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*Educational Policy* 2004; 18; 142

DOI: 10.1177/0895904803260030

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# Against the Undertow: Language-Minority Education Policy and Politics in the “Age of Accountability”

TERRENCE G. WILEY and WAYNE E. WRIGHT

*This article reviews historical and contemporary policies, ideologies, and educational prescriptions for language-minority students. It notes language and literacy policies historically have been used as instruments of social control and that racism and linguistic intolerance have often been closely linked with antecedents in the colonial and early nationalist periods as well as in nativist thought of the 19th century. The article concludes that the contemporary English-only and antibilingual education movements share features reminiscent of the restrictionism of earlier periods. The article next assesses policies of the federal and state governments in accommodating language-minority students. Current debates over appropriate assessment of language-minority students are backgrounded against the history of the testing movement. Recent research on high-stakes testing is reviewed with the conclusion that it is not improving the quality of teaching and learning and appears to be having a negative effect for language-minority students.*

**Keywords:** *language; diversity; assessment; education; policy*

LANGUAGE DIVERSITY HAS ALWAYS been part of the national demographic landscape of the United States. At the time of the first census in 1790, about 25% of the population spoke languages other than English (Lepore, 2002). Thus, there was a diverse pool of native speakers of other languages at the time of the founding of the republic. Today, nationwide, school districts have reported more than 400 languages spoken by language-minority stu-

EDUCATIONAL POLICY, Vol. 18 No. 1, January and March 2004 142-168  
DOI: 10.1177/0895904803260030  
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dents classified as limited English proficient (LEP) students (Kindler, 2002). Between 1991 and 2002, total K-12 student enrollment rose only 12%, whereas LEP student enrollment increased 95% during this same time period (National Clearinghouse for English Language Acquisition, 2002b). This rapid increase and changing demographics has intensified the long debate over the best way to educate language-minority students.

Historically, many groups attempted to maintain their native languages even as they learned English, and for a time, some were able to do so with relatively little resistance until a wave of xenophobia swept the country during World War I (Kloss, 1977/1998). Other groups, Africans, and Native Americans encountered repressive policies much earlier. During the 1960s, a more tolerant policy climate emerged. However, for the past two decades there has been a steady *undertow* of resistance to bilingualism and bilingual education. This article provides historical background and analyzes contemporary trends in language-minority education within the context of the recent national push for accountability, which typically takes the form of high-stakes testing.

The origins of persistent themes regarding the popular antagonisms toward bilingual education and the prescribed panaceas of “English immersion” and high-stakes testing in English need to be scrutinized. As background to the contemporary context, we briefly discuss the history of language politics in the United States and the ideological underpinnings of the dominant monolingual English ideology. We analyze the recent attacks on bilingual education for what this attack represents for educational policy within a multilingual society such as the United States. We emphasize *multilingual* because most discussions of language policy are framed as if monolingualism were part of our heritage from which we were now drifting. Framing the language policy issues in this way masks both the historical and contemporary reality and positions non-English language diversity as an abnormality that must be cured. Contrary to the steady flow of disinformation, we begin with the premise that even as English has historically been the dominant language in the United States since the colonial era, language diversity has always been a fact of life. Thus, efforts to deny that reality represent a “malady of mind” (Blaut, 1993) that has resulted in either restrictionist or repressive language policies for minorities.

As more states ponder imposing restrictions on languages of instruction other than English—as California, Arizona, and Massachusetts have recently done—it is useful to highlight several questions related to the history of language politics and language planning in the United States. Educational language planning is frequently portrayed as an attempt to solve the language problems of the minority. Nevertheless, the historical record indicates that

schools have generally failed to meet the needs of language-minority students (Deschenes, Cuban, & Tyack, 2001) and that the endeavor to plan language behavior by forcing a rapid shift to English has often been a source of language problems that has resulted in the denial of language rights and hindered linguistic access to educational, social, economic, and political benefits even as the promoters of English immersion claim the opposite (Wiley, 1996; see also Crawford, 2000a; Leibowitz, 1971, 1974; Weinberg, 1977/1995, 1997)

#### THE EARLY STATUS ACHIEVEMENT AND DOMINANCE OF ENGLISH

The dominance of English was established under the British during the colonial period, not by official decree but through *language status achievement*, that is, through “the legitimization of a government’s decisions regarding acceptable language for those who are to carry out the political, economic, and social affairs of the political process” (Heath, 1976, p. 51). English achieved dominance as a result of the political and socioeconomic trade between England and colonial administrators, colonists, and traders. Other languages coexisted with English in the colonies with notable exceptions. Enslaved Africans were prohibited from using their native tongues for fear that it would facilitate resistance or rebellion. From the 1740s forward, southern colonies simultaneously institutionalized “compulsory ignorance” laws that prohibited those enslaved from acquiring English literacy for similar reasons. These restrictive slave codes were carried forward as the former southern colonies became states of the newly United States and remained in force until the end of the Civil War in 1865 (Weinberg, 1977/1995). Thus, the very first formal language policies were restrictive with the explicit purpose of promoting social control.

By the time of the first census in 1790, about 75%—less than today—of the United States’s population spoke English as their native tongue. This was among a population of approximately 4 million, which included 600,000 Europeans, 150,000 enslaved Africans, and 150,000 Indians (Lepore, 2002). Thus, there were diverse groups of speakers of other languages. There were a few implausible proposals to promote other languages, such as Hebrew or Greek, rather than English at the time of the founding of the republic.

The founders of the United States chose not to designate English as the official language. There are several probable reasons for this. The dominance of English had been long achieved during the prior colonial period; thus, an official policy declaring English as the official language would have been unnecessary. The founders respected linguistic diversity and minority rights,

at least among those who had just fought for liberty, and therefore they were hesitant to offend them by restricting their languages or implying their inferiority. More important, the primary reason is that English has functioned as if it were the official language throughout U.S. history. Thus, English has generally always possessed the status of the official language without the need for official designation (Baron, 1990; Crawford, 1992a; Heath, 1976; Kloss, 1977/1998; Wiley, 1997).

