

Accessing Language Rights in Education: A Brief History of the U.S. Context

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This chapter addresses the question of the extent to which language minorities in the United States have been able to access language rights in education. In dealing with this issue, it is necessary to distinguish between the *right to access* an education that allows for social, economic, and political participation, and the *right to an education mediated* in one's mother tongue(s). For language minority students, both rights are essential if they are to participate in the broader society and maintain continuity with their home/community language.

Many children in the United States and a majority of children around the world enter schools where the language of instruction is different from the language spoken in their homes. Given the prevalence of language diversity in the United States and around the world, the fragile condition of language rights in education is lamentable. A small but persistent group of scholars has begun to address the issue (see for example, Kontra *et al.*, 1999a, 1999b).

A fundamental question underlying any discussion of educational language rights is the need to probe the assumptions about language rights more broadly. In this regard, Macías (1979) distinguishes between two types of rights. The first is 'the right to freedom from discrimination on the basis of language' (p. 41). This in essence is a right to protection. The second is 'the right to use one's language in the activities of communal life' (p. 41). This is essentially the right to expression. Macías concludes that 'There is no right to choice of language ... except as it flows from these two rights above in combination with other rights, such as due process, equal enforcement of the laws, and so on' (pp. 41-42). However, in order for language rights to be asserted, the 'identifiable and legal standing of a class based on language' must be recognized (p. 42). This

latter point is particularly significant for understanding language minority rights in the United States and other Western countries, because of their emphasis on locating rights in the individual rather than in the group (Macías, 1979; Wiley, 1996a). In international law, 'all of the existing rights ... are individual rights and freedoms, although their manifestations may involve more than one individual' (de Varennes, 1999, p. 118). In the United States, the salience of language rights is largely derived from their association with other constitutional protections dealing with race, religion, and national origin.

Historically, rights and privileges have been distributed *selectively* based on the recognition of legal status. The significance of such status was dramatically illustrated in the 1994 California election in which Proposition 187 was designed to restrict health and educational rights of immigrants and their children who lacked the status of legal residents. The proposition was approved by a majority of those who voted; those targeted by 187 were unable to vote. In public debates over 187, the major arguments were between those who contended that rights to health and education should be restricted to *citizens* and *legal residents*. Opponents of 187 maintained that these entitlements were *human* rights and that children's human rights should not be surrendered merely because of the legal status of their parents. Subsequently, most provisions of 187 have been struck down in court, yet the controversy over immigrant rights and entitlements echoed around the country. A formal assault (Proposition 227) followed in 1998 on the right of language minority children to be educated biligualy and the right of their parents to make that choice for them.

For many in the United States, the idea that a child who speaks a minority language or vernac-

ular dialect should have a *right* to instruction in his or her language is a peculiar idea – one that is weighed against the argument that the need for a common language is greater than any claims of language rights by minorities. However, the idea of language rights is not new. In 1953, a UNESCO resolution held that every child should have a right to attain literacy in his or her mother tongue. More recently, Skutnabb-Kangas (1995) has put forward her own proposal for a declaration of children's linguistic human rights based on the following three premises: '(1) Every child should have the right to identify positively with her original mother tongue(s) and have her identification accepted and respected by others. (2) Every child should have the right to learn the mother tongue(s) fully. (3) Every child should have the right to choose when she wants to use the mother tongue(s) in all official situations' (Skutnabb-Kangas, 1995, p. 45).

On its face, the first premise has been supported by most learning theorists and to some extent by U.S. courts in recent decades. The need for children to identify positively with their mother tongues(s) has provided part of the rationale for federal bilingual education programs that were implemented in the late 1960s. Nevertheless, gaining support for children's linguistic human rights and translating it into school policy is a major challenge. For instance, schools, policymakers, and pundits have generally not accepted as legitimate 'non-standard' varieties of language such as Ebonics, Appalachian English, and Hawai'i Creole English, despite the authority of linguistic evidence that deems them to be legitimate (Rickford, 1999; Wolfram *et al.*, 1999).

The second premise of the declaration implies that every child should have the right to become literate in his or her mother tongue. Creating educational policies for this part of the declaration is complicated by the fact that the majority of the world's estimated 6,000 to 7,000 languages are not used in schools and that many are not used as languages of literacy. In the U.S., even among the major languages taught, there has been a chronic undersupply of certified bilingual teachers for several decades.

The third premise extends the scope of language rights beyond the domain of education to 'all official situations'. It implies that the government should provide sufficient resources to accommodate language minorities. In the United States, the right to some accommodation has been made in cases dealing with educa-

tional, legal, economic and political access, but language rights remain on a very tenuous legal foundation (Piatt, 1992). Around the world, language rights frequently are ignored in the formulation of educational policies. Unfortunately, even if organizations such as the United Nations support language rights, member nations, including the United States do not act on them because resolutions are not binding (Skutnabb-Kangas, 1999).

The Historical Context of Language Diversity in the United States

Prior to European conquest and colonization, North America had a rich array of indigenous languages. In that portion of the continent that was to become the United States, the linguistic dominance of English, or what Heath (1976) referred to as the 'language status achievement' of the language, had occurred long before the first U.S. Census in 1790. Until the mid-19th century, a majority of immigrants were from predominantly English-dominant areas. Into the early 20th century, native language instruction and bilingual education were not uncommon in areas where language minority groups comprised a major portion of the local population (Kloss, 1977/1998).

