

Assimilation via Liberal Individualism: Law and Language Policy in the USA

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Abstract

This essay describes and analyzes the legal regime of the United States in relation to language diversity. The article argues that the U.S. case in language law indicates that, under certain conditions, a liberal individualistic legal regime – marked by equal “freedom of choice” in respect to language use – can nevertheless serve as an agency of linguistic assimilation in a multilingual country.

1. Introduction

Founded mostly by English speaking colonists from the UK, the United States has been both English dominant and multilingual since its launch as an independent country in the late eighteenth century. Demonstrating the continuity of this pattern of a single dominant language coupled with the persistent presence of other languages, the country currently has the largest number of non-English speakers in its history, even though nearly all of its people claim to speak English very well. The U.S. Census’ 2009 American Community Survey found that some 55 million people over age five – nearly 20% of the U.S. population – usually speak a language other than English in their homes. And one language group – Spanish speakers – makes up well over half of those speaking a language other than English in their homes, a fact that plays a major role in the contemporary U.S. political conflict over language policy. At the same time, and signifying the hegemonic role of the dominant language, over 80% of those who usually speak a language other than English also claim to speak English “very well” (U.S. Census Bureau, 2010).

This essay describes and analyzes the legal regime of the United States in relation to language diversity. The article argues that the U.S. case in language law indicates that, under certain conditions, a liberal individualistic legal regime – marked by equal “freedom of choice” in respect to language use – can nevertheless serve as an agency of linguistic assimilation in a multilingual country. This thesis contradicts the expectation of many of those involved in language policy disputes, who evidently believe that a restrictive legal regime is necessary to encourage members of linguistic minority groups to become fluent in, and adopt as their own, a country’s dominant language. On the contrary, the essay argues, in a country with a single dominant language and widespread linguistic freedom of choice, speakers of minority languages will opt for linguistic assimilation into that

dominant language unless positive and proactive steps are taken to protect and encourage the use of those minority languages.

2. Sources of U.S. Linguistic Diversity

Before turning to an analysis of U.S. language law, it might be helpful to briefly summarize the sources of the country's linguistic diversity. One of the dominant narratives in U.S. identity politics is that the United States is a *nation of immigrants*. This narrative has considerable truth (though not universal truth, as detailed below) in that the large majority of contemporary Americans trace their ancestries to international migrants who came to the country from virtually every corner of the globe, speaking most of the languages of humankind.

The history of U.S. immigration is typically described as coming in three “waves”: the *first* (1830s – 1850s) was predominantly composed of migrants from northwestern Europe (especially the United Kingdom and Ireland, but also Germany and Scandinavia), though a number of Chinese migrants were imported to the West Coast during the latter part of the period to help construct the country's first transcontinental railroad. The *second* “wave” of immigration (1880s to 1920s) saw a shift in origins toward migrants from southern and eastern Europe (e.g., Italy, Greece, Poland, Russia), while the *third* (1960s to present) has involved another major shift in the origins of migrants, this time away from Europe toward Latin America, Asia, the Middle East, and Africa. Thus, at present Americans can trace their origins to virtually every place – and every language group – on the globe, and most of these arrived via international migration.

But while most can trace their ancestry back to immigrants, significant numbers of Americans come from groups that were *initially incorporated* into the population through other means, often *through violent and coercive means*. Among these are the members of indigenous tribal groups or nations, African American descendants of peoples violently imported as chattel slaves, and Mexican and Puerto Rican Americans whose ancestors were incorporated through conquest and annexation via the U.S. war with Mexico in 1846-48 and the Spanish-American War of 1898. The war with Mexico resulted in that country's loss of nearly half its territory (areas now incorporating the U.S. states of Texas, California, New Mexico, Arizona, Nevada, and parts of Colorado and Utah), while Spain ceded both Puerto Rico and the Philippines to the U.S. following the 1898 conflict. The Philippines was granted its independence after being recaptured from the Japanese near the end of World War II, but Puerto Ricans are U.S. citizens even though the island's status is that of a “commonwealth” and not a state. Meanwhile, contemporary immigrants from Mexico who settle in the U.S. southwest (the large majority) often live in co-ethnic communities and neighborhoods some of which have existed since the territory was taken from Mexico over 150 years ago. And the Spanish language has been in continuous usage in both Puerto Rico and in the areas taken from Mexico since being incorporated into the U.S.A.

