

Washington University Law Review

Volume 86 | Issue 5

January 2009

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Recommended Citation

Travis W. England, *Bilingual Education: Lessons from Abroad for America's Pending Crisis*, 86 WASH. U. L. REV. 1211 (2009).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol86/iss5/4

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BILINGUAL EDUCATION: LESSONS FROM ABROAD FOR AMERICA'S PENDING CRISIS

INTRODUCTION

Bilingual education has been the cause of much debate in the United States over the last several decades. As the country continues to see a proportional increase in its minority populations, especially those that have recently emigrated from non-English speaking nations, the debate over the necessity and practicality of a bilingual educational system will likewise grow more prevalent.¹ In fact, recent studies have shown that immigrant children are “the fastest growing sector of the U.S. child population.”² Although at its birth the United States faced a rich ethnolinguistic diversity and employed a multitude of educational policies, the country has largely seen the assimilation of linguistic minorities into the larger English-speaking majority.³

However, as the United States faces increased linguistic diversity, bilingual education will undoubtedly reemerge as an issue of national importance. Facing the issue of linguistic heterogeneity, lawmakers might benefit from an examination of the policies of other nations that have historically dealt with large populations of linguistic minorities. This Note offers a comparative analysis of the bilingual education policies enacted in several other nations that have faced the challenge of effectively educating significant populations of linguistic minorities. In the end, my analysis offers suggestions of how policymakers in the United States might best learn lessons from the experiences of these nations.

In Part I, I will present a concise overview of the history of bilingual education in the United States and the controversial state initiatives that

1. The latest interim census report indicates that the Hispanic and Asian populations in the United States will increase by 187.9% and 212.9%, respectively, over current levels by the year 2050. POPULATION DIV., U.S. CENSUS BUREAU, U.S. INTERIM PROJECTIONS BY AGE, SEX, RACE AND HISPANIC ORIGIN tbl.1b (2004), available at <http://www.census.gov/population/www/projections/usinterimproj/natprojtab01b.pdf>; Adriana Garcia, *Whites to Become Minority in U.S. by 2050*, REUTERS, Feb. 12, 2008, available at <http://www.reuters.com/article/domesticNEWS/idUSN1110177520080212>; see also Marcelo Suarez-Orozco, *Globalization, Immigration, and Education: The Research Agenda*, 71 HARV. EDUC. REV. 345, 349, 350 fig.1 (2001).

2. Suarez-Orozco, *supra* note 1, at 351. As of 2004, about one in ten students in prekindergarten through grade twelve in the United States are so-called “English language learners.” ALEC IAN GERSHBERG ET AL., BEYOND “BILINGUAL” EDUCATION: NEW IMMIGRANTS AND PUBLIC SCHOOL POLICIES IN CALIFORNIA 1 (2004).

3. See *infra* Part I.A for a discussion of the historical origins of bilingual educational policies in the United States.

have fomented to mandate certain forms of bilingual education in the last several decades. In Part II, I will examine the heated debate that has occurred over the effectiveness of various iterations of bilingual education policies throughout the states. In Part III, I will undertake a comparative analysis of the policies of several other nations that have had to address the needs of linguistic minorities. Specifically, I will analyze the policies of South Africa and Singapore. Within this analysis, I will present a succinct context to the social, political, and legal issues driving bilingual education policies within each country. I will identify the policies' purported goals, the policies that have been undertaken in an effort to attain these goals, and the measured and perceived outcomes of the policies to date. I will conclude the analysis with recommendations to policymakers in the United States in crafting successful, equitable, and politically feasible policies that better address the needs of linguistic minorities in achieving proficiency in English and ensure adequate educational opportunities. Ultimately, I conclude that the lack of ideological consistency in bilingual education policies has significantly impaired the ability of school systems to meet these needs. As such, a more cohesive policy should be put in place to provide bounded guidance to the states in promoting effective means to educate language minorities.

I. HISTORICAL OVERVIEW OF BILINGUAL EDUCATION IN THE UNITED STATES

A. *Historical Development*

Many authors have reviewed the historical development of bilingual education in the United States.⁴ At its origin, the country faced robust

4. See generally Carlos J. Ovando, *Bilingual Education in the United States: Historical Development and Current Issues*, 27 BILINGUAL RES. J. 1 (2003). Ovando has identified four principal eras characterizing distinct philosophical and pedagogical attitudes toward bilingual education in the United States. Ovando's research attempts to derive the primary factors determining U.S. policies for educating language minorities. He identifies a "Permissive Period" from the 1700s to the 1880s, characterizing it as a period tolerant of native language instruction, given the many languages present in early United States history. *Id.* at 4. He then notes that various movements coalesced to create a "Restrictive Period" from the 1880s to the 1960s, in which the United States began imposing limiting measures on Native American languages, while the nation also faced burgeoning xenophobia due to an influx of immigration from Europe and Asia. *Id.* at 4–6. In the next period, which he classifies as the "Opportunist Period" from the 1960s to the 1980s, Ovando notes that the aftermath of World War II and the ever-present Cold War tensions served as a reminder of the importance of foreign language instruction in the United States. *Id.* at 7–12. These forces resulted in not only an environment tolerant of bilingual educational policies, but one actively promoting their expansion. *Id.* Finally, he identifies the present period as being "Dismissive," bringing with it a marked change in political and

linguistic diversity and concomitant policies favoring instruction in multiple languages.⁵ However, such diversity and support for bilingual education markedly subsided throughout the nineteenth century as concerns for seeking a common language increased and economic and historical factors coincided to position English as a dominant language of government.⁶

During the first part of the twentieth century, states enacted restrictive policies regarding instruction in foreign languages and the education of language minorities. Several states even enacted prohibitions against the teaching of foreign languages.⁷ Most notably, one such law in Nebraska led the United States Supreme Court to hear its first case to address the topic of bilingual education: *Meyer v. Nebraska*.⁸

In *Meyer*, the Court overturned the Nebraska conviction of a teacher prosecuted for teaching a ten-year-old to read German under a law prohibiting such action.⁹ The Court held that the teacher's right to pursue the vocation of foreign language instruction was protected under the Fourteenth Amendment.¹⁰

Subsequently, increased immigration of non-English speakers during the twentieth century prompted Congress to take action.¹¹ To address this

pedagogical philosophies regarding bilingual education and massive campaigns in several states resulting in the ban of traditional bilingual education. *Id.* at 12–14. *See also generally* Teresa L. McCarty, *Dangerous Difference: A Critical-Historical Analysis of Language Education Policies in the United States*, in MEDIUM OF INSTRUCTION POLICIES: WHICH AGENDA? WHOSE AGENDA? 71 (James W. Tollefson & Amy B. M. Tsui eds., 2004) (similarly tracing the development of language education policies).

5. MARIA ESTELA BRISK, BILINGUAL EDUCATION: FROM COMPENSATORY TO QUALITY SCHOOLING 21 (2d ed. 2006). Initial non-English European colonizers employed language policies reflecting those of their countries of origin, establishing schools that taught primarily in a non-English language while offering English as a second language. *Id.*

6. *Id.* Diversity in educational policy throughout the colonies existed primarily because parochial and private schools dominated over any formal public system, and each of these schools inherited the language of its founders. However, as public schools became more popular, a move toward a more unified English-based curriculum followed suit. *Id.* Brisk also notes that the form of government chosen by the founders, heavily influenced by the British system, undoubtedly swayed language policy towards adopting English as the standard. *Id.*

7. *See id.* at 21–22. These enactments generally reflect Ovando's classification of this period as "restrictive" in nature, reflecting the overall sentiments of the nation desiring to unify language policy. Ovando, *supra* note 4, at 4–6.

8. 262 U.S. 390 (1923).

9. *Id.* at 403.

10. *Id.* at 400. Despite the State's general police power argument that the law was designed to promote the welfare of Nebraska children, the Court held that a "desirable end cannot be promoted by prohibited means." *Id.* at 401. Rather than finding fundamental rights of the language learners, however, the Court instead chose to base its holding on the fundamental rights of the language *teacher* to pursue a vocation and of parents to make educational decisions regarding their children. *Id.* at 400.

11. Much of the increase in immigration was attributable to loosened standards under the

issue and burgeoning bilingual programs in certain states, Congress enacted the Bilingual Education Act of 1968 (BEA).¹² The BEA was the first to provide federal assistance to state educational authorities for establishing bilingual programs. As originally drafted, the bill established the goals of *maintenance* of bilingualism in students who already knew another language, but the text of the legislation that was eventually enacted was redrafted to replace this goal with one of English language proficiency.¹³ The BEA remained ambiguous as to the policies it expected states to pursue in achieving this goal.¹⁴ It did, however, persuade states to rethink increasingly prevalent policies that called for instruction solely in English.¹⁵ Although the BEA initially remained neutral on the specific policies to be imposed within the states, a 1974 amendment¹⁶ required local authorities receiving federal funding to follow the “transitional bilingual education” model of instruction.¹⁷ Transitional bilingual education calls for the use of the native language of language minority students in a separated setting while they are learning and first using English, with a subsequent transition into mainstream classes with other language majority students after English proficiency is obtained.¹⁸ It is only one of various methods of bilingual instruction, however, and states have experimented with numerous alternatives.¹⁹

Immigration and Nationality Act Amendments of 1965. See Pub. L. No. 89-236, 79 Stat. 911 (codified as amended at 8 U.S.C. § 1151 (2006)). Over 26 million new immigrants have entered the country since its enactment. BRISK, *supra* note 5, at 18.

12. Bilingual Education Act of 1968, Pub. L. No. 90-247, 81 Stat. 783. The BEA has since been repealed by the No Child Left Behind Act, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C. §§ 6301–6777 (2000)), discussed *infra* text accompanying notes 61–72.

