CHAPTER THREE

The Politics of English Only in the United States: Historical, Social, and Legal Aspects

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In Noam Chomsky's words, "questions of language are basically questions of power" (1979, 191). This chapter is concerned with the process by which non-English languages were and are devalued, conquered, assimilated, and partially accommodated. The founding fathers and later policymakers held ambivalent attitudes toward languages other than English, ranging from pragmatic acceptance to deliberate policies of forced *extermination* and assimilation.

The first section of this chapter explores the relationship between language movements and high levels of immigrants in the early and late twentieth century. High levels of immigration in the United States have typically led to two trends: an increase in various strains of xenophobia and a crusade to "Americanize" the new immigrants. As Higham (1967) observes, "When neither a preventative nativism nor the natural health of a free society seemed sufficient to cope with disunity, a conscious drive to hasten the assimilative process, to heat and stir the melting pot, emerged" (235). Both the post-1965 era and the period of Americanization campaigns, defined as the decades between the 1890s and the 1920s aimed at the "new immigration" from southern and eastern Europe, shared a significant upsurge of newcomers who were thought to be significantly different from the older native-born population and incapable of being assimilated into American culture (Graham and Koed 1993). High immigration is also an important factor in the emergence of political movements to abolish bilingual services, such as the recent initiatives in California.

The second section examines Official English legislation and recent legal cases, focusing on English Only laws and Proposition *227,* which effectively eliminates bilingual education in California. Despite its obvious importance, there has been relatively little scholarly attention directed toward the issue of language rights in the United States. The last section analyzes the issues raised by English Only rules. The imposition of English in the United States has not been uniform across different language groups. Of particular interest is the divergent treatment of linguistic groups and the ideological aims on the part of the dominant groups.

Language Restriction, High Immigration, and the Politics of Exclusion

Early-Twentieth-Century Language Conflict

The first English-language requirement for naturalization was adopted with the explicit purpose of limiting the entrance into the United States of southern and eastern Europeans. During World War I, the idea of expulsion as an alternative to assimilation was frequently discussed. In *1916* the National Americanization Committee, which worked closely with the Federal Bureau of Education, sponsored a bill in Congress to deport all aliens who would not apply for citizenship within three years. The U.S. Congress in the Revenue Act of *1918* doubled income tax rates on "nonresident" aliens-an ill-defined term, but one clearly intended to increase the rate of naturalization. In *1919* fifteen states decreed English as the sole language of instruction. An Oregon law required foreign-language newspapers to publish English translations, and a California law mandated that foreigners pay a special poll tax of *$10.20* (Graham and Koed *1993;* Higham *1967).*

The late nineteenth century through World War I was a time of high immigration and a crusade to "Americanize" the new immigrants. In *1911* a federal commission issued a forty-twovolume study of the foreign-born population alleging that the new immigrants" were less skilled and educated, more clannish, slower to learn English, and generally less desirable as citizens than the "old immigrants" (Handlin 1957).

A 1919 article in the *American Journal of Sociology* also echoed this theme, observing that "unlike the earlier immigrants, many of the late-comers manifested no intention of making America a permanent home and no desire of becoming Americans" (Hill 1919, 611).

The "new immigrants" came from those regions of Europethe Russian Empire, Austria-Hungary, Italy, and the Balkans which were comparatively poor and had a less democratic tradition compared to the "old immigrants" from the British Isles, Germany, Holland, and other sections of northwestern Europe. This first wave of newcomers came from those regions of Europe which had a common fund of social mores and practices, and a somewhat similar socioeconomic and political experience. In addition, most of the first wave of immigrants was Protestant, while the second wave tended to be Catholic or Jewish. The new immigrant groups began to migrate to the United States in significant numbers as early as 1875, when approximately 10 percent of the total number of immigrants came from eastern and southern Europe. Each year thereafter the percentage increased; by 1896 it reached 57 percent, and by 1902, it was over 76 percent. From 1873 to 1910, it has been estimated that approximately 9,306,000 immigrants from southern and eastern Europe migrated to the United States (Hartmann 1948). At the turn of the century, the nation's already high immigration increased dramatically, doubling between 1902 and 1907 (Landes, Cessna, and Foster 1993).

Even western European immigrants have come under attack when their numbers increased or political events called special attention to the group. Before World War I, German Americans, as the largest language minority in the United States, came under immediate suspicion. The large increase in German speakers in all likelihood made the population more visible. Between 1850 and 1880, the number of foreign-born Germans whose mother tongue was German increased from 15 to 60 percent, largely as a result of immigration (Kloss 1977, 13). After the United States entered World War I, measures were taken in many states against the German population. The war, according to Wittke (1936),

"precipitated a violent, concerted movement to eradicate everything German from American civilization" (163).