3. Responses to U.S. Linguistic Diversity

American linguistic diversity, then, is a product of both immigration and the forcible incorporation of peoples that did not voluntarily migrate to the country. The history of responses to U.S. linguistic diversity is highly complex and cannot be summarized in any detail here (but see, e.g., Baron, 1990, and Kloss, 1998, for historical overviews). For present purposes, however, it can be said that two overriding facts stand out in this history. *First*, some members of virtually every language group that has become part of the U.S. population have attempted to preserve, maintain, and perpetuate their (non-English) language as a practical reality in their new country. This is true of both immigrant groups and of those groups that were incorporated through coercion. These efforts at language preservation have taken multiple forms, including the following: group segregation from the dominant cultural community (whether imposed or voluntary); the organization and support of social, cultural and economic institutions operated in the group's language; the development and support of private and/or faith-based schools to teach the group's language and culture to its young; the operation of mass media in the group's language (e.g., newspapers, magazines, radio and television stations); and efforts to convince public authorities to teach the group's language and culture in the public schools, in language classes and/or through broader bilingual curricula.

The *second* overriding fact is that over the long run these efforts at maintaining language diversity through multiple generations of the same ethno-linguistic groups have been quite unsuccessful. That is, with few exceptions (one being the Navajo in the U.S. southwest), both casual observers and language scholars have observed a consistent pattern of linguistic adaptation to life in the United States: the *first generation* speaks mainly the language it brought to the U.S. as immigrants or as an annexed population, while also making some (more or less successful) effort to learn English; the *second generation* remains fluent in its parents' language, but is also fluent in English; and the *third generation* is nearly monolingual in English, though it may retain some ability to understand its grandparents' efforts at communication in the heritage language (see Veltman, 1983, for a classic articulation of the scholarly findings). Scholarly studies of current newcomers to the U.S. are finding a rather consistent replication of this traditional pattern, despite the fears of assimilationists and U.S. nationalists that (especially) Spanish-speaking immigrants are avoiding the country's historical pattern of language shift to English (for a recent articulation of these fears, see, e.g., Huntington, 2004).

These patterns appear to be continuing and prevalent during the contemporary "third wave" of U.S. immigration, despite the unprecedented fact that well over half of contemporary non-English speakers speak a single language – Spanish – and that a majority of these Spanish speakers reside in territory that was once part of the country from which they have migrated, Mexico.

Thus, on the one hand, for more than three decades studies of Latino public opinion have consistently found that most U.S. residents with roots in Latin America or the Spanish-speaking Caribbean strongly favor a *bilingual* approach to U.S. language policy. According to

these polls, Hispanics are not at all resistant to the learning of English, believing that immigrants to the U.S. should learn English as quickly as possible. The 2006 Latino National Survey (the most extensive recent national survey of Latino public opinion), for example, found that 98.7% of the U.S. Latino respondents thought that the ability to speak English is either “very important” or “somewhat important” for those living in the United States. Only 1.3% thought that English-speaking ability is only “a little” or “not at all” important (Latino National Survey, 2006: 7). Among the 67% of Latino respondents who are *immigrants*, the LNS found that 99.3% believe that it is “somewhat” or “very” important to be able to speak English in the United States (Latino National Survey, 2007, slide 23).

At the same time that U.S. Latinos express a strong preference for wanting to know and use English, however, *they also express a nearly equally strong desire* for their families to retain facility in their native tongue. The Latino National Survey, for example, found that 97% of its national sample believes it “somewhat” or “very” important that their families maintain the ability to speak Spanish. And it seems very significant that the LNS found that the vast majority (88.9%) of even *fourth generation* Latinos believe that it is “somewhat” or “very” important for them and their families to maintain the ability to speak Spanish (Latino National Survey, 2007, slide 23). And other surveys have found strong support among Latino respondents for education policies fostering bilingualism, as well as majority support for access to ballots and election materials in Spanish, the provision of public services in Spanish, and linguistic non-discrimination policies (for an overview, see Schmidt, 2000, Chapter 3).