13. BRISK, *supra* note 5, at 24.

14. Ovando, *supra* note 4, at 8.

15. *Id.*

16. Bilingual Education Act Amendments of 1974, Pub. L. No. 93-380, 88 Stat. 484. The 1974 amendment was enacted after the decision of *Lau v. Nichols*, discussed *infra* text accompanying notes 20–30, and largely codified the result of that case. Lisa Ellern, Note, *Proposition 227: The Difficulty of Insuring English Language Learners' Rights*, 33 COLUM. J.L. & SOC. PROBS. 1, 18–19 (1999).

17. Joseph A. Santosuosso, Note, *When in California . . . In Defense of the Abolishment of Bilingual Education*, 33 NEW ENG. L. REV. 837, 847 (1999).

18. BRISK, *supra* note 5, at 40.

19. Scholars have identified various other models of bilingual education. “Dual-Language schools” deliver a mainstream curriculum in two languages, usually alternated between mornings and afternoons. *Id.* at 35–36. “Two-way programs” mix students from language minorities with language majority students, encouraging socialization between the two groups and using both languages in instruction. *Id.* at 37–38. “Maintenance Programs” have as their goal the development and maintenance of the native language and culture, making heavy use of the native language in early years while transitioning to increased use and proficiency of the language to be acquired. *Id.* at 38–39. Alternatively, a “pull-out transitional bilingual education” places language minorities in the mainstream classroom with language majority students, with the exception of individual or separate instruction periods daily for native language instruction. *Id.* at 41. At the other end of the spectrum,

In 1974, the United States Supreme Court significantly addressed the subject of bilingual education in *Lau v. Nichols*.²⁰ *Lau* involved a challenge to practices of the San Francisco school system, which offered assistance to Spanish-speaking students, but not to Chinese-speaking students.²¹ The suit was brought on behalf of 2,856 Chinese-speaking students within the school system.²² The plaintiffs argued that such practice was in violation of the Equal Protection Clause of the Fourteenth Amendment and the Office for Civil Rights' (OCR) interpretation of Title VI of the 1964 Civil Rights Act.²³ OCR's interpretation allowed a finding of a violation if discriminatory effect was shown.²⁴ On appeal, the Ninth Circuit found for the school district.²⁵ The Supreme Court, however, held the policy of the school district violated Title VI, under which federal regulations required the school district to take "affirmative steps to rectify the language deficienc[ies]."²⁶ However, the Court declined to base its

"English as Second Language" (ESL) programs are English-only programs that insert "English Language Learners" (ELLs) into mainstream classes while simultaneously enrolling them in special classes designed to teach them English. *Id.* at 43. "Structured Immersion" is a variation of ESL that groups students of the same language into segregated classrooms for instruction in English, and has been supported by proponents of recent state-level bilingual education initiatives, discussed *infra* text accompanying notes 47–52. *Id.* at 44–46.

20. 414 U.S. 563 (1974).

21. *Id.* at 564–65.

22. *Id.* at 564.

23. *Id.* at 565. *Brown v. Board of Education*, 347 U.S. 483 (1954), paved the way for the arguments used by the plaintiffs in *Lau*. In *Brown*, the Court held that legally sanctioned dual school systems were unconstitutional as a denial of equal protection and that "separate but equal" educational facilities, previously sanctioned by *Plessy v. Ferguson*, 163 U.S. 537 (1896), were to be prohibited by law. *Brown*, 347 U.S. at 495. The *Brown* Court struck down a state law that separated students in schools based on race, holding that denying black children admission to so-called white schools was an impermissible violation of the black students' Fourteenth Amendment rights. *Id.* In *Lau*, the Court noted that under English-only state programs "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*, 414 U.S. at 566.

24. OCR's interpretation determined that, in view of the statute, language should not be used as a proxy for race, ethnicity, or national origin to effect discrimination prohibited by the Act. Identification of Discrimination and Denial of Services on the Basis of National Origin, 35 Fed. Reg. 11,595 (July 18, 1970). The lawsuit furthermore served as a test for the ability of the OCR to expand Title VI's coverage. BRISK, *supra* note 5, at 26.

25. *Lau v. Nichols*, 483 F.2d 791, 800 (9th Cir. 1973). The Ninth Circuit disagreed with the expansive view of the Civil Rights Act offered by the plaintiffs and the OCR, finding for the school district. *Id.* The court reasoned that "[e]very student brings to the starting line of his educational career different advantages and disadvantages caused in part by social, economic, and cultural background, created and continued completely apart from any contribution by the school system." *Id.* at 797.

26. *Lau*, 414 U.S. at 566–68 (quoting 35 Fed. Reg. 11,595). The Court determined that Congress held power to prohibit the discriminatory effect of behavior not necessarily amounting to a constitutional violation, and the Civil Rights Act was a valid exercise of this power. *Id.* The Court also held that a federal enforcement agency's understanding of the scope of civil rights protection was legitimate and authoritative. *Id.* at 566–67. Finding a private right of action under Title VI, the Court

ultimate holding on equal protection grounds, instead relying solely on Section 601 of the Civil Rights Act (CRA), which allows a finding of violation upon discriminatory effect, “even though no purposeful design is present.”²⁷ The holding was celebrated by supporters of bilingual education.²⁸ However, while some courts used *Lau* as an opportunity to mandate transitional bilingual education programs,²⁹ others interpreted the same opinion so as to limit support for such programs.³⁰

Subsequent to *Lau*, Congress sent another important message about its views of bilingual education in enacting the Equal Educational Opportunity Act of 1974.³¹ The Act effectively codified the decision in *Lau*, and included in its definition of denial of equal educational opportunity “the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by students.”³² Whereas *Lau* remained nebulous in defining exactly what policies were required of states, subsequent guidelines published by the OCR called for the use of two languages in instruction as the preferred

held that the Chinese-speaking students had a valid claim that the school district’s reliance on English-language instruction wrongfully excluded non-English speaking children. *Id.* at 566.

27. *Id.* at 568. Specifically, guidelines established by the Department of Health, Education and Welfare (HEW) “prohibit[ed] recipients of federal funds from using race, color, or national origin as a basis for providing disparate services and benefits or restricting access to such opportunities.” Thomas F. Felton, Comment, *Sink or Swim? The State of Bilingual Education in the Wake of California Proposition 227*, 48 CATH. U. L. REV. 843, 855 (1999) (citing 29 Fed. Reg. 16,298–16,305 (then codified at 45 C.F.R. § 80.3(b) (1998))).

28. See, e.g., Herbert Teitelbaum & Richard J. Hiller, *Bilingual Education: The Legal Mandate*, 47 HARV. EDUC. REV. 138 (1977) (discussing that *Lau* served as an impetus for the movement for bilingual education and the expansion of the nation’s consciousness of the need for adequate bilingual education).

29. See, e.g., *ASPIRA v. Bd. of Educ. of N.Y.*, 423 F. Supp. 647 (S.D.N.Y. 1976) (holding defendant school district officials in contempt for failure of diligence, effective control, and steadfast purpose to effectuate prescribed goals); *Serna v. Portales Mun. Sch.*, 351 F. Supp. 1279 (D.N.M. 1972) (holding that where I.Q. test scores of children in school having a large preponderance of Spanish-surnamed children were lower than those of children in the other schools, such children did not in fact have the equal educational opportunity required by the Fourteenth Amendment, and requiring the school district to reassess its program for specialized needs of such children).

30. For example, in 1978 the Ninth Circuit held that Title VI did not require elementary school districts to provide non-English speaking students with bilingual-bicultural education when remedial English education was available. *Guadalupe Org., Inc. v. Tempe Elementary Sch. Dist.*, 587 F.2d 1022, 1029 (9th Cir. 1978). The court determined that the provision of remedial English instruction “makes available the meaningful education and equality of educational opportunity” required by the Civil Rights Act. *Id.*

31. Equal Educational Opportunity Act of 1974, Pub. L. No. 93-380, 88 Stat. 514 (codified at 20 U.S.C. §§ 1701–58 (2000)).

32. 20 U.S.C. § 1703(f) (2000). The enactment of the Equal Educational Opportunity Act was accompanied by amendments to the Bilingual Education Act in 1974, discussed *supra* note 16, which provided more specific guidance on the types of bilingual education programs that would receive federal funding. BRISK, *supra* note 5, at 24.

method of implementation.³³ States subsequently enacted legislation to conform to these guidelines, which were vigorously enforced by the OCR.³⁴ Many of these programs were transitional bilingual education programs, teaching children in their native language while gradually introducing English over a period of several years.³⁵

Despite the development of this case law and legislation during the 1970s, states were still left with a fairly ambiguous yardstick against which to measure their programs.³⁶ In 1981, *Castaneda v. Pickard*³⁷ established the standards under which educational programs for bilingual students were to be evaluated pursuant to the Equal Educational Opportunities Act and helped to clarify, to some degree, what was meant by “appropriate action.” There, Mexican-American families brought suit against the Raymondville, Texas, Independent School District, alleging that the district’s educational policies and practices were racially discriminatory.³⁸ The court established a three-step test for determining whether “appropriate action” was being taken by school districts under the Equal Educational Opportunities Act.³⁹ In examining whether a school district has violated the Act, courts should first examine whether the

33. U.S. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE, OFFICE OF THE SECRETARY, TASKFORCE FINDINGS SPECIFYING REMEDIES AVAILABLE FOR ELIMINATING PAST EDUCATIONAL PRACTICES RULED UNLAWFUL UNDER *LAU V. NICHOLS* (Aug. 11, 1975), available at <http://www.stanford.edu/~kenro/LAU/LauRemedies.htm>; see also Barbara J. Brunner, *Bilingual Education Under the No Child Left Behind Act of 2001: ¿Se Quedara Atras?*, 169 EDUC. L. REP. 505, 506–07 n.12 (2002). The so-called Lau Remedies were in effect a blueprint for school districts in implementing policies to integrate English language learners. Ovando, *supra* note 4, at 10. They “specified suitable pedagogical strategies, the importance of moving [English Language Learners] into mainstream classrooms in a timely fashion, and professional standards for bilingual teachers.” *Id.* These guidelines were aggressively enforced from 1975 to 1981, and resulted in bilingual education programs being implemented in nearly 500 school districts through consent agreements, known as “Lau Plans.” Brunner, *supra*, at 507.