In 1917 an amendment to the Espionage Act was submitted to Congress requiring every foreign-language paper to submit precise English translations of all articles containing news on the war. The primary purpose of the amendment was to provide effective censorship of the foreign-language press, most notably of papers in the German language. Although there was some protest, the law went into effect on October 15, 1917. The law had a dampening effect on German-language newspapers in the United States. By 1920, ten papers which had previously been printed in German appeared exclusively in English. Although there were few arrests, several editors were interned as alien enemies. The editor of the *Cleveland Echo,* a socialist paper, was arrested for not filing a translation of an article attacking the American Protective League (Wittke 1936).

German schools had enjoyed a privileged position in the curricula of some school systems. The hysteria of the war, however, changed this situation. Petitions were circulated to eliminate German from the curriculum. Almost immediately the number of students taking German in the schools dropped significantly. For example, in Cincinnati high schools in the fall of 1918, less than thirty students elected to take German. On April 1, 1919, Governor James Cox urged the adoption of a law to abolish the teaching and use of German in the public, private, and parochial elementary schools of Ohio as "a distinct menace to American-ization, and a part of a plot formed by the German government to make the school children loyal to it" (Wittke 1936, 181). By 1923 thirty-four states adopted laws banning instruction in students' native languages, and some states also banned foreign-language teaching in the early grades (Leibowitz 1971).

Through immigration and nationality laws, the federal government ranked populations into hierarchies of assimilability, in which some groups were regarded as more likely to "fit in" than others (Carter, Green, and Halpern 1996). Attempts to exclude foreign-born immigrants deemed "racially" undesirable became apparent when Congress passed an act to suspend Chinese immigration in 1882. Fundamental to the opposition of the Chinese and other undesirable groups was the antagonism of race, reinforced by economic competition (Sandmeyer 1939).

The reconstitution of national identity was articulated through concepts of race, language, country of origin, and religion. The debate over immigration policy helped to expose the extent of anxiety over who was to be included in the nation. This started a process by which the federal government codified in immigration law racist and nationalist discourse. Over the next two decades, the principle of exclusion by race was extended to several groups which were thought to be unassimilable. The exclusion of Japanese workers was accomplished by the Gentleman's Agreement of 1907. Immigrants from southern and eastern Europe were also racialized.

Immigration restrictionists were motivated by a variety of factors, which included ideological commitments to white supremacy, acceptance of social Darwinistic thinking, vote-getting demagoguery, and the belief that the increase in immigration that took place from the 1890s onwards, particularly from southern and eastern Europe, would threaten the nation's ability to absorb and Americanize the newcomers (Carter, Green, and Halpern 1996). Wartime intolerance of German Americans, coupled with language, ethnic, and racial antagonism, combined to create an atmosphere conducive to the revision of the United States' once liberal immigration policy.

Bilingualism came directly under attack beginning in the 1920s, bolstered by new psychometric tests. The majority of studies by psychologists consistently reported evidence that bilingual children suffered from a language handicap. In comparison with monolingual children, bilingual youth were found to be inferior in intelligence test scores and on a range of verbal and nonverbal linguistic abilities. Nature rather than nurture was cited as cause of the low IQ among bilingual immigrant schoolchildren (Portes and Rumbaut 1996). Collectively, these findings supported attempts to vastly reduce the number of newcomers.

The decades of the Americanization movement culminated in legislation in 1921 and 1924 creating the national origins quota system, effectively closing the gates to mass immigration. The 1921 Immigration Act limited admissions from each European country to 3 percent of each foreign-born nationality in 1910, with an annual maximum of 350,000 entrants.

The consequence was that northern Europeans were favored at the expense of southern and eastern Europeans. Higham observed that the 1921 act

> proved in the long-run to be the most important turning point in American immigration policy. It imposed the first sharp and absolute numerical limits on European immigration. It established a nationality quota system based on the pre-existing composition of the American population-an idea which has survived in one form or another through all subsequent legislation. (Higham 1967, 311)

Large-scale evasion of the quotas quickly began, with estimates of illegal entrants ranging from 100,000 a year to 1,000 a day (Keller 1994, 229). In 1924 the Johnson Act superseded the 1921 legislation. It was even more extreme in reducing the number of immigrants by using the 1890 census as a benchmark and reducing quotas from 3 percent to 2 percent. The 1924 act also excluded immigrants ineligible for citizenship, that is, Chinese and Japanese. Furthermore, it provided for an examination of prospective immigrants overseas, and put the burden of proof of admissibility on the would-be immigrants (Hutchinson 1981). Immigration restriction marked the conclusion of an era of nationalistic and nativistic legislation in the mid-1920s. Language and immigration issues then lay largely dormant as a public issue for the next half a century.