On the other hand, while U.S. Latinos express strong support for policies of bilingualism and for the maintenance of Spanish language fluency across generations into the future – even while also providing strong support for English language fluency as well – a growing consensus exists among linguists studying the adaptation of recent Spanish-speaking immigrants to life in the United States suggests that the ability to speak, read, and write Spanish is disappearing among third-generation Latinos in a repetition of the classic pattern summarized above.

To illustrate these findings, a recent study by three prominent sociologists directly challenged Huntington’s claims, cited above, that contemporary Spanish-speaking immigrants are not learning English (Huntington, 2004). Rumbaut, Massey and Bean summarize the political implications of their research as follows:

... those who worry about linguistic balkanization because of heavy immigration from Spanish-speaking countries have nothing to fear, because use of Spanish dies out rapidly across the generations, even in the area of highest Hispanic immigrant concentration in the United States. (Rumbaut, Massey, and Bean, 2006: 2).

Noting that Southern California has the highest concentration of recent immigrants and Spanish speakers in the country, they find nevertheless that the “life expectancy” (i.e., continuing ability to speak the non-English language fluently) of languages other than English is very short: among speakers of Asian languages, that “life expectancy” is two generations, while for Mexican Spanish speakers it is 3.1 generations (Rumbaut, Massey, and Bean, 2006: 12). These scholars, then, describe Southern California as a “graveyard for languages”:

Although the life expectancy of Spanish may be appreciably greater among Mexicans in Southern California, its ultimate demise nonetheless seems assured by the third generation. Like taxes and biological death, linguistic death seems to be a sure thing in the United States, even for Mexicans living in Los Angeles, a city with one of the largest Spanish-speaking urban populations in the world. (Rumbaut, Massey, and Bean, 2006: 13)

4. Explaining the Results

How can these consistent historical patterns of language shift, of assimilation to English – even among Spanish-speakers – be explained? And what is the role of U.S. language law in this explanation?

There have been instances of outright suppression of minority languages in U.S. history, but mostly these have been confined to the education of minority youth and not to the direct prohibition of the use of non-English languages in the public sphere. During the nineteenth and twentieth centuries (until the 1960s), for example, the policy of the U.S. government's Bureau of Indian Affairs was to place as many indigenous youth as possible in "Indian schools" where they were punished for speaking their native tongues and urged to master the English language as one of the central pillars of their becoming "civilized" Americans. Similarly, testimony at legislative hearings on behalf of bilingual education policies in the 1960s and 1970s was replete with statements by Hispanics that they and/or their children had been punished in public schools for speaking Spanish on the playgrounds or in classrooms. And, of course, African American history contains many documented instances of the deracination of slaves through their punishment for speaking African languages and the simultaneous prohibition of their being taught English literacy.

Immigrant languages too have sometimes been subject to efforts at suppression, particularly during times of heightened public anxiety and opposition to immigration. A prominent instance of this – to be discussed below in reference to a major decision of the U.S. Supreme Court – occurred during and soon after World War I, when anti-German hostility led several mid-western states and local communities to ban the teaching of "foreign" languages in the schools. In the 1980s and 1990s, as well, there were efforts in some local communities of Southern California to prohibit the placement of non-English commercial signage on storefronts (see, e.g., *Asian American Business Group v. City of Pomona*, 1989; Horton, 1995).

Despite such efforts at restrictions on language diversity, however, for the most part American language policy has been remarkably tolerant of the use of non-English languages by private individuals in both private and public spaces. And the main foundation for this tolerance for the use and teaching of non-English languages in the United States has been the country's liberal individualistic legal and constitutional regime.

