

Pedagogically speaking, these research findings are excellent news. They confirm that developing fluent bilingualism and cultivating academic excellence are complementary, rather than contradictory, goals. It is not necessary to sacrifice LEP students' native-language skills to teach them effectively in English. Moreover, the findings suggest that, while language is not the only barrier to school success for these children, approaches that stress native-language instruction can be helpful in overcoming other obstacles such as poverty, family illiteracy, and social stigmas associated with minority status. These challenges are formidable, to be sure, requiring schools to replicate effective program models, adapt them to local conditions, train and retrain teachers, develop curriculum and materials, encourage parent participation, and pay attention to a host of other practical details. Yet they are hardly insuperable, provided there is a commitment to improve programs for English learners.

Politically speaking, however, the research findings are less encouraging. They support an educational rationale for bilingual instruction that is both complex and counter-intuitive to members of the public. They also imply a sociopolitical goal that few Americans are inclined to endorse: the legitimization of bilingualism in public contexts. Since the mid-1980s, many US voters have reacted defensively against the racial, cultural, and language diversity brought by rising levels of immigration. This has led to a nationwide campaign for 'the legal protection of English,' resulting in numerous laws restricting the use of other languages (see pp. 4-30, 31-51).

Immigrant children's progress in acquiring English is now regarded as a matter of urgency, not only by Anglo-Americans but also by a significant number of immigrant parents. Hence the growing popularity of nostrums like 'structured immersion,' whose enthusiasts promise short-cuts to English proficiency. Conversely, bilingual approaches that feature a more gradual transition to the mainstream are vulnerable to legislative restrictions. In addition to Proposition 227, bills have been proposed in several states and localities, as well as in Congress, to impose arbitrary time limits on a child's enrollment in bilingual education (or, in some cases, *any* special program to address limited English proficiency).

To understand how we arrived at this juncture, it is necessary to analyze the historical roots of today's language attitudes. Ethnic diversity is hardly a recent phenomenon in this country. Nor is bilingual education. How have Americans thought about and coped with these issues previously? How have current policies on language-minority education evolved? And how are future ones likely to be determined?

The Political Paradox of Bilingual Education

Enacted at the apex of the Great Society, the Bilingual Education Act of 1968 passed Congress without a single voice raised in dissent. Americans have spent the past thirty years debating what the law was meant to accomplish. Was it intended primarily to assimilate limited-English-proficient (LEP) children more efficiently? To teach them English as rapidly as possible? To encourage bilingualism and biliteracy? To remedy academic underachievement and high dropout rates? To raise the self-esteem of minority students? To promote social equality? Or to pursue all of these goals simultaneously? The bill's legislative history provides no definitive answer.

It is hardly an idle question. Whether to continue teaching LEP students in two languages is now a matter of public debate throughout the United States. Since the mid-1980s, critics have won increasing support for the contention that this experiment, while well-intentioned, has failed to meet expectations. Now policy-makers are seriously considering demands to limit or even dismantle the program. California voters have already chosen the latter course. Proposition 227, a ballot initiative approved in June 1998, eliminates most native-language instruction in a state with 40 percent of the nation's LEP students. The future of bilingual education is suddenly in doubt.

Ironically, research provides considerably more support for bilingual approaches today than it did in 1968, when few program models existed and almost none had been evaluated. What seemed reasonable in theory – that investing in children's native-language development should ultimately pay cognitive and academic dividends – has now been borne out in practice. Not that success has been universal for all approaches labeled bilingual. Nor has research proved 'conclusively,' beyond a reasonable doubt, their superiority over English-only methodologies for all children in all contexts. By a more reasonable standard, however, *a preponderance of the evidence* favors the conclusion that well-designed bilingual programs can produce high levels of school achievement over the long term, at no cost to English acquisition, among students from disempowered groups (see, e.g. Ramírez *et al.*, 1991; August and Hakuta, 1997; Greene, 1998).

Deconstructing Title VII

Let us begin by considering our original question. Was the Bilingual Education Act (also known as Title VII of the Elementary and Secondary Education Act) intended as:

- an *anti-poverty initiative* to overcome the educational disadvantages of language-minority students – that is, to remedy the problem of limited English proficiency?
- an *anti-discrimination measure* to open up the curriculum for LEP students – to guarantee their right to equal educational opportunity?
- an *experiment in multicultural education* to foster bilingualism – to develop linguistic and cultural resources other than those of the dominant society?

These alternatives correspond to Ruiz's (1984) 'orientations in language planning,' or ways of framing language issues and the language policies adopted in response.

Language-as-problem focuses on social liabilities, such as limited proficiency in the majority tongue and its academic consequences. From this perspective, Title VII was a way to ease LEP children's transition to the mainstream by teaching English, raising self-esteem, and thereby enabling these students to progress in school.

Language-as-right emphasizes questions of social equality, or lack thereof, such as whether members of minority groups enjoy unimpeded access to public institutions. In this view, Title VII was designed to overcome language barriers, make school meaningful for LEP students, and give them a chance to succeed.