Late-Twentieth-Century Language Conflict

Today's "new era" immigration waves represent a significant departure from the past. This stems in part from the change in immigrants' national origins, with most of the newcomers arriving from Latin America and Asia rather than from Europe. Half of the newcomers between 1955 and 1964 came from Europe, with most of the remainder arriving from North America, primarily Mexico, the Caribbean, and Central America. By the decade from 1965 to 1974, the proportion arriving from Europe had dropped to barely 30 percent, while the percentage arriving from Asia increased dramatically to 22 percent, and the percentage coming from Mexico and Central America increased by 40 percent (Landes, Cessna, and Foster 1993).

Immigration increased dramatically around 1965 after a lull of almost four decades. The rate of increase in the immigrant population was nearly twice as fast in the 1980s as in the 1970s. Much of the surge was among Hispamcs/Latinos, who comprised 48 percent of immigrants during the 1980s. In 1991 newcomers from Mexico comprised almost 52 percent of the total immigrant population (U.S. Immigration Service 1997).

Much like the immigrants who came before them, the most recent wave of newcomers are highly concentrated among a few states and metropolitan areas. California, New York, Florida, Texas, Illinois, and New Jersey contain nearly three-fourths of the foreign residents counted in the 1990 census. California, a traditional destination for immigrants from Asia as well as Latin America, contained one-third of the U.S. foreign-born population in 1990. Although many immigrants are from rural backgrounds, 90 percent live in metropolitan areas, many of which are experiencing economic decline. Nearly five million Hispanic Americans live in the Los Angeles consolidated metropolitan statistical area (CMSA), while nearly three million live in New York. Close to a million Hispanics/Latmos live in the CMSAs of Miami, San Francisco, and Chicago (U.S. Bureau of the Census 1993).

The context in which immigration occurs today differs from that of earlier immigrants. Newcomers in the early part of the twentieth century were more likely to find an expanding economy that needed unskilled labor. Recent immigrants enter an economy that is growing more slowly. Current skill and education levels required by the marketplace are very different from those of the past, with an increased need for skilled individuals and a limited market for unskilled labor. The changes in the economy threaten the mobility of unskilled immigrant and citizen populations. Furthermore, the new era immigration is more global in its impact, with the flow and composition of immigrants determined by recent global and national economic and political transformations (Abelmann and Lie 1995; Ong, Bonacich, and Cheng 1994).

Language rights and antiforeigner sentiment have emerged as important issues in the second half of the twentieth century.

The massive wave of immigration from Latin America and Asia that began in the 1960s fueled demands that government provide education, election ballots, emergency services, and other information in languages other than English.

Other factors have also contributed to the recent emergence of language as a source of conflict in the political arena. These include immigration reform, limited government recognition of bilingualism, and a heightened sense of nationalism and patriotism. The new national-origins system increased the number of immigrants allowed into the United States and gave priority to applicants who already had family members in the country. Settlement patterns exacerbated the language conflict since the growth of the Hispanic/Latino and Asian communities are heavily concentrated in five states, with almost 40 percent in California. The recent entry of so many immigrants who speak languages other than English makes them more visible and distorts perceptions of how well immigrants are learning English and adapting to the United States. Both English-language ability and incomes tend to increase with time spent in the country (Fix and Passel 1994).

Another important factor is the limited legal recognition of languages other than English. The Bilingual Education Act reversed our two-hundred-year-old tradition of a laissez-faire attitude toward language. It seemed to contradict ingrained assumptions about the role of second languages and the melting pot in U.S. society. The goals of the act were unclear, so it was variously interpreted as a remedial effort, enrichment program, and opportunity to maintain one's own language and culture through the public schools (Crawford 1989).

Finally, unstable economic conditions and current events seem to have fueled a new search for a national identity. According to Fishman, the English Only movement represents middle-class mainstream American fears and anxieties manifested by the creation of "mythical and simplistic and stereotyped scapegoats" (Fishman 1988, 132). As Donald Horowitz (1985) observes, language is an especially salient symbolic issue because it links political claims with psychological feelings of group worth. As in the early decades of the twentieth century, contemporary nativists blame many problems on

the new immigrants. They find convenient scapegoats for the crisis in public institutions, including schools, health care, and welfare, as well as for high crime rates in poor immigrant quarters and the trend toward higher taxes.