In international discussions of language diversity, a distinction is made between *indigenous* language minorities and *national* language minorities (Skutnabb-Kangas, 1999). National language minorities are the language minority in a country other than where they are currently residing. In the United States, much of the discussion about language diversity and schooling has centered on immigrant language minorities. From an historical perspective, immigration has been an important source of language diversity. However, other sources are also important (see Table 1). Among the three major groupings of historical language minorities are (1) *immigrants* (including refugees), (2) *enslaved peoples* who were brought to the United States against their will, and (3) *indigenous peoples*. Macías (1999) expands the notion of indigenous peoples to include (a) those who inhabited an area that later became part of the United States prior to its national expansion into the region they occupied, and (b) groups that have an historical or cultural bond to the Americas before European colonization. In 1790, it is estimated that 23,000 Spanish-speaking people inhabited areas that would later become part of the southwestern United

States (Leibowitz, 1971). For many, language shift to English resulted not from choice, but as a consequence of involuntary immigration and enslavement, or annexation and conquest.

Territorial expansion and forced incorporation notwithstanding, immigration was the major source of language diversity in the 19th and 20th centuries. Contrary to popular beliefs about immigration, the percentage of recent immigrants in the late 20th century, as a percentage of the total population, was less than it was during the early 20th century (Wiley, 1996b).

Educational Language Policies and the Broader Societal Context

A number of scholars contend that educational language policies are best understood in their relationship to broader societal policies, dominant beliefs, and power relationships among groups. Leibowitz (1969, 1971, 1974, 1982), for example, concluded that language policies have been used as instruments of *social control* (see Tollefson, 1991, and 1995, for related discussions of language planning as an instrument of *discourse, state, and ideological power*). Leibowitz's thesis was developed by analyzing the impact of official English policies and restrictive language policies across political, economic, and educational domains. He argued:

The significant point to be noted is that language designation in all three areas followed a marked, similar pattern so that it is reasonably clear that one was responding not to the problems specifically related to that area (i.e., educational issues or job requirements in the economic sphere) but to broader problems in the society to which language was but one response. (1974, p. 6)

Leibowitz concluded that

as English became officially designated for specific purposes, for example, as the language of instruction, or for voting, it was almost always coupled with restrictions on the use of other languages in addition to discriminatory legislation and practices in other fields against the minorities who spoke the language, including private indignities . . . which made it clear that the issue was a broader one. (1974, p. 6)

Leibowitz (1971) also compared the restric-

tive impact of English-only policies imposed on German, Japanese, and Chinese immigrants as well as on Native Americans, Mexican Americans, and Puerto Rican Americans. He concluded that the motivations to impose official English language and to restrict native languages in schools corresponded to the general level of *hostility* of the dominant group toward various language minority groups.

A synopsis of the historical effects of educational policies and language policies on linguistic minority students is represented in Table 2, which specifies the initial mode of amalgamation and the subsequent policy management of each group. Although English was universally imposed, the experience of each group differed. Some groups were more restricted and segregated than others. Historically, only African Americans experienced the full gamut of inhumanities, including 'compulsory ignorance' laws prior to 1865 (Weinberg, 1995).

The belief that *all* children deserve the right to educational opportunity in publicly supported education – let alone an equal opportunity to learn – received broad support gradually. It was not a widely held notion at the founding of the nation. During the 19th century, the idea that children should have a right to publicly supported education gained favor. However, even as it did, the right to equal educational opportunity was selectively withheld from many children of color, many of whom were also language minorities (Spring, 1994; Weinberg, 1995, 1997). Adding the force of law, the Supreme Court, in *Plessy v. Ferguson*, affirmed the dogma of segregated, *separate but equal* education, which stood from 1896 to 1954. It was not until the landmark *Brown v. Board of Education* (1954) decision that the court reasoned 'it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education' (cited from Leibowitz, 1982, p. 162). In the *Brown* decision, race had been the singular focus. Skuttnab-Kangas (1995) has recently made a similar case for linguistic access:

If you want to have your fair share of the power and the resources (both material and non-material) of your native country, you have to be able to take part in the democratic processes in your country. You have to be able to negotiate, try to influence, to have a voice. The main instrument for doing that is language . . . In a democratic country,

Table 1 Historical overview of policies and events affecting the educational treatment and language rights of language minorities