5. The U.S. Legal Regime: Language Policy and Liberal Individualism

There is not space in this brief article for a systematic overview of the U.S. legal regime in

relation to language diversity and language policy (for a good recent overview of language rights under U.S. law, however, see Del Valle, 2003). Instead, this article will focus on the degree to which the U.S. legal regime is based upon a *liberal individualistic* framework regarding the relationships between language diversity and the law. Before turning to those relationships, however, it might be useful to note that the U.S. legal regime of positive law is based on a written constitution that is interpreted by judges under a doctrine known as *judicial review*. That doctrine, first enunciated by Chief Justice John Marshall in the case of *Marbury v. Madison* (5 U.S. 137, 1803), gives to the nation's courts, and ultimately the U.S. Supreme Court, the authority to determine not only what the laws and the constitution *mean*, but also to determine whether or not laws enacted by legislative bodies are consistent with the U.S. Constitution. When laws (or parts of laws) are found to be inconsistent with that constitution, they are declared by the courts to be null and void, and may not be enforced by government officials. The most authoritative aspects of U.S. language law, then, are ultimately articulated by court decisions about the meaning and constitutionality of legislation dealing with this (or any other) subject.

At the heart of liberal individualism are two core values: *liberty* and *equality*. Despite the inherent vagueness, complexity, mutability and highly contested meanings of both of these concepts, both values have played crucial roles in the development of U.S. constitutional law in relation to language diversity, and they will frame the analysis that follows.

While the main body of the original U.S. constitution (written in 1787) contained few provisions that may be seen as foundational for a legal regime of liberal individualism, several *amendments* to that constitution have been foundational for a legal regime that articulates and enforces a series of individual rights and liberties. The first ten amendments to the constitution, adopted at the time of its ratification in 1789 at the insistence of several of the original thirteen state governments, collectively are known as the Bill of Rights and traditionally are perceived as the fount of individual liberties in the U.S. constitutional order. With respect to language policy, the most important provision of the Bill of Rights is the First Amendment, which articulates the core religious and political *liberties* of the U.S. population: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (U.S. Constitution, Amendment I).

Perhaps even more important in regard to language diversity has been the Fourteenth Amendment, ratified in 1868 following the U.S. civil war. While the First Amendment protected individual liberties only against actions by the national government, the Fourteenth – intended to ensure that former slaves would enjoy the full rights of citizens of the United States – proclaims that *both* liberty and equality will be legal norms binding on the actions of state and local governments as well. This Amendment contains several provisions that have been foundational in the U.S. legal regime of individual rights, but for purposes of this article, the most important of these are contained in Section I:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (U.S. Constitution, Amendment XIV).

Thus, individual *liberty* is enshrined in the Fourteenth Amendment's "due process clause" prohibiting state governments from depriving persons of "life, liberty, or property, without due process of law." And *equality* is central to the so-called "equal protection clause" prohibiting state governments from denying to "any person . . . the equal protection of the laws." Taken together, these key parts of the Fourteenth Amendment have formed the bedrock for the legal regime of individual rights and liberties in relation to linguistic diversity in the United States.

6. Linguistic Liberty and the Law

Without doubt, the most important U.S. Supreme Court case articulating individual rights to linguistic toleration was that of *Meyer v. State of Nebraska* (262 U.S. 390), decided in 1923. As noted above, World War I unleashed a passionate upsurge of anti-German sentiment in the United States, particularly in the Midwest where numerous German-origin communities had been established. In Nebraska, this antagonism toward Germans and all things German had led to a state law decreeing that "no person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language." Moreover, the law stipulated that languages other than English could only be taught to students in high school or above. This restrictive law was challenged by Meyer, who had been convicted and fined for teaching in the German language in a Lutheran parochial school.

