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The Politics of Language

Bilingual Education in the U.S.

by Alicia Pousada

Legal precedents establish minority language rights, but enactment of educational programs is hampered by HEW overload and public misunderstanding.

According to the 1970 census, 32.2 million citizens of the United States (approximately 15 percent of the population) do not speak English as their native language. At least 5 million children are estimated to be in need of special language programs (17, p. 6). Language minority students have had a history of high drop-out rates, over-agedness, and academic lag directly attributable to language problems (15, 21) for which monolingual education has not proven successful. It is for these reasons that during the past ten to fifteen years, educators, linguists, and representatives of community organizations have been calling for legislation on bilingual education.

Bilingual education has formally existed in the United States only since the late 1960s; however, there has been bilingual teaching in this country since 1840 (1), and ethnic schools using native language instruction go back to the founding of the republic (11, 13). Prior to World War I there was considerable tolerance of foreign language instruction which disappeared with the xenophobia and isolationism of the post-war years. The current struggle, focused as it is on equal educational opportunity for language minority groups, is the result of the civil rights movement, which brought national attention to the educational neglect of both racial and ethnic minority children.

Despite this long history, there is yet to appear a clear federal language policy. The U.S. has maintained, principally since World War I, a great concern for the preservation of the English language as an essential element of nationhood. A tacit assumption of "English-only" is generally made, though nowhere in the U.S. Constitution, code, or statutes at large is such an assumption directly upheld (8, p. 32). Decisions on language issues are made on an *ad hoc* basis, and provisions offering protection for language minorities are debated anew with each administration and appropriations bill.

Alicia Pousada is a doctoral candidate in Educational Linguistics at the Graduate School of Education, University of Pennsylvania. She is currently employed as a research assistant at the Centro de Estudios Puertorriqueños in New York City.

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This article examines the history and growth of bilingual education in the U.S. as it has developed through legislation and the courts. Given the large role the federal government has played in furthering bilingual education, much of the discussion will center around the Department of Health, Education and Welfare, the legislatively designated watchdog for bilingual education and its language planning efforts.

What is meant today by bilingual or bilingual/bicultural education in the U.S.?

The Bilingual Education Act of 1968, Title VII of the 1965 Elementary and Secondary Education Act (1965 Elementary and Sec. Ed. Act, 20 U.S.C. 880b) did not actually define bilingual education. However, in the 1974 amendments, it was specified as

> *instruction given in, and study of, English, and to the extent necessary to allow the child to progress effectively through the educational system, the native language of the children of limited English-speaking ability, and such instruction is given with appreciation for the cultural heritage of such children. . . .*

In this definition the primary stress is on the rapid acquisition of English, with the mother tongue used as a means to an end. This is termed the "transitional" approach to bilingual education.

A more "progressive" definition of bilingual education is found in the Manual for Project Applicants and Grantees issued by HEW to accompany the 1968 Act (22):

> *Bilingual education is the use of two languages, one of which is English, as mediums of instruction for the same pupil population in a well-organized program which encompasses part or all of the curriculum and includes the study of the history and culture associated with the mother tongue.*

According to this definition the student is presumed to learn basic skills through the mother tongue and then transfer those skills to the second language. The definition also potentially includes bilingual instruction for Anglos. However, the orientation is still transitional; there is no commitment to continuing maintenance or enrichment programs.

The "transitional" definition has been the one most often used in the structuring of bilingual education programs, responsibility for which is in the hands of state and local educational agencies and varies according to the intent and needs of the particular school districts (10, 22). State bilingual education laws intended these programs to be a temporary measure, designed to pass out of existence once the students had learned English. Because bilingual education

only minimally influenced federal policy-making, and little has been done to make legislation consistent across states.

The federal approach to bilingual education is based on two legal foundations: one statutory (Title VI of the 1964 Civil Rights Act) and one constitutional (the equal protection clause of the Fourteenth Amendment). The position of language rights in this regard has been defined by the courts. The burden of proof of discrimination is on the individual, in classic equal protection cases; however, if a "suspect class" or a "fundamental right" is involved, then the burden is transferred to the government for justification. Categories so far recognized as "suspect" are race, religion, and national origin (specified in Title VI), but language is not. In most cases, it would seem that language is generally so closely bonded to national origin as to be inseparable. However, the argument has been that language is not an immutable characteristic—people *can* learn another language. However, given the identifiability and stigma attached to speakers of non-English languages (9, 11, 12) and the slowness of learning a second language, the validity of this argument is questionable. In addition, the right to maintain one's own native language is not considered a fundamental right.