Time period	Policy orientations and key events	Implications for educational language rights
1740–1845	Compulsory ignorance laws imposed under colonial rule and retained in slave codes of southern states.	Enslaved African Americans were barred from becoming literate until 1865. In some states, Whites could also be fined or punished for teaching African Americans to read.
	Treaty of Paris in 1783; Louisiana Purchase in 1803; Florida and adjacent areas annexed (1820).	Peoples in the Northwest Territories, and, subsequently, those in the Mississippi and Missouri river valleys were incorporated under U.S. territorial and later state laws.
	In 1819 the Civilization Fund Act enacted to promote English education and practical skills among Native American peoples.	Mission schools were established among some Native American peoples with less than spectacular results in promoting English and Anglo values.
	A Cherokee writing system developed (in 1822) by Sequoia.	Cherokee schools succeeded in promoting Cherokee literacy and biliteracy in English. By 1852 Choctaws, Creeks and Seminoles also operated their own school.
	German Bilingual Schools thrive, even amidst the Know Nothing Movement (1840–1850s).	German language instruction flourished through private and sectarian efforts in the Midwest. In 1837, Pennsylvania passed a law allowing for public schooling in German. In 1840, Ohio passed a law allowing for German-English public schooling.
1845–1905	Texas annexed 1845, followed by Oregon, Washington and Idaho by 1846; Treaty of Guadalupe Hidalgo and Mexican Cession (1848); Gadsden Purchase (1853); Alaska purchased in 1867; Hawaii, 1898; and Puerto Rico, 1901.	Peoples residing in Mexican territory were conquered and brought under U.S. territorial or state authority; indigenous/resident populations were incorporated and were subject to U.S. territorial and later state laws.
	The 'treaty period' ended (1871). The first 'off reservation' English-only boarding school established (1889).	Native Americans lost autonomy and governance of their schools. Among the Cherokee a gradual decline in literacy resulted as the policy of compulsory Americanization and English-only instruction persisted into the 1930s.
	German immigration peaked in the 1880s.	School-related English-only laws aimed at German Catholics were passed (1889), and subsequently repealed, Illinois and Wisconsin.
	<i>Plessy v. Ferguson</i> (1896)	The Supreme Court upheld the doctrine of 'separate but equal' racial segregation.

Time period	Policy orientations and key events	Implications for educational language rights
1905–1923	Eastern and Southern European immigration increases (to WWI). Immigration restricted on the basis of national origin.	German instruction was gradually declining in the schools (public and private), but was nevertheless still prevalent until WWI. During WWI, German instruction was banned or dropped in most states. A majority of states passed laws officially designating English as the language of instruction and restricting the use of 'foreign' languages.
1923–1950	<i>Meyer v. Nebraska</i> (1923) <i>Farrington v. Tokushige</i> (1927)	In 1923, the Supreme Court overturned a 1919 Nebraska law banning instruction in German. Several similar cases were decided during the 1920s, including one in Hawaii dealing with private schooling in Japanese
	Tribal Restoration (1930s)	Deculturation policies aimed at Native Americans were relaxed from the 1930s to the 1950s.
	Guam added as a Territory (1945) Philippines granted independence.	Pacific Island peoples were incorporated.
1950–1960	Native American Termination Policies. <i>Brown v. Board of Education</i> (1954)	Renewed restrictions on Native Americans. Termination of legal segregation (reversal of <i>Plessy v. Ferguson</i>).
1960–1980	1964 Civil Rights Act 1965 Immigration Act The 1968 Bilingual Education Act Tribal restoration (Phase II).	Civil rights and immigration reform provided legal protections from discrimination. The U.S. government broke new ground in allowing for expediency-oriented educational language policies. Restrictive policies toward Native Americans were again relaxed.
	<i>Lau v. Nichols</i> (1974) <i>Serna v. Portales</i> (1974) <i>Rios v. Read</i> (1978) <i>U.S. v. Texas</i> (1981)	The Supreme Court affirmed that School Districts must accommodate language minority children. Additional federal cases prescribed bilingual education in local contexts.
	<i>M. L. King Jr. Elementary vs. Ann Arbor School District</i> (1979)	A federal court ruled that the Ann Arbor School District must accommodate speakers of African American English
	<i>Casteñeda v. Pickard</i> (1981)	Criteria for acceptable program remedies were established.

Time period	Policy orientations and key events	Implications for educational language rights
1980–2000	English Only Movement 1981 to present	There was a return to official designations of English as the official language coupled with restrictionism during a period of increased anti-immigrant sentiment.
	Reagan Administration (1980–88) backs away from enforcement of <i>Lau</i> Remedies. Native American Languages Preservation Act (1990).	The federal government de-emphasized bilingual education as a remedy. Tolerance of Native American languages was expressed by the Federal government, which was largely symbolic.
	California's Propositions 63 (1986); 187 (1991); 209 (1996), and 227 (1998); Arizona's proposition 203.	A series of initiatives were proposed/ passed in California and other states to restrict immigrant rights in education; and to restrict bilingual education.

Sources: Crawford, 1992, 1995; Hernández-Chávez, 1994; Kloss, 1977/1998; Leibowitz 1969, 1971; Lyons, 1995; Macías, 1999; Wiley, 1998a, 1998b, 1999a, 2000; and Wiley & Lukes, 1996

it should be the duty of the school system to give every child, regardless of linguistic background the same chance to participate in the democratic process. If this requires that (at least) some of children (i.e., the linguistic minority children) become bilingual or multilingual, then it should be the duty of the educational system to make them bilingual/multilingual. (p. 42)

Implications of Policy Orientations for Language Minority Educational Rights

In assessing various policies toward language diversity and their implications for educational language rights, it is helpful to locate them in a language policy framework. Table 3 provides an overview of policy orientations of the federal government, states, and other agencies with the power to impose policies or practices that have the force of policy.