34. For example, California’s Chacon-Mascone Bilingual Bicultural Education Act of 1976, CAL. EDUC. CODE §§ 52160–79 (West 2006), required California school districts to “offer bilingual learning opportunities . . . and to provide adequate supplemental financial support to achieve such purpose.” *Id.* § 52161.

35. See Ovando, *supra* note 4, at 10.

36. Frustration at the time emerged largely from the continually ambiguous definition of “appropriate action.” See, e.g., Eric Haas, *The Equal Educational Opportunity Act 30 Years Later: Time to Revisit “Appropriate Action” for Assisting English Language Learners*, 34 J.L. & EDUC. 361 (2005).

37. 648 F.2d 989 (5th Cir. 1981).

38. *Id.* at 992. The program that was enacted in the district used a system for classroom assignments that grouped students based on race and ethnicity criteria. *Id.* The plaintiffs alleged that this system “resulted in impermissible classroom segregation,” that the school district “discriminat[ed] against Mexican-Americans in the hiring and promotion of faculty and administrators,” and that the district “fail[ed] to implement adequate bilingual education to overcome the linguistic barriers.” *Id.*

39. *Id.* at 1009–10.

district's system is based upon "sound[] . . . educational theory or principles."⁴⁰ Next, courts should look to whether the school district's programs and practices are "reasonably calculated to implement effectively the educational theory adopted by the school."⁴¹ Finally, the courts should look to whether the program "fails, after being employed for a period of time sufficient to give the plan a legitimate trial, to produce results indicating that the language barriers confronting students are actually being overcome."⁴² The court in *Castaneda* remanded the case for consideration of the history of the policy to determine whether there was discrimination and whether its effects were erased.⁴³

Subsequent to *Castaneda*, the OCR continued to actively enforce *Castaneda* and its own guidelines.⁴⁴ Although *Lau* and its progeny marked significant successes for proponents of bilingual education in the United States, *Lau*'s significance has waned in the decades since the decision.⁴⁵ Disagreement arose between federal and state authorities, for example, on the expense and efficiency of new bilingual education programs, which ultimately led the government to retreat from its previously aggressive enforcement in subsequent educational amendments and to increase funding to alternative programs.⁴⁶

In the years after the development of the *Castaneda* test, the states have created a variety of programs for language minority students. A 2005 study identified five different policies in use throughout the United States, with many states using a combination of these policies.⁴⁷ The policies include:

40. *Id.* at 1009.

41. *Id.* at 1010.

42. *Id.*

43. *Id.* at 1015.

44. Ovando, *supra* note 4, at 10.

45. For a detailed discussion of the subsequent treatment of *Lau*, and claimants' potential alternatives to reliance on Title VI, see Rachel F. Moran, *Undone by Law: The Uncertain Legacy of Lau v. Nichols*, 16 LA RAZA L.J. 1 (2005).

46. The Educational Amendments of 1978, Pub. L. No. 95-561, 92 Stat. 2143 (codified as amended at 20 U.S.C. § 2701 (2006)), emphasized bilingual education as "transitional" in nature. The amendments also cut funding for programs designed to maintain native languages. Brunner, *supra* note 33, at 508. The 1984 Educational Amendments also encouraged "special alternative instructional programs," generally encouraging a more flexible application of LEP-student instruction. Educational Amendments of 1984, Pub. L. No. 98-51, § 7002(b)(3), 97 Stat. 263 (codified as amended at 20 U.S.C. § 7202 (2006)). 1988 Amendments increased funding of these "special alternative instructional programs" even further. See Brunner, *supra* note 33, at 508 (citing Educational Amendments of 1988, Pub. L. No. 100-297, § 7002(b)(3), 102 Stat. 130 (codified as amended at 20 U.S.C. § 7103 (2006))).

47. EUGENE E. GARCIA, TEACHING AND LEARNING IN TWO LANGUAGES: BILINGUALISM AND SCHOOLING IN THE UNITED STATES 77-85 (2005). For more discussion on the various types of bilingual education, see generally BRISK, *supra* note 5, at 35-48, and *supra* note 19.

1. Implementing instructional programs that allow or require instruction in a language other than English (17 states);
2. Establishing special qualifications for the certification of professional instruction staff (15 states);
3. Providing school districts supplementary funds to support educational programs (15 states);
4. Mandating a cultural component (15 states);
5. Requiring parental consent for enrollment of students (11 states).⁴⁸

B. Recent Developments

Despite the variety of policies enacted at the state level, there has been a significant decline in support for bilingual education due largely in part to the development of organizations formed to oppose the use of languages other than English as the medium of instruction in United States schools.⁴⁹ These groups are part of a wider movement seeking to establish English as the official language of the United States and limit the use of minority languages.⁵⁰ As a result of these pressures, several states have enacted measures specifically restricting the use of bilingual education in the classroom. In California, for example, voters approved Proposition 227⁵¹ in 1998, banning bilingual education programs in favor of “English immersion” programs.⁵²

48. GARCIA, *supra* note 47, at 85.

49. For example, a group called U.S. English describes itself as “the nation’s oldest, largest citizens’ action group dedicated to preserving the unifying role of the English language in the United States.” U.S. English Home Page, <http://www.us-english.org> (last visited May 3, 2009). This group has been instrumental in fomenting support within states for antibilingual education measures. *See* U.S. English, State Legislation, <http://www.us-english.org/view/364> (last visited May 3, 2009). In addition, the group has pushed for action on the federal level, including the proposal of “Official English” legislation. *See* U.S. English, Federal Legislation, <http://www.us-english.org/view/310> (last visited May 3, 2009); *see also* U.S. English, *English Language Unity Act Introduced in the 111th Congress*, Feb. 11, 2009, <http://www.us-english.org/view/569>; The English Language Unity Act of 2007, H.R. 997, 110th Cong. (2007).

50. McCarty traces the origins of the English-only movement to 1981, when Senator S.I. Hayakawa attempted to garner support for an amendment to the Constitution that would have made English the official language of the United States. McCarty, *supra* note 4, at 85. Senator Hayakawa and John Tanton formed U.S. English, discussed *supra* note 49, two years later, in an attempt to prevent a so-called “mindless drift toward a bilingual society.” McCarty, *supra* note 4, at 85.

51. Formally titled “English Language Education for Immigrant Children.” CAL. EDUC. CODE §§ 300–340 (West 2006).

52. For a detailed comparison of the spectrum of bilingual education alternatives and a

Citing the high cost and systemic failure of present bilingual education programs in California, supporters of Proposition 227 successfully pushed the ballot initiative forward.⁵³ The statute directs school districts to teach children “overwhelmingly” in the English language, with only a “temporary transition period allowed” for limited English proficiency (LEP) students.⁵⁴ The statute does provide for a waiver in limited circumstances, however, to allow parents to place their children in specific bilingual or native language instruction.⁵⁵ The program withstood initial challenges in court, in part due to the absence of data evaluating its efficacy.⁵⁶ Proposition 227 remains in effect to this day, reflecting California’s significant move away from its previous system of bilingual education. Its successes have been debated, and recently scholars have pointed out a widening achievement gap between English Language Learners and other students in California since the enactment of Proposition 227.⁵⁷

comparative analysis of their effectiveness, see BRISK, *supra* note 5, at 35–48.

53. A large portion of the financial and political support for Proposition 227 came as a result of its backing by Ron Unz, “a former gubernatorial candidate and wealthy software developer.” William Ryan, Note, *The Unz Initiatives and the Abolition of Bilingual Education*, 43 B.C. L. REV. 487, 499 (2002). Code-named the “English for the Children” initiative, the campaign to enact Proposition 227 was a resounding success, replacing bilingual education programs with an “immersion program” that placed a student in an entirely English environment after a short initial period of “sheltered English.” *Id.*

54. CAL EDUC. CODE § 306(d) (West 2006). The statute also provides a private remedy for parents, allowing them to sue directly any educator who “willfully and repeatedly refuses to implement the . . . statute.” *Id.* § 320.

55. *Id.* §§ 310–11. The California courts have decided that the right to seek a waiver is solely held by the parents of the student and have denied attempts by school districts with significant language-minority populations to seek general waivers. See *McLaughlin v. State Bd. of Educ.*, 89 Cal. Rptr. 2d 295, 319 (Ct. App. 1999) (rejecting school district’s argument that the statute allowed entire school districts to apply for waivers from sections of the California Education Code created by Proposition 227, and holding, *inter alia*, that the proposition intended to transfer decision-making power to parents).

56. *Valeria G. v. Wilson*, 12 F. Supp. 2d 1007, 1018–19 (N.D. Cal. 1998). Applying the *Castaneda* test, the court found that “respected authorities legitimately differ[ed] as to the best type of educational program for limited English speaking students.” *Id.* (citing *Castaneda v. Pickard*, 648 F.2d 989, 1009 (5th Cir. 1981)). The court held that, in light of the evidence before it, the English immersion program under Proposition 227 was a valid educational theory, thus satisfying the first prong of the *Castaneda* test. *Id.* The court then determined that under the second prong of the *Castaneda* test, because Proposition 227 had not been implemented, insufficient data existed to support the plaintiff’s contention that the system was not “calculated to implement effectively the educational theory.” *Id.* at 1020.