Language-as-resource takes a human-capital approach, stressing the social value of conserving and developing minority language skills. Seen through this prism, Title VII was intended to promote fluency in two languages, exploit cultural diversity to meet national needs, and encourage ethnic tolerance.

Ruiz's orientations can help to illuminate the assumptions and implications of alternative language policies. For example, language-as-problem, by focusing on students' *language disability*, is consistent with a quick-exit pedagogy (bilingual or otherwise) that places the rapid acquisition of English ahead of other academic goals. By contrast, language-as-resource, by focusing on students' *language ability* in a minority tongue, tends to support a late-exit enrichment model that continues native-language instruction after students are proficient in English.

As *ex post facto* descriptions, however, Ruiz's categories are less useful in explaining causality – that is, in analyzing the political and ideological factors that go into language policy decisions. Orientations in language planning, elaborated in 'pure' form and focusing on sociolinguistic issues, may accurately summarize the policy alternatives as understood by experts in the field. Yet rarely do they correspond to the interests of contending factions or to the actual terms of political debate, which are never pure; usually they extend well beyond the realm of language. In short, *orientations toward language per se are rarely determinant in policy decisions about language*. This becomes evident in tracing the legislative history of Title VII.

Political momentum was strong from the outset, as thirty-seven different bilingual education bills were introduced in the 90th Congress. Throughout 1967, a series of House and Senate hearings showcased the educational problems of LEP children and elicited virtually unanimous support for a solution involving bilingual instruction. Disagreements were confined to secondary issues, such as whether to cover all LEP students or (as originally proposed) only Spanish-speakers. The witness lists included academic researchers, language educators, school administrators, teachers, psychologists, social workers, elected officials, and representatives of Hispanic, Asian American, and American Indian organizations.¹ Some experts recommended bilingual education as a remedy for LEP students' 'linguistic handicap' and resulting 'educational problems.' Others focused on the bill's potential to develop needed language resources, Spanish skills in particular. Many witnesses cited both objectives, describing them as educationally compatible. (Although the theme of language-as-right was barely detectable in deliberations over Title VII, that would soon change with a spate of litigation brought by language-minority parents.) José Cárdenas, a veteran educator from San Antonio, recalls that neither he nor his fellow experts worried about a contradiction between the *transition* and *maintenance* goals of bilingual instruction (Crawford, 1992a). These terms – yet to be coined in 1967 – were a product of political, not pedagogical, necessity.

The most substantive, albeit brief, debate on the goals of the bill came on the Senate floor (*Congressional Record*, 1967). Joseph Montoya of New Mexico urged his colleagues:

We must take advantage of the language pluralism that exists in the Southwest. But it must be constructive pluralism. Comprehensive bilingual education programs are, to my way of thinking, one way we can give to all [Spanish-speaking students] the best of both worlds in terms of language, culture, and cooperation in daily life. (p. 35053)

Frank Lausche of Ohio was less enthusiastic about 'the Federal Government pouring in ... money' to help maintain minority tongues. A native speaker of Slovenian, he recalled that 'I went to a grammar school where they taught English. They did not teach me Slovenian in order to learn English [sic]. He also worried about the precedent: 'What are we to do if there is a Hungarian neighborhood in Toledo that finds it wants Hungarian taught in its schools?' (p. 34702).

The bill's chief sponsor, Ralph Yarborough of Texas, sought to finesse the differences by emphasizing transition while leaving the door ajar for maintenance:

It is not the purpose of this bill to create pockets of different languages throughout the country. It is the main purpose of the bill to bring millions of school children into the mainstream of American life and make them literate in the national language of the country in which they live: namely, English. Not to stamp out the mother tongue and not to make their mother tongue the dominant language, but just to try to make these children fully literate in English, so that the children can move into the mainstream of American life. (p. 34703)

This explanation appeared to satisfy Senator Lausche, who asked 'whether all of us should not be expert in at least 2 languages - perhaps 3' and recommended 'a knowledge of Latin' to everyone (p. 34703). No further questions were raised, and the Bilingual Education Act passed as part of an omnibus education measure.²

Ambiguity served Senator Yarborough's purposes. In 1967, the political universe was perfectly aligned to create an anti-poverty program serving Hispanic Americans, whose particular needs had thus far received limited attention from the Great Society. Mexican American educators and the National Education Association (1966) had recently highlighted the plight of Spanish-speaking students, 'the invisible minority,' at a conference in Tucson. There they enlisted Yarborough, a populist Democrat, in what came to be known as the *bilingual movement*. But this was by no means a partisan cause. Senator George Murphy, a conservative California Republican, also endorsed the idea, noting that then-Governor Ronald Reagan had recently signed legislation repealing his state's mandate for English-only instruction.

Still there was no time to lose. Urban riots and a costly war in Southeast Asia were beginning to spoil the Johnson Administration's appetite for social spending. Indeed, Yarborough had to twist arms to get its support for a new 'title' of the Elementary and Secondary Education Act. (The Administration initially favored funding bilingual approaches through existing programs.) Who knew when this opportunity would come

again? Why risk it by raising sensitive matters like assimilation and pluralism? Better to pass a bilingual education bill today and clarify its goals at some future date.

