

### **Conflict: community interests, American ideals and individual rights**

In a society that is as diverse in linguistic, cultural, and national origins as the USA, it is inevitable that language would eventually become a source of conflict in education. How should American schools deal with the language needs of children who do not speak English or, more precisely, the variety of English used in school? What position should the society take towards family and community efforts to preserve the ethnic languages of native and immigrant students? What accommodations should the schools make for students who do not know English? Over the past several decades, these issues have become increasingly contentious, divisive, and political. This chapter examines these issues and considers what they reveal about American beliefs regarding language diversity and how our society has dealt with linguistic diversity in education.

The conflict over language in education may always have been an underlying issue, but it was not until the last quarter of the twentieth century that it surfaced as a topic of public debate and division. This chapter begins with an examination of the situations and events that led to a shift in how language is considered in education and then addresses questions that schools confront currently. The educational approach that brought public scrutiny to the language of schooling was bilingual education. When the US Congress passed the Bilingual Education Act of 1968, making funds available to states and local districts for the development of bilingual instructional programs, it recognized that language diversity was at the heart of a long-standing educational problem for the mostly English monolingual US school system.

The American schoolhouse has been the place where countless immigrants and American natives, speakers of a great many different languages, have been turned into English speakers, frequently at the cost of their ethnic languages and cultures. Until recently, however, little notice was given either to the problem this process presented to the schools or to how it affected the people who were being transformed. Certainly the need for the school to serve this purpose was never questioned. It was simply assumed that everyone who lived in the USA, irrespective of origin, would want to be transformed into English monolinguals, and that the schools were the appropriate place for children from diverse backgrounds to acquire the cultural and linguistic knowledge and skills required for participation in the larger society.

Until the 1960s, few groups contested the exclusive use of English in US public schools. This is not to say that minority groups were unconcerned about the retention of their ethnic languages. Historically, many groups have recognized that the continuation of cultural practices and traditions depended on the younger generations of the community learning and using those languages even as they were learning English. Immigrant groups wanting instruction for their children in their ethnic languages generally sought to establish such programs through church or religious organizations. A study of the use of ethnic languages

in schools conducted in the 1960s found that, historically, most such efforts were church sponsored programs (Fishman and Nahimy 1966). According to the study, 81 percent of the ethnic day-school programs at the time were under religious sponsorship, an indication of the powerful role played by churches and religion in the maintenance of ethnic languages and cultures in the USA. The researchers estimated that there were approximately 2,000 church-sponsored schools operating in the USA that were providing some ethnic language instruction, and among the sponsoring religious groups were Roman Catholic, Eastern and Greek Orthodox, and various Protestant and Jewish groups.

The right of immigrant families to send their children to such schools did not go unchallenged, however. During the xenophobic period surrounding World War I, there were statutes passed in several states prohibiting the use of "foreign languages" in any school, whether public or private. In Nebraska, parochial school teacher Robert Meyer was found guilty of violating a 1919 law prohibiting the use of foreign languages in school before the eighth grade. His transgression? He taught a Bible story in German to a ten-year-old child. The conviction was later overturned by the US Supreme Court in a case known as *Meyer v. Nebraska*. The Court noted that the Fourteenth Amendment protects the rights of individuals to the pursuit of happiness, to acquire useful knowledge, to marry, establish a home and bring up children, and it also pointed out that parents had not only the duty to give their children a suitable education but also the "right of control" over that education (see Crawford 1992b).<sup>1</sup>

The Supreme Court's 1923 decision is an important one to consider as we examine the conditions leading to the present in which the use of languages other

<sup>1</sup> The ruling *Meyer v. Nebraska* reads:

"The challenged statute forbids the teaching in school of any subject except in English; also the teaching of any other language until the pupil has attained and successfully passed the eighth grade, which is not usually accomplished before the age of 12. The Supreme Court of the state has held that 'the so-called ancient or dead languages' are not 'within the spirit or the purpose of the act.' Latin, Greek, Hebrew are not proscribed; but German, French, Spanish, Italian and every other alien speech are within the ban. Evidently, the Legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunity of pupils to acquire knowledge, and with the power of parents to control the education of their own.

It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and 'that the English language should be and become the mother tongue of all children reared in this state.' It is also affirmed that the foreign born population is very large, and that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most type and the public safety is imperiled.

That the state may do much, go very far, indeed, in order to improve the quality of its citizens, physically, mentally, and morally, is clear; but the individual has certain fundamental rights which must be respected. The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced with methods which conflict with the Constitution - a desirable end cannot be promoted by prohibited means." [262 U.S. 390, (1923)]

than English is being contested once again, this time in public schools. There had been a few scattered efforts to use languages other than English in the public schools prior to the 1960s (French in Louisiana, Spanish in New Mexico, German in Ohio and Wisconsin), but these early bilingual programs were limited and had not been regarded as a threat to the prevailing ideal of the American school as the place where polyglot immigrants and American natives were turned into monolingual English speakers.

### **The advent of federally sponsored bilingual education**

For the most part, the use of ethnic languages was confined to private and parochial schools until the early 1960s when the Dade County schools in Florida were suddenly confronted with the problem of how to accommodate the region's many Spanish-monolingual children. They were the children of the hundreds of thousands of refugees who fled Cuba in the decade following the Castro revolution in 1959. These families were members of the upper class and professionals, who had the most to lose by remaining in Castro's Cuba after the revolution.