The Nebraska Supreme Court had upheld the law and Meyer's conviction, but this finding was reversed by the U.S. Supreme Court in this case on the grounds that the Nebraska law violated the *liberty* of persons protected under the Fourteenth Amendment's due process clause. In particular, the court held that this constitutionally protected liberty included the teacher's right to teach the German language and the rights of parents to engage him to instruct their children in the language. The kernel of the right to be different established by the court is contained in the following reasoning:

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 by methods which conflict with the Constitution -- a desirable end cannot be promoted by prohibited means. (U.S. Supreme Court, *Meyer v. Nebraska*, 1923)

This liberty to teach – and learn – languages other than English as articulated in the *Meyer* case became an important precedent that has been used by the courts over time to fend off a variety of legislative efforts to curtail the freedom to publicly use languages other than English in the United States. There is not space here to provide an overview of the range of other efforts to shrink the liberty to speak languages other than English, but it is necessary to indicate a few of the more important. Among these are:

(1) Efforts to restrict commercial signs to English only. Faced with an influx of Asian-origin immigrants, the city of Pomona, California adopted an ordinance in 1987 requiring that all businesses with commercial signs in the city have at least 50% of their signs' areas contain "English alphabetical characters" and that their addresses be depicted with "Arabic numerals." A trial court found in *Asian American Business Group v. City of Pomona* (1989) found this law to violate the plaintiffs' free speech rights under the First Amendment of the U.S. Constitution.

(2) Efforts to make English the sole "official" language of the United States. This has been a large-scale effort by "assimilationists," who have sought to amend the U.S. constitution with that goal in mind. Failing so far, advocates have concentrated their efforts on state and local level governments and more than twenty U.S. states have adopted laws making English their sole official languages. While there is nothing inherently prohibitive in the symbolic gesture of adopting a single official language (and most of the state laws fall into this category), Arizona's 1988 official English law aimed at restricting the use of non-English languages by public officials. As the Ninth Circuit U.S. Court of Appeals held in the case of *Yniguez v Mofford* (730 Fsupp 309, D Ariz 1990), in which it upheld a lower court's finding that the law was unconstitutional, the purpose of Arizona's law was "a prohibition on the use of any language other than English by all officers and employees of all political subdivisions in Arizona while performing their official duties except where specifically allowed by law." The courts found Arizona's law an overly broad impingement on the First Amendment freedom of speech rights of both the state's public employees and its elected officials, and ruled it unconstitutional accordingly.

In each of these cases, the courts cited the *Meyer* case as the critical precedent establishing a U.S. right to freedom of expression in languages other than English. For present purposes, however, the important point to notice about these court findings and interpretations is that the linguistic liberty enjoyed by Americans has been consistently construed as a liberty held by individuals, and not by groups. That is, it is *individual persons* who have the freedom to teach, learn, and otherwise use languages other than English, to place their commercial signs in a language of their choice, etc. In contrast, ethno-linguistic *groups* – e.g., Latinos or Spanish-speakers – do not enjoy legal standing entitling them to any such freedom or liberty. Another way to express this point is to say that the *Meyer* decision and its off-spring give to individuals the liberty to *speak* in the language of their choice, but not a right to *be heard* in that language, whether by the state or by the members of an ethno-linguistic community. Such a right to be heard would need to come from a supportive interpretation of the other core liberal value, that of equality, the subject to which we now turn.

7. Linguistic *Equality* and the Law

Though there is national legislation establishing legal protections for U.S. language minority groups (e.g., 1975 amendments to the Voting Rights Act of 1965), most of the legal regime aiming to ensure "equal protection of the laws" to all persons in the United States

has been constructed from a liberal individualist perspective. And accordingly, it provides little in the way of “equality” for the most significant minority language communities in the United States.

As noted above, it is the Fourteenth Amendment to the U.S. constitution that undergirds most legal efforts to realize equality as a core value in the United States. And it was that amendment’s stipulation that no state shall “deny to any person within its jurisdiction the equal protection of the laws” that ultimately led to the overturning of the U.S. South’s system of legally sanctioned racial segregation. And it was this provision that also has enabled legislative and litigative efforts to overturn patriarchal hierarchy, discrimination against gays and lesbians, etc.