As political strategy, Senator Yarborough's approach is hard to fault. As policy-making, it left many loose ends. In particular, the unresolved question of goals would haunt Title VII for years to come. Reflecting on the legislative process long after the fact, many of the key players (including Yarborough) agreed that the law was conceived as an experiment not in language policy but in education policy, designed to tackle a problem of underachievement in which language happened to play a role (Croghan, 1997). Conscientious or not, the federal government's intervention on behalf of bilingual instruction was unprecedented and far-reaching. What did it mean? The program's administrators, members of Congress, school personnel, academic researchers, and the parents of LEP children all cherished their own interpretations.

The Office of Education included the following advice in its 1971 instructions for Title VII grant applicants: 'It must be remembered that the ultimate goal of bilingual education is a student who functions well in two languages on any occasion.' This was hardly the consensus view on Capitol Hill. Congressional committee members made it clear that 'we were in there to overcome [students'] "bilingual problem,"' according to Albar Peña, the program's first director. 'There was an obsession that if they were not English-speaking at the end of the first grade that the world would come to an end' (Crawford, 1992a: 85). Appropriations for Title VII nevertheless remained modest - only \$7.5 million in 1969. Although funding increased to \$45 million by 1974, it was enough to support a mere 211 local programs.

As state legislatures began repealing English-only school laws and authorizing native-language instruction, they showed a similar ambivalence. In 1971, Massachusetts became the first state to require 'transitional bilingual education' under certain circumstances - and the first to use the term - but its definition of the program omitted any mention of goals (*Mass. Gen. Laws XII, Chap. 71A*). A similar law, adopted two years later in Illinois, articulated the purpose of transitional programs: 'to meet the needs of [LEP] children and facilitate their integration into the regular public school curriculum' (*Ill. Ann. Stat. Chap. 122, Art. 14C*). By the mid-1970s, more than a dozen states had enacted bilingual education statutes; none drew sharp lines of demarcation between transition and maintenance.

Educators, for their part, continued to see the two goals as compatible. According to a nationwide study of Title VII's impact by the American Institutes of Research (Danoff *et al.*, 1977-78), 86 percent of local bilingual

portrayed TBE as a language-maintenance approach – the program's defenders tended to downplay its potential to develop bilingual skills. One exception was the Miami-based Spanish American League against Discrimination (SALAD). Troubled by Bennett's assimilationist rhetoric, in 1985 the group countered with the slogan 'English Plus.' While English is essential in the United States, SALAD argued, to succeed in a global economy children need to learn more than one language, and DBE could be an effective means to that end. This philosophy was soon put into service as a programmatic alternative to the broader English-only campaign (Combs, 1992). Over the years, however, English Plus has appealed primarily to language educators and ethnic minorities. It has found few legislative champions outside of the Latino and Asian American caucuses (e.g. Serrano, 1997).³

'Simple Justice'

By the late 1960s, bilingual education had also become a civil-rights issue. For militant Chicanos in particular, it emerged as a key demand, in no small part because of the suppression of Spanish in schools throughout the Southwest, a symbol of racial oppression. For La Raza Unida Party, which won control of the Crystal City, Texas, school board in 1970, bilingual education became a matter of self-determination, an assertion of ethnic pride, and a pedagogical approach to which high hopes were attached (Shockley, 1974). Wherever language minorities were concentrated, school officials began to feel community pressure to adopt bilingual methods. Several districts became the target of lawsuits by parents, who argued that failure to address students' language needs meant failure to provide them an equal opportunity to learn. As Mexican American students staged boycotts to protest their treatment by the schools in cities like Los Angeles, bilingual education was frequently among their demands.

The Civil Rights Act of 1964 (42 USC §2000d *et seq.*) guaranteed that 'no person can be excluded from participation in, or be denied the benefits of' a federally supported program or activity on the basis of race, color, or national origin. As President Kennedy said in proposing the legislation, 'Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination' (*Congressional Record*, 1963: 11161). Applying this principle to public schools that had intentionally segregated students by race seemed straightforward enough. But what were its implications when treating all students alike

programs retained Spanish-speaking children even after they were deemed fluent in English. On the other hand, 50 percent of 'bilingual' teachers lacked proficiency in the native languages of their students – casting doubts on whether Title VII was doing much to promote fluent bilingualism. Amid the furor over the first finding, however, the second was largely ignored. Critics charged the Office of Education with flouting both the melting-pot tradition and the intent of Congress by failing to 'mainstream' children as quickly as possible (Epstein, 1977). The language-as-resource approach was condemned as diametrically opposed to the goal of assimilation. In addition, AIR's mediocre report card for Title VII – 'no consistent significant impact' on achievement – led opponents to question the program's effectiveness. This marked the first serious opposition to the bilingual experiment. Under the leadership of Senator S.I. Hayakawa of California, it would soon expand into an English-only movement seeking to restrict most uses of minority tongues by government.