Complaints about a breakdown in the process of assimilation are especially prevalent during periods of high immigration, economic restructuring, and job insecurity, providing fertile soil for the growth of nativism and a negative nationalism. This trend has not abated even though the new immigrants do not directly affect the vast majority of U.S. workers. The newcomers do not directly threaten most of their jobs. Several studies indicate that objective self-interests or economic conditions seem to be less important in shaping popular attitudes than the intensity of feelings toward a group or political symbol (Tatalovich 1995).

U.S. English is the largest, most aggressive, and most successful of the political groups promoting English as the official language in the United States. It has grown rapidly, from 300 members in 1983 to 400,000 nationwide as of 1990, with about half of these members in California (Schmid 1992). Currently, U.S. English reports 620,000 contributors (Tatalovich 1997). The activities of U.S. English include lobbying for a federal constitutional amendment making English the official language of the United States, restricting government funding for bilingual education to short-term transitional programs, and supporting state Official English statutes (Schmid 1992). So far voters or legislators have enacted English Only legislation in twenty-one states, and nowhere has such an initiative been defeated at the polls. In 1986 California voters, by a margin of 73-27 percent, adopted a constitutional amendment declaring English the state's official language. In November 1988, voters in the states of Arizona, Colorado, and Florida passed English Only amendments to their state constitutions by 51 percent in Arizona, 61 percent in Colorado, and 84 percent in Florida.

An important factor that sparks anti-immigrant sentiment in the United States and provides support for U.S. English and other restrictionist groups is the perception that new immigrants are unwilling or unable to learn English as readily as earlier immigrants. The lack of English proficiency has been blamed for numerous economic, social, and health problems encountered by immigrants and in society as a whole.

Economists argue that English proficiency is a form of human capital and that limited knowledge is associated with lower earnings, less schooling for adolescents, and communication barriers with health care providers (Espenhade and Fu 1997).

Not since the beginning of this century has language received as much attention in the United States. Language battles in the 1980s and 1990s, like their counterparts in the 1900s, appeal to patriotism and unity, often casting language minorities in the role of outsiders who deliberately choose not to learn English. Unlike the earlier period, when these issues tended to be more localized, the last decade and a half has seen a campaign orchestrated at the national level. While the stated goal of U.S. English is to establish English as the official language in the United States, its connections to immigration restriction groups suggest a more far-reaching agenda.

The Federation for American Immigration Reform (FAIR) and U.S. English possess many common roots. Dr. John Tanton, a Michigan ophthalmologist, environmentalist, and population control activist, launched FAIR in the late 1970s. FAIR is a Washington, D.C.-based lobby that advocates tighter restrictions on immigration. FAIR has proposed reducing the current level of about one million legal immigrants per year to 300,000 or fewer (Seper 1995). Prior to organizing FAIR, Tanton served as president of Zero Population Growth. Former Senator S. 1. Hayakawa and Tanton organized U.S. English in 1983 as an offshoot of FAIR. By highlighting the cultural impact of immigration, U.S. English was able to bolster FAIR's demands for stricter control of the nation's borders. Until mid-1988, according to federal tax returns, U.S. English was a project of US Inc., a tax-exempt corporation that also channels large grants to FAIR, Americans for Border Control, Californians for Population Stabilization, and other immigration restrictionist groups. While FAIR did not hesitate to target Hispanic/Latino newcomers, in particular undocumented Mexicans, U.S. English focused on language while avoiding immigration issues (Crawford 1992, 153).

Both organizations supported Proposition 187 (which restricted almost all social services, including education, of undocumented workers) in California. In this way, the two sister organizations were able to increase their social and economic influence.

Most attempts to protect English, although ostensibly neutral, have targeted Spanish speakers (Liebowicz 1985, 522). Spanish is the largest single non-English language spoken in the United States and comprises the largest group of limited-Englishproficient (LEP) students. U.S. English has recently depicted Spanish-speaking communities in the United States as having unprecedented rates of language and cultural maintenance. Tanton, in a memo leaked to the press, warned of a Hispanic "political takeover" through immigration, language maintenance, high birthrates, and cultural maintenance.

The focus on language differences and opposition to bilingualism is seen by many political and social scientists as thinly veiled hostility and resentment toward Hispanics/Latinos and other minority-language groups (Alatis 1986; Heath and Krasner 1986; Judd 1987; Marshall 1986). The loss of a common language is an often repeated theme of U.S. English (de la Pena 1991). There is little evidence, however, to support this claim. Many myths surround language proficiency and the speed at which new immigrants and their children are learning English.