Table 3 builds from Kloss (1977/1998), who limited his analyses to formal policies imposed by law. However, in the United States, language behavior and language rights more commonly have been shaped by *implicit/covert* policies and by *informal* practices that can have the same, or even greater force than official policies (see Schiffman, 1996; Wiley, 1999a). Thus, it is useful to apply Table 3 to both formal and informal policies and practices. *Implicit policies* include those that may

not start out to be language policies but have the effect of policy. *Covert policies*, as the word implies, are more ominous. They are policies that seek to use language or literacy requirements as a means of barring someone from social, political, educational, or economic participation (Wiley, in press). Historical examples include literacy requirements for voting and English literacy requirements for entry to the United States that have been used as gate-keeping mechanisms to exclude immigrants on the basis of their race or ethnicity (Leibowitz, 1969).

Promotion-oriented policies require governmental support. Historically, among language minority communities, there has never been any controversy over the need to promote English. By the 1920s, English had been designated as the official language of schooling in nearly all states. As a result, language promotion resources have flowed primarily into English instruction. At the institutional level, many colleges and universities have long had foreign/second language requirements, but college-level entry requirements for proficiency in English have helped to drive most language-related curricular policies since the late 19th century (Wright, 1980).

Although advocates of restrictive English-Only policies frequently depict contemporary advocates of bilingual education as being against the promotion of English, there is no evidence to support this. Most advocates of bilingual

Table 2 Historical comparison of selected U.S. linguistic minority groups' initial modes of incorporation and subsequent educational treatments

Ethnolinguistic group	Initial mode of incorporation	English compelled	Compulsory ignorance laws	Legally segregated	Excluded from schools	Quotas in higher education
African Americans	Enslaved	Yes	Yes	Yes	Yes	Yes
American Indians	Conquered	Yes	No	Yes	Yes	Yes
Mexican Americans	Conquered	Yes	No	Yes	No	Yes
Puerto Rican	Conquered	Yes	No	No	No	No
<i>Pacific Peoples</i>						
Filipinos	Conquered	Yes	No	No	No	No
Micronesians	Conquered	Yes	No	No	No	No
Polynesians	Conquered	Yes	No	No	No	No
<i>Asian Americans</i>						
Japanese	Immigrant	Yes	No	Yes	No	No
Korean	Immigrant	Yes	No	Yes	No	No
Chinese	Immigrant	Yes	No	Yes	Yes	No
Hong Kong Chinese	Immigrant	Yes	No	No	No	No
Taiwanese Chinese	Immigrant	Yes	No	No	No	No
Asian Indians	Immigrant	Yes	No	No	No	No
Cambodians	Refugee	Yes	No	No	No	No
Laotians and Hmong	Refugee	Yes	No	No	No	No
Vietnamese	Refugee	Yes	No	No	No	No

Adapted with permission from Weinberg (1997, p. 314)

Table 3 Policy orientations with implications for educational language rights

Governmental/state/agency policy orientation toward language rights	Policy characteristics	Implications for language minority educational rights
Promotion-oriented policies	The government/state/agency allocates resources to support the official use of minority languages.	Examples outside the U.S. include the promotion of community languages, e.g. Welsh in the UK.
Expediency-oriented laws*	A weaker version of promotion laws not intended to expand the use of minority language, but typically used only for short-term accommodations.	E.g. Title VII bilingual education programs to accommodate perceived English deficiencies of speakers of languages other than English.
Tolerance-oriented policies	Characterized by the noticeable absence of state <i>intervention</i> in the linguistic life of the language minority community.	E.g. language schools; private/religious schools in which heritage/community languages are maintained by private resources.
Restrictive-oriented policies	Legal prohibitions or curtailments on the use of minority languages; age requirements dictating when a child may study a minority/foreign language.	E.g. Federal restriction on Native American languages in boarding schools; WWI era restrictions on foreign language instruction; Proposition 227 and similar measures, such as Arizona's Proposition 203.
Null policies	The significant absence of policy recognizing minority languages or language varieties.	Failure to consider the implications of language differences in instruction mediated only in English.
Repression-oriented policies	Active efforts to eradicate minority languages.	E.g. outside the U.S., include equating the use/instruction in a minority language as a political crime (see Skutnabb-Kangas & Bucak, 1994).
This table draws from and expands Kloss' schema (1977/1998; see also Macías & Wiley, 1998). The 'Null' and 'Repression-oriented' categories did not appear in Kloss' schema. Kloss also limited these categories to formal governmental/state policies. The contention here is that this schema can also be applied to institutional agencies and institutional contexts as well as to implicit/covert policies/practices.		

*Expediency-oriented policies are a subcategory of promotion-oriented policies

education and of linguistic human rights support the notion of 'English Plus', that is, they support the promotion of English and another language (Combs, 1992). Federally supported transitional bilingual education falls under the subcategory *expediency-oriented laws*

(a subcategory of *promotion-oriented* policies in Table 3). *Expediency-oriented accommodations* are used to bridge contact between a minority population and the government, such as when the government/state sees a reason to try to improve communication with speakers of

minority languages in order to facilitate assimilation (Kloss, 1977/1998; Wiley, 1999a).