In reaction to the controversy, Congress voted in 1978 to restrict federal support to *transitional bilingual education* (TBE) programs. Henceforth the native language could be used only 'to the extent necessary to allow a child to achieve competence in the English language' (P.L. 95-561). While this statutory restriction was eased in 1984, for another decade only a tiny portion of federal funds flowed to maintenance, now known as *developmental bilingual education* (DBE). Nevertheless, critics successfully portrayed Title VII as a program that emphasized the native language and 'ethnic pride' at the expense of English. Led by the Reagan Administration's secretary of education, William J. Bennett, they advocated 'local flexibility' for districts to try English-only alternatives such as *structured immersion* (Bennett, [1985] 1992). In response, defenders insisted that bilingual education was the most efficient solution to the problems of limited English proficiency and academic underachievement.

Thus, during the 1987–88 reauthorization of Title VII, the debate involved means, not ends. Both sides embraced the language-as-problem orientation, which proved to be consistent with diametrically opposed policies for educating LEP students. Congress struck a compromise, diverting up to 25 percent of annual appropriations from bilingual to *special alternative instructional programs* (SAIPs). Far less funding was allocated to developmental programs, despite their promising academic outcomes and success in cultivating bilingualism.

Language-as-resource, while gaining hegemony among educational researchers and practitioners, was marginalized politically by the new terms of the debate. With any form of native-language instruction now condemned as a distraction from English – in effect, Title VII's critics

meant failing to serve their diverse needs? Did LEP students have a right to be treated differently and, if so, in what ways?

Guidance was slow in coming from federal authorities. Finally, the US Department of Health, Education, and Welfare (1970) issued a memorandum on school districts' obligations toward LEP students. It warned that, under the civil-rights law passed six years earlier, the sink-or-swim treatment was no longer permissible. Public schools would now be required to take 'affirmative steps' to help students overcome language barriers. Moreover, they would have to provide such assistance without segregating children on dead-end tracks of remedial education.

Few districts paid much attention. In San Francisco, for example, administrators continued to insist that by giving LEP students the *identical* education offered to all students – instruction via the English language – schools were discharging their obligation to provide an *equal* education for all. If some children failed to understand the language, that was their problem. Federal district and appeals courts agreed, rejecting a lawsuit brought on behalf of Chinese-speaking students. While this perspective may seem myopic today, in the early 1970s it was widely shared. The issue of desegregation had so dominated the movement for civil rights that any suggestion of 'separate but equal' education was suspect, even to many progressives. Unlike African-Americans fighting exclusion, the language-minority plaintiffs in the San Francisco case sought to establish the principle that children with different needs are entitled to different treatment by the schools. They cited the words of Justice Frankfurter a generation earlier: 'There is no greater inequality than the equal treatment of unequals' (Steinman, 1971).

The US Supreme Court embraced the parents' reasoning in a unanimous opinion. Its ruling in *Lau v. Nichols* (1974), while limited in scope, remains the major legal precedent on language rights in the United States – or, more precisely, on the obligation of government to provide appropriate language accommodations to safeguard (other) fundamental rights. Writing for the court, Justice Douglas reasoned that:

there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education. Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand

English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful. (p. 565)

The decision stopped short of mandating bilingual education, leaving the door open to other pedagogical treatments for students' 'language deficiency':

No specific remedy is urged upon us. Teaching English to the students of Chinese ancestry who do not speak the language is one choice. Giving instructions to this group in Chinese is another. There may be others. Petitioner asks only that the Board of Education be directed to apply its expertise to the problem and rectify the situation. (p. 563)

As interpreted by the US Office of Education, however, *Lau v. Nichols* soon became a *mandate* for bilingual education: the remedy of choice whenever a school district was found to be violating the civil rights of LEP students. Aggressive enforcement of the so-called Lau Remedies from 1975 to 1981 imposed bilingual education on nearly 500 school districts, mostly in the Southwest, through consent agreements known as Lau Plans. This period of federal oversight – or federal 'heavy-handedness,' in the view of many local officials – had contradictory results.

For the first time, large numbers of school districts were induced to pay attention to the language needs of LEP students and to serve them through bilingual education. Before the mid-1970s, few had done either of these things – which required a thorough transformation of business-as-usual – without the carrot of federal or state subsidies. Now came the stick, as the federal Office for Civil Rights (OCR) patrolled school systems with significant language-minority enrollments. Districts that were required to adopt Lau Plans, along with others who acted to preempt federal intervention, tended to accept the new pedagogy grudgingly at first. Over time, however, most came to regard bilingual instruction as, if not a panacea, at least a substantial improvement over sink-or-swim. As pedagogical outcomes improved, community support often increased. But that effect on public opinion was hardly universal.