Despite widespread belief that immigrants are less likely to learn English than older waves of newcomers and their children, current studies do not support this commonly held opinion. In 1990, 14 percent of the nation's population spoke a language other than English in the home, but less than 3 percent did not speak English well or at all. In one of the best-designed studies looking at language shift, drawing on the 1976 Survey of Income and Education, Veltman (1988) concluded that data "certainly do not indicate that hispanophone immigrants resist the learning of English; in fact, the data indicate very rapid movement to English on the part of Spanish immigrants" (44). He found that more than three-fourths of any given age group of immigrants will come to speak English on a regular basis after approximately fifteen years of residence. Even more important, approximately 70 percent of the youngest immigrants and 40 percent of those aged ten to fourteen at the time of arrival will make English their primary language.

According to a detailed 1989 study, despite significant differences according to age, education, nationality group, year of immigration, and English knowledge prior to immigration, most immigrants' English-language skills improve with added years of experience in the United States. New immigrants, especially those from Asian and Latin American countries, may encounter initial problems with the English language during their first few years. Based on the evidence of the study, however, "fears that America's newcomers are failing to learn English appear to be greatly exaggerated" (Espenshade and Fu 1997, 302).

In the late twentieth century, the English language has taken its place beside the American flag as a symbol of what it means to be an American. Countersymbols that challenge the melting pot theory, such as the legitimacy of speaking and perhaps even maintaining a language in addition to English, add to the current social conflict. One could vividly see this clash in Proposition 227 in California. The California measure passed 61 percent to 39 percent in June 1998. Proposition 227 significantly changes the way that LEP students are taught in California. Specifically, it requires that "all children in California public schools shall be taught English by being taught in English." In most cases, this would eliminate bilingual classes-programs that provide students with academic instruction in their primary language while they learn English. LEP students are entitled to "be taught English ... as effectively as possible." The initiative, however, shortens the time most LEP students would stay in special classes, prescribing programs of "sheltered English immersion during a temporary transition period not normally intended to exceed one year" *(English Language Education* 1998, Ch. 3, 300).

The reception of bilingual education is not equally negative in all parts of the country. Perceived economic incentives, especially in the business community, and a sense that bilingual education is "enrichment" rather than "remedial" education are two important variables explaining why bilingual education is better received in some states. In Florida a new push for bilingual education is coming from the Miami business community. A 1995 survey of businesses in Miami and surrounding Dade County found that more than half of the businesses worked at least 25 percent in Spanish. In addition, 95 percent of the businesses surveyed agreed on the importance of a bilingual workforce.

A University of Miami study found that bilingual Hispanics/Latinos who are fluent in both English and Spanish earned about $3,000 a year more on average than unilingual English speakers. These conditions contrast sharply with those in California, where bilingual education has become equated with remedial education rather than an enrichment program. Businesses in California have been slow to recognize the advantage of bilingual employees (Anderson 1988).

Despite significant opposition to bilingual education in California, most LEP students do not study in bilingual classes. There are simply not enough classes to accommodate the rapidly growing numbers. California's public schools serve 5.6 million students in kindergarten through twelfth grades. In the 1996-97 school year, schools identified 1.4 million LEP students. These are students insufficiently proficient in English to keep up with their grade level in school. Only 30 percent of California students with limited English ability are taught in bilingual classes. These students receive some or all of their academic subjects in their home languages. Opposition to bilingual education was at the heart of the Unz initiative, [2] even though a majority of Hispanics/Latinos are not in bilingual classes. About 40 percent of all LEP students are taught their academic subjects in English with specially designed materials for students who lack fluency in English. The remaining 30 percent of LEP students do not receive special help in their academic subjects, either because they do not need it or because the school does not provide it *(English Language in Public Schools* 1998). Unfortunately, the question of what is the best method to teach children English, especially children from less privileged backgrounds, was lost in the noise of the campaign.

California is particularly ripe for conflict over bilingual education since the number of students labeled "limited English proficient" has more than doubled in the past ten years. They comprise nearly a quarter of the state's public school students and roughly 50 percent of all LEP students in the nation. Approximately 80 percent of LEP students speak Spanish as their mother tongue *(Plaintiff Legal Brief* 1998).