Perhaps the most important case on language equality in relation to *education* is that of *Lau v. Nichols* 414 U.S. 56. Decided in 1974, this class-action case was brought against the San Francisco public school district on behalf of a young Chinese-speaking student who did not speak English. Lau was part of the majority of non-English speaking Chinese students in the district who were not provided instruction in Chinese, but were placed in classrooms in which the language of instruction was exclusively English. Lau’s case asserted that in those circumstances, he was denied “equal protection of the laws” as required by the Fourteenth Amendment, and also that he was denied an equal opportunity to a public education as required by the Civil Rights Act of 1964 (the main “equal protection” law enacted by the U.S. Congress to overturn ethno-racial segregation and inequality in the country).

A unanimous U.S. Supreme Court case found in Lau’s favor, basing its opinion, however, solely on the Civil Rights Act and *not* on the Fourteenth Amendment. The Court summarized its finding as follows:

The failure of the San Francisco school system to provide English language instruction to approximately 1,800 students of Chinese ancestry who do not speak English, or to provide them with other adequate instructional procedures, denies them a meaningful opportunity to participate in the public educational program and thus violates § 601 of the Civil Rights Act of 1964, which bans discrimination based “on the ground of race, color, or national origin,” in “any program or activity receiving Federal financial assistance” . . . (*Lau v. Nichols* 414 U.S. 56, 1974).

The Court’s rationale for this finding is found in the following lines from the decision: “There is no equality of treatment merely by providing students with the same facilities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education” (*Lau v. Nichols* 414 U.S. 56, 1974). The Court’s remedy did not require that Chinese-speaking students be taught in Chinese, but only that some method be provided for giving the students a “meaningful opportunity” to participate in the public educational program.

The same year that the *Lau* case was decided, Congress enacted the Equal Educational Opportunities Act of 1974, which used the language of the *Lau* Court to require any public school receiving Federal funds to “take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program” (quoted in Schmidt, 2000, p. 13). And to implement the *Lau* Court’s decision, the U.S. Office of Education issued so-called “Lau Guidelines” that privileged, but did not require,

“transitional” bilingual education programs providing instruction in the “limited English proficient” student’s home language until such time as the student could be placed in an English-only classroom.

Although it would play a pivotal role in expanding access to bilingual education for language minority students in the U.S. for several decades, for present purposes it is important to note that the *Lau* case and its progeny were based on a liberal individualistic understanding of “equality.” That understanding articulated by the courts would later undermine efforts to ensure that the aim of bilingual education for language minority students would be bilingual adults, rather than monolingual English speaking adults.

To explain this claim, it must be stated that the meaning of equality that gains the widest public support and policy legitimacy in the United States is certainly that of *equality of opportunity*, articulated by Milton and Rose Friedman in 1981 as follows:

No arbitrary obstacles should prevent people from achieving those positions for which their talents fit them and which their values lead them to seek. Not birth, nationality, color, religion, sex, nor any other irrelevant characteristic should determine the opportunities that are open to a person – only his [sic] abilities. (Friedman, 1981, p. 123)

And it is this understanding of equality’s meaning that undergirds the *Lau* decision and most of the legal structure that frames equal language rights in the United States.

This is a highly individualistic formulation of the meaning of equality, and as such, it fails to inquire into the *social and historical context* that frames the “opportunities” available to individuals seeking to “achieve” and advance up the ladder of success in any given society. In relation to a society characterized by linguistic diversity and a single hegemonic language of success, this formulation of the equality of opportunity doctrine presupposes an *assimilationist* path toward advancement and “success.” Thus, the Supreme Court’s *Lau* decision assumed – as would most later legislation on education – that English is the “normal” language of instruction in the United States and that non-English speaking students are “handicapped” by their inability to speak and read English. There is no recognition in the Court’s decision, nor in the bilingual education and equal educational opportunities legislation that followed its lead, that Chinese or even Spanish might have been constituted by the country’s historical development as authentically “American” languages, nor that the speakers of those languages might have rights to the “equal protection” of their cultural inheritance as Americans.