Anti-Bilingual Backlash

Prescriptiveness also bred resistance. Bilingual education suddenly became a point of conflict between federal authorities and local school boards, as well as a cause célèbre for opponents of Big Government – in short, a natural issue for conservatives of the period. First, the Lau Remedies were attacked as illegitimate because, as quasi-formal 'guidelines,' they had been issued without an opportunity for public scrutiny or

comment. A federal court agreed. Labeling the rule-making process illegal, it ordered the Carter Administration to develop formal Lau Regulations. When the new rules finally appeared, shortly before the 1980 election, they were greeted with near-unanimous opposition from education groups (the only exceptions being the National Education Association and the National Association for Bilingual Education). Ronald Reagan, who had made attacks on federal red tape a major campaign theme, withdrew the Lau Regulations as one of his first presidential acts. Since 1981, OCR has declined to articulate a preference for any pedagogical approach.⁴

Second, the Lau Remedies placed a new burden of proof on the federal government. Mandating bilingual instruction, rather than merely encouraging local school districts to try it, created pressure to offer 'conclusive' evidence of its pedagogical benefits. A US Department of Education review of the research literature, initiated by the Carter Administration, found mixed results at best. Baker and de Kanter (1983: 50-51) concluded that 'no consistent evidence supports the effectiveness of TBE. ... An occasional, inexplicable success is not enough reason to make TBE the law of the land.' The report also speculated that alternative, all-English approaches might be promising. Yet the Baker-de Kanter study itself came under criticism for its methodology (e.g. Willig, 1985). Many of the studies under review involved programs that were poorly designed and implemented, quick-exit models rather than the developmental approaches later found to be superior (Ramírez *et al.*, 1991). The authors' claims for the promise of structured immersion were based on studies of Canadian programs (bilingual ones, at that), which had been tailored to the needs of students who had little in common with language-minority students in the United States. Despite the study's limited credibility among researchers, however, it received considerable play in the news media. The debate lent credence to the argument that if the experts were divided, the scientific evidence remained too 'inconclusive' to support a federal preference for pedagogies using the native language (Bennett, [1985] 1992).

Hence the political paradox of bilingual education. It might well have remained a marginal experiment had it not been imposed on school districts via the Lau Remedies and assorted court orders. Today's most successful instructional models for LEP students might never have been developed otherwise; at best, they would be confined to a tiny number of schools. At the same time, however, federal and state mandates for bilingual education provoked a backlash and a fierce debate over the program's effectiveness. Critics charged that Title VII had failed to fulfill its promises, citing the persistence of high failure and dropout rates

among Latino students in particular. Thus its value as a civil-rights remedy has come into question.

Increasingly, English-only advocates have appropriated the language-as-right approach for their own purposes. Chávez (1991) argues that, if bilingual education segregates LEP children from the mainstream and discourages them from learning English, then it must limit their educational opportunities. Proposition 227, the so-called English for the Children initiative (English Language in Public Schools, 1998), made a similar pitch to California voters:

- (a) WHEREAS the English language is the national public language of the United States of America and of the state of California, is spoken by the vast majority of California residents, and is also the leading world language for science, technology, and business, thereby being the language of economic opportunity; and
- (b) WHEREAS immigrant parents are eager to have their children acquire a good knowledge of English, thereby allowing them to fully participate in the American Dream of economic and social advancement; and
- (c) WHEREAS the government and the public schools of California have a moral obligation and a constitutional duty to provide all of California's children, regardless of their ethnicity or national origins, with the skills necessary to become productive members of our society, and of these skills, literacy in the English language is among the most important; and
- (d) WHEREAS the public schools of California currently do a poor job of educating immigrant children, wasting financial resources on costly experimental language programs whose failure over the past two decades is demonstrated by the current high drop-out and low English literacy levels of many immigrant children; and
- (e) WHEREAS young immigrant children can easily acquire full fluency in a new language, such as English, if they are heavily exposed to that language in the classroom at early age.
- (f) THEREFORE it is resolved that: all children in California public schools shall be taught English as rapidly and effectively as possible. (\$300)

Most fair-minded Americans would agree with most of these premises (although paragraphs (d) and (e) would receive few endorsements from experts in second-language acquisition). LEP children are surely entitled to 'be taught English ... as effectively as possible.' Whether that also means 'as rapidly as possible' is another matter. Still, no one disputes that

English proficiency is crucial both to their academic success and to their 'economic and social advancement.'

The question becomes one of means: How should these goals be pursued? Proposition 227 requires that 'all children in California public schools shall be taught English by being taught in English.' The initiative statute prohibits most uses of native-language instruction for LEP students and prescribes programs of 'sheltered English immersion during a temporary transition period *not normally intended to exceed one year*' (§305; emphasis added).⁵

Will this sweeping mandate serve the interests and safeguard the rights of English learners? Or will it do precisely the opposite (see pp. 104-127)? Laypersons are being asked to decide such questions not only in California but in other states as well - judgments that require sorting through complex and contradictory information. One might as well ask the electorate to choose a treatment for AIDS or to select the design of the next space station.⁶ How schools should teach LEP students has become a highly technical issue. It has also become a highly political one, which invites simplistic and demagogic answers.

Again the paradox. In its path to acceptance, bilingual education followed the course of numerous reforms of the 1960s. Conceived as an innovative approach to a social problem, it was taken up as a demand by ethnic militants and parents' organizations, supported with federal funds, accepted by school boards, studied by researchers, embraced by practitioners, and sustained by a corps of experts, lawyers, and bureaucrats. In short, it became institutionalized. At the same time, however, these currents were eroding its political support. To the extent that bilingual education has become the domain of professionals, it is less of a community concern, less of a social movement.