57. William N. Myhill, *The State of Public Education and the Needs of English Language Learners in the Era of ‘No Child Left Behind,’* 8 J. GENDER, RACE & JUST. 393, 430–43 (2004). Examining achievement test scores of LEP students from before and after the enactment of Proposition 227, Myhill notes that “forces are delaying and/or negatively impacting ELL achievement at least since the time of Proposition 227’s approval.” *Id.* at 443.

Other states have followed California's lead and have imposed similarly restrictive policies in recent years. Massachusetts replaced its program of transitional bilingual education in favor of English-immersion programs in 2002.⁵⁸ Similarly, Arizona amended its constitution in 2000 to significantly limit bilingual education after voters approved Proposition 203.⁵⁹ In fact, among recent large-scale campaigns to eliminate bilingual education, the only one to be defeated came in Colorado in 2002.⁶⁰

The pull away from bilingual education has been recently reflected at the federal level as well.⁶¹ Congress began to significantly reconsider the efficacy of bilingual education programs amid growing concerns over persistently high failure and drop-out rates among Hispanic students.⁶² Recently, Congress has significantly revised its views on bilingual education programs. President George W. Bush signed into law the No Child Left Behind Act of 2001 (NCLB),⁶³ which changed how federal law addresses bilingual education and provided for significant amounts of federal funding to state and local educational agencies.⁶⁴ NCLB repealed the Bilingual Education Act of 1968.⁶⁵ Title III of the NCLB, in which education of Limited English Proficiency students is principally addressed, uniformly replaced the existing words "bilingual education" with "English language acquisition" throughout the statute.⁶⁶ Such a change reflects its

58. MASS. GEN. LAWS ANN. ch. 71A, § 4 (West Supp. 2008). The law requires that "all children in Massachusetts public schools shall be taught English by being taught in English and all children shall be placed in English language classrooms" and provides for a short transition period for English learners. *Id.*

59. ARIZ. REV. STAT. ANN. § 15-751 (West 2002). Proposition 203 received more than sixty-three percent support from Arizona voters. Sandra Cortes, Note, *A Good Lesson for Texas: Learning How to Adequately Assist Language-Minorities Learn English*, 13 TEX. WESLEYAN L. REV. 95, 113 (2006) (citing SANDRA DEL VALLE, LANGUAGE RIGHTS AND THE LAW IN THE UNITED STATES 253 n.180 (2003)).

60. GARCIA, *supra* note 47, at 87.

61. McCarty, *supra* note 4, at 85. McCarty observes that in the current political climate "new colors of diversity are perceived by many in the dominant White mainstream as dangerous indeed." *Id.*

62. Brunner, *supra* note 33, at 507. The 1978 Educational Amendments emphasized the "transitional" nature of bilingual education programs and noted that programs should focus on quickly preparing Limited English Proficiency students to enter mainstream classrooms. *Id.* at 507-08. The 1984 Amendments reserved up to four percent of federal funds for the creation of alternative programs for Limited English Proficiency students that did not involve instruction in the students' native languages. *Id.* at 508.

63. No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (codified at 20 U.S.C. §§ 6301-6777 (2006)).

64. For the year 2002 alone, the statute authorized over \$13 billion in federal funds to state and local educational agencies. 115 Stat. at 1440 (codified at 20 U.S.C. § 6302).

65. Brunner, *supra* note 33, at 505.

66. 20 U.S.C. § 3473. Title III was individually titled the English Language Acquisition Act (ELAA). 20 U.S.C. §§ 6811-6871.

drafters' sentiments in favor of English-only education.⁶⁷ NCLB also renamed the Office of Bilingual Education and Minority Language Affairs the Office of English Language Acquisition (OELA),⁶⁸ and NCLB assigned OELA with a very specific set of tasks. Among other things, NCLB requires the OELA:

(1) to help ensure that [LEP students] . . . develop high levels of academic attainment in English, and meet the same challenging State academic content and student academic achievement standards as all children are expected to meet . . . (4) to assist State educational agencies and local educational agencies to develop and enhance their capacity to provide high-quality instructional programs designed to prepare limited English proficient children . . . to enter all-English instruction settings . . . (8) to hold [State and local educational agencies], and schools accountable for increases in English proficiency . . . by requiring (A) demonstrated improvements in the English proficiency of [LEP] children each fiscal year; and (B) adequate yearly progress for [LEP] children.⁶⁹

These requirements seem to place English language proficiency below an emphasis on English language instruction.⁷⁰ Scholars have argued that this placement has the potential to widen the already substantial gap between English proficient students and LEP students.⁷¹ Compounding the problem, due to these reforms, there are only a limited number of options available for parents of LEP students who believe that their children are not adequately being served by language programs funded by NCLB.⁷²

67. BRISK, *supra* note 5, at 29.

68. The full title of the office is the Office of English Language Acquisition, Language Enhancement, and Language Affairs. Myhill, *supra* note 57, at 426.

69. *Id.* at 427 (citing 20 U.S.C.A. § 6812 (West Supp. 2003)).

70. Myhill notes that these requirements reflect “[t]he overarching emphasis of English language proficiency under the NCLB—prioritizing English language instruction above all others.” *Id.* at 428. He argues that emphasizing English language instruction “threatens to widen the achievement gap and may predispose [LEP students] to inappropriate special education referral.” *Id.*

71. *Id.*; see also McCarty, *supra* note 4, at 86–87 (arguing that despite efforts of education reform in NCLB, “an unconscionable number of English language learners, students of color, and working-class children are, in fact, being left behind.”).

72. Eden Davis examines the limited avenues of redress for parents of LEP students. Eden Davis, *Unhappy Parents of Limited English Proficiency Students: What Can They Really Do?*, 35 J.L. & EDUC. 277 (2006). She notes that if parents are dissatisfied by the lack of an LEP program within their local school district they are able to “file a complaint with the OCR,” or sue under the EEOA or Title VI. *Id.* at 279–82. If such a program is in place, the parents can make a request to the OCR for compliance review, or can sue under the EEOA if their claim meets the *Castaneda* test. *Id.* at 282–84. However, under NCLB’s English Language Acquisition Act provisions, there is no specification of what parents may do if a school is failing to meet the requirements of NCLB, and Davis notes that

In sum, Congress's departures from its past priorities in bilingual education are reflective of overall trends in views of bilingual education among many states. The question at hand, however, is whether these changes and those recently effected at the state level are truly a step in the right direction in ensuring that children with limited English proficiency are able to adequately adapt to life in the United States. In 2009, as a new administration ushers in fresh policies and changes existing ones, its constituents should seek to more fully meet this goal.

II. THE DEBATE OVER THE EFFECTIVENESS OF BILINGUAL EDUCATION PROGRAMS

As evidenced by recent history, the question of how states might effectively integrate young immigrants into the national economy through language instruction has become particularly divisive. Linguistic assimilation is vital to ensuring that language minorities can attain success in school and in the workforce. However, many remain wary of the imposition of policies, such as those produced in California, Arizona, and Massachusetts, that are seen as eradivative of a student's first language.

Opponents of transitional bilingual education programs note its high costs and point to limited success stories.⁷³ In the 1970s, some scholars expressed apprehension that the transitional bilingual education approach would accelerate the extinction of the native language, and as a result many programs extended the length of time in which instruction in the student's "mother-tongue" was conducted.⁷⁴ Moreover, a 1981 study commissioned by the U.S. Department of Education expressed significant doubts as to the validity of the then widely accepted theory that mother-tongue instruction was effective.⁷⁵ Indeed, significant debate exists over

such failure "may continue . . . for up to four years before anything other than a report and an attempt for improvement is done on the part of the state agency." *Id.* at 285. Often, the parent will be left with no choice but to remove his/her child to a different program in the interim. *Id.* Compare remedies available under California's provision specifically, discussed *supra* note 54.

73. See, e.g., Cortes, *supra* note 59 (arguing for the restructuring of current Texas programs to better address the needs of LEP students, calling into question existing practices); Santosuosso, *supra* note 17 (arguing that the California bilingual education regime justifiably needed change, and certain interest groups were inhibiting that change from occurring); William J. Gale, Comment, *Bilingual Education: Should the Traditional Approach Be Abandoned in Favor of "English Immersion"?*, 19 J. JUV. L. 158 (1998) (arguing in favor of the then-pending Unz initiative calling for a move toward English-only programs).

74. ROSALIE P. PORTER, FORKED TONGUE: THE POLITICS OF BILINGUAL EDUCATION 75 (2d ed. 1996). Porter notes, however, that such fears were unfounded and that the lengthening of the mother-tongue instruction only served to weaken students' proficiency in English. *Id.* at 75-76.

75. Susan G. Foster, *Advisory Commission on Bilingual Program Attacks US Studies*,

the efficacy of transitional bilingual education in ensuring that linguistic minorities either attain English proficiency or are properly educated in other subjects.⁷⁶

Scholars have argued that initiatives eliminating the use of bilingual education in favor of English-only policies are discriminatory in purpose and effect.⁷⁷ Teresa L. McCarty argues that medium-of-instruction policies are “neither historically nor socially neutral,” and “concern struggles for political and economic participation, democracy, and human rights.”⁷⁸ In essence, she argues that vis-à-vis bilingual educational policies, “language [becomes] a proxy for social class and race.”⁷⁹ Similar opinions have been reflected in many arguments in opposition to California’s Proposition 227 and other policies like it.⁸⁰

EDUCATION WEEK, Dec. 21, 1981, <http://www.edweek.org/ew/articles/1981/12/21/01150060.h01.html>. The study “question[ed] ‘federal policy promoting transitional bilingual [sic] education without adequate evidence of its effectiveness’ and concluded that “‘the structured immersion’ method, in which bilingual teachers are used but instruction is given in English, should be given more attention in program development.” *Id.* Interestingly, the study was one of several begun during the Carter Administration and made public in 1981, whereupon it was denounced by members of the National Advisory Council on Bilingual Education. *Id.*

76. For an overview of the various types of bilingual educational programs, including a definition of “transitional bilingual education,” see *supra* notes 18–19 and accompanying text; see also PORTER, *supra* note 74, at 121–59.