Race and ethnicity played a significant role in support or rejection of Proposition 227. African American support for the initiative fell below 50 percent, according to a *Los Angeles* Times-CNN exit poll, with just under half (48 percent) supporting the measure. Fewer than four in ten (37 percent) Hispanic/Latino voters backed the initiative. For many Hispanics/Latinos, an attack on bilingual education became synonymous with prejudice toward the large California Mexican American community of new immigrants. The proposition failed in two dozen precincts where Hispanics/Latinos accounted for at least half of the registered voters. Latino presence at the polls grew to 12 percent of all California voters in 1994 (Pyle, McDonnell, and Tobar 1998). Even though they are the state's fastest growing population, the Hispanic electorate is much smaller (12 percent in 1998) than the group's 29.4 percent share of the California population.[3] Non-Hispanic/Latino Whites, on the other hand, overwhelmingly supported the Unz measure. Almost seven in ten Whites (67 percent) supported Proposition 227. Endorsement of the initiative was particularly strong among Republicans, who provided the major support (77 percent) *(Los Angeles* Times Poll 1998).

The June 2, 1998, outcome appeared to follow other elections in California in which Latinos were in a minority and went against the tide on measures that were more likely to affect them personally: the anti-legal immigrant Proposition 187, and the anti-affirmative action Proposition 209. Latinos opposed both measures passed by state voters. Proposition 227 was the third racially divisive ballot measure in as many election years in California.

Immediately after Proposition 227 was passed, the Mexican American Legal Defense and Educational Fund, the American Civil Liberties Foundation, and other concerned civil rights organizations requested a preliminary injunction. A federal judge refused to block its enforcement. The following section analyzes language rights and the legal status of English Only laws. Is there a legal right to receive governmental services in languages other than English? To what extent is bilingual education guaranteed in the law?

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Language Rights and the Legal Status of English Only Laws

The Constitutional Issue Avoided: Lau and Title VI

Almost twenty-five years ago in *Lau v. Nichols,* the Supreme Court held that placing non-English-speaking students in a classroom with no special assistance and providing them with instruction that was not comprehensible to them violated Title VI of the federal Civil Rights Act of 1964. In *Lau,* a class of approximately 1,800 non-English-speaking Chinese students in the San Francisco schools raised an equal-protection claim and a claim under Title VI. Title VI prohibits discrimination based on the grounds of race, color, or national origin in any program or activity receiving federal financial assistance.

In its analysis, the Supreme Court observed the importance of the English language in the California educational scheme. English fluency was a prerequisite for high school graduation. School attendance was compulsory. Furthermore, English as the basic language of instruction was mandated by the state. Given these state imposed standards, "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" *(Lau v. Nichols* 1974, 566).

In addition to Title VI, the *Lau* court relied on the guidelines promulgated by the Department of Health, Education and Welfare (HEW) in reaching this conclusion. The guidelines required that school districts take affirmative steps to address the language needs of minority-language children. Failure to rectify language deficiencies constitutes discrimination on the basis of national origin, even if it is not deliberate. The Court did not resolve the question of whether the failure to provide educational assistance to non-English-speaking students violated the constitution. The *Lau* decision did not order a specific remedy since none was requested by the plaintiffs, although it did identify bilingual education and English as a second language (ESL) instruction as options.

In *Serna v. Portales,* the Tenth Circuit Court closely followed the reasoning in *Lau,* and also ruled on Title VI rather than constitutional grounds.

The *Serna* court noted that the children were required to attend schools in which classes were conducted in English. Since it failed to provide remedial measures to meet the needs of Mexican American students, the Portales school curriculum was discriminatory and in violation of Title VI and the HEW regulations *(Serna v. Portales* 1974).

As the only Supreme Court case on the issue of the right of language-minority children to an equal education, the *Lau* case established guidelines for similar cases. Courts tended to avoid the constitutional issue, rely on the discriminatory-effect rationalization of Title VI, choose a remedy on a case-by-case basis, and take into account the number of students involved (McFadden 1983). While there appears to be a limited right to rectify language deficiencies where school policies have had the effect of discriminating against national-origin minorities under Title VI, there is not an absolute right to bilingual education. In school districts with both language and racial minorities, conflicting remedies present difficult problems. With the future of *Lau* remedies increasingly uncertain, there has been more reliance on the Equal Educational Opportunity Act (EEOA) of 1974. Shortly after the *Lau* decision, Congress in effect codified the Supreme Court's holding.

The Equal Educational Opportunities Act

Section 1703(f) of the Equal Educational Opportunities Act requires school districts to "take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs." For the first time, Congress recognized the right of language-minority students to seek redress for a school system's inequity, whether or not it received subsidies from the federal government. Soon after the passage of section 1703(f), the Fifth Circuit Court held that a violation of this act requires no discriminatory intent on the part of school authorities, simply a failure to take appropriate action *(Morales v. Shannon* 1975).

The courts have been split, however, on the form this "appropriate" action must take. In 1978 the district court for the Eastern District of New York, in *Cintron v. Brentwood Union Free School District* (1978), held that where a bilingual program is implemented under section 1703(f), it must include instruction in the child's native language in most subjects.