It would be easy to misread the stance of early leaders toward an official language as representing one of linguistic tolerance. From the 18th century through the late 19th century, various groups experienced both periods of tolerance or intolerance determined largely by their ethnic, racial, or religious status. European immigrant groups generally experienced tolerance with the exception of occasional nativist attacks on foreign speech and accents (Bennett, 1988). German immigrants had a long tradition of promoting bilingual education in both community, parochial, and public schools (Kloss, 1977/1998; Toth, 1990; Wiley, 1998).

#### IDEOLOGICAL UNDERPINNINGS AND EFFORTS TO USE LANGUAGE POLICIES AS INSTRUMENTS OF SOCIAL CONTROL

Within the context of U.S. history and the preceding colonial history, racism and linguistic intolerance have often been closely linked. Leibowitz (1974) formulated a thesis on this linkage nearly three decades ago. He contended that there is a need to focus on what linguistic minorities perceive to be language policies, regardless of whether these are formulated as formal policies or merely as institutional practices and procedures that affect linguistic behavior. In analyzing U.S. history, he suggested analyzing the interrelationships among three general areas: (a) the school system, (b) political institutions (citizenship, voting), and (c) the economic life of the country.

Language as an instrument of social control supported by an ideology of English monolingualism has a long history with antecedents dating from the colonial and early nationalist periods in the work of prominent writers such as Benjamin Franklin and Noah Webster (Wiley, 2000). It also appears in early nativist thought. Nativists sought to promote the rights and privileges of Whites born in the United States over those of immigrants. They attempted to impose the learning of English as a crucial component of loyalty and what it means to be an "American." By the turn of the 20th century, neo-nativists succeeded in making English a requirement for naturalization and citizenship. During the World War I era, nativist thinking went mainstream. Promoting English became a major part of the agenda of the Americanization movement

that attempted to Americanize millions of recent immigrants (Leibowitz, 1969, 1971; McClymer, 1982; Tatalovich, 1995; Toth, 1990; Wiley, 1998).

From the perspective of social control, ideologies supporting linguistic assimilation have generally had two broad goals. One has attempted to achieve *deculturation* for the purpose of subordination; the other has sought to promote *acculturation* for assimilation. Ideologies of racial, cultural, and linguistic superiority among the English have a long history that preceded their American colonial exploits. Early expressions of their purported racial superiority were used to rationalize the conquest and subordination of the Irish (Spring, 1994; Takaki, 1993). Similar ideologies were developed to justify the exploitation of enslaved African peoples (Jordan, 1974). Schmidt (2002) argued that by the 19th century in the United States, linguistic and racist ideologies converged to such an extent that "Anglo-Saxon racialist thought focused on the superiority of the English language as a derivative of German culture" (p. 4). He concluded that language has "played an important role in both the ideology and practice of the system of racial domination that held sway in the United States prior to the Second Reconstruction of the 1960s" (Schmidt, 2002, p. 4; Wiley, 2000).

The most extreme example of this ideology translated into practice involved the systematic policy of taking lands occupied by Indian peoples. The encroaching White population used the ideology of Anglo cultural, religious, and economic superiority along with the imposition of English as a tool of domestication. After the Civil War, the federal policies toward Native Americans became more repressive. A policy of *coercive assimilation* was implemented to expedite deculturation and pacification, and language eradication was a central tenet of this repressive policy. During the 1880s, the Bureau of Indian Affairs instituted a system of English-only boarding schools, Indian children were wrenched from their families at a young age, and attempts were made to destroy Native American customs and languages (Crawford, 2000c; Spicer, 1980; Spring, 1994, 1996; Weinberg, 1977/1995; Wiley, 1999a).

Through the mid-19th century, many immigrants were from predominantly English-speaking countries such as England, Ireland, Scotland, and Canada. In contrast, by the end of the 20th century, the majority of immigrants arrived from countries where languages other than English were spoken (Tse, 2001; Wiley, 1996). Table 1 indicates, however, that the total number of speakers of languages other than English increased dramatically from 1910 to 2000, yet in terms of the percentage of the total population, the percentage in 2000 (17.9%) is actually lower than it was in 1910 (24%). Native language instruction and bilingual education were common in areas where non-English speaking immigrant groups settled and composed a major

Table 1  
*Persons Who Speak Languages Other Than English in the United States: U.S. Census 1910-2000*

<i>Census Year</i>	<i>1910</i>	<i>1940</i>	<i>1970</i>	<i>1980</i>	<i>1990</i>	<i>2000</i>
Speakers of languages other than English (in millions)	22.2	21.8	42.5	23.1	31.8	46.9
Speakers of languages other than English (percent of population)	24	16.5	20.1	11	13.8	17.9

*Source.* Macias, 1999; U.S. Bureau of the Census, 2000; Wiley, 1996.

portion of the local population. German bilingual education was prevalent until World War I when legislation was passed in 34 states, between 1917 and 1922, mandating English as the official language of instruction.

During World War I, the German language was repressed as a wave of xenophobia led to widespread attacks on German and other languages. The foreign languages in the schools were a primary target of local councils of national defense. Book burnings in schools were accompanied by attacks on ministers who continued to preach in German to the elderly and non-English speaking. Foreign language presses were subject to censorship. In 1917, as the United States entered the war, restrictions against the use of German and foreign languages more generally resulted in a rapid decline in both foreign and bilingual education as states moved to restrict any foreign language until Grades 6 to 8, when it was less likely that children would draw on their native languages. Similar restrictionism was directed against other languages. Japanese, for example, became a target in California and the then territory of Hawaii. Although the more extreme restrictions on foreign language instruction were struck down by the Supreme Court in 1923 (*Meyer v. Nebraska*), German language instruction never fully recovered (Kloss, 1977/1998; Leibowitz, 1971; Tamura, 1993; Wiley, 1998). Perhaps more important, by raising the age of instruction to roughly ages 11 to 13 for foreign language instruction, opportunities to acquire languages other than English were made significantly more difficult for the English-speaking children.