As a result, the bilingual educational laws in the United States that were adopted by the national and many state governments during the 1970s through the 1990s were overwhelmingly “transitional” in their understanding of bilingualism. In transitional bilingual education, that is, the sole aim of teaching non-English speaking students in their home languages was to prevent their “falling behind” native English speakers while they were learning English. Thus, these students – who came to be defined in the law as “English language learners” – were to be kept in bilingual classrooms only so long as they continued to be “deficient” in their English language skills. Once they had acquired sufficient competency in English, they were “mainstreamed” into English-only classrooms. Thus, the students’ non-English languages were perceived as classroom “crutches” used to off-set the students’ “handicaps,” and that should be discarded from the instructional environment as

quickly as possible.

This understanding of equality of opportunity's meaning in relation to linguistic diversity in the U.S. meant that bilingual education laws had political purchase only so long as it could be proved that transitional bilingual education was superior to competing methods of teaching English such as "English language immersion" classes, "structured English immersion," English-as-a-Second Language, etc. These methods all met the *Lau* Court's finding that the Civil Rights Act of 1964 required that non-English speaking students need some kind of organized program for helping them to develop the language skills necessary to learn on a level footing with native English speakers.

It did not take opponents of bilingualism long to develop statistical measures demonstrating to their satisfaction that transitional bilingual education is an inferior method for teaching non-English speakers to become fluent and literate in English. While these measures remain highly controversial among education research experts, the voting behavior of Americans and of U.S. political leaders indicates that most are persuaded by the "time-on-task" common-sense logic that spending more time learning in English will result in greater mastery of the language. By 2002, then, many states had eliminated even their transitional programs in bilingual education when the Bush Administration and Congress rewrote the national government's central educational law – now dubbed "No Child Left Behind" – and in doing so eliminated any reference to bilingual education in the law (see, e.g., Crawford, 2002).

An alternative understanding of what is required by "equal protection of the laws" might have recognized the historical and social realities that there are significant language minority groups in the United States and that their members make up substantial proportions of the U.S. population. These groups might have been recognized as having valued cultural and linguistic heritages, and their members might have been recognized as having an equal right to learn and to use their inheritances as equal members of the larger political community. However, such a pluralistic view of the nature of the American polity, and the meaning of equality in such a polity, has failed to gain substantial support in the American legal order.

8. Concluding Analysis

As has been demonstrated, then, the U.S. legal order has been remarkably supportive of the freedom to speak languages other than English in public as well as private spaces. And all persons in the United States, further, enjoy "equal protection of the laws" in relation to their language rights. Still, this tolerant and egalitarian legal order has resulted in a very high degree of linguistic assimilation to English on the part of non-English speaking ethno-linguistic communities, nearly all of whom have supported efforts to retain fluency in their heritage languages even while learning the dominant English language of the country.

As demonstrated above, this pattern of linguistic assimilation holds true even for Spanish-speakers, a language minority with deep historical roots in the land, and that makes up over half of the non-English speakers in the country. U.S. Hispanics, moreover,

overwhelmingly desire that their offspring be bilingual in both Spanish and English, and in public opinion surveys Latinos have consistently supported educational policies – e.g., “maintenance” bilingual education – that would maintain such bilingualism among future generations. Still, by the third generation, most Hispanics have lost fluency and literacy in Spanish.

This article argues that the liberal individualistic understandings of the core values of “freedom” and “equality” embedded in the U.S. legal regime operate in support of such a pattern of linguistic assimilation. For despite its tolerance of linguistic diversity among the speakers of non-English languages, there is no legal right among such speakers to be “heard” in their heritage language. And despite legal guarantees of “equal protection of the laws” in the United States, such protections are nearly always interpreted as meaning “equality of opportunity” to compete with others in the dominant language of the country. Once again, then, there are “equal” protections to gain access to the dominant English language – to learn how to *speak* the dominant language – but there is no equal protection to learn, to speak, or to be heard in any of the minority languages of the country. Given this legal regime of liberal individualism, and the overwhelming hegemony of the English language in U.S. public and commercial life, there is little wonder that most newcomers to the United States quickly and “freely” choose English as the language of success as they seek to advance to a better position within the U.S. social order.

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