Ordinarily, non-English-speaking children coming into Florida's schools would have been placed in English-Only classrooms where they would have received short-term instructional help with English until they knew it well enough to get by on their own. The situation, however, was hardly ordinary. The numbers of Spanish-speaking immigrants enrolling in Dade County schools were staggering – so many in some schools that they outnumbered the English speakers. Then, too, many of the refugees did not plan to stay in the USA. They expected that Castro would be overthrown and they could then return home to Cuba. To school officials, it made sense to establish a bilingual program for these children, where they could be instructed both in Spanish and in English. Such an approach would allow the children to continue their schooling during their sojourn in Florida and also give them an opportunity to learn some English. The Dade County program was highly effective – the children thrived educationally in bilingual classes, and not only were they successfully incorporated into the American educational culture, but they also maintained the language and culture of their families and primary community. The success of the bilingual program was recognized by educators and researchers around the country as a model program (see Mackey and Beebe 1977).

The Florida experience convinced some policymakers and educators that bilingual education might be a solution for the vexing problem of under-achievement and school failure for many other Hispanic students who were limited in English proficiency (LEP). These children generally had difficulty making academic progress and dropped out of school at a much higher rate than English speakers did. Bilingual education might well be the answer for the many other Spanish-speaking children in the USA. This was in fact the major justification for the funding of the Bilingual Education Act. In his introduction of the legislation to Congress in 1967, Senator Ralph Yarborough of Texas noted that bilingual

education offered a solution for the nearly 3.5 million Spanish speakers in the Southwestern states whose access to educational opportunities had been limited because English was the only language used in school:

I am introducing today the Bilingual Education Act. Its declaration of policy reads as follows: In recognition of the special needs of the large numbers of students in the United States whose mother tongue is Spanish and to whom English is a foreign language, Congress hereby declares it to be the policy of the United States to provide financial assistance to local educational agencies to develop and carry out new and imaginative elementary and secondary school programs designed to meet these educational needs.

Title VII of the Elementary Secondary Education Act, as the Bilingual Education Act of 1968 was called, made it possible for schools to provide instruction for LEP students in languages they already understood, a constructive but nonetheless radical solution to a persistent educational problem, given the millions of children who came from homes where little English was spoken. The 1968 bill was based on the assumption that not knowing English constituted a deficiency and that the use of the home language in school would help compensate for that deficiency by giving LEP students access to the school's curriculum in language they understood. The use of English in such programs would enable LEP students to learn it as a second language, thus facilitating their eventual transition into the English monolingual school system.

There was little initial objection to bilingual instructional programs. Title VII provided federal funds to finance the development and establishment of bilingual programs. These early programs were not regarded as problematic by educators or by the public because states and local districts could choose whether or not to seek funding for them. The value of the Title VII programs funded under this act, however, was obvious to many members of the immigrant communities whose children could benefit from bilingual instruction.

In San Francisco, California, the school district was heavily impacted by the influx of many thousands of new immigrants and refugees from Asia, Southeast Asia, Mexico, and Central America during the early 1970s, and there were many more students needing bilingual education than the district could accommodate in its Title VII programs. San Francisco Unified School District (SFUSD) had received Title VII funding for Cantonese, Spanish, and Tagalog bilingual instruction, but these were small, experimental programs at a few schools and could serve only a small percentage of the children who spoke those languages and whose parents wanted them placed in the bilingual classrooms.

### ***Lau v. Nichols*, Lau Guidelines, and mandate for bilingual education**

In 1973, a class action suit was brought against the SFUSD School Board on behalf of the many non-English-speaking Chinese children in the district who

were not receiving any instructional support to help them overcome the linguistic barrier to school participation. This, the plaintiffs argued, was a violation of both the Equal Protection Clause of the Fourteenth Amendment and of §601 of the Civil Rights Act of 1964, which bans discrimination based "on the grounds of race, color, or of national origin" in "any program or activity receiving Federal financial assistance." The District Court initially ruled against the plaintiffs. The judge asserted that the non-English speaking Chinese children were attending the same schools, sharing the same classrooms, were taught by the same teachers, and were using the same textbooks as their English-speaking classmates, so there was no evidence that they were being discriminated against nor that they were being denied access to the programs provided by the school district.

After the ruling was upheld by the Court of Appeals, the case went to the US Supreme Court, which in 1974 reversed the judgment and ruled in favor of the plaintiffs in the landmark case, *Lau v. Nichols*, basing its ruling strictly on Title VI of the Civil Rights Act. The school district had agreed to comply with Title VI of the Civil Rights Act, which prohibits discrimination in services and programs when applying for federal funds to support its programs. The grounds on which discrimination was barred included language differences, which had earlier been defined as an indicator of national origins. Students could not be denied access to instructional services because they did not understand English. In the judgment of the Supreme Court, there was clear evidence of discrimination:

It seems obvious that the Chinese-speaking minority receive fewer benefits than the English-speaking majority from respondents' school system which denies them a meaningful opportunity to participate in the educational program - all earmarks of the discrimination banned by the regulations. In 1970 HEW [the US Department of Health, Education, and Welfare] issued clarifying guidelines, 35 Fed. Reg. 11595, which include the following:

"Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional programs to these students."

Attendance in school was mandatory by the compulsory education law, the Supreme Court declared, and the state's education code specifies that no student can graduate from high school without a demonstration of English proficiency. But how, it asked, were children to deal with subject matter taught exclusively in English if they did not know that language and were not provided instructional help in learning it? In the Court's opinion this was inherently discriminatory:

Under these state-imposed standards there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Basic English skills are at the very core of what these public schools teach. Imposition of a requirement that, before a child can effectively participate in the educational program, he must already have acquired those basic skills is to make a mockery of public education. We know that those who do not understand English are certain to find their classroom experiences wholly incomprehensible and in no way meaningful.