#### THE ENGLISH-ONLY MOVEMENT

Reminiscent of nativist attacks of a half century earlier, immigrants and language minorities—especially the Spanish speaking—have been targeted increasingly since the 1970s as a backlash against the federally funded Title VII bilingual education program (see below) took hold. Pundits began protesting that federal bilingual education policies were interfering with the American melting pot. Noel Epstein (1977), an influential editor, charged

that bilingual education programs were promoting “affirmative ethnicity” (Crawford, 1992a, 1999).

In 1981, Senator S. I. Hayakawa introduced a constitutional amendment that would make English the official language of the United States. During the 1980s and 1990s, various versions of the proposed amendment were put forward. Hayakawa teamed with John Tanton, an ophthalmologist interested in environmentalism and population control. Together they founded an organization called U.S. English. The organization collected millions of dollars and endorsements from celebrities to push its English-only agenda. It backed a federal constitutional amendment and began an aggressive strategy resulting in proposals for restrictive official-English measures in 48 States. It was successful in 23 of these states by the late 1990s (Crawford, 1992b, 2000a). By this time, however, the U.S. English organization had failed to realize its primary goal of a constitutional amendment making English the official language of the United States (Wiley, in press).

The English-only movement and the U.S. English organization have been criticized for fostering interethnic hostility, ignoring civil rights through efforts to disenfranchise its minority citizens, failing to promote the integration of language-minority children, and failing to value multilingual citizenry in an age of globalization (Baker & Jones, 1999, p. 291). Concerns also have been raised about extremist tendencies in the movement. Donahue (1995), for example, noted “a suspicious thrust toward disinformation . . . with . . . arguments that speaking Spanish causes racial tensions and low economic achievement” (p. 115). Tanton resigned his post with U.S. English in 1988 following the disclosure of a racially provocative internal memo he had written (Crawford, 1992a, 1992b, 2000a). In 2003, U.S. English’s communications director James Lubinkas resigned when his ties with White supremacy groups were discovered and made public by the Southern Poverty Law Center (Krikorian & Matthews, 2003). Nevertheless, Crawford (1998) contended that the movement is more of a “mainstream phenomenon” than an extremist one as popular polls tend to suggest.

There is certainly substantial support for official English, suggesting that the ideology of English monolingualism is hegemonic. Even so, we may still ask: How deeply held is the ideology and which sectors of the population are most affected by it? Tatalovich (1995) put forward five hypotheses for probable sources of the movement: (a) racial hostility of the majority toward the minority, (b) ethnic conflict among minorities toward one another, (c) class antagonism by lower socioeconomic groups, (d) politically partisaned backlash, and (e) antifoignism. He also identified three phases of the English-only movement. The first phase was dominated by elites, whereas the second phase involved more mass activism. The third phase shifted emphasis from



the states back to the national scene where it was easily linked to the immigration issue, which is potentially more incendiary—especially since the September 11th terrorist attacks—than it was during the first quarter of the 20th century.

As the movement has developed over time, questions can be raised of what function the movement has and who benefits from it. Donahue (1995) suggested,

Given the nature of wide publicity and exposure in the modern mass communication, ambitious individuals may wish merely to achieve notoriety for a given cause, without regard to the fairness, justice, ultimate tests of constitutionality, over even the immediate success of the cause. What matters is that to achieve leadership, one must first become widely known. In what seems to be an utterly cynical value, problems of truth and falsity can be dealt with not at the outset, but later, as a matter of process; indeed, truth may simply be a matter of what one can get the public to believe. (p. 117)

In retrospect, the passage above almost appears prophetic because within a short period of time, Ron Unz, a businessperson with political aspirations, emerged leading three successful campaigns to restrict bilingual education in the states of California, Arizona, and Massachusetts (see below), and one failed attempt in Colorado. Obviously, some individual politicians, pundits, and private individuals have achieved a degree of notoriety from the English-only/antibilingual education movement, whereas the truth about the needs, contributions, and intentions of language minorities, bilingual teachers, and the efficacy of bilingual education often has become a victim in public debates.

From a more cynical perspective, Donahue (1995) has suggested that the official-English issue and the attack on bilingual education is a phony issue intended to “paralyze debate and to prevent the formation of alternative leadership in a democracy at a time when a two-decade old policy of resource reallocation proceeds unabated” (p. 137). In other words, Donahue is suggesting that these attacks are merely diverting attention from a more fundamental social class conflict during a time when there has been a loss of wealth and social position for the middle class. From a socioeconomic perspective, an important test for the efficacy of language policies is the extent to which they facilitate social mobility.

In the following sections, we will begin by addressing changes in language-minority education policies in certain states and then proceed to a discussion of federal policy, given that during the past two decades, these changes in state policies have tended to influence federal policies rather than the other way around.

RECENT DEVELOPMENTS:  
PROPOSITIONS 227 AND 203 AND QUESTION 2

In June of 1998, a controversial law called English for the Children (Proposition 227, California Education Code, Section 305-306) was approved by 61% of California's voters. Nearly identical but slightly more stringent measures, Proposition 203 (Arizona Revised Statutes 15-751-755) and Question 2 (G.L. c. 71A), passed by similar margins in Arizona and Massachusetts, respectively. These measures were designed to have a major impact on the education of language-minority children.

The initiative process—originally intended to provide a popular alternative to the power of special interests—is vulnerable if voters are poorly informed about complex issues or when a majority is hostile to minorities, which of course was one of the major motivations for the original Bill of Rights. These concerns have been raised in conjunction with a series of propositions passed in California that have been depicted by critics as anti-immigrant. These were Proposition 63 (California State Constitution, Article III, Section 6), which declared English to be the singular official language of the state; Proposition 187, which attempted to limit schooling and social service benefits provided to undocumented immigrants;<sup>1</sup> and Proposition 209 (California State Constitution, Article I, Section 31), which sought to end affirmative action programs intended to make competition between the majority and underrepresented minorities more equitable (Wiley, 1999c).