A *tolerance-orientated* policy prevailed toward speakers of European languages up to the World War I era. During the colonial period and the early history of the republic, education among European-origin peoples was supported through private and sectarian means. In a climate of relative tolerance, German Americans provided support for schooling taught either in German or bilingually in German and English (Toth, 1990; Wiley, 1998a). Some states with large German-origin populations for a time even allowed for public supported education in German and German/English (Ohio and Pennsylvania), but, for the most part, it was incumbent on local and private stakeholders to foster education in community languages. African-origin peoples had a markedly different experience. *Restrictive* literacy policies appeared in slave codes in the 1740s. Slaveholders saw literacy as a direct threat to their ability to control the enslaved. *Compulsory illiteracy* laws remained on the books until 1865 (Weinberg, 1995). Kontra *et al.* note:

The state/government can *restrict* minority languages in three ways. It can (1) ... restrict the age-groups and the range of school subjects for which minority-medium education is provided ... (2) [restrict] the number of languages through which education is made available ... [and/or] (3) reduce the number of people entitled to minority medium education by obfuscation of who the rightholders/beneficiaries are. (p. 10)

During World War I, speakers of German, who were the second most populous linguistic group at that time, suddenly found themselves stigmatized and forced to use English (Wiley, 1998a). During the 1920s and 1930s, Chinese and Japanese community-based schools operated, often meeting resistance from territorial authorities in Hawaii and state authorities in California.

The *null* policy category (in Table 3) indicates the significant absence of policy. When educational policies have prescribed a one-size-fits-all approach, they have often disadvantaged language minority students by failing to address their special needs, histories, and circumstances (see Quezada *et al.*, 1999/2000). Unless policy prescribes a special program of study of the language of instruction, language minorities are

excluded, or at best, systematically disadvantaged in learning academic subjects.

School-based language requirements and standards can covertly be used as surrogates for more overtly racist policies. For example, in 1924, English Standard Schools were implemented in Hawaii. Placement was based on tests of standard English that were used to sort children into 'standard', 'nonstandard', and 'feeble-minded' educational tracks. Without resorting to overt racially based segregation, a system of racially segregated schooling was established largely on the basis of language proficiency. In his analysis of historical and contemporary school and university policies and practices in Hawaii, Haas (1992) concluded that many promote institutional racism. Among the examples he identified were failing to offer instruction in languages commonly spoken in linguistically diverse communities even when the communities have requested them; misassigning students to educational tracks based on their performance on tests of standard English which have been normed on national, rather than local populations (e.g. although about half of Hawaii's population is comprised of native speakers of Hawaii Creole English [HCE/'pidgin'], the SAT continues to be used as an entry requirement for admission to the state-supported university system); insufficient use of immigrant languages to communicate with parents; inadequately trained staff responsible for the education of language minority students; and underidentifying and underserving language minority students due to the failure to recognize them as language minorities. Romaine (1994) concluded:

Speakers of HCE have been discriminated against through education in a school system which originally was set up to keep out those who could not pass an English test. In this way it was hoped to restrict the admission of non-white children into the English Standard schools set up in 1924, which were attended mainly by Caucasian children. By institutionalizing what was essentially racial discrimination along linguistic lines, the schools managed to keep creole speakers in their place, maintaining distance between them and English speakers until after World War II. (p. 531; cf. Agbayani & Takeuchi, 1986; Benham & Heck, 1998; Kawamoto, 1993)

As in the case of speakers of other 'non-standard' varieties of language, the failure of educators in Hawaii to recognize (through *null* policy) the language minority status of HCE as a distinct language variety positions its speakers as merely 'substandard' articulators of English. Thus 'deficiency' is located in the students, but not in the educational system responsible for educating them.

Court Decisions on Language Rights and Educational Access

This section examines important U.S. court cases focused on language and educational access.

Meyer v. Nebraska, 262 U.S. 390 (1923). Following the xenophobia of World War I, Nebraska and other states passed laws prohibiting foreign language instruction. In many states, children were not allowed to study a foreign language until Grade 6, in others, not until Grade 8. The intent was to make foreign languages inaccessible during those ages when children would have the best opportunity for learning or retaining them. By 1923, several appeals challenging these restrictions had been filed to the Supreme Court (Piatt, 1992). The decisive case was *Meyer v. Nebraska* (1923). Meyer, a parochial school teacher, was convicted and fined for breaking a Nebraska law prohibiting foreign language teaching. Meyer appealed to the Nebraska Supreme Court and lost. The Nebraska court reasoned that teaching German to children of immigrants was unfavorable to national safety and self-interest. In 1923, the Supreme Court overturned the Nebraska court, arguing that in peacetime, no threat to national security could justify the restriction on teachers of foreign languages nor the limitation imposed on the parents who wished their children to learn them. By a 7-2 vote, the Nebraska law was held to be an infringement of the Due Process Clause of the Fourteenth Amendment (Edwards, 1923; Murphy, 1992; Piatt, 1992; Wiley, 1998a).