77. See Kevin R. Johnson & George A. Martinez, *Discrimination by Proxy: The Case of Proposition 227 and the Ban on Bilingual Education*, 33 U.C. DAVIS L. REV. 1227, 1231 (2000) (arguing that California’s Proposition 227 is “part of a general attack on Latina/os” and employs language as a proxy for national origin, discriminating against persons of Mexican, Latin American, and Asian ancestry in violation of the Fourteenth Amendment); see also Donna F. Coltharp, Comment, *Speaking the Language of Exclusion: How Equal Protection and Fundamental Rights Analyses Permit Language Discrimination*, 28 ST. MARY’S L.J. 149, 190–211 (1996) (arguing that claims alleging language discrimination deserve a higher level of scrutiny under the Fourteenth Amendment).

78. McCarty, *supra* note 4, at 72.

79. *Id.* at 87. She notes that “the United States is in the midst of a national language panic, where language has become a proxy for social class and race.” *Id.* For another take on this argument, see Johnson & Martinez, *supra* note 77, at 1229–30.

80. See, e.g., Felton, *supra* note 27, at 848 (arguing that Proposition 227 would clog the court system . . . and have other unintended consequences in that state, and concluding that such movement would adversely impact LEP students); Rene Galindo & Jami Vigil, *Language Restrictionism Revisited: The Case Against Colorado’s 2000 Anti-Bilingual Education Initiative*, 7 HARV. LATINO L. REV. 27, 29 (2004) (arguing that initiatives and enactments such as Colorado’s 2000 Anti-Bilingual Education Initiative “[n]ot only . . . undermine bilingualism, cultural pluralism, and ethnic pride . . . [but] also result in the loss of educational opportunities for linguistic minority populations by eliminating educational options”); Kirsten Gullixson, Comment, *California Proposition 227: An Examination of the Legal, Educational and Practical Issues Surrounding the New Law*, 17 LAW & INEQ. 505 (1999) (examining the legal, educational, and practical aspects of Proposition 227, and concluding that significant educational and public policy reasons exist for not implementing the Proposition); Johnson & Martinez, *supra* note 77, at 1229–30 (arguing in support of an equal protection challenge to Proposition 227 based on the use of language as a proxy for race and national origin).

It is such fervent debate that has led many scholars to question whether the policies being enacted are merely a product of political whim and coercion rather than rigorous scientific analysis address effectiveness.⁸¹ Indeed, the politicization of the debate over bilingual education seems to have significantly limited the extent to which novel or creative alternatives can be put in place. Echoing these sentiments is a study published in 2004 in which several scholars measured the performance of English-language learners in five large urban districts in California that have done away with transitional bilingual education in favor of English immersion.⁸² The study noted that California, like most states having significant minority immigrant populations, had no coherent or unifying policy strategy for the education of immigrants save that of prohibiting bilingual education.⁸³ Moreover, a statistical analysis of the “typical” immigrant or English-language learner in California found that such students “attend schools where teachers are less experienced, have lower education levels, and are less likely to be fully certified.”⁸⁴ The study ultimately concluded that the policy debates presenting English immersion as the only alternative to bilingual education have been overly narrow, which has resulted in the delay and inhibition of the growth in other alternative programs.⁸⁵ The study recommends that states and the federal government develop a cohesive policy to support innovative program design and evaluative

81. Porter notes that it is mostly the middle-class immigrants that have been fervent supporters of bilingual education’s role in preserving traditional cultural ties. PORTER, *supra* note 74, at 8. She argues that bilingual education should not be a force that “preserves tradition” at the expense of opportunities. *Id.* To her, between the extremes of the right-wing “sink-or-swim” approach and the left-wing cultural/linguistic preservation approach lies a “moderate, pragmatic view that proposes a range of alternatives in education,” allowing individual communities to choose their own approach. *Id.* at 12. She laments the fact that, during the 1980s and 1990s, an entrenched establishment of traditional bilingual education supporters at the state level (particularly in Massachusetts) undercut the development of alternative programs through suppressing information on successful alternatives and threatening to withhold funding from school districts with alternative and innovative programs. *Id.* at 39. Porter thus argues persuasively for a critical reexamination of both the beliefs leading to the establishment of a particular program and the experiences of educators and students under that program. *Id.* at 58.

82. GERSHBERG ET AL., *supra* note 2. The study examined students in Fresno, Long Beach, Los Angeles, San Diego, and San Francisco. *Id.* at 4.

83. *Id.* at 143. The study also lamented the fact that the federal government had no such cohesion, either. *Id.* For further observations on the limits of California’s success in post-Proposition 227 LEP student education, see Myhill, *supra* note 57, at 431–33.

84. GERSHBERG ET AL., *supra* note 2, at 145. The study further attempts to differentiate the experience of the typical immigrant from the typical English-language learner, which is beyond the scope of this discussion. *See generally id.*

85. *Id.*

research to determine the strengths and weaknesses of particular programs.⁸⁶

Thus, it seems at the national level, the failure of the United States to develop a cohesive policy regarding bilingual education is partly the product of waxing and waning political support for it.⁸⁷ The fact that the federal government has gone from strong support of true bilingual programs to the current No Child Left Behind regime's emphasis on teaching LEP students in English means that no middle ground has been found.⁸⁸ Thus, based on these observations, it seems that many of the problems of bilingual education in the United States are due to the lack of true consistency in application and the failure of the development of a pedagogically sound policy. As federal policies have vacillated from one extreme to another, the states have been left with little in the form of guidance on exactly *what* policies are truly effective. While the notion of "states as laboratories"⁸⁹ for experimenting with diverse policies is a tried and true virtue of a federal system, when allowing states to engage in diverse policies hinders the substantial goals of ensuring adequate minority education, perhaps enhanced policy cohesion would be more virtuous. However, given critiques of NCLB's overemphasis on English language instruction, such cohesion should allow for some freedom to

86. *Id.*

87. Ovando defines five factors that have contributed to the lack of ideological consistency in the United States:

1. The fact that politically, language has been a minor issue compared to race, religion, class, and other factors.
2. The hegemony achieved by the English language has prevented language from becoming an issue of nationalism historically.
3. "Policy decisions on language were typically subordinated to other considerations, such as the race and social status of minority-language speakers"
4. Restrictive language policy at the turn of the century was driven by ideological factors in support of a new imperialism and social control at home.
5. Increased immigration in the 20th century moved language issues to the forefront of national politics, and created a "contentious symbolic issue" that eventually fomented opposition to bilingual educational policies.

Ovando, *supra* note 4, at 17–18.

88. McCarty has observed striking parallels between policies at the state and national levels, noting that liberal immigration policies in the 1960s were met with liberal bilingual education policies at the state level, while restrictive immigration reforms of the 1980s occurred at a time when states such as California began to institute more restrictive language reforms. McCarty, *supra* note 4, at 85.

89. See, for example, Justice O'Connor's remarks in *Gonzales v. Raich*, 545 U.S. 1, 42 (2005) ("One of federalism's chief virtues, of course, is that it promotes innovation by allowing for the possibility that 'a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.'") (citing *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting)).

experiment. The analysis that follows assesses other nations' policies in an attempt to better address the question of what might be the optimum balance.

III. INTERNATIONAL PERSPECTIVES ON BILINGUAL EDUCATION

Given the heated debate and overall inconsistency in the application of bilingual education policies, the extent to which policymakers have examined social science literature in determining the best policies to follow regarding bilingual education is uncertain.⁹⁰ It seems that where social pressures have exerted their full force, as in the arena of the bilingual education debate in the last decade, the utility of social scientific research as evidence in support of existing regimes markedly declines.⁹¹ Thus, a critical reexamination of the debate over traditional bilingual education must look beyond existing social scientific research of its effectiveness. Perhaps examining the policies of other nations that have faced the complex problem of addressing the educational needs of linguistic minorities will prove instructive in deciphering the most effective means of educating a burgeoning multilingual and multicultural society.

It appears that legal scholars have not significantly undertaken a transnational comparative analysis of bilingual education policies in the past. Thus, in this Part I will briefly examine the historical, political, and social context of bilingual education policies in South Africa and Singapore in an attempt to fill this void. Although other scholars have brought comparative analyses to the subject of bilingual education,⁹² my analysis will be restricted to the legal mechanisms that have been constructed within these multilingual societies to address bilingual education. I will identify each country's goals in formulating bilingual educational policies, examine the policies undertaken to achieve those

90. Indeed, several scholars have questioned the extent to which such social-scientific program evaluation can play a role in the promotion of bilingual education. *See, e.g.*, Kip Tellez et al., *Resistance to Scientific Evidence: Program Evaluation and Its Lack of Influence on Policies Related to Language Education Programs*, in *LANGUAGE IN MULTICULTURAL EDUCATION* 57 (Rumjahn Hoosain & Farideh Salili eds., 2005) (finding that the major evaluations of bilingual education tended to support its effectiveness); *cf.* PORTER, *supra* note 74, at 59–84 (arguing that basic assumptions of bilingual education's effectiveness have undermined policymakers' attempts to institute successful reform programs).

91. Tellez et al., *supra* note 90, at 62.

92. *See, e.g.*, *LANGUAGE IN MULTICULTURAL EDUCATION*, *supra* note 90; *LANGUAGE OF THE LAND: POLICY, POLITICS, IDENTITY* (Katherine Schuster & David Witkosky eds., 2007); *EUROPEAN MODELS OF BILINGUAL EDUCATION* (Hugo Baetens Beardsmore ed., 1993).

goals, and finally review some of the literature that has evaluated the outcome of these policies. Ultimately, I conclude that in light of the lessons provided by policies enacted in other multilingual societies, a more cohesive set of guidelines should be established at the national level that allows for properly bounded creativity at the state level in choosing from the multitude of bilingual educational programs available.