Crawford (1998) contended that Unz managed to distance himself from these anti-immigrant propositions and pose his initiatives as if they were advocating for immigrants and their right to learn English. As presented to voters, the rationale for the Unz initiatives was based on five assumptions: (a) English is the language of opportunity because of its dominance in science, business, and technology; (b) immigrant language-minority parents are eager to have their children learn it; (c) schools have a moral obligation to teach English, given its importance; (d) for the past two decades schools have performed poorly in educating immigrant children, as indicated by their higher rates of dropping out of school; and (e) young immigrant children acquire second languages easily. Assuming all these to be correct, the argument in these initiatives concludes that "all children . . . shall be taught English as rapidly as possible" (Wiley, 1999c, p. 1).

Advocates of bilingual education and language-minority parents generally agree with the first three assumptions regarding the importance of English and the need to learn it. However, the majority of language-minority parents, when given an informed choice, indicate that they want their children to become bilingual as long as they have the opportunity to attain English and a

quality education (see Krashen, 1996). Given that “bilingual” education in the United States includes English, to suggest that bilingual education is anti-English has been a specious claim but an effective ploy.

The fourth assumption, that bilingual education causes high drop-out rates among language-minority students, is groundless. For example, less than 30% of California’s 1.4 million language-minority students received any bilingual education prior to passage of Proposition 227, yet it was claimed that bilingual education was responsible for widespread educational underachievement. The reality was that the majority of language-minority children were not receiving the language and educational services to which they were entitled (Weinberg, 1997; Wiley, 1999c; Wright, in press-b).

The last assumption—that young immigrant children rapidly acquire second languages—was not supported by research and failed to examine the social and educational contexts of, and opportunities for, second-language learning. The assumption is also contradicted by the fact that many English-speaking monolingual children also have difficulties mastering literacy skills in school because the language practices and demands of the schools differ greatly from those of children’s homes. Research supports the conclusion that language-minority children face greater obstacles in acquiring school literacy in a second language when they do not have an opportunity to develop initial literacy in their home language and when they are required to compete with native speakers of the dominant language of schooling (August & Hakuta, 1997; Baker, 2001; E. E. Garcia, 2001). Unfortunately, in the public media debates regarding the Unz initiatives, many news writers gave more attention to the anecdotal opinions of pundits opposed to bilingual education than to the findings of educational researchers.

Since the passage of Propositions 227 and 203 and of Question 2, several issues have posed major challenges for schools and parents. First, these measures impose English-only instruction and suggest just 1 school year (180 days) of “structured English immersion.” Second, they do not allow bilingual education, unless language-minority parents request a *waiver*. Even if parents make such a request, there has been no guarantee that their children will receive bilingual instruction because schools must receive enough waivers to fill a classroom at each grade level, because school administrators are given great leeway in terms of accepting or rejecting waiver requests, and because many schools simply lack bilingual teachers and materials to even offer the program. Making matters even more difficult, implementing these measures—as with any other educational policy—is complicated by the decentralized nature of education in the United States, where school districts have considerable authority concerning how they interpret and implement state policies. Finally, and most important, schools do not receive equal

funding allocations. A substantial portion of resources is derived locally. Thus, program quality for language-minority students varies greatly from locality to locality across the country (Wiley, 1999c).

Initial reports regarding the implementation of Proposition 227 suggest considerable variation across California school districts because individual districts were developing their own English programs for language-minority students and because districts varied in how well they were informing parents of the right to request waivers from the English-only programs (A. Garcia, 2000). Some school districts, typically those that had quality bilingual programs before Proposition 227, have managed to maintain bilingual programs because they did a good job of informing parents and had strong parental support. Other districts have dropped their bilingual programs and made little to no effort to inform parents of their right to request waivers (Gandara, 2000; Maxwell-Jolly, 2000). In some cases, schools that had been offering dual-immersion bilingual programs prior to Proposition 227 were exempted from its restrictions because of their special status as "charter schools." These schools are allowed to develop alternative education programs (Wiley, 1999b).

The impact of Proposition 203 in Arizona is just beginning to be documented. Also, legal battles are brewing as the superintendent of public instruction is interpreting the waiver provisions of Proposition 203 in such a narrow manner as to make it impossible for parents of English-language learning (ELL) students to request and obtain waivers. In Massachusetts, educators, parents, and advocates are working to persuade their political leaders to allow districts and schools flexibility in interpreting and implementing the new law. Even in Colorado, where Unz's Question 31 was defeated, the initiative has caused a ripple effect with some lawmakers attempting to pass legislation to restrict bilingual education programs. Ron Unz continues to carry his campaign to restrict bilingual education to other states.

#### ROLE OF THE FEDERAL GOVERNMENT IN LANGUAGE-MINORITY EDUCATION POLICY

Prior to 1968, there were no federal educational language policies regarding the unique requirements of minorities in need of English language development. For the most part, minority language background was ignored in the schools and students were placed in English immersion or "sink-or-swim" programs (Crawford, 1999; National Clearinghouse for English Language Acquisition, 2002b).<sup>2</sup> In the wake of the civil rights movement, culminating in the passage of the Civil Rights Act of 1964 (Title VI) and the war on

poverty, educators and policy makers became more sensitive to the needs of their rapidly growing language-minority student population (Crawford, 2000d). Census data from 1960 revealed large disparities in the average number of years of schooling between Whites (14 years) and Mexican Americans (4.7 years), thus revealing a high drop-out rate of Mexican American students (Kloss, 1977/1998; Leibowitz, 1971). A conference on the education of Spanish-speaking children, sponsored by the National Education Association in 1966, led to a study and report on innovative education programs in southwestern states that made use of the students' Spanish language (National Education Association, 1966). The report made several recommendations, including that "instruction in pre-school and throughout the early grades should be in both Spanish and English" and that "English should be taught as a second language." The report also called for the repeal of state laws that specify English as the language of instruction. In addition to these programs, the success of a two-way bilingual program at Coral Way Elementary School in Florida for Cuban refugee students garnered attention.