This finding was important not only for the Chinese children in San Francisco's schools but for all LEP children throughout the USA. The Supreme Court directed the San Francisco Board of Education to rectify the problem that had led to the suit, and the remedy the Board found was bilingual education. The Office of Civil Rights assembled a task force to develop standards of compliance for school districts throughout the country with large enough concentrations of non-English speakers or LEP students to warrant attention. That task force found bilingual education to be the most appropriate educational remedy for children who did not understand English. LEP students should be provided instruction part of the time in their home languages, thus giving them access to the curricular content of school in language they already understood, and part of the time in English, providing them opportunities to learn it as a second language. The task force's document came to be known as the "Lau Guidelines" or "Remedies."

### **The debate over bilingual education**

In the years after the Supreme Court's ruling in *Lau*, numerous states passed bilingual education legislation – thereby changing state education codes that had specified English as the sole language of instruction, and mandating bilingual education where it was feasible. These changes were lauded by educators and community members who saw bilingual education as perhaps the only pedagogically sound approach to educating students who did not already know the language of the school and society. They were as quickly denounced by others – including many educators and politicians – who viewed bilingual education as an abandonment of the ideal of the USA as a melting pot and who viewed the schools as the place where linguistic and cultural diversity were eliminated and immigrants transformed into English-speaking Americans. The heated debate over bilingual education and over language in education has not lessened in the quarter century since the *Lau* decision was handed down. Among the issues debated have been the following:

*Challenge No.1:* Bilingual programs make exclusive use of the students' primary languages in school. How are LEP students to learn English if they never hear it at school?

*The response:* The learning of English is an important goal but not the only educational goal for LEP students. LEP students must learn all of the content in the school's curriculum, just as native speakers of English must. If children were taught nothing but English until they knew it well enough to handle the

curriculum in English, they would fall too far behind their age cohort ever to catch up in school. Research has shown that it ordinarily takes children from five to seven years to learn a new language (see especially Cummins 1981a, b, Collier 1987, Scarcella 1999). If during that period, they are not given access to the curriculum in language they understand, they are prevented from participating in school. That was the main point in the *Lau* decision. The charge that bilingual programs are conducted exclusively in the primary languages of the LEP students is absurd. If there is an imbalance in the use of language, it is invariably in the overuse of English.

*Challenge No. 2:* The programs are educationally ineffective. They are based on an "unproven" educational theory. LEP students perform no better in bilingual programs and in some cases perform worse than they would in English-Only programs.<sup>2</sup>

*The response:* The claims that bilingual education has been educationally ineffective are spurious and based on biased interpretations of the research data (see Crawford 1992a, Cummins 1992, 1996, Krashen 1996). There was a time when bilingual programs produced mixed results. During the early years of bilingual education, there were not enough teachers who were prepared or qualified to teach in such programs, and there was little in the way of instructional materials available in languages such as Spanish, Cantonese, and Vietnamese – but that situation has changed. In the past decade and a half, ample research evidence has showed that well-planned programs staffed by qualified and well-trained personnel get positive results (see Krashen and Biber 1988, Collier and Thomas 1989, Cummins 1989, 1996, Ramírez et al. 1991, Ramírez 1992, Krashen 1996, Gándara 1997, Greene 1998). The critics of bilingual education have systematically ignored that research and have even attempted to suppress evidence demonstrating its effectiveness.<sup>3</sup>

<sup>2</sup> See Baker and DeKanter's (1981) review of the evaluation studies of early bilingual education programs funded under ESEA Title VII. After setting up methodological criteria that excluded many studies from their review, the remaining ones did not support bilingual education. This was the first of many such examinations that have purportedly shown that bilingual education is ineffective.

<sup>3</sup> See, e.g., Willig's (1985) meta-analysis of the same studies that Baker and DeKanter had used to show that bilingual education was ineffective. Her reanalysis demonstrated the opposite effect. The most dramatic evidence comes from a large-scale longitudinal study funded by the US Department of Education, the design of which was heavily influenced by its project officer, Keith Baker. It was designed to compare the relative effectiveness of several program models: early exit (transitional) and late-exit (maintenance) bilingual programs, and a model that Baker believed was superior to any type of bilingual program – "structured English immersion," in which students are instructed entirely in English and are given help in learning English. The earliest reports for the study indicated that the students in both bilingual programs were outperforming those in the structured immersion programs. Nothing more was heard from the study thereafter until 1991, when the final report was released. That report, which Dolson and Mayer (1992) described as "carefully crafted" by its authors "in concert with directives from project officers from the US Department of Education," suggested that there were no great differences in final outcome from the three program types. Dolson and Mayer, two bilingual specialists from the California State Department of Education, in their review of the findings found that this was quite misleading. Looked at closely, the children in both

*Challenge No. 3:* Bilingual education is extremely expensive. It costs considerably more to educate LEP students in bilingual classrooms than it does in English-Only programs.

*The response:* Bilingual education adds little to the usual cost of educating students. It is less costly than alternative programs such as pull-out English as a second language (ESL) classes (where children are "pulled out" of regular classes for short periods of time and given instructional support by a special ESL teacher several times each week) and is much less expensive than compensatory or special education programs, where LEP students often end up when they are not provided instructional services that are more appropriate to their needs. A 1994 study (Parrish) comparing the added costs of various types of instructional support classes for LEP students found that bilingual programs in California that were judged to be effective added just \$60 to the direct cost of educating students in that state, which was at that time in forty-sixth place among the fifty states in educational spending. In contrast compensatory education programs added \$875 per student, and special education programs \$2,402.<sup>4</sup>

*Challenge No. 4:* Bilingual education is little more than a jobs program for bilingual teachers and bilingual researchers (see, e.g., Porter 1990: 73).