Although the *Meyer* ruling determined that unduly restrictive educational language policies were unconstitutional, it established a weak precedent for educational rights. The court accepted the hegemonic view that all citizens of the United States should be required to speak a common tongue (Murphy, 1992) and affirmed the 'power of the state to compel attendance at some school and to make reasonable regulations for all schools, including a requirement that they shall give instructions in English' (cited in

Norgren & Nanda, 1988, p. 188). The Supreme Court's decision affirmed the official status of English-language instruction. Even after *Meyer*, German-language instruction never recovered its pre-war levels (Wiley, 1998a).

Farrington v. Tokushige 273 U.S. 284, 298 (1927). In a related decision, *Farrington v. Tokushige*, the Supreme Court, based on *Meyer*, ruled that the attempt by the territorial governor of Hawaii to impose restrictions on private or community-based Japanese, Korean, and Chinese foreign language schools was unconstitutional. *Farrington* was not without significance, because a large number of such schools had been established in Hawaii (Leibowitz, 1971) and California (Bell, 1935/1974), and many thrived during the 1920s and 1930s, just as similar schools do today. These heritage languages schools provided supplemental instruction in native languages to the English-only instruction provided in public schools. During World War II, however, the right to Japanese instruction was prohibited in federal internment camps in which Japanese Americans were imprisoned (U.S. Senate, 1943/1974).

Lau v. Nichols 414 U.S. 563, 565 (1974) and *Related Cases*. The most significant legal case since *Meyer* with implications for language minority students' educational rights was *Lau v. Nichols* (1974). As historical background to the case, several facts are worth noting. The case was filed in San Francisco, California, like many other states, had a prior history of discriminating against racial and ethnolinguistic minorities. In California, discrimination on the basis of race, at one time, had a legal basis in state law. Anti-Chinese groups even succeeded in lobbying the U.S. government to pass the Chinese Exclusion Act of 1882, which restricted Chinese immigration for ten years. In addition, segregation of Asian-origin students was legal in California from the late 19th century to the mid-20th century. As late as 1943, the California Constitution had affirmed legal segregation of school children of Indian, Chinese, Japanese, or 'Mongolian' parentage. This provision was not overturned until 1947. In 1905, the San Francisco School Board passed a resolution calling for the segregation of Japanese and Chinese students, arguing that its intent was

not only for the purpose of relieving the congestion at the present prevailing in our schools, but also for the higher end that

our children should not be placed in any position where their youthful impressions may be affected by association with pupils of the Mongolian race. (Resolution, 1905/1974; emphasis added)

As in many educational discrimination cases, litigation resulting in *Lau* was born out of the frustration of failed efforts on the part of parents and community activists to receive appropriate educational programs for language minority children. According to Li-Ching Wang, a community leader involved in the four-year litigation, the Chinese-American community held meetings with the San Francisco school administrators over a three-year period. They had 'conducted numerous studies that demonstrated the needs of non-English speaking children, proposed different approaches to solve the problem', and staged demonstrations in protest of district inaction (De Avila *et al.*, 1994, p. 13). As a last resort, Chinese American parents and community leaders filed a lawsuit in 1970, based on the following facts:

1. 2,856 Chinese speaking students in San Francisco Unified School District (SFUSD) needed special instruction in English.
2. 1,790 [Chinese speaking students] received no help or special instruction at all, not even the 40 minutes of ESL [provided to some students].
3. Of the remaining 1,066 Chinese speaking students who did receive some help, 623 received such help on a part-time basis and 433 on a full-time basis.
4. Only 260 of the 1,066 Chinese students receiving special instruction in English were taught by bilingual Chinese speaking teachers. (De Avila *et al.*, 1994, p. 14)

The lower courts rejected the arguments of the plaintiffs. In 1973, the Ninth Circuit Court of Appeals sided with the school district, concluding:

The discrimination suffered by these children is not the result of laws passed by the state of California, presently or historically, but is the result of deficiencies created by the children themselves in failing to know and learn the English language. (cited in De Avila *et al.*, 1994, p. 16; emphases added)

Twenty years after the *Lau* decision, Edward

Steinman, the attorney who had represented Kinney Lau, lamented that the attitude which had led to the struggle for *Lau* 'cannot be changed by a court decision... This statement [above] says that the child is inherently sinful for having the audacity not to know English when he or she enters the classroom' (De Avila *et al.*, 1994, p. 17). What is even more remarkable is the similarity of the 1973 reasoning of the Ninth Circuit Court to the editorial remarks in the *San Francisco Chronicle*, printed 66 years earlier, in support of the segregation of Japanese children:

The most prominent objection to the presence of Japanese in our public schools is their habit of sending young men to primary grades, where they sit side by side with very young [white] children, because in those grades only are the beginnings of English taught. That creates situations which often become painfully embarrassing. They are, in fact, unendurable.