It was against this backdrop that Senator Ralph Yarborough (Democrat, Texas) introduced a bill to provide federal funding for school districts to support bilingual education programs. His bill eventually became the Bilingual Education Act of 1968 (Title VII of the Elementary and Secondary Education Act) (Kloss, 1977/1998). The original bill included only Spanish-surnamed students, but similar bills introduced by other legislators led to the inclusion of "all children whose native tongue was not English" (Leibowitz, 1971, p. 32) and targeted schools with a concentration of low-income families (Lyons, 1995). Lyons (1995) argued that these changes "fundamentally transformed the focus into a remedial or compensatory program to serve children who were 'deficient' in English-language skills" (p. 2). However, there was still a lack of consensus about the purpose and goals of Title VII and "the question of what beneficial effects instruction in the native language would have" (Leibowitz, 1971, p. 34). There was also disagreement as to whether Title VII was meant to be an antidiscrimination measure or an antipoverty measure and the extent to which Title VII programs initially were supposed to assist students to become proficient bilinguals or simply transition them to English-literacy instruction as quickly as possible (Crawford, 2000b). In 1970, 134 projects using 16 languages were funded (Leibowitz, 1980). Four years later, 220 bilingual programs servicing 340,000 students were receiving Title VII funds, with more than 85% of the funds going toward Spanish programs (Kloss, 1977/1998). Although these were all called *bilingual education* programs, there was great variation in the use of the students' native languages across these programs (Leibowitz, 1980).

The passage of the Bilingual Education Act led to the adoption of similar policies in several states. By 1999, 30 states had statutes allowing native language instruction, 9 states mandated it, and 7 others stopped enforcing their laws that prohibited native language instruction. At the federal level, however, the ambiguity of the original act led to many debates and changes in subsequent reauthorizations of Title VII. The political climate of each reauthorization period also influenced changes to the law. In 1974, the poverty criterion was dropped and the law clarified that native language instruction was to be used only to allow students to progress academically while learning English (Crawford, 1999; Ricento, 1996). In addition, the law was changed declaring that English-only students in Title VII classrooms could not learn the language of the non-English language background students (Lyons, 1995). Thus, maintenance<sup>3</sup> and dual-immersion programs<sup>4</sup> were not allowed, and only transitional bilingual programs<sup>5</sup> were supported. The 1974 reauthorization also included the creation of the National Clearinghouse for Bilingual Education as a federal resource for information collection and dissemination.

The 1978 reauthorization introduced the term *limited English proficient* (LEP) to replace *limited English speaking*.<sup>6</sup> The label change was intended to emphasize students' needs across the domains of listening, speaking, reading, writing, and cognitive development. This new term, however, still represented a deficit view of students (i.e., they "lack" English). The ban on dual-immersion programs was lifted (Lyons, 1995), however, an increasingly hostile political environment toward maintaining students' native language led to an increased focus on transitional bilingual education models and the need to exit students to English-only mainstream programs as quickly as possible (Ricento, 1996). Prior to this reauthorization, a report by the American Institute for Research claimed that most bilingual programs aimed at maintenance rather than transition—a claim Crawford (1999) questioned given that the same report found that 49.6% of bilingual teachers lacked proficiency in the students' native language.

Another major source of the political backlash against bilingual education was the *Lau Remedies*, created by the Office of Civil Rights following the 1974 Supreme Court decision in *Lau v. Nichols*. Although Title VII regulations applied to funded programs only, the Lau Remedies were applicable to all school districts and functioned as de facto compliance standards (Lyons, 1995). Going beyond the court decision, which did not mandate any particular approach, the Lau Remedies essentially required districts to implement bilingual education programs for ELL students. A large number of complaints, and a lawsuit from Alaska, held that the Remedies were not formal regulations and thus, were not binding. A settlement led to an agreement to

turn the Remedies into official regulations, but the proposed new rules also proved to be controversial. Ronald Reagan grabbed hold of the issue 3 months before the presidential election and used it as an example of the need to get the “government off the back of the American people” (Lyons, 1995, p. 5). After Reagan’s election, the efforts to formalize the Remedies faded away. Without formal rules, Office of Civil Rights reviews had to be conducted on a case-by-case basis, which still resulted in finding many districts failing to meet the basic needs of ELL students. However, the total number of compliance reviews decreased substantially, and few follow-ups were conducted with the districts found to be out of compliance (Crawford, 1999).

The reauthorization of the Bilingual Education Act in 1984 clarified the goal of Title VII programs as helping all LEP students “to achieve competence in the English language . . . [and] to meet grade-promotion and graduation standards” (Lyons, 1995, p. 7). Surprisingly, through a series of compromises, support was made available for a limited number of developmental bilingual programs, but a percentage of funds also had to be reserved for Special Alternative Instructional Programs (SAIPs) that made no use of native language instruction. Bilingual advocates who successfully negotiated for the inclusion of developmental programs were trying to break Title VII out of the deficit/compensatory mode, but the allowance for SAIPs opened the way for more English-only programs to be funded in future authorizations (Crawford, 1999). In the 1988 reauthorization, the Reagan administration tried to remove all restrictions on SAIPs, but a compromise limited funding for SAIPs to a maximum of 25%. The final reauthorization of Title VII in 1994, as part of the Improving America’s Schools Act (H.R. 6) under the Clinton administration, resulted in increased attention to developmental maintenance bilingual programs (National Clearinghouse for English Language Acquisition, 2002a).