*The response:* This is a strange and illogical allegation with no basis in reality. Is American education itself a jobs' program for teachers, school administrators, and educational researchers? A comparison of the student and teacher demographics of US schools reveals that, if anything, we ought to be troubled by the glaring mismatch in their backgrounds. Teachers are overwhelmingly white, middle class, and female. American students are not. Roughly a third of all students in US schools are minorities, while the proportion of teachers belonging to minority ethnic groups was just 13 percent (*Schools* 1996). While no one would argue that teachers and students must match in cultural, ethnic, or linguistic backgrounds, it is difficult to understand why anyone would object to teachers who have the skills and background to address the special needs of the students they are teaching. LEP students have special linguistic needs, and there are a great many students in US schools who require teachers who have special skills and training to work with them. At present, there are around 2.75 million school-age children who are limited in English proficiency in US schools. Only 29 percent of public school teachers who have LEP students in their classes are qualified to work with them (Issue 1996), and fewer still have the language background and qualifications to provide native language support for their students. In California, where LEP children are most heavily concentrated, the situation is somewhat better, but there has been a serious shortage of teachers who have the qualifications and preparation to work with children who do not speak English. The California State Department

bilingual conditions outperformed those in the structured immersion, but the longer the children were provided native language support, the better they did in school. There were differences that had been obscured by the bland statement of findings in the officially approved report.

<sup>4</sup> I am indebted to Patricia Gándara (1997) for bringing my attention to Parrish's study.



of Education estimates that at present there is a shortage of around 12,000 teachers, who are needed just to handle the large numbers of LEP students in the state (Gold 1996). The National Center for Educational Statistics estimates that by 2008–09 some 1.7 to 2.7 million new teachers will be needed (*Schools* 1999). Since the LEP population is not likely to decline in the next decade, one could hardly object to teachers with bilingual language skills who are also prepared to work with children who need language support.

*Challenge No. 5:* In some schools there are more than fifty languages spoken! How can the schools possibly provide bilingual education programs for all these groups?

*The response:* The linguistic situation is seldom as complicated as purported by critics who use this argument. A look at any list of languages reportedly spoken by the students in a given school will show that there is considerable confusion in how languages are identified by teachers and parents. One such list contained entries such as Filipino, Pilipino and Tagalog – all of which refer to the same language. Chinese, Mandarin, Putong-hua, Beijing dialect, Guo-yu, and Taiwanese often refer to the same language but are separately listed and counted. It may not always be possible to provide native language support in school for every child. The Lau guidelines specify that bilingual programs be provided where there are enough children from the same language background and at the same grade levels to make a bilingual program a viable option.

*Challenge No. 6:* Why should schools accommodate the linguistic needs of present-day immigrants when past immigrants had no need of such accommodations? In the past, immigrants accepted the necessity and responsibility of learning English, and they learned it quickly and well. These new immigrants expect the school to change and accommodate their needs.

*The response:* It may be true that in the past little accommodation was made in school for immigrants. As a result, many earlier immigrants failed in school, just as many will fail school now without bilingual education. The major difference was that until the 1940s and 1950s many people in the society did not finish high school, but they could still survive economically because the situation then was very different. Except for the years of the depression, there were job opportunities even for people with poor English language skills and little formal education, and many ways to earn a living in the USA. Present-day immigrants do not differ from past groups. What has changed is the economy. In the present situation, there are few jobs that can pay a living wage for people who do not have at least a high school education, and employers expect workers to have much higher levels of education than in the past. With stiff limits placed on social welfare these days, we expect every able-bodied person – especially immigrants – to support themselves with work. We expect immigrants to be self-sufficient and self-supporting, but how do they do it without some initial help? It's a matter of both fairness and economic self-interest that we should educate everyone as well as we can.

*Challenge No. 7:* Bilingual education allows immigrants to resist assimilation and avoid learning English. They want to live in the USA but are unwilling

to be a part of the society. They are unwilling to change or give anything up as they must, if they are to become Americans. Why should the society promote and pay for the maintenance and continuation of immigrant languages and cultures?<sup>5</sup>

*The response:* There are no doubt a few immigrants who are not eager to learn English and who would prefer to remain isolated from the larger society. The overwhelming majority however – no matter what their origins are or the circumstances under which they have come to live in the USA – want nothing more than to learn English, to be accepted, and to become a part of the society. This is especially true of the young. Children want to participate in the social and the intellectual life of the schools they attend. They learn very quickly that English is the key to social acceptance and participation, and they are impatient to gain the linguistic and social knowledge needed to blend into the social scene. It can take as little as a year or two before children are putting aside their primary languages and speaking English exclusively whether or not they know it very well. What this can mean is that they lose their primary languages and have difficulty communicating with their own families and communities (see Fillmore 1991a, b, Olsen 1997). Bilingual education does not stop this process of language and cultural loss, but it can slow it enough so that young immigrants and their families can make a healthier adjustment to life in this society. It is true that many immigrant families would like their children to maintain their ethnic languages and cultures. Who would not want their children to remain close to their primary families and communities? Who would be happy to see their children become strangers who are unable to communicate with them and unable to participate in their own communities? If bilingual education makes it possible for immigrant children to retain their ethnic languages and cultures as they grow up and become English-speaking Americans, it can hardly be considered an undesirable outcome of schooling. The world of the twenty-first century will be a considerably smaller place than it has been in the past. The new global economy means that Americans will be conducting business across linguistic and national boundaries. The ability to speak languages other than English should be considered a resource to be developed rather than a costly and unnecessary burden for taxpayers! When critics complain that immigrant groups should not be expecting the society to bear the cost of supporting ethnic cultures through bilingual education, it is hard to know what part of the cost of educating children contributes to the society and what part supports their culture – immigrant or otherwise. In reality this is a complaint rooted in impatience. Americans are impatient with people who do not speak English, who appear not to be making as rapid an adjustment to life in this society as we think they should, or who need more than just a little help making that