There is also objection to taking the time of the teachers to teach the English language to pupils, old or young, who do not understand it. It is a reasonable requirement that all pupils entering the schools shall be familiar with the language in which instruction is conducted. *We deny either the legal or moral obligation to teach any foreigner to read or speak the English language. And if we choose to do that for one nationality, this is our privilege.* (U.S. Senate, 1906/1974, p. 2972; emphasis added)

In delivering the 1974 opinion of the Supreme Court, Justice William O. Douglas focused on the connections between language and race, ethnicity, and national origin:

The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program and thus violates §601 of the Civil Rights Act of 1964, which bans discrimination based on 'the ground of race, color, or national origin', in 'any program or activity receiving financial assistance'. (*Lau et al. v. Nichols et al.*, 414 U.S. No. 72-6320; Reprinted in ARC, 1994, p. 6)

And, contradicting the entrenched notion that schools are not 'legally or morally obligated to teach English', Douglas concluded,

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. (*Lau et al. v. Nichols et al.*, 414 U.S. No. 72-6520; Reprinted in ARC, 1994, p. 8; emphasis added)

Contrary to a common misunderstanding, *Lau* did not mandate bilingual education. The plaintiffs had not requested a specific remedy, and Douglas left the prescription of possible remedies open, stating: 'Teaching English to the students of Chinese ancestry is one choice. Giving instructions to this group in Chinese is another' (cited in ARC, p. 7). Soon after, federal authorities took the next step with the so-called *Lau Remedies* (see Crawford, 1992). The *Lau Remedies* attempted to spell out appropriate expediency-oriented policies that could be implemented in schools. However, these were subsequently withdrawn under the Reagan administration (see Crawford, 1995). Nevertheless, using *transitional bilingual education* (see Table 4) as a remedy was prescribed in several district court cases. The first was *Serna v. Portales Municipal Schools* in 1974 (*Serna* was also affirmed by the 10th U.S. Circuit Court of Appeals). Other important district court cases prescribing the remedy of transitional bilingual education include *U.S. v. Texas* (1981) and *Rios v. Read* (1978; see Leibowitz, 1982). However, in neither *Lau* nor related cases such as *Serna* did the courts address the constitutional issue of equal protection under the 14th Amendment. Rather, rulings were based on legislative protections against discrimination under the 1964 Civil Rights Act (Piatt, 1992).

The issue of determining whether or not the school districts have complied with *Lau* was left to federal courts to resolve (Jiménez, 1992). The definitive case to date is *Casteñeda v. Pickard* (1981). As Jiménez notes, the significance of *Casteñeda* is that it laid out an analytical framework or three-part test by which 'appropriate actions' by

school districts 'to overcome language barriers' could be assessed (p. 248). The criteria were that any prescribed remedy must (a) be based on sound educational theory; (b) have a reasonable plan for implementation, including the hiring of appropriate personnel; and (c) produce positive educational results.

Martin Luther King Jr. Elementary School Children v. Ann Arbor School District Board (1979). Children who speak non-standard language varieties, such as Hawaii Creole English, Appalachian English, and Ebonics, have often been ignored in discussions of language minority educational rights. The most important legal case in this area is *Martin Luther King Jr. Elementary School Children v. Ann Arbor School District Board*. Initially, this was brought as a racial discrimination suit in which race, class, and language were linked. Smitherman (1981) an expert witness for the defense, after the trial noted:

The fate of black children as victims of mis-education continues to be the bottom line in the case. King began with a claim against the institutional mismanagement of the children... It ended with a claim against the institutional mismanagement of the language of the children... Our argument and Judge Joiner's ruling was that it is the obligation of educational institutions to accept it as legitimate. (p. 20)

Although the judge's ruling affirmed the status of Ebonics/African American English, his strategy in limiting the case to the single issue of language demonstrates how language is used as a substitute for issues involving race and class (Wiley, 1999b). The judge in the King case avoided race and class by focusing on the issue of language deficiency.

Several misunderstandings have developed regarding this case. One is that the judge ordered Ebonics/Black English to be taught or *promoted* in place of standard English. To the contrary, he was only trying to *accommodate* the children's language differences. Another misperception is that this case had the same force as *Lau* (see Baugh, 1995; Schiffman, 1996). However, unlike *Lau*, which reached the Supreme Court, *Ann Arbor* was decided only at the federal district court-level. The school district, which lost the decision, chose not to appeal it; thus, its impact was only relevant in the Ann Arbor District

Table 4 A typology of bilingual education

Type of program	Typical child	Language of the classroom	Societal and educational aim	Language and/or literacy aim
<i>Weak Forms of Education for Promoting Bilingualism and/or Biliteracy</i>				
SUBMERSION (a.k.a. Structured Immersion)	Language Minority	Majority Language	Assimilation	Monolingualism
SUBMERSION (+ Withdrawal ESL)	Language Minority	Majority Language	Assimilation	Monolingualism
SEGREGATIONIST	Language Minority	Minority Language (forced, no choice)	Apartheid	Monolingualism
TRANSITIONAL	Language Minority	From Minority to Majority Language	Assimilation	Relative Monolingualism
MAJORITY Lang. + Foreign Language	Language Minority	Majority Language with L2/FL Lessons	Limited enrichment	Limited Bilingualism
SEPARATIST	Language Minority	Minority Language (out of choice)	Detachment/autonomy	Limited Bilingualism
<i>Strong Forms of Education for Promoting Bilingualism and/or Biliteracy</i>				
Immersion	Language Minority	Bilingual, Initial Emphasis on L2	Pluralism and Enrichment	Bilingualism and Biliteracy
Maintenance/Heritage Language	Language Minority	Bilingual with Emphasis on L1	Maintenance/Pluralism/ Enrichment	Bilingualism and Biliteracy
Two-way/Dual Language	Mixed Language Minority and Majority	Minority and Majority Languages	Maintenance/Pluralism/ Enrichment	Bilingualism and Biliteracy
Mainstream Bilingual	Language Majority	Two Majority Languages	Maintenance/Pluralism/ Enrichment	Bilingualism and Biliteracy