Federal policy for language-minority students learning English has changed dramatically with the passage of President George W. Bush’s No Child Left Behind Act (NCLB), which reauthorized the Elementary and Secondary Education Act in 2002. The term *bilingual* completely vanished from the federal law. The Bilingual Education Act (Title VII) was replaced with the Language Instruction for Limited English Proficient and Immigrant Students (Title III of NCLB). The name of the Office for Bilingual Education and Minority Language Affairs was changed to the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, and the National Clearinghouse for Bilingual Education was changed to the National Clearinghouse for English Language Acquisition and Language Instruction Educational Programs. The stated purpose of Title III is “to ensure that children who are limited English

proficient, including immigrant children and youth, attain English proficiency” (Title III, Sec. 3102). Federal funding for LEP students nearly doubled, but competitive grant programs under the old Title VII were replaced with formula grants to state education agencies.<sup>7</sup> Although the increase and more equitable distribution of funds for LEP students is laudable, the funding is spread more thinly, resulting in a reduction per eligible student (Crawford, 2002).

States, districts, and schools are required to provide LEP students with a “high quality language instruction education program.” This is defined as

an instructional course—(A) in which a limited English proficient child is placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards; and

(B) that may make instructional use of both English and a child’s native language to enable the child to develop and attain English proficiency, and may include the participation of English proficient children if such course is designed to enable all participating children to become proficient in English and a second language. (Title III, Part C—General Purposes, Sec. 3301(8))

Thus, Title III does allow funding for transitional bilingual education programs (without referring to them by name) but not maintenance bilingual programs. Although some allowance is made for dual-immersion bilingual education programs, it should be noted that these programs, although growing in popularity, are still serving only a fraction of students. Also, the irony should be noted that language-minority students classified as LEP do not have the right to develop bilingualism in school unless enough English-only students are interested in becoming bilingual through a dual-immersion program. Also, the demand among English-only students for dual-language instruction is typically limited to Spanish, with just a few programs in languages such as French, Chinese, and Japanese. Thus, for students who speak less commonly taught languages (e.g., Khmer, Lao, Farsi, Urdu, etc.) there is little hope for dual-immersion programs in their languages.

Despite the allowances for transitional and dual-immersion programs, the new law is more likely to discourage bilingual education and promote English-only approaches. The change in funding distribution gives states a great deal of discretion in terms of what programs they will fund at the local level. González (2002), the first director of the Office for Bilingual Education and Minority Language Affairs, contended that federal bilingual education policy was needed in the first place because states were reluctant to “deal with minorities and their special educational needs” (p. 3). Title III requires that programs for LEP students be “based on scientifically based research”



(Sec. 3106(9)); it is up to each state to determine what qualifies as scientifically based research. Thus, it is possible that educational officials could select a single study, no matter how dubious or flawed, which supports English-only agendas. In Arizona, for example, the superintendent of public instruction touts the Guzman (2002) study—which experts in the field have found flawed—as “scientific” evidence that bilingual education is ineffective (see Krashen, 2002, for a critique of this study).

Even more problematic are the accountability provisions of Title III. An explicit purpose of Title III is to help 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” (Sec. 3102(1)). On its face, the goal is praiseworthy, but the accountability requirements to measure this are strict, complex, and questionable. Each state is required to develop English-language proficiency standards and assessments and define and develop “annual measurable achievement objectives” (AMAOs) for “increasing and measuring the level of LEP children’s development and attainment of English proficiency” in the domains of listening, speaking, reading, writing, and comprehension (U.S. Department of Education, 2003, Part II, p. 5). The English-language proficiency assessments must be given annually, and the AMAOs must include “annual increases in the number or percentage of children making progress in learning English” and “the number or percentage of children attaining English proficiency” (Title III, Sec. 3122(a)(3)(A)).

In addition, to measure academic achievement in meeting state academic content and achievement standards, all LEP students must be included in state assessment programs regardless of how long they have been in the United States. As with language proficiency, states are required to set AMAOs for LEP students on these statewide assessments. The AMAOs for both language proficiency and academic achievement must define and quantify “adequate yearly progress” (AYP) for LEP students. If a school district fails to make progress toward meeting its AMAOs 2 consecutive years, they must submit an improvement plan to the state, and the state is required to provide technical assistance in the development and implementation of the plan. If the district fails to meet the AMAOs for 4 consecutive years, the state is authorized to modify the district’s instruction, cut its funds, or replace its personnel. In other words, the state is authorized to take over the school district.

Thus, school districts are under immense pressure to teach LEP students English as quickly as possible and to redesignate as many as possible each year even as they strive to prepare their LEP students for the statewide high-stakes tests, which are only in English. The AYP requirement for statewide tests alone will likely push states or districts to push English-only programs.

In a large urban California school district, Wright (2002, in press-a) found that pressure to raise scores on high-stakes tests was even more influential in ending bilingual programs than Proposition 277. District leaders rationalized that only by eliminating bilingual education and immersing students in all-English instruction starting in kindergarten would students have a chance of being able to read and answer the test questions in English on the SAT-9, which is given to all students in the second through eleventh grades.<sup>8</sup> With the added AYP requirement for English-language proficiency, it is likely that many districts with bilingual programs will feel the same pressure to move to all-English instruction.

#### THE LEGACY OF ENGLISH-ONLY LITERACY AND THE INTELLIGENCE TESTING MOVEMENT

With the requirements of NCLB, and as the debate rages over the appropriateness of testing language-minority students with high-stakes exams offered only in English, it is useful to reflect on some of the uses to which educational testing was put in its formative period. In the United States, the rise of the modern educational technologist-oriented curriculum making and the rise of the scientific educational testing movement coincided with the period of Americanization and widespread xenophobia toward non-English speaking immigrants and lynchings of African Americans and discrimination against other racial minority groups. Literacy and intelligence tests, which were given in English to linguistically diverse participants, were used to make cross-group comparisons, usually with race and ethnicity as the determining categories. Literacy in languages other than English and prior schooling were largely ignored as factors that might account for empirical claims regarding “innate” differences between groups. English literacy became a gatekeeping tool to bar unwanted immigrants from entering the United States when nativists began clamoring for restrictions. Simultaneously, literacy requirements barred African Americans at the polls (Leibowitz, 1969). During World War I, reports of high levels of failure by Army recruits on qualifying tests were well publicized. A massive testing campaign was initiated to ferret out the feeble-minded (Wiley, 1996).