The Ninth Circuit Court, on the other hand, in *Guadalupe Organization, Inc. v. Tempe Elementary School* (1978), concluded that appropriate action under 1703(f) need not be bilingual-bicultural education staffed with bilingual instructors. The ESL program proposed for the Arizona school district qualified as an appropriate program for English-deficient children.

The interpretation of 1703(f) was clarified in the 1981 Fifth Circuit Court case of *Castaneda v. Pickard* (1981). Agreeing with Cintron, the court held that it was not necessary for a school district to discriminate intentionally in order for 1703(f) to be invoked. It also determined that the type of appropriate compensatory language programs should be left up to the state and local educational authorities. The Fifth Circuit Court of Appeals formulated a set of basic standards to determine a school district's compliance with EEOA. The *Castaneda* test included three major criteria: (1) the school must pursue a program based on an educational theory recognized as sound or, at least, as a legitimate experimental strategy; (2) the school must actually implement the program with instructional practices, resources, and personnel necessary to transfer theory into reality; and (3) the school must not persist in a program that fails to produce results. Therefore the court specified that at a minimum, schools must have a program predicated on and "reasonably calculated" to implement a "sound" educational theory and must be adequate in actually overcoming the students' language barriers *(Castaneda v. Pickard* 1981, 1010-1019). The influence of *Castaneda* has extended beyond the Fifth Circuit Court, making it one of the most significant cases affecting language-minority students after *Lau.*

While Section 1703(f) of the Equal Education Opportunity Act provides some protection for language minorities, like the *Lau* decision and Title VI, there is not a right to bilingual-bicultural education. The EEOA did, however, recognize a duty on behalf of educational agencies to ensure access to instructional programs for LEP students. In addition, it provided aggrieved individuals with a private right of action to compel such relief, and it allowed the attorney general of the United States to sue on behalf of those individuals.

On July 15, 1998, a federal court district judge rejected a move to block Proposition *227*. Judge Charles Legge held, "Since there is no constitutional right to bilingual education, the voters of California were free to reject bilingual education." The plaintiffs argued that the initiative's "one-size-fits-all" program overrides choices of local schools and school districts and deprives them of the individualized flexibility to address the specific needs of the diverse composition of LEP students. "It reverses the State's proper role as a supervisor and guarantor of compliance, converting it into an enforcer of an arbitrary ceiling on educational services that impedes, rather than facilitates, compliance with the EEOA" *(Plaintiff Legal Brief* 1998, *23)*. The civil rights organizations argued that the initiative would cause "irreparable harm" by forcing schools to teach many students in a language they barely understand.

Opposing this view, attorneys for the state argued that the initiative simply favors an educational policy of language "immersion" that is followed elsewhere in the country. They observed that the initiative statute allows parents to apply for waivers to enable children to continue to receive bilingual teaching under limited circumstances. Judge Legge agreed that opponents had "terribly overstated" the restrictions and agreed with the state that the initiative allows educational agencies significant flexibility in catering to LEP students (Anderson and Sahagun 1998). The ruling is likely to be appealed to the United States Court of Appeals for the Ninth Circuit. The appellate courts are generally reluctant to stay a voter-approved law such as Proposition *227,* particularly when a trial judge already has found no compelling reason to provide an injunction.

The Application of the Equal Protection Clause and Language Rights

Another argument put forth by the plaintiffs was that Proposition *227* "violates the Equal Protection Clause of the Fourteenth Amendment and is subject to strict scrutiny because it forecloses minorities' options in the area of equal educational opportunity, and restructures the political process to embed its single anointed option of `immersion' to the preclusion of all others" *(Plaintiff Legal Brief 1998, 34)*. The Supreme Court applies a "strict scrutiny" standard of review to classifications that infringe on rights considered "fundamental," or classifications that single out "suspect classes."

Strict scrutiny has been interpreted as applying not only to discrimination on the basis of race, but also to discrimination based on national origin. When strict scrutiny is applied, statutes generally fail unless they serve a compelling state interest. Classifications that do not implicate either specially protected rights or specially protected persons are granted broad deference by the courts on the "rational basis" standard. The courts will uphold the law so long as it has a rational or reasonable basis (Tribe *1978)*.

The Supreme Court has not resolved the question of whether language-based discrimination constitutes a "suspect" class. A number of legal scholars have argued that language-based discrimination should be afforded strict scrutiny or at least intermediate level scrutiny (Moran *1981;* Califa *1989)*. They have emphasized the need for strict scrutiny because of the close relationship to national-origin discrimination. Like racial minorities, non-English speakers have suffered a history of discrimination (including voting and access to political power), been stigmatized by government action, and suffered economic and social disadvantage.