This table is adapted with permission from Baker (1996, p. 172). Notes: (1) L2 = Second Language; L1 = First Language; FL = Foreign Language. (2) See pp. 172–197 for elaboration

(Baugh, 1995). Nevertheless, the decision demonstrates the potential of *expediency* policies for removing the sole burden for acquiring standard English from students who do not enter school speaking it (Wiley, 1999b).

In 1996, the Oakland School Board decided to use Ebonics as a bridge to school English. Its decision was widely ridiculed by the press and popular media, and more viciously attacked by hate-oriented Internet websites. What the press and media failed to focus on was the fact that the overwhelming majority of language minority children, including speakers of Ebonics, are being educated in standard English by many teachers who equate their students' language differences with language deficiencies (see Ramírez *et al.*, 1999).

Language Minority Educational Rights in Institutional and Programmatic Contexts

In order to evaluate access to educational language rights, it is useful to analyze the various types of program models prescribed by legislation, or otherwise available, and to consider their particular goals for language minority students vis-à-vis the dominant society and in terms of their aims for language and literacy development as well (see Table 4).

The political debate over bilingual education in the United States has focused more on the phrase 'bilingual education' rather than on programmatic substance. As Lyons (1990/1995) has noted, the intent of one of the initial sponsors of federal bilingual programs, Senator Yarbrough, was to address the needs of Spanish-speaking children. Initially, the proposal for bilingual education had strong bipartisan support, with some three-dozen bills being put forth. In a compromise move to expedite passage of the legislation, the designated target population was redefined as being 'children of limited English-speaking ability'. This shift in terminology away from 'Spanish-speakers' had the appearance of being more inclusive. However, it also positioned the target population as members of a 'remedial' group, defined by the lack of proficiency in English. Amendments to the Bilingual Education Act of 1978 relabeled the target population as being 'limited English proficient' to underscore the emphasis on reading, writing, comprehension and cognitive skills in English. Yet 'the new definition, arguably clearer and more comprehensive, reinforced the deficit approach to

educating language minority students' (Lyons, 1990/1995, p. 3).

Under the Bilingual Education Act and its reauthorized versions, the majority of programs offered under the 'bilingual' label have been short-term *transitional* programs and programs in English as a second language. In Table 4, these models fall under the 'weak' category because they fail to promote or maintain native languages. Also the societal and educational aims of these programs as well as their language/literacy aims promote 'assimilation' and 'monolingualism' (in English) respectively. Many so-called educational 'reform' measures, such as Proposition 227 ('English for the Children') and Arizona's Proposition 203, have sought to restrict even 'weak' *transitional* models of bilingual education.

Conclusion

The history of access to educational language rights in minority languages, from the colonial period to the present, indicates a mixed bag of official and unofficial policies. As English achieved highest status, colonial and early national policies and practices toward minority languages ranged from relative tolerance or indifference toward education in European languages and bilingual education, to the suppression of African tongues accompanied by compulsory ignorance laws imposed on enslaved African Americans. Policy differences toward each group suggest the extent to which language policies represented efforts to exert social control over various language minority groups based on their relative status vis-à-vis the English-speaking majority. From the early national period to the mid-19th century, policies toward Native Americans encouraged the acquisition of English over maintenance native languages. However, after the Civil War, policies toward American Indians shifted to *coercive assimilation* of English, accompanied by restrictions on the maintenance of native languages until the 1930s. From the late 1880s to the 1920s, restrictive policies (peaking during World War I) were also adopted toward European languages, most notably toward German, with the effect of reduced maintenance and a de-emphasis on German education in the schools. In the 1920s, the Supreme Court struck down the most restrictive prohibitions on 'foreign' language instruction. Nevertheless, it affirmed the goal of a monolingual English speaking society and the imposition of English as the medium of instruction. In the 1960s, during

a climate of heightened concern for civil rights, greater educational opportunity for all, and 'remediation', bilingual education – with assimilation into English mediated education as its goal – was adopted as an *expediency* measure to promote greater educational access. During the anti-bilingual education movement of the 1990s, even weak forms of publicly supported bilingual education were subject to attack. California's Proposition 227 and Arizona's Proposition 203 were designed to strictly limit access to bilingual education and similar measures were introduced in a number of other states.

From the perspective of educational language rights, the 21st century begins with echoes of early 20th century restrictionism (cf. Tatalovich, 1995). At present, support for the right of language minority children in the United States to maintain their languages remains protected in principle. Unfortunately, the prospects for attaining such a goal survive largely outside the domain of federal education policy through the efforts of charter school *two-way immersion* programs (see Table 4) and freelance community-based organizations and private efforts. Thus, the struggle for educational language rights and linguistic human rights in the United States continues.

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