By World War I, intelligence testing became a national movement. Corporate foundations supported studies on the inheritance of mental traits, eugenics, and race betterment. A committee on the heredity of feeble-mindedness included prominent educational researchers such as Edward Thorndike who, with Lewis Terman of Stanford University, supported sterilization of the “feeble-minded.” Thorndike and his student, Henry Garret, likewise believed that those with lesser intelligence, as documented by standardized tests, were

morally inferior. Although English literacy and some formal schooling were requisite for intelligence testing, researchers of the period paid little attention to language, class, and culture bias and presented their findings as “objective,” “empirical” (hence, “scientific”) evidence that those of Anglo-Saxon origin were of “superior” intellectual and moral stock. Thus, the so-called scientific testing movement of the early 20th century was intertwined with racism and linguicism at a time when the push for expanded uses of restrictive English-literacy requirements coincided with the period of record immigration (as percentage of total population) (Gould, 1981; Karier, 1973; Wiley, 1996).

Immigrants arriving at Ellis Island were put into inspection lines where they were scrutinized for behavior, which might indicate mental instabilities that would burden the receiving society. Nearly 1 in 10 immigrants during this period were referred for mental testing to determine whether they were mentally impaired. Symptoms arousing suspicion included “facetiousness, nail biting, smiling, or other eccentricities” (Chermayeff, Wasserman, & Shapiro, 1991, p. 137). When observed to be acting suspiciously, immigrants were chalked with an X on their sleeve and subjected to further interrogation, which often involved solving reasoning problems. One Polish immigrant woman complained,

They asked us questions. “How much is two and one? How much is two and two?” But the next young girl . . . [was asked] “How do you wash stairs, from the top or from the bottom?” She says, “I don’t go to America to wash stairs.” (Chermayeff et al., 1991, p. 138)

Terman sought to expand the use of the Stanford-Binet test and, with H. H. Goddard, convinced the Army to use two tests on nearly 2 million draftees. One test was designed for those who could read and write and another for “illiterates” and “foreigners” (who received instructions in pantomime). The results made comparisons on the basis of English literacy, national origin, ethnicity, and race. Europeans were racially classified into Nordics, Alpines, and Mediterranean races (Hakuta, 1986), with Nordics at the top and Mediterraneans (Greeks and Italians) at the bottom. As part of the Mediterranean group, Italians were considered a “superior sort of Chinaman” (Wyman, 1993, p. 100). Only English literacy counted as literacy. Illiterates and foreigners were lumped together. Native language literacy or prior schooling, as factors influencing the results, were ignored. The test results were popularized by Carl Brigham (1923) in *A Study of American Intelligence*. The study found immigrants of Alpine and Mediterranean races to be inferior to the Nordic race. Brigham discounted language background, schooling, and

cultural biases and concluded that the “underlying cause” of test performance differences between groups was race rather than language (Brigham, 1923, p. 174; Hakuta, 1986, p. 21; Wiley, 1996).

*A Study of American Intelligence* provided ammunition for nativists who succeeded in influencing Congress to pass a restrictive immigration act with strict quotas for non-Nordics. “Of the 27 states with sterilization laws by 1930, 20 had been passed since 1918, the end of World War I. Works by eugenicists such as Brigham were an important factor in the passage of this legislation” (Weinberg, 1983). In 1924, a young African American student at the University of Chicago, Horace Mann Bond, undertook a secondary data analysis of the data and found a correlation of .74 between schooling and intelligence. Bond further found that African Americans in Illinois averaged higher scores than Whites from four southern states. Bond’s findings were largely ignored by the leading testing experts and “theorists of genetic inferiority” (Weinberg, 1983, p. 63; Wiley, 1996), whereas Brigham’s work remained influential through the 1920s—a period marked by widespread lynchings and discrimination against African Americans.

#### RECENT CONCERNS ABOUT HIGH-STAKES TESTING OF LANGUAGE-MINORITY STUDENTS

Contrary to the overtly racist features of the early testing movement, the contemporary push to test all children, regardless of their language background and facility in English, is now cast in terms of promoting “higher standards for all.” Advocates of equity in language-minority education certainly support the goal of higher standards. Nevertheless, many concerns remain regarding the efficacy and ethics of subjecting children to high-stakes tests in English when they have not been given sufficient time, or in many cases, appropriate educational opportunities to be compared to students for whom English is their primary language.

The NCLB requirement to include LEP students in statewide high-stakes assessments is problematic given the growing body of research that questions the reliability and validity of test scores for students who are not fully proficient in the language of the test (Adebi, 2003; Adebi & Leon, 1999; Heubert & Hauser, 1999). Notwithstanding these concerns, schools and districts must now meet the AYP targets set by their state. Adebi (2003) found that schools with large numbers of ELL students will have to meet more stringent AYP requirements than schools with low numbers of ELLs, as schools with large numbers of ELLs will likely have a significantly lower baseline. A further complication is the lack of a well-defined, objective definition of *limited English proficiency*; thus, measuring and reporting AYP for the LEP sub-

groups may be inconsistent and questionable across districts and states employing different definitions and measures of English-language proficiency (Adebi, in press). NCLB does allow for some accommodations for LEP students on tests; however, there is little empirical evidence that these accommodations make a difference in producing more reliable and valid test scores for ELL students (Rivera, 2002).