Thus there is no clear U.S. government protection for the language rights of minority groups. This position is in contrast to that of the United Nations, which consistently names language along with race, sex, and religion as impermissable bases for discrimination (14, 20).

The Bilingual Education Act of 1968 was the first categorical federal bilingual education law.

Although some limited funding for special programs for Cuban students had been available under the Migration and Refugee Assistance Act of 1962 (P.L. 87-510), the 1968 act was the first law to directly deal with bilingual education. The law provided funding for special demonstration programs for non-English-speaking students and offered hope to language minority groups for further protective legislation. The act contained certain basic flaws, including a narrowly defined poverty clause which left out many needy students, and lacked provisions for evaluating the program. The most serious flaw, however, was the law's adherence to a remedial/compensatory model for bilingual education which presumes linguistic and cultural deficiency on the part of the students (7, p. 12). The act was also established to be temporary and transitional.

The 1968 act was amended in 1969 and 1972, increasing funding authorizations and adding special provisions to include more children. The 1972 amendments included the Emergency School Aid Act (20 U.S.C. §1601) which established bilingual education as a major tool in desegregation efforts involving national origin minority students. It did not require an income limitation, and one percent of the appropriation was reserved for program evaluation.

The 1974 Bilingual Education Act was much more explicit, having profited somewhat from the practical experiences of the 305 federally funded bilingual programs then in operation (2). On November 1, 1978, a new Bilingual Act (H12172) was signed into law by President Carter. It provides $20 million for research in bilingual education and also includes provisions for staff training, community involvement, and curriculum development. The funding is for four to five years. Enrollment of native English speakers is limited to 40 percent of total student enrollment in the bilingual programs. Although this law provides increased funding for programs and research, the emphasis is explicitly on transitional programs (see §703 and §721) (19).

As important as this legislation has been, bilingual education policy has developed largely through judicial decisions.

Of the many cases, the *Lau* decision (*Lau* v. *Nichols*, 414 U.S. 563, 1974) has been the most significant in its affirmation of a broad interpretation of Title VI. The suit was brought by the Chinese public school students against the San Francisco School District, contending that the lack of a language program violated both the equal protection clause of the Fourteenth Amendment and Title VI. The district court ruled that the plaintiffs had the same educational opportunity as did the other students, and the Ninth Circuit affirmed this decision, ruling that uniform use of English in the classroom did not constitute discrimination. The case went to the Supreme Court, where the earlier decision was reversed on statutory grounds only, with the conclusion that "students who do not understand English are effectively foreclosed from any meaningful education" (414 U.S. 563 at 566). The court left the working out of remedies to the district court, and the design and implementation of the program were remanded to the local authorities.

The codification of *Lau* came in the Equal Educational Opportunity Act (20 U.S.C. §1703 at [f]), which stated that ". . . the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by the students in its instructional program . . ." constitutes denial of equal educational opportunity. Unfortunately, the act's anti-busing provisions served to limit the ability of HEW and the Justice Department to implement comprehensive desegregation measures.

Despite its vagueness and limited view of remedies, the *Lau* decision helped in the resolution of many other cases and gave the impetus needed to pass the 1974 Bilingual Education Act. It also helped to change the stance of the Office of Management and Budget of HEW which opposed Title VII on budgetary grounds. However, the decision sparked much internal conflict at HEW between the Office of Bilingual Education, which favored a bicultural component and viewed the task of bilingual education as one of maintenance, and the Office of Planning and Evaluation, which favored a transitional program. Then-HEW Under-Secretary Carlucci outlined his view of the role of the federal government in bilingual education, describing it as one of "capacity building," involving research, testing, curriculum development, materials dissemination, teacher training, and technical assistance to local school districts (25, pp. 312-

313). There was nothing in this comprehensive statement which supported a long-term maintenance view of bilingual education.