A. *South Africa*

Although undoubtedly containing a significantly different political, social, and cultural landscape than that of the United States, South Africa provides an illuminating example of bilingual education policies.⁹³ The country has indeed poised itself as a premier experiment in broad-based bilingual educational policy. With a constitution adopting eleven official languages and a government recognizing numerous others, the debate over bilingual education in South Africa is ever-present.⁹⁴ Furthermore, the country's constitution mandates that "the state must take practical and positive measures to elevate the status and advance the use of these languages."⁹⁵ Thus, an analysis of the constitutionally mandated "practical and positive measures" taken toward a bilingual educational system in South Africa provides an interesting comparison with the *Castaneda* mandate of "appropriate action" and other efforts to currently address the needs of language minorities in the United States.

Bilingual education in South Africa is best understood by first examining its historical context. Much like other postcolonial states on the African continent, South Africa at independence adopted as official languages those languages used by its colonizers—English and

93. South Africa's population is over forty-three million and its people speak about eighty different languages. Vic Webb, *Language Policy in Post-Apartheid South Africa*, in MEDIUM OF INSTRUCTION POLICIES: WHICH AGENDA? WHOSE AGENDA?, *supra* note 4, at 217.

94. Both the 1993 interim Constitution and the 1996 Constitution declared eleven languages to be official languages of the Republic of South Africa. Victoria J. Baker, *English and/or Mother-Tongue Instruction: Ambivalence in Post-Apartheid South Africa*, in LANGUAGE IN MULTICULTURAL EDUCATION, *supra* note 90, at 115, 116. The decision to have eleven official languages was partially the result of a compromise between the African National Congress and the National Party—the two primary political parties negotiating democratization efforts. Webb, *supra* note 93, at 221. Seeking support of the existing regime and power structure (closely held by Afrikaner elite), the National Party sought to keep Afrikaans and English as co-official languages and maintain "regional" official languages in the form of traditional Bantu languages. *Id.* The African National Congress, on the other hand, sought to have English established as the sole official language. *Id.* The current system of eleven languages resulted as a compromise.

95. S. AFR. CONST. 1996, § 6.2. Subsequent legislation also established the Pan South African Language Board, which was tasked with laying the groundwork for "development and equal use of all official languages." Baker, *supra* note 94, at 117.

Dutch/Afrikaans.⁹⁶ A repressive apartheid regime relegated non-English and non-Afrikaans languages to the background of South African political and social life.⁹⁷ The Bantu Education Act of 1953⁹⁸ required primary school to be taught in the students' mother tongue.⁹⁹ In secondary school, Afrikaans and English were compulsory for all students, with acquisition of a third language (usually the African student's "mother tongue") also expected.¹⁰⁰ For black South Africans, all subjects were taught in English with the exceptions of Afrikaans and the "mother-tongue" language classes.¹⁰¹ These policies resulted in "massive under-education of the majority of the population" and remained in effect to some degree until the late twentieth century.¹⁰²

Many argue that the vestiges of the Bantu Education policy remain in modern South Africa, as many scholars have critiqued the current system as not offering a significant improvement over the former apartheid-era regime.¹⁰³ In 1994, South Africa enacted a new constitution after the end of apartheid, which explicitly called for embracing multilingualism and

96. Hassana Alidou notes that generally in colonial sub-Saharan Africa two divergent policies were followed regarding the use of traditional African languages in colonial language instruction—the British model and the French model. Hassana Alidou, *Medium of Instruction in Post-Colonial Africa*, in MEDIUM OF INSTRUCTION POLICIES: WHICH AGENDA, WHOSE AGENDA?, *supra* note 4, at 195, 199. A transitional system using traditional African languages until the fourth grade was instituted in British colonies. *Id.* at 199. The French model, however, followed a generalized policy of assimilation and prohibited the use of African languages in schooling altogether, requiring students to learn French. *Id.* Postcolonial African countries largely inherited the language instruction policies of their colonizers—a factor that scholars have argued has significantly contributed "to ineffective communication and lack of student participation in classroom activities." *Id.* at 195.

97. *See id.*

98. The Bantu Education Act 47 of 1953, available at http://www.disa.ukzn.ac.za/index.php?option=com_displaydc&recordID=leg19531009.028.020.047.

99. Baker, *supra* note 94, at 125. The Act was merely one of a number of apartheid-era laws specifically designed to limit the social mobility of black South Africans. *See, e.g.*, Group Areas Act 41 of 1950 (establishing different residential areas for different races); Separate Representation of Voters Act 46 of 1951 (limiting races appearing on the voters' roll); Reservation of Separate Amenities Act 49 of 1953 (forcing segregation of public amenities); Extension of University Education Act 45 of 1959 (altering University education to create separate institutions for each of the primary races in South Africa); Bantu Homelands Citizens Act of 1970 (removing citizenship of black South Africans and compelling them to join ethnic "homeland" regions).

100. Diane B. Napier, *Languages, Language Learning, and Nationalism in South Africa*, in LANGUAGE OF THE LAND: POLICY, POLITICS, IDENTITY, *supra* note 92, at 55, 57–62.

101. *Id.* This language-in-education policy was one of the primary factors fomenting the SOWETO student uprising in 1976. Kathleen Heugh, *Giving Good Weight to Multilingualism in South Africa*, in RIGHTS TO LANGUAGE: EQUITY, POWER, AND EDUCATION 234, 235 (Robert Phillipson ed., 2000).

102. Kathleen Heugh, *The Case Against Bilingual and Multilingual Education in South Africa*, PRAESA OCCASIONAL PAPERS No. 6, at 4 (2000).

103. *See id.*

the promotion of the eleven official languages.¹⁰⁴ Facing robust linguistic diversity and a constitutional mandate to embrace and promote this diversity, policymakers in post-apartheid South Africa were inevitably required to tailor any educational policy to contain a formal bilingual education component.¹⁰⁵ From the outset in the days immediately following the formation of the new government, officials in South Africa sought to enact “practical, implementable solutions within the existing budgetary constraints of government.”¹⁰⁶ What resulted was the “Language in Education” policy. The policy itself is contained within the South African Constitution and a Department of Education language in education policy document.¹⁰⁷ The Department of Education portion explicitly places as one of its goals that the government “promote multilingualism, the development of the official languages, and respect for all languages used in the country.”¹⁰⁸ However, the actual implementation strategies have been left to provincial and regional leadership and no specific model is recommended by the policy.¹⁰⁹ As a result, South African school systems are decidedly heterogeneous in their specific implementation of the Language in Education policy.¹¹⁰

The new policy has generally been viewed by South Africans as a step in the right direction. A recent study has suggested that populations within

104. S. AFR. CONST. 1996, §§ 6.1–6.4.

105. Baker, *supra* note 94, at 116. A Language-in-Education Subcommittee was formed as part of a task force created by the Minister of Arts, Culture, Science and Technology. Among this Subcommittee’s goals was to “[p]romote the use of students’ primary languages as languages of learning and teaching in the context of an additive multilingual paradigm and with due regard to the wishes and attitudes of parents, teachers, and students.” *Id.*

106. Heugh, *supra* note 102, at 4.

107. Webb, *supra* note 93, at 232. The relevant portion of the Republic of South Africa Constitution reads:

Everyone has the right to receive education in the official language or languages of their choice in public educational institutions where that education is reasonably practicable. In order to ensure the effective access to, and implementation of, this right, the state must consider all reasonable education alternatives including single medium institutions, taking into account (a) equity, (b) practicability; and (c) the need to redress the results of past racially discriminatory laws and practices.

S. AFR. CONST. 1996 § 29.2.

108. Baker, *supra* note 94, at 117.

109. Webb, *supra* note 93, at 232. The policy leaves open various avenues for achieving its lofty goals, including offering more than one language of learning and teaching, offering additional languages as subjects, and applying special immersion or language maintenance programs. *Id.*

110. Webb notes that 11% of all schools selected Afrikaans as a medium of instruction, while 51% selected English, and 37% selected a Bantu language. *Id.* at 233. Even though 83% of the school population consisted of speakers whose mother tongue was a Bantu language, the results show that the system is still largely skewed towards English. *Id.* For a detailed discussion and overview of the system’s structure, see S. G. Taylor, *Multilingual Societies and Planned Linguistic Change: New Language-in-Education Programs in Estonia and South Africa*, 46 COMP. EDUC. REV. 313 (2002).

the townships of South African cities (a historically impoverished group) overwhelmingly “favor the new policy and claim [support for] bilingual education.”¹¹¹ Generally, South Africans view the equality of status and usage of African languages as a crucial factor in realizing democratization within South Africa.¹¹² However, the study also found significant ambivalence regarding the preferred language, with respondents generally viewing English as the language of empowerment.¹¹³ Moreover, there is some variation between what South Africans seem to prefer and the policies that are being implemented; in a recent study only 12% of families reported that they preferred English, while 37% indicated they would prefer instruction in their primary language.¹¹⁴

The positive public perception of the policy, however, has not guaranteed its success.¹¹⁵ Scholars have noted that such an open-ended policy framework has hampered actual implementation, as “the tangle of different agencies engaged in language planning” combine with tight budget constraints to undermine the system’s effectiveness.¹¹⁶ Test results also raise doubts about the system’s efficacy at successfully educating language minorities. In 1997, nearly fifty-three percent of all students taking the Matriculation (Secondary School Graduation) Exam failed.¹¹⁷ A number of factors have been posited to explain the dwindling success rates of the system. Alexander notes that a significant obstacle in South African education has been the fact that many instructors themselves are not entirely proficient in English (the language in which the exam is given), it

111. Baker, *supra* note 94, at 115. Conducted over six months by Victoria J. Baker, the study investigated the subjective views of thirty teachers, one hundred students, and fifty parents in the black township of Ikageng in South Africa’s North West Province. *Id.* at 116. The study questioned participants about their language policy preferences, opinions on the existing curriculum, and thoughts on problems associated with multilingual classrooms. *Id.*

112. Neville Alexander, *Language Policy and Planning in South Africa: Some Insights*, in RIGHTS TO LANGUAGE: EQUITY, POWER AND EDUCATION, *supra* note 101, at 170.