<sup>5</sup> This is the so-called "affirmative ethnicity" complaint, first discussed in 1981 by Noel Epstein, a journalist with the *Washington Post*. As an education writer, Epstein took a look at bilingual education and decided it was an ethnic plot to get the government to support the maintenance of ethnic cultures and languages, rather than a pedagogical approach that would ease the transition of LEP students into the US school system.

adjustment. We are not comfortable around people who speak languages we do not understand – and it is a fact that not many Americans are able to speak any language but English. That is where the angst over language choice in education comes from. This has always been the case.

### **Immigration and the focus on Hispanics**

This hostile debate over bilingual education – its justification, appropriateness, necessity, cost, effectiveness, benefits, fairness, and true goals – began in the mid-1970s, with virtually no let-up in polemics since then. In the media, the courts, state legislative chambers, congress, and virtually every public venue, the opposing sides of the bilingual education debate have clashed over this pedagogical approach. From the beginning, the hostility towards bilingual education was directed at one group in particular – Spanish speakers – despite the fact that bilingual education served children from all language backgrounds (see Crawford 1992a). Why? Spanish speakers are by far the largest language minority group in the USA. Children from Spanish-speaking families comprise 80 percent of the LEP students in American schools. Without a doubt, another reason is that Latinos have been the staunchest and most vocal supporters of bilingual education. There has often been a strong anti-immigrant sentiment in our society – whenever there are large enough numbers of newcomers to call attention to themselves by being different from the American norm in appearance, behavior, and speech, people tend to get nervous and fearful about their intentions and influence. With the large influx of Spanish-speaking immigrants from Mexico, the Caribbean, and Central America in the 1970s and 1980s, there has been a great increase in the number of Latino residents in many parts of the country. (See chapters 10 and 11 in this volume.) Underlying the debate against bilingual education has been a frequently expressed belief that the USA is being “overrun” by “illegal aliens” – people who have immigrated illegally, who take advantage of services provided by the society but are unwilling to assimilate into it. In California, this belief led to the passage of a public referendum denying social, health, and educational services to undocumented immigrants in 1994, and it also made it illegal for employers to hire them. Among the arguments presented by supporters of Proposition 187, as the referendum was designated, was that services like social welfare, medical care, and bilingual education were “magnets” drawing illegal aliens to California and that these aliens were swamping the state and its services. California voters passed that referendum by 59 percent to 41 percent, a vote that reveals how deeply Americans are divided not only on the issue of immigration but also towards people they view as dependent on the society. Many Hispanics saw Proposition 187 as an anti-Hispanic movement, having little to do with the legal status of immigrants. It was about the growing numbers of Latino immigrants especially in the southern part of the state, numbers that could eventually translate into political power. The legality of this referendum was challenged by civil rights

organizations, and it was eventually overturned, with a federal judge ruling in 1997 that it was unconstitutional.

### Language in education: conflict in California

At the heart of the controversy in California over immigration was the rapidly growing number of LEP students in the public school system, students who required special linguistic services. As shown in table 18-1, California has many foreign-born residents – both old and new immigrants. It is the most frequent destination of most new immigrants. 25 percent of its residents are foreign born, comprising a third of the total foreign population in the USA. Table 18-1 also shows the large proportion of LEP students in California schools. One of every four students is limited in English, totaling 1.4 million students who do not speak English. In fact, California has 43 percent of all LEP students in the USA, more than the next four states (Texas, Illinois, New York, Florida) combined. In Los Angeles Unified School District, 50 percent of the students are LEP, and 97 percent of those speak Spanish.

Table 18-1 *US and California immigrant and student population, 1997*

1997 population	USA	California
Total population	267.6 million	32.3 million
Foreign born immigrants	25.8 million	8+ million
% Foreign born immigrants	9.6%	25%
Total student population	26.5 million	5.6 million
LEP students	3.3 million	1.4 million
% LEP students	12.5%	25%

Source: US Census Bureau and California State Department of Education

Statewide, 80 percent of the LEP students speak Spanish as their primary language. Others speak various Asian and South Asian languages (Mandarin, Cantonese, Korean, Vietnamese, Hmong, Laotian, Khmer, Tagalog and other languages of the Philippines) and others. California had provided bilingual education programs for some but not all of these groups since 1976, when the state legislature amended its bilingual education provision, which had permitted school districts to establish bilingual instructional programs for LEP students but did not mandate them. After the Lau decision, the legislature passed the Chacon-Moscone Bilingual Education Act of 1976, which mandated bilingual programs in California schools wherever ten or more non-English speakers, or fifteen or more limited English speakers, from the same language background could be found at the same grade level. That Act required school districts to conduct a language

census each year and to test the language proficiency of those students who came from homes where a language other than English was spoken, as did the Lau Guidelines.