Two specific divisions of HEW have an effect on bilingual education and language planning—the Office of Civil Rights (OCR) and the Office of Bilingual Education (OBE). OCR was established in 1965 to enforce Title VI of the 1964 Civil Rights Act. But enforcement was made difficult for several reasons. HEW's 1965 desegregation guidelines (45 C.F.R. 80) were designed to permit the utmost flexibility in carrying out enforcement and thus lost much of the force they might have had. Enforcement of the act was at first carried out by the regular staff who were not specifically trained to do the investigations required. There was also great dependence on "paper compliance," so that if a district filed the appropriate assurances and statements of compliance, the cases were allowed to rest. Thus in this early period of OCR activity, active enforcement, i.e., actual denial of funds to school districts, took place relatively infrequently.

Another fundamental flaw in enforcement efforts rested in the choice of school districts for review. It was not until 1968 that northern districts were required to show compliance and protection for national origin minority students (4, p. 14). Reviews were begun in Boston and El Paso, districts with large numbers of non-English-speaking children, and soon after in California, Arizona, New Jersey, and Indiana. New York City came under review in 1972 with a focus on the Puerto Rican students in the system, and OCR found grave discriminatory practices. Other reviews were directed toward Native American groups in Wisconsin and Minnesota, with similar findings (4, p. 29).

The Office of Bilingual Education came into being in 1974.

The descendant of the 1968 Advisory Committee on the Education of Bilingual Children and the later Division of Bilingual Education, OBE functions as a seed-sower. It funds model programs which are intended to be taken over by the local districts within five years. As of 1977, OBE was funding 356 bilingual schools, 12 teacher training programs, 5 curricular development centers, 2 materials dissemination centers, 3 bilingual assessment centers, and 2 family bilingual education projects (18). In 1975, the 40-member staff handled about 800 proposals for school districts all over the country.

The procedure for funding decisions involves the sending of an invitation to state agencies to apply for funding, a professional reading and evaluation of the received proposals, the setting of threshold levels for funding, and final selection of grantees, taking into account geographic distribution whenever possible. The criteria for funding are the provisions for planning, administration, evaluational tools, staff development, and community involvement given.

Even with recent increases in appropriations, number of programs funded, and number of students served, OBE is still helping only about 2 percent of those children who have been shown to need some type of bilingual education (24). Remedial programs and English as a second language programs, which were rejected by the U.S. Commission on Civil Rights as inadequate to meet the needs of language minority children (21), still greatly outnumber bilingual education programs in operation.

If the Offices of Civil Rights and Bilingual Education are examined together, certain recurrent problems emerge. The basic deficiencies in enforcing compliance with bilingual education legislation involve the lengthiness of the review procedure and the lack of priorities in the selection of school districts for enforcement. For instance, in 1974 only one percent of the schools with minority students were focused upon for review, and this group was further reduced to include only those schools with a history of discriminatory practices (4). Many large urban areas with serious problems have been passed by because of the difficulties in evaluating the complex sites. Because of an overload of cases, many complaints have not been followed up. After HEW has exhausted its own administrative sanctions, the cases are sent to the Department of Justice, and enforcement efforts in the non-complying areas are suspended until the cases are decided, permitting the uncooperative districts to continue activities without restraint during the drawn-out litigation process.

HEW's main enforcement tool is its power to withhold federal funding; however, termination of federal funds has seldom been invoked in cases involving bilingual education. One outstanding case was that of the Uvalde Independent School District in Texas (HEW administrative proceedings, Docket #S-47, July 24, 1974), in which the Review Authority held that bilingual education was required to equalize educational opportunity for illegally segregated Chicano students. A more recent case was that of the Chicago school system, in which it was decided in the fall of 1978 that the schools were in noncompliance with Title VII. Chicago is now moving toward compliance.

Completion of cases through all stages of review, revision, and enforcement of newly formulated programs has, however, been relatively rare. Some districts refuse to revise programs to comply with rulings. A case in point is that of Ferndale, Michigan which refused to comply even after federal funds were cut off (4). Other similar cases have come up in other areas of Michigan and in North Dakota. In certain instances, the solution has been placement of the concerned school districts into temporary receivership with management being transferred to the federal government until compliance is reached. Even though in 1972 the New York City schools were found to be deficient in complying with the law, and even though some half a dozen suits have been filed against the Board of Education (see *Aspira* v. *Board of Education*, 58 F.R.D. 62, S.D.N.Y. 1973 and similar suits), the schools have not yet fully complied.

School districts have offered three main reasons for not complying with bilingual education laws: budgetary considerations, contractual problems, and "numerosity" questions.