In general, the courts have rejected an equal-protection challenge to language minorities unless the case involves a close relationship to national-origin discrimination or involves rights considered fundamental. More common is the reasoning in *Soberal-Perez v. Heckler,* a Second Circuit Court case, which rejected an equal-protection challenge for the failure to provide information in Spanish to Social Security recipients and applicants, holding that "[language, by itself, does not identify members of a suspect class" *(Soberal-Perez v. Heckler 1983, 41)*. In addition to the Second Circuit Court, the Sixth and Ninth Circuit Courts, employing similar reasoning, have continued to hold that language is not synonymous with nationality *(Frontera v. Sindell 1975; Carmona v. Sheffield 1973)*. The standard of judicial review under the Equal Protection Clause will continue to be a major issue in the area of language rights. The current interpretation of the equal-protection analysis does not recognize language discrimination as a subset of national-origin discrimination.

Therefore, English Only laws for which language, as opposed to national origin, is at issue are rarely deemed "suspect."

Protection o f Language Rights under the First Amendment

Very few cases have challenged Official English laws or governmental restraints on the use of foreign languages. Thus far courts have ruled that most state English Only laws are mainly of symbolic value. One important exception is the Arizona constitutional amendment, which is the most restrictive Official English statute. In 1988 the citizens of Arizona, by a 51 percent majority, amended their state constitution to require that all governmental employees and officials during working hours "shall act in English and no other language" (Arizona Constitution article 28 *S 3[1][a]).*

Maria-Kelley Yniguez, a state employee, challenged the constitutionality of the amendment, arguing that it violated her free speech rights under the First Amendment. The district court agreed, holding that the amendment was unconstitutionally overbroad. When the state of Arizona chose not to appeal the decision, Arizonans for Official English, a group supported by U.S. English (which proposed the amendment) sought permission to do so. The Ninth Circuit Court of Appeals eventually granted that permission and heard the appeal. Prior to the Court of Appeals rule, Yfiiguez resigned her position. The Court of Appeals, en banc, voted 6-5 to affirm the district court's decision. The case was appealed to the United States Supreme Court. Because of procedural problems, however, the Supreme Court case was not decided on the merits. The Court held that the actual controversy in the case ended when Yniguez resigned her position and was no longer subject to the English Only amendment, so the case was ordered to be dismissed as moot *(Arizonans for Official English v. Arizona* 1997).

The constitutional amendment finally went to the Arizona Supreme Court. In an April 28, 1998, decision, the state supreme court held that the law violates the First Amendment because it interferes with the ability of non-English-speaking people to obtain government information, and hinders communication by public officials and employees *(Ruiz v. Hull* 1998).

The law has limited application, applying only to Arizona, and does not affect other English Only state laws.

Conclusion

The English Only movement, like the Americanization movement before it in the 1920s, has prompted a resurgence of antiforeigner sentiment. Fueled by high rates of immigration from Latin American and Asian countries, English Only forces have attempted to limit bilingual services and encourage English Only laws in the public and private sectors. They seek to limit bilingual education and bilingual services. In California the passage of Proposition 227 will vastly curtail the use of native-language instruction in the classroom.

Many troubling aspects of the English Only movement and the official English laws remain. The laws have not increased the proficiency of individuals with a limited knowledge of English. Rather than promote national unity and tolerance of Hispanic/Latino and Asian newcomers, these laws have promoted an antiforeigner attitude among the population. Immigrants are perceived as refusing to assimilate and to learn the English language, even though studies show that most language minorities lose their mother tongues by the second or at most the third generation. Unless there are proper safeguards for language minorities, nativist groups will be able to promote a hidden agenda that has little to do with language.

Notes

1. This term is borrowed from Meissner, Hormats, Walker, and Ogata (1993), whose book is entitled *International Migration Challenges in a New Era.* The term "new era immigration" is used in this chapter to differentiate the post-1965 waves of immigration from the "new immigration" which took place from the 1890s through the 1920s.
2. Ron Unz is the wealthy Silicon Valley businessman who sponsored Proposition 227. He is a conservative Republican and former gubernatorial candidate. Unz has no educational background and, according to newspaper reports, has never set foot in a bilingual class (Terry 1998).

3. At parents' request, "waivers" of the English Only rule may be allowed for older LEP students and those with "special needs." These waivers are subject to many restrictions, however. Teachers, administrators, and school board members who failed to provide English Only instruction may be held personally liable for financial damages *(English for the Children* 1998, S S311, 320).

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