For the next ten years, bilingual education developed and expanded in California, along with the LEP population. And it soon became a hot issue in the schools, the legislature, and the press. In fact, bilingual education became controversial as soon as school districts were required to adopt it. Before *Lau* and the 1976 California Bilingual Education Act, local school districts could disregard the language needs of LEP students. It was not possible to do so after 1976. Monitoring compliance with the legislation, the state exerted pressure on districts to adopt bilingual education as required by law. Bilingual programs were established throughout the state. Some districts became committed to the approach once teachers and administrators saw what a difference primary language support made to their LEP students. Others adopted it only under duress and did as little as required to make the programs work. Still other districts and educators did everything they could to subvert the effort. Bilingual programs in some schools were staffed mostly by teachers who did not believe in bilingual education or lacked the language skills to teach bilingually. A single "bilingual class" in such a school might be composed of students whose primary languages were as diverse as Vietnamese, Khmer, Laotian, Mien, Cantonese, and Thai – children who spoke six or seven unrelated first languages. Under such conditions, bilingual instruction was impossible. All teachers could do was to teach in English. These classes were "bilingual," as required by law, but they were bilingual in name only (see Fillmore 1992a).

Ironically, as bilingual educators became more skilled at their craft, the approach became more controversial. There were numerous attempts in the state legislature during the 1980s to weaken the mandate for bilingual education as the 1976 law came up for renewal. The state legislature renewed the law, but the governor opposed bilingual education and vetoed the bill. In fact, he did so on several different occasions. The final veto was in 1987, when anti-immigrant and anti-bilingual movements were gaining support throughout the country, particularly in places like California with large immigrant populations. A year earlier, California voters had passed Proposition 63, the Official English referendum, by a 73 percent vote. (See table 18-2 for a summary of Proposition 63 and other relevant California propositions.) The bilingual education law was "sunsetting" after 1987, but that did not mean that school districts could dismantle their bilingual programs. The Lau Guidelines still required schools to provide language support for LEP students, and the Office of Civil Rights continued to use those guidelines in monitoring compliance with the Equal Educational Opportunities Act. However, school districts in California had greater discretion to provide alternative programs, particularly after a district court judge ruled in 1989 against the plaintiffs in *Teresa P. v. Berkeley Unified School District*, a case brought against the district on the grounds that it had failed to provide enough qualified and trained bilingual teachers for its LEP students. The ruling, which hinged on whether

bilingual instruction was more effective than ESL, was that the plaintiffs had not demonstrated the superiority of bilingual instruction. It allowed Berkeley to continue its practice of providing instruction for children largely in English, with ESL support. It also encouraged other school districts to adopt the same approach, further weakening bilingual education in California. By 1997, slightly less than 30 percent of students in California who qualified for some form of linguistic support in school were receiving assistance that could be described as bilingual education. The bilingual programs that remained, however, were mostly well conceived and properly implemented, and they were having positive results.<sup>6</sup>

It is this fact that makes California's Proposition 227 especially puzzling. Why, when bilingual education was hardly a pedagogical issue in California anymore, should it become a major political issue? What was the motivation behind the drive to put on the June 1998 ballot a draconian referendum that would eliminate bilingual education as a pedagogical approach for LEP students in that state?

The answer to both questions is politics. Ron Unz, a Silicon Valley software entrepreneur, had ambitions to be governor of California and had earlier attempted to run for the governorship. Running against incumbent Governor Pete Wilson in the 1994 primaries, Unz declared himself opposed to Proposition 187, which Wilson strongly supported. Illegal immigration was not as great a problem as bilingual education and affirmative action, he declared in his 1994 campaign (Wallace 1994). Unz had little chance of winning the Republican primary against Wilson, although he did receive 34 percent of the primary election votes.

It was not a bad showing for someone whose name was virtually unknown to the voters of California, but Unz had failed to see how much support Proposition 187 had from California voters. It was the second anti-immigrant, anti-diversity voter initiative to garner support from California voters, each measure a part of a conservative agenda to check the political power of California's growing minority population. The first such measure was the "English-Only initiative" in 1986. For his next race, Unz would have to gain better name recognition, and for that he needed to position himself on the right side of an issue that would attract the conservative vote in California. In 1996, the anti-affirmative action initiative,

<sup>6</sup> See, e.g., Parrish 1994, Gándara 1997, Collier 1992, Ramírez et al. 1991, Ramírez 1992. Ironically, the most striking evidence for the success of bilingual education came out one month after the vote on Proposition 227, in July, 1998, when the state of California released its first annual comparative test data from the Standardized Testing and Reporting program. The *San Francisco Chronicle* reported the following: "The results appeared on the state's new Standardized Testing and Reporting (STAR) exam, a multiple-choice test that uses a 99-point scale. Third-graders who had graduated from bilingual classrooms in San Francisco, for example, scored 40 percentage points higher in math than their native English-speaking counterparts. On the language portion, bilingual fourth-graders scored 25 points higher than the natives. And in reading, eighth-grade bilingual graduates outscored the natives by nine points - although their reading scores slipped behind in later grades. Similar but less impressive differences showed up in San José. There, for example, fourth-grade bilingual graduates scored 19 points higher than natives in spelling. In the seventh grade, they outscored the natives by 7 points in math." ("Bilingual Surprise in State Testing: Many Native English Speakers Outscored in S. F., San José." N. Asimov, staff writer, *San Francisco Chronicle*, July 7, 1998).