Government agencies, educators' associations, and school districts have done little to explain the pedagogy to outsiders, including parents, many of whom are new to the United States and have no memory of earlier struggles for bilingual education. The broader public, which has never been clear about the rationale for native-language instruction, is increasingly skeptical of its results. With the rise of English-only activity, assimilationist rhetoric has won a growing acceptance. Now it is making inroads into language-minority communities. Surveyed on whether they would favor an initiative to 'require all public school instruction to be conducted in English and for students not fluent in English to be placed in a short-term English immersion program,' 84 percent of Hispanic Californians answered in the affirmative (Los Angeles Times Poll, 1997).⁷

There is no question that the parents of LEP students continue to feel strongly about the civil-rights goals of bilingual education. Yet it is also

clear that in the 1990s language minority communities are less vocal on its behalf than in the 1970s. Defending the program's effectiveness has become largely a job for professionals. Whether bilingual instruction provides an antidote for school failure, whether it teaches English effectively, whether it safeguards children's rights under *Lau* ... these questions are usually left to specialists who can explain the complexities of educational research. Few members of the public seem interested in such explanations, which contradict cherished myths on how languages are learned and how immigrant ancestors 'made it' without special help.

Moreover, the voters exhibit a growing impatience with government programs that benefit immigrants and racial minorities. By approving Proposition 187 in 1994, Californians instructed school officials to hunt down and expel the children of 'illegal aliens.' With Proposition 209 two years later, they chose to outlaw all forms of affirmative action. In 1998, disregarding the advice of professionals in the field, they voted to dismantle bilingual education. Meanwhile, Latino and Asian American politicians, who once rallied liberal supporters behind programs serving immigrants, now sense ambivalent feelings among their own constituents. Hence their wariness about countering attacks like Proposition 227.

Thus, to the extent that bilingual education relies heavily on expert opinion, its political viability becomes increasingly tenuous. This is true not only because experts are routinely divided on pedagogical matters. In addition, many researchers today are sensitive to the charge that their work has become politicized. So they are more guarded in expressing support for bilingual approaches than they were in the 1980s. A recent report by the National Research Council strived for even-handedness, noting the benefits of both native-language and English-only instruction, even though the panel comprised several prominent enthusiasts of 'additive bilingualism' (August and Hakuta, 1997).⁸ Bilingual teachers and administrators continue to champion their programs without equivocation. Yet such views are easily dismissed as expressions of narrow self-interest - a perennial line of attack by conservative critics (see, e.g., Thernstrom, 1980; Cházvez, 1991).

Without a broader and firmer political base, the future of bilingual education would appear uncertain, to say the least. Where is the needed support to be found? The most obvious undeveloped sources are language-minority families and communities. What has kept them from playing a larger advocacy role? Several factors have already been noted: professionalization of bilingual programs, poor communication by the schools, timidity among elected officials, and immigrants' inexperience in a new political system.

Equally important is the peculiar tradition of language rights – or lack thereof – in the United States

Language Rights, American Style

In most of the world, language rights are understood in two ways: '(1) the right of freedom from discrimination on the basis of language; and (2) the right to use your language(s) in the activities of communal life' (Macías, 1979: 41). International treaties to which the United States is a signatory, including the United Nations Charter and the International Declaration of Human Rights, recognize either one or both varieties. Such treaty obligations make these language rights a part of US law – at least theoretically. Nevertheless, they remain largely foreign to our legal traditions.

The United States has frequently addressed the language needs of its citizens on political, economic, or moral grounds. During the 19th century, for example, a dozen states and territories authorized minority-language instruction in public schools; elsewhere it was often provided without official sanction (Kloss, 1998). Yet there were no constitutional obstacles to terminating such policies and mandating English-only instruction, as most states chose to do during the World War I era. Some Latino advocates have argued that, under the 1848 Treaty of Guadalupe Hidalgo, Spanish-speakers are *entitled* to bilingual-bicultural education in the Southwest. In fact, the treaty makes no explicit mention of language rights and such interpretations have been rejected by US courts (e.g. *López Tijerina v. Henry*, 1969).

Language rights exist in the United States only as a component of other rights, in particular the Fourteenth Amendment guarantee of 'equal protection' under law without regard to race or national origin. *Lau v. Nichols* (1974) was decided on similar grounds, relying on Title VI of the Civil Rights Act of 1964. Taking another approach in *Meyer v. Nebraska* (1923), the Supreme Court struck down restrictions on foreign-language instruction as an unconstitutional violation of 'due process' guarantees:

While this court has not attempted to define with exactness the liberty thus guaranteed ... without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. The established doctrine is that this liberty may not be interfered with, under

the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. (p. 402)

Among these implicit rights, the court enumerated a German language teacher's 'right thus to teach and the right of parents to engage him so to instruct their children.'