113. Baker, *supra* note 94, at 130. The fact that English is a language highly valued throughout the international economy has caused it to become a sought-after resource in non-English speaking countries throughout the world. For example, in Hong Kong, English has been the medium of instruction preferred by parents even after the resumption of sovereignty by China. Farideh Salili & Amy B. M. Tsui, *The Effects of Medium of Instruction on Students’ Motivation and Learning*, in LANGUAGE IN MULTICULTURAL EDUCATION, *supra* note 90, at 135, 139. In spite of this preference, the Hong Kong government mandated in 1998 that Chinese be the medium of instruction in three quarters of Hong Kong schools, with the remaining schools using English. *Id.*

114. Webb, *supra* note 93, at 234.

115. See generally Felix Banda, *The Dilemma of the Mother Tongue: Prospects for Bilingual Education in South America*, 13 LANGUAGE, CULTURE & CURRICULUM 51 (2000) (concluding that a proposed additive bilingualism policy was “unlikely to succeed as long as role models, learners and their parents see little utility in languages other than in English”).

116. Taylor, *supra* note 110, at 332.

117. Alexander, *supra* note 112, at 172.

being either their second or third language.¹¹⁸ Moreover, the lack of significant written traditions in various African languages has been cited as a significant drawback to the support of African language instruction.¹¹⁹ Various authors have noted the lack of real support for the promotion of African indigenous languages, as well.¹²⁰ Some argue in favor of strict mother-tongue instruction to foster the development of traditional African languages, while others argue that English should be the preferred and only medium of instruction.¹²¹ For example, Heugh argues against bilingual and multilingual education in South Africa, criticizing the existing regime as furthering the discriminatory practices of the former apartheid government.¹²² In essence, allowing a choice between education in strictly the mother tongue or in English forces a false dichotomy.¹²³ Instead, she argues that the policy in place should be discarded in favor of a more cohesive policy that places an emphasis on educating children in the tongue that will most likely empower them to enter into society and the workforce.¹²⁴

South Africa's Language-in-Education Policy places choice as a high priority—particularly choice in selecting a program that best suits a child's needs.¹²⁵ While this choice is seen as important in giving families and students a sense of empowerment by recognizing the importance of their mother tongue, the lack of guidance may in fact hinder the goals of the program. Thus, the case of South Africa presents an interesting example of how a nation can place too much emphasis on respect for minority

118. *Id.* As a result, Alexander argues that a system espousing first- or home-language (i.e. mother tongue) medium would be more efficient given short-term considerations. *Id.*

119. Zubeida Desai, *Mother Tongue Education: The Key to African Language Development? A Conversation with an Imagined South African Audience*, in *RIGHTS TO LANGUAGE: EQUITY, POWER AND EDUCATION*, *supra* note 101, at 178.

120. Alexander, *supra* note 112, at 173; *see also* Desai, *supra* note 119, at 174–75. Desai notes three possible reasons for the lack of promotion of indigenous languages throughout sub-Saharan Africa. *Id.* First, the fact that most sub-Saharan African languages are of principally oral, rather than written, tradition. *Id.* Second, the absence of linguistic nationalism. *Id.* Third, the fact that the tremendous diversity of languages ultimately results in very small segments of the population speaking any particular language. *Id.*

121. *See, e.g.*, Heugh, *supra* note 102.

122. *Id.* In her work Heugh purports to debunk five principle myths hindering the use of African languages in education in South Africa: (1) there is not enough indigenous South African research; (2) parents want English only; (3) African languages cannot or do not deliver quality education to the majority; (4) many South African children do not need mother-tongue instruction because they do not have a mother tongue; (5) bilingual education is too expensive. *Id.* at 11–31.

123. *Id.*

124. *Id.*

125. *See id.*

languages and not enough emphasis on effectively integrating linguistic minorities into the economy and society.

As noted above, such policies should not be undertaken blindly on the assumption that respect alone will automatically breed empowerment. Thus, as a tangible lesson for the United States, it is important that federal and state policymakers attempt to reconcile the competing demands between linguistic minority groups that seek to preserve their cultural and linguistic heritage, and linguistic minority groups' need to be effectively integrated into the national economy.

B. Singapore

In contrast with the struggles faced by South Africa in implementing an educational system to deal with the country's numerous linguistic minorities, Singapore has experienced relative success with its system. While Singapore's system has embraced English as the dominant tongue and medium of instruction, it has done so without sacrificing respect for and use of the languages of the various ethnic groups within Singapore.

Singapore was founded in 1819 as a British colony, and gained independence in 1959.¹²⁶ Thus, English has maintained a dominant influence in Singapore politics, society, and culture since its birth.¹²⁷ With a population of slightly over 4.5 million people¹²⁸ speaking four official languages,¹²⁹ Singapore has managed to create an efficient and effective bilingual education system. Indeed, the system has produced a high level of achievement in bilingualism while simultaneously developing an awareness and appreciation of the country's rich multiculturalism.¹³⁰

English was selected as the primary language of instruction in Singapore because of its political neutrality between the three main ethnic groups and because it was thought to provide significant returns in light of

126. Anne Pakir, *Medium-of-Instruction Policy in Singapore*, in MEDIUM OF INSTRUCTION POLICIES: WHICH AGENDA? WHOSE AGENDA?, *supra* note 4, at 117.

127. Many scholars have lamented the fact that English has exercised such cultural superiority within Singapore. See, e.g., A. SURESH CANAGARAJAH, RESISTING LINGUISTIC IMPERIALISM IN ENGLISH TEACHING (1999); P.G.L. Chew, *Linguistic Imperialism, Globalism, and the English Language*, in ENGLISH IN A CHANGING WORLD 13 (1999); Rani Rubdy, *Creative Destruction: Singapore's Speak Good English Movement*, 20 WORLD ENGLISHES 343 (2001).

128. Statistics Singapore, Population (Mid-Year Estimates), <http://www.singstat.gov.sg/stats/themes/people/hist/popn.html> (last visited May 3, 2009).

129. Singapore's official languages are English, Mandarin, Malay and Tamil. Pakir, *supra* note 126, at 118. Of a population of nearly five million people, 77% speak Chinese, 15% Malay, 7% Indian, and 1% "other." *Id.*

130. *Id.*

heavy investment by English-speaking multinational corporations.¹³¹ Although English is the primary medium of instruction, “ethnic mother tongues” are also used in education and are considered important in helping students understand their cultural heritage.¹³² Thus, an examination of bilingual education policy in Singapore might prove useful in the process of discovering how to successfully implement language education policies in states with increasing linguistic diversity. Moreover, because Singapore is a nation containing a smaller population than many states in the United States, its policies for the implementation of a bilingual education system may provide insight into creating a cohesive policy at the state level.

Singapore’s current education system is expansive, highly centralized and recognizes a commitment to a multilingual state.¹³³ “Educational excellence” serves as the motivating philosophical goal driving the current system.¹³⁴ Officially, children in Singapore must become bilingual and biliterate in English and one other official language.¹³⁵ Many students who come from non-school-language home environments (e.g., specific dialects of Chinese, or other Southeast Asian languages) are often placed in after-school special assistance programs.¹³⁶

Beyond simply obtaining proficiency in two languages and promoting a highly skilled and well-educated labor force, another goal of the system is to promote interethnic communication.¹³⁷ Essentially, striking a balance in practically educating the nation’s diverse ethnic groups, and ensuring cultural homogeneity, while simultaneously promoting ethnic heritage appreciation for each of the four national groups, have been the central goals of Singapore’s multilingual education policy.¹³⁸

131. *Id.* English continued to grow in importance even in the years after Singapore became independent and was established as the primary language of instruction for all state schools in 1987. *Id.* at 120. Pakir attributes the success of Singapore’s multilingual education program to “sociopolitical and socioeconomic forces at work in the community that clarify for most Singaporeans the value of English as the medium of instruction for a small country, with people as its only resource.” *Id.* at 129.

132. *Id.* at 117–18.

133. The school system consists of 195 primary schools, 4 full schools, 148 secondary schools, 2 preuniversity institutes, and 14 junior colleges. *Id.* at 120.

134. *Id.* at 119. Pakir notes that the system espouses five “pillars” to achieve “educational excellence”: “(a) literacy (including biliteracy), (b) numeracy, (c) bilingualism (in English and one other official language), (d) physical education (and general well-being), and (e) moral education (for the transmission of culturally based values).” *Id.*

135. *Id.* at 120. Normally, children select their second language based on their ethnic classification. *Id.* Because Chinese is the second biggest language grouping, the majority of schools offer Chinese as a second language. *Id.*

136. *Id.*

137. *Id.* at 119.