What research has been able to show, thus far, is that high-stakes testing is not improving the quality of teaching and learning in schools, and in fact may be having the complete opposite effect, especially for poor, minority, and ELL students. McNeil (2000), for example, found that poor and minority students were subjected to long hours of test preparation, which usually consisted of “drill and kill” type exercises and taking practice exams. Subject-area teachers were required to stop teaching their content area and drill students on math and language test practice items. McNeil described these strategies as successful in “inflating” test scores, whereas the quality of education for these students substantially decreased.

Haney’s (2000) analysis of test score and student enrollment data in Texas confirms large numbers of dropouts among poor and minority students in the key testing grades. Some schools manipulated promotion of students to the next grade, or in some cases encouraged (or did not discourage) students to drop out of school if they were low test scorers (see also Klein, Hamilton, McCaffrey, & Stecher, 2000). McNeil (2000) also found that schools would focus on students who were close to passing (the “bubble kids”) while ignoring the needs of gifted and very low performing students.

Wright (2002) has documented several negative effects on the teaching and learning of ELL students in an inner-city elementary school in Southern California, such as the elimination of subjects not tested, excessive test preparation, and drastic changes in the school’s standards and curriculum to closely match the content and format of the SAT-9 exam. He also found that teachers who were well trained in specially designed academic instruction in English and English language development were having a difficult time using these strategies and providing daily English language development instruction for their students because of the tremendous pressure and amount of time it took to teach to the test. These efforts to raise test scores may be in vain, as Amrein and Berliner (2002) have found that increases on state high-stakes tests did not generalize to other tests administered in those same states (e.g., National Assessment of Educational Progress, SAT, ACT, AP exams, etc.). They concluded that increases on the high-stakes tests were more the result of training to take that specific test rather than true higher academic learning and achievement.

In summary, current federal education policy for language-minority students in need of English language development no longer mandates, nor even encourages, bilingual education. Although it does not directly outlaw it, the funding mechanisms that give complete discretion to the states, and the accountability provisions of NCLB, are likely to discourage bilingual education programs and encourage English-only programs. Given the psychometric problems of obtaining reliable and valid test scores of these students, and the lack of any conclusive evidence on the effectiveness of various accommodation strategies, school districts will have great difficulty in demonstrating AYP with their LEP students on AMAOs. In a retrospective on the demise of the Bilingual Education Act, González (2002) concluded:

Title III is a hollow version of the hopeful legislative step taken in 1968 with the enactment of Title VII. We should be careful to distinguish between the best practices that are supported by research, and those that are fundable through this highly compromised version of the law. Title III is a highly negotiated piece of legislation. It no longer has a core of principles on which to build substantive programs with a real chance for success. Above all, we should resist the idea of having the federal government define what constitutes high quality programs [for ELLs]. That can only come from practitioners and researchers in the field; it cannot be negotiated in the back offices of Congressmen and Senators.(p. 3)

#### CONCLUSION: UNRESOLVED QUESTIONS AND POLICY CHALLENGES

English, historically and presently, is the dominant language of the United States and the principal language of schooling. Nevertheless, language diversity in the United States and its schools has been, and remains, a fact of life. Even as bilingual education was attacked in recent state initiatives for failing to promote English among language-minority students, the vast majority of these children were not even enrolled in bilingual education programs to which they were entitled. Thus, the attack on bilingual education can be seen as a smoke screen to divert attention away from “mainstream” educational programs that fail to accommodate language-minority educational needs. In the aftermath of the new language restrictionism, now that we do not have bilingual education “to kick around anymore,” who will be blamed for the persistent underachievement and disproportion failure among language minorities? In the wake of the demise of Title VII, and given the limitations of Title III, can we expect a rerun of the failed language-minority educational policies that preceded the advent of Title VII? What disadvantages in an age of globalization will this society incur due to its failure to develop languages

other than English among the English-only speaking majority? What kinds of language policies could expand the language resources of both the monolingual English-speaking majority and language minorities? The litmus test for educational language planning in the United States in the “age of accountability” should not be one of defending the position of English, but one of acknowledging language diversity and developing it as a national resource.

#### NOTES

1. Proposition 187 passed in California in 1984, but a series of lawsuits charging that the proposition was unconstitutional led to a temporary restraining order within days after passage. Later court rulings and mediation agreements essentially sealed the death of Proposition 187.

2. *English immersion* refers to programs where English-language learning (ELL) students are simply placed in mainstream classrooms with little to no support. Thus they are left to sink or swim.

3. Maintenance bilingual programs (also referred to as developmental or late-exit bilingual programs) are typically 5 to 7 years in length and are designed to help ELL students attain high levels of oral proficiency and literacy in the students' first language and English.

4. Dual-immersion programs (also called dual-language or two-way immersion programs) refer to programs where 50% of the students are language minority (from a single language group) and 50% are language-majority students and literacy and content instruction are taught equally in both languages. The goal is to develop high levels of bilingualism and biliteracy in both languages for all students in the program.

5. In transitional bilingual education programs, ELL students receive initial literacy and some content instruction in their primary language, in addition to English as a second language instruction and sheltered English instruction in other content areas. Students are typically transitioned to all-English instruction after 2 to 3 years of instruction. The goal of the program is to transition students to English-only mainstream classrooms as rapidly as possible.

6. The terms *ELL* and *LEP* refer to the same group of students and are often used interchangeably. The current use of *English-language learner* (ELL) over *limited English proficient* (LEP) is an attempt to improve on the latter, which has a deficit connotation. Nevertheless, ELL also suffers by rendering a child's home language invisible. In this article, we use *LEP* when discussing federal policy as this is the official term used in the law and use *ELL* because of its wide use in the field, but recognize that it is a less than ideal label.

7. There is a provision in Title III that if funding drops below U.S.\$650 million in any fiscal year, then funding and programs will essentially return to the old Title VII system of competitive grants.

8. Some school districts have also required first-grade students to take the SAT-9 (Wright, 2002).

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