Significantly, despite the breadth of constitutional liberties it found to be guaranteed by implication, the *Meyer* court said nothing about *community* rights to use and maintain a language other than English. Its omission is consistent with the Anglo-American tradition of common law, which almost always endows rights to individuals rather than to groups. This has tended to discourage the recognition of language rights, which have limited meaning outside a collective context. For example, the *Lau* decision defines a LEP student's right to special assistance designed to overcome the language barrier and make academic instruction comprehensible – not an ethnic group's right to perpetuate its language via vernacular (non-English) education. Restricted in this way, Magnet (1990: 293) argues, language rights are ultimately meaningless:

The right to utilize a language is absolutely empty of content unless it implies a linguistic community which understands the speaker and with whom that speaker can communicate. ... Language rights are collective rights. They are exercised by individuals only as part of a collectivity or a group. Legal protection of language rights, therefore, means protection of that linguistic community, that community of speakers and hearers, *vis-à-vis* the larger community which would impinge upon it or restrict its right as a group to exist.

Canada's policy of official bilingualism incorporates this philosophy. In essence, according to a former Commissioner of Official Languages, it guarantees the francophone minority's 'right *not* to assimilate, the right to maintain a certain difference' (Yalden, 1981: 79; emphasis in original). Besides entitling citizens to federal government services in both English and French, Canada provides subsidies to numerous indigenous and immigrant minorities for the purpose of linguistic maintenance. The United States, by contrast, has tended to resist such policies in principle, if not always in practice. Except in matters of religion, it would be hard to cite any collective 'right' not to assimilate ever guaranteed by federal or state governments. Nor has there been any formal recognition of a right to mother-tongue schooling for any non-anglophone group, immigrant or indigenous.

Nevertheless, American linguistic minorities have succeeded in maintaining distinct communities, sometimes for several generations, with

varying degrees of toleration or accommodation from authorities. Bilingual and vernacular education were widely, if inconsistently, available from the Colonial Era until World War I. In 1900, contemporary surveys reported that 600,000 elementary school children, public and parochial, were receiving part or all of their instruction in the German language. This figure, which Kloss (1998) regards as overly conservative, was equivalent to 4 percent of the elementary school population at the time – probably larger than the proportion of children in all bilingual classrooms today.⁹

This era of accommodation ended following World War I, a period when speaking languages other than English, especially German, came to be associated with disloyalty to the United States. Wartime fears strengthened a campaign to ‘Americanize the immigrant,’ especially in linguistic matters. This in turn had a major impact on the schools. By 1923, thirty-four states had adopted laws banning native-language instruction and, in some cases, foreign-language teaching in the early grades (Leibowitz, 1969). As a result, bilingual education largely disappeared until the early 1960s, when it was revived by Cuban exiles in Dade County, Florida.

15 The Once and Future Politics of Bilingualism

What can be learned from for early American ‘traditions’ of bilingual education that might be relevant to its present political plight? In particular, what were its ideological and political foundations before the modern era?

First, it should be noted that bilingual and vernacular schools were often the product of practical necessity or local choice. Before the 20th century, fully English-proficient teachers were unavailable in large expanses of the rural Midwest, New Mexico, southern California, Louisiana, and northern New England. Where language minorities commanded local majorities, they usually controlled their own education systems. The first public schools in the state of Texas, established by the municipality of New Braunfels in the 1850s, operated mostly in German (Kloss, 1998). At about the same time, the Cherokee Nation of Oklahoma established a system of twenty-one bilingual schools and two academies, achieving higher literacy rates in English and Cherokee than the neighboring states of Arkansas and Texas could manage in English alone (US Senate, 1969).

Bilingual education also gained a foothold in major cities including St Louis, Indianapolis, Milwaukee, and Cincinnati, which ran extensive German-English programs for several decades. School systems made conscious decisions to accommodate the wishes of immigrant parents. More than five million Germans arrived between 1830 and 1890, and most

settled in the Ohio and Mississippi valleys. Notwithstanding their religious, cultural, and political diversity, by and large these immigrants were united on the value of German-language instruction as the key to a treasured heritage. For parents, language maintenance was usually the chief goal of bilingual instruction.

Meanwhile, public school officials saw themselves in competition with parochial schools for immigrant students. Providing minority-language instruction was conceived a way to entice parents to support the Common School and thus to draw their communities into the mainstream of American life. William Torrey Harris, school superintendent in St Louis and later US Commissioner of Education, perceived no contradiction in fostering bilingualism and assimilation simultaneously. Like other educational leaders – and unlike most immigrant parents – he saw the primary goal of bilingual education as teaching the dominant culture, including the English language, as efficiently as possible. His rationale, however, was more political than pedagogical. ‘If separate nationalities keep their own [Lutheran and Catholic] schools,’ Harris wrote in 1870, ‘it will result that the Anglo- and German-American youth will not intermingle and caste-distinctions will grow up.’ On the other hand, ‘if the German children can learn to read and write the language of the fatherland in the public schools, they will not need separate ones’ (Schlossman, 1983: 152).

Harris believed strongly in the public schools’ mission to ‘Americanize the immigrant.’ Yet he differed from later assimilationists in his conviction that the process would proceed more efficiently by voluntary rather than coercive means. In St Louis, his approach proved successful. After fifteen years of German bilingual programs, the percentage of German American children attending the public schools had increased from 20 percent to 80 percent (Schlossman, 1983).