138. Pakir notes that throughout Singapore’s history, policy has always focused on:

One concern posed by critics of the system is whether the focus on encouraging bilingualism (including after-school programs dedicated to language acquisition) is at the expense of the substantive learning of traditional classroom content.¹³⁹ It appears that for some students the need to spend extra time outside of the classroom to acquire a second language is especially burdensome.¹⁴⁰ Other growing concerns within Singapore regarding its bilingual education policy are whether the language policy is fulfilling the need for interethnic communication and whether English as the primary medium of instruction unfairly benefits particular ethnic/linguistic or socioeconomic groups.¹⁴¹

Overall, Singapore provides an instructive lesson on a government striking a balance between the education of linguistic minorities and the promotion of a common language. While Singapore's policy recognizes English-language acquisition as a valuable commodity, it also recognizes the importance of multilingual and multicultural education to promote intercultural communication in a nation of people from diverse ethnic backgrounds. As a small nation (city-state, even) smaller than many states in the United States, Singapore's policies may prove instructive for states that are attempting to deal with the mixing of cultures and languages in the near future. Perhaps, as Singapore's example suggests, promoting a "pragmatic bilingualism" would be more fruitful than attempting to eradicate the use of minority languages because of an unsubstantiated fear of the dominant language's waning importance.¹⁴²

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- a) assessing bilingual attainment and its use for admission to higher levels of education,
 - b) creating standards and norms for the first school language . . . ,
 - c) improving the teaching of the second school languages, such as Mandarin,
 - d) encouraging community representation, specifically allowing minority Indian languages other than Tamil in the school system,
 - e) examining exogenous influences on and encouraging indigenisation of the curriculum, and
 - f) evolving new pedagogies based on Asian cultural scripts.

Id. at 121.

139. *Id.* at 124.

140. *Id.*

141. *Id.* at 119. Principally, scholars have noted two distinct language shifts taking place in the population as a result of the current bilingual policy—one shift to English, and a second shift to Mandarin. *Id.* at 122. Two significant public campaigns appear to coincide with these shifts: The Speak Good English Movement and the Speak Mandarin Campaign. *Id.*

142. For a discussion of "pragmatic multilingualism," see Eddie C. Y. Kuo & Björn H. Jernudd, *Balancing Macro- and Micro-Sociolinguistic Perspectives in Language Management: The Case of Singapore*, in *ENGLISH AND LANGUAGE PLANNING: A SOUTHEAST ASIAN CONTRIBUTION* 70, 76 (Thiru Kandiah & John Kwan-Terry eds., 1994).

IV. DISCUSSION

Despite the debate over the best practices of the education of language minorities, expanding America's ability to interact with an increasingly global economy will require school systems to fashion effective language education policies for all students.¹⁴³ Indeed, as the American economy has shifted from low-skilled, labor-intensive industry towards high-skilled capital-intensive industry, effective education of all strata of American society has become increasingly important.¹⁴⁴ Perceptions of immigration policies have changed significantly in recent years, motivated in part by the recognized need for low-skilled services that most Americans will not perform.¹⁴⁵ However, such rhetoric fails to capture the plight of those documented and legal immigrants who do not wish to remain on the bottom rung of the economy, and for whom such jobs are becoming increasingly scarce. To be able to effectively move beyond this bottom tier, immigrants must be presented with realistic opportunities to learn English. The enactment of policies, such as those in the No Child Left Behind Act, that seek only to emphasize and quicken the amount of English taught to English Language Learners do not effectively give states the incentive to ensure that LEP students are *actually acquiring* English skills.

Other scholars have called for the development of a legal regime that respects and recognizes minority languages as coequal to that of English. Geneva Smitherman argues for a national public policy on language that recognizes the need for the teaching of a "language of wider communication," while simultaneously recognizing the importance and needs of linguistic minorities.¹⁴⁶ Even further, Christina M. Rodriguez

143. For example, a recent New York Times article highlights the growing importance of building a nation of "polyglots" able to function in the global economy. Joseph Berger, *Building a Nation of Polyglots, Starting With the Very Young*, N.Y. TIMES, Nov. 14, 2007, at B9. Effective policies must not only seek to be remedial, but also to actively promote bilingualism. Indeed, actively promoting bilingual education using means beyond traditional foreign language education can be useful not only in training a nation of "polyglots," but also in developing cohesiveness and unity in a nation of growing multilingualism and multiculturalism.

144. See, e.g., Robert H. Cohen, *Immigration Crackdown Hurts Economy*, COLUMBUS DISPATCH, Feb. 14, 2008, at 13A.

145. See *id.*

146. Geneva Smitherman, *Toward a National Public Policy on Language*, in *THE SKIN THAT WE SPEAK: THOUGHTS ON LANGUAGE AND CULTURE IN THE CLASSROOM* 163, 170–71 (Lisa Delpit ed., 2002). As part of this policy, she argues for "reinforce[ing] and reaffirm[ing] the [l]egitimacy of [n]on-[m]ainstream [l]anguages and [d]ialects" and for the "promo[tion of] [m]other-[t]ongue [i]nstruction as a [c]o-[e]qual [l]anguage of [i]nstruction." *Id.* at 172. She also suggests that language majority students

argues in favor of the development of a comprehensive theory of language rights in the United States.¹⁴⁷ In her work she attempts to formulate a theory of the language status of language and linguistic minorities.¹⁴⁸ She concludes that language is a relevant factor to an individual's legal status and argues that it should be treated as such through "a legal regime that accommodates linguistic difference and its effects."¹⁴⁹

While these scholars have well-meaning intentions of ensuring that the rights of language minorities are protected, the experience of South Africa provides a cautionary tale of such an expansive regime. However, a more refined, cohesive national policy protecting the rights of language minorities and fostering effective state programs to address the needs of language minorities seems to be a necessary solution. The No Child Left Behind Act marked a final deathblow that eviscerated significant federal guidelines regarding formal bilingual education policies. What remains is a generalized mandate that frowns upon the use of transitional bilingual education and emphasizes English-only programs. Although such deregulation has allowed the states to develop new policies regarding bilingual education and has afforded them more flexibility, many states with significant language minority populations are uniformly adopting English-only policies or severely restricting the use of foreign languages as a result of the vague federal guidance.¹⁵⁰ However, as noted above, significant debate exists over the efficacy of English-only programs, and substantial literature suggests that these programs are underperforming previous bilingual programs.¹⁵¹

In light of the observations of the systems in place within South Africa and Singapore, it seems that enhanced guidance on the federal level would significantly improve the states' abilities to educate language minorities. Although the United States does not face the tremendous linguistic diversity faced by many other nations throughout the world, its increasingly diverse linguistic landscape indicates that policies must be put

should seek to "acqui[re] one or more foreign languages," which is already a requirement in most school districts in the United States. *Id.* at 173.

147. Cristina M. Rodriguez, *Accommodating Linguistic Difference: Toward a Comprehensive Theory of Language Rights in the United States*, 36 HARV. C.R.-C.L. L. REV. 133 (2001).

148. After examining political and constitutional theory, and modern doctrine and practice, she concludes that "language rights" bears meaning in the United States not unlike other countries where such rights are formally legally recognized. *Id.* at 135.

149. *Id.*

150. See *supra* notes 53–55 and accompanying text.

151. See *supra* note 57 and accompanying text.

in place that adequately steer language policy to address the needs of growing populations of linguistic minorities.

The cases of South Africa and Singapore capture much of the debate that has occurred over bilingual education in the United States. South Africa's bilingual education policy, for example, suffers from too little guidance at the federal level, despite a well-meaning goal of promoting linguistic diversity. Singapore's more cohesive program, by contrast, has shown substantial positive results but has not been without its critics. Striking an adequate balance between state, federal, and local control, however, is a ubiquitous problem in numerous areas of public education.

As Kathleen Heugh notes, "no language policy will ever succeed unless an accompanying plan is implemented; neither will it succeed if there is an accompanying plan which is at variance with the goals."¹⁵² Thus, policymakers must be cognizant of the outcome they are trying to achieve. While the goals of school districts within the United States may not be identical to those in other countries (i.e., promoting acquisition of English and cultural assimilation rather than acquisition and appreciation of multilingualism and multiculturalism), it is important to consider the needs of the people most directly affected by such policies—the Limited English Proficiency students and their families.

It remains to be seen to what extent NCLB will be left intact by the Obama administration and what priority level bilingual education is given. During the 2008 presidential campaign, observers noted that Obama favored transitional bilingual education over English-only alternatives.¹⁵³ However, given the pressing economic crisis and other unforeseen domestic and international issues, it is likely that change may not be as immediate as some may like.

In light of the highly politicized debate that has taken place in many states and the extensive critiques of various iterations of bilingual education policies discussed above, I propose that any such revision of federal policy should give school systems freedom to experiment with novel and creative programs that they see as best fitting the needs of their

152. Heugh, *supra* note 102, at 5 (citing E.N. Akinnaso, *Toward the Development of a Multilingual Language Policy in Nigeria*, 12 *APPLIED LINGUISTICS* 29 (1991)). She goes on to note another scholar who recognizes that "a language in education policy will not succeed unless it is integrated with and in synchrony with the national education policy and plan." *Id.* (citing B.S. Chumbow, *Towards a Language Planning Model for Africa*, 17 *J. W. AFRICAN LANGUAGES* 15, 22 (1987)).

153. Bruce Fuller, *The Bilingual Debate: Transitional Classrooms*, N.Y. TIMES CAMPAIGN STOPS BLOG, Sept. 28, 2008, available at <http://campaignstops.blogs.nytimes.com/2008/09/28/the-bilingual-debate-transitional-classrooms/?8ty&emc=ty>.

local students. Such freedom should not come without boundaries, however, and therefore I also argue that more cohesive state and federal policies should be put in place that foster, encourage, and guide such creativity.

CONCLUSION

The lack of ideological consistency evidenced by the shifting policies towards bilingual education has significantly impaired the ability of language minorities in the United States to obtain proficiency in English. As such, a more cohesive policy should be put in place to provide guidance to the states in promoting effective means to educate minorities. Although there is significant debate over the effectiveness of transitional bilingual education, legitimate studies should not be ignored in favor of following policies that are simply the product of shifting political whims.

After examining the bilingual education policies of South Africa and Singapore, it seems that a cohesive policy with tangible guidelines provides the most effective means for educating language minority populations. Although a return to the strict enforcement of the use of transitional bilingual education would most likely be counterproductive given the diversity of opinions on the effectiveness of such programs, a set of more cohesive guidelines should be adopted at the national level to ensure that states are in fact taking appropriate action for the education of language minorities.

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