The first argument, that of budgetary restrictions, has not been accepted by the courts, which have traditionally ruled that resources must be redistributed in order to comply with federal regulations. Bilingual programs have been shown to be only initially more expensive than regular school programs (16).

Hiring bilingual teachers is cheaper than hiring regular teachers plus language specialists, and spending money on monolongual education for children who cannot benefit from it appears to be pointless.

Teachers' contracts have also been invoked to justify a lack of bilingual programs. But the use of union contracts to block reassignment of faculty has not been accepted in several desegregation cases which have argued the issue of competency standards. The result has been that an Anglo teacher who cannot teach in another language may be moved to where his/her competencies can be better utilized. This has understandably caused worry among the ranks of the teachers' unions as Anglos fear the loss of jobs or opportunities. However, this situation may serve to encourage further training of these individuals in second languages and bilingual education methods.

"Numerosity," or the relative proportion of children needing bilingual education, has created the most difficulties. This principle was used in the *Otero* decision (*Otero* v. *Mesa County Valley School District #51*, 75 Civil Action #74-W-279, D. Col., Dec. 8, 1975) to decline the case of the Chicano students who represented only 8.2 percent of the school population. The HEW Memorandum of 1975 (23) found that all children, regardless of how many there are in a particular group, are entitled to protection under the *Lau* decision, although in practical terms very small groups would be less protected than larger ones. The memo requires non-complying school districts to submit voluntary plans if there are 20 or more students of one language group in the district.

Another argument used against instituting bilingual education programs maintains that the programs represent just another kind of segregation. There is indeed the possibility of segregatory bilingual education programs. However, the 1970 HEW Guidelines and the Emergency School Aid Act both prohibit dead-end tracking or more than 25 percent segregation of the school day for special programs, except when genuine educational need (not based on the absence of English language skills) can be shown. As Cárdenas (3) illustrates, there are alternative methods of giving bilingual schooling without segregating children, including bilingual sessions within the same classroom, similar to the already existing reading groups; use of paraprofessionals and volunteers to assist the teacher; or exchange classes in which children are separated only for language-related subjects and regrouped for all other activities (7).

Bilingual education and desegregation should be seen as compatible, not competing, approaches to achieving equal educational opportunity for all students, Anglo as well as minority, keeping in mind, however, that bilingual education is not a substitute for desegregation measures.

The issue of bilingual education is very complex, for it is closely entwined with questions of civil rights and attitudes toward ethnic and linguistic diversity.

Attitudes toward non-English-speaking minorities are perhaps the most difficult factors to contend with in formulating language policy and are especially crucial in achieving popular acceptability for any policy. One of the greatest problems bilingual education has to face is the public's general unwillingness to view language heterogeneity as enriching and to appreciate the linguistic resources of the U.S. There is a commonly held fear that any bow to linguistic pluralism will lead to political divisiveness, and social divisiveness that already exists (of which language is only an emblem) is often attributed to the growing demands for linguistic parity from long-disgruntled minority groups (10).

As a result of such attitudes, the need for culturally sensitive language planning is not fully understood, especially with regard to bilingual education. Beyond all the problems faced by HEW in bringing about administrative remedies and beyond all the limitations of the transitionally oriented legislation is the problem of winning popular approval. Numerous social scientists (see 5, 6) have continued to promote the view that there is a great need to make the public more aware that majority, as well as minority, groups stand to gain from bilingual education.

The future of bilingual education as a regular part of the school curriculum will only be secured if the support of Anglo parents (who are best equipped economically and socially to influence policy) is obtained. Otherwise, the present situation of constant struggle for renewal of the programs will continue. In addition, minority parents must be convinced that bilingual education will not endanger their children's chances of becoming socially mobile in an English-dominant society.

Until there is public awareness of the great need for programs assisting language minority children and enriching the education of all children, Congress cannot be moved to make significant guarantees for these children, nor can HEW be expected to effect complete and speedy compliance.

As the U.S. Commission on Civil Rights concluded (21, p. 60):

> *The extent to which HEW has been unable to fulfill its Title VI [or Title VII] responsibility is in large part a measure of the failure of the entire Federal effort. It is also a reflection of the complexity of Title VI [Title VII] enforcement and the intransigence of opposition to the letter and spirit of the law.*

It is this "intransigence of opposition" which indicates most clearly the lack of public understanding or approval and the need for comprehensive and thoughtful language planning.

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