By offering bilingual instruction in St Louis and elsewhere, schools recognized no language rights in the strict sense. Nevertheless, they paid homage to a strong tradition in American education: parents’ prerogative to have a say in their children’s schooling. However vaguely defined in legal terms, the *right of parental choice* has been revered as a political principle. Thus it has served at times as a powerful rallying cry for diverse groups of parents, including language minorities. In 1889, when German Americans learned that Wisconsin and Illinois had imposed English-only instruction on parochial as well as public schools, they put aside sectarian divisions, organized to defeat the ruling Republican Party at the next election, and soon repealed the legislation (Crawford, 1992a). In the 1960s, when Mexican Americans demanded an end to sink-or-swim neglect,

they marshaled sufficient moral and legal authority to win bilingual education subsidies, court orders, and civil-rights enforcement.

Parent activism can only flourish, however, when armed with clarity of purpose. To the extent that the parents of LEP children are uncertain about the rationale for bilingual education and alienated from the professionals who control it, they will remain passive players in the public policy debate. A majority of these parents may continue to favor the program. But without mass goals and leadership to rally behind, there can be no 'bilingual movement' to provide needed political support. Indeed, parents' passivity may be mistaken for acquiescence to anti-bilingual policies – as it was in California's approval of Proposition 227.

If current trends continue, the consequences could be drastic: Bilingual educators find themselves increasingly isolated and hard-pressed to resist attacks. LEP students enjoy fewer options, as many school districts limit access to native-language instruction and others convert to English-only models altogether. The nation's thirty-year experiment with bilingual education, despite its success in many schools and its benefits to many children, is branded a failure in the public mind. A generation of experience and research is discarded, as the pedagogy is relegated to marginal status. The question for bilingual educators and advocates is whether they can regain the confidence, understanding, and allegiance of their core constituency – language-minority communities – in time to rewrite this grim scenario.

Notes

1. In a tendentious history of these events, Thernstrom (1980) claims: 'The chairmen of the House and Senate committees did not call witnesses – in the sense of experts on the educational and political questions raised by the legislation – but (with few exceptions) lobbyists. Ethnic activists – mostly Hispanics – came to testify on the bill's necessity' (p. 6). In fact, only 26 of the 144 witnesses were lobbyists for community and advocacy groups; about half had Hispanic surnames.
2. There was no separate recorded vote on bilingual education in either the House or the Senate.
3. This situation may be changing, as Republicans begin to make overtures to Hispanic voters. A new English Plus resolution was introduced in 1998 by John McCain of Arizona and nine other Republican senators.
4. OCR has relied instead on the *Castañeda* standard for determining whether school districts are meeting their obligations toward LEP students (Crawford, 1996b). This three-part test was developed by a federal appeals court in interpreting the Equal Educational Opportunities Act of 1974. Reaffirming the *Lau v. Nichols* decision, the law requires school districts to take 'appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs' (§1703(f)). More than vague 'good faith' efforts

are required, the court ruled in *Castañeda v. Pickard* (1981). A program serving LEP students must meet the following criteria:

- It must be based on 'a sound educational theory' endorsed by one or more experts.
 - It must be 'implemented effectively,' with adequate resources and personnel.
 - After a trial period, it must be evaluated as effective in overcoming language handicaps or its weaknesses must be rectified.
5. At parents' request, 'waivers' of the English-only rule may be allowed for older LEP children and those with 'special needs,' but they are subject to restrictions. Teachers, administrators, and school board members who fail to provide English-only instruction may be sued and held 'personally liable' for financial damages (English Language in Public Schools, 1998: §§311, 320).
 6. These examples are not entirely far-fetched, considering California's attachment to government-by-initiative. In early 1998, there were five measures certified for the June ballot and forty-three others being circulated for the November ballot, ranging from a proposal to legalize casino gambling to an effort to ban the sale of horse meat for human consumption.
 7. In fairness, it should be noted that this question poorly summarized the provisions of the English for the Children initiative, such as neglecting to mention its ban on bilingual education programs. Later polls showed contradictory results – for example, Spanish-language media in Los Angeles found that 88 percent of parents with children enrolled in bilingual programs were satisfied with them. The major exit poll on June 2 concluded that Latinos had rejected Proposition 227, 63 to 37 percent (Los Angeles Times-CNN Poll, 1998). Yet even this level of support is substantially higher than in the past.
 8. Several panel members had been part of the Stanford Working Group on Federal Programs for Limited-English-Proficient Students, which influenced the Clinton Administration to expand support for developmental bilingual education (Hakuta *et al.*, 1993).
 9. Kloss (1998) argues that one million – or 7 percent – would be a more reasonable figure for 1900. Unfortunately, data-gathering in this area has barely improved since that time. Based on reports from forty-eight states and the District of Columbia, the US Department of Education estimates that 3,378,861 students in public and private K-12 schools were limited-English-proficient in 1996-97 (Macías, 1998). While these counts vary in reliability, states typically report that no more than one-third of eligible students are enrolled in fully bilingual classrooms. Extrapolated nationwide, that generous assumption would yield an estimate of about 1.1 million US students receiving native-language instruction in 1996-97 – or less than 2.5 percent of the total K-12 enrollment of 45,650,352.