Table 18-2 *A decade of anti-immigrant, anti-diversity voter initiatives in California*

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- 1986 – Proposition 63: Makes English the only official language in California and prohibits the use of other languages in public documents and in public meetings.
- 1994 – Proposition 187: Abolishes health, welfare, social and educational services for undocumented immigrants.
- 1996 – Proposition 209: Abolishes affirmative action programs for women and minorities in jobs and in education.
- 1998 – Proposition 227: Eliminates bilingual education for LEP students; limits LEP students to one school year of instructional support to learn English; allows teachers, school administrators and school board members to be sued if they are found not to be in compliance with 227.
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Proposition 209, was passed by California voters, ending consideration of gender, race, and ethnicity in hiring and admissions decisions in the state. Proposition 209 was another voter referendum that Pete Wilson had ardently supported. Unz was left with one hot issue: bilingual education.

In 1997, Unz positioned himself as the arch-foe of bilingual education by funding a drive to put an anti-bilingual education initiative on California's ballot. Joining forces with a first-grade teacher who was running for the state school superintendency on an anti-bilingual education platform, Unz wrote the "English Language Education for Immigrant Children Initiative." This referendum did more than end bilingual education. It also limits LEP children to one year of instructional support to learn English, and it dictates the type of instructional support schools can provide such students. The prescribed program is "sheltered English immersion" – the approach that has the support of other anti-bilingual critics but is neither well described nor supported by research as the authors of 227 claimed. The initiative attempts to forestall legal challenges on the grounds that it denies parents the right to have any control over their children's education, a major issue in the *Meyer v. Nebraska* case as discussed above. It allows parents, after children have been in English-Only classes for thirty days, to apply for a waiver of the required placement, provided the school principal and instructional staff agree that a given child has "physical, emotional, psychological, or educational needs" that necessitate such an exemption. In the end, however, it allows parents or children's guardians and members of the public to sue school board members and public school teachers and administrators who they believe are not implementing 227 fully. Strangely, the voters of California did not even question the peculiarity of this initiative being on the ballot: it was a vote, of all things, on a pedagogical approach. Never before in the history of education had pedagogy been put to a public vote. This referendum also weakens and invalidates the important principle of local control of schools. School boards are elected by communities to decide

how best to educate students at the local level. Proposition 227 dictates how language minority students will be instructed, and it puts school board members in jeopardy of being taken to court if they do not implement its provisions to the letter. Further, it nullifies the professional judgment of teachers – they too can be sued if they use children's primary languages in school even if they believe it is in their students' best interest to do so.

The opponents of the measure argued that 227 imposes one untested method for teaching English on every local district in California; it also negates the right of school boards, teachers, and parents to make pedagogical decisions for the children in their care. Children who do not know the language of instruction are at an educational disadvantage. It takes time to learn English well enough to deal with its use as a medium of instruction – far more time than the one year allowed under 227. And while English is crucial, it is not the only goal of schooling for LEP students. They must also learn everything else in the curriculum as well. Before the adoption of bilingual education in California in 1976, children were sometimes given instructional support for learning English, but little help in dealing with the rest of the curriculum. The curriculum was provided only in English, and students had to know that language well in order to get anything out of school. The high drop-out and academic failure rates – as high as 50 percent for some groups in the pre-bilingual education period – showed how great a barrier language differences can be to getting an education.

But when they were raised during the debate on 227, these issues were not as persuasive to voters as the arguments made by supporters of the initiative. The "Arguments in Favor of Proposition 227" given in the election materials recite the familiar litany of complaints: bilingual education does not work; "bilingual education actually means monolingual SPANISH-ONLY [caps in original] education for the first 4 to 7 years of school"; it fails to teach children to read and write in English; children are not being moved into mainstream classes fast enough; Latino children receive "the lowest test scores and have the highest drop-out rates of any immigrant group" despite bilingual education; there are 140 languages spoken by immigrant students in California schools – how are all of these languages to be accommodated?

Opponents of the referendum fought valiantly (see Crawford 1997), but in the end 227 prevailed. By a 61 percent to 39 percent vote, California voters passed it in 1998, revealing not only how little the public understood the pedagogical issues, but also how conflicted Americans are about their diversity and how unwilling to change their institutions and practices to accommodate diversity. In a state where over half the residents are foreign-born immigrants or US-born children of immigrants, why would 61 percent of the voters want to end a pedagogical approach that gave non-English-speaking students access to the curriculum of the school in language they understood while they were in the process of learning English?



Immediately after the election, a coalition of civil rights organizations requested that the state be enjoined from putting 227 into effect at the beginning of the coming school term, arguing that implementation of 227 would constitute a violation of the state's responsibility under the provisions of the Equal Educational Opportunity Act of 1974. They also argued that sixty days – the period allowed between the passage of 227 and its implementation – was not enough time for districts to gear up for change and would result in chaos in the schools. The federal judge who had been assigned the case turned down the request and wrote in his ruling that the test for such an injunction was whether irreparable harm was likely to result from the implementation of 227. He dismissed virtually all the arguments made by the civil rights groups involved in the suit, noting that the claim that 227 would cause irreparable harm if implemented was “speculative” – 227 had not yet caused actual harm to anyone.

How has 227 affected the education of children in California? Some educational researchers say it has not changed things much.<sup>7</sup> School districts that were committed to bilingual education before 227 have maintained their programs by informing parents of their right to request waivers for their children from placement into English-Only programs; districts that had little commitment to bilingual education closed their programs as soon as it was possible to do so, and have done little to inform parents about the possibility of waivers. Two large urban districts with effective programs, San Francisco and San José, found legal support for continuing bilingual education in spite of 227. San Francisco is still operating under the consent decree in *Lau*, while San José is obligated to continue its bilingual programs under a consent decree on school desegregation. For the most part however, bilingual education is no longer provided for LEP students in California. It remains to be seen how long it will be before there is evidence that 227 is harmful to LEP students in California. In the meanwhile, Unz and his supporters are attempting to pass similar laws and initiatives in other states.

