup>

## VI. CONCLUSION

Having virtually traveled with the reader of this essay through different geographical, cultural, and, consequently, linguistic contexts within courts of law and their judicial proceedings, the intent of this essay is to offer opportunity for reflection on the fairness, or existing lack of fairness, to any defendant or accused when any language in a judicial proceeding, whether in Puerto Rico, Hong Kong, India, or Colombia, is imposed. We illustrate alternatives through the constitutional protections offered in Spain, which serve to protect the linguistic regional interests of Iberia's culturally varied communities, which co-exist under the umbrella of Castillian Spanish, and Portuguese, in the case of Portugal.

The author emphasizes that linguistic inclusion of an individual in any judicial community, as opposed to their linguistic exclusion, can only foster defendant or witness collaboration in any judicial proceeding. In similar fashion, the author suggests that Puerto Rico and the Federal Court of Puerto Rico should contemplate, in the near future, a bilingual federal court system which would more accurately

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45. Uccelli & Páez, *supra* note 41, at 225-36.

46. Maria Fusaro, *Mapping the Literacy Development of Bilingual Children*, HARV. GRADUATE SCH. EDUC. NEWS & IMPACT (Jan. 6, 2010), <http://www.gse.harvard.edu/news-impact/2010/01/mapping-the-literacy-development-of-bilingual-children/>. See also Paola Uccelli & Mariela M. Páez, *supra*, note 41.

reflect the linguistic reality of Puerto Rican culture—particularly in the interest that a defendant or accused can choose to stand trial, as he or she may prefer, in either English or Spanish.

We have also analyzed the repercussions of language choices made in the jury selection process, both in the Federal Court of Puerto Rico and in courts of law in Spain. The examples of judicial proceedings offered in this essay confirm that flexibility and language polyvalence, together with basic courtesy in human relations, as explicitly required by the Spanish Constitutional due process protections, makes for a language-choice recipe that best ensures fairness and due process of law for all concerned.

To conclude, while there are certainly empowering virtues in fostering common and shared language, Dr. Gaspar Ariño-Ortíz, in his timely exposition on the *Revindication of Language* (original, *Reivindicación de la lengua*), states:

Languages are no one's property, nor can they be imposed, nor can they forever live under protection; they are spontaneous, growing and dying by influence of a series of factors which vary, from demographic to economic, scientific and cultural influences achieved by way of language. The State must facilitate—not only permit—the use of other languages, but it should also ensure, wherever possible, that a common language exists in the country in which all its citizens, when they meet, can understand one another because that will give them enormous advantages.<sup>47</sup>

One example Dr. Ariño cites “is the United States, a country of confluences where one can ‘hear’ many languages, but where one rule applies to interstate official life: ‘English Only.’ This has been an important key to [the country’s] success and power.”<sup>48</sup>

The Spanish philosopher, José Ortega y Gasset, is quoted to have said, as early as 1932, that “‘without entering into speculations now about the proximity of language to the soul of its communities, the principle which should rule in this matter is liberty.’”<sup>49</sup> As may apply to Catalán and Mallorquín, Basque/Euskera, Gallego, Valencian, Asturian, Extremaduran, and other regional languages in Spain,<sup>50</sup> the

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47. ARIÑO ORTÍZ, *supra* note 7, at 93.

48. *Id.* at 93.

49. *Id.* at 92.

50. The languages of Spain are: (1) Castilian/Castellano, which is

obligation is—to the extent that each person wishes and is able—to teach and learn both Spanish and a given regional language, “but that liberty should rule the use of one or another language in education centers, in official documents (administrative, notarial, judicial), and in order to write, publish books or exhibit films, to research or teach at universities, and, in general, for whatever manifestation of life.”<sup>51</sup> Naturally, Ortega thought that the liberty of each person and the right to use one language or the other language in that community will be accompanied by the obligation and the duty to accept its use by others (putting in place the necessary means to achieve understanding). In conclusion Dr. Ortega writes:

With time—in brief time—a bilingual society will emerge, one in which everyone will be interested in knowing and using both languages, in the ways that are necessary for the development of its own life (which in and of itself will open more possibilities), and, finally, the very force, extension, utility and cultural richness of each language will give the new a greater or lesser role in some disciplines.<sup>52</sup>

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“internationally recognised as Spanish or Español [sic] and spoken by about 75% of the population”; (2) Catalán/Catalá and Valencian/Valenciano, which are “spoken by an estimated 10 million people, with perhaps 7 million using it as their primary language”; (3) Galician/Gallego, sounding more akin to Portuguese than Castilian, “is the language of the north west of Spain where it is spoken by 3 million people”; (4) “Basque/Euskera [which is] the language of some 600,000 in the three Basque provinces of Alava (Araba), Biskaia [Vizcaya] (Biskay) & Gipuzkoa, and the northern part of Navarra, as well as about 100,000 in the Pyrénées-Atlantiques region of France”; (5) Asturian/Asturiano, which approximately “450,000 people speak [ . . . ] in the northern province of Asturia, 100,000 as their main language”; (6) Extremaduran /Extremeño, which is an archaic dialect of Castilian, isspoken by some 200,000 people; and (7) “[other indigenous] languages such as Aragonese (perhaps 30,000 speakers), Fala (10,000 speakers) and Occitan (Gascón, Aranese), though generally supported by local statute, currently have limited representation in the local media or school curriculum.” Maurice Hamlin, *Language of Spain*, PRACTICALSPAIN.COM, <http://www.practicalspain.com/Language.htm> (last visited Mar. 27, 2012).

51. ARIÑO ORTÍZ, *supra* note 7, at 92.

52. *Id.* at 92-93.