The curtailment of bilingual education as an instructional approach comes at an especially trying time for language minority students in California. It is but one of several major changes in educational policy that are likely to affect educational and subsequent economic opportunities for immigrants and other language minorities. The adoption of new and higher curricular standards has been a nationwide reform, and it has been a necessary change. A critical self-examination of the status of US education by participants at the 1989 Education Summit led to the adoption of the Goals 2000 Educate America Act of 1994 in the hope that such a change would help close the achievement gap between Americans and students in other societies, especially in areas such as reading, writing, math, and science. There has also been the adoption of new benchmark assessments to measure the effectiveness of improvements in programs of instruction that

<sup>7</sup> This is the preliminary finding of a study conducted by Gene Garcia and Tom Stritikus, as reported at the Linguistic Minority Research Institute Conference in May 1999 in Sacramento, CA.

states and local districts have adopted: are students learning what they should be learning in school? The termination of social promotion is another important change: students who do not learn what they are expected to learn at each grade level will not be promoted to the next in many states. A fourth important change has been the adoption of high school exit examinations by twenty-three states at last count. Students must pass tests on English language and literacy and on mathematics before they can graduate from high school in states that have adopted this requirement. And the clincher – the change in California that may predict the future in other places too – the abandonment of affirmative action in higher education admissions and in consideration of jobs.

### Conclusion

How will language minority students fare under these changes? Can LEP students deal with the newly adopted higher curricular standards and expectations in reading and writing, math and science, without instructional support in language they understand? Can they learn the English needed to deal with the school's curriculum at each grade level with as little help as 227 allows them? How much English can they acquire in a year?<sup>8</sup> Will LEP students be able to pass the high school graduation examination that California recently adopted? What chance have they of going to college, or getting a job with the education they will be getting from the public schools, if affirmative action no longer exists?

The answer to these questions will depend on the ability of educators to find solutions to the problem of language differences in school that do not threaten the fundamental beliefs of people in our society about matters of language and culture. It is fair to say that while the USA has a diverse linguistic heritage, it is not a linguistically diverse society by choice. As a society, we value just one language – and while English is unchallenged as the language of discourse in all spheres of public life, we are militant whenever we perceive any threat to its primacy. For many Americans, English is not just a language, it is synonymous with being American. It has the force of an ideology for some: English symbolizes the willing acceptance of what it means to be an American, and the necessary abandonment of other loyalties, belief systems, and languages. We do tend to judge people according to whether or not they agree with this

<sup>8</sup> A study conducted by students and faculty from the University of California at Berkeley and San Francisco State University in 1998 (Declaration by L. W. Fillmore submitted in support of the request for an injunction in the case of 227) found that 61 percent of a sample of 238 children selected randomly from those who entered school the previous fall with no English at all remained virtually free of English, despite having been in "sheltered English immersion" programs for a year; another 32 percent had learned enough that they could no longer be regarded as non-English speakers, but they were still so limited in English proficiency that they could not have survived in school with no further instructional assistance. Thus 93 percent of the children after a year of submersion in English could be expected to have difficulty dealing with an all-English curriculum if they were entirely on their own.

ideology. Why else are so many members of our society so hostile toward the use of languages other than English in school? Why are people so adamant that non-English-speaking children be required to function in English as soon as they enter school?

The problem is that in the public mind the use of languages other than English in school means that speakers of those languages do not have to change or learn English. People fear that the use of children's home languages at school will allow them to keep using those languages and not become fully Americanized. Many millions of immigrants and indigenous peoples have encountered these sentiments in the American schoolhouse. They enter school speaking many different languages, but few of those languages survive the experience. Language shift and loss has long been a problem for both immigrants and American natives alike. In the past, it took at least a generation or two for an immigrant language to be lost. At the beginning of the twenty-first century, the process has become greatly accelerated. Many first generation immigrants are losing their ethnic languages well before they have mastered English (see Fillmore 1991a, b, 1992b). Indigenous languages that have managed to survive against all odds in the past are fighting a valiant battle just to stave off further erosion (see Benjamin et al. 1998). The loss of immigrant and indigenous languages is more than the loss of valuable linguistic resources and of cultural and linguistic diversity in our society.<sup>9</sup> Too often it also means the breakdown of family relations, particularly where parents do not speak or understand English, and it means the weakening of bonds within communities where participation in community practices requires knowledge and use of the ethnic language. The loss of community and family cohesion and intimacy added to the cost in human resources of not educating students well – the high rate of school failure among language minority students – tally up to a hefty tariff for the society to pay for its insistence on English-Only. Americans might well consider the real cost of how we deal with language diversity in our society's schools.

### **Suggestions for further reading and exploration**

The footnotes and references within the chapter point to sources of additional information, and perhaps the most convenient of these are the books by Crawford (1989, 1992a, 1992b), Cummins (1989, 1996), Krashen (1996), and Olsen (1997).

<sup>9</sup> See especially Hale et al. (1992), where Krauss notes that 90 percent of the indigenous languages of North America have become extinct and that most of the few that remain are spoken only by a small number of elderly people. He points out that of the twenty Native languages in Alaska only two (Central Yup'ik and the Siberian Yup'ik of St. Lawrence Island) are still being learned by children. Recently, I visited a village along the Kuskokwim River where slightly less than 20 percent of the children entering kindergarten were able to speak any Yup'ik, as compared to ten years ago, when 90 percent of the children were fluent in Yup'